

VMI finds it is not above the Law?

IMPORTANT: See Accompanying .PDF file of Documents from the BOV, Procurement file and Court that support all areas covered below.

- Twenty-Fifth Judicial Circuit Court of Virginia for the County of Rockbridge denied VMI's Plea in Bar and Demurrer requesting the dismissal of the lawsuit filed against VMI by Center for Applied Innovation, LLC (CAI), a Virginia Service-Disabled, Veteran-Owned Business.
- VMI unsuccessfully claimed it was not bound by the Virginia Public Procurement Act (VPPA), then attempted to claim sovereign immunity against being sued by CAI. The Court's denial of VMI's motions clear the way for unsuccessful bidder CAI to vigorously pursue its claims in the litigation, including that VMI's decision to issue a Notice of Intention ("NOI") to award the RFP for the Diversity, Equity and Inclusion (DEI) contract for mandatory cadet, faculty, staff and Board of Visitors training to bidder NewPoint Strategies, LLC was arbitrary and capricious under Virginia law.
- Represented by a member of Virginia Attorney General Jason Miyares' staff, VMI's first argued that it is exempt from the VPPA, the foundational Virginia law established to ensure the competition and award of contracts by Virginia State Agencies adhere to the highest ethical standards and avoid even the perception of impropriety. The Court found that VMI does not have the requisite "management agreement" in place, as required after Title 23 of the Virginia Code was repealed in 2016; moreover, a Memorandum of Understanding (MOU) that VMI submitted to the Court was insufficient, so the strict standards of the VPPA did indeed apply to the RFP as Plaintiff CAI had contended in its lawsuit.
- VMI's second argument was to claim CAI's lawsuit against it could not proceed under the doctrine of sovereign immunity. The Court rejected this as well, finding VMI is a "Public Body" within the meaning of the VPPA and that in its own Brief VMI stated the VPPA and rules allow bid protest lawsuits that constitute a waiver of sovereign immunity. The court further ruled that the Rules Governing Procurement that VMI had provided to the Court in an attempt to stop CAI's lawsuit were promulgated pursuant to the now-repealed Title 23 of the Code of Virginia.
- VMI's only success was in the Court declining CAI's request for a Court Order declaring the contract between VMI and its intended contractor void. While this does not give CAI the immediate ruling to void the intended contract award CAI sought, the Court found CAI's complaint sufficient to move forward on the serious allegations that VMI violated Virginia Procurement law in its arbitrary and capricious NOI to award the RFP for the DEI training, as alleged in CAI's complaint.
- More importantly, VMI acknowledged that it is prohibited from awarding the DEI contract for mandatory cadet, faculty, staff and Board of Visitors training until after CAI's lawsuit has been adjudicated by the Court.

SIGNIFICANT IMPACT FOR VMI AND VIRGINIA TAX PAYERS

- The Court's finding that VMI is NOT exempt from the VPPA opens the door for other procurement contractors and companies dealing with VMI to seek relief under the VPPA for procurement law violations. For companies that attempted to contract or had difficulties with VMI in the past the ruling brings up potential areas of concern of how VMI may have improperly invoked this argument with treatment of other contractors and acquisitions after Title 23 was revoked in 2016.

- It also raises the question of whether Virginia’s Chief Procurement Officer (CPO) will investigate VMI’s past and present procurement awards to include its significant use of “sole source” contracting to avoid competition and potentially steer contracts to preferred vendors.

CAI’s COURT COMPLAINT

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CAI’s 54-page Protest that includes 245 footnotes and an additional 657 pages of evidentiary exhibits supporting its claims on contracting and other improprieties will be evaluated in court. A small sample of CAI’s documented allegations against VMI and its failed procurement process in the lawsuit is:

- VMI deliberately denied access to, or concealed, or destroyed documents required by FOIA, VPPA and other applicable policies and rules to be created, maintained and available by VMI for review in the procurement file with the aim of preventing the challenges of any bidder from being successful. VMI does not even attempt to deny its spoliation, concealment, and destruction of procurement records and other relevant evidence. In fact, public records filed with CAI’s lawsuit show VMI admitted records of proposal evaluation were destroyed, missing, or not maintained at all, in contravention of the VPPA.
- The VMI DEI RFP price scoring structure, method, evaluation, as well as the scoring implemented, were arbitrary and capricious in violation of the VPPA.
- The cost proposals from the top three Offerors, as ranked by the VMI evaluation panel and selected for the final evaluation round, indicates the winning (NOI) bidder NewPoint Strategies, LLC received preferential treatment.
- Pressure by the VMI leadership was placed on VMI procurement staff to include unnecessarily shortening 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.
- VMI acted willfully and unlawfully (under the VPPA) to impede or block an Offeror from submitting a proper, complete and timely protest.
- Systematic arbitrary and unequal treatment of Offerors.

WHAT IS NEXT FOR VMI?

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CAI now has the ability to obtain depositions from all relevant VMI staff including its procurement officials, RFP evaluators, and most senior leadership. This extends to the VMI Board of Visitors (BOV) who are also named Defendants in the Lawsuit. According to the BOV’s Statement of Governance, “The Board shall also oversee the actual application of resources and ensure the cost-effective operation of the Institute” and “The Board is ultimately responsible for the academic quality and integrity of the Institute.”¹ To date, the VMI BOV minutes posted on VMI’s website for the public do not indicate if the BOV is aware of the lawsuit or ever executed its oversight responsibilities by reviewing it or the various aspects of the procurement.

In addition to the VPPA procurement violations, the Court’s ruling also opens the path to explore allegations that VMI willfully disregarded Governor Youngkin’s Executive Order and Policy against divisive training and instruction in state-supported educational institutions. Documents obtained by CAI and filed with the Court

provide evidence of VMI's disregard not only for Virginia Procurement law but for Governor Youngkin and his policies and VMI's role as the leading state-supported senior military college. Just a few examples available from VMI's own records show:

- One member of the committee that evaluated proposals (who is also a VMI Professor instructing Cadets) deducted points from CAI's proposal because of *“too much military”* and *“includes VMI alumni”*ⁱⁱ
- Another VMI Professor on the selection committee made her position against VMI's rich military tradition and the VMI system itself clear when she stated, *“We [VMI] really aren't military. I have a bird on my shoulder [indicating Colonel rank] – doesn't mean anything – just I am a field professor, So – compare us more to University of Maryland than a military academy.”*ⁱⁱⁱ
- A VMI priority, as evident from the selection committee's evaluation notes, appears to be developing and implementing a risk management plan in order to protect VMI's Chief Diversity Officer (CDO) from scrutiny based on the selection committee's repeated questions to bidders of *“How will you protect VMI from Risk?”* This question was so beyond the scope of the RFP that a VMI procurement official annotated in the meeting notes *“why ask?”*^{iv}
- Records also show VMI developing a deliberate campaign to lobby or otherwise influence the Youngkin administration in Richmond and a plan to deal with persons who criticize the Chief Diversity Officer ; according to one VMI Professor and evaluation Panel member's question to a bidder: *“How to assist VMI with new government [i.e., then-new Youngkin administration]? 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?”*^v This selection committee member also commented, *“Youngkin CRT/Va Policies. Cannot ignore 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.”*^{vi} [Emphasis added]
- VMI is developing a media engagement plan to include repression of free speech, *“Control who talks to the press. Shared understanding of what information is shared with the press”*^{vii} [Emphasis added]
- Before evaluations and award, VMI Attorney-General appointed Legal Counsel opined *“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.”*^{viii} [emphasis added]

HIGHLY CONTROVERSIAL TRAINING

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- The Court's ruling comes at a time when VMI, the BOV and the mandatory DEI training at the Institute are becoming more and more controversial.
- During the July 26, 2022 VMI BOV DEI committee public meeting held on August 26, a presentation was given by CDO LTC Love. This presentation of VMI's planned Cadet and Employee DEI training consisted largely of graphic/offensive videos and what many regard as ideologically divisive content.

- One video entitled “**Miss Representation**”^{ix} included a video animation depicting a man hitting a woman with what appears to be a hammer. After she falls to the ground, he continues to beat her until there are pools of blood.
- Another video is “**White Like Me – Race, Racism & White Privilege in America.**” The video is described in part as: “**Tim Wise, explores race and racism in the US through the lens of whiteness and white privilege. Wise offers a fascinating look back at the race-based white entitlement programs that built the American middle class, and argues that our failure as a society to come to terms with this legacy of white privilege continues to perpetuate racial inequality and race-driven political resentments today [emphasis added].”**
- A third video in the presentation, “**Disarm Hate**” advanced by Dr. Love for “Inclusive Excellence” on “LGBTQIA+ & the Military” conveys a strong anti-military and anti gun rights ideology. The video’s official summary is: “Nine LGBTQs come together after the Pulse Massacre to join one man, a hairdresser and activist from New Jersey without political experience, as he builds a national rally to demand LGBTQIA equal rights, **fight the NRA and challenge America's obsession with gun violence.**” [emphasis added]
- The **references** cited as the foundation for the DEI training in Dr. Love’s presentation to the BOV include, but were not limited to, *Microaggressions and Female Athletes; Masculinity and US Military Climate; The Military Hypermasculinity Mystique; How symbolic embodiment threatens women’s inclusion in the US military; Femininity as Perceived Threat to Military Effectiveness: How Military Service Members Reinforce Hegemonic Masculinity in Talk.* [emphasis added]
- The situation at VMI has grown so ominous, and the atmosphere there so negative, anti-male, and anti-military, that, in a separate action, a petition was initiated that received the support of over 1,100 individuals, consisting of VMI alumni, parents, and others, asking the Virginia Attorney General to investigate. In other separate appeals to the Governor and Attorney General, VMI alumni, cadets and parents, together with attorneys representing cadets and national student rights organizations, have raised serious allegations of the VMI administration repressing **the First Amendment Rights** of cadets, including Free Speech, additionally, the VMI Alumni Association has been alleged to have engaged in censoring alumni. The allegations include documented instances of interfering with attempts to bring these issues to the attention of the VMI BOV and alumni.

WILL VMI MOVE FORWARD WITH THE TRAINING ANYWAY?

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- The Court’s decision now allows CAI’s lawsuit to go forward, thus providing the opportunity for a full and open review of the significant allegations that have been made. It should also be noted that VMI agreed it would not award the DEI contract until such time as the case has been fully adjudicated, and a final judgment rendered by the court.
- In a statement to the *Washington Post* on behalf of VMI soon after the election when former-Governor Ralph Northam gave a speech at the school that raised criticism because cadets were forced to attend and no alumni allowed to attend, VMI’s official spokesperson, Bill Wyatt, VMI’s Communications Director, doubled down on pushing forward with Northam’s policies stating to the *Post*, “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.”¹ [Emphasis added]

- As reported in a July 2, 2022 Washington Post article, Col. Bill Wyatt, VMI spokesperson, stated the language of the new Virginia General Assembly budget appropriation for VMI appears to come with a caveat that the money may not be used to fund the expansion of VMI’s Chief Diversity Office and DEI program. but VMI, again, plans to push forward, regardless of the General Assembly’s findings: "It was an expense we were hoping the state would fund," Wyatt said. **"But in the absence of state funding, we'll find a way to fund it."**² [emphasis added] It remains open if VMI intends to by-pass the Court’s ruling by finding a way to move forward with the DEI training RFP despite the decision. Will unknowing VMI alumni donors’ unrestricted donations to the VMI Foundation be diverted to the fund the expansion of VMI’s Chief Diversity Office and DEI program as part of Mr. Wyatt’s declaration just a month ago that "...in the absence of state funding, we'll find a way to fund it."
- When asked by the Spirit of VMI PAC how the DEI office will be resourced given the restrictions on the budget approved a VMI spokesperson informed the Spirit of VMI Pack a member of the VMI administration stated it would be funded from monies VMI will take from tuition and Cadet fees paid to attend VMI. The same VMI administrator also stated that, to date, the positions in the DEI office has been funded by a “benefactor” but did not disclose who or what outside VMI organization was the source of funding.
- According to VMI BOV records, during her July 26, 2022 presentation to the BOV, CDO LTC Love stated that VMI plans to conduct the DEI training in 17 cadet sessions plus 2 makeup sessions in the upcoming academic session. No change was announced as a result of the Court decision.
- When asked by the Spirit of VMI PAC how the DEI office will be resourced given the restrictions on the budget approved a VMI spokesperson informed the Spirit of VMI Pack the office would be funded from monies to be taken from tuition and Cadet fees paid to attend. When asked by the Spirit of VMI PAC how the DEI office wil be resourced given the restrictions on the budget approved a VMI spokesperson informed the Spirit of VMI Pack the office would be funded from monies to be taken from tuition and Cadet fees paid to attend.
- VMI has also repeatedly misrepresented CAI’s lawsuit and the intent of CAI’s President, a VMI alumnus, as intending to stop needed changes to racial and gender issues at VMI and for some personal benefit. VMI’s argument fails to disclose that neither CAI nor its President can ever recover the substantial funds spent to litigate the case. The only possible outcome under Virginia law is for the contract award to be cancelled and, so that any future VMI procurements, to include DEI training, would be fair, open, transparent, and free of arbitrary and capricious awards, thereby complying with the VPPA as the General Assembly intended.

ⁱ chrome-extension://efaidnbnmnnibpcajpcglcfeindmkaj/https://www.vmi.edu/media/content-assets/documents/bov/Statement-of-Governance.pdf

ⁱⁱ See CAI complaint Exhibit 50.

ⁱⁱⁱ See CAI complaint Exhibit 51.

^{iv} See CAI complaint Exhibit 49.

¹ https://www.washingtonpost.com/local/youngkin-vmi-northam-racism/2021/11/12/718cdb8a-419e-11ec-a88e-2aa4632af69b_story.html

² <https://www.washingtonpost.com/dc-md-va/2022/07/02/vmi-board-youngkin-racism-sexism/>

^v See CAI complaint Exhibit 49.

^{vi} See CAI complaint Exhibit 49.

^{vii} See CAI complaint Exhibit 49.

^{viii} See CAI complaint Exhibit 59.

^{ix} <https://www.kanopy.com/en/benbrooklibrary/video/128008>

Commonwealth of Virginia

JUDGES
TWENTY-FIFTH JUDICIAL CIRCUIT
OF VIRGINIA

W. CHAPMAN GOODWIN, CHIEF JUDGE
JOEL R. BRANSCOM
PAUL A. DRYER
ANNE M. REED
CHRISTOPHER B. RUSSELL
EDWARD K. STEIN



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CIRCUIT COURTS OF
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COUNTY OF ROCKBRIDGE
CITY OF BUENA VISTA
CITY OF STAUNTON
CITY OF WAYNESBORO

August 3, 2022

Via Electronic Mail

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Re: *Center for Applied Innovation, LLC v. Virginia Military Institute, et al.*
Case No.: CL22-215

Dear Counsel:

On July 14, 2022, the parties appeared for argument on the defendants' Plea in Bar and Demurrer. Having considered the oral and written argument of counsel and the authority presented, the Court responds as follows.

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff Center for Applied Innovation, LLC ("Plaintiff" or "CAI") is a limited liability company. Defendant Virginia Military Institute ("Defendant" or "VMI") is a public institution of higher education located within the jurisdiction of this Court. In November of 2021, VMI published a Request for Proposal ("RFP") seeking proposals for the provision of Diversity, Equity and Inclusion ("DEI") Consultation and Training. CAI and other entities submitted proposals in response to the RFP. Plaintiff was eliminated from consideration during the first round of the

procurement process. In February of 2022, VMI published a Notice of Intent (“NOI”) to Award a contract to Newpoint Strategies, LLC.¹

Prior to the posting of the NOI, Plaintiff attempted unsuccessfully to obtain access to records from the procurement process. On March 18, 2022, Plaintiff filed a Protest of Award, alleging that VMI’s actions during the process had resulted in an unjust awarding of the contract. VMI responded with a denial letter on March 28, 2022. On April 1, 2022, Plaintiff filed this action seeking relief, which includes (1) a Motion for Declaratory Judgment, and; (2) a Petition for Temporary & Permanent Injunction. CAI alleges that VMI’s conduct during the procurement process was arbitrary and capricious. In response, VMI filed a Plea in Bar and Demurrer.

II. QUESTIONS PRESENTED

VMI asserts several bases for dismissal of Plaintiff’s actions. First, VMI claims a statutory exemption from the provision of the Virginia Public Procurement Act (VPPA) under which Plaintiff filed. Second, VMI states that the doctrine of sovereign immunity bars the remedies Plaintiff seeks. Further, VMI claims that Plaintiff has failed to state a cause of action for declaratory judgment or injunctive relief and has failed to state facts upon which relief can be granted.

III. ANALYSIS

A. Plea in Bar

1) Exemption from VPPA

Generally, public bodies in the Commonwealth are required to comply with the VPPA when procuring services from non-governmental vendors. In this case, Plaintiff has filed suit under Va. Code § 2.2-4364 which, under usual circumstances, provides a cause of action for bidders on government contracts to challenge the legitimacy of the bidding process. However, Va. Code § 23.1-1017—part of the Restructured Higher Education Financial and Administrative Operations Act (RHEFAO)—states that, “each covered institution may be exempt from the provisions of the Virginia Public Procurement Act, except for §§ 2.2-4340, 2.2-4340.1, 2.2-4340.2, 2.2-4342, and 2.2-4376.2.” Further, the definitions portion of the same act defines “covered institution” as “a public institution of higher education that has entered into a management agreement with the Commonwealth to be governed by the provisions of Article 4.” Va. Code § 23.1-1000. Thus, if VMI is a “covered institution” pursuant to the Act, it is exempt from the relevant provisions of VPPA.

VMI does not assert that it is a party to a management agreement. Instead, it asserts that it is exempt from the VPPA by having entered a “memorandum of understanding” with the Commonwealth. Memoranda of understanding are governed by § 23.1-1003. An MOU can provide an institution of Higher Education “restructured operational authority in any operational area adopted by the General Assembly in accordance with law.” However, an MOU under this statute

¹ At the hearing on July 14, 2022, VMI presented as Defendant’s Exhibit #2 an Affidavit of Kathleen Tomlin, the Procurement Services Director at VMI, indicating that VMI has not awarded a contract to NewPoint or any other bidder under the RFP and does not intend to do so while this lawsuit is pending.

does not appear to bestow the status of “covered institution” which would exempt the institution from the requirements of the VPPA.

In support of its position, VMI cites a 2008 amendment to Va. Code § 23-38.90.

To effect its implementation under the Memorandum of Understanding, and if the Institution remains in continued substantial compliance with the terms and conditions of the Memorandum of Understanding, the Institution's procurement of goods, services, insurance, and construction and the disposition of surplus materials shall be exempt from the Virginia Public Procurement Act.

VMI argues that this amendment “showed an intent for institutions of higher education that have entered into a MOU to not be subject to civil actions beyond what is provided for in the rules.” *Memo in Support of Plea in Bar* at 6.² However, Title 23 of the Virginia Code was repealed in 2016. The current version of the RHEFAO in Title 23.1 exempts “covered institutions” from the VPPA while omitting similar protection for institutions who have entered Memoranda of understanding. Furthermore, the language of the MOU itself certifies that VMI is in full compliance with the requirements of the VPPA. The MOU itself does not appear to contemplate the exemption VMI asserts.

2) Sovereign Immunity

VMI argues that the doctrine of sovereign immunity protects it from this suit. Plaintiff filed under Virginia Code § 2.2-4364 which empowers bidders to challenge the decision of the “public body” to deny their bid. “Public body” in the relevant sense is defined as:

any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in this chapter.

Va. Code § 2.2-4301. VMI is a public body under this definition. Further, as VMI notes in its Brief, the VPPA and the Rules allowing bid protest lawsuits (which VMI says are applicable here) constitute a waiver of sovereign immunity.

Defendants’ Plea in Bar is overruled.

B. Demurrer

1) Plaintiff’s Request for Declaratory Judgment

A declaratory judgment provides a procedural remedy for a legally viable cause of action that is yet to ripen. *See Cherrie v. Va. Health Servs.*, 292 Va. 309, 318 (2016). Such judgments “provide relief from the uncertainty arising out of controversies over legal rights.” *Treacy v.*

² The recodification of the RHEFAO is not mentioned in the Commonwealth Finance Secretary’s letter to VMI’s Superintendent dated May 23, 2017, contained in Defendant’s Exhibit #1. In any event, the statute referenced in the opening sentence of that letter was not in effect on that date.

Smithfield Foods, 256 Va. 97, 103 (1998). Rather than guiding the parties in their future conduct, CAI seeks to remedy injuries it has allegedly already sustained. *See Liberty Mut. Ins. Co. v. Bishop*, 211 Va. 414, 421 (1970). The elimination of Plaintiff from the procurement process and denial of its protest of the notice of intent to award are concluded events, and therefore constitute claims which have fully matured.

It is true that the general rule is that in an action for a declaratory judgment, if the plaintiff's pleading alleges the existence of an actual or justiciable controversy it states a cause of action and is not demurrable. But this does not mean that a demurrer will never lie to a plaintiff's pleading in a declaratory judgment proceeding. As is said in 26 C.J.S., *Declaratory Judgments*, § 141, p. 335, "[Where] the allegations of the complaint not only fail to show a right to executory relief, but also fail to show a right to declaratory relief, there is no reason why a demurrer should not be interposed; and where it is plain on the record that there is no basis for declaratory relief, a demurrer is properly sustained."

First Nat'l Tr. & Sav. Bank v. Raphael, 201 Va. 718, 721 (1960) (internal citations omitted).

Plaintiff's assertions that Defendant violated the VPPA and that its award of the contract was arbitrary and capricious are disputed issues and facts. When the "actual objective in the declaratory judgment proceeding [i]s a determination of [a] disputed issue rather than an adjudication of the parties' rights,' the case is not one for declaratory judgment." *Pure Presbyterian Church of Wash. v. Grace of God Presbyterian Church*, 296 Va. 42, 55 (2018) (citing *Green v. Goodman-Gable-Gould Co.*, 268 Va. 102, 108 (2004)).

Plaintiff's Count I requests a Judgment Order declaring the contract between VMI and NewPoint void and granting full access to the procurement file pursuant to the VPPA. The Court is satisfied that no such contract exists. Further, the Court agrees with VMI that declaratory judgment is not an appropriate vehicle for Defendants' request for records, especially given the disputed facts in this case.

Defendants' demurrer to Count I is sustained.

2) Injunction Merits

a. VMI is Prohibited from Awarding the Contract

Section 52 of the Rules Governing Procurement of Goods, Services, Insurance and Construction by a Public Institution of Higher Education and Their Vendors ("the Rules") states:

An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest as provided in § 50 of these Rules, or the filing of a timely legal action as provided in § 54, no further action to award the contract shall be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

VMI has acknowledged that it is prohibited from awarding the contract until the present action has been resolved.

b. The Four-Part Test Used by Federal Courts

VMI correctly states that “[n]o Virginia Supreme Court case has definitively set out standards to be applied in granting or denying a[n] injunction.” *See Sch. Bd. Of Richmond v. Wilder*, 73 Va. Cir. 251, 253 (2007). However, Virginia Circuit Courts have relied on the four-part test used by the federal courts.

Since the Fourth Circuit decided *Real Truth About Obama*, most Virginia circuit courts have evaluated temporary injunctions using that court's sequential analysis. Consistent with this approach, the *Virginia Civil Benchbook* refers to the *Winter* four-factor test—and the Fourth Circuit's interpretation of the *Winter* factors as applied in *Real Truth About Obama*—in the section regarding motions for temporary injunctions.

Dillon v. Northam, 105 Va. Cir. 402, 409 (Cir. Ct. 2020) (internal citations omitted).

VMI's argument that Plaintiff has failed to state a cause of action for an injunction rests heavily on the assertion that Plaintiff has filed its action pursuant to the VPPA rather than the Rules. Setting aside (for the moment) this procedural distinction, an analysis based on the federal standard requires that Plaintiff “must establish (1) that he is likely to succeed on the merits, (2) that he is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in his favor, and (4) that an injunction is in the public interest.” *Winter v. NRDC*, 555 U.S. 7, 20, 24 (2008).

Plaintiff's allegations fail to establish that CAI is likely to suffer irreparable harm in the absence of preliminary relief. An injunction is not appropriate in this case at this time.

3) Substantive Claims

The Supreme Court of Virginia has defined an act as "arbitrary and capricious when it is willful and unreasonable and taken without consideration or in disregard of facts or law or without determining principle, or when the deciding body departed from the appropriate standard in making its decision." *James v. City of Falls Church*, 280 Va. 31, 41 (2010) (internal quotations and citations omitted). Plaintiff alleges that VMI has departed from numerous relevant authorities, including the APSPM, VPPA, the Rules, Purchasing Manual, and Vendor's manual. *See generally* Pl.'s Ex. A.

In *Professional Building Maintenance Corporation v. School Board of the County of Spotsylvania*, the Supreme Court of Virginia addressed a similar complaint of arbitrary and capricious actions during the process of entertaining bids for a contract. *See generally Prof'l Bldg. Maint. Corp. v. Sch. Bd.*, 283 Va. 747 (2012). The allegations evaluated by the court included (1) utilizing factors that were not included in the criteria set forth in the invitation; (2) inability to articulate the factors considered in how points were allocated or awarded; (3) allocating points for certain criteria with no basis in fact; and (4) giving point scores that bore no rational relationship with the information provided in the bid. *See id.* at 754-55. The court found that the allegations were not merely conclusory and sufficiently stated a cause of action regarding whether the school board's actions were arbitrary and capricious. The court therefore held that the circuit court had erred in sustaining the school board's demurrer, reversed the judgment, and remanded the matter for further proceedings.

CAI has alleged that VMI (1) utilized factors not included in the criteria of the RFP by scoring prices in proposals that included products and services that were not requested by the RFP; (2) failed to include justification or explanations that articulated the factors considered in scoring; (3) allocated points for criteria with no basis in fact due to the wide variance of the costs/services in each company's proposals caused by VMI's vague articulation of its requirements; and (4) gave points with no rational relationship to the information provided as Plaintiff was the only bidder to receive a score of "0" for price, despite the existence of several more expensive proposals. *See generally* Pl.'s Ex. A. Viewed in the light most favorable to Plaintiff, these allegations are sufficient to withstand VMI's demurrer as to the substance of Plaintiff's claims.

4) Procedural Issues

VMI argues that CAI's remedies, if any, emanate from the Rules Governing Procurement rather than the VPPA. It appears to the Court that the Rules presented to the Court were promulgated pursuant to the now-repealed Title 23 of the Code of Virginia. Similar expressions of policy, purpose, and scope of procurement authority are now codified in Article 4 of the RHEFAO. However, as noted above, these provisions apply to "covered institutions" that have "management agreements" with the Commonwealth. The correspondence between VMI and the Commonwealth in 2017³ appears designed to extend the original Memorandum of Understanding, subject to the Rules, notwithstanding the General Assembly's recodification of Title 23 one year earlier. As VMI correctly notes, the statutes in effect in 2017 retained Memoranda of understanding in § 23.1-1003. But the General Assembly appears to have transferred the compliance scheme contemplated by the Rules to Article 4, which does not by any express terms apply to institutions that entered Memoranda of understanding. Nothing in the correspondence mentions Article 4 or any intent to convert the Memorandum of Understanding to a management agreement. The Code currently recognizes both types of agreements. VMI has an MOU, but the "Rules" VMI says are to govern this dispute now apply to management agreements.

IV. CONCLUSION

The defendants' Plea in Bar is overruled. The demurrer is sustained as to Count I. The demurrer is overruled as to Count II. The plaintiff's counsel is requested to prepare an appropriate Order reflecting the ruling of the Court.

Thank you for your attention to the above. With kind regards, I am

Sincerely yours,


Christopher B. Russell

c: Michelle M. Trout, Clerk of Court

³ Letters of May 23, 2017 and June 9, 2017 contained in Defendant's Exhibit #1.

VIRGINIA:

IN THE CIRCUIT COURT OF ROCKBRIDGE COUNTY

CENTER FOR APPLIED)
INNOVATION, LLC,)
)
Plaintiff,)
)
v.)
)
VIRGINIA MILITARY INSTITUTE, et al.,)
)
Defendants.)

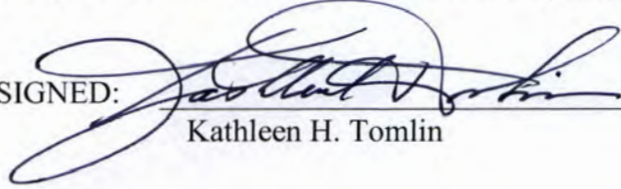
Case No. CL22-215-00

AFFIDAVIT OF KATHLEEN H. TOMLIN

I, Kathleen H. Tomlin, being duly sworn according to law, state the following:

1. My name is Kathleen H. Tomlin and I am an adult citizen residing in the Commonwealth of Virginia.
2. I am the Procurement Services Director at Virginia Military Institute (“VMI”).
3. I have reviewed the Motion for Declaratory Judgment and Petition for Temporary & Permanent Injunction filed by Center for Applied Innovation, LLC, Case No. CL22-215-00 (“the Lawsuit”).
4. In my role as Procurement Services Director at Virginia Military Institute, I am familiar with the request for proposal issued by VMI titled Project #V211-22-054 (“RFP”) and that is described in the Lawsuit.
5. VMI has not awarded a contract to NewPoint Strategies LLC (“NewPoint”) or any other bidder under the RFP.
6. No work has been performed under the RFP.

7. VMI does not intend to award a contract under the RFP while the Lawsuit is pending.

SIGNED: 
Kathleen H. Tomlin

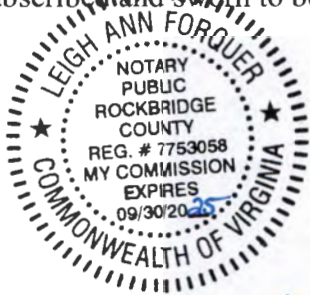
CITY/COUNTY OF Rockbridge

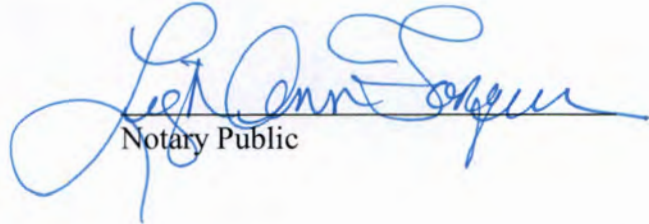
COMMONWEALTH OF VIRGINIA

I, Leigh Ann Forquer, a Notary Public in the Commonwealth of Virginia, do hereby certify that this day personally appeared before me Kathleen H. Tomlin, who being first duly sworn, made oath that the foregoing Affidavit is true and correct to the best of her knowledge, information, and belief.

Subscribed and sworn to before me this 15th day of June, 2022.

[SEAL]




Notary Public

My Commission expires: 9/30/2025

My Commission No.: 7753058

Virginia Military Institute Statement of Governance

In accordance with Virginia Code § 23.1-1306 and upon recommendation of the Executive Committee, the Board of Visitors of the Virginia Military Institute adopted on September 18, 2013, the following statement setting out the Board's role in the governance of the Institute:

1. The Board shall define the mission of the Virginia Military Institute, as a public institution of higher education in the Commonwealth, and oversee the development, revision and implementation of a strategic plan for the accomplishment of that mission.
2. The Board is responsible for oversight of the Institute's budget development process. It shall ensure that the Institute's mission and the priorities established by its strategic plan, are reflected in the intentional allocation and reallocation of resources from year-to-year. The Board must review and approve any request for funds to be made to the Governor or to the General Assembly. The Board shall also oversee the actual application of resources and ensure the cost-effective operation of the Institute.
3. The Board shall appoint a Superintendent, whose duties are described by Article II, Section 1 of these By-laws, and ensure that the Superintendent complies with all Board and statutory directives. It shall define its expectations and set goals for the Superintendent and annually review the Superintendent's performance with reference to those expectations and goals. The Board shall annually deliver, in closed session, its evaluation of the Superintendent's performance. Any change to the Superintendent's employment contract during any such meeting or any other meeting of the Board shall be made only by a vote of a majority of the Board's members.
4. The Board is ultimately responsible for the academic quality and integrity of the Institute. It shall determine what academic courses and programs will be offered, establish rules and regulations for the employment of faculty, appoint them and fix their salaries. Faculty can be removed only for good cause and with the concurrence of a majority of the Board. Upon the removal of a faculty member, the fact of, and reasons for, such removal shall be reported to the Governor.
5. The Board, upon prior written consent of the Governor, may accept and expend gifts to the Institute. However, it is the Board's responsibility to ensure that all private gifts for the benefit of the Institute, both restricted and unrestricted, are applied in support of the mission and in a manner consistent with the priorities of the Institute. The Board shall ensure that any private organization permitted to operate in the name or for the benefit of the Institute provides regular and detailed reporting of expenditures and activities undertaken on its behalf.

6. The Board shall determine and define the requirements for admission to the Institute, establish rules and regulations for the acceptance of students, the appropriate size of the Corps of Cadets, the nature and duration of their service and the core curriculum requirements. With the concurrence of the Governor and the faculty, the Board shall confer degrees. The Board may adopt regulations for the management of the Institute and for the conduct of cadets.

7. The Board, with the approval of the Governor and as provided by statute, may lease, sell or otherwise convey whatever interest in real property the Institute may have, and may acquire interests in real property by purchase, will or deed of gift.

8. The Board may authorize the Superintendent or his designee to execute any instrument in the name and on behalf of the Virginia Military Institute. The Secretary to the Board shall have authority to affix the seal of the corporation to any such instrument.

9. The Board of Visitors of the Virginia Military Institute is a working Board and its members are expected to attend all meetings and to participate in the activities of the Board.

10. The Board shall submit to the General Assembly and the Governor an annual executive summary of its interim activity and work no later than the first day of each regular session of the General Assembly. The executive summary shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports for publication on the General Assembly's website.

11. The Board shall remain transparent in its actions and shall operate openly, to the extent required by law.

12. The Board shall comply with the requirements of the Virginia Freedom of Information Act, Virginia Code § 2.2-3700, et seq., in the conduct of all meetings, as such term is defined by statute.

13. The Board has such additional powers and duties as provided by statute and as the General Assembly may see fit to amend such statutes, or otherwise act, from time to time.

Exhibit 49

Carmack

Veritas Academy

Tony Farmer
Chris Armstrong
Vince Brantley
Carla Mena

1 Carla - Strategic Source ~~Code~~ Review
What do we currently have
real human issues

2 Vince - Talk to the collective to identify how
they define DEI
Plant 1st Star

3 Chris - Quantitative vs Qualitative
head vs heart
Root orientated
Symptomatic concerns
Human centered assessments as well as
metrics

4 Vince - Training & Plans
Neutral in discovery
Passionate in Plans
Emotional Intelligence Training
Co-create plans with internal change agents

SC = Strategic Communication

5. Carla - Coaching + Consulting
Aid facilitator

Participant Fatigue - leans on hope
"Trust"

Preventing overreliance
"Pandora's Box"

Use their words - not replace their words
Get beyond their assumptions

Culture
Y culture

Head vs Heart

Focus on Equity and Belonging over Diversity
and Inclusion

Culture
Sculpture

How will we know that we answered our
why?

Changing hearts & minds
Facilitation over instruction

Subjective topics - variety of definitions -
easy to criticize

Collective regard

OL - turned on elevator? @ 9:54
TS - stay longer?

Buy in at all levels

Solutions that can actually be accomplished
→ what can legally be accomplished

* Maintaining integrity + moral courage *

Human centered + high touch

① Who would be facilitators? Merge of all 3 →
Students, staff + faculty - 2 @ all times

COL Love -

How will you protect VMI from risk? (why)
ASK

~~Assessment~~

Written with FOIA in mind

Tinny - DEI @ upper levels?

Vince - listen to them - learn - understand
their standards

Leaders don't define the culture

* 5 Goals developed by LTC Love - where
are they? What are they?

VINCE - inciteful = not inciting

Kliner - How to assist VMI with new government? Critical Race Theory

Collective Regard -

Governor tends to respond to criticism + complaints

How will you support the CEO - people who don't support her

CK Business Strategies

Corrin + King

Did not provide slides to ^{their} team on Zoom

Military backgrounds

Results driven

Highly interactive & engaging

Leadership initiatives

Leadership

VASCOPP School?

① COL Love - strengthen commitment to Inclusive Excellence: Meet customers where they are & where they want to go. General to the specific. More assessments: would affect timeline

② Inclusive excellence training:

③ How to protect VMI from risk? Develop a DEI "talking points" campaign. Confidentiality

Align with mission + message + values. Find the positive and focus on those

Sketch: Lifelong learning + inclusive excellence: Training is an event, Mentoring, Continuing classes. Then the rest is on the individual. Build awareness, Can't force inclusion
→ Video production team ←

Kline Youngkin - CRT + DEI:

Sen Help leadership stay accountable? Reporting -
More YMI focus on assessment + training

→ Don't expect what you don't inspect -

Timing? Start March! if contract awarded immediately

* - 5 Goals on IET is one more, challenging - will send response

Tracy - None

* Marketing Team / Social Media

CK - what is the take away for what the cadets get from training?

- JL
- 50% of commissioning cadets to be cultural competent
 - lifelong learning + growth

KK Majority may not experience issues but ~~is~~ a large minority may have

AR Old dog new tricks

New Point Strategies

Allen Fuller Hubbard

Karetha Hubbard - Father in law - YMI grad

Daisy Lung - Billy Mauns

Stephanie Goebel - Naval Academy - Navy ^{13 years}

- Did web site focused on YMI + Citadel female Cadets

Chris Kilmartin - has consulted @ YMI since women were admitted

Karen Walter - retired Marine ^{WRE} psychologist

Holistic Approach with military experience

Framework of services - Customized delivery

* 6-Phase consulting

① Where are you currently

② Senior leadership writing

③ Senior training coaching

④ Manager/supervisor training

⑤ All-staff training

⑥ Evalo + outcomes

NP

What is VMI's Vision?

OL ① Lifelong Learning

Implicit, unconscious bias - what to do about it
Cultural Competence

~~OL~~

Respect in the workplace for West Point

Kline Youngkin & CRT

Leadership Accountability - top down

"Own" message & steps to achieve goal

Ready to do in-person training - Assess through
March - training in April

OL Protect VMI from risk? Risk of what?

Bad publicity?

Helping VMI be less of a focus? Unless positive?

NP

Control who talks to the press. Shared understanding
of what information is shared with the press.

Ranking
DEI Meeting 2/11/22 3:00

V CK
| |
| |
| |

Love: 1. New Point - very good - Polished + genuine
2. Veritas - polished
3. CK Strategy

Sketch: 1. New Point
2. Veritas
3. CK Strategy

Kline 1. New Point - sound science
③ Veritas - didn't like the science,
everything is subjective, ^{stuy} neutral
② CK Strategies

Gen 1. New Point - science, diversity of skills +
people, VMI connection, good response to
risk question (outsiders can say what
insiders can't). Facilitators of learning.
Respect + interaction among team.
2 Veritas + CK

Lackey: 1. New Point - support to CDO, plan
for employees
2. Veritas - touchy feely
3. CK Strategy

①. NDI - Stays out for 10 days

Exhibit 50



Evaluator:

REDACTED

EVALUATION AND AWARD CRITERIA

RFP # V211-22-054

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

Offeror: Center for Applied Innovation, LLC

Date: 1/10/2022

Evaluation Criteria	VALUE	SCORE
Plan for providing DEI services, tailored to VMI needs	20	10
Qualifications and experience of Offeror	20	10
Price (Scored by Procurement Services)	15	0
Implementation, Planning and Services	15	10
References where similar goods and/or services have been provided	10	7
Participation of Small, Women-Owned and Minority (SWaM) Business (Scored by Procurement Services)	20	20
TOTAL	100	57

37

Notes/Comments

Virginia-based; consulted by Northampton;
 good military experience/understanding/relationships; Best team
 includes VMI alumni -> potential bias;
 like root-cause analyses; Too much military;
 plan is unclear and sound like a military op-order;
 some military is great; all military not good for that
 purpose

Exhibit 51

Offshore

2/3/2022

Peritas

{ Tony Turner COO
Chris Armstrong co-owner
Jina Brath
Carla Menon

* Strategic Source Review

* DEI Culture Session
Collective Sessions (25%)

Assessment

Idea & Heart HUMAN CENTRED
Symptom

* Overall health / symptomatic / Root issues / Root solutions

Training + Plans -

- ↳ * Neutral * in discovery

↳ Planning - Implementation

↳ Co Create to eliminate the need for consultant

Coaching & Consulting - aid facilitators

Questions —

①

Facilitators —

who do you envision?

FACULTY

STAFF

CADETS?

Merge of
all three

Everyone is
part of the
solution

* Fatigue

* Trust

(*) Informed Expression

* Challenge fears & assumptions

* People want to see themselves in the assessments

→ No pre-conceived notions

No making the means justify the end.

② How do you measure effectiveness? VALIDATION / BUY IN / DEFENSE OF FINDINGS

* No training before assessment

— not restructured / out-of-the-box training /

① Love - ~~about~~ about DEI office not existing
 • no program until she arrived
 Knowing that - does this change your approach?
 • No - unless you introduce other than human beings

② Similar experiences:
 - Fort Bragg San Antonio AFB
 - DIA
 - NGA

③ unconscious BIAS - no BYUS

④ RISK AVOIDANCE

Amoral

- Life long learning
 A - culture - listening - see others differently
 Tools for the tool kit
 (cup example) Transformational

Trust

DEI - upper level VP level support
 LISTEN - it is the + accountability
 SAME Process

Leaders do not define the culture ->
 they influence it.

(H)

Timmi - continued

Excellence Plan -

* 5 Goals (area of growth)

Any 1 more difficult than any other?

- Buy in - of all goals

- DEFENSABILITY

COMMUNICATION

INCLUSION IN THE SOLUTION

• LISTEN - LISTEN - LISTEN •

NOTION

"Fixing something that isn't broken"

KLINE

Youngkin - no CRT / VA Policies

A: - CANNOT ignore collective regard

constituency complaints - won't do anything
CHAOS - is where they intervene

They only go where there is FIRE

↳ they don't believe there is a FILE here.

INSIGHTFUL not INCITEFUL / respectful of all opinions

KLINE

↳ How do you support the CDO?

Against people who wish to stop/undermine her efforts.

A: Agreed - LISTEN - understand the
Creations - why? Want to move forward.
Direct engagement/alignment

Culture sculpture - do nothings
Culture =

See it?

See it as a problem?

See the impact of it?

See it as your problem to solve?

What is my role?

Kline

- Collective Regard - is overwhelming negative

A: ↳ is neither good or bad

it is all experiences

LACKEY no questions

Love - Inclusive Excellence THIS SEMESTER

A: - only one career because Assessment is
Required to move forward.

* CK Business Strategies

2/4/22

- Corrin + King BusStrat LLC -

McWilson CFO

* Kim Taylor-Wilson

* Jim / Mark - virtually
White / Garrett

Fredericksburg

Quantico

Global Insights Productions

ON LINE TRAINING

VMI - Unique

Launch in the 80's -

Understand military culture / underpinnings

Legacy of Military Experience
WWI, WWII

~~Small~~ Small classes - to interact

POINTS: We are glad you are here / you were selected for
a field of 16 responders VMI is committed to
making an award as soon as practical.

IN PERSON TRAINING IS PREFERRED

Q - I noticed that VASCUPP is on your client list. What type of training was conducted for that group?

A.

Q: Pre Training Assessment

Answer

- How long do you anticipate that takes to develop? 4 Days

- When would you start training?
→ MAR - APR 2022

Participant ~~Surveys~~ Surveys after each session.

Sustainability is Key - Reinforcement

DEI advocacy groups with cadets

Questions

COL LOVE

Before July 21 / no DEI

- * no change in approach
- * Grand zero experience

Confidentiality alignment with goals, mission & messages.

1,000's of Positive experiences at VMI that are not all

"Don't expect what you don't inspect"

Video library - available

(Inclusion Intelligence)

Different people - more information from different points of view.

* Accountability - ~~DEI~~ TRACKING DATA

SCHAV?

Performance Appraisals

* Not familiar with Excellence Plan

New Point Strategies

2/4/22

* Dr Estelle Marie Montgomery

Jaretta Hubbard

civility in the work place
'33 PFL Cops of Engineers

Allen
Fuller
Hubbard

Stephane 1980 Annual Academy
Focused on VMI/Citadel
Entrance to VMI for women

Chris → * VMI - consultant: VAW (women)
↳ also Sexual Assault Training
Naval Academy

Z Z Abdul-Razzak NPL
↳ Univ of Md

Not off the Shelf

* study/assess/develop
Customized delivery

Meet you where you are

@PHASE

- ASSESSMENT (consult)

- Senior Leadership debrief — TOP DOWN —

- Senior Training — Supervisors Training — all staff

- Post Training Report

- RFP → Contract

- Changes occur between then and now

Collaborative - collect THE DATA

Do WITH You

Can't change opinions, you change behaviors

Data Assessments

Training

LEADERSHIP

MID LEVEL Mgmt

EMPLOYEE

Post Training Option

- all are 3 Hours -

Holistic Training - no lectures

Personally relevant

18 Months

Leadership Training October 22

* See Recordings for questions

1984

with Karotta Hubbard - Fowler W-W

= West Point

= Air Force Academy

= Annapolis

- Staff training is different from leadership training

(4W) (H/L) (1A) (3B)
- W-9 M-2

Blind Spots a/drawing

= we all have them / we need to be aware of them

4PM - Kline left

Training this May? (Yes)

* Assesments of March

Design - Rollout 12 April

3 week training - INTENSE

Tinnir - Hybrid we really aren't military

I have a bird on my shoulder -

Doesn't mean anything - just I am a field professor

"So - compare us more to
University of Maryland
rather than a military academy."

Deliberation Notes

2/11/22

Jamie Love

- ① Last New Point
- Clear Answers
- Support - CDD
- Good Ideas
Presentations well thought
Genuine

- ② Veritas -
Well thought
Blinded

- ③ CK -
Technology was not on their side

Amridd Sheikh

- ③ CK - technology

- ② Veritas - set the bar high, really liked

- ① New Point - diverse background
of employees

Keith ~~Line~~

①

Looking New Point
Science for it

Just psychological science
Psychometrics
Impressive Energetic

②

CK

Substance
only because

③

Veritas

Polished, comfortable

Red flags → didn't like the science

→ Unconscious bias

Stance - Everything is subjective

Staying neutral

Someone needs to say something is wrong when it's wrong

Kum bi ya

No substance

Tinni - Senn

① Newpoint — leaps and bounds

data. experience

Diversity of people, skills

ODD impediments — formal resources

— outsiders can say what insiders
can not.

Experience — years + issues

Facilitator/learners not Trainers

↳ interaction

② Veritas

↳

Polish / into absurdity
i.e., culture / vulture

③ — CK

Tracey Lackey

② Ventas /
human heart

① Newport

- plan was flexible
- experience

③ CK

Exhibit 59

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>
Sent: Friday, February 4, 2022 8:27 AM
To: Clark, Dallas B <clarkdb@vmi.edu>
Cc: Tomlin, Kathleen H <TomlinKH@vmi.edu>; Young, John <youngjm@vmi.edu>; Ryan, Kevin A <ryanka@vmi.edu>; Lawhorne, Jeffrey L <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>
Sent: Friday, February 4, 2022 5:41 AM
To: O'Leary, Patrick O, 'Pat' <olearypo@vmi.edu>
Cc: Tomlin, Kathleen H <TomlinKH@vmi.edu>; Young, John <youngjm@vmi.edu>; Ryan, Kevin A <ryanka@vmi.edu>; Lawhorne, Jeffrey L <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

Inclusive Excellence Training VMI

BOV DEI Subcommittee
LTC Jamica Nadina Love, D.Ed

1

Today's Agenda

- Welcome & Opening Remarks
- Brief Overview of 2021-22 Training
 - Employee
 - Cadet
- Review Training Materials
- Research/Sources for Training
- Feedback on Review

2

NOTE: These videos require a user account with the streaming service Kanopy. VMI access is not readily available, leaving access through a public library. Their content can be clearly viewed as "inherently divisive concepts."

Inclusive Excellence Video Clips

Sexism

- <https://www.kanopy.com/en/vmi/video/128008>
- 1h:12:17 – 1h:13:41 | *Violence and women*

Cultural Competency #3 -Understanding character development includes a continual effort to respond appropriately to my thoughts and actions, reducing the impact of my assumptions and biases about people of cultures different from mine.

LGBTQIA+ & the Military


- <https://www.kanopy.com/en/vmi/video/126922>
- 1:00-5:44
- <https://www.kanopy.com/en/vmi/video/11455885>
- 0 - 02:23

Cultural Competency #4 -Understanding civility (citizenship) requires acting as an ally to my peers and colleagues, intervening when I observe them experiencing discrimination.

Race & Education

- <https://www.kanopy.com/en/vmi/video/93031>
- 30:38 – 31:00 | *College/studies/stats*

Cultural Competency #5 -Awareness of the impact of social context on the lives of historically underrepresented populations within the VMI community.



9



Inclusive Excellence CPR

Focus-

1. Listen to Understand
2. Enhance Your Listening Skills
3. Enhance Your Questioning Skills

- When discussing diversity, begin and end with questions.
- What is Inclusive Excellence CPR?
 - C-Clarify
 - P-Probing
 - Recognizing

10

Resources

1. [20 Questions to Assess Your Hidden Gender Biases and How They Harm the LGBTQ+ Community \(thepsychologygroup.com\)](#)
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4. BOHLAND, J. D. (2013). Look Away, Look Away, Look Away to Lexington Struggles over Neo-Confederate Nationalism, Memory, and Masculinity in a Small Virginia Town. *Southeastern Geographer*, 53(3), 267–295. <https://doi.org/10.1353/sgn.2013.0026>
5. Briscoe, F. M. (2005). A question of representation in educational discourse: Multiplicities and inter sections of identities and positionalities. doi:10.1207/s15326993es3801_4 *Educational Studies*, 38 (1), 2341.
6. Chang, M. J. (2007). Beyond artificial integration: Reimagining cross-racial interactions among undergraduates. *New Directions for Student Services*, 120, 25–37. doi:10.1002/ss.255
7. CHIEBLE, M., VETTER, A., & MARTIN, K. M. (2021). Critical Listening for Critical Conversations. *English Journal*, 111(2), 71–77.
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9. Dewsbury, B. M., Swanson, H. J., Moseman-Valtierra, S., & Caulkins, J. (2022). Inclusive and active pedagogies reduce academic outcome gaps and improve long-term performance. *PLoS ONE*, 17(6), 1–13. <https://doi.org/10.1371/journal.pone.0268620>
10. Garrett, M. X. (2021). Military Diversity: A Key American Strategic Asset. *Military Review*, 101(3), 14–21.
11. Holt D, Davis S. Interrupting Bias in Army Talent Management. *Parameters: US Army War College*. 2022;52(1):21-39. doi:10.55540/0031-1723.3127
12. [How Questioning Can Drive Arguments, Productive Debate & Information Literacy Among Students \(ebSCO.com\)](#)
13. Kaskan, E., & Ho, I. (2016). Microaggressions and Female Athletes. *Sex Roles*, 74(7–8), 275–287. <https://doi.org/10.1007/s11199-014-0475-1>
14. Katz-Buonincontro, J. (2015). Fanning The Fires of Conflict or Leading With Empathy? Aesthetic Learning "Tipping Points" in Improvisational Theatre. *Canadian Review of Art Education: Research & Issues*, 42(1), 26–43.
15. Lewis, N. (2016). New faces on campus: Students of all races welcome first black presidents to largely white colleges. The Hechinger Report. Retrieved from <https://hechingerreport.org/new-faces-campus-students-races-welcome-first-black-presidents-largely-white-colleges/>
16. Richard, K., & Molloy, S. (2020). An examination of emerging adult military men: Masculinity and U.S. military climate. *Psychology of Men & Masculinities*, 21(4), 686–698. <https://doi.org/10.1037/men0000203>
17. Schaefer, H. S., Cotting, D. I., Proctor, E. S., Ryan, D. M., & Lerner, R. M. (2021). The military hypermasculine mystique: Sex, status, and emotional control at the United States Military Academy. *Psychology of Men & Masculinities*, 22(4), 611–626. <https://doi.org/10.1037/men0000365>
18. Steidl, C. R., & Brookshire, A. R. (2019). Just one of the guys until shower time: How symbolic embodiment threatens women's inclusion in the US military. *Gender, Work & Organization*, 26(9), 1271–1288. <https://doi.org/10.1111/gwop.12320>
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