

Standard Contract**UCPUMW 19-915
Piano Replacement Program**

This contract entered into this 30th day of January, 2019 by Kawai America Corporation, hereinafter called the "Contractor" and the Commonwealth of Virginia, University of Mary Washington called the, "University" or "UMW".

WITNESSETH that the Contractor and the University, in consideration of the mutual covenants, promises and agreements herein contained, agree as follows:

PERIOD OF CONTRACT: February 11, 2019 - February 10, 2024, with 10, one-year renewal options

CONTRACT DOCUMENTS: The contract documents shall consist of in order of precedence:

1. This signed Contract;
2. The Kawai Memorandum of Understanding (~~Confidential~~); MLP 1/31/19
3. The Contractor's proposal dated November 9, 2018 including all attachments;
4. Any addenda and the original solicitation, RFP # 19-915, dated October 9, 2018

All of which are incorporated herein by reference and constitute the "contract documents." Any contractual claims shall be submitted in accordance with the contractual dispute procedures set forth in the Commonwealth of Virginia Purchasing Manual for Institutions of Higher Education and their Vendors.

SCOPE OF SERVICES: The Contractor shall provide the piano loan/purchase services described herein.

PRICING & PAYMENT: See Attachment I for pricing. Annual price increases are capped at 5%. Contractor prefers to receive payment by ACH or ePayables for amounts over \$10,000.

CONTRACT ADMINISTRATION: The Chair of the Music Department, or designee, shall be identified by the University as the Contract Administrator and shall use all powers under the contract to enforce its faithfulness and performance in conjunction with the University's Procurement Services department.

GENERAL TERMS AND CONDITIONS: Please refer to the link to follow regarding Required General Terms and Conditions of this Solicitation which are a mandatory part of the resulting contract: [UMW Mandatory and Non-Negotiable General Terms and Conditions – November 2018.](#)

SPECIAL TERMS AND CONDITIONS:

1. ADDITIONAL (FUTURE) GOODS & SERVICES: The University reserves the right to request from the contractor to provide additional Goods and/or Services under similar and market-based pricing, terms, and conditions, and to make modifications or enhancements to existing services. Additional Goods and Services may include other products, components, accessories, subsystems or related services that are newly introduced during the term of the Agreement. Newly introduced additional Services will be provided to the University at favored nations pricing, terms, and conditions.

2. AUDIT: The contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The University, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.
3. CANCELLATION OF CONTRACT: Both parties reserve the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon sixty (60) days' written notice to the Contractor. Any contract cancellation notice shall not relieve the Contractor of the obligation to deliver and/or perform all outstanding orders issued prior to the effective date of cancellation. The Contractor shall be entitled to receive full compensation for all University-accepted services performed and/or goods received prior to the effective date of contract termination. Contractor shall not be entitled to, and hereby waives claims for lost profits and all other damages and expenses.
4. DELIVERY AND STORAGE: It shall be the responsibility of the contractor to make all arrangements for delivery, unloading, receiving and storing materials in the building during installation. The owner will not assume any responsibility for receiving these shipments. Contractor shall check with the owner and make necessary arrangements for security and storage space in the building during installation.
5. DELIVERY POINT: All items shall be delivered F.O.B. destination point, or as directed by the University.
6. E-VERIFY PROGRAM: EFFECTIVE 12/1/2013: Pursuant to the Code of Virginia, §2.2-4308.2., any employer with more than an average of fifty (50) employees for the previous twelve (12) months entering into a contract in excess of \$50,000 with any agency of the Commonwealth to perform work or provide services pursuant to such contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to such public contract. Any such employer who fails to comply with these provisions shall be debarred from contracting with any agency of the Commonwealth for a period up to one year. Such debarment shall cease upon the employer's registration and participation in the E-Verify program. If requested, the employer shall present a copy of their Maintain Company page from E-Verify to prove that they are enrolled in E-Verify.
7. EXTRA CHARGES PROHIBITED: The bid or proposal price shall be complete; and shall include all applicable freight and any other charges; extra charges invoked by the Contractor shall not be honored or paid. These charges, for example, shall include but not be limited to fees invoked by the vendor for the use of the credit card for payment of invoices, or any order-associated eVA fees.
8. FISCAL YEAR PROCESSING: The University of Mary Washington fiscal year is July 1st through June 30th. Payment cannot be made for multiple fiscal years in advance of services.
9. INDEPENDENT CONTRACTOR RELATIONSHIP: In performing any and all of the services to be provided under this contract, the Contractor shall at all times and for all purposes be and remain an independent contractor. In no case and under no circumstances shall the Contractor or any of its employees, including but not limited to those of its employees actually performing any of the services, have authority to make any representations or commitments on behalf of the University or be considered the agent of the University for any purpose whatsoever. No persons engaged by the Contractor in connection with the provision of Services shall be considered employees of the University. As between the parties, the Contractor shall be responsible for hiring, supervising, training and instructing those individuals performing

the services and shall pay any required state and federal taxes on behalf of such persons and provide them with any legally required employee benefits.

10. INSTALLATION: All items must be assembled and set in place, ready for University use. All crating and other debris must be removed by the contractor from the premises.
11. NON-EXCLUSIVE CONTRACT: Nothing herein is intended nor shall be construed as creating any overall exclusive arrangement with the Contractor. The contract shall not restrict UMW from acquiring similar, equal or like goods and/or services from other sources. However, no other piano sale events associated with UMW shall be allowed either on or off campus, except for those with the Contractor.
12. NOTICES: Any official legal notice, demand, request, consent, approval or communication required by this Agreement to be provided in writing by either party, shall be addressed to the University or Contractor at their respective addresses entered below. These notices shall be sent via certified mail, return receipt requested, and shall be considered by the sender received within five (5) days of delivery to the U.S. Postal Service, or via the stamped evidence of delivery, whichever occurs first. Any unofficial notices or communications may be sent via electronic mail.

If to the University:
Attn: Procurement Services
1301 College Avenue
Fredericksburg, VA 22401

If to the Contractor:
Attn: Kawai America
2055 E. University Drive
Rancho Dominguez, CA 90220

13. PROCUREMENT MANUAL: This solicitation and any resulting contract is subject to the provisions of the Commonwealth of Virginia Procurement Manual for Institutions of Higher Education and their Vendor's and any revisions thereto, which are hereby incorporated into this contract in their entirety. The manual may be viewed at <http://vascupp.org>.
14. PRODUCT AVAILABILITY/SUBSTITUTION: Substitution of a product, brand or manufacturer after the award of contract is expressly prohibited unless approved in writing by the University's Procurement Services Department. The University may, at its discretion, require the contractor to provide a substitute item of equivalent or better quality subject to the approval of the University, for a price no greater than the contract price, if the product for which the contract was awarded becomes unavailable to the contractor.
15. RENEWAL OF CONTRACT: This contract may be renewed by the University upon written agreement of both parties for ten (10), one-year successive periods under the terms of the current contract, and at a reasonable time (approximately 90 days) prior to the expiration. Only at the time of renewal may prices be negotiated for the upcoming term.
16. SEVERABILITY: If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

17. SMALL BUSINESS SUBCONTRACTING AND EVIDENCE OF COMPLIANCE:

1301 College Avenue
Fredericksburg, VA 22401-5300
adminfinance.umw.edu/procurement

Tel: (540) 654-1127
Fax: (540) 654-1168
procure@umw.edu

- a. It is the goal of the University that 42% of its purchases are made from small businesses. This includes discretionary spending in prime contracts and subcontracts. All potential bidders/offerors are required to submit a Small Business Subcontracting Plan. Unless the bidder/offeror is registered as a Department of Small Business and Supplier Diversity (DSBSD) certified small business and where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such subcontracting opportunities to DSBSD-certified small businesses. This shall not exclude DSBSD-certified women-owned and minority-owned businesses when they have received DSBSD small business certification. No bidder/offeror or subcontractor shall be considered a Small Business, a Women-Owned Business or a Minority-Owned Business unless certified as such by DSBSD by the due date for receipt of bids or proposals. If small business subcontractors are used, the prime contractor agrees to report the use of small business subcontractors by providing the procurement office at a minimum the following information: name of small business with the DSBSD certification number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product/service provided.
 - b. Each prime contractor who wins an award in which provision of a small business subcontracting plan is a condition of the award, shall deliver to the University on a quarterly basis, evidence of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the small business subcontracting plan. When such business has been subcontracted to these firms and upon completion of the contract, the contractor agrees to furnish the procurement office at a minimum the following information: name of firm with the DSBSD certification number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product or service provided. Payment(s) may be withheld until compliance with the plan is received and confirmed by the University. The University reserves the right to pursue other appropriate remedies to include, but not be limited to, termination for default.
 - c. Each prime contractor who wins an award valued over \$200,000 shall deliver to the University on a quarterly basis, information on use of subcontractors that are not DSBSD-certified small businesses. When such business has been subcontracted to these firms and upon completion of the contract, the contractor agrees to furnish the procurement office at a minimum the following information: name of firm, phone number, total dollar amount subcontracted, and type of product or service provided.
18. SPECIAL EDUCATIONAL OR PROMOTIONAL DISCOUNTS: The contractor shall extend any special educational or promotional sale prices or discounts immediately to the University during the term of the contract. Such notice shall also advise the duration of the specific sale or discount price.
 19. STANDARDS OF CONDUCT IN THE WORKPLACE: The University of Mary Washington, an agency of the Commonwealth of Virginia, strictly forbids harassment of any employee, applicant for employment, vendor, contractor or volunteer in the workplace, on the basis of an individual's race, sex, color, national origin, religion, sexual orientation, age, veteran status, political affiliation or disability. The Commonwealth will not tolerate any form of retaliation directed against an employee or third party who either complains about harassment or who participates in any investigation concerning harassment. http://web1.dhrm.virginia.gov/itech/hrpolicy/pol1_80.html. Pursuant to the authority provided in Chapter 10 and 12, Title 2.2 of the Code of Virginia.
 20. WARRANTY (COMMERCIAL): The contractor agrees that the goods or services furnished under any award resulting from this solicitation shall be covered by the most favorable commercial warranties the

contractor gives any customer for such goods or services and that the rights and remedies provided therein are in addition to and do not limit those available to the University by any other clause of this solicitation. A copy of this warranty should be furnished with the proposal.

METHOD OF PAYMENT: The contractor shall be paid using one of the following three (3) methods for all University initiated procurements:

1. Small Purchase Charge Card (SPCC): Small Purchase Charge Card (SPCC): At the time of verified receipt of goods or services, if the Contractor accepts credit cards in payment, the University will authorize payment by SPCC, currently the Bank of America Visa. Any "Check-out fees" imposed by the contractor must be disclosed prior to the purchase. No check-out fee or surcharge may be greater than 4% of the total sale. The University expects that these costs, as well as all contractor business expenses will be built into the contractor's quoted price. If the contractor's eVA profile indicates acceptance of a credit card in payment, the Commonwealth will pay via charge card for invoices \$50,000 or less. *The University reserves the right to request certification (with confirmation code) of the vendor's registration with its merchant bank/VISA to invoke "check-out fees" or surcharges for use of the credit card. "Check-out fees" or surcharges for use of the credit card shall not exceed the vendor's cost of acceptance rate.*
2. ePayables through Bank of America: All payments under ePayables will have a net 16 payment term. For more information about this payment option, contact UMW's Accounts Payables department at payables@umw.edu or view <http://www.bankofamerica.com/epayablesvendors>.
3. Check or ACH: Payment will be made 30 days after satisfactory performance of the contract in all provisions thereof and upon receipt of a properly completed invoice, whichever is later; in accordance with Chapter 43, VPPA, Article 4, Code of Virginia.

To be considered eligible for payment, *all invoices must be received at the following address should reference the eVA purchase order and UMW contract numbers:*

University of Mary Washington
Attention: Accounts Payable
1301 College Avenue
Fredericksburg, VA 22401

Note: This public body does not discriminate against faith-based organizations in accordance with the *Governing Rules §36* or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any basis prohibited by state law relating to discrimination in employment.

In witness, whereof, the parties have caused this Contract to be duly executed intending to be bound thereby.

CONTRACTOR

UNIVERSITY OF MARY WASHINGTON

Signature: _____

Signature: _____

Printed Name: Cory Callies

Printed Name: Melva A. H. Kishpaug

Title: National Sales Manager

Title: Director, Procurement Services

Date: 01/30/2019

Date: January 31, 2019

FEI/FIN#: 95-226-2037

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