

RFP 0201-11-SSES
SANITARY SEWER ENGINEERING SERVICES

<u>SECTION</u>	<u>PAGE</u>
I. SUBJECT-----	3
II. GENERAL -----	3
III. COMPETITION INTENDED -----	4
IV. ELIGIBILITY -----	4
V. PROOF OF AUTHORITY TO TRANSACT BUSINESS IN VIRGINIA -----	4
VI. RIGHTS OF THE CITY -----	4
VII. SCOPE OF WORK AND BACKGROUND -----	5
VIII. SUBCONTRACTORS -----	6
IX. CONTRACT TERM AND RENEWAL OPTIONS-----	7
X. PRICES AND PRICE ADJUSTMENTS -----	7
XI. PROMPT PAYMENT DISCOUNT -----	8
XII. PROJECTED REQUIREMENTS/ESTIMATED QUANTITIES: -----	8
XIII. TRADE SECRETS OR PROPRIETARY INFORMATION -----	8
XIV. DEBARMENT STATUS -----	9
XV. CONTRACT DOCUMENTS -----	9
XVI. PROPOSAL PREPARATION -----	9
XVII. PROPOSAL SUBMISSION REQUIREMENTS-----	10
XVIII. PROPOSAL EVALUATION CRITERIA -----	16
XIX. PRESENTATION/DEMONSTRATION: -----	17
XX. BASIS OF AWARD -----	17
XXI. PROTEST OF AWARD OR DECISION TO AWARD -----	18
XXII. NOTICE OF ACCEPTANCE/CONTRACT DOCUMENTS-----	18
XXIII. TAX EXEMPTION -----	18
XXIV. STANDARD PROVISIONS-----	18
XXV. GENERAL CONDITIONS AND INSTRUCTIONS TO OFFERORS -----	34

I. SUBJECT

The City of Falls Church ("City") is soliciting proposals from qualified firms to provide Professional Engineering Services for an Evaluation of the City's Sanitary Sewer System as is further described herein.

II. GENERAL

A. ACCESS TO RFP UPDATES: This RFP and any addenda are available on the City of Falls Church's website: www.fallschurchva.gov. The **Purchasing & Procurement** link which contains RFP/Bid information is listed in the Popular Topics Section on the home page. This solicitation and any associated addenda may also be published through eVA, the Commonwealth of Virginia's electronic procurement portal for registered suppliers (<http://eva.virginia.gov>).

B. Offerors should note that changes to the RFP, in the form of addenda, are often issued between the issue date and within three (3) days before the closing of the RFP. **Offerors are solely responsible for checking the Website to insure that they have the most current information regarding the RFP.**

All addenda must be signed and submitted with your proposal.

C. QUESTIONS - Questions regarding this solicitation must be in writing and received by no later than five (5) business days prior to the RFP closing date. All questions shall be directed only to:

Faye Smith, Purchasing Agent
The City of Falls Church
300 Park Ave, Falls Church, VA 22046
fsmith@fallschurchva.gov Phone: 703.248.5007

with a copy to retris@fallschurchva.gov

No inquiries, if received by the Purchasing Agent in less than five (5) business days of the date set for the opening of proposals, will be given any consideration. Any material question or interpretation of a specification or requirement, as determined by the Purchasing Agent, will be expressed in the form of an addendum which will be posted on the City's website (www.fallschurchva.gov) no later than three (3) days before the date set for receipt of proposals. If utilized for the initial RFP release, addenda will also be published through eVA (the Commonwealth of Virginia's e-procurement portal for registered suppliers).

Oral answers will not be authoritative.

D. The City is not liable for any costs incurred by any Offeror in connection with this RFP or any response by any Offeror to this RFP. The expenses incurred by Offeror in the preparation, submission, and presentation of the proposal are the sole responsibility of the Offeror and may not be charged to the City.

E. ACCEPTANCE OF PROPOSALS - BINDING 120 DAYS: All proposals submitted shall be binding for a one hundred and twenty (120) calendar days following solicitation opening date, unless extended by mutual consent of all parties.

F. CONTACT RESTRICTED - No Offeror shall initiate or otherwise have contact with any City representative or employee, other than the Purchasing Agent or Purchasing Agent's designee concerning or related to this RFP, after the date of this solicitation's release and before award or cancellation of this RFP except with the foreknowledge and permission of the Purchasing Agent or his/her representative. Any contact in contradiction to this requirement is prohibited and may cause the disqualification of the Offeror from this procurement process.

- G. This solicitation is being conducted in accordance with the guidelines of the Competitive Negotiation (Professional Services) method of contractor selection per the Virginia Public Procurement Act which is incorporated herein by reference.

III. COMPETITION INTENDED

It is the City of Falls Church's intent that this Request for Proposals (RFP) permits competition. It shall be the Offeror's responsibility to advise the City's Purchasing Manager, in writing, if any language, requirement, specification, etc., or any combination thereof, inadvertently restricts or limits the requirements stated in this RFP to a single source. Such notification must be received by the Purchasing Manager not later than fifteen (15) days prior to the date set for acceptance of proposals. Any such notification shall be sent to the City's Purchasing Agent's email address: fsmith@fallschurchva.gov with a copy to retris@fallschurchva.gov. Confirmation of email receipt shall be the responsibility of the notifying Offeror.

Nothing herein is intended to exclude any responsible Offeror or in any way restrain or restrict competition. All qualified Offerors are encouraged to submit proposals.

IV. ELIGIBILITY

The following minimum requirements **must be met at the time a Proposal is submitted** and maintained during the term of any resultant contract:

1. The Offeror must be registered to do business in the Commonwealth of Virginia. See Section below entitled "Proof of Authority to Transact Business in Virginia".
2. The Offeror must be licensed in accordance with the specific requirements of this solicitation and the Code of Virginia (Licensed Engineer, Contractor's license, etc).

It is the Contractor's sole responsibility to have knowledge of the applicable licenses(s), if any, associated with this solicitation's scope of work.

Any person or firm, or agent of any person or firm, currently suspended or debarred from participation in City procurement, conducting business or submitting proposals on contracts by any other local government or agency of the Commonwealth of Virginia, or the Federal Government is not eligible for contract award under this solicitation.

V. PROOF OF AUTHORITY TO TRANSACT BUSINESS IN VIRGINIA

A firm organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 of the Code of Virginia shall include in its proposal the identification number issued to it by the State Corporation Commission (SCC). The Offeror's SCC ID number shall be provided on the cover sheet of this solicitation on the line entitled "VA SCC Business Registration #".

Any 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 of the Code of Virginia or as otherwise required by law shall include in its bid or proposal a signed statement attached to the Cover Sheet of this RFP, describing why the Offeror is not required to be so authorized. Any Offeror described herein that fails to provide the required information shall not receive an award unless a waiver of this requirement and the administrative policies and procedures established to implement this section is granted, in writing, by the City Manager.

VI. RIGHTS OF THE CITY

- A. Among the indisputable rights of the City specified herein, the City, at its sole discretion may:
1. cancel, withdraw or re-advertise this RFP; accept or reject all or any part of proposals; and/or waive minor technicalities/informalities.
 2. award a contract to multiple vendors by individual items, in the aggregate, or in combination thereof whenever any such actions are in the best interest of the City.

3. issue RFPs for similar work and other projects as the need may occur; issue Purchase Orders and/or expand or otherwise modify existing Purchase Orders for work similar to that being proposed hereunder, in consideration of the City's knowledge and/or evaluation of each Contractor's qualifications, expertise, capabilities, performance record, current ability to perform, location and/or distance to the project, and any and all other factors as may be pertinent to the particular project and for the convenience of the City.
 4. add, delete or change services, locations, requirements, frequency of service, or other factors related to the products and/or work under contract dependent upon requirements that may develop during the contract period and cannot guarantee the amount of work or predict future funding for any resultant contract.
 5. use any or all ideas presented in reply to this RFP, subject only to the limitations regarding proprietary/confidential data of Offeror.
- B. This is a Request for Proposals and is in no way to be misconstrued as a commitment to purchase on the part of the City.

VII. SCOPE OF WORK AND BACKGROUND

- A. The City is soliciting Proposals from qualified engineering firms to provide Professional Engineering Services for an Evaluation of the City of Falls Church Sanitary Sewer System, as further described herein.
- B. The City has undertaken a ten-phase sanitary sewer rehabilitation program. Each phase of the program is to be completed in two steps; a detailed sanitary sewer system evaluation survey followed by rehabilitation. The City has completed the first four phases of the program and is about to begin the remaining phases. The purpose of this RFP is to obtain professional engineering services to assist in the completion of the remaining phases of the sanitary sewer system improvement plan and related sanitary sewer system projects.
- C. The work assigned under the requested contract may include, but not be limited to, the following services, which are not listed in any particular order of priority:
 1. Feasibility studies and engineering economic analyses
 2. Sanitary sewer collection system evaluation, surveys, and associated infiltration and inflow (I/I) analyses.
 3. Recommendations for correcting defects in areas of the system sub-sheds, which contain extraneous flows and require repairs.
 4. Trunk, collector and relief sewer design as required.
 5. Sanitary sewer modeling, with SSO analysis and abatement.
 6. Recommendations for upgrade of system capacity, to meet future demand.
 7. Surveying and GPS location of facilities.
 8. Easement plat preparation as required.
 9. Closed circuit TV inspection of sanitary sewer mains.
 10. Smoke testing of sanitary sewer mains.
 11. Preparation of federal, state, and local permitting as required.
 12. Assistance with public information programs related to the City's rehabilitation efforts.
 13. Preparation of plans and specifications, bidding assistance and contract administration, upon the City's request, for specific projects involving additions, modifications, and/or replacement of the City's existing sanitary sewer facilities.
 14. Construction management services as requested.

- D. The initial scope of work will include the services needed to carry out additional phases of the ten-phase rehabilitation program. These services will include:
1. Smoke testing
 2. Video inspection of sewer mains
 3. Physical inspection of manholes and other structures
 4. Reporting findings with recommendations for scope of rehabilitation required
 5. Assistance with public outreach and information program
- E. The potential tasks identified in this RFP are given for information to the Offeror and for proposal evaluation purposes only. They do not necessarily indicate the actual tasks or services that will be ordered. Such tasks will depend upon requirements that may develop during the contract period. The information provided above does not relieve the contractor of his obligation to perform all similar or related services which may be ordered under any resultant contract.

VIII. SUBCONTRACTORS

- A. In the event that the Offeror desires to subcontract some part of the work specified in this solicitation, the Offeror shall furnish the City the names, qualifications, and experience of the proposed material/key subcontractors and the percentage of the work under any resultant contract to be performed by each with the proposal. The Offeror shall provide services as the Prime Contractor.
- B. Subcontractors may be used for not more than forty nine percent (49%) of the work performed unless otherwise approved in advance by the City. If in the proposal Contractor specifies the subcontractors it will use in the performance of service under the contract resulting from this RFP, and the work performed by those identified subcontractor(s) will not exceed 49% of the total job, City pre-authorization will not be required.
- C. If however, during the course of the contract, the Offeror wishes to use a subcontractor(s) other than the firms identified in the RFP, and/or the subcontractor(s) will perform more than 49% of the project work, advance written notice and approval of the City shall be required.
- D. The Contractor shall be responsible for completely supervising and directing the work under the Contract and all subcontractors that they may utilize. Subcontractors who perform work under the Contract shall be responsible to the prime Contractor. The Contractor agrees to be fully responsible for the payment to, performance, acts and omissions of their subcontractors/partners and of persons employed by them.
- E. The City reserves the right to reasonably reject the successful firm's selection of subcontractors.
- F. The Contractor shall remain fully liable and responsible for: supervising and directing the work to be done by his/her subcontractor(s) including those persons either directly or indirectly employed by Contractor and shall assure compliance with all the requirements of the contract; payment to; performance, acts and omissions of their subcontractors, partners and of all persons employed by them and to assure that the subcontractor(s) insurance is in compliance with the requirements of this solicitation and for assuring that all subcontractors, partners, and/or others furnished by or acting at Contractor's direction or on Contractor's behalf, comply and remain in compliance with all federal, state, and local laws, rules, regulations, orders and other legal requirements that are directly or indirectly related to the performance under the contract, including procurement of required permits, certificates, licenses, insurance, approvals, and/or inspections.
- G. The Contractor shall not enter into any subcontract with any subcontractor who has been suspended or debarred from participating in contracting programs by any agency of the United States Government, the Commonwealth of Virginia or other state where the contract is to be performed.

- H. The Contractor shall insert appropriate clauses in all subcontracts to bind subcontractors to the terms and conditions of this contract insofar as they are applicable to the work of subcontractors.
- I. Nothing contained in the contract shall create any contractual relationship between any subcontractor and the City.

IX. CONTRACT TERM AND RENEWAL OPTIONS

- A. If a contract is awarded, it shall cover the target period from date of award through a one (1) year period except as otherwise provided in this solicitation.
- B. The City reserves the right to renew the contract for four (4) successive one (1) year periods, upon mutual written agreement of the parties.
- C. Notice of intent to renew may be given to the Contractor in writing by the City, normally sixty (60) days before the expiration date of the current contract. Failure to give such notice will not constitute a breach of this contract. This notice will not be deemed to commit the City of Falls Church to a contract renewal.
- D. Contractor shall notify the City, in writing, at least ninety (90) days prior to the then current contract period expiration if Contractor intends not to extend the contract term if such is offered by the City.
- E. The City may extend the term of an existing contract for services to allow completion of any work undertaken, including presentation and acceptance of the final report and/or other deliverables but not completed during the original term of the contract or for other reasons in the best interest of the City.
- F. **NON-APPROPRIATION OF FUNDS** - All funds for payments by the City for goods/services under contract are subject to the availability of general or specific annual appropriation for this purpose by the City of Falls Church City Council, as applicable. . In the event of non-appropriation of funds by the City Council for the goods/services provided under contract, the City will terminate the contract, without termination charge to the City, on June 30th of the then current fiscal year or when the appropriation made for the then current year for the goods/services covered by the contract is spent, whichever event occurs first.

X. PRICES AND PRICE ADJUSTMENTS

NO PRICES, RATES OR FEES ARE TO BE PROVIDED WITH INITIAL PROPOSAL SUBMITTAL. Short listed terms will be specifically requested to submit non-binding and/or binding rates, fees, and/or project costs at the applicable time during the evaluation and award process.

- A. All Contract unit prices will remain fixed through the first term of the contract or 365 days, whichever is later.
- B. Thereafter, the contractor may request, in writing, an increase in unit prices once every 365 days to coincide with the contract anniversary).
- C. The Contractor shall provide the City prior written notice of any potential increases at least sixty (60) days prior to the proposed effective date of such increase. The request for a change in the unit price shall include as a minimum, the cause for the adjustment and the proposed effective date and, the amount of the change requested.
- D. Any price increases shall be no greater than the percentage change of the CPI-U for the Washington-Arlington-Alexandria area using Table 3. Consumer Price Index for All Urban Consumers (CPI-U): Selected areas, all items index; Washington-Baltimore, DC-MD-VA-WV area as listed for the most recent twelve month period on the U.S. Department of Labor's Bureau of Labor Statistics website or five percent (5%) whichever is lower.

- E. All increases must be reviewed and approved by the City's Purchasing Department. Any price adjustment agreed to shall take place only in accordance with the schedule defined above as documented in a contract amendment.
- F. Any orders placed prior to the proposed effective date of the increase shall not be subject to such increase.
- G. If labor rates are requested, the rates specified by the Offeror shall include all direct and indirect overhead costs including but not limited to transportation, general and administrative cost, etc. Labor rates will be paid on the basis of time at the site.
- H. Price reductions may be initiated by the Offeror at any time and shall be effective immediately.
- I. No restocking fees will be charged for product returns under the terms of the contract, if applicable.

No prices, rates or fees are to be provided with initial Proposal submittal.

XI. PROMPT PAYMENT DISCOUNT

- A. Unless otherwise specified herein, prompt payment discounts requiring payment in less than fifteen (15) days will not be considered in evaluating a proposal for award. However, even though not considered in the evaluation, such discounts will be taken if payment is to be made within the discount period.
- B. In connection with any discount offered, time will be computed from the date an undisputed invoice is received by the City. In the event the Offeror does not indicate a prompt payment discount, it shall be construed to mean NET 30 days.
- C. For the purpose of earning the discount, payment is deemed to be made as of the date of mailing of the City check or issuance of an Electronic Funds Transfer, if applicable.

XII. PROJECTED REQUIREMENTS/ESTIMATED QUANTITIES:

- A. The potential tasks identified in this RFP are for information to the Offeror and for proposal evaluation purposes only. They do not necessarily indicate the actual tasks that will be ordered since such tasks will depend upon requirements that develop during the contract period.
- B. Tasks or quantities described in this RFP shall not be construed to represent any amount of services of which the City shall be obligated to purchase under the contract, or relieve the contractor of his obligation to perform all services which may be ordered under the contract.
- C. The City reserves the right to expand or delete services as necessary and cannot guarantee the amount of work or predict funding for planned projects.
- D. No proposal will be considered which stipulates that the City shall guarantee to order a specific service, task or quantity thereof.

XIII. TRADE SECRETS OR PROPRIETARY INFORMATION

- A. Trade secrets or proprietary information submitted by an Offeror in response to this RFP shall not be subject to public disclosure under the Virginia Freedom of Information Act. However, the Offeror must invoke the protection of this section prior to or upon submission of data or materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary (Section 2.2-4342F of the Code of Virginia).
- B. If the proposal contains any proprietary or trade secret material, such notice must be attached as the **first page of the proposal and clearly identify the material/information** by some distinct method such as highlighting/underlining or submitted in a separate and clearly labeled section. In addition, the Offeror must (i) indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information and (ii) clearly state the justifiable reason why protection is necessary.

- C. **Classification of an entire proposal document and/or prices (line item or totals) as proprietary or trade secret is NOT ACCEPTABLE and may result in REJECTION of the proposal.**

XIV. DEBARMENT STATUS

By submitting a proposal, the Offeror (including any partner, associate, or subcontractor associated with the provision of good/services under this solicitation) certifies that they are not (1) currently debarred from conducting business or submitting bids/proposals or on contracts by any local government or agency of the Commonwealth of Virginia, or the Federal Government; (2) an agent of any person or entity that is currently debarred from conducting business or submitting bids/proposals on contracts by any local government or agency of the Commonwealth of Virginia, or the Federal Government; or (3) suspended, proposed for debarment, excluded or disqualified under the nonprocurement common rule, or otherwise declared ineligible from receiving Federal contracts, certain subcontracts, and certain Federal assistance and benefits. For procurements that are to be funded by Federal monies, the City will confirm a vendor's status via the Excluded Parties List of the Federal Government.

XV. CONTRACT DOCUMENTS

- A. This solicitation, including all addenda, attachments, exhibits and/or appendices hereto, shall become a part of any contract that may be awarded inclusive of any terms, conditions and/or provisions that may be changed, added to, deleted, or modified as may be agreed to between the City and the Offeror during negotiations.
- B. Other documents which shall become a part of any resultant contract include but are not limited to:
 1. Offeror's Proposal and any modifications accepted by the City
 2. Proposal clarifications; responses to questions/issues.
 3. Documents submitted in conjunction with oral discussions/presentations.
 4. Memoranda of Negotiations
- C. **EXCEPTIONS** – This solicitation contains terms and conditions the City favors and intends to use in any resultant contract. If the Offeror wishes the City to consider any changes or has any objections to any of the provisions, requirements, specifications, terms or conditions set forth in this RFP and/or other associated documents, such changes must be submitted as a part of the Offeror's proposal clearly labeled as "Exceptions". Otherwise, submission of a proposal by an Offeror will indicate Offeror's intent, if it is the successful Offeror, to enter into a contract containing the same or substantially similar terms and conditions as those contained herein.
- D. The City reserves the right to negotiate any and all terms, conditions, prices and/or exceptions as may be in its best interest.

XVI. PROPOSAL PREPARATION

- A. Before submitting a proposal, the Offeror must read the entire solicitation. Failure to read any part of this solicitation shall not relieve the Contractor of its contractual obligations.
- B. The RFP cover page must be completed as required, signed in ink by Offeror's representative with the **AUTHORITY TO BIND HIS/HER FIRM IN A CONTRACT**, and returned with the proposal.
- C. All information requested must be submitted. Proposals which are substantially incomplete or lack key information may be rejected by the City at its discretion.
- D. Proposal contents should be arranged in the same order and identified with headings as presented herein.

- E. The City reserves the right to accept or reject all or any part of proposals, waive minor technicalities/informalities and award the contract to the most qualified and best suited Offeror to best serve the interest of the City.
- F. Failure to submit all information requested may result in the Purchasing Agent requiring prompt submission of missing information and/or giving a lowered evaluation of the proposal. Proposals which are substantially incomplete or lack key information may be rejected by the City at its discretion.
- G. Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of context. Unnecessarily elaborate proposals, brochures of other presentations, expensive paper, bindings, visual and other presentation aids beyond that sufficient to present a complete and effective proposal are neither required nor desired.
- H. Each copy of the proposal should be bound in a single volume. The City encourages the use of recycled products, therefore, it is urged that proposals be submitted on paper made from or with recycled content and be printed on both sides.
- I. The City will not consider information other than the materials provided in a duly submitted proposal and/or subsequent interviews for proposal evaluation purposes.
- J. Questions regarding this solicitation must be in writing and received by no later than five (5) business days prior to the RFP closing date. All questions shall be directed only to:

Faye Smith, Purchasing Agent
 The City of Falls Church
 300 Park Ave, Falls Church, VA 22046
fsmith@fallschurchva.gov Phone: 703.248.5007

with a copy to retristr@fallschurchva.gov

No inquiries, if received by the Purchasing Agent in less than five (5) business days of the date set for the opening of proposals, will be given any consideration. Any material question or interpretation of a specification or requirement, as determined by the Purchasing Agent, will be expressed in the form of an addendum which will be posted on the City's website (www.fallschurchva.gov) no later than three (3) days before the date set for receipt of proposals. If utilized for the initial RFP release, addenda will also be published through eVA (the Commonwealth of Virginia's e-procurement portal for registered suppliers).

Oral answers will not be authoritative.

XVII. PROPOSAL SUBMISSION REQUIREMENTS

A. Specific Requirements

1. Offerors are required to submit three (3) complete hard copy proposal packages consisting of one (1) original and two (2) copies of each proposal to include the information and format described herein.
 - a. **PROPOSAL PAGE LIMIT** – The total number of pages in your proposal **should not exceed 50 pages**. This limit includes all information in the PROPOSAL CONTENT paragraph below. Double sided documents count as two (2) pages.
 - b. In addition to the hard copies, each Offeror shall submit a searchable, indexed PDF copy of their complete Proposal to the City's Purchasing Agent within two business days AFTER the Proposal due date and time. If the Proposal contains proprietary or confidential information in accordance with the Section entitled "Trade Secrets or Proprietary Information, the Offeror shall also submit a redacted version of the searchable, indexed PDF. The file name of the PDF(s) shall include the RFP number, Firm's name, date of Proposal, redacted

ID if applicable and be emailed only to the City's Purchasing Agent:
fsmith@fallschurchva.gov.

The hard copy proposal shall be the Offeror's "official" Proposal and shall meet all requirements for submission by the due date and time specified herein. The PDF copy WILL NOT be accepted in lieu of the hard copy Proposal for proposal submission compliance.

B. Proposal Content

Submit proposals in the order outlined below. Each section should be separated by tabs, clearly labeled and with pages numbered.

Title Page: Include the RFP number, RFP name, name of Offeror, address, telephone number, and date of preparation. Provide name, telephone number and email address of person to contact regarding proposal questions or issues.

Table of Contents: Indicate the material included in the proposal by section, including all items set forth below. All pages are to be numbered and indicate Offeror's name.

Tab 1 **Signed Offer:** First Page of this RFP, completed and signed in ink by person authorized to bind the company. Include any attachment(s) for Proprietary Information and/or exceptions for VA SCC Business Registration, if applicable, as well as any RFP Addendums (signed and dated). This information is NOT included in fifty (50) page limit.

Tab 2 **Executive Summary/Overview:** To Include:

- (1) Cover Letter on company letterhead, signed by a person with the corporate authority to enter into contracts in the amount of the proposal.
- (2) A brief history of the firm, including number of years in business and size of firm. State the location of the office from which the work is to be performed. Identify any other business names, including DBAs used by firm within the past ten (10) years, if applicable.
- (3) Identification of a primary point and/or contract/project manager who will work with the City during the term of any contract.

Tab 3 **Qualifications:** To Include:

- (1) **The Offeror's Qualifications** - Describe the Offeror's qualifications and ability to fulfill the work required, documented success and direct experience in similar projects. Identify in-house capabilities to perform the services and indicate the number of partners, managers, supervisors, and other professional staff employed at that office who will work on the project along with an organization chart. Extent of the Offeror's and assigned individual's experience in making presentations to elected officials and citizens, if applicable. List any applicable licenses, certificates or other credentials.
- (2) **The Proposed Project Team** – Identify key personnel, associates and/or proposed material subcontractors to be engaged by Offeror for any resultant contract under this RFP, provide names, qualifications, direct work experience, and description of proposed work responsibilities. For subcontractor's whose services will be material to this engagement, also identify the proposed percentage of the Contract work to be performed by each. Include the organizational structure of the team (including subcontractors). Include resumes of key personnel and sub-contractors. Resumes may be included as an appendix but not in the body of the qualifications.

- Tab 4 The Work Plan:** Include information that communicates how you would fulfill the requirements of a contract resulting from this RFP
- (1) A brief statement of the Offeror's understanding of the project's Scope of Work to include a narrative describing the technical approaches, proposed project approach and methodology for executing the work and an awareness of any difficulties of this engagement and a plan for surmounting them.
 - (2) A description of basic services/tasks proposed to satisfy the requirements described in this solicitation and explanation of the methodology and underlying philosophy of the Offeror in providing the services. Include any services/tasks. Information that addresses and details how Offeror would fulfill the requirements related to the tasks, specifications and other requirements described in the Scope of Work and else where in this solicitation.
 - (3) Include any services to be provided over and above those required on the Scope of Services.
 - (4) Include any recommended additional and/or optional services not specifically outlined in the Scope of Work or other requirements that might increase the effectiveness and/or efficiency of the services specified herein.
- Tab 5 Client References**
- (1) Offerors shall include, with their proposals, a list of at least three (3) current references, other than the City, for whom comparable work has been performed within the past three (3) years. The City may be included in addition to the three (3) requested.
 - (2) This list shall include company name, person to contact, address, telephone number and description of services performed. Failure to include references may be cause for rejection of proposal.
- Tab 6 Exceptions**
- (1) The Offeror shall identify (by Section Number) any specific sections or issues and elaborate on any exceptions and proposed resolution(s) to any and all technical, functional, cost, or other issues and/or terms and conditions specified herein.
 - (2) If there is any deviation from that prescribed in the Scope of Work, the appropriate line shall be ruled out or otherwise clearly highlighted and the substitution indicated.
 - (3) The City reserves the right to accept, reject and/or negotiate any proposed change(s) in the scope, terms and conditions or other provisions of this RFP.
 - (4) If there are no proposed exceptions, please provide a definitive statement to that effect.
 - (5) Please note that an Offeror's failure to agree to terms required by law or City Code, policies or regulations, which are all incorporated herein by reference, may be grounds for disqualification of the proposal.
- Tab 7 Appendices**
- Offerors who wish to submit additional material that will clarify their response may submit optional attachments. This information will be counted in the 50 page limit)

C. General Requirements

1. Proposals shall be placed in a sealed, opaque envelope, and clearly marked in the lower left-hand corner with the RFP number, RFP title and the date/time proposals

are scheduled to be received. Proposals are to be submitted by mail, courier or delivered in person **ONLY** to:

Attn: Purchasing Agent
City Of Falls Church
300 Park Avenue, Rm 300 E, 3rd Floor, East Wing
Falls Church, Virginia 22046 / (703) 248-5007

2. The City Purchasing Office is open for the receipt of proposal from 8:30 AM until 4:30 PM, Monday through Friday (excluding City holidays). The City is not responsible for deliveries attempted outside of these time periods or misdirected to other offices.
3. The time of receipt shall be determined by the time the hard copy proposal is signed in at the Purchasing Office. Offerors are solely responsible for ensuring that their proposal is stamped by Purchasing Office personnel.
4. **Any proposal received after the proposal due date and time as detailed on the first page of this solicitation whether by mail or otherwise, will not be accepted or considered.** The time of receipt shall be determined by the time the proposal is signed in at the Purchasing Office. Offerors are solely responsible for ensuring that their proposal is stamped by Purchasing Office personnel by the deadline indicated.
The City is not responsible for delays in the delivery of mail by the U.S. Postal Service, private couriers, the intra-City mail system or delivery by other means. Offerors are solely responsible for ensuring that their proposal is received and stamped by Purchasing Office personnel by the deadline indicated.
5. See paragraph A.1.b above for information on submission requirements for the PDF copy of the Proposal.
6. The City, and its officers, employees or agents will not be responsible for the opening of a proposal envelope or package prior to the scheduled opening if that envelope or package is not appropriately sealed and marked as specified.
7. If the City declares administrative or liberal leave, scheduled receipt of proposals will be extended to the next business day after which administrative or liberal leave has been canceled.
8. Oral proposals or proposals delivered by electronic means such as facsimile and e-mail are not allowed and proposals so delivered will not be considered.
9. **Offerors are solely responsible for checking the City's Website to insure that they have the most current information regarding the RFP.**
10. All erasures, interpolations, and other changes in the proposal shall be signed or initialed by the Offeror. Carelessness in quoting business terms (i.e. prices), or in preparation of the proposal will not relieve the Offeror. When an error is made in extending total prices, the unit price will govern. Offerors are cautioned to recheck their proposals for possible error. Errors discovered after negotiation cannot be corrected, and the Offeror will be required to perform if its proposal is accepted.
11. Conditional proposals are subject to rejection in whole or in part.
12. Under no circumstances shall an Offeror, whose proposal has not been awarded, be entitled to any claim for compensation under this solicitation.

D. Proposal Submission Covenants And Certifications

The Offeror's signature on the RFP Cover Page covenants and certifies acknowledgement and compliance with following:

1. Fully Informed

The Offeror acknowledges that they have read this solicitation, understand it, has satisfied itself from its own investigation of the conditions to be met and/or products to be provided, fully understands Offeror's obligation, agrees to be bound by this

solicitation's terms and conditions (except as otherwise explicitly provided in writing), and will not make any claim for, or have right to cancellation or relief from the contract because of any misunderstanding or lack of information. In addition the Offeror has or will provide properly trained employees, staff, subcontractors (if approved by the City), or other personnel; and has familiarized itself with all federal, state, and local laws, ordinances, and rules and regulations; that in any manner may affect the cost, delivery, progress, or performance of products and/or work proposed and to be provided under this RFP.

2. Collusion

In the preparation and submission of this RFP, the Offeror did not, either directly or indirectly, enter into any combination or arrangement with any person, firm or corporation or enter into any agreement, participate in any collusion, or otherwise take any action in the restraint of free, competitive bidding in violation of the Sherman Act (15 U.S.C. Section 1 et seq.) or Sections 59.1-9.1 through 59.1-9.17 or Sections 59.1-68.6 through 59.1-68.8 of the Code of Virginia.

3. Employees Not to Benefit

- a. To the best of the Offeror's knowledge, no City of Falls Church official or employee having official responsibility for the procurement transaction, or member of his or her immediate family (including spouse, parents or children), has received, been promised, directly or indirectly, or will receive any financial benefit, including but not limited to fees, commission, finder's fee, political contribution or any similar form of remuneration, or other financial benefit of more than nominal or minimal value on account of the act of awarding and/or executing this contract.

If such a benefit has been received or will be received, this fact shall be disclosed with the proposal or as soon thereafter as it appears that such a benefit will be received. Failure to disclose the information prescribed above may result in suspension or debarment, or rescission of the contract made, or could affect payment pursuant to the terms of the contract.

- b. Whenever there is reason to believe that a financial benefit of the sort described in paragraph "a" has been or will be received in connection with a proposal or contract, and that the contractor has failed to disclose such benefit or has inadequately disclosed it, the City Manager, as a prerequisite to payment pursuant to the contract, or at any other time, may require the Contractor to furnish, under oath, answers to any interrogatories related to such possible benefit.
- c. In the event the Offeror has knowledge of benefits as outlined above, this information should be submitted with the proposal. If the above does not apply at time of award of contract and becomes known after inception of a contract, the Offeror shall address the disclosure of such facts to the City of Falls Church, 300 Park Avenue, Falls Church, VA 22046. Relevant Invitation For RFP Number should be referenced in the disclosure.

4. Licenses and Insurance

The firm submitting the Offeror is licensed and registered to do business in the Commonwealth of Virginia and has the current Contractor's licenses as may be required under this solicitation as of the date of Offeror submission.

if awarded the contract, the Contractor shall have insurance coverages as specified in section entitled "Standard Provisions", sub-section entitled "Insurance" at the time the work commences and shall submit proof of such insurance to the City as stipulated in that section.

5. Ethics In Public Contracting

The provisions, requirements, and prohibitions as contained in Sections 2.2-4367 through 2.2-4377, of the Virginia Public Procurement Act as set forth in the Code of Virginia, as amended, pertaining to Offerors, Offerors, contractors, and subcontractors are applicable to this solicitation. By submitting a proposal, the Offeror certifies that their proposal is made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

6. Conflict of Interest

The provisions referenced in the paragraph above entitled "Ethics In Public Contracting" above, supplement, but do not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interests Act (§§ 2.2-3100 et seq.), the Virginia Governmental Frauds Act (§§ 18.2-498.1 et seq.), and Articles 2 (§§ 18.2-438 et seq.) and 3 (§§ 18.2-446 et seq.) of Chapter 10 of Title 18.2. The provisions apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act.

7. Employment Discrimination By Contractor Prohibited

During the performance of any resultant contract, the Offeror will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, and Section 2.2-4311 of the Virginia Public Procurement Act which provides that:

In every contract over \$10,000.00 the provisions in "a" and "b" below apply:

a. During the performance of this contract, the contractor agrees as follows:

- 1) The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- 2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
- 3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

b. The Contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over \$10,000.00, so that the provisions will be binding upon each subcontractor or vendor.

8. Drug Free Workplace

Every Contract over \$10,000 the following shall apply:

During the performance of any resultant contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all

solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in conjunction with a specific contract awarded to a contractor in accordance with this section, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

XVIII. PROPOSAL EVALUATION CRITERIA

- A. All Proposals shall be reviewed and evaluated by the City's Selection & Evaluation Committee ("Committee"). Proposals determined not to meet one or more material RFP requirements may be excluded from further consideration.
- B. The following factors will be considered by the Committee in the selection of a Contractor with the first two factors being relatively more important.
 1. **Attributes/Credentials of the Offeror/Project Team** - These factors include the experience, technical capabilities, professional competence, and qualifications of the Offeror, Project Manager and other personnel to be assigned to provide their services in accordance with the Scope of Services. Favorable references from other commercial and/or governmental entities. Documented experience in performing and completing similar tasks/services for other governmental and/or commercial clients in a timely manner.
 2. **Project Approach/Methodology** – Depth of response, a clearly demonstrated understanding of the City's needs, the work to be performed, and the extent to which the Offeror is likely to be able to achieve the desired results. The completeness and reasonableness of the Offeror's proposed work plan for accomplishing the Scope of Work and ability to meet proposed target/schedules for accomplishing the tasks.
 3. **Proposal Compliance and Presentation** – The Offeror's responsiveness and extent to which the proposal meets the requirements of the RFP. Any proposed exceptions to Contract language, Conditions and Instructions to Offerors, Scope of Work requirements, or other sections of the RFP.
 Offerors may be required to give an oral presentation of their proposal to the Evaluation Committee. This will provide an opportunity for the Offeror to clarify or elaborate on the proposal. Oral presentations are strictly at the option of the City and may or may not be conducted. Therefore, proposals should be comprehensive, competitive and complete.
 4. **Client References** – Previous client evaluations and references from other commercial and/or governmental entities shall be considered to include documented experience in performing and completing similar tasks/services for other governmental and/or commercial clients in a professional, efficient and timely manner.
- C. Rating Criteria - The Committee will evaluate the responses of all Offerors based on the criteria above to create a short list of those deemed responsible and most qualified to perform the work.
- D. The City may make such reasonable investigations and evaluations as deemed proper and necessary to determine the ability of the Offeror to perform the services/furnish the goods, and the Offeror shall furnish to the City all such information and data for this purpose as may be requested.

The City reserves the right to: (1) evaluate the Offeror's fiscal responsibility and request a copy of a current Dunn and Bradstreet "Business Information Report", other equivalent independent study which includes an in-depth analysis of the Offeror's financial position, business overview, products and services, history, executives, etc., (if available), and/or the Offeror's last two audited financial statements and/or other applicable data; (2) make on – site visitations to inspect and/or assess the Offeror's physical facilities and other capabilities to satisfy questions regarding the Offeror's capabilities, (3) request documentation that Offeror is licensed under applicable laws of the Commonwealth of Virginia, and/or (4) request certification of other Offeror claims and contact references provided in the proposal as well as others for whom the Offeror has provided services.

The City further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such Offeror fails to satisfy the City 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.

XIX. PRESENTATION/DEMONSTRATION:

If in the City's opinion, Offeror presentations or demonstrations of the Offeror's proposed services and/or system's features and capabilities are warranted, the City will notify the appropriate Offerors. Such presentation or demonstration will be at a City site at a date and time mutually agreed to between the City and Offeror and will be at the Offeror's expense.

Presentations are strictly at the option of the City and may or may not be conducted. Therefore, proposals should be comprehensive and complete.

XX. BASIS OF AWARD

- A. The City shall engage in individual discussions with two (2) or more Offerors it deems to be fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence to provide the required services. Repetitive informal interviews are permissible. Offerors will be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed contract, as well as alternative concepts. At the discussion stage, the City may request and discuss non-binding fee schedules and/or total project costs including man-hours or costs for services.
- B. At the conclusion of discussions, on the basis of the evaluation criteria so stated in the RFP and all information developed in the selection process to this point, the City shall select in the order of preference two (2) or more Offerors whose professional qualifications and proposed services are deemed most meritorious.
- C. Negotiations shall then be conducted, beginning with the highest ranked Offeror. If a contract satisfactory and advantageous to the County can be negotiated at a price considered fair and reasonable, award shall be made to that Offeror. Otherwise, negotiations with the Offeror ranked highest shall be formally terminated and negotiations conducted with the Offeror ranked next highest, and so on until a contract is awarded at a fair and reasonable price. Alternately, the City may elect to cancel this solicitation and make no award.
- D. Should the City determine in writing and in its sole discretion that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Offeror.
- E. The award document will be a contract incorporating by reference all the requirements, terms, and conditions of the solicitation and the Offeror's proposal as negotiated.
- F. Offerors are advised that, in the event of receipt of an adequate number of proposals, which, in the opinion of the City, require no clarifications and/or supplementary information, such proposals may be evaluated without further discussion.
- G. Offerors may inspect the proposal records after evaluation and negotiations are complete, but prior to award (Code of Virginia, §2.2-4342D). The Proposal Evaluation results shall remain

confidential until after the Notice of Contract Award and contract execution with the successful Offeror(s). Properly designated proprietary information from competing Offerors shall not be disclosed to the public or competitors, except as may be required by law.

- H. All awards for professional good and services over \$60,000 are contingent upon City Council approval.

XXI. PROTEST OF AWARD OR DECISION TO AWARD

- A. Public announcement of an award or intent to award will be posted on the City's website: www.fallschurchva.gov; the "Purchasing & Procurement" link and the Public Notices bulletin board at:

City Hall Office Building
300 Park Avenue, 1st Floor, East Wing
Falls Church, VA 22046

- B. The City is not required to furnish a statement of the reasons why a particular proposal was not deemed the most advantageous or otherwise debrief any Offeror.
- C. Any Offeror may protest the award or decision to award only in accordance with the provisions of Sections 2.2-4357 through 4364 of the Code of Virginia, and only if such is provided for in such Code section.

XXII. NOTICE OF ACCEPTANCE/CONTRACT DOCUMENTS

- A. There is no binding agreement, no contractual relationship, no understanding nor mutual assent until a contract is signed, executed and exchanged by and between the Offeror and the City or Purchase Order is issued and accepted..
- B. The contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The contract may be amended or modified only by written modification.

XXIII. TAX EXEMPTION

The City is exempt from the payment of federal excise taxes and the payment of State Sales and Use Tax on all tangible, personal property for its use or consumption. Tax exemption registration number 54-6001271 applies. Certificated furnished upon request. The price offered must be net, exclusive of taxes. However, when under established trade practice any federal excise tax is included in the list price, an Offeror may quote the list price and shall show separately the amount of federal tax, either as a flat sum or as a percentage of the list price, which shall be deducted by the City. Materials used in the performance of construction contracts are subject to Virginia Sales/Use Tax as described in Section 630-10-27J of the Virginia Retail Sales and Use Tax Regulations.

XXIV. STANDARD PROVISIONS

- A. Section Headings: The headings of the sections in the "Standard Provisions" and/or "General Conditions and Instructions to Offerors" are inserted for convenience only and are not intended to affect the meaning or interpretation of this solicitation or any resultant contract.
- B. Precedence of Terms: In the event that there is a conflict between any terms and conditions in this section and the General Conditions and Instructions to Offerors, the Standard Provisions shall apply.

1. Authority to Transact Business in Virginia

A Contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic

or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described herein that enters into a Contract with the City pursuant to the Virginia Public Procurement Act 2.2-4300 et seq. shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50 of the Code of Virginia, to be revoked or cancelled at any time during the term of the Contract. The City may void any Contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

2. Choice Of Law and Courts

Any contract resulting from this solicitation is made, entered into, and shall be performed in the City of Falls Church, Virginia, unless otherwise specified, and shall be governed in all respects by the applicable laws of the Commonwealth of Virginia. Any litigation with respect thereto shall be brought in the courts of the Commonwealth. Any dispute arising out of the contract, its interpretations, or its performance shall be litigated only in either the General District Court of the City of Falls Church or in the Circuit Court of the County of Arlington, Virginia.

3. Compliance With Laws

The Contractor shall comply at its own expense with all federal, state, and local laws, rules, regulations, orders and other legal requirements that are directly or indirectly related to the Contractor's performance under the contract, including procurement of required permits, certificates, licenses, insurance, approvals, and inspections.

The Contractor shall comply with the Code of Virginia including Section 2.2-4300, the Virginia Procurement Act; well as the City Code, Ordinances, Laws and Policies which are all incorporated herein by reference.

4. Authorized Dealer/Distributor Responsibilities

The Contractor, as the manufacturer or an authorized dealer/distributor of the products specified in the solicitation, hereby transfers all rights, including software rights, licenses and documentation to the City upon product acceptance.

5. Procedures

The extent and character of the services to be performed by the Contractor(s) or products delivered shall be subject to the general control and approval of the City's Project/Contract Manager assigned under the contract, the Purchasing Manager or his/her authorized designee(s). The contractor shall only comply with requests and/or orders issued by the Project/Contract Manager or his authorized designee(s) acting within their authority for the City.

All communications between the parties relating to material contractual issues shall be through the Purchasing Agent and any material change to the contract must be approved in writing by the Purchasing Agent and the Contractor to be deemed binding.

6. Workmanship, Inspection and Acceptance

Insofar as possible, the Contractor, in carrying out his/her work, must employ such methods or means as will not cause interruption of or interference with the work of any other Contractor, or City personnel at the site.

All work under the resulting contract shall be performed in a skillful and workmanlike manner. The City may, in writing, require the Contractor to remove any employee from work that the City deems incompetent or careless.

The City reserves the right and may, from time to time, conduct any test and/or make inspections of the work performed, being performed or good delivered or being delivered under the contract. Any inspection by the City does not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements. The presence of an authorized City representative or agent ("Inspector") shall not lessen the

obligation of the Contractor for performance in accordance with the contract requirements, or be deemed a defense on the part of the Contractor for infraction thereof. The Inspector is not authorized to revoke, alter, enlarge, relax, or release any of the requirements of the contract documents. Any omission or failure on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material. Notification of an omission or failure will be documented by the Purchasing Agent.

If goods or services do not conform to requirements, in addition to all other rights and remedies City may have, the City may reject the goods or services in full or part. Non-conforming goods may be returned or non-conforming services rejected at the City's option for refund, credit or replacement at Contractor's expense. Goods rejected upon receipt remain the property of Contractor. The City's inspection, or lack of inspection, shall not affect any express or implied warranties, nor shall the City waive any rights to return goods which contain latent defects discovered in the testing of the City's products containing such goods. Nothing in this section affects or limits any of the City's rights or remedies available under the contract.

7. Key Personnel/ Project Staff

Any personnel named in the offer details will remain responsible for performance of the described task(s) throughout the period of any contract resulting from the solicitation. No diversion or replacement may be made without advance written notice to the Purchasing Agent and submission of a resume of the proposed replacement for review and approval by the City.

NO substitutions, additions or cancellations, including those of key personnel, are permitted after Contract award without written approval by the City's Purchasing Agent or his/her designee. Where specific employees are proposed by the Contractor for the work, those employees shall perform the work as long as those employees work for the Contractor, either as employees or subcontractors, unless the City agrees to a substitution. Requests for substitutions shall be reviewed, including submission of a resume for the proposed replacement, for approval approved by the City at its sole discretion.

The City will, throughout the life of the contract, have the right of reasonable rejection and approval of staff or subcontractors assigned to the project by the Contractor. If the City reasonably rejects staff or subcontractors, the Contractor must provide replacement staff or subcontractors satisfactory to the City in a timely manner and at no additional cost to the City. The day-to-day supervision and control of the Contractor's employees shall be the sole responsibility of the Contractor.

Where required, personnel used by the Contractor to perform under the contract shall be licensed and certified as required by the Virginia Board for Contractors. Contractors shall submit evidence of licensing, trades certification and training within five (5) calendar days of the City's request. The City reserves the right to reject any of Contractor's service personnel who, in the City's judgment, are not adequately qualified to perform the work.

8. Purchase Orders

Contractor shall not start work prior to the receipt of a purchase order. A purchase order may be enclosed with the resulting contract or may be issued shortly thereafter, and will become an integral part of the resulting contract.

Any purchase order issued by the City which references this solicitation or resultant contract, shall be deemed to be placed under and incorporate the terms and conditions of this solicitation or resultant contract as well as any supplemental terms and conditions agreed to by the parties in writing. However, the City's failure to specifically incorporate, identify, or reference the contract on any purchase order shall in no manner affect the applicability of these terms and conditions.

Contractors providing goods or services without a signed City purchase order, do so at their own risk. The City will not be liable for payment of any purchases made by its employees without appropriate purchase authorization signed by City's Purchasing Agent.

In case of an emergency as defined by the City Project Manager, Contract Manager or other authorized representative, the Contractor shall cooperate to the extent reasonably requested with the understanding that a Purchase order will follow.

Orders for less than \$1,000.00 do not require a Purchase Order per the City's Procurement Policy and Guidelines incorporated herein by reference.

9. Work Site Damages

Any damage to property, whether owned by the City or others, resulting from work performed under this contract, shall be repaired or replaced to the City's satisfaction at the Contractor's expense. Contractor shall immediately notify City of any such damages.

10. Ownership of Material

Ownership of all data, materials, and documentation originated and prepared for the City pursuant to the solicitation shall belong exclusively to the City and be subject to public inspection in accordance with the Virginia Freedom of Information Act.

11. Use Of Information:

Any specifications, drawings, sketches, models, samples, tools, computer or other apparatus programs, technical or business information or data, written, oral, or otherwise (all hereinafter designated "Information") which the City furnished, or shall furnish, to the Contractor under the contract or in contemplation of this agreement, or that Contractor comes in contact with on City premises or under City control shall remain City property. All copies of such information in written, graphic or other tangible form, and all information, ideas, discoveries, improvements, derived from or reflecting such information, shall be returned to City at its request, and in any event within thirty (30) days after the expiration or termination of the contract. Unless such information was previously known to Contractor free of any obligation to keep it confidential, or has been or is subsequently made public by City or a third party without breach of any agreement, it shall be kept strictly confidential and shall be used only in performing services under this Agreement, and may not be used for other purposes except upon such terms as may be agreed upon between Contractor and City in writing. Unless approved in writing by the Purchasing Agent, the Contractor may not sell or give to any individual or organization any information, reports, or other materials given to, prepared, or assembled by the Contractor under the final contract.

12. Task Order Cost Proposals

- a. The City may require the Contractor to provide a cost proposal for an individual task order to include the Contractor's hours to perform the work based upon their fixed hourly rates contained in any resultant contract. The cost proposal shall also contain the Contractor's costs separated by task; detailed subcontractor costs; a narrative describing work to be performed and the estimated time for completion and other details as may be required by the City. After review and acceptance of the task order proposal, the City will issue a purchase order to perform the work, or if the task is for less than one thousand dollars (\$1,000), the City may issue an Authorization to Proceed letter, signed by a duly authorized City representative. The proposal shall be prepared at no additional cost to the City.
- b. When the scope of services for the task order involves work of such a nature that the Contractor cannot reasonably estimate the time which would be required to provide the services, the City may, at its sole option, agree to an Hourly Rate Purchase Order based on the actual hours worked times the hourly rates indicated in the Contractor's binding fee schedule and other approved expenses. A maximum Purchase Order fee or cost not to exceed limitation shall be agreed upon for Hourly Rate Purchase Orders. When an Hourly Rate Purchase Order is used, the Contractor shall submit

detailed time records, documentation for other expenses, and such other evidence as the City may require to support the Contractor's billing request.

- c. For Services required by the City that are not specifically identified in the Contract Fee Schedule but covered under the scope of this Contract, the Consultant shall submit to the City Project Manager, in the task order cost proposal, the detailed costs for these Services.
- d. Any Contractor Technician time shall only be payable for on-site time. Any overtime rates require advance written notice and approval of the City. Such approved overtime rates shall only apply after forty (40) hours of work per week.
- e. Individual task orders authorized under this Contract shall not exceed one hundred thousand dollars (\$100,000) each.

13. Federal Government and/or VDOT Requirements

If any tasks under any resultant contract is to be funded by the Virginia Department of Transportation (VDOT) or Federal Government grant, the Contractor shall comply with supplemental terms and conditions, including the utilization of Disadvantaged Business Enterprises (DBEs), as may be required by VDOT and/or the Federal Government for applicable tasks and/or projects, projects funded in whole or in part by the American Recovery and Reinvestment Act Of 2009 (ARRA) and/or other project grants. Such required supplemental terms and conditions will be included in the contract as may be amended for such inclusion as is permitted by VDOT and/or the Federal Government.

14. BPOL License Requirement

All firms with a business location/address within the City limits and doing business in the City of Falls Church must be licensed in accordance with the City's Business, Professional and Occupational Licensing (BPOL) Tax Ordinance. Wholesale and retail merchants without a business location in the City are exempt from this requirement. Questions regarding the BPOL license and tax should be referred to the Office of the Commissioner of the Revenue, 300 Park Avenue, Suite #104E, Falls Church, Virginia 22046-3301. Phone: (703) 248-5019; Fax: (703) 248-5212.

15. Payment Terms

Payment will be made once each month based upon satisfactory and actual services rendered and/or products received and invoices submitted. All such invoices will be paid net thirty (30) days after receipt of an undisputed invoice unless (i) more favorable terms are stated on Contractor's invoice and the City elects to pay on such terms, or (ii) any items thereon are questioned, in which event payment will be withheld pending verification of the amount claimed and the validity of the claim. The Contractor shall provide complete cooperation during any such investigation.

Payment terms shall appear on vendor's invoice. Any discount period shall be computed from the date of proper receipt of the Contractor's correct invoice. Late payment charges shall not exceed the allowable rate specified by the Commonwealth of Virginia Prompt Payment Act (1% per month).

The City reserves the right to withhold any or all payments or portions thereof for Contractor's failure to perform in accordance with the provision of the contract or any modifications thereto.

Payment by the City of invoices does not mean or imply that the goods or services have been accepted and does not impair or limit in any way the City's full rights and remedies which shall be and remain as set forth hereof.

16. Invoicing

All invoices to the City shall reference the applicable Purchase Order number and be submitted to the name and address on the Purchase Order unless otherwise directed by the City.

The prices and payments shall be full compensation for the products, services, labor, tools, equipment, transportation and all other incidentals necessary to deliver the products and/or complete the services ordered.

Conflicting pre-printed provisions on the reverse or front of the Contractor's form(s) shall be deemed deleted.

Invoice(s) for final payment shall be submitted within thirty (30) days after completion and acceptance of the work or acceptance of the goods unless otherwise specified in the contract or mutually agreed upon in writing.

17. Changes

The City may, at any time, by written order, require changes within the general scope of the services to be performed or the products to be provided under contract.

If such changes cause an increase or decrease in the Contractor's cost of, or time required for performance of any services or provision of products under the contract, within fifteen (15) days (or other mutually agreeable time period) of receipt of a change order, the Contractor shall submit a written proposal for any equitable adjustment to the contract price, delivery schedule, or both. Upon mutual agreement, authorized representative of the parties shall then agree to and sign such modification to the purchase order or contract. Contractor's receipt and performance of a Purchase Order detailing such changes shall be deemed acceptance.

The Contractor shall not begin work on any alteration requiring a change order until the agreement, setting forth the changes/modifications, has been executed by the City and the Contractor or associated Purchase Order received. No products or services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written authorization of the City.

If a satisfactory agreement cannot be mutually agreed to for any item requiring a change order, the City reserves the right to terminate the contract as it applies to the items/services in question and make such arrangements as may be deemed necessary to complete the work.

No payment shall be made to the Contractor for any extra material or services, or of any greater amount of money than stipulated to be paid in the contract, unless some changes in or additions to the contract requiring additional outlay by the Contractor shall first have been expressly authorized and ordered in writing by change order or Contract Amendment.

18. Additions/Deletions:

The City reserves the right to add similar items/services or delete items/services specified in the resultant contract as requirements change during the period of the contract by contract amendment. The City and the Contractor will mutually agree to prices for items/services to be added to the contract and/or reduction in overall costs for items/services deleted. Contract amendments will be issued for all additions or deletions.

19. Safety

All contractors and subcontractors performing services for the City are required to comply with OSHA standards, all other Federal and State guidelines, and other industry accepted safety rules and regulations.

Precaution shall be exercised at all times for the protection of persons (including employees) and property.

The Contractor and all subcontractors are to comply with the Occupational Safety and Health Act of 1970, Public Law 91-956, as it may apply to this Contract.

Contractor(s) shall be held responsible for the safety of their employees and any unsafe acts or conditions that may cause injury or damage to any persons or property within and around the work site area under this contract. The City has sole right to dismiss contractors

and/or sub-contractors for non-compliance to the above rules and regulations and/or safety violation. The contractor must rectify all safety concerns prior to continuance of work.

20. Communications

At least one on-site worker who has supervision authority must be conversant in the English language. This is necessary because of the need to provide job instructions, ensure compliance with safety regulations and communicate with City staff and/or other contractors on site. The City shall be sole judge of the communication level of the contractor's employees. Failure to have an English- speaking worker on each job is cause to halt work until the situation is remedied. Should this happen, it shall be at no additional cost to the City.

21. Warranties and Guarantees

Contractor warrants to the City that services provided hereunder shall be diligently, efficiently and skillfully performed in a manner which meets or exceeds the highest prevailing standards in the industry, and in accordance with applicable specifications.

Contractor represents and warrants that all products will be new, free from defects in material or workmanship and will conform to, comply, function and perform in accordance with the requirements and specifications, and that Contractor will make all necessary adjustments, repairs and replacements to maintain all goods in such condition during the term of the applicable warranty, in accordance with the terms and conditions hereof. Unless otherwise specified such adjustments, repairs and replacements will be provided at no additional cost to the City during the applicable warranty term. Contractor further warrants that each product furnished under the contract will perform such general and specific operations and have such general and specific characteristics as described and claimed for them in any of Contractor's published literature, descriptions and specifications whether or not such literature, descriptions and specifications are included in or referenced by a Purchase Order or this Agreement.

All warranties shall survive inspection, acceptance and payment.

Contractor's and/or manufacturer's warranty shall cover all parts and factory labor. Any warranty specified by the Contractor shall not act to void longer guarantees given by the manufacturer of the equipment or its components.

The Contractor agrees to: furnish services described in the solicitation and resultant contract at the times and places and in the manner and subject to conditions therein set forth provided that the City may reduce the said services at any time; enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence; and render all work and services in strict conformance to all laws, statutes, and ordinances and the applicable rules, regulations, methods, and procedures of all government boards, bureaus, offices, and other agents.

The City's approval of designs or specifications furnished by Contractor shall not relieve the Contractor of its obligations under this warranty.

All periods of warranty, and periods of manufacturers' product and/or equipment warranties shall commence on the date of Acceptance of the Work and shall extend for a minimum period of one year thereafter

22. Default

In case of failure to deliver products, to meet specifications, in accordance with the contract terms and conditions, the City, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the City may have.

23. Contract Disputes Resolution

Arbitration shall not be applicable but the parties shall negotiate in good faith to resolve any dispute arising under the contract. The Contractor's dispute shall detail all pertinent facts of the dispute and the Contractor's desired outcome.

Contractual disputes, whether for money or other relief, shall be submitted in writing no later than 60 days after final payment; however, written notice of the Contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the dispute is based. Any notice or dispute shall be delivered to the City's Purchasing Agent, 300 Park Avenue, 3rd Floor East Wing, Falls Church, VA and shall include a description of the factual basis for the dispute and a statement of the amounts claimed or other relief requested. The Purchasing Agent shall render a decision on the claim and shall notify the Contractor within thirty (30) days of receipt of the dispute. The Contractor may appeal the decision of the Purchasing Agent to the City Manager by providing written notice to the Purchasing Agent, within fifteen (15) days of the date of the decision. The City Manager shall render a decision on the dispute within 60 days of the date of receipt of the appeal notice and such decision shall be final unless the Contractor appeals the decision in accordance with the Virginia Public Procurement Act. Invoices for all services or goods provided by the Contractor shall be delivered to the City no later than thirty (30) days following the conclusion of the work or delivery of the goods, unless other terms are prescribed by contract.

A Contractor may not institute legal action until all statutory requirements have been met or prior to receipt of City's decision on the claim.

Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

24. Termination

Subject to the provisions below, the contract may be terminated by the City upon written notice; but if any work or service hereunder is in progress, but not completed as of the date of termination, then the contract may be extended upon written approval of the City until said work or services are completed and accepted.

In every such event in which the City shall terminate the services of the Contractor, the Contractor is obligated and agrees to refund the City any and all monies paid (including advance payments) to it by the City for products not delivered and/or services not rendered by said Contractor as of the date on which Contractor shall receive Notice of Termination.

The City may exercise the City's right of setoff as to any amounts the City may owe the Contractor. The City may require Contractor to transfer title and deliver to the City any or all items produced or procured by Contractor under this contract for performance of the work terminated.

a. Termination for Convenience

The City may cancel and terminate the contract in part or in whole, without penalty for its convenience. Any such termination shall be effected by delivery of a written Notice of Termination to the Contractor at least ten (10) business days prior to the effective date. After receipt of a notice of termination, the Contractor must stop all work and deliveries under the purchase order/contract on the effective date and to extent specified in the notice. However, any termination notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issues prior to the effective date of the termination. A reasonable, equitable adjustment in the contract price shall be made for completed performance, but no amount shall be allowed for anticipated profit on unperformed services.

b. Termination for Cause

The City may terminate the contract at any time, without penalty, by written notice to the Contractor for: (1) cause, default, or negligence ("default") on the part of the Contractor; or (2) if the Contractor should be adjudged bankrupt, or make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of the Contractor's insolvency ("bankruptcy"). In the case of termination for cause, advance written notice by the City is not required. In addition to any right to terminate, the City may enforce any remedy available at law or in equity in connection with such default or bankruptcy, and the Contractor shall be liable for all damages to the City resulting from Contractor's default or bankruptcy.

In the event any Termination for Cause is found to be improper or invalid by any court of competent jurisdiction, then such termination shall be deemed to have been a Termination for Convenience.

c. Termination Due to Unavailability of Funds in Succeeding Fiscal Years

Multiyear contracts may be continued each fiscal year only after funding appropriations and program approval have been granted by the appropriate City authority. If necessary funds are not appropriated or otherwise made available to support continuation of the performance of the contract in a subsequent fiscal year, then the contract shall be canceled on the last day of the then current fiscal year or when the appropriation made for the then current year for the services covered by this Contract is spent, whichever event occurs first, and the Contractor shall be reimbursed for the reasonable value of any documented nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under this agreement. No amount shall be allowed for anticipated profit on unperformed services.

25. Delays/Service Failure

Failure of a Contractor to deliver products or services within the time specified, or within reasonable time as interpreted by the City, or failure to make replacements/corrections of rejected products/services when so requested, immediately or as directed by the City, shall constitute authority for the City to purchase in the open market products/services of comparable grade/quality to replace the services, products rejected, and/or not delivered. Should public necessity demand it, the City reserves the right to use or consume articles delivered or services performed which are substandard in quality, subject to an adjustment in price to be determined by the City.

If delay is foreseen, Contractor shall give thirty (30) days prior written notice to the designate City Project Manager. The City has the right to extend delivery date if reasons appear, in the sole discretion of the City, to be valid. Contractor must keep the City advised at all times of status of order. Except as otherwise provided in the contract, default in promised delivery or failure to meet specifications, authorizes the City to purchase supplies, equipment, or services elsewhere and charge full increase in cost and handling to defaulting Contractor.

26. Indemnification

The Contractor agrees to indemnify and hold harmless the City of Falls Church, Virginia, its officers, agents, and employees from any liability, claim, 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 department or to failure of the using department to use the materials, goods or equipment in the manner already and permanently described by the contractor on the materials, goods or equipment delivered. The Contractor agrees to protect the City from claims involving infringement of patent or copyrights.

Contractor expressly understands and agrees that any performance bond or insurance protection required by this contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify, keep and hold harmless and defend the City as herein provided.

The Contractor shall also save the City, its officers, agents and employees harmless from liability of any nature or kind for the use of any copyrighted or un-copyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a Contract for which the Contractor is not the patentee, assignee, licensee or City.

The Contractor shall protect the City against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery; furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work or to the work of other contractors, for which his or her workers are responsible and protect the City from loss or damage to City owned property while it is in the custody of the Contractor.

If the Contractor uses any design, device, or materials covered by letters patent or copyright, it is mutually agreed and understood without exception that the contract price includes all royalties or costs arising from the use of such design, device, or materials in any way involved with the work.

27. Insurance

- a. The Contractor is responsible for its work and for all materials, tools equipment, appliances, and property of any and all description used in connection therewith. The Contractor assumes all risk of direct and indirect damage of or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the contract, or in any way whatsoever with the contracted work.
- b. The Contractor shall, during the continuance of all work under the contract provide the insurance as detailed below:
 - 1) Maintain statutory Workers' Compensation and Employer's Liability insurance in limits of not less than \$100,000 to protect the contractor from any liability or damages for any injuries (including death and disability) to any and all of its employees, volunteers, or subcontractors including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia, or which may be hereinafter enacted.
 - 2) Commercial General Liability - \$1,000,000 combined single limit coverage with \$2,000,000 general aggregate covering all premises and operations and including Personal Injury, Completed Operations, Contractual Liability and, where applicable to the project (as determined by APS), Products and Independent Contractors. The general aggregate limit shall apply to this project.
 - 3) Maintain owned, non-owned, and hired Automobile Liability insurance, in the amount of \$1,000,000 per occurrence/aggregate, including property damage, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the contractor. In addition, all mobile equipment used by the contractor in connection with the contracted work, will be insured under either a standard Automobile Liability policy, or a Commercial General Liability policy. The Garage Keeper's Liability coverage shall also be maintained where appropriate.
 - 4) Maintain Contractors Liability insurance in the amount of \$1,000,000 per occurrence/aggregate to insure against loss due to liability imposed upon an owner/contractor for acts arising out of the operations of independent

contractors/subcontractors or out of an owner's/contractor's supervisory activity.

- 5) Maintain Professional Liability Insurance. --The policy shall cover the City for all sources of liability which would be covered by the latest edition of the standard Errors and Omissions Liability Coverage Form (E&O), as filed for use in the Commonwealth of Virginia by the Insurance Services Office, without the attachment of restrictive endorsements.

The E&O Policy shall include the successful Offeror and the Offeror's subcontractors of every tier as the Offeror designated in the declarations.

The minimum E&O Policy limits to be provided by the successful Offeror (inclusive of any amounts provided by an umbrella or excess policy) shall be \$1,000,000 per occurrence combined single limit for bodily injury liability and property damage liability. The limits afforded by the E&O Policy (or umbrella or excess policy with respect to it) shall apply only to the City and City's officials, officers, agents and employees and only to claims arising out of or in connection with the work under this contract.

Notice of Cancellation and/or Restriction - The policy must be specifically endorsed to provide the City with forty-five (45) days' notice of cancellation, non-renewal, change in coverages, and/or restriction.

- 6) Maintain Environmental Impairment Liability Insurance including sudden and accidental pollution and in transit coverage as well as coverage for storage at site in the limits of \$2,000,000 per occurrence/aggregate where appropriate.
- 7) Liability insurance may be arranged by General Liability and Automobile Liability policies for the full limits required or by a combination of underlying Liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.
- 8) Liability Insurance "Claims Made" basis: If the liability insurance purchased by the contractor has been issued on a "claims made" basis, the contractor must comply with the following additional conditions. The limit of liability and the extensions to be included as described previously in these provisions, remain the same. The Contractor must either:
 - a. Agree to provide certificates of insurance evidencing the above coverage for a period of two years after final payment for the contract. This certificate shall evidence a "retroactive date" no later than the beginning of the Contractors or sub-contractors work under this contract, or
 - b. Purchase the extended reporting period endorsement for the policy or policies in force during the term of this contract and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself.
- 9) The Contractor agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A:VI.
- 10) The Contractor will provide an original, signed Certificate of Insurance citing the contract number and such endorsements as prescribed herein before any work is started. In addition, the Contractor will secure and maintain all insurance certificates of its subcontractors, which shall be made available to the City on demand.

- 11) The Contractor will provide on demand certified copies of all insurance policies related to the contract within ten (10) business days of demand by the City. These certified copies will be sent to the City from the Contractor's insurance agent or representative. During the period of the contract, the City reserves the right to require the contractor to furnish certificates of insurance for the coverage required
- c. No change, cancellation, or non-renewal shall be made in any insurance coverage without a forty five (45) day advance written notice to the City. The Contractor shall furnish a new certificate prior to any change or cancellation dated. The failure of the Contractor to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished.
- d. Compliance by the Contractor and all subcontractors with the foregoing requirements as to carrying insurance shall not relieve the Contractor and all subcontractors of their liabilities provisions of the contract.
- e. Contractual and other liability insurance provided under this contract shall not contain a supervision, inspection or engineering services exclusion that would preclude the City from supervising and/or inspecting the project as to the end result. The Contractor shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of the subcontractors.
- f. Nothing contained in the specifications shall be construed as creating any contractual relationship between any subcontractor and the City. The Contractor shall be as fully responsible to the City for the acts and omissions of the subcontractors and of persons employed by them as it is for acts and omissions of person directly employed by it.
- g. The City, its officers and employees shall be named as an "additional insured" in the Automobile and General Liability policies and it shall be stated on the Insurance Certificate that his coverage "is primary to all other coverage the City may possess."
- h. If an "ACCORD" Insurance Certificate form is used by the Contractor's insurance agent, the words, "endeavor to" and "..... but failure to mail such notice shall impose no obligation or liability of any kind upon the company" in the "Cancellation" paragraph of the form shall be deleted or crossed out.
- i. Insurance coverage required by this solicitation shall be in force throughout the contract term. Should the Contractor fail to provide acceptable evidence of current insurance within five (5) days of written notice at any time during the contract term, the City shall have the absolute right to terminate the contract without any further obligation to the Contractor, and the contractor shall be liable to the City for the entire additional cost of procuring the uncompleted portion of the contract at the time of termination.

28. Correspondence

All communications between the parties relating to material contractual issues shall be through the Purchasing Agent and must be in writing to be deemed binding.

29. Quality

All services shall be performed in a first class workmanlike manner in accordance with current industry standards.

All products provided shall be new, not refurbished, free of material cosmetic defects, latest model, design or pack and in first class condition, including containers suitable for shipments and storage, unless otherwise indicated herein. Products shall meet or exceed industry standards for quality and reliability. Product design and construction must be consistent with current best industry or engineering practices.

All products and services shall meet the then current applicable local, state and federal rules and guidelines.

30. Brand Name Or Equivalent Items

Unless otherwise specified herein, the name of a certain brand, make or manufacturer does not restrict Offerors to the specific brand, make or manufacturer named; it conveys the general style, type, character, and quality of the product desired, and any product which the City, in its sole discretion, determines to be the equivalent of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, will be accepted.

31. Bonding/Contract Security

The City reserves the right to require a bid, performance, and/or payment bond for contracts for goods or services if specified in this solicitation in accordance with sections § 2.2-4336. "Bid Bonds", § 2.2-4337 "Performance and Payment Bonds" and other related sections of the VA Public Procurement Act. In such case, the successful Offeror shall bear the cost and be required to furnish such bid, performance, and/or bond in the specified amount with the bid and/or before award of contract, as applicable. The parties shall mutually agree upon the form of the bond document/agreement. If no bond can be furnished by the successful Offeror, the City reserves the right to award the contract to the next most highly qualified and responsible Offeror in the best interest of the City.

32. News Release/Publicity By Contractors

As a matter of policy, the City does not endorse the products or services of a Contractor. News releases or other publicity concerning any resultant contract from this solicitation will not be made by a Contractor without the prior written approval of the City. All proposed news releases will be routed to the Purchasing Agent for review and consideration of approval.

33. Emergency Purchases

If the Contractor is unable to provide the required service for any period of time, except as provided in the Section "General Terms and Conditions", paragraph entitled "FORCE MAJEURE", the Contractor is responsible for providing a backup service, satisfactory to the City, to the City at no additional cost to the City. The City reserves the right to make arrangements for service, under emergency conditions from other sources, should the Contractor be unable to provide the required service within the required time frame. If this occurs, the City further reserves the right to recover all costs from the Contractor.

34. Americans With Disabilities Act Requirements

The City is fully committed to the Americans with Disabilities Act (ADA) which guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and all City programs, activities and services. The City government contractors, subcontractors, vendors, and/or suppliers are subject to this ADA policy. All individuals having any City contractual agreement must make the same commitment. Your acceptance of any contract resulting from this solicitation acknowledges your commitment and compliance with ADA.

35. Immigration Reform And Control Act

By entering into a written contract with the City, the Contractor certifies that the Contractor does not, and shall not, during the performance of the Contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.be amended.

36. Virginia Freedom Of Information Act

All proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act.

37. Funding

A contract shall be deemed binding only to the extent of appropriations available for the purchase of goods and services.

38. Assignment

The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of any award, or any or all of its rights, obligations, or interests under this contract, without the prior written consent of the City.

If the Contractor desires to assign his/ her right to payment of the contract, Contractor shall notify the City's Purchasing Agent immediately, in writing, of such assignment of right to payment. In no case shall such assignment of contract relieve the Contractor from his or her obligations or change the terms of the contract.

39. Force Majeure

Neither party shall be liable for any delay or failure to perform its obligations in connection with any action described in this Agreement, if such failure results from any act of God, riot, war, civil unrest, flood, earthquake, acts by the public enemy, or other cause beyond such party's reasonable control (including any mechanical, electronic, or communications failure, but excluding failure caused by a party's financial condition or negligence).

40. Record Retention/Audits

The Contractor shall maintain accurate records of all invoices, amounts billable to and payments made by the City, during the performance of the contract and for a period of three (3) years from the completion of this agreement. Such records shall include, but not be limited to: all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices, including the Contractor's copies of periodic estimates for partial payment; ledgers, cancelled checks; deposit slips; bank statements; journals; contract amendments, and change orders; insurance documents; payroll documents; timesheets; memoranda; and correspondence. Such records shall be available to the City on demand and without advance notice during the Contractor's normal working hours. City personnel or designee may perform in-progress and post-audits of the Contractor's records.

41. Payments To Subcontractors

Within seven (7) days after receipt of amounts paid by the City for work performed by a subcontractor under this Agreement, the Contractor shall either:

- a. Pay the subcontractor for the proportionate share of the total payment received from the City attributable to the work performed by the subcontractor under this agreement; or,
- b. Notify the City and subcontractor, in writing, of its intention to withhold all or a part of the subcontractor's payment and the reason for non-payment.

The Contractor shall pay interest to the subcontractor on all amounts owed that remain unpaid beyond the seven-day period except for amounts withheld as allowed in item b. above.

Unless otherwise provided under the terms of this agreement, interest shall accrue at the rate of one percent (1%) per month.

The Contractor shall include this provision in each of its subcontracts requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor. The Contractor's obligation to

pay an interest charge to a subcontractor pursuant to this provision may not be construed to be an obligation of the City.

42. Time Of The Essence

Time is of the essence in respect to all provisions of the contract that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this agreement.

43. Reports

The Contractor must submit status reports as requested and appropriate to the tasks and projects that are developed under contract in a form, format and frequency satisfactory to the City.

44. Antitrust

By entering into a contract, the contractor conveys, sells, assigns and transfers to the City all rights, title, and interest in and to all causes of action the Contractor may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the goods or services purchased or acquired by the City under said contract.

45. Relationship of the Parties

The Contractor will be legally considered and acting solely as an independent contractor and neither the Contractor nor its employees or subcontractors will, under any circumstances, be considered servants or agents of the City. The City will not be legally responsible for any negligence or other wrongdoing by the Contractor, its servants or agents. The City will not withhold from the contract payments to the Contractor any federal or state unemployment taxes, federal or state income taxes, social security tax, or any other amounts for benefits to the Contractor. Further, the City will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation, normally provided by the City for its employees or officers.

Persons furnished by the respective parties shall not be considered employees of the other party for any purpose. Nothing contained in the solicitation or any resultant contract is intended to give rise to a partnership or joint venture between the parties.

46. Severability

The sections, paragraphs, sentences, clauses and phrases of this Contract are severable, and if any phrase, clause, sentence, paragraph or section of this Contract shall be declared invalid by the valid judgment or decree of a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Contract.

47. Non-Waiver

No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of the contract agreement, shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

The City's failure at any time to enforce any of the provisions of the contract or any right or remedy available hereunder or at law or equity, or to exercise any option herein provided will in no way be construed to be a waiver of such provisions, rights, remedies or options or in any way to affect the validity of this agreement. The exercise by the Client of any rights, remedies or options provided hereunder or at law or equity shall not preclude or prejudice the exercising thereafter of the same or any other rights, remedies, or options.

48. Non-Exclusive Market Rights

It is expressly understood and agreed that except as otherwise specifically provided, the contract neither grants to Contractor an exclusive privilege to sell or provide to the City any or all goods or services of the type described in the contract which the City may require, nor does it require the purchase of any goods or services from Contractor by the City. Contractor understands and agrees that the City is free to and may contract with other manufacturers and Contractors for the procurement of comparable goods or services.

49. HIPAA Compliance

The Contractor shall comply with all applicable legislative and regulatory requirements of privacy, security and electronic transaction components of the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

50. Confidentiality And Return Of Records

The Contractor agrees that all findings, memoranda, correspondence, documents or records of any type, whether written or oral, and all documents generated by the Contractor or its subcontractors as a result of the City request for services under this Contract, are confidential records ("Record" or "Records"), and neither the Records nor their contents shall be released by the Contractor, its subcontractors, or other third parties; nor shall their contents be disclosed to any person other than the City's Project Manager or designee. The Contractor agrees that all oral or written inquiries from any person or entity regarding the status of any Record generated as a result of the existence of this Contract shall be referred to the Project Manager or designee for response. At the City's request, the Contractor shall deliver all Records to the Project Officer, including "hard copies" of computer records, and at the City's request, shall destroy all computer records created as a result of the City's request for services under this Contract.

The Contractor agrees to include the provisions of this section as part of any Contract the Contractor enters into with subcontractors or other third parties for work related to work pursuant to this Contract.

No termination of this contract shall have the effect of rescinding, terminating or otherwise invalidating this section.

51. Copyright

The Contractor hereby irrevocably transfers, assigns, sets over and conveys to the APS all right, title and interest, including the sole exclusive and complete copyright interest, in any and all copyrightable works created pursuant to this Contract. The Contractor further agrees to execute such documents as the City may request to affect such transfer or assignment.

Further, the Contractor agrees that the rights granted to the City by this paragraph are irrevocable. Notwithstanding anything else in this Contract, the Contractor's remedy in the event of termination or dispute over the terms of this Contract shall not include any right to rescind, terminate or otherwise revoke or invalidate in any way the rights conferred pursuant to the provisions of this paragraph. Similarly, no termination of this Contract shall have the effect of rescinding, terminating or otherwise invalidating the rights acquired pursuant to the provisions of this "Copyright" paragraph.

The use of subcontractors or third parties in developing or creating input into any copyrightable materials produced as a part of the Contract is prohibited unless the City approves the use of such subcontractors or third parties in advance and such subcontractors or third parties agree to include the provisions of this paragraph as part of any contract they enter into with the Contractor for work related to work pursuant to this Contract

52. Data Sources

The City will provide the Contractor with all necessary and available data possessed by the City that relates to the contract. However, the Contractor is responsible for all costs for acquiring other data or processing, analyzing, or evaluating City data.

53. Provisions Required By Law Deemed Inserted

Each and every provision of laws and clauses required by law to be inserted in a contract resulting from this solicitation shall be deemed to be inserted and incorporated by reference. The contract shall be read and enforced as though the required provisions are included and if through mistake or otherwise, any such provision is not inserted or not correctly inserted, then upon the application of either party, the contract may be amended to make such Insertion.

XXV. GENERAL CONDITIONS AND INSTRUCTIONS TO OFFERORS

- A. The general rules and conditions which follow apply to all purchases and become a definite part of each formal solicitation and resulting contract award issued by the City, unless otherwise specified.
 - B. If there is a conflict between the terms and conditions in this "General Conditions and Instructions to Offerors" and the Standard Provisions and/or conditions in other attachments to this solicitation, the latter shall take precedence.
1. **DEFINITIONS:** The terms defined in this section shall have the meanings set forth below whenever they appear regardless of case (capitalized or not), unless the context in which they are used clearly requires a different meaning or a different definition is described for a particular Section or provision:
 - a. **OFFEROR:** Any individual, company, firm, corporation, partnership or other organization providing a proposal in response to a solicitation issued by the Purchasing Manager and offering to enter into contract with the City.
 - b. **CONTRACTOR/CONSULTANT:** Any individual, company, firm, corporation, partnership or other organization to whom an award is made by the City.
 - c. **DAY:** Unless otherwise specified "day" or "days" shall mean calendar days
 - d. **GOODS/PRODUCTS:** All material, equipment, supplies, printing, and/or automated data processing/information technology hardware and software.
 - e. **INFORMALITY:** A minor defect or variation of a proposal from the exact requirements of the Request for Proposal which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.
 - f. **PROFESSIONAL SERVICES:** Any type of professional service performed by an independent contractor within the practice of accounting, actuarial services, architecture, dentistry, land surveying, landscape architecture, law, medicine, optometry, pharmacy, or professional engineering.
 - g. **PURCHASING AGENT:** The Purchasing Agent employed by the City of Falls Church, Virginia.
 - h. **SERVICES:** Any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.
 - i. **SOLICITATION:** as applicable the RFP or process of notifying prospective Offerors that the City wishes to receive proposals on a set of requirements to provide goods or services.
 - j. **STATE:** Commonwealth of Virginia.
 2. **LEGAL ACTION:** No Offeror, potential Offeror, or subcontractor shall institute any legal action until all statutory requirements have been met.

3. **CONDITION OF COMMODITIES:** All items proposed shall be new, latest model, design or pack and in first class condition, including containers suitable for shipments and storage, unless otherwise indicated in proposal invitation/proposal request. Verbal agreements to the contrary will not be recognized.
4. **SAMPLES:** Samples, if required, must be furnished free of expense to the City on or before date specified; if not destroyed in examination, they will be returned to Offeror, if requested, at Offeror's expense. Each sample must be marked with the Offeror's name and address, City's request number and opening date. **DO NOT ENCLOSE IN OR ATTACH PROPOSAL TO SAMPLE.**
5. **FORMAL SPECIFICATIONS** - When a solicitation contains a specification which states no substitutes, no deviation therefrom will be permitted and the Offeror will be required to furnish articles in conformity with that specification. The Offeror shall abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully complete every part as the true intent and meaning of the specifications and drawings. Whenever the mention is made of any articles, material, or workmanship to be in accordance with laws, ordinances, building codes, underwriter's codes, A.S.T.M. regulations or similar expressions, the requirements of these laws, ordinances, etc., shall be construed as to the minimum requirements of these specifications.
6. **FEDERAL SPECIFICATIONS**-Any Federal Specifications referred to herein may be obtained from the GSA Federal Supply Service Bureau - Specification Section, 470 East L'Enfant Plaza, S.W., Suite #8100, Washington, D.C. 20407 (Voice: 1-202-619-8925, Fax: 1-202-619-8978).
7. **COVENANT AGAINST CONTINGENT FEES**-The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For violation of this warranty, the City shall have the right to terminate or suspend this contract without liability to the City or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
8. **SHIPPING** - Unauthorized advance shipments and shipments other than for the quantity ordered are returnable at Contractor's expense. Delivery shall not be deemed complete until the goods have been actually received by City at its facility.
9. **RESPONSIBILITY FOR SUPPLIES TENDERED** - Unless otherwise specified in the solicitation, the Contractor shall be responsible for the materials or supplies covered by the contract until they are delivered at the designated point, but the Contractor shall bear all risk on rejected materials or supplies after notice of rejection. Rejected materials or supplies must be removed by and at the expense of the Contractor promptly after notification of rejection, unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the Contractor within ten (10) days after date of notification, the City may return the rejected materials or supplies to the Contractor at his or her risk and expense or dispose of them as its own property.
10. **COMPLIANCE**-Delivery must be made as ordered and in accordance with the solicitation or as directed by the City when not in conflict with the contract. The decision of the City as to reasonable compliance with delivery terms shall be final. Burden of proof of delay in receipt of goods by the City shall rest with the Contractor. Any request for extension of time of delivery from that specified must be approved by the City, such extension applying only to the particular item or shipment affected. Should the Contractor be delayed by the City, there shall be added to the time of completion a time equal to the period of such delay caused by the City. However, the contractor shall not be entitled to claim damages or extra compensation for such delay or suspension. These conditions may vary for construction contracts. See Standard or Specific Provisions for the individual solicitation.
11. **POINT OF DESTINATION**-All materials shipped to the City must be shipped F.O.B. DESTINATION unless otherwise stated in the contract or purchase order. The materials must be delivered to the "Ship to" address indicated on the purchase order.
12. **LABELING OF HAZARDOUS SUBSTANCES** - If the items or products requested by this solicitation are "Hazardous Substances" as defined by 10.1-1400 of the Code of Virginia (1950), as amended, 42 U.S.C. § 11001 et seq., or 42 U.S.C. § 9601 et seq., then the Offeror, by submitting his proposal, certifies and warrants that the items or products to be delivered under this contract shall be properly

labeled as required by the foregoing sections and that by delivering the items or products that the Offeror does not violate any of the prohibitions of Sec. 10.1-1400 et seq., or the Code of Virginia or Title 15 U.S.C. Sec. 1263. Material Safety Data Sheets (MSDS) and descriptive literature shall be provided with the proposal or delivered materials for each chemical and/or compound offered.

13. MATERIAL SAFETY DATA SHEETS: Material Safety Data Sheets (MSDS) and descriptive literature shall be provided with the proposal or delivered materials for each chemical and/or compound offered.
14. CONTRACT ALTERATIONS - No alterations in the terms of a contract shall be valid or binding upon the City unless made in writing and signed by the City's authorized representative.
15. BANKRUPTCY: If the Contractor should be adjudged bankrupt, or make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of the Contractor's insolvency, then the City may without prejudice to any other right or remedy, terminate the contract Contractor and procure such goods or services from other sources. In such event, the Contractor shall be liable to the City for any additional cost occasioned by such failure or other default. In such cases, the Contractor shall not be entitled to receive any further payment if the expense of finishing the contract requirements, including compensation for additional managerial and administrative services shall exceed the unpaid balance of the contract price, the Contractor shall pay the difference to the City.
16. SUBCONTRACTING: If one or more subcontractors are required, the contractor is encouraged to utilize small, minority-owned and women-owned business enterprises. For assistance in finding subcontractors, contact the Virginia Department of Business Assistance <http://www.dba.state.va.us/>; the Virginia Department of Minority Business Enterprise <http://www.dmb.e.state.va.us/>; local chambers of commerce and other business organizations. As part of the contract award, if requested by the City, the prime contractor agrees to provide the names and addresses of each subcontractor that subcontractor s status as defined by the Commonwealth of Virginia as small, minority-owned and/or woman-owned business and the type and dollar value of the subcontracted goods/services provided.

Except as otherwise specified in the solicitation, the Contractor may subcontract third party issues performed under the contract, but must submit a written list of those subcontractors, their addresses, personnel who will be performing the work, and a description of the work to be performed to the City prior to the work actually being done. The City must agree to the third party's work and reserves the right to deny the third party access if necessary.

1. GENERAL GUARANTY: The Contractor agrees to:
 - a. Save the City, its agents and employees harmless from liability of any nature or kind for the use of any copyrighted or un-copyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a Contract for which the Contractor is not the patentee, assignee, licensee or City.
 - b. Protect the City against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery.
 - c. Furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work or to the work of other contractors, for which his or her workers are responsible.
 - d. Pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules, and regulations of the City.
 - e. Protect the City from loss or damage to City owned property while it is in the custody of the Contractor.
2. SERVICE CONTRACT GUARANTY: The Contractor agrees to:
 - a. Furnish services described in the solicitation and resultant contract at the times and places and in the manner and subject to conditions therein set forth provided that the City may reduce the said services at any time.
 - b. Enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence.

- c. Render all work and services in strict conformance to all laws, statues, and ordinances and the applicable rules, regulations, methods, and procedures of all government boards, bureaus, offices, and other agents.
- d. Allow services to be inspected or reviewed by an employee of the City at any reasonable time and place selected by the City. The City shall be under no obligation to compensate the Proposal for any services not rendered in strict conformity with the contract.
- e. Stipulate that the presence of a City inspector shall not lessen the obligation of the Proposal for performance in accordance with the contract requirements, or be deemed a defense on the part of the Proposal for infraction thereof. The Inspector is not authorized to revoke, alter, enlarge, relax, or release any of the requirements of the contract documents. Any omission or failure on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material. Notification of an omission or failure will be documented by the Purchasing Agent.

17. SMALL, WOMAN AND MINORITY-OWNED BUSINESS (SWaM):

- a. The City encourages Small, Woman and Minority-owned business to participate in business opportunities with the City. Contact the Virginia Department of Minority Business Enterprise for information regarding certification and certified businesses: <http://www.dmb.e.virginia.gov/>
- b. Where Federal grants or monies are involved it is the policy of City, through its agents and employees, to comply with the requirements set forth in the U.S. Office of Management and Budget Circular No. A-102, uniform administrative requirements for Grants and Cooperative Agreements with State and Local Governments, as they pertain to small and minority business utilization.