

SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



ITEM  
3.18  
(ID # 10040)

MEETING DATE:

Tuesday, August 27, 2019

FROM: HUMAN RESOURCES:

SUBJECT: HUMAN RESOURCES: Approval of the Professional Services Agreement with Vital Smarts for Crucial Conversation®, Crucial Accountability®, and Influencer® Participant Training Suites without seeking competitive bids for five years, renewable annually, All Districts. [\$750,000 - 100% Departmental Budgets]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Professional Service Agreement with Vital Smarts for Crucial Conversation®, Crucial Accountability®, and Influencer® Participant Training Suites without seeking competitive bids not to exceed \$150,000 annually for up to five (5) years through June 30, 2024;
2. Authorize the Purchasing Agent, in accordance with Ordinance No. 459, based on the availability of fiscal funding and as approved by County Counsel to sign amendments that exercise the options of the agreement including modifications to the scope of work that stay within the intent of the Agreement; and
3. Authorize the Chairman of the Board to sign three (3) copies of the Agreement on behalf of the County and direct the Clerk of the Board to retain one (1) copy of the Agreement and return two (2) copies of the Agreement to the Human Resources Department for distribution.

ACTION: Policy

  
Brenda Niederichs, Assistant CEO / Human Resources Director 8/14/2019

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MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Washington, seconded by Supervisor Spiegel and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt  
Nays: None  
Absent: None  
Date: August 27, 2019  
xc: HR

Kecia R. Harper  
Clerk of the Board

By:   
Deputy

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,  
STATE OF CALIFORNIA**

<b>FINANCIAL DATA</b>	<b>Current Fiscal Year:</b>	<b>Next Fiscal Year:</b>	<b>Total Cost:</b>	<b>Ongoing Cost</b>
<b>COST</b>	\$ 150,000	\$ 150,000	\$ 750,000	\$
<b>NET COUNTY COST</b>	\$ 0	\$ 0	\$ 0	\$ 0
<b>SOURCE OF FUNDS: 100% Department Budgets</b>			<b>Budget Adjustment:</b>	<b>No</b>
			<b>For Fiscal Year:</b>	2019/20-2023/24

**C.E.O. RECOMMENDATION:** Approve

**BACKGROUND:**

**Summary**

Since 2003, the County of Riverside Human Resources Department (HR) has partnered with Vital Smarts to provide county employees with vital training to ensure good customer service and professional problem-solving skills to the community and within county departments.

Human Resources, over many years, has researched many organizational development companies and continues to find Vital Smarts' products and training the most effective and highly rated programs of their type. Vital Smarts owns the copyrights and is the sole provider of Crucial Conversation®, Crucial Accountability®, and Influencer® Participant Training Suites.

HR also invests in the Vital Smarts training certification of employees within the County who facilitate these courses. By providing certified Vital Smarts facilitators internally, the County of Riverside saves \$1,385 per participant over the cost of attending a 2-day workshop facilitated by the vendor.

Vital Smarts courses are designed to improve both performance and professionalism of employees in addition to an improved working environment and customer interactions through improved interpersonal communications county-wide.

**Impact on Residents and Businesses**

Vital Smarts products provided through HR support the goal of having responsive, customer-centric, and business-friendly public service through the development of employees' interpersonal skills.

**Additional Fiscal Information**

The cost of Vital Smarts training and materials is recovered from individual departments based on their attendance. The full cost of the five (5) year sole source renewal is \$750,000. The cost per fiscal year is as follows: FY19/20- \$150,000; FY20/21- \$150,000, FY21/22- \$150,000; FY22/23- \$150,000; FY23/24- \$150,000.

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,  
STATE OF CALIFORNIA**

**Contract History and Price Reasonableness**

The County of Riverside will receive the maximum discount offered to government agencies. Moreover, Vital Smarts periodically extends promotional discounts on training certifications and materials. As a result, HR can continue to extend learning opportunities to County of Riverside employees at significantly lower cost than market value.

**ATTACHMENTS:**

**SCHEDULE A. Professional Services Agreement**

**SCHEDULE B. Sole Source Justification**

  
Tina Grande, Assistant Purchasing Director 8/19/2019

  
Gregory V. Priamos, Director County Counsel 8/21/2019

# RIVCO HR

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Date: August 9, 2019  
From: Brenda Diederichs, Assistant CEO/Human Resources Director  
To: Board of Supervisors/Purchasing Agent  
Via: Jennifer Fuller, Deputy HR Director, 955-3557  
Subject: Sole Source Procurement; Request for Vital Smarts, L.C. Crucial Conversations®, Crucial Accountability®, and Influencer® training materials

The below information is provided in support of my Department requesting approval for a sole or single source.

1. Supplier being requested: Vital Smarts, LC

2. Vendor ID: 35721

3.  Single Source  Sole Source

*(Single Source - is a purchase of a commodity or service without obtaining competitive bids although more than one source is available)*

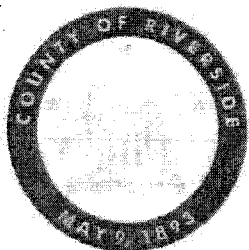
*(Sole Source - is a purchase of a commodity or service that is proprietary or no other vendor is qualified or willing to meet the county specified requirements)*

4. Have you previously requested and received approval for a sole or single source request for this vendor for your department? (If yes, please provide the approved sole or single source number).

Yes 15-339  No

4a. Was the request approved for a different project?

Yes  No



**Brenda L. Diederichs**  
Assistant CEO/HR Director

Michael Bowers - Assistant HR Director  
Sarah Franco - Assistant HR Director  
Brande Hune - Assistant HR Director  
Jennifer Fuller - Deputy HR Director  
Mylene Daniels - Deputy HR Director

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**5. Supply/Service being requested:**

Crucial Conversation<sup>®</sup>, Crucial Accountability<sup>®</sup>, and Influencer<sup>®</sup> training materials..

**6. Unique features of the supply/service being requested from this supplier.**

Vital Smarts has designed and developed training materials that continue to be adopted by the County of Riverside. As the county-wide learning center, RivCo HR Learning and Organizational Development Division provides Vital Smarts courses that help individuals build the skills necessary to communicate effectively and solve behavioral challenges to improve morale, organizational performance, and customer service.

**7. Reasons why my department requires these unique features from the vendor and what benefit will accrue to the county:**

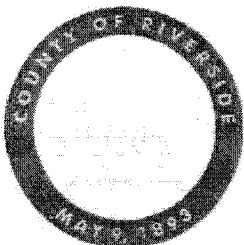
Vital Smarts is the only approved supplier of the training material used in conjunction with its licensed programs.

RivCo HR Learning and Organizational Development Division began obtaining certification and training materials from Vital Smarts in 2003 to help build competencies identified as essential for County of Riverside managers, supervisors, and leaders to build and sustain a high performance culture. Further RivCo HR Learning and Organizational Development Division currently has two (2) highly experienced and certified instructors who teach Vital Smarts courses.

The success of Vital Smarts courses is evident as departments report excellent results in preventing and resolving problems, which increases productivity, communication, commitment, and employee engagement. Demand for this training continues to be strong among the County of Riverside employee population as well as with individual departments. Further, Vital Smarts' Crucial Conversations is recognized to be of such significant value to the County of Riverside, Human Resources employees routinely attend this training as part of the onboarding process..

**8. Period of Performance:**  
(total number of years)

From: FY 2019/20 to FY 2023/24



**Brenda L. Diederichs**  
Assistant CEO/HR Director

**Michael Bowers** – Assistant HR Director  
**Sarah Franco** – Assistant HR Director  
**Brande Hune** – Assistant HR Director  
**Jennifer Fuller** – Deputy HR Director  
**Mylene Daniels** – Deputy HR Director

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Is this an annually renewable contract?  No  Yes  
 Is this a fixed-term agreement:  No  Yes

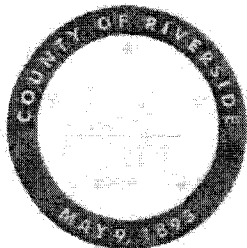
*(A fixed-term agreement is set for a specific amount of time; it is not renewed annually. Ensure multi-year fixed-term agreements include a cancellation, non-appropriation of funds, or refund clause. If there is no clause(s) to that effect, then the agreement must be submitted to the Board for approval. No exemptions shall apply.)*

9. Identify all costs for this requested purchase. In addition, please include any single or sole source amounts previously approved and related to this project and vendor in the section designated below for current and future fiscal years. You do not need to include previous fiscal year amounts. If approval is for multiple years, ongoing costs must be identified below. If annual increases apply to ongoing costs such as CPI or other contract increases, provide the estimated annual cost for each consecutive year. If the annual increase may exceed the Purchasing Agent's authority, Board approval must be obtained. (Note: ongoing costs may include but are not limited to subscriptions, licenses, maintenance, support, etc.)

Description:	FY 19-20	FY20-21	FY21-22	FY22-23	FY23-24	Total
NTE:						
Training Materials	\$150,000	\$150,000	\$150,000	\$150,000	\$150,000	\$750,000
Total Costs NTE	\$150,000	\$150,000	\$150,000	\$150,000	\$150,000	\$750,000

10. **Price Reasonableness:** (Explain why this price is reasonable or cost effective – were you provided government discounted pricing? Is this rate/fee comparable to industry standards?)

The County of Riverside will receive the maximum discount on training and materials. Moreover, Vital Smarts periodically extends promotional discounts on training certification and materials. As a result, RivCo HR Learning and Organizational Development Division can provide learning opportunities to County of Riverside employees at a cost substantially below market value.



**Brenda L. Diederichs**  
 Assistant CEO/HR Director

**Michael Bowers** - Assistant HR Director  
**Sarah Franco** - Assistant HR Director  
**Brandi Hune** - Assistant HR Director  
**Jennifer Fuller** - Deputy HR Director  
**Mylene Daniels** - Deputy HR Director



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For example, the savings for one participant to attend Crucial Conversations training internally versus at a 2 day workshop facilitated by the vendor is \$1,385 (source: <https://www.vitalsmarts.com/events/>).

**11. Projected Board of Supervisor Date (if applicable):** Tues., August 27, 2019.  
*(Draft Form 11s, service agreement and or quotes must accompany the sole source request for Purchasing Agent approval.)*

*Brenda Diederichs*      Brenda Diederichs      8/9/19  
Department Head Signature      Print Name      Date  
(or designee)

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**The section below is to be completed by the Purchasing Agent or designee.**  
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Purchasing Department Comments:

Approve

Approve with Condition/s

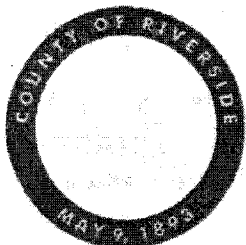
Disapprove

Condition/s:

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

Not to exceed:

One-time \$ \_\_\_\_\_



**Brenda L. Diederichs**  
Assistant CEO/HR Director

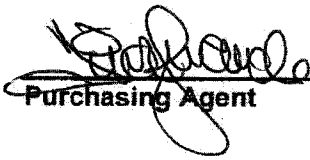
**Michael Bowers** - Assistant HR Director  
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# RIVCO HR

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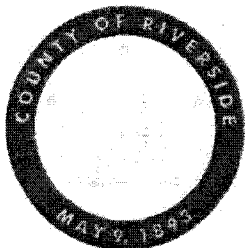
Annual Amount \$ 150,000 - / per fiscal year through 6/30/24 (date)  
(If Annual Amount Varies each FY)

FY \_\_\_\_\_ : \$ \_\_\_\_\_  
FY \_\_\_\_\_ : \$ \_\_\_\_\_  
FY \_\_\_\_\_ : \$ \_\_\_\_\_  
FY \_\_\_\_\_ : \$ \_\_\_\_\_  
FY \_\_\_\_\_ : \$ \_\_\_\_\_

  
Purchasing Agent

8/15/19  
Date

20-041  
Approval Number  
(Reference on Purchasing Documents)



**Brenda L. Diederichs**  
Assistant CEO/HR Director

**Michael Bowers** - Assistant HR Director  
**Sarah Franco** - Assistant HR Director  
**Brande Hune** - Assistant HR Director  
**Jennifer Fuller** - Deputy HR Director  
**Mylene Daniels** - Deputy HR Director



**PROFESSIONAL SERVICE AGREEMENT**

**for**

**CRUCIAL CONVERSATIONS, CRUCIAL ACCOUNTABILITY, AND**

**INFLUENCER PARTICIPANT TRAINING SUITES**

**between**

**COUNTY OF RIVERSIDE**

**and**

**VITAL SMARTS, LLC**



**TABLE OF CONTENTS**

<b><u>SECTION HEADING</u></b>	<b><u>PAGE NUMBER</u></b>
1. Description of Services.....	
2. Period of Performance.....	
3. Compensation.....	
4. Alteration or Changes to the Agreement .....	
5. Termination .....	
6. Ownership/Use of Contract Materials and Products .....	
7. Conduct of Contractor .....	
8. Inspection of Service: Quality Control/Assurance .....	
9. Independent Contractor/Employment Eligibility .....	
10. Subcontract for Work or Services .....	
11. Disputes .....	
12. Licensing and Permits .....	
13. Use by Other Political Entities .....	
14. Non-Discrimination .....	
15. Records and Documents .....	
16. Confidentiality .....	
17. Administration/Contract Liaison.....	
18. Notices.....	
19. Force Majeure.....	
20. EDD Reporting Requirements.....	
21. Hold Harmless/Indemnification .....	
22. Insurance .....	
23. General .....	
Exhibit A-Scope of Service .....	
Exhibit B- Payment Provisions .....	

This Agreement, made and entered into this 1st day of September, 2019, by and between (VITALSMARTS, LLC, a Utah limited liability company (herein referred to as "CONTRACTOR"), and the COUNTY OF RIVERSIDE, a political subdivision of the State of California, (herein referred to as "COUNTY"). The parties agree as follows:

**1. Description of Services**

**1.1** CONTRACTOR shall provide all services as outlined and specified in Exhibit A, Scope of Services, at the prices stated in Exhibit B, Payment Provisions.

**1.2** CONTRACTOR represents that it has the skills, experience, and knowledge necessary to perform under this Agreement and the COUNTY relies upon this representation. CONTRACTOR shall perform to the satisfaction of the COUNTY and in conformance to and consistent with the highest standards of firms/professionals in the same discipline in the State of California.

**1.3** CONTRACTOR affirms that it is fully apprised of all of the work to be performed under this Agreement; and the CONTRACTOR agrees it can properly perform this work at the prices stated in Exhibit B. CONTRACTOR is not to perform services or provide products outside of the Agreement.

**1.4** Acceptance by the COUNTY of the CONTRACTOR's performance under this Agreement does not operate as a release of CONTRACTOR's responsibility for full compliance with the terms of this Agreement.

**2. Period of Performance**

**2.1** This Agreement shall be effective upon signature of this Agreement by both parties and continues in effect through June 30, 2024, unless terminated earlier pursuant to the terms hereof. CONTRACTOR shall commence performance upon signature of this Agreement by both parties and shall diligently and continuously perform thereafter. The Riverside County Board of Supervisors is the only authority that may obligate the County for a non-cancelable multi-year agreement.

**3. Compensation**

**3.1** The COUNTY shall pay the CONTRACTOR for services performed, products provided and expenses incurred in accordance with the terms of Exhibit B, Payment Provisions. Maximum payments by COUNTY to CONTRACTOR shall not exceed \$150,000 annually, including all expenses. The COUNTY is not responsible for any fees or costs incurred above or beyond the contracted amount and shall have no obligation to purchase any specified amount of services or products. Unless otherwise specifically stated in Exhibit B, COUNTY shall not be responsible for payment of any of CONTRACTOR's expenses related to this Agreement.

**3.2** No price increases will be permitted during the first year of this Agreement (If applicable). All price decreases (for example, if CONTRACTOR offers lower prices to another governmental entity) will automatically be extended to the COUNTY. The COUNTY requires written proof satisfactory to COUNTY of cost increases prior to any approved price adjustment. After the first year of the award, a minimum of 30-days advance notice in writing is required to be considered and approved by COUNTY. No retroactive price adjustments will be considered. Any price increases must be stated in a written amendment to this Agreement. The net dollar amount of profit will remain firm during the period of the Agreement. Annual increases shall not exceed the Consumer Price Index- All Consumers, All Items – Los Angeles-Long Beach-Anaheim, and Riverside-San Bernardino-Ontario areas and be subject to satisfactory performance review by the COUNTY and approved (if needed) for budget funding by the Board of Supervisors.

**3.3** CONTRACTOR shall be paid only in accordance with an invoice submitted to COUNTY by CONTRACTOR within fifteen (15) working days from the last day of each calendar month, and COUNTY shall pay the invoice within thirty (30) working days from the date of receipt of the invoice. Payment shall be made to CONTRACTOR only after services have been rendered or delivery of materials or products, and acceptance has been made by COUNTY. Prepare invoices in duplicate. For this Agreement, send the original and duplicate copies of invoices to:

Accounts Payable  
COR HR/Learning and Organizational Development Division  
4080 Lemon Street, 7<sup>th</sup> Floor  
Riverside, CA 92502

- a) Each invoice shall contain a minimum of the following information: invoice number and date; remittance address; bill-to and ship-to addresses of ordering department/division; Agreement number HRARC-92435-001-06/24; quantities; item descriptions, unit prices, extensions, sales/use tax if applicable, and an invoice total.
- b) Invoices shall be rendered monthly in arrears.

**3.4** The COUNTY obligation for payment of this Agreement beyond the current fiscal year end is contingent upon and limited by the availability of COUNTY funding from which payment can be made, and invoices shall be rendered “monthly” in arrears. No legal liability on the part of the COUNTY shall arise for payment beyond June 30 of each calendar year unless funds are made available for such payment. In the event

that such funds are not forthcoming for any reason, COUNTY shall immediately notify CONTRACTOR in writing; and this Agreement shall be deemed terminated, have no further force, and effect.

**4. Alteration or Changes to the Agreement**

**4.1** The Board of Supervisors and the COUNTY Purchasing Agent and/or his designee are the only authorized COUNTY representatives who may at any time, by written amendment, alter this Agreement. If any such alteration causes an increase or decrease in the cost of, or the time required, for the performance under this Agreement, an equitable adjustment shall be made in the Agreement price or delivery schedule, or. In accordance with Section 23.12 of this Agreement, the Agreement shall be modified only by prior written amendment signed by the authorized representative of both parties accordingly.

**4.2** Any claim by the CONTRACTOR for additional payment related to this Agreement shall be made in writing by the CONTRACTOR within 30 days of when the CONTRACTOR has or should have notice of any actual or claimed change in the work, which results in additional and unanticipated cost to the CONTRACTOR. If the COUNTY Purchasing Agent decides that the facts provide sufficient justification, he may authorize additional payment to the CONTRACTOR pursuant to the claim. Nothing in this section shall excuse the CONTRACTOR from proceeding with performance of the Agreement even if there has been a change.

**5. Termination**

**5.1.** COUNTY may terminate this Agreement without cause upon thirty (30) days written notice served upon the CONTRACTOR stating the extent and effective date of termination.

**5.2** This Agreement may be terminated: (a) by written notice from either party in the event the other party materially defaults in the performance of its obligations hereunder, which default has not been substantially cured within thirty (3) days after written notice has been given to the defaulting party specifying the default, or (b) by CONTRACTOR immediately, in the event COUNTY has breached section 6 "Ownership/Use of Contract Materials and Products" section of this Agreement.

**5.3** After receipt of the notice of termination, CONTRACTOR shall:

- (a) Stop all work under this Agreement on the date specified in the notice of termination; and
- (b) Transfer to COUNTY and deliver in the manner as directed by COUNTY any materials, reports or other products, which, if the Agreement had been completed or continued, would have been required to be furnished to COUNTY.

**5.4** After termination, COUNTY shall make payment only for CONTRACTOR's performance up to the date of termination in accordance with this Agreement.

**5.5** CONTRACTOR's and COUNTY's rights under this Agreement shall immediately terminate (except for fees accrued prior to the date of termination) upon dishonesty or a willful or material breach of this Agreement by CONTRACTOR; or in the event of CONTRACTOR's unwillingness or inability for any reason whatsoever to perform the terms of this Agreement. In such event, CONTRACTOR shall not be entitled to any further compensation under this Agreement.

**5.6** If the Agreement is federally or State funded, CONTRACTOR cannot be debarred from the System for Award Management (SAM). CONTRACTOR must notify the COUNTY immediately of a debarment. Reference: System for Award Management (SAM) at <https://www.sam.gov> for Central Contractor Registry (CCR), Federal Agency Registration (Fedreg), Online Representations and Certifications Application, and Excluded Parties List System (EPLS)). Excluded Parties Listing System (EPLS) (<http://www.epls.gov>) (Executive Order 12549, 7 CFR Part 3017, 45 CFR Part 76, and 44 CFR Part 17). The System for Award Management (SAM) is the Official U.S. Government system that consolidated the capabilities of CCR/FedReg, ORCA, and EPLS.

**5.7** The rights and remedies of COUNTY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

**6. Ownership/Use of Contract Materials and Products**

COUNTY acknowledges and agrees that as between it and CONTRACTOR, CONTRACTOR remains the owner(s) of all intellectual property rights in and to the Programs, Services, and Materials, whether or not protected by patents. COUNTY acknowledges that certain materials associated with Crucial Conversations®, Crucial Accountability®, and Influencer® are property of the Vital Smarts, LLC. CONTRACTOR acknowledges and agrees that COUNTY will retain all its rights, title, and interest in and to COUNTY's products, trademarks, technology, inventions, techniques, data, designs, and other information, whether or not protected by patents. CONTRACTOR grants to the COUNTY a nonexclusive, nontransferable, limited license to use the Programs and Materials solely for the COUNTY's internal use by employees of COUNTY during the Period of Performance as set forth in Section 2.1 hereof. Persons receiving the Materials pursuant to the foregoing license are referred to herein as "Participants." COUNTY will pay the applicable Program fees for each Participant (if included in the Confirmation Form). Participants are permitted to retain indefinitely for their personal reference the tangible Program materials. COUNTY agrees to use any articles, program videos, wall charts, and other program materials and

instructional aids only internally during the Period of Performance of this Agreement. Neither COUNTY nor its employees (nor contractors or consultants) shall have any right to copy, distribute, publicly display, license, sub-license, create derivative works from, or make any other use of any such property and materials.

**7. Conduct of Contractor**

7.1 The CONTRACTOR covenants that it presently has no interest, including, but not limited to, other projects or contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with CONTRACTOR's performance under this Agreement. The CONTRACTOR further covenants that no person or subcontractor having any such interest shall be employed or retained by CONTRACTOR under this Agreement. The CONTRACTOR agrees to inform the COUNTY of all the CONTRACTOR's interests, if any, which are or may be perceived as incompatible with the COUNTY's interests.

7.2 The CONTRACTOR shall not, under circumstances which could be interpreted as an attempt to influence the recipient in the conduct of his/her duties, accept any gratuity or special favor from individuals or firms with whom the CONTRACTOR is doing business or proposing to do business, in accomplishing the work under this Agreement.

7.3 The CONTRACTOR or its employees shall not offer gifts, gratuity, favors, and entertainment directly or indirectly to COUNTY employees.

**8. Inspection of Service; Quality Control/Assurance**

8.1 All performance (which includes services, workmanship, materials, supplies and equipment furnished or utilized in the performance of this Agreement) shall be subject to inspection and test by the COUNTY or other regulatory agencies at all times. The CONTRACTOR shall provide adequate cooperation to any inspector or other COUNTY representative to permit him/her to determine the CONTRACTOR's conformity with the terms of this Agreement. CONTRACTOR will, as its sole remedy, replace defective product with conforming product provided returns are made within 15 days of receipt at no additional cost to the COUNTY.

8.2 CONTRACTOR shall establish adequate procedures for self-monitoring and quality control and assurance to ensure proper performance under this Agreement; and shall permit a COUNTY representative or other regulatory official to monitor, assess, or evaluate CONTRACTOR's performance under this Agreement at any time, upon reasonable notice to the CONTRACTOR.

**9. Independent Contractor/Employment Eligibility**

**9.1** The CONTRACTOR is, for purposes relating to this Agreement, an independent contractor and shall not be deemed an employee of the COUNTY. It is expressly understood and agreed that the CONTRACTOR (including its employees, agents, and subcontractors) shall in no event be entitled to any benefits to which COUNTY employees are entitled, including but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or other leave benefits. There shall be no employer-employee relationship between the parties; and CONTRACTOR shall hold COUNTY harmless from any and all claims that may be made against COUNTY based upon any contention by a third party that an employer-employee relationship exists by reason of this Agreement. It is further understood and agreed by the parties that CONTRACTOR in the performance of this Agreement is subject to the control or direction of COUNTY merely as to the results to be accomplished and not as to the means and methods for accomplishing the results.

**9.2** CONTRACTOR warrants that it shall make its best effort to fully comply with all federal and state statutes and regulations regarding the employment of aliens and others and to ensure that employees performing work under this Agreement meet the citizenship or alien status requirement set forth in federal statutes and regulations. CONTRACTOR shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by federal or state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. CONTRACTOR shall retain all such documentation for all covered employees, for the period prescribed by the law.

**9.3** Ineligible Person shall be any individual or entity who: Is currently excluded, suspended, debarred or otherwise ineligible to participate in the federal health care programs; or has been convicted of a criminal offense related to the provision of health care items or services and has not been reinstated in the federal health care programs after a period of exclusion, suspension, debarment, or ineligibility.

**9.4** CONTRACTOR shall screen prospective Covered Individuals prior to hire or engagement. CONTRACTOR shall not hire or engage any Ineligible Person to provide services directly relative to this Agreement. Covered Individuals shall be required to disclose to CONTRACTOR immediately any debarment, exclusion or other event that makes the Covered Individual an Ineligible Person. CONTRACTOR shall notify COUNTY within five (5) business days after it becomes aware if a Covered Individual providing services directly relative to this Agreement becomes debarred, excluded or otherwise becomes an Ineligible Person.



9.5 CONTRACTOR acknowledges that Ineligible Persons are precluded from providing federal and state funded health care services by contract with COUNTY in the event that they are currently sanctioned or excluded by a federal or state law enforcement regulatory or licensing agency. If CONTRACTOR becomes aware that a Covered Individual has become an Ineligible Person, CONTRACTOR shall remove such individual from responsibility for, or involvement with, COUNTY business operations related to this Agreement.

9.6 CONTRACTOR shall notify COUNTY within five (5) business days if a Covered Individual or entity is currently excluded, suspended or debarred, or is identified as such after being sanction screened. Such individual or entity shall be promptly removed from participating in any activity associated with this Agreement.

**10. Subcontract for Work or Services**

No contract shall be made by the CONTRACTOR with any other party for furnishing any of the work or services under this Agreement without the prior written approval of the COUNTY; but this provision shall not require the approval of contracts of employment between the CONTRACTOR and personnel assigned under this Agreement, or for parties named in the proposal and agreed to under this Agreement.

**11. Disputes**

11.1 The parties shall attempt to resolve any disputes amicably at the working level. If that is not successful, the dispute shall be referred to the senior management of the parties. Any dispute relating to this Agreement, which is not resolved by the parties, shall be decided by the COUNTY's Purchasing Department's Compliance Contract Officer shall furnish the decision in writing. The decision of the COUNTY's Compliance Contract Officer shall be final and conclusive unless determined by a court of competent jurisdiction pursuant to Section 23.11 hereof to have been fraudulent, capricious, arbitrary, or so grossly erroneous to imply bad faith. The CONTRACTOR shall proceed diligently with the performance of this Agreement pending the resolution of a dispute.

11.2 Prior to the filing of any legal action related to this Agreement, the parties shall be obligated to attend a mediation session in Riverside County before a neutral third-party mediator mutually agreed upon by COUNTY and CONTRACTOR. A second mediation session shall be required if the first session is not successful. The parties shall share the cost of the mediations.

**12. Licensing and Permits**

CONTRACTOR shall comply with all State or other licensing requirements, including but not limited to the provisions of Chapter 9 of Division 3 of the Business and Professions Code. All licensing requirements

shall be met at the time proposals are submitted to the COUNTY. CONTRACTOR warrants that it has all necessary permits, approvals, certificates, waivers and exemptions necessary for performance of this Agreement as required by the laws and regulations of the United States, the State of California, the County of Riverside, and all other governmental agencies with jurisdiction and shall maintain these throughout the term of this Agreement.

**13. Use By Other Political Entities**

The CONTRACTOR agrees to extend the same pricing, terms, and conditions as stated in this Agreement to each and every political entity, special district, and related non-profit entity in Riverside County. It is understood that other entities shall make purchases in their own name, make direct payment, and be liable directly to the CONTRACTOR and COUNTY shall in no way be responsible to CONTRACTOR for other entities' purchases.

**14. Non-Discrimination**

CONTRACTOR shall not be discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this Agreement; and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code 12900 et. seq), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. S1210 et seq.) and all other applicable laws or regulations.

**15. Records and Documents**

CONTRACTOR shall make available, upon written request by any duly authorized Federal, State, or COUNTY agency, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of the CONTRACTOR's costs related to this Agreement. All such books, documents and records shall be maintained by CONTRACTOR for at least five years following termination of this Agreement and be available for audit by the COUNTY. CONTRACTOR shall provide to the COUNTY reports and information related to this Agreement as requested by COUNTY.

**16. Confidentiality**

**16.1** COUNTY and CONTRACTOR shall not use for personal gain or make other improper use of privileged or confidential information which is acquired in connection with this Agreement. The term "privileged or confidential information" includes but is not limited to: unpublished or sensitive technological or scientific information; medical, personnel, or security records; anticipated material requirements or

pricing/purchasing actions, products, techniques, data, designs and inventions; COUNTY information or data which is not subject to public disclosure; COUNTY operational procedures; and knowledge of selection of contractors, subcontractors or suppliers in advance of official announcement.

CONTRACTOR acknowledges that COUNTY is a governmental entity subject to the public records and meeting laws of the State of California, include the California Public Records Act and the California Brown Act. Notwithstanding any other provision contained in this Agreement, any information (including privileged or confidential information), communications, and documents given by CONTRACT to COUNTY and meetings involving COUNTY may be subject to disclosure pursuant to the Public Records Act and Brown Act. To the extent COUNTY is required by law to disclose the above-described information, COUNTY will comply with such law. COUNTY has sole authority to determine whether such information is exempt from public release.

**16.2** The CONTRACTOR shall protect from unauthorized disclosure names and other identifying information concerning persons receiving services pursuant to this Agreement, except for general statistical information not identifying any person. The CONTRACTOR shall not use such information for any purpose other than carrying out the CONTRACTOR's obligations under this Agreement. The CONTRACTOR shall promptly transmit to the COUNTY all third-party requests for disclosure of such information. The CONTRACTOR shall not disclose, except as otherwise specifically permitted by this Agreement or authorized in advance in writing by the COUNTY, any such information to anyone other than the COUNTY. For purposes of this paragraph, identity shall include, but not be limited to, name, identifying number, symbol, or other identifying particulars assigned to the individual, such as finger or voice print or a photograph.

**17. Administration/Contract Liaison**

The COUNTY Purchasing Agent, or designee, shall administer this Agreement on behalf of the COUNTY. The Purchasing Department is to serve as the liaison with CONTRACTOR in connection with this Agreement.

**18. Notices**

All correspondence and notices required or contemplated by this Agreement shall be delivered to the respective parties at the addresses set forth below and are deemed submitted two days after their deposit in the United States mail, postage prepaid:

**COUNTY OF RIVERSIDE**

Purchasing & Fleet Services

ATTN: Irene Maese

**CONTRACTOR**

VitalSmarts, LC

ATTN: Michael Poore

2980 Washington St  
Riverside, CA 92504

282 River Bend Ln.  
Provo, UT 84604

**19. Force Majeure**

In case by reason of force majeure either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement, then except as otherwise expressly provided in this Agreement, if such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied on, the obligations of the party giving such notice (other than the obligations pertaining to Hold Harmless/Indemnification, Section 21 herein, or Insurance, Section 22 herein), so far as they are affected by such force majeure, shall be suspended during the continuance of the inability then claimed which shall include a reasonable time for the removal of the effect thereof, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "force majeure," as employed herein, shall mean any cause beyond the reasonable control of either party and shall include, but shall not be limited to, labor disputes or other industrial disturbances, systemic electrical, telecommunications or other utility failures, earthquakes, hurricanes, tornadoes or other acts of nature, embargoes, riots, acts or orders of government, acts of terrorism or war..

**20. EDD Reporting Requirements**

In order to comply with child support enforcement requirements of the State of California, the COUNTY may be required to submit a Report of Independent Contractor(s) form **DE 542** to the Employment Development Department. The CONTRACTOR agrees to furnish the required data and certifications to the COUNTY within 10 days of notification of award of Agreement when required by the EDD. This data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders. Failure of the CONTRACTOR to timely submit the data and/or certificates required may result in the contract being awarded to another contractor. In the event a contract has been issued, failure of the CONTRACTOR to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignments Orders and Notices of Assignment shall constitute a material breach of Agreement. If CONTRACTOR has any questions concerning this reporting requirement, please call (916) 657-0529. CONTRACTOR should also contact its local Employment Tax Customer Service Office listed in the telephone directory in the State Government section under "Employment Development Department" or access their Internet site at [www.edd.ca.gov](http://www.edd.ca.gov).

**21. Hold Harmless/Indemnification**

**21.1** CONTRACTOR shall indemnify and hold harmless the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as Indemnitees) from any liability, action, claim or damage whatsoever, based or asserted upon any services of CONTRACTOR, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature. CONTRACTOR shall defend the Indemnitees at its sole expense including all costs and fees (including, but not limited, to attorney fees, cost of investigation, defense and settlements or awards) in any claim or action based upon such acts, omissions or services.

**21.2** With respect to any action or claim subject to indemnification herein by CONTRACTOR, CONTRACTOR shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of COUNTY; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes CONTRACTOR indemnification to Indemnitees as set forth herein.

**21.3** CONTRACTOR'S obligation hereunder shall be satisfied when CONTRACTOR has provided to COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action or claim involved.

**21.4** The specified insurance limits required in this Agreement shall in no way limit or circumscribe CONTRACTOR'S obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

**22. Insurance**

**22.1** Without limiting or diminishing the CONTRACTOR'S obligation to indemnify or hold the COUNTY harmless, CONTRACTOR shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement. As respects to the insurance section only, the COUNTY herein refers to the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents, or representatives as Additional Insureds.

**A. Workers' Compensation:**

If the CONTRACTOR has employees as defined by the State of California, the CONTRACTOR shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of

California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of The County of Riverside.

**B. Commercial General Liability:**

Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of CONTRACTOR'S performance of its obligations hereunder. Policy shall name the COUNTY, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents, or representatives as Additional Insured. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

**C. Vehicle Liability:**

If vehicles or mobile equipment is used in the performance of the obligations under this Agreement, then CONTRACTOR shall maintain liability insurance for all owned, non-owned, or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name the COUNTY, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents, or representatives as Additional Insureds.

**D. General Insurance Provisions - All lines:**

1) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

2) The CONTRACTOR must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence each such retention shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention unacceptable to the COUNTY, and at the election of the County's Risk Manager, CONTRACTOR'S carriers shall either; 1) reduce or eliminate such self-insured

retention as respects this Agreement with the COUNTY, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

3) CONTRACTOR shall cause CONTRACTOR'S insurance carrier(s) to furnish the County of Riverside with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, and 2) if requested to do so orally or in writing by the County Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to the County of Riverside prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the County of Riverside receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. CONTRACTOR shall not commence operations until the COUNTY has been furnished original Certificate (s) of Insurance and certified original copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier shall sign the original endorsements for each policy and the Certificate of Insurance.

4) It is understood and agreed to by the parties hereto that the CONTRACTOR'S insurance shall be construed as primary insurance, and the COUNTY'S insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

5) If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or, there is a material change in the equipment to be used in the performance of the scope of work; or, the term of this Agreement, including any extensions thereof, exceeds five (5) years; the COUNTY reserves the right to adjust the types of insurance and the monetary limits of liability required under this Agreement, if in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by the CONTRACTOR has become inadequate.

6) CONTRACTOR shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

7) The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to the COUNTY and with prior written consent of the COUNTY.

8) CONTRACTOR agrees to notify COUNTY of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

**23. General**

**23.1** CONTRACTOR shall not delegate or assign any interest in this Agreement, whether by operation of law or otherwise, without the prior written consent of COUNTY. Any attempt to delegate or assign any interest herein shall be deemed void and of no force or effect. Notwithstanding the foregoing, either party may, without consent, assign, transfer, delegate or pledge this Agreement and/or its rights and obligations hereunder to any third party in connection with any merger, spin-off or sale of substantially all of that party's stock or assets.

**23.2** Any waiver by COUNTY of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term of this Agreement. Failure on the part of COUNTY to require exact, full, and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms or preventing COUNTY from enforcement of the terms of this Agreement.

**23.3** In the event the CONTRACTOR receives payment under this Agreement, which is later disallowed by COUNTY for nonconformance with the terms of the Agreement, the CONTRACTOR shall promptly refund the disallowed amount to the COUNTY on request; or at its option the COUNTY may offset the amount disallowed from any payment due to the CONTRACTOR.

**23.4** CONTRACTOR shall not provide partial delivery or shipment of services or products unless specifically stated in the Agreement.

**23.5** CONTRACTOR shall not provide any services or products subject to any chattel mortgage or under a conditional sales contract or other agreement by which an interest is retained by a third party. The CONTRACTOR warrants that it has good title to all materials or products used by CONTRACTOR or provided to COUNTY pursuant to this Agreement, free from all liens, claims, or encumbrances.

**23.6** Nothing in this Agreement shall prohibit the COUNTY from acquiring the same type or equivalent equipment, products, materials or services from other sources, when deemed by the COUNTY to be in its best interest. The COUNTY reserves the right to purchase more or less than the quantities specified in this Agreement.

**23.7** The COUNTY agrees to cooperate with the CONTRACTOR in the CONTRACTOR's performance under this Agreement, including, if stated in the Agreement, providing the CONTRACTOR with reasonable facilities and timely access to COUNTY data, information, and personnel.



**23.8** Both parties shall comply with all applicable Federal, State and local laws and regulations. In the event that there is a conflict between the various laws or regulations that may apply, the CONTRACTOR shall comply with the more restrictive law or regulation.

**23.9** CONTRACTOR shall comply with all air pollution control, water pollution, safety and health ordinances, statutes, or regulations, which apply to performance under this Agreement.

**23.10** CONTRACTOR shall comply with all requirements of the Occupational Safety and Health Administration (OSHA) standards and codes as set forth by the U.S. Department of Labor and the State of California (Cal/OSHA).

**23.11** This Agreement shall be governed by the laws of the State of California. Any legal action related to the performance or interpretation of this Agreement shall be filed only in the Superior Court of the State of California located in Riverside, California or United States District Court for the Eastern District of California, Eastern Division, and the parties waive any provision of law providing for a change of venue to another location.


**23.12 SEVERABILITY.** If any provision, clause, sentence or paragraph of this Agreement shall be held invalid by any court of competent authority, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision or application, and to this end, the provisions of this Agreement are severable.

**23.13 COUNTERPARTS.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

23.14 This Agreement, including any attachments or exhibits, constitutes the entire Agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. This Agreement may be changed or modified only by a written amendment signed by authorized representatives of both parties.

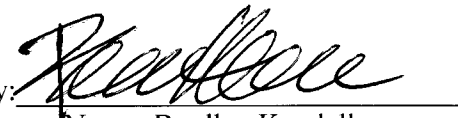
IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement.

**COUNTY OF RIVERSIDE**, a political liability company  
subdivision of the State of California

By:   
Kevin Jeffries, Chairman  
Board of Supervisors

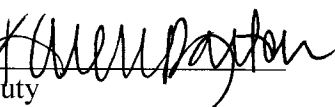
Dated: AUG 27 2019

**VITALSMARTS, LLC**, a Utah limited

By:   
Name: Bradley Kendall  
Title: Chief Revenue Officer

Dated: 8/19/19

ATTEST:  
Kecia Harper  
Clerk of the Board

By:   
Deputy

APPROVED AS TO FORM:  
Gregory P. Priamos  
County Counsel


By:   
David M. McCarthy,  
Deputy County Counsel

EXHIBIT A  
Scope of Service

1. CONTRACTOR Responsibilities:

- a. CONTRACTOR shall provide a Participant Suite for every participant attending a training, upon request of the COUNTY.
- b. A Participant Suite/kit includes a book and participant learning materials.

2. COUNTY Responsibilities:

- a. COUNTY shall design and develop training to be adopted by the COUNTY.
- b. RivCo HR Learning and Organizational Development Division shall provide CONTRACTOR courses to help employees build the skills necessary to communicate effectively and solve behavioral challenges; to improve morale, organizational performance, and customer service.
- c. COUNTY will provide Participant Suites/Kits to employees participating in the Leadership Initiative, Management and Supervisory Academies, as well as in stand-alone classes.
- d. COUNTY shall create learning opportunities leveraging CONTRACTOR's content to enhance customer service.
- e. COUNTY shall make all arrangements for the location of the programs, and for informing the participants.

EXHIBIT B:  
Payment Provisions

<u>Course Title</u>	<u>Number of Hours</u>	<u>Price</u>
Crucial Conversations	16hrs	\$210 per Participant Suite
Crucial Accountability	8hrs	\$157per Participant Suite
Influencer	16hr	\$210 per Participant Suite

**Shipping, Reimbursable Expenses, and Payment**

1. All orders are shipped F.O.B. destination, freight prepaid and added to COUNTY's invoice.
2. Payments will be accepted via wire, ACH, check or credit card. If COUNTY pays via credit card, COUNTY shall pay CONTRACTOR a 3% processing fee in addition to the invoice amount. COUNTY is responsible, without limitation, for all applicable shipping and handling charges, sales and/or withholding taxes. CONTRACTOR will add such charges and taxes to the invoice and COUNTY will be responsible for payment of such taxes, unless COUNTY provides to CONTRACTOR a valid exemption certificate or other document acceptable to the authority imposing the tax. COUNTY is responsible for all duties and other government fees applicable to the purchase and import of CONTRACTOR products.