

THE COLLEGE OF WILLIAM & MARY
SEALED - REQUEST FOR PROPOSALS
RFP# W&M-1267-11

Issue Date: January 3, 2011

Title: Brand Profile Development, Marketing and Creative Services

Due Date: Wednesday, January 26, 2011 (before 3:00 pm)

Commodity Code: 91503, 91522, 91551, 91552, 91800, 96153, 96546

Issuing Agency: College of William & Mary (Use this address for US Mail delivery only)
Office of Procurement
P. O. Box 8795
Williamsburg, Virginia 23187-8795

College of William & Mary (Use this address for hand delivery or Courier Services only)
Office of Procurement
Facilities Management Building, Lower Level, Rear Entrance
Grigsby Drive
Williamsburg, Virginia 23187-8795

Period of Contract: February 26, 2011 or Date of Award THROUGH February 25, 2012 (with five (5) One-Year Renewal Options)

If Proposals are mailed or hand delivered: send directly to the Issuing Agency as specified above.

IDENTIFICATION OF PROPOSAL ENVELOPE: The signed proposal should be returned in a separate envelope or package, sealed and identified as instructed in Section IX, paragraph D. The envelope should be addressed as directed in the heading of this Page of the solicitation. No other correspondence or other proposals should be placed in the envelope.

Pre-Proposal conference - Optional:

An optional Pre-Proposal Conference will be held on Wednesday, January 12, 2011 at 2:00 PM EST via telephone. The purpose of this conference is to allow potential Offerors an opportunity to present questions and obtain clarification relative to any facet of this solicitation. While attendance at this conference will not be a prerequisite to submitting a proposal, Offerors who intend to submit a proposal are encouraged to attend. Please have a copy of the solicitation available. Any changes resulting from this conference will be issued by the Office of Procurement in a written addendum to the solicitation. Minutes and attendees of this meeting will not be posted. **If you plan to attend the pre-proposal conference, please fax the Registration Form, Attachment E, to Sandra L. Eatmon, VCO, at 757-221-3959 no later than Monday, January 10, 2011. The College cannot guarantee your receipt of the Call-In Number if Registration Forms are received after January 10th.** The Conference Call-In Telephone Number will be provided at least 24 hours prior to the conference by email.

All inquiries for information regarding this Request For Proposals should be directed to: **Sandra L. Eatmon, Senior Procurement Officer, Office of Procurement (757) 221-1579.** Use of the Understanding of Requirements Form, ATTACHMENT A, must be used for questions concerning specifications or scope of work.

In compliance with this Request For Proposals and to all the conditions imposed herein and hereby incorporated by reference, the undersigned offers and agrees to furnish the goods/services in accordance with the attached signed proposal or as mutually agreed upon by subsequent negotiation.

Name and Address of Firm:	Date: _____
_____	By: _____
_____	<i>Signature in Ink</i>
_____	Name: _____
	<i>(Type or Print Name and Title)</i>
	Phone #: _____
FEI/FIN #: _____	Fax #: _____
	Email: _____
Minority Vendor: ____ Woman Owned ____ Small Business ____	Dept. of Minority Business Enterprise Cert. # _____

This public body does not discriminate against faith-based organizations in accordance with the Rules Governing Procurement, Chapter 2, Exhibit J, Attachment 1, § 36 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.

RETURN OF THIS PAGE IS REQUIRED

RFP# W&M-1267-11
BRAND PROFILE DEVELOPMENT, MARKETING AND CREATIVE SERVICES

I.	PURPOSE	PAGE	3
II.	BACKGROUND	PAGE	3
III.	CONTRACT PARTICIPATION	PAGE	4
IV.	REPORTING AND DELIVERY REQUIREMENTS	PAGE	4
V.	STATEMENT OF NEEDS	PAGE	5
VI.	EVALUATION AND AWARD CRITERIA	PAGE	6
VII.	PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS	PAGE	7
VIII.	MANDATORY GENERAL TERMS & CONDITIONS	PAGE	9
IX.	SPECIAL TERMS & CONDITIONS	PAGE	14
X.	SPECIAL TERMS & CONDITIONS FOR INFORMATION TECHNOLOGY	PAGE	19
XI.	METHOD OF PAYMENT	PAGE	21
XII.	PRICING SCHEDULE	PAGE	21

ATTACHMENTS:

- A. UNDERSTANDING OF REQUIREMENTS
- B. CONFLICT OF INTEREST STATEMENT
- C. CONTRACTOR DATA SHEET
- D. SWAM (Small, Women and Minority-owned Businesses) UTILIZATION PLAN
- E. REGISTRATION FORM

I. PURPOSE

The purpose and intent of this Request for Proposals (RFP) is to solicit sealed proposals from experienced firms in order to establish a contract through competitive negotiations for the purpose of providing Brand Profile Development, Marketing and Creative Services to the College of William and Mary for the Virginia Institute of Marine Science, hereinafter referred to as "the College", an agency of the Commonwealth of Virginia.

- A. For ease of reference, each vendor or company receiving this Request for Proposal is referred to as an Offeror(s) and the Offeror selected to provide services for the College is referred to as a Contractor. This Request for Proposal (RFP) states the instructions for submitting proposals, the procedures and criteria by which an Offeror's proposal will be evaluated and the terms and conditions by which the College proposes to govern the agreement between it and the selected Contractor(s).
- B. *"This document as written and issued by the College's Office of Procurement on January 3, 2011 is the official solicitation document. Any changes made to the document by an offeror must be clearly identified at the time the proposal is submitted. Changes made to a bid document generally will result in disqualification; changes made to a proposal may be considered within the negotiation process."*

II. BACKGROUND

A. GENERAL:

The Virginia Institute of Marine Science (VIMS) is the nation's largest marine science center focused on coastal and estuarine science. There are three locations: the main location in Gloucester Point, Virginia, a laboratory on the Eastern Shore of Virginia and the Kauffman Aquaculture Center on the Rappahannock River in Virginia. VIMS carries out a three-part mission of research, advisory service and education. As part of that mission, VIMS plays a leading role in identifying and addressing the challenges of the Chesapeake Bay, and its science guides efforts to clean the Bay. Its reach is both local and global with many faculty serving on national and international panels involving marine resources.

VIMS educates tomorrow's leaders in the field of marine science. This education is conducted through the VIMS Graduate School of Marine Science, which is part of the College of William and Mary. VIMS graduate students (both Masters and Ph.D.) are trained to study, understand, and manage the coastal environment. VIMS alumni work in academic and research institutes; government agencies at the local, state and federal levels; and in the private sector.

The strengths of the Institute are in its diverse faculty and interdisciplinary approach to complex scientific questions combined with its ability to provide practical solutions to marine issues. VIMS provides advisory service to government agencies, localities, businesses, and industries throughout the Commonwealth and beyond. VIMS is not an advocacy group. Rather, it generates the basic scientific knowledge needed to preserve Chesapeake Bay, protect the marine environment, and sustain marine resources.

Like other state institutions of higher education in the Commonwealth, VIMS is become increasingly dependent on private support to continue its leading-edge scientific and education programs. Yet it lags behind its peers in building endowments to secure its future. To encourage private support, VIMS has created the VIMS Foundation to provide endowments for student support and other needs.

Market Research

VIMS recently undertook a research study to determine awareness of and attitudes about VIMS in various segments of the public including Bay enthusiasts, thought leaders, VIMS internal audiences, alumni, and the general public. The study revealed low awareness in many constituent groups.

Also, VIMS is now in the midst of working with a corporate partner to develop a framework to help VIMS develop a brand identify and prioritize target audiences, and outline the most impactful methods to reach these audiences.

We expect that data from both the market-research project and the corporate partner will be used as the basis of a marketing and communications plan for the prospective marketing firm to carry out.

Goals

The primary goal in hiring an external marketing firm is to help build awareness of the Virginia Institute of Marine Science as a premier marine research institute whose research and educational activities are valued and deemed worthy of support by those who care about a healthy marine environment. VIMS is seeking an experienced marketing firm to work as a partner to refine and assist with the creative elements related to branding and messaging. Educating the public and raising awareness of VIMS is critical to the success of any program for private support. The firm must possess a strong understanding of VIMS' unique status as a graduate education body of the College of William and Mary, as an advisor for marine issues to the Commonwealth of Virginia, and as a leader in marine research locally, nationally, and internationally.

Long-term Metrics of Success

- Increased awareness of VIMS among key constituencies (requires additional market research to benchmark current awareness level)
- Increased private support to VIMS
- Provide creative services that can be maintained by the staff of VIMS in the future,

- B. **SMALL BUSINESS SUBCONTRACTING AND EVIDENCE OF COMPLIANCE:** It is the goal of the College that 50% of its purchases are made from small businesses. This includes discretionary spending in prime contracts and subcontracts. Where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such subcontracting opportunities to DMBE-certified small businesses, to include DMBE-certified women-owned and minority-owned businesses when they have received DMBE small business certification. If small business subcontractors are used, the prime contractor agrees to report the use of small business subcontractors by providing the purchasing office at a minimum the following information: name of small business with the DMBE certification number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product/service provided.

All potential Offerors are required to submit a Small Business Subcontracting Plan unless the Offeror is registered as a DMBE-certified small business. No Offeror or subcontractor shall be considered a Small Business, a Women-Owned Business or a Minority-Owned Business unless certified as such by the Department of Minority Business Enterprise (DMBE) by the due date for receipt of proposals.

- III. **CONTRACT PARTICIPATION:** It is the intent of this solicitation and resulting contract to allow for cooperative procurement. Accordingly, any public body, public or private health or educational institutions, or College's affiliated corporations may access any resulting contract if authorized by the contractor.

Participation in this cooperative procurement is strictly voluntary. If authorized by the Contractor, the resultant contract may be extended to the entities indicated above to purchase at contract prices in accordance with contract terms. The Contractor shall notify the College in writing of any such entities accessing the contract. No modification of this contract or execution of a separate contract is required to participate. The Contractor will provide semi-annual usage reports for all entities accessing the Contract. Participating entities shall place their own orders directly with the Contractor and shall fully and independently administer their use of the contract to include contractual disputes, invoicing and payments without direct administration from the College. The College shall not be held liable for any costs or damages incurred by any other participating entity as a result of any authorization by the Contractor to extend the contract. It is understood and agreed that the College is not responsible for the acts or omissions of any entity, and will not be considered in default of the contract no matter the circumstances.

Use of this contract does not preclude any participating entity from using other contracts or competitive processes as the need may be.

Vendor shall provide the amount of annual sales the firm has with each VASCUPP Member Institution. A list of the VASCUPP Members can be found at <http://web.wm.edu/procurement/documents/VASCUPP.pdf>. Vendor may be asked to provide semi-annual usage reports for all entities accessing this contract. Semi-annual reports, if requested, shall be provided within thirty days from date of request.

IV. REPORTING AND DELIVERY REQUIREMENTS

UTILIZATION OF SMALL BUSINESSES AND BUSINESSES OWNED BY WOMEN AND MINORITIES: The following reports shall be submitted as indicated:

- A. **MINORITY/WOMEN OWNED BUSINESS SUBCONTRACTING AND REPORTING:** Where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such business to minority and/or women-owned businesses. Names of firms may be available from the buyer and/or from the Department of Minority Business Enterprises.
- B. **Final Actual Involvement Report:** The Contractor shall submit a report annually to the Contract Officer, within 10 days of contract completion, a report on the actual dollars spent with small businesses and businesses owned by women and minorities during the performance of this contract. At a minimum, this report shall include for each firm contracted with and for each such business class (i.e., small, women-owned, minority-owned) a comparison of the total actual dollars spent on this contract with the planned involvement of the firm and business class as specified in the proposal, and the actual percent of the total estimated contract value.
- C. The Contractor agrees to furnish the purchasing office the following information: name of firm, phone number, total dollar amount subcontracted and type of product/service provided.

V. STATEMENT OF NEEDS

A. GENERAL:

The Contractor(s) should provide separate a la carte pricing on each marketing component outlined below. Each response should include the process and budget for implementation of the individual item.

Internal

1. Brand platform: Contractor should create and codify a brand platform (built off a positioning framework created by corporate partner) that will be used to talk about the organization
2. Contractor should develop materials to enable internal stakeholder to use those messages (communication plan/visual style guide)
3. Contractor should create standards and goals for internal stakeholders to achieve that will encourage them to use messages in the community
4. Contractor should build the brand platform into current and new collateral pieces, included but not limited to the following:
 - Website,
 - Brochures & other pieces suitable for fundraising initiatives,
 - Promotional video

External

Potential key private-sector market segment or audiences for the VIMS brand including, but not limited to:

- Citizens and Bay enthusiasts who donate or have an interest in environmental causes
- Industry partners, business leaders, community leaders
- Current and past VIMS donors
- VIMS alumni

Media Presence

1. Contractor should evaluate scientific and environmental sites and links for a VIMS presence
2. Contractor should evaluate potential social media sites; determine how aligned VIMS' mission/audience base is with each platform and select those on which VIMS should be present
3. Contractor should build infrastructure necessary for VIMS to be present on proposed sites
4. Contractor should determine process and staff capacity requirements for maintaining tools

Public Relations

1. Contractor should identify and develop a public relations plan that connects mission/programs/new

initiatives to events or news that's larger than organization to get press coverage

Sponsorships

1. Contractor should identify and plan development-related events that are relevant to mission, will increase visibility of VIMS and bring VIMS before new, select audiences into the mix of people exposed to VIMS

Traditional Advertising

1. Contractor should identify and develop plan to purchase print/electronic/radio/TV ads
2. Contractor should develop print/electronic/radio/TV ads

Networking "Presence Building"

1. Contractor should identify networking opportunities (community/corporate events) to create VIMS presence in the community
2. Contractor should identify convener groups (nonprofit roundtables, scientific and environmental venues) and craft an organizational "position" or "voice" to add to conversations taking place at these groups

Partnerships

1. Contractor should identify and develop plan to build relationships with organizations that will help increase presence through partnerships.

Additional Information:

1. This project should be a collaborative partnership between the VIMS Development Office, the VIMS Communications Office, and the external consultants. We expect the work to be collaborative; however, final written approval of all brand images, communications, messages, and/or positioning statements must be given by Jennifer Dillon, Associate Director of Development at VIMS.
2. A timeline with built-in check points should be given to Jennifer Dillon, Associate Director of Development, within one week of contract award.
3. Period updates about progress should be reported to Jennifer Dillon, Associate Director of Development, on a frequency as decided by Jennifer Dillon and Contractor.
4. VIMS expects regular contact with consultants for on-going discussions and decision-making.
5. The Contractor should respect, recognize, and reflect VIMS' culture and philosophy in planning and decision making.

VI. EVALUATION AND AWARD CRITERIA

A. EVALUATION CRITERIA

Each proposal will be evaluated for full compliance with the RFP instructions to the Offeror and the mandatory terms and conditions set forth within the RFP document. The objective of the Evaluation Committee will be to recommend the Contractor(s) who is most responsive to the herein described needs of The College of William & Mary. The proposals shall be evaluated by The College of William & Mary using the following criteria:

1. Experience, performance history, location of offices and references of consultants and subcontractors for each area listed in Statement of Work (20)
2. Detailed budget for each deliverable listed in the Statement of Work (20)
3. Clearly articulated plan, methodology, time table, and business model for

	accomplishing the work in a creative, practical and cost effective manner	(25)
4.	An appreciation for working with a complex and diverse institute, and a perceived ability to work successfully with VIMS epresentatives	(15)
5.	Small, Women-Owned, and Minority-Owned Participation Plan	<u>(20)</u>
	TOTAL	100

- B. **AWARD OF CONTRACT:** 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 evaluation factors included in the Request for Proposals, including price, if so stated in the Request for Proposals. Negotiations shall be conducted with the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the agency shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. The College reserves the right to make multiple awards as a result of this solicitation. The College may cancel this Request for Proposals or 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 (*Rules Governing Procurement, Chapter 2, Exhibit J. Section 49D*). . Should the College determine in writing and 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, a contract may be negotiated and awarded to that offeror. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the contractor's proposal as negotiated.

VII. **PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS**

A. **GENERAL REQUIREMENTS:**

1. In order to be considered for selection, Offerors must submit a complete response to this RFP. One original and five (5) copies of each proposal must be submitted to the Office of Procurement at the College of William & Mary. No other distribution of the proposal shall be made by the Offeror.
2. Each copy of the proposal should be bound or contained in a single volume where practical. All documentation submitted with the proposal should be included.
3. 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 College 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 College.** Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation.
4. All proposals shall be received and time stamped in the Issuing Office no later than the Closing Date and Time shown on the cover page of this Request for Proposal. Any proposal received after the specified date and time shall not be considered and shall be returned unopened to the Offeror.
5. **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 College of William & Mary. This provides an opportunity for the Offeror to clarify or elaborate on the proposal. This is a fact finding explanation session only and does not include negotiation. The College will schedule the time and location of these presentations. Oral presentations are an option of the College and may or may not be conducted.
6. All information requested by this RFP on the ownership, utilization and planned involvement of small businesses, women owned businesses and minority-owned businesses must be submitted. If an Offeror fails to submit all information requested the College may require prompt submission of missing information after the receipt of Offeror's proposal.

7. Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content.
8. Proposals should be organized in the order in which the requirements are presented in the RFP. All pages of the proposals 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 and 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. 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.
9. Ownership of all data, materials, samples, portfolios, and documentation, etc., originated and prepared for the College pursuant to the RFP shall belong exclusively to the College 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 Freedom of Information Act; however, the Offeror must invoke the protections of Section 11-52D 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.

B. SPECIFIC REQUIREMENTS:

Proposals should be as thorough and detailed as possible so that the College may properly evaluate your capabilities to provide the required goods/services. **Offerors are required to submit the following items as a complete proposal:**

1. The return of the RFP cover sheet and all addenda acknowledgments, if any, signed and filled out as required.
2. Complete Contractor Data Sheet (**Attachment C**) included as an attachment to the RFP, and other specific items or data requested in the RFP.
3. Small, Women-Owned and Minority Business Participation. The Offeror must submit the following data for small businesses, women-owned businesses and minority-owned businesses: 1) ownership, 2) utilization of small, women-owned and minority-owned businesses for the most recent 12 months. Forms for submission of this data are provided in **Attachment D**.
4. A written narrative statement to include how the Offeror plans on accomplishing the work in the Statement of Needs, as follows:
 - a. Experience, performance history, location of offices and references of consultants and subcontractors for each area listed in the Statement of Needs section.
 - b. Detailed budget for each outlined deliverable listed in the Statement of Needs section.
 - c. Metrics for measuring outcomes of each deliverable.
 - d. Estimates of costs associated with the recommendations, based on current media development and placement costs.
 - e. Clearly articulated plan, methodology, preliminary time table, and business model for accomplishing the work in a creative, practical and cost effective manner.
 - f. Examples/Samples of each area listed in Statement of Work Section.
 - g. Examples of working with non-profit organizations and universities.

- h. An appreciation for working with a complex and diverse institute, and a perceived ability to work successfully with VIMS representatives.

VIII. **MANDATORY GENERAL TERMS AND CONDITIONS**

- A. **PURCHASING MANUAL:** This solicitation is subject to the provisions of the College's Purchasing Manual for Institutions of Higher Education and their Vendors and any revisions thereto, which are hereby incorporated into this contract in their entirety. A copy of the manual is normally available for review at www.wm.edu/procurement.
- 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 agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Rules Governing Procurement*, Chapter 2, Exhibit J, Attachment 1§ 56). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.
- C. **ANTI-DISCRIMINATION:** By submitting their proposals, Offerors certify 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 §10 of the *Rules Governing Procurement*, Chapter 2, Exhibit J, Attachment 1. 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 1. and 2. below apply:

- 1. During the performance of this contract, the Contractor agrees as follows:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, or 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.
 - b. 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.
 - c. Notices, advertisements, and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
- 2. 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 vendor.
- D. **ETHICS IN PUBLIC CONTRACTING:** By submitting their proposals, Offerors certify that their proposals are 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 proposals, Offerors certify 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 proposals, Offerors certify that they are not currently debarred by the Commonwealth of Virginia from submitting proposals on contracts for the type of goods and/or 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 a contract, the Contractor conveys, sells, assigns, and transfers to the College 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 goods or services purchased or acquired by the College under said contract.
- G. AVAILABILITY OF FUNDS: It is understood and agreed between the parties herein that the College shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.
- H. PROPOSAL: Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the College reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.
- I. CLARIFICATION OF TERMS: If any prospective Offeror has questions about the specifications or other solicitation documents, the prospective Offeror should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revision to the solicitation will be made only by addendum issued by the buyer.
- J. 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, social security number (for individual Contractors) 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 goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the Contractor at the contract price, regardless of which public agency is being billed.
 - d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is to be 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 College shall promptly notify the Contractor, in writing, as to those charges that 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 (*Rules Governing Procurement*, Chapter 2, Exhibit J, Attachment 1§ 53).
 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 College 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 College, 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 College.

K. PRECEDENCE OF TERMS: Paragraphs A-J of these General Terms and Conditions, *Commonwealth of Virginia Purchasing Manual for Institutions of Higher Education and their Vendors*, shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

L. QUALIFICATIONS OF OFFERORS: The College may make such reasonable investigations as deemed proper and necessary, to determine the ability of the Offeror to perform the services/furnish the goods and the Offeror shall furnish to the College all such information and data for this purpose as may be requested. The College reserves the right to inspect Offeror's physical facilities prior to award to satisfy questions regarding the Offeror's capabilities. The College further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such Offeror fails to satisfy the College that such Offeror is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

M. TESTING AND INSPECTION: The College reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

N. ASSIGNMENT OF CONTRACT: A contract shall not be assignable by the Contractor in whole or in part without the written consent of the College.

O. CHANGES TO THE CONTRACT: Changes can be made to the contract in any one of the following ways:

1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
2. The College may order changes within the general scope of the contract at any time by written notice to the Contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give the College a credit for any savings. Said compensation shall be determined by one of the following methods:
 - a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to the College's right to audit the Contractor's records and/or to determine the correct number of units independently; or
 - c. By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings

realized. The Contractor shall present the College with all vouchers and records of expenses incurred and savings realized. The College shall have the right to audit the records of the Contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the College within thirty (30) days from the date of receipt of the written order from the College. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract (see General Conditions, clause Y herein) or, if there is none, in accordance with the disputes provisions of the *Commonwealth of Virginia Purchasing Manual for Institutions of Higher Education and their Vendors*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.

- P. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the College, 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 which the College may have.
- Q. **TAXES:** Sales to the College of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST -12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The College's excise tax exemption registration number is 10-546001718F.
- R. **INSURANCE:** By signing and submitting a proposal under this solicitation, the Offeror certifies that if awarded the contract, it will have the following insurance coverage 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 §25 of the *Rules Governing Procurement – Chapter 2, Exhibit J, Attachment 1 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 coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

In instances where a resulting contract award requires the contractor's employees presence on state property at any time, the contractor shall issue a Certificate of Liability Insurance prior to the beginning of the project. It shall be understood that the College of William & Mary and the Virginia Institute of Marine Science, in the bidding and resulting contract, are deemed to be one agency of the Commonwealth.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify College of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.
 2. Employer's Liability - \$100,000.
 3. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The College of Virginia must be named as an additional insured and so endorsed on the policy.
 4. Automobile Liability - \$1,000,000 per occurrence.
- S. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract over \$50,000, as a result of this solicitation, the College will publicly post such notice on the DGS/DPS eVA web site (www.eva.state.va.us) for a minimum of 10 days.
- T. **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; (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 vendor.

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.

- U. NONDISCRIMINATION OF CONTRACTORS: A 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, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the Offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. 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 goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.
- V. CLAIMS PROCEDURE: Contractual claims for payment under the Agreement shall be submitted in writing no later than sixty (60) days after the College states in a writing delivered to the Contractor that it has made its final payment to the contractor under the Agreement and that Contractor must submit any claim within 60 days thereafter. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

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

The Contractor must provide the written claim to:

Director of Procurement
Grigsby Drive, Facilities Management Bldg, Lower Level
College of William & Mary
P.O. Box 8795 Williamsburg, Virginia 23187-8795

Although the Contractor may, if it chooses, attempt to resolve its claim directly with the College department using the product or services rather than the one stated in the above paragraph, the Contractor must submit any unresolved claim in writing, no later than sixty (60) days after notice of final payment is delivered to the Contractor in accordance with the opening paragraph of this subsection (w), to the Director of Procurement if it wishes to pursue its claim.

Upon receiving the written claim, the Director of Procurement will review the written materials relating to the claim and decide whether to discuss the merits of the claim with the contractor. If such discussion is to be held, the Director of Procurement will contact the Contractor and arrange such discussion.

The Director of Procurement will mail his or her decision to the Contractor within sixty-(60) days after receipt of the claim. The decision will state the reason for granting or denying the claim.

The Contractor may appeal the Director of Procurement's decision to:

Vice President for Administration
College Apartments
College of William & Mary
P.O. Box 8795
Williamsburg, Virginia 23187-8795

Upon receiving the written appeal, the Vice President for Administration will review the written materials relating to the claim and decide whether to discuss the merits of the claim with the Contractor. If such discussion is to be held, Vice President for Administration will contact the Contractor and arrange such discussion.

The Vice President for Administration will mail his or her decision to the Contractor within thirty (30) days after the Vice President for Administration's receipt of the appeal. The decision will state the reasons for granting or denying the appeal.

Nothing set forth in this section shall limit, delay or reduce the Contractor's ability to seek equitable relief from a court of competent jurisdiction in the Commonwealth of Virginia to the extent permitted by Virginia law. In addition, to the extent the College brings a claim against the Contractor, then the Contractor shall in no event be precluded from asserting a counterclaim for payments due under the Agreement regardless of whether such counterclaim is raised within the 60 day period specified above.

W. **eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION:** The eVA internet electronic procurement solution, web site portal www.eva.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the College shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service. Winning Offeror must register in eVA prior to contract award; failure to register will result in the proposal being rejected.

- a. eVA Basic Vendor Registration Service: \$25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, electronic bidding, and the ability to research historical procurement data available in the eVA purchase transaction data warehouse.
- b. eVA Premium Vendor Registration Service: \$25 Annual Registration Fee plus appropriate order Transaction Fee specified below. 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.
- c. The Vendor Transaction Fee is:
 - i. DMBE-certified Small Businesses: 1% capped at \$500 per order.
 - ii. Businesses that are not DMBE-certified Small Businesses: 1% capped at \$1,500 per order.

The DMBE certified Small Business designation is understood to include DMBE certified Woman –and Minority – Owned Businesses as well.

The eVA transaction fee will be assessed approximately 30 days after each purchase order is issued. Any adjustments (increases/decreases) will be handled through eVA change orders.

IX. SPECIAL TERMS AND CONDITIONS

- A. **ADVERTISING:** In the event a contract is awarded for supplies, equipment, or services resulting from this proposal, no indication of such sales or services to the College will be used in product literature or advertising. The Contractor shall not state in any of its advertising or product literature that the College has purchased or uses its products or services without the prior written approval from the College.
- B. **ALTERATIONS TO PROPOSALS:** Prior to submission of proposals, alterations may be made, but they must be initialed by the person signing the proposal. The proper procedure is to draw a single line through the information to be changed, insert the desired information, and initial the change. Erasures, typewriter strike-overs, or the use of correction fluid on proposal form that affect unit price, quantity, quality, or delivery may result in the rejection of the line item involved in the proposal.
- C. **RIGHT OF AUDIT:** The College reserves the right to audit or cause to be audited the Selected Firm's books and accounts regarding the College's account at any time during the term of this Agreement and for five years thereafter. The Selected Firm will make available to the College all books and records relating to performance of this Agreement as may be requested during said period. This specifically includes, but is not

limited to, the right of the College to require that the Selected Firm perform self-audits within reasonable parameters established by the College.

- D. IDENTIFICATION OF PROPOSAL ENVELOPE: If a special label is not furnished, or if return with the special label is not possible, the signed proposal should be returned in a separate envelope or package, sealed and identified as follows:

From: _____ January 26, 2011 Before 3:00 PM EST
Name of Offeror Due Date Time

_____ WM-1267-11
Street or Box Number RFP No.

_____ Brand Profile Development, Marketing & Creative Services
City, State, Zip Code RFP Title

Name of Buyer: Sandra L. Eatmon, VCO

The envelope should be addressed as directed on Page 1 of the solicitation.

If a proposal not contained in the special envelope is mailed, the Offeror takes the risk that the envelope, even if marked as described above, may be inadvertently opened and the information compromised which may cause the proposal to be disqualified. Proposals may be hand delivered to the designated location in the Office of Procurement. No other correspondence or other proposals should be placed in the envelope.

- E. LATE PROPOSALS: To be considered for selection, proposals must be received by the Office of Procurement prior to the designated date and hour. The official time used in the receipt of proposals is that time on the automatic time stamp machine in the Office of Procurement. Proposals received in the Office of Procurement after the date and hour designated are automatically disqualified and **will not be considered**. The College is not responsible for delays in the delivery of mail by the U.S. Postal Service, private couriers, or the intra College mail system. **It is the sole responsibility of the Offeror to ensure that its proposal reaches the Office of Procurement by the designated date and hour.**

Proposal receipts and openings scheduled during a period of suspended state business operations will be rescheduled for processing at the same time on the next regular business day.

- F. OFFEROR UNDERSTANDING OF REQUIREMENTS: It is the responsibility of each Offeror to inquire about and clarify any requirements of this solicitation that are not understood. The College will not be bound by oral explanations as to the meaning of specifications or language contained in this solicitation. Therefore, all inquiries deemed to be substantive in nature must be in writing and submitted to the responsible buyer in the Office of Procurement. Offerors must ensure that written inquiries reach the buyer at least five (5) days prior to the time set for receipt of proposals. A copy of all inquiries and the respective response will be provided in the form of an addendum to all Offerors who have indicated an interest in responding to this solicitation. Your signature on your proposal certifies that you fully understand all facets of this solicitation. These questions may be sent by FAX to 757-221-3959 using Attachment A, the Understanding of Requirements form.
- G. OFFER ACCEPTANCE PERIOD: Any offer in response to this solicitation shall be valid for 90 days. At the end of the 90 days, the offer may be withdrawn at the written request of the Offeror. If the offer is not withdrawn at that time, it remains in effect until an award is made or the solicitation is canceled.
- H. CONFLICT OF INTEREST: The Offeror represents to the College that its entering into this agreement with the College does not entail any violation of the Virginia Conflict of Interest Act.
- I. RENEWAL OF CONTRACT: This contract may be renewed by the College upon written agreement of both parties for **five (5)** successive one-year periods, under the terms of the current contract, and at a reasonable time approximately 90 days prior to the expiration.

If during a subsequent renewal period the College elects to exercise the option to renew the contract for additional one-year periods, the contract price(s) for the additional one-year periods shall not exceed the contract price(s) of the previous one-year renewal period increased by more than three percent (3%). Contractor agrees to offer price reductions. Price increases may be negotiated only at renewal.

- J. CANCELLATION OF CONTRACT: The College reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the Contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract 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.
- K. INDEMNIFICATION: Contractor agrees to indemnify, defend and hold harmless the Commonwealth of Virginia, the College, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of materials, goods, or equipment of any kind or nature furnished by the Contractor/any services of any kind or nature furnished by the Contractor, provided that such liability is not attributable to the sole negligence of the using agency to use the materials, goods, or equipment in the manner already and permanently described by the Contractor on the materials, goods or equipment delivered.
- L. INDEPENDENT CONTRACTOR: The selected Offeror shall not be an employee of the College, but shall be an independent Contractor. The Contractor shall indemnify and hold the College harmless with respect to all withholding, social security, unemployment compensation and all other taxes or amounts of any kind relating to employment of any labor or other persons providing services to the College under this agreement. Nothing in this agreement shall be construed as authority for the Contractor to make commitments which shall bind the College or to otherwise act on behalf of the College, except as the College may expressly authorize in writing.
- M. PRIME CONTRACTOR RESPONSIBILITIES: The contractor shall be responsible for completely supervising and directing the work under this contract and all subcontractors that he may utilize, 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 as 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.
- N. STANDARDS OF CONDUCT: The Contractor shall be responsible for controlling employee conduct, for assuring that its employees are not boisterous or rude, and assuring that they are not engaging in any destructive or criminal activity.
- O. SUBCONTRACTS: No portion of the work shall be subcontracted without prior written consent of the college. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish the College the names, qualifications and experience of their proposed subcontractors. The Contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.
- P. BREACH: The Contractor shall be deemed in breach of the Agreement if the Contractor (a) fails to make any Product or Service ready for acceptance testing by the specified delivery date; (b) repeatedly fails to respond to requests required services within the time limits as agreed; (c) fails to comply with any other terms of this Agreement and fails to cure such noncompliance within ten days (or such greater period as is acceptable to the College) following Contractor's receipt of a Show Cause Notice identifying such noncompliance; or (d) fails to provide a written response to the College's Show Cause Notice within ten days after receiving same.

The Contractor shall not be in breach of this Agreement if its default was due to causes beyond the reasonable control of, and occurred without any fault of negligence on the part of, both the Contractor and its subcontractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Commonwealth in either its sovereign or Contractual capacity, fire, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

In the event of breach, in addition to any other remedies provided by law, the College may cancel its obligations with respect to any or all unaccepted Products or Services. All costs for de-installation and return of Products shall be borne by the Contractor. In no event shall any failure by the College to exercise any remedy available to it be construed as a waiver of or consent to any breach

- Q. TERMINATION: If the Contractor fails to provide quality goods or services in a professional manner, solely as determined by the College, and, upon receipt of notice from the College, does not correct the deficiency, to

the College's satisfaction within a reasonable period of time, not to exceed five calendar days unless otherwise agreed to by both parties in writing, the College reserves the right to terminate this Agreement upon written notice to the Contractor.

- R. TERMINATION FOR CONVENIENCE: This Contract may be terminated, in whole or in part, upon sixty (60) days advance written notice by the College. There are no additional costs for financial obligations to the College upon termination for convenience.
- S. TERMINATION FOR CONVENIENCE OF INDIVIDUAL ORDER: Any individual Order placed under this Agreement may be terminated, in whole or in part, by the College for its convenience, at any time up to thirty (30) days advance written notice to the Contractor. There are no other costs or obligations for termination for convenience.
- T. EFFECT OF TERMINATION: Upon termination, the College shall have no future liability except for Deliverable accepted or Services rendered by Contractor and accepted by the College prior to the termination date.

In the event of a Termination for Breach or Termination for Default, Contractor shall accept return of any Deliverable that was not accepted by the College, and Contractor shall refund any monies paid by the College for such Deliverable, and all costs of de-installation and return of Deliverables shall be borne by the Contractor.

- U. PROPRIETARY INFORMATION, DUPLICATION AND DISCLOSURE: Contractor acknowledges that in the course of performing services hereunder its personnel and subcontractors (if any) will have access to confidential information about the College's business, operations, employees, faculty, staff, and students. Contractor agrees that, except as directed by the College, Contractor, its employees and its subcontractors shall not at any time during or after the term of this Agreement (a) disclose any Confidential Information to any third party, (b) permit any third party to examine and/or make copies of any reports, documents or electronic data containing Confidential Information (whether they are prepared by Contractor or come into Contractor's possession or under Contractor's control by reason of Contractor's services) or (c) use any Confidential Information for any reason other than in the performance of services hereunder. Upon termination of this Agreement, Contractor shall return to the College or at the College's request destroy, all reports, documents, electronic data and other matter in Contractor's possession or under Contractor's control that contain or relate to Confidential Information. Contractor may disclose Confidential Information to such of its personnel as have a need therefore in the performance of their duties, provided however, that Contractor shall inform all such personnel of their confidentiality obligations hereunder and shall use its absolute best efforts to ensure their compliance therewith. Contractor shall not be required to treat as confidential any information which:
 - (a) contractor can demonstrate was in its possession prior to execution of this Agreement
 - (b) has become generally available in the public domain without breach of this Agreement
 - (c) becomes lawfully available to Contractor from a source other than the College

ANY RELEASE OF PROPRIETARY OR CONFIDENTIAL INFORMATION BY THE CONTRACTOR OR CONTRACTOR'S EMPLOYEES SHALL BE CONSIDERED A BREACH OF THIS AGREEMENT. THE CONTRACTOR SHALL NOT USE THE CONFIDENTIAL INFORMATION OF THE COLLEGE FOR ITS OWN BENEFIT OR FOR THE BENEFIT OF ANY THIRD PARTY. THE PROVISIONS OF THIS SECTION SHALL SURVIVE ANY TERMINATION OF THIS AGREEMENT IN PERPETUITY.

- V. GENERAL WARRANTY: With respect to the Services provided by Contractor, Contractor represents and warrants the following:

Ownership

Contractor has the right to provide the Services, including Deliverables, without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party.

Contractor's Viability

Contractor warrants that it has the financial capacity to perform and continue to perform its obligations under this Contract; that Contractor has no constructive or actual knowledge of an actual or potential legal

proceeding being brought against Contractor that could materially adversely affect performance of this Contract; and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction.

Contractor's Past Experience

Contractor warrants that the Services have been successfully performed for a non-related third-party without significant problems due to the Services or Contractor.

Performance

All Services shall be performed with care, skill and diligence, consistent with or above applicable professional standards currently recognized in its profession, and Contractor shall be responsible for the professional quality, technical accuracy, completeness and coordination of all plans, information, specifications, Deliverables and Services furnished under this Contract;

Services pursuant to a particular Request for Proposal ("RFP") and any associated Deliverables shall be fit for the particular purposes specified by the College in the RFP and in this Contract, and Contractor is possessed of superior knowledge with respect to the Services and Deliverables and is aware that the College is relying on Contractor's skill and judgment in providing the Services and Deliverables;

Malicious Code

Contractor has used its best efforts through quality assurance procedures to ensure that there are no computer viruses or undocumented features in any of the media or means used to deliver the Services.

Limited Warranty Period and Remedy

During the warranty period of 365 days, Contractor warrants that the Services shall meet or exceed the Requirements. Contractor shall correct, at no additional cost, all errors identified during the warranty period that result in a failure of the Services to meet the Requirements. If Contractor is unable to make the Service/Deliverable conform, in all material respects, to the Requirements within ten (10) days following written notification by the College, Contractor shall, at the College's request, accept return of such Deliverable and any other related Deliverable(s) rendered unusable, and return all monies paid by the College for the non-conforming Services and Deliverable and such other related Deliverable(s) rendered unusable.

THE OBLIGATIONS OF CONTRACTOR UNDER THIS GENERAL WARRANTY SECTION ARE MATERIAL. CONTRACTOR MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY CONCERNING MERCHANTABILITY OR FITNESS FOR ANY OTHER PARTICULAR PURPOSE.

W. **FORCE MAJEURE**

No Party shall be responsible for failure to meet its obligations under this Contract if the failure arises from causes beyond the control and without the fault or negligence of the non-performing Party. If any performance date under this Contract is postponed or extended pursuant to this section for longer than thirty (30) calendar days, the College, by written notice given during the postponement or extension, may terminate Contractor's right to render further performance after the effective date of termination without liability for that termination.

X. **LIABILITY:** Contractor shall have unlimited liability with respect to (i) any intentional or willful misconduct or negligence of any employee, agent, or subcontractor of Contractor, (ii) any act or omission of any employee, agent, or subcontractor of Contractor, (iii) claims for bodily injury, including death, and real and tangible property damage, (iv) Contractor's indemnification obligations, (v) Contractor's confidentiality obligations, and (vi) Contractor's security compliance obligations. Contractor agrees that it is fully responsible for all acts and omissions of its employees, agents, and subcontractors, including their gross negligence or willful misconduct.

FOR ALL OTHER CONTRACTUAL CLAIMS, IN NO EVENT WILL ANY PARTY BE LIABLE TO ANY OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING (WITHOUT LIMITATION) LOSS OF PROFIT, INCOME OR SAVINGS, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, EXCEPT WHEN SUCH DAMAGES ARE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE PARTY, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS.

Y. **VIRGINIA FREEDOM OF INFORMATION:ACT:** Except as provided below, once an award is announced, all proposals submitted in response to the RFP will be open to the inspection of any interested person, firm or

corporation, in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by firms as part of its proposal will not be subject to the public disclosure under the Virginia Freedom of Information Act; however, the firm must invoke the protections of this section prior to or upon submission of its proposal, and must identify the specific data or other materials to be protected and state the reasons why protection is necessary. Firms may not request that its entire proposal be treated as proprietary information.

- Z. eVA BUSINESS-TO-GOVERNMENT CONTRACTS AND ORDERS: It is anticipated that the contract will result in multiple purchase orders (i.e., one for each delivery requirement) with the eVA transaction fee specified below assessed for each order.

Vendor Transaction Fee is:

- (i) DMBE-certified Small Businesses: 1%, Capped at \$500 per order.
- (ii) Businesses that are not DMBE-certified Small Businesses: 1%, Capped at \$1,500 per order.

The eVA transaction fee will be assessed approximately 30 days after each purchase order is issued. Any adjustments (increases/decreases) will be handled through eVA change orders.

Internet electronic procurement solution, website portal 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.

Vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution.

- AA. The Contractor shall provide a weekly progress report to Jennifer Dillon, Associate Director of Development, outlining the following:

- i. The specific accomplishments achieved during the reporting period.
- ii. The specific tasks completed pursuant to the provisions of the contract and the completion dates of such tasks.
- iii. The projected completion dates for the remaining specific tasks required by the contract.

- BB. Reimbursement of Expenses: The College will pay, or reimburse Contractor, for all reasonable and actual travel-related expenses for greater than thirty (30) miles from portal to portal incurred by Contractor during the relevant period; provided, however, that the College shall only be liable to pay for Contractor's travel-related expenses, including transportation, meals, lodging and incidental expenses, that have been authorized by the College in advance and which will be reimbursable by the College at the then-current per diem amounts as published by the Virginia Department of Accounts (http://www.doa.virginia.gov/Admin_Services/CAPP/CAPP_Topics/20336.pdf or a successor URL(s)).

All reimbursed expenses will be billed to the College on a pass-through basis without any markup by Contractor. At the College's request, Contractor shall provide copies of receipts for all travel expenses over US\$30.00.

X. SPECIAL TERMS AND CONDITIONS FOR INFORMATION TECHNOLOGY

- A. DEFINITION - SOFTWARE: As used herein, the terms software, product, or software products shall include all related materials and documentation whether in machine readable or printed form.
- B. LATEST SOFTWARE VERSION: Any software product(s) provided under the contract shall be the latest version available to the general public as of the due date of this solicitation.
- C. SENSITIVE DATA: Contracts/agreements that require a third party vendor to collect credit and/or debit card

information from individuals must require the third party vendor to demonstrate proof of current compliance with all federal and state Payment Card Industry (PCI) Data Security Standards (DSS). Additionally, contracts/agreements that will result in the collection, storage, transmission and/or exchange of sensitive data must include a data interoperability agreement signed by both parties that sets the minimum security levels for securing the data.

Contracts/agreements that will result in the collection, storage, transmission and/or exchange of sensitive data must include a Sensitive Data Interoperability Agreement signed by both parties that sets the minimum security levels for securing the data.

Definition of Sensitive Data:

Sensitive University Data: Data that the University is obligated to protect, whether by law, contract, or policy. Examples include:

- a. Personal information including social security number, driver's license number, ancestry, or religion;
- b. Student records, which are protected by FERPA;
- c. Personally identifiable financial information (these records, which are protected by the Gramm-Leach-Bliley Act, generally will also be either personnel or student records);
- d. Personal information collected from a donor, alumnus, or other individual;
- e. Proprietary vendor information;
- f. Health records, which are protected by the Virginia Health Records Privacy Act; and
- g. Attorney-client communications.

Sensitive data does not include information in the William and Mary directory or data that is made public by the University.

- D. **NONVISUAL ACCESS TO TECHNOLOGY:** The Selected Firm will meet the requirements set forth in section 508 Standards for Electronic Information Technology of the Rehabilitation Act of 1973 and Web Content Accessibility Guideline from the World Wide Web Consortium. Additionally, in accordance with § 2.2-3502 of the Code of Virginia, the following minimum non-visual access requirements will apply to all information technology Agreements.

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

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

The College may stipulate additional specifications in any procurement.

Compliance with the foregoing non-visual access standards will not be required if the Director of Procurement, The College of William and Mary determines that 1) the Technology is not available and 2) non-visual equivalence is not available.

Installation of hardware, software or peripheral devices used for non-visual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information will permit the installation and effective use of non-visual access software and peripheral devices.

- E. OWNERSHIP OF INTELLECTUAL PROPERTY: All copyright and patent rights to all papers, reports, forms, materials, creations, or inventions created or developed in the performance of this contract shall become the sole property of the Commonwealth. On request, the contractor shall promptly provide an acknowledgment or assignment in a tangible form satisfactory to the Commonwealth to evidence the Commonwealth's sole ownership of specifically identified intellectual property created or developed in the performance of the contract.
 - F. PRODUCT SUBSTITUTION: During the term of any contract resulting from this solicitation, the vendor is not authorized to substitute any item for that product and/or software identified in the solicitation without the prior written consent of the contracting officer whose name appears on the front of this solicitation, or their designee.
 - G. TITLE TO SOFTWARE: By submitting a bid or proposal, the bidder or offeror represents and warrants that it is the sole owner of the software or, if not the owner, that it has received all legally required authorizations from the owner to license the software, has the full power to grant the rights required by this solicitation, and that neither the software nor its use in accordance with the contract will violate or infringe upon any patent, copyright, trade secret, or any other property rights of another person or organization.
 - H. WARRANTY AGAINST SHUTDOWN DEVICES: The contractor warrants that the equipment and software provided under the contract shall not contain any lock, counter, CPU reference, virus, worm, or other device capable of halting operations or erasing or altering data or programs. Contractor further warrants that neither it, nor its agents, employees, or subcontractors shall insert any shutdown device following delivery of the equipment and software.
 - I. WARRANTY OF SOFTWARE: The contractor warrants the operation of all software products for a period of 12 months from the date of acceptance. During the warranty period, the contractor shall provide 8 hour toll free phone support and all patches, fixes, revisions, updates, upgrades, and minor releases to both the software and its supporting documentation. In addition, the contractor shall provide a two hour return call response time and complete all necessary patches/fixes within 12 hours of initial notification.
 - J. WARRANTY (COMMERCIAL): The contractor agrees that the goods or services furnished under any award resulting from this solicitation shall be covered by the most favorable commercial warranties the contractor gives any customer for such goods or services and that the rights and remedies provided therein are in addition to and do not limit those available to the Commonwealth by any other clause of this solicitation. A copy of this warranty should be furnished with the bid/proposal.
- XI. METHOD OF PAYMENT**: Payment will be made in accordance with the Commonwealth of Virginia Prompt Payment Act. All invoices shall show the contract number and/or purchase order number. Invoices for items or services ordered, delivered, and accepted shall be submitted by the Contractor to the address that appears on the College's assigned eVA purchase order.

The Contractor shall ensure that a current W-9 (Taxpayer Identification Number and Certification) is on file in the Accounts Payable Office. Failure to have a current W-9 on file may delay payment of any invoice(s) submitted. Invoices presented to the Accounts Payable Office are deemed valid only if a current W-9 is on file.

XII. PRICING SCHEDULE:

A separate, detailed budget for each deliverable listed in the Statement of Work. Please include a grand total.

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OFFEROR: _____

RFP#: RFP #WM-1267-11 DATE: _____

The following question concerns specifications, Section (number) _____

Paragraph _____, page _____:

All responses to questions may be made by Addendum.

Questions Submitted by: _____

NAME

ORGANIZATION

EMAIL

This may be FAXED to: (757) 221-3959 or E-MAIL to: (sleatm@wm.edu) Senior Procurement Officer: Sandra L. Eatmon, VCO, Senior Procurement Officer

Ensure that the solicitation is thoroughly read and completed. Complete, sign and return the information requested below with your proposal. FAILURE TO FURNISH THIS DATA MAY RESULT IN REJECTING YOUR PROPOSAL.

NAME: _____

ADDRESS: _____

CITY/STATE: _____

TELEPHONE NUMBER: _____

FEDERAL ID NUMBER (FIN): _____

THE ABOVE FIRM IS A: (CHECK, AS APPLICABLE)

- | | |
|--|--|
| ☐ SMALL BUSINESS | ☐ INDIVIDUAL BUSINESS |
| ☐ WOMAN-OWNED BUSINESS | ☐ SOLE PROPRIETORSHIP |
| ☐ MINORITY-OWNED BUSINESS | ☐ PARTNERSHIP |
| ☐ SHELTERED WORKSHOP | ☐ CORPORATION |

RELATIONSHIP WITH THE COLLEGE OF VIRGINIA:

IS ANY MEMBER OF THE FIRM AN EMPLOYEE OF THE COMMONWEALTH OF VIRGINIA WHO HAS A PERSONAL INTEREST IN THIS CONTRACT PURSUANT TO THE CODE OF VIRGINIA, SECTION 2.1-639.1 - 639.24? ☐ YES ☐ NO

IF YES, EXPLAIN:

SIGNATURE OF OFFEROR

DATE

Please tell us how you received this solicitation:

- ☐ It was mailed to you directly.
- ☐ You requested a copy through the Virginia Business Opportunities.
- ☐ You obtained a copy through the Tidewater Regional Minority Purchasing Council.
- ☐ You obtained a copy from the Virginia Department of Minority Business Enterprise.
- ☐ Other (please specify) _____.

RETURN OF ATTACHMENT B IS REQUIRED

QUALIFICATIONS OF OFFEROR: Offerors must have the capability and capacity in all respects to fully satisfy the contractual requirements.

Indicate the length of time you have been in business providing this type of service. _____ Years
_____ Months

Provide a list of current references, either College, Educational Institutions, and/or other companies that your firm is servicing. Include the length of service, dollar volume, year contract was entered into, and the name and address of the person the State has your permission to contact. Such listing shall be comprehensive of your firm's customer base and can be formatted as follows:

CURRENT ACCOUNTS:

Account Name, Address & Phone #	Length of Service	\$ Volume/Year
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

LOST ACCOUNTS:

Account Name, Address & Phone #	Length of Service	\$ Volume/Year
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

RETURN OF ATTACHMENT C IS REQUIRED

Small Business Subcontracting Plan**Definitions**

Small Business: "Small business " means an independently owned and operated business which, together with affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years. Note: DMBE-certified women- and minority-owned businesses shall also be considered small businesses when they have received DMBE small business certification.

Women-Owned Business: Women-owned business means a business concern that is at least 51% owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, or in the case of a corporation, partnership or limited liability company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, and both the management and daily business operations are controlled by one or more women who are citizens of the United States or non-citizens who are in full compliance with the United States immigration law.

Minority-Owned Business: Minority-owned business means a business concern that is at least 51% owned by one or more minority individuals or in the case of a corporation, partnership or limited liability company or other entity, at least 51% of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals and both the management and daily business operations are controlled by one or more minority individuals.

All small businesses must be certified by the Commonwealth of Virginia, Department of Minority Business Enterprise (DMBE) to participate in the SWAM program. Certification applications are available through DMBE online at www.dmb.virginia.gov (Customer Service).

Offeror Name: _____

Preparer Name: _____

Date: _____

Instructions

- A. If you are certified by the Department of Minority Business Enterprise (DMBE) as a small business, complete only Section A of this form. This shall not exclude DMBE-certified women-owned and minority-owned businesses when they have received DMBE small business certification.
- A. If you are not a DMBE-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 DMBE-certified small business in this section. Points will be assigned based on each offeror's proposed subcontracting expenditures with DMBE certified small businesses for the initial contract period as indicated in Section B, column E divided by the offeror's total price in Section B, column F.

Section A

If your firm is certified by the Department of Minority Business Enterprise (DMBE), are you certified as a (**check only one below**):

_____ Small Business

_____ Small and Women-owned Business

_____ Small and Minority-owned Business

Certification number: _____ Certification date: _____

Section B

Populate the table below to show your firm's plans for utilization of DMBE-certified small businesses in the performance of this contract. This shall include DMBE-certified women-owned and minority-owned businesses that meet the small business definition and have received the DMBE small business certification. Include plans to utilize small businesses as part of joint ventures, partnerships, subcontractors, suppliers, etc.

Plans for Utilization of DMBE-Certified Small Businesses for this Procurement

COLUMN A Small Business Name & Address DMBE Certificate #	COLUMN B Status if Small Business is also: Women (W), Minority (M)	COLUMN C Contact Person, Telephone & Email	COLUMN D Type of Goods and/or Services	COLUMN E \$ Value of Planned SWaM Involvement During Initial Period of the Contract	COLUMN F Expected Planned \$ Value of Total Service/Sales During Initial Period of the Contract
Totals \$					

RETURN OF ATTACHMENT D IS REQUIRED

REGISTRATION for PRE-PROPOSAL CONFERENCE

RFP # WM-1267-11
Brand Profile, Marketing and Creative Services

FAX TO: 757-221-3959
Attn: Sandra L. Eatmon, VCO, Senior Procurement Officer

REGISTRATRION FORM

DUE DATE/TIME: Monday, January 10, 2011 before 5:00 PM EST

An **OPTIONAL** Preproposal Conference will be held on **Wednesday, January 12, 2011** at 2:00 PM EST via telephone. The purpose of this conference is to allow potential Offerors an opportunity to present questions and obtain clarification relative to any facet of this solicitation. While attendance at this conference will not be a prerequisite to submitting a proposal, Offerors who intend to submit a proposal are encouraged to attend. Please have a copy of the solicitation available. Any changes resulting from this conference will be issued by the Office of Procurement in a written addendum to the solicitation. Minutes and attendees of this meeting will not be posted. The Office of Procurement shall not be responsible for updating late conference arrivals.

The Conference Call-in Telephone Number will be provided at least 24 hours prior to the conference by email.

Name of firm attending: _____

Number of representatives from your firm attending conference: _____

Email (where to send Conference Call-In Telephone Number): _____

CONFERENCE CALL-IN NUMBER: _____
(TO BE PROVIDED BY THE COLLEGE)

**RETURN OF THIS PAGE IS REQUIRED
IF ATTENDING PRE-PROPOSAL CONFERENCE**