



TOWN OF VIENNA

127 Center Street S
Vienna, VA 22180

REQUEST FOR PROPOSAL

RFP NUMBER: 23-16

ISSUE DATE: November 21, 2022

RFP SUBJECT: Tree Inventory

LOCATION: Vienna, VA

PRE-PROPOSAL MEETING: December 6, 2022; 10 a.m. Eastern via Zoom

QUESTIONS DUE: December 12, 2022; 2:00 p.m. Eastern

PROPOSAL DUE DATE: December 20, 2022; 2 p.m. Eastern

Inquiries concerning this Request for Proposal shall be submitted, in writing, to jerry.amacker@viennava.gov

Procurement Officer
Jerry Amacker, CPPB, VCO, VCA

RFP 23-16

TREE INVENTORY

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PROPOSAL PACKAGE

OFFEROR’S PROPOSAL

- ATTACHMENT A. BPOL LICENSE
- ATTACHMENT B. STATE CORPORATE COMMISSION (SCC)
- ATTACHMENT C. PROPRIETARY INFORMATION
- ATTACHMENT D. EXCEPTIONS TO RFP

SIGNED ADDENDUMS

POSTING NOTICE:

Proposals shall be submitted electronically via the DemandStar website.

The Town uses eVA and DemandStar for notification and distribution of solicitation documents.

Current solicitations can be viewed and downloaded [here](#).

To log in or to register your company so that you *receive notifications* of the Town's solicitations, go to [DemandStar](#). On the registration form, enter the required information and be sure to select the Town of Vienna as your *Free Agency Registration*.

Solicitations also are advertised on the Commonwealth of Virginia's [eVA Procurement Portal](#), where they may be downloaded and viewed in their entirety.

This RFP may be downloaded from the Town's website at: www.viennava.gov

Please email me at jerry.amacker@viennava.gov if you want to participate in the pre-proposal meeting.

After registering, you will receive a confirmation email containing information about joining the webinar.

While not mandatory, the purpose of this meeting is to allow potential offerors an opportunity to present questions and obtain clarification relative to this solicitation. Any changes resulting from this meeting will be issued in a written addendum to the solicitation.

The Town of Vienna reserves the right to reject any and all proposals or to accept the proposal(s) which, in its judgment, will be for its best interest.

NO PROPOSAL MAY BE WITHDRAWN FOR A PERIOD OF NINETY (90) DAYS SUBSEQUENT TO THE DATE OF THE PROPOSAL OPENING.

Any proposal may be withdrawn PRIOR to the scheduled time for proposal opening or authorized postponement thereof.

SECTION 1. PURPOSE & OVERVIEW

The Town of Vienna is seeking a consultant to perform a tree inventory to develop data that can be used as the Town works to develop an Urban Forest Management Plan, tree canopy goals, and an understanding of the make-up of the Town’s tree infrastructure.

SECTION 2. BACKGROUND

Located in Northern Virginia and approximately 14 miles from Washington D.C., the Town of Vienna is an incorporated town within Fairfax County—adjacent to Tysons Corner (Northeast), Oakton and Fairfax City (Southwest), Merrifield/Mosaic District (Southeast) and Reston (Northwest). The Town is 4.4 square miles and home to approximately 16,473 residents.

Enhancing the Management of Our Tree Inventory

Among Vienna’s strategic goals is to be an environmentally sustainable community. Vienna is working to become more deliberate and proactive in assessing, managing, and ultimately improving its tree inventory. Vienna desires to develop a tree inventory to aid in implementing an Urban Forest Management Plan that will guide our efforts to manage our tree infrastructure.

Goals for this Project

The goals for this project are to develop and analyze the data that will support the subsequent development of an Urban Forest Management Plan for the Town and provide tree canopy goals for the Town. The data we seek are:

1. An up-to-date tree inventory analysis
2. A review of the types, age, condition etc. of the Town’s trees
3. Suggested planting areas delineated by tree size class (small, medium, large) to provide information where planting efforts in the Town should be targeted.
4. Recommendations on how this tree inventory will support goals and information provided in the Town’s Urban Tree Canopy report.

SECTION 3. SCOPE OF WORK

1. TREE INVENTORY (*data fields must include, but are not limited to*):
 - a. Location – street address, GPS coordinates (compatible with the Town of Vienna’s GIS data)
 - b. Tree Common Name
 - c. Tree Latin Name
 - d. Trunk Diameter (measured at 54” from ground)
 - e. Tree Height (Estimated to the nearest foot)
 - f. Stems – number of stems with diameter measured for each stem
 - g. Condition (Overall) – excellent (90% - 100% condition rating), good (70% - 90% condition rating), fair (40% - 70% condition rating), poor (less than 40% condition rating), dead
 - h. Crown condition (percentage of deadwood or dieback)
 - i. Level One Tree Risk Assessment as per ANSI A-300 standards using these classifications. Include a brief description of risk factor.
 - i. Low – chances of failure are minimal

- ii. Moderate – chances of failure are possible, some
 - iii. High – chances of failure are likely
 - iv. Extreme – the tree is failing and requires attention immediately.
- j. Location of risk factor on tree and definition of risk target
 - k. Observations – general observations warranting review
 - l. Locations where no trees are present on the Town’s right-of-way
 - m. Maintenance recommendations based on ANSI A-300 standard specifications:
 - i. Train - Selective pruning recommendation to improve structure, health, and vigor of a young tree. This will correct structural flaws and make the tree more aesthetically pleasing.
 - ii. Thin - Selective removal of live branches to evenly distribute crown weight and to reduce density. The intention of this pruning is to reduce wind resistance, reduce snow and ice loads, and to increase light penetration.
 - iii. Raise - The removal of lower branches from the crown to eliminate obstructions or clearance issues. The majority of these cuts will be made at the tree trunk.
 - iv. Clean - A crown cleaning to remove dead, diseased, damaged, poorly attached, or crossing branches to increase longevity and reduce failures.
 - n. Remove - The complete removal of a dead or dying tree that has no potential of improving with maintenance.
 - o. Stump removal- This category indicates a stump and its location that should be removed. Any stump in the public right-of-way or on Town property. Include diameter of stump measured at 2 widest parts of the stump.
 - p. Plant- A site well suited for a new planting and recommend species size at maturity. Include some detail about the growing space.
 - q. Hardscape and town features (walls, traffic signs or signals, intersections as an example)
 - r. Utility lines present (Y or N)
 - s. Picture of each tree (as a separate line item for bidding)
 - t. Environmental values and benefits (such as used in iTree)
 - u. Date of inspection and name of inspector
 - v. General observations warranting recognition include, but are not limited to the following:
 - Grate/Guard
 - Remove Hardware
 - Poor Location
 - Mulched Improperly
 - Planted Improperly
 - Trimmed Improperly
 - Pest Problem
 - Mechanical Damage
 - Cavity/Decay
 - Visible root issues
 - Any other issues observed during data collection

2. Report

Provide a complete report of the results of the inventory findings. A representative sample of a previously completed inventory shall be included with the proposal. Detail what the components of this report will include in the proposal. Also provide an executive summary report with 12-15 Power Point slides.

3. **Project Outline**

Provide an outline of the project workplan with a schedule and time of completion of each step in the proposed outline. Include names and qualifications of the personnel involved in the project.

4. **Data**

It is desirable that data from this analysis be provided digitally, in a format that can be utilized by data management software, such as Excel or FileMaker. The data should be easily extendable through appropriate API programming interface(s) to be compatible with multiple programs, such as mapping and data management.

5. **Final Submission**

Digital file of the complete report and analysis of the tree inventory.

6. **Presentation**

Present, in person, an overview of the assessment and the key findings, conclusions, and recommendations to Vienna Town Council and interested citizens at a Town Council meeting. Use visual presentation with graphics and information. Respond to questions (As a separate line item)

SECTION 4. QUALIFICATION REQUIREMENTS

The Town of Vienna will consider, in determining the qualifications of a offeror, its record in performance of any contracts for the services into which it may have entered with the Town or with other public bodies or corporations; and, the Town of Vienna expressly reserves the right to reject the proposal of such offeror, if such record discloses that said offeror, in the opinion of the Town, has not properly performed such contracts or has habitually and without just cause neglected the payment of bills, or has otherwise disregarded their obligations to subcontractors, suppliers or employees.

To accomplish the key objectives of this RFP, the successful offeror should have expertise and experience with similar tree inventory projects. In the proposal, the vendor shall provide the names, addresses and telephone numbers of at least three (3) other firms or local governments for whom this type of work has been performed in the past five (5) years.

The Town of Vienna will make an investigation as to the ability of the offeror to perform the work. The Town of Vienna reserves the right to reject any proposal, if the evidence submitted by, or investigation of offeror, fails to satisfy the Town that such offeror is properly qualified by experience and financial status to carry out the obligations of the contract and to complete the work contemplated therein. Conditional proposals will not be accepted.

SECTION 5. PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS

1. General Requirements

RFP Response: In order to be considered for selection, offerors must submit a complete response to the RFP. All proposals shall be sent electronically through the DemandStar website. Proposals **shall not** be hand delivered to Town Hall or other Town locations.

Proposal Preparation

- a. An authorized representative of the offeror shall the sign proposal. All information requested should be submitted. Failure to submit all information requested may result in the Procurement Division requiring prompt submission of missing information and/or giving lowered evaluation of the proposal. Proposals which are substantially incomplete or lacking key information may be rejected by the purchasing agency. Mandatory requirements are those required by law or

regulation or are such that they cannot be waived and are not subject to negotiation.

- b. Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of content.
- c. Each proposal should be contained in a single PDF where practical. All documents submitted with the proposal should be contained in that single PDF.
- d. Ownership of all data, materials and documentation originated and prepared for the Owner pursuant to the RFP will belong exclusively to the Owner and be subject to public inspection in accordance with the Virginia Freedom of Information Act (FOIA). Trade secrets or proprietary information submitted by an Offeror shall not be subject to public disclosure under the Virginia FOIA; however, the Offeror must invoke the protections of Section 2.2-4342(D) of the Code of Virginia, in writing, on the form provided within this RFP (Reference page 18) either before or at the time the data or other material is submitted. As noted on the form, Offerors must specifically identify the data or materials to be protected and state the reasons why protection is necessary. The Owner reserves the right to ask for additional clarification prior to establishing protection.

2. Specific Submittal Requirements

Proposals should be as thorough and detailed as possible so that the Evaluation Committee may properly evaluate the Offeror's capabilities to provide the required services. Proposals are limited to fifty (50) pages. The 50-page limit includes the cover letter and table of contents but not the signed addenda. The 50-page limit does not include attachments A-D.

Offerors are required to submit the following as a complete proposal:

- a. Offeror' Proposal, signed addendums and attachments A-D.
- b. RFP Cover Page.
- c. Letter of interest outlining your background, areas of expertise, interest in this project, and a brief list of clients.
- d. Firm/Team information: Name, address, phone number, email for primary contact, number of professional staff members and list of their specialties of who will be assigned to work on the project, including years of experience in their respective fields. If more than one firm is part of the team, please show experience working with other team members/firms.
- e. Availability: A brief statement as to the availability of the key personnel responsible for the project and where the various aspects of work would be performed.
- f. Timeframe: Statement of anticipated time frame to complete each task as outlined in the Scope of Work. Provide report of prior experience in delivering services within the prescribed time frame.
- g. Statement of Qualifications: Provide a summary of the firm's/team's overall background, capabilities, experiences, and qualifications. Cite experience with similar projects, and with similarly sized jurisdictions.
- h. Understanding of the Project: Provide an overview of the consulting firm's/team's understanding and approach that will be utilized for this project, including critical issues that will need to be addressed to successfully complete this project.

- i. Examples of Work: Provide complete or partial examples of work similar in nature to this project.
- j. Demonstrated ability to provide the requested services. A clearly described methodology and work plan. Description of experienced personnel. The ability to obtain and analyze source datasets.
- k. Description of at least three similar projects including name of client and reference or link to the final report.
- l. Provide CV, bonafides, resume (or similar) for members of the project team.
- m. Provide a schedule for completing each task in the scope of work and for project deliverables.
- n. Provide at least three references, with contact information (email addresses).
- o. **Per the Virginia Public Procurement Act (VPPA) § 2.2-4302.2 do not provide estimates of people-hours, cost of services or budget. Cost Proposals will be requested from short listed offerors.**

3. Oral Presentation

After the initial review of proposals, offerors that are short listed will 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 but will in no way change the original proposal. The Procurement Officer will schedule the date, time, and location of these presentations. Proposals should be complete.

SECTION 6. EVALUATION CRITERIA

An Evaluation Committee will evaluate the proposals using the following criteria.

- 1. Project approach, including source datasets to be used. (30%)
- 2. Experience with similar projects. (30%)
- 3. Ability to complete the project within the proposed time frame. (20%)
- 4. Additional deliverables beyond those listed in this RFP. (10%)
- 5. Proposed total cost/cost effectiveness. (10%)

First Impression Score - 5-point scale:

0 = The proposal fails to address the criterion or cannot be assessed due to missing or incomplete information.
 1 = Poor. The criterion is inadequately addressed, or there are serious inherent weaknesses.
 2 = Fair. The proposal broadly addresses the criterion, but there are significant weaknesses.
 3 = Good. The proposal addresses the criterion well, but a number of shortcomings are present.
 4 = Very Good. The proposal addresses the criterion very well, but a small number of shortcomings are present.
 5 = Excellent. The proposal successfully addresses all relevant aspects of the criterion. Any shortcomings are minor.

Numbers:

Maximum Score for any Criteria is 5.0.
 Scores are entered in whole or half numbers.
 Determine weighted score by multiplying Weight time Score.
 Maximum Total Weighted Score is 450.

Criteria	Weight	Score	Weighted Score
Project approach, including source datasets to be used	30		
Experience with similar projects	30		
Ability to complete the project within the proposed time frame	20		
Additional deliverables beyond those listed in this RFP	20		
Totals	100		

SECTION 7. AWARD OF CONTRACT

The Town of Vienna Evaluation Committee shall engage in individual discussions with two (2) or more of the Offerors deemed fully qualified by the Evaluation Committee. Repetitive informal interviews shall be permissible. Such Offerors shall be encouraged to elaborate on their qualifications and performance data or staff qualifications pertinent to the proposed project, as well as alternate concepts.

At the discussion stage, the Town may discuss non-binding estimates of total project costs including, but not limited to non-binding estimates of cost of services.

Proprietary information from competing Offerors shall not be disclosed to the public or to the competitors.

At the conclusion of the informal interviews, on the basis of evaluation factors published in the Request for Proposals and all information developed in the selection process to this point, the Evaluation Committee shall select, in the order of preference, two or more Offerors whose professional qualifications and proposed services are deemed more meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the Town of Vienna can be negotiated at a price considered fair and reasonable, the Town Council shall be advised and make the award to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price.

Should the Evaluation Committee determine in writing that only one (1) offeror is fully qualified, or that one (1) offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that Offeror.

The award will be made to the responsible Offeror whose proposal, conforming to the solicitation, is the most advantageous and represents the best value to the Town of Vienna, costs and other factors considered.

The Town, as a municipal corporation of the Commonwealth of Virginia, is obligated and bound by the terms of this Agreement only to the extent that funds are lawfully appropriated therefore and are allocated and available to pay its obligations hereunder. In the event that and at such time as funds have not been appropriated or are not allocated and available to pay the Town’s obligations under this Agreement, then the Town shall not be liable for any obligation to pay for the services referred to in this Agreement.

It is expressly agreed and understood that the selected firm is in all respects an independent Contractor as to work and is in no respect any agent, servant, or employee of the Town. The contract specifies the work to be done by the firm, but the method to be employed to accomplish the work shall be the responsibility of the firm.

SECTION 8. CONTRACT TERM

The term of this contract shall be from the date of award until the project is completed.

SECTION 9. SPECIAL TERMS AND CONDITIONS

Precedence of Terms: In the event that there is a conflict between the General Terms and Conditions and any Special Terms and Conditions used in this section, the Special Terms and Conditions shall apply.

A. Mandatory Use of Town Forms and Terms and Conditions: Failure to submit a proposal accompanied by

the signed and dated Cover Sheet provided shall be a cause for rejection of the proposal. Return of the complete document is required. Modification of or additions to any portion of the solicitation may be cause for rejection of the proposal; however, the Town of Vienna reserves the right to decide, on a case-by-case basis, in its sole discretion, whether or not such a proposal should be considered as non-responsive.

Offerors are reminded that changes to the RFP, in the form of addenda, are often issued between the issue date and within three business (3) days before the closing of the RFP. Offerors are solely responsible for checking the Town website to ensure that they have the most current information regarding the RFP.

All addenda must be signed and submitted with your proposal.

- B. Ownership of Material: Ownership of all data, materials and documentation originated and prepared for the Town of Vienna pursuant to the RFP shall belong exclusively to the Town and be subject to public inspection in accordance with the Virginia Freedom of Information Act. Trade secrets and proprietary information submitted by an offeror shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the offeror must invoke the protections of this section prior to or upon submission of the data or other materials and must identify the data or other materials to be protected and state the reasons why protection is necessary.
- C. Default: In case of failure to deliver services in accordance with the contract terms and conditions, the Town of Vienna, after due oral or written notice, may procure them from other sources and hold the Consultant responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Town of Vienna may have.
- D. Obligation of Offeror: By submitting a proposal, the offeror covenants and agrees that they have satisfied themselves, from their own investigation of the conditions to be met, that he fully understands their obligation and that they will not make any claim for or have right to cancellation or relief from the contract because of any misunderstanding or lack of information.
- E. Withdrawal/Modification of Proposals: Proposals may be withdrawn or modified by written notice received from Offerors prior to the time fixed for proposal receipt.
- F. Receipt and Opening of Proposals: In the case of proposals received in response to a Request for Proposals, public openings are not required; however, if a public opening is held, only the names of the Offerors are read aloud.
- G. Qualifications of Offerors: The Town of Vienna may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the work, and the offeror shall furnish to the Town of Vienna all such information and data for this purpose as may be requested. The Town of Vienna reserves the right to inspect the Offeror's physical facilities prior to award to satisfy questions regarding the Offeror's capabilities. The Town of Vienna further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy the Town that such offeror is properly qualified to carry out the obligations of the contract and to complete the work contemplated therein.
- H. Debarment Status: By submitting their proposals, all Offerors certify that they are not currently debarred from submitting proposals on contracts by any agency of the Commonwealth of Virginia, nor are they an agent of any person or entity that is currently debarred from submitting proposals on contracts by any agency of the Commonwealth of Virginia.
- I. Cancellation of Contract: The Town of Vienna reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty upon ten (10) days written notice to the consultant. Any contract cancellation notice shall not relieve the consultant of the obligation to deliver and/or perform

on all outstanding orders issued prior to the effective date of cancellation.

- J. Rights of the Town of Vienna: The Town of Vienna further reserves the right to request information relative to experience, reference and/or financial status of a firm.
- K. Conflict of Interest: The Offeror certifies that to the best of its knowledge no employee of the Owner nor any member thereof, nor any public agency or official affected by the proposal, has a pecuniary interest in the business of the Offeror, and that no person associated with the Offeror has any interest that would conflict in any manner with the performance of the proposal.
- L. Insurance: By signing and submitting a proposal under this solicitation, the Offeror certifies that if awarded the contract, it will have the insurance coverage specified on the Insurance Checklist within ten (10) days of notification of award. Additionally, the Offeror certifies that it will maintain all required insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

During the period of the contract the Owner reserves the right to require the Firm to furnish the certificates of insurance for coverage required to the Procurement Division.

Insurance Coverages and Limits Required:

- a. Worker's Compensation - Statutory requirements and benefits.
- b. Employers Liability - \$100,000.00
- c. General Liability - \$500,000.00 combined single limit. The Town of Vienna is to be named as an additional insured with respect to the services being procured. This coverage is to include Premises/Operations Liability, Products and Completed Operations Coverage, Independent Contractor's Liability, Owner's and Contractor's Protective Liability and Personal Injury Liability.
- d. Automobile Liability - \$500,000.00
- e. Professional Liability/Errors and Omissions Coverage - Proof of professional liability coverage must accompany the Consultant's written proposal.

Additionally, it will maintain these during the entire term of the contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

During the period of the contract, the Town reserves the right to require the consultant to furnish certificates of insurance for the coverage required.

The Town of Vienna, Virginia is to be named as an additional insured and this is to be so noted on Certificate of Insurance. The policy shall be delivered to the Town of Vienna PRIOR to the commencement of any work.

A thirty (30) day written notice of cancellation or non-renewal shall be furnished by certified mail to the purchasing office at the address indicated on the solicitation.

- M. Ownership of documents: Any reports, studies, photographs, negatives, or other documents prepared by the Offeror in the performance of its obligations under this contract shall be the exclusive property of the Owner, and all such materials shall be remitted, without restriction, to the Owner by the Offeror upon completion, termination or cancellation of the contract. Offeror shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of the Offeror's obligations under this contract without the prior written consent of the Owner.

SECTION 10. INFORMATION FOR OFFERORS

1. SUBMISSION OF PROPOSALS AND PROPOSAL OPENING

- A. Proposals shall be submitted electronically via the DemandStar website.
- B. **KEEP A COPY OF THE RFP FOR YOUR FILES AND DO NOT SUBMIT IT WITH THE PROPOSAL PACKAGE.** By signing the Proposal, the offeror acknowledges they have read this solicitation, understand it, and agree to be bound by its terms and conditions. Proposals **shall not** be submitted by mail or delivered in person.
- C. The Offeror shall assume full responsibility for the timely upload of their proposal package to the DemandStar website. Proposals will not be accepted in person at Vienna's Town Hall or any other department.

2. PROPOSAL DOCUMENTS

- A. Proposal Documents include the following: Offeror's proposal, signed addendums and attachments A-D. All requirements and obligations of the Proposal Documents are hereby incorporated by reference into the Contract Documents and are binding on the Successful Offeror upon Award of the Contract.

3. OFFERORS REFERRED TO LAWS

- A. The provisions of this Contract shall be interpreted in accordance with the laws of the Commonwealth of Virginia and in accordance with the laws, ordinances, regulations, permits and resolutions of the Town of Vienna. When there is conflict between state or local contract language and federal rules, the federal-aid or most conservative rule prevail.
- B. Offeror certifies that it does not and will not during the performance of this contract violate (i) the provisions of the Federal Immigration Reform and Control Act of 1986, as amended, and § 40.1-11.1, Code of Virginia, which prohibits the employment of illegal aliens, and (ii) the provisions of Federal and State employment and wage hour laws. The contractor shall include and enforce the language in the last sentence in every subcontract issued under this contract and shall require the subcontractor to do the same.

4. RIGHT TO REJECT PROPOSALS

The Town expressly reserves the right to reject any or all proposals, to waive any informalities or irregularities in the proposals received, and to accept that proposal which in its judgment, best serves the interest of the Town.

5. PROTEST OF AWARD OR DECISION TO AWARD

- A. Any offeror may protest the award or decision to award a contract by submitting a protest in writing to the Procurement Officer or his designee, or other official designated by the Town of Vienna, no later than ten (10) days after the award or the announcement of the decision to award, whichever occurs first; provided, however, that no protest shall lie for a claim that the selected offeror is not a responsible offeror. The written protest shall include the basis for the protest and the relief sought. The Procurement Officer shall issue a decision within ten (10) days of the receipt of the protest stating the reasons for the action taken. This decision shall be final unless the offeror institutes legal court action in the Town of Vienna within ten (10) days of receipt of the written decision.

- B. If prior to award, it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The Procurement Officer or his designee, shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be declared void by The Town. Where the award has been made and performance has begun, the Procurement Officer or his designee may declare the contract void upon a finding that this action is in the best interest of the Town. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance at a rate specified in the contract up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.
- C. Pending final determination of a protest, the validity of a contract awarded and accepted in good faith in accordance with this article shall not be affected by the fact that a protest or appeal has been filed.
- D. An award need not be delayed for the period allowing an offeror to protest, but in the event of a timely protest, no further action to award the contract will be taken unless there is written determination that proceeding without delay is necessary to protect the public interest or unless the proposal or offer would expire.

6. SUBCONTRACTING

If one or more subcontractors are required, the Contractor is encouraged to utilize small, minority-owned, and women-owned business enterprises. Upon contract award, the prime contractor agrees to make maximum effort to provide the names addresses of each subcontractor, that subcontractor's status as defined by the Town of Vienna as a small, minority-owned, and/or woman-owned business, and the type and dollar value of the subcontracted goods/services provided.

7. EXPENSES INCURRED IN PREPARING PROPOSAL

The Town accepts no responsibility for any expense incurred by the offeror in the preparation and presentation of a proposal and such expenses are to be borne exclusively by the offeror.

8. NONAPPROPRIATION

All funds for payments by the Town under this Contract are subject to the availability of an annual appropriation for this purpose by the Town Council. In the event of non-appropriation of funds by the Town Council for the goods or services provided under this Contract or substitutes for such goods or services, which are as advanced or more advanced in their technology, the Town will terminate the Contract without termination charge or other liability to the Town 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. If funds are not appropriated at any time for the continuation of this Contract, cancellation will be accepted by the Contractor on thirty (30) days prior written notice. However, failure to give such notice shall be of no effect and the Town shall not be obligated under this Contract beyond the date of termination.

9. CONTRACT MODIFICATIONS

- A. The Town may, upon mutual agreement with the contractor, issue written modifications to the scope of work with this contract, and within the general scope thereof, accept that no modifications can be made which will result in an increase of the original price by a cumulative amount of more than \$50,000.00 or 25%, whichever is greater, without the

advance written approval of the Mayor and Council. (Section 2.2-4309 of Virginia Public Procurement Act).

- B. Should it be necessary in the best interest of the Town to make modifications, the same shall be covered by change order. The Contractor shall not begin work on any alteration requiring a change order until the written agreement, setting forth the changes/modifications, has been executed by the Town and the Contractor.
- C. If a satisfactory agreement cannot be mutually agreed to for any item requiring a change order, the Town reserves the right to terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the work.
- D. The Town may, in writing, omit from the work any item other than major items found unnecessary to the project and such omission shall not be a waiver of any conditions of the Contract nor invalidate any of the provisions thereof. Major items may be omitted by change order.
- E. The Contractor shall be paid for all work done toward the completion of the item prior to such cancellation, alteration, or suspension of work by the Town.
- F. A major item shall be construed to be any item, the total cost of which is equal or greater than ten percent (10%) of the total. The contract amount for each separate alternate shall be computed on the basis of the proposed quantity and the contract unit price.

10. HOLD HARMLESS CLAUSE

Proposals shall provide for the Contractor holding harmless the Town of Vienna and representatives thereof from all suits, actions, or claims of any kind brought on account of any injuries or damages sustained by any person or property in consequence of any neglect in safeguarding contract work, or on account of any act or omission by the Contractor or its employees, or from any claim or amounts arising or recovered under any law, bylaw, ordinance, regulation, or decree.

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SECTION 11. TOWN OF VIENNA GENERAL TERMS AND CONDITIONS

VENDOR: THE GENERAL TERMS AND CONDITIONS WHICH FOLLOW APPLY TO ALL PURCHASES AND BECOME A DEFINITE PART OF EACH FORMAL INVITATION FOR BID, REQUEST FOR PROPOSALS, PURCHASE ORDER AND/OR OTHER AWARD ISSUED BY THE TOWN OF VIENNA, VIRGINIA, UNLESS OTHERWISE SPECIFIED IN THE SOLICITATION DOCUMENTS. BIDDERS/OFFERORS OR THEIR AUTHORIZED REPRESENTATIVES ARE EXPECTED TO FULLY INFORM THEMSELVES AS TO THE CONDITIONS, REQUIREMENTS, AND SPECIFICATIONS BEFORE SUBMITTING BIDS/PROPOSALS; FAILURE TO DO SO WILL BE AT THE BIDDERS/OFFERORS' OWN RISK AND HE CANNOT SECURE RELIEF ON THE PLEA OF ERROR.

SUBJECT TO STATE, COUNTY AND LOCAL LAWS AND ALL RULES, REGULATIONS AND LIMITATIONS IMPOSED BY LEGISLATION OF THE FEDERAL GOVERNMENT, BIDS/PROPOSALS ON ALL SOLICITATIONS ISSUED BY THE PURCHASING OFFICE WILL BIND BIDDERS/OFFERORS TO APPLICABLE CONDITIONS AND REQUIREMENTS HEREIN SET FORTH UNLESS OTHERWISE SPECIFIED IN THE SOLICITATION.

1. **CLARIFICATION OF TERMS:** If any prospective bidder/offeror has questions about the specifications or other solicitation documents, the prospective bidder/offeror should contact the Procurement Officer or the person whose name appears on the face of solicitation NO LATER THAN SEVEN (7) WORKING DAYS BEFORE opening/closing date. Any revisions to the solicitation will be made only by addendum issued by the Procurement Officer.
2. **PREPARATION & SUBMISSION:** In order to be considered for selection, the bidder/offeror must submit a complete response to the Invitation for Bid/Request for Proposals. The bid/proposal shall be signed by an authorized representative of the bidders'/offerors' firm and uploaded to the DemandStar website by the time and date specified on the cover page.
3. **LATE BIDS/PROPOSALS:** LATE bids/proposals will not be accepted by the DemandStar website. The Town of Vienna will not accept hard copies hand delivered to Town Hall or any other departments. The Town of Vienna will not accept mailed bids/proposals.
4. **PRICING ERRORS:** In case of an error in price extension, the firm fixed unit price shall govern.
5. **BID/PROPOSAL ACCEPTANCE PERIOD:** Proposals shall be binding upon the offeror for ninety (90) days following the proposal due date. Any bid/proposal on which the bidder/offeror shortens the acceptance period may be rejected.
6. **TAXES:** The Town of Vienna is exempt from the payment of federal excise or state sales taxes on all tangible, personal property for its use or consumption.

The Purchasing Office will furnish a Tax Exemption Certificate (Form ST-12) upon request and if applicable to this contract.

7. **USE OF BRAND NAME OR EQUAL:**
 - a) Unless otherwise provided in the solicitation, the name of a certain brand, make or manufacturer does not restrict bidders/offerors to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the Town of Vienna, in its sole discretion, determines to be equal to that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.
 - b) The bidder/offeror is responsible to clearly and specifically indicate the product being offered and to provide sufficient descriptive literature, catalogs, and technical details to enable the Town of Vienna to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid non-responsive. Unless the bidder/offeror clearly indicates in its bid/proposal that the product offered is an "EQUAL" product, such bid/proposal will be considered to offer the brand name product referenced in the solicitation.
 - c) It shall be understood that the burden of proof for an "equal" product shall be and remain the sole responsibility of the bidder. The Town's decision of approval or disapproval of a proposed alternate shall be final. Nothing herein is intended to exclude any responsible bidder, its product or service or in any way restrain or restrict competition.
8. **SAMPLES:** Samples, if required, must be furnished free of expense to the Town of Vienna on or before date specified; if not destroyed in examination, they will be returned to bidder/offeror, if requested, at their expense. Each sample must be marked with the bidder's/offeror's name and address, Town's solicitation request number and opening date.
9. **TRADE SECRETS/PROPRIETARY INFORMATION:** Trade secrets or proprietary information submitted by an Offeror in response to this Request for Proposal shall not be subject to public disclosure under the Virginia Freedom of Information Act (FOIA); however, the Offeror must invoke the protection of this section prior to or upon submission of data or materials to be protected and state the reasons why protection is necessary (Section 2.2-4342F of the Code of Virginia).
10. **DELIVERY:** Proposal must show the number of days required to provide the services/reports as specified.

Failure to state delivery time obligates bidder/offeror to complete delivery in fourteen (14) calendar days or as specified. An unrealistically short or long delivery promise may cause a bid/offer to be disregarded. Delivery shall be made during normal working hours, 8:00 am to 4:30 pm Monday through Friday, unless prior approval for another time period has been obtained from Consignee.
11. **DEFAULT:** In case of failure to deliver goods/services in accordance with the contractual terms and conditions, the Town of Vienna, Virginia, after due oral or written notice, may procure them from other sources and hold the defaulting Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Town of Vienna may have.

12. **TOWN'S RIGHT TO TERMINATE THE CONTRACT:** The Contract may be terminated by the Town for any one of the following reasons:

- a) If the successful bidder/offeror 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 successful bidder's/offeror's insolvency, or if the successful bidder/offeror should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to deliver the goods or services within the time specified, or if the bidder/offeror otherwise defaults, then the Town may without prejudice to any other right or remedy, and after giving the successful bidder/offeror seven (7) calendar days written notice, terminate the employment of the successful bidder/offeror and procure such goods or services from other sources. In such event, the successful bidder/offeror shall be liable to the Town for any additional cost occasioned by such failure or other default.

- b) In such cases, the successful bidder/offeror 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 successful bidder/offeror shall pay the difference to the Town.
 - c) If the successful bidder/offeror should fail to make prompt payment to Subcontractor(s) for material or labor, persistently disregards laws, ordinances or the instruction of the Town, or otherwise be in substantial violation of any provisions of the Contract;
 - d) Failure of the Contractor to promptly make good any defects in materials or work or any defects of any other nature, the correction of which has been directed in writing by the Town;
 - e) Substantial evidence of collusion for the purpose of illegally procuring a contract or perpetrating fraud on the Town in the construction of work under contract.
 - f) Prior to termination of the Contract, the successful bidder/offeror and their Surety shall be notified in writing by the Town of the condition which makes termination of contract imminent. Ten (10) days after this notice is given, if a satisfactory effort has not been made by the successful bidder/offeror or their Surety to correct the conditions, the Town may declare the Contract terminated and notify the successful bidder/offeror and their Surety accordingly.
 - g) Upon receipt of notice of contract termination, the successful bidder/offeror shall immediately discontinue all operations. The Town may then proceed with the work in any lawful manner that they may elect until the project is final and complete.
 - h) The Town reserves the right to take possession of the premises and of all materials, tools and appliances thereon and finish the work by whatever method is deemed expedient. In such case, the successful bidder/offeror shall not be entitled to receive any further payment. If the expense of finishing the work, including compensation for additional managerial and administrative services, shall exceed the unpaid balance of the contract price, the successful bidder/offeror shall pay the difference to the Town. The expense incurred by the Town as herein provided, and the damaged incurred through the Contractor's default, shall be certified by the Town.
 - i) Termination of the contract under this section is without prejudice to any rights or remedies of the Town.
 - j) The Town reserves the right to cancel and terminate any resulting contract, in whole or in part, without penalty, upon 60 days written notice to the Contractor/ Consultant. Any contract cancellation notice shall not relieve the Contractor/Consultant of the obligation to delivery and/or perform on all outstanding services performed prior to the effective date of cancellation.
 - k) Notwithstanding anything to the contrary contained in the contract between the Town and the successful bidder/offeror, the Town may, without prejudice to any other rights it may have, terminate the contract for convenience and with cause, by giving thirty (30) days written notice to the successful bidder/offeror.
- 1) In the event the Contract is terminated for cause related to the Contractor/Consultant's (or its Subcontractor's) hiring of unauthorized aliens, Contractor/Consultant hereby waives any claim to lost profits and the Town will proceed in accordance with subsections f) et seq. above.
13. **RIGHTS OF THE TOWN OF VIENNA:** The Town reserves the right to accept or reject all or any part of bids/proposals, waive minor technicalities/informalities and award the contract to the lowest responsive and responsible bidder or most qualified and best suited offeror to best serve the interest of the Town.
14. **CONTRACTOR'S PERFORMANCE:**
- a) Goods and services must be delivered and rendered strictly in accordance with this bid/proposal and shall not deviate in any way from the terms, conditions, prices, quality, quantity, delivery instructions, and specifications of this bid/proposal.
 - b) All goods and/or services delivered and/or rendered shall comply with all applicable federal, state, and local laws, and shall not infringe any valid patent or trademark. The successful bidder/offeror shall indemnify, keep, save, and hold the Town, its officers and employees, harmless from any liability for infringement and from any and all claims or allegations of infringement by the bidder/offeror or the Town, its officers and employees, arising from, growing out of, or in any way involved with the goods delivered or services rendered pursuant to this purchase.
 - c) In the event that suit is brought against the Town, its officers and/or its employees, either independently or jointly with the bidder/offeror, the bidder/offeror shall defend the Town, its officers and employees, in any such suit at no cost to them. In the event that final judgment is obtained against the Town, its officers, and/or its employees, either independently or jointly with the bidder/offeror, then the bidder/offeror shall pay such judgment, including costs and attorney's fees, if any, and hold the Town, its officers and employees, harmless there from.
 - d) The successful bidder/offeror shall ensure that its employees shall observe and exercise all necessary caution and discretion so as to avoid injury to person or damage to property of any and all kinds.
 - e) The successful bidder/offeror shall not, in its product literature or advertising, refer to this purchase or the use of the bidder's/offeror's goods or services by the Town of Vienna, Virginia.
 - f) The successful bidder/offeror shall cooperate with Town officials in performing the specified work so that interference with the Town's activities will be held to a minimum.
15. **DRUG-FREE WORKPLACE TO BE MAINTAINED BY THE CONTRACTOR** (Code of Virginia Section 2.2-4312): During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous 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 prohibitions, (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with the Virginia Public Procurement Act, 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.

16. **NO DISCRIMINATION AGAINST FAITH-BASED ORGANIZATIONS:**

The Town of Vienna does not discriminate against faith-based organizations as that term is defined in Virginia Code Section 2.2-4343.1.

17. **ANTI-TRUST:** By entering into a contract, the bidder/offeror conveys, sells, assigns, and transfers to the Town of Vienna all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Town of Vienna under said contract.
18. **INDEMNIFICATION:** The Contractor agrees to indemnify, defend and hold harmless the Town of Vienna, Virginia, its officers, agents, and employees from any 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 vendor agrees to protect the Town from claims involving infringement of patent or copyrights.
19. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the Contractor, in whole or in part, without the prior written consent of the Town of Vienna, Virginia.
20. **CONTRACT DOCUMENTS:** The contract entered into by the parties shall consist of the Invitation For Bid/Request For Proposal, the signed bid/proposal submitted by the Contractor, the Town of Vienna's standard Purchase Order, the Mandatory/Special Specifications, Terms and Conditions, and the General Terms and Conditions, all of which shall be referred to collectively as the Contract Documents.

If the contractor has a standard contract form, this form shall be submitted with the bid/proposal submittal for the Town's review of its terms and conditions.

21. **LICENSE REQUIREMENT:** All firms doing business in the Town of Vienna are required to be organized or authorized to transact business in the Commonwealth of Virginia or include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized. Bidders/Offerors do not, however, need to show such evidence prior to bidding or submitting a proposal. Additionally, all firms doing business in the Town of Vienna are required to be licensed in accordance with the Town's "Business, Professional and Occupational Licensing (BPOL) Tax" Ordinance. Wholesale and retail merchants without a business location in the Town are exempt from this requirement. Questions concerning the BPOL Tax should be directed to the Finance Department, Business License Office, Telephone number (703) 255-6321. The BPOL License number must be indicated on the submitted bid/proposal form.
22. **AWARD:** The contract shall be awarded to the lowest responsive and responsible bidder or the most qualified and best suited offeror.

The Town Council will award all contracts in the amount of thirty-thousand dollars (\$30,000.00) or more.

The Procurement Officer will award all contracts less than thirty-thousand dollars (\$30,000.00).

The Procurement Officer shall sign all contract documents, with the exception of "Construction" contracts, and issue a purchase order to the successful bidder/offeror.

23. **COMPENSATION:**
 - a) It is the Town's policy not to pay for any goods or services until the same have been actually received.
 - b) Individual contractors shall provide the Purchasing Office their social security numbers and proprietorships, partnerships and corporations shall provide the federal employer identification numbers (Code of Virginia, Section 2.2-4354.2). This information shall be provided in the space indicated on the Bid/Proposal Form.
 - c) The successful bidder/offeror shall submit a complete itemized invoice on each item or service, which is delivered under the contract. The successful bidder/offeror shall indicate the purchase order number on the front of each invoice and on the outside of each package or shipping container.
 - d) Cash discounts shall be deducted in accordance with the terms of the bid/proposal.
 - e) Payment shall be rendered to the successful bidder/offeror for satisfactory compliance with the general terms, conditions and specifications of this bid/proposal. The required payment date shall be either: (i) the date on which payment is due under the terms of the contract for the provision of such goods or services; or (ii) if such date is not established by contract, not more than forty-five (45) days after goods or services are received or not more than forty-five (45) days after the invoice is rendered, whichever is later (Code of Virginia, Section 2.2-4352).
 - f) Unless otherwise provided under the terms of the contract for the provisions of goods and services, if the Town fails to pay by the payment date, the Town agrees to pay the financial charge assessed by the successful bidder/offeror, which does not exceed one percent per month (Code of Virginia, Section 2.2-4354.4).
24. **METHOD OF PAYMENT:** Upon satisfactory delivery of the merchandise and/or satisfactory completion of the services, all invoices and statements shall reference the purchase order number and be submitted to:

Town of Vienna
ATTN: ACCOUNTS PAYABLE
127 Center St., S.
Vienna, VA 22180.

The prices and payments shall be full compensation for the labor, tools, equipment, transportation and all other incidentals necessary to complete the specified terms and conditions.

25. **SUCCESSFUL BIDDER/OFFEROR'S OBLIGATION TO PAY SUBCONTRACTOR:**
 - a) The successful bidder/offeror awarded the contract for this project shall take one of the two following actions within seven (7) days after the receipt of amounts paid to the successful bidder/offeror by the Town for work performed by the successful bidder/offeror's subcontractor(s) under the contract (Code of Virginia, Section 2.2-4354):
 1. Pay the subcontractor(s) for the proportionate share of the total payment received from the Town attributable to the work performed by the subcontractor(s) under the contract; or
 2. Notify the Town and subcontractor(s), in writing, of their intention to withhold all or a part of the subcontractor's payment with the reason for

nonpayment.

- b) The successful bidder/offeror shall pay interest to the subcontractor(s) on all amounts owed by the successful bidder/offeror that remain unpaid after seven (7) days following receipt by the successful bidder/offeror of payment from the Town for work performed by the subcontractor(s) under the contract, except for amounts withheld as allowed in subparagraph a (2) of this section. Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent (1%) per month.
- c) The successful bidder/offeror shall include in each of its subcontractors a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor(s).
- d) The successful bidder/offeror's obligation to pay an interest charge to a subcontractor(s) pursuant to the payment clause in this section may not be construed to be an obligation of the Town. A contract modification may not be made for the purpose of providing reimbursement for such interest charge and a cost reimbursement claim may not include any amount for reimbursement for such interest charge.

26. **ANTI-DISCRIMINATION:** By submitting their bids/proposals all bidders/offerors certify to the Town of Vienna that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, where applicable, and Section 2.2-4311 of the Virginia Public Procurement Act which provides:

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:

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.

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.

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.

27. **ETHICS IN PUBLIC CONTRACTING:** The provisions contained in Sections 2.2-4367 through 2.2-4377 of the Virginia Public Procurement Act as set forth in the Code of Virginia (1950), as amended, shall be applicable to all contracts solicited or entered into by the Town of Vienna. A copy of these provisions may be obtained from the Procurement Officer upon written request.

By submitting their bids/proposals, all bidders/offerors certify that their bids/proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other bidder/offeror, supplier, manufacturer or subcontractor in connection with their bid/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.

28. **CRIMINAL SANCTIONS:** The provisions referenced in Item 27 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.

29. **APPLICABLE LAW AND COURTS:** Any contract resulting from this solicitation shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall comply with applicable federal, state and local laws and regulations.

30. **LAWS AND REGULATIONS:** The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the work.

The Contractors and Subcontractors shall comply with the Virginia Contractor's Registration Law, Title 54.1, Chapter 11, Code of Virginia (1950), as amended.

All non-resident Contractors and Subcontractors submitting bids on the work described herein shall register with the Department of Labor and Industry under the provisions of Subsection 40.1-30 of the Code of Virginia (1950), as amended.

This contract and all other contracts and subcontracts are subject to the provisions of Articles 3 and 5, Chapter 4, Title 40.1, Code of Virginia (1950), as amended, relating to labor unions and the "right to work", and all Contractors and Subcontractors, whether residents or non-residents of the Commonwealth, who perform work related to the project shall comply with all of said provisions.

The Contractor shall furnish the Owner copies of affidavits upon request giving original dates, renewal dates and expiration dates of all labor contracts related to any phase of the work to be performed on the job site under this contract.

The provisions of all rules and regulations governing safety as adopted by the Safety Codes Commission of the Commonwealth of Virginia, issued by the Department of Labor and Industry under Title 40.1 of the Code of Virginia (1950), as amended, shall apply to all work under this contract.

The Contractor/Consultant shall comply with all laws and regulations of the Commonwealth of Virginia and the United States with respect to the employment of unauthorized aliens. Contractor/Consultant shall not hire or subcontract any portion of the work under this Contract to any individual the Contractor knows or reasonably should know to be an unauthorized alien as defined by 8 U.S.C. §1324a(h)(3). A violation of this provision shall

constitute a material breach of the Contract and the Town may, in its sole discretion, terminate the contract.

31. **DEBARMENT STATUS:** By submitting their bid/proposal, Bidders/Offerors certify that they are not currently debarred by the Commonwealth of Virginia or any Political Subdivision from submitting bids/offers on contracts for the type of services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.
32. **RECORD RETENTION/TOWN AUDITS:**
- a) The successful bidder/offeror shall retain, during the performance of the contract and for a period of five (5) years from the completion of the contract, all records pertaining to the successful bidder's/offeror's bid/proposal and any contract awarded pursuant to this Request for Proposal. 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 successful bidder's/offeror's copies of periodic estimates for partial payments; 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 Town on demand and without advance notice during the successful bidder's/offeror's normal working hours.
 - b) Town personnel may perform in-progress and post-audits of the successful bidder's/offeror's records as a result of a contract awarded pursuant to this Request for Proposal. Files would be available on demand and without notice during normal working hours.
33. **MODIFICATION OF CONTRACT:** The Town may, upon mutual agreement with the Contractor, issue written modifications to the scope of work of this contract, and within the general scope thereof, except that no modifications can be made which will result in an increase of the original contract price by a cumulative amount of more than \$50,000.00 or twenty-five percent (25%) of the amount of the original contract, whichever is greater, without the advance written approval of the Mayor and the Town Council. (Section 2.2-4309 of Virginia Public Procurement Act).

Should it become necessary, for the best interest of the Town, to make modifications, the same shall be covered by change order. The Contractor shall not begin work on any alteration requiring a change order until the agreement, setting forth the changes/modifications, has been executed in writing by the Town and the Contractor.

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

The Town may, in writing, omit from the work any item, other than major items, found unnecessary to the project and such omission shall not be a waiver of any condition of the contract nor invalidate any of the provisions thereof. Major items may be omitted by change order.

The Contractor shall be paid for all work done toward the completion of the item prior to such cancellation, alteration or suspension of the work by the Town.

A major item shall be construed to be any item, the total cost of which is equal to or greater than ten percent (10%) of the total; contract amount for each separate alternate, computed on the basis of the proposed quantity and the contract unit price.

34. **SPECIFICATION FAMILIARITY:**
- a) It is the Offeror's responsibility to examine this entire RFP carefully. If a question arises as to the meaning or intent of these documents, inquiry must be made in writing to the Procurement Officer.
 - b) The submission of a proposal shall indicate that the Offeror thoroughly understands the terms and conditions of the RFP.
35. **CONTRACT AND FORMS:**
- a) Offerors are advised that the Town does not sign standard contract forms that may be used by the offeror. The selected Offeror will be expected to enter into a contract with the Town for the commodities outlined in this RFP. The form of contract will be the Town's Purchase Order and/or Agreement.
 - b) The proposal form contains a signature line for the offeror that must be signed when submitting a proposal. The signature certifies the offeror is an agent of officer authorized to bind the Contractor to the terms and conditions of the RFP.
36. **ADDENDA AND INTERPRETATIONS:** No interpretation of the meaning of these documents will be made to any offeror orally. Any request for an interpretation must be in writing addressed to Town of Vienna, 127 Center Street, South, Vienna, VA 22180, Attention: Procurement Officer. Faxed inquiries to the Purchasing Department fax number will also be accepted. To be given consideration, requests must be received at least five days prior to the date fixed for the submission of Proposals. Any and all such interpretations and any supplemental instructions will be returned in writing to the prospective offeror requesting such interpretations or will be in the form of written addenda which, if issued, will be sent to all prospective offerors, at the respective addresses furnished for such purpose, not later than three days prior to the date fixed for the submission of Proposals. Failure of any offeror to receive any such addenda or interpretations shall not relieve said offeror from any obligation under their Proposal as submitted. All addenda so issued shall become part of the Contract Documents.
37. **INSURANCE:** The Contractor shall provide the Procurement Officer with a Certificate of Insurance PRIOR to the start of any work under the contract and agrees to maintain such insurance until the completion of the contract. The minimum limits of liability shall be:

Workers' Compensation -- Standard Virginia Workers' Compensation Policy

Broad Form Comprehensive General Liability--\$1,000,000.00.

Combined Single Limit coverage to include:

Premises - Operations; Products/Completed Operations;
Contractual; Independent Contractors; Owners and Contractors
Protective; Personal Injury (Libel, Slander, Defamation of Character, etc.)

Automobile Liability--\$500,000.00 Combined Single Limit.

The Town of Vienna, Virginia is to be named as an additional insured and this is to be so noted on Certificate of Insurance.

The policy shall be delivered to the Town of Vienna PRIOR to the commencement of any work.

A thirty (30) day written notice of cancellation or non-renewal shall be furnished by certified mail to the purchasing office at the address indicated on the solicitation.

Contractor's signature on this solicitation constitutes certification that, if awarded the contract, Contractor shall obtain the required coverage as specified herein within ten (10) days of notification of award.

38. WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY:

- a) The successful Bidder's/Offeror's insurance shall cover the bidder/offeror and its subcontractors of every tier of those sources of liability which would be covered by the latest edition of the standard Worker's Compensation Policy, as filed for use in the Commonwealth of Virginia by the National Council on Compensation Insurance, without restrictive endorsements, but including Broad Form All States Endorsement. In addition to coverage for the Virginia Worker's Compensation Act, where appropriate, coverage is to be included for the United States Longshore and Harbor Worker's Compensation Act, Maritime including Jones Act, Federal Liability Act and any other applicable federal or state law.
- b) Subject to the restrictions of coverage found in the standard Worker's Compensation Policy, there shall be no maximum limit on the amount of coverage for liability imposed by the Virginia Worker's Compensation Act, the United States Longshore and Harbor Worker's Compensation Act, or any other coverage customarily insured under Part One of the standard Worker's Compensation Policy. The minimum amount of coverage for those coverages customarily insured under Part Two of the standards Worker's Compensation (inclusive of any amounts provided by an umbrella or excess policy) shall be \$1,000,000 bodily injury by accident each accident, \$1,000,000 bodily injury by disease each employee, and \$1,000,000 bodily injury by disease policy limit or aggregate where such aggregate is applicable under the terms of the standard Worker's Compensation Policy.

39. PROFESSIONAL LIABILITY:

- a) The successful bidder/offeror shall provide the Town of Vienna with an Errors and Omissions Liability Policy (E&O Policy). The policy shall cover the Town of Vienna for all sources of liability which would be covered by the latest edition of the standard Errors and Omissions Liability Coverage Form, as filed for use in the Commonwealth of Virginia by the Insurance Services Office without the attachment of restrictive endorsements.
- b) The policy shall be endorsed to include the Town of Vienna's officials, officers, agents and employees as insured. The E&O Policy shall include the successful Offeror and the offeror's subcontractors of every tier as the designated in the declarations.
- c) 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 Town of Vienna officials, officers, agents and employees and only to claims arising out of or in connection with the work under this contract.

The insurance provided by the successful Offeror pursuant to the resulting contract shall apply on a primary basis and any other insurance or self-insurance maintained by the Town of Vienna or the Town of Vienna official, officer, agent or employee shall be excess of and not contributing with the insurance provided by or on behalf of the Offeror.

The coverages other than Worker's Compensation may be either on an occurrence or a claims-made basis. Provided, however, that claims-made coverage for other than the Products/Completed Operations shall respond to claims arising out of accidents, occurrences, incidents and offenses happening after the commencement of the resulting contract but before the end of the contract completion date provided that the claim is made within five years after the contract completion date.

Prior to commencing work under a resulting contract, the successful Offeror shall furnish the Town of Vienna with a Certificate(s) of Insurance naming the Town of Vienna, its officers, employees and agents, as additional insureds, giving a forty-five (45) day notice of cancellation, non-renewal, or change in the insurance coverage, and/or restrictions.

- 40. **SAFETY:** All contractors and subcontractors performing services for the Town of Vienna are required to comply with OSHA standards and accepted safety rules and regulations.
- 41. **OWNERSHIP OF PRODUCTS/SERVICES:** All control work, compilation of notes, work sheets, and any and all interim and final products and materials shall be the sole property of the Town of Vienna.
- 42. **COLLUSION:** By submitting a bid/proposal in response to this solicitation, the Bidder/Offeror represents that in the preparation and submission of this bid/proposal, said Bidder/Offeror did not, either directly or indirectly, enter into any combination or arrangement with any person, Bidder/Offeror or corporation or enter into any agreement, participate in any collusion, or otherwise take any action in the restraint of free, competition in violation of the Sherman Act (15 U.S.C. Section 1) 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.

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