



**REQUEST FOR PROPOSALS
(SEALED PROPOSALS)**

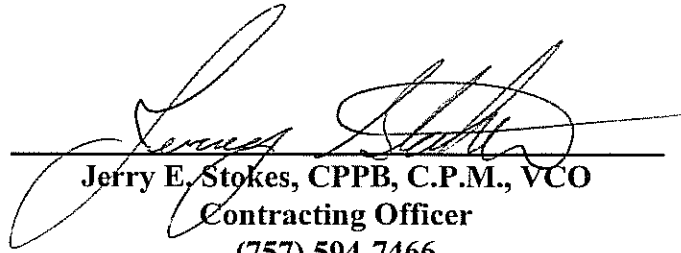
**REQUEST FOR PROPOSAL NUMBER
RFP 242-11-00027-JES**

**TRADEMARK LICENSING
SERVICES**

CLOSING DATE/TIME

JANUARY 21, 2011

2:00 PM


Jerry E. Stokes, CPPB, C.P.M., VCO
Contracting Officer
(757) 594-7466
jerry.stokes@cnu.edu

**COMMONWEALTH OF VIRGINIA
CHRISTOPHER NEWPORT UNIVERSITY
REQUEST FOR PROPOSALS
(SEALED PROPOSALS)**

RFP NUMBER: 242-11-00027-JES

Title: Trademark Licensing Services

Issue Date: January 10, 2011

Issuing Agency: Christopher Newport University
Dept. of Material Management / Office of Procurement Services
301 Hiden Boulevard
Suite 309
Newport News, Virginia 23606-2998

**Sealed Proposals Will
Be Received Until:** 2:00 p.m. on January 21, 2011

If proposals are mailed, send directly to the issuing agency shown above. If proposals are hand-delivered, deliver to: Department of Material Management / Office of Procurement Services, CNU/Suntrust Building, 301 Hiden Boulevard, Third Floor, Suite 309, Newport News, VA 23606. Direct all inquiries for information to Jerry E. Stokes, CPPB, C.P.M., VCO, Contracting Officer, (757) 594-7466 or at the above address.

In compliance with this Request for Proposals (RFP) and subject to all conditions imposed therein and hereby incorporated by reference, the undersigned offers and agrees to furnish the services described in accordance with the attached proposal or as mutually agreed upon by subsequent negotiation.

Name & Address of Firm:	Date: _____
_____	By: _____
_____	Signature (In Ink) _____
_____	Name (Typed) _____
_____	Title _____
Telephone No.: _____	Federal Identification Number (FIN) _____
Fax No.: _____	DUNS Number _____
Email address _____	
eVA Registered: _____ Yes _____ No	
DMBE Certified: _____ Small _____ Women _____ Minority	

Christopher Newport University does not discriminate against faith based organizations in accordance with *Code of Virginia* § 2.2-4343.1 or against any contractor, offeror because of race, religion, color, sex, national origin, age, disability or any other basis prohibited by State law relating to discrimination in employment.

TABLE OF CONTENTS
RFP# 242-11-00027-JES
Full Service Licensing Representation

I.	PURPOSE	4
II.	BACKGROUND	4
III.	CONTRACT PERIOD	4
IV.	STATEMENT OF NEEDS	4
V.	PROPOSAL PREPARATION & SUBMISSION REQUIREMENTS	6
VI.	EVALUATION AND AWARD CRITERIA	8
VII.	REPORTING & DELIVERY REQUIREMENTS	8
VIII.	GENERAL TERMS & CONDITIONS	9
IX.	SPECIAL TERMS & CONDITIONS	15
X.	METHOD OF PAYMENT	17
XI.	PRICING SCHEDULE	17
	ATTACHMENTS	
A.	CONTRACTOR DATA SHEET	18
B.	CONFLICT OF INTEREST STATEMENT	19
C.	UNDERSTANDING OF REQUIREMENTS	20
D.	SMALL BUSINESS CONTRACTING PLAN	21

I. **PURPOSE**

The purpose of this Request for Proposals (RFP) is to establish a contract with one qualified official and exclusive licensing partner (partner) to represent Christopher Newport University (agency) in all commercial uses of Trademarks owned by the agency. The licensing partner will take care of all essential licensing functions, including: management of licensees, executing licensing agreements, secure retail distribution of licensed products and other services as requested.

II. **BACKGROUND**

- A. Christopher Newport University (herein called the University), an Agency of the Commonwealth of Virginia, is a small, selective public university offering more than 80 academic majors and programs at the undergraduate and graduate levels with a student population of approximately 5,000 students, and 687 faculty and staff. The CNU Department of Athletics sponsors a comprehensive NCAA Division III intercollegiate athletics program with 22 varsity sports that compete in the USA South Athletic Conference. The University ranks fifth nationally in NCAA Division III Team Championships, and the school has produced more than 500 All Americans. CNU hosts a multitude of intercollegiate sporting events on campus each academic year with a minimum of five (5) football and fifteen (15) basketball games. Each year CNU hosts events in POMOCO Stadium (football, track & field) with an annual estimated attendance of 35,000 and events in the Freeman Center (basketball, volleyball, track & field) with an annual attendance of approximately 75,000.

III. **CONTRACT PERIOD**

The term of this contract is three (3) years with two (2) additional one-year renewal options. Christopher Newport University will consider other proposed contract terms if it is in the best interest of the University.

IV. **STATEMENT OF NEEDS**

A. **GENERAL:**

Christopher Newport University requires that the full service licensing partner secured through this RFP represent CNU in the following core licensing functions:

B. **SPECIFIC REQUIREMENTS:**

1. Conclude business arrangements with Licensees which are advantageous to CNU
2. Negotiate and execute licensing agreements on behalf of CNU
3. Secure retail distribution of licensed CNU products
4. Collect quarterly royalty payments from Licensees
5. Ensure Licensee compliance with the CNU brand identity standard
6. Investigate suspected cases of infringement and consult with CNU on appropriate action
7. Review all routine and non-routine product requests and provide recommendations to CNU
8. Act as a general consultant to CNU's licensing program and assist when requested

C. **SERVICE REQUIREMENTS**

At minimum the Contractor should:

1. Serve as CNU's agent to license and market the trademarks, service marks, logos, seals, mascots, designs, name, symbols and insignia (hereafter all are referred to as "marks") of CNU,
2. Promote the name of CNU through established national, regional and local vendors and other marketing channels;
3. Assist CNU in protecting its marks;

3. Assist CNU in protecting its marks;
4. Submit for CNU approval, at no cost to CNU, specifications of merchandise, photographs, samples, etc. from potential licensees desiring to sell items bearing CNU's marks;
5. Perform compliance reviews of licensees conducted by a qualified individual. This individual should examine the licensee's books to determine that sales of licensed products are properly reported and earned royalty paid;
6. Perform licensing and marketing services in a manner that preserves the integrity of CNU;
7. Ensure that all licensed merchandise is of the highest quality;
8. Have a program to monitor conditions in factories where products bearing CNU marks are manufactured;
9. Advise CNU on labor code issues and standards;
10. Support CNU's decision on affiliation or non-affiliation with labor code standards;
11. Enforce the established labor standards;
12. Perform trademark and licensing services for CNU with compensation based on a commission negotiated by CNU and the Contractor;
13. Receive its compensation from the licensees authorized by CNU and the Contractor to sell merchandise bearing the marks. CNU should share in the compensation;
14. Respect the right of CNU to exempt any user from royalty payment if in its sole discretion it believes such exemption would be in the best interest of CNU, in which event the Contractor should not be entitled to any fee for the usage of the CNU marks attributable to the exempt party;
15. Provide CNU with educational opportunities and training materials explaining the upcoming trends in the licensing and trademark industry;
16. Be financially stable and capable of providing the trademark licensing service for the potential full term of the contract;
17. Develop new licensees and provide licensees with a support service;
18. The Contractor **shall** not license any item which is in violation of existing NCAA rules or regulations or such rules and regulations as may be adopted prospectively by the NCAA;
19. The Contractor **shall** permit CNU's own continued use of its marks on stationery products and other items not-for-resale at no cost to CNU;
20. The Contractor **shall** obtain written approval from CNU prior to authorizing potential licensees to sell merchandise bearing the CNU marks; and
21. The Contractor **shall** obtain written approval from CNU prior to making any representation on behalf of CNU.

D. REPORTING REQUIREMENTS:

At minimum the Contractor should:

1. Submit to CNU quarterly reports of all sales generated by licensed goods and all licensing fees collected on behalf of CNU;
2. Remit to CNU on a quarterly basis, or sooner, fees collected less the Contractor's commission;
3. Initiate management and/or compliance review services awarded through this contract within ninety (90) business days of contract execution or as negotiated; and
4. Provide CNU with marketing reports.

V. PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS

A. GENERAL REQUIREMENTS:

1. In consideration for selection, Offerors must submit a complete response to this RFP. Submit one original and five (5) copies of each proposal to the Materiel Management Office at Christopher Newport University. The Offeror shall make no other distribution of the proposal.
2. Bind or contained in a single volume, where practical, each copy of the proposal. Include all documentation with the proposal submittal.
3. The authorized representative of the Offeror shall sign the proposal. All information requested should be submitted. Failure to submit all information requested may result in the University requiring prompt submission of missing information and/or giving a lowered evaluation of the proposal. Proposals that are substantially incomplete or lack essential information may be rejected by the University. 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 Christopher Newport University. 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 University will schedule the time and location of these presentations. Oral presentations are an option of the University 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 University 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 and documentation originated and prepared for the State pursuant to the RFP shall belong exclusively to the State and be subject to public inspection in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by an Offeror shall not be subject to public disclosure under the Freedom of Information Act; however, the Offeror must invoke the protections of Section 2.2-3705.6 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 University 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 Data Sheet included as an attachment to the RFP, and other specific items or data requested in the RFP.
3. A written narrative statement to include how the Offeror plans on accomplishing the work in the Statement of needs, as follows:
 - a. Capability and Skill- the Offeror's capability and skill to perform the services stated in the proposal, including references. List current accounts on the Contractor Data Sheet and lost account Contractor Data Sheet.
 - b. Responsiveness - The degree to which the Offeror has responded to the purpose and scope of services e.g., services to be provided, additional information to be provided, flexibility of the proposal to meet the University's needs. Approach to providing services described herein.
4. Fee Structure: The percentage of Gross Revenues resulting from the sale of licensed products.
5. Small, Women-Owned, and Minority-Owned Participation Plan - It is the policy of the Commonwealth of Virginia to contribute to the establishment, preservation, and strengthening of small businesses and businesses owned by women and minorities and to encourage their participation in State procurement activities. The Commonwealth encourages Contractors to provide for participation of small businesses and businesses owned by women and minorities through partnerships, joint ventures, subcontracts, or other contractual opportunities. Submission of a report of past efforts to utilize the goods and services of such businesses and plans for involvement on this contract are required. By submitting a proposal, Offerors certify that all information provided in response to this

RFP is true and accurate. Failure to provide information required by this RFP will ultimately result in rejection of the proposal.

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 is to recommend the contractor(s) who is most responsive to the herein-described needs of The University. The criteria are not necessarily given below in order of priority. The proposals shall be evaluated by the University using the following criteria:

1. Fee structure, as a percentage of Gross Revenues resulting from the sale of licensed products
2. Ability to service all of the requested functions listed in Section IV, Articles B and C
3. The partner's relevant experience, qualifications and success in providing the services outlined in this RFP
4. The partner's plan to help CNU increase annual royalty revenue over the life of the contract
5. The partner's references from institutions of higher education and clients which are comparable to the University
6. The quality of the proposal, specifically, responsiveness to requirements and adequacy of information provided
7. Small business contracting plan.

B. **AWARD**

Selection shall be made of two or more offerors deemed fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in the Request for Proposals, including fee structure, if so stated in the Request for Proposals. Negotiations shall be conducted with the offerors so selected. Fee structure 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 University 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 (*Code of Virginia*, § 2.2-4359D). Should the University 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. **REPORTING AND DELIVERY REQUIREMENTS**

UTILIZATION OF SMALL BUSINESSES AND BUSINESSES OWNED BY WOMEN AND MINORITIES:

The following reports shall be submitted as indicated:

- A. **Periodic Progress Reports/Invoices:** The Contractor shall provide a report on involvement of small businesses and businesses owned by women and minorities on a quarterly basis to the Contract Officer. This report will specify the actual dollars contracted to be spent to date with such businesses, actual dollars expended to date with such businesses, and the total dollars planned to be contracted with such businesses on this contract. This information shall be provided separately for small businesses, women-owned businesses and minority-owned businesses.
- B. **Final Actual Involvement Report:** The Contractor shall submit 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.

VIII. **GENERAL TERMS AND CONDITIONS**

- A. **VENDORS MANUAL:** This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at www.dgs.state.va.us/dps under "Manuals."
- 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 (*Code of Virginia*, § 2.2-4366). 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 Section 11-51 of the Virginia Public Procurement Act.

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, or disabilities, except where religion, sex or national origin 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 one of the 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 bids or 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 Commonwealth of Virginia all rights, title and interest in and to all causes of the 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 Commonwealth of Virginia under said contract.
- H. **MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR RFP'S:** Failure to submit a proposal on the official state form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the University 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 revisions 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 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 which 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 which 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 University 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 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.
3. Each prime contractor who wins an award in which provision of a SWAM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.
4. The Commonwealth of Virginia encourages contractors and subcontractors to accept electronic and credit card payments.

K. **PRECEDENCE OF TERMS:** The following General Terms and Conditions *VENDORS MANUAL*, *APPLICABLE LAWS AND COURTS*, *ANTI-DISCRIMINATION*, *ETHICS IN PUBLIC CONTRACTING*, *IMMIGRATION REFORM AND CONTROL ACT OF 1986*, *DEBARMENT STATUS*, *ANTITRUST*, *MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS*, *CLARIFICATION OF TERMS*, *PAYMENT* 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 University 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 University all such information and data for this purpose as may be requested. The University reserves the right to inspect offeror's physical facilities prior to award to satisfy questions regarding the offeror's capabilities. The University further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy the University 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 University 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 re-assigned by the Contractor in whole or in part without the written consent of the University.
- O. **CHANGES TO THE CONTRACT**: Changes can be made to the contract in any 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 University 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 Purchasing Agency 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 University'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 Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency 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 Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. 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 or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Vendors Manual*. 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 University, 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 the Commonwealth may have.
- Q. **TAXES**: Sales to the Commonwealth 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 Commonwealth's excise tax exemption registration number is 54-73-0076K.

- R. **USE OF BRAND NAMES:** Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict offerors to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the public body, in its sole discretion, determines to be the equivalent of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The offeror is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the offeror clearly indicates in its proposal that the product offered is an equivalent product, such proposal is considered to offer the brand name product referenced in the solicitation.
- S. **TRANSPORTATION AND PACKAGING:** By submitting their proposals, all offerors certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.
- T. **INSURANCE:** By signing and submitting a bid or proposal under this solicitation, the bidder or 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 §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The bidder or 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.

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 the Commonwealth 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 Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.
- U. **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 purchasing agency will publicly post such notice on the DGS/DPS eVA web site (www.eva.virginia.gov) for a minimum of 10 days.
- V. **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 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.

- W. **NONDISCRIMINATION OF CONTRACTORS:** A bidder, 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 bidder or 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.
- X. **eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION:** The eVA Internet electronic procurement solution, website 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 Commonwealth shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service. All bidders or offerors must register in eVA; failure to register will result in the bid/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 orders 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 the 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. For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of \$500 per order.
- d. For orders issued August 16, 2006 and after, 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.
- Y. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.
- Z. **Deleted**

- AA. **BID PRICE CURRENCY:** Unless stated otherwise in the solicitation, offerors shall state offer prices in US dollars.
- BB. **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with a public body pursuant to the *Virginia Public Procurement Act* shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

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 University will be used in product literature or advertising. The Contractor shall not state in any of its advertising or product literature that the Commonwealth of Virginia or any agency or institution of the Commonwealth has purchased or uses its products or services.
- B. **AUDIT:** The Contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The University, its authorized agents, and/or State auditors shall have full access to and the right to examine any of said materials during said period.
- C. **AWARD:** Selection shall be made of two or more offerors deemed 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. Fee Structure 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 University 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 (*Code of Virginia*, § 2.2-4359D). Should the University 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.
- D. **BEST AND FINAL OFFER (BAFO):** At the conclusion of negotiations, the offeror(s) may be asked to submit in writing, a Best And Final Offer (BAFO). After the BAFO is submitted, no further negotiations shall be conducted with the offeror(s). The offeror's proposal will be rescored to combine and include the information contained in the BAFO. The decision to award will be based on the final evaluation including the BAFO.
- E. **PROPOSAL 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.

- F. **CANCELLATION OF CONTRACT:** The University reserves the right to cancel and terminate any resulting contract, in whole or in part, 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.

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

From: _____

_____	_____	_____
Name of Offeror	Due Date	Time

_____	_____
Street or Box Number	RFP No.

_____	_____
City, State, Zip Code	RFP Title

Name of Buyer _____

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 Materiel Management Office. No other correspondence or other proposals should be placed in the envelope.

- H. **LATE PROPOSALS:** To be considered for selection proposals must be received by the Materiel Management Office by 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 Materiel Management Office. Proposals received in the Materiel Management Office after the date and hour designated are automatically disqualified and will not be considered. **The University is not responsible for delays in the delivery of mail by the U.S. Postal Service. Private couriers or the Intra University mail system. It is the sole responsibility of the offeror to insure that its proposal reaches the Materiel Management Office by the designated date and hour.** Bid receipts and openings or the receipt of proposals scheduled during a period of suspended state business operations will be rescheduled for processing at the same time on the next regular business day.

- I. **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 University 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 Materiel Management Office. 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 757-594-7464 using Attachment C, the Understanding of Requirements form.

- J. **CONFLICT OF INTEREST:** The Offeror represents to the University that its entering into this agreement with the University does not entail any violation of the Virginia Conflict of Interest Act.

- K. **INDEPENDENT CONTRACTOR:** The selected offeror shall not be an employee of the University, but shall be an independent contractor. The Contractor shall indemnify and hold the University 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 University under this agreement. Nothing in this agreement shall be construed as authority for the Contractor to make commitments, which shall bind the University or to otherwise act on behalf of the University, except as the University may expressly authorize in writing.

- L. **PRIME CONTRACTOR RESPONSIBILITIES:** The Contractor shall be responsible for completely supervising and directing the work under this contract and all subcontractors that he/she may utilize, using their best skill and attention. Subcontractors who perform work under this contract shall be responsible to the prime Contractor. The Contractor agrees that he/she is as fully responsible for the acts and omissions of their subcontractors and of persons employed by them as he/she is for the acts and omissions of their own employees.
- M. **RENEWAL OF CONTRACT:** This contract may be renewed by the University upon written agreement of both parties for two (2) successive one year periods, under the terms of the current contract, and at a reasonable time (approximately 90 days) prior to the expiration.
- N. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of the University. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish the University 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.
- O. **SPECIAL PROMOTIONAL DISCOUNTS:** The contractor shall extend any special promotional sale prices or discounts immediately to the University during the term of the contract. Such notice shall also advise the duration of the specific sale or discount price.

X. **METHOD OF PAYMENT:**

- A. The Contractor will be paid as according to the negotiated fee structure as a percentage of Gross Revenues from the sale of licensed CNU products. The Contractor will make quarterly payments to CNU according to the negotiated fee structure and will provide comprehensive reports on product sales and gross revenues.
- B. The Contractor will not provide any additional billable services without acquiring permission from CNU in advance.
- C. If The Contractor is authorized by CNU to perform a billable service in advance, The Contractor shall forward all invoices directly to:

Christopher Newport University

1 University Place, Attn. Accounts Payable

Newport News, VA 23606-2998

XI. **PRICING SCHEDULE:**

Submit a proposed fee structure that details the percentage of Gross Revenues that the contractor will receive as payment for their services to CNU.

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
_____	_____	_____

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 COMMONWEALTH 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) _____.

OFFEROR

RFP#: _____ DATE: _____

The following question concerns specifications, Section (number) _____

paragraph _____, page _____:

All responses to questions may be made by Addendum.

Questions Submitted by: _____

NAME

ORGANIZATION

PAGE _____

This may be FAXED to: (757) 594-7464 Contracting Officer: Jerry Stokes

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: This shall not exclude DMBE-certified women- and minority-owned 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) by the due date of the solicitation 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
- B. 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 in relation to the offeror's total price.

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 not exclude DMBE-certified women-owned and minority-owned businesses when they have received the DMBE small business certification. Include plans to utilize small businesses as part of joint ventures, partnerships, subcontractors, suppliers, etc.

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

Small Business Name & Address DMBE Certificate #	Status if Small Business is also: Women (W), Minority (M)	Contact Person, Telephone & Email	Type of Goods and/or Services	Planned Involvement During Initial Period of the Contract	Planned Contract Dollars During Initial Period of the Contract
Totals \$					