

CHAPTER 7

COMPETITIVE NEGOTIATION

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7. **General.** The *Virginia Public Procurement Act (VPPA)* requires the use of competitive negotiation for the procurement of all professional services. For professional service procurement guidelines, refer to 4.23. Competitive negotiation may be the procurement method used for goods and nonprofessional services when it is not practicable or fiscally advantageous to use competitive sealed bidding (*Code of Virginia*, §§ 2.2-4302.2 & 2.2-4303C). The competitive negotiation process, for the purchase of goods and nonprofessional services, is depicted in the flowchart in Annex 7-A.

7.1 **Competitive Negotiation (for Goods and Nonprofessional Services).** Competitive negotiation has the advantage of flexibility for describing in general terms what is being sought and the factors to be used in evaluating responses. It offers the opportunity, through negotiation, to change the content of an offer and pricing after opening. Negotiation is the dialogue that occurs to achieve mutually satisfactory objectives and benefits and to reconcile differences through mediation. This discussion provides the means for both the buyer and seller to reach agreement on a contract's content, terms, and conditions. In the course of negotiation, both parties should be able to reach a mutually acceptable agreement. Competitive negotiation is not "horse trading," "haggling," or an auction. Competitive negotiation, properly carried out, requires skill and extensive preparation on the part of the negotiators to achieve specific procurement objectives. If competitive negotiation is used for a purchase expected to be \$100,000 or less, set-aside per 3.10(g) and the solicitation shall include a tiered award clause as specified in Special Term and Condition 2.M.

This method of procurement requires the issuance of a Request For Proposal (RFP) that describes in general terms the requirement, the factors that will be used to evaluate the proposal, the Commonwealth General Terms and Conditions, plus any special conditions including unique capabilities or qualifications that will be required. In a sealed program, all responses must be held unopened until the date and time specified for their receipt.

Preparation and Issuance of a Request for Proposal (RFP).

- a. (Deleted)
- b. A written RFP is issued to describe in general terms that which is to be procured (see Annex 7-B for format and contents). The RFP must specify and list the specific requirements to be addressed by the offerors that will be used in evaluating the proposals and will contain other applicable contractual terms and conditions, including any unique capabilities or qualifications required of the contractor. When the terms and conditions of multiple awards are so provided in the RFP, awards may be made to more than one offeror. The terms or conditions of the RFP must state the manner in which public notice of the award or the announcement of the decision to award shall be given by the public body (see 3.18 and Appendix B, Section I, U.).
- c. If the method for receiving “Best and Final Offers” (BAFO) is to be used in the negotiation and evaluation process, then this must be stated in the RFP for the offerors’ notification and consideration.
- d. Mandatory requirements should be kept to a minimum and refer only to those areas that are required by law or regulation or are such that they cannot be waived and are not subject to negotiation. The use of “shall” or “must” indicates a mandatory requirement. Specify any optional information desired. The criteria to be used in evaluation shall be stated in the RFP, the weights assigned to them and an indication of whether a numerical scoring system will be used in the evaluation of proposals must be included in the RFP. The weights assigned to the evaluation criteria shall also be posted in the location used for public posting of procurement notices prior to the due date and time if the weights were not included in the RFP. A breakout of subcomponent weights need not be listed. Price shall be one of the factors considered, but need not be the determining one. Include a pricing schedule in the RFP (see Annex 7-B).
- e. Review the RFP Solicitation and File Checklist (Annex 7-E) to assure that all specific requirements applicable to the procurement have been met (see 3.18 for posting requirements). In writing the scope of work and/or technical specifications for an RFP, use the term “contractor” to describe the person/firm that is to perform the requirements of the contract after award. Use the term “offeror” to describe who is to submit a response to the RFP.
- f. Establish a proposal submission due date and time which provide sufficient time for potential offerors to develop a proposal. The minimum time period is ten (10) days from issue date of the RFP. The time period used may be greater than the required ten (10) days based on the complexity of the requirement and whether or not a preproposal conference is required. When an addendum for a sealed solicitation is issued, there must be a minimum of 10 days from the date of the addendum to the due date set for the receipt of bids, or the due date shall be extended.
- g. Sources.
- 1) Solicit at least six (6) sources, including a minimum of four (4) DSBSD-certified small businesses, including any women, minority, or micro business also certified as a small business, if available. The list should note which vendors are small businesses. If fewer than the required number of sources are solicited, the reasons must be documented in writing and placed in the purchase file.
 - 2) If under \$100,000, set-aside accordance with the Small Business Enhancement Award Priority for small business including micro), solicit a minimum of six (6) DSBSD-certified small businesses including at least one micro business in accordance with 3.10(g).
- h. All preproposal conferences or site visits must be mentioned in the RFP and any advertisement of it. If attendance at such a conference or site visit is a prerequisite for submitting a proposal, the public notice period must be at least ten (10) days after issuance to provide adequate opportunity for potential offerors to obtain a copy of the RFP and attend. Preproposal conferences scheduled during a period of suspended State business operations must be rescheduled by the purchasing agency to a date and time which will permit proper notification to all potentially interested participants (Annex 6-E).
- i. Purchase actions requiring advertisement shall be posted in eVA VBO (3.18). In addition to advertising in eVA VBO, RFPs shall be advertised in a newspaper of general circulation in the area in which the contract is

to be performed. The advertisement should be a brief statement about the requirement and information on how to receive a copy of the solicitation.

- j. In accordance with the Commonwealth's policy of facilitating and maximizing the participation of small businesses, which shall include businesses owned by women and minorities when they have also received DSBSD small business certification, an evaluation criterion for all contracts in excess of \$100,000 shall be a Small Business Subcontracting Plan (see Annex 7-G) unless no subcontractor opportunities exist. (See 3.10 h). This requirement is to ensure DSBSD-certified small business participation, which will assist efforts toward achieving the statewide goal of exceeding 42% of the Commonwealth's discretionary spending in combined prime and subcontracts for small businesses. When using numerical scoring, the weight for this evaluation criterion shall be at least 20% of the total evaluation points. If the weight for this criterion exceeds 20%, the weight should be based on the availability or likelihood of subcontracting opportunities for the goods or services being procured. See Appendix B, Section II, 36 for the special term and condition for submission of the Small Business Subcontracting Plan and Evidence of Compliance with this requirement.

If the offeror is a DSBSD-certified small business, the offeror shall indicate such in Section A of Annex 7-G, and shall receive 100% of the points assigned to this evaluation criterion. If the offeror is not a DSBSD-certified small business, the offeror is required to identify which portions of the requirement is planned to subcontract to DSBSD-certified small businesses by completing and returning Section B of Annex 7-G. The maximum number of points available if the offeror is not a DSBSD-certified small business is 75% of the points assigned to this evaluation criterion. For any particular procurement, an offeror or subcontractor shall be considered a Small Business if and only if the offeror or subcontractor holds a certification as such by the Department of Small Business and Supplier Diversity (DSBSD) on the due date for receipt of proposals.

(See Annex 7-G.)

7.3 **Sealed Proposals - Receipt and Evaluation**

- a. Public openings of proposals are not required. If a public opening is held, the names of the individuals, or the names of firms submitting proposals in a timely manner, is the only information read aloud and made available to the offerors and general public (see 3.1e for further guidance on the receipt and opening of proposals).
- b. The proposals are evaluated by the buyer, contracting officer, or an evaluation team. As an option, evaluators may request presentations or discussions with offerors, as necessary, to clarify material in the offerors proposals, to help determine those fully qualified and best suited. Proposals are evaluated on the basis of the criteria set forth in the RFP, using the scoring weights previously determined. All RFP responses are to be evaluated. Proposals not meeting requirements should be scored lower. Only bids in response to an IFB may be determined to be nonresponsive. Offerors may be given an opportunity to correct a deficiency in their proposals, within an appropriate period of time, as determined by the purchasing office. Offerors who fail to submit required documentation or meet mandatory requirements, in such time, for evaluation purposes may be eliminated from further consideration. Two or more offerors determined to be fully qualified and best suited are then selected for negotiation. Price is considered, but need not be the sole determining factor.
- c. During the evaluation phase it may be determined by the evaluation panel that only one offeror is fully qualified, or that one offeror is CLEARLY more highly qualified than the others under consideration. A written determination shall be prepared and retained in the contract file to document the meaningful and convincing facts supporting the decision for selecting only one offeror and negotiating with that offeror. The determination shall be signed by the agency head or designee.

7.4 **Negotiation and Award**

- a. Negotiations are conducted with each of the offerors so selected. Negotiation allows modification of proposals, including price. Offers and counter-offers may be made as many times with each offeror as is necessary to secure a reasonable contract. After negotiations have been conducted with each of the selected offerors, the proposals shall be re-scored unless there have been no changes in any of the items negotiated or only one proposal is under consideration. The Commonwealth selects the offeror which, in its opinion, has made the best proposal. In all cases, written confirmation shall be obtained from the offeror on any modifications of the original proposal. Once an Intent to Award notice is posted, no further negotiation shall be conducted.

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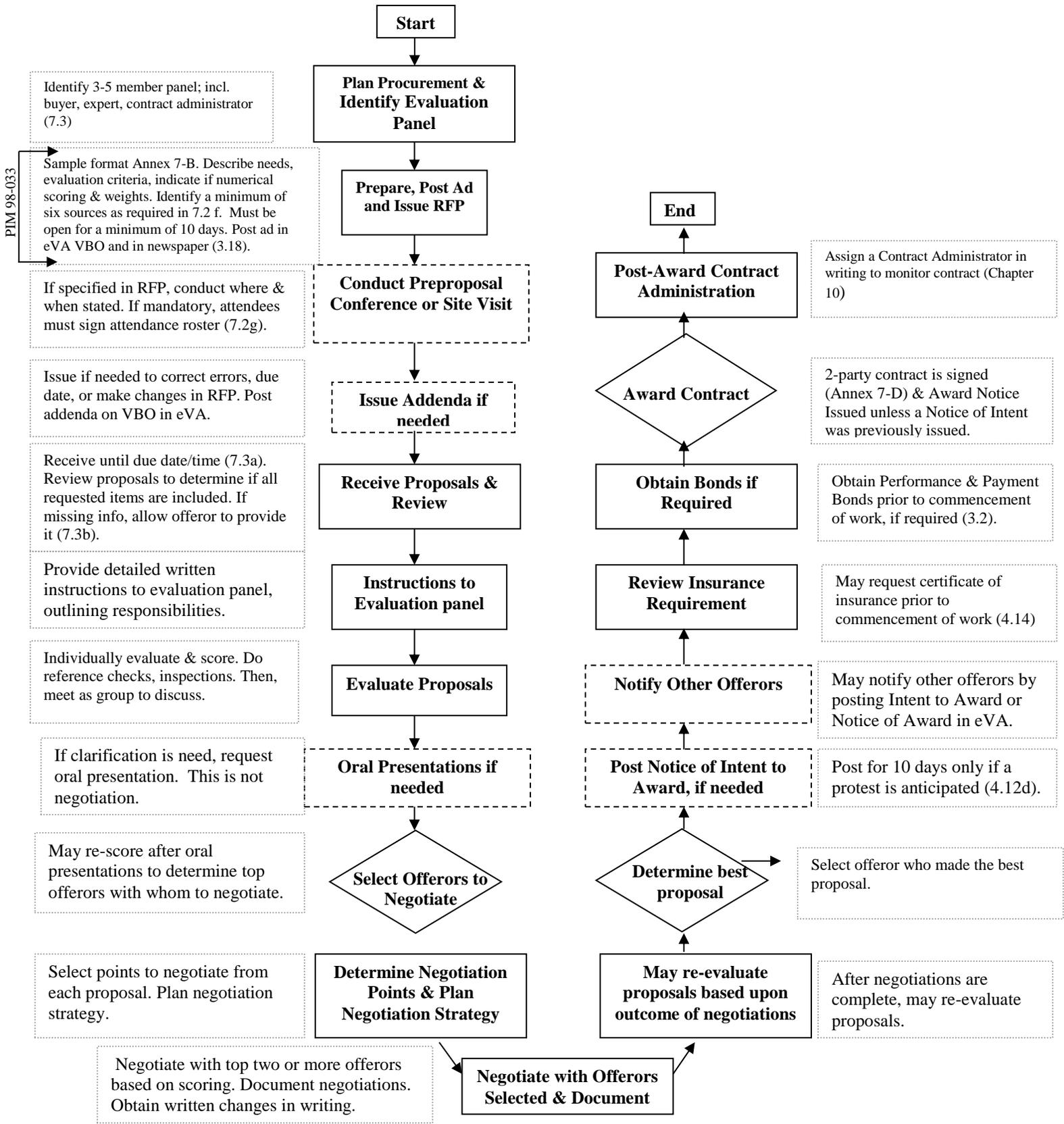
- b. When a provision for receiving best and final offers (BAFO) is included in the RFP, after negotiations, offerors are given the opportunity to submit a best and final offer. After the offeror submits a BAFO, no further negotiation shall take place with that offeror. The offeror's proposal, if already received and scored, may be rescored to combine and include the information contained in the BAFO with the technical evaluation score previously assigned, and the award decision made. The contract file shall be documented to show the basis for the award, and include the final rescoring of the proposals following negotiation and receipt of best and final offers.
- c. For competitively negotiated procurements, once evaluation and negotiations have been completed with selected offeror(s), the agency must prepare a written narrative summarizing the rationale for the ratings that are developed for each proposal negotiated. The summary shall address the merits of the proposal relative to the evaluation ratings; it shall not compare proposals to each other (see Annex 7-H). Agencies are not required to furnish a statement of the reason why a particular proposal was not deemed to be the most advantageous (*Code of Virginia*, § 2.2-4359D). Offerors may inspect the proposal records after evaluation and negotiations are complete, but prior to award (see 3.17 and *Code of Virginia*, §2.2-4342D). Once negotiations have been finalized, complete the "Summary of Evaluation of Ratings by Criteria Worksheet" (Annex 7-H) and place in the procurement file. This worksheet for each offeror negotiated with should be a compilation of the evaluation committee's ratings and not done by or for each committee member.
- d. Agencies may cancel a RFP, or reject proposals at any time prior to making an award (*Code of Virginia*, § 2.2-4319 and 3.1d in this manual).
- e. The award documents shall incorporate, by reference, the terms and conditions of the RFP and the contractor's proposal, together with all written modifications thereof (see 4.12, Annex 6-G, and Annex 6-H).
- f. Merged into 7.4c.

7.5 **Delete**

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Annex 7-A

Competitive Sealed Proposal Process For Goods and Non-professional Services over \$100,000 (Code of Virginia §2.2-4302.2)



Annex 7-B

SAMPLE FORMAT AND STEP-BY-STEP PROCEDURES
REQUEST FOR PROPOSAL (RFP)

Issue Date: _____ RFP# _____

Title: _____

Commodity Code: _____

Issuing Agency: Commonwealth of Virginia

Using Agency And/Or Location
Where Work Will Be Performed: _____

Initial Period Of Contract: From _____ Through _____ (*Renewable).
(* If contract has renewal clause)

Sealed Proposals Will Be Received Until _____ For Furnishing The Goods/Services
Described Herein. _____ Time and Date

All Inquiries For Information Should Be Directed To: _____ Phone: (_____) _____.

IF PROPOSALS ARE MAILED, SEND DIRECTLY TO ISSUING AGENCY SHOWN ABOVE. IF PROPOSALS ARE
HAND DELIVERED, THEN DELIVER TO:

_____ Street Address Building Floor Room No.

In compliance with this Request For Proposals (RFP) and all conditions imposed in this RFP, the undersigned firm hereby offers and agrees to furnish all goods and services in accordance with the attached signed proposal or as mutually agreed upon by subsequent negotiation, and the undersigned firm hereby certifies that all information provided below and in any schedule attached hereto is true, correct, and complete.

* Virginia Contractor License No. _____ * DSBSD-certified Small Business No. _____

Class: _____ Specialty Codes: _____

Name And Address Of Firm:

Date: _____

By: _____

(Signature In Ink)

Name: _____

(Please Print)

eVA Vendor ID or DUNS #: _____

Fax Number: (____) _____

Title: _____

E-mail Address: _____

Telephone Number: (____) _____

* PREPROPOSAL CONFERENCE: A (mandatory/optional) proposal conference will be held on _____ at the _____ (Reference: Paragraph ____ herein). (If mandatory add: "NO ONE WILL BE ADMITTED AFTER _____ (Time) ")* If special ADA accommodations are needed, please contact _____ (Name) at (phone number) by _____ (date) .

* Delete if not applicable.

Note: This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

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NOTE: FOR SECTIONS NOT USED ENTER THE WORD "OMITTED" IN PAGE NUMBER COLUMN.

COMPETITIVE NEGOTIATION STEP-BY-STEP PROCEDURES

The following step-by-step procedures are a guide on how to properly prepare an RFP for the procurement of goods or nonprofessional services by competitive negotiation.

STEP 1 - PREPARE THE REQUEST FOR PROPOSAL (RFP)

Competitive negotiation is a method of contractor selection which includes issuance of a written RFP indicating in general terms that which is sought to be procured, specifying the factors that will be used in evaluating the proposals, and containing or incorporating by reference the applicable contractual terms and conditions including any unique capabilities or qualifications which will be required of the contractor (*Code of Virginia, § 2.2-4302.2*). The RFP should be prepared using the sequence shown on Annex 7-B. The use of this procedure by state agencies standardizes format and makes it easier for state personnel to prepare, evaluate, award, and administer a competitive negotiation program. It also makes it easier for vendors to understand and respond to RFPs. Determine if the procurement is to be set-aside for small businesses.

Preparing the RFP - The following is an explanation of the contents of each section of an RFP. Not all sections need be used in every RFP.

- I. PURPOSE: Include a brief statement of the purpose of the RFP. The following are typical examples of language used in writing this section for goods and services.
 - A. Goods: “The purpose of this Request for Proposal (RFP) is to solicit sealed proposals to establish a contract through competitive negotiation for the (purchase/lease-purchase/lease/rental) of (generic commodity description) by the (agency name).”
 - B. Services: “The purpose of this Request for Proposal (RFP) is to solicit sealed proposals to establish a contract through competitive negotiation for the purchase of (type of consultant services/type of maintenance services/type of other nonprofessional services) by the (agency name).”
- II. BACKGROUND: Optional. If used, the brief narrative should describe historical facts or events leading up to the present requirement for that which is to be purchased. It sets the stage for the proposed procurement.
- III. STATEMENT OF NEEDS:
 - A. The Statement of Needs should describe in general terms, the service to be performed or the goods to be purchased, including quantity, if applicable. Specifications and/or drawings may be referenced by attachment.
 - B. Items that should be addressed in the Statement of Needs include the specific tasks, subtasks, parameters, and limitations restricting such task or subtasks which should be accomplished and/or considered by the contractor or included in the final product. Consequently, each task should be numbered and organized in such a manner as to identify it as an individual task among many. This is one of the most important sections of the RFP, because it is the section upon which the offerors will base their proposed prices.
 - C. Other items that should be addressed, as appropriate, include but are not limited to, agency furnished materials such as State plans, statistical reports, office space, personnel, response times, workmanship, working hours, overtime, access to work site, etc.
 - D. The following content information and language usage should be observed in writing the Statement of Needs:
 1. Do not include Proposal Preparation and Submission information in the Statement of Needs section of the RFP. Likewise, do not place Statement of Needs requirements in the Proposal Preparation and Submission Instructions Section of the RFP (see IV, Proposal Preparation and Submission Instructions).
 2. In stating a requirement or fact, avoid duplication unless necessary. Duplicating a requirement, especially if it is worded differently, may be confusing. The weaker construction of two different sentences addressing the same requirement may be construed to govern in case of controversy. Courts normally rule against the writer of a document in such matters.

3. Use the word “contractor” in the Statement of Needs to describe the person/firm under contract. Use the word “offeror” to describe who is to submit a response to the RFP. Do not use the words offeror, successful proposer, consultant, vendor, selected firm and provider or other similar nouns to identify the contractor. These terms may create severe problems since they also identify other types of persons besides a contractor. Be consistent in the use of a term to describe a person, function, action, item or organization. For example, do not identify a person or role as a “Project Leader” in one instance and then subsequently identify the same person as a “Project Manager” in another sentence. Technically, two different positions may contractually exist in a case of strict interpretation. More importantly, the offerors may be confused by the use of different terms.
4. Use the words “must” or “shall” only for those areas which are mandatory; that is, they are required by law or regulation or are such that they cannot be waived and are not subject to negotiation. The writer should avoid the use of such phrases as “The contractor will” and “The report is to be completed by” to describe a mandatory requirement. These, and other similar expressions, may be construed as future tense or as a condition of fact rather than a mandatory requirement.
5. The words “should” and “may” are to be used to describe an advisory or permissible action for which negotiations are anticipated or desired.

E. The following are samples of the beginning language:

1. Goods: “The contractor shall furnish ____ each of the following described item(s):”
 - a. The description must specify the minimum desired functions of the item(s) and/or the desired characteristics, design, etc., if applicable. The use of brand names is more appropriate in an IFB than a RFP.
 - b. Other items that should be addressed include but are not limited to inside delivery, set up and assembly, removal of trash, warranty, maintenance, packaging, etc., as appropriate.
2. Consultant Services: “The contractor shall furnish all labor and resources to conduct a management study of (name of specific area, etc.) for the purpose of analyzing and recommending appropriate changes to improve efficiency, etc.”
3. Nonprofessional Services: “The contractor shall furnish all labor, materials, etc. to provide Janitorial Services/Dental Services/Food Service Operations/etc. to the (name of the agency or specific areas, etc.).”

IV. PROPOSAL PREPARATION AND SUBMISSION INSTRUCTIONS:

- A. GENERAL INSTRUCTIONS: This section is used to inform the potential offerors of how many copies of the proposal must be submitted, how the proposal is to be prepared, the possibility of oral presentations by the offerors, etc. To reduce administrative burden and costs, request enough copies so that each evaluator is provided a copy. The following are sample paragraphs normally used in this section.
 1. RFP Response: In order to be considered for selection, offerors must submit a complete response to this RFP. One (1) original and () copies of each proposal must be submitted to the issuing agency. No other distribution of the proposal shall be made by the offeror.
 2. Proposal Preparation:
 - a. Proposals shall be signed by an authorized representative of the offeror. All information requested should be submitted. Failure to submit all information requested may result in the purchasing agency requiring prompt submission of missing information and/or giving a lowered evaluation of the proposal. Proposals which are substantially incomplete or lack key information may be rejected by the purchasing agency. Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation.
 - b. Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of content.

- c. Proposals should be organized in the order in which the requirements are presented in the RFP. All pages of the proposal should be numbered. Each paragraph in the proposal should reference the paragraph number of the corresponding section of the RFP. It is also helpful to cite the paragraph number, subletter, and repeat the text of the requirement as it appears in the RFP. If a response covers more than one page, the paragraph number and subletter should be repeated at the top of the next page. The proposal should contain a table of contents which cross-references the RFP requirements. Information which the offeror desires to present that does not fall within any of the requirements of the RFP should be inserted at an appropriate place or be attached at the end of the proposal and designated as additional material. Proposals that are not organized in this manner risk elimination from consideration if the evaluators are unable to find where the RFP requirements are specifically addressed.
 - d. As used in this RFP, the terms "must", "shall", "should" and "may" identify the criticality of requirements. "Must" and "shall" identify requirements whose absence will have a major negative impact on the suitability of the proposed solution. Items labeled as "should" or "may" are highly desirable, although their absence will not have a large impact and would be useful, but are not necessary. Depending on the overall response to the RFP, some individual "must" and "shall" items may not be fully satisfied, but it is the intent to satisfy most, if not all, "must" and "shall" requirements. The inability of an Offeror to satisfy a "must" or "shall" requirement does not automatically remove that Offeror from consideration; however, it may seriously affect the overall rating of the Offerors' proposal.
 - e. Each copy of the proposal should be bound or contained in a single volume where practical. All documentation submitted with the proposal should be contained in that single volume.
 - f. Ownership of all data, materials, and documentation originated and prepared for the State pursuant to the RFP shall belong exclusively to the State and be subject to public inspection in accordance with the *Virginia Freedom of Information Act*. Trade secrets or proprietary information submitted by an offeror shall not be subject to public disclosure under the *Virginia Freedom of Information Act*; however, the offeror must invoke the protections of § 2.2-4342F of the *Code of Virginia*, in writing, either before or at the time the data or other material is submitted. The written notice must specifically identify the data or materials to be protected and state the reasons why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. The classification of an entire proposal document, line item prices, and/or total proposal prices as proprietary or trade secrets is not acceptable and will result in rejection of the proposal. If, after being given reasonable time the offeror refuses to withdraw an entire classification designation, the proposal will be rejected.
3. Oral Presentation: Offerors who submit a proposal in response to this RFP may be required to give an oral presentation of their proposal to the agency. This provides an opportunity for the offeror to clarify or elaborate on the proposal. This is a fact finding and explanation session only and does not include negotiation. The issuing agency will schedule the time and location of these presentations. Oral presentations are an option of the purchasing agency and may or may not be conducted.
- B. SPECIFIC PROPOSAL INSTRUCTIONS: Use this section to inform the potential offerors of the information that must be submitted with their proposals. The information requested is used as the basis for developing the proposal evaluation criteria. The following is a sample of the beginning language and examples of typical specific requirements:
- “Proposals should be as thorough and detailed as possible so that the (agency name) may properly evaluate your capabilities to provide the required goods/services. Offerors are required to submit the following items as a complete proposal:
1. Return the RFP cover sheet and all addenda acknowledgments, if any, signed and filled out as required.
 2. Offeror Data Sheet, included as an attachment to the RFP, and other specific items or data requested in the RFP.
 3. A written narrative statement to include:

- a. Experience in providing the goods/services described herein.
 - b. Names, qualifications and experience of personnel to be assigned to the project.
 - c. Resumes of staff to be assigned to the project.
4. Specific plans for providing the proposed goods/services including:
 - a. List of proposed equipment/goods/etc. including operating parameters, illustrations, etc.
 - b. What, when and how the service will be performed.
 - c. Time frame for completion (if not otherwise specified by the agency in the statement of needs).
 5. Proposed Price. Indicate in the pricing schedule, Section XI of the RFP, if provided.
 6. Small Business Subcontracting Plan – Summarize the planned utilization of DSBSD-certified small businesses under the contract to be awarded as a result of this solicitation. This is a requirement for all prime contracts in excess of \$100,000 unless no subcontracting opportunities exist. (See 3.10 h and Appendix B, Section II, 36.) Complete Annex 7-G.
 7. State Corporation Commission Form: Required of all offerors pursuant to Title 13.1 or Title 50 (See Appendix B, Section II, 64.). Include SCC Form, Annex 7-I, in Request for Proposals.

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V. →

EVALUATION AND AWARD CRITERIA: This section is in two parts. The first part, “Evaluation Criteria,” tells the offerors how the proposals will be evaluated. **The criteria must be developed from the items asked for in the “Specific Proposal Instructions” section.** The RFP shall indicate whether a numerical scoring system will be used in the evaluation of proposals. The point values assigned to each of the evaluation criteria shall be included in the RFP or be posted in the location used for public posting of procurement notices prior to the due date and time. Prepare a written evaluation plan showing the maximum point values to be assigned to each of the evaluation criteria appearing in the RFP. It is suggested that the point values assigned to the evaluation criteria when totaled equal 100. The second part is the “Award of Contract” clause that states how the award will be made. Select from Appendix B, Section II, the appropriate award clause. The following is a **sample** of the beginning language and example evaluation and award criteria that can be modified to reflect the agency's needs:

- A. **EVALUATION CRITERIA:** “Proposals shall be evaluated by the (name of issuing agency) using the following criteria:”

Instructions to Buyers: The basis for evaluation must be known in advance. Phrases such as “and any other criteria the State may decide to use” are not specific, violate the intent of the General Assembly expressed in § 2.2-4300C of the *Code of Virginia*, and shall not be used. Experience and qualifications not only of the firm but also of the personnel to be assigned to the contract shall be included in the “Experience and qualifications” criterion, when appropriate (e.g., services, furnish and install).

These are examples of **typical criteria** used. There is no specific number required but the number should normally be kept to no more than five criteria. The numerical weight assigned to each criterion must be determined by the agency and stated in the RFP, or they must be assigned and posted prior to the opening of proposals. The weights shown here are **only for illustration purposes, except the weight for the small business subcontracting plan shall not be less than 20% of the total point value.** A DSBSD-certified small business that serves as a prime vendor will receive full credit for small business utilization. Other businesses will receive credit based on their Small Business Subcontracting Plan.

<u>FOR SERVICES</u>	<u>POINT VALUE</u>
1. Specific plans or methodology to be used to perform the services	25
2. Price	25
3. Experience and qualifications of personnel assigned to perform the services	20
4. Small Business Subcontracting Plan	20
5. References from other clients	10
TOTAL	100

<u>FOR GOODS</u>		<u>POINT VALUE</u>
1.	Quality of equipment offered and suitability for the intended purpose	25
2.	Experience and qualifications of personnel in providing the goods	20
3.	Price	20
4.	Small Business Subcontracting Plan	20
5.	Maintenance Support	10
6.	Scope and suitability of training offered to State personnel	5
TOTAL		100

Note: If the solicitation has been set-aside for small business or no subcontracting opportunities exist (see 3.10 h), the criteria for Small Business Subcontracting Plan and the point value associated with this criteria will be deleted. The point value shall be re-allocated to the other evaluation criteria.

B. AWARD OF CONTRACT: See Appendix B, Section II for the appropriate clause.

VI. REPORTING AND DELIVERY INSTRUCTIONS: This section is mandatory if the anticipated value of the contract exceeds \$100,000, to include all renewal periods. When used, this section should identify all documentation, reports, etc., and the specific delivery date for each deliverable item that the contractor must furnish during the contract period. In writing this section, the following typical language is provided as an example:

- A. "The contractor shall provide the following documentation to (a specific person or title) for approval by the agency"
- B. "The contractor shall provide a (weekly/monthly) progress report to (a specific person or title) outlining the following:"
 - 1. The specific accomplishments achieved during the reporting period.
 - 2. The specific tasks completed pursuant to the provisions of the contract and the completion dates of such tasks.
 - 3. The projected completion dates for the remaining specific tasks required by the contract.
- C. "Within thirty (30) calendar days after the award date of the contract, the contractor shall furnish a preliminary outline of the organizational structure of the final report to (a specific person or title)."
 - 1. The preliminary outline shall delineate the main topics and subtopics that will later be described in detail in the final report.
 - 2. Beneath each topic and subtopic, the contractor shall furnish a brief narrative description of the subject matter encompassed by the topic or subtopic.
 - 3. The agency shall have the right to edit, modify and/or rearrange the organizational structure, topics, and subtopics as it deems necessary to insure the inclusion of all work required by the contract.
- D. "At least two (2) weeks prior to the submission of the final report, the contractor shall present a preliminary draft of the final report to (a specific person or title). The agency shall have the right to modify and/or to require additional elaboration as it deems necessary to insure a comprehensive and thorough written study of all work required by the contract."
- E. "On or before the date specified in the contract, a final report shall be delivered to (a specific person or title) for its approval. The contractor shall furnish () copies of the final report."

- F. “The contractor shall make at least one (1) oral presentation of the final report to persons or organizations as deemed necessary by the agency.”

NOTE: The requirement to provide a report or other deliverable may be mandatory; however, the specific content of the report, format, etc. may be negotiable. Language which can be used may be, “The contractor shall provide a monthly progress report to (a specific person or title). These reports should contain the following information: . . .”

- G. See 3.10 h. outlining requirements for a Small Business Subcontracting Plan in solicitations where the prime contract is in excess of \$100,000. Prime contractors are required to complete Annex 7-G which should be attached to the RFP solicitation. For competitive negotiation, the Small Business Subcontracting Plan shall be used as one of the evaluation criteria. A DSBSD-certified small business who serves as prime contractor will receive full credit for subcontracting for work performed by such prime. See Appendix B, Section II, 36 for the special term and condition that may be included in RFPs requiring the contractor to provide evidence of compliance with this requirement. Receipt of a small business subcontracting plan may be a condition of the award and if so, a requirement for a report from the prime contractor must be stated in the solicitation indicating the frequency of the report required in the contract.
- VII. PREPROPOSAL CONFERENCE: If a preproposal conference is desired, indicate date, time, place, and whether attendance is mandatory or optional. See Appendix B, Section II for correct wording.
- VIII. GENERAL TERMS AND CONDITIONS: Include the general terms and conditions for goods and services. See Appendix B, Section I. Use the additional general terms and conditions in Appendix B, Section III, for non capital outlay construction projects, as appropriate. Delete General Terms and Conditions that are not applicable to the procurement such as clauses Q, R, S which are not applicable to service contracts; clause T for goods purchases.
- IX. SPECIAL TERMS AND CONDITIONS: Select from Appendix B, Section II, all applicable special terms and conditions. Other special terms and conditions may be developed and included, if approved by your agency’s legal advisor.

The following special terms and conditions must be included in all RFPs or as indicated:

- A. AUDIT: Term contracts only.
- B. CANCELLATION OF CONTRACT: Term contracts only. Provides for the cancellation of the contract by the agency without penalty when it is determined to be in the best interest of the Commonwealth. This clause is not to be used to terminate a contract for default (see Appendix B, Section II).
- C. RENEWAL OF CONTRACT: A term contract normally cannot be renewed unless a clause of this type is included in the RFP (see Appendix B, Section II).
- D. SMALL BUSINESS SUBCONTRACTING PLAN AND EVIDENCE OF COMPLIANCE: Required where the prime contract is in excess of \$100,000 unless the solicitation has been set-aside for small businesses or no subcontracting opportunities exist. (see 3.10 h and Appendix B, Section II). When this term and condition is used then include Annex 7-G in solicitations to be completed by the offeror.
- X. METHOD OF PAYMENT: Specify when payment will be made, i.e., monthly, quarterly, completion of project, etc. In addition, specify when invoices are to be submitted, i.e., by the 10th of the month following the month services were rendered, upon shipment, upon completion of project, etc.
- XI. PRICING SCHEDULE: Provide space and specify how price is to be submitted, i.e., lump sum, hourly rate, unit price, etc. For example: Lump Sum \$ _____
- XII. ATTACHMENTS: List any attachments including their purpose.

STEP 2 – PREPARE COVER SHEET AND ISSUE THE REQUEST FOR PROPOSALS

- I. COVER SHEET: Utilize the cover sheet format on Annex 7-B.
- A. RFP#: A control number should be assigned to each RFP issued.

- B. **TITLE:** If set-aside in accordance with the Small Business Enhancement Award Priority, under 3.10(g) use the following format “Small Business Set-Aside Award Priority” followed by the title of the commodity or service being procured (e.g., Small Business Set-Aside Award Priority - Security Services).

COMMODITY CODE: Assign the appropriate five digit commodity code for either goods or services.

- C. **ISSUE DATE:** This is the date that appears on the RFP and is the date the RFP is to be publicly posted and mailed to selected sources.
- D. **PERIOD OF CONTRACT:** The RFP must state: **From** - “date of award” or a specified date, **Through** - a specified date, a specified number of days after award, “completion of project,” or a specified delivery date.
- E. **SEALED PROPOSALS WILL BE RECEIVED UNTIL:** Specify the exact date and time for receipt of proposals, at least 10 calendar days from date of issue. Public openings of proposals is not required but may be held if desired. If a public opening is held, add “And Then Opened In Public” after the date and time stated on the cover page of the solicitation.

- II. **IDENTIFY POTENTIAL SOURCES:** Select the appropriate number of sources and prepare a solicitation list (see 3.10).
- III. **PUBLISH:** Post in eVA VBO. If set-aside in accordance with the Small Business Enhancement Award Priority under 3.10(g). Select “Small Business Set-Aside Award Priority” once the set-aside box has been checked in VBO
- IV. **ADVERTISING:** Agencies may also post on a designated bulletin board where the general public has access to it. Notices shall also be published in a newspaper or newspapers of general circulation in the area in which the contract is to be performed (see 3.18).

STEP 3 - SELECT AN EVALUATION PANEL

Select and assign a proposal evaluation panel. The evaluation panel should be kept small, three to five is recommended, including the buyer or some other person knowledgeable of the *VPPA*, the *Vendors Manual* and the *Agency Procurement and Surplus Property Manual (APSPM)*. Experience has shown that larger panels are unwieldy and make it difficult to coordinate meetings and negotiating sessions and to reach evaluation decisions.

Provide members of the evaluation panel a copy of VPPA, Article 6. Ethics in Public Contracting, and have them sign a nondisclosure statement (Annex 7-J) concerning conflict of interest.

STEP 4 - CONDUCT PREPROPOSAL CONFERENCE AND/OR SITE VISIT

Conduct preproposal conference and/or vendor visit of work site, if required in the RFP. See Annex 6-E for guidelines. If a preproposal conference or site visit is required, a roster signed by those attending shall be made.

STEP 5 - ISSUE ADDENDUM

If necessary, issue an addendum to correct errors, change proposal due date, or to make any other changes that have been agreed to as a result of the preproposal conference, site visit, etc. See Annex 6-F for sample addendum. Addenda must be posted on the DGS/DPS eVA web site.

STEP 6 - RECEIVE PROPOSALS

Receive proposals at the date and time specified. Publicly open them if indicated on the cover sheet. A public opening is not required by law. If a public opening is held, read only the names of the offerors. See 3.1e for proposal opening procedure. Unsealed proposals may be opened and evaluated upon receipt. Late proposals cannot be considered and should be returned unopened.

STEP 7 - BUYER REVIEW OF PROPOSALS FOR COMPLIANCE WITH THE RFP

After proposals are opened, the buyer/contract officer must review them for completeness and compliance with mandatory requirements. If a proposal is found either to be missing items of information required to be included by the Specific Proposal Instructions or to indicate noncompliance with one or more mandatory requirements of the RFP, immediately notify

the offeror. Give the offeror a reasonable time to provide the missing information or furnish evidence of intention to comply with the mandatory requirement(s). Failure to furnish the information within the time allowed will adversely affect the scoring of the proposal.

STEP 8 - PROVIDE INSTRUCTIONS TO EVALUATION PANEL

The buyer/contract officer should prepare written instructions for the evaluation panel detailing the actions to be taken to evaluate the proposals and provide the instructions and copies of the proposals to each evaluator. The original proposals are to be retained and readily available.

- I. The evaluators are instructed to identify and list areas of apparent noncompliance or areas needing clarification in each proposal.
- II. The evaluators are instructed to conduct a preliminary independent and impartial appraisal and prepare a tentative handwritten analysis describing the rationale leading to specific conclusions on the strengths and weaknesses of each proposal.
- III. The evaluators should be instructed not to contact any of the offerors. They must also be instructed not to reveal any information or tentative conclusions on the relative merits of proposals.

STEP 9 - EVALUATE PROPOSALS

- I. The chairperson should determine that all preliminary studies have been completed by each member.
 - A. The evaluator's lists of apparent noncompliance and questionable areas are reviewed by the committee as a group and a determination made as to the need for clarification from the offeror.

If a question/answer clarification conference is scheduled, the committee may defer final decisions related to noncompliance with mandatory requirements. Such a conference may be held with any or all of the offerors.
 - B. If a question/answer conference is considered necessary, the chairperson will schedule the conference using the following guidelines:
 1. The conference may be conducted by using one of two methods: (1) in person or (2) via the telephone. On larger and more complicated projects, the in-person technique is encouraged.
 2. The activities of the conference are limited to clarification or verification of the offeror's written proposal. Negotiations are not conducted at this point.
 3. The offeror may be required to document an answer if such a written clarification is determined to be in the best interest of the Commonwealth.
 4. Proposals that are substantially incomplete or fail to meet mandatory requirements and the offeror has failed to agree to remedy the situation should be eliminated from further consideration.
- II. If reference checks or any tests or inspections are required by the evaluation criteria, proceed as follows:
 - A. The evaluation committee must contact the references for each offeror.
 - B. A written questionnaire identifying the reference and questions asked should be developed. A brief summary of the answers is recorded on the form and becomes part of the file.
 - C. If equipment is required by the RFP, a demonstration test is permissible provided that such requirements are specifically set forth in the RFP.
 - D. On-site inspection of an offeror's facilities by the evaluation committee is permissible for the purpose of verifying facts presented in the proposal. Arrangements for on site tests and inspections should be coordinated with the offeror(s) by the buyer/contract officer.
- III. COMPLETE EVALUATION BY ASSIGNING POINTS. The proposals must be assigned points in accordance with the evaluation criteria in the RFP.

- A. The lowest price shall be scored the maximum number of evaluation points for price.

The lowest price is then divided by each of the higher offeror's proposed price in turn. The quotient is then multiplied by the points assigned for price to determine the evaluation points to be assigned to each higher price proposal.

$$\frac{\text{Lowest Price Offered}}{\text{Price of Offer being Evaluated}} = \% \text{ Factor} \times \text{Maximum Available Points} = \text{Points Assigned}$$

Offeror/ Price	Lowest Offeror's Price		% Factor	x	Maximum Eval PTS (25)*	=	Points Assigned
A \$32,500	<u>24,250</u> 32,500	=	75	x	25	=	18.75
B \$24,250	<u>24,250</u> 24,250	=	100	x	25	=	25
C \$26,350	<u>24,250</u> 26,350	=	93	x	25	=	23.25
D \$27,600	<u>24,250</u> 27,600	=	88	x	25	=	22

* Point value shown is only an example and will vary with the RFP based on points assigned to price criteria.

- B. When assigning points for subjective evaluation criteria, the best proposal for each criteria shall receive the highest points for that subjective criteria (not necessarily the maximum) with the other proposals receiving fewer points according to the evaluator's judgment. Although the scoring of points for other than cost is a matter of subjectivity, the committee member's judgment must be based on fact as presented in the proposal, question/answer conference, etc. An offeror should not be penalized because of lack of experience with the agency itself, but should be judged, among other considerations, on the relevancy of experience and expertise wherever it occurred. Likewise, an offeror should not be given an unfair advantage of points simply because of a previous contractual relationship with the agency. The relevancy of such experience in terms of the RFPs statement of needs, however, may be judged. Points should not be manipulated to favor a preferred supplier, but be assigned in an impartial manner.
- C. One consensus evaluation form should be prepared showing as a minimum: (1) names of the committee members, (2) names of all offerors including those that were removed from further consideration, (3) evaluation criteria and maximum point values for each, (4) average of points assigned to each offeror. Individual committee members' written comments and points assigned should be included in the procurement file once the consensus evaluation form is prepared to support their consensus.
- D. When assigning points for the Small Business Subcontracting Plan criteria, a DSBSD-certified small business, which shall not exclude women-owned and minority-owned businesses when they have received DSBSD small business certification, who serves as the prime contractor, will receive the maximum number of evaluation points for this criteria. The weight for the small business subcontracting plan shall not be less than 20% of the total point value. See Annex 7-G, Section A of the Small Business Subcontracting Plan. Example: 20 points available for Small Business Subcontracting and the Offeror is a DSBSD certified small business then that Offeror would receive 20 points. No further subcontracting would be required.
- E. Other businesses that are not DSBSD-certified small businesses will receive credit based on their Small Business Subcontracting Plan not to exceed 75% of the points assigned to this evaluation criterion i.e. 20 points X 75%= 15 points. Points will be assigned based on each offeror's proposed subcontracting expenditures with DSBSD certified small businesses for the initial contract period as indicated in the offeror's submitted subcontracting plan in relation to each offeror's total price. See Annex 7-G, Section B of the Small Business Subcontracting Plan for proposed small business subcontracting expenditures.

The Offeror's proposed subcontractor use of DSBSD certified small businesses is divided by the Offeror's total proposed price. The quotient is then multiplied by the points assigned for the criteria to determine the evaluation points to be assigned.

		Offeror's proposed use of DSBSD certified small businesses as subcontractors = % Factor X Available = Points					Assigned
Offeror Price	Offeror's Price	=	% Factor	x	Points (15)*	=	Points Assigned
A \$152,500	<u>15,250</u> 152,500	=	10	x	15	=	1.5
B \$158,000	<u>26,800</u> 158,000	=	17	x	15	=	2.5
C \$166,350	<u>43,251</u> 166,350	=	26	x	15	=	3.9
D \$177,600	<u>95,904</u> 177,600	=	54	x	15	=	8.1

* Point value shown is only an example and will vary with the RFP based on points assigned to Small Business Subcontracting Plan criteria not to exceed 75% of the points assigned to this evaluation criterion i.e. 20 points X 75% = 15 points.

STEP 10 - SELECTION OF OFFERORS AND PREPARATION FOR NEGOTIATION

- I. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors included in the Request for Proposal. The selection is based upon the Evaluation Committee's score. Negotiations shall be conducted with each of the offerors so selected. Should the evaluation committee determine in writing that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror. The determination shall be signed by the agency head or designee.
- II. Each selected offeror's proposal is then discussed in detail by the committee to determine a plan highlighting the areas of negotiation, e.g., concessions to be requested and possible concessions that may be made by the State. **In preparing for negotiations refer to Annex 7-C, Tips/Guidelines for Negotiation.**

STEP 11 - SCHEDULE AND CONDUCT NEGOTIATIONS

- I. Contact each selected offeror and schedule negotiations.
- II. Negotiations are then conducted in accordance with the negotiation plan developed in Step 11. Care should be taken to assure that information contained in other proposals is not divulged. Multiple negotiation sessions may be required.
- III. Obtain in writing, from each offeror with whom negotiations have been held, confirmation of any changes to their proposals that were agreed to during negotiations. Documentation of the negotiating sessions will be made a part of the file. After proposals are rescored in accordance with 7.4.a., the decision to award shall be based on the final negotiated proposals in accordance with the evaluation criteria in the RFP and must be documented in the procurement file. Upon completion of all negotiations, the procuring office shall select the offeror, which in its opinion has made the best proposal, and shall award the contract to that offeror.
- IV. If provisions were included in the RFP for receiving Best and Final Offers (BAFO), as described in 7.4b, after negotiations have been held, offerors are given the opportunity to submit their BAFO. The offers will then be rescored, and an award is made.

- V. Once negotiations have been finalized, complete the “Summary of Evaluation of Ratings by Criteria Worksheet” (Annex 7-H) and place in the procurement file. This worksheet for each offeror negotiated with should be a compilation of the evaluation committee’s ratings and not done by or for each committee member.

STEP 12 - POST A NOTICE OF INTENT TO AWARD

Post for 10 days if protest of the award is anticipated (see Annex 6-G for example of format).

STEP 13 - NOTIFY OTHER OFFERORS

Optional. Notify all other offerors by letter of intent to award or notice of award.

STEP 14 - INSURANCE REQUIREMENTS

If insurance is required in the RFP, the agency has the option of requesting that an insurance certificate be issued. If the agency exercises its option to request such a certificate, it should be requested prior to the work commencing.

STEP 15 - AWARD CONTRACT

The preferred instrument of award for a competitively negotiated contract is the Standard Contract Form (see Annex 7-D). Awards shall be posted on eVA VBO (3.18)

STEP 16 - POST AWARD CONTRACT ADMINISTRATION

The award of a contract is the end of one phase of procurement and the beginning of another equally important phase. This latter phase is contract administration. Its purpose is to assure that the contractor’s total performance is in accordance with all the terms and conditions of the contract. An individual should be assigned in writing to be responsible for contract monitoring and oversight for service or term contracts. A contract administrator should also be assigned when additional coordination is required by the complexity or criticality of the requirement to the agency. Any deviation from contract requirements should be brought to the attention of the contractor and immediate corrective action required (see Chapter 10).

Annex 7-C

NEGOTIATION TIPS/GUIDELINES

These guidelines were developed primarily for procurement by competitive negotiation for goods and non-professional services. Much of the data, however, is applicable to competitive negotiation for professional services, negotiation for technical proposals, non-competitive negotiation and negotiation for resolution of problems arising out of performance under contract.

Procurement by negotiation is the art of arriving at a common understanding through bargaining on the essentials of a contract, such as delivery, specifications, price, and terms. Because of the interrelation of these factors with many others, it is a difficult art and requires experience and the exercise of judgment, tact, and common sense. An effective negotiator must be thoroughly prepared and aware of the strengths and weaknesses of his/her position versus the other party to the negotiation. Only through an awareness of relative bargaining strength can a negotiator know where to be firm or where permissive concessions in price or terms may be made.

Competitive negotiation really begins with the development of the Request for Proposals (RFP). A well-prepared RFP will strengthen the negotiator's position.

Negotiation consists of four equally important steps: Preparation for Negotiation, Conduct of Negotiation, Post Negotiation Actions and Review of Lessons Learned.

PREPARATION:

Plan sufficient time for the negotiation process. Insufficient time leads to hasty decisions. The vendor will sense the pressure of time and take advantage of the situation.

Make a methodical study of all proposals and compare prices, terms and conditions. This will provide the negotiator with the facts required to place the burden on the vendor to justify prices or contractual terms that appear unwarranted. Notes should be made of issues which are likely to arise during negotiation and plans made to deal with these issues. Determine from the proposals those areas in which assistance may be required; technical, engineering, legal, etc.

If a market survey was not conducted prior to issuing the RFP, conduct one. This type information is essential to sound negotiation.

Establish the parameters for specific points in the RFP and vendor proposals that might be traded for more important issues.

Determine the bargaining authority of the vendor representative. Insist on dealing with someone with full authority to commit the vendor. Otherwise, you may have to do the job twice.

Arrange for adequate facilities for the negotiations.

Prepare an agenda.

Be prepared. Study all issues thoroughly. Do not go into a session without having done your homework! Negotiate with the confidence gained from advanced preparation. If unsure contact DGS/DPS for assistance in negotiation.

CONDUCTING NEGOTIATIONS:

There are many ways in which negotiations may be conducted. Each negotiator, therefore, must develop the techniques which they can use most effectively.

Outline the important contract issues and obtain the vendor's position on each. The vendor may not want to consider the logic of the negotiator's position until he/she has explained his/her side of the issue. Try to identify the areas of weakness in the vendor's position.

The negotiator should then make his or her own position known in general terms, citing such areas as policy or budget as justification for the position. This places the burden on the vendor to find a way to comply or justify the exception.

Here, the negotiator brings into play the information gained in the market survey and the competitors' proposals without disclosing what the competition offered. When the vendor disputes the validity of the information, require him to provide the specific information on which his position is based; i.e., cost price analysis.

Reach an agreement on the most important issues before discussing the less important items. If agreement cannot be reached on the major items, the negotiator may use the minor issues for bargaining on the major issues. Be prepared to explore alternatives in the event of disagreement.

Reach an agreement on all contract terms.

One person should be designated as the spokesperson and negotiate for the agency. Team participation in the actual negotiation may be required but the agency's position is finalized by the spokesperson.

Evidence of negotiation shall be documented and made a part of the procurement file.

POST NEGOTIATION ACTIONS:

Be sure all participants fully understand what has been agreed to.

Reduce the agreements to writing and have both parties sign.

Prepare the final contract, obtain necessary signature and any required supporting documents.

REVIEW OF LESSONS LEARNED:

Critique the negotiations with members of your team, pointing out the strong and weak points observed during the negotiation.

Determine if future requirements can be competitively bid.

DO'S AND DON'TS OF NEGOTIATION

DO

Develop your own technique for negotiation.

Be well prepared.

Identify each point to be negotiated.

Establish parameters of discussion for each point.

Identify important issues first and consider appropriate points in time for their negotiation.

Try to settle one point before moving to the next.

Discuss budget limitations, policy and restrictions related to the program.

Be prepared to discuss alternatives.

Negotiate on an even basis. If the vendor has legal or technical support, bring your qualified counterparts.

Avoid arguments.

Avoid interruption.

Avoid quick deals.

Be ethical, fair and firm.

Control the negotiation session.

Attempt to reach a WIN-WIN result e.g., both parties at the conclusion of the negotiation believe they have reached a satisfactory contract.

DON'T

Underestimate the ability of the vendor.

Disclose the specific contents of other proposals.

Negotiate areas beyond the scope of the RFP.

Make a concession without obtaining a concession.

Accept the first no.

Be unreasonable or unfair.

Negotiate to the point that the price is no longer fair and reasonable.

**COMMONWEALTH OF VIRGINIA
STANDARD CONTRACT**

(for use with Competitively Negotiated contracts only)

Contract Number: _____

This contract entered into this ___ day of _____ 20___, by _____ hereinafter called the "Contractor" and Commonwealth of Virginia, _____ (Department, Agency, Division) called the "Purchasing Agency."

WITNESSETH that the Contractor and the Purchasing Agency, in consideration of the mutual covenants, promises and agreements herein contained, agree as follows:

SCOPE OF CONTRACT: The Contractor shall provide the goods/services to the Purchasing Agency as set forth in the Contract Documents.

PERIOD OF PERFORMANCE: From _____ through _____.

The contract documents shall consist of:

- (1) This signed form;
- (2) The following portions of the Request for Proposal dated _____:
 - (a) The Statement of Needs,
 - (b) The General Terms and Conditions,
 - (c) The Special Terms and Conditions together with any negotiated modifications of those Special Conditions;

Attachment _____, Date _____
Attachment _____, Date _____

- (3) The Contractor's Proposal dated _____ and the following negotiated modifications to the Proposal, all of which documents are incorporated herein.

The Contractor [is a certified small business] [agrees to subcontract ___% of the contract to DSBSD-certified small businesses].

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

CONTRACTOR:

PURCHASING AGENCY:

By: _____

By: _____

Title: _____

Title: _____

Note: This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

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Annex 7-E

RFP SOLICITATION AND FILE CHECKLIST

✓	RFP SOLICITATION CHECKLIST	✓	FILE CHECKLIST
	<u>Approval</u> : Required approvals should be obtained prior to preparing the solicitation and a copy placed in the solicitation file. Examples include a release from Corrections to purchase a good(s) or service they produce from a commercial source, authority from the DGS/DPS for an agency to make a direct procurement in excess of its delegated purchase authority (see 1.2, 1.4 and 2.1).		Special Approval
	<u>Approved Request</u> : Written approval to expend funds must be included in the file. When considering the value of the procurement, include all possible renewal periods.		Purchase Requisition
	<u>Statement of Needs</u> : The Statement of Needs describes in general terms what is to be procured.		
	<u>Preproposal Conferences/Site Visits</u> : If a preproposal conference or site visit is to be held, the solicitation must state the date, time, place, and whether attendance is optional or mandatory.		Preproposal sign-in sheet
	<u>General Terms and Conditions</u> : The general terms and conditions or “boilerplate” must be included in every solicitation. Taxes, Use of Brand Names, and Transportation and Packaging General Terms and Conditions are not normally required for service contracts. The Insurance clause is not normally required for goods purchases.		
	<u>Special Terms and Conditions</u> : Each procurement is different, and for each solicitation the special terms and conditions used should be carefully reviewed to ensure that the proper ones are included. They should be essential to the requirement, protect the interests of the Commonwealth, and assist the offeror in understanding the agency’s intent.		
	<u>Evaluation Criteria</u> : The evaluation criteria must be stated in the solicitation, and be based on the requirements stated therein. Typical evaluation criteria include price, approach to the work, experience and qualifications of offerors. Indicate in the RFP whether a numerical scoring system will be used in the evaluation of the proposal. The weights assigned to each criteria must be either included in the RFP or posted prior to receipt of proposals.		Evaluation criteria weights (if not included in the RFP)
	<u>Method of Payment</u> : If payment is to be made prior to final acceptance of the service or goods to be provided, the solicitation should set forth the procedure; e.g., progress payments, partial payments, etc.		
	<u>References</u> : If references are required, the number and type should be specified in the solicitation, and those listed should be checked.		Results of Reference Checks (if requested)

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Pre-award, Receipt & Evaluation, and Post-Award		
	<u>Evaluation Committee</u> : Proposal Evaluation Committee is identified.	Names of Evaluation Committee

	<p><u>Offerors List:</u> Solicit a minimum of six (6) offerors, including a minimum of four (4) DSBSD-certified small businesses, if available. If set-aside for Small Business Enhancement Award Priority in accordance with 3.10(g), solicit a minimum of six (6) DSBSD-certified small businesses, if available including (1) micro business. If fewer than the required number of sources are solicited, the reasons shall be documented. Note which vendors are DSBSD-certified small businesses</p>	<p>Offerors List: Name, addresses of Offerors Solicited</p>
	<p><u>Public Notice:</u> Public notice of the solicitation is required at least ten (10) days prior to the date set for receipt of proposals by posting on eVA VBO and by publishing in a newspaper of general circulation in the area in which the contract is to be performed. Notices may also be posted in other locations (see 3.18).</p>	<p>Publicly advertise and posted notice of solicitation in <i>VBO</i> Advertisement</p>
	<p><u>Solicitation:</u> The original RFP. After the award, remove excess copies of the solicitation and keep the original RFP as issued as a permanent record in the file.</p>	<p>Original solicitation</p>
	<p><u>Addenda:</u> Any changes to the original solicitation must be made by written addendum, sent to each offeror solicited, or each offeror who attended a mandatory preproposal conference. A copy of all addenda issued must be uploaded to the DGS/DPS eVA web site and maintained in the file.</p>	<p>Addenda</p>
	<p><u>Questions/Responses:</u> Answers to questions from potential offerors should be shared with all offeror's who attended a mandatory preproposal conference or who were included on the list of offeror's solicited.</p>	
	<p><u>Proposal Receipt:</u> Proposals are closed at the date and time specified in the solicitation. See 3.1e. There is no requirement for a public opening. Instructions are provided to the evaluation committee. Proposals are checked for missing information.</p>	
	<p><u>Review Proposals:</u> Provide detailed written instructions to evaluation committee, outlining specific actions. Members review proposals against mandatory requirements. If missing required information, contact offeror. Allow opportunity for them to provide information.</p>	<p>Copy of each evaluation committee member's score sheet</p>
	<p><u>Review Member Evaluations:</u> Schedule conferences as appropriate or necessary. Conduct reference checks and inspections as required.</p>	
	<p><u>Oral Presentations:</u> Schedule oral presentations if they are necessary to clarify any ambiguities or omissions in the proposals.</p>	
	<p><u>Proposal Evaluation:</u> Individual evaluations are prepared and proposals are evaluated based upon the evaluation criteria and weights.</p>	
	<p><u>Select Offerors and Determine Issues to Negotiate:</u> The committee will decide who to negotiate with based upon the logical division in the point spread as determined by the points received on the evaluation score sheets. The issues to negotiate will be determined by the evaluation committee.</p>	
	<p><u>Schedule and Conduct Negotiation:</u> A record is maintained of the negotiations with each offeror so selected.</p>	<p>Documentation of negotiations.</p>
	<p><u>Best and Final Offers:</u> If it is planned for Best and Final Offers (BAFO's) to be considered from offerors, then this provision must be made a part of the RFP. If the responses have been scored and a BAFO is received after negotiations, then the affected and previously scored proposal will be rescored with the new information contained in the BAFO being considered. No further negotiation shall take place with offerors providing BAFO's. The offeror who has made the best proposal is given the award.</p>	<p>Best and final offers (if requested in the RFP)</p>

	<u>Review Insurance Requirement or other Requirements:</u> If insurance is required in RFP, the agency has the option to request the insurance certificate prior to commencement of work.		
	<u>Notice of Award or Notice of Intent to Award:</u> Post a Notice of Intent to Award for 10 days on the DGS/DPS eVA web site if a protest of the award is anticipated; otherwise, issue the Notice of Award.		Award document
	<u>Bonds:</u> Obtain Performance and payment Bonds prior to commencement of work, if required in the RFP.		
	<u>Successful Proposal:</u> A copy of the successful proposal is retained in the active procurement file.		Successful proposal
	<u>Contract:</u> A standard two-party contract is typically used for negotiated procurements. Be sure to include by reference, all of the terms and conditions of solicitation, and the RFP as may have been changed through subsequent negotiation.		Copy of the contract
	<u>Contract Administration:</u> If the contract requires administration by other than the buyer, those responsibilities are assigned in writing.		Contract Administrator assignment
	<u>Licenses/References:</u> If other information was required of the contractor, these items must be retained in the procurement file.		Licenses, References
	<u>Unsuccessful Proposals:</u> A copy of the unsuccessful proposals is retained as a part of the inactive permanent record.		Unsuccessful proposals
	<u>Post-Award Correspondence:</u> All post- award correspondence should be maintained in the procurement file.		

The following items should be considered when developing the solicitation:	
	For BOTH Goods and Service Procurements:
	<u>Availability of Funds:</u> Funds to support a procurement solicitation must be available. If funds are limited, the file should contain a statement of dollar ceiling that cannot be exceeded, to ensure that a buyer does not make an award in excess of the funds available. See Appendix B, Section II, Special Terms and Conditions for the appropriate clause which should be used in the solicitation. Use with term contracts only.
	<u>Bonds:</u> For the procurement of goods or services other than construction, for any dollar amount, consider if performance or payment bonds are necessary to protect the Commonwealth's interest.
	<u>Cancellation Clause:</u> If the solicitation will result in a term contract this clause should be included. This is not an appropriate clause for spot purchases. (See Appendix B for sample clause.)
	<u>Performance Period:</u> The performance period stated in the contract must include a starting and ending date, or the contract period must be for a specific period of time after a starting point; e.g., 120 days after date of award. If an option to renew the contract for an additional period is desired, the option must be stated in the solicitation.
	<u>Liquidated Damages:</u> If time and delivery are critical, it may be necessary to include a provision for liquidated damages. The basis for the amount of liquidated damages assessed must be supportable and reasonable, considering the service or goods being purchased and the impact of delay on the Commonwealth. A liquidated damages clause is <u>not</u> to be used as a penalty but as a means to access for damages which may be incurred by late delivery.

	<u>Ownership of Documents</u> : If the contract will result in the production of plans, camera ready copy, art work, or any other material that has been paid for by the Commonwealth and is required for subsequent or future production, then the appropriate special clause should be used in the solicitation to ensure ownership and retention by the Commonwealth.
	<u>Required Delivery/Completion Time</u> : If applicable, a specific date must be stated in the solicitation.
	<u>Small Business Subcontracting and Evidence of Compliance</u> : Use in solicitations for goods, nonprofessional services, or non capital outlay construction when a small business subcontracting plan is a condition of the award. Required in solicitations valued over \$100,000 that are not set-aside for small businesses accordance with the Small Business Enhancement Award Priority, unless a written determination is made, signed by the chief purchasing officer and supported by factual evidence explaining in sufficient detail why no subcontracting opportunities exist.
	<u>Vendor Data Sheet</u> : If the agency wishes to check the offeror's references or to verify the offeror's experience, the Vendor Data Sheet should be included as an attachment to the solicitation (see Annex 6-C).
	For Goods Procurements:
	<u>Inside Delivery</u> : If inside delivery is required, the solicitation should so state. Consider specifying access requirements, e.g., inside delivery is required, the solicitation must so state.
	<u>Samples/Demonstration or Demonstration Models</u> : If samples, demonstration or demonstration models are required, the type, quantity, size, the place, and time for submission must be stated in the solicitation.
	<u>Technical Data</u> : If technical data will be required for evaluation, the solicitation should specify when and where the data should be submitted.
	For Service Procurements:
	<u>Bonds</u> : For the procurement of services other than construction, for any dollar amount, consider if performance or payment bonds are necessary to protect the Commonwealth's interest. If services are being solicited where personal bonding is required such as financial or security service, the requirement must be stated in the solicitation.
	<u>Facilities</u> : If the agency will provide facilities for use by the contractor, such as a storage area, this should be stated in the solicitation. If the contractor is required to provide equipment or facilities, it should also be stated in the solicitation.
	<u>Hours of Work - Access to Agency Facilities</u> : If the hours of work and access to the agency's facility are restricted to certain time periods and dates, the solicitation should so specify. If the resulting contract is not a fixed price contract and overtime work can be anticipated, the pricing schedule should require a statement of overtime rates.
	<u>Insurance</u> : This General Term and Condition should be included on service purchases when the contractor is required to work on state owned, leased or rented property. The contractor must have the proper liability insurance and worker's compensation to protect the Commonwealth from claims resulting from the contractor's work or personnel. For information, call the Division of Risk Management at 804-786-3152.
	<u>Licensing Requirements</u> : State any requirements for licensing. Contractors must comply with licensing requirements (see 3.4).
	<u>Material/Supplies</u> : If there is agency furnished material to be supplied to the contractor, the solicitation must provide for its control, and return, or disposition. If the contractor is to furnish material or supplies, the quantity, quality, and availability must be specified.
	<u>Personnel Approval</u> : If the agency desires to approve individuals employed by the contractor under the terms of the contract, or to exercise some degree of control over contractor's personnel, the requirement must be included in the solicitation.
	<u>Response Time/Service Calls</u> : If the vendor must respond to a service call within a specific time frame, the time frame must be specified in the solicitation.
	<u>Sub-Contractor Approval</u> : If sub-contractors may be involved in satisfying the requirement and there is a need to

	approve the sub-contractors on a project, then the solicitation should state what approvals the Commonwealth wishes to exercise (see page Annex B, Special Condition on Subcontracts).
	For Construction Procurements:
	See 4.24 - The procurement of “construction” for “Capital Outlay Projects” is governed by the rules of the <i>Construction and Professional Services Manual</i> , issued by DGS/Division of Engineering and Buildings.
	<u>Bonds</u> : For construction contracts in excess of \$500,000, a bid bond, performance and payment bonds are required.
	<u>Drawings, As-Built</u> : If “as-built drawings” are required, specify the number of copies, when, and to whom they are to be delivered.
	<u>Drawings, Shop</u> : If shop drawings are required, specify when and to whom they are to be submitted, approvals required, and time limits for review or changes, by both the agency and the contractor.
	<u>Material/Supplies</u> : If there is agency furnished material to be supplied to the contractor, the solicitation must provide for its control, and return, or disposition. If the contractor is to furnish material or supplies, the quantity, quality, and availability must be specified.

Annex 7-F

(Deleted)

Annex 7-G

Small Business Subcontracting Plan

It is the goal of the Commonwealth that more than 42% of its purchases be made from small businesses. All potential bidders are required to submit a Small Business Subcontracting Plan.

PIM 98-033

→ **Small Business:** "Small business (including micro)" means a business which holds a certification as such by the Virginia Department of Small Business and Supplier Diversity (DSBSD) on the due date for proposals. This shall also include DSBSD-certified women- and minority-owned businesses when they also hold a DSBSD certification as a small business on the proposal due date. Currently, DSBSD offers small business certification and micro business designation to firms that qualify.

→ Certification applications are available through DSBSD online at www.DSBSD.virginia.gov (Customer Service).

Offeror Name: _____

Preparer Name: _____ **Date:** _____

Instructions

- A. If you are certified by the DSBSD as a micro/small business, complete only Section A of this form. This includes but is not limited to DSBSD-certified women-owned and minority-owned businesses when they have also received DSBSD small business certification.
- B. If you are not a DSBSD-certified small business, complete Section B of this form. For the offeror to receive credit for the small business subcontracting plan evaluation criteria, the offeror shall identify the portions of the contract that will be subcontracted to DSBSD-certified small business for the initial contract period in Section B..

Offerors which are small businesses themselves will receive the maximum available points for the small business participation plan evaluation criterion, and do not have any further subcontracting requirements.

Offerors which are not certified small businesses will be assigned points based on proposed expenditures with DSBSD-certified small businesses for the initial contract period in relation to the offeror's total price for the initial contract period.

Points will be assigned based on each offeror's proposed subcontracting expenditures with DSBSD certified small businesses for the initial contract period as indicated in Section B in relation to the offeror's total price.

Section A

If your firm is certified by the Department of Small Business and Supplier Diversity (DSBSD), provide your certification number and the date of certification):

Certification number: _____ Certification Date: _____

Annex 7-H SAMPLE

Offeror: Unique Concepts Inc.

Summary of Evaluation Ratings by Criteria Worksheet

RFP# FM-000-12-001

Date: May 15, 20xx

Criteria	Narrative Summary of Ratings
Plan or Methodology Possible 30 points	The offeror’s methodology met the RFP criteria. The plan was clear, concise, and offered innovative approaches. The offeror’s plan was broken down into phases and clearly provides a time frame to monitor progress. The plan detailed each task and allowed flexibility based on the agency’s needs. Out of a possible 30 points, the offeror received an average of 24.5 points from the committee.
Experience/Qualified Firm or Personnel Possible 25 points	The firm’s experience was solid and vast. It had over 35 years experience in the field of this service. The personnel assigned to the project had a combination of education and hands-on experience that met or exceeded the requirements. Experience was the firm’s major strength, receiving the maximum points available. Offeror received 25 points.
Small → Subcontracting Plan Small Business-20 points Other–Possible 15 points	The offeror’s small business subcontracting plan was acceptable. It committed 75% of its total cost to small business utilization. The plan was detailed and the subcontracting contact information provided was complete. In addition, the subcontractor was present at negotiations to discuss its roles throughout the project. Offeror received 15 points.
Price Lowest price-15 points	The offeror provided pricing as required – hourly rate and estimated contact hours for each category. The offeror was able to correlate the hours with the detailed work plan. Through negotiations, the final price was agreed to and the offeror received 15 points out of 15 allotted for this criterion.
References Possible 10 points	The offeror provided the required number of references. Each reference had provided the similar service in public relations/marketing to each reference. References had worked an average of three years with the offeror. Each reference rated the offeror with a favorable evaluation of “Always” or “Usually” on nine of nine categories. All references indicated that they would recommend this firm for work in these services. The offeror received 10 points.

Buyer uses the individual narrative of the evaluation committee members to create an Evaluation Summary document for each offeror negotiations were conducted with.

Total Score 89.5

Annex 7-I

State Corporation Commission Form

Virginia State Corporation Commission (SCC) registration information. The offeror:

is a corporation or other business entity with the following SCC identification number: _____ **-OR-**

is not a corporation, limited liability company, limited partnership, registered limited liability partnership, or business trust **-OR-**

is an out-of-state business entity that does not regularly and continuously maintain as part of its ordinary and customary business any employees, agents, offices, facilities, or inventories in Virginia (not counting any employees or agents in Virginia who merely solicit orders that require acceptance outside Virginia before they become contracts, and not counting any incidental presence of the offeror in Virginia that is needed in order to assemble, maintain, and repair goods in accordance with the contracts by which such goods were sold and shipped into Virginia from offeror's out-of-state location) **-OR-**

is an out-of-state business entity that is including with this proposal an opinion of legal counsel which accurately and completely discloses the undersigned offeror's current contacts with Virginia and describes why those contacts do not constitute the transaction of business in Virginia within the meaning of § 13.1-757 or other similar provisions in Titles 13.1 or 50 of the Code of Virginia.

****NOTE**** >> Check the following box if you have not completed any of the foregoing options but currently have pending before the SCC an application for authority to transact business in the Commonwealth of Virginia and wish to be considered for a waiver to allow you to submit the SCC identification number after the due date for proposals (the Commonwealth reserves the right to determine in its sole discretion whether to allow such waiver):

Annex 7-J SAMPLE

NON DISCLOSURE STATEMENT

The procurement of goods and services by a public body from a private enterprise is a sensitive process governed by law. We must be assured that all public parties involved in the selection process do nothing to contribute to the “**fact**” or “**appearance**” of any impropriety or personal interest in the outcome of the procurement. Commonwealth law and policy requires that each individual be totally objective in arriving at their conclusions in the evaluation process. To better make you aware of the sensitivity of public procurements, each person serving on this evaluation/selection committee will be required to agree and comply with the following statements derived from *Article 6, Ethics In Public Contracting, Virginia Public Procurement Act*.

- A. I certify that I am not a paid officer or director of any firm which is expected to respond to this Request for Proposals (**RFP**). Similarly, no member of my immediate family is a paid officer or director of any firm which is expected to respond to this **RFP**.
- B. I certify that neither I, nor any member of my immediate family, do not directly owe money to any employee or officer of any firm which is expected to respond to this **RFP**.
- C. I certify that I do not have any funds invested in any firm which is expected to respond this **RFP**. Similarly, neither I nor any member of my immediate family own or control an interest in any firm which is expected to respond to this **RFP**.
- D. I certify that since my employment at the Department of _____, neither I nor any member of my immediate family, received lodging, entertainment, transportation, money or anything else of value offered by an employee or officer of any firm which is expected to respond to this **RFP**. (This includes tickets to sporting events or shows, meals or lodging, gifts, etc.). During and after the procurement process, I will not accept any of the forgoing from any employee or officer of any firm which is expected to respond or did responded to the **RFP**.

NOTE: Exceptions to D. must be approved by the Agency Director initiating the procurement action. Such approval could include acceptance of a meal which is widely offered to many individuals inside and outside the Department (i.e. provided on-site when a break in the proceedings is not practicable.)

- E. I certify that I have not received any compensation from any firm which is expected to respond to this **RFP**. No member of my immediate family has received compensation, salary or wages in excess of \$10,000 from any firm which is expected to respond to this **RFP**.

NOTE: If at any time during the evaluation/selection process, I find that I, or any member of my immediate family, have a personal interest in any firm responding to this **RFP**, I will promptly notify the chairperson of this conflict and voluntarily remove myself from this evaluation/selection process.

- F. During the course of this procurement, I understand that **all** communication with firms regarding this **RFP** must be handled by the chairperson. I agree not to contact firms responding to this **RFP**, and if any of these firms attempt to contact me directly, I agree to refer the firm to the chairperson. I also agree that the information acquired through this evaluation/selection process will not be divulged to anyone outside the panel until after award of the contract resulting from this process.
- G. I agree to abide by all the policies/procedures contained in this document relative to this procurement as well as any other instructions and directed by the Chairperson of this evaluation/selection committee.

Signature

Printed Name

Date

