



TOWN OF
VIENNA
since 1890

Purchasing Office

INVITATION FOR BID

IFB NUMBER:	23-08
IFB SUBJECT:	Tree Maintenance & Removal
ISSUE DATE:	July 20, 2022
QUESTIONS DUE DATE:	August 16, 2022, by 2:00 p.m. Eastern
BID DUE DATE:	August 26, 2022, by 3:00 p.m. Eastern
BID OPENING:	August 26, 2022, at 3:15 p.m. Eastern

Inquiries concerning this Invitation for Bid shall be submitted, in writing, to jerry.amacker@viennava.gov no later than August 16, 2022.

Procurement Officer
Jerry Amacker, CPPB, VCO, VCA

IFB 23-08 TREE MAINTENANCE & REMOVAL

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BID PACKAGE

BID FORM PART I

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ATTACHMENT A. BPOL LICENSE

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CONTRACTOR’S WRITTEN SAFETY POLICY

SECTION 1. POSTING NOTICE

Bids 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.

SECTION 2. PURPOSE

The purpose of this Invitation for Bid is to establish a contract for tree maintenance, removal, and related work located in the public rights-of-way and on public properties for the Town of Vienna Department of Parks and Recreation, on an as needed basis. Bidders shall be certified by the International Society of Arboriculture (ISA), licensed, insured and bonded, and having the experience and equipment to perform tree maintenance and removal work in accordance with the specifications herein.

SECTION 3. QUALIFICATIONS

Bidders must have been in the tree services business for at least the five (5) most recent years and shall employ an ISA certified arborist to supervise any work performed for the Town. Bidders shall provide the names, addresses and telephone numbers of at least three (3) other firms, or government agencies, NOT INCLUDING THE TOWN OF VIENNA, for whom this type of work has been performed in the past 12 months.

The Contractor shall provide the names, addresses and telephone numbers of at least three (3) other firms or government agencies for whom this type of work has been performed in the past two (2) years.

The Town of Vienna will consider, in determining the qualifications of a bidder, their record in performance of any contracts for the services into which he 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 bid of such bidder, if such record discloses that said bidder, 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 his obligations to subcontractors, suppliers or employees.

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

SECTION 4. BID SUBMISSION

Bidders must submit their bid electronically via the DemandStar website. All bids must show unit price, if applicable, and total price. **All bidders must submit the bid forms I and II, attachments A, B, C, and all addendums (signed and dated). Paper bids will not be accepted at the Purchasing Office or other locations in the Town of Vienna. Keep a copy of the IFB for your files and do not submit it with the Bid Package.** By signing the Official Bid Form, the bidder acknowledges they have read this solicitation, understand it, and agree to be bound by its terms and conditions. Bids shall be submitted electronically through the DemandStar website.

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

All addenda must be signed and submitted with your bid.

SECTION 5. SPECIAL PROVISIONS – SCOPE OF WORK

A. GENERAL

The Town of Vienna (“Town”) seeks licensed, qualified firms to provide Tree Removal, Pruning and Stump Grinding Services for trees located in the public right-of-ways, park lands, easements and/or on various public properties for the Town of Vienna. The Town, at its discretion, may also include trees that are on private property that are impacted during Town-funded or sponsored projects. The Contractor(s) shall furnish all labor, equipment, materials, and transportation necessary to perform the services in accordance with the specifications in this Invitation to Bid (“IFB”). Contractors may subcontract on a limited basis, with prior approval from the Town.

The Town seeks to award multiple contracts, designating a “Primary Contractor” and “Secondary Contractor” for the services described herein.

B. OVERSIGHT, WORK ORDERS AND REPORTING

1. The Superintendent of Park Maintenance, or designee will serve as Project Manager (“PM”) and will provide work assignments, oversight and guidance to the Contractor for the implementation and administration of all technical aspects of the contract.
2. Within three (3) business days of receipt of any work order, the Contractor shall provide to the PM a written schedule, including the amount of time required to complete the work and identifying the anticipated start date. The PM shall prioritize assigned work and the Contractor shall provide status reports of all outstanding work, if and as requested.
3. The Contractor must be capable of receiving, updating and transmitting the status of work orders electronically in a mutually agreed upon format, such as but not limited to Excel, Word, etc.

C. LICENSING, STANDARDS AND CERTIFICATION

1. The Contractor shall perform all work in accordance with the latest edition of the American National Standards Institute (ANSI) Z133.1 *Safety Requirements for Arboricultural Operations*,

as well as the latest edition of the *American National Standard for Tree Care Operations - Tree, Shrub, and Other Woody Plant Management - Standard Practices (Pruning)*; known as the A300 Pruning Standard.

2. An arborist shall directly supervise all tree maintenance operations. For the purposes of this contract this arborist shall be called the Supervising Arborist. The Supervising Arborist shall be certified by the International Society of Arboriculture (ISA) as a Certified Arborist (CA) or Board-Certified Master Arborist (BCMA) or be a Registered Consulting Arborist (RCA) as designated by the American Society of Consulting Arborists (ASCA) and employed by the Contractor.
3. VDOT flagger certification is required per Section F of these Special Provisions.
4. The Contractor shall provide proof of compliance with the Occupational Safety and Health Administration's (OSHA) 1910.331 safety standard with regards to safe work practices within ten feet of any energized electrical conductor during non-line clearance tree care operations. Proof of documentation can be, but not limited to, successful completion of the Tree Care Industry Association's (TCIA) Electrical Hazard Awareness Program (EHAP) and proof of on-the-job training.

D. EQUIPMENT USAGE AND SAFETY

1. All equipment used on the job shall meet all Federal, State, and local safety requirements. The equipment shall be licensed to operate in Virginia and the Contractor's name, or logo shall be clearly displayed on all vehicles used on all jobs.
2. All equipment used shall be equipped with factory safeguards or safety modifications meeting OSHA requirements. Safety to the public is of utmost importance to the Town. The Town reserves the right to stop the Contractor from performing work or for the failure to observe applicable safety precautions. Work may not resume until the required safety measures are in place and approval is given by the PM.
3. **Equipment such as cars, trucks, Bobcats, skid steers, earth-moving equipment, and heavy machinery) are allowed only on paved surfaces on Town properties.**
4. In the event that any vehicular equipment is driven off paved surfaces and causes damage to turf, landscaping, trees (including tree roots), soil, or underground infrastructure, fines may be issued to the Contractor and the Contractor shall be required to repair, replace, or restore all damaged areas and assets at their expense, to the satisfaction of the PM. The PM shall define the extent of damages, or the contractor may be required to hire an independent third party to define the extent of damages and cost of repair. Mitigation or repair measures shall be prescribed by the PM in accordance with Town Code, industry best practices, and relevant standards.
5. If necessary, vehicular equipment may be permitted on other than paved surfaces, but only with express written authorization from the PM. Such limited permission shall be contingent upon Town-approved measures to be taken by the Contractor to prevent damage, including but not limited to the use of plywood, root and soil protection pads, and/or tree protection fencing. Such measures shall be removed by the Contractor upon completion of the work.

6. No gas-powered equipment shall be used when an Air Quality Forecast from the Metropolitan Washington Council of Governments is declared "Code Orange" or "Code Red".
7. The Contractor is responsible for providing, maintaining and transporting all necessary equipment, and fuel for its use.
8. The Contractor shall provide all tools and supplies necessary for performing the work required as specified unless otherwise noted.
9. While on the job site, the Contractor's personnel shall wear required personal protective equipment (PPE). PPE shall include, but not be limited to hard hats, hearing protection, eye protection, chainsaw protection, appropriate clothing, and foot protection. All personnel working on the job shall also wear clothing which clearly identifies them as employees of the Contractor. Uniforms or tee shirts which display the name or logo of the Contractor will be acceptable. Uniforms shall be clean, free of damages and neat in appearance.
10. **As part of the initial bid submittal package**, the Contractor shall provide to the Town a copy of its written safety policies and safety procedures applicable to the scope of work for the Town's review. Such approved policies and procedures shall become a part of any resultant contract. Any updates or revisions to these safety policies during the contract term shall also be submitted to the PM in a timely manner for review and approval.
11. The Contractor shall immediately discontinue any operations that are determined to be unsafe or in violation of ANSI or OSHA regulations as determined by the PM. Notice may be issued in writing or orally by the PM.
12. The Town reserves the right to require the removal and replacement of any employee or equipment of the Contractor at the work site when, in the PM's judgment, that person or equipment is not performing safely or efficiently.

E. COMMUNICATION AND WORKSITE SUPERVISION

1. The Supervising Arborist shall provide supervision of the Contractors' personnel, ensure satisfactory productivity and quality assurance, and be available and responsive to the PM. This competent, qualified Supervising Arborist shall be capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous or dangerous to employees. He or she shall ensure compliance with all applicable safety regulations and shall have the authority and responsibility to take prompt corrective measures, which may include removal of the Contractor's personnel from the work site.
2. Each crew provided by the Contractor shall possess a crew member who is capable of communicating in English both in writing and orally, so as to effectively interact with the PM and the public.
3. The PM shall submit, in writing, a work order for tree maintenance services to the Contractor that describes the tree number (in the Town's tree inventory system), tree address, tree name, size of tree measured in diameter at breast height (DBH) as defined in the latest edition of the ISA Tree Inventories Best Management Practices, and work request.

F. STAFFING REQUIREMENTS AND PERSONNEL QUALIFICATIONS

1. The Contractor shall provide sufficient staff members to perform services in a reasonable time frame.
2. **Grounds person:** shall have the necessary skills to perform operations such as loading trucks, operating a chainsaw, cutting limbs on the ground, operating a chipper, raking and cleaning work area and provide safe traffic management.
3. **Climber:** shall have the necessary skills to work in trees from an aerial lift/tower or by the use of ropes, saddles and other hand climbing equipment, and shall be proficient in operating all related mechanical equipment.
4. **Crew Foreman and/or Supervising Arborist:** shall provide continuous on-site supervision of the work force and shall be responsible for giving directions to other personnel, making decisions, and assuming responsibility for all work performed by the Contractor.
5. **Flagger:** shall possess a valid VDOT Flagger certification.
6. **Equipment Operator:** shall have the necessary skills and licensing, if mandated, for the safe operation of equipment such as crane, log loader, aerial lift, etc.

G. CONTACT PERSONNEL

1. At the beginning of the awarded contract, the Contractor shall be responsible for submitting the names and contact information for Primary Contact Person. The Primary Contract Person shall be available during routine City working hours, 7:00 AM – 5:00 PM, Monday through Friday and for emergency calls outside routine Town working hours. **An answering machine is not acceptable as a point of contact.** A voicemail paging system or answering service in lieu of a contact person shall be required to initiate a callback to the Town within 15 minutes.
2. Whenever there are changes to the Contractor's Key Contact Personnel, the Contractor shall submit new contact names and information to the Town's PM within 24 hours.

H. RESPONSE TIMES

The Town requires the following minimum response time frames:

1. **Non-Emergency Work:** The Contractor shall schedule and complete routine, non-emergency work under this contract within **three (3) weeks** of the PM's request. The PM may, at his or her discretion, allow an extension of the completion time frame on a tree-by-tree basis.
2. **On-Call Emergency Work:** The Contractor shall:
 - a. Respond in writing (via text or email) within **six (6) hours** of the PM's initial request. Should the Primary Contact Person not be able to adhere to the response time, the Contractor shall advise the PM as soon as practicable within this time frame.
 - b. Start the requested emergency work within twenty-four **(24) hours** of the PM's initial request, unless otherwise authorized by the PM.

3. Emergency work shall be as defined by the PM.
4. In certain situations, such as local, statewide, or federally declared emergencies, the Contractor shall be required to document and submit detailed invoices, including such information as the location by address, property name, or nearest intersection; start and end times for each individual work assignment; and estimates of debris removed (in cubic yards) daily.

I. RESPONSE TIME FAILURE & FAILURE TO COMPLY

The successful Bidder(s) will be required to adhere to start/completion times indicated in this solicitation or as otherwise required by the Town for specific projects or jobs.

1. If the Primary Contractor cannot meet the Town's response time and/or project completion requirements according to the awarded contract or for project work to be performed thereunder, the Town may use the services of the Secondary contractor, if so awarded, as necessary to fulfill its needs.
2. Ongoing or frequent failure of the Primary or Secondary Contractors to meet the Town's response time and/or project completion requirements, may give cause for Town to evaluate and possibly take action based for the applicable Contractor's failure to perform.
3. The Town reserves the right to make purchases from other sources, should the Primary or Secondary Contractors be unable to furnish the required service within the required time frame or in case of emergency as determined by the Town.
4. In the event that the Contractor fails to comply with the terms and conditions of the contract, verbal and written notification will be given to the Contractor for immediate action. If the Contractor fails to correct the deficiency(s) immediately, or within a time acceptable to the PM, then the Town reserves the right to take necessary action to correct the deficiency(s). If the Town has to correct any deficiency(s), it will do so at the Contractor's expense. Payment will be deducted accordingly from the next payment(s) owed or invoiced directly to the contractor.

If the Contractor receives three (3) written notifications of non-compliance during any one 12-month period, the PM may recommend termination of the Contract.

J. REQUIREMENTS CONTRACT

The Contractor shall understand and agree that the resultant contract shall be a requirements type contract and **the Town does not guarantee any specific amount of work for the Contractor**. Any quantities which are included in these documents are for evaluation and/or planning purposes.

K. INCOMPETENT AND/OR DISORDERLY EMPLOYEES

If any person employed by the Contractor shall appear to the PM to be incompetent or to act in a disorderly or improper manner, such person shall be removed immediately upon reasonable request of the PM and shall not again be re-employed on this project except on written consent of the Town. Alcoholic beverages, illegal drugs, or firearms are prohibited on the job site. Possession of alcoholic beverages, illegal drugs, or firearms on the job site by a contractor's employee, will result in

immediate removal of the individual from the site. Any individual removed from the job site, pursuant to this section, may not return to any Town site to perform services associated with this contract without the written consent of the PM.

L. TOWN PARKS AND GREEN SPACES

No vehicles or heavy equipment of any kind shall be allowed in Town Parks and Green Spaces without prior written consent by the PM. The Contractor shall plan for accomplishing all specified work, including the removal of limbs and debris, within Town Parks and Green Spaces through the use of manual techniques except for use of chain saws. Specific exception(s) may be granted with prior approval by the PM.

M. MAINTENANCE OF TRAFFIC

1. Lane closures are limited to the hours of 9:00 AM to 3:30 PM unless otherwise instructed, in writing, by the PM.
2. The Contractor shall conduct its operation in a manner that will ensure vehicle traffic will be uninterrupted except as approved by the PM. At the close of each workday, the area of work shall be restored and the street open for normal traffic flow.
3. At all times, the Contractor shall comply with the current Virginia Department of Transportation (VDOT) Virginia Work Area Protection Manual. This includes the use of appropriately trained personnel, as well as proper traffic control signs and devices. For example, if any maintenance activities (equipment or personnel) obstruct a street or pedestrian or vehicle traffic flow, the Contractor shall provide VDOT approved signs, traffic cones and flagmen equipped with VDOT-approved "STOP/SLOW" double-sided traffic control paddles, to manage traffic and provide a safe experience for workers, pedestrians and vehicles.
4. Traffic control workers shall not be assigned to any other duties while engaged in directing traffic.
5. The Contractor has sole responsibility for ensuring that its operations are conducted in a safe manner and notwithstanding any other provision to the contrary, shall fully indemnify the Town, its officers, agents and employees for any damage or injury related to traffic operations which is caused by negligent or otherwise improper or deficient performance under the Contract or nonperformance of the terms of the Contract.
6. All personnel, signs, traffic cones, barricades and any other items necessary for the maintenance of traffic and safety shall be provided by the Contractor. No separate payment shall be made by the Town for Contractor compliance with VDOT standards. All costs for Maintenance of Traffic shall be included by the Contractor as part of the Contract Unit Prices.

N. TEMPORARY PARKING RESTRICTIONS

1. When necessary, the Contractor may temporarily restrict parking at a work site in accordance with Town regulations. "No Parking" signs will be provided by the PM to the Contractor to be

used exclusively in the completion of contracted Town work. The Contractor must advise the PM 48 hours in advance of any "No Parking" signs which need to be posted.

2. Spaces dedicated as "Handicapped" are NOT TO BE PARKED IN OR BLOCKED.

O. LICENSES AND PERMITS

1. The Contractor shall, at its expense, obtain all necessary licenses and permits needed to conduct the work required under this contract. The Contractor shall give away any and all necessary formal notices required in conjunction with the lawful prosecution of the work of the contract.

P. PROTECTION OF UTILITIES

1. The Contractor shall be responsible for contacting Miss Utility for location of any underground services situated in the work area that could be damaged by the Contractor's operation. The Contractor shall be responsible for contacting all affected utility companies prior to beginning work to ensure the proper coordination of work and the protection of utility lines.
2. Should damage to a utility (overhead or underground) occur, the Contractor shall immediately contact the appropriate utility organization. The Contractor shall be responsible for all claims of damage, fines, fees, repair costs, etc. that may be assessed by the utility company, other party, or regulatory authority. The Contractor shall notify the PM immediately after damage to a utility has occurred.

Q. OVERHEAD HIGH VOLTAGE LINES SAFETY ACT

1. If any work required herein will be performed within ten feet of an overhead high voltage line, the provisions of the Code of Virginia Section 59.1-406, et. seq., "Overhead High Voltage Line Safety Act" (Act) shall apply. The "person or contractor responsible for the work to be done," as used in the Act, will be interpreted to mean the Contractor. The Contractor shall notify the owner or operator of the high voltage line in the manner prescribed in Section 59.1-411 of the Act in sufficient time to avoid delays with completing the assigned work.
2. The Town will not pay for loss of time, profits, or permit any extension of the work for any delays caused by the failure of the Contractor to make such arrangements in a timely manner. All costs for the work shall be paid by the Contractor.

R. WORK HOURS AND NOISE LEVELS

1. The Contractor may perform the work on weekdays, Monday through Friday, between the hours of 7:00 AM and 5:00 PM. Special permission must be obtained, in advance, from the PM to allow work on the weekends (Saturday and Sunday) and legal holidays. In the event that work is permitted on weekends and legal holidays, the hours of operation shall be 9:00 AM to 5:00 PM or as otherwise instructed by the PM.
2. Work performed on major commuter routes (Maple Avenue, Nutley Street, Malcolm Road, Courthouse Road, Park Street, Cottage Street, Lawyers Road and Beulah Road) shall be between the hours of 9:00 AM and 3:00 PM, Monday through Friday.

3. The Town reserves the right to direct the Contractor regarding any additional changes to hours or days of operation, as may be required by special events held in the Town.
4. The Contractor shall comply with Town Code regarding noise levels.
5. Work around Vienna Town Hall and Vienna Community Center will not be allowed on Mondays (court in session) or Saturday mornings (Farmers Market) respectively.

S. TREE REMOVAL PROCEDURES

1. The tree trunk shall be cut as close to grade as possible; all wood, brush, leaves and debris shall be removed, unless otherwise directed. Trees listed for removal shall be marked with white paint or flagged with red or orange ribbon near the base or lower trunk of the tree. Trees that are not marked shall be personally identified by the PM to the Supervising Arborist prior to their removal.
2. Trees shall be dismantled in accordance with applicable industry standards and based on the following minimum requirements:
 - a. Extreme care shall be taken to prevent limbs, branches, and trunks from falling and causing personal injury or damage to (by way of illustration and not limitation) people, vehicles, buildings, fences, trees and other vegetation, irrigation components, driveways, sidewalks, streets, and other property, both publicly and privately owned.
 - b. Limbs and branches shall be lowered to the ground by the use of ropes or other mechanical devices when a target is present.
 - c. Stumps shall not be left higher than three (3) inches above ground level unless the contractor has been assigned to remove the stump via grinding or other means.

T. STUMP GRINDING/REMOVAL

1. The price per inch shall be calculated per inch and is based on the average diameter of the stump at ground level.
2. Stumps shall be ground to eighteen (18) inches below existing grade and shall include grinding of the stump and buttress roots (when present) that are within thirty-six (36) inches of the trunk.
3. Buttress roots farther than thirty-six (36) inches from the tree trunk may be requested to be ground and shall be ground to a depth of six inches below the existing root.
4. All debris generated from stump grinding activities shall be excavated to the depth of grinding. The Contractor shall remove and legally dispose of all grindings and debris generated from stump grinding activities.
5. Due to the nature of stump grinding activities, safety measures must be employed to restrict and prevent debris from contacting nearby pedestrians, vehicles, vegetation and facilities.

6. The Contractor is responsible for contacting Miss Utility and ensuring the underground utilities are located prior to commencing work.

U. MAINTENANCE PRUNING PROCEDURES

1. The Contractor shall perform all tree pruning services in accordance with the most current American National Standards Institute (ANSI) Z133 *Safety Requirements, A300 Standards for Tree Care Operations* and ISA *Best Management Practices for Tree Pruning*.
2. Tree Maintenance pruning will be performed on a task basis as directed by the PM and may include:
 - a. **Crown Cleaning** - to include the selective removal of dead, dying, diseased, and broken branches greater than or equal to two (2) inches in diameter.
 - b. **Crown Thinning** - to include live tissue greater than or equal to two (2) inches in diameter;
 - c. **Crown Raising** - to include pruning of limbs up to six (6) inches in diameter to achieve the required clearance of 8' and 10' over the sidewalk and 15' to 18' over streets. Maximum clearance heights shall not be exceeded when pruning trees unless directed by the PM.;
 - d. **Crown Reduction** - to include lateral branches less than or equal to six (6) inches in diameter
 - e. **Crown Restoration**
 - f. **Cabling / Bracing**
 - g. **Pruning of Specific limbs or branches as Identified by the Town PM.**
If pruning of this nature cannot clearly attributed to one of the standard, above-referenced pruning types, then pruning of this nature should be billed to the Town on an hourly basis.
3. Specific Requirements of Maintenance Pruning:
 - a. Training young trees shall encourage proper trunk development, and strong branch development through proper permanent and temporary branch selection. Pruning of any tree shall not exceed the removal of more than twenty-five percent (25%) of the crown unless otherwise directed by the PM.
 - b. The use of chain saws shall be limited to the removal of limbs greater than two inches (2") in diameter.
 - c. Circular blade power saws may not be used.
 - d. Hand pruners, loppers, or similar tools of the anvil-style may not be used; only bypass-style hand pruners or loppers are permitted for use.

- e. All trees shall be pruned to provide a minimum of five (5) feet of clearance from adjacent buildings and structures or to a distance determined by the PM.
- f. Trees which are developing more than one (1) dominant leader must be selectively pruned to promote a single dominant leader by subordinating the other competitive branches. Selection of the dominant leader must be made with consideration of the tree's form, health, and structure. Contractor shall consult with PM prior to pruning co-dominant leads on trees.
- g. Diameter at breast height (DBH) is the diameter of the tree measured at 4.5 feet above the existing grade level.
- h. The Contractor is responsible for the legal disposal of brush, wood and debris generated from tree maintenance activities.
- i. Trees and branches which are obstructing the public rights-of-way and/or traffic, parking or other government-related signs, signals and streetlamps shall be pruned or elevated so as to clear the obstructed view of these signs.
- j. The Contractor shall not offer any accommodations to, nor take direction or fulfill requests related to pruning from adjacent property owners, businesses, or other members of the general public. The Contractor shall refer any citizen-generated requests for service to the PM.

V. ADDITIONAL SERVICES

When necessary, and at the sole discretion of the PM, the Contractor may be asked to complete special tree work assignments. These services shall be paid for on an hourly basis using the costs submitted for specific crew configurations, personnel and/or equipment as required by the task.

W. CLEANUP AND REMOVAL OF DEBRIS

- 1. Work sites shall be cleaned daily before the work crew leaves the site, unless permission is granted by the PM to do otherwise. All affected lawn areas shall be raked, all streets and sidewalks shall be swept or blown, and work areas shall be left in a condition equal to that which existed prior to the commencement of work.
- 2. The Contractor shall remove and legally dispose of all logs, brush, and other debris resulting from its operations at no additional cost to the Town. If wood chips or other debris is requested by the PM to be dumped on Town property yard, then the PM shall be present at the Town property prior to dumping/disposal of debris.

X. DAMAGES TO VEGETATION OR PROPERTY

- 1. The Contractor shall restore any turf areas and grades, damaged by vehicles or mechanical operations, to their original condition within two (2) days of the day they were damaged.
- 2. In addition to liability requirements for property damage stated elsewhere in this IFB (e.g. XXXII Standard Provisions, *Section 8 Work Site Damages* and *Section 26 Insurance*), the following provisions apply:

3. Climbing irons, spurs, gaffs, or spikes shall not be used on trees to be pruned.
 - a. Any damage to vegetation (tree, shrub, forb, lawn), irrigation systems, fences, infrastructure or property (owned by the Town or others) resulting from work performed under this contract, shall be report to the PM with 2 hours of occurrence. The damages shall be repaired, replaced or mitigated at the Contractor's expense. Repairs must be performed to the satisfaction of the PM. This may include or require the hiring of a third-party contractor approved by the PM. Contractor shall immediately notify PM of damages incurred as a result of work performed under the terms of this contract. Failure to repair the damage will result in withholding the amount of the cost of the repair by the Town from any payments due to the Contractor.
 - b. The casualty loss suffered by the Town when a tree is damaged beyond repair by the Contractor will be accounted for in one of the two following ways, at the sole discretion of the PM:
 - i. The tree shall be removed (and stump ground out or removed) by the Contractor at no cost to the Town. The Contractor shall replace the tree with the number of nursery-grown specimens of a size and species determined by the PM.
 - ii. The dollar value of the damaged tree (the casualty loss) will be determined by a qualified Arborist, with demonstrated experience in tree appraisal. Charges for the appraisal shall be paid in full by the Contractor. The Contractor shall pay the dollar value of the damaged tree, as determined by the appraisal, within thirty (30) days of receipt of the appraisal. The Town may deduct the dollar value of the damaged tree, as determined by the appraisal, from any payments due to the Contractor.

SECTION 6. MANDATORY TERMS AND CONDITIONS

Requirements in this section are specified as mandatory and met to the degree stated in these specifications in order for the bid to receive further consideration. Bids which fail to meet ALL of the mandatory requirements may be considered unacceptable and may not be considered for selection. Final acceptance of purchase will depend on the successful completion of all necessary work as specified.

All attachments to this solicitation are incorporated into this Section and, therefore, they are Mandatory Requirements.

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.

My signature on this solicitation constitutes certification that, if I am awarded the contract, I shall obtain the required coverages as specified herein within ten (10) days of notification of award.

Progress Schedule: It is the intention of the Town, that all necessary paperwork (insurance, bonds, etc.) be completed and submitted to the Town within ten (10) working days of notice of award of contract. The actual work schedule shall be coordinated with the Town Arborist and performed on an as needed basis.

Hold Harmless Clause: Bids 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 contact 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.

Protection of Persons and Property: The Contractor expressly undertakes every precaution at all times for the protection of persons and property, including Owner's employees and property and its own.

The Contractor shall use customary and reasonable precautions, including suitable protective coverings wherever necessary, to prevent damage to adjoining areas.

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work.

The Contractor shall protect the Owner's property from injury or loss arising in connection with this Contract. The Contractor shall make good any such damage, injury or loss, except such as may be directly due to errors in the Contract Documents or caused by agents or employees of the Owner. The Contractor shall adequately protect adjacent property as provided by law and the Contract Documents, and shall provide and maintain all passageways, guard fences, lights and other facilities for protection required by public authority, local conditions, or any of the Contract Documents.

Laws and Regulations: The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority by 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.

Owner's Right to Terminate Contract: The contract may be terminated by the Town for any one of the following reasons:

- (a) If the Contractor shall be adjudged bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed in account of his insolvency;
- (b) Substantial evidence that the progress being made by the Contractor is insufficient to complete the work within the specified time frame;
- (c) If the Contractor should persistently or repeatedly refuse or should fail, except in cases for which extensions of time is provided, to supply enough properly skilled workers or proper materials;
- (d) If Contractor should fail to make prompt payment to Subcontractors or for material or labor, persistently disregards laws, ordinances or the instructions of the Town, or otherwise be in substantial violation of any provisions of the Contract;
- (e) 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;
- (f) Substantial evidence of collusion for the purpose of illegally procuring a contract or perpetrating fraud on the Town in the performance of work under contract.

Prior to termination of the Contract, the Contractor 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 contractor to correct the conditions, the Town may declare the contract terminated and notify the Contractor and his surety accordingly.

Upon receipt of notice of contract termination, the Contractor shall immediately discontinue all operations. The Town may then proceed with the work in any lawful manner that they may elect until the term of the contract is final and complete.

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 Contractor 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 Contractor shall pay the difference to the Town. The expense incurred by the Town as herein provided, and the damage incurred through the Contractor's default, shall be certified by the Town. Termination of the contract under this section is without prejudice to any rights or remedies of the Town.

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 Contractor shall pay the difference to the Town. The expense incurred by the Town as herein provided, and the damage incurred through the Contractor's default, shall be certified by the Town.

Termination of the contract under this section is without prejudice to any other rights or remedies of the Town.

The Contractor shall not suspend the work without the written authority from the Town and shall proceed with the work promptly when notified by the Town to resume operations. The time in which work is suspended by written order for reasons not connected with the Contractor's failure to perform or improper performance shall not be charged against time for completion of contract.

Notwithstanding anything to the contrary contained in the contract between the Town and the successful bidder, 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. Any contract cancellation notice shall not relieve the Contractor of the obligation to delivery and/or perform on all outstanding services performed prior to the effective date of cancellation.

Work Site Damages: Any damage, including damage to finished surfaces, and damage to private property resulting from the performance of this Contract shall be repaired to the Owner's satisfaction at the Contractor's expense.

SECTION 7. ESTIMATED QUANTITIES

The quantities shown on the "Official Town Bid Form" are estimates only. The Town of Vienna does not guarantee, nor shall it be held liable, to purchase the quantities shown.

SECTION 8. AWARD

The Bid Form requests unit pricing; however, the Town will make a lump sum award to the lowest responsive and responsible Bidder. The Town also reserves the right to reject any or all bids, in whole or in part, to waive informalities and to delete items prior to making the award, whenever it is deemed in the sole opinion of the procuring public body to be in its best interest.

The annual amount will be based on the amount that will be allocated by the Town Council for any fiscal year in which the work will be performed. Therefore, the Town reserves the right to increase or decrease quantities to make full use of the amount of funding that will be allocated for the project(s).

SECTION 9. CONTRACT RENEWAL

The resulting contract will cover a period of one (1) year from the date of award. At the sole discretion of the Town of Vienna, and upon mutual written agreement with the Contractor, this contract can be renewed for an additional four (4) years, in one (1) year increments, at the expiration of its terms by mutual written agreement of the Contractor and the Town of Vienna. Should the contract be renewed, the prices for the renewal contract shall be no greater than the percentage change of the CPI-U for the Washington-Arlington-Alexandria, DC-VA-MD-WV area, as listed for the most recent twelve (12) month period on the U.S. Department of Labor's Bureau of Labor Statistics website:

http://www.bls.gov/eag/eag.dc_washington_md.htm#eag_dc_washington_md.f.4

The contractor may request a price adjustment no more frequently than once per year. The renewal of the contract shall depend on the Contractor's performance and the ability to follow instructions of this solicitation.

SECTION 10. CONDITIONS AT SITE, BUILDING OR STRUCTURE

The contractor shall visit specified work site(s) prior to beginning work and shall be responsible for having ascertained pertinent local conditions such as location, accessibility and general character of the site. Claims, as a result of failure to do so, will not be considered by Owner.

SECTION 11. SUBCONTRACTS

The Contractor shall, as soon as practicable after the signing of the Contract, notify the Owner in writing of the names of Subcontractors proposed for the principal parts of the work.

The Contractor shall not employ any subcontractor that is not responsible or otherwise suitable. The Owner shall not direct the Contractor to contract with any particular Subcontractor, however, the Owner may disapprove the use of any Subcontractor deemed unsuitable.

The Contractor agrees that he is fully responsible to the Owner for the acts or omissions of his Subcontractors and of persons either directly or indirectly employed by him.

SECTION 12. USE OF PREMISES AND REMOVAL OF DEBRIS

The Contractor expressly undertakes either directly or through its Subcontractor: To clean up all refuse rubbish, scrap materials and debris caused by its operations, to the extent that the site of the work shall present a neat, orderly and workmanlike appearance prior to leaving the site.

SECTION 13. TEMPORARY SUSPENSION OF WORK

The Town shall have the authority to suspend the work wholly, or in part, for such period(s) as may be deemed necessary due to unsuitable weather, or such other conditions as are considered unfavorable for the prosecution of the work, or for such time as is necessary due to the Contractor's failure to carry out orders or perform any or all provisions of the contract.

SECTION 14.

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. The bid/proposal must be submitted on the Town of Vienna Bid/Proposal Forms provided. 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:** The DemandStar website does not allow late submittals of 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:** Bids shall be binding upon the bidder for sixty (60) days following the bid opening date. 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. **CORRECTION OR WITHDRAWAL OF BIDS AND CANCELLATION OF AWARDS UNDER COMPETITIVE SEALED BIDDING:** Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, shall be permitted. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the Town or fair competition shall be permitted. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Procurement Officer. No bid may be withdrawn when the result would be to award the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent (5%). If a bid is withdrawn, the lowest remaining bid shall be deemed to be the low bid. If the Procurement Officer, the Using Department, or a designee of such, denies the withdrawal of a bid, he shall notify the bidder in writing stating his decision.

7. **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 except taxes paid on materials that will be installed by the bidder and become a part of real property.

If a bidder is bidding on materials that require installation by the bidder and become a part of real property, the applicable taxes shall be included in the lump sum bid price for the installation of the material and not as a separate charge for taxes. The taxes shall be an obligation of the successful bidder and not of the Town, and the Town shall be held harmless for same by the successful bidder.

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

When a bidder lists a separate tax charge on the Bid Form and the tax is not applicable to the purchase by the Town, the bidder will be allowed to delete the tax from its bid.

8. **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.
9. **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, if requested, at his expense. Each sample must be marked with the bidder's name and address, Town's request number and opening date. DO NOT ENCLOSE IN OR ATTACH BID TO SAMPLE.
10. **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).

11. **DELIVERY:** Bids must show number of days required to place material in using agency's receiving area under normal conditions. 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. A five (5) day difference in delivery promise may break a tie bid. An unrealistically short or long delivery promise may cause a bid/offer to be disregarded. Consistent failure to meet delivery promise without valid reason may cause removal from bid list. 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.

12. **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.

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

14. **CONDITION OF ITEMS:** All items bid/proposed shall be new and in first class condition, including containers suitable for shipments and storage, unless otherwise indicated in bid invitation/proposal request. Verbal agreements to the contrary will not be recognized.

15. **SUBSTITUTIONS:** No substitutions or cancellations permitted without prior written approval by the Procurement Officer.

16. **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.

17. **NEGOTIATION WITH THE LOWEST BIDDER:**

- a) If all bids received exceed the available funds for the proposed purchase, the Town, pursuant to Town Code provisions, may meet with the lowest responsive and responsible bidder to discuss a reduction in the scope for the proposed purchase and negotiate a contract price within the available funds.
- b) After bid negotiations, the lowest responsible bidder shall submit an addendum to its bid, which addendum shall include the change in scope for the proposed purchase, the reduction in price and the new contract value.

- c) If the proposed addendum is acceptable to the Town, the Town may award a contract within funds available to the lowest responsible bidder based upon the bid as amended by the addendum.
- d) If the Town and the lowest responsible bidder cannot negotiate a contract within available funds, all bids shall be rejected.

18. CONTRACTOR'S PERFORMANCE:

- a) Goods and services must be delivered and rendered strictly in accordance with this bid and shall not deviate in any way from the terms, conditions, prices, quality, quantity, delivery instructions, and specifications of this bid.
- 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 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 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, the bidder 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, then the bidder 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 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 shall not, in its product literature or advertising, refer to this purchase or the use of the bidder's goods or services by the Town of Vienna, Virginia.
- f) The successful bidder shall cooperate with Town officials in performing the specified work so that interference with the Town's activities will be held to a minimum.

- 19. 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.

20. **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.

21. **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. Consistent and continued tie bidding could cause rejection of bids by the Procurement Officer and/or investigation for Anti-Trust violations.

22. **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.

23. **TIE BIDS:** If there is a tie for low bid and all other considerations are equal, and if the public interest will not permit the delay of re-advertising for bids, the award shall be determined by drawing lots in public.

24. **PROHIBITION AS SUBCONTRACTORS UNDER COMPETITIVE SEALED BIDDING:** No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

25. **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.

26. **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.

27. **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. 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 form.
28. **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.

29. **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 Form.
- c) The successful bidder shall submit a complete itemized invoice on each item or service, which is delivered under the contract. The successful bidder 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.
- e) Payment shall be rendered to the successful bidder for satisfactory compliance with the general terms, conditions and specifications of this bid. 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, which does not exceed one percent per month (Code of Virginia, Section 2.2-4354.4).

30. **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.

31. **SUCCESSFUL BIDDER'S OBLIGATION TO PAY SUBCONTRACTOR:**

- a) The successful bidder 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 by the Town for work performed by the successful bidder'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 shall pay interest to the subcontractor(s) on all amounts owed by the successful bidder that remain unpaid after seven (7) days following receipt by the successful bidder 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 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'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.

32. **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.

33. **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.

34. **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.

35. **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.

36. **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.

37. **LABELING OF HAZARDOUS SUBSTANCES:** If the items or products requested by this solicitation are "Hazardous Substances" as defined by 3.1 250 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 bidder/offeror, by submitting his bid/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 bidder/offer does not violate any of the prohibitions of Sec. 3.1 252 or the Code of Virginia or Title 15 U.S.C. Sec. 1263.
38. **SAFETY DATA SHEETS:** Safety Data Sheets (SDS) and descriptive literature shall be provided with the bid/proposal or delivered materials for each chemical and/or compound offered. Failure of the bidder/offeror to submit such data sheets may be cause for declaring the bid/proposal as non-responsive.
39. **DEBARMENT STATUS:** By submitting their bids, Bidders certify that they are not currently debarred by the Commonwealth of Virginia or any Political Subdivision from submitting bids

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.

40. **COOPERATIVE PROCUREMENT:** As authorized in Section 2.2-4304 of the Code of Virginia this procurement is being conducted on behalf of and may be used by public bodies, agencies, institutions and localities of the several states, territories of the United States, and the District of Columbia with the consent of the Contractor.

41. **RECORD RETENTION/TOWN AUDITS:**

- a) The successful bidder shall retain, during the performance of the contract and for a period of three (3) years from the completion of the contract, all records pertaining to the successful bidder's bid and any contract awarded pursuant to this Invitation for Bid. 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 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 normal working hours.
- b) Town personnel may perform in-progress and post-audits of the successful bidder's records as a result of a contract awarded pursuant to this Invitation for Bid. Files would be available on demand and without notice during normal working hours.

42. **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.

43. SPECIFICATION FAMILIARITY:

- a) It is the Bidder's responsibility to examine this entire IFB 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 bid shall indicate that the Bidder thoroughly understands the terms and conditions of the IFB.

44. CONTRACT AND FORMS:

- a) Bidders are advised that the Town does not sign standard contract forms that may be used by the bidder. The selected Bidder will be expected to enter into a contract with the Town for the commodities outlined in this IFB. The form of contract will be the Town's Purchase Order and/or Agreement.
- b) The bid form contains a signature line for the bidder that must be signed when submitting a bid. The signature certifies the bidder is an agent of officer authorized to bind the Contractor to the terms and conditions of the IFB.

45. ADDENDA AND INTERPRETATIONS: No interpretation of the meaning of these documents will be made to any bidder 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 Bids. Any and all such interpretations and any supplemental instructions will be returned in writing to the prospective bidder requesting such interpretations or will be in the form of written addenda which, if issued, will be sent to all prospective bidders, at the respective addresses furnished for such purpose, not later than three days prior to the date fixed for the submission of Bids. Failure of any bidder to receive any such addenda or interpretations shall not relieve said bidder from any obligation under his Bid as submitted. All addenda so issued shall become part of the Contract Documents.

46. 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.

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

- a) The successful Bidder's/Offeree's insurance shall cover the bidder/offeree 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.

48. PROFESSIONAL LIABILITY:

- a) The successful bidder/offeree 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.

- 49. **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.
- 50. **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.
- 51. **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, competitive bidding 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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