

REQUEST FOR PROPOSALS

ISSUE DATE: April 1, 2022 **RFP SMD #22-01**

TITLE: Shell dredging and shell planting for Virginia's portion of the Chesapeake Bay and its tributaries.

COMMODITY CODE: 96834/95900

ISSUING AGENCY: Commonwealth of Virginia
Marine Resources Commission
380 Fenwick Road, Bldg. 96
Fort Monroe, Virginia 23651

WORK LOCATION: James River, City of Newport News, Rappahannock River, Lancaster and Middlesex Counties, York River, York and Gloucester Counties, Chesapeake Bay, Mobjack Mathews County, Great Wicomico River, Lancaster County, and Tangier Sound, Pocomoke Sound, Accomack County.

PERIOD OF CONTRACT: From date of award to September 30, 2022.

SEALED PROPOSALS WILL BE RECEIVED UNTIL April 22, 2022, AT 2:00 P.M. FOR FURNISHING THE SERVICES DESCRIBED HEREIN. LATE PROPOSALS WILL NOT BE CONSIDERED.

ALL INQUIRIES FOR INFORMATION SHOULD BE DIRECTED TO:

Andrew Button
Telephone (757) 247-2121

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

Brandy L. Battle
Marine Resources Commission
380 Fenwick Rd., Bldg. 96
Fort Monroe, VA 23651
(757) 247-2260

IN COMPLIANCE WITH THIS REQUEST FOR PROPOSALS (RFP) AND ALL THE CONDITIONS IMPOSED IN THIS RFP, THE UNDERSIGNED FIRM HEREBY OFFERS AND AGREES TO FURNISH THE SERVICES DESCRIBED AT THE PRICE INDICATED IN SECTION XI, PRICING SCHEDULE IN ACCORDANCE WITH THE ATTACHED SIGNED PROPOSAL OR AS MUTUALLY AGREED UPON BY SUBSEQUENT NEGOTIATION, AND THE UNDERSIGNED FIRM HEREBY CERTIFIES THAT ALL INFORMATION PROVIDED BELOW AND IN ANY SCHEDULE ATTACHED HERETO IS TRUE, CORRECT, AND COMPLETE.

State Corporation Commission ID Number: _____ (See Special Terms and Conditions)

NAME AND ADDRESS OF FIRM:

_____	DATE: _____
_____	BY: _____ (Signature in ink)
_____	NAME: _____ (Please print)
_____ Zip Code: _____	TITLE: _____
EVA Vendor ID or DUNS #: _____	PHONE: (____) _____
EMAIL: _____	FAX: (____) _____

RETURN ENTIRE CONTRACT PROPOSAL TO VMRC. SIGN CERTIFICATION ABOVE.

COMPLETE SECTIONS:

- XI – PRICING SCHEDULE**
- ATTACHMENT A**
- ATTACHMENT B (if applicable)**
- ANNEX 7-G**
- ANNEX 7-I**

Note: This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, sexual orientation, gender identity, political affiliation, or veteran status or any other basis prohibited by state law relating to discrimination in employment. Faith-based organizations may request that the issuing agency not include subparagraph 1.f in General Terms and Condition C. Such a request shall be in writing and explain why an exception should be made in that invitation to bid or request for proposal.

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- I. **PURPOSE:** The intent and purpose of this Request for Proposals (RFP) is to solicit sealed proposals from qualified sources to dredge, grade, and wash approximately 25,000 to 70,000 cubic yards of fossil oyster shells from the James River, and then transport and deploy the same oyster shells on sites in the James River, York River, Rappahannock River, Mobjack Bay, Chesapeake Bay, Great Wicomico River, Tangier Sound, and Pocomoke Sound.
- II. **BACKGROUND:** The VMRC Shellfish Management Division (SMD) has the responsibility for managing and restoring the oyster resource in the State. Millions of bushels of oyster shells have been placed overboard by the SMD to serve as cultch for oyster larvae to attach (strike). In recent years, oyster reef restoration has primarily used oyster shell from local shucking houses. However, there are not sufficient quantities of oyster shell to complete all of the current projects, nor the anticipated increase in oyster restoration projects over the next few years.

The current project shall require fossil shells to be dredged from subaqueous deposits near Newport News in the James River. These shells shall be washed and sorted into two size categories. These dredged shells will then be transported and washed overboard (referred to as "planting shells") with a high-pressure stream of water in areas in the James River, York River, Rappahannock River, Mobjack Bay, Chesapeake Bay, Great Wicomico River, Tangier Sound, and Pocomoke Sound. All dredging, washing, transportation, and planting will be conducted according to the terms of this contract and according to existing shell dredging permits. The Marine Resources Commission is responsible for obtaining the necessary permits.

The shell dredging site is on the north side of the James River, between Route 17, James River Bridge and the Interstate 664, Monitor-Merrimac Bridge Tunnel (Map (see attached C – Shell Dredging Permit which includes the shell dredge and plant maps) on VMRC website http://www.mrc.virginia.gov/mrc_procurement_info.shtm).

The shell planting sites are specified and buoyed by the VMRC Conservation and Replenishment Department. The shells shall be planted on areas that are generally 5 to 25 acres in size. Plantings are made by washing shell overboard with high pressure water as the shell barge moves around the area to give a uniform coverage.

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 the 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.

III. **SCOPE OF WORK:**

- a) The contractor shall dredge, wash, and sort 25,000 to 70,000 cubic yards of fossil shell in accordance with permits issued by the U. S. Army Corps of Engineers.

- b) Shell dredging requires permits issued by the U. S. Army Corps of Engineers. Obtaining the necessary permits is the responsibility of the VMRC – SMD. The Contractor shall dredge, wash, transport, and plant shells in accordance with the terms of the permits.

Typical conditions in the permits address topics such as: dredging equipment, dredge cut dimensions, discharge of waste sediment and shell grit, appropriate uses of shell, dredging areas and dredging times. The permits along with the contract contain the complete conditions and should be consulted.

The time period for shell dredging as specified in the permits is June 1 to December 31. The dredging sites are located in the James River and are labeled in Attachment C – Shell dredging permit which includes the shell plant maps on VMRC website - http://www.mrc.virginia.gov/mrc_procurement_info.shtm.

VMRC is responsible for acquiring shell dredging permits and conducting environmental studies required by the permits.

The most recent dredging permit (2022), from the Army Corps of Engineers is attached as Attachment C. The contractor is responsible for full compliance with and all notifications identified in the dredging permit (2022); except for completing the compliance certification form (page 3, 2nd paragraph).

- c) Dredge cuts are to a maximum of 50 feet mlw with spoil returned to the dredge cut after washing by means of bow and stern elephant trunk discharge pipes. The elephant trunk discharge pipes shall extend under the dredge barge.
- d) Shells shall be washed and sorted into two sizes. “Fines” are those shell pieces from 3/16” to 1” in size, and shells are those shell pieces 1 inch in size and greater (≥ 1 ”).
- e) The contractor may request approval to purchase all or a portion of the shell pieces or “fines”, and the value of such shell pieces shall be included as a credit against the contractor price.
- f) **Shellplanting:** James River, York River, Rappahannock River, Mobjack Bay, Chesapeake Bay, Great Wicomico River, Tangier Sound, and Pocomoke Sound.

(Maps on VMRC website) http://www.mrc.virginia.gov/mrc_procurement_info.shtm.

Shells shall be transported by barge and tug to the planting locations and washed overboard from a moving barge that should be making a minimum of 1.5 knots SOG, at MRC designated sites at an approximate rate of 60 to 600 yards per acre. The contractor shall make every reasonable effort to insure shells are planted as uniformly as possible. Water depths at planting sites are greater than 5' mlw. Planting locations are generally 5 to 25 acres and will be marked by VMRC-SMD personnel.

The dredging and planting of shells shall be conducted under supervision of and as directed by VMRC – SMD personnel during the period of June 1 – August 15, 2022.

Planting Areas:

Water Body/Site number	Bar	Lat	Long	Acreage	Cultch/per meter ²	Total Bu	Total Cu yds	Width (m)
Tangier/Pocomoke								
1	Marshall's Rock	37.864745	-75.83207	7.00	5.4	7,000	452	22000
2	Byrd Rock	37.852548	-75.79701	13.00	4.30	13,000	839	22000
3	Island Rock	37.855578	-75.76988	20.00	unknown	20,000	1,290	22000
4	Onancock	37.748909	-75.86058	11.00	10.00	11,000	710	22000
5	Johnson's Rock	37.78318	-75.94861	40.00	9.20	40,000	2,581	22000
Subtotals				91.0		91,000	5,871	
Great Wicomico								
6	Cranes Creek	37.8094	-76.30104	13.00	12.50	13,000	839	3000
7	Fleeton Point	37.810947	-76.28809	14.00	6.60	14,000	903	3000
8	P.G. 56 Cockrell Creek	37.816657	-76.28824	4.00	18.00	4,000	258	3000
9	Black Berry	37.8565	-76.23794	11.00	12.60	11,000	710	22000
Subtotals				42.0		42,000	2,710	
Rappahannock								
10	Temple Bay	37.615909	-76.47809	50.00	8.25	50,000	3,226	6000
11	Parrots Rock	37.605855	-76.41449	20.00	12.40	20,000	1,290	6000
12	Smokey Point	37.732283	-76.57906	30.00	5.20	30,000	1,935	6000
13	Midway Creek	37.728955	-76.57164	20.00	unknown	20,000	1,290	6000
Subtotals				120.0		120,000	7,742	
Mobjack								
							0	
14	Pultz	37.352381	-76.35219	14.0	4.5	14,000	903	3000
15	Toe Stake	37.338776	-76.38623	9.0	6.4	9,000	581	3000
16	Browns Bay	37.310047	-76.35314	10.0	10.8	10,000	645	3000
Subtotals				33.0		33,000	2,129	
Lower James								
17	Nansemond Ridge	36.95655	-76.45139	284	12.6	284,000	18,323	7500
18	Browns Shoal (low Brow)	37.011682	-76.46917	83	7.8	83,000	5,355	7500
Subtotals				367.0		367,000	23,677	
Grand Total				653.0		653,000	42,129	
	Previously Permitted, 18, 19, 20, 21							

g) Shell Quantity

The contractor shall dredge, wash, transport, and plant oyster shell as directed by VMRC. The quantity for this contract shall be 25,000 - 70,000 cubic yards and the contractor's capabilities should provide for a daily completion rate of 3,000 to 6,000 cubic yards. The conversion factor for cubic yards to Virginia bushels is 15.5 (C.Y. X 15.5 = VA Bushels).

h) Shell Quality

Shell material is categorized as "shells" (equal to or greater than 1 inch in size) and "fines" (3/16" to 1 inch).

Shells and fines for oyster restoration projects shall be washed clean of mud and sediment by the contractor at the dredging site and be suitable for attracting spat, according to VMRC – SMD. The contractor shall sort shells from fines at the dredging site and provide either material as specified by VMRC.

i) Shell Volume Measurements

A team consisting of at least one representative of VMRC and one representative of the contractor shall measure each barge load of shells or fines. The measurement for shells to be planted may be estimated prior to transport; the official measurements shall be made when the barge arrives at the planting location. One representative of VMRC and one representative of the contractor shall agree upon the measurement of shells prior to commencement of shell planting. The measurement technique shall be according to the Standard method below or in a few cases, the Alternative Method:

STANDARD VOLUME DETERMINATION OF DREDGED SHELL/FINES ON BARGE

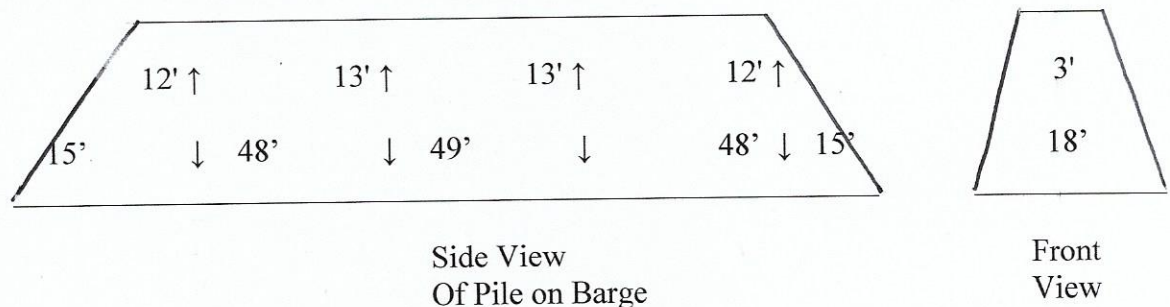
The shell or fine pile is to be of nearly uniform height along length of a barge, with sides of the piles as straight and consistent a slope along length as is practicable.

Measurements (feet and decimal fractions of feet) are to be made for height and width at a minimum of four (4) intervals along the length of the shell pile. The first and last measurements are made at the point where the pile begins sloping from its uniform height downward to the ends of the barge. Measurements between these two points should be made at nearly equal distances, avoiding extreme low points or high points of the pile.

At each interval, measurements are to be made as follows:

- * length of interval;
- * height of pile; and
- * width of pile at the base and at the peak

An example of measurements to be made is shown below:



For each interval (length), an average height and width are determined to arrive at an average volume (cubic feet) for that interval. Each sectional volume is then added to get an overall volume. The volume is converted to cubic yards and shall be the volume used when billing VMRC.

ALTERNATE VOLUME DETERMINATION OF DREDGED SHELL/FINES ON BARGE

The volume of shells or fines may be determined by measuring the draft of a loaded barge, but only after discussion and agreement between the Contractor and VMRC to decide upon the actual method. Suitable conversion factors will be needed for the weight to volume ratio for both shells and fines under dry and wet conditions, and measuring draft will need to be done under calm conditions when wave action has negligible effect on reading the draft of a barge.

j) Equipment and Experience of Contractor:

The Contractor shall provide all equipment and personnel necessary to carry out the terms of this contract, including but not limited to dredges, washing, and sorting equipment, tugboats, barges, crane and bucket, pumps, crew, crew boats and measuring equipment. In certain locations, designated by VMRC, the contractor shall provide vessels and load barges in such a manner that they have a combined draft less than six feet. All barges used for planting shell shall be less than 60 feet in width. The equipment and their use must comply with the specifications of the shell dredging permit (Attachment C). The dredge must be a hydraulic dredge equipped with an elephant trunk discharge pipe which directs waste water and sediment into the cut being made. The offeror is required to provide a dredge equipped with a shell washing/sorting apparatus that can sort clean shells from clean fines and load each, simultaneously, onto barges at the dredge.

k) Dredging Site Management by the Contractor

The Contractor is responsible for damage it causes to commercial fishing gear near the dredging operation, for marking dredging sites if buoys are needed, for using discrete traffic lanes for tug and barge traffic in the immediate vicinity of the dredge and for coordinating with local watermen the removal of crab pots, eel pots, or other gear from these traffic lanes.

l) Environmental Conditions and Restrictions

The contractor shall conduct all dredging, washing, transporting and planting of shells in a manner which will attempt to minimize any environmental harm. All conditions and specifications in the dredging permit shall be followed, such as the use of a trunk discharge pipe to direct all dredging waste to the cut being made. Environmental studies, if required, will be conducted by VMRC.

m) Right of Inspection

The Contractor agrees that VMRC may station MRC-SMD personnel at its dredge or dredges all operative hours to check the quality and quantity of shells and fines, and any environmental impacts regarding fish or water quality.

n) Maintenance and Records

The Contractor agrees to keep accurate books and records showing the quantity of shells and fines dredged, the location dredged, the locations planted and the volume of each planting. All books and records shall be open to inspection and audit by VMRC, or its duly authorized representatives, at all reasonable intervals during business hours.

o) Maps of the James River, York River, Rappahannock River, Mobjack Bay, Chesapeake Bay, Great Wicomico River, Tangier Sound, and Pocomoke Sound

(Attachment C – Shell dredging permit includes the shell dredge and shell plant maps on VMRC website http://www.mrc.virginia.gov/mrc_procurement_info.shtm) show the generalized shell planting areas. MRC Staff shall mark planting sites with buoys and the Contractor will plant shells only within the specified boundaries. If the planting barge moves outside of the marked area or the SOG falls below 1.5 knots, the Contractor shall stop planting until the barge is back within the area, making way at the required speed or water cannons are being manipulated as to insure even planting of shells. Planting specifications will vary and MRC will direct each planting.

IV. PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS:

A. General Requirements

1. RFP Response: In order to be considered for selection, offerors must submit a complete response to this RFP. One (1) original and three (3) copies of each proposal must be submitted to the Marine Resources Commission. No other distribution of the proposal shall be made by the offeror.
2. Proposal Preparation:
 - a. Proposals shall be signed by an authorized representative of the offeror. All information requested must be submitted. Failure to submit all information requested may result in the purchasing agency requiring prompt submission of missing information and/or giving a lowered evaluation of the proposal. Proposals which are substantially incomplete or lack key information may be rejected by the purchasing agency. Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation.
 - b. Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of RFP. Emphasis should be on completeness and clarity of content.

- c. Proposals should be organized in the order in which the requirements are presented in the RFP. All pages of the proposal should be numbered. Each paragraph in the proposal should reference the paragraph number of the corresponding section of the RFP. It is also helpful to cite the paragraph number, subletter, and repeat the text of the requirement as it appears in the RFP. If a response covers more than one page, the paragraph number and subletter should be repeated at the top of the next page. The proposal should contain a table of contents which cross references the RFP requirements. Information which the offeror desires to present that does not fall within any of the requirements of the RFP should be inserted at an appropriate place or be attached at the end of the proposal and designated as additional material. Proposals that are not organized in this manner risk elimination from consideration if the evaluators are unable to find where the RFP requirements are specifically addressed.
- d. As used in this RFP, the terms "must", "shall", "should" and "may" identify the criticality of requirements. "Must" and "shall" identify requirements whose absence will have a major negative impact on the suitability of the proposed solution. Items labeled as "should" or "may" are highly desirable, although their absence will not have a large impact and would be useful, but are not necessary. Depending on the overall response to the RFP, some individual "must" and "shall" items may not be fully satisfied, but it is the intent to satisfy most, if not all, "must" and "shall" requirements. The inability of an Offeror to satisfy a "must" or "shall" requirement does not automatically remove that Offeror from consideration; however, it may seriously affect the overall rating of the Offerors' proposal.
- e. Each copy of the proposal should be bound in a single volume where practical. All documentation submitted with the proposal should be bound in that single volume.
- f. Ownership of all data, materials, and documentation originated and prepared for the State pursuant to the RFP shall belong exclusively to the State and be subject to public inspection in accordance with the *Virginia Freedom of Information Act*. Trade secrets or proprietary information submitted by an offeror shall not be subject to public disclosure under the *Virginia Freedom of Information Act*; however, the offeror must invoke the protections of § 2.2-4342F of the *Code of Virginia*, in writing, either before or at the time the data or other material is submitted. The written notice must specifically identify the data or materials to be protected and state the reasons why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. The classification of an entire proposal document or prequalification

application, line item prices and/or total proposal prices as propriety or trade secrets is not acceptable and will result in rejection of the proposal. If, after being given reasonable time the offeror refuses to withdraw an entire classification designation, the proposal will be rejected.

3. Oral Presentation: Offerors who submit a proposal in response to this RFP may be required to give an oral presentation of their proposal to the Marine Resources Commission. This provides an opportunity for the offeror to clarify or to elaborate on the proposal. This is a fact-finding and explanation session only and does not include negotiation. The Marine Resources Commission will schedule the time and location of these presentations. Oral presentations are an option of the purchasing agency and may or may not be conducted.

B. Specific Requirements

1. Proposals should be as thorough and detailed as possible so that the Marine Resources Commission may properly evaluate your capabilities to provide the required services. Offerors are required to submit the following items as a complete proposal:
 - a. The return of this complete RFP and all addenda acknowledgements, signed, and filled out as required.
 - b. Complete Contractor Data Sheet (Attachment A), and if applicable, Subcontractor Data Sheet (Attachment B).
 - c. A written narrative statement to include:
 - (1) What, when, and how the service will be performed,
 - (2) Description of the equipment that will be used to dredge, sort, and clean fossil shell and methods to minimize environmental impacts of the dredging operation,
 - (3) Description of barges, pumps, tugboats and all other equipment that will be used to plant the shells in James River, York River, Rappahannock River, Mobjack Bay, Chesapeake Bay, Great Wicomico River, Tangier Sound and Pocomoke Sound.
 - (4) Description of any stationary barge that will be used,
 - (5) Description of the anticipated number of trips necessary to complete the project,
 - (6) Complete description of any subcontractor arrangements to be used, and completion of Subcontractor Data Sheet, Attachment B.

- (7) Estimated time schedule for completion of the project,
- (8) Cost as described in Section XI, Pricing Schedule, and
- (9) Experience of company and personnel in marine contracting projects similar to oyster restoration.
- (10) Small Business Subcontracting Plan – Summarize the planned utilization of DSBSD-certified small businesses under the contract to be awarded as a result of this solicitation. Complete Annex 7-G. Describe all subcontracting arrangements.
- (11) State Corporation Commission Form: Required of all offerors pursuant to Title 13.1 or Title 50. Complete Annex 7-I, SCC Form.

V. **EVALUATION AND AWARD CRITERIA:** Proposals shall be evaluated by the Marine Resources Commission using the following criteria:

A. <u>Evaluation Criteria</u>	<u>Percentage Value</u>
Contractor’s Project Completion Capabilities	35%
Approach to completing the project	
Equipment – Size, Condition, Type	
Likelihood of Completing Project within Time Specified	
Contractor’s Experience	20%
Experience with similar marine construction projects	
Experience of Staff	
Cost	25%
Small Business Subcontracting Plan	<u>20%</u>
	100%

B. **Award Criteria:** 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 the offeror. The Commonwealth 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 reason why a particular proposal was not deemed to be the most advantageous (*Code of Virginia, § 2.2-4359D*). Should the Commonwealth 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.

VI. **REPORTING AND DELIVERY INSTRUCTIONS:** Omitted

VII. **MANDATORY PREPROPOSAL CONFERENCE:** Omitted

VIII. **GENERAL TERMS AND CONDITIONS, NON PROFESSIONAL SERVICES:**

- 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 process 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.eva.virginia.gov under "I Sell to Virginia".
- 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, without regard to its choice of law provisions, and any litigation with respect thereto shall be brought in the circuit 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 § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. 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 sexual orientation, gender identity, 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, sexual orientation, gender identity, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - 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 the requirements of this section.
 - d. If the contractor employs more than five employees, the contractor shall (i) provide annual training on the contractor's sexual harassment policy to all supervisors and employees providing services in the Commonwealth, except such supervisors or employees that are required to complete sexual harassment training provided by the Department of Human Resource Management, and (ii) post the contractor's sexual harassment policy in (a) a conspicuous public place in each building located in the Commonwealth that the contractor owns or leases for business purposes and (b) the contractor's employee handbook.
 - e. The requirements of these provisions 1. and 2. are a material part of the contract. If the Contractor violates one of these provisions, the Commonwealth may terminate the affected part of this contract for breach, or at its option, the whole contract. Violation of one of these provisions may also result in debarment from State contracting regardless of whether the specific contract is terminated.
 - f. In accordance with Executive Order 61 (2017), a prohibition on discrimination by the contractor, in its employment practices, subcontracting practices, and delivery of goods or services, on the basis of race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, disability, or veteran status, is hereby incorporated in this contract.
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 entering into a written contract with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

F. **DEBARMENT STATUS:** By participating in this procurement, the vendor certifies that they are not currently debarred by the Commonwealth of Virginia from submitting a response for the type of goods and/or services covered by this solicitation. Vendor further certifies that they are not debarred from filling any order or accepting any resulting order, or that they are an agent of any person or entity that is currently debarred by the Commonwealth of Virginia.

If a vendor is created or used for the purpose of circumventing a debarment decision against another vendor, the non-debarred vendor will be debarred for the same time period as the debarred vendor.

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 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 RFPs:** 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 Commonwealth 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 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 resolved in accordance with *Code of Virginia*, § 2.2-4363 and -4364. Upon determining that invoiced charges are not reasonable, the Commonwealth shall notify the contractor of defects or improprieties in invoices within fifteen (15) days as required in *Code of Virginia*, § 2.2-4351. 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. Within seven (7) days of the contractor's receipt of payment from the Commonwealth, a contractor awarded a contract under this solicitation is hereby obligated:
 - (1) To pay the subcontractor(s) for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 - (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.
- b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for

amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

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 Commonwealth 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 Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect offeror's physical facilities prior to award to satisfy questions regarding the offeror's capabilities. The Commonwealth further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy the Commonwealth 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 Commonwealth 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 Commonwealth.

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 terms, conditions, or scope of the contract. Any additional goods or services to be provided shall be of a sort that is ancillary to the contract goods or services, or within the same broad product or service categories as were included in the contract award. 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 Purchasing Agency 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, unless the contractor intends to claim an adjustment to compensation, schedule, or other contractual impact that would be caused by complying with such notice; in which case the contractor shall, in writing, promptly notify the Purchasing Agency of the adjustment to be sought, and before proceeding to comply with the notice, shall await the Purchasing Agency's written decision affirming, modifying, or revoking the prior written notice. If the Purchasing Agency decides to issue a notice that requires an adjustment to compensation, 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 Purchasing Agency'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 Commonwealth, 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 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.

If sales or deliveries against the contract are not exempt, the contractor shall be responsible for the payment of such taxes unless the tax law specifically imposes the tax upon the buying entity and prohibits the contractor from offering a tax-included price.

- 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 will be 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 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 §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The offeror further certifies that the contractor and any subcontractors will maintain these insurance coverage during the entire term of the contract and that all 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 and \$2,000,000 in the aggregate. 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.
 5. Automobile Liability - \$1,000,000 combined single limit.
 6. Watercraft policy with a combined single limit of \$2,000,000 for protection and indemnity coverage.
- U. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract as a result of this solicitation, the purchasing agency will publicly post such notice in eVA VBO (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, sexual orientation, gender identity, 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, CONTRACTS, AND ORDERS:** 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 by completing the free eVA Vendor Registration. All bidders or offerors must register in eVA and pay the Vendor Transaction Fees specified below; failure to register will result in the proposal being rejected.

Vendor transactions fees are determined by the date the original purchase order is issued and the current fees are as follows:

- a. For orders issued July 1, 2014, and after, the Vendor Transaction Fee is:
 - (i) DSBSD-certified Small Businesses: 1%, capped at \$500 per order.
 - (ii) Businesses that are not DSBSD-certified Small Businesses: 1%, capped at \$1,500 per order.
- b. Refer to Special Term and Condition “eVA Orders and Contracts” to identify the number of purchase orders that will be issued as a result of this solicitation/contract with the eVA transaction fee specified above assessed for each order.

For orders issued prior to July 1, 2014, the vendor transaction fees can be found at www.eva.virginia.gov.

The specified vendor transaction fee will be invoiced, by the Commonwealth of Virginia Department of General Services, typically within 60 days of the order issue date. Any adjustments (increases/decreases) will be handled through purchase order changes.

- Y. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent that the legislature has appropriated funds that are legally available or may hereafter become legally available for the purpose of this agreement.
- Z. **BID PRICE CURRENCY:** Unless stated otherwise in the solicitation, offerors shall state offer prices in US dollars.
- AA. **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** A contractor organized as a stock or non-stock 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.
- BB. **CIVILITY IN STATE WORKPLACES:** The contractor shall take all reasonable steps to ensure that no individual, while performing work on behalf of the contractor or any subcontractor in connection with this agreement (each, a "Contract Worker"), shall engage in 1) harassment (including sexual harassment), bullying, cyber-bullying, or threatening or violent conduct, or 2) discriminatory behavior on the basis of race, sex, color, national origin, religious belief, sexual orientation, gender identity or expression, age, political affiliation, veteran status, or disability.

The contractor shall provide each Contract Worker with a copy of this Section and will require Contract Workers to participate in agency training on civility in the State workplace if contractor's (and any subcontractor's) regular mandatory training programs do not already encompass equivalent or greater expectations. Upon request, the contractor shall provide documentation that each Contract Worker has received such training.

For purposes of this Section, "State workplace" includes any location, permanent or temporary, where a Commonwealth employee performs any work-related duty or is representing his or her agency, as well as surrounding perimeters, parking lots, outside

meeting locations, and means of travel to and from these locations. Communications are deemed to occur in a State workplace if the Contract Worker reasonably should know that the phone number, email, or other method of communication is associated with a State workplace or is associated with a person who is a State employee.

The Commonwealth of Virginia may require, at its sole discretion, the removal and replacement of any Contract Worker who the Commonwealth reasonably believes to have violated this Section.

This Section creates obligations solely on the part of the contractor. Employees or other third parties may benefit incidentally from this Section and from training materials or other communications distributed on this topic, but the Parties to this agreement intend this Section to be enforceable solely by the Commonwealth and not by employees or other third parties.

IX. SPECIAL TERMS AND CONDITIONS:

- A. **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 agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.
- 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 Commonwealth 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 Commonwealth 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.
- C. **PROPOSAL ACCEPTANCE PERIOD:** Any proposal in response to this solicitation shall be valid for 90 days. At the end of the 90 days, the proposal may be withdrawn at the written request of the offeror. If the proposal is not withdrawn at that time, it remains in effect until an award is made or the solicitation is canceled.
- D. **PROPOSAL PRICES:** Proposal prices shall be as requested in Section XI, Pricing Schedule.

E. **INSPECTION OF CONSTRUCTION:**

- 1) The Contracting Officer for the SMD shall be Andrew Button or his designee.
- 2) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to the contract requirements.
- 3) SMD inspections and tests are for the sole benefit of the SMD and do not:
 - a. Relieve the Contractor of responsibility for providing adequate quality control measures;
 - b. Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;
 - c. Constitute or imply acceptance; or
 - d. Affect the continuing rights of the SMD after acceptance of the completed work.
- 4) The presence or absence of a SMD inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Contracting Officer's written authorization.
- 5) The Contractor shall promptly furnish, without additional charges, all facilities, labor and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The SMD may charge to the Contractor any additional cost for inspection or tests when work is not ready at time specified by the Contractor for inspection or tests, or when prior rejection makes reinspection or retest necessary. The SMD shall perform all inspections and tests in a manner that will not unnecessarily delay the work.
- 6) The Contractor shall, without charge, replace or correct work found by the SMD not to conform to contract requirements, unless in the public interest the SMD consents to accept work with an appropriate adjustment in contract price.
- 7) If the Contractor does not promptly, as advised by the Contracting Officer, replace or correct rejected work, the SMD may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor and (2) terminate for default the Contractor's right to proceed.
- 8) Unless otherwise specified in the contract, the SMD shall accept, as promptly as practical after the completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines can be accepted

separately.

- F. **CANCELLATION OF CONTRACT:** The purchasing agency reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 15 days written notice to the Contractor. In the event the initial contract period is for more than 12 months, the resulting contract may also be terminated by the contractor, 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. **CONTRACT EXTENSION:** Contract end date may be extended by mutual agreement between the Marine Resources commission and the Contractor. No other terms of the contract shall change.
- H. **CONTRACTOR'S TITLE TO MATERIALS:** No materials or supplies for the work shall be purchased by the Contractor or by any subcontractor subject to any chattel mortgage or under a conditional sales or other agreement by which an interest is retained by the seller. The Contractor warrants that he has clear title to all materials and supplies for which he invoices for payment.
- I. **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: _____ April 22, 2022 2:00 p.m.
Name of Offeror Due Date Time

_____ RFP# SMD 22-01
Street of Box Number RFP No.

Shell dredging and shell planting for
Virginia's portion of the
Chesapeake Bay and its tributaries.

City, State, Zip Code

RFP Title

Name of Contract/Purchase Officer or Buyer

Brandy L. Battle

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 issuing the solicitation. No other correspondence or other Proposals should be placed in the envelope.

J. **INSPECTION OF JOB SITE:** My signature on this solicitation constitutes certification that I have inspected the job site and am aware of the conditions under which the work must be accomplished. Claims, as a result of failure to inspect the job site, will not be considered by the Commonwealth.

K. **SUBMISSION OF SMALL BUSINESS SUBCONTRACTING PLAN, EVIDENCE OF COMPLIANCE WITH SMALL BUSINESS SUBCONTRACTING PLAN, AND SUBCONTRACTOR REPORTING:**

A. Submission of Small Business Subcontracting Plan: It is the statewide goal of the Commonwealth that 42% of its purchases be made from small businesses certified by DSBSD. This includes discretionary spending in prime contracts and subcontracts. All offerors are required to submit a Small Business Subcontracting Plan. The contractor is encouraged to offer such subcontracting opportunities to DSBSD-certified small businesses. This shall include DSBSD-certified women-owned and minority-owned businesses and businesses with DSBSD service disabled veteran-owned status when they have also received DSBSD small business certification. Where it is not practicable for any portion of the goods/services to be subcontracted to other suppliers, the offeror shall note such on the Small Business Subcontracting Plan. No offeror or subcontractor shall be considered a small business unless certified as such by the Department of Small Business and Supplier Diversity (DSBSD) by the due date for receipt of bids or proposals.

B. Evidence of Compliance with Small Business Subcontracting Plan: Each prime contractor who wins an award in which provision of a small business subcontracting plan is a condition of the award, shall deliver to the contracting agency or institution timely reports substantiating compliance in accordance with the small business subcontracting plan. If a variance exists, the contractor shall provide a written explanation. A subcontractor shall be considered a Small Business for purposes of a contract if and only if the subcontractor holds a certification as such by the DSBSD. Payment(s) may be withheld until the purchasing agency confirms that the contractor has certified compliance with the contractor's submitted Small Business Subcontracting Plan or is in receipt of a written explanation of the variance. The agency or institution reserves the right to pursue other appropriate remedies for non-compliance to include, but not be limited to, termination for default.

C. Prime Contractor Subcontractor Reporting:

1. Each prime contractor who wins an award greater than \$100,000, shall deliver to the contracting agency or institution on a monthly basis, all applicable information for each subcontractor listed on the Small Business Subcontracting Plan that are DSBSD-certified businesses or Employment

Services Organizations (ESOs). The contractor shall furnish the applicable information to the purchasing office via the Subcontractor Payment Reporting tool accessible within the contractor's eVA account.

2. In addition each prime contractor who wins an award greater than \$200,000 shall deliver to the contracting agency or institution on a monthly basis, all applicable information on use of subcontractors that are **not** DSBSD-certified businesses or Employment Services Organizations. The contractor shall furnish the all applicable information to the purchasing office via the Subcontractor Payment Reporting tool accessible within the contractor's eVA account.

- L. **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.
- M. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of the purchasing agency. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish the purchasing agency 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.
- N. **WORK SITE DAMAGES:** Any damage to the reef structure which has been completed or adjacent oyster beds resulting from the performance of this contract shall be repaired to the Commonwealth's satisfaction at the Contractor's expense.
- O. **COMPLETION OF ATTACHMENTS:** Attachment A – Contractor data sheet, and if applicable. Attachment B – One page for each subcontractor to be utilized. Annex 7-G-Small Business Subcontracting Plan and Annex 7-I-SCC Form must be completed in full and returned with the proposal package.
- P. **APPLICABLE U. S. COAST GUARD LICENSES AND REGULATIONS:** Operators of all vessels used for deployment shall present, upon request, applicable U. S. Coast Guard licenses and shall obey all applicable U. S. Coast Guard regulations at all times during operations under this contract.
- Q. **HAZARD TO NAVIGATION:** Contractor shall not create a hazard to navigation while performing under this contract. Any such hazard to navigation created by the Contractor while performing under this contract shall be removed or eliminated at his expense.
- R. **eVA ORDERS AND CONTRACTS:** The solicitation/contract will result in one purchase order with the applicable eVA transaction fee assessed for each order.

Vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution and agree to comply with the following: If this solicitation is for a term contract, failure to provide an electronic catalog (price list) or index page catalog for items awarded will be just cause for the Commonwealth to reject your offer or terminate this contract for default. The format of this electronic catalog shall conform to the eVA Catalog Interchange Format (CIF) Specification that can be accessed and downloaded from www.eVA.virginia.gov. Contractors should email Catalog or Index Page information to eVA-catalog-manager@dgs.virginia.gov.

- S. **STATE CORPORATION COMMISSION IDENTIFICATION NUMBER:** Pursuant to Code of Virginia, §2.2-4311.2 subsection B, an offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its proposal the identification number issued to it by the State Corporation Commission (SCC). Any offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law is required to include in its proposal a statement describing why the offeror is not required to be so authorized. Indicate the above information on the SCC Form provided. Contractor agrees that the process by which compliance with Titles 13.1 and 50 is checked during the solicitation stage (including without limitation the SCC Form provided) is streamlined and not definitive, and the Commonwealth's use and acceptance of such form, or its acceptance of Contractor's statement describing why the bidder or offeror was not legally required to be authorized to transact business in the Commonwealth, shall not be conclusive of the issue and shall not be relied upon by the Contractor as demonstrating compliance.
- T. **E-VERIFY PROGRAM:** EFFECTIVE 12/1/13. Pursuant to *Code of Virginia*, §2.2-4308.2., any employer with more than an average of 50 employees for the previous 12 months entering into a contract in excess of \$50,000 with any agency of the Commonwealth to perform work or provide services pursuant to such contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to such public contract. Any such employer who fails to comply with these provisions shall be debarred from contracting with any agency of the Commonwealth for a period up to one year. Such debarment shall cease upon the employer's registration and participation in the E-Verify program. If requested, the employer shall present a copy of their Maintain Company page from E-Verify to prove that they are enrolled in E-Verify.
- X. **METHOD OF PAYMENT:** The contractor will be paid on the basis of invoices submitted after satisfactory completion of each of the areas listed in XI. Pricing Schedule. All copies of the invoices shall be forwarded directly to the using agency or wherever otherwise designated. Payments will be made directly to the contractor, who will be responsible for payments to all subcontractors. Payments will be made in accordance with the Virginia Prompt Payment Act, once each of the areas listed in XI. Pricing Schedule are completed and verified by Oyster Replenishment Department Staff. The final payment may be withheld, based on General Terms and Conditions, J. Payment, 3., until VMRC receives evidence and certification of compliance with the SWAM procurement plan.

XI. **PRICING SCHEDULE:**

- A. _____ Cost per cubic yard to dredge, wash, sort, and load approximately 42,129 cubic yards of shell in the James River, Chesapeake Bay.
- B. _____ Cost per cubic yard to dredge, wash, sort, and load approximately 10,000 cubic yards of fines in the James River, Chesapeake Bay.
- C. _____ Cost per cubic yard to transport and deploy by water cannon approximately 10,000 cubic yards of fine shell in the York River, Chesapeake Bay.
- D. _____ Cost per cubic yard to transport and deploy by water cannon approximately 10,000 cubic yards of fine shell in the Mobjack Bay, Chesapeake Bay.
- E. _____ Cost per cubic yard to transport and deploy by water cannon approximately 2,710 cubic yards of shell in the Great Wicomico River, Chesapeake Bay.
- F. _____ Cost per cubic yard to transport and deploy by water cannon approximately 7,742 cubic yards of shell in the Rappahannock River, Chesapeake Bay.
- G. _____ Cost per cubic yard to transport and deploy by water cannon approximately 11,677 cubic yards of shell in the Pocomoke Sound, Chesapeake Bay.
- H. _____ Cost per cubic yard to transport and deploy by water cannon approximately 8,968 cubic yards of shell in the Tangier Sound, Chesapeake Bay.
- I. _____ credit per cubic yard for “fine” shells for _____ cubic yards retained by the contractor.

XII. **DELIVERY:** The agency expects delivery and complete deployment from June 1 – August 15, 2022.

XIII. **LIQUIDATED DAMAGES:** All equipment must be mobilized, and work must commence, no later than June 1, 2022. It is understood and agreed by the offeror that time is of the essence in the performance of the contract. In the event the equipment is not mobilized and work does not commence by the date specified there will be deducted, not as a penalty but as liquidated damages, the sum of \$3000 per day for each and every calendar day of delay beyond the time specified; except that if the performance be delayed by any act, negligence, or default on the part of the Commonwealth, public enemy, war, embargo, fire, or explosion not caused by the negligence or intentional act of the contractor or his supplier(s), or by riot, sabotage, or labor trouble that results from a cause or causes entirely beyond the control or fault of the contractor or his supplier(s), a reasonable extension of time as the procuring public body deems appropriate may be granted. Upon receipt of a written request and justification for any extension from the contractor, the purchasing office may extend the time for performance of the contract or delivery of goods herein specified, at the purchasing office’s sole discretion, for good cause shown.

**ATTACHMENT A TO RFP #SMD22-01
CONTRACTOR DATA SHEET
TO BE COMPLETED BY OFFEROR**

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

2. **YEARS IN BUSINESS:** Indicates the length of time you have been in business providing this type of service.

_____ Years _____ Months

3. **REFERENCES:** Indicate below a listing of at least four (4) recent references for whom you have provided this type of service. Include the date service was furnished and the name, address and phone number of the person the purchasing agency has your permission to contact.

<u>CLIENT</u>	<u>ADDRESS</u>	<u>DATE OF SERVICE</u>	<u>CONTACT & PHONE No.</u>

**ATTACHMENT B TO RFP #SMD 22-01
SUBCONTRACTOR DATA SHEET
TO BE COMPLETED BY OFFEROR**

1. **QUALIFICATIONS OF OFFEROR:** Subcontractor must have the capability and capacity in all respects to fully satisfy all the contractual agreements.

2. **YEARS IN BUSINESS:** Indicates the length of time you have been in business providing this type of service.

_____ Years _____ Months

3. **REFERENCES:** Indicate below a listing of at least four (4) recent references for whom you have provided this type of service. Include the date service was furnished and the name, address and phone number of the person the purchasing agency has your permission to contact.

<u>CLIENT</u>	<u>ADDRESS</u>	<u>DATE OF SERVICE</u>	<u>CONTACT & PHONE No.</u>

Annex 7-G

Small Business Subcontracting Plan

It is the goal of the Commonwealth that over 42% of its purchases be made from small businesses. All potential offerors are required to return this document with their response.

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

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

Offeror Name: _____

Preparer Name: _____ Date: _____

Who will be doing the work: I plan to use subcontractors I plan to complete all work

Instructions

- A. If you are certified by the DSBSD as a micro/small business, complete only Section A of this form.
B. If you are not a DSBSD-certified small business, complete Section B of this form. For the offeror to receive credit for the small business subcontracting plan evaluation criteria, the offeror shall identify the portions of the contract that will be subcontracted to DSBSD-certified small business for the initial contract period the initial contract period in Section B.

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

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

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

Section A

If your firm is certified by the DSBSD provide your certification number and the date of certification.

Certification number: _____ Certification Date: _____

Section B

If the "I plan to use subcontractors box is checked," populate the requested information below, per subcontractor to show your firm's plans for utilization of DSBSD-certified small businesses in the performance of this contract for the initial contract period in relation to the offeror's total price for the initial contract period. Certified small businesses include but are not limited to DSBSD-certified women-owned and minority-owned businesses and businesses with DSBSD service disabled veteran-owned status that have also received the DSBSD small business certification. Include plans to utilize small businesses as part of joint ventures, partnerships, subcontractors, suppliers, etc. It is important to note that these proposed participation will be incorporated into the subsequent contract and will be a requirement of the contract. Failure to obtain the proposed participation dollar value or percentages may result in breach of the contract.

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

Subcontract #1

Company Name: _____ SBSD Cert #: _____
Contact Name: _____ SBSD Certification: _____
Contact Phone: _____ Contact Email: _____
Value % or \$ (Initial Term): _____ Contact Address: _____
Description of Work: _____

Subcontract #2

Company Name: _____ SBSD Cert #: _____
Contact Name: _____ SBSD Certification: _____
Contact Phone: _____ Contact Email: _____
Value % or \$ (Initial Term): _____ Contact Address: _____
Description of Work: _____

Subcontract #3

Company Name: _____ SBSD Cert #: _____
Contact Name: _____ SBSD Certification: _____
Contact Phone: _____ Contact Email: _____
Value % or \$ (Initial Term): _____ Contact Address: _____
Description of Work: _____

Subcontract #4

Company Name: _____ SBSD Cert #: _____

Contact Name: _____ SBSD Certification: _____

Contact Phone: _____ Contact Email: _____

Value % or \$ (Initial Term): _____ Contact Address: _____

Description of Work: _____

Subcontract #5

Company Name: _____ SBSD Cert #: _____

Contact Name: _____ SBSD Certification: _____

Contact Phone: _____ Contact Email: _____

Value % or \$ (Initial Term): _____ Contact Address: _____

Description of Work: _____

Annex 7-I
State Corporation Commission Form

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

- is a corporation or other business entity with the following SCC identification number: _____ **-OR-**
- is not a corporation, limited liability company, limited partnership, registered limited liability partnership, or business trust **-OR-**
- is an out-of-state business entity that does not regularly and continuously maintain as part of its ordinary and customary business any employees, agents, offices, facilities, or inventories in Virginia (not counting any employees or agents in Virginia who merely solicit orders that require acceptance outside Virginia before they become contracts, and not counting any incidental presence of the offeror in Virginia that is needed in order to assemble, maintain, and repair goods in accordance with the contracts by which such goods were sold and shipped into Virginia from offeror's out-of-state location) **-OR-**
- is an out-of-state business entity that is including with this proposal an opinion of legal counsel which accurately and completely discloses the undersigned offeror's current contacts with Virginia and describes why those contacts do not constitute the transaction of business in Virginia within the meaning of § 13.1-757 or other similar provisions in Titles 13.1 or 50 of the Code of Virginia.

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