Sideline Beverage and Promotional Rights for Athletics

April 28, 2010
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Request for Proposal #KC042810
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This Request for Proposal (RFP) has been posted on Procurement Services web site for your convenience. Addenda and attachments are posted if issued. The RFP can be downloaded at this web site: [http://www.procurement.virginia.edu/pagerfp](http://www.procurement.virginia.edu/pagerfp). It is the firm’s responsibility to ensure that the latest version of the entire RFP and related links are reviewed prior to submission of a proposal. We encourage you to check the web site frequently for any changes prior to the due date. Call (434) 924-1346 if you have trouble accessing the RFP from the web. For questions about the content of the RFP, contact the buyer listed in Section VI, Information about this RFP. Additional information can be found on Procurement Services web site: [http://www.procurement.virginia.edu/pagehome](http://www.procurement.virginia.edu/pagehome)

I. Overview of the RFP Process

The Rector and Visitors of the University of Virginia (the “University”), a Virginia public corporation, seeks an experienced firm to provide Sideline Beverage and Promotional Rights for Athletics. This RFP is part of a competitive procurement process which helps to serve the University's best interests. It also provides firms with a fair opportunity for their services to be considered. The process of competitive negotiation being used in this case should not be confused with the different process of competitive sealed bidding. The latter process is usually used where the goods or services being procured can be described precisely and price is generally the determinative factor. With competitive negotiation, however, price is not required to be the determinative factor, although it may be, and the University has the flexibility it needs to negotiate with firms to arrive at a mutually agreeable relationship.

For ease of reference, each firm receiving this RFP is referred to as a "firm" and the firm selected to provide services for the University is referred to as the "Selected Firm." This RFP states the instructions for submitting proposals, the procedure and criteria by which a firm may be selected, and the contractual terms by which the University proposes to govern the relationship between it and the Selected Firm.

It is the policy of the Commonwealth of Virginia and the University to contribute to the establishment, preservation, and strengthening of small businesses and businesses owned by women and minorities, and to encourage their participation in State procurement
activities. The Commonwealth and the University encourage firms to provide for the participation of small businesses and businesses owned by women and minorities through partnerships, joint ventures, subcontracts, or other contractual opportunities.

II. Background Discussion and Goals of the University

When Thomas Jefferson founded the University in 1819, he intended it to be nothing less than a world-class institution of higher learning. Jefferson’s spirit lives on – not only in the Rotunda and Academical Village he designed, and which remain treasures of American architecture, but in the University’s standing as a leader in education, research, and community service.

The over 20,300 students attending the University work within a true meritocracy and live by an Honor Code unique among American universities. Each student is exposed to the widest spectrum of disciplines – from arts and athletics to humanities and technology. Our students also enjoy a unique connection to the world beyond college through the University’s outstanding professional training, exemplified by its nationally ranked schools of Law, Business, and Medicine. The University as a whole has had a consistently high ranking not only among public schools, where it often heads the list, but among all American universities, public and private.

Over 12,400 permanent University faculty and staff are committed to serving both the local and national community. The University makes a real difference in the world, through its invaluable research, a hospital ranked among the nation’s finest, and graduates who have consistently been among the forefront of our nation’s shapers. At the University, our bright future is the direct result of our great history.

The Department of Athletics is an integral part of the University’s commitment to educational excellence. Its mission is to enhance and support the intellectual purpose of the University and its exemplary academic standards and traditions. The University’s Athletics Department is in the midst of an aggressive ten year strategic plan with goals
that include: graduating 100 percent of its student-athletes, winning 12 national
championships and 70 conference championships, fully endowing all scholarships,
building and maintaining the finest facilities, attracting top prospective student-athletes,
and fully complying with Title IX.

A member of the highly competitive Atlantic Coast Conference (“ACC”), Virginia fields
12 intercollegiate sports for men and 13 for women. Virginia had another successful year
of ACC competition in 2008-09. The University’s intercollegiate athletics program
ranked eighth in the final 2008-09 Learfield Sports Directors’ Cup standings, which are
based on the combined performance of men’s and women’s sports during the academic
year. Virginia is one of just 15 schools to finish in the Top 30 in the Directors’ Cup
standings in all 16 years of the program’s existence and the eighth place finish ties for the
Cavaliers’ best.

Teams or individuals in 20 of Virginia’s 25 sports advanced to NCAA postseason
competition in 2008-09. The baseball team reached the College World Series for the first
time, the women’s rowing team finished fourth at the NCAA Championships, the men’s
lacrosse team reached the semifinals of the NCAA Championships, the women’s golf
team finished a program-best eighth at the NCAA Championships, the men’s tennis team
reached the NCAA Quarterfinals and the men’s swimming and diving team finished a
program-best ninth at the NCAA Championships. The men’s tennis team won the
Intercollegiate Tennis Association’s National Team Indoor Championship for the second
consecutive year. Virginia teams won six conference championships in 2008-09, the
most of any league member and tying for the most won by the Cavaliers in a year.
Virginia has won 35 ACC Championships in the last seven years, the most of any school
in the ACC during that period.

In addition the University’s doubles team of Dominic Inglot and Michael Shabaz won
the NCAA Men’s Doubles Championship, the first doubles team from an ACC school to
accomplish that feat. The National Collegiate Baseball Writers Association and
[CollegeBaseballInsider.com] both named Virginia’s baseball coach Brian O’Connor
National Coach of the Year. Four different Virginia coaches won a total of six ACC Coach of the Year awards in 2008-09.

Virginia’s intercollegiate athletics teams won more than 64 percent of their contests in 2008-09 to win the 31st annual Virginia Sports Information Directors Association Division I All-Sports Championship for the second consecutive year and fourth time in the last six years. The University’s 25 men’s and women’s teams compiled an overall record of 271-146-5 (.648 winning percentage).

Through the winter sports seasons in 2009-10, Virginia won an NCAA Championship in men’s soccer, won the Intercollegiate Tennis Association’s National Team Indoor Championship for the third consecutive year and won four ACC Championships.

Virginia had 216 student-athletes named to the 2008-09 ACC Honor Roll. The ACC Honor Roll comprises those student-athletes who participated in a varsity-level sport and registered a grade point average of 3.0 or better for the full academic year. The University also had two individuals named ACC Scholar-Athlete of the Year in their respective sports.

Virginia’s graduation rate for student-athletes who have exhausted their eligibility remains high. In the 2008-09 academic year, those individuals who exhausted their eligibility graduated at a rate of 93 percent.

Five Virginia athletics teams received public recognition awards for achieving Academic Progress Rate (APR) scores in the top 10 percent of their respective sports. The teams were women’s soccer, softball, women’s swimming and diving, women’s indoor track and volleyball.

Football Facilities - The University’s Scott Stadium (“Stadium) has long been considered one of the most beautiful football stadiums anywhere, with Monticello Mountain as a backdrop and the Blue Ridge Mountains on the horizon. The Stadium’s renovation and
expansion project was completed in the year 2000 and increased capacity to more than 60,000. With the completion of the project, the Carl Smith Center, home of David A. Harrison III Field at Scott Stadium, is a facility befitting the Virginia football program’s stature as a member of the ACC and a program that has participated in 17 bowl games.

The project included construction of the south bowl's upper deck, expanding the President's Box on the east side to include a donor recognition seating area and lounges, building 44 luxury suites, creating a 600-space, three-level parking garage behind the new Bryant Hall, expanding the press box area on the west side, adding a pergola plaza above the hill on the north end, and replacing the bleachers on the northwest and northeast sides of the Stadium with permanent seating. A new 32-foot by 57-foot video board was installed prior to the 2009 football season. Featuring many enhanced amenities and a distinctive architectural appearance all its own, the Stadium is designed to create the ultimate game day experience for players, coaches, fans, and media.

In recent years the stadium has also hosted concerts by The Dave Matthews Band, The Rolling Stones, and U2.

Basketball Facilities – The John Paul Jones Arena (“Arena”), which opened in the summer of 2006, was designed and built to benefit the Virginia basketball programs, the entire Athletics Department, the University, and all of Central Virginia. The Arena provides a beautiful and functional home for men’s and women’s basketball, benefits all of the Athletics Department’s student-athletes with its dining hall and academic center, and gives residents of Central Virginia a venue to watch collegiate basketball at its highest level as well as a variety of other entertainment options.

From a basketball perspective the men’s and women’s programs each have one and a half practice courts available at all times for team and individual work. The Arena seats 14,593 for basketball and features coaches’ office complexes, locker rooms, a training room, a strength and conditioning area and an equipment room.
The Virginia men’s basketball team has made 29 postseason appearances, including 16 appearances in the NCAA Tournament. The University’s women’s basketball team has made 28 postseason appearances, including 24 appearances in the NCAA Tournament.

The Arena is designed to provide a wonderful experience for individuals attending a variety of events as well as for the student-athletes who use the facility on a daily basis. Basketball fans benefit from a state-of-the-art audio-visual system, a spacious lobby with two large video displays, a center-hung scoreboard with four video screens, conveniently located concession stands and a Team Shop.

Other Athletics Department offices located in the Arena are academic affairs, athletics media relations and video services.

Live Game Telecasts - Virginia’s affiliation with the 12-member ACC provides plenty of opportunities for national and regional television exposure. The ACC featured 292 television appearances by ACC members during the 2009-10 men’s basketball regular season, including 179 appearances on national television networks. Virginia’s men’s basketball team made 22 television appearances during the 2009-10 season. During the 2009 football regular season ACC members made 109 television appearances, including eight by the Virginia football team.

Additional Television Programming – The 2009-10 academic year marks the sixth year of Cavalier Sports Weekly. The half-hour television program is hosted each week by a University student-athlete. Cavalier Sports Weekly consists of game highlights, student-athlete profiles, behind-the-scenes footage and other interesting feature stories on Virginia’s intercollegiate athletic teams. The program runs for 32 weeks and is produced and distributed by Virginia Sports Properties and the Athletics Department’s video services staff. Cavalier Sports Weekly is televised on major network affiliates in the Charlottesville area, regionally on Comcast SportsNet and online at VirginiaSportsTV.com.
Radio and Internet live play-by-play coverage of twelve regular season football and over forty basketball games each year on the Virginia Sports Radio Network offers maximum coverage to fans throughout the Commonwealth and beyond. About half of all network affiliates are now powerful FM stations. The network is anchored by a 50,000 watt clear channel AM station, WRVA 1140, out of Richmond, Virginia. Additionally, the ACC has signed a national deal with satellite radio provider, XM Radio, to broadcast all ACC football and men’s basketball games on three dedicated channels. Football, men's and women's basketball, baseball, and lacrosse play-by-play coverage is also available for fans live over the Internet on VirginiaSports.com, the official athletic web site of University athletics.

VirginiaSports.com receives more than 2,000,000 page views a month during the peak athletic season. VirginiaSports.com provides details on all twenty-five athletic programs throughout the year including game updates, player and team profiles, video features, live statistics, and more.

Signage - A limited offering of Stadium and Arena signage is available as part of larger corporate sponsorship packages. The opportunity also exists for sponsors to be included in LED fascia signage at the Stadium and Arena and for sponsors to be part of video content sponsorship opportunities on large screen video displays at the Arena and Stadium in addition the baseball, soccer, and lacrosse venues.

Print – Game programs are distributed to fans for each home athletics event. Posters and schedule cards are produced for each sports program. Meanwhile, a fan guide is mailed to season ticket holders for the football and basketball seasons.

In support of its mission and in an effort to maintain the highest quality services for its customers, the University seeks an experienced firm to provide the Sideline Beverage and Promotional Rights for Athletics to begin July 21, 2010.

III. Scope of Goods and Services

It is the University's intent to enter into an Agreement with the Selected Firm for providing financial support and / or product in exchange for Sideline Beverage and
Promotional Rights for Athletics to include those goods and services necessary to help the University achieve its goals as outlined in this RFP. In order to achieve this goal the Selected Firm may be requested to provide those goods and services outlined in this section.

A. Product:
1. Complimentary product for all 25 of the University’s intercollegiate athletic programs. Product(s) being offered must meet the permissible nutritional supplement requirements as defined by the National Collegiate Athletic Association (NCAA). NCAA definition of permissible nutritional supplements:
   a. Purpose is for providing additional calories and electrolytes to student-athletes,
   b. Do not contain NCAA banned substances, and
   c. Are identified according to the following classes: Carbohydrate / electrolyte drinks, energy bars, carbohydrate boosters and vitamins and minerals.
2. New beverage coolers, squeeze bottles, and cups for dispensing product to athletes.
3. New vending and jet spray dispensing machines.
4. Sports towels and apparel.

B. Service:
1. Marketing support for athletic youth days and tournament(s).
2. Marketing support for promotions, give-a-ways, samplings and printed material.

C. University Considerations:
The University is willing to provide the Selected Firm with the following:
1. Exclusive regular season beverage sideline rights for all 25 University intercollegiate athletic teams for all home events and all away, pre- and post-
season events, if or where possible. Should the Selected Firm not be able to provide a specified product, the University has the right to purchase the product from an alternate source. The exclusive rights do not apply to catering events or to convenience stores.

2. A protection for non-competing sideline beverage signage rights in all athletics and intramural venues (to include temporary and/or permanent signage).

3. Exclusive sideline beverage logo identification on sideline beverage coolers and cups.

4. Exclusive vending presence in all University athletics and intramural facilities.

5. Exclusive use of the University's Department of Intercollegiate Athletics names, symbols, emblems, designs, colors, uniforms and logos (the "Marks") on and off Grounds after obtaining written approval from the Director of the University's Department of Intercollegiate Athletics or his/her designate.

6. Season tickets to all home games, where applicable.

7. Preferred parking passes to all events, where applicable.

8. ACC Men’s Basketball Tournament tickets.

D. Environmentally friendly products, recycling, and reducing paper to include:

1. Choice of recycled products and paper whenever deemed financially feasible.

2. Plans to reduce paper consumption.

IV. Basis of Selection

The University will evaluate proposals and, if a firm is to be selected, select the firm on the basis of:

A. The firm's plan to assist the University to meet its goals for Sideline Beverage and Promotional Rights for Athletics as discussed in Section II, Background Discussion and Goals of the University, and Section III, Scope of Goods and Services;
B. The firm's relevant experience, qualifications and success in providing the goods and services outlined in this RFP;
C. The firm's references from institutions of higher education and clients which are comparable to the University;
D. The firm's financial proposal including but not limited to discounts, service charges and other charges;
E. The quality of the proposal, specifically, responsiveness to requirements and adequacy of information provided;
F. The contractual terms which would govern the relationship between the University and the Selected Firm;
G. The firm’s plan for the utilization of Small, Women-owned and Minority-owned (SWAM) businesses. (In evaluating the firm’s proposal, the University will assign a minimum of 10 percent of the total selection weight to this individual selection criterion.); and
H. Any other factors relevant to the firm's capacity and willingness to satisfy the University.

V. Contents of the Proposal

Proposals should include information outlined in this section. Six copies of proposals must be sent to the Issuing Office, Procurement Services, Carruthers Hall, and not to any other office or department whatsoever at the University.

Unnecessarily elaborate brochures and other presentations beyond that sufficient to present a complete and effective proposal are not desired and may be construed as an indication of an offerors lack of cost consciousness. Elaborate artwork, expensive paper and bindings, and expensive visual and other presentation aids are neither necessary nor desired.
A. Goods and Services

1. Provide a plan of operation to achieve the objectives set forth in Section II, Background Discussion and Goals of the University and Section III, Scope of Goods and Services.

2. Provide information relating to the firm's products and how the University will obtain them under any resulting Agreement. Specific information should also be provided about:
   a. Procedures for obtaining products on a routine and emergency basis; and;
   b. Delivery schedules for products; including standard and special sizes.

3. The University invites proposals that present different options for provision of the Goods and Services, and/or alternate creative proposals from firms. The University will, in its sole judgment, consider such options and/or alternatives as long as the functionality and minimum requirements of the University are met.

B. Firm Information, Personnel, References

1. Provide a brief history of the firm and its experience in providing goods and services similar to those described in this RFP.

2. Provide information on those individuals assigned to work with the University including a description of their experience in providing similar goods and services outlined in this RFP. Specifically identify the name and contact information for the individual assigned to act as the coordinator for both the firm’s proposal and any subsequent responses required of the firm as a part of the RFP process.

3. Provide a list of all of the firm's clients comparable to the University indicating the length of service of each account. The University may contact and/or visit any of these accounts.

4. Provide a list of institutions of higher education with which the firm has signed a term contract.

5. Provide a list of all clients lost within the last three years which includes:
a. A contact name and telephone number
b. Length of service at the account
c. Reason for the loss

6. Provide a copy of the firm's most recent audited financial statements.

7. Provide the amount of annual sales the firm has with each VASCUPP Member Institution. A list of the VASCUPP Members can be found at http://www.vcu.edu/procurement/coopcon.htm

8. Provide the name of the individual responsible for the firm’s supplier diversity program. This individual is responsible for implementing and reporting on the firm’s Small, Women-owned and Minority-owned (SWAM) program as it will relate to this procurement should the firm be selected.

C. Financial Proposal

1. Provide the amount of fees to be paid to the University, and the payment schedule. The firm should detail its valuation assigned to each of the rights listed under Section III, Scope of Goods and Services. The firm should also detail the premium, if any, it assigns to gaining the exclusive sideline rights for all 25 intercollegiate sports programs.

2. Provide prices of products not provided to the University at no charge (if any).

D. Contractual Arrangements

1. Provide the University with any form or contract the University may be requested to sign.

2. State the firm's acceptance of Attachment 1, Mandatory Contractual Provisions.

3. State the firm's acceptance, with any proposed modifications, of Attachment 2, Preferred Contractual Provisions.

4. Provide a written statement with the firm’s proposal that its principals or legal counsel has reviewed Attachment 1, Mandatory Contractual
Provisions, and Attachment 2, Preferred Contractual Provisions, and agrees that these provisions will become a part of any final agreement.

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

The University is committed to the goal of non-discrimination and to giving fair consideration for all vendors in its procurement programs. The University has set a voluntary goal of doing 5% more business with SWAM firms each year. The University’s 2008 SWAM plan spend goal for firms certified by the Commonwealth of Virginia’s Department of Minority Business Enterprise (DMBE) is 40%. Targets for each business segment are:

<table>
<thead>
<tr>
<th>Business Segment</th>
<th>Goal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minority Business Enterprises</td>
<td>4.0 %</td>
</tr>
<tr>
<td>Women Business Enterprises</td>
<td>5.0 %</td>
</tr>
<tr>
<td>Small Business Enterprises</td>
<td>31.0 %</td>
</tr>
</tbody>
</table>

This goal does not allow for "set aside" purchases. SWAM firms must compete equally with majority firms and be able to provide the University with quality goods and services at competitive prices. To view the University’s current quarterly achievements, click here (Current SWAM Report). As this report shows, the University is in need of assistance in the Minority-owned and Women-owned categories. Please tailor your firm’s SWAM plan to assist the University in meeting its goal and targets.

Specify whether the firm is a SWAM. Firms can only be considered a Small, Women-owned or a Minority-owned Business Enterprise if certified by DMBE. All certified SWAM firms will be assigned a specific identification number. No SWAM firm is required to certify under this program and no SWAM firm will be excluded from doing business with the Commonwealth because of their failure to certify as a SWAM firm.

If the firm is not a SWAM firm, describe the firm’s partnering relationships with SWAM firms and how it plans to support the University’s goal to increase
business annually by 5% with these firms in accordance with Attachment 4, Executive VP and COO’s Request for Commitment letter.

F. Other Information
Provide any other information which the University should consider in evaluating the firm's proposal.

VI. Information about this RFP
A. Procurement Schedule
Here is a brief schedule for this procurement, specifying the important dates and milestones:

Issue Date of RFP:   04/28/10
Preproposal Questions due:  05/14/10
Deadline for Receipt of Proposals:  05/28/10
Oral Presentations & Negotiations: Week of 06/07/10
Contract Award:   07/21/10

B. Issuance of RFP and Questions
The Issuing Office for this RFP is:
Procurement Services
University of Virginia
1001 North Emmet Street
P.O. Box 400202*
Charlottesville, Virginia  22904-4202

**NOTE:  If RFP proposal is sent U. S. Postal Service use the P. O. Box. The University does not take responsibility for lost or misdirected mail.

Attention:  Kevin Crabtree, Senior Buyer
Telephone: (434) 982-4219
Fax: (434) 982-2690
TDD: (434) 982-HEAR
Email:  kc5yc@virginia.edu

Any questions concerning this RFP will be directed to Kevin Crabtree as listed above and not to any other person at the University, with the exception of issues directly related to SWAM business and SWAM subcontracting opportunities.
Such SWAM issues may be alternately directed to Bill Cooper, the University’s Director of Supplier Diversity, at (434) 924-7174 or wsc6ja@virginia.edu. The University will determine whether any addenda should be issued as a result of any question or other matters raised.

C. Proposal Deadline
All proposals must be received at the Issuing Office by 3:00 p.m. EDT on Friday, May 28, 2010. Six copies of each proposal must be provided in individual, bound volumes. Firms must also include an electronic copy of the proposal on a CD-ROM or thumb drive, excluding any pre-printed materials such as financial statements. The electronic copy should be formatted as a Microsoft Word document.

D. Oral Presentations and Negotiations
An oral presentation by two or more firms may be required after written proposals are received by the University. If the University requires such a presentation, the Issuing Office will schedule a time and place. Each firm should be prepared to discuss and substantiate any of the areas of the proposal it submitted, its own qualifications for the services required and any other area of interest relative to its proposal. If Oral Presentations are determined to be needed by the University then Negotiations will also take place on that same day. The University will provide a list of questions that should be addressed in the Oral Presentations / Negotiations meeting. These questions will be emailed at least one week prior to the scheduled meeting. Or the University may decide to handle the negotiations via electronic mail and teleconferencing communications only. Oral presentations /negotiations are tentatively scheduled for the week of June 7, 2010.

E. Communications Between the University and the firms regarding This RFP
Informal Communications
From the date of receipt of this Request for Proposal by each firm until a binding contractual agreement exists with the Selected Firm and all other firms have been
notified, or when the University rejects all proposals, informal communications regarding this procurement will cease. Informal communications will include but not be limited to:

1. Requests from the firms to any department at the University, with the exception of Procurement Services for information, comments, speculation, etc.; and

2. Requests from any department at the University, or any employee of the University, with the exception of Procurement Services for information, comments, speculation, etc.

Formal Communications
From the date of receipt of this Request for Proposal by each firm until a binding contractual agreement exists with the Selected Firm and all other firms have been notified, or when the University rejects all proposals, all communications between the University and the firms will be formal, or as provided for in this Request for Proposal, or as requested by Procurement Services. Formal communications will include but not be limited to:

1. Preproposal Questions
2. Oral presentations
3. Site visits, Interviews, etc.

Any failure to adhere to the provisions set forth in Informal Communications and the Formal Communications sections above may result in the rejection of any firm's proposal or cancellation of this RFP.

F. Formation of the Agreement with the Selected Firm
All proposals received will first be carefully evaluated by the University, and then the University intends to conduct negotiations with two or more firms. After negotiations have been conducted, if the University chooses to make award, the University will select the firm which, in its opinion, best meets the needs of the University. Alternately, if the University determines in writing and in its sole discretion that only one firm is fully qualified, or that one firm is clearly more
highly qualified than the others under consideration, it may decide to negotiate and award an agreement to that single firm. In either event, the University intends to execute a mutually satisfactory written agreement which will reflect and largely incorporate this RFP as reconciled with any pertinent documents, such as the proposal submitted and relevant negotiation correspondence.

**Because the University may choose to negotiate and award to a single firm as discussed above, each firm must include in its written proposal all requirements, terms or conditions it may have, and should not assume that an opportunity will exist to add such matters after the proposal is submitted.**

Any firm(s) invited to negotiations should note that the University reserves the right to begin negotiations by combining the best aspects of submitted proposals from all responding firms as the basis for subsequent formation of any Agreement resulting from this RFP.

Firms should also note that, as described in Section H, Provisions Deemed Included in the Proposal, certain matters will automatically be deemed part of the proposal.

**G. Provisions Deemed Included in the Proposal**

The University will consider each proposal to include not only the matters expressly stated in the proposal as requested in Section V, Contents of the Proposal, but also other provisions which consist of two different types: those which are "mandatory" and cannot be changed by a firm in its proposal; and those which are "preferred" by the University, but which a firm may wish to alter by expressly and specifically so stating in its proposal.

The University includes mandatory provisions so that all proposals will be governed by the same basic contractual terms. The University encourages any firm which feels that a mandatory provision is unreasonable to contact the
University before proposals are due so the University can consider amending the provision. The University includes preferred provisions so that any difference between the firm and the University's preferred contractual provisions can be considered during the University's evaluation of proposals.

1. Mandatory Provisions

Each proposal received by the University in response to this RFP will automatically be deemed to include the firm's agreement to the provisions of (a) and (b) below. Although such provisions will govern the firm's proposals as submitted, the University and one or more firms may later mutually agree to amend such provisions, such as when additional time is needed to consider proposals, or when contractual negotiations or performance indicate that such amendments are appropriate.

a. The proposal constitutes an offer by the firm which will remain open and irrevocable for a period of 120 days from the deadline for submitting proposals as stated in Section C, Proposal Deadline.

b. If selected by the University, the provisions governing the firm's performance will include all the provisions of Attachment 1, Mandatory Contractual Provisions.


Unless a firm expressly and specifically provides otherwise in its written proposal, the proposal received by the University in response to this RFP will automatically be deemed to include the firm's agreement to these provisions:

a. The firm consents to the University contacting and obtaining any information relevant to this RFP from the references and others identified by the firm in its proposal, as well as from any other persons, firms, or organizations which the University wishes to contact; and

b. If selected by the University, the provisions governing the firm's performance will include all the provisions of Attachment 2, Preferred Contractual Provisions.
H. Rejection of Proposals

The University reserves the right to reject any or all proposals received.
Nonacceptance of a firm's proposal will mean that one or more proposals were
deemed more advantageous to the University or that all proposals were rejected.
Firms whose proposals are not accepted will be notified after a binding
contractual agreement between the University and the Selected Firm exists, or
when the University rejects all proposals.

I. Virginia Freedom of Information Act

Except as provided below, once an award is announced, all proposals submitted in
response to this RFP will be open to the inspection of any citizen, or any
interested person, firm or corporation, in accordance with the Virginia Freedom of
Information Act. Trade secrets or proprietary information submitted by a firm as
part of its proposal will not be subject to public disclosure under the Virginia
Freedom of Information Act; however, the firm must invoke the protections of
this section prior to or upon submission of its proposal, and must identify the
specific data or other materials to be protected and state the reasons why
protection is necessary. A firm may not request that its entire proposal be treated
as a trade secret or proprietary information. Nor may a firm request that its
pricing be treated as a trade secret or proprietary information, or otherwise be
deemed confidential.
Attachment 1
Mandatory Contractual Provisions

A. Nondiscrimination
During the performance of this Agreement, the Selected Firm will comply with the contract provisions contained in Section 2.2-4311 (1) & (2) of the Code of Virginia or any successor provisions which may be applicable to this Agreement. Also, in accordance with Section 2.2-4343.1, the University does not discriminate against faith-based organizations.

B. Conflict of Interests
The Selected Firm represents to the University that its entering into this Agreement with the University and its performance through its agents, officers and employees does not and will not involve, contribute to nor create a conflict of interest prohibited by the Virginia State and Local Government Conflict of Interests Act (Va. Code 2.2-3100 et seq), the Virginia Ethics In Public Contracting Act (Va. Code 2.2-4367 et seq), the Virginia Governmental Frauds Act (Va. Code 18.2-498.1 et seq) or any other applicable law or regulation.

C. Assignment
Neither party to this Agreement will have the right to assign this Agreement in whole or in part without the prior written consent of the other.

D. Amendments
No amendment of this Agreement will be effective unless it is reduced to writing and executed by the University's Director of Procurement Services and by the individual signing the Selected Firm's proposal or by other individuals named by either party as specified in Section E, Notices below. If the Selected Firm deviates from the terms of this Agreement without a written amendment, it does so at its own risk.
E. Notices

Any notice required or permitted to be given under this Agreement will be in writing and will be deemed duly given: (1) if delivered personally, when received; (2) if sent by recognized overnight courier service, on the date of the receipt provided by such courier service; (3) if sent by registered mail, postage prepaid, return receipt requested, on the date shown on the signed receipt: or (4) if sent by facsimile, when received (as verified by sender’s machine) if delivered no later than 4:00 p.m. (receiver’s time) on a business day or on the next business day if delivered (as verified by sender’s machine) after 4:00 p.m. (receiver’s time) on a business day or on a non-business day. All such notices will be addressed to a party at such party’s address or facsimile number as shown below.

If to the University:
Eric N. Denby
Director of Procurement Services
Carruthers Hall
University of Virginia
1001 North Emmet Street
P.O. Box 400202
Charlottesville, Virginia 22904-4202
Fax: (434) 982-2690

If to the Selected Firm:
The person signing the Selected Firm's proposal in response to the University's RFP, at the Selected Firm's address indicated in such proposal; or to such other person or address as either may designate for itself in writing and provide to the other.

F. Independent Contractor

The Selected Firm is not an employee of the University, but is engaged as an independent contractor. The Selected Firm will indemnify and hold harmless the Commonwealth of Virginia, the University, and its employees and agents, with respect to all withholding, Social Security, unemployment compensation and all other taxes or amounts of any kind relating to the Selected Firm's performance of this Agreement. Nothing in this Agreement will be construed as authority for the Selected Firm to make commitments which will bind the University, or to otherwise act on behalf of the University, except as the University may expressly authorize in writing.
G. Workers' Compensation and Employers' Liability
The Selected Firm will (i) maintain Employers Liability coverage of at least $100,000 and (ii) comply with all federal or state laws and regulations pertaining to Workers' Compensation Requirements for insured or self-insured programs.

H. Drug-Free Workplace
The Selected Firm, its agents and employees are prohibited, under the terms of this Agreement, Code of Virginia Section 2.2-4312, and the Commonwealth of Virginia, Department of Human Relations Management Policy Number 1.05, from manufacturing, distributing, dispensing, possessing, or using any unlawful or unauthorized drugs or alcohol while on University property.

During the performance of this Agreement, the Selected Firm agrees to 1) provide a drug-free workplace for the Selected Firm's employees; 2) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Selected Firm's workplace and specifying the actions that will be taken against employees for violations of such prohibition; 3) state in all solicitations or advertisements for employees placed by or on behalf of the Selected Firm that it maintains a drug-free workplace; and 4) include the provisions of the foregoing clauses in every subcontract or purchase order of over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific agreement awarded to a Selected Firm, the employees of whom are prohibited from engaging in the unlawful manufacturing, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the agreement.
I. Information Technology Access Act

In accordance with § 2.2-3504 of the Code of Virginia, the following will apply to all information technology Agreements:

NON-VISUAL ACCESS TO TECHNOLOGY: All information technology (the "Technology") which is purchased or upgraded by the University will comply with the following non-visual access standards from the date of purchase or upgrade until the expiration of the Agreement:

- Effective, interactive control and use of the Technology will be readily achievable by non-visual means;
- Technology equipped for non-visual access will be compatible with information technology used by other individuals with whom any blind or visually impaired user of the Technology interacts;
- Non-visual access technology will be integrated into any networks used to share communications among employees, program participants or the public; and
- Technology for non-visual access will have the capability of providing equivalent access by non-visual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

Compliance with the foregoing non-visual access standards will not be required if the Director of Procurement Services, University of Virginia determines that 1) the Technology is not available with non-visual access because the essential elements of the Technology are visual and 2) non-visual equivalence is not available.

Installation of hardware, software, or peripheral devices used for non-visual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information will permit the installation and effective use of non-visual access software and peripheral devices.
If requested, the Agreement must provide a detailed explanation of how compliance with the foregoing non-visual access standards is achieved and a validation of concept demonstration.

J. 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 RFP and will have full ownership and beneficial use free and clear of claims of any nature by any third party including without limitation copyright 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.

K. eVA Business To Government Registration

The eVA Internet electronic procurement solution, web site portal [www.eva.virginia.gov](http://www.eva.virginia.gov), is the Commonwealth of Virginia's comprehensive electronic procurement system. The portal is the gateway for firms to conduct business with state agencies and public bodies. All agencies and public bodies are expected to utilize eVA. All firms desiring to provide goods and/or services in the Commonwealth are encouraged to participate in the eVA Internet e-procurement solution. The Selected Firm is required to register in the eVA Internet e-procurement solution prior to an award being made.
L. eVA Transaction Fee
The Selected Firm agrees, by accepting an award as a result of this RFP, that it is a registered eVA vendor and will be subject to an eVA transaction fee, for which the Selected Firm will be invoiced by Commonwealth of Virginia, Department of General Services. Additional information is available at [www.eva.virginia.gov](http://www.eva.virginia.gov).

M. Contractor License Requirements
State statutes and regulatory agencies require that some firms be properly registered and licensed, or hold a permit, prior to performing specific types of services. If firms provide removal, repair, improvement, renovation or construction-type services they, or a qualified individual employed by the firm, must possess and maintain an appropriate State of Virginia Class A, B, or C Contractor License (as required by applicable regulations and value of services to be performed) for the duration of the Agreement. It is the firm’s responsibility to comply with the rules and regulations issued by the appropriate State regulatory agencies.

License #________________ Type________________________

A copy of the license must be furnished upon request to the University or VASCUPP member institution.

N. Unauthorized Alien Use.
The Selected Firm warrants that it does not knowingly employ an “unauthorized alien,” as such term is defined in the federal Immigration Reform and Control Act of 1986. The Selected Firm furthermore agrees that, during the term of the Agreement, it will not knowingly employ an unauthorized alien.
Attachment 2
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. Term of Agreement
The term of this Agreement will be for five years.

C. Contract Administrator
The University will identify a Contract Administrator for any Agreement which results from this RFP. 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.

D. 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.

E. 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.

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

G. 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.

H. 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.

I. 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 five 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.
J. 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.

K. Insurance

Listed below is the insurance the Selected Firm must maintain under any Agreement resulting from this RFP. In no event should the Selected Firm construe these minimum required limits to be their limit of liability to the University. The Selected Firm will maintain insurance which meets or exceeds the requirements of the University with insurance companies that hold at least an A- financial rating with A.M. Best Company. No Agreement will be executed by the University until the Selected Firm satisfies the insurance requirements of the University. The Selected Firm may be required to provide the University with a valid Certificate of Insurance before providing any goods or services to the University. The University reserves the right to approve any insurance proposed by the Selected Firm.

**Comprehensive Commercial General Liability:**
The Selected Firm and any Subcontractor will maintain a minimum combined single Limit of Liability for bodily injury and property damage of $1,000,000 per occurrence and a $3,000,000 aggregate, with coverage for: premises/operations, products/completed operations, personal injury, and blanket contractual liability. The University will be named as an Additional Insured, and the proper name is: "The Commonwealth of Virginia, and the Rector and Visitors of the University of Virginia, its officers, employees, and agents."

**Automobile Insurance:**
The Selected Firm and any Subcontractor will provide a minimum combined single Limit of Liability for bodily injury and property damage of $750,000 per accident, with coverage for: owned, hired, and non-owned automobiles operated by their employees.
L. Use of Agreement by Third Parties

It is the intent of this RFP and any resulting Agreement to allow for cooperative procurement. Accordingly, any public body, 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 at fees in accordance with the Agreement. The Selected Firm will notify the University in writing of any such entities accessing the Agreement. No modification of this Agreement or execution of a separate agreement is required to participate. The Selected Firm will provide semi-annual usage reports for all entities accessing the Agreement. Participating entities will place their own orders directly with the Selected Firm and will fully and independently administer their use of the Agreement to include contractual disputes, invoicing and payments without direct administration from the University. 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 this Agreement does not preclude any participating entity from using other agreements or competitive processes as the need may be.

M. 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.
N. 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 the Selected Firm by the University's Director of Procurement Services.

O. 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 at this web site:


P. 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:

Nancy Noblette
Administrative Assistant to the Director of Procurement Services
E-mail: nrn9g@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.”

Q. 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 RFP 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.

R. Payment Terms
The Selected Firm may indicate payment terms of less than 30 days so long as those terms also contain a cash discount for early payment. For example: “5% 15/Net 30” would correspond to a 5% discount if paid in 15 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, 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 RFP will be paid on a Net 30 days after receipt of the Goods and Services and University receipt and approval of the corresponding invoice.

The Selected Firm agrees to receive payments electronically and provide any additional discounts that may result from paying electronically. The firm will contact the University’s Payment Processor Specialist group in Procurement Services to set up its preferred method of receiving electronic payments [Phone: (434) 924-4212 or email: uva-prs-boa@virginia.edu]. Accordingly, the Selected Firm agrees to accept Bank of America’s (“BoA”) ePayables® method of electronic payment or BoA’s PayMode® method of electronic payment.

S. Future Services

The University reserves the right to have the Selected Firm provide additional Services under the same Favored Nations pricing, terms, and conditions across the Selected Firm’s service line. Such additional Services may include Services that are newly introduced during the term of this Agreement. Such newly introduced additional Services will be provided to the University at Favored Nations pricing, terms, and conditions.
Attachment 3

Procedure for Resolution of Contractual Claims

The Virginia Acts of Assembly of 2007, Chapter 943, Chapter 3, Exhibit P and its attachments requires contractors with the University to submit any claims, whether for money or other relief, in writing no later than 60 days after final payment; however, written notice of the contractors intention to file such a claim must be given at the time of the occurrence or beginning of the work upon which the claim is based.

The University's procedure for deciding such contractual claims is:

A. The Selected Firm must provide the written claim to:
   Assistant Director of Procurement Services
   University of Virginia
   1001 North Emmet Street
   P. O. Box 400202
   Charlottesville, Virginia 22904-4202

B. Although the Selected Firm may, if it chooses, attempt to resolve its claim by dealing with a University department other than the one stated in Section A above, the Selected Firm must submit any unresolved claim in writing no later than 60 days after final payment to the Assistant Director of Procurement Services if it wishes to pursue its claim.

C. Upon receiving the written claim, the Assistant Director of Procurement Services will review the written materials relating to the claim and decide whether to discuss the merits of the claim with the Selected Firm. If such discussion is to be held, the Assistant Director of Procurement Services will contact the Selected Firm and arrange such discussion. The manner of conducting such discussion will be as the Assistant Director and the Selected Firm mutually agree.
D. The Assistant Director of Procurement Services will mail his or her decision to the Selected Firm within 60 days after receipt of the claim. The decision will state the reason for granting or denying the claim.

E. The Selected Firm may appeal the decision to:

   Director of Procurement Services
   University of Virginia
   Carruthers Hall
   1001 North Emmet Street
   P.O. Box 400202
   Charlottesville, Virginia  22904-4202

   by providing a written statement explaining the basis of the appeal, within 15 days after the Selected Firm's receipt of the decision.

F. Upon receiving the written appeal, the Director of Procurement Services will review the written materials relating to the claim and decide whether to discuss the merits of the claim with the Selected Firm. If such discussion is to be held, the Director of Procurement Services will contact the Selected Firm and arrange such discussion. The manner of conducting such discussion will be as the Director of Procurement Services and the Selected Firm mutually agree.

G. The Director of Procurement Services will mail his or her decision to the Selected Firm within 60 days after the Director of Procurement Services receipt of the appeal. The decision will state the reasons for granting or denying the appeal.

H. Nothing in this Attachment 3 will preclude either party from filing a claim in any court of the Commonwealth of Virginia to seek legal or equitable remedy if a dispute should arise, in addition to such other remedies as are expressly provided in this Agreement; provided, the Selected Firm may not file such claim unless and until it has complied fully with the procedure set forth in this Attachment 3.
Greetings:

The quality of service the University of Virginia is able to deliver to its customers is directly related to the excellent support we receive from you and many other outstanding suppliers of goods and services. Without you, we would not be able to fulfill our educational, health care and research missions. An important part of our procurement program involves our commitment to doing business with small, women-and minority-owned (SWAM) businesses. As one of our most important vendors, we look to you to help us achieve this objective.

We conduct substantial business with small firms. We have been less effective in securing long-term business relationships with minority-and women-owned businesses. We are determined to improve our record.

I seek your assistance in two areas. First, to the extent practical, I ask that you involve small, women-and minority-owned businesses in the delivery of services you provide to The University. Second, I seek your help in reporting your results through our quarterly subcontracting reports. The terms and conditions previously provided to your organization outlined this process.

This effort is important to us. We depend on you in so many ways – this is another way that we can partner with your company to make things better.

Sincerely,

Leonard W. Sandridge
Executive Vice President and Chief Operating Officer

Leonard W. Sandridge Executive Vice President and Chief Operating Officer
LWS:dr

Madison Hall · Post Office Box 400228 · Charlottesville, Virginia 22904-4228