

**COMMONWEALTH OF VIRGINIA  
 VIRGINIA INFORMATION TECHNOLOGIES AGENCY  
 SUPPLY CHAIN MANAGEMENT DIVISION  
 110 SOUTH 7<sup>TH</sup> STREET  
 RICHMOND, VIRGINIA 23219**

**RFP 2004-26**

REQUEST FOR PROPOSALS – OPTIONAL USE TERM CONTRACT

**INFORMATION TECHNOLOGY RESOURCE SERVICES**

Issue Date: February 20, 2004      Date/Time: March 10, 2004

Procurement Engineer:      *Robert Gleason*  
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<b>User: Virginia Information Technologies Agency (VITA)</b>	
<u>NOTE:</u> This public body does not discriminate against faith-based organizations in accordance with the <i>Code of Virginia</i> , §2.2-4343.1 or against an offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.	
<u>AWARD POSTING:</u> Upon the award or the announcement of the decision to award a Contract as a result of this solicitation, the Commonwealth of Virginia, through its Virginia Information Technologies Agency, Supply Chain Management Division (SCM), will publicly post such notice on its website at <a href="http://asd.state.va.us/">http://asd.state.va.us/</a> and <a href="http://www.eva.state.va.us">http://www.eva.state.va.us</a> for a minimum of 10 days.	
<u>CLARIFICATION OF TERMS:</u> If any prospective offeror has questions about the specifications or other solicitation documents, the prospective offeror should contact the Procurement Engineer whose name appears on the face of this solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the Procurement Engineer.	
The undersigned offers and agrees to furnish any and all services in accordance with the attached signed proposal or as mutually agreed upon by subsequent negotiation.	
COMPANY NAME: _____	DATE: _____
ADDRESS: _____	BY: _____ Signature in ink
_____	NAME: _____ (Print)
_____	TITLE: _____
CITY/STATE/ZIP: _____	PHONE NO: _____
FEIN OR SOCIAL SOC. NO: _____	FAX NO: _____
COMPANY WEBSITE: _____	E-MAIL ADDRESS _____
eVA Business-to-Government Registered Vendor partner with Commonwealth of VA?    YES ___    NO ___	
This information below is requested for informational purposes only:	
Corporation _____	Partnership _____
Proprietorship _____	Individual _____
Woman _____	
Owned _____	Small Business Owned _____
Minority Owned _____	

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Attachments:

- Attachment A: PPEA Review, Evaluation, Analysis and Implementation Skills
- Attachment B: Small, Women, and Minority Owned Businesses
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**Links:**

1. eVA Registration:  
<http://evaregishelp.dgs.state.va.us/>
2. Commonwealth Travel Regulations  
<http://www.doa.state.va.us/procedures/adminservices/capp/capp1.htm>.
3. VITA Supply Chain Management (SCM):  
<http://www.asd.virginia.gov/>
4. Virginia PPEA Model Procedures:  
<http://www.administration.virginia.gov/Services/Vendors/PPEIA.cfm>

## INSTRUCTIONS TO OFFERORS

### RFP Response

1. In order to be considered for selection, Offerors must submit a complete response to this RFP. One (1) original hardcopy and (4) softcopies on individual CD-ROMs of each proposal must be submitted to:

Virginia Information Technologies Agency (VITA)  
Supply Chain Management Division  
110 South 7<sup>th</sup> Street, Suite L100  
Richmond, VA 23219

No other distribution of the proposal shall be made by the Offeror. **All sealed proposals submitted for consideration shall be clearly marked on the outside cover of all envelopes, CDs, boxes or packages:**

Name of Offeror  
Street or P.O. Box Number  
City, State, Zip Code  
Due Date: March 10, 2004 NLT: 5:00 p.m. (EST)

### RFP 2004-26

2. 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 VITA 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 VITA.
3. Proposals should be prepared simply and economically as indicated in Section 4, providing a straight forward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of content.
4. Proposals should be organized in the order in which the requirements are presented in the RFP. Proposals should be single-sided and limited to the page numbers indicated in Section 4. Blind resumes (no names) may be included in an appendix to the proposal and will not be counted toward page limitations. It is also helpful to cite the paragraph number, sub letter, 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 sub letter should be repeated at the top of the next page. The proposal should contain a table of contents which cross-references the RFP requirements. 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.

5. Each copy of the technical and pricing 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.
6. Ownership of all data, materials, and documentation originated and prepared for the Commonwealth pursuant to the RFP shall belong exclusively to the Commonwealth 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 proposals.
7. Definition of “Mandatory” and “Desirable” Requirements:

Mandatory Requirements: The use of “shall”, “must”, or “will” in this RFP or its official amendments indicates a requirement or condition that is mandatory (mandatory requirement), and shall not be construed in any way as allowing deviation from any requirement. Deviation from the mandatory requirements will not be accepted by VITA. VITA reserves the right to reject any and all proposals and to waive informalities. All mandatory requirements must be met in order for any proposal to be considered. The Offeror must respond to the mandatory requirements identifying if he/she can fulfill the requirements identified herein and how the Offeror proposes to meet the requirements. Substantiation of responses must be provided.

Desirables: There are a number of features that are considered desirable by VITA. Those services that will enhance the overall service delivery or performance and are not considered mandatory will be considered “desirable”. Words such as “desirable”, “should”, “is requested”, “is urged to”, are important in selecting an Offeror, but in order to permit Offerors to meet the requirements creatively, they are not specified as strictly mandatory requirements. Offeror responses to desirable services should meet stated goals, objectives, or enhance performance and identify how the proposed system provides the desired solution. However, failure of a proposal to meet desirable requirements is not disqualifying. Offerors should document the extent to which they can meet the desirable or optional services or provide a cost effective solution.

7. Oral Presentation: Offerors who submit a proposal in response to the RFP may be required to give an oral presentation of their proposal to VITA. 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. VITA will schedule the

time and location of these presentations and will give one (1) week's advance notice to the Offeror(s). Oral presentations are at the option of VITA and may or may not be conducted.

8. It is the Offerors responsibility to inquire about and clarify any requirement of this RFP that is not clearly understood by the Offeror. All questions must be in writing and submitted by 4:00 p.m. no later than five (5) days prior to the proposal due date. No questions or inquiries will be accepted after this time. VITA will not be bound by verbal responses to questions. All inquiries concerning this RFP should be submitted by fax, email or U.S. Mail (Indicate on envelope "Questions on RFP # RFP 2004-26) to:

Robert Gleason  
Virginia Information Technologies Agency  
110 South 7<sup>th</sup> Street, Suite L100  
Richmond, Virginia 23219  
Fax: (804) 371-5969  
Email: [robert.gleason@vita.virginia.gov](mailto:robert.gleason@vita.virginia.gov)

Offerors shall not discuss their proposal or this Request for Proposal with any Commonwealth employee or public servant other than the above named individual.

9. No proposal or unsolicited modifications to a proposal shall be accepted after the closing date and time. Offerors may use any means of delivery but it is the responsibility of the Offeror to allow adequate time for delivery by the due date for receipt of proposals. Proposals and modifications received after closing will be returned unopened.
10. Any contract awarded as a result of this RFP will be considered an optional use contract. VITA is not required to purchase consulting services from any industry partner who may be selected for a contract award under this RFP.
11. The Supply Chain Management Division of VITA maintains a web site with a URL of <http://asd.state.va.us>. This web site provides information about SCM and acquisitions conducted by SCM for information technology related items. Offerors are invited to check this site regularly. The web site should be checked prior to submission of proposals to identify any amendments that may have been made subsequent to issuance.
12. Offerors' attention is directed to the RFP cover page concerning company information including their Federal Identification Number. Failure to supply the FEIN number may result in our inability to verify your registration and may be cause for rejection of your proposal.
13. By date of award, a selected Offeror(s) is required to be registered and have completed and submitted an Ariba Trading Partner Agreement (TPA) through the Commonwealth of Virginia's e-procurement website (eVa) located at <http://www.eva.state.va.us>. Offerors are advised to print the eVa page that lists their firm's name and submit this, with a completed TPA, with their proposal response. If a firm is not registered with eVa, then

the following website: <http://evaregishelp.dgs.state.va.us/> is available for assistance. Offerors are advised to print a copy of the completed registration confirmation and submit it with their proposal response.

An award will not be made to an Offeror who is not registered with eVA or has not completed a TPA.

14. Results of this RFP will not be given out by telephone. The Notice of Award will be made available on the eVA web site (<http://www.eva.state.va.us>) and the ASD web site (<http://asd.state.va.us>) as soon as selection is made.
15. Offerors are advised to read and understand both the Mandatory and Desirable Terms and Conditions.

## RFP

### 1. PURPOSE:

The Virginia Information Technologies Agency (VITA) is soliciting sealed proposals to establish a comprehensive contract with one or more qualified offerors through competitive negotiation(s) for consulting services. Such consulting services are needed to assist VITA with the review, evaluation and analysis of complex proposals received pursuant to the Public-Private Education Infrastructure and Facilities Act of 2002 (“PPEA”). VITA is requesting a comprehensive PPEA resource services solution through this Request for Proposals (RFP) to satisfy VITA’s need for specialized consulting and sourcing advisory services from experts who have specific experience in implementing and managing sourcing relationships. VITA is looking for sourcing experts who have strategic experience in creating and utilizing methodologies for the evaluation, negotiation, implementation and management of major sourcing transactions.

The Public-Private Education Facilities and Infrastructure Act of 2002, §§56-575.1 *et seq.* of the *Code of Virginia* (the “PPEA”) allows VITA to create public-private partnerships for the development of a wide range of projects for public use if VITA determines the project serves a public purpose and that private involvement may provide the project in a timely or cost-effective fashion. The PPEA specifically provides for the submission of PPEA proposals for technology infrastructure projects.

VITA has received and will be receiving PPEA proposals for technology infrastructure projects. The purpose of this solicitation is to engage specialized consultants to assist VITA in developing VITA’s strategic framework for analysis, evaluation and implementation of PPEA projects. This project framework that is developed will be used across the board in the evaluation and decision-making process for VITA’s PPEA projects, regardless of scope or subject matter.

The initial contract term for any resulting contract will be for a period of one (1) year with three (3) one-year renewal options. This procurement is in accordance with the *Virginia Public Procurement Act (VPPA)*.

“Offeror” is defined for purposes of this solicitation as any officer, agent, employee or owner of any firm, corporation, company or partnership, limited liability company or sole proprietorship, and, as referenced in this solicitation Offeror, refers to the firm preparing and submitting a proposal in response to this Request for Proposals (RFP). The term “Contractor” refers to the firm that, when awarded the contract, will be responsible for Services as required as a result of this solicitation.

“Order(s)” is defined for purposes of this solicitation as a purchase order, task order, work order, small purchase charge card order, and/or eVA Order.

**2. BACKGROUND:**

The PPEA allows VITA to develop innovative public-private partnerships with its industry partners through solicited and unsolicited proposals for projects for which VITA determines there is a public need. Pursuant to its commitment to build success through partnerships, VITA has received several unsolicited PPEA proposals. VITA is interested in evaluating these proposals to determine if such proposals support VITA’s strategic direction as well as bring efficiencies, cost savings and service improvements to the Commonwealth’s technology infrastructure.

In order for a project to be eligible under the PPEA, it must meet the definition of a “qualifying project.” The PPEA establishes requirements for the review and approval of proposals received pursuant to the PPEA. In addition, the PPEA specifies the criteria that must be used to select a proposal and the contents of any comprehensive agreement between VITA and the private entity. VITA will follow the Secretary of Administration’s Model Procedures to review PPEA proposals; such model procedures are available at <http://www.administration.virginia.gov>

**3. STATEMENT OF NEEDS:**

Concept Overview

VITA is now seeking Industry Partners (contractors) to provide needed strategic high level consulting and sourcing advisory assistance services to address the business, financial and technical issues facing VITA as it evaluates PPEA proposals. Any contract that results from this RFP is intended to provide VITA with the flexibility to address the challenges and opportunities resulting from these PPEA proposals and initiatives while increasing citizen expectations for better, more responsive services, with improved economical operations and improved outcomes. These contractual services will enable VITA to review, evaluate, implement and negotiate PPEA proposals in a quick and expeditious manner, as well as provide VITA and the Commonwealth with access to solutions that take advantage of innovative technology solutions in a timely and efficient manner.

To ensure that VITA’s objectives for obtaining PPEA consulting and sourcing advisory services are met, this RFP contains several key provisions:

- It focuses on contracting with firms instead of individuals with specific skills for the completion of specified projects and initiatives. The responsibility for making and fulfilling commitments is focused on the organization. The contracted firm is held accountable for satisfactory performance of work (e.g., schedule, budget, deliverables, etc.).
- It establishes a partner to assist in areas of specific business, functional, and technical skills relating to evaluation of PPEA proposals.
- It allows VITA to focus on the concept of “best value” for addressing its PPEA consulting needs.
- Offerors are encouraged to propose innovative consulting and advisory solutions that will provide a comprehensive package to satisfy VITA’s need for on-site PPEA consulting

and advisory services. Off-site sourcing solutions may also be part of the comprehensive solution proposed by the Offeror.

- VITA is committed to ‘Supplier Diversity’ [to include small businesses, women- and minority-owned businesses (SWAM)] efforts. VITA will ensure fair consideration of all suppliers. Therefore no offeror will be precluded from consideration on the basis of race, color, religion, faith, gender, age or national origin.

Offerors must meet the following requirements in order to have their proposal considered:

1. Must exhibit an understanding of the information technology issues facing VITA and the Commonwealth of Virginia;
2. Must exhibit an understanding of the Virginia Public-Private Education Facilities and Infrastructure Act of 2002. (PPEA).

#### **4. PROPOSAL PREPARATION AND SUBMISSION INSTRUCTIONS**

Offerors proposals should be straightforward, clear, well organized, easy to understand, and concise to include the following sections. Proposal responses should be submitted in the order as requested below. (1-16). Proposed pricing must be included with proposal response in a separate, sealed envelope. No other sections may be submitted. Original hardcopy proposals should be bound with tabs delineating each section. The minimum font size is 12 on 8.5 x 11 size paper, and the minimum/maximum numbers of pages for each section is provided below. Offeror shall provide One (1) original hardcopy and (4) softcopies on individual CD-ROMs.

Offerors’ qualifications substantially impact the evaluation process, and will be evaluated based on how well they address the following requirements:

- 1) Table of Contents
- 2) Understanding the IT issues facing the Commonwealth (four (4) page maximum) – Describe the IT objectives of the Commonwealth and propose how your organization may assist VITA in reviewing and evaluating PPEA proposals which are proposing initiatives to address these objectives.
- 3) Strategic partnerships (one (1) page maximum) – Describe the Offerors ability, willingness, and flexibility to establish strategic relationships with subcontractors, as needed. These strategic partnerships, which should include SWAM partners, will provide VITA with access to a broader range of resources to meet the needs of this solicitation. This does not require the hiring of such SWAM firms but rather requires steps to assure that such firms are given equal opportunity to compete for business and given fair consideration in the selection of firms for such opportunities.
- 4) Corporate Background and Experience (six (6) page maximum) – Offeror should include information on their corporate organization (history, years in business, size, financial soundness, etc.), experience and skills regarding the offerors’ track record, reputation and

past client performance that indicates the capabilities for successful completion or provisions of the requested PPEA consulting and sourcing advisory services. Provide examples of similar major transformation projects that demonstrate Offerors' experience, qualifications, innovative solutions, and skill sets to meet and perform the tasks, as outlined in Attachment A.

- 5). Demonstrate expertise and innovative solutions specific to examples of extensive sourcing expertise in large transactions, developing the strategy and structure to evaluate projects that have different scopes of work, establishment of financial benchmarking, technical expertise and service delivery improvement. Five (5) page maximum for overall. Offeror may offer other suggested areas. Sample resumes may be included by the offeror in an appendix that will not count in this five (5) page maximum requirement.
- 6) Demonstrate expertise and innovative solutions specific to examples of governance structure development and sourcing framework analysis for review, implementation and monitoring of large scale sourcing projects. (Three (3) page maximum.)
- 7) Describe approach and experience in providing a transfer of knowledge to VITA employees (one (1) page maximum).
- 8) Describe process by which you will obtain feedback from VITA employees to determine if VITA's expectations and deliverables were successfully or unsuccessfully met and provide such information in a report to the VITA Contract Administrator (to be provided upon contract award). (One (1) page maximum.)
- 9) Describe your organization's task order management methodology (general description or name, not complete copy), including resource management (one (1) page maximum).
- 10) Explain your organization's policy on replacing personnel on a job when immediate replacement is requested and your commitment to satisfy the request (one (1) page maximum).
- 11) Describe your organization's experience with large, complex organizations in both the public and private sector, in particular experience with large enterprise transformations, including change management.
- 12) Describe the communication plan and implementation structure to support large complex project and process change. (one (1) page maximum)
- 13) Describe the general organization of the Account Management Team (no names) (two (2) page maximum) that the Offeror will commit to VITA for the term of this agreement. VITA realizes that the size and structure of the team may vary depending upon the final provisions of the agreement. Therefore the Offerors are encouraged to provide a "benchmark" organization from which specific services or functions can be found in the proposal, where applicable, to satisfy RFP requirements. The organization description should address the following:

- a. Team organization
  - b. Description of team positions and functions
  - c. Indicate number of staff to be assigned on a full or part-time basis.
  - d. Define location of team members
  - e. Provide “blind” (no name) resumes for all members.
- 14) Describe your organization’s qualifications and experience in providing strategic analysis with recommendations for efficient/effective delivery of governmental services. (two (2) page maximum).
- 15) Pricing Options (no page requirements): Provide pricing options that should include solutions such as hourly rates, project based rates, discounted rates for extended timeframes on projects that would vary in size and might be based on hours and hourly rates, fixed price, or innovative pricing solutions. Example of creative solution might be a reduction in normal rates for a project over a certain number of hours or reduction in cost if brought in after due date, or reduced rates for extended time periods on site, etc. VITA is seeking flexibility and not fixed rates. At a minimum, Offeror shall provide a range of rates for a minimum to maximum pricing schedule for these consulting services.
- 16) Financing Options (no page requirements): Provide financing or pricing options which should include innovative financing arrangements between VITA and the consulting organization which could provide for cost-sharing, results-oriented financing, supplier provided financing, etc. The pricing proposal is to be provided on a separate CD.

**5. EVALUATION AND AWARD CRITERIA**

VITA reserves the right to make more than one award, if appropriate, as a result of this solicitation. VITA will determine in its sole discretion which proposal presents the most optimal overall “total” solution and best value for use in the evaluation and review of PPEA proposals, based upon the following evaluation factors.

- PPEA Program Management Methodology for:
  - Managing the partnership with VITA for PPEA review processes
  - Providing broad range of consulting and sourcing advisory sources and expertise to VITA
  - Obtaining regular feedback on Service
  - Recruiting and retaining skilled staff
  - Project Management methodology
  - Staffing replacements
  - Knowledge transfer and process continuity
  - Task Order “stage-gating” processes.
- Demonstrated qualifications and experiences of Offeror in providing strategic operational, functional and technical business solutions to clients.

- Strategic methodology and qualifications and experience of Offeror in providing strategic analysis with recommendations for efficient/effective delivery of governmental services
- Ability to deliver a range of solutions specific to the PPEA consulting and sourcing advisory needs of VITA in reviewing, evaluating, implementing and monitoring PPEA proposals.
- SWAM
- Price

It is VITA’s intent to award to those offeror(s) who propose the most comprehensive and broadest solution (“total” solution), and overall best value. The selection and award will be made to the Offeror(s) whose proposal(s) provides the optimal financial, technical consulting, and sourcing advisory solutions, and with the overall assessed best value for review, evaluation, analysis and implementation skills needed for PPEA proposal activities.

In accordance with the *Code of Virginia* § 2.2-4301 3.b, VITA will conduct negotiations with each of the Offerors selected and determine, in its opinion, the best proposals and award the contracts to those Offerors. If VITA determines in its sole discretion that only one Offeror is fully qualified or that one offeror is clearly more highly qualified than the others under consideration, then a contract may be negotiated and awarded to that Offeror. Price will be considered, but is not the sole determining factor to be considered in the contract award.

VITA may make multiple awards, or VITA may cancel this Request for Proposals, or VITA may reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous (*Code of Virginia*, § 2.2-4359D).

## 7. **DELIVERABLES**

- A. As an integral part of providing VITA with the high-level consulting and sourcing advisory services necessary to review, evaluate, implement and monitor PPEA proposals, the Contractor will provide the following deliverables during the course of an engagement:
- 1) Project management methodology tools and framework delivered in electronic media and hard copy.
  - 2) Project management plan and benchmarking analysis tools for utilization with all PPEA proposals regardless of subject or scope.
  - 3) Strategic evaluation framework for analysis of PPEA technology proposals received by VITA.
  - 4) Financial evaluation framework for analysis of PPEA technology projects received by VITA.

5) Completed analysis of proposals including strategy, financial evaluation, technical evaluation and business impact.

B. All work product and deliverables will be delivered directly to VITA and will be the confidential proprietary information of VITA.

**8. CONTRACT USAGE**

A. Contractor personnel shall not be permitted to commence work on any project until a written Statement of Work Order by VITA has been issued. Any work performed by the Contractor or Contractor's personnel prior to the effective date of the Statement of Work Order shall not be billed and/or accepted by VITA.

B.. If any individual(s) employed by the Contractor is unable to perform at an acceptable level within a reasonable length of time, as determined in VITA's sole judgment, VITA will have the right to terminate that individual's services. Notice of termination may be as little as one (1) work day. If it can be shown that an individual did not make productive use of his/her time, VITA may, at its sole option, refuse payment for any hours billed against that individual for that period of time.

C. The Contractor shall be responsible for start up costs on time and materials basis, as negotiated by VITA, to train the replacement to bring them up to the point of where the previous individual left off whenever Contractor personnel are replaced at the Contractor's request.

D. VITA will provide proper working facilities and consumable supplies commensurate with the task(s) to be performed.

E. VITA will provide access to project documentation as well as familiarization briefings on requirements.

F. VITA will provide access to any technical manuals and references required during the normal performance of duties.

G. Contractor personnel shall be expected to follow established directives and policies during the performance of assigned tasks.

H. From time to time, Contractor personnel may be required to work weekends or to travel to locations other than their primary work place. In such cases, the Contractor shall be reimbursed for meals, transportation and lodging in accordance with the Commonwealth's State Travel Regulations as posted on the Department of Account's website at <http://www.doa.state.va.us/procedures/adminservices/capp/capp1.htm>.

All invoices for travel shall not exceed the Commonwealth's reimbursement rates for mileage, meals, lodging and incidental travel expenses and shall not exceed 10% of the

total "Order" cost of services. TRAVEL SHALL BE COUNTED AS NORMAL TIME NOT TO EXCEED EIGHT (8) HOURS PER DAY REGARDLESS OF THE ACTUAL TIME REQUIRED. The Contractor shall not charge VITA for travel, lodging and meal expenses to relocate information technology consultants hired by VITA. No overtime payment shall be allowed for hourly individuals only straight hourly rate will be paid.

- I. Should the Contractor, at any time, be unable to provide fully qualified personnel from within his organization due to current workload, the contractor may provide personnel under a subcontractor type arrangement, at the rates awarded in the Contract.

#### ORDERS

- J. Orders issued hereunder shall be initiated through eVA and processed as follows, which will contain among other provisions:

- A reference to this Contract
- Statement of Work (SOW)
- Statement of Type of Work Order (i.e., Time and Materials, fixed price or alternate pricing model) and total costs or unit price; and
- Delivery or Performance Schedule

- K. Orders may be written based on Time and Materials (T&M), fixed price, or any alternate pricing basis agreed upon by VITA against this Contract. A Time and Materials Order will list the consulting Services to be performed by personnel desired together with hourly costs associated with each. All Orders will contain a "Not to Exceed" limitation. When a "Not to Exceed" limitation is employed, it shall impose obligations upon the parties in accordance with the "Limitation of Cost" provision in Section 9, Terms and Conditions.

- L. A Fixed Price Order will list the deliverables of the project or consulting Service to be delivered along with the associated hours and hourly costs. VITA will also consider alternate pricing models instead of fixed price driven by hourly rates and hours provided the models list the deliverables of the project or consulting Service and total cost.

- M. Pricing for all Orders shall be in accordance with the pricing schedule provided by the Contractor and set forth in this Contract or as agreed upon by both parties for specific projects/requirements. All orders shall be incorporated as an integral part of this Contract.

- N. Work hours will be established by VITA, however, normal work hours are from 8:00 a.m. to 5:00 p.m., Monday through Friday, (State holidays excluded). Contractor's personnel may be required to work unusual hours and times to meet project related requirements and /or suspense dates. When unusual hours are required, VITA will provide sufficient advance notice for proper planning.

#### ACTIVATION OF ORDERS

O. The following procedure will be used to initiate and activate an Order under this Agreement:

- A. VITA will prepare a Statement of Work Order (Order), together with all necessary technical attachments, and provide the Order to the Contractor through eVA.
- B. Contractor upon receipt of an eVA Order shall commence work as stipulated in the Order.

**9. MANDATORY TERMS AND CONDITIONS**

**A. ASSIGNMENT OF CONTRACT**

This Contract shall not be assignable by the Contractor in whole or in part without the written consent of the Commonwealth.

**B. APPLICABLE LAWS AND COURTS**

This solicitation and any resulting Contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations.

**C. ANTI-DISCRIMINATION**

By submitting their proposal, offeror certifies to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and §2.2-4311 of the Virginia Public Procurement Act. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the Contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that Contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).

In every Contract over \$10,000 the provisions in a. and b. below apply:

- a. During the performance of this Contract, the Contractor agrees as follows:

- 1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  - 2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
  - 3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for meeting these requirements.
- b. The Contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or Contractor.

**D. ETHICS IN PUBLIC CONTRACTING**

By submitting their proposal, Offeror certifies that their proposal is made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

**E. IMMIGRATION REFORM AND CONTROL ACT OF 1986**

By submitting their proposal, Offeror certifies that they do not and will not during the performance of this Contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

**F. DEBARMENT STATUS**

By submitting their proposal, Offeror certifies that they are not currently debarred by the Commonwealth of Virginia from submitting offers on Contracts for the type of Services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

**G. ANTITRUST**

By entering into this Contract, the Contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes

of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular Services purchased or acquired by the Commonwealth of Virginia under this Contract.

**H. PAYMENT**

1. To Prime Contractor:

- a. Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/Contract. All invoices shall show the state Contract number and/or purchase order number; project number, or the federal employer identification number (for proprietorships, partnerships, and corporations).
- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. All Services provided under this Contract or any Order referencing this Contract that are to be paid for with public funds, shall be billed by the Contractor at the Contract price.
- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- e. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, Contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges that appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the Contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A Contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its

prompt payment obligations with respect to those charges that are not in dispute (Code of Virginia, § 2.2-4363).

2. To Subcontractors:

- a. A Contractor awarded a Contract under this solicitation is hereby obligated:
  1. To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the Contract; or
  2. To notify the agency and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.
- b. The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the Contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier Contractor performing under the primary Contract. A Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

**I. INVOICING/PAYMENT**

- a. Where performance is longer than one (1) month, the Contractor shall invoice monthly in arrears.
- b. Where performance is completed in less than one (1) month, the Contractor shall invoice VITA for the full amount of the Order at the completion thereof.
- c. Invoices shall provide at a minimum the following information:
  - Contractor's tax identification number
  - Invoice date
  - Invoice number
  - Order number
  - VITA contact name
  - Project name
  - Description of Services provided for previous month

- Amount billed (versus total project cost if applicable)
- d. A maximum of fifteen percent (15%) of each invoice may be withheld pending completion and acceptance of the total project.

**J. CHANGES/MODIFICATIONS**

This Contract may be modified in accordance with Section 2.2-4309 of the Code of Virginia. Such modifications may only be made by the representatives noted below. By written notice to the Contractor, VITA may, from time to time, make changes in drawings, designs, specifications, place of delivery, and property and services being furnished to the Contractor by VITA. If any change causes an increase or decrease in price of an Order, in the time required for its performance, or otherwise affects any other provision of the Order, the Contractor shall promptly and before beginning the affected work, notify the VITA Contracting Officer in writing that the Contractor intends to assert a claim for adjustment, and an equitable adjustment may be incorporated into the order. **THE ISSUANCE OF INFORMATION, ADVICE, APPROVALS, OR INSTRUCTIONS BY VITA'S TECHNICAL OR MANMANAGEMENT PERSONNEL OR OTHER REPRESENTATIVES SHALL BE DEEMED EXPRESSIONS OF PERSONAL OPINIONS ONLY AND SHALL NOT AFFECT THE CONTRACTOR'S AND COMMONWEALTH'S RIGHTS AND OBLIGATIONS HEREUNDER UNLESS THE SAME IS IN WRITING SIGNED BY THE PARTIES AND EXPRESSLY STATES THAT IT CONSTITUTES A CHANGE TO THE ORDER.**

The VITA Contracting Officer for approval of any Contract modifications is:

Commonwealth of Virginia  
Virginia Information Technologies Agency (VITA)  
ATTN: Robert E. Gleason  
Richmond Plaza Building, Lobby Level  
110 South 7<sup>th</sup> Street  
Richmond, VA 23219

When placing an Order, VITA may, in its sole discretion, determine that it does not need the level of qualifications specified in this Agreement, or may determine that it needs individuals with qualifications much higher than specified in this Agreement. In such cases, VITA and the Contractor may agree to modify the qualifications requirements for a specific Order in exchange for an appropriate adjustment in the hourly rate. However, in no event may any hourly rate be increased to an amount more than 25%. Additionally, in no event may the amount of any Order referencing this Agreement be increased by more than 25%. Any modifications agreed to by VITA and the Contractor shall apply only to that specific Order and shall apply only if the agreed change is reduced to writing and signed by both the Contractor and VITA before the commencement of work affected by the change. Such modifications that affect only a particular Order, and

which do no more than change the required qualifications and applicable hourly rate do not require approval of the VITA Contracting Officer.

**K. DEFAULT**

In case of failure to deliver Services in accordance with the Contract terms and conditions, VITA, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that VITA or the Commonwealth may have. Contractor shall not be liable for any excess cost if the failure to perform arises out of any act of war, order of legal authority, strikes, act of God, or other unavoidable causes not attributed to their fault or negligence.

**L. INSURANCE**

By signing and submitting a proposal under this solicitation, the offeror certifies that if awarded a Contract, it will have the following insurance coverages at the time the Contract is awarded. For construction Contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The offeror further certifies that the Contractor and any subcontractors will maintain these insurance coverages during the entire term of the Contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

**INSURANCE COVERAGES AND LIMITS REQUIRED:**

1. Worker's Compensation - Statutory requirements and benefits.
2. Employers Liability - \$100,000.
3. Commercial General Liability - \$500,000 combined single limit. Commercial General Liability is to include Premises/Operations Liability, Products and Completed Operations Coverage, and Independent Contractor's Liability or Owner's and Contractor's Protective Liability. The Commonwealth of Virginia must be named as an additional insured when requiring a Contractor to obtain Commercial General Liability coverage.
4. Automobile Liability - \$500,000 - Combined single limit. (Only used if motor vehicle is to be used in the Contract.)

**M. DRUG-FREE WORKPLACE**

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) 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 Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) 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 Contractor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific Contract awarded to a Contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract.

**N. NONDISCRIMINATION OF CONTRACTORS**

An Offeror or Contractor shall not be discriminated against in the solicitation or award of this Contract because of race, religion, color, sex, national origin, age, or disability or against faith-based organizations. If the award of this Contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this Contract objects to the religious character of the faith-based organization from which the individual receives or would receive the Services, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent Services from an alternative provider.

**O. eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION**

The eVA Internet electronic procurement solution, web site portal <http://www.eva.state.va.us/>, streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

All Offerors desiring to provide Services to the Commonwealth shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service, and complete the Ariba Commerce Services Network registration.

- a. eVA Basic Vendor Registration Service: \$25 Annual Fee plus a transaction Fee of 1% per order received. The maximum transaction fee is \$500 per order. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, and electronic bidding, as they become available.
- b. eVA Premium Vendor Registration Service: \$200 Annual Fee plus a Transaction Fee of 1% per order received. The maximum transaction fee is \$500 per order. eVA Premium Vendor Registration Service includes all

benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments, and ability to research historical procurement data, as they become available.

- c. Ariba Commerce Services Network Registration. The Ariba Commerce Services Network (ACSN) registration is required and provides the tool used to transmit information electronically between state agencies and vendors. There is no additional fee for this service.

**P. CONTRACT TERM**

The initial Contract term will be for up to a one (1) year period. The Contract may be renewed by VITA for three (3) successive one-year periods under the terms and conditions herein. Written notice of VITA's intention to renew will be given approximately 60 days prior to the expiration date of each Contract period. All Orders and related documents shall survive the period of performance stated in this section until such time as all Orders (executed prior to the expiration date of the Contract) have been completely performed.

**Q. TERMINATION AND CANCELLATION**

The Commonwealth shall have the unilateral right to terminate this Contract for Default, in the event that any one or more of the following events of default occur or continue during the term of this agreement, (a) the Contractor shall fail to deliver the Services required by this Contract or (b) the Contractor shall repeatedly fail to respond to requests for Services within the time limits set forth in the Contract or (c) the Contractor shall breach any of the other terms set forth within this Agreement or (d) the Contractor shall fail to cure any breach after receiving a "Show Cause Notice" identifying the failure, and providing the Contractor ten (10) days to cure the failure/nonperformance. If the Contractor fails to answer the cure notice, or does not correct the deficiencies noted, the State may immediately terminate the agreement for Default.

In such event, the Commonwealth will only be liable for cost incurred to the date of termination.

The Commonwealth's failure to exercise its right to terminate for default under this provision shall not be construed as a waiver of its right to terminate, rescind or revoke this Contract in the event of any subsequent breach of any provisions of this agreement.

**R. PRICE PROTECTION**

The Commonwealth shall not pay any costs above those specified in this Agreement or set forth on any Order or Attachment referencing this Agreement. If within twelve (12) months following the acceptance of any Service, the list price of Service is reduced below the price paid hereunder, then the difference shall be refunded to the Commonwealth. Such refund shall be made to VITA within thirty (30) days from the date the decrease is announced to the general

public. In addition, written notification of the decrease will be provided to VITA at the address identified.

The Commonwealth, in its sole option, may permit price adjustments, for requested changes in the Contractor's cost of Services using the Consumer Price Index/W (CPI-W) Table 4, Services/"Other Services" category as a guide, as found on website <http://STATS.BLS.GOV/NEWS.RELEASE/CPI.T04.HTM>.

Once the website is accessed, refer to the section titled COMMODITY AND SERVICE GROUP, within this group, refer to the lines titled SERVICES and OTHER SERVICES and read the figures in the fourth column for the current CPI rate.

No price increase is authorized until twelve (12) months after the effective date of this Contract, or the effective date for any subsequent renewal thereafter, or the effective date of any Order referencing this Contract. Price increases allowed shall not be retroactive and shall only apply to new statements of work (SOW) or change orders impacting an existing SOW, upon approval of VITA.

Contractor shall give not less than thirty (30) days advance written notice of any price increase to VITA. Any approved price changes will be effective only at the beginning of the calendar month following the end of the full 30 day notification period. The Contractor shall document the amount and the proposed effective date of any general change in the price of Services. Documentation shall be supplied with the Contractor's request for increase which will: 1) verify that the requested price increase is general in scope and not applicable just to the Commonwealth; and (2) verify the amount of percentage of increase which is being passed on to or by the Contractor and why the percentage of increase is necessary to supply services to VITA. The Contractor is further advised that decreases which affect the cost of services are required to be communicated and effective immediately to VITA.

**S. CONTRACTUAL DISPUTES**

In accordance with Section [2.2-4363](#) of the *Code of Virginia*, Contractual claims, whether for money or other relief, shall be submitted in writing to VITA no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim must be given to VITA at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. VITA shall render a final decision in writing within thirty (30) days after its receipt of the Contractor's written claim.

The Contractor may not invoke any available administrative procedure under Section [2.2-4365](#) of the *Code of Virginia* nor institute legal action prior to receipt of VITA's decision on the claim, unless VITA fails to render its decision within thirty (30) days. The decision of VITA shall be final and conclusive unless the

Contractor, within six (6) months of the date of the final decision on the claim, invokes appropriate action under Section [2.2-4364](#), *Code of Virginia* or the administrative procedure authorized by Section [2.2-4365](#), *Code of Virginia*. Prior to such action under Section [2.2-4364](#), *Code of Virginia*, VITA may require that contractor submit its claim to alternative dispute resolution proceedings.

VITA, its officers, agents and employees, are executing this Agreement and any orders issued hereunder, solely in its or their statutory and regulatory capacities as agents for VITA and need not be joined as a party to any dispute that may arise hereunder.

In the event of any breach by VITA or the Commonwealth, Contractor's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this section. In no event shall Contractor's remedies include the right to terminate any license or support services hereunder.

**T. PATENT/COPYRIGHT PROTECTION**

Contractor, at its own expense, shall defend any suit brought against the Commonwealth or VITA for the infringement of patents, copyrights or trade secrets enforceable in the United States if the claim of infringement is alleged to relate to or arise from the Contractor's or Commonwealth's use of any equipment, software, materials or information prepared, developed or delivered in connection with performance of this Agreement. In such suit, Contractor shall indemnify the Commonwealth, its agents, officers and employees for any loss, liability or expense incurred as a result of such suit.

VITA shall notify the Contractor of such suit within a reasonable time after learning of it and shall give the Contractor the full right and opportunity to conduct the defense of the suit, subject however to the requirements of Section 2.2-507, Section 2.2-510 of the *Code of Virginia* or any successor statute. If principles of governmental or public law are involved, the Commonwealth may, at its option and expense, participate in the defense of the suit.

The Contractor shall not be required to indemnify VITA or the Commonwealth for liability arising solely out of VITA's or the Commonwealth's own specifications or design or solely from the combination of equipment or software furnished hereunder with any equipment or software not supplied by the Contractor.

If, any Product or Service becomes, or in the Contractor's opinion, is likely to become, the subject of a claim of infringement, Contractor may, at its option, provide noninfringing substitutes that are satisfactory to the Commonwealth, or at Contractor's option and expense, may obtain the right for the Commonwealth to continue the use of such Product or Service.

If the use of such equipment or software by the Commonwealth is prevented by permanent injunction or by Contractor's failure to procure the right for the Commonwealth to continue using the software, the Contractor agrees to take back the infringing equipment, software, materials or information and refund the total amount the Commonwealth has paid Contractor under this Agreement, less one half (1/2%) percent of the total paid for each month of use by the Commonwealth. This obligation is in addition to the obligations cited in the first four subparagraphs above.

**U. NON-APPROPRIATION**

All funds for payment of Services ordered under this Contract are subject to the availability of legislative appropriation for this purpose. In the event of non-appropriation of funds by the Legislature for the Services under this Contract, the Commonwealth will terminate this Contract for those Services for which funds have not been appropriated. Written notice will be provided to the Contractor as soon as possible after legislative action is completed.

If any purchases are to be supported by federal funding, and such funding is not made available, the Commonwealth may terminate this Contract for Services dependent on such federal funds without further obligation.

**V. CONFIDENTIALITY OF INFORMATION**

Contractor agrees to observe complete confidentiality with respect to all aspects of any confidential information, including the contents of any and all PPEA proposals, proprietary data and/or trade secrets and any parts thereof, whether such contents are VITA's or those of another manufacturer, contractor or distributor whereby Contractor or any Contractor's personnel may gain access while engaged by VITA or while on VITA's premises. Revealing, copying or using in any manner whatsoever any such contents which have not been authorized by VITA are strictly prohibited. The restrictions herein shall survive the termination of this agreement for any reason and shall continue in full force and effect and shall be binding upon the Contractor, his agents, employees, successors, assigns, subcontractors or any party claiming an interest in this Agreement on behalf of or under the rights of Contractor following any termination. Contractor shall advise all Contractors' agents, employees, successors, assigns and subcontractors which are engaged by VITA of the restrictions, present and continuing, set forth herein. Contractor shall defend and incur all costs, if any, for actions which arise as a result of non-compliance by Contractor, his agents, employees, successors, assigns and subcontractors regarding the restrictions herein.

The Contractor, all Contractors' agents, employees, successors, assigns, and subcontractors that are engaged by VITA for the purposes of this Contract will be

required to sign a non-disclosure agreement protecting the confidentiality of all PPEA proposals that may be reviewed during the course of this Contract.

**W. INVENTIONS AND COPYRIGHTS**

The Contractor is prohibited from copyrighting any papers, reports, forms or other materials, and from obtaining any patent on any invention or other discovery resulting solely from its performance under the terms and conditions of this Contract.

**X. CREATION OF INTELLECTUAL PROPERTY**

All copyrightable material created pursuant to this Agreement shall be considered work made for hire and shall belong exclusively to VITA. If the whole or any part of such copyrightable material cannot be deemed work made for hire, the Contractor agrees to assign, and does hereby irrevocably assign, the copyright thereto to VITA, and shall execute and deliver such further documents as VITA may reasonably request for the purposes of acknowledging or implementing such assignment.

The Contractor warrants that no individual, other than regular employees of the Contractor or VITA working within the scope of their employment, shall participate in the creation of any copyrightable material to be delivered under this Agreement, unless such individual and his or her employer, if any, have signed an intellectual property agreement satisfactory to VITA.

VITA shall have all rights, title and interest in or to any invention reduced to practice through the performance of this Agreement.

The Contractor hereby agrees that, notwithstanding anything else in this Agreement, in the event of any breach of this Agreement by VITA, the Contractor's remedy shall not include any right to rescind or otherwise revoke or invalidate the provisions of this Section. Similarly, no termination of the Agreement by VITA shall have the effect of rescinding the provisions of this Section.

**Y. COMMONWEALTH'S RIGHTS TO SOFTWARE AND DOCUMENTATION**

All materials generated under any Order referencing this Contract shall be considered work made for hire. VITA shall have all rights, title and interest in or to all products, work plans, project reports, designs, programs, data bases and documentation developed or generated under this Agreement, including, without limitation, unlimited rights to use, duplicate, modify or disclose any part thereof, in any manner and for any purpose and the right to permit or prohibit any other

person, including the Contractor, from doing so. To the extent the Contractor may be deemed at any time to have any of the foregoing rights, the Contractor agrees to irrevocably assign and does hereby irrevocably assign such rights to VITA.

Contractor warrants that all documentation provided under a Contract Order shall be of sufficient quality and detail to pass without objection in the trace and to enable outside parties and VITA staff to maintain or modify the materials generated hereunder. Such warranty shall extend beyond the date of final acceptance of materials generated hereunder for a period of one (1) year.

**Z. PRIME CONTRACTOR RESPONSIBILITIES**

The Contractor shall be responsible for completely supervising and directing the work under this Agreement and all subcontractors that he may use, using his best skill and attention. Subcontractors who perform work under this Contract shall be responsible to the prime Contractor. The Contractor agrees that he is fully responsible for the acts and omissions of his subcontractors and of persons employed by them as he is for the acts and omissions of his own employees.

**AA. SMALL, WOMEN, AND MINORITY-OWNED BUSINESSES**

Where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor shall give full and fair consideration to small businesses, women and minority -owned businesses. When such business has been subcontracted to these firms, the contractor agrees to furnish the VITA Contracts Manager with quarterly reports that includes the following information: name of SWAM-owned subcontracted firm, contact name and phone number, total dollar amount subcontracted and type of product/service provided by the subcontracted firm.

**BB. PERIODIC PROGRESS REPORTS/INVOICES**

For Contracts requiring submission of periodic Contract performance progress reports or program status reports, the Offeror will include a section on involvement of small businesses and businesses owned by women and minorities. This section will specify the actual dollars Contracted to-date with such businesses, actual dollars expended to-date with such businesses and the total dollars planned to be Contracted for with such businesses on this Contract. This information shall be provided separately for small businesses, minority-owned businesses and women-owned businesses.

If the Contract does not require the submission of periodic progress reports, the offeror will provide the above required information on actual involvement of small businesses and businesses owned by minorities and women as part of their periodic invoices.

**CC. FINAL ACTUAL INVOLVEMENT REPORT**

Contractor will submit, prior to completion or at completion of the Contract and subject to final payment, a report on the actual dollars spent with small businesses and businesses owned by women and minorities during the performance of the Contract. At a minimum, this report shall include for each firm Contracted with and for each such business class (i.e., small, minority-owned, women-owned) the total actual dollars spent on this Contract, the planned involvement of the firm and business class as specified in the proposal, and the actual percent of the total estimated Contract value. A suggested format is as follows:

FIRM NAME	ADDRESS AND PHONE NUMBER	TYPE GOODS/ SERVICES	ACTUAL DOLLARS	PLANNED DOLLARS	% OF TOTAL CONTRACT
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
Totals for Business Class		_____	_____	_____	

**DD. LIMITATION OF LIABILITY**

To the maximum extent permitted by applicable law, the Contractor's liability under this Contract for loss or damages to government property caused by the use of any defective or deficient Services delivered under this Contract shall not exceed the greater of \$1,000,000 dollars or two times the total amount of the affected Order to be paid to the Contractor resulting from a statement of work (SOW) under this Contract as of the date of the event or circumstance giving rise to Contractor's liability. The Contractor will not be liable under this Contract for any indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data or use of the Services delivered under this Contract. The above limitation of liability is per incident. The limitation and exclusion of damages in the foregoing sentences will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or willful negligence on the part of the Contractor; or (c) circumstances where the Contract expressly provides a right to damages, indemnification or reimbursement.

**EE. LIMITATION OF COST**

It is hereby stipulated and agreed that the total cost to VITA or the Commonwealth for the performance of each Order will be within the "Not to Exceed" funding limitation set forth in the Order, and the Contractor agrees to perform the work specified and all obligations under the Order within such funding limitation. The Contractor agrees to notify VITA in writing no later than when the billable amounts reach eighty percent (80%) of the funding limitation and will include in such notification an estimate to complete the requirements of the Order.

VITA will not be obligated to reimburse the Contractor for billing in excess of appropriated funding up to the funding limitation set forth in the Order, and the Contractor shall not be obligated to continue performance of the Order or to incur costs in excess of the funding limitations unless and until a written amendment to the Order increasing the funding limitation is approved by VITA.

**FF. CRIMINAL HISTORY AND CREDIT CHECKS**

The Contractor shall conduct criminal history check(s) through the Virginia State Police and credit check(s) through a reputable credit bureau for individuals when required by the Commonwealth.

**GG. TERMINATION FOR CONVENIENCE**

This Contract or any Order issued under this Contract may be terminated, in whole or in part, for the convenience of the Commonwealth by delivering to the Contractor a notice of termination specifying the extent to which performance under the Order or Contract is terminated, and the date of termination. Any Contract or Order cancellation notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation. Payment will be made by the Commonwealth to the Contractor for Services provided as of the effective cancellation date. After receipt of a notice of termination, the contractor shall stop all work or deliveries under the Order or Contract on the effective date, and to the extent, specified in said Notice. There are no other costs or obligations for termination for convenience.

**10. DESIRABLE TERMS AND CONDITIONS**

**HH. SCOPE OF AGREEMENT**

This is an agreement (the "Agreement" or "Contract") between the Commonwealth of Virginia ("Commonwealth" or "State" or "VITA") and \_\_\_\_\_ (the "Contractor"), a \_\_\_\_\_ corporation having its principal place of business at \_\_\_\_\_ for the acquisition of strategic high level consulting and sourcing advisory assistance services ("Services") pursuant to the Commonwealth's Request For Proposal #04-\_\_\_\_\_, dated \_\_\_\_\_ (the "RFP"), and the Contractor's proposal dated \_\_\_\_\_, 2004 in response thereto, to assist VITA assess and evaluate various business, financial and technical issues related to PPEA proposals.

**II. INTERPRETATION OF AGREEMENT**

As used in this Agreement, "services" shall refer to strategic high level consulting and sourcing advisory assistance services, and shall include all related papers,

reports, forms or other materials and documentation, whether in machine-readable or printed form, and produced pursuant to this Contract, or any Order resulting from this Contract.

Headings are for reference purposes only and shall not be considered in construing this Agreement.

The documents comprising this Agreement, and their order of precedence in case of conflict, are: (1) this document, (2) all executed Orders and Attachments referencing this Agreement; (3) the Contractor's proposal if any, if submitted in response to a Request for Proposal ("RFP"); (4) the Commonwealth's RFP, if any; and, (5) the non-disclosure agreement(s), if any, resulting from an executed Order referencing this Agreement. The foregoing documents represent the complete and final agreement of the parties with respect to the subject matter of this Agreement.

If any term or condition of this Agreement is found to be illegal or unenforceable, it shall be severed, and the validity of the remaining terms and conditions shall not be affected.

Nothing in this Agreement shall be construed as an express or implied waiver of the Commonwealth's sovereign or Eleventh Amendment immunity, or as a pledge of its full faith and credit.

**JJ. QUALIFICATIONS OF OFFERORS**

VITA may make such reasonable investigations as deemed proper and necessary to determine the ability of the Offeror to perform the Services and the Offeror shall furnish to VITA all such information and data for this purpose as may be requested. VITA reserves the right to inspect Offerors physical facilities prior to award to satisfy questions regarding the Offerors capabilities. VITA further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such Offeror fails to satisfy VITA that such Offeror is properly qualified to carry out the obligations of the Contract and to provide the Services delineated herein.

**KK. CONTRACTOR RECORDS**

All Contractual books, records and other documents related to matters under this Contract shall be made available by Contractor to VITA and its designated agents for a period of three (3) years after final payment for purposes of audit and examination.

Contractual records are hereby further defined as this Contract and all delivery/purchase orders, invoices or correspondence directly relating to this Agreement.

**LL. ORDERS**

Authorized ordering officials representing the “Authorized Users” of this Contract may order Equipment or Services from this Contract by one of the following Order methods:

- A. eVA: An eVA order issued by the Supply Chain Management directorate (SCM), VITA through the eVA electronic procurement website portal <http://www.eva.state.va.us>
- B. Purchase Order (PO): An official PO form issued by the Supply Chain Management directorate (SCM), VITA.
- C. Charge/Credit Card:
  - 1. Any order/payment transaction processed through the Commonwealth’s contract with American Express (AMEX). Each Commonwealth Charge Card Order must not exceed \$5,000, or the then current charge card limit. Payment will be made by AMEX to Contractor within three (3) business days.
  - 2. Any other order/payment charge or credit card process, e.g. AMEX, MASTERCARD, or VISA, under contract for use by an Authorized User.

This ordering authority is limited to issuing Orders for Services that is available only under this Agreement. Notwithstanding the section herein, entitled Modifications, no Authorized User or other public body of the Commonwealth shall have the authority to modify this Contract.

**11. ATTACHMENTS**

- Attachment A – PPEA Review, Evaluation, Analysis and Implementation Skills
- Attachment B – SWAM Reporting Forms
- Attachment C - Services Pricing

**ATTACHMENT A**

**PPEA REVIEW, EVALUATION, ANALYSIS  
AND IMPLEMENTATION SKILL SETS**

1) Operational and Business Process Skills

This specialty area addresses the skills for fulfilling duties, responsibilities and work tasks necessary to perform the business and administrative functions to assist VITA in addressing the challenges associated with change management, project branding, business process reengineering, and organizational design and management which may be inherent in a PPEA proposal.

- a. Provide documentation of experience in providing skills in the functional areas referenced above.
- b. Provide at least three (3) clients where personnel with skills representative of those listed above have been provided. Include contact name and telephone number should additional information be needed.

2). Technology Advisory Consulting Skills

This specialty area addresses the skills, experience and capabilities for providing advice and solutions on a wide range of issues, areas, concepts, trends, best practices, products, etc., related to the comprehensive review and analysis of a PPEA proposal.

- a. Provide documentation of extensive knowledge in one or more of these areas as it relates to the Commonwealth of Virginia.
- b. Provide at least three (3) clients for which technology advisory services have been provided. Include contact name and telephone number should additional information be needed.

3). Major Project Implementation to include Project Management Skills

This specialty area addresses the skills and disciplines required for technology project implementations using modern and emerging technologies. The Offeror will need to demonstrate substantial depth and breadth of knowledge and expertise in major technology and transformative project implementations.

Major projects are typically large-scale, significant investment endeavors. In addition, they offer technical, business, and political complexities. It is crucial that these initiatives be delivered on-time, within-budget, and provide the results expected.

Subject matter experts by specialty for major IT implementations **must** have demonstrated the following abilities and capabilities:

- A. Project Management – experience and expertise managing large information technology projects. Includes PMI, or equivalent, certification, as well as experience in establishing Project Management Offices and providing multiple levels of PM expertise, such as in the roles of Project Directors, Sr. Project Managers, Project Managers, and/or Project Coordinators.
- B. Experience and expertise in System Development Life Cycle/methodology for IT projects.
- C. Knowledge and experience with using modern and emerging technologies.
- D. Proven methodologies, policies and procedures for the following project aspects:
  - 1) Budgeting
  - 2) Deadline management
  - 3) Deliverables
  - 4) Staff
  - 5) Training
  - 6) Risk management
  - 7) Change management
  - 8) Project management
  - 9) Responsibility and accountability
- E. Ability to provide personnel with the skills necessary to perform major projects successfully
- F. Ability to accept full responsibility for major project implementations

Provide a minimum of three (3) client engagements demonstrating the existence of the skill sets necessary to accomplish the task associated with the above-described Service areas. Include client contact name and telephone number should additional information be needed.

**ATTACHMENT B**

**PARTICIPATION BY SMALL BUSINESS**

- A. Offeror certifies that it ( ) is, ( ) is not, a small business concern. For the purpose of this procurement, a small business is a concern, including its affiliates, which is independently owned and operated, but is not dominant in the field of operation in which it is contracting and can further qualify under the criteria concerning number of employees, average annual receipts, or other criteria, as prescribed by the United States Small Business Administration.
- B. List Small businesses with which the Offeror has contracted or done business and dollar amounts spent with each of these businesses in the most recent 12 -month period for which data are available. Offerors are encouraged to provide additional information and expand upon the following format:

**PERIOD:** From: January 1, 2004 to: December 31, 2004

**TOTAL COMPANY EXPENDITURES FOR THIS PERIOD: \$** \_\_\_\_\_

Firm Name, Address & Phone No.	Contact Person	Type Goods/ Services	Dollar Amounts	% Total Co. Expenditures for Goods & Services

**PARTICIPATION BY SMALL BUSINESS**

(Continued)

- C. Describe Offerors plans to involve small businesses in the performance of this contract either as part of a joint venture, as a partnership, as subcontractors or as suppliers. Offerors are encouraged to provide additional information and expand upon the following format:

Firm Name, Address & Phone No.	Contact Person	Type Goods/ Services	Dollar Amounts	% Total Contract



**PARTICIPATION BY BUSINESSES OWNED BY WOMEN**

(Continued)

- C. Describe Offerors plans to involve businesses owned by women in the performance of this contract either as part of a joint venture, as a partnership, as subcontractors or as suppliers. Offerors are encouraged to provide additional information and expand upon the following format:

Firm Name, Address & Phone No.	Contact Person	Type Goods/ Services	Dollar Amounts	% Total Contract



**PARTICIPATION BY BUSINESSES OWNED BY MINORITIES**

(Continued)

- C. Describe Offerors plans to involve businesses owned by minorities in the performance of this contract either as part of a joint venture, as a partnership, as subcontractors or as suppliers. Offerors are encouraged to provide additional information and expand upon the following format:

Firm Name, Address & Phone No.	Contact Person	Type Goods/ Services	Dollar Amounts	% Total Contract

**ATTACHMENT "C"**  
**TO**  
**RFP-**  
**AGREEMENT VA \_\_\_\_\_ - \_\_\_\_**  
**FOR THE**  
**VIRGINIA INFORMATION TECHNOLOGIES AGENCY**

***SERVICES PRICING***

Attachment "\_\_\_" is hereby incorporated into and made an integral part of Agreement Number VA \_\_\_\_\_ - \_\_\_\_\_ between XYZ and the Commonwealth of Virginia.

**CONTRACTORS DO NOT ADD ANY INFORMATION TO THIS ATTACHMENT "C" AT THIS TIME. THIS WILL BE COMPLETED AND FINALIZED DURING CONTRACT NEGOTIATIONS BETWEEN THE PARTIES TO THIS AGREEMENT.**

LISTING OF SERVICES AND PRICES

SHIP TO BILL TO ADDRESSES

DELIVERY SCHEDULE

VITA POINTS OF CONTACT