

VIRGINIA: IN THE CIRCUIT COURT OF ROCKBRIDGE COUNTY

CENTER FOR APPLIED INNOVATION, LLC

Plaintiff,

v.

Case No. CL CL22000215-00

VIRGINIA MILITARY INSTITUTE,  
Serve: Patrick O’Leary, Counsel  
Virginia Military Institute  
319 Letcher Ave  
Lexington, VA 24450

BOARD OF VISITORS OF THE  
VIRGINIA MILITARY INSTITUTE,  
Serve: Patrick O’Leary, Counsel  
Virginia Military Institute  
319 Letcher Ave  
Lexington, VA 24450

NEWPOINT STRATEGIES LLC  
SERVE: Karetta Hubbard, Registered Agent  
1350 Beverly Road, Suite 115-164  
McLean, VA, VA, 22101 - 0000, USA  
(FAIRFAX COUNTY)

Defendants.

**MOTION FOR DECLARATORY JUDGMENT AND  
PETITION FOR TEMPORARY & PERMANENT INJUNCTION**

Plaintiff Center for Applied Innovation, LLC (“CAI” or “Plaintiff”), a Virginia limited liability company, by counsel, respectfully asks that a declaratory judgment be entered in its favor in accordance with Virginia Code § 8.01-184 and respectfully moves this Court for a temporary and permanent injunction ordering defendants Virginia Military Institute (“VMI”), The Board of Visitors of Virginia Military Institute, and Newpoint Strategies LLC (“NewPoint”) to cease immediately any and all work and efforts under the Notice of Intent to Award Contract<sup>1</sup>

<sup>1</sup> See Exhibit A, Ex. 1 (Notice of Intent to Award).

(under and arising from Request for Proposal (RFP): PROJECT #V211-22-054, Diversity, Equity, and Inclusion (DEI) Consultation and Training), which VMI unlawfully awarded to New Point in violation of the Virginia Public Procurement Act. In support of this motion/complaint, CAI respectfully represents as follows.

**Facts Common to All Counts**

1. Plaintiff CAI is a Virginia limited liability company which regularly conducts business in the Commonwealth of Virginia. CAI is certified by both the Virginia Office of the Secretary of Veteran's Affairs and the United States Department of Veterans Affairs as a Service-Disabled Veteran-Owned Small Business (SDVOSB) that provides wide-ranging services on projects, including, but not limited to interviews, surveys, investigations, analysis, data collection, and actionable recommendations for process organizational and institutional improvement. CAI maintains an Office of Human Research Protections and Food and Drug Administration federally registered Institutional Review Board (IRB) that operates in full compliance with 45 CFR 46.111(a)(7) and 21 CFR 56.111(a)(7) under Office of Management and Budget (OMB) guidelines and policies.
2. Defendant VMI is a Virginia public institution of higher education, empowered with the responsibility and decision-making authority relating to the procurement and project identified as Request for Proposal (RFP): PROJECT #V211-22-054, Diversity, Equity, and Inclusion (DEI) Consultation and Training.
3. Defendant Board of Visitors of Virginia Military Institute ("Board of Visitors" and/or "VMI") is a public institution formed under the laws of the Commonwealth of Virginia and located in Lexington, Virginia, and is part of the statewide system of public higher

education operated by the Commonwealth of Virginia. The Board of Visitors is the supervisory board of Virginia Military Institute. The Board defines the mission of the Institute as a public institution of higher education in the Commonwealth of Virginia and oversees the development, revision, and implementation of a strategic plan for the accomplishment of that mission.

4. Defendant NewPoint is a Virginia limited liability company, authorized to conduct business throughout the Commonwealth. NewPoint is a named defendant as the relief sought in this action will impact its rights.
5. On or about November 30, 2021, VMI published Request for Proposal, Project #V211-22-054, Diversity, Equity and Inclusion (DEI) Consultation and Training on November 30, 2021 with the published due date of December 14, 2021.<sup>2</sup>
6. The RFP is subject to the Virginia Public Procurement Act §§2.2-4300 *et seq* (the “VPPA”), which VMI violated in multiple material respects in its award to NewPoint because the award was arbitrary and capricious and not the honest exercise of discretion. Attached as Exhibit A is CAI’s timely Protest of Award<sup>3</sup> documenting those violations.
7. Several entities submitted proposals in response to the RFP, including CAI and NewPoint.
8. CAI was eliminated during the first round, and the procurement process continued with other bidders. The fatally flawed process ultimately culminated in an arbitrary and capricious award to NewPoint.

---

<sup>2</sup> A copy of the RFP can be found in Exhibit A, Ex. 3.

<sup>3</sup> The Protest included a typo in the first paragraph, inadvertently referring to VA Code § 2.2-4360, as VA Code § 2.2-4260. This error is correct in the concluding paragraph of the protest. VMI responded to the merits of the protest, as such, this typo is irrelevant and of no importance.

9. An undated Notice of Intent (NOI) to Award to NewPoint was published on eVA on February 28, 2022. The NOI was not date-stamped as required when a protest is anticipated, as documents referenced herein indicate VMI anticipated.<sup>4</sup>
10. As an unsuccessful bidder on the RFP, having been eliminated in the first round, CAI attempted, well before the posting of the Notice of Intent to Award on eVA, to secure access to the procurement records necessary to protest the intention to award (which access is statutorily mandated under § 2.2-4360 and § 2.2-4342), but VMI acted to prevent, obstruct, and unreasonably restrict the required access from being provided to CAI. *See Exhibit A*, pg. 1-3 (detailing timelines and VMI's failure, to date, to provide full access to the procurement file). The full extent of non-compliance is unclear, as VMI and its agents also engaged in spoliation, permitting relevant documents to be destroyed.
11. On March 18, 2022, CAI timely submitted its protest of the award/intent to award. A copy of the Protest of Award ("Protest") is enclosed as Exhibit A. The 54-page (excluding exhibits) Protest detailed the fatal flaws in the procurement process and the resulting arbitrary and capricious award to NewPoint.
12. On March 28, 2022, VMI denied the Protest. A copy of VMI's denial letter is attached hereto as Exhibit B.
13. In its denial of the Protest, VMI does not address in detail any of the serious issues brought to its attention in the Protest (Exhibit A), but, consistent with its unlawful conduct to date, merely denied the Protest, claiming it acted properly.

---

<sup>4</sup> *See Exhibit A*, Ex. 1.

14. VMI did not even attempt to deny its spoliation and improper conduct in permitting its agents to destroy and/or otherwise fail to retain records relating to the scoring and procurement. *See* Exhibit A, pg. 53. The spoliation is truly concerning, as VMI expected a protest, yet permitted this unlawful conduct to occur. *See* Exhibit A, Ex. 57.
15. This legal action is brought pursuant to Virginia Code § 2.2-4364 (c) on grounds that the denial of the Protest (*See* Exhibits A & B) was improper and the award to NewPoint was not an honest exercise of discretion, but rather was arbitrary and capricious, and furthermore was not in accordance with the Constitution of Virginia, applicable state law (including, without limitation, the VPPA) and/or regulation, and/or the terms or conditions of the Request for Proposal.
16. As detailed in CAI's 54-page Protest (Exhibit A), which included 245 footnotes and an additional 657 pages of exhibits, there is overwhelming evidence and multiple reasons why the flawed process implemented by VMI and its ultimate award to NewPoint was arbitrary and capricious in violation of the Virginia Public Procurement Act. *See* Exhibit A. The challenges detailed in this Complaint and in the attached Protest (*see* Exhibit A) are also based upon VMI's shocking failure to maintain required records and spoliation of pertinent evidence, despite expecting a Protest. This type of conduct should result in severe sanctions.
17. The following is a brief summary of the bases for relief sought in this court, which are more extensively detailed in Exhibit A, which is incorporated fully herein by express reference:
  - a. VMI has, to date, improperly prevented from CAI obtaining full access to the procurement file. While some documents have not been produced, others have

been destroyed or concealed with the aim of preventing the challenges of any bidder, like CAI, from being successful. The destruction of documents that VMI is required, under FOIA and VPPA to maintain, constitutes spoliation and reflects VMI's improper intent and conduct. VMI cannot be permitted to benefit from its own malfeasance. *See Exhibit A.*

- b. VMI failed to adhere to Virginia Department of General Services Agency Procurement and Surplus Property Manual (APSPM), The Commonwealth of Virginia Vendors Manual, the Rules Governing Procurement of Goods, Services, Insurance and Construction by a Public Institution of Higher Education of the Commonwealth of Virginia, and/or The Commonwealth of Virginia's Purchasing Manual for Institutions of Higher Education and Their Vendors, and other standards and best practices for procurement. *See Exhibit A, Section II.* VMI elected to "cherry pick" the regulations it would apply in its unlawful efforts to steer the award to a bidder of its choosing, while trying to insulate itself from proper challenges. VMI's failure to adhere to the VPPA, the ASPM, and best practices designed to ensure a lawful and proper procurement process is indicative of the arbitrary and capricious nature of the process pursued that culminated in the resulting improper and unlawful award. *See Exhibit A, Section III (pg. 4-5).*
- c. The price evaluation and scoring implemented was arbitrary and capricious. *See Exhibit A, Section III (pg. 5-21).*

- i. VMI's undefined procurement type and lack of any price proposal structure resulted in arbitrary and capricious scoring. *See* Exhibit A (pg. 6-11).
- ii. The price scoring structure and method used was arbitrary and capricious. *See* Exhibit A (pg. 11-13).
- iii. The solicitation guidance for price proposals resulted in a proposed cost range across Offerors that could only result in arbitrary and capricious scoring. *See* Exhibit A (pg. 14-15).
- iv. Scoring of cost proposals did not properly utilize cost realism.<sup>5</sup> *See* Exhibit A (pg. 15-19).
- v. VMI's arbitrary and capricious price scoring method unfairly resulted in CAI receiving a "0" point score for price. *See* Exhibit A (pg. 19-20). This example reflects the arbitrary and capricious nature of the scoring resulting from the flawed system implemented.
- vi. The cost proposals from the top three Offerors selected for the final round shows NewPoint received preferential treatment, raising a reasonable conclusion that two of the final three Offerors were provided inside information on the procurement price target. *See* Exhibit A (pg. 20-21).

---

<sup>5</sup> Cost realism analysis is the process of independently reviewing and evaluating specific elements of each Offeror's proposed cost estimate to determine whether the estimated proposed cost elements (i) are realistic for the work to be performed, (ii) reflect a clear understanding of the requirements; and (iii) are consistent with the unique methods of performance and materials described in the Offeror's technical proposal. Price realism is the analysis the government uses to evaluate whether an Offeror's price is "too low." *See* FAR 15.404-1 (State and the private sector use the Federal definition and criteria detailed there).

- vii. Vendor Price scoring did not include justification or explanations. *See Exhibit A (pg. 21).*
- d. The award here was for goods and services that violate the Governor's policies and directives against divisive trainings and ideologies, including, without limitation, Critical Race Theory (CRT), the theory on which Diversity, Equity and Inclusion (DEI) is based; the services that are the subject of the RFP award consist of DEI Consultation and Training. *See Exhibit A (pg. 21-28).*
  - i. The end-state of the contract and its DEI Consultation and Training is far beyond simple training, focusing instead on indoctrination and causing mindset change in the VMI Faculty, staff and cadets using various divisive concepts and approaches. *See Exhibit A (pg. 23-24).*
  - ii. VMI is actually pursuing a supporting contract designed to indoctrinate all VMI cadets through behavior/mindset change, which design and purpose were not disclosed to Offerors for use in proposal preparation and pricing. *See Exhibit A (pg. 24-26).*
  - iii. NewPoint Strategies' Diversity, Equity and Inclusion Training, as proposed in its bid, includes and is based on these divisive concepts in violation of the Commonwealth's new direction, policy and guidance from Governor Youngkin and his administration. *See Exhibit A (pg. 26-27).*
  - iv. NewPoint Strategies' proposal on Diversity, Equity and Inclusion is based on divisive concepts specifically banned by Governor Youngkin's Executive Order #1 and related policies. *See Exhibit A (pg. 27).*



- v. NewPoint Strategies' proposal includes significant non-training work that was not specifically stated/requested in the RFP; consequently other Offerors did not have the opportunity include in their proposals any of that significant non-training work. *See Exhibit A (pg. 27-28).*
- e. Protest of Award (award to NewPoint was arbitrary and capricious, rather than the honest exercise of discretion). *See Exhibit A (pg. 28-47).*
  - i. NewPoint's bid failed to adhere to the explicit requirements of the RFP, and its bid should have been rejected at the earliest stage of RFP bid evaluation. *See Exhibit A (pg. 28-31).*
    - 1. VMI attempted to conceal the association between and among scores, notes and evaluators in the procurement record. *See Exhibit A (pg. 28).*
    - 2. NewPoint clearly did not comply with the RFP's mandatory "shall" and "will" requirements. *See Exhibit A (pg. 29).*
    - 3. NewPoint clearly was improperly allowed to adjust its price proposal after the solicitation closed. *See Exhibit A (pg. 29-31).*
  - ii. Improper and arbitrary award of points to NewPoint in scoring. *See Exhibit A (pg. 31-34).*
    - 1. Improper and Arbitrary Awarding of Points and Credit to NewPoint for issues beyond the scope of the RFP. *See Exhibit A (pg. 32-33).*
    - 2. Improper and Arbitrary scoring points to NewPoint for activities not required by the RFP. *See Exhibit A (pg. 33-34).*

- iii. Compare Unfair Treatment and Consideration of other Bidders. *See* Exhibit A (pg. 34-35).
  - 1. Improper Points for Pricing. *See* Exhibit A (pg. 35).
- iv. Arbitrary Application of RFP Requirements and Scoring. *See* Exhibit A (pg. 35-44).
  - 1. Improper and Arbitrary Deduction of Points from CAI for issues beyond the scope of the RFP and for which points should not have been deducted. *See* Exhibit A (pg. 35-44).
- v. Systematic Arbitrary and Unequal treatment of Offerors. *See* Exhibit A (pg. 44-45).
- vi. Block voting is improper and results in an arbitrary and capricious award. *See* Exhibit A (pg. 45-47).
- f. Protest on grounds that contract to be awarded differs so greatly from that described before and/or in the RFP so as to constitute a different RFP. *See* Exhibit A (pg. 48-49).
- g. Protest on grounds that pressure by the VMI leadership was placed on procurement staff to unnecessarily shorten the acquisition cycle without sufficient urgency justification and with the intent to steer the contract to a specific Offeror or to one within a selected group of Offerors. *See* Exhibit A (pg. 49-50).
- h. Protest on grounds that VMI acted willfully and unlawfully to impede or block an Offeror from submitting a proper, complete and timely protest. *See* Exhibit A (pg. 51-53).

- i. The blatant spoliation and FOIA violations by VMI warrant the granting of CAI's Protest and the Court's issuance of injunctive relief to CAI pursuant to this Complaint, because VMI's serious malfeasance in connection with the RFP, the award, and its post-ward dealings with CAI further evidence the improper nature of the award. *See* Exhibit A (pg. 53).
18. The overwhelming evidence of arbitrary and capricious award and unlawful conduct by VMI set forth in paragraph 16 (and Exhibit A) detail the multiple reasons why the award to NewPoint must be vacated, voided, and enjoined. VMI, in its denial of the Protest, has not addressed the merits of any of the specific claims presented by CAI, yet cursorily rejects them. This was not expected and is indeed surprising, as VMI has no justifications or explanations for its unlawful conduct.
  19. CAI expects to uncover additional evidence supporting the unlawful and arbitrary & capricious nature of the award to NewPoint, once it is granted the access to the procurement records that is guaranteed under the Virginia Public Procurement Act (Virginia Code § 2.2-4360 and § 2.2-4342). At that point, CAI will be able to determine the full extent of non-production of procurement records, as well as any spoliation, concealment and/or destruction of such records engaged in by VMI and its agents.

**Count I: Declaratory Judgment**

20. Paragraphs 1-18 are incorporated herein by reference and realleged.
21. As detailed above, VMI violated the Virginia Public Procurement Act as the award of contract to NewPoint was arbitrary and capricious, and not an honest exercise of discretion.

22. CAI requests that this Court find that: (1) VMI violated the Virginia Public Procurement Act, (2) that the award to NewPoint under the RFP was arbitrary and capricious, in violation of Virginia law, and therefore void.
23. CAI requests a Judgment Order granting the following relief: (1) declaring the contract between VMI and NewPoint to be void, and (2) ordering that VMI provide forthwith to CAI full and unredacted access to the procurement file as required by the Virginia Public Procurement Act, with CAI having ten (10) days after such complete and unredacted access to amend this Complaint.

**Count II: Temporary and Permanent Injunction**

24. Paragraphs 1-22 are incorporated herein by reference and realleged.
25. The Court should grant the requested temporary injunction (to be confirmed in a subsequent permanent injunction) because: (1) CAI is likely to succeed on the merits, (2) CAI, and the citizens of the Commonwealth of Virginia, are likely to suffer irreparable harm in the absence of the relief sought, (3) the equities favor CAI and the granting of this injunction, and (4) it is in the public interest to ensure government projects are awarded in a fair and impartial manner in conformity with the Virginia Public Procurement Act. *See* Virginia Code § 2.2-4300(c) (The central goal of the act being "...that all procurement procedures be conducted in a fair and impartial manner with avoidance of any impropriety or appearance of impropriety...")
26. CAI is likely to succeed on its claim that VMI violated the Virginia Public Procurement Act and that the award to NewPoint was unlawful, as well as arbitrary and capricious. *See* Exhibit A.

27. The evidence to be presented before this Court will clearly demonstrate VMI blatantly violated the Virginia Public Procurement Act in multiple material respects and awarded the contract by Notice of Intent to Award to NewPoint, and without an injunction being granted by this Court, NewPoint will actually begin the work on this contract and/or NewPoint will continue to perform services under a contract that was unlawfully awarded.
28. Without an injunction, CAI and all citizens of the Commonwealth of Virginia will suffer irreparable harm. As a bidder, CAI was entitled to a fair and unbiased process for awarding a contract on the RFP. All citizens of the Commonwealth are entitled to rest assured that government funding is provided in a fair and lawful manner, free of corruption and impropriety. Without This Court's granting of the injunctive relief sought, NewPoint has or will immediately begin to perform the substantive work it was not entitled to be awarded. CAI and all Virginia citizens (especially Virginia taxpayers) will be irreparably harmed by permitting a contract that was illegally awarded to be performed (and to be paid for with Virginia taxpayer dollars). Additionally, CAI will have been deprived of a fair and appropriate opportunity to bid for the work in question.
29. NewPoint may attempt argue that any such harm could be remedied by a damages award, however, that relief is not available under the Virginia Public Procurement Act. VMI and Newpoint should not benefit from VMI's extensive unlawful conduct in connection with this RFP and award by being permitted to continue with the unlawful contract.
30. The spoliation, concealment, and destruction of procurement records and other relevant evidence by VMI and its agents, as well as its/their failing to maintain and safeguard the

required records, supports this Court's ruling and issuance of injunctive relief in favor of CAI. *See* Exhibit A. VMI does not even attempt to deny its spoliation, concealment, and destruction of procurement records and other relevant evidence. *See* Exhibit B. (Denial of claim).

31. The equities balance in favor of granting the injunction. VMI has engaged in multiple instances of unlawful conduct, as set forth above, harming CAI, the public (all citizens of Virginia) and the very procurement process created by the General Assembly to protect the public from corruption. No party would be harmed by the issuance of the requested injunction, as it supports the much-needed enforcement of the Virginia Public Procurement Act under the facts of this case. NewPoint cannot, in good faith, claim to be harmed by having Virginia law followed, as it cannot expect to benefit from VMI's unlawful conduct.
32. The public interest weighs in favor of enforcing compliance with the Virginia Public Procurement Act in order to ensure that government contracts are awarded in an open, equitable process which is free of corruption and the appearance of impropriety. This Complaint details a multitude of issues and factual matters which raise serious concerns regarding the integrity of the process followed by VMI on this RFP. An injunction will protect CAI from having its rights (including, without limitation, the right to a procurement process free of corruption and impropriety) violated and will ensure the public process for bidding under the VPPA is followed, resulting in awards that comply with the laws of the Commonwealth.

WHEREFORE, Plaintiff Center for Applied Innovation, LLC respectfully requests that this Court issue a temporary and permanent injunction, to remain in effect

until the conclusion of the trial in this matter, or until such other time as the Court may deem prudent, enjoining and restraining defendants Virginia Military Institute, The Board of Visitors of Virginia Military Institute, and Newpoint Strategies LLC from performing any further services pursuant to the contract awarded pursuant to Notice of Intent to Award under Request for Proposal (RFP): PROJECT #V211-22-054, Diversity, Equity, and Inclusion (DEI) Consultation and Training). Plaintiff further requests that judgment be entered as follows:

(1) declaring that Virginia Military Institute and The Board of Visitors of Virginia Military Institute violated the Virginia Public Procurement Act in arbitrarily and capriciously awarding the contract to NewPoint Strategies LLC

(2) Finding and declaring that the contract between Virginia Military Institute and/or The Board of Visitors of Virginia Military Institute and NewPoint Strategies LLC is void and enjoining performance of same,

(3) ordering that Virginia Military Institute and The Board of Visitors of Virginia Military Institute provide forthwith to the Plaintiff Center for Applied Innovation, LLC with full and unredacted access the procurement records for this project,<sup>6</sup> with CAI having ten (10) days after such full and unredacted access to amend this Complaint.

(4) and awarding the plaintiff costs and any and all further relief the Court may deem appropriate.

---

<sup>6</sup> CAI serves discovery, along with the filing of this Complaint, seeking the full procurement records for this RFP, which records have, to date, been withheld and/or destroyed by VMI (without justification under the VPPA).

CENTER FOR APPLIED INNOVATION, LLC

By: Patrick C. Henry II  
Counsel

Bradley P. Marrs (VSB#25281)  
Patrick C. Henry II (VSB#80468)  
Marrs & Henry  
7202 Glen Forest Drive, Suite 307  
Richmond, VA 23226  
(804) 662-5716  
(804) 662-5712





## Center for Applied Innovation, LLC

214 Terrebonne Road  
Yorktown, Virginia 23692

Voice: (U.S.): 1.757.869.6770 • Facsimile: (U.S.): 1.270.477.7087  
[www.caihq.com](http://www.caihq.com) • E-mail: [BobM@caihq.com](mailto:BobM@caihq.com)



March 18, 2022

### **By FEDEX & Email**

Virginia Military Institute  
Procurement Services  
ATTN: Colonel Kathleen H. Tomlin, VCO, VCCO, CUPO  
Director, Procurement Services  
330 Parade Avenue, 314 Smith Hall  
Lexington, VA 24450  
Email: [TomlinKH@vmi.edu](mailto:TomlinKH@vmi.edu)

Re: Center for Applied Innovation, LLC  
Request for Proposal (RFP): *PROJECT #V211-22-054, Diversity, Equity,  
and Inclusion (DEI) Consultation and Training*, Notice of Intent to Award  
Contract to: NewPoint Strategies, LLC<sup>1</sup>  
**Protest of Award**

Dear Sirs & Madams:

This letter sets forth: (1) written notification of unsuccessful bidder Center for Applied Innovation, LLC's ("CAI's") protest, pursuant to Virginia Code § 2.2-4260, of the award of the above-captioned RFP to NewPoint Strategies, LLC ("NewPoint") on the grounds that the award was arbitrary and capricious and not the honest exercise of discretion, (2) demand that the Virginia Military Institute ("VMI") cease and desist from, and also remedy, its unlawful conduct in connection with the RFP, and (3) demand, once again, full and un-redacted access to the procurement file in accordance with Virginia Code §§ 2.2-4342 and 2.2-4260, the requests for such access by CAI having been repeatedly denied.<sup>2</sup> Copies of all exhibits referenced are included on the enclosed zip drive.

### **I. Timing of Protest**

Under the Virginia Public Procurement Act, ("VPPA"), "if the protest of any actual or potential bidder or Offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under § 2.2-4342, then the time within which the protest shall be submitted shall expire ten days after those records are available for inspection by

<sup>1</sup> See Exhibit 1.

<sup>2</sup> This was done for the singular purpose of attempting to prevent CAI from being able to research and identify in the procurement records all of the grounds for its protest, as well as the improper and unlawful conduct in which VMI had engaged.

such bidder or Offeror under § 2.2-4342.”<sup>3</sup> Under this clear and unambiguous clause, CAI’s protest is timely (as agreed to by VMI, via email, *see* Exhibit 17). For clarity, to date, CAI has still not been provided adequate and reasonable access to records, as required under VPPA. VMI’s conduct appears to reflect that it is fearful of protests and challenges to its improper conduct and this arbitrary and capricious award, of legitimate media scrutiny, and of the public becoming aware of its unlawful activities in regard to the procurement process and award,<sup>4</sup> and VMI has taken affirmative steps to prevent reasonable access by CAI to the procurement records and corresponding formulation of CAI’s protest via obstructionist conduct and “piece-meal” release of procurement files only when formally challenged by CAI that they are being improperly withheld. The purpose of the VPPA is transparency, and VMI’s conduct has been completely inconsistent with that aim.

CAI has sought access to the records since it first learned it had not been selected for the second round of consideration among the “final three” companies VMI selected to conduct interviews and negotiations with. In response to CAI’s multiple requests for such access, VMI acted improperly and unlawfully in denying reasonable access and denying reasonable accommodations to access the records, as required by the VPPA. VMI did not provide any justifications for these actions and, in fact, simply either ignored these multiple, legitimate, requests or released documents piece-meal only after being challenged for withholding them. The following is a chronology of the timeline relating to the access to records and filing of CAI’s protest:

- VMI published Request for Proposals, Project #V211-22-054, Diversity, Equity and Inclusion (DEI) Consultation and Training on November 30, 2021 with the published due date of December 14, 2021.<sup>5</sup>
- VMI published Addendum 1 to RFP #V211-22-054 on December 6, 2021, extending the proposal due date to December 16, 2021.<sup>6</sup>
- VMI published Addendum 2 to RFP #V211-22-054 on December 7, 2021, due date remained December 16, 2021 and the Addendum confirmed only hard copy (not electronic) submissions would be accepted.<sup>7</sup>
- On December 16, 2021 submissions for the RFP closed.
- On January 11, 2022 winning Offeror NewPoint requested VMI contracting officer Lynn W. Carmack provide the number of managers to be trained so they could provide VMI an updated price proposal.<sup>8</sup>
- On January 12, 2022 winning Offeror NewPoint submitted updated pricing to its proposal another the solicitation had previously closed.<sup>9</sup>

---

<sup>3</sup> VPPA §2.2-4360 (A)

<sup>4</sup> See Exhibit 2.

<sup>5</sup> See Exhibit 3.

<sup>6</sup> See Exhibit 4.

<sup>7</sup> See Exhibit 5.

<sup>8</sup> See Exhibit 6.

<sup>9</sup> See Exhibit 6.

- On January 21, 2022, VMI Published “short list” of Offerors to move onto the second<sup>10</sup> but did not distribute it to CAI.
- On 30 January 2022 CAI requested from VMI the status of the procurement.
- On January 31, 2022, only after CAI formally requested status, VMI provided the short list notification to Offerors dated January 21, 2022.<sup>11</sup>
- On January 31, 2022 CAI requested access to the full procurement file as authorized by the VPPA to review the reasons it was not selected for the final three Offerors.<sup>12</sup> VMI never responded to this request.
- On February 1, 2022 CAI made a second request for access to the Procurement record.<sup>13</sup>
- On February 4, 2022, the VMI Contracting officer requested the Selection Committee “confirm by reply that you have not had any conversations with any Offerors participating in the solicitation.”<sup>14</sup>
- VMI conducted interviews with the short list Offerors February 3-4, 2022.
- On February 9, 2022 VMI acknowledged receipt of CAI January 31, 2022 request for the procurement file stating it would be available after publication of the Notice of Intent to Award for the RFP.<sup>15</sup>
- On February 9, 2022, CAI responded to VMI re-stating its request the procurement file be provided electronically.<sup>16</sup>
- An undated Notice of Intent (NOI) to award to NewPoint was published to eVA on February 28, 2022. The NOI was not date stamped as required when a protest is anticipated as documents referenced herein show VMI anticipated.<sup>17</sup>
- On February 28, 2022 VMI agreed to send the procurement file to CAI electronically.<sup>18</sup>
- On March 7, 2022, CAI notified VMI a key record, the presentation to VMI by final three Offeror Veritas Academy, was missing from the procurement file. This presentation was critical to comparing CAI’s score with Veritas’ scores and VMI’s selection of the final three Offerors that would proceed to the second round.<sup>19</sup>
- On March 8, 2022, VMI stated to CAI it had uploaded the full procurement file to CAI.<sup>20</sup>
- On March 8, 2022, CAI notified VMI that the procurement record provided was not complete as substantial files required to be in the procurement record by the VPPA, Rules APSPM, Manuals and DGS Offerors’ manual were missing. These included, without limitation, all records relating

---

<sup>10</sup> See Exhibit 7.

<sup>11</sup> See Exhibit 7.

<sup>12</sup> See Exhibit 8.

<sup>13</sup> See Exhibit 9.

<sup>14</sup> See Exhibit 10.

<sup>15</sup> See Exhibit 11.

<sup>16</sup> See Exhibit 12.

<sup>17</sup> See Exhibit 1.

<sup>18</sup> See Exhibit 13.

<sup>19</sup> See Exhibit 14.

<sup>20</sup> See Exhibit 15.

scoring and selection of Offerors for the top 3, to include interviews, and award of a contract to NewPoint.<sup>21</sup>

- On March 9, 2022, after normal close of business, VMI provided CAI 12 additional files from the procurement record it previously improperly withheld stating they comprised all Selection Committee scoring sheets and interview notes for the procurement. VMI admits that some interview notes were not secured and so were unavailable to CAI. CAI accessed the files at the start of the business day March 10, 2022.<sup>22</sup>
- On March 9, 2022, **VMI extended the deadline for CAI to submit its protest to March 21, 2022**.<sup>23</sup> There can be no dispute that this protest is timely.
- On March 18, 2022, despite the above-described multiple obfuscations, delays, and repeated withholding/piecemealing by VMI, CAI submitted a timely protest and again requested, in the protest document, that the full procurement file be released as required by law.

As of the filing of this protest, CAI has still not been granted full access to the procurement file. As such, CAI's protest is timely under the VPPA and because of the above-described extension granted CAI by VMI. CAI further reserves to supplement and amend based on proper and full access being ultimately provided.

## **II. Protest of Award: VMI's award and corresponding application of Commonwealth of Virginia statutes, policies and regulations was arbitrary and capricious.**

- Code of Virginia § 2.2-4300, Virginia public Procurement Act (VPPA), establishes the public policies pertaining to governmental procurement from non-governmental sources in Virginia. VMI, as a state educational institution, is bound by the VPPA.
- The Commonwealth of Virginia Vendors Manual ("Manuals") is published under the authority of 2.2-1111 of the Code of Virginia. Its purpose is, *to set forth rules and regulations applicable to the purchase of nontechnology goods and nonprofessional services by the Commonwealth*.<sup>24</sup>
- The VMI contract is governed under the Rules Governing Procurement of Goods, Services, Insurance and Construction by a Public Institution of Higher Education of the Commonwealth of Virginia ("Rules").<sup>25</sup>
- The solicitation was subject to the provisions of the Commonwealth of Virginia's Purchasing Manual for Institutions of Higher Education and Their Vendors "Manuals".<sup>26</sup>
- The Virginia Department of General Services Agency Procurement and Surplus Property Manual (APSPM), *establishes the policies and procedures to be followed by State agencies and select institutions in conducting procurements and contract administration within their delegated limits. The APSPM is updated by issuance of Procurement Information Memoranda (PIM).*

---

<sup>21</sup> See Exhibit 16.

<sup>22</sup> See Exhibit 17.

<sup>23</sup> See Exhibit 18.

<sup>24</sup> <https://dgs.virginia.gov/procurement/policy-consulting--review/policy/>

<sup>25</sup> RFP Section III, <https://vascupp.org/sites/vascupp/files/2020-05/vascapp-governing-rules.pdf>

<sup>26</sup> RFP Section VIII, A. Purchasing Manual, <https://vascupp.org/sites/vascupp/files/2020-09/hem.pdf>.

*PIMs are a result of procurement law changes as a result of the General Assembly each year and/or Executive Orders that impact procurement.*<sup>27</sup>

**a. VMI implemented APSPM compliance in the solicitation and must be held to APSPM standards in this procurement.**

- On March 9, 2022, VMI claimed that the APSPM does not apply to any of its procurements, stating “VMI is not governed by the APSPM.”<sup>28</sup>
- In her guidance after review of the RFP draft submitted by VMI’s Chief DEI Officer Dr. Jamica Love to the Selection Committee, VMI Procurement Officer Maj Lynn Carmack, VMI Assistant Director for Procurement Services, stated VMI is following APSPM “requirements” for SWaM scoring, Offeror questions, Non-Disclosure Agreements (NDA), communications, RFP Evaluation and Committee Instructions as well as other areas of the procurement. VMI Procurement Services edited the RFP to reflect those requirements stating, *This is VMI policy as well as in the APSPM to protect the integrity of the procurement.*<sup>29</sup>

VMI’s “cherry picking” of what portions of the APSPM it chooses to comply with and not to comply with in order to meet their objective of awarding the contract to a specific Offeror while avoiding scrutiny and a legitimate protest violates “the integrity of the procurement” and is the very definition of arbitrary and capricious. Regardless of application, VMI’s failure to adhere to the VPPA, the ASPM, and best practices designed to ensure a proper process is indicative of the arbitrary and capricious nature of the process engaged and the corresponding improper and unlawful award.

Just as with violations of the VPPA and Vendor’s manual, VMI cannot now dismiss its violations of the APSPM detailed in CAI’s protest.

**III. Protest of Award: The price evaluation and scoring was arbitrary and capricious.**

- Section VI, Proposal Preparation and Submission, of the RFP did not contain any specific instructions or requirements for a Offeror’s price format or structure in their proposal.<sup>30</sup>
- Section VI, Proposal Preparation and Submission, of the RFP did not contain any specific instructions or requirements for a Offeror’s price format or structure in their proposal.<sup>31</sup>
- For cost and pricing Section VI, B, Specific Instructions under item 6. States only “Proposed cost” as an item required to be included in Offeror’s proposal with any further specifications as to format or other requirements.<sup>32</sup>

---

<sup>27</sup> <https://dgs.virginia.gov/procurement/policy-consulting--review/policy/>

<sup>28</sup> See Exhibit 19.

<sup>29</sup> See Exhibit 20.

<sup>30</sup> See Exhibit 3.

<sup>31</sup> See Exhibit 3.

<sup>32</sup> See Exhibit 3.

- Section VII, A, Evaluation Criteria under item 3. States only “price” with 15 points as the total points available with no further criteria provided for how price scoring would be calculated by the evaluation panel.<sup>33</sup>

**a. VMI’s undefined procurement type and lack of any price proposal structure resulted in arbitrary and capricious scoring.**

- Section IX, Special Terms and Conditions, 3, Award of Contract, states only that “*Price shall be considered, but need not be the sole determine factor*”. No price submission format or price proposal structure requirement was issued with the RFP or addendums and no criteria was provided to Offerors or the Selection Committee for how price scoring would be calculated by the Selection Committee.<sup>34</sup>
- Section XI, Pricing Schedule only that “*the contractor shall provide pricing for all products and services included in the proposal indicating one-time and on-going costs*”. No price submission format or requirement was issued and no criteria provided for how price scoring would be calculated by the evaluation panel.<sup>35</sup>
- The RFP did not include an attachment containing any specified pricing schedule required for proposals.<sup>36</sup>
- In the Addendum 1 response to RFP Question and Answer #4, “*Who will the training be provided for; how many groups/people in need of training represent the VMI community?*”, VMI Responded, “*Employees. Groups will be determined based on the type of training, amount of available trainers.*”<sup>37</sup> It did not provide any specifics a Offeror could reasonably rely upon to calculate workload, man-hours and costs for a Firm-Fixed-Price (FFP) to similar pricing proposal.
- In the Addendum 1 response to RFP Question and Answer #7, “*Would you qualify what providing ‘support’ means as it relates to ‘strategic plans at the institutional level’ & ‘Strategic work of the Chief Diversity Officer (CDO)?*”<sup>38</sup>, VMI Responded, “*Helping in identifying best approach for implementing ‘strategic plan at the institutional level.’ Help in identifying ways to contend with implicit bias. Provide CDO with ways to process the challenges of working on DE&I at a strategic level.*”<sup>39</sup> It did not provide any specifics a Offeror could reasonably rely upon to calculate workload, man-hours and costs.
- In Addendum 1, response to RFP Question and Answer #15, “*Who is contractor expected to provide coaching for others than executives and the Board of Visitors*”<sup>40</sup>,

---

<sup>33</sup> See Exhibit 3.

<sup>34</sup> See Exhibit 3.

<sup>35</sup> See Exhibit 3.

<sup>36</sup> See Exhibit 3.

<sup>37</sup> See Exhibit 4.

<sup>38</sup> See Exhibit 4.

<sup>39</sup> See Exhibit 4.

<sup>40</sup> See Exhibit 4.

VMI Responded, *“Primary institution executives and Board of Visitors, with limited coaching for Inclusive Excellence Committee, and DE&I advocates and allies.”*<sup>41</sup> None of these populations were identified in terms of the number of persons, frequency of training or mentoring, or other interactions that would be required in a legitimate Statement of Work. Without identifying the numbers of persons and frequency, the workload was effectively infinite and so required Offerors to “worse case” their own estimates without any of the normal fact-based workload provided and reasonable expected RFPs. It did not provide any specifics a Offeror could reasonably rely upon to calculate workload, man-hours and costs.

- Also in response to Addendum 1 RFP Question and Answer #15, *“(How often, session duration, number of sessions, issues addressed during the coaching sessions,)”*<sup>42</sup>, VMI Responded, *“On an as needed basis to assist with accomplishing the goals of the Inclusive Excellence Plan a outlined in question #13.”*<sup>43</sup> The response to question #13 only provided high level goals and Measures of Success without any of the specific requested by the Offeror submitting the question. *“On an as needed basis”* creates an unlimited workload more suited to a time and materials contract or a Task Order/Purchase order based contract using fixed-price labor categories (LCAT) as CAI proposed than FFP. It also required Offerors to “worse case” cost without any of the normal fact-based workload provided and reasonably expected in RFPs. It did not provide any specifics that an Offeror could reasonably rely upon to calculate workload, man-hours and costs.
- In response to Addendum 1 RFP Question and Answer #32, *“What pricing structure are you looking for in the price schedule (e.g. FFP, LS, T&M, etc.?)”*<sup>44</sup>, VMI Responded, *“Waiting on verification for meaning of FFP, LS, & TM.”*<sup>45</sup> The fact that the VMI did not even know the difference between a Firm-Fixed-Price (FFP), Time and Materials (TM) and LS contract, and could not notify Offerors which type of contract was being competed is inexcusable. In the Addendum 2 RFP Question and Answer to the question, *“What pricing structure are you looking for in the price schedule (e.g., FFP, LS, T&M, etc.)?”*<sup>46</sup> VMI responded, *“VMI isn’t requiring a specific price structure. The vendor should submit pricing according to the structure that best fits their methodology to provide the requested services.”*<sup>47</sup> VMI never directly answered this essential question in any formal Addendum available to Offerors. The question was about the type of contract and not the price structure for the contract. The Addendum 2, Question and Answer

---

<sup>41</sup> See Exhibit 4.

<sup>42</sup> See Exhibit 4.

<sup>43</sup> See Exhibit 4.

<sup>44</sup> See Exhibit 4.

<sup>45</sup> See Exhibit 4.

<sup>46</sup> See Exhibit 5.

<sup>47</sup> See Exhibit 5.

inquiry, “*What type of contract will this be*”<sup>48</sup> again specifically asked for contract type, to which VMI’s response was, “*This will be a term contract with the first term to expire on 30 June 2023 and with four (4) optional one-year renewals.*” VMI never answered the question as to the type contract for this procurement. This created the situation where Offerors would, and reasonably could, make cost proposal on how they interpreted the workload. This, itself, make scoring of price completely arbitrary and capricious.

- In response to Addendum 1 RFP Question and Answer #33, “*Is there a budget set aside for this project?*”<sup>49</sup>, VMI Responded, “*There is a budget for this project and pricing is one of the scoring criteria, but this is an RFP and not a price-based award. All proposal pricing should be based on what the vendor considers to be their best price for the services they are providing. Budget figures are not available for any contractors to review*”<sup>50</sup> VMI’s response made scoring price arbitrary and capricious. Pricing was left completely to the contractor based solely on “*what the vendor considers their best price for the services they are providing.*” Vendors were given no parameters on which to scope or even estimate price for specific, equally unspecified, tasks. This, again, created the situation where Offerors were forced to make their cost proposal based solely on how they interpreted the workload from vague requirements. This further made scoring of price completely arbitrary and capricious.
- In response to Addendum 1 RFP Question and Answer #41, “*Please confirm if there is a required format for pricing. If there is a required format, please send*”<sup>51</sup>, VMI Responded, “***The vendor should provide their pricing according to their standard format. VMI is not requiring a specific pricing structure.***”<sup>52</sup> [emphasis added] By leaving the price structure and format for price structure completely up to the Offerors, VMI made it inevitable that scoring price in proposals would be arbitrary and capricious. Here again, even the format to submit pricing as left completely to the Offeror and so CAI should not be penalized or not scored for price by submitting a price proposal in its own standard structure.
- In response to Addendum 2 RFP Question and Answer, “*Should course pricing be provided*”<sup>53</sup>, VMI Responded, “*No, course pricing isn’t needed for the RFP review.*”<sup>54</sup> [emphasis added] By leaving the price structure and format for price structure completely up to the Offerors, VMI made it inevitable that scoring price in proposals would be arbitrary and capricious. Here again, even the format to submit pricing was left

---

<sup>48</sup> See Exhibit 5.

<sup>49</sup> See Exhibit 4.

<sup>50</sup> See Exhibit 4.

<sup>51</sup> See Exhibit 4.

<sup>52</sup> See Exhibit 4.

<sup>53</sup> See Exhibit 4.

<sup>54</sup> See Exhibit 4.



completely to the Offerors and no Offeror should be penalized for how it proposed pricing as CAI was.

Establishing and stating a contract type is required by APSPM, VPPA, Rules, Purchasing Manual, Vendors Manual. It is an essential VPPA-based foundation of the procurement process that the price proposal structure used by Offerors to propose, and the price scoring method used for source selection and award, must be objective, clearly defined and easily understandable. The method used for price scoring must be one that can be applied to the price proposal requirements, and scoring results must be documented in the procurement record to the level of detail that any reasonable person can understand it and conclude it was not arbitrary or capricious. The price scoring used must be clearly defined and documented in the published evaluation plan. None of this occurred in the subject procurement, resulting in a process, and in an award, that is undauntedly arbitrary and capricious

The RFP language itself and VMI's responses to numerous questions on the type contract, price structure, and related areas required for proposals were, themselves, arbitrary, capricious, and evasive, setting the stage for an improper procurement process resulting in an unlawful award. The language and associated VMI actions unquestionably produced the effect of making any price scoring arbitrary and capricious. VMI staff involved in this procurement were aware of the arbitrary and capricious nature of their actions, and expected a protest, from the start. According to VMI Finance Officer, BG Clarke, "We are getting a great deal of consternation on the subject procurement. I expect that the probability is high that this procurement will be protested."<sup>55</sup>

Not requiring course pricing and leaving not only the type contract, but also pricing completely up to Offerors without any guidance or structure effectively made this a labor hours-based services procurement. Not providing workload data such as the exact number of personnel to be trained in each employee and cadet category, number of desired class sessions, frequency, time period, scope, etc. made it impossible for consistency between Offeror pricing, which violates the explicit aim of the VPPA and other procurement regulations. For example, the normal student to instructor ratio is 1:12 but, as seen in the wide range of proposals, the ratio varied to the extent the winning Offeror, NewPoint, proposed only an "estimate" and not a fixed price inclusive of all training and events.<sup>56</sup>

Not providing a contract type for Offerors to use in structuring price proposals, coupled with stating all pricing was completely up to the contractor's individual subjective interpretation of vague requirements, forced Offerors to use any price structure for any contract type they felt appropriate to

---

<sup>55</sup> See Exhibit 59.

<sup>56</sup> See Exhibit 21.

meet the RFP requirements. This eliminated any ability to score one proposal against the other based on a common criterion for an “apples to apples” scoring method, leading to arbitrary decisions not based on any logic or standards common to all bidders. It appears that VMI provided bidders the most points for low price bids, but these bids were not offering the same services. As a result, the scoring was arbitrary from the start.

That VMI never answered the repeated submitted pre-proposal question of FFP, LS, & TM - and admitted they did not know what they meant<sup>57</sup> in itself nullifies (i) any proposal scoring for price, (ii) the RFP itself and (iii) any award in which price was used to down-select to the final three Offerors and award. VMI, in its answers, concedes that it did not provide the information necessary to permit a fair and non-arbitrary process. Instead of cancelling the procurement and reevaluating its purpose and providing the necessary information, it proceeded with this improper and unlawful process.

The vagueness of the requirement, contrary to the letter and intent of the APSPM, VPPA, Rules, Purchasing Manual, Vendors Manual, did not provide Offerors a sufficient scope of work to determine a fixed price. For example, “Strategic work”, based on the size and complexity of the organization and stakeholder diversity, could be small or extremely large and complex requiring multiple Full-Time-Equivalents (FTEs).

Whereas VMI did not provide a pricing template and left pricing completely to the discretion of the Offeror, Team CAI proposed a standard hourly rate for all labor categories (LCAT) in fully burdened rates.<sup>58</sup> This was a legitimate and feasible proposal to provide a cost proposal lacking the required details needed for any Offeror to calculate labor hours, Other Direct Costs (ODC) and other level of effort factors required to complete the project. VMI did not clarify per an Addendum if the contract would be FFP, T&M or other approach in response to the Q&A and each of those would require different pricing approaches. CAI’s approach was the most flexible for VMI and a generally accepted approach for VASCUPP contracts of this nature that CAI is already a prime contractor for and already include training development, delivery and related areas VMI could access. This is not to attack other bidders, but rather to demonstrate that the process and corresponding evaluations were so flawed, that an arbitrary and capricious award was the only possible outcome.

CAI offered to negotiate the FFP hourly rates into a best and final price in instances where full or part-time office support will be provided to VMI or for large training events. This would have allowed CAI to discount further the overall cost on a per-project basis and provide VMI a cost-avoidance over paying hourly rates for these projects. It would have resulted in direct cost savings and avoidances to VMI, an agency or institution of the Commonwealth, and other contract users. CAI has used this process in the past with Commonwealth and Federal customers during negotiations and in Task Order/Purchase

---

<sup>57</sup> An understanding of standard contract types is simple and considered “basic contracting 101”

<sup>58</sup> See Exhibit 22.

Order (TO/PO) development to include VASCUPP contracts with William and Mary for training and consulting services.

CAI's price proposal using LCATS was entirely appropriate and should have been scored properly. The arbitrary and capricious method used to score pricing resulted in CAI incorrectly receiving a score of zero ("0") from the evaluation panel.<sup>59</sup> This example demonstrates and evidences the arbitrary and capricious nature of the award and scoring used. This type of issue was entirely avoidable, but for VMI's decision not to follow proper processes nor to comply with the VPPA.

**b. The price scoring structure and method used was arbitrary and capricious.**

The arbitrary and capricious nature of price scoring is also shown by the wide variation of price proposal and approaches submitted by the offers (TM, FFP, etc.) and the favorable scoring approaches applied to the three Offerors selected for the final interviews. - In some cases, the finalists selected for interview did not even provide a complete cost for their proposals as required by the RFP.<sup>60</sup> As shown below, this specifically includes the winning Offeror NewPoint.

- **NewPoint Strategies, LLC**<sup>61</sup> – The winning Offeror - proposed on fixed events (e.g. only one session of Senior Level training/Coaching, only 15 sessions of all-staff training, etc.) when the RFP and the associated Q&A responses required services for coaching, mentoring, support to the Diversity Office etc. were as required or on an "as needed" basis. NewPoint also listed "Manager/Supervisor Training" as "*Number of participants is not specified in the RFP*" pricing as "*TBD*".<sup>62</sup> NewPoint's approach was similar to CAI's LCAT-based proposal wherein CAI proposed a fully-burdened hourly rate and cost would be determined "*TBD*" when VMI specified the exact requirement. In addition, NewPoint's winning price of \$99,504.00 is not a firm fixed price as it, according to the proposal, is "*Total based on known parameters provided in the RFP*".<sup>63</sup> This unfairly opens the door for NewPoint to charge significantly higher costs after contract award when VMI properly defines the requirement. The same could have been allowed to CAI but was not. Despite these obvious errors NewPoint was rated higher than many other Offerors who bid a full-fixed price and especially CAI that received zero (0) points in scoring.

---

<sup>59</sup> See Exhibit 23.

<sup>60</sup> Instead of being marked negative (with points deducted from score on their RFP bids) for the failure to adhere to RFP requirements, these bidders received favorable treatment. This is another clear instance of arbitrary and capricious scoring, where VMI knowingly and intentionally did not adhere or consider the requirements it set forth. This type of improper conduct and analysis violates the VPPA.

<sup>61</sup> See Exhibit 24.

<sup>62</sup> See Exhibit 21.

<sup>63</sup> See Exhibit 21.

- **This situation results in a completely unfair, arbitrary, and capricious process, and the resulting unlawful award must be overturned.**
- **CK Business Strategies**<sup>64</sup> - One of the final three selected for interview – CK Business Strategies proposed using a Pricing Schedule based on training events with associated curriculum development. The proposal did not include mentoring and other RFP-required areas but did include options for video simulations not required by the RFP.
  - **The lack of inclusion of such required areas, despite being mandated in the RFP, inexplicably did not harm their scoring.**
- **CIDIS, LLC**<sup>65</sup> - CIDIS proposed general services utilizing a Time and Materials contract structure that was scored according to a low price low bid firm-fixed-price procurements.
- **CTW**<sup>66</sup> - Price proposal structured as a base year with separate pricing for all 5 option years using a combination of delivery approaches. The RFP called for a based and only four (4) option years. From the scoring tables, CTW’s five year total price for the base year plus all five option years was improperly scored against the single year cost proposal of other Offerors.<sup>67</sup>
  - **This type of scoring, once again, violates the basic “apples to apples” comparison necessary to effectuate a non-arbitrary, non-capricious decision process.**
- **Veritas Academy**<sup>68</sup> - One of the final three Offerors selected for interview in the final round Offeror – Proposed costs based on Contract Line Item Numbers (“CLINs”), although the RFP did not contain any CLINs. The cost submitted by Veritas in its bid included the caveat that “*Actual recommended training is unknown until Assessment results, so Veritas is putting in a placeholder for number of training blocks.” [emphasis added]. As with NewPoint, this was not a fixed price for the contracted services but rather, just as stated, a “placeholder” creating the likelihood costs will increase (likely significantly) after award. It based the significant “as needed, when needed” strategic planning work on the proposition that “*Strategic communication is Veritas helping ghostwrite communication to staff/team that provides intent and updates of efforts.*” Such work is far below even basic strategic plan development and employment requirements as described in the RFP. This approach gave Veritas the advantage of negotiating the actual requirement after the fact (an option not provided to CAI) with a more flexible price structure. Additional analysis is not possible at this time because the procurement file inexplicably does not include Veritas’s presentation slides and related documents because VMI claims it did not receive or keep a copy of the presentation, which is a violation of the VPPA requirement that the procurement file contain*

---

<sup>64</sup> See Exhibit 25.

<sup>65</sup> See Exhibit 26.

<sup>66</sup> See Exhibit 27.

<sup>67</sup> See Exhibit 23.

<sup>68</sup> See Exhibit 28.

all relevant records so any objective reviewer can determine precisely how (and on what basis) the procurement decision was made and that it was made legitimately.<sup>69</sup>

- **The failure to maintain records is further evidence of the arbitrary and capricious nature of the process VMI employed, resulting in the improper award being challenged here.**
- **FIG Strategy and Consulting services**<sup>70</sup>- FIG proposed event costs to include training the entire Corps of Cadets (not a RFP requirement but added after the fact in VMI's responses to the Q&A) and included video training (not an RFP requirement). Price was for the base year only.
- **iPONDER**<sup>71</sup>- Proposed cost for just the base year and in workshop delivery format. Price was not all inclusive as it did not include all costs with price proposed, "exclusive of travel and customary expenses".
- **Mayadan Consulting Associates LLC**<sup>72</sup>- Proposed a flat rate multiplied times estimated work hours for only the base year.
- **Racial Equity Group**<sup>73</sup>- Proposed using Full Time Equivalent (FTEs) based on their own estimate of hours required.
- **TMI Consulting**<sup>74</sup>- Proposed using hourly rates and terms that would be broken out by Separate Statements of Work at a later date using a combination of single year approaches, 18 month approaches and others that did not meet the base year plus four option year format required by the RFP. TMI also required \$75,000 "due at signing" the contract, which constitutes an "up front" payment prohibited by the VPPA. TMI Consulting's TO approach was similar to CAI's proposed cost in bidding a fixed-price LCAT structure where individual TO/POs would be priced based on the work agreed between VMI and CAI. VMI assigned point values to TMI, but gave CAI a "?" point score.
- **WGU Lab Services**<sup>75</sup>- Proposed a single year cost based on generic deliverables such as "WGU Lab Services", CAPE Inclusion Services", etc.

Despite the variety of proposals, some of which were not compliant with the RFP, all Offerors received higher pricing scores than CAI's "0" score. This process was flawed from day one, resulting in arbitrary and capricious scoring, not only of CAI, but of all bidders. The award resulting from this fatally flawed process is arbitrary, capricious, and therefore (most importantly) unlawful.

---

<sup>69</sup> See Exhibit 19.

<sup>70</sup> See Exhibit 29.

<sup>71</sup> See Exhibit 30.

<sup>72</sup> See Exhibit 31.

<sup>73</sup> See Exhibit 32.

<sup>74</sup> See Exhibit 33.

<sup>75</sup> See Exhibit 34.

**c. The solicitation guidance for price proposals resulted in a proposed cost range across Offerors that could only result in arbitrary and capricious scoring.**

In addition to being arbitrary, capricious and skewed toward specific Offerors, scoring appeared to use a standard firm-fixed-price scoring formula with low cost receiving maximum points and higher proposed costs receiving percentages of the points based on ranking. This was *not* disclosed to Offerors during the proposal process and was not documented in the Evaluation Plan provided to the Selection Committee (as required). This method is normally used for FFP contracts and is not appropriate when Offerors are told they can submit pricing in any way they wanted. VMI's approach to scoring, and especially pricing, was questioned by, and even perplexed, its Selection Committee.<sup>76</sup> The fact that the RFP award decision-makers were confused by VMI's approach to scoring, and especially pricing, is damning evidence that this procurement process was arbitrary and capricious. The resulting award suffers from the same fatal flaw.

This arbitrary and capricious scoring guidance produced cost proposals from Offerors that ranged so widely for the same services they became irrelevant for scoring purposes. As shown in the table below taken from the procurement record<sup>77</sup> Offeror cost proposals ranged from \$99,325.00 (Veritas Academy) on the low end to \$7,817,277.00 (CIDIS) on the high end. **A spread of over \$7,717,952.00.** Such a broad range unquestionably evidences a process that can only be characterized as arbitrary and capricious. Scoring multi-year proposals against base-only year proposals was similarly arbitrary and capricious as it placed CAI and other Offerors who proposed multi-year pricing, per the RFP, at a disadvantage when scored against Offerors whose proposals only contained pricing for the base year.

CIDIS proposed a price of \$7,817,227.00 for the total period including the base plus five option years. Each option year was priced separately. In assigning scores based on the formula used by VMI, it focused on CIDIS' full base +5-year price vice its base-year only price of \$2,115,630.00 with ODCs or its \$1,827,930.00 base-year costs without ODCs, resulting in a lower score.

CTW proposed a price of \$472,340.16 for the base year without travel or ODCs and \$510,511.50 including ODCs and travel. Additional costs were provided for the option years. VMI used the \$472,314.16 price for scoring and not the all-inclusive price required by the RFP. The result was to improperly award CTW more points (3.15) than to FIG strategy (3.04) when FIG Strategies price was actually the lower all-inclusive one. Again, the arbitrary and capricious scoring results when a governmental or state-supported entity, such as VMI, puts out an RFP and then fails to follow proper standards and procedures for scoring the bids under the VPPA.

---

<sup>76</sup> See Exhibit 35.

<sup>77</sup> See Exhibit 23.

FIG Strategy proposed an 18-month initial period of performance (compared to 12 months in the RFP) with a price of \$490,000. Their proposal notes that the 12-month cost would be only \$326, 667.00. VMI scored FIG Strategies price using the 18-month vice the 12-month cost resulting in a lower score. This type of arbitrary & capricious scoring is not permitted and violates the VPPA and common sense.

FIRM	Fixed Costs	Points	SWaM Utilization	Points	Total Points
		15		20	
Center for Applied Innovation	?	0	100%	20	20
CIDIS	7,817,277.00	0.19	100%	20	20.2
CK Business Strategy	596,750.00	2.50	100%	20	22.5
CTW LLC	472,340.00	3.15	100%	20	23.15
FIG Strategy	490,000.00	3.04	100%	20	23.04
iPondr	331,100.00	4.50	0%	0	4.5
Mayadan Consulting Assoc.	450,000.00	3.31	2%	0.4	3.71
NewPoint Strategies	99,504.00	14.97	100%	20	34.97
Racial Equity Group	135,000.00	11.04	0%	0	11.04
TMI Consulting	1,288,216.00	1.16	100%	20	21.16
Veritas Academy	99,325.00	15.00	100%	20	35
WGU Labs	176,500.00	8.44	0%	0	8.44

CAI proposed a fixed fully-burdened labor rate for the bases plus all four RFP option years.

CAI is the only Offeror that received a “0” score despite the wide variety in Offeror price approaches and contract types proposed. RFP IX, 8, eVA Orders and contracts: *“This solicitation/contract will result in multiple purchase order(s) with the applicable eVA transaction fee assessed for each order”*<sup>78</sup> clearly states contract execution will consists of multiple TOs/POs as CAI proposed. CAI was penalized in scoring for following the RFO requirement while NewPoint and other Offerors were rewarded and NewPoint was selected for a proposal that did not include a TO/PO process. This type of scoring is inexplicable and demonstrates the unabashedly arbitrary & capricious nature of the scoring utilized in this unlawful process.

**d. Scoring of cost proposals did not properly utilize cost realism.**

VMI’s arbitrary and capricious scoring method lacked cost realism<sup>79</sup> resulting in unfair advantage and high scores for NewPoint and other Offerors to the detriment of more realistic cost

<sup>78</sup> See Exhibit 3.

<sup>79</sup> Cost realism analysis is the process of independently reviewing and evaluating specific elements of each Offeror ’s proposed cost estimate to determine whether the estimated proposed cost elements are realistic for the work to be performed; reflect a clear understanding of the requirements; and are

proposals by CAI and others Offerors. VMI did not apply any cost realism analyses to proposals during scoring as is prudent, appropriate and a procurement best (and common sense) practice when new requirements may not be fully understood by competing Offerors (or in this case, the selection committee itself). As covered above, the vague RFP requirement and non-specific responses to Offerors' requests to clarify them definitely resulted in significant misunderstanding of the requirements by the numerous Offerors. The wide variations in price proposals, method and price structure (T&M, FFP, etc.) among the Offerors' bids verifies this disconnect.

The RFP required offers to provide "*pricing for all products and services included in the proposal.*"<sup>80</sup> This required Offerors to include all ODC's<sup>81</sup> and Indirect Costs<sup>82</sup> in their proposals. Indirect costs would result in fully burdened labor rates.<sup>83</sup> Together in a proposal, these elements produce the fixed price for the proposal as requested in this procurement.

The RFP did not include any limiting language on the price increases the winning Offeror could apply to pricing beyond the base year. It did not require Offerors agree to any limit on price increases for the option years as is the practice with many other VASCUPP and state-wide contracts. NewPoint, Veritas, and CK Business strategies proposed only base-year costs. These would increase in the out-years, likely making the overall total lifecycle cost of the contract (plus option years) higher than CAI's proposal and possibly the CIDIS proposal as well. Giving advantage in the evaluation to Offerors who only proposed the base year over those who proposed a structure covering the life of the contract was arbitrary and capricious.

Veritas, another final three Offeror selectee, submitted the lowest price proposal at \$99,325.00. The price that did not reflect the actual cost of training and all other RFP required services to be provided, "*Actual recommended training is unknown until Assessment results, so Veritas is putting in a*

---

consistent with the unique methods of performance and materials described in the Offeror's technical proposal. Price realism is the analysis the government uses to evaluate whether an Offeror's price is "too low."

<sup>80</sup> See Exhibit 3

<sup>81</sup> Direct costs are specifically associated with the project's performance, meaning they can be directly assigned to the project, with a high degree of accuracy. Examples of a direct cost include labor, materials, and travel. The salary of a person working on a specific project or equipment and materials purchased and specifically used on the project can be directly associated with the project.

<sup>82</sup> Indirect costs are sometimes called Facilities and Administrative (F&A) costs or overhead. These costs include the cost of buildings, utilities, and other expenses necessary for the operation of VMI. They cannot be specifically associated with the project activity because these costs benefit the whole department, not just the Sponsored Programs Accounting and Regulatory Certification Chapter II: Other Direct Costs Revised April 2016 1 project. Overhead expenses pay for the lights, heat, and central and departmental administrative costs.

<sup>83</sup> The fully-burdened labor cost is the full hourly cost to employ a worker for the hours actually worked that includes wages and the "burden" of the additional costs.



*placeholder for number of training blocks.*"<sup>84</sup> VMI unfairly awarded Veritas a maximum price score, and selected them for the final three interviews, when they failed to provide "*pricing for all products and services included in the proposal*" as required by the RFP.<sup>85</sup> Veritas was also allowed to move forward in consideration to interviews with a price proposal allowing final cost to be determined at a later date when CAI, and other Offerors, were not. Veritas was given the full 15 allowable price points in scoring while CAI was given "0"<sup>86</sup> The scoring here reflects the serious flaws in the process and arbitrary & capricious nature of the award.

NewPoint provided the second lowest price proposal at \$99,500.00 for only the base year while much of the actual workload was listed as "TBD". This included, without limitation, "*Manager/Supervisor Training (Number of participants is not specified in the RFP) \$2,262/half day, cost TBD*"<sup>87</sup> As with Veritas, NewPoints price did not provide pricing for all products and services included in the proposal. NewPoint was given 14.97 of the 15 allowable points in scoring while CAI was given "0".<sup>88</sup> Another clear example of the fatal flaws of the process implemented by VMI.

CK Business Strategies, another final three selectees, submitted a proposal for only the base year with a final cost of \$596,750.00 that was \$497,425 more than Veritas and \$495,250 more than NewPoint.<sup>89</sup> Final cost did not include "*training for select groups*", "*video simulations*", "*video recaps*" or other products and services listed as optional in the price proposal. These would unquestionably incur additional costs given RFP Q&A response to the question asking how many groups/people would be trained was that "... *Groups will be determined based on the type of training, amount of available trainers*"<sup>90</sup> The Q&A question on how often, session duration, number of sessions and issues addressed during the coaching sessions for the large number of "other" VMI executives and the Board of Visitors was responded to by VMI as, "*On an as needed basis*"<sup>91</sup>. Adding in those prices would have made CK Business Strategies' proposal higher and more likely than not resulted in a lower price score. Not scoring CAI similarly for its approach of determining final cost based on fixed LCAT rates, or leaving the door open to add additional cost after award, was arbitrary and capricious; if given the same level of detail on the actual requirements, CAI could have provided a full FFP price. CK Business Strategies was given 2.5 of the 15 allowable points in scoring while CAI was given "0".<sup>92</sup> These issues in scoring and the process implemented cannot be reconciled, and make clear the award was arbitrary, capricious and unlawful.

---

<sup>84</sup> See Exhibit 28.

<sup>85</sup> See Exhibit 3.

<sup>86</sup> See Exhibit 28.

<sup>87</sup> See Exhibit 24.

<sup>88</sup> See Exhibit 21.

<sup>89</sup> See Exhibit 25.

<sup>90</sup> See Exhibit 4.

<sup>91</sup> See Exhibit 4.

<sup>92</sup> See Exhibit 21

Pricing for Offerors Racial Equity Group, iPonder, and CIDIS all also included “TBD” or other conditions on their pricing. All received points from the Selection Committee, but CAI received a score of “0”. VMI cannot, in good faith, defend this process and not concede that it was entirely arbitrary.

Given the vague requirements and lack of workload specificity (such as work required would be “as needed”, “when needed”, on call, etc. in the RFP), CAI’s LCAT structure was appropriate and other Offerors (such as CIDIS, TMI Consulting and others who used price reasonableness) proposed higher pricing. Given the vague nature of NewPoint’s proposal and “TBD” for the cost of major workload areas required by VMI, there is evidence the contract cannot be performed at the offered price and, therefore, the price is “too low”. Similarly, Veritas Academy’s proposal includes training for all 1,600 cadets completed in 4-6 hour training session. Given the course load at VMI it is unreasonable that cadets will be available for 4-6 hour blocks of additional mandatory instruction unless the cadets lose current open study and other time on nights and weekends. More likely than not, these vague requirements will need to be met by substantial additional Purchase Orders under the contract that will make the actual cost much higher. None of the Evaluator Scoring sheets provided to CAI in the incomplete procurement file released to date nor the presentations by the top three Offerors in the second round show the VMI evaluators ever attempted to verify the reasonableness of the final three interviewees’, and especially NewPoint’s, cost proposals. This is not covered in either the NewPoint or the CK Business Strategies presentation to the Selection Committee. As covered below, CAI has been denied the ability to review the Veritas Academy proposal presentation, as VMI did not provide it to CAI with the procurement record as required by law.

Not scoring CAI similarly for its approach of determining final cost based on fixed LCAT rates was arbitrary and capricious - - if given the same level of detail on the actual requirements, CAI could have provided a full FFP price.

<b>FIRM:</b>	<b>Points Awarded</b>	<b>Price Structure</b>	<b>Final Cost TBD</b>	<b>Years Covered</b>	<b>Fully Loaded</b>	<b>Includes ODCs</b>	<b>Allow Multiple Task Orders?</b>
CK Business Strategy	2.50	FFP	YES	Base+4	YES	YES	NO
Racial Equity Group	11.04	FFP (FTE)	YES	BASE	YES	YES	NO
NewPoint Strategies	14.97	FFP	YES	BASE	UNK	NO	YES
FIG Strategy	3.04	FFP	NO	BASE	YES	YES	NO
TMI Consulting	1.16	FFP + LCAT	NO	Base + 2	YES	NO	NO
CIDIS	0.19	T&M	YES	Base+4	YES	YES	YES
Veritas Academy	15.00	FFP	YES	Base	UNK	NO	NO
Center for Applied Innovation	0.00	FFP IDIQ (TO)	YES	Base+4	YES	YES	YES
WGU Labs	8.44	FFP	NO	Base	YES	YES	NO
CTW LLC	3.15		NO	Base+4	YES	YES	NO

FIRM:	Points Awarded	Price Structure	Final Cost TBD	Years Covered	Fully Loaded	Includes ODCs	Allow Multiple Task Orders?
iPonder	4.50	FFP	YES	Base+4	NO	NO	NO
Mayadan Consulting Association	3.31	FFP	NO	Base	YES	YES	NO

**Notes:**

- 1- Final cost assumes there will be no "training for select groups", video simulations or recaps as well as no other products and services listed as optional in the price proposal. These would incur additional costs. Fixed pricing was not provided for options listed in the price proposal.
- 2 - Additional services for the areas in the RFP and Q&A listed, as to be identified not listed in the pricing.
- 3- Priced only on NewPoint's own analysis of the RFP requirements (not specified) cost for any services NewPoint did not assume were in the RFP will be additional cost to VMI. No manager or supervisor training is included in the total proposed price. No training for Corps of Cadets included in the training.
- 4- Additional cost (unspecified) for annual update to the videos. Does not include Corps of Cadets. "Creative development and production for cadet training videos will be billed as each video or group of videos is completed, which may alter the cost amounts shown".
- 5 - Separate SOW required for each phase of work. Additional cost for work between phases. Hourly rate doubles after normal work hours, during vacation time, weekends, holidays, etc.
- 6 - Per the cost proposal, "The proposed costs outlined in this volume do not include training, as those costs will need to be determined once courses are identified."
- 7 - Price is highly susceptible to change based on the proposal condition: "Actual recommended training is unknown until Assessment results, so Veritas is putting in placeholder for number of training blocks."
- 8 - CAI price uses standard LCAT pricing at the PO level determined once specific requirements are provided in order to return the lowest cost.
- 9 - Price Proposal states cost is "exclusive of travel and customary expenses"
- 10 - Limited to only 450 man-hours for the year of the contract period proposed.

**e. VMI's arbitrary and capricious price scoring method unfairly resulted in CAI receiving a "0" point score for price.**

Once VMI left the proposal format and price determination completely to the Offerors, the burden shifted to VMI to develop and apply a fair and equitable price evaluation and scoring process for any price proposal submitted. Unfortunately, as detailed herein, VMI failed to create a process to avoid its issuing an arbitrary & capricious award. It is not clear whether this was intentionally done in efforts to help preferred bidders; however, regardless of intent, the resulting award is unlawful.

CAI was unfairly given a score of zero points in the evaluation based solely on VMI's establishment of an arbitrary and capricious price scoring approach, which was doomed to result in an unlawful award. In complete compliance with the RFP and Q&A instructions, *"The Offeror should*

*provide their pricing according to their standard format. VMI is not requiring a specific pricing structure*”<sup>93</sup> [emphasis added] CAI provided pricing in its standard LCAT format and its associated pricing structure. CAI should not have been unfairly penalized in scoring because VMI failed to provide sufficient specificity in its requirement for more detailed pricing, and especially because VMI could not figure out how to fairly score proposals in the free-range price proposal environment it created. Other Offerors who proposed a TO and TBD approach were scored, including NewPoint as the winning Offeror.

The minimum information available to CAI from the records released clearly shows price scoring to be arbitrary and capricious, as well as to raise serious questions as to the integrity of the procurement itself and the overall evaluation process. CAI respectfully calls on VMI to remedy this unlawful award.

There are more likely than not significant additional violations and errors relative to price scoring of CAI (and the other bidders’ proposals) that CAI could not discover or sufficiently document for this protest, due to the significant missing key records in the procurement file provided to CAI (see below). CAI strongly believes that, when VMI is compelled to make full release of the procurement record, as they should have under the law, additional evidence of arbitrary and capricious conduct in this RFP will be documented. However, even absent that additional evidence, CAI respectfully submits that the award, as detailed herein, is arbitrary and capricious.

**f. Cost proposal from the top three Offerors selected for the final round shows NewPoint received preferential treatment, raising a reasonable conclusion that two of the final three Offerors were provided inside information on the procurement price target.**

Within this wide variation of prices proposed, the main two Offerors selected for the final three interviews (NewPoint Strategies and Veritas Academy) are only separated by \$179.00. The significant spread between them and the next lowest Offeror was over \$35,000. The difference between them and the next most qualified Offeror (CK Business Strategy) that moved into the final three companies for interviews (NewPoint, Veritas and CK Business Strategy) is even more significant. CK Business Strategies price proposal of \$596,750.00 was \$497,425 more than Veritas and \$495,250 more than NewPoint.<sup>94</sup> The major scoring factor resulting in NewPoint and Veritas advancing to the final three Offerors for interviews is their disproportionately high price scores where they were only separated by 0.03 points (15.00 vs 14.97). The significant difference in price compared to CK Business Strategy as the next most qualified bidder, and their closeness in price, raises significant questions, clearly shows preference and is a high indicator that NewPoint and Veritas were given unfair advantage by one or more individuals involved in the procurement. As detailed herein, that advantage was arbitrary and capricious.

---

<sup>93</sup> See Exhibit 4.

<sup>94</sup> See Exhibit 25.

This unquestionably shows two of the three Offerors selected for interviews had a substantially different understanding of the requirement than the other Offeror selected by the Selection Committee based on technical proposal scores.

Any reasonable person would also conclude from the closeness of their pricing (and significant difference between that pricing and CK Business Strategy pricing) that NewPoint and Veritas likely had very specific information about the requirement not available to other Offerors. Both proposed near the same low cost, and both were so widely separated from other Offerors.

As shown below, winning Offeror NewPoint is the only Offeror VMI allowed to adjust its proposed pricing after the RFP closing date and prior to selection of the final three Offerors. This is the very definition of arbitrary and capricious.<sup>95</sup> The aim of the VPPA is to create a process beyond reproach and impropriety (actual impropriety and/or the appearance of same). Unfortunately, VMI's improper process has defeated this statutory aim, and the arbitrary & capricious award must be overturned.

**g. Vendor Price scoring did not include justification or explanations.**

The procurement record does not include a required narrative formula and other documentation that any reasonable person could use to determine or understand the scoring method used or the justifications for scores assigned to Offerors for their proposals as required by the APSPM, VPPA, Rules, Purchasing Manual, Vendors Manual.

**IV. Protest of Award: Contract awarded for goods and services that violate the Governor's policies and directives against divisive trainings and ideologies, including Critical Race Theory (CRT).**

- Governor Youngkin issued Executive Order #1<sup>96</sup>, designating the Commonwealth Chief Diversity, Opportunity & Inclusion Officer with a stronger and more focused role on promoting ideas, policies, and economic opportunities for disadvantaged Virginians, including Virginians living with disabilities and bringing Virginians of different faiths together. VMI's RFP, scoring and contract award continue to be based on "Equity" in direct violation of the Commonwealth of Virginia's policy and directives. During his March 6, 2022 presentation at the University of Virginia, Governor Youngkin further clarified his Executive Order #1 policy and direction to cover Institutions of Higher Education, in addition to K-12 (as covered in the original Executive Order).<sup>97</sup>

---

<sup>95</sup> See Exhibit 6.

<sup>96</sup> See Exhibit 36.

<sup>97</sup> <https://www.law.virginia.edu/news/202203/youngkin-calls-law-students-public-service-state-level>

- VMI's disregard for the Governor's mandate is flagrant, direct, and intentional. Quoting the Washington Post<sup>98</sup>, "...Bill Wyatt [VMI Director of Communications], VMI's spokesman, pointed to [Maj. Gen.] Wins' 'One Corps-One VMI' plan, which was unveiled this past spring and calls for advancing the college's experience, traditions and culture to be 'more positive and inclusive' and 'producing leaders prepared for the complex world we live in today and into the future.'

"General Wins is definitely very ambitious. He's very invested in VMI. . . . He is not afraid to come in and shake things up and make decisions and move the ball forward,' Wyatt said. 'I think that it would be silly for the past 18 months, going through a leadership change and a new plan, I think it would be silly to roll all that back just because of the results of an election.'" [Emphasis added]

- Goal #3 in the Executive Summary of the VMI Inclusive Excellence One Virginia Strategic Plan stated<sup>99</sup>: "Engage students, faculty, staff, alumni, and the community in learning varied perspectives of domestic and international diversity, equity, inclusion, and social justice [emphasis added]." It goes on to further state: "VMI will consider input from other state agencies and guidance from the following publications in developing the Plan: 1. The ONE Virginia Plan (Many Virginians: One Commonwealth)"
- In the Preface of the former One Virginia Plan<sup>100</sup>, now rescinded in total by Governor Youngkin, but used by VMI as the basis for the RFP requirements, scoring and award, divisive concepts, including some Critical Race Theory ideology abound. Examples include:
  - "Inequity is rooted in America's foundation. Accordingly, Virginia's history is replete with unrelenting, pervasive structural racism starting with the extermination of its Indigenous community, the chattel enslavement of Africans, racialization of immigration..."
  - "American institutions of racial domination have evolved from slavery and segregation to punitive, exploitative, and unjust systems of housing, education, labor markets, criminal justice, and more. White supremacy emerged early on to justify racism and racial violence."
  - "In the 400+ years since, a plethora of laws and policies have been established to create a caste-like racial hierarchy system that limited the rights and freedoms of Black and Indigenous people, and People of Color (BIPOC)."

---

<sup>98</sup> [https://www.washingtonpost.com/local/youngkin-vmi-northam-racism/2021/11/12/718cdb8a-419e-11ec-a88e-2aa4632af69b\\_story.html](https://www.washingtonpost.com/local/youngkin-vmi-northam-racism/2021/11/12/718cdb8a-419e-11ec-a88e-2aa4632af69b_story.html)

<sup>99</sup> See Exhibit 37

<sup>100</sup> See Exhibit 37

- VMI's Diversity, Equity, and Inclusion Review: 30 Day Report; from the One Corps - One VMI A Unifying Action Plan<sup>101</sup>, Superintendent MG Wins states:
  - "...I [Maj. Gen. Wins] have concluded VMI must move past accusations of institutional racism by placing increased emphasis and focus on diversity, equity and inclusion ...[emphasis added].
  - Using the contractor Paradigm Reach, VMI is teaching multiple divisive topics aligned with CRT ideology that will be reinforced and expanded by this contract to include, without limitation, Unconscious bias (the focus for fall 2021 training), mindset, micro-aggressions, and others.
  - Using the contractor Visions, Inc., VMI is already conducting DEI training for the BOV as required by the RFP that includes multiple divisive topics aligned with CRT ideology. These include, without limitation,
    - *An agreed-upon set of principles/behaviors designed to create effective cross-cultural interactions.*
    - *How to become more connected and aware of implicit biases and assumptions.*
    - *Mono-culturalism, diversity, and inclusion/equity, and provides a framework for understanding historical and current forms of oppression.*
    - *How implicit bias negatively impacts communication.*
    - *The four levels (Personal, Interpersonal, Institutional, and Cultural) [of oppression].*
    - *How old-fashioned forms of racial oppression have been partially eclipsed by more subtle forms of racism that sometimes stem from good intent. This piece of our model lists specific behaviors that comprise "modern oppression," and "internalized oppression".*
  - The Visions, Inc. Training is designed not to educate or inform but to effect mindset and behavioral change, "it [lasting change] must occur in 3 domains; thinking (cognitive), doing (behavioral) and feeling (affective). This disturbing goal of indoctrination to change behavior throughout a cadet's time at VMI is further detailed in VMI's pursuit of a sole source contract with the Offeror Biasync (see below) designed to work with the contract awarded under the RFP. The concern here is based on the conflict with the Governor Youngkin's Executive Order #1, and the corresponding arbitrary & capricious nature of seeking to reward bids that conflict or are inconsistent with that Executive Order.
  - a. **The end-state of the contract and training is far beyond training, focusing instead on indoctrination and mindset change in the VMI Faculty, staff and cadets using other divisive concepts and approaches:**

---

<sup>101</sup> See Exhibit 38

In an email November 30, 2022, the day the RFP was released, Dr. Love, Ph.D a member of the evaluation panel, continued to negotiate a contract with another Offeror (Biassync)<sup>102</sup> for DEI training.<sup>103</sup> Dr. Love, Ph.D corrected the RFP to delete Implicit Association Test (IAT) from the RFP. Dr. Love, Ph.D stated “*The other aspect of DEI training is to have ongoing tough points that will have IAT.*”<sup>104</sup>

IAT is a highly controversial approach implemented by Harvard University. IAT, “*measures the strength of associations between concepts (e.g., black people, gay people) and evaluations (e.g., good, bad) or stereotypes (e.g., athletic, clumsy). The main idea is that making a response is easier when closely related items share the same response key.*”<sup>105</sup> It is defined on the website as “scientific research”. As such there are ethical considerations that must addressed by an Institutional Review Board for compliance with the Belmont Report and other applicable policies, statues and regulations. Also, in accordance with the Harvard research guidance on the tool, it should not be mandatory (as is VMI’s intent) in connecting it to this training.<sup>106</sup>

**b. VMI is pursuing a supporting contract designed to indoctrinate all VMI cadets through behavior change, which was not disclosed to Offerors for use in proposal preparation and pricing.**

RFP Section II, Background clearly states VMI’s intent to ignore Governor Youngkin’s policies and continue implementing divisive training and ideology:

- VMI seeks to ***intentionally*** strengthen its commitment and work around DEI to aid the institute in achieving its Inclusive Excellence Plan goals and Objectives. [emphasis added]<sup>107</sup>
- VMI understands that these extraordinary times require ***intentionality and awareness bias***. [emphasis added]
- Intentionality bias defined as *the intentionality bias, which refers to the implicit and automatic inclination to interpret human actions as intentional (Rosset, 2008, Cognition 108, 771–780)*. The RFP and the training it provides, therefore, are a means to address what VMI perceives as psychological disorders in faculty, staff and cadets as schizophrenia.<sup>108</sup>
- Dr. Jamica Love, VMI DEI Director, and lead for both the contract requirement and the Selection Committee, equates the intentionality bias her solicitation seeks to address at VMI with white supremacy and the Critical Race Theory (CRT) ideology banned from state-supported educational institutions by Virginia’s new

---

<sup>102</sup> <https://biassync.com/>

<sup>103</sup> See Exhibit 39.

<sup>104</sup> See Exhibit 39.

<sup>105</sup> <https://implicit.harvard.edu/implicit/iatdetails.html>

<sup>106</sup> <https://implicit.harvard.edu/implicit/ethics.html>

<sup>107</sup> See Exhibit 3.

<sup>108</sup> <https://www.sciencedirect.com/science/article/abs/pii/S016517811400537X>



governor<sup>109</sup>. Maj. Gen. Wins took to social media, using an account created to duplicate his official VMI Facebook page, to claim CRT is not being taught at VMI.<sup>110</sup> This claim has been heavily disputed and refuted.<sup>111</sup> As shown below Dr. Love, lead for the RFP project and the Selection Committee, continually referenced Maj. Gen. Wins' influence on the procurement.

According to an email from Kathleen Tomlin, VMI Procurement, to Lt. Col. Jamica Love and multiple other addresses, dated November 18, 2021 (just prior to RFP release), the intended sole source contractor (BisaSync) stated, "*The contract we've been discussing with Dr. Love is three years (as that is how long it takes to see behavior change based on our scientifically validated approach) and the total with a discount for the lowest amount of users (1700) we were asked to price out for comes to \$173,320.*" [emphasis added]<sup>112</sup>

The accompanying BiasSync email of November 15, 2021 confirms the company "*first connected with your organization through Dr. Janice Underwood*".<sup>113</sup> Dr. Underwood, former Commonwealth DEI Director, was replaced by Governor Youngkin, and her divisive approaches

---

<sup>109</sup> Per Dr. Jamica Love citing *Gillborn (2005) observed that educational policy can be an effective construct and location for the proliferation of racial inequity, stating: [A]lthough race inequity may not be a planned and deliberate goal of education policy neither is it accidental. The patterning of racial advantage and inequity is structured in domination and its continuation represents a form of tacit intentionality on the part of White power-holders and policy-makers. It is in this sense that education policy is an act of White supremacy. Following others in the CRT tradition, therefore, the paper's analysis concludes that the most dangerous form of 'White supremacy' is not the obvious and extreme fascistic posturing of small neo-Nazi groups, but rather the taken-for-granted routine privileging of White interests that goes unremarked in the political mainstream.*

*Given Gillborn's (2005) paradigm, employing CRT in the examination of affirmative action in higher education can facilitate an examination of the racialized underpinnings of higher education in the affirmative action period and/or prior to its evolution. Additionally, affirmative action's origins in social justice via the civil rights movement are aligned with CRT's foundation in social justice. Matias, Montoya, & Nishi (2016) emphasized the precondition of enacting CRT is that it is grounded in the concept and actions of social justice, particularly in the field of education. CRT enables recognition that explanations for issues of racial inequities appear in historical movements and the communications of the suppressed (Padgett, 2015). With the use of CRT, scholars can analytically embrace the history of affirmative action in race-conscious*

*admissions in combination with affirmative action bans. THE EXPERIENCES OF AFRICAN AMERICAN COLLEGE PRESIDENTS AND RACECONSCIOUS AFFIRMATIVE ACTION ADMISSIONS POLICIES, A thesis presented by Jamica Nadina Love to the College of Professional Studies, (p. 485).*

<sup>110</sup> See Exhibit 40.

<sup>111</sup> See Exhibit 41.

<sup>112</sup> <https://dictionary.cambridge.org/us/dictionary/english/mindset>

<sup>113</sup> <https://dictionary.cambridge.org/us/dictionary/english/mindset>

terminated, pending full review by the new administration. CRT and other divisive approaches should not have been factors in any aspect of RFP development and competition, and their involvement in this RFP raises concerns of impropriety and failure to comply with lawful executive orders in the Commonwealth.

Infusing a three-year human behavioral change cycle will fundamentally change VMI and its corps components in The Ratline, the Honor System and the Corps system. The existing VMI system is one that utilizes these three components in the four-year cadetship to accomplish behavior change to, and adoption of, the VMI ethos of “Duty, Honor, Country” and the “citizen-soldier”. Two behavior change approaches cannot exist in the same space, especially two as diametrically opposed as the above VMI ethos and the DEI model VMI is recklessly pursuing, using vehicles such as this RFP. The soon-to-be awarded proposal by NewPoint asserts that it will be a change driver for policies, processes and all other areas of VMI. This approach was not detailed in the RFP; consequently, all Offerors were not afforded the opportunity to include it in their proposals, resulting in an arbitrary and capricious process/practice and award. DEI behavioral change programs in state-supported educational institutions in the Commonwealth run directly contrary to the Governor’s mandates and orders. No contract should be awarded for such services or programs without proper review and approval by the Governor’s administration for compliance with his new direction pursuant to Executive Order #1, as well as without meeting federal requirements for human use in research and experimentation.

- c. **NewPoint Strategies’ Diversity, Equity and Inclusion Training, as they proposed, includes and is based on these divisive concepts in violation of the Commonwealth’s new direction, policy and guidance:**<sup>114</sup>

As described by NewPoint<sup>115</sup>:

- *“All our diversity courses are grounded in the principles of appreciating differences and leveraging the value of different cultural perspectives in approaching work and solving problems. Courses feature [emphasis added]:*
  - *“Exploration of the concepts of “diversity disconnects” and stereotyping through case studies and dynamic group exercises.*
  - *“Reinforcement of practical skills to defuse uncomfortable situations and restore relationships damaged by cultural misunderstandings.*
  - *“Exercises in implicit bias to promote a deeper understanding of unconscious messaging that often drives biased behavior and ways to overcome these cultural influences.*
  - *Diversity/Equity/Inclusion Awareness*
  - *Info on how implicit attitudes impact hiring, treatment, and promotion of women, people of color, people with disabilities, and people of different body sizes.*

---

<sup>114</sup> <https://newpoint.biz/>

<sup>115</sup> <https://newpoint.biz/>

- Clarification of the subtle, often unconscious, verbal and nonverbal cues we send and receive that can demonstrate bias and have a significant impact on who feels valued and included.
  - An exploration of the Harvard Implicit Bias tool.
  - An analysis of micro-affirmations and micro-inequities and how they influence who gets hired, who gets fired, and who gets what assignments, promotions, and inclusions in social and business activities.
  - **“Implicit bias** refers to attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner without awareness, intention, or control.
- d. NewPoint Strategies’ proposal<sup>116</sup> is based on Diversity, Equity and Inclusion as well as other divisive concepts specifically eliminated by Governor Youngkin’s Executive Order #1 and related policies. Examples include, without limitation [emphasis added]:
- *“NewPoint has highly qualified consultants with strong credentials and an impressive track record in the areas of Diversity, Equity, Inclusion, and Accessibility (DEJA); Implicit Bias; Discrimination based on Race, Color, Age, Gender, Religion, Disability, Sexual Identity, and Other EEO-Protected Classes; Microaggressions and Micro-Inequities; LGBTQIA+; Sexual Harassment/Assault Prevention; Suicide Prevention; DEJA in Police Reform; Racial Equity/Social Justice; and Culture Change.”*
    - *Module 2: Business Case for Diversity, Equity, Inclusion and Unconscious Bias*
    - *Module 3a: Diversity/Unconscious Bias.*
    - *Module 5a: Inclusion and Unconscious Bias/ Determine Bias*
- e. NewPoint Strategies’ proposal<sup>117</sup> includes significant non-training work not specifically stated in the RFP and that other Offerors did not have the opportunity to propose. Examples include, without limitation [emphasis added]:
- *“NewPoint will discuss and confirm a specific timeframe for the organization-wide review of VMI policies and procedures, including the policies of the Human Resources department, and conduct on-site interviews with all levels of employees. Following this overview and analysis, recommendations will be presented, with a written Report with an Action Plan and milestones to track progress.”*
  - NewPoint would inject these divisive concepts into VMI Strategic planning and deployment, *“NewPoint acknowledges and understands the importance of incorporating the DEI training with the VMI Inclusive Excellence Plan, which will support VMI’s effort to make institutional decisions and strategic plans.”*

---

<sup>116</sup> See Exhibit 24.

<sup>117</sup> See Exhibit 24.

- “[P]erform a comprehensive Organization-wide review of all policies, practices, and procedures applicable to the goals of Diversity, Equity, Inclusion, and removal of Unconscious Bias from the workplace.”
- “Provide a critical review of the VMI policies, human resources practices, leadership and employee interviews and evaluations/assessments”

**V. Protest of Award (award to NewPoint was arbitrary and capricious, rather than the honest exercise of discretion)**

The VPPA clearly and unequivocally establishes the Commonwealth’s and General Assembly’s statutory mandate “...that all procurement procedures be conducted in a fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to public business and that no Offeror be arbitrarily or capriciously excluded.”<sup>118</sup> It is further the stated intent of the General Assembly: “that procurement procedures involve openness and administrative efficiency... that specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor...”<sup>119</sup> Based upon the limited, partially redacted and incomplete procurement documents CAI has been provided to date by VMI, the standards, requirements, and public policies embodied in the VPAA were clearly not met in this procurement process and the award to NewPoint was arbitrary and capricious.

**a. NewPoint’s bid failed to adhere to the explicit requirements of the RFP, and its bid should have been rejected at the earliest stage of RFP bid evaluation.**

**i. VMI attempted to conceal the association between scores, notes and evaluators in the procurement record**

In its email to Selection Committee members on March 9, 2022, VMI confirmed its deliberate acts to hide and otherwise conceal the association between the evaluators, their scores and the required notes from scoring and interviews, “We provided the scoring matrix (less committee member names)...”<sup>120</sup> Other scoring sheets from the procurement record have names of evaluators associated with their scores redacted. Such concealment is another example of VMI’s attempt to impede any protest by preventing CAI from associating any reasons for scoring to the actual scores. Unfortunately for VMI, this conspiracy failed in that one email in the disclosed records was missed for redaction and it associated the evaluators with their scores.<sup>121</sup> CAI used that email for our protest, although many procurement records have still not been provided to CAI by VMI.

---

<sup>118</sup> Title 43, Virginia Public Procurement Act, § 2.2-4300, C.

<sup>119</sup> Title 43, Virginia Public Procurement Act, § 2.2-4300, C.

<sup>120</sup> See Exhibit 42.

<sup>121</sup> See Exhibit 43.

**ii. NewPoint clearly did not comply with the RFP’s mandatory “shall” and “will” requirements**

The bid submitted by NewPoint failed to adhere to the requirements detailed in the RFP. For example, price is a critical, specific RFP scoring criterion. The RFP provides, “*The contractor shall provide evidence of compliant and ongoing internal control of sensitive data and process through a standard methodology, such as but without limitation the American Institute of Certified Public Accountant (AICPA) Service Organization Control (SOC) Reports.*”<sup>122</sup> While this was addressed specifically in CAI’s proposal,<sup>123</sup> NewPoint did not include it in their proposal.<sup>124</sup>

The RFP specified “*The proposal should contain a table of contents which cross references the RFP requirement.*”<sup>125</sup> In response to the pre-proposal Q&A, question: “*In reference to “should” directives, are these mandated like requirements “shall” and “will”*”, VMI responded, “*Yes, should directives are mandated like requirements “shall” and “will”.*”<sup>126</sup> This had the direct effect of making all “should” and “may” directives critical requirement for which, at a minimum, points must be deducted for failure to comply with in proposals. CAI’s proposal complied. NewPoint’s did not.

These cannot be dismissed as trivial or administrative errors. If some “shall” and “must” are to be disregarded, then all must be. If not, like here, the decision on award is arbitrary and capricious.

**iii. NewPoint clearly was improperly allowed to adjust its price proposal after the solicitation closed.**

The RFP required all Offerors to submit pricing with their proposals. VMI published Request for Proposals, Project #V211-22-054, Diversity, Equity and Inclusion (DEI) Consultation and Training on November 30, 2021 with the published due date of December 14, 2021.<sup>127</sup> VMI published Addendum 1 to RFP #V211-22-054 on December 6, 2021, extending the proposal due date to December 16, 2021.<sup>128</sup> VMI published Addendum 2 to RFP #V211-22-054 on December 7, 2021, due date remained December 16, 2021 and the Addendum confirmed only hard copy (not electronic) submissions would be accepted.<sup>129</sup> Proposal submissions closed on December 16, 2021 at which time no further submissions or adjustment of submissions were allowed under the VPPA (and other procurement rules) until any negotiations were conducted. As covered above, NewPoint’s price proposal did not include a cost for Manager Training, listing it as “TBD”. On January 11, 2022, NewPoint requested VMI contracting officer Lynn W. Carmack provide the number of managers to be trained so they could provide VMI a specific price, “*Lynn, please clarify how many managers need to be trained so that we can give you a*

---

<sup>122</sup> See Exhibits 3.

<sup>123</sup> See Exhibit 22.

<sup>124</sup> See Exhibit 24.

<sup>125</sup> See Exhibits 3.

<sup>126</sup> See Exhibits 4.

<sup>127</sup> See Exhibit 3.

<sup>128</sup> See Exhibit 4.

<sup>129</sup> See Exhibit 4.

*specific price on that line item.”*<sup>130</sup> On January 11, 2022, Major Carmack, responded without providing the number of managers to be trained, *“I don’t have that information. The RFP requested training for 750 employees and that is the only information I can provide.”*<sup>131</sup> On January 12, 2022 NewPoint submitted updated pricing to its proposal, *“Please find the enclosed updated price overview. Because we do not know how many managers will partake in the training we cannot provide a total number for that. However, we have tallied up all known parameters. Do not hesitate to contact us if you have further questions.”*<sup>132</sup> On January 21, 2022, VMI published its “short list” of Offerors to move onto the second round<sup>133</sup> This “short list” included NewPoint and did not include CAI. NewPoint received improper and preferential treatment in being allowed to modify its bid, while not informing other bidders and othering the same opportunities. This raises serious concerns of impropriety, the exact concerns the VPPA seeks to eliminate.

NewPoint submitted updated pricing after the solicitation closed in violation of the explicit bid requirements, while CAI honored the RFP’s requirements, yet received a score equal to other lower bidders for pricing. NewPoint’s submission of a \$99,504.00 price in their proposal that did not include all costs is a direct violation of the RFP and evaluation criteria.<sup>134</sup> This error and/or flaw was not a mere “informality” nor was it “immaterial” or “inconsequential,” because such error/flaw of the bid evaluators directly and negatively impacted CAI’s and the other unsuccessful bidders’ scoring (and the fate of their proposals). This fits squarely into the definition of an arbitrary and capricious award.

Whereas the procurement file provided to CAI does not does include both NewPoint’s original and updated price proposals, in violation of the VPPA, CAI is unable to conduct further prudent analysis at this juncture and is unable to determine if that price proposal was scored or determine the difference between the two. The procurement record provided by VMI also does not include the required documentation to disclose what VMI’s decision and actions were regarding this price change submission. It appears this price change was accepted by VMI in violation of the RFP, yet, no explanation is documented in the limited records provided. CAI is confident that, when VMI is compelled to make full disclosure of all procurement records related to this acquisition, further additional irregularities will be discovered. Coupled with those irregularities and failures to comply with the VPPA that already been uncovered, it is clear that this RFP process is inappropriate and unfair, and that the resulting award is arbitrary & capricious.

Even if VMI received and did not use the updated NewPoint pricing, VMI’s VPPA and other violations are clear. VMI scored NewPoint’s price when a key cost, for required Managers Training, was not provided. NewPoint’s pricing in the price proposal provided by VMI to date states *“Manager/Supervisor Training (Number of participants is not specified in the RFP) to be \$2,262/half”* day and cost *“TBD”*<sup>135</sup> This is no different than CAI proposing LCATs and the actual cost to be

---

<sup>130</sup> See Exhibit 6.

<sup>131</sup> See Exhibit 6.

<sup>132</sup> See Exhibit 6.

<sup>133</sup> See Exhibit 7.

<sup>134</sup> APSPM 3.9 e.

<sup>135</sup> See Exhibit 21.

determined when the actual workload was provided by VMI. Nevertheless, VMI arbitrarily and capriciously awarded points to NewPoint's proposal and gave CAI a "0" score.

VMI's arbitrary and capricious decision to allow NewPoint to move forward (after submitting such an admittedly non-responsive bid on pricing) to the subjective evaluation round to become the eventual Awardee was severely prejudicial to CAI and all other bidders, and not the exercise of honest discretion. There is also no question that the evaluation panel, as well as NewPoint, knew that the bid violated the RFP and the unfair and arbitrary nature of VMI's actions in regard to NewPoint's bid. It is therefore beyond doubt that NewPoint's proposal should have been rejected from even initial consideration at the earliest stage of evaluation of bids.

The arbitrary and capricious scoring of NewPoint's pricing continued into the final round, culminating in the improper award. In the Final Round, NewPoint's price remained unchanged at \$99,504 with Manager and Supervisor Training still unpriced at "TBD", but NewPoint still did not confirm their pricing was "all inclusive" of travel and ODCs as required by the RFP.<sup>136</sup> While CAI does not dispute that, under the VPAA, the remaining bidders in the final round had the right to change their pricing in the final negotiations, VMI's actions were clearly arbitrary and capricious in permitting NewPoint to be considered in the second round and receive contract award with such an egregious violation of the VPPA and RFP specifications that should have knocked NewPoint out of the bidding at the earliest stages of bid evaluation, as VMI did with CAI. Rather than being the result of the exercise of honest decision-making, VMI's overlooking the fatal pricing in NewPoint's proposal, as submitted in response to the RFP, is unlawful and, consequently, should result in the award to NewPoint being vacated or withdrawn.

VMI's arbitrary and capricious price scoring of NewPoint's Price Proposals under the RFP's explicit requirements (as compared to CAI's and the other Offerors' pricing) in obvious favor of an award to its pre-selected winner NewPoint was arbitrary, capricious and demonstrated bias in favor of one of the RFP Offerors over the others. The documented "ends" of VMI, as demonstrated in many of the numerous Exhibits attached to this protest by CAI, appear to "justify" its use of any means available to anoint its pre-selected awardee NewPoint. This whole process, especially as it pertains to VMI's scoring of pricing (and its failure to give NewPoint, and any other Offerors who left final pricing to whenever VMI confirmed requirements, a "0" score as VMI did to CAI) in the earliest stages of the evaluation) was blatantly unlawful and in violation of the letter and spirit of the VPPA, which can only be remedied by the vacating or withdrawal of the award to NewPoint and an injunction to halt this RFP/procurement.

#### **b. Improper and arbitrary award of points to NewPoint in scoring**

The limited and incomplete review of the documents provided to date reveals serious and systematic flaws in the scoring system implemented in making this award, all of which were arbitrarily and capriciously designed and implemented to assist and benefit NewPoint. The issues identified to date include but are not limited to NewPoint inexplicably receiving points for criteria and scope not included

---

<sup>136</sup> See Exhibit 21.

in the RFP, and not receiving deductions for inadequacies and failures in NewPoint's bid. The remainder of this section will detail several examples, intended to provide a clear perspective of the arbitrary system implemented by VMI, giving rise to some of the grounds for this protest. CAI fully expects that a full and adequate review of the procurement file will reveal additional discrepancies and issues. VMI's own Finance Officer, BG Clark, expressed fear in this regard Specifically to VMI' legal counsel, Mr. O'Leary, and members of the VMI Procurement Office where "*We are getting a great deal of consternation on the subject procurement. I expect that the probability is high that this procurement will be protested.* Accordingly, please get with Kathy Tomlin and let's begin to assemble a review of our documents and process, *understand our vulnerabilities* and complete a review of the procurement protest process." <sup>137</sup> [emphasis added]

**i. Improper & Arbitrary Awarding of Points and Credit to NewPoint for issues beyond the scope of the RFP.**

The limited documents made available demonstrate that the evaluators elected to provide NewPoint points and support for things not contained in the RFP. This is further evidence of the arbitrary and capricious nature of award and grounds for vacating same. The APSPM and VPPA requires: "...the committee member's judgment must be based on fact as presented in the proposal, question/answer conference, etc. An offeror should not be penalized because of lack of experience with the agency itself, but should be judged, among other considerations, on the relevancy of experience and expertise wherever it occurred...Points should not be manipulated to favor a preferred supplier, but be assigned in an impartial manner". <sup>138</sup> The instructions VMI provided to all members of the evaluation panel required: "As a committee member, you are to review and score each Offeror's response based on the established evaluation criteria and rating scale. Print out a score sheet for each of the vendors who submitted a proposal and be sure to write notes and comments you may have for each Offeror. This will be important when discussing the rankings in order to make an award. Your notes are also helpful to use during the interview process in order to address your questions and/or concerns with the Offeror for clarification" <sup>139</sup> The following are a few examples of where the appropriate standards were not followed and NewPoint received points for things it should not have or should have been eliminated from further consideration:

- No notes from evaluator Tinni Sen were preserved or provided for the first round of scoring and no formal notes for the second round after interviews. Ms. Sen falsely states, "Unfortunately, since we were not required to save the notes, I did not save the ones from the first round of evaluations. Also, there were no scoresheet for the in-person interviews, so I do not have formal notes for these." <sup>140</sup> As a result, Ms. Sen's first round Scoring sheets for CAI and the other

---

<sup>137</sup> See Exhibit 2.

<sup>138</sup> Commonwealth of Virginia, Department of General Services, **Agency Procurement and Surplus Property Manual**, September 1998 including PIM #98-038, effective August 15, 2020, Annex 7B - STEP 9 - EVALUATE PROPOSALS, II, B

<sup>139</sup> See Exhibit 44.

<sup>140</sup> See Exhibit 42.



Offerors only contain raw scores.<sup>141</sup> The published Selection Committee instructions were clear and unequivocal regarding the importance of noting reasons for scores and preserving all notes. The reasonable conclusion is that Ms. Sen intentionally disregarded those instructions with the intent to conceal the reasons for her scores from objective scrutiny.

- Regardless of intention, the failure to preserve notes, is indicative of flawed and arbitrary process.
- Ammad Sheikh did not make, preserve, and provide notes or justification of his scores for the first round of scoring and did not keep detailed formal notes from the interviews. As a result, Mr. Sheikh's first round scoring sheets for CAI and the other Offerors only contain raw scores.<sup>142</sup> As did Ms. Sen, Mr. Sheikh falsely states he did not know of a requirement for such notes and justifications, "*I didn't take any notes in particular.*"<sup>143</sup> Mr. Sheikh then arrogantly and sarcastically adds, "*Clearly, I would've if I knew that I would be needing them. All the best.*" As with Ms. Sen, the Selection Committee instructions Mr. Sheikh received from the VMI procurement office were specific and clear in regard to documenting the rationale for scoring and their importance to a fair and objective procurement. Also as with Ms. Sen, the conclusion any reasonable person would draw from his actions are that Mr. Sheikh intentionally disregarded those instructions with the intent to conceal the reasons for his scores from objective scrutiny. Mr. Sheikh's dismissive attitude toward these serious legal requirements also demonstrates his own, personal disregard for fair and objective acquisition practices, the VMI contracting office, and the law.
  - If Mr. Sheikh truly did not know the need to keep records, it appears that he and others did not read or review the instructions provided. This would be truly disconcerting and also evidence that the process followed was fatally flawed, resulting in an arbitrary and capricious award.
- The flagrant disregard by two evaluators to follow evaluation instructions (or in the alternative, to not even read or review them) and the failure by VMI to create, maintain, and secure scoring and associated justifications in the procurement record is a clear violation of the VPPA that makes it impossible for any objective review of scores, beyond the clear evidence of the arbitrary and capricious result detailed herein This is, itself, arbitrary and capricious leading to a reasonable conclusion, supported by other VMI statements included in this protest, that VMI was worried about a protest, anticipated a protest, and so took actions to impede any protest.

**ii. Improper & Arbitrary scoring points NewPoint for activities not required by the RFP.**

- NewPoint received positive remarks/points and support in the first round based on the evaluator's notes (Dr. Love, Ph.D) that "*experience with sexual assault as well*"<sup>144</sup> However, sexual assault is not an RFP requirement and separate from DEI' focus on sexual equity.

---

<sup>141</sup> See Exhibit 45.

<sup>142</sup> See Exhibit 45.

<sup>143</sup> See Exhibit 46.

<sup>144</sup> See Exhibit 47.

- NewPoint received positive remarks/points in the first round for its experience (Dr. Love, Ph.D) “*mental health experience on college campuses.*”<sup>145</sup> Mental health experience was not a RFP requirement and is significantly beyond the scope of the RFP.
- NewPoint received positive remarks and support from the interviews (Dr. Love, Ph.D) for a member of the NewPoint staff (Karetta Hubbard) whose father-in-law was in the VMI Class of 1933 (Allen Fuller Hubbard).<sup>146</sup> As shown below, CAI was simultaneously and ironically decremented points in round #1 for having a VMI alumnus connected with the work while NewPoint was afforded favorable comments and ratings for a deceased alumnus as the father-in-law of a staff member. These contrary results cannot logically be reconciled, making clear that the award is arbitrary and capricious.
- NewPoint received positive remarks and support from the interviews (Dr. Love, Ph.D) for their response to her question, How will you protect VMI from risk?”<sup>147</sup> Risk was not a part of the RFP; accordingly, NewPoint was afforded a higher rating than CAI and/or other Offerors based on a factor that should never have been scored.
- NewPoint received positive remarks and support in the final decision meeting from Dr. Love, Ph.D for their response to her risk question “Outsiders can say what insiders can’t”<sup>148</sup> Risk was not a part of the RFP; therefore, NewPoint was afforded a higher rating than CAI and/or other Offerors based on a factor that should never have been scored.

### **c. Compare Unfair Treatment and Consideration of other Bidders**

The limited documentation made available provides details on the unfair treatment other bidders received from the VMI Evaluation/Selection Team, to the arbitrary benefit of NewPoint. For example, Mr. Kline wrote, as the main flaw with CAI’s proposal, “*But team includes VMI alumni. Potential bias.\**”<sup>149</sup> Mr. Kline clearly has an overt bias toward both VMI and VMI alumni not only based on his statements in his evaluation, but his previous statements condemning VMI, its Honor System and other facets of the school in his cooperation and interviews with the *Washington Post* for its derogatory articles on VMI. Mr. Kline’s comments and the emphasis he placed on their importance by double underline and make it evident that the Selection Committee was not chosen from objective, unbiased persons but to advance a specific VMI Diversity Office objective and that VMI and its team did not review these bids with an equal and unbiased position. In comparison, NewPoint received points and support despite having submitted a proposal that did not contain all required elements of the RFP, as well as for elements not required in the RFP - - CAI and other Offerors were unable to propose on those not-required elements because they had no clue what they were.

---

<sup>145</sup> See Exhibit 48.

<sup>146</sup> See Exhibit 48.

<sup>147</sup> See Exhibit 48.

<sup>148</sup> See Exhibit 49.

<sup>149</sup> See Exhibit 50.

**i. Points for Pricing**

As detailed above, NewPoint’s failure to submit pricing in conformity with the requirements and price scoring for all Offerors, then being rewarded, after such failure, by points and advancement to the next round by the Selection Committee was arbitrary and capricious.

**d. Arbitrary Application of RFP Requirements and Scoring**

The points and scoring system were arbitrary and capriciously applied, leading to the unlawful award of this contract to NewPoint. The incomplete procurement records provided by VMI to date do provide details on the unequal and arbitrarily favorable treatment of NewPoint, as opposed to the unfavorable, unfair treatment of other bidders. This failure to comply with the VPPA, the Department of General Services and VASCUPP Manuals as well as the VASCUPP rules, code and manual in the evaluation process directly contributed to the lack of a fair and reasonable evaluation that resulted in the arbitrary, capricious and non-fact-based evaluation that was applied in this process. This can best be demonstrated through an example detailed below.

**i. Improper & Arbitrary Deduction of Points from CAI for issues beyond the scope of the RFP & for which points should not have been deducted.<sup>150</sup>**

The first RFP criterion in RFP Evaluation criteria was “Plan for Providing DEI services, tailored to VMI needs” allocated twenty (20) Points.<sup>151</sup> For this criterion the procurement record scoring matricide provided to CAI does not show a tabulation of evaluator scores.<sup>152</sup> NewPoint’s average score was sixteen (16.0) points while CAI’s average score was fourteen point four (14.4) points. The RFP contains the Contractor Qualifications applicable to scoring this criterion as published in RFP V., Statement of Needs, A.

Plan for Providing DEI services, tailored to VMI Needs							
FIRM:	VALUE	LOVE	LACKEY	SHEIKH	SEN	KLINE	Notes
CK Business Strategy	20	19	20	17	20	20	1
NewPoint Strategies	20	15	20	13	15	17	1
Veritas Academy	20	14	20	15	15	12	1
Center for Applied Innovation	20	14	20	15	13	10	1

**Notes:**

1 - The Score for CAI on the score sheet for one or more evaluators appears to have been changed at least once at some point.

The two lowest scores received by CAI came from Mr. Kline (10 of 20 points) and Ms. Sen (13 of 20 Points). There are no evaluator comments from Ms. Sen as required by the Evaluation Instructions.

<sup>150</sup> See Exhibit 61

<sup>151</sup> See Exhibit 45.

<sup>152</sup> See Exhibit 23.

The only evaluator comments documented in the procurement file are from Dr. Love, Ph.D and Mr. Kline on the format for the CAI’s proposal:

- Love: “Found the proposal hard to follow and the information [illegible] superfluous”.<sup>153</sup>
- Kline: “Plan is unclear...”<sup>154</sup>

CAI received a maximum 20 points for this criterion from Ms. Lackey, VMI Procurement Office, and an expert on this area of the RFP who is the most qualified objective evaluator of proposal format compliant with the RFP.

The format, flow and information covered in CAI’s proposal exactly followed the RFP requirements in sections VI, VII., and IX. Due to the incomplete nature of the procurement record provided to CAI it is not possible to determine what portion of CAI’s proposal Dr. Love considered “superfluous” since CAI followed the RFP requirements exactly- reflecting the arbitrary nature of the scoring engaged The RFP is clear that if the prescribed format and content are not followed it could impact the score, “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.”<sup>155</sup> Compliance with the RFP requirements by CAI was not “unnecessary” as is the definition of “superfluous”<sup>156</sup>, it was required. CAI was arbitrarily penalized in scoring for following the RFP requirement. There is no justification provided in the limited procurement plan documents provided to justify any point deductions in these areas nor is it possible to determine the rational for the scoring.

The second RFP criterion in RFP Evaluation criteria was “Implementation, planning and Services” allocated twenty (15) Points.<sup>157</sup> For this criterion the procurement record scoring matricide provided to CAI does not show a tabulation of evaluator scores.<sup>158</sup> NewPoint’s average score was 13.0 (16.2) points and CAI’s was 11.0.

Implementation, Planning and Services							
FIRM:	VALUE	LOVE	LACKEY	SHEIKH	SENN	KLIN	Notes
CK Business Strategy	15	14	10	17	14	15	1
NewPoint Strategies	15	13	15	10	14	13	1
Veritas Academy	15	13	15	12	13	11	1
Center for Applied Innovation	15	11	15	10	9	10	1

**Notes:**

**1 - The Score for CAI on the score sheet for one or more evaluators appears to have been changed at least once at some point.**

<sup>153</sup> See Exhibit 47.

<sup>154</sup> See Exhibit 50.

<sup>155</sup> See Exhibit 3 - RFP VI., 2., c.

<sup>156</sup> <https://www.merriam-webster.com/dictionary/superfluous>

<sup>157</sup> See Exhibit 45.

<sup>158</sup> See Exhibit 23.

The RFP contains the Organizational Requirements and Description of Services Contractor Qualifications applicable to scoring this criterion as published in RFP V., Statement of Needs, A. Organization Requirements and B. Description of Services. They consist of the solely of the following and as required by the VPPA and APSPM, VPPA, Rules, Purchasing Manual, Vendors Manual. are the only factors Implementation, Planning and Services should be scored against in the evaluation:

- *“The organization **must** be able to provide opportunities for **face-to-face training on post.**”<sup>159</sup> [emphasis added] and *“Trainings **must** take place **on Post, in person.**”*<sup>160</sup> NewPoint was identified as deficient in proposing webinars and videos to train cadets when it is a stated RFP requirement. Mr. Klein noted in his evaluation *“I am concerned about tentative plan to use webinars & videos for cadets.”*<sup>161</sup> No Selection Committee members cited CAI for any deficiencies in this area.*
- *“Must address and support the VMI Inclusive Excellence Plan as well as its Goals, Objectives and Measures.”*<sup>162</sup> NewPoint’s proposal does not address any portion of the VMI Inclusive Excellence Plan. The Plan itself is only mentioned in NewPoints’ proposal at E. to say NewPoint understands it and at A, stating NewPoint will conduct ongoing coordination *“of DEI Principles into the VMI Inclusive Excellence Plan.”* But nothing further is identified in the plan or implementation.<sup>163</sup> CAI’s proposal specifically addresses all 5 VMI Inclusive Excellence Plan Goals, Objectives and associated Measures in detail mapped to the RFP and pre-proposal Q&A.<sup>164</sup>
- *“DEI Training that can be delivered to the VMI Community, including Institute Executives and Board of Visitors”*<sup>165</sup> as its proposal at “C.” does not address any portion of the VMI Exclusive Excellence Plan.<sup>166</sup> CAI’s proposal specifically addressed all 5 VMI Inclusive Excellence Plan Goals, Objectives and associated Measures.<sup>167</sup>
- *“Determination of a clear roadmap for training, consulting, and coaching.”*<sup>168</sup> NewPoint’s proposal at “C” does not provide the required method or plan for this requirement and only provides *“three training options”* that are available to VMI.<sup>169</sup>
- *“Support VMI’s effort to make decisions and strategic plans at the institutional level.”*<sup>170</sup> NewPoint’s proposal at “E.” does not provide any plan, method or approach, stating only, *“If*

---

<sup>159</sup> See Exhibit 3 - RFP V., B., 7.

<sup>160</sup> See RFP V.,B., 10.

<sup>161</sup> See Exhibit 50.

<sup>162</sup> See Exhibit 3 - RFP V, A., 1; Also See Exhibit 51 - Interview notes.

<sup>163</sup> See Exhibit 24 - NewPoint Proposal.

<sup>164</sup> See Exhibit 22 - CAI’s proposal.

<sup>165</sup> See Exhibit 3 - RFP V, A., 1.

<sup>166</sup> See Exhibit 24 - NewPoint Proposal.

<sup>167</sup> See CAI Proposal at 3.2 (cross-referenced to RFP VI, B., 3.,c.); 3.3 (cross-referenced to RFP VI, B., 3.,b.)

<sup>168</sup> See Exhibit 3 - RFP V, A., 4.

<sup>169</sup> See Exhibit 24 - NewPoint Proposal.

<sup>170</sup> See Exhibit 3 - RFP V, A., 5.

*selected, NewPoint will discuss and confirm a specific timeframe..*" <sup>171</sup> [emphasis added].

NewPoint does not provide any method, approach or plan to support strategic planning or VMI's Inclusive Excellence Plan as required in the RFP. CAI's proposal provided a detailed methodology (as required) to provide VMI with strategic planning support that CAI also connected to Training Development, Assessments (including Root Cause Analysis, and a time frame for implementation.<sup>172</sup>

- *"The organization **must** be able to provide opportunities for **face-to-face training on post.**"*<sup>173</sup> [emphasis added] and *"Trainings **must** take place **on Post, in person.**"*<sup>174</sup> NewPoint did not propose all training to be on-site at VMI as required by the RFP. NewPoint proposed webinars and videos to train cadets when the stated RFP requirement that: Mr. Klein noted in his evaluation *"I am concerned about tentative plan to use webinars & videos for cadets."*<sup>175</sup>
- *"Provide support for the daily strategic work of the Chief Diversity Officer (CDO) and the Office of Diversity Equity and Inclusion."*<sup>176</sup> Newpoint did not propose any specific strategic planning support or method for the RFP requirement. Rather than provide strategic planning and implementation services as required by the RFP, NewPoint in its proposal at "F" would conduct focus groups and *"an organization-wide review of VMI Policies and Procedures"* focus groups, policy and procedure reviews were never presented as a requirement in the RFP or Q&A. these actions were already conducted and completed by the \$1M Barnes & Thornburg, LLP investigation and, according to VMI, validated by Maj. Gen. Wins' 45-day assessment. Allotting points to NewPoint for this work is to arbitrarily and capriciously reward a Offeror for proposed work not required by the RFP. NewPoint's Proposal also does not demonstrate how any of the work proposed will actually support the daily operations or strategic planning requirement in the RFP. CAI's proposal meets all RFP requirements by providing services to include normal operations, strategic planning, training development and delivery.<sup>177</sup>
- *"The organization must be able to provide DEI training that includes guidelines, cultural sharing, areas of modification, bias intervention options, and DEI language that best fits the VMI community."*<sup>178</sup> NewPoint's Proposal does not include or address in any way "guidelines, cultural sharing, areas of modification, bias intervention options." It lacks any proposed method NewPoint will use to determine "best fit for the VMI community." The term "modifications" only used once in the proposal to reference modifications to classes if needed<sup>179</sup>, not the required

---

<sup>171</sup> See Exhibit 24- NewPoint Proposal.

<sup>172</sup> See Exhibit 22 - CAI Proposal at 3.2 (cross-reference to RFP VI, B., 3.,c.); 3.3.2 (Training Development); 3.3.4 (Assessments including Root Cause Analysis); 3.3.5 Strategic Planning (includes link to VMIs Inclusive Excellence Plan); and 3.3.6 Time frame for implementation.

<sup>173</sup> See Exhibit 3 - RFP V., B., 7.

<sup>174</sup> See Exhibit 3 - RFP V.,B., 10.

<sup>175</sup> See Exhibit 50 - Mr. Kline only deducted two points from NewPoint's maximum possible score of 20 points to 19 although the score sheet appears to indicate scores were changed at some point.

<sup>176</sup> See Exhibit 3 - RFP V, A., 6..

<sup>177</sup> See Exhibit 22 - CAI Proposal at 3.2 (cross-reference to RFP VI, B., 3.,c.); 3.3 (cross reference to RFP VI, B., 3., b.); 3.3.2

<sup>178</sup> See Exhibit 3 - RFP V.,B.1.

<sup>179</sup> See Exhibit 24 - NewPoint Proposal at A.,2.

modifications within VMI to improve DEI. The only mention of "Language" in the NewPoint proposal is "give participants the language... they need to feel empowered."<sup>180</sup> None of these meet the critical RFP requirement and CAI's proposal does for all.<sup>181</sup>

- *"The organization must be able to provide opportunities for individuals to embrace DEI concepts, explore allyship, and a framework for lifelong learning."*<sup>182</sup> NewPoint's proposal is incomplete and missing any method or even mention of "allyship" or Lifelong Learning that are named in the RFP as critical requirements. CAI's proposal covers all with specific method to deliver.<sup>183</sup>
- *"The organization must be able to discuss cultural and identity oppression in the context of current culture as it relates to VMI."*<sup>184</sup> NewPoint's proposal does not include cultural or identity oppression assessments (or oppression of any type). CAI's proposal addresses these and connects them to survey, lifelong learning, ADDIE and the Adult Learning Model methods.<sup>185</sup>
- *"The organization must be able to design, conduct, review, and analyze an organizational DEI cultural assessment."*<sup>186</sup> NewPoints' proposal does not include the conduct of any cultural assessment. The proposal will provide an assessment of VMI policies, procedures and other areas already conducted by the previous Barnes & Thornburg Investigation. An assessment of VMI's policies, procedures and other areas covered in the NewPoint proposal are not RFP requirements. CAI's proposal specifically and properly provides its method for conducting the required cultural assessment and connects assessment results to training development and outcomes.<sup>187</sup>
- *"The organization must be able to review the assessment from a framework that is both individual and organizational while understanding the VMI philosophy."* Whereas the proposal does not cover the required cultural assessments it cannot meet this requirement. VMI Philosophy is also not covered in the NewPoint proposal. As shown above the CAI proposal adequately covers this requirement.<sup>188</sup>
- *The organization must be able to assist in determining roadmap of training, consulting, and coaching."*<sup>189</sup> The NewPoint Proposal at "D" states that NewPoint will only develop the approach to training and give training options, its does not include the required details of "how,

---

<sup>180</sup> See Exhibit 24 - Newpoint proposal at D.,4.

<sup>181</sup> See Exhibit 22 - CAI Proposal at 3.3 (cross-references to RFP VI, B., 3.,b.); 3.3.2 Training Development

<sup>182</sup> See Exhibit 3 - RFP V., B., 2.

<sup>183</sup> See Exhibit 22 - CAI Proposal at 3.3 (cross-reference to RFP VI, B., 3.,b.); 3.3.2 Training Development. Specifically, and properly connects lifelong learning thee ADDIE and Adult Learning Models

<sup>184</sup> See Exhibit 3 - RFP V., B., 3.

<sup>185</sup> See Exhibit 22 - CAI Proposal at 3.3 (cross-reference to RFP VI, B., 3.,b.); 3.3.2 Training Development

<sup>186</sup> See Exhibit 3 - RFP at V., B., 4.

<sup>187</sup> See Exhibit 22 - CAI Proposal at 3.3 (cross-reference to RFP VI, B., 3.,b.); 3.3.2 Training Development

<sup>188</sup> See Exhibit 3 - RFP at V., B., 5.

<sup>189</sup> See Exhibit 3 - RFP at V, B., 8.

when where and outcomes". The CAI proposal fully covers this requirement and provides all RFP required detail.<sup>190</sup>

- *"The organization should provide accountability and support within the ranks of Institute Executives."*<sup>191</sup> The NewPoint proposal and method mentions "accountability" only mentioned once, stating only that assessments *"will be developed"* for the Inclusive Excellence Plan Organizational Culture and Accountability. The required how, when where, outcomes and method to be used are never stated. The CAI proposal fully, specifically and properly connects to training development delivery, assessments and outcomes to a robust and detailed assessment method.<sup>192</sup>
- *"The organization must be able to provide on-going DEI support."*<sup>193</sup> NewPoints' proposal consist solely of focus groups, organization-wide review of VMI policies and procedures that are not a part of the RFP requirements and were already conducted by the \$1M B&T investigation and validated by Maj. Gen. Wins' 45-day assessment. No specific work supporting daily DEI office operations or strategic planning are included in the proposal. CAI's proposal covered support to all aspects of DEI office operations and its pricing provided extensive LCAT that would cover any required skillset.<sup>194</sup>
- *"Identify Institute's role and responsibilities for implementation/conversion."*<sup>195</sup> NewPoint's Proposal states only: *"VMI leadership will be responsible for providing input for the training of managers, employees, and cadets"*. The proposal does not include any NewPoint deliverables for determining and defining the institutes role in these areas as required by the RFP.<sup>196</sup> CAI provided a separate section with its detailed plan to provide these deliverables in its proposal addressing this critical requirement.<sup>197</sup>

CAI's two lowest scores were again from Mr. Kline (10 of 15) and Ms. Sen (9 of 15). Mr. Klein awarded NewPoint 13 of 15 points despite writing laudable praise for CAI's approach in his score summary: *"Virginia-based; consulted by Northam; good military experience/understanding relationships; like root cause analysis"*. Ms. Lackey cited CAI strong points as *"VASCUPP Contract"*<sup>198</sup>

The only recorded deficiencies on the first round evaluations by the Selection Committee were for NewPoint:

- The tentative plan to use webinars & videos for cadets [Kline]<sup>199</sup>

---

<sup>190</sup> See Exhibit 22 - CAI proposal at 3.3 (cross-reference to RFP VI, B., 3.,b.); 3.3.2 Training Development; 3.3 Strategic Planning.

<sup>191</sup> See Exhibit 3 - RFP at V, B., 6.

<sup>192</sup> See Exhibit 22 - CAI Proposal at 3.3 (cross-referenced to RFP VI, B., 3.,b.); 3.3.2 Training Development.

<sup>193</sup> See Exhibit 3 - RFP V, B., 9.

<sup>194</sup> See Exhibit 22 - CAI Proposal at 3.3 (cross-reference to RFP VI, B., 3.,b.).

<sup>195</sup> See Exhibit 3 - RFP VI,3. B.,4, d.

<sup>196</sup> See Exhibit 24 - NewPoint proposal at Section I, A., 4.

<sup>197</sup> See Exhibit 22 - CAI Proposal at 3.4 (cross referenced to RFP VI., B., 4., d.).

<sup>198</sup> See Exhibit 52.

<sup>199</sup> See Exhibit 50.



- “On site” with the remainder of the wording erased or redacted [Lackey]<sup>200</sup>
- The arbitrary and capricious nature of the scoring applied is evident in the clear disconnect from the comments and corresponding scoring. These cannot be reconciled logically, and demonstrate the arbitrary nature of the award.

The third RFP criterion in RFP Evaluation criteria was “Qualifications and Experience” allocated twenty (20) Points. For this criterion the procurement record scoring matricide provided to CAI does not show a tabulation of evaluator scores.<sup>201</sup> NewPoint’s average score was sixteen point two (16.2) points and CAI’s was fourteen (14) .

Qualifications and Experience							
FIRM:	VALUE	LOVE	LACKEY	SHEIKH	SEN	KLINE	Notes
CK Business Strategy	20	19	20	18	19	19	1
NewPoint Strategies	20	15	20	14	14	18	1
Veritas Academy	20	15	20	14	14	13	1
Center for Applied Innovation	20	13	20	13	14	10	1

The RFP contains the Contractor Qualifications applicable to scoring this criterion as published in RFP V., Statement of Needs, A. Organization Requirements. They consist of the solely of the following and as required by the APSPM, VPPA, Rules, Purchasing Manual, Vendors Manual are the only factors experience and qualifications should be scored against in the evaluation:

*The organization should have consultants who understand the military underpinnings of VMI.*<sup>202, 203</sup> This single criterion formed the underpinning of the ability for the Offeror to provide critical RFP deliverables:

- *“The organization **must** be able to provide DEI training that includes guidelines, cultural sharing, areas of modification, bias intervention options, and DEI language that best fits the VMI community.”<sup>204</sup> [emphasis added]*
- *“The organization **must** be able to discuss cultural and identity oppression in the context of current culture as it relates to VMI.”<sup>205</sup> [emphasis added]*
- *“The organization **must** be able to review the assessment from a framework that is both individual and organizational while understanding the VMI philosophy.”<sup>206</sup>*

<sup>200</sup> See Exhibit 52.

<sup>201</sup> See Exhibit 23.

<sup>202</sup> See Exhibit 3 - RFP V., A., 3.

<sup>203</sup> See Exhibit 4 - RFP Addendum 1, The Q&A responses clarified that “should” requirements are critical and the same as “shall” and “will”, “‘should’ directives are mandated like requirements ‘shall’ and ‘will’.

<sup>204</sup> See Exhibit 3 - RFP V, B., 1.

<sup>205</sup> See Exhibit 3 - RFP V, B., 3.

<sup>206</sup> See Exhibit 3 - RFP V, A., 1.

- *“The organization must be able to discuss cultural and identity oppression in the context of current culture as it relates to VMI.”<sup>207</sup> [emphasis added]*

Dr. Love, Ph.D, Mr. Sheikh, Mr. Kline and Ms. Sen all rated CAI lower than NewPoint while, Ms. Lackey awarded CAI the maximum of 20 Points and 15 points in each category. The only comments potentially justifying the point reductions were noted by Mr. Kline. In addition to the overt bias against VMI Alumni by Mr. Kline (see above) used to give CAI a lower score, Mr. Kline’s offered rationale for CAI’s low score was: *“Too Much Military”<sup>208</sup>; Some military is great; all military not great for that purpose.”<sup>209</sup>*

Although Ms. Sen did not make notes on her score sheets, her comments recorded by Col. Kathleen Tomlin, VMI Procurement office, clearly demonstrate her overt bias toward VMI, VMI alumni and the military in general. During the presentation to NewPoint Ms. Sen stated, *“We [VMI] really aren’t military. I have a bird on my shoulder [indicating Col. rank] – doesn’t mean anything – just I am a field professor, So – compare us more to University of Maryland than a military academy.”<sup>210</sup>* It is not hard for any reasonable person to conclude from these remarks that the low scores received by CAI from Ms. Sen were mainly based on the military SMEs on its team. Ms. Sen has been an outspoken critic of VMI itself, alumni, the Corps system, the Honor System, the Ratline and other areas. She is also a contributor to the *Washington Post* articles calling for fundamental system for change at VMI that would make it “less military” by significantly changing or eliminating many of the related military aspects. As her statements confirm, Ms. Sen’s vision of VMI is to remove the “military” from it and that is apparent in how she significantly downgraded CAI’s proposal. This is the very definition of arbitrary and capricious. If these factors were going to be considered in determining the award, it must have been detailed in the RFP. The selectors are not permitted to engage in their own desired arbitrary and capricious scoring and standards, regardless of their own motivations or biases. A public procurement is no place for activism or political aims. The scoring methods used here demonstrate this process was flawed and the corresponding award is arbitrary, capricious and blatant violation of the VPPA.

Both of Mr. Klein’s reasons for the significant point reductions to VMI are attributed to its inclusion of military experience and Ms Sen’s overt bias against both the military itself and VMI as a military school are obvious. VMI cannot claim this process was valid, and the award cannot survive this challenge.

In comparison to Mr. Kline’s and Ms. Sens. Comments, Dr. Love, Ph.D and Ms. Lackey praised CAI’s mix of military and non-military consultants:

- Lackey: *“Extensive military culture understanding”.*<sup>211</sup>

---

<sup>207</sup> See Exhibit 3 - RFP V., B., 3.

<sup>208</sup> See Exhibit 50.

<sup>209</sup> See Exhibit 50.

<sup>210</sup> See Exhibit 51.

<sup>211</sup> See Exhibit 52.

- Love: “Team contained [illegible “solid?”] staffing with a background in military.”<sup>212</sup>

NewPoint’s proposal reflects some military experience, but its consultant’s most recent VMI experience is experience in the 1990s (30+ years in the past) when VMI admitted women that is hardly current as required. The team has no VMI alumni, no current contract with the Corps of Cadets, and does not reflect any knowledge or experience with the critical issues facing VMI and covered in the B&T report that is the basis for the DEI program the contract is specifically designed to support. CAI’s proposal cites specific, detailed experience with the recent B&T report, current cadets, and includes VMI alumni with a detailed plan to recruit current cadets and alumni from all classes as advocates for deployment of DEI and the strategic plan that advances key goals and objective of VMI’s Inclusive Excellence Plan.<sup>213</sup> If Ms. Sen, Mr. Klein and Dr. Love had any real understanding of the VMI culture or followed the requirements in the RFP, they would know that any real DEI related change starting with the integration of Blacks into VMI, women joining the VMI Corps, banning of “Dixie” and the confederate flag at events, on class rings and other significant changes, they would know that all meaningful and lasting change must be driven and supported by the Corps of Cadets with alumni support to success. Their bias, and that of Dr. Love, Ph.D. based on this procurement indicate deliberate intent to appoint evaluators to the Selection Committee and award the contract in a manner that excludes cadets and alumni from the DEI program and its related areas so as to make it totally “non-inclusive” of those key stakeholders/

The application of “too much military” is also arbitrary and Mr. Kline’s statements CAI’s proposal is “all” military are materially and knowingly false. Of the 19 persons on the CAI proposed team, only 6 served in the military. The remaining 68% of CAI’s team are non-military. Comparatively, NewPoint’s team of 10 consultants consists of only 2% more (70%) with military service. The falsehoods and bias used in the scoring makes clear the arbitrary and capricious nature of the scoring.

Deducting CAI points in scoring for a subjective perception of “*too much military*” and “*includes VMI alumni*”<sup>214</sup> yet awarding NewPoint a higher score, given the conflicting and unfavorable VMI comments reviewed in the preceding paragraphs, is entirely arbitrary and capricious. Additionally, the obvious bias and contempt for the military in general, VMI’s military system and the expressed intent to “*treat us like the University of Maryland*”, VMI makes the equally unsupported, pre-judged assertion in those comments above that CAI will be bias and is unqualified based on CAI’s inclusive plan to bring the entire VMI Family (alumni, cadets, parents, faculty and staff) together in support of DEI. It is more than ironic that VMI seek inclusion while deliberately attempting to exclude key stakeholders. And, for the record (in case VMI’s unsupported conclusion regarding alumni as being fraught with bias), the General Officers on CAI’s team included those who received their Commission through West Point, Military Colleges other than VMI, Reserve Officer Training Course (ROTC) programs at conventional Colleges and Universities as well as from Non-Commissioned Officer ranks through Officer Candidate School. They cover the entire political spectrum. Our other SME’s military

---

<sup>212</sup> See Exhibit 48.

<sup>213</sup> See Exhibit 22 - CAI Proposal at 3.2 (cross-reference to RFP VI, B., 3.,c.); 2.0 (Cross-referenced to RFP VI, B., 3.b.)

<sup>214</sup> See Exhibit 50.

experience similarly covered all commission and enlisted sources including the United States Naval Academy. This approach provides CAI's team with the broad breadth and significant depth of experience and impartiality as well as mitigates any of VMI's unfounded concerns and allegations of racism against West Point. Moreover, VMI's scoring of NewPoint's and CAI's proposals in these areas of the RFP was directly contrary to APSPM, VPPA, Rules, Purchasing Manual, and Vendors Manual requirements that scoring criteria be objective, measurable and based on fact, and that it be based on the cumulative experience of the Prime and all subcontractors. The result is an arbitrary and capricious procurement process violating the VPAA resulting in an improper award that should be vacated or withdrawn.

CAI's response to the Experience and qualifications requirements complied completely with RFP itself and the RFP Question and Answers Addendum while NewPoint's proposal did not. Despite the RFP requiring point reductions for NewPoint, the panel arbitrarily elected not apply these standards to NewPoint. The failure to score, consistent with the requirements of the RFP, demonstrates, without question, that the award is arbitrary and capricious.

The final scoring criteria was "References where similar goods and/or services have been provided", VMI was required to comply with the APSPM, VPPA, Rules, Purchasing Manual, Vendors Manual. requirement that Offerors receive credit in scoring for experience and qualifications, not only of the firm, but also of the personnel to be assigned to the contract shall be included in the 'References' criterion and that Offerors be judged, among other considerations, on the relevancy of experience and expertise wherever it occurred. As with the Methodology and Plans criterion, the APSPM, VPPA, Rules, Purchasing Manual, and Vendors Manual require criteria be developed from RFP Specific Proposal Instructions' section of the RFP and the Selection Committee members' judgment in scoring and source selection be based on fact presented in the proposal, questions and answers, conference, etc. and so VMI Question and Answers Addendum to the RFP are required to be used in scoring Offerors' proposals by the APSPM, VPPA, Rules, Purchasing Manual, Vendors Manual. Any Offeror who does not comply with the specifications must be assessed a point deduction in scoring.

The panel's scoring of CAI and NewPoint demonstrates that the scoring system was arbitrary and capricious and not based on fact. CAI's proposal clearly included a much greater depth of experience with Institutions of Higher Education (IHE) and K-12, especially in Virginia, but this appears lost in the majority of the Selection Committee's bias against alumni and the military. VMI does not provide any details and facts supporting the point deductions for this criterion to support the deficiencies in the scoring summary, further supporting the conclusion that its decision to award the RFP to NewPoint was not result of the honest exercise of discretion.

**e. Systematic Arbitrary and Unequal treatment of Offerors.**

In evaluating and scoring proposals, the agency has an obligation to treat all Offerors equally. This means that Offerors' approaches should be similarly and consistently evaluated. VMI did not apply the criteria equally to NewPoint as compared to the other Offerors, resulting in a significant and unfair advantage to NewPoint in violation of the VPPA. This is detailed, in part, in the prior sections.

The RFP, contained general and special requirements that NewPoint did not meet, as detailed herein. By ignoring these serious violations and other deficiencies or, in some cases correcting them, VMI did not treat all Offerors fairly and further reinforced the appearance of impropriety.

The DGS procurement manual specifically addresses evaluation panel activities. The buyer/contract officer should prepare written instructions for the evaluation panel detailing the actions to be taken to evaluate the proposals and provide the instructions and copies of the proposals to each evaluator. Evaluators are instructed to identify and list areas of apparent noncompliance or areas needing clarification in each proposal and to conduct a preliminary independent and impartial appraisal on the strengths and weaknesses of each proposal. The evaluators should be instructed not to contact any of the Offerors. They must also be instructed not to reveal any information or tentative conclusions on the relative merits of proposals.

This failure to comply with the DGS Manual, APSPM, VPPA, Rules, Purchasing Manual, and Vendors Manual directly contributed to the lack of a fair and reasonable evaluation that resulted in the arbitrary, capricious and non-fact-based evaluation of the proposals received and the arbitrary award to NewPoint. The panel did not significantly decrement NewPoint's scores as required by the VPPA for these various deficiencies, as detailed in the preceding sections. The result was a completely bias, unfair and most importantly unlawful process.

The APSPM, VPPA, Rules, Purchasing Manual, and Vendors Manual upon which it is based require that the RFP criteria "must be developed from the items asked for in the 'Specific Proposal Instructions' section."<sup>215</sup> VMI did not comply with this requirement in its arbitrary and capricious scoring of proposals. While the APSPM, VPPA, Rules, Purchasing Manual, and Vendors Manual do account for subjectivity in scoring, they require: "...the committee member's judgment must be based on fact as presented in the proposal, question/answer conference, etc."<sup>216</sup> This did not occur in VMI's scoring of proposals to the arbitrary and capricious benefit of NewPoint.

For example, one rationale in the scoring summary for CAI's lower score under one of the criteria is: "Too military" and "includes VMI alumni"<sup>217</sup> There are no references in the RFP to limit, define or provide guidance on the level of involvement by personnel with military backgrounds of VMI alumni as the government contract lead or participating in the contract. Point deductions, therefore, cannot be made to CAI's proposal based on a proposed methodology that covers these according to common practice in government contracts. However, unlike NewPoint who received beneficial treatment, other Offerors suffered because of this disparate treatment.

**f. Block voting is improper and results in an arbitrary and capricious award.**

---

<sup>215</sup> APSPM Step by Step Instructions, V., EVALUATION AND AWARD CRITERIA:

<sup>216</sup> APSPM September 1998 including PIM #98-038, effective August 15, 2020, Annex 7B - STEP 9 - EVALUATE PROPOSALS, II, B

<sup>217</sup> See Exhibit 50.

It is highly unusual and indicative of inappropriate coordination between evaluation panel members that there is not a wide variance between subjective Selection Committee member scores on relatively subjective criteria. It is significant that the actual score shows this **did not happen** with the wide variance in evaluator scores compared to the almost exact, or in some cases exact, same scoring by other evaluators especially for the NewPoint proposal.

The scoring of evaluators Love, Sheikh, Sen and Kline are very close, if not exactly the same, for CAI and NewPoint proposals. The scores by Sheikh, Sen and Kline are, in most cases, exactly the same or within 1-2 points. The only significant gap is with the VMI procurement Office representative Ms. Lackey. The appearance of “block voting” between these other evaluators is unavoidable, as it is highly statistically improbable that these evaluators reviewing proposals completely independently as required by the APSPM, VPPA, Rules, Purchasing Manual, and Vendors Manual would all produce scores so uniformly similar for the same group of bidders. It is even more unlikely all would be within one to two points for the same bidder as they are. These scores directly influenced not only the selection of bidders moving to the second round, but the eventual award decision itself. The data available strongly suggests block voting or improper coordination, consistent with the rules and requirements of an impartial selection process.

The limited procurement file provided to CAI also contains evidence at least some members of the Section Committee attempted block voting and to coordinate scoring in violation of the Selection Committee instructions both on their own and through inappropriate pressure they attempted to place on the VMI procurement office. After repeatedly being instructed not to speak with other evaluators or Offerors, Ms. Sen stated to the VMI Procurement Office:

- *“I guess I don’t understand why you assume that there would be any more or less bias if we discussed the proposals. In fact, it would be a more informed decision, right.”*<sup>218</sup>
- *“Well, it’s still an individual evaluation – we still have our own scores. Discussing it doesn’t make it a group evaluation, right? That would only happen if the committee submitted one score. If you consider that point, then we could have a discussion and that would enhance our understanding of the strengths/weaknesses of vendors.”*<sup>219</sup>
- *In that case, shouldn’t those who know DEI have the final say in identifying who we hire to train the VMI community? We don’t have the procurement office sit in our candidate interviews, even though there are large sums of monies involved.*<sup>220</sup>

In efforts to prevent a full and complete fact-based analysis of the source for this block scoring is the fact that VMI intentionally attempted to redact the names of evaluators from the scoring matrix and unlawfully withheld the individual evaluator sheets and notes until forced to provide them by CAI.<sup>221</sup> VMI intentionally delayed CAI’s rightful access to the procurement file after CAI was not selected for interviews and rightfully requested said access under the VMI. This was under direct advice of VMI’s

---

<sup>218</sup> See Exhibit 35.

<sup>219</sup> See Exhibit 35.

<sup>220</sup> See Exhibit 35.

<sup>221</sup> See Exhibit 46 “We [VMI] provided the scoring sheets (less committee member names).”

legal counsel who advised the Procurement Officials *“My advice is not to respond to this letter.”*<sup>222</sup> One of the fundamental goals of the VPPA is to instill public confidence in procurement, and VMI has acted to undermine that confidence. The refusal to provide full and un-redacted access to records is consistent with the unlawful process applied in this evaluation.

Further evidence is the fact that several of the evaluators intentionally disregarded written Selection Committee instructions (or did not read them, an equally disturbing and improper scenario) and did not either make any notes or did not retain them. Finally, VMI did not take any steps to preserve these records by collecting evaluator notes and storing them securely in the procurement file. As a result, it is impossible to pinpoint any bias or conduct a more precise analysis. Despite this lack of information, the scoring itself proves the arbitrary and capricious nature of VMI’s scoring and certainly creates, at minimum the appearance of impropriety.

Simply stated, the APSPM, VPPA, Rules, Purchasing Manual, and Vendors Manual prohibit the manipulation of scores to benefit any one Offeror: *“Points should not be manipulated to favor a preferred supplier, but be assigned in an impartial manner.”*<sup>223</sup> VMI’s scoring violated the APSPM, VPPA, Rules, Purchasing Manual, and Vendors Manual. In so doing it was arbitrary, capricious and raises a significant appearance of impropriety. See Section III (b)(ii) (for example of block voting and impact)

**DEI Consultation and Training - Scores based on qualifications**

**RFP #V211-22-054**

<b>FIRM:</b>	<b>LOVE</b>	<b>LACKEY</b>	<b>SHEIKH</b>	<b>SEN</b>	<b>KLINE</b>	<b>AVG</b>
CK Business Strategy	61	35	60	61	64	56.2
Racial Equity Group	52	60	50	52	57	54.2
NewPoint Strategies	47	65	43	46	55	51.2
FIG Strategy	55	35	51	55	58	50.8
TMI Consulting	43	65	44	43	49	48.8
CIDIS	44	65	44	44	46	48.6
Veritas Academy	47	55	47	46	44	47.8
Center for Applied Innovation	45	65	44	44	37	47
WGU Labs	42	55	41	40	54	46.4
CTW LLC	48	39	44	47	48	45.2
iPondr	39	40	42	38	40	39.8
Mayadan Consulting Assoc.	40	35	40	40	38	38.6

<sup>222</sup> See Exhibit 53

<sup>223</sup> APSPM , September 1998 including PIM #98-038, effective August 15, 2020, Annex 7B - STEP 9 - EVALUATE PROPOSALS, II, B

**VI. Protest on grounds that contract to be awarded differs so greatly before RFP to constitute a different RFP.**

CAI has reviewed the NewPoint's proposal that will become the contract between NewPoint and VMI and compared it to what was contemplated by the RFP. The changes are so significant that they could greatly impact the pricing, value and scope of work from the RFP originally presented. The scope in the final contract is significantly different in a number of areas that Offerors were required to include in the proposals and is further tailored more to NewPoint's proposal than to the RFP issued. The following is summary of just some of the particular issues:

- The final contract would include a full review of VMI policies and procedures. This was not in the RFP
- The final contract would include off-site training that is specifically prohibited in the RFP.
- Based on the interview results and interactions between NewPoint and VMI the final contract will include a communications plan, marketing and other support to influence political leaders and the public that are not included in the TRFP. Just a few examples include:
  - A risk protection plan per Dr. Love, Ph.D's question to Offerors, "*How will you protect VMI from Risk?*" This question was so out of scope VMI procurement official Carmack, wrote in her meeting notes "*why ask*"<sup>224</sup>
  - Lobbying or otherwise influencing the new State government in Richmond and a plan to deal with persons who criticize the CDO per Mr. Kline's question: "*How to assist VMI with new government? Critical Race Theory. Collective Regard – Governor tends to respond to criticism and complaints*" and "*how will you support the CDO – people who do not support her?*"<sup>225</sup> Kline also commented, "*Youngkin CRT/Va Policies. Cannot ignor collective regard. Constituency complaints – won't do anything. CHAOS – is where they intervene. They only go where there is a FIRE. They don't believe there is a fire here.*"<sup>226</sup>
  - Developing a VMI "*talking points campaign*" to protect from risk and criticism.<sup>227</sup>
  - Media engagement plan, "*Control who talks to the press. Shared understanding of what of what information is shared with the press*"<sup>228</sup>

In its most basic terms the RFP was a simple and straight-forward DEI training assessment, development and delivery requirement with the addition of routine coaching (not mentoring). It is obvious from the limited records provided from the procurement file that while the Procurement Office representative (Lackey) did her best to evaluate and select an Offeror based on compliance with the RFP

---

<sup>224</sup> See Exhibit 49.

<sup>225</sup> See Exhibit 49.

<sup>226</sup> See Exhibit 49.

<sup>227</sup> See Exhibit 49.

<sup>228</sup> See Exhibit 49.



and its stated requirements, the other members of the Selection Committee, handpicked by Dr. Love, Ph.D, had a separate and improper agenda. That agenda was to award a contract to an Offeror who would advance their DEI agenda, limit relevant recent military or VMI experience and specifically exclude alumni well beyond simply providing the required training and assessments in the RFP in a “solicitation be damned” approach. It is also obvious that Dr. Love, Ph.D and her team, made every effort to shorten the procurement process well below the normal 30 days, limit the evaluation team below what the VMI Procurement office recommended to be fair and equitable and deliberately limited the number of Offerors who would advance to interviews. All with the intent to make the selection of an Offeror who would meet their own personal agendas and provide services not specified in the RFP- a complete violation and departure from the requirements of the VPPA. It is also obvious that, led by Mr. O’Leary as its legal counsel, VMI was more interested in covering up these violations to defeat a protest than complying with the law.<sup>229</sup>,

At a minimum, all of these and the others detailed in CAI’s protest (above) should have been published as a change to the RFP after Q&A and before proposal submission. The extensive material and other changes solely for the benefit of NewPoint raise serious questions impropriety and demonstrates the arbitrary and capricious nature of the award to NewPoint that in no way, shape or form can be characterized as the exercise of honest discretion. The “ends” of VMI as thoroughly documented in the overwhelming majority of the numerous Exhibits referenced and attached by CAI per footnotes to the previous pages of its protest, may well, in VMI’s view, appear to “justify” its use of any means available to anoint its pre-selected awardee NewPoint. Nevertheless, because VMI’s entire procurement process employed in this RFP has been demonstrated in detail by this protest to be blatantly arbitrary and capricious and in violation of the VPAA, there is no question that the award to NewPoint should be vacated or withdrawn.

**VII. Protest on grounds that pressure by the VMI leadership was placed on procurement staff to unnecessary shorten the acquisition cycle without sufficient urgency justification and with the intent to steer the contract or a specific Offeror or one within a selected group of Offerors.**

VMI was well aware of their actions were limiting a fair and equitable procurement. In one example, the VMI procurement office cautioned Dr. Love, Ph.D, “ *We have received criticism for the short posting period allowed for this public solicitation. This procurement is highly visible and giving firms the ability to tailor their presentations will allow for a much more successful, less suspect, outcome.*”<sup>230</sup> Dr. Love, Ph.D ignored this warning

The procurement office scheduled five firms for interviews.<sup>231</sup> Dr. Love, Ph.D cut it to three firms with no justification.<sup>232</sup> The justification can be inferred, and it is consistent with the award being arbitrary and capricious.

---

<sup>229</sup> See Exhibit 54.

<sup>230</sup> Exhibit 43.

<sup>231</sup> Exhibit 55.

<sup>232</sup> Exhibit 43.

Dr. Love, Ph.D became so upset by what she perceived as unnecessary delays in advancing her agenda, that were, in fact prudent steps by the procurement office, that she, for a time ceased responding to procurement office emails. <sup>233</sup>*This type of behavior raises clear and unequivocal signs of impropriety.*

Dr. Love, Ph.D attempted to by-pass the acquisition process altogether in efforts to make the procurement decision solely between herself in Maj. Gen. Wins, while accusing BG Clarke of stating to the VMI BOV that he would make the decision although he was not on the evaluation committee. This led to a meeting with the VMI Counsel on how VMI could “*clean this up*” to include changing the official BOV minutes. <sup>234</sup>Unfortunately, the desire to clean up their mess did not ultimately translate to a honest and proper procurement process.

BG Clarke engaged the VMI Attorney, Mr. O’Leary, stating “*We are getting a great deal of consternation on the subject procurement. I expect the probability is high that this procurement will be protested.*” <sup>235</sup>

BG Clarke and the VMI Procurement staff acknowledged “Someone is feeding her [Dr. Love] misinformation” indicating Dr. Love., Ph.D was engaging with outside entities regarding the procurement. The correspondence includes numerous examples of Dr. Love’s attempts to influence the procurement and pressure the procurement office. <sup>236</sup>

Dr. Love, Ph.D directed the period to seek proposals be shortened from 30 days to 10 days citing the urgency of the requirement but the procurement file, as produced to date, is absent of any documentation of any justification or approval. <sup>237</sup>

Dr. Love, Ph.D. ignored VMI procurement office recommendations and shortened the time Offerors were allowed to prepare for interviews. <sup>238</sup>

At one point the procurement office held concerns evaluators may be talking with outside entities. <sup>239</sup>

All of these issues raise clear and obvious concerns of actual impropriety. The award is undoubtedly arbitrary and capricious, and VMI must not move forward with the award under these circumstances.

---

<sup>233</sup> Exhibit 50.

<sup>234</sup> Exhibit 54.

<sup>235</sup> Exhibit 54.

<sup>236</sup> Exhibit 56.

<sup>237</sup> Exhibit 57.

<sup>238</sup> Exhibit 58.

<sup>239</sup> Exhibit 10.

**VIII. Protest on grounds that VMI acted willfully to impede or block an Offeror from submitting a proper, complete and timely protest.**

VMI's willful actions to impede or block CAI from submitting a proper, complete, timely protest are numerous. Examples of this behavior include, without limitation, deliberate withholding of documents, failure to acquire and maintain documents for the procurement record, delay in providing required documentation, incomplete records provided, and others. The following are a few specific examples:

- a. **Scoring sheets.** To be clear, VMI initially deliberately withheld copies of the scoring sheets used to evaluate the bidders. At first VMI attested the fully procurement file was uploaded for CAI. It was only after CAI challenged VMI with the VPPA did VMI relent and disclose these documents. VMI has further refused and failed to provide scoring and meeting notes from several of the Selection Team Members. They have failed to provide how the scoring was done and how it was determined. The clear aim being to prevent their malfeasance from being uncovered.
- b. **Top Three Vendor presentation.** The interview presentation by Veritas Academy was missing from the procurement file. This presentation was critical to comparing CAI's score with Veritas' scores and eventual selection to the final three Offerors in the second round. VMI's response was simply that Veritas did not provide them a copy and so none were available to VMI. This is required in the procurement file and under the VPPA.
- c. **Price scoring.** The procurement record does not include a required narrative formula and other documentation any reasonable person could use to determine or understand the scoring method used or the justifications for scores assigned to Offerors for their proposals as required.
- d. **NewPoint Proposal Changes.** The procurement record does not include the original or updated price proposal submitted by NewPoint and related documents on the action(s) VMI took with it.
- e. **Emails and attachments.** A number of the emails in the procurement file specifically reference attachments that were not provided to CAI in order to prepare its protest. There were obvious meetings and other communications ongoing between Dr. Love, Ph.D, Lt. Col. Young, BG Clark, Maj. Gen. Wins, Mr. Kline, Ms. Sen and others on the VMI staff copied on or mentioned in emails that were not disclosed to CAI and should be in the procurement records. There is also evidence VMI altered the BOV records and minutes, to include, but not limited to, changing out the copy of the RFP originally provided to the BOV with another one when they discovered the first version the BOV was brief on was wrong.<sup>240</sup> There is no evidence in the record VMI ever notified the BOV of this serious error.
- f. **Additional procurement related correspondence.** The VMI Procurement office wrote "*We have received criticism for the short posting period allowed for this public solicitation.*"<sup>241</sup> BG Clarke engaged the VMI Attorney, Mr. O'Leary, stating "*We are*

---

<sup>240</sup> See Exhibit 54.

<sup>241</sup> See Exhibit 59.

*getting a great deal of consternation on the subject procurement. I expect the probability is high that this procurement will be protested.*"<sup>242</sup> These documents are not in the procurement record provided to CAI.

- g. **Procurement records including sole source documents.** The incomplete records provided to CAI as of the protest date show Dr. Love, Ph.D sent BG Clarke, Deputy Superintendent of Finance and Administration, the terms and agreement for the BidSync sole source procurement in linking it to the RFP. Although the portions of the Procurement record released show a clear connection between the two acquisitions as part of a larger VMI plan and the compatibility of the proposals to the BidSync approach prominently covered in the emails with obvious importance to the training procured under the RFP and obviously used in scoring proposals received in response to the RFP, none of the documents were available to Offerors in preparing their proposals. These important documents were also not released to CAI with the alleged full procurement file. To date VMI continues to withhold these and related procurement records.

If these records don't exist, as required by the APSPM, VPPA, Rules, Purchasing Manual, and Vendors Manual it demonstrates the award was improper and if they do exist, the refusal to produce is evidence of the unlawful nature of same.

As stated February 4, 2022, before evaluations and award, by Patrick O'Leary (VMI Attorney-General Legal Counsel), to BG Clarke (VMI Finance Director), Lt. Col. Young (Chief of Staff to Maj. Gen. Wins, VMI Superintendent), Lt. Col. Ryan (Executive Officer to VMI Superintendent), Mr. Lawhorn (Treasurer's Office), and Ms. Tomlin (Director of Procurement Services), "*We are getting a great deal of consternation on the subject procurement. I expect that the probability is high that this procurement will be protested.* Accordingly, please get with Kathy Tomlin and let's begin to assemble a review of our documents and process, *understand our vulnerabilities* and complete a review of the procurement protest process."<sup>243</sup> [emphasis added]

As shown above Mr. O'Leary also advised the procurement office to ignore legitimate and legal CAI requests to access the procurement file as it was CAI's right under the VPPA.

Rather than provide legal advice focused on protecting the integrity of the procurement process and correct violations to prevent scoring and award from being arbitrary and capricious Mr. O'Leary's strategy shows VMI focused on discovering their "vulnerabilities", a strategy to defeat any legitimate protest<sup>244</sup>, and expediting contract award than adhering to the letter and spirit of the VPPA, "*...any protest delays will further compound the issues in getting the training in place which is desire.*"<sup>245</sup>

---

<sup>242</sup> See Exhibit 60.

<sup>243</sup> See Exhibit 59.

<sup>244</sup> See Exhibit 54.

<sup>245</sup> See Exhibit 59.

As a result, it is clear and obvious that the award was arbitrary and capricious. To the extent these documents exist, and VMI has knowingly withheld production in violation of the law. They cannot seek to benefit from such malfeasance. CAI reserves the right to seek an injunction against the award, should the protest be denied, on these grounds.

**IX. The Blatant Spoilation & FOIA Violations Warrant the Granting of this Protest, as this serious malfeasance further evidences the improper nature of the award.**

As detailed in this protest, VMI violated the law in failing to maintain and preserve all records, including scoring sheets (with comments) used in the evaluation of bidders. These are public records and there exists an affirmative duty to maintain them. The evaluators claims that some of them did not preserve the records is suspect, raises concerns of impropriety, and constitutes spoilation.

A party cannot benefit from its own malfeasance. The destruction of certain pertinent, relevant documents creates an inference that those documents were and would have been harmful to the destroying party, in this case VMI (and the evaluators). CAI protests on grounds that the spoilation of pertinent evidence constitutes malfeasance, in violation of the VPPA. The award must be vacated.

The award is arbitrary and capricious. The FOIA violations and corresponding spoilation are grounds alone for vacating this illegal award. If the matter proceeds to court, CAI will seek relief due to the improper spoilation and destruction of documents, intending to cover up the arbitrary, capricious and unlawful conduct engaged in the award.

**X. Request for Documents**

CAI once again respectfully requests the following records pursuant to VA Code § 2.2-4342 (Public inspection of certain records) and the Virginia Freedom of Information Act, codified in Section 2.2-3704 of the Virginia Code be produced in full and without redaction:

- The complete unreacted contents of the VMI procurement record.
- Any and all records or documents relating to Request for Proposals Project #V211-22-054, Title: Diversity, Equity, and Inclusion (DEI) Consultation and Training, 30 November 2022.
- All internal correspondence/communications relating to the bids and/or decision to award the contract to NewPoint
  - Including all internal communication regarding process and scoring.
  - Including all correspondence with the VMI Superintendent and his office, VMI Communications Office, or other offices with whom any part of the RF, acquisition Process, CAI or its team members were discussed.
- All documents or communications relating the rejection of any bid.
- Any and all records relating to the request for proposal at issue in this matter.
- Copies of any and all administrative procedures that have been adopted relating the Protest of award or decision to award.
- Missing scoring sheets and summaries.



March 18, 2022

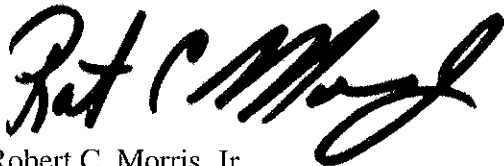
Page 54

Please direct your response pursuant to the statutes referenced above to the address on the letterhead.

We look forward to your detailed response to the protest within 10 days, as required by VA Code § 2.2-4360. To the extent the issues in this project are not resolved to CAI's reasonable satisfaction, we intend to pursue further legal action in response to any decision adverse to its interests. CAI acknowledges that the only remedy is to vacate and enjoin this improper award, the protest/claim is being pursued to protect the integrity of the procurement process and the citizens of the Commonwealth footing the bill. It is an interest that VMI hopefully shares.

Center for Applied Innovation, LLC would like to resolve this matter amicably and, in that spirit, I look forward to hearing back from you in response to the issues raised by this protest within the timeframes required by the VPAA.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert C. Morris, Jr.", written in a cursive style.

Robert C. Morris, Jr.

President

Center for Applied Innovation, LLC

# Exhibit 1





**Virginia Military Institute**  
**Procurement Services**  
314 Smith Hall  
Lexington, Virginia 24450-0304  
540-464-7323

**NOTICE OF INTENT TO AWARD**

**DATE: 28 February 2022**

**TITLE: DEI CONSULTATION and TRAINING**

**IN RESPONSE TO: RFP V211-22-054                      DATED 30 November 2021**

**CONTRACTOR: NewPoint Strategies, LLC**

Records for this procurement are now available for inspection by any offeror on this RFP.

MAJ Lynn W. Carmack, CUPO, CPSM, CPSD  
Assistant Director of Procurement Services

# Exhibit 2

**From:** [Tomlin, Kathleen H](#)  
**To:** [Carmack, Lynn W](#)  
**Subject:** FW: DEI Procurement  
**Date:** Friday, February 4, 2022 9:16:45 AM

---

**From:** O'Leary, Patrick O, 'Pat' <[olearypo@vmi.edu](mailto:olearypo@vmi.edu)>  
**Sent:** Friday, February 4, 2022 8:27 AM  
**To:** Clark, Dallas B <[clarkdb@vmi.edu](mailto:clarkdb@vmi.edu)>  
**Cc:** Tomlin, Kathleen H <[TomlinKH@vmi.edu](mailto:TomlinKH@vmi.edu)>; Young, John <[youngjm@vmi.edu](mailto:youngjm@vmi.edu)>; Ryan, Kevin A <[ryanka@vmi.edu](mailto:ryanka@vmi.edu)>; Lawhorne, Jeffrey L <[LawhorneJL@vmi.edu](mailto:LawhorneJL@vmi.edu)>  
**Subject:** RE: DEI Procurement

Ok, let's set up a face to face meeting next week to review the documents and process.

Pat

**From:** Clark, Dallas B <[clarkdb@vmi.edu](mailto:clarkdb@vmi.edu)>  
**Sent:** Friday, February 4, 2022 5:41 AM  
**To:** O'Leary, Patrick O, 'Pat' <[olearypo@vmi.edu](mailto:olearypo@vmi.edu)>  
**Cc:** Tomlin, Kathleen H <[TomlinKH@vmi.edu](mailto:TomlinKH@vmi.edu)>; Young, John <[youngjm@vmi.edu](mailto:youngjm@vmi.edu)>; Ryan, Kevin A <[ryanka@vmi.edu](mailto:ryanka@vmi.edu)>; Lawhorne, Jeffrey L <[LawhorneJL@vmi.edu](mailto:LawhorneJL@vmi.edu)>  
**Subject:** DEI Procurement

Pat,

We are getting a great deal of consternation on the subject procurement. I expect that the probability is high that this procurement will be protested. Accordingly, please get with Kathy Tomlin and let's begin to assemble a review of our documents and process, understand our vulnerabilities and complete a review of the procurement protest process.

This has been a high pressure procurement with expedited timelines and any protest delays will further compound the issues in getting the training in place which is desired.

Many thanks,

**Dallas B. Clark**

Brigadier General

Deputy Superintendent for Finance, Administration and Support

**Virginia Military Institute**

303 Smith Hall, Lexington, Virginia 24450-0304

540-464-7321 Office | 540-460-8020 Mobile

[clarkdb@vmi.edu](mailto:clarkdb@vmi.edu)

# Exhibit 3

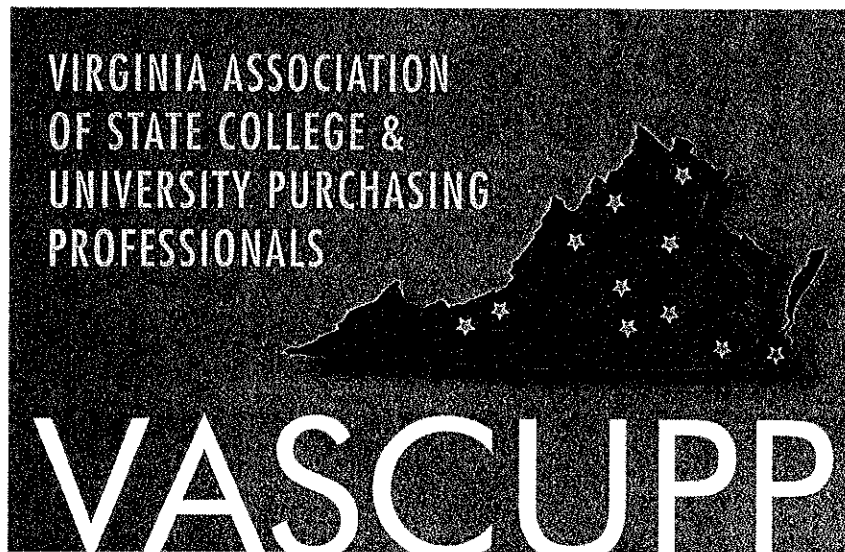


REQUEST FOR PROPOSALS  
PROJECT #V211-22-054

**Diversity, Equity, and Inclusion (DEI) Consultation and Training**  
30 November 2021

---

---



**Virginia Military Institute**  
Lexington, Virginia 24450-0304

REQUEST FOR PROPOSALS

RFP# V211-22-054

Issue Date: 30 November 2021

Title: Diversity, Equity, and Inclusion (DEI) Consultation and Training

Pre-Proposal  
Conference Date: There will be no pre-proposal conference

Due Date: 14 December, 2021 at 2:00 PM EST

Issuing Agency: Virginia Military Institute  
Procurement Services  
330 Parade Avenue, 314 Smith Hall  
Lexington, VA 24450

Period of Contract: Date of Award through 30 June 2023 (Annually Renewable Thereafter for four (4) successive one-year renewals.

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

PRE-PROPOSAL CONFERENCE: There is NO PRE-PROPOSAL CONFERENCE.

All Inquiries for Information Should Be Directed To: MAJ Lynn W. Carmack, VMI Procurement Services at [carmacklw@vmi.edu](mailto:carmacklw@vmi.edu).  
Use of the Understanding of Requirement Form (Attachment A) must be submitted for questions concerning specifications or statement of needs.

In Compliance With This Request For Proposal And To All The Conditions Imposed Therein And Hereby Incorporated By Reference, The Undersigned Offers And Agrees To Furnish The Goods/Services In Accordance With The Attached Signed Proposal Or As Mutually Agreed Upon By Subsequent Negotiation.

Name and Address Of Firm:

_____	Date: _____
_____	By: _____
_____	(Signature In Ink)
_____	Name: _____
_____	(Please Print)
_____ Zip Code: _____	Title: _____
EVA Vendor ID or DUNS number _____	Phone: (____) _____
E-mail: _____	Fax: (____) _____

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 made in writing and explain why an exception should be made in that invitation to bid or request for proposal.

**REQUEST FOR PROPOSAL**  
Diversity, Equity, and Inclusion (DEI) Consultation and Training  
V211-22-054

**TABLE OF CONTENTS**

I. PURPOSE .....Page 4

II. BACKGROUND.....Page 4

III. CONTRACT PARTICIPATION.....Page 4

IV. SMALL, WOMAN-OWNED AND MINORITY PARTICIPATION.....Page 4

V. STATEMENT OF NEEDS.....Pages 4-5

VI. PROPOSAL PREPARATION AND SUBMISSION.....Pages 5-7

VII. EVALUATION AND AWARD CRITERIA.....Page 7

VIII. GENERAL TERMS AND CONDITIONS .....Pages 8-15

IX. SPECIAL TERMS AND CONDITIONS .....Pages 16-20

X. METHOD OF PAYMENT .....Page 20

XI. PRICING SCHEDULE .....Page 20

XI. ATTACHMENTS.....Pages 21-27

Attachment A: Understanding of Requirements

Attachment B: Conflict of Interest Statement

Attachment C: Contractor’s Data Sheet

Attachment D: References

Attachment E: SWaM (Small, Woman- and Minority-owned Businesses) Utilization Plan

Attachment F: Small Business Subcontracting Plan

Attachment G: State Corporation Commission Form

**I. PURPOSE**

The purpose of this Request for Proposal (RFP) is to solicit sealed proposals from qualified sources to enter into a contract to provide Diversity, Equity, and Inclusion Training and Consulting Services for Virginia Military Institute. The initial contract will be from date of award until 30 June 2023, with four (4) optional one-year renewals.

**II. BACKGROUND**

VMI seeks to intentionally strengthen its commitment and work around DEI to aid the institute in achieving its Inclusive Excellence Plan goals and objectives. VMI understands that these extraordinary times require intentionality and awareness bias.

General:

1. Institute DEI activities are foundational to achieving inclusive excellence
2. The Institute has 750 employees active on the payroll system, which are paid semi-monthly.
3. Approximately 1,600 students are enrolled at Virginia Military Institute.

**III. CONTRACT PARTICIPATION**

Under the authority of §6 of the Rules Governing Procurement of Goods, Services, Insurance and Construction by a Public Institution of Higher Education of the Commonwealth of Virginia (copy available at <https://vascupp.org/sites/vascupp/files/2020-05/vascapp-governing-rules.pdf>), it is the intent of this solicitation and resulting contracts to allow for cooperative procurement. Accordingly, any public, body, public or private health or educational institutions or lead issuing institution's affiliated corporations may access any resulting contract if authorized by the contractor. Participation in this cooperative procurement is strictly voluntary. If authorized by the Contractor(s), the resultant contract(s) may be extended to the entities indicated above to purchase at contract prices in accordance with the contract terms. The Contractor shall notify the lead issuing institution in writing of any such entities accessing the contract. No modification of this contract or execution of a separate contract is required to participate. The Contractor will provide semi-annual usage reports for all entities accessing the contract. Participating entities shall place their own orders directly with the Contractor and shall fully and independently administer their use of the contract(s) to include contractual disputes, invoicing and payments without direct administration from Virginia Military Institute. VMI shall not be held liable for any costs or damages incurred by any other participating entity as a result of any authorization by the Contractor to extend the contract. It is understood and agreed that VMI is not responsible for the acts or omissions of any entity and will not be considered in default of the contract no matter the circumstances. Use of this contract(s) does not preclude any participating entity from using other contracts or competitive processes as the need may be. Please contact the buyer for additional information.

**IV. SMALL, WOMAN-OWNED AND MINORITY (SWAM) PARTICIPATION**

It is the policy of the Commonwealth of Virginia to contribute to the establishment, preservation, and strengthening of Small, Woman-owned and Minority-owned (SWaM) business enterprises and to encourage the participation of Department of Small Business and Supplier Diversity (DSBSD) certified SWaM businesses in State procurement activities. VMI strongly encourages DSBSD-certified SWaM firms to compete and majority firms to provide for the participation of DSBSD-certified SWaM businesses through partnerships, joint ventures, subcontracts, and other contractual opportunities. VMI has adopted an annual SWaM Procurement Plan that specifies goals for SWaM procurement by Prime Contractors (A/E or Construction) in support of the Governor's Executive Order 35 with a minimum SWaM utilization goal to 42%. Proposer must provide information on its past utilization of Small, Women, and Minority-Owned disadvantaged businesses, and must also state any plans to utilize such businesses and the manner in which



they may be utilized under this Contract. Evidence of such utilization is demonstrated on Attachment F: Small Business Subcontracting Plan.

## V. STATEMENT OF NEEDS

### A. Organization Requirements:

1. DEI training that can be delivered to the VMI community, including Institute Executives and Board of Visitors.
2. The organization must be able to identify specific areas for organizational in-depth focus through a DEI lens.
3. The organization should have consultants who understand the military underpinnings of VMI.
4. Determination of a clear roadmap for training, consulting, and coaching.
5. Support VMI's effort to make decisions and strategic plans at the institutional level
6. Provide support for the daily strategic work of the Chief Diversity Officer (CDO) and the Office of Diversity Equity and Inclusion

### B. Description of Services:

The organization should provide at a minimum, the services described below:

1. The organization must be able to provide DEI training that includes guidelines, cultural sharing, areas of modification, bias intervention options, and DEI language that best fits the VMI community.
2. The organization must be able to provide opportunities for individuals to embrace DEI concepts, explore allyship, and a framework for lifelong learning
3. The organization must be able to discuss cultural and identity oppression in the context of current culture as it relates to VMI.
4. The organization must be able to design, conduct, review, and analyze an organizational DEI cultural assessment.
5. The organization must be able to review the assessment from a framework that is both individual and organizational while understanding the VMI philosophy.
6. The organization should provide accountability and support within the ranks of Institute Executives.
7. The organization must be able to provide opportunities for face-to-face training on post.
8. The organization must be able to assist in determining roadmap of training, consulting, and coaching.
9. The organization must be able to provide on-going DEI support.
10. Trainings must take place on Post, in person.

## VI. PROPOSAL PREPARATION AND SUBMISSION

### A. GENERAL INSTRUCTIONS:

1. RFP Response: In order to be considered for selection, offeror must submit a complete response to this RFP. One (1) original and five (5) copies of each proposal must be submitted to the issuing State agency. No other distribution of the proposal shall be made by the offeror.

**To ensure timely and adequate consideration of your proposal, offerors are to limit all contact, whether verbal or written, pertaining to this RFP to the Virginia Military Institute Procurement Services Office for the duration of this Proposal process. Failure to do so may jeopardize further consideration of Offeror's proposal.**

Questions are to be submitted in writing no less than ten (10) days prior to the close date of this solicitation and should be addressed to MAJ Lynn W. Carmack at [carmacklw@vmi.edu](mailto:carmacklw@vmi.edu). Questions will be answered and posted in the form of an addendum.

2. Proposal Preparation:

- a. Proposals shall be signed by an authorized representative of the offeror. All information requested should be submitted. Failure to submit all information requested may result in the purchasing agency requiring prompt submissions of missing information and/or giving a lowered evaluation of the proposal. Proposals which are substantially incomplete or lack key information may be rejected by the purchasing agency. Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation.
- b. Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of content.
- c. Proposals should be organized in the order in which the requirements are presented in the RFP. All pages of the proposal should be numbered. Each paragraph in the proposal should reference the paragraph number of the corresponding section of the RFP. It is also helpful to cite the paragraph number, 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 the 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 offeror's proposal.
- e. Each copy of the proposal should be bound or contained in a single volume where practical. All documentation submitted with the proposal should be contained in that single volume.
- f. Ownership of all data, materials and documentation originated and prepared for the State pursuant to the RFP shall belong exclusively to the State and be subject to public inspection in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by the offeror shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the offeror must invoke the protection of Section 2.2-4342F of the Code of Virginia, in writing, either before or at the time the data 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 materials 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 and return of the proposal.

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 Virginia Military Institute. This provides an opportunity for the offeror to clarify or elaborate on the proposal. This is a fact finding and explanation session only and does not include negotiation. VMI will schedule the time and location of these presentations. Oral presentations are an option of the Institute and may or may not be conducted. Therefore, proposals should be complete.

**B. SPECIFIC PROPOSAL INSTRUCTIONS:**

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

1. Return RFP cover sheet and all addenda acknowledgments, if any, signed and filled out as required.
2. Contractor's Data Sheet, included as Attachment C to the RFP, and other specific items or data requested in the RFP.
3. A written narrative statement to include:
  - a. Experience in providing the goods/services described herein;
  - b. Names, qualifications and experience of personnel to be assigned to the project;
  - c. Resumes of staff to be assigned to the project.
4. Specific plans for providing the proposed services including:
  - a. List of proposed equipment/goods and approach to providing any service including a proposed work plan;
  - b. What, when and how services will be performed;
  - c. Time frame for implementation/completion;
  - d. Identify Institute's role and responsibilities for implementation/conversion.
5. Small Business Subcontracting Plan: Offeror shall provide a Small Business Subcontracting plan which summarizes the planned utilization of SBSD-certified small businesses which include businesses owned by women and minorities, when they have received SBSD small business certification, under the contract to be awarded as a result of this solicitation. This is a requirement for all prime contracts in excess of \$100,000.
6. Proposed Cost.

**VII. EVALUATION and AWARD CRITERIA**

**A. EVALUATION CRITERIA:**

Proposals shall be evaluated by Virginia Military Institute using the following criteria:

	<u>Points</u>
1. Plan for providing DEI services, tailored to VMI needs	20
2. Qualifications and experience of Offeror	20

3. Price	15
4. Implementation, Planning and Services	15
5. References where similar goods and/or services have been provided	10
6. Participation of Small, Women-Owned and Minority (SWaM) Businesses	<u>20</u>
TOTAL:	100

**VIII. GENERAL TERMS AND CONDITIONS**

- A. **PURCHASING MANUAL:** This solicitation is subject to the provisions of the Commonwealth of Virginia’s Purchasing Manual for Institutions of Higher Education and Their Vendors and any revisions thereto, which are hereby incorporated into this contract in their entirety. A copy of the manual is available for review at the purchasing office. The manual may be accessed electronically at <https://vascupp.org/sites/vascupp/files/2020-09/hem.pdf>.
- 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 Commonwealth of Virginia Vendor’s 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 or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia, § 2.2-4343.1E*).

In every contract over \$10,000 the provisions in 1. and 2. below apply:

- 1. During the performance of this contract, the contractor agrees as follows:
  - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
  - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.

- 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 (bids/proposals), (bidders/offers) certify that their (bids/proposals) are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other (bidder/offers), supplier, manufacturer or subcontractor in connection with their (bid/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:** Applicable for all contracts over \$10,000: 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 IFBs AND 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 (bidder/offeror) has questions about the specifications or other solicitation documents, the prospective (bidder/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 *COMMONWEALTH OF VIRGINIA PURCHASING MANUAL for INSTITUTIONS OF HIGHER EDUCATION and THEIR VENDORS*, 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 (BIDDERS/OFFERORS):** The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the (bidder/offeror) to perform the services/furnish the goods and the (bidder/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 (bidder's/offeror's) physical facilities prior to award to satisfy questions regarding the (bidder's/offeror's) capabilities. The Commonwealth further reserves the right to reject any (bid/proposal) if the evidence submitted by, or investigations of, such (bidder/offeror) fails to satisfy the Commonwealth that such (bidder/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. Any 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.

**(NOT NORMALLY REQUIRED FOR SERVICE CONTRACTS)**

R. **USE OF BRAND NAMES:** Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict (bidders/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 (bidder/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 (bidder/offeror) clearly indicates in its (bid/proposal) that the



product offered is an equivalent product, such (bid/proposal) will be considered to offer the brand name product referenced in the solicitation.

- S. **TRANSPORTATION AND PACKAGING:** By submitting their (bids/proposals), all (bidders/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:**

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 shall be added as an additional insured to the policy by an endorsement.
4. Automobile Liability - \$1,000,000 combined single limit. (Required only if a motor vehicle not owned by the Commonwealth is to be used in the contract. Contractor must assure that the required coverage is maintained by the Contractor (or third party owner of such motor vehicle.)

<u>Profession/Service</u>	<u>Limits</u>
Accounting	\$1,000,000 per occurrence, \$3,000,000 aggregate
Architecture	\$2,000,000 per occurrence, \$6,000,000 aggregate
Asbestos Design, Inspection or Abatement Contractors	\$1,000,000 per occurrence, \$3,000,000 aggregate
Health Care Practitioner (to include Dentists, Licensed Dental Hygienists, Optometrists, Registered or Licensed Practical Nurses, Pharmacists, Physicians, Podiatrists, Chiropractors, Physical Therapists, Physical Therapist Assistants, Clinical Psychologists, Clinical Social Workers, Professional Counselors, Hospitals, or Health Maintenance Organizations.)	
	<i>Code of Virginia</i> § 8.01-581.15
	<a href="https://law.lis.virginia.gov/vacode/title8.01/chapter21.1/section8.01-581.15/">https://law.lis.virginia.gov/vacode/title8.01/chapter21.1/section8.01-581.15/</a>
Insurance/Risk Management	\$1,000,000 per occurrence, \$3,000,000 aggregate
Landscape/Architecture	\$1,000,000 per occurrence, \$1,000,000 aggregate
Legal	\$1,000,000 per occurrence, \$5,000,000 aggregate
Professional Engineer	\$2,000,000 per occurrence, \$6,000,000 aggregate
Surveying	\$1,000,000 per occurrence, \$1,000,000 aggregate

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 on the DGS/DPS eVA VBO ([www.eva.virginia.gov](http://www.eva.virginia.gov)) for a minimum of 10 days.

V. **DRUG-FREE WORKPLACE:** Applicable for all contracts over \$10,000:

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, web site portal [www.eva.virginia.gov](http://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 bid/proposal being rejected.

Vendor transaction 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](http://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. **SET-ASIDES IN ACCORDANCE WITH THE SMALL BUSINESS ENHANCEMENT AWARD PRIORITY:** This solicitation is set-aside for award priority to DSBSD-certified micro businesses or small businesses when designated as "Micro Business Set-Aside Award Priority" or "Small Business Set-Aside Award Priority" accordingly in the solicitation. DSBSD-certified micro businesses or small businesses also includes DSBSD-certified women-owned and minority-owned businesses when they have received the DSBSD small business certification. For purposes of award, bidders/offerors shall be deemed micro businesses or small businesses if and only if they are certified as such by DSBSD on the due date for receipt of bids/proposals.
- AA. **BID PRICE CURRENCY:** Unless stated otherwise in the solicitation, bidders/offerors shall state bid/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.
- CC. **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**

1. **ADDITIONAL USERS:** This procurement is being conducted on behalf of state agencies, institutions and other public bodies who may be added or deleted at any time during the period of the contract. The addition or deletion of authorized users not specifically named in the solicitation shall be made only by written contract modification issued by this agency or institution and upon mutual agreement of the contractor. Such modification shall name the specific agency added or deleted and the effective date. The contractor shall not honor an order citing the resulting contract unless the ordering entity has been added by written contract modification.
2. **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.
3. **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.
4. **CANCELLATION OF CONTRACT:** The purchasing agency reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the contractor. In the event the initial contract period is for more than 12 months, the resulting contract may 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.
5. **CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION:** The contractor assures that the information and data obtained as to personal facts and circumstances related to students or staff will be collected and held confidential, during and following the contract, and will not be divulged without the individual's and the University's written consent and only in accordance with federal law or Code of Virginia. Contractors who utilize, access, or store personally identifiable information as part of the performance of a contract are required to safeguard this information and immediately notify the agency of any breach or suspected breach in the security of such information. Contractors shall allow the agency

to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. Contractors and their employees working on this project may be required to sign a confidentiality statement.

6. **CONTINUITY OF SERVICES:**

- A. The Contractor recognizes that the services under this contract are vital to the University and must be continued without interruption and that, upon contract expiration, a successor, either the University or another contractor, may continue them. The Contractor agrees:
  - 1. To exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor;
  - 2. To make all University owned facilities, equipment, and data available to any successor at an appropriate time prior to the expiration of the contract to facilitate transition to successor; and
  - 3. That the University Contract Officer shall have final authority to resolve disputes related to the transition of the contract from the Contractor to its successor.
- B. The Contractor shall, upon written notice from the Contract Office, furnish phase-in/phase-out services for up to ninety (90) days after this contract expires and shall negotiate in good faith a plan with the successor to execute the phase-in/phase-out services. This plan shall be subject to the Contractor Officer's approval.
- C. The Contractor shall be reimbursed for all reasonable, pre-approved phase-in/phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in/phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract. All phase-in/phase-out work fees must be approved by the Contract Officer in writing prior to commencement of said work.

7. **CONTRACT ADMINISTRATION:** VMI assigns "Contract Administrators" to each contract awarded. The Contract Administrator shall be the initial point of contact for the Contractor. Contract Administrators are charged with ensuring the terms and conditions of the contract are followed, payments are made in accordance to the contractual pricing schedule, and reporting noncompliance issues to the Procurement and Contracts Department at VMI. Contract Administrators **do not** have the authority to authorize changes and/or modifications to the contract. Should noncompliance issues exist and cannot be resolved at this level or changes/modifications to the contract are required, the assigned Contract Officer in the Procurement Services Department must be notified immediately by the Contract Administrator. The assigned Contract Administrator will be identified upon award.

8. **eVA ORDERS AND CONTRACTS:** The solicitation/contract will result in multiple purchase order(s) 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 bid/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](http://www.eVA.virginia.gov). Contractors should email Catalog or Index Page information to [eVA-catalog-manager@dgs.virginia.gov](mailto:eVA-catalog-manager@dgs.virginia.gov).

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

<b>Name of Offeror:</b>	<b>RFP#</b>
<b>Address:</b>	<b>Due Date:</b> <b>Time:</b>
	<b>RFP Title:</b>
<b>City, State, Zip:</b>	<b>Contract Officer:</b>

10. **INDEMNIFICATION:** Contractor agrees to indemnify the Commonwealth of Virginia, its officers, agents and employees for any loss, liability, cost, or reasonable settlement cost incurred as a result of any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the contractor/any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the sole negligence of the using agency or to failure of the using agency to use the materials, goods, or equipment in the manner already and permanently described by the contractor on the materials, goods or equipment delivered.
11. **LATE PROPOSALS:** To be considered for selection, proposals must be received by the Issuing Agency by the designated date and hour. The official time used in the receipt of proposal is that time on the automatic time stamp machine in the Issuing Agency. **The Institute is not responsible for delays in the delivery of mail by the U.S. Post Office, private couriers, or the Institute's internal mail system. It is the sole responsibility of the Offeror to insure that its proposal reaches the issuing office by the designated date and hour.** \*Proposal receipt scheduled during a period of suspended state business operations will be rescheduled for processing at the same time on the next regularly scheduled business day.
12. **REFERENCES:** Bidders shall provide a list of at least three references where similar goods and/or services have been provided. Each reference shall include the name of the organization, the complete mailing address, the name of the contact person and telephone number.
13. **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.
14. **STATE CORPORATION COMMISSION IDENTIFICATION NUMBER:** Pursuant to Code of Virginia, §2.2-4311.2 subsection B, a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its bid or proposal the identification number issued to it by the State Corporation Commission (SCC). Any bidder or 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 bid or proposal a statement describing why the bidder or 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.
15. **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.

- 16. CERTIFICATION OF INTERNAL CONTROLS:** The contractor shall have clearly delineated processes and procedures for the internal control of sensitive data and processes, which are any data and processes of which the compromising of confidentiality, integrity, and/or availability could have a material adverse effect on Commonwealth of Virginia interests, the conduct of agency programs, or to the privacy of which individuals are entitled, when such sensitive data or processes are related to the goods and/or services provided pursuant to this agreement.

The contractor shall provide evidence of compliant and ongoing internal control of sensitive data and processes through a standard methodology, such as but without limitation the American Institute of Certified Public Accountant (AICPA) Service Organization Control (SOC) Reports. The evidence of compliance shall be contained in a report describing the effectiveness of the contractor's internal controls. The most recent version of the report shall be provided to the purchasing office upon request. Trade secrets or proprietary information contained within the report shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the contractor must invoke the protection of Code of Virginia, § 2.2-4342F, in writing, prior to or upon submission of the report, and must identify the data or other materials to be protected and state the reasons why protection is necessary.

If deficiencies in the contractor's internal control processes and procedures are described in the most recent version of the report, the contractor shall automatically submit the report to the purchasing office within a timely manner and shall describe the corrective actions to be put into place by the contractor to remedy the deficiencies. Failure to report and/or repair deficiencies in a timely manner shall be cause for the Commonwealth to make a determination of breach of contract.

The contractor's obligations for certification of internal controls shall survive and continue after completion of this agreement unless the contractor certifies the destruction of the sensitive data at the end of the contract term.

- 14. FEDERALLY IMPOSED TARIFFS:** In the event that the President of the United States, the United States Congress, Customs and Border Protection, or any other federal entity authorized by law, imposes an import duty or tariff (a "tariff"), on an imported good that results in an increase in contractor's costs to a level that renders performance under the Agreement impracticable, the Commonwealth may agree to an increase to the purchase price for the affected good. No increase in purchase price may exceed 25% of the additional tariff imposed on the goods imported or purchased by the contractor that are provided to the Commonwealth under this Agreement.

Prior to the Commonwealth agreeing to a price increase pursuant to this Section, the contractor must provide to the Commonwealth, the following documentation, all of which must be satisfactory to the Commonwealth:

- evidence demonstrating: (i) the unit price paid by contractor as of the date of award for the good or raw material used to furnish the goods to the Commonwealth under this Agreement, (ii) the applicability of the tariff to the specific good or raw material, and (iii) contractor's payment of the increased import duty or tariff (either directly or through an increase to the cost paid for the good or raw material). The evidence submitted shall be sufficient in detail and content to allow the Commonwealth to verify that the tariff is the cause of the price change.

- a certification signed by contractor that it has made all reasonable efforts to obtain the good or the raw materials comprising the good procured by the Commonwealth at a lower cost from a different source located outside of the country against which the tariff has been imposed.
- a certification signed by contractor that the documentation, statements, and any other evidence it submits in support of its request for a price increase under this Section are true and correct, and that the contractor would otherwise be unable to perform under this Agreement without such price increase.
- as requested by the Commonwealth, written instructions authorizing the Commonwealth to request additional documentation from individuals or entities that provide the good or the raw materials to verify the information submitted by contractor.

If the Commonwealth agrees to a price increase pursuant to this Section, the parties further agree to add the following terms to this Agreement:

- During the Term and for five (5) years after the termination of this Agreement, contractor shall retain, and the Commonwealth and its authorized representatives shall have the right to audit, examine, and make copies of, all of contractor's books, accounts, and other records related to this Agreement and contractor's costs for providing goods to the Commonwealth, including, but not limited to those kept by the contractor's agents, assigns, successors, and subcontractors.
- Notwithstanding anything to the contrary in this Agreement, the Commonwealth shall have the right to terminate this Agreement for the Commonwealth's convenience upon 15 days' written notice to contractor.

In the event the import duty or tariff is repealed or reduced prior to termination of this Agreement, the increase in the Commonwealth's contract price shall be reduced by the same amount and adjusted accordingly.

- Any material misrepresentation of fact by contractor relating in any way to the Commonwealth's payment of additional sums due to tariffs shall be fraud against the taxpayer's of the Commonwealth and subject contractor to treble damages pursuant to the Virginia Fraud Against Taxpayers Act.

**X. METHOD OF PAYMENT**

The contractor will be paid on the basis of invoices submitted in accordance with the RFP and negotiations.

**XI. PRICING SCHEDULE**

The contractor shall provide pricing for all products and services included in proposal indicating one-time and on-going costs

**XII. ATTACHMENTS**

Attachment A: Understanding of Requirements

Attachment B: Conflict of Interest Statement

Attachment C: Contractor's Data Sheet

Attachment D: References

Attachment E: SWAM (Small, Woman- and Minority-owned Businesses) Utilization Plan

Attachment F: Small Business Subcontracting Plan

Attachment G: State Corporation Commission Form



UNDERSTANDING OF REQUIREMENTS

OFFEROR: \_\_\_\_\_

RFP#: RFP #V211-22-054

Date: \_\_\_\_\_

The following question concerns specifications, Section (number) \_\_\_\_\_

Paragraph \_\_\_\_\_, page \_\_\_\_\_

---



---



---



---



---



---



---



---



---



---



---



---



---



---



---



---



---



---



---



---



---



---

All responses to questions will be made by Addendum and posted to [www.eVA.virginia.gov](http://www.eVA.virginia.gov)  
Questions not submitted on this form WILL NOT BE ANSWERED.

Questions Submitted by: \_\_\_\_\_

NAME

\_\_\_\_\_  
ORGANIZATION

\_\_\_\_\_  
PHONE

\_\_\_\_\_  
EMAIL

E-Mail to: [carmacklw@vmi.edu](mailto:carmacklw@vmi.edu), MAJ Lynn W. Carmack

CONFLICT OF INTEREST STATEMENT

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

RELATIONSHIP WITH THE COLLEGE OF VIRGINIA:

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

IF YES, EXPLAIN:

\_\_\_\_\_  
SIGNATURE OF OFFEROR

\_\_\_\_\_  
DATE

Please tell us how you received this solicitation:

- It was mailed to you directly.
- You requested a copy through the Virginia Business Opportunities.
- You obtained a copy from the Virginia Department of Minority Business Enterprise.
- Other (please specify) \_\_\_\_\_.

**RETURN OF THIS PAGE IS REQUIRED**

CONTRACTOR DATA SHEET

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

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
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

REFERENCES

Please list at least three references for whom you have performed each applicable category of service specified herein and within the past five years.

CLIENT: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CONTACT  
PERSON/PHONE#: \_\_\_\_\_

APPROXIMATE DOLLAR VOLUME PER YEAR: \_\_\_\_\_

PROJECTS/DATES/DESCRIPTION: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

CLIENT: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CONTACT  
PERSON/PHONE#: \_\_\_\_\_

APPROXIMATE DOLLAR VOLUME PER YEAR: \_\_\_\_\_

PROJECTS/DATES/DESCRIPTION: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

CLIENT: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CONTACT  
PERSON/PHONE#: \_\_\_\_\_

APPROXIMATE DOLLAR VOLUME PER YEAR: \_\_\_\_\_

PROJECTS/DATES/DESCRIPTION: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Please use a separate sheet of paper for additional references.

**ATTACHEMENT E:**  
**SWaM (Small, Woman- and/or Minority-Owned Business Certification)**

**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 SBSB-certified women- and minority-owned businesses when they have received SBSB 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 Small Business and Supplier Diversity (SBSB) by the due date of the solicitation to participate in the SWaM program. Certification applications are available online at [www.sbsd.virginia.gov](http://www.sbsd.virginia.gov).

Offeror Name: \_\_\_\_\_

Preparer Name: \_\_\_\_\_ Date: \_\_\_\_\_

**Instructions**

- A. Businesses certified by the Department of Small Business and Supplier Diversity (SBSB) as a small business must complete Section A of this form.

**Section A**

CERTIFICATION TYPE (check only one below):

- Small Business
- Small and Women-owned Business
- Small and Minority-owned Business

Certification number: \_\_\_\_\_ Certification Date: \_\_\_\_\_

Expiration Date: \_\_\_\_\_

**NOTE:** It is your responsibility to ensure that your certification is renewed and does not lapse. Should your certification expire, you will no longer be eligible to receive awards under this contract.

**ATTACHMENT F**  
**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 SBSD-certified women- and minority-owned businesses when they have received SBSD 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 Small Business and Supplier Diversity (SBSD) by the due date of the solicitation to participate in the SWAM program.**

Certification applications are available through SBSD online at [www.sbsd.virginia.gov](http://www.sbsd.virginia.gov) (Certification Division).

**Offeror Name:** \_\_\_\_\_

**Preparer Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Instructions**

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

**Section A**

If your firm is certified by the Department of Small Business and Supplier Diversity (SBSD) check which certification below and provide your certification number and date received:

- \_\_\_\_\_ 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 SBSD-certified small businesses in the performance of this contract. This shall not exclude SBSD-certified women-owned and minority-owned businesses when they have received the SBSD small business certification. Include plans to utilize small businesses as part of joint ventures, partnerships, subcontractors, suppliers, etc.

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

Small Business Name & Address SBSD 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
<b>Totals \$</b>					

Annex 6-J

State Corporation Commission Form

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

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 bidder 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 bidder's out-of-state location) -OR-

is an out-of-state business entity that is including with this bid an opinion of legal counsel which accurately and completely discloses the undersigned bidder'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 bids (the Commonwealth reserves the right to determine in its sole discretion whether to allow such waiver):



# Exhibit 4



## ADDENDUM 1 V211-22-054

314 Smith Hall                      Lexington, VA 24450  
Phone: 540-464-7323      Fax: 540-464-7669

**Project:**      *Diversity, Equity, and Inclusion (DEI) Consultation and Training*

**Date/Time:**    *6 December 2021, 4:45 PM*

**To:**    *Prospective Offerors*

This Addendum forms a part of the Contract Documents and modifies, corrects or supplements the original Request for Proposal dated 30 November 2021.

***Proposal Schedule:***

The closing date and time for this proposal has been changed to **Thursday 16 December 2021 at 2:00 PM EST.**

***Understanding of Requirements:*** Questions submitted and answered by the date and time of this addendum are attached.

***State Corporation Commission Form:*** This required form was omitted from the original RFP posting. It has been added to the RFP document and is also provided as an attachment.

Submitted by:                      MAJ Lynn W. Carmack  
Assistant Director of Procurement Services  
540-464-7223  
[carmacklw@vmi.edu](mailto:carmacklw@vmi.edu)

## RFP V211-22-054: Responses to Questions

1. **General-HISTORICAL DATA & USAGE:** 1) Has the Chief Diversity Officer; the Office of Diversity Equity and Inclusion or any other entity investigated, collected data or conducted research with regards to diversity and VMI's current training/consulting needs; Yes. \_\_\_\_\_ 2) Has any effort or attempts been made or initiated to develop a plan/strategy, training/consulting?; Yes. 3) If yes, regarding any of the above, will the Offeror be able to use the results for educational purposes to assist in the development of trainings, assessments and plans and/or leverage the knowledge from the individuals who conducted the research? Yes.
2. **General:** Are any assessments needed for VMI's external community **No.**
3. **General-** What VMI resources and Points of Contact (POCs) (i.e., Personnel, Departments, etc.) will be available during the Period of Performance (POP) to the Training and Consulting Teams? **The Office of Diversity, Equity & Inclusion.**
4. Who will the training be provided for; how many groups/people in need of training represent the VMI community? **Employees. Groups will be determined based on the type of training, amount of available trainers.**
5. Assessments: What results is VMI looking for in-regards to the needs for training? **Recognize that achieving cultural competence requires humility and a commitment to lifelong learning. Understand and respect the intersecting identities, customs, traditions, and cultural norms within the local community, nationally, and abroad. Awareness of the assumptions and biases I hold about people of different cultures than one's own. Engage with others to gain a broader perspective of the social environments of their lives.**
6. How often are assessments needed and would the Proposer have to provide reports. What would the testing requirements be? **There should be at least one assessment of the training with a report provided.**
7. Would you qualify what providing "support" means as it relates "strategic plans at the institutional level" & "Strategic work of the Chief Diversity Officer (CDO)? **Help in identifying best approach for implementing "strategic plan at the institutional level." Help in identifying ways to contend with implicit bias. Provide CDO with ways to process the challenges of working on DE&I at a strategic level.**
8. Would you qualify the type of support and effort needed in the requirement of "...The organization should provide accountability and support within the ranks of Institute Executives?" **Accountability means that the organization will track and follow-up with Institute Executives to assure consultant/trainers directives are completed. And in reference to "should directives," are these mandated requirements like the requirements "shall" and "will". Yes, should directives are mandated like the requirements "shall" and "will."**
9. What location will the support, consultation and Needs take place? **Support and consultation maybe provided on post or via phone, virtual, or electronic communication. Will all trainings need to be provided on post? All trainings provided on post unless otherwise noted.**
10. Are there any personnel security requirements/clearances needed? **A background check facilitated by the VMI Human Resources Dept.**
11. Will we be required to provide Consultants with a military background? **Some consultants should have an intimate understanding and, or experience with the military.**
12. Is there any limitations on the type of training material (e.g., digitization). **Materials should be accessible upon request.**
13. What are VMI's overall Inclusive Excellence Plan goals and objectives as it relates to demographics and the measurement of success? **The overall Inclusive Excellence Plan is outlined below;**

**Goal: Access and Success-** Achieve and maintain a more diverse and inclusive student body, faculty, staff, and administration by achieving increased student enrollment from historically underrepresented and underserved populations, and increasing retention and academic success of historically underrepresented and underserved undergraduate students. Additionally recruit and retain a diverse faculty and staff.

**Measurements of Success:**

Enrollment numbers for gateway program participants

Yield rate for admitted first-time college and transfer students

Financial assistance funding

Participation rates in academic support programs

First to second year retention rates

Second to third year retention rates

Results of program evaluation/assessments

Faculty and staff headcount and percentages.

Managerial and executive staff counts and percentages

Retention rates for faculty and staff

Tenure and promotion rates

Review of dashboard

Leadership development participation for faculty and staff.

**Goal: Climate and Intergroup Relations-**Create and sustain an organizational environment that affirms and respects diversity and employs inclusive practices throughout its daily operations.

**Measurements of Success:**

Perceptions of climate for diversity and inclusion as measured by climate survey and other sources of information

Using climate surveys and evaluations, measure awareness and understanding of Institute resources related to harassment, discrimination, and identity-based violence.

Results of program evaluations designed to facilitate intergroup dialogue and trust

Using national benchmarking, triangulate institutional results

**Goal: Education and Scholarship-**Engage students, faculty, staff, alumni, and the community in learning varied perspectives of domestic and international diversity, equity, inclusion, and social justice. Create and sustain an organizational environment that affirms and respects diversity and employs inclusive practices throughout its daily operations. Additionally increase the cultural competencies of faculty and staff

**Measurements of Success:**

Participation by faculty and staff in professional development programs related to curricular transformation, in support of diversity, equity and inclusion

Cadet participation in co-curricular opportunities tied to Inclusive Excellence

Research output related to DE&I topics

Evaluation of programs related to inclusive teaching

Self-reported improvement in knowledge and skill related to teaching and curricular development

Level of participation in professional development opportunities

Self-reported growth in awareness and competencies

Faculty assessment of diversity-related learning goals

**Goal: Organizational Culture and Accountability-**Create and sustain an institutional infrastructure that effectively supports progress and accountability in achieving DE&I goals, while creating a culture of evaluation and continuous improvement for administrators and senior leaders.

**Measurements of Success:**

Documented processes for reporting progress towards the DE&I goals established in the Inclusive Excellence framework

Evidence of DE&I integration in the post (campus) wide and unit-level operations plans

Report on where the use of shared resources and dispersion of best practices have been implemented

Number of formal cross-post collaborations

Documentation of reporting processes

Work groups dedicated to analyzing disaggregated data related to DE&I.

Number of policies and processes evaluated and redesigned using an equity lens

Funding support for DEI initiatives from fundraising efforts

Increased initiatives aimed at women and multicultural alumni cultivation

**Goal: Community Engagement -Leverage institutional philanthropy and community partnerships to create collective impact with other community organizations.**

**Measurements of Success:**

Number and type of partnerships

Demonstrated impact of partnerships on community outcomes

14. Are you looking for a proposed project schedule? Yes

15. Who is contractor expected to provide coaching for other than executives and the Board of Visitors?

Primarily institute executives and Board of Visitors, with limited coaching for Inclusive Excellence Committee, and DE&I advocates and allies. What are the general expectations of coaching for the executives and Board of Visitors? Coaching for DE&I strategies, policies, and programs. Coaching to confront bias and coaching for underrepresented executives (How often, session duration, number of sessions, issues addressed during the coaching

sessions) On an as needed basis to assist with accomplishing the goals of the Inclusive Excellence plan as outlined in question #13.

16. What previous Diversity, Equity and Inclusion (DEI) training or related initiatives have been conducted? **None as it relates to this project.**
17. Does every DEI consultant participating on this effort need to have a prior military background assuming they understand military and cultural underpinnings of the VMI environment? **No, but some consultants should have an intimate understanding and, or experience with the military.**
18. In addition to the executives and the Board of Visitors, who else on the VMI staff will be the contractor be required to train? (Staff?) **Yes, faculty, staff and cadets.**
19. Will you be the only Point of Contact - All contact will be through Procurement Services. MAJ Carmack will be the primary point of contact with backup from COL Tomlin.
20. When do you anticipate the bidder question addendum to be posted? **As soon as possible once all answers are available.**
21. Due to the question submission deadline being Saturday (10 days prior to close date), will you be offering the option to submit additional questions on the following business day, Monday? Questions will currently be accepted through Monday, 6 December 2021. However, the content of received questions could affect the timeline of the solicitation and require the due date to be extended.
22. How many months is the Base Year? **The base year will be from the date of award through 30 June 2023, but cannot exceed 18 months due to the current time line.**
23. Will all of the Attachments/Forms need to be provided in separate documents. We understand the pricing document needs separate. The price proposal is the only document that needs to be submitted separately. All others should be included in the proposal packet.
24. What are the anticipated dates for: Decision and selection of Contractor?; Notice of intent to award publication?; and 3) Authorization to proceed to the successful offeror? The decision and selection of contractor will occur as soon as possible following the close of the solicitation, but allowing for thorough evaluation and scoring. The award and authorization to proceed would be posted to eVA at that time and a formal contract issued to the selected contractor.
25. What is your anticipated award date? As soon as possible following the close of the solicitation but allowing for thorough evaluation and scoring.
26. If there is voluntary contract (cooperative procurement) participation, will all of the terms and conditions apply to any affiliate contract? For example: the inability for the contractor to initiate the negotiations of liability costs with the affiliate? The general terms and conditions of the contract would apply to any agency utilizing the contract.
27. Does our proposal have to include past experience utilizing SWaM with VMI? SWaM Experience could include any previous contract and is not limited to past experience with VMI.
28. Other than the bid format parameters already mentioned in section V.I.2, and understanding "emphasis...placed on completeness and clarity", are there any other formatting guidelines (e.g., graphics, font, size, etc.)? No. There are no additional formatting guidelines or format parameters other than what is specified.
29. Are you allowing this bid to be submitted electronically and does the Four (4) copy requirement apply if so? All proposals are to be submitted in hard copy form. VMI does not currently accept electronic responses to RFP's, and due to the change to the required Virginia electronic procurement portal, electronic responses aren't available for this

solicitation.

30. If a Prime Contractor is submitting one proposal as a joint effort/Teaming agreement, do both Organizations/Businesses have to provide a subcontractor plan or will one suffice? One subcontracting plan will suffice; however, it should be submitted by the Prime Contractor who will be signing the contract document and receiving payment for the services.
31. Will there be any COVID restrictions and legal terms and conditions? Physical COVID restrictions will follow the CDC and Virginia guidelines that are in place during the contract period at the time services are scheduled. Legal Terms and Conditions may be added to the contract based on the services included in the final contract.
32. What pricing structure are you looking for in the price schedule (e.g., FFP, LS, T&M, etc.?) and What type of contract will this be? Waiting on verification for meaning on FFP, LS & T&M.
33. Is there a budget set aside for this project? **There is a budget for this project and pricing is one of the scoring criteria, but this is an RFP and not a price-based award. All proposal pricing should be based on what the vendor considers to be their best price for the services they are providing. Budget figures are not available for any contractors to review.**
34. Please confirm if this response is a small business set-aside. **No, this is not a small business set-aside. All capable vendors are welcome to respond, but we do encourage a SWaM subcontracting plan if possible for non-certified vendors.**
35. Please provide clarification on what should be listed in the “Lost Accounts” section. **Lost accounts would include any former clients that terminated your services during the contract period or that chose not to renew.**
36. Please confirm if each paragraph in the proposal should reference the applicable RFP section or if an aligned section header for each response requirement will suffice. **An aligned section header for each requirement will suffice.**
37. Please confirm if FedEx delivery of the hard copy submission is acceptable. **FedEx deliver of the hard copy submission is acceptable. Please note that VMI is not in a guaranteed delivery zone. Or would it be possible to submit electronically. VMI does not currently accept electronic proposals.**
38. Please confirm if the COI form should be included in the separate Price Volume or if it should be included with the rest of the content in the Technical volume. **The COI form may be included in the Technical volume.**
39. Attachment A is requested to be included in the Technical Volume of the response but that is the form to submit questions. Please confirm if that was stated in error and that Attachment C should be included in the response to meet the “Offeror Data Sheet” requirement. **The correct attachment is Attachment C.**
40. The first referenced section of the RFP requires min. of 3 references and the Attachment D form requires a min. of 4 references. Please confirm the number of references that should be presented in the response. **A minimum of three (3) references should be provided. Attachment D will be updated.**
41. Please confirm if there is a required format for pricing. If there is a required format, please send. **The vendor should provide their pricing according to their standard format. VMI is not requiring a specific pricing structure.**
42. Please confirm if the hard copy submission includes 1 original and 5 copies of the Technical Volume and 1 original and 5 copies of the Price Volume – resulting in 12 hard copies. **The hard copy submission includes 1 original and 5 copies of the Technical Volume. One (1) copy of the price proposal will be sufficient.**
43. The SCC form mentioned was not provided. Please provide. **The SCC form is included with this addendum and was uploaded to the Solicitation as a separate document.**

Annex 6-J

State Corporation Commission Form

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

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 bidder 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 bidder's out-of-state location) **-OR-**

is an out-of-state business entity that is including with this bid an opinion of legal counsel which accurately and completely discloses the undersigned bidder'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 bids (the Commonwealth reserves the right to determine in its sole discretion whether to allow such waiver):



# Exhibit 5



## ADDENDUM 2 V211-22-054

314 Smith Hall                      Lexington, VA 24450  
Phone: 540-464-7323      Fax: 540-464-7669

**Project:**        *Diversity, Equity, and Inclusion (DEI) Consultation and Training*

**Date/Time:**    *7 December 2021*

**To:** *Prospective Offerors*

This Addendum forms a part of the Contract Documents and modifies, corrects or supplements the original Request for Proposal dated 30 November 2021.

### ***Understanding of Requirements Questions and Answers:***

- Q. What are the general expectations of coaching for the executives and Board of Visitors? (How often, session duration, number of sessions, issues addressed during the coaching sessions)
- A. ***The general expectations of coaching for the executives and Board of Visitors would be DE&I strategies, policies, and programs. Coaching to confront bias and coaching for underrepresented executives. Coaching is on an as needed basis to assist with accomplishing the goals of the Inclusive Excellence plan as outlined in question #13.***
- Q. Should course pricing be provided?
- A. ***No, course pricing isn't needed for the RFP review.***
- Q. What pricing structure are you looking for in the price schedule (e.g., FFP, LS, T&M etc.)?
- A. ***VMI isn't requiring a specific price structure. The vendor should submit pricing according to the structure that best fits their methodology to provide the requested services.***
- Q. What type of contract will this be?
- A. ***This will be a term contract with the first term to expire on 30 June 2023 and with four (4) optional one-year renewals.***
- Q. With such a short suspense date for submission and the upcoming holidays causing delays in delivery times, is hand-delivery of the proposal an option?
- A. ***Yes, proposals may be hand delivered to Procurement Services between 8 – 4:30 PM Monday-Friday up until the proposal closing time of 2:00 PM, 16 December 2021. The address is 330 VMI Parade, 314 Smith Hall, Lexington VA 24450.***

Submitted by: MAJ Lynn W. Carmack  
Assistant Director of Procurement Services  
540-464-7223  
[carmacklw@vmi.edu](mailto:carmacklw@vmi.edu)

# Exhibit 6

**From:** Estelle-Marie Montgomery  
**To:** Carmack, Lynn W; Lynne Revo-Cohen  
**Subject:** RE: question  
**Date:** Wednesday, January 12, 2022 9:27:10 AM  
**Attachments:** Outlook-0uoorwvy\_1.png  
image003.png@01D80705.58110150  
image004.png@01D80705.58110150  
image001.jpg@01D80705.58134B40  
VMI Price Proposal Updated 0112.pdf

---

Good morning Lynn,

Please find enclosed the updated price overview.

Because we do not know how many managers will partake in the training we cannot provide a total number for that. However, we have tallied up all other known parameters. Do not hesitate to contact us if you have further questions.

Thank you, we look forward to presenting on how our capabilities could enable the successes you seek.

Best,

Dr. Estelle-Marie Montgomery, PhD  
VP Business Development  
[emontgomery@newpoint.biz](mailto:emontgomery@newpoint.biz)  
240-401-7900



***NewPoint Strategies: Ahead of the Curve***

[www.newpoint.biz](http://www.newpoint.biz)

*DEIA/Implicit Bias/Social Justice/Suicide Prevention/  
Sexual Harassment & Assault Prevention*

On January 11, 2022 at 16:07:49, Carmack, Lynn W ([carmacklw@vmi.edu](mailto:carmacklw@vmi.edu)) wrote:

I don't have that information. The RFP requested training for 750 employees and that is the only information I can provide.

Lynn W. Carmack, CUPO, VCCO, CPSM, CPSD, CPPO

Major, Virginia Militia

Assistant Director, Procurement Services

Virginia Military Institute

314 Smith Hall, Lexington, VA 24450

540-464-7223 Office



**New Platform Count-down! eVA is changing!**

Remain in the know by visiting the eVA Transition Newsroom:

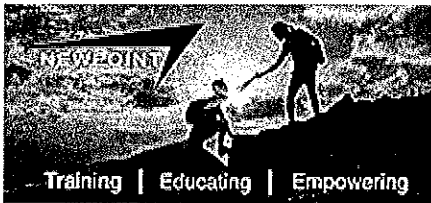
[Next Gen eVA](#)

**From:** Lynne Revo-Cohen <lrevocohen@newpoint.biz>  
**Sent:** Tuesday, January 11, 2022 4:04 PM  
**To:** Carmack, Lynn W <carmacklw@vmi.edu>  
**Cc:** Estelle-Marie Montgomery <emontgomery@newpoint.biz>  
**Subject:** question

Lynn, please clarify how many managers need to be trained so that we can give you a specific price on that line item. Thank you, Lynne

Lynne Revo-Cohen (she/her/hers)

Founding Partner, NewPoint Strategies LLC



[www.newpoint.biz](http://www.newpoint.biz)

703-405-7133

*Next Gen Learning Strategies*

\*Sexual Harassment\*Sexual Assault Prevention  
\*Diversity/Equity/Inclusion\*Pay Equity

# Exhibit 7



## MEMORANDUM FOR THE RECORD

Re: DEI Consultation and Training Short List

RFP # V211-22-054

Date: 21 January 2022

The Selection Committee for the DEI Consultation and Training RFP was comprised of LTC Jamica Love, Chief Diversity Officer; COL Tinni Sen, Professor; COL Keith Kline, Professor; LTC Ammad Sheikh, Director of Career Services; and Ms. Tracey Lackey, Procurement officer.

The following firms (in alphabetical order) have been selected to participate in the interview process.

- CK Business Strategy
- NewPoint Strategies
- Veritas Academy

Respectfully submitted,

MAJ Lynn W. Carmack, CUPO, CPSM, CPSD, CPPO, VCCO  
Assistant Director, Procurement Services

Virginia Military Institute  
314 Smith Hall  
Lexington, VA 24450  
540-464-7223  
[carmacklw@vmi.edu](mailto:carmacklw@vmi.edu)



# Exhibit 8



## Center for Applied Innovation, LLC

214 Terrebonne Road  
Yorktown, Virginia 23692  
FAX (U.S.): 1.270.477.708  
e-mail: [BobM@caihq.com](mailto:BobM@caihq.com)



January 31, 2022

Virginia Military Institute  
Procurement Services  
ATTN: MAJ Lynn W. Carmack, VMI Procurement Services at [carmacklw@vmi.edu](mailto:carmacklw@vmi.edu)  
330 Parade Avenue, 314 Smith Hall  
Lexington, VA 24450  
Email: [carmacklw@vmi.edu](mailto:carmacklw@vmi.edu)

Via Email and U.S. Mail

SUBJECT: REQUEST FOR IMMEDIATE ACCESS TO THE FULL PROCURMENT FILE FOR RFP, PROJECT #V211-22-054<sup>1</sup>, Diversity, Equity, and Inclusion (DEI) Consultation and Training

Dear Major Carmack

1. Under the authority of the Virginia Public Procurement Act (Va. Code §§ 2.2-4300, et seq.) (VPPA), the applicable parts of the Commonwealth of Virginia, Department of General Services, Agency Procurement and Surplus Property Manual (APSPM) (as Amended) and the Commonwealth of Virginia Vendor's Manual (as amended) and the Commonwealth of Virginia Vendors Manual The Center for Applied Innovation, LLC (CAI) requests access to the full, unredacted acquisition file and all related documents for the subject acquisition. As covered below this includes, without limitation, the basis for the selection decision and contract award and a list of all offers with contact information and ranking in the scoring; evaluation of the significant strengths, weaknesses or deficiencies in our proposal as contained in all scoring sheets, notes, correspondence between evaluators and procurement personnel, and other documentation relating to the evaluation the of the CAI's proposal and related activities; overall evaluated cost or price (including unit prices), and technical rating, of the successful offerors and our proposal; summary of the rationale for award; copy of all proposals with attachments, presentations, notes, hand-outs and other materials used or provided by the successful bidders, and a copy of those materials as well as all score sheets, evaluator notes and other documentation related to the decision to award to them; any correspondence, meeting notes or other records from any agency or entity pertaining to this acquisition as well as any other additional relevant documentation regarding this action; names, agencies and offices of all personnel who made up or advised the review panel; all successful offeror pricing to include original response price as submitted and any changes up to an including "best and final".
2. As I am sure you are aware, as competitive sealed bidding bidder, upon request, the CAI shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award and any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award. In addition, as a bidder, if the CAI decides to protest the intended contract award said protest will depend in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under VPPA § 2.2-4342, our time to file the protest expires ten (10) days after all public records required to prepare the protest are available to the Offeror for

<sup>1</sup> The request is being made so that CAI can determine whether a protest is warranted Refusal to grant the legally required access will result in an immediate lawsuit seeking an injunction and sanctions.

inspection. The law does not limit public records to only VMI's procurement records but the appropriate records by any agency or entity involved in the procurement.. VMI, as the procurement agency must make the full and complete procurement record available with full access so we can determine if a protest is warranted and, if we decide to protest, so we have copies of the records required to support the basis for any protest. We have the right to access to the records themselves before final award and before they were available to the public under the Freedom of Information Act (FOIA).

3. We expect the access granted will be to the entire procurement record including, without limitation, documents setting forth the qualifications of vendors, evaluation, award decision and eventual award as well as all emails and communications from any party, and especially the evaluators covering the entire procurement lifecycle for this procurement. It includes, without limitation, all records set as the minimum standards for documents that must be contained in the procurement file (and related records) as set forth in the APSPM Chapters and Annexes relevant to the specific procurement. For the purposes of this authorized review of the procurement record, "Records" refer(s) to any and all forms of retained and/or memorialized information, whether written, graphic, computerized, or stored electronically or on tape relating to any element of the procurement throughout the acquisition lifecycle. This definition specifically includes, but is not limited to, drafts, originals, copies, handwritten notes or comments, letters, correspondence, e-mails, text messages, records of discussions, memoranda, telegrams, telephone logs and records, teletypes, appointment books, meeting agenda(s) and/or minutes, formal or informal meeting notes or any other record, formal or informal, to include, without limitation, schedules for meeting(s) and/or other correspondence, reports, studies, analyses, communications with government bodies, interoffice and/or intra-office communications, computer programs, cell phone, SMS or other messaging devices and printouts, social media communications, including but not limited to text messages, and any and all other kinds of messages, social media posts, records and/or voice records, films and/or tapes.
4. "Acquisition Life Cycle" refers to any and all phase(s) within the acquisition life cycle phases including, without limitation, Acquisition Planning, Market Research, Solicitation and Award, Contract Management, Completion and Closeout including, but not limited to: acquisition planning assistance, including market research and procurement strategy; acquisition document development including cost/price estimates, quality assurance surveillance plans, statements of work, synopses, solicitations, price negotiation memoranda, etc.; proposal evaluations, including, without limitation, price/cost analysis and/or technical proposal analysis; contract administration support, including but not limited to assistance reviewing contractor performance, development of contract modifications and/or investigating reports of contract discrepancies; contract close-out assistance; competitive sourcing support, including, without limitation, strategic sourcing studies; privatization studies and/or public-private partnerships.
5. "Acquisition Planning" refers to any and all sub-phase(s), activity/ies and/or function(s) in connection with the Acquisition Planning phase within the acquisition life cycle to include, without limitation, Procurement Strategy/Acquisition Strategy Plan (e.g. procurement plan development/review, work plans, plans of action, research, reports, etc.) requirements definition, specification/Statement of Work, Statement of Needs, Specifications/Scope of Work Review, Requirement(s) Analysis, Specification Writing (Technical), Request for Information (RFI), Statements of Work (SOW), Statements of Objective (SOO), statement of work, statement of need, scope of work, etc. and any and all other requirements documents, including, but not limited to researching and drafting specifications and standards, including, without limitation, Performance-based Work Statements (PWS); developing performance measures, consultation and/or recommendations; and coordinating requirements documents solicitation evaluation planning, independent cost estimate and/or budgeting (e.g. projected, anticipated, probable cost, benchmark for cost/price analysis, analysis of reasonable and required resources, justification, etc.), procurement policy, justifications for decisions made throughout the procurement lifecycle, and/or any related or included activities.
6. "Completion and Closeout" refers to any and all sub phase(s), activity/ies and/or function in connection with the Completion and Closeout phase within the acquisition life cycle to include, without limitation,

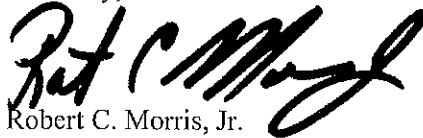
delivery/acceptance, Final payment and closeout, vendor performance evaluation and/or any related or included activities.

7. "Contract Management" refers to any and all sub phase(s), activity/ies and/or function(s) in connection with the Contract Management phase(s) within the acquisition life cycle to include, without limitation, contract development, contract management, contract administration, change management, request for equitable adjustment, Performance work plan and/or CAP; Vendor Performance Plan development and/or review; Documentation of Contract Performance, including but not limited to Observation Record, Compliance Record, Discrepancy Record, Unsatisfactory Performance Report, Summary Evaluation Report, Contractor Status Report, process optimization, compliance reviews, burn rate reviews, quality oversight and/or any included and/or related activities.
8. "Solicitation and Award" refers to any and all sub-phase(s), activity/ies and/or function(s) in connection with the Solicitation and Award phase within the acquisition life cycle for the review and/or development of, but not limited to Solicitation review, evaluation, Negotiation (if applicable), Fair and Reasonable Determination, Subcontractor flow-down, reviews, source selection, Cost Realism or other cost analysis, probable cost estimates, document development and/or any related or included activities.
9. "Market Research" means the gathering and studying of data relating to consumer preferences and purchasing power. In relation to the procurement life cycle, Market Research means the examination of available sources of information to find available sources of supply to meet the needs of any given procurement and/or any related or included activities. "Market Research" also refers to any and all sub-phase(s), activity/ies and/or function(s) in connection with the Market Research phase within the acquisition life cycle to include, but not limited to cost and pricing analysis, source availability, Request for Information (RFI), Request for Proposal (RFP), Request for Qualifications (RFQ), Sources Sought, etc.; cost and pricing analysis, approaches, options, strategies, risks, methods, competition, sources, cost, milestone, etc., researching existing State-wide contracts for available products and services., research of available suppliers and comparison of services and costs of obtaining support from the different providers; and equivalent activities and/or any related or included activities.
10. "Market Research Plan" means the process that one will follow to gather, analyze, and interpret information about a particular market. Such a plan defines market research approaches and includes, without limitation, different types of market research to undertake for maximum impact and/or any related or included activities.
11. "VMI" refers to Virginia Military Institute and includes, without limitation, its Board of Visitors ("BoV") members, and any and all VMI executives, officers, staff, faculty, VMI Cadets, all other VMI employees, contractors, agents, etc., together with all ROTC detachment government and/or contractor staff and other personnel assigned to VMI by (or employed at VMI by) the Department of Defense.
12. "VMI AA" refers to the VMI Alumni Agencies, which are Virginia non-profit corporations and/or limited liability companies which provide support to VMI, and include, without limitation, the VMI Foundation, the VMI Alumni Association, Inc., the VMI Keydet Club, and all affiliated non-profit corporations and/or limited liability companies, together with any and all of their executives, officers, directors, board members, staff, and all of their other employees, contractors, agents, Alumni, etc.
13. In accordance with VPPA, APSPM and the DGS Vendor's Manual, VMI must make reasonable accommodations for the Offeror to review the procurement records. Given the surge in COVID-19 and other concerns identified by the Federal and Virginia government resulting from the Omicron variant and my medical condition, I request reasonable accommodations be made for this review as authorized by the VPPA, APSPM and required by the Americans with Disabilities Act (ADA I have a 90% disability rating from the U.S. Department of Veterans Affairs and some of those conditions are such as to make me

particularly at risk from COVID-19. My physician specifically advises that my condition puts me at high risk for COVID-19 and severe complications from it and that I work remotely. Other staff members who will need to be involved since we will not be allowed to make copies of any documents have similar circumstances or their race puts them at higher risk for COVID-19. Therefore, in regard to access to these records as well as the time it likely requires to completely review them, we are entitled to and therefore request that accommodations be made in when, how, where and other aspects of how these records are made available and for review.

14. Title II of the ADA covers all activities of State and local governments regardless of the government entity's size or receipt of Federal funding. Title II of the ADA also requires that State and local governments give people with disabilities an equal opportunity to benefit from all of their programs, services, and activities. I am a "qualified individual with a disability" for purposes of the ADA, 42 U.S.C. § 12101-12213, and implementing regulation, 28 C.F.R. § 35.130(d). I have physical impairments that substantially limit major life activities; a record of a physical impairment; and I am certified as having physical impairments by the United States Department of Veterans Affairs. Specific to this case I have medically certified conditions that qualify as disabilities and make me both at higher risk for COVID-19 and more at risk for serious effects or death from COVID-19.
15. These reasonable accommodations I am requesting is that the full, unreacted procurement record be provided to me electronically. This is also both customary and routine in many Virginia Agencies regardless of ADA contestations or entitlements and is a standard practice recognized by the Virginia Department of General Services (DGS). As such, it is not difficult for VMI to provide. The accommodations I am requesting to access the procurement records electronically due to my disability will not endanger the health and safety of others; will not change the job of reviewing the files in a significant way. In fact, it is routine and a matter of practice during COVID-19 for all State and local procurement offices.
16. We understand that, should CAI decide after review of the complete the complete procurement record, we are required to submit the protest in writing to no later than ten (10) working days after the posting of the Notice of Award or Notice of Intent to Award, whichever comes first (§ 2.2-4360), but that under the VPPA the ten (10) day period does not commence until such time as we obtain all records, for any source, required for us to prepare a protest should we desire to do so. We are not stating or implying a protest or intent to protest at this time and so our rights under the VPPA remain intact and the ten-day period has not yet commenced. We look forward to your cooperation in provided the legally required access Should the access not be provided, immediate legal action shall result.
17. Please acknowledge receipt of this request and advise of when we can expect your office's response.

Sincerely,



Robert C. Morris, Jr.  
COL, USA (Ret)  
President  
Center for Applied Innovation, LLC

# Exhibit 9

From: Self <BobM@caihq.com>  
To: "Carmack, Lynn W" <carmacklw@vmi.edu>  
Subject: Request for status of documents - Solicitation (RFP-1540)  
Copies to: patrick Henry <pherry@marrs-henry.com>  
Date sent: Wed, 02 Feb 2022 07:30:12 -0500

Good Morning Ms Carmack:

We wanted to circle back to check on when we may expect to receive the full procurement file to date per my email send and received there yesterday February 1, 2020.

V/R

Bob Morris  
Center for Applied Innovation, LLC

# Exhibit 10



**From:** [Love, Jamica N](#)  
**To:** [Carmack, Lynn W](#); [Sen, Tinni](#); [Kline, Keith A](#); [Sheikh, Ammad](#); [Lackey, Tracey M](#)  
**Cc:** [Tomlin, Kathleen H](#); [Clark, Dallas B](#)  
**Subject:** RE: DEI RFP V211-22-054  
**Date:** Friday, February 4, 2022 11:07:50 AM  
**Attachments:** [image002.png](#)

---

No.

**From:** Carmack, Lynn W <carmacklw@vmi.edu>  
**Sent:** Friday, February 4, 2022 11:05 AM  
**To:** Love, Jamica N <lovejn@vmi.edu>; Sen, Tinni <SenSB@vmi.edu>; Kline, Keith A <klineka@vmi.edu>; Sheikh, Ammad <sheikhas@vmi.edu>; Lackey, Tracey M <lackeytm@vmi.edu>  
**Cc:** Tomlin, Kathleen H <TomlinKH@vmi.edu>  
**Subject:** DEI RFP V211-22-054

Good morning,

Please confirm by reply email that you have not had conversations with any vendors participating in this solicitation, including those that were not selected for interview.

Respectfully,

Lynn W. Carmack, CUPO, VCCO, CPSM, CPSD, CPPO  
Major, Virginia Militia  
Assistant Director, Procurement Services

Virginia Military Institute  
314 Smith Hall, Lexington, VA 24450  
540-464-7223 Office



**New Platform Count-down! eVA is changing!**  
Remain in the know by visiting the eVA Transition Newsroom:  
[Next Gen eVA](#)