



Virtual Virginia
via Fiscal Agent Charlotte County Public Schools

Request for Proposal (RFP)

Issue Date: December 4, 2020

RFP# 2704281210

Title: Learning Management System (LMS) & VVA Student Information System (SIS)

Issuer:

Virtual Virginia

via Fiscal Agent:

Charlotte Co Public Schools
P.O. Box 790
Charlotte Court House, Virginia 23923

Electronic proposals will be received from offerors until **12:00 p.m. on January 6, 2021**, for furnishing and providing the goods and services described herein. No offeror proposal shall be accepted after this deadline unless the due date has been previously changed by an addendum to the existing RFP.

Inquiries for information should be directed to:

proposal_inquiries@virtualva.org

Proposals must be submitted to:

proposal_submissions@virtualva.org

In compliance with this Request For Proposals (RFP) and all conditions imposed in this RFP, the undersigned firm (Offeror) hereby offers and agrees to furnish all goods and services to Virtual Virginia (VVA) via the fiscal agent Charlotte County Public Schools (CCPS) 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.

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PURPOSE

The purpose of this Request for Proposal (RFP) is to solicit proposals from qualified sources to procure a Learning Management System (LMS) and Student Information System (SIS) for the Virtual Virginia program.

BACKGROUND

Virtual Virginia (VVA) is mandated by the Code of Virginia § 22.1-212-2 as a Statewide Electronic Classroom Program. Virtual Virginia requires students across the Commonwealth to have access to web-based instructional courses/content and resources. In addition to providing web-based instructional courses/content and resources, VVA service components include data management, communication, course registration, systems administration, and technical support.

The Virtual Virginia program requires the purchase of a Learning Management System (LMS) to store learning content and courses. VVA also requires the integration with a Student Information System (SIS) for enrollment in VVA courses and the assignment of grades.

In addition to VVA, every Virginia public school division must have a dedicated LMS instance, the ability to upload local courses/content to the LMS, and the ability to register students, teachers, and educational professionals using an integration with the school division SIS. The LMS will serve the needs of the VVA program, school divisions, Governor's Schools, the VDOE, and other educational professionals for delivering virtual courses/content to support multiple instances and up to 1.4 million users. It is understood VVA cannot guarantee the number of users every year.

STATEMENT OF NEEDS

A. Overall Requirements

The Offeror shall furnish all labor, resources, and licenses to implement, fully host, administer, maintain, support and deliver online learning courses via Virtual Virginia and Virginia public school divisions to support up to 1.4 million LMS users and up to 20,000 SIS users, with a fully operational and start-up date of three (3) months after the date the contract is awarded.

Another factor important to the timeline is that the systems will be ready for initial testing by VVA within one (1) month of contract award, will have resolution of any issues and successful data conversion within two (2) months of contract award, and will be in production within three (3) months of contract award.

The Offeror will provide the following for usage by students and teachers:

1. Online courses in both synchronous and asynchronous formats;

2. Hosting and maintenance of course registration, payment, management/content object software, website hosting, and necessary support packages for courses developed for delivery via the Virtual Virginia program.
3. Online course registration with payment features through the SIS, to include automated end-user invoicing, acceptance of purchase orders, and credit/debit card payments for deposit to the Virtual Virginia bank account to be specified.
4. Technical support assistance to the faculty and staff of Virtual Virginia and to the participating Virginia public school divisions, including but not limited to 24/7 phone and chat support and dedicated support personnel, including a principal consultant/customer success manager/team.
5. Maintain a commitment to protecting personal information (PI) or personally identifiable information (PII) and a strict adherence to FERPA and COPPA laws. VVA requires, at minimum, an Offeror commitment to the Student Data Privacy Pledge or the National Data Privacy Agreement.

B. Learning Management System (LMS) Requirements

The LMS shall be capable of components that include but are not limited to authoring, course management, communication tools, assessments, multiple instances, and reporting functionality with user roles, permissions, and rights inherent within the system to support up to 1.4 million users.

All existing VVA courses/content must be accessible within one (1) month of the date the contract is awarded for review by VVA staff for accuracy and functionality. Any revisions found during the review must be corrected by the Offeror and available for a final review by the VVA staff within two (2) months of the date the contract is awarded. The LMS shall be fully operational and available for usage by students and teachers within three (3) months of the date the contract is awarded.

Also within three (3) months of the date the contract is awarded, participating public school divisions will have a dedicated LMS instance able to upload local courses/content and register students, teachers, and other educational professionals through an integration with the school division SIS.

Specifically, the Offeror shall configure and provide an LMS that:

1. Stores all existing course content, including multiple types of rich media and interactives created with HTML5 and other media formats.
2. Supports a wide variety of mobile technologies and devices for instructional, performance, and assessment activities.
3. Includes search features that are capable of finding keywords or phrases.

4. Supports migration of content and access to edit, filter, track, and create reports.
5. Includes a built-in HTML5 editor and WYSIWYG (What You See Is What You Get) editor for making course edits and authoring functionality that allows users to create, edit, save, and embed multimedia components and HTML, in addition to customization of student and teacher documents, portfolios, and presentations.
6. Supports various levels of access, roles, and permissions based on user groups, rosters, teams, and communities.
7. Provides analytics and reporting, including but not limited to statistics for the system, users, courses, groups, assessments, and completion.
8. Supports the integration of multiple languages from a direct conversion using software and/or other devices.
9. Links seamlessly to various VVA partners and resources, including but not limited to Learning Tools Interoperability (LTI) services.
10. Includes communication features such as student email, discussion forums, file submissions to teachers or other users, messaging, calendar, news, chat, and assessments, as well as integration with other third-party communication/collaboration tools.
11. Embeds web-based synchronous tools to support videoconferencing, whiteboard, screen/application sharing, recording, and archiving sessions.
12. Supports a variety of assessment tools for developing, administering, and retrieving data analysis of assessments within the LMS. Assessment tools will include the use of text, images, multimedia, a mathematical equation editor, scientific symbols, and the integration of world languages.
13. Includes built-in and customizable analytics for student responses on individual assignments.
14. Includes online storage space for students.
15. Provides capability of producing a certificate of completion as designated within an academic course or professional learning course.
16. Provides capability for the sharing of courses, resources, and files between instances of the LMS.
17. Includes a training portal for asynchronous and synchronous professional learning/training offerings.
18. Supports self-registration via a professional learning portal linking to the LMS.

19. Integrates standards alignment for lessons and assessments within the LMS.

C. Student Information System (SIS) Requirements

The SIS shall have capabilities that include but are not limited to registering, withdrawing, transferring, and reporting functionality with user roles, permissions, and rights inherent within the system to support up to 20,000 active users. The SIS shall seamlessly integrate with the LMS and the VVA web-based merchant card-processing software system.

All existing data must be accessible within one (1) month of the date the contract is awarded for review by VVA staff for accuracy and functionality. Any revisions found during the review must be completed by the Offeror and available for a final review by VVA staff within two (2) months of the date the contract is awarded. The SIS shall be fully operational and available for usage by students and teachers within three (3) months of the date the contract is awarded.

Specifically, the SIS shall include the following:

1. Secure management, storage, and conversion of student data, including all existing data (2007–2021) and complete functionality within three (3) months of contract award.
2. Various levels of access (roles) to allow teachers, school division personnel, and parents to access student-specific information.
3. Customized integration with the web-based merchant card-processing software system that is approved for use and offers invoice creation, secure processing of credit/debit cards, and automatic updates of payment information.
4. Customized integration with the LMS, which allows for the secure transfer of student data, updates to course enrollments and drops, overnight transfer of student grades and other school data, and teacher management.
5. A built-in reporting system that analyzes and displays student achievement data.
6. A customizable reporting system that allows specific reports to be created and saved.

PROPOSAL PREPARATION AND SUBMISSION INSTRUCTIONS

A. General Instructions

1. RFP Response

In order to be considered for selection, the Offeror must submit a complete response to this RFP and provide the following:

- a. One (1) complete proposal (digital) with original signature(s) submitted to proposal_submissions@virtualva.org;
- b. One (1) complete proposal (digital) with original signature, redacted to remove proprietary and trade secret material (if any) submitted to proposal_submissions@virtualva.org; and
- c. Upon request, an electronic copy of the entire proposal and a copy of the entire proposal with any proprietary and trade secret materials redacted, if any, in Microsoft-compatible searchable PDF format submitted to proposal_submissions@virtualva.org.

No other distribution of the proposal shall be made by the Offeror.

2. Proposal Preparation

- a. Proposals shall be signed by an authorized representative of the Offeror. All information requested should be submitted to VVA. Failure to submit all information requested may result in VVA requiring prompt submission of missing information and/or giving a lowered evaluation of the proposal. Proposals that are substantially incomplete or lack key information may be rejected by the purchasing agency. Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation.
- b. Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be placed on addressing the scope of work.
- c. Proposals should be organized in the order in which the requirements are presented in the RFP. All pages of the proposal file should be numbered. Proposals that are not organized in this manner risk elimination from consideration if the evaluators are unable to find where the RFP requirements are specifically addressed.
- d. As used in this RFP, the terms "must," "shall," "should," and "may" identify the criticality of requirements. "Must" and "shall" identify requirements whose absence will have a major negative impact on the suitability of the proposed solution. Items labeled as "should" or "may" are highly desirable and would be useful, but their absence will not have a large impact and are, therefore, not necessary. Depending on the overall response to the RFP, some individual "must" and "shall" items may not be fully satisfied, but it is the intent to satisfy most, if not all, "must" and "shall" requirements. The inability of an Offeror to satisfy a "must" or "shall" requirement does not automatically remove that Offeror from consideration; however, it may seriously affect the overall rating of the Offeror's proposal.

- e. Each copy of the proposal should be contained in a single digital file. All documentation submitted with the proposal should be contained in that single file.
- f. Ownership of all data, materials, and documentation originated and prepared for VVA pursuant to the RFP shall belong exclusively to VVA.
- g. An Offeror who submits 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. If required, VVA will schedule the time and location of these presentations. Oral presentations are an option of VVA and may or may not be conducted.

B. Specific Proposal Instructions

Proposals should be as thorough and detailed as possible so that the VVA may properly evaluate your capabilities to provide the required services. The Offeror is required to submit the following items in the order listed as a complete proposal, and each copy shall be a comprehensive and complete digital package.

The RFP digital file submission should be organized as follows:

1. **Section 1.** Table of Contents.
2. **Section 2.** Signed RFP cover sheet and all Addenda acknowledgments, if any, completed and signed as required.
3. **Section 3.** Protected Materials. Specifically identify all data or materials to be protected (if any) 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.
4. **Section 4.** A written narrative explaining the Offeror's approach to meeting each of the requirements set out in the Statement of Needs. The Offeror should clearly identify each requirement by referencing the corresponding requirement at the beginning of each response and elaborate upon each approach as to its potential effectiveness.
5. **Section 5.** A Project Plan for the proposed services that includes the major tasks required to have the solution in production and available for use within three (3) months of contract award and a timeline that indicates the time period required to complete each task, including the requirements specified in the Reporting and Delivery section of the RFP.

6. **Section 6.** Acceptance of RFP Terms and Conditions. If the Offeror is selected to go forward into negotiations, the Offeror will be required to state any exceptions to liability provisions contained in the RFP at that time via email to the designated VVA evaluation team. Such Offeror-provided exceptions or recommended language revisions shall be considered during negotiations.
7. **Section 7.** Complete and include **Attachment A: Vendor Data Sheet** and required attachments. All offerors must complete and submit Attachment A. Please provide reference of recent accounts, either commercial or governmental, that the Offeror is servicing or has serviced or in which the Offeror has provided similar goods as requested in this solicitation.
8. **Section 8.** Complete and include **Attachment B: State Corporation Commission Form**. This is required of all offerors pursuant to Title 13.1 or Title 50. Include Section 8 in the original proposal only (**do not include in proposal copies**).
9. **Section 9.** Complete and include **Attachment C: Pricing Schedule**. All offerors must complete and submit Attachment C (no "assumptions" or other pricing scenarios will be accepted). Include Section 9 in the original proposal only (**do not include in proposal copies**).
10. **Section 10.** Complete and include **Attachment D: W-9 form**. All offerors must complete and submit Attachment D.

Proposals that are not organized in this manner risk elimination from consideration if the evaluators are unable to find where the RFP requirements are specifically addressed.

EVALUATION AND AWARD CRITERIA

- A. Evaluation Criteria.** Proposals shall be evaluated by VVA using the following criteria:

ITEM #	CRITERIA	WEIGHTS/POINTS
1	Experience in providing the service and qualifications	25
2	Approach to meeting the requirements	15
3	References	25
4	Agreement with General and Special Terms and Conditions	10
5	Proposed Price	25
TOTAL		100

- B. Award.** VVA will select offerors deemed to be fully qualified and best suited among those submitting proposals based on the evaluation factors included in the RFP, including price, if so stated in the RFP. 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, VVA shall select the offeror that, in its opinion, has made the best

proposal and shall award the contract to that offeror.

VVA may cancel this RFP 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. Should VVA determine in its sole discretion that only one offeror is fully qualified or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror. The award document will be a contract incorporating by reference all the requirements, terms, and conditions of the solicitation and the selected offeror's proposal as negotiated.

REPORTING AND DELIVERY INSTRUCTIONS

A. Pre-Production.

1. On a weekly basis from contract award until the VVA LMS and SIS are fully operational and have been in use by students and teachers for two (2) months with no major issues, the selected offeror (the Contractor) is required to submit a progress report of the specific tasks listed in the Project Plan, outlining the following:
 - a. the specific accomplishments achieved during the weekly reporting period;
 - b. the specific tasks completed pursuant to the provisions of the contract and the completion dates of such tasks; and
 - c. the project completion dates for the remaining tasks and potential challenges to completion.
2. If revisions are needed, the Contractor shall complete all revisions and data conversion and meet with VVA within three (3) weeks of contract award to demonstrate system readiness for a production "go-live" date of three (3) months after contract award.

B. Post-Production. On an ongoing weekly basis after the VVA integrated LMS and SIS are fully operational and in use by students and teachers, the Contractor should report to VVA all system downtime statistics, including technical support instances, security, or performance and resolution issues.

Payment under the contract may be withheld until the reports above are delivered, or other appropriate remedies may be assessed in lieu of withholding such payment.

GENERAL TERMS AND CONDITIONS

A. Applicable Laws and Courts. This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia, without regard to its choice of law provisions, and any litigation with respect thereto shall be brought in the circuit courts of the Commonwealth. VVA 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 offeror shall comply with all applicable federal, state, and local laws, rules, and regulations.

B. Anti-Discrimination. As a condition of awarding a contract for the provision of services that require the Contractor or employees of the Contractor will not have direct contact with students on school property. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

1. 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.
2. Notices, advertisements, and solicitations placed in accordance with federal law, rules, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

C. Debarment Status. By participating in this procurement, the Contractor certifies that they are not currently debarred by the Commonwealth of Virginia from submitting a response for the type of goods and/or services covered by this solicitation. The Contractor further certifies that they are not debarred from filling any order or accepting any resulting order or that they are an agent of any person or entity that is currently debarred by the Commonwealth of Virginia.

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

D. Clarification of Terms. If any prospective offeror has questions about the specifications or other solicitation documents, the prospective offeror should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by VVA.

E. Payment.

1. To the Contractor:
 - a. Invoices for items ordered, delivered, and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number and the social security number (for individual offerors) 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 later. However, this shall not affect offers of discounts for payment in less than 30 days.
 - c. 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 when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
 - d. Unreasonable charges: Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, the Contractor should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges.
 - e. VVA may make such reasonable investigations as deemed proper and necessary to determine the ability of the Contractor to perform the services/furnish the goods, and the Contractor shall furnish to VVA all such information and data for this purpose as may be requested. VVA further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy that such offeror is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.
 - f. VVA reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
2. A contract shall not be assignable by the Contractor in whole or in part without the written consent of VVA.

F. Changes to the Contract. Changes can be made to the contract in any of the following ways:

- 1. The parties may agree in writing to modify the terms, conditions, or scope of the contract. Any additional goods or services to be provided shall be of a sort that is ancillary to the contract goods or services or within the same broad product or service categories as were included in the contract award.
- 2. 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.
- 3. Changes within the scope of the contract include but are not limited to services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the notice upon receipt, unless the Contractor intends to claim an adjustment to compensation, schedule, or other contractual impact that would be caused by complying with such notice, in which case the Contractor shall, in writing, promptly notify VVA of the adjustment to be sought, and before proceeding to comply with the notice, shall

await VVA's written decision affirming, modifying, or revoking the prior written notice. If VVA decides to issue a notice that requires an adjustment to compensation, the Contractor shall be compensated for any additional costs incurred as the result of such order and shall give VVA 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 VVA's right to audit the Contractor's records and/or to determine the correct number of units independently; or
- c. by ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present VVA with all vouchers and records of expenses incurred and savings realized. VVA 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 VVA within 30 days from the date of receipt of the written order from VVA.

G. Default. In case of failure to deliver goods or services in accordance with the contract terms and conditions, VVA, 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 VVA may have.

H. Announcement of Award. Upon the award or the announcement of the decision to award a contract as a result of this solicitation, the selected offeror will be notified via electronic correspondence.

I. 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, or any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders.

J. Availability of Funds. It is understood and agreed between the parties herein that VVA shall be bound hereunder only to the extent that the appropriated funds are available or may hereafter become legally available for the purpose of this agreement.

- K. Bid Price Currency.** Unless stated otherwise in the solicitation, bidders/offerors shall state bid/offer prices in US dollars.

SPECIAL TERMS AND CONDITIONS

- A. Audit.** The Contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by VVA, whichever is sooner. VVA, its authorized agents, and/or auditors shall have full access to and the right to examine any of said materials during said period.
- B. Cancellation of Contract.** VVA reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days' written notice to the offeror. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period, upon 60 days' written notice to the other party. Any contract cancellation notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
- C. Final Inspection.** At the conclusion of the work, the offeror shall demonstrate to the authorized owners' representative that the work is fully operational and in compliance with contract specifications and codes. Any deficiencies shall be promptly and permanently corrected by the Contractor at the Contractor's sole expense prior to final acceptance of the work.
- D. Individuals with Access to PI/PII.** Only individuals employed and officially authorized by the Contractor shall have access to personal information (PI) or personally identifiable information (PII). The Contractor takes responsibility for authorized employees' understanding of federal and state requirements related to non-disclosure of the data and for their handling of PI/PII.

Participating public school divisions may desire additional PI/PII assurances and addenda focusing on the use, disposition, retention, and safety of data beyond the commitments and pledges listed in the Statement of Needs (above). The Contractor shall comply with participating individual division data privacy and PI/PII security requests as needed.

E. Administrative Requirements.

1. If permitted by applicable law, the Contractor shall notify VVA immediately upon receipt of any legal or other demand for disclosure of PI/PII.
2. The Contractor shall report and notify VVA immediately upon discovering any breach or suspected breach of the terms and conditions of the contract, including breach of security or any disclosure of PII to unauthorized parties or agencies, and provide the names of any individuals involved.
3. The Contractor shall be held to applicable Virginia laws regarding breach of data and notification to clients.

4. The Contractor does not and shall not, during the performance of the contract for goods and services in Virginia, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
5. The Contractor shall maintain personnel policies that subject employees to disciplinary action, including termination for actions that cause a violation of the terms and conditions of the contract.

F. Ownership of Intellectual Property. All copyright and patent rights to all papers, reports, forms, materials, creations, or inventions created or developed in the performance of this contract ("the Intellectual Property") shall become the sole property of VVA. The Contractor hereby assigns to VVA exclusively all rights, title, and interest in and to all rights in the Intellectual Property that the Contractor may have or obtain without further consideration, free from any claim, lien, or balance due, or rights of retention thereto on the part of the Contractor. The parties do not intend for and the Contractor shall not be deemed to be a joint author or inventor of the Intellectual Property. Upon request, the Contractor shall promptly provide any further acknowledgment or assignment in a tangible form satisfactory to VVA to evidence VVA's sole ownership of the Intellectual Property.

G. Indemnification. The Contractor agrees to indemnify, defend, and hold harmless VVA and 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 the use of any materials, goods, or equipment of any kind or nature furnished by the Contractor or any services of any kind or nature furnished by the Contractor provided that such liability is not attributable to the sole negligence of the using agency or to failure of the using agency to use the materials, goods, or equipment in the manner already and permanently described by the Contractor on the materials, goods or equipment delivered.

H. Liability.

1. Contractor Liability. Except for liability arising from any combination of:
 - a. any intentional or willful misconduct, fraud, or recklessness of Contractor or any Contractor personnel; or
 - b. any act or omission of Contractor or any Contractor personnel that results in claims for bodily injury, including death, and damage to real property or tangible property resulting from the negligence of a Contractor or any Contractor personnel
2. Limitation of Liability. Contractor will be liable for damages caused by its employees, agents, or subcontractors. Except for liability arising out of a party's negligence or willful misconduct, neither party will be liable to the other party for any indirect, incidental, consequential, or punitive damages, including (without limitation) loss of profit, income, or savings, even if advised of the possibility of these damages.

I. Prime Contractor Responsibilities. The Contractor shall be responsible for completely supervising and directing the work under this contract and all

subcontractors that it may utilize, using its best skill and attention. Subcontractors who perform work under this contract shall be responsible to the Contractor. The Contractor agrees to be fully responsible for the acts and omissions of its subcontractors and of persons employed by it as it is for the acts and omissions of its employees.

J. Subcontracts. No portion of the work shall be subcontracted without prior written consent of VVA. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish VVA the names, qualifications, and experience of their proposed subcontractors. The Contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.

K. Confidentiality of Personally Identifiable Information. The Contractor assures that information and data obtained as to personal facts and circumstances related to attendees will be collected and held confidential during and following the terms of this agreement and will not be divulged without the individual's and VVA's written consent.

L. Continuity of Services.

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

M. State Corporation Commission Identification Number. Pursuant to Code of Virginia, §2.2-4311.2, subsection B, a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is

required to include in its bid or proposal the identification number issued to it by the State Corporation Commission (SCC). Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law is required to include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized. Indicate the above information on the SCC Form provided. The offeror agrees that the process by which compliance with Titles 13.1 and 50 is checked during the solicitation stage (including, without limitation, the SCC Form provided) is streamlined and not definitive, and the Commonwealth's use and acceptance of such form or its acceptance of the bidder or offeror's statement describing why the bidder or offeror was not legally required to be authorized to transact business in the Commonwealth shall not be conclusive of the issue and shall not be relied upon by the offeror as demonstrating compliance.

- N. E-Verify Program.** Pursuant to Code of Virginia, §2.2-4308.2., any employer with more than an average of 50 employees for the previous 12 months entering into a contract in excess of \$50,000 with any agency of the Commonwealth to perform work or provide services pursuant to such contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to such public contract. Any such employer who fails to comply with these provisions shall be debarred from contracting with any agency of the Commonwealth for a period up to one (1) year. Such debarment shall cease upon the employer's registration and participation in the E-Verify program. If requested, the employer shall present a copy of their Maintain Company page from E-Verify to prove that they are enrolled in E-Verify.
- O. Upgrades.** VVA shall be entitled to any and all upgraded versions of the system/solution covered in the contract that becomes available from the Contractor. The maximum charge for upgrade shall not exceed the total difference between the cost of VVA's current version and the price the Contractor sells or licenses the upgraded software under similar circumstances.
- P. Warranty.** The Contractor warrants and represents to VVA that the Contractor will fulfill its contractual obligations and meet all needed requirements as described.
1. The Contractor warrants that the platform will operate over the full term of the contract and all operations and maintenance will be performed by the Contractor with the exception of any additionally requested customization not in the resulting contract.
 2. The Contractor has the right to perform and provide all contractual obligations and provide all needed services and products without violating or infringing on any law, rule, regulation, copyright, patent, trade secret, or other proprietary right of any third party.
 3. The Contractor has used its best efforts through quality assurance procedures to ensure that there are no computer viruses or undocumented features in the software as obligated and provided by the Contractor at the time of delivery to VVA. The Contractor warrants that the software as obligated and provided by the Contractor does not contain any embedded device or code (e.g., time bomb) that is intended to obstruct or prevent any VVA use of the software.

Notwithstanding any rights granted under the contract or at law, the Contractor hereby waives in any and all circumstances any right it may have or may hereafter have to exercise electronic self-help. The Contractor agrees that VVA may pursue all remedies provided under the law in the event of a breach or threatened breach of this section, including injunctive or other equitable relief.

Q. Survival. Any provisions of the contract regarding software license, rights to intellectual property, security, warranty, escrow, confidentiality, content/data privacy and security, liability, indemnification, transition of services, and the General Terms and Conditions shall survive the expiration or termination of the contract.

13. Escrow Agreement.

- a. The Contractor shall maintain copies of all application source code and related technical and user documentation, in English, in an escrow account, and shall maintain with escrow agent the executed agreement attached hereto as the Requirements (Application Escrow Agreement). The Contractor shall maintain, in a separate escrow account for VVA, copies of all content provided by or to VVA in a format accessible without use of the Contractor's application. An executed agreement for providing for any such Content Escrow Agreement is attached hereto as the Requirements (Content Escrow Agreement).
- b. Supplier warrants that the information and materials to be kept in escrow in a media-safe environment for the benefit of VVA pursuant to the Application Escrow Agreement are specifically identified and listed in Attachment A to the Application Escrow Agreement and include:
 - i. the most current version used by VVA of the source code for the application software and all future releases,
 - ii. identification of the development/support technology stack, including but not limited to every software tool, driver, script, and app, with versions and details needed to develop, test, and support all phases of the software development life cycle for all tiers of the application software as used in VVA's solution or operating environment,
 - iii. all documentation related thereto as well as all necessary and available proprietary information in English,
 - iv. technical documentation, in English, enabling VVA or an agent of VVA to create, maintain, and/or enhance the application software without the aid of the Contractor or any other person or reference to any other materials, maintenance tools (test programs and program specifications), or proprietary or third-party system utilities (compiler and assembler descriptions); descriptions of the system/program generation; and descriptions of any Contractor tools required to enable VVA to continue to use the application software, and

- v. all documentation provided in unprotected Microsoft Word and other commonly used formats that can be updated.
- c. The Contractor warrants that all items, including future versions, deposited in escrow for VVA shall be verified by the Escrow Agent within 30 days after deposit to validate the completeness, accuracy, and functionality of the Contractor's escrow deposits. The verification process to be performed by the Escrow Agent for the original deposit and subsequent deposits shall be detailed in the Escrow Agreement and a detailed report of all tests of such verification shall be submitted in writing to VVA within 10 business days of completion. To perform such verification, the Escrow Agent shall conduct a verification process that includes but is not be limited to:
- i. a **File List Test** to ensure that the deposited items are catalogued and will confirm they are readable and virus-free and, if encrypted, that the Escrow Agent has the decryption keys on deposit;
 - ii. an **Inventory and Analysis Test** to provide a complete audit and inventory of the deposit, including analysis of deposited media to verify the presence of build instructions, to identify all materials necessary to recreate the original development environment, and to confirm the presence of all build instructions, file classification tables, database schema, and listings;
 - iii. a **Compile Test** to validate whether the development environment can be recreated from the deposited documentation and files, identify third-party libraries, recreate the Contractor's development environment, compile source files and modules, recreate executable code, and prepare a complete list of any hardware or software configurations;
 - iv. a **Binary Comparison Test** to test the functionality of the compiled deposit materials by comparing the files built in compile testing to the licensed, executable file running at VVA's site;
 - v. a **Full Usability Test** to confirm the source code placed in escrow will be fully functional in the event of a release and to perform a relevant series of tests to ensure that replicated software runs properly in the required VVA environment;
 - vi. a **Final Operability Test** to perform a final demonstration of the functioning software; and
 - vii. a **Fault Remedy** to collaborate with Contractor on fixing any faults discovered during the testing, to obtain corrected escrow items, and to re-perform any verification tests as necessary until all tests are successful, with written, detailed reports to VVA.
- d. The Contractor warrants that the information and materials to be kept in escrow in a media-safe environment for the benefit of VVA pursuant to a Content Escrow Agreement shall be specifically identified and listed in Attachment A to such Content Escrow Agreement and include a monthly backup of the content

repository for VVA.

- e. The Contractor warrants that the Escrow Agreements provide or shall provide for, among other items, the release of the list of items on Attachment A of each Escrow Agreement which could occur upon the happening of certain events, including but not limited to the Contractor's failure to carry out its support and maintenance obligations imposed by this contract for a period of 60 days, the Contractor's breach or default under this contract, the Contractor's bankruptcy, and/or the Contractor's failure to continue to do business in the ordinary course. Any Content Escrow Agreement shall also provide for the release of the escrowed items in the event VVA's content is destroyed, lost, or damaged or following the termination or expiration of the contract. The Contractor agrees to pay all expenses associated with establishing and maintaining the escrow accounts and the contents mentioned above.
- f. Subject to the information and materials listed on Attachment A of the Application Escrow Agreement being released to the Commonwealth pursuant to the terms of the Application Escrow Agreement, which is an agreement supplementary hereto, the Contractor hereby grants to VVA a royalty-free, perpetual, irrevocable license that permits disclosure to a third-party support vendor of a complete and accurate copy of then-current source code for the application licensed hereunder, along with all related documentation.

METHOD OF PAYMENT

Prior to VVA's acceptance and approval of the solution in production, the awarded Contractor shall invoice VVA quarterly (25%) per the annual amount. Subsequent invoices shall remain quarterly, and also be one-fourth (25%) of the annual cost. All invoices shall include the name of the Contractor, date of invoice, invoice number, time period being billed, purchase order number, and contract number.

Only electronic invoices will be accepted. Electronic invoices must be remitted in a locked (non-modifiable) format, such as a PDF file, and sent to a VVA destination email.

PRICING SCHEDULE

Pricing shall be submitted as indicated on Attachment C.

ATTACHMENTS

Attachment A: Vendor Data Sheet

Attachment B: State Corporation Commission Form

Attachment C: Pricing Schedule

Attachment D: W-9 Form

ATTACHMENT A: OFFEROR DATA SHEET

Note: The following information is required as part of your proposal submission in response to this solicitation. Failure to complete and provide this sheet may result in finding your bid non-responsive.

1. Offeror's Primary Point of Contact

Name:
Phone:
Email:

2. Vendor Information

eVA Vendor ID:

3. History (Years in Business)

Indicate the length of time the Offeror has been in business providing the same or similar services as detailed in this solicitation.

Years/Months:

4. Experience

Attach a written narrative detailing Offeror's experience in providing the same or similar services as detailed in this solicitation.

5. Staff/Subcontractors

Attach the names and provide résumés of staff and/or subcontractors to be assigned to this project (as requested by VVA).

6. Recent Accounts

Indicate below at least four (4) current or recent accounts, either commercial or governmental, that the Offeror is servicing or has serviced or for which the Offeror has provided similar goods. Include the length of service and the name, address, and telephone number of the point of contact.

Company:
Contact:
Phone:
Email Address:
Project Name:
Dates of Project:
Project Value: \$

Company:
Contact:
Phone:
Email Address:
Project Name:
Dates of Project:
Project Value: \$

Company:
Contact:
Phone:
Email Address:
Project Name:
Dates of Project:
Project Value: \$

Company:
Contact:
Phone:
Email Address:
Project Name:
Dates of Project:
Project Value: \$

I certify the accuracy of this information.

Signed: _____ Date: _____

ATTACHMENT B: STATE CORPORATION COMMISSION FORM

Virginia State Corporation Commission (SCC) Registration Information

The offeror:

- is a corporation or other business entity with the following SCC identification number:

-OR-

- is not a corporation, limited liability company, limited partnership, registered limited liability partnership, or business trust

-OR-

- is an out-of-state business entity that does not regularly and continuously maintain as part of its ordinary and customary business any employees, agents, offices, facilities, or inventories in Virginia (not counting any employees or agents in Virginia who merely solicit orders that require acceptance outside Virginia before they become contracts and not counting any incidental presence of the bidder in Virginia that is needed in order to assemble, maintain, and repair goods in accordance with the contracts by which such goods were sold and shipped into Virginia from bidder's out-of-state location)

-OR-

- is an out-of-state business entity that is including with this bid an opinion of legal counsel which accurately and completely discloses the undersigned bidder's current contacts with Virginia and describes why those contacts do not constitute the transaction of business in Virginia within the meaning of § 13.1-757 or other similar provisions in Titles 13.1 or 50 of the Code of Virginia.

NOTE

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

ATTACHMENT C: PRICING SCHEDULE

The Offeror must provide an all-inclusive proposed total price for one (1) year, broken out by each component (e.g., one-time annual price, total annual per-user price up to 1.4 million users, etc.) that makes up the all-inclusive proposed total price.

Component	Price
TOTAL	

Note to the Offeror: No "assumptions" or other pricing scenarios will be accepted. The all-inclusive total price for one (1) year will be evaluated and scored. If renewed, subsequent years must not exceed the Year 1 total price.

ATTACHMENT D: W-9 FORM

Form W-9 (Rev. October 2018) Department of the Treasury Internal Revenue Service	<h2 style="margin: 0;">Request for Taxpayer Identification Number and Certification</h2> <p style="margin: 0; color: blue;">▶ Go to www.irs.gov/FormW9 for instructions and the latest information.</p>	Give Form to the requester. Do not send to the IRS.
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Print or type. See Specific Instructions on page 3.	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.	
	2 Business name/disregarded entity name, if different from above	
	3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes. <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ _____ Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner. <input type="checkbox"/> Other (see instructions) ▶ _____	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <small>(Applies to accounts maintained outside the U.S.)</small>
	5 Address (number, street, and apt. or suite no.) See instructions.	Requester's name and address (optional)
	6 City, state, and ZIP code	
	7 List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

	Social security number - -
	or
	Employer identification number -

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here	Signature of U.S. person ▶	Date ▶
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.