

Request for Proposal #2020-001

Issue date: March 9, 2020

Title: Consulting & analytical services for legalizing marijuana

Commodity Codes: 91812 (Analytical studies and surveys), 91858 (Government consulting), 91832 (Consulting Services), 91837 (Economy consulting)

Issuing Agency:
Commonwealth of Virginia
Joint Legislative Audit and Review Commission
919 E. Main St., Suite 2101
Richmond, Virginia 23219



Period of Contract: Date of Award through March 31, 2021

Sealed proposals for furnishing services described herein will be received until **2:00 p.m., Wednesday, April 1, 2020 April 8, 2020**

All inquiries for information should be directed to:
Justin Brown, Associate Director, (804) 371-4576, jbrown@jlarc.virginia.gov

All proposals (~~whether mailed or hand delivered~~) should be ~~delivered to the address above~~ **e-mailed to jbrown@jlarc.virginia.gov**

In compliance with this Request for Proposal (RFP) and all conditions imposed in this RFP, the undersigned firm hereby offers and agrees to furnish all goods and services in accordance with the attached signed proposal or as mutually agreed upon by subsequent negotiation, and the undersigned firm hereby certifies that all information provided below and in any schedule attached hereto is true, correct, and complete.

Name & address of firm:		
Firm EIN:		
Date:		
Submitted by:		
	(Printed name)	(Title)
	(Signature)	
Contact information:		
	(e-mail address)	(Phone #)

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.

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I. PURPOSE

The purpose of this Request for Proposal (RFP) is to solicit sealed proposals to establish a contract through competitive negotiation with the Joint Legislative Audit and Review Commission (JLARC) for the purchase of consulting and analytical services related to legalizing marijuana in Virginia.

JLARC staff intend to select one or more contractor(s) with expertise in (i) policy considerations related to state level legalization of marijuana, and (ii) regulating and licensing the cultivation, processing, distribution, and sale of marijuana. The contractor also should have expertise in estimating economic and revenue impacts from marijuana legalization.

II. BACKGROUND

A. Joint Legislative Audit and Review Commission

JLARC is the oversight agency of the Virginia General Assembly. Through analysis, research, and evaluation, JLARC helps ensure that the legislature is informed about state program operations, agencies fulfill legislative intent, and programs operate efficiently and effectively. JLARC is located in the state's capital of Richmond, Virginia. More information about JLARC can be found online.

B. JLARC Study Requirement

JLARC has been directed through legislative resolution to study and make recommendations for how to legalize and regulate marijuana in Virginia (SJ 67 and HJ 130). Several items in the resolutions entail addressing how legalization can help remedy historical negative effects of marijuana's prohibition on certain minority communities. The 2020 General Assembly also authorized a separate work group to concurrently review legalization (as well as medical cannabis and industrial hemp workgroups).

To accommodate JLARC's required study completion deadline, the selected contractor will need to complete the majority of its work no later than mid-July 2020.

C. Overview of current Virginia law regarding marijuana use and production

Possessing marijuana has historically been unlawful in Virginia, with several exceptions (§18.2-250.1). An individual's first conviction of possessing marijuana has historically been a misdemeanor punishable by up to 30 days in jail and a fine of \$500. Second and subsequent convictions have been a Class 1 misdemeanor. State and local law enforcement agencies enforce this criminal statute.

The 2020 General Assembly enacted legislation decriminalizing simple possession of marijuana. If signed into law by the governor, this legislation will make simple possession a civil offense and reduce the penalty for possession (of 0.5 ounce or less) to a \$25 fine.

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Virginia law permits the possession or distribution of marijuana-derived cannabidiol and THC-A products for medical purposes (§18.2-251.1). Medical practitioners may issue patients a certification (not a prescription) to use these products to attempt to alleviate a variety of medical conditions. Practitioners and their patients must be registered with the Board of Medicine (§54.1-3408.3). The Board of Medicine also has recently been authorized to develop a regulatory and permit process for pharmaceutical processors related to cultivating marijuana plants and extracting cannabidiol oil and THC-A oil for medical use (§54.1-3442.5).

The 2020 General Assembly has enacted legislation decriminalizing medical use marijuana plant cultivation and the manufacture and distribution of cannabidiol and THC-A products by licensed medical use processors. The legislation, if signed by the governor, would also decriminalize possession of these products by certified patients. (Currently patients are allowed to possess products under an “affirmative defense.”)

Cultivation and production of industrial hemp is also currently lawful in Virginia (§3.2-4113), consistent with federal law. Producers must register with the Virginia Department of Agricultural and Consumer Services and comply with relevant regulations.

III. STATEMENT OF NEEDS

JLARC seeks the assistance of a contractor to help with its review of certain issues related to the potential legalization of marijuana in Virginia. The contractor will identify key elements and considerations with regard to governance and regulation, propose approaches to taxation, estimate government revenues and other economic impacts, identify potential approaches to address negative impacts of marijuana's prohibition on individuals and communities, and identify potential approaches to address other key considerations.

Contractors may partner to submit a joint proposal if they believe they can more effectively fulfill this statement of needs by partnering.

The contractor's work will be used to supplement the research and analysis conducted by JLARC staff. JLARC staff's work will culminate in a report to the Virginia General Assembly that can serve as a comprehensive blueprint for how to legalize and effectively regulate marijuana in Virginia, should the General Assembly choose to do so.

A. Detailed project plan

Task A is a detailed project plan that identifies the specific tasks to be completed, the interdependencies between tasks (both contractor and a few major JLARC staff tasks), and the interim and final milestones that need to be met to ensure the work is completed on time. The project plan should be a document finalized in consultation with JLARC staff no later than two weeks after contract award. JLARC staff will hold introductory and informational meetings with the contractor to guide development of the project plan.

The project plan should begin the process of identifying any requirements for data collection that will require the assistance of JLARC staff. The plan should identify any potential data confidentiality, sensitivity, or security issues that need to be addressed. (The contractor may be required to sign one or more nondisclosure agreements with JLARC and/or another Virginia state government entity agreeing to protect confidential information, personal information, or any other sensitive data or information that is shared between parties as part of the work.)

B. Participation in periodic status meetings / conference calls, and general coordination of work

Task B is participation in periodic status meetings or conference calls. Appropriate contract staff will be expected to set up and facilitate meetings or conference calls to (1) provide updates to JLARC staff on progress toward project plan milestones and (2) contribute suggestions and ideas about other pending activities. The frequency and format of the status calls will be determined after completion of the project plan in Task A.

JLARC staff will be in regular contact with the contractor through scheduled status calls and on an as-needed basis. JLARC staff will also provide guidance on the format of the deliverables required by each item, as well as feedback on the substance of the reports as they are finalized.

The contractor will keep JLARC staff apprised of the need to schedule interviews with staff at relevant state and local entities. The contractor will coordinate scheduling interviews with JLARC staff for subjects that overlap JLARC staff's own research activities. JLARC staff reserve the right to participate in all interviews, document reviews, and other related activities.

C. Identify key governance, regulatory, and administrative elements and considerations

Task area C consists of two tasks related to governance, regulatory, and administrative considerations:

C1. Identify key elements of and considerations for governance structure, regulatory framework, and administrative structure, including

- a governance structure that ensures accountability, effective oversight, and effective policymaking;
- a regulatory framework and processes that ensure operational integrity and regulatory compliance while minimizing the regulatory burden; and
- an administrative structure (including the specific number and type of personnel needed), as well as the costs and potential funding mechanisms to pay for the administrative costs.

C2. Submit a report summarizing findings and providing possible approaches for governing, regulating, and administering the legalization of marijuana.

D. Develop taxation approaches, estimate potential tax revenues and other economic impacts related to marijuana legalization

Task area D consists of two tasks related to tax revenue and economic impact:

D1. Identify taxation approaches, estimate tax revenue, and other economic impacts, in particular

- identify potential approaches to taxation (including type and percentage levied);
- for each approach, estimate the resulting state and local tax revenue; and
- estimate other economic impacts (positive and negative) related to legalization.

D2. Submit a report summarizing findings and providing options for taxation related to cultivation, processing, distribution, and retail sales.

E. Identify potential approaches to address negative impacts of marijuana's prohibition on individuals and communities

Task E is to identify realistic and effective ways to use legalization policy and implementation to address the negative impacts of marijuana's prohibition on minority individuals, groups, and communities.

F. Identify potential approaches to address other key considerations

Task F is to identify potential approaches to address other key considerations, including:

- negative impacts on existing Virginia agricultural or other industries;
- types of products to be sold and labeling requirements;
- allowable methods of advertisement;
- effective integration and coordination between regulation of general marijuana production and use, and medical marijuana and industrial hemp production and use;
- allowing localities to opt out of marijuana legalization (e.g. zoning, sales);
- sequencing legalization implementation; and
- other relevant considerations.

G. Review JLARC staff options and recommendations for legalizing marijuana in Virginia

Task area G is two deliverables related to developing options and recommendations for legalizing marijuana in Virginia.

Task G1. Participate in a working meeting with JLARC staff to review and discuss options and recommendations for how best to legalize marijuana in Virginia. This meeting will be the formal point at which the contractor's previous tasks and JLARC's research activities are addressed together.

After this meeting, JLARC will begin to more formally develop its final report and the options and recommendations it will include.

Task G2. Review of a preliminary draft version of the final report developed by JLARC. The purpose of the review is to provide a structured, expert review of the draft report for accuracy and reasonableness.

Work under Task G will not begin until substantive completion of the preceding tasks; it will occur in late August, September, and October.

H. Attendance at November JLARC meeting and other follow-up as needed

Task H will be attendance at the November 2020 JLARC meeting in Richmond, Virginia, during which JLARC staff will present their final report to the General Assembly. The contractor may be required to assist JLARC staff in answering questions asked during the meeting and providing additional context or explanation when necessary.

Task H may also include periodic phone calls and emails with JLARC staff after the November 2020 meeting, possibly through the completion of the legislative session in late February 2021. JLARC staff typically receive questions from legislators and legislative staff regarding their work, and JLARC staff may need to call or email the consultant to help address these.

IV. PROPOSAL PREPARATION AND SUBMISSION INSTRUCTIONS

A. General Requirements

1. RFP Response. In order to be considered for selection, offerors must submit a complete response to this RFP. ~~Eight copies of each proposal must be submitted to JLARC staff.~~ **A PDF of the proposal should be e-mailed to jbrown@jlarc.virginia.gov by 2:00 on April 8, 2020.** No other distribution of the proposals shall be made by the offeror.
2. Proposal Preparation
 - a. Proposals shall be signed by an authorized representative of the offeror. All information requested must be submitted. Failure to submit all information requested may result in the purchasing agency requiring prompt submission of missing information and/or giving a lowered evaluation of the proposal. Proposals which are substantially incomplete or lack key information may be rejected by the purchasing agency. Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation.
 - b. Proposals should be prepared simply and economically, providing a straightforward, but detailed description of capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content. Unnecessarily elaborate brochures, art work, expensive paper, and other presentations **proposals** beyond that sufficient for a complete and effective proposal are not desired.
 - 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. Proposals should reference the task number and/or the corresponding section of the RFP as necessary.
 - d. Ownership of all data, materials, and documentation originated and prepared for the state pursuant to the RFP shall belong exclusively to the state and be subject to public inspection in accordance with the *Virginia Freedom of Information Act*. Trade secrets or proprietary information submitted by an offeror shall not be subject to public disclosure under the *Virginia Freedom of Information Act (Code of Virginia, §2.2-3700 et seq)*; however, the offeror must invoke the protections of subsection B of §2.2-4317 of the *Code of Virginia*, in writing, either prior to or upon submission of data and other materials. The written notice must specifically identify the data or materials to be protected and state the reasons why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. The classification of an entire proposal document, line item prices and/or total proposal prices as proprietary or trade secrets is not acceptable and will result in rejection of the proposal.

- e. The Commonwealth will not pay any costs that any contractor incurs in preparing a proposal and reserves the right to reject any and all proposals received.

3. Estimated Cost to JLARC, by Task

Proposals shall include a non-binding cost estimate. The estimate should reflect the total cost to JLARC for the contractor to successfully complete and submit each task in the Statement of Needs.

4. 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 agency. 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. The issuing agency will schedule the time and location of these presentations. Oral presentations are an option of the purchasing agency and may or may not be conducted.

B. Specific Requirements

Proposals should be as thorough and detailed as possible such that JLARC staff and others may properly evaluate the Contractor's capabilities to provide the required services. Offerors are required to submit the following items as a complete proposal:

1. The RFP cover sheet (initial page of this RFP) and addenda, if any, signed and completed as required.
2. A written narrative statement describing the offeror's proposed approach to addressing each element of the Statement of Needs. This narrative must be sufficient for JLARC staff to evaluate how the contractor plans to address each element of the Statement of Needs and the depth and specificity of that plan.
3. A written narrative statement including information which reflects the qualifications of the offeror to provide services necessary to complete each task; and the expertise of participating personnel, the proportion of their time available for this contract, and a summary of their education, training, and experience which will ensure that all personnel assigned to perform under any resultant contract shall be capable and qualified in the work assigned to them.
4. Non-binding cost estimate for each task in the Statement of Needs.
5. Resumes of all staff committed to the contract.
6. The names and qualifications of all subcontractors proposed for use on this contract.
7. Letters of reference and contact information and brief description of work performed from two to three clients for whom the offeror has recently provided services similar to those requested in this RFP.

V. EVALUATION AND AWARD CRITERIA

A. RFP Evaluation Criteria

Proposals will be evaluated by JLARC staff and others designated by JLARC staff by the criteria and weighting shown below in Table 1.

TABLE 1: RFP Evaluation Criteria

Category and Weight	Sub-criteria, Weight, and Definition	
Technical (50%)	Consistency with Scope of Tasks Requested (10%)	<ul style="list-style-type: none"> Extent to which requested tasks are addressed within each part Extent to which tasks addressed demonstrate sufficient depth and understanding of subject matter
	Analytical Approach (25%)	<ul style="list-style-type: none"> Proposed approach is clear and specific Proposed approach is rigorous and realistic Market and other analysis performed using industry-recognized software using sound methodologies, assumptions, and data Consistency with needed deliverables and timeframes
	Qualifications of Proposed Personnel (15%)	<ul style="list-style-type: none"> Number, qualifications, and related experience of the offeror's proposed staff, including subcontractors if included in proposal Skills of proposed team consistent with skills needed to complete tasks
Past Performance (30%)	<ul style="list-style-type: none"> Extent and similarity of work performed for similar clients Satisfaction of clients with previous work as evidenced through favorable letters of reference 	
Management (10%)	<ul style="list-style-type: none"> Organization and understandability of proposed management approach (e.g. staffing, process for managing work and deadlines) 	
Price (10%)	<ul style="list-style-type: none"> Proposed amount charged to complete tasks 	

B. Award of Contract

Selection shall be made of offeror(s) 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.

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

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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.

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).

VI. REPORTING AND DELIVERY INSTRUCTIONS

A. Deliverables

Table 2 below lists the deliverables the contractor will be required to complete for payment and the timeframes, if known. The contractor will be required to augment, revise, or summarize all or parts of each draft deliverable before it is finalized, if deemed necessary by JLARC staff.

TABLE 2: Deliverables and Timeframes

Deliverable	Proposed Timeframe
A. Project plan	Finalized two weeks from contract award
B. Participation in periodic status meetings / calls	Contract award through end
C. Key governance, regulatory, and administrative considerations	Draft – June 22 ⁹ Final – August 7
D. Taxes, revenues, and economic impacts	Draft – July 13 Final – August 21
E. Identify potential approaches to address historical negative impacts	August
F. Identify potential approaches to address other key considerations	August
G. Review JLARC staff options and recommendations and review draft JLARC report	September, October
H. Attendance at November JLARC meeting in Richmond and follow-up as needed	November

B. Working Paper Control

To facilitate reviews of contractor working papers by JLARC staff, the Contractor shall exercise strict control over the preparation and maintenance of working papers and shall ensure that all working papers are referenced to source documents. JLARC staff may review working papers and supporting references at any time.

C. Contractor Staffing

The contractor should make a reasonable effort to ensure that there is continuity and stability in the staffing approach for this project. The contractor will be proactive and expedient in notifying JLARC if there are going to be any changes in its staffing approach.

VII. GENERAL TERMS AND CONDITIONS

A. Vendors Manual

This solicitation is subject to the provisions of the Commonwealth of Virginia Vendors Manual and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in the Vendors Manual, which is accessible at www.eva.virginia.gov.

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). The Contractor shall comply with applicable federal, state, and local laws and regulations.

C. Anti-Discrimination

1. By submitting their proposals, offerors certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and Section 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 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 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)
2. In every contract over \$10,000 the provisions in a. and b. below apply:
 - a. During the performance of this contract, the Contractor agrees as follows:
 - (1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, or disabilities, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

- (2) 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.
 - (3) Notices, advertisements, and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- b. The Contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

D. Ethics in Public Contracting

By submitting their proposals, offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer, or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

E. Immigration Reform and Control Act of 1986

By submitting their proposals, the offerors certify that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

F. Debarment Status

By submitting their proposals, offerors certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently debarred from submitting bids or proposals on contracts by any agency of the Commonwealth of Virginia.

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

Failure to submit a proposal on the official state form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the

Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.

I. Clarification of Terms

If any prospective offeror has questions about the specifications or other solicitation documents, the prospective offeror should contact the JLARC staff 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 JLARC staff.

J. Payment

1. To Prime Contractor:

- a. Invoices shall be submitted by the Contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the RFP number, 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 services provided pursuant to this RFP, that are to be paid for with public funds, shall be billed by the Contractor at the contract price, regardless of which public agency is being billed.
- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.

2. To Subcontractors:

- a. A Contractor awarded a contract under this solicitation is hereby obligated:
 - (1) To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 - (2) To notify the 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 VIII I 2 a (2) above. The date of mailing of any payment by U. S. Mail is deemed to be the date of 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.

K. Precedence of Terms

The General Terms and Conditions set forth in Paragraphs A through J (Vendor Manual, Applicable Laws and Courts, Anti-Discrimination, Ethics in Public Contracting, Immigration Reform and Control Act of 1986, Debarment Status, Antitrust, Mandatory Use of State Form and Conditions, Clarification of Terms, and Payment) shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

L. Qualifications of Offerors

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

M. Testing and Inspection

The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure services conform to the requirements herein.

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 may be made to the contract in 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 general scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:
 - a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to the 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 to 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 Vendor's 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. Insurance

1. By signing and submitting a proposal under this solicitation, the offeror certifies that if awarded the contract, it will have the following insurance coverages at the time the contract is awarded. The offeror further certifies that it will maintain these coverages during the entire term of the contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.
2. During the period of the contract the Commonwealth reserves the right to require the Contractor to furnish certificates of insurance for the coverage required.

Minimum Insurance Coverages And Limits Required:

- a. Worker's 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.
- b. Employers Liability - \$100,000.
- c. Commercial General Liability - \$1,000,000 per occurrence and \$2,000,000 in aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.
- d. Automobile Liability - \$1,000,000 combined single limit.

R. 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 web site (www.eva.state.va.us) for a minimum of 10 days.

S. Drug-free workplace

1. 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 place, 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.

2. 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.

T. Non-discrimination of Contractors

A bidder, offeror, or Contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by State law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the State agency, department, or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider. (*Code of Virginia*, §2.2-4343.1H).

U. eVA Business-to-Government Vendor Registration, Contracts, and Orders

The eVA Internet electronic procurement solution, web site portal www.eVA.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the 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.

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.

V. Availability of Funds

It is understood and agreed between the parties herein that JLARC shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

W. 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.

VIII. SPECIAL TERMS AND CONDITIONS

A. Compliance with Procedures

The Contractor shall comply with all procedural instructions that may be issued from time to time by JLARC. However, the terms and conditions of the contract will not change.

B. Audit

The Contractor hereby agrees to 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. JLARC, its authorized agents, and/or State auditors shall have full access to and the right to examine any of said materials during said period.

C. Cancellation of Contract

JLARC reserves the right to cancel and terminate any resulting contract, in part or in whole, upon 30 days written notice to the Contractor. Any contract cancellation notice shall not relieve the Contractor of the obligation to deliver and/or perform all outstanding orders issued prior to the effective date of cancellation.

D. Confidentiality of Protected Information

The Contractor assures that confidential information and data obtained to perform the evaluations described in this RFP will be collected and held confidential, during and following the term of this contract. Employees of the contractor who handle confidential information may be required to sign confidentiality agreements with JLARC and/or the agencies providing confidential information, and uphold the terms of the signed agreements.

E. Indemnification

The Contractor agrees to indemnify, defend, and hold harmless the Commonwealth of Virginia, its officers, agents, and employees from any claims, damages, and actions of any kind or nature, whether at law or in equity, arising from or caused by any services of any kind or nature provided by the Contractor, provided that such liability is not attributable to the sole negligence of the using agency.

F. Use of Subcontractors

1. The use of subcontractors is permitted, and subcontractors will be prohibited from performing research tasks where confidential data is involved unless the subcontractors into a separate data security agreement with JLARC and/or another Virginia state government entity agreeing to protect confidential information, personal information, or any other sensitive data or information that is shared between parties as part of the work. Offerors must specify in their proposals the names, addresses, and telephone numbers of all subcontractors to be used, and the work the subcontractors are to complete. Proposals must describe the qualifications of the subcontractors. JLARC reserves the right to

- reject the use of any subcontractor which fails to meet any of the requirements of this solicitation.
2. Where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the Contractor is encouraged to offer such business to small, women, and/or minority-owned (SWAM) businesses. If SWAM subcontractors are used, the prime contractor agrees to report the use of SWAM subcontractors by providing JLARC, at a minimum, with the following information: name of firm, phone number, total dollar amount subcontracted, category type (small, women, or minority-owned), and type of product/service provided.

G. Renewal of Contract

1. This contract may be renewed by JLARC for one year under the terms and conditions of the original contract, except as stated in a. below. Price increases may be negotiated only at the time of renewal. Written notice of JLARC's intention to renew shall be given approximately 60 days prior to the expiration date of the contract period. Renewal of this contract is contingent upon the availability of appropriated funds and the negotiated project scope.
 - a. If JLARC elects to exercise the option to renew the contract, the contract price(s) for the additional year shall not exceed the contract price(s) of the original contract increased/decreased by no more than the percentage increase/decrease of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest 12 months for which statistics are available, unless the project scope or workload changes.

IX. METHOD OF PAYMENT

A. The Contractor shall be paid based upon invoices submitted, according to a payment or fee schedule to be negotiated between the parties with regard to the specific tasks in Table 2.

B. Submit invoices to: Elizabeth Gibbs, JLARC Business Manager
919 East Main Street
Suite 2101
Richmond, Virginia 23219
egibbs@jlarc.virginia.gov