

Preferred Contractual Provisions

A. Goods and Services

During the term of this Agreement, the Selected Firm will provide for the University the goods and services offered to the University by the firm in its proposal and/or any addenda to its proposal which has been approved in writing by the University and as may be further specified by the University in writing when it selected the firm.

B. Contract Administrator

The University will identify a Contract Administrator for any Agreement which results from this solicitation. The individual will be the point of contact at the University for day-to-day operations, but cannot approve amendments to the Agreement or price changes.

C. Waiver

No waiver of any right will be deemed a continuing waiver, and no failure on the part of either party to exercise wholly or in part any right will prevent a later exercise of such or any other right.

D. Indemnification

The Selected Firm will indemnify and hold harmless The Commonwealth of Virginia, The Rector and Visitors of the University of Virginia, and their agents, employees and officials from any and all costs, damage or loss, claims, liability, damages, expenses (including, without limitation, attorneys' fees and expenses) caused by or arising out of the performance or non performance of the Agreement by the Selected Firm or its agents or subcontractors, including the provision of any services or products. The Selected Firm warrants that the products, goods and services provided the University may be used by the University without being in violation of any copyright, patent or similar property right or claim by others and will defend, indemnify and save the University (its employees and agents) from and against any such claim.

E. Governing Law

This Agreement will be governed in all respects by the laws of the Commonwealth of Virginia.

F. Termination

If the Selected Firm fails to provide quality goods or services in a professional manner, solely as determined by the University, and, upon receipt of notice from the University does not correct the deficiency, to the University's satisfaction within a reasonable period of time, not to exceed five calendar days unless otherwise agreed to by both parties in writing, the University reserves the right to terminate this Agreement upon written notice to the Selected Firm.

G. Non-Appropriation

Funding for any Agreement between the University and a Selected Firm is dependent at all times upon the appropriation of funds by the Virginia General Assembly and/or any other organization of the Commonwealth authorized to appropriate such funds. In the event that funding to support this Agreement is not appropriated, whether in whole or in part, then the Agreement may be terminated by the University effective the last day for which appropriated funding is available.

H. Right of Audit

The University reserves the right to audit or cause to be audited the Selected Firm's books and accounts regarding the University's account at any time during the term of this Agreement and for three years thereafter. The Selected Firm will make available to the University all books and records relating to performance of this Agreement as may be requested during said period. This specifically includes, but is not limited to, the right of the University to require that the Selected Firm perform self-audits within reasonable parameters established by the University.

I. Contractual Claims

This Agreement is subject to the University's policy on Contractual Claims which is provided as Attachment 3, Procedure for Resolution of Contractual Claims.

J. Cooperative Purchasing / Use of Agreement by Third Parties

It is the intent of this solicitation and any resulting Agreement to allow for cooperative procurement. Accordingly, any public body (to include government/state agencies, political subdivisions, etc.), cooperative purchasing organizations, public or private health or educational institution, or any University related foundation may access the Agreement if authorized by the Selected Firm.

Participation in this cooperative procurement is strictly voluntary. If authorized by the Selected Firm, the Agreement may be extended to the entities indicated above to purchase goods and services in accordance with the Agreement. As a separate contractual relationship, the participating entity will place its own orders with the Selected Firm and will fully and independently administer its use of the Agreement to include contractual disputes, invoicing and payments without direct administration from the University. No modification of the Agreement or execution of a separate agreement is required to participate; however, the participating entity and the Selected Firm may modify the terms and conditions of the Agreement to accommodate specific governing laws, regulations, policies, and business goals required by the participating entity. Any such modification will apply solely between the participating entity and the Selected Firm.

The Selected Firm will notify the University in writing of any such entities accessing the Agreement. The Selected Firm will provide semi-annual usage reports for all entities accessing the Agreement. The University will not be held liable for any costs or damages incurred by any other participating entity as a result of any authorization by the Selected Firm to extend the Agreement. It is understood and agreed that the University is not responsible for the acts or omissions of any entity, and will not be considered in default of the Agreement no matter the circumstances.

Use of the Agreement does not preclude any participating entity from using other agreements or competitive processes as needed.

K. Favored Nations

The Selected Firm represents that the prices, terms, warranties, and benefits specified in its proposal are comparable to or better than the equivalent terms being offered by the firm to any present customer.

L. The University's Authorized Representatives

The only persons who are or will be authorized to speak or act for the University in any way with respect to this Agreement are those whose positions or names have been specifically designated in writing to Selected Firm by the University's Director of Procurement and Supplier Diversity Services.

M. Purchasing Manual

This Agreement is subject to the provisions of the Commonwealth of Virginia "Purchasing Manual for Institutions of Higher Education and Their Vendors" and any subsequent revisions, which is available on Procurement and Supplier Diversity Services web site at:

<https://vascupp.org/sites/vascupp/files/2020-09/hem.pdf>

N. Small, Women-owned and Minority-owned (SWAM) Business Reporting

The Selected Firm will identify and fairly consider SWAM firms for subcontracting opportunities when qualified SWAM firms are available to perform a given task in performing for the University under the resulting Agreement. The Selected Firm will submit a quarterly SWAM business report to the University by the 8th of the month following each calendar quarter, specifically the months of April, July, October, and January. The Selected Firm will submit the quarterly SWAM business reports to:

Lorie Strother

SWAM Contract Administrator

Procurement and Supplier Diversity Services

E-mail: ljs8n@virginia.edu

The quarterly SWAM business reports will contain this information:

- SWAM firm's name, address and phone number with which the Selected Firm has contracted over the specified quarterly period.
- Contact person at the SWAM firm who has knowledge of the specified information.
- Type of goods and/or services provided over the specified period of time.
- Total amount paid to the SWAM firm as it relates to the University's account.

The Selected Firm's failure to provide SWAM reports on a quarterly basis which contain the information required by this section and/or the Selected Firm's failure to comply with the plan for utilizing SWAM businesses submitted by the Selected Firm as part of its proposal and/or negotiation response may be grounds for debarment pursuant to Section 4.M. of the "Purchasing Manual for Institutions of Higher Education and their Vendors."

O. Intellectual Property Rights/Disclosure

Unless expressly agreed to the contrary in writing, all goods, products, materials, documents, reports, writings, video images, photographs or papers of any nature including software or computer images prepared or provided by the Selected Firm (or its subcontractors) for the University will not be disclosed to any other person or entity without the written permission of the University. The Selected Firm warrants to the University that the University will own all rights, title and interest in any and all intellectual property rights created in the performance or otherwise arising from any Agreement resulting from this solicitation and will have full ownership and beneficial use thereof free and clear of claims of any nature by any third party including without limitation copyright or patent infringement claims. The Selected Firm will execute any assignments or other documents needed for the University to perfect such rights. Notwithstanding the foregoing, for research collaboration pursuant to subcontracts under sponsored research agreements administered by the University's Office of Sponsored Programs, intellectual property rights will be governed by the terms of the grant or contract to the

University to the extent such grant or contract requires intellectual property terms to apply to subcontractors.

P. Electronic Procurement Clause

The Selected Firm agrees to provide and maintain an electronic catalog in the University's Electronic Marketplace (the "Marketplace"). Catalogs can be hosted in the Marketplace or a punchout from the Marketplace to the Selected Firm's website. The University requires the following from its catalog vendors.

Hosted Catalog Firms will:

- Periodically update items, descriptions and pricing. Not to exceed four times per year.
- Use SciQuest functionality to identify product classifications such as hazardous materials, radioactive, controlled substances, etc.
- Address pricing discrepancies within one business day.
- Invoice all items at catalog prices until a new price file is submitted and approved by the University.
- Not increase prices more than once per year and will allow 30 days to review any price changes prior to changing invoiced prices.

Punchout Catalog Firms will:

- Notify the University's Contract Administrator of pricing and product changes prior to making a change.
- Clearly notate shipping terms, return policy and cancellation policy in the punchout catalog.
- Provide training or help details in the punchout catalog.
- Allow customization of the punchout catalog with the University's marks, logos and/or necessary language.
- Agree that to the extent the terms and conditions of this Agreement are in conflict with those in the punchout catalog, this Agreement will take precedence.
- Provide an error message as connectivity interruptions arise.

- Have a privacy policy that complies or is similar to the Platform for Privacy Preferences Project (P3P) standards.

The Selected Firm will:

- Ensure that the Catalog data is maintained, updated and accurate.
- Invoice at catalog prices or lower and accept payment of catalog price if there is a discrepancy.
- Negotiate freight terms for Marketplace purchases.
- Agree to develop and maintain a delivery performance standard and provide annual reports on such performance
- Register in eVA and maintain its registered status for the term of this Agreement. Additionally, maintain the necessary number of eVA sites for orders to be placed from the Marketplace.
- If necessary will maintain and update accurate Ship to addresses in its system.
- Provide reports as required by the University update and maintain its catalog in the system. Such reports may include sales by item, price and quantity sold per time, percentage increase in sales, average lead time, percentage of on-time deliveries and delivery errors.
- Support a manual process for change orders.
- Encourage University user to utilize the UVa Marketplace for placing orders.

The University reserves the right to remove the Selected Firm's catalog from its Marketplace, renegotiate discounts and/or fees and payment of site license fees at anytime during the term of this Agreement.

Q. Payment Terms

State the firm's capability for accepting electronic payments through Automated Clearing House (ACH) and/or purchasing card and provide any additional discounts that may result from paying electronically.

The Selected Firm may indicate payment terms of less than 45 days so long as those terms also contain a cash discount for early payment. For example: “1.25% 20/Net 30” would correspond to a 1.25% discount if paid in 20 days, otherwise net 30. The University will compute discounts from the date of delivery of goods at destination, after final inspection, and acceptance, from the date of completion of services, or from the date the correct invoice is received in Accounts Payable Division, whichever is later. The University will take the cash discount if payment is made within the specified time frame.

Unless alternate payment terms, with cash discounts, are proposed by the Selected Firm, invoices submitted to the University by the Selected Firm for the Goods and Services described in this solicitation will be paid on a Net 45 days after receipt of the Goods and Services and University receipt and approval of the corresponding invoice.

R. Marketing

The University encourages the Selected Firm to appropriately and specifically market itself to applicable end-using University departments that may be interested in the Selected Firm’s Goods and Services. However, the Selected Firm will not use non-specific mass marketing formats; such as, but not limited to, spam, emails and junk mail. In the event that the Selected Firm engages in non-specific mass marketing formats, the University, in its sole discretion, may choose to terminate this Agreement.

S. Future Goods and Services

The University reserves the right to have the Selected Firm provide additional goods and/or services under the same pricing, terms, and conditions. Such additional Goods and Services may include other products, components, accessories, subsystems or related services that are newly introduced during the term of this Agreement. Such newly introduced additional Goods and Services will be provided to the University at favored nations pricing, terms, and conditions.

T. The University does not place verbal orders for the Goods and Services. The University may only place orders for the Goods and Services by issuing a formal written Purchase Order in advance of Selected Firm's provision of the Goods and Services. Accordingly, at the University's request, the Selected Firm will issue a proposal/quotation listing the Goods and Services desired by the University and the corresponding fees and/or fee estimates. After any necessary discussions and/or revisions, the University will issue a corresponding Purchase Order for a specified fee amount. This specified fee amount cannot be exceeded by the Selected Firm unless a new formal written Purchase Order or Purchase Order revision is issued by the University authorizing a specific additional fee amount. Under no circumstances does the University authorize the Selected Firm to provide the Goods and Services before receipt of a formal written Purchase Order corresponding to its proposal/quotation. If the Selected Firm provides Goods and Services prior to receipt of a formal written Purchase Order, or incurs costs in excess of authorized purchase order fee amounts, it does so at its own risk.