

PRE-PROPOSAL CONFERENCE

RFP 2000002502

An optional pre-proposal conference will be held at 10:00 AM on March 20, 2018 at the Fairfax County Government Center, 12000 Government Center Parkway, Conference Room 7, Fairfax Virginia. The purpose of this conference is to allow potential offerors an opportunity to present questions and obtain clarification relative to any facet of this solicitation.

While attendance at this conference will not be a prerequisite to submitting a proposal, offerors who intend to submit a proposal are encouraged to attend. Bring a copy of the solicitation with you. Any changes resulting from this conference will be issued in a written addendum to the solicitation.

All questions pertaining to this RFP should be submitted in writing to the contract specialist at dpmteam3@fairfaxcounty.gov prior to the pre-proposal conference.



FAIRFAX COUNTY

DEPARTMENT OF PROCUREMENT AND MATERIAL MANAGEMENT

12000 GOVERNMENT CENTER PARKWAY, SUITE 427

FAIRFAX, VIRGINIA 22035-0013

www.fairfaxcounty.gov/dpmm

V I R G I N I A

TELEPHONE: (703) 324-3201 FAX: (703) 324-3228 TTY: 711

ISSUE DATE: March 6, 2018	REQUEST FOR PROPOSAL NUMBER: 2000002502	TITLE: Marketing and Communication Services
DEPARTMENT: Office of Public Affairs	DUE DATE/TIME: April 3, 2018 at 2:00pm	CONTRACT SPECIALIST : Derek D. Solomon at 703-324-3603 or derek.solomon@fairfaxcounty.gov

Proposals - In accordance with the following and in compliance with all terms and conditions, unless otherwise noted, the undersigned offers and agrees, if the proposal is accepted, to furnish items or services for which prices are quoted, delivered or furnished to designated points within the time specified. It is understood and agreed that with respect to all terms and conditions accepted by Fairfax County the items or services offered and accompanying attachments shall constitute a contract.

Note: Fairfax County does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment in the performance of its procurement activity.

NAME AND ADDRESS OF FIRM:

Telephone/Fax No.:

E-Mail Address:

Federal Employer Identification No or

Federal Social Security No.(Sole
Proprietor)

Prompt Payment Discount: ___% for payment within ___days/net
___days

State Corporation Commission (SCC)
Identification No.

By signing this proposal, Offeror certifies, acknowledges, understands, and agrees to be bound by the conditions set forth in the General Conditions and Instructions to Bidders as described in Appendix A, the Certification Regarding Ethics in Public Contracting set forth in Appendix B, and any other relevant certifications set forth in Appendix B.

BUSINESS CLASSIFICATION – Described in Appendix B - CHECK ONE: ☐ LARGE (Y) ☐ SMALL (B)

☐ MINORITY-OWNED SMALL (X) ☐ MINORITY OWNED LARGE (V) ☐ WOMEN-OWNED SMALL (C)

☐ WOMEN OWNED LARGE (A) ☐ NON PROFIT (9)

CHECK ONE: ☐ INDIVIDUAL ☐ PARTNERSHIP ☐ CORPORATION

State in which Incorporated: _____

Vendor Legally Authorized
Signature

Date

Print Name and Title

Sealed proposals subject to terms and conditions of this Request for Proposal will be received by the Fairfax County Purchasing Agent at 12000 Government Center Parkway, Suite 427, Fairfax, Virginia 22035-0013 until the date/time specified above.

AN EQUAL OPPORTUNITY PURCHASING ORGANIZATION

(DPMM32) rev 08/2013



SPECIAL PROVISIONS

1. SCOPE OF SERVICES:

- 1.1. The purpose of this Request for Proposal is to solicit sealed proposals to establish a contract or contracts through competitive negotiation for the provision of one or more of the identified marketing and communication services for the County of Fairfax, Virginia. These services will be on an as needed basis for a variety of occasions.
- 1.2. Offeror may submit a proposal for one or more of the tasks listed in Section 5.1. through 5.7. Offeror must submit a proposal for all three subcategories of Task 5.4., Publication Production, if submitting a proposal for Task 5.4.
- 1.3. Federal funds may be expended under the resulting contract; therefore the Contractor shall be bound by the attached Federal Grant Terms and Conditions (Appendix C) without exception.
- 1.4. The successful offeror(s) agree that all materials, work products and other deliverables to be produced or provided under a resulting contract and all intellectual property rights in or related to the deliverables shall become and remain the sole and exclusive property of Fairfax County. The successful offeror(s) will be required to assign all right, title, and interest in and to all of the foregoing to Fairfax County. As owner of the deliverables and related intellectual property rights, Fairfax County may:
 - a. obtain and hold copyrights, patents or such other registrations or intellectual property protections with respect to the deliverables as may be desirable or appropriate;
 - b. adapt, change, modify, edit or use the deliverables as Fairfax County sees fit, including in combination with the works of others;
 - c. prepare derivative works based on the deliverables and publish, display and distribute any deliverable(s) in any medium; and
 - d. sell, license, sublicense, lease, or permit others to use the deliverables and any intellectual property rights therein or related thereto, all without payment of any additional compensation to vendor.

2. PRE-PROPOSAL CONFERENCE:

- 2.1. An optional pre-proposal conference will be held on March 20, 2018 at 10:00 A.M. in the Fairfax County Government Center, Conference Center Room 7 , 12000 Government Center Parkway, Fairfax, Virginia. To request reasonable ADA accommodations, call the Department of Procurement and Material Management ADA representative at (703) 324-3201 or TTY 711. Please allow seven working days in advance of the event to make the necessary arrangements.
- 2.2. The purpose of the pre-proposal conference is to give potential offerors an opportunity to ask questions and to obtain clarification about any aspect of this Request for Proposal. Offerors may submit any questions pertaining to the RFP, in writing, prior to the pre-proposal conference to derek.solomon@fairfaxcounty.gov.

3. CONTRACT PERIOD AND RENEWAL:

- 3.1. This contract will begin on May 24, 2018, or date of award, whichever is later, and terminate on May 31, 2020.
- 3.2. Automatic renewals are prohibited. Contract renewals must be authorized by and coordinated through the County's purchasing department. The County reserves the right to renew the contract for an additional three (3) years, one (1) year at a time based on satisfactory Contractor performance and if agreeable to all parties.

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- 3.3. The obligation of the County to pay compensation due the contractor under the contract or any other payment obligations under any contract awarded pursuant to this Request for Proposal is subject to appropriations by the Fairfax County Board of Supervisors to satisfy payment of such obligations. The County's obligations to make payments during subsequent fiscal years are dependent upon the same action. If such an appropriation is not made for any fiscal year, the contract shall terminate effective at the end of the fiscal year for which funds were appropriated and the County will not be obligated to make any payments under the contract beyond the amount appropriated for payment obligations under the contract. The County will provide the contractor with written notice of non-appropriation of funds within thirty (30) calendar days after action is completed by the Board of Supervisors. However, the County's failure to provide such notice shall not extend the contract into a fiscal year in which sufficient funds have not been appropriated.

4. BACKGROUND:

- 4.1. The Office of Public Affairs (OPA) provides essential information to the public, elected and appointed officials, County departments and the media concerning County programs and services. It serves as the central communication office for the County. The services of OPA are divided into three primary areas: external, internal and emergency communications. OPA collaborates with other County departments and acts as consultant for communication and event-related issues for about 30 agencies that do not have information officers within the agency. In addition, approximately 20 agencies have information officers assigned specifically to provide communication support for their individual agencies.

5. TASKS TO BE PERFORMED:

Qualified offerors are encouraged to submit a proposal for one or more of the following services:

- 5.1. Outreach Campaigns: Under direction of OPA staff or the agency information officer, assist County agencies in developing comprehensive internal and external communication plans. Duties may include, but are not limited to:
- a. Conduct necessary research and gather data;
 - b. Identify communication goals and objectives, key messages, and measures for success;
 - c. Develop plans based on available funding and staff resources;
 - d. Produce collateral associated with the campaign
 - e. Review and revise plan(s) as needed.
- 5.2. Social Media: Under the direction of OPA staff or the agency information officer, provide comprehensive and/or select social media support for programs, initiatives and events. Duties may include, but are not limited to:
- a. Provide strategic counsel for official/approved social media accounts/efforts in line with county policies and procedures, provided in Exhibit A; offeror cannot start social media accounts on behalf of the county.
 - b. Create tactical social media content, including text, graphics and photos, for approved county social media accounts.
 - c. Analyze content/campaign performance and provide metrics reports.
 - d. Align social media efforts with overall communications planning, web content development, paid advertising, media relations, big/open data initiatives and other efforts.
 - e. Provide best practice industry research and trends for staff to consider within county policies and procedures, provided upon contract award.

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- 5.3. Web Writing and Design: Under direction of OPA staff or the agency information officer, write, edit, and produce copy for the Web. Duties may include, but are not limited to:
- a. Write text for the County's internal and external websites;
 - b. Design web pages in compliance with the County's standards; Offeror cannot start .com, .org, or other separate websites.
 - c. Locate appropriate photos and create graphic elements to illustrate and enhance product;
 - d. Research and provide examples of web page designs that can be adapted to follow Fairfax County web design guidelines;
 - e. Create content that meets Fairfax County's accessibility requirements, provided in Exhibit B.
- 5.4. Publication production: Under direction of OPA staff or the agency information officer, produce publication materials for review. Duties may include, but are not limited to:
- a. Writing text: Prepare text for a variety of publications and marketing materials for review. Duties may include, but are not limited to:
 1. Meet with key personnel to determine information to be included, reviewing text with them and receive approvals for content;
 2. Write and edit content from available resources, background materials, research or interviews with appropriate contacts as determined by the appropriate County staff person;
 3. Provide outlines and drafts throughout the process;
 4. Provide final drafts that incorporate the comments and revisions of key personnel;
 5. Design formats and develop marketing brands for brochures, newsletters, or other publications and coordinating with graphic designer to develop the product;
 6. Customize publications for key market segments.
 - b. Copy editing and proofing. Duties may include, but are not limited to:
 1. Check publications and other materials for spelling, grammar, punctuation, usage and typographical errors;
 2. Ensure consistency with appropriate style guide — Associated Press Stylebook (AP) for general publications and media materials and the Gregg Reference Manual for business communications;
 3. Suggest changes to improve clarity and consistency;
 4. Ensure compliance with the Fairfax County Communication Toolkit, reference Exhibit C.
 - c. Graphic Design and Printing: Provide graphic design for a variety of formats for review. Duties may include, but are not limited to:
 1. Design publications such as brochures, newsletters, fliers, invitations, programs, and display materials using Adobe CreativeSuite or Microsoft Publisher;
 2. Design promotional materials — e.g. magnets, bookmarks, fans, pens, calendars, etc.;
 3. Design logos, brand identities and marketing campaigns;
 4. Format text into graphic design;
 5. Prepare publications for production;
 6. Locate appropriate photos and other graphic elements to illustrate and enhance product;
 7. Work with the Fairfax County Print Shop to ensure accurate and timely printing and distribution. Successful Offeror must familiarize themselves with the Print Shop's printing capabilities and design materials to fit within their capabilities, when possible.

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- 5.5. **Event Planning:** Under direction of OPA staff or the agency information officer, assist with concept development and implementation of various tasks for County ceremonies and events. Duties may include, but are not limited to:
- a. Coordinate activities with the organizing group or committee;
 - b. Develop marketing strategies and developing logos, appropriate themes, slogans and messages;
 - c. Design invitations, fliers, registration materials, promotional and display materials, participant evaluations, and programs;
 - d. Write and/or edit copy for printed materials, news releases and the web;
 - e. Write and/or edit talking points for designated speakers;
 - f. Determine and handle event logistics including facilities, technology, audio-visual needs, food, publications, registration, staffing, display materials, handout materials, event schedule, and order of speakers; and
 - g. Provide staff to plan and support the event.
- 5.6. **Photography:** Under direction of OPA staff or the agency information officer, photograph events, subjects and other assignments for a variety of uses. Duties may include, but are not limited to:
- a. Take photographs at County events, summits or forums in varied locations;
 - b. Photograph County officials and staff;
 - c. Provide photographs in varied formats (e.g., jpg, gif, tiff, bmp) for different uses (e.g., publications, Web, social media);
 - d. Coordinate with staff on concept and requirements for photography;
 - e. Provide own photography equipment;
 - f. Provide availability on short notice; and
 - g. Ability to modify and enhance pictures using Photoshop or other editing software.
- 5.7. **Research:** Under direction of OPA staff or the agency information officer, research topics for various uses. Duties may include, but are not limited to:
- a. Use standard resources (e.g., online, library, records, County information and publications, media) to provide background and information;
 - b. Interview appropriate information sources;
 - c. Find appropriate photos and graphics;
 - d. Compile research in appropriate format for usage;
 - e. Gather and evaluate publications and Web sites; and
 - f. Provide research on market segments for outreach.

6. TECHNICAL PROPOSAL INSTRUCTIONS:

- 6.1. The offeror must submit the Technical Proposal in a separate binder containing the following information. This information will be considered the minimum content of the proposal. Proposal contents shall be arranged in the same order and identified with headings as presented herein.
- a. Name of firm submitting proposal; main office address; when organized; if a corporation, when and where incorporated; appropriate Federal, State, and County registration numbers.
 - b. Understanding of the problem and technical approach.
 1. Statement and discussion of the requirements as they are analyzed by the offeror.
 2. Offeror's proposed definitive Scope of Work with explanation of technical approaches and a detailed outline of the proposed program for executing the requirements of the technical scope and achieving project objectives.
 3. Portfolio samples and other graphic representations of previous work.
 4. Offeror should demonstrate an awareness of difficulties in the completion of this undertaking, and a plan for surmounting them. Special attention should be given to methodological issues that will be encountered in such a project.

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6.2. Preliminary Work Plan:

The offeror must present a description of the phases or segments into which the proposed program can logically be divided and performed, together with flow charts. The technical narrative should address separately each of the tasks described in the Request for Proposal and responses should be keyed to appropriate paragraph numbers. This section should also contain a discussion of any changes proposed by the offeror that substantially differs from the project scope described in these Special Provisions.

This section should include detailed descriptions of activities that are to occur, significant milestones, and anticipated deliverables.

6.3. Treatment of the Issues:

In this section, the offeror may also comment if deemed appropriate, on any aspect of the Request for Proposal, including suggestions on possible alternative approaches to the coverage, definition, development, and organization of the issues presented in the "Tasks to be Performed" section, and may propose alternative approaches.

6.4. Statement of Qualifications:

The statement of Qualifications must include a description of organizational and staff experience, and resumes of proposed staff.

- a. Organizational Experience: Offerors must describe their qualifications and experience to perform the work described in this Request for Proposal. Information about experience should include direct experience with the specific subject matter.
- b. References: Provide a minimum of two references and they may be from Fairfax County and/or Fairfax County Public Schools. Special notation must be made of similar or related programs performed and must include organization names, addresses, names of contact persons, and telephone numbers for such reference.
- c. Personnel: Full-time and part-time staff, proposed consultants and subcontractors who may be assigned direct work on this project should be identified. Information is required which will show the composition of the task or work group, its specific qualifications, and recent relevant experience. Special mention shall be made of direct technical supervisors and key technical personnel, and approximate percentage of the total time each will be available for this project. The technical areas, character and extent of participation by any subcontractor or consultant activity must be indicated and the anticipated sources will be identified.

Resumes of staff and proposed consultants are required indicating education, background, recent relevant experience with the subject matter of the project. Current telephone numbers must be included.

- d. A staffing plan is required which describes the Offeror's proposed staff distribution to accomplish this work. The staffing plan should indicate a chart that partitions the time commitment of each professional staff member across the proposed tasks and a timeline for the project. It is mandatory that this section identify the key personnel who are to work on the project, their relationship to be contracting organization, and amount of time to be devoted to the project. This includes Consultants as well as regular employees of the offeror, if relevant.
- e. Financial Statements: The offeror shall provide an income statement and balance sheet from the most recent reporting period.

6.5. The personnel named in the technical proposal will remain assigned to the project throughout the period of this contract. No diversion or replacement may be made without submission of a resume of the proposed replacement with final approval being granted by the County Purchasing Agent.

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7. CONSULTATION SERVICES:

- 7.1. The contractor's staff must be available for consultation with County staff on an as-needed basis between 8:00 AM and 5:00 PM, Eastern Time, Monday through Friday.

8. COST PROPOSAL INSTRUCTIONS:

- 8.1. The offeror must submit a cost proposal in a separate binder fully supported by cost and pricing data adequate to establish the reasonableness of the proposed fee. The following information should be submitted as part of the cost proposal:

The cost of each task or segment of the task shall be itemized.

- a. Offerors must provide a price breakdown for each service separately as well as totals for services provided together if price differ.
- b. Breakdown of direct labor and labor overhead costs including number of man-hours and applicable actual or average hourly rates, overhead rate and supporting schedule.
- c. Travel and per diem or subsistence costs, if any supported by breakdown including destination, duration and purpose.
- d. Breakdown of other expenses such as clerical support, other overhead costs, supplies, etc.

Caution: Failure to break down cost elements may render the Cost proposal non-responsive.

9. PRICING:

- 9.1. The subsequent contract will be a hourly labor rate fee for service agreement. The fee(s) will remain firm and will include all charges that may be incurred in fulfilling the requirements of the contract during the first 365 days. Changes in cost for any subsequent contract years may be based on the Consumer Price Index (CPI-U) or other relevant indices.
- 9.2. The request for a change in the unit price shall include as a minimum, (1) the cause for the adjustment; (2) proposed effective date; and, (3) the amount of the change requested with documentation to support the requested adjustment (i.e., appropriate Bureau of Labor Statistics, Consumer Price Index (CPI-U), change in manufacturer's price, etc.).
- 9.3. Price decreases shall be made in accordance with paragraph 39 of the General Conditions & Instructions to Offerors. (Appendix A)

10. TRADE SECRETS/PROPRIETARY INFORMATION:

- 10.1. Trade secrets or proprietary information submitted by an offeror in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, offerors must invoke the protections of this section prior to or upon submission of the data or other materials.
- 10.2. **The offeror must identify the data or other materials to be protected and state the reasons why protection is necessary.** Disposition of material after award(s) should be stated by the offeror.
- 10.3. Appendix B (Request for Protection of Trade Secrets or Proprietary Information) is provided as a courtesy to assist offerors desiring to protect trade secrets or proprietary information from disclosure under the Virginia Freedom of Information Act.
- 10.4. The classification of an entire proposal document, line item prices, and/or total proposal prices as proprietary or trade secrets is not acceptable and may result in rejection of the proposal.

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11. CONTACT FOR CONTRACTUAL MATTERS:

- 11.1. All communications and requests for information and clarifications shall be directed to the following procurement official:

Derek D. Solomon, Contract Specialist
Department of Procurement and Material Management
Telephone: (703) 324-3603
E-mail: derek.solomon@fairfaxcounty.gov

- 11.2. No attempt shall be made by any offeror to contact members of the Selection Advisory Committee (SAC) about this procurement (see paragraph 16.3).

12. REQUIRED SUBMITTALS:

- 12.1. Each Offeror responding to this Request for Proposal must supply all the documentation required in the RFP. Failure to provide documentation with the Offeror's response to the RFP will result in the disqualification of the Offeror's proposal.

13. SUBMISSION OF PROPOSAL:

- 13.1. One (1) original (duly marked) and five (5) copies of the Technical proposal, and one (1) original (duly marked) and five (5) copies of the Cost proposal (Appendix B) shall be delivered to the following address in sealed envelopes or packages with the proposal number, title and the offerors name and address on the outside. Electronically stamped delivery receipts are available.

Department of Procurement and Material Management
12000 Government Center Parkway, Suite 427
Fairfax, Virginia 22035-0013
Telephone: 703-324-3201

- 13.2. Offerors are reminded that changes to the request for proposal, in the form of addenda, are often issued between the issue date and within three (3) days before the due date of the solicitation. All addenda **MUST** be signed and submitted to the Department of Procurement and Material Management, 12000 Government Center Parkway, Suite 427, Fairfax, VA 22035 before the due date/time or must accompany the proposal. Notice of addenda will be posted on eVA and the DPMM current solicitation webpage. It is the Offeror's responsibility to monitor the web page for the most current addenda at <http://www.fairfaxcounty.gov/solicitations>.
- 13.3. It is the Offeror's responsibility to clearly identify and to describe the services being offered in response to the Request for Proposal. Offerors are cautioned that organization of their response, as well as thoroughness is critical to the County's evaluation process. The RFP forms must be completed legibly and in their entirety; and all required supplemental information must be furnished and presented in an organized, comprehensive and easy to follow manner.
- 13.4. Unnecessarily elaborate brochures of other presentations beyond that sufficient to present a complete and effective proposal is not desired. Elaborate artwork, expensive paper, bindings, visual and other presentation aids are not required. The County encourages the use of recycled paper, therefore it is urged that proposals be submitted on paper made from or with recycled content and be printed on both sides.
- 13.5. Each original and set of the five (5) copies of the proposal shall consist of:
- a. Cover sheet (DPMM32)
 - b. Technical proposal as required in the Special Provisions, paragraph 6, **TECHNICAL PROPOSAL INSTRUCTIONS.**
 - c. Cost proposal as required in the Special Provisions, paragraph 8, **COST PROPOSAL INSTRUCTIONS.** (Appendix B should be included in the Cost proposal).

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- 13.6. By executing the cover sheet (DPMM32), Offeror acknowledges that they have read this Request for Proposal, understand it, and agree to be bound by its terms and conditions. Proposals may be submitted by mail or delivered in person.

14. LATE PROPOSALS:

- 14.1. Proposals received in the Office of the County Purchasing Agent after the date and time prescribed shall not be considered for contract award and shall be returned to the offeror.

15. PERIOD THAT PROPOSALS REMAIN VALID:

- 15.1. Proposals will remain valid for a period of one-hundred and twenty days (120) calendar days after the date specified for receipt of proposals.

16. BASIS FOR AWARD:

- 16.1. This Request for Proposal is being utilized for competitive negotiation. Under the competitive negotiation process, a contract may be awarded to the responsible offeror whose proposal is determined to be the most advantageous to the County, taking into consideration price and the evaluation factors set forth in the Request for Proposal. The County reserves the right to make multiple awards as a result of this solicitation.
- 16.2. A Selection Advisory Committee has been established to review and evaluate all proposals submitted in response to this Request for Proposal. The Committee shall conduct a preliminary evaluation of all proposals on the basis of the information provided with the proposal, and the evaluation criteria listed below. Based upon this review, the cost proposals of the highest rated offeror(s) will then be reviewed.
- 16.3. No Offeror, including any of their representatives, subcontractors, affiliates and interested parties, shall contact any member of the Selection Advisory Committee or any person involved in the evaluation of the proposals. Selection Advisory Committee members will refer any and all calls related to this procurement to the procurement official named in 11.1 above. Failure to comply with this directive may, at the sole discretion of the County, result in the disqualification of an offeror from the procurement process.
- 16.4. Based on the results of the preliminary evaluation, the highest rated offeror(s) may be invited by the County Purchasing Agent to make oral presentations to the Selection Advisory Committee. This committee will then conduct a final evaluation of the proposals. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. After negotiations have been conducted with each offeror so selected, the County shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror.
- 16.5. Should the County determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror. The Committee will make appropriate recommendations to the County Executive and Board of Supervisors, if appropriate, prior to actual award of contract.
- 16.6. Proposal Evaluation Criteria

The following factors will be considered in the award of this contract:

- a. Demonstrated ability to provide the Special Provisions, Section 5, **TASKS TO BE PERFORMED**. (35 Points)
- b. Demonstrated understanding of the problem and technical approach. (Refer to Paragraph 6.1.b.) (20 Points)
- c. Demonstrated qualification of firm with appropriately qualified and experienced personnel. (Refer to Paragraph 6.4) (25 Points)
- d. Reasonableness of cost proposal(s). (20 Points)

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- 16.7. Fairfax County reserves the right to make on-site visitations to assess the capabilities of individual offerors and to contact references provided with the proposal.
- 16.8. The County Purchasing Agent may arrange for discussions with firms submitting proposals, if required, for the purpose of obtaining additional information or clarification.
- 16.9. Offerors are advised that, in the event of receipt of an adequate number of proposals, which, in the opinion of the County Purchasing Agent, require no clarifications and/or supplementary information, such proposals may be evaluated without further discussion. Consequently, offerors should provide complete, thorough proposals with the offerors most favorable terms. Should proposals require additional clarification and/or supplementary information, offerors should submit such additional material in a timely manner.
- 16.10. Proposals which, after discussion and submission of additional clarification and/or supplementary information, are determined to meet the specifications of this Request for Proposal will be classified as "acceptable". Proposals found not to be acceptable will be classified as "unacceptable" and no further discussion concerning same will be conducted.
- 16.11. The County may cancel this Request for Proposal or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.

17. INSURANCE:

- 17.1. The contractor is responsible for its work and for all materials, tools, equipment, appliances, and property of any and all description used in connection with the project, whether owned by the contractor or by the County. The contractor assumes all risks of direct and indirect damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the contract, or in connection in any way whatsoever with the contracted work.
- 17.2. The Contractor shall, during the continuance of all work under the Contract provide the following:
 - a. Maintain statutory Worker's Compensation and Employer's Liability insurance in limits of not less than \$100,000 to protect the Contractor from any liability or damages for any injuries (including death and disability) to any and all of its employees, volunteers, or subcontractors, including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia, or which may be hereinafter enacted.
 - b. The contractor agrees to maintain Commercial General Liability insurance in the amount of \$1,000,000 per occurrence/aggregate, to protect the contractor, its subcontractors, and the interest of the County, against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation under the contract or in connection with contracted work.
 - c. The contractor agrees to maintain owned, non-owned, and hired Automobile Liability insurance, in the amount of \$1,000,000 per occurrence/aggregate, including property damage, covering all owned, non-owned borrowed, leased, or rented vehicles operated by the Contractor.
 - d. Liability insurance may be arranged by General Liability and Automobile Liability policies for the full limits required, or by a combination of underlying Liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.
 - e. Rating Requirements:
 1. The Contractor agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A: VI.
 2. European markets including those based in London, and the domestic surplus lines markets that operate on a non-admitted basis are exempt from this requirement provided that the contractor's broker can provide financial data to establish that a market is equal to or exceeds the financial strengths associated with the A.M. Best's rating of A:VI or better.
 - f. Indemnification: Article 63 of the General Conditions and Instructions to Bidders (Appendix A) shall apply.

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- g. The Contractor will provide an original, signed Certificate of Insurance citing the contract number and such endorsements as prescribed herein, and shall have it filed with the County Purchasing Agent and/or Risk Manager before any work is started.
 - h. If the Contractor delivers services from a County-leased facility, the Contractor is required to carry property insurance on all equipment, to include County-owned installed and maintained equipment used by the contractor while in their care, custody and control for use under this contract.
- 17.3. No change, cancellation, or non-renewal shall be made in any insurance coverage without a thirty-five-day written notice to the County Purchasing Agent and/or Risk Manager. The Contractor shall furnish a new certificate prior to any change or cancellation date. The failure of the Contractor to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished.
- 17.4. Precaution shall be exercised at all times for the protection of persons (including employees) and property.

18. METHOD OF ORDERING:

- 18.1. The County may use two (2) different methods of placing orders from the final contract: Purchase Orders (PO's) and approved County procurement cards.
- 18.2. A Purchase Order (PO) may be issued to the contractor on behalf of the County agency ordering the items/services covered under this contract. An issued PO will become part of the resulting contract. The purchase order indicates that sufficient funds have been obligated as required by Title 15.2-1238 of the Code of the Commonwealth of Virginia.
- 18.3. Procurement Card orders and payments may also be made by the use of a Fairfax County or Fairfax County Public Schools "Procurement" Card. The Procurement Card is currently a Master Card. Contractors are encouraged to accept this method of receiving orders.
- 18.4. Regardless of the method of ordering used, solely the contract and any modification determine performance time and dates.
- 18.5. Performance under this contract is not to begin until receipt of the purchase order, Procurement Card order, or other notification to proceed by the County Purchasing Agent and/or County agency to proceed. Purchase requisitions shall not be used for placing orders.

19. REPORTS:

- 19.1. The Contractor must maintain all records in compliance with federal and state regulations.

20. INVOICING:

- 20.1. The Contractor must invoice each County department using the final contract separately. Invoices for all users of the contract must meet County requirements, unless otherwise indicated. The Contractor must send each department an itemized monthly invoice (or as agreed to between the parties), which must include the information listed below:
 - a. Employee name, Point of Contact;
 - b. The name of the County department;
 - c. Date of services
 - d. The type of services; and,
 - e. The itemized cost for each item/service.
- 20.2. County departments must receive monthly invoices by the 10th of each month following the month the Contractor provided the service. The Contractor will mail the invoices to the individuals identified in the final contract.

21. PAYMENTS:

- 21.1. The County will pay the Contractor based upon completion, acceptance, and approval by the County of each task outlined in the Special Provisions, paragraph 5, **TASKS TO BE PERFORMED.**

SPECIAL PROVISIONS**22. CHANGES:**

- 22.1. Fairfax County may, at any time, by written order, require changes in the services to be performed by the Contractor. If such changes cause an increase or decrease in the Contractor's cost of, or time required for, performance of any services under this contract, an equitable adjustment shall be made and the contract shall be modified in writing accordingly. The County Purchasing Agent must approve all work that is beyond the scope of this Request for Proposal.
- 22.2. No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written authorization of the Fairfax County Purchasing Agent.

23. DELAYS AND SUSPENSIONS:

- 23.1. The County may direct the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time deemed appropriate for the convenience of the County. The County will extend the Contractor's time of completion by a period of time that in the discretion of the Purchasing Agent is reasonably suited for completion of work. The County may further amend the contract by mutual agreement for any increase in the cost of performance of the contract (excluding profit) resulting solely from the delay or suspension of the contract. No adjustment shall be made under this clause for any delay or interruption resulting from any other cause, including the fault or negligence of the Contractor.
- 23.2. If the County does not direct the Contractor, in writing, to suspend, delay, or interrupt the contract, the Contractor must give the County Purchasing Agent written notice if Fairfax County fails to provide data or services that are required for contract completion by the Contractor. The County may extend the Contractor's time of completion by a period of time that in the discretion of the Purchasing Agent is reasonably suited for completion of work. The County may further amend the contract by mutual agreement for any increase in the cost of performance of the contract (excluding profit) resulting solely from the delay or suspension of the contract. No adjustment shall be made under this clause for any delay or interruption resulting from any other cause, including the fault or negligence of the Contractor.
- 23.3. The Contractor shall continue its work on other phases of the project or contract, if in the sole discretion of the Purchasing Agent such work is not impacted by the County's delay, suspension, or interruption. All changes to the work plan or project milestones shall be reflected in writing as a contract amendment.

24. ACCESS TO AND INSPECTION OF WORK:

- 24.1. The Fairfax County Purchasing Agent and using agencies will, at all times, have access to the work being performed under this contract wherever it may be in progress or preparation.

25. PROJECT AUDITS:

- 25.1. The Contractor shall maintain books, records and documents of all costs and data in support of the services provided. Fairfax County or its authorized representative shall have the right to audit the books, records and documents of the contractor under the following conditions:
 - a. If the contract is terminated for any reason in accordance with the provisions of these contract documents in order to arrive at equitable termination costs;
 - b. In the event of a disagreement between the contractor and the County on the amount due the Contractor under the terms of this contract;
 - c. To check or substantiate any amounts invoiced or paid which are required to reflect the costs of services, or the Contractor's efficiency or effectiveness under this contract; and,
 - d. If it becomes necessary to determine the County's rights and the contractor's obligations under the contract or to ascertain facts relative to any claim against the Contractor that may result in a charge against the County.
- 25.2. These provisions for an audit shall give Fairfax County unlimited access during normal working hours to the Contractor's books and records under the conditions stated above.

SPECIAL PROVISIONS

- 25.3. Unless otherwise provided by applicable statute, the contractor, from the effective date of final payment or termination hereunder, shall preserve and make available to Fairfax County for a period of five (5) years thereafter, at all reasonable times at the office of the Contractor but without direct charge to the County, all its books, records documents and other evidence bearing on the costs and expenses of the services relating to the work hereunder.
- 25.4. Fairfax County's right to audit and the preservation of records shall terminate at the end of five (5) years as stated herein. The Contractor shall include this "Right of Audit and Preservation of Records" clause in all subcontracts issued by it and they shall require same to be inserted by all lower tier subcontractors in their subcontracts, for any portion of the work.
- 25.5. Should the Contractor fail to include this clause in any such contract or lower tier contract, or otherwise fail to insure Fairfax County's rights hereunder, the Contractor shall be liable to Fairfax County for all reasonable costs, expenses and attorney's fees which Fairfax County may have to incur in order to obtain an audit or inspection of or the restoration of records which would have otherwise been available to Fairfax County from said persons under this clause. Such audit may be conducted by Fairfax County or its authorized representative.

26. DATA SOURCES:

- 26.1. The County will provide the Contractor all available data possessed by the County that relates to this contract. However, the Contractor is responsible for all costs for acquiring other data or processing, analyzing or evaluating County data.

27. SAFEGUARDS OF INFORMATION:

- 27.1. Unless approved in writing by the County Purchasing Agent, the Contractor may not sell or give to any individual or organization any information, reports, or other materials given to, prepared or assembled by the Contractor under the final contract.

28. ORDER OF PRECEDENCE:

- 28.1. In the event of conflict, the Acceptance Agreement (provided at contract award) and the Special Provisions of this contract shall take precedence over the General Conditions and Instructions to Bidders, (Appendix A).

29. SUBCONTRACTING:

- 29.1. If one or more subcontractors are required, the contractor is encouraged to utilize small, minority-owned, and women-owned business enterprises. For assistance in finding subcontractors, contact the Virginia Department of Business Assistance <http://www.dba.state.va.us>; the Virginia Department of Minority Business Enterprise <http://www.dmb.e.state.va.us/>; local chambers of commerce and other business organizations.
- 29.2. As part of the contract award, the prime contractor agrees to provide the names and addresses of each subcontractor, that subcontractor's status as defined by Fairfax County, as a small, minority-owned and/or woman-owned business, and the type and dollar value of the subcontracted goods/services provided. Reference Appendix B to this solicitation.

30. USE OF CONTRACT BY OTHER PUBLIC BODIES:

- 30.1. Reference Paragraph 75, General Conditions and Instructions to Bidders, Cooperative Purchasing. Offerors are advised that the *resultant* contract(s) may be extended, with the authorization of the Offeror, to other public bodies, or public agencies or institutions of the United States to permit their use of the contract at the same prices and/or discounts and terms of the resulting contract. If any other public body decides to use the final contract, the Contractor(s) must deal directly with that public body concerning the placement of orders, issuance of purchase orders, contractual disputes, invoicing and payment. The County of Fairfax acts only as the "Contracting Agent" for these public bodies. Failure to extend a contract to any public body will have no effect on consideration of your offer. (See Appendix B for sample listing).

SPECIAL PROVISIONS

- 30.2. It is the Contractors responsibility to notify the public body(s) of the availability of the contract(s).
- 30.3. Other public bodies desiring to use this contract will need to make their own legal determinations as to whether the use of this contract is consistent with their laws, regulations, and other policies.
- 30.4. Each public body has the option of executing a separate contract with the Contractor(s). Public bodies may add terms and conditions required by statute, ordinances, and regulations, to the extent that they do not conflict with the contracts terms and conditions. If, when preparing such a contract, the general terms and conditions of a public body are unacceptable to the Contractor, the Contractor may withdraw its extension of the award to that public body.
- 30.5. Fairfax County **shall not** be held liable for any costs or damages incurred by another public body as a result of any award extended to that public body by the Contractor.

31. NEWS RELEASE BY VENDORS:

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

32. AMERICANS WITH DISABILITIES ACT REQUIREMENTS:

- 32.1. Fairfax County Government is fully committed to the Americans with Disabilities Act (ADA) which guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and all County programs, activities and services. Fairfax County government contractors, subcontractors, vendors, and/or suppliers are subject to this ADA policy. All individuals having any County contractual agreement must make the same commitment. Your acceptance of this contract acknowledges your commitment and compliance with ADA.
- 32.2. Fairfax County is committed to a policy of nondiscrimination in all County programs, services, and activities and will provide reasonable accommodations upon request. Bidders requesting special accommodations should call the Department ADA representative at (703) 324-3201 or TTY 711. Please allow seven (7) working days in advance of the event to make the necessary arrangements.

33. HIPAA COMPLIANCE:

- 33.1. Fairfax County Government has designated certain health care components as covered by the Health Insurance Portability and Accountability Act of 1996. The successful vendor will be designated a business associate pursuant to 45 CFR part 164.504(e) of those agencies identified as health care components of the County, including the Fairfax-Falls Church Community Services Board, upon award of contract. The successful vendor shall be required to execute a Fairfax County Business Associate Agreement and must adhere to all relevant federal, state, and local confidentiality and privacy laws, regulations, and contractual provisions of that agreement. These laws and regulations include, but are not limited to: (1) HIPAA – 42 USC 201, et seq., and 45 CFR Parts 160 and 164; and (2) Va Code – Title 32.1, Health, § 32.1-1 et seq. The vendor shall have in place appropriate administrative, technical, and physical safeguards to ensure the privacy and confidentiality of protected health information.
- 33.2. Further information regarding HIPAA Compliance is available on the County's website at <http://www.fairfaxcounty.gov/HIPAA>.

SPECIAL PROVISIONS**34. STATE CORPORATION COMMISSION IDENTIFICATION NUMBER:**

- 34.1. Pursuant to *Code of Virginia*, §2.2-4311.2 subsection B, a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its bid or proposal the identification number issued to it by the State Corporation Commission (SCC). Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law is required to include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized. Any bidder or offeror that fails to provide the required information may not receive an award.

General Conditions and Instructions to Bidders

COUNTY OF FAIRFAX
COMMONWEALTH OF VIRGINIA

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

BIDS ON SOLICITATIONS ISSUED BY THE COUNTY WILL BIND BIDDERS TO THE APPLICABLE CONDITIONS AND REQUIREMENTS IN THE GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS (GCIB) UNLESS OTHERWISE SPECIFIED IN THE SOLICITATION AND SUBJECT TO APPLICABLE STATE, LOCAL, AND FEDERAL LAWS.

BIDDERS OR THEIR AUTHORIZED REPRESENTATIVES SHOULD INFORM THEMSELVES FULLY AS TO THE CONDITIONS, REQUIREMENTS, AND SPECIFICATIONS OF EACH COUNTY PROCUREMENT BEFORE SUBMITTING BIDS. FAILURE TO DO SO WILL BE AT THE BIDDER'S OWN RISK AND RELIEF CANNOT BE SECURED ON THE PLEA OF ERROR.

1. **AUTHORITY:** The Purchasing Agent has the sole responsibility and authority for purchasing supplies, materials, equipment, and services, except as excluded in the Fairfax County Purchasing Resolution. The Purchasing Agent's responsibility and authority includes, but is not limited to, issuing and modifying solicitations, negotiating and executing contracts, and placing purchase orders. In discharging these responsibilities, the Purchasing Agent may be assisted by contract specialists. Unless specifically delegated by the Purchasing Agent, no other County officer or employee is authorized to order supplies or services, enter into purchase negotiations or contracts, or in any way obligate the government of the County of Fairfax for an indebtedness. Any purchase ordered or contract made that is contrary to these provisions and authorities shall be of no effect, void, and does not bind the County.
2. **DEFINITIONS:** Unless otherwise defined in the GCIB, capitalized terms shall have the meanings defined by the Fairfax County Purchasing Resolution.

AGENCY: Any Department, Agency, Authority, Commission, Board or other unit in the Administrative Service of the County.

BID: The offer of a bidder to provide specific goods or services at specified prices and/or other conditions specified in the solicitation.

BIDDER/OFFEROR: Any individual, company, firm, corporation, partnership or other organization bidding on solicitations issued by the Purchasing Agent and offering to enter into contracts with the County. The term "bidder" will be used throughout this document and shall be construed to mean "offeror" where appropriate.

CONTRACTOR: Any individual, company, firm, corporation, partnership or other organization to whom an award is made by the County.

INVITATION FOR BID (IFB): A request which is made to prospective suppliers (bidders) for their quotation on goods or services desired by the County. The issuance of an IFB will contain or incorporate by reference the specifications and contractual terms and conditions applicable to the procurement.

PURCHASING AGENT: The Purchasing Agent employed by the Board of Supervisors of Fairfax County, Virginia.

REQUEST FOR PROPOSAL (RFP): A request for an offer from prospective offerors which will indicate the general terms which are sought to be procured from the offeror. The RFP will specify the evaluation factors to be used and will contain or incorporate by reference other contractual terms and conditions applicable to the procurement.

SOLICITATION: The process of notifying prospective bidders that the County wishes to receive bids on a set of requirements to provide goods or services. The notification of County requirements may consist of public advertising (newspaper, County Web Site, or other electronic notification), the mailing of Notices of Solicitation, Invitation for Bid (IFB) or Request for Proposal (RFP), the public posting of notices, issuance of an informal solicitation to include telephone calls to prospective bidders.

CONDITIONS OF BIDDING

3. **BID FORMS:** Unless otherwise specified in the solicitation, all bids must be (i) submitted on the forms provided by the County, including the bid Cover Sheet and Pricing Schedule(s); (ii) properly signed in ink in the identified spaces; and (iii) submitted in a sealed envelope or package.

If the bid prices or any other submissions differ on the copy of the submitted bid, the ORIGINAL copy shall prevail.

4. **LATE BIDS & MODIFICATIONS OF BIDS:**
 - a. Bids or proposals received after the date and time specified for receipt in the solicitation will not be considered.
 - b. If an emergency, unanticipated event, or closing of County offices interrupts or suspends normal County business operations so that bids cannot be received at the County office designated for receipt of bids by the exact time specified in the solicitation, then bids will be due at the same time of day specified in the solicitation on the first work day that normal County business operations resume.
 - c. The official time used for receipt of bids/modifications is the time and date stamp clock located in the Department of Procurement & Material Management. No other clocks, calendars or timepieces are recognized. All bidders must ensure all bids/modifications are received prior to the scheduled due date/time.

General Conditions and Instructions to Bidders

5. **WITHDRAWAL OF BIDS:** Bids shall be withdrawn only as set forth in the Fairfax County Purchasing Resolution.
6. **ERRORS IN BIDS:** When an error is made in extending total prices, the unit bid price will govern. Erasures in bids must be initialed by the bidder. Bidders are cautioned to recheck their bids for possible error. Errors discovered after public opening cannot be corrected and the bidder will be required to perform if its bid is accepted.
7. **LABELING OF BIDS:** All bids and proposals submitted in response to a County solicitation must be submitted in a sealed envelope or package identified with the solicitation number, title, and bidder's name and address clearly marked on the outside of the envelope or package.
8. **ACCEPTANCE OF BIDS/BINDING 90 DAYS:** Unless otherwise specified, all formal bids submitted shall be binding for ninety (90) calendar days following bid opening date, unless extended by mutual consent of all parties.
9. **CONDITIONAL BIDS:** Conditional bids may be rejected in whole or in part.
10. **BIDS FOR ALL OR PART:** The Purchasing Agent reserves the right to make award on all items in the aggregate or on any of the items on an individual basis, whichever is in the best interest of the County. A bidder may restrict its bid to consideration in the group aggregate by so stating, but must name a single unit price on each item bid. Any bid in which the bidder names a total price for all the articles without quoting a unit price for each and every separate item may not be considered for award.
11. **AREA BIDS:** For the purchase and delivery of certain goods and services the County may be divided into Areas (e.g., Areas I, II, III, and IV). When such goods and services are included in the Pricing Schedule, bidders may bid on all areas or an individual area. A map showing the areas of the County will be furnished with the solicitation when required.
12. **RECEIPT OF BIDS:** Bids received prior to the time of opening will be securely kept, unopened by the County. No responsibility will attach to the Purchasing Agent or her representative for the premature opening of a bid not properly addressed and identified. Unless specifically authorized in the solicitation, telegraphic, electronic, or facsimile bids/modifications will not be considered by the County.
13. **BID OPENING:** All bids received in response to an Invitation for Bid (IFB) will be opened at the date, time and place specified, read publicly, and made available for inspection as provided in paragraph 63, General Conditions and Instructions to Bidders. The Purchasing Agent's representative assigned to open the bids will decide when the specified time for bid opening has arrived. Tabulations of bids received are posted on the County's website at: <http://www.fairfaxcounty.gov/procurement/bid-tab>

Proposals received in response to a Request for Proposal (RFP) will be made available as provided in Paragraph 63, General Conditions and Instructions to Bidders.
14. **OMISSIONS & DISCREPANCIES:** Any items or parts of any equipment listed in this solicitation that clearly necessary for the operation and completion of such equipment, but are: (i) not fully described by the County; or (ii) are omitted by the County from such specification, shall be considered a part of such equipment even if not directly specified or called for in the specifications.

If a bidder finds discrepancies or ambiguities in, or omissions from, the solicitation, including the drawings and/or specifications, it shall notify the Purchasing Agent at least five (5) days prior to the date set for the opening of bids. If necessary, the Purchasing Agent will send a written addendum for clarification to all bidders no later than three (3) days before the date set for opening of bids. Notifications regarding specifications will not be considered if received within five days of the date set for opening of bids.
15. **BIDDER INTERESTED IN MORE THAN ONE BID:** If more than one bid is offered by a bidder, directly or indirectly, all such bids may be rejected. A bidder who has quoted prices on work, materials, or supplies to a bidder is not disqualified from quoting prices to other bidders or firms submitting a bid directly for the work, materials or supplies.
16. **TAX EXEMPTION:** The County is exempt from the payment of any federal excise or any Virginia sales tax. Fairfax County's Federal Excise Tax Exemption Number is 54-74-0127K.
17. **PROHIBITION AGAINST UNIFORM PRICING:** The Purchasing Agent encourages open and competitive bidding by all possible means and endeavors to obtain the maximum degree of open competition on all purchase transactions using the methods of procurement authorized by the Fairfax County Purchasing Resolution. Each bidder, by virtue of submitting a bid, guarantees that it has not been a party with other bidders to an agreement to bid a fixed or uniform price. Violation of this implied guarantee shall render void the bids of participating bidders. Any disclosure to or acquisition by a competitive bidder, in advance of the opening of the bids, of the terms or conditions of the bid submitted by another competitor may render the entire proceedings void and may require re-advertising for bids.

SPECIFICATIONS

18. **CLARIFICATION OF TERMS:** If any prospective bidder has questions about the specifications or other solicitation documents, the prospective bidder should contact the contract specialist whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the contract specialist.

General Conditions and Instructions to Bidders

19. **BRAND NAME OR EQUAL ITEMS:** Unless otherwise provided in the Invitation for Bid, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named; it conveys the general style, type, character, and quality of the article desired. Any article that the County in its sole discretion determines to be the equivalent of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The bidder is responsible for clearly and specifically identifying the product being offered and providing sufficient descriptive literature, catalog cuts and technical detail to enable the County 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. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the bidder clearly indicates in its bid that the product is an equivalent product, such bid will be considered to offer the brand name product referenced in the solicitation.
20. **SPECIFICATIONS:** When a solicitation contains a specification that states no substitutes, no deviation therefrom will be permitted and the bidder will be required to furnish articles in conformity with that specification.

The bidder must abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully complete every part as the true intent and meaning of the specifications and drawings. Whenever the mention is made of any articles, material, or workmanship to be in accordance with laws, ordinances, building codes, underwriter's codes, A.S.T.M. regulations or similar expressions, the requirements of these laws, ordinances, etc., shall be construed as to the minimum requirements of these specifications.

AWARD

21. **AWARD OR REJECTION OF BIDS:** The Purchasing Agent shall award the contract to the lowest responsive and responsible bidder complying with all provisions of the IFB, provided the bid price is reasonable and it is in the best interest of the County to accept it. Awards made in response to a RFP will be made to the highest qualified offeror whose proposal is determined, in writing, to be the most advantageous to the County taking into consideration the evaluation factors set forth in the RFP. The Purchasing Agent reserves the right to award a contract by individual items, in the aggregate, or in combination thereof, or to reject any or all bids and to waive any informality in bids received whenever such rejection or waiver is in the best interest of the County. Award may be made to as many bidders as deemed necessary to fulfill the anticipated requirements of Fairfax County. The Purchasing Agent also reserves the right to reject the bid of a bidder deemed to be a non-responsible bidder.

In determining the responsibility of a bidder, the following criteria will be considered:

- a. The ability, capacity and skill of the bidder to perform the contract or provide the service required;
 - b. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
 - c. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
 - d. The quality of performance of previous contracts or services;
 - e. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or services;
 - f. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
 - g. The quality, availability and adaptability of the goods or services to the particular use required;
 - h. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;
 - i. Whether the bidder is in arrears to the County on debt or contract or is a defaulter on surety to the County or whether the bidder's County taxes or assessments are delinquent; and
 - j. Such other information as may be secured by the Purchasing Agent having a bearing on the decision to award the contract. If an apparent low bidder is not awarded a contract for reasons of non-responsibility, the Purchasing Agent shall so notify that bidder and shall have recorded the reasons in the contract file.
22. **NOTICE OF ACCEPTANCE/CONTRACT DOCUMENTS:** A written award (or Acceptance Agreement) mailed or otherwise furnished to the successful bidder within the time for acceptance specified in the solicitation shall result in a binding contract. The following documents, which are included in the solicitation, are incorporated by reference in and made part of the resulting contract:
- a. County of Fairfax Solicitation Form (Cover Sheet) and other documents which may be incorporated by reference, if applicable
 - b. Acceptance Agreement
 - c. General Conditions and Instructions to Bidders
 - d. Special Provisions and Specifications
 - e. Pricing Schedule
 - f. Any Addenda/Amendments/Memoranda of Negotiations
23. **TIE-BIDS:** If all bids are for the same total amount or unit price (including authorized discounts and delivery times), and if the public interest will not permit the delay of re-advertisement for bids, the Purchasing Agent is authorized to award the contract to the tie bidder that has its principal place of business in the County, or if there be none, to the resident Virginia tie bidder, or if there be none, to one of the tie bidders by drawing lots in public; or the Purchasing Agent may purchase the goods or services in the open market except that the price paid shall not exceed the lowest contract bid price submitted for the same goods or services. The decision of the County to make award to one or more such bidders shall be final.
24. **PROMPT PAYMENT DISCOUNT:**
- a. Unless otherwise specified in the solicitation, prompt payment discounts requiring payment in less than fifteen (15) days will not be considered in evaluating a bid for award. However, even though not considered in the evaluation, such discounts will be taken if payment is to be made within the discount period.
 - b. If a discount for prompt payment is allowed, the discount period will begin on the date of receipt of a properly completed invoice or acceptance of materials or services, whichever is later.

General Conditions and Instructions to Bidders

- c. For determining acceptance of supplies in accordance with the provisions of the prompt payment discount paragraph, inspection and acceptance shall be accomplished only after examination (including testing) of supplies and services to determine whether the supplies and services conform to the contract requirements.

For the purpose of earning the discount, payment is deemed to be made as of the date of mailing of the County check or issuance of an Electronic Funds Transfer, or completion of a credit card transaction.

25. **INSPECTION-ACCEPTANCE:** Acceptance shall occur only after receipt and inspection provided such inspection, as appropriate, is accomplished within a reasonable time. The County reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
26. **DEFINITE BID QUANTITIES:** Where definite quantities are specifically stated, acceptance will bind the County to order quantities specified and to pay for, at contract prices, all such supplies or services delivered that meet specifications and conditions of the contract. However, the County will not be required to accept delivery of any balances unordered, as of the contract expiration date, unless the Contractor furnished the Purchasing Agent with a statement of unordered balances not later than ten (10) days after the termination date of the contract.
27. **REQUIREMENT BID QUANTITIES:** On "Requirement" bids, acceptance will bind the County to pay for, at unit bid prices, only quantities ordered and delivered. Where the County specifies estimated quantities, the Contractor shall not be required to deliver more than ten (10) percent in excess of the estimated quantity of each item, unless otherwise agreed upon.

CONTRACT PROVISIONS

28. **TERMINATION OF CONTRACTS:** Contracts will remain in force for full periods specified and/or until all articles ordered before date of termination shall have been satisfactorily delivered and accepted and thereafter until all requirements and conditions shall have been met, unless:
- a. Terminated prior to expiration date by satisfactory deliveries of entire contract requirements, or upon termination by the County for Convenience or Cause.
 - b. Extended upon written authorization of the Purchasing Agent and accepted by Contractor, to permit ordering of unordered balances or additional quantities at contract prices and in accordance with contract terms.
29. **TERMINATION FOR CONVENIENCE:** A contract may be terminated in whole or in part by the County in accordance with this clause whenever the Purchasing Agent determines that such a termination is in the best interest of the County. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance shall be terminated and the date upon which termination becomes effective. An equitable adjustment in the contract price shall be made for completed service, but no amount shall be allowed for anticipated profit on unperformed services.
30. **TERMINATION OF CONTRACT FOR CAUSE:**
- a. If, through any cause, the Contractor fails to fulfill in a timely and proper manner its obligations under this contract, or if the Contractor violates any of the covenants, agreements, or stipulations of this contract, the County shall have the right to terminate the contract. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance shall be terminated and the date upon which termination becomes effective. In such event all finished or unfinished documents, data, studies, surveys, drawings, maps, models, and reports prepared by the Contractor under the contract shall, at the option of the County, become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.
 - b. Termination of the Contract for Cause does not relieve the Contractor of liability to the County for damages sustained by the County by virtue of any breach of contract by the Contractor for the purpose of set off until such time as the exact amount of damages due to the County from the Contractor is determined.
31. **CONTRACT ALTERATIONS:** No alterations in the terms of a contract shall be valid or binding upon the County unless made in writing and signed by the Purchasing Agent or her authorized agent.
32. **SUBLETTING OF CONTRACT OR ASSIGNMENT OF CONTRACT FUNDS:** It is mutually understood and agreed that the Contractor shall not assign, transfer, convey, sublet or otherwise dispose of his or her contractual duties to any other person, firm or corporation, without the previous written consent of the Purchasing Agent. If the Contractor desires to assign its right to payment of the contract, Contractor shall notify the Purchasing Agent immediately, in writing, of such assignment of right to payment. In no case shall such assignment of contract relieve the Contractor from its obligations or change the terms of the contract.
33. **FUNDING:** The obligation of the County to pay compensation due the Contractor under the contract or any other payment obligations under any contract awarded pursuant to this contract is subject to appropriations by the Fairfax County Board of Supervisors to satisfy payment of such obligations. The County's obligations to make payments during subsequent fiscal years are dependent upon the same action. If such an appropriation is not made for any fiscal year, the contract shall terminate effective at the end of the fiscal year for which funds were appropriated and the County will not be obligated to make any payments under the contract beyond the amount appropriated for payment obligations under the contract. The County will provide the

Contractor with written notice of non-appropriation of funds within thirty (30) calendar days after action is completed by the Board of Supervisors. However, the County's failure to provide such notice will not extend the contract into a fiscal year in which sufficient funds have not been appropriated.

General Conditions and Instructions to Bidders

34. **DELIVERY/SERVICE FAILURES:** If a Contractor (i) fails to deliver goods or services within the time specified or within a reasonable time as interpreted by the Purchasing Agent; or (ii) fails to make replacements or corrections of rejected articles or services when so requested, immediately or as directed by the Purchasing Agent, then the Purchasing Agent shall have the authority to purchase in the open market goods or services of comparable grade or quality to replace goods or services not delivered or rejected. On all such purchases, the Contractor shall reimburse the County, within a reasonable time specified by the Purchasing Agent, for any expense incurred in excess of contract prices. Such purchases shall be deducted from the contract quantities if applicable. Should public necessity demand it, the County reserves the right to use or consume articles delivered or services performed which are substandard in quality, subject to an adjustment in price to be determined by the Purchasing Agent.
35. **NON-LIABILITY:** The Contractor shall not be liable in damages for delay in shipment or failure to deliver when such delay or failure is the result of fire, flood, strike, the transportation carrier, act of God, act of Government, act of an alien enemy or by any other circumstances which, in the Purchasing Agent's opinion, are beyond the reasonable control of the Contractor. Under such circumstances, however, the Purchasing Agent may, at her discretion terminate the contract.
36. **NON-DISCRIMINATION:** During the performance of this contract, the Contractor agrees as follows:
- a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there 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 non-discrimination clause.
 - b. 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.
 - c. 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.
 - d. The Contractor will include the provisions of the foregoing paragraphs a, b, and c above in every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.
 - e. Contractor shall, throughout the term of this contract, comply with the Human Rights Ordinance, Chapter 11 of the Code of the County of Fairfax, Virginia, as reenacted or amended. Contractor shall further require that all of its subcontractors will comply with the Human Rights Ordinance, Chapter 11 of the Code of the County of Fairfax, Virginia, as reenacted or amended.
37. **SMALL, WOMEN-OWNED, AND MINORITY-OWNED BUSINESS USE:**
- a. It is the declared policy of the County of Fairfax, through its Small and Minority Business Enterprise Program, that Fairfax County and its employees undertake every effort to increase opportunity for use of small or minority businesses in all aspects of procurement to the maximum extent feasible.
 - b. Where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such subcontracting opportunities to small, women and minority businesses.
 - c. Where Federal grants or monies are involved, it is the policy of Fairfax County, through its agents and employees, to comply with the requirements set forth in the 2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, as they pertain to small and minority business use.
38. **GUARANTEES & WARRANTIES:** All guarantees and warranties required shall be furnished by the Contractor and shall be delivered to the Purchasing Agent before contract execution. Unless otherwise stated, manufacturer's standard warranty applies.
39. **PRICE REDUCTION:** If the Contractor makes a general price reduction for any material covered by the solicitation to customers generally, an equivalent price reduction shall apply to this contract for the duration of the contract period (or until the price is further reduced). Such price reduction shall be effective at the same time and in the same manner as the reduction in the price to customers generally. For purpose of this provision, a "general price reduction" shall mean any horizontal reduction in the price of an article or service offered (1) to Contractor's customers generally, or (2) in the Contractor's price schedule for the class of customers (i.e., wholesalers, jobbers, or retailers), which was used as the basis for bidding on this solicitation. An occasional sale at a lower price, or sale of distressed merchandise at a lower price is not a "general price reduction" under this provision. The Contractor shall submit its invoice at such reduced prices indicating on the invoice that the reduction is pursuant to the "Price Reduction" provision of the contract documents. The Contractor will also within ten days of any general price reduction notify the Purchasing Agent of such reduction by letter. FAILURE TO DO SO MAY RESULT IN TERMINATION OF THE CONTRACT.
40. **CHANGES:** If in the Purchasing Agent's opinion, it becomes proper or necessary in the execution of this contract to make any change in design, or to make any alterations that will increase the expense, the Purchasing Agent shall determine an equitable adjustment to the Contractor's compensation.
- No payment shall be made to the Contractor for any extra material or services, or of any greater amount of money than stipulated to be paid in the contract, unless some changes in or additions to the contract requiring additional outlay by the Contractor are first expressly authorized and ordered in writing by contract amendment or otherwise furnished by the Purchasing Agent.
41. **PLACING OF ORDERS:** Orders against contracts will be placed with the Contractor by Purchase Order or Procurement Card (P-Card) executed and released by the Purchasing Agent or their designee. When a Blanket Purchase Order has been released by the Purchasing Agent, telephonic orders may be placed directly with the Contractor by authorized personnel in the ordering Agency.

General Conditions and Instructions to Bidders

DELIVERY PROVISIONS

42. **SHIPPING INSTRUCTIONS - CONSIGNMENT:** Unless otherwise specified in the solicitation each case, container, package, etc., delivered under the contract must be plainly marked, stating the Contractor's name, purchase order number, and delivery address as indicated in the order. Deliveries must be made within the hours of 8:00 AM - 3:00 PM. Deliveries at any other time will not be accepted unless specific arrangements have been previously made with the receiver at the delivery point. No deliveries will be accepted on Saturdays, Sundays and holidays, unless previous arrangements have been made. It shall be the responsibility of the Contractor to insure compliance with these instructions for items that are drop-shipped.
43. **RESPONSIBILITY FOR MATERIALS OR GOODS TENDERED:** Unless otherwise specified in the solicitation, the Contractor is responsible for the materials or supplies covered by the contract until they are delivered at the delivery point designated by the County. The Contractor bears all risk of loss on rejected materials or supplies after notice of rejection. Rejected materials or supplies must be removed by and at the expense of the Contractor promptly after notification of rejection, unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the Contractor within ten (10) days after date of notification, the County may return the rejected materials or supplies to the Contractor at its risk and expense or dispose of them as the County's own property.
44. **INSPECTIONS:** Inspection and acceptance of materials or supplies will be made after delivery at the designated destinations unless otherwise stated. If inspection is made after delivery at the designated destination, the County will bear the expense of inspection except for the value of samples used in case of rejection. Final inspection is conclusive except in regard to latent defects, fraud or such gross mistakes as to amount to fraud. Final inspection and acceptance or rejection of the materials or supplies will be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the County for such materials or supplies as are not in accordance with the specifications.
45. **COMPLIANCE:** Delivery must be made as ordered and in accordance with the contract or as directed by the Purchasing Agent when not in conflict with the contract. The decision of the Purchasing Agent as to reasonable compliance with delivery terms shall be final. If the Contractor claims the delay in receipt of goods was caused by the County, the Contractor must provide evidence satisfactory to the Purchasing Agent supporting the Contractor's claim. Any request for extension of delivery time from that specified in the contract must be approved by the Purchasing Agent, such extension applying only to the particular item or shipment affected. If the Contractor is delayed by the County, there shall be added to the time of completion a time equal to the period of such delay caused by the County. However, the Contractor shall not be entitled to claim damages or extra compensation for such delay or suspension. These conditions may vary for construction contracts. See contract for the individual instructions.
46. **POINT OF DESTINATION:** All materials shipped to the County must be shipped F.O.B. DESTINATION unless otherwise stated in the contract or purchase order. The materials must be delivered to the "Ship to" address indicated on the purchase order.
47. **ADDITIONAL CHARGES:** Unless bought F.O.B. "shipping point" and Contractor prepays transportation, no delivery charges shall be added to invoices except when express delivery is authorized and substituted on orders for the method specified in the contract. In such cases, difference between freight or mail and express charges may be added to invoice.
48. **METHOD AND CONTAINERS:** Unless otherwise specified, goods shall be delivered in commercial packages in standard commercial containers that are constructed to ensure acceptance by common or other carrier for safe transportation to the point of delivery. Containers become the property of the County unless otherwise specified by bidder.
49. **REPLACEMENT:** Materials or components that have been rejected by the Purchasing Agent, in accordance with the terms of a contract, shall be replaced by the Contractor at no cost to the County.
50. **PACKING SLIPS OR DELIVERY TICKETS:** All shipments must be accompanied by Packing Slips or Delivery Tickets and must contain the following information for each item delivered:
- a. The Purchase Order Number,
 - b. The Name of the Article and Stock Number (Supplier's),
 - c. The Quantity Ordered,
 - d. The Quantity Shipped,
 - e. The Quantity Back Ordered,
 - f. The Name of the Contractor.

Contractors are cautioned that failure to comply with these conditions is sufficient reason for the County's refusal to accept the goods.

BILLING

51. **BILLING:** Billing for the Fairfax County Public Schools and for County agencies: Unless otherwise specified on the contract or purchase order (PO), invoices are to be submitted for each purchase order immediately upon completion of the shipment or services. Invoices should be mailed to the "BILL TO" address on the PO or to the appropriate address specified in the contract.

PAYMENTS

52. **PAYMENT:** Payment shall be made after satisfactory performance that is in accordance with all provisions of the contract, and upon receipt of a properly completed invoice. The County reserves the right to withhold any or all payments or portions thereof for Contractor's failure to perform in accordance with the provision of the contract or any subsequent modifications.

General Conditions and Instructions to Bidders

53. **PARTIAL PAYMENTS:** Unless otherwise specified, partial payments will be made upon acceptance of materials or services so invoiced if in accordance with completion date. However, up to 5 percent (5%) of the value of the entire order may be retained until completion of contract.
54. **PAYMENT FOR EQUIPMENT, INSTALLATION, AND TESTING:** When equipment requires installation (which includes erection, setting up or placing in position, service, or use) and testing, and the installation or testing is delayed, payment may be made based on 50% of the contract price when such equipment is delivered on the site. A further allowance of 25% may be made when the equipment is installed and ready for test. The balance shall be paid after the equipment is tested and found to be satisfactory. If the equipment must be tested, but installation is not required to be made by the Contractor or if the equipment must be installed but testing is not required, payment may be made based on 75% at the time of delivery and the balance shall be paid after satisfactory test or installation is completed.

GENERAL

55. **GENERAL GUARANTY:** Contractor agrees to:
- Save the County, its agents and employees harmless from liability of any nature or kind for the use of any copyrighted or uncopyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a contract for which the Contractor is not the patentee, assignee, licensee or owner.
 - Warrant that when the contract includes a software license, or use of licensed software, the Contractor is the owner of the Software or otherwise has the right to grant to the County the license to use the Software granted through the Contract without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party.
 - Protect the County against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery.
 - Furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work or to the work of other contractors, for which his or her workers are responsible.
 - Pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules, regulations, and policies of the County.
 - Protect the County from loss or damage to County owned property while it is in the custody of the Contractor.
56. **SERVICE CONTRACT GUARANTY:** Contractor agrees to:
- Furnish services described in the solicitation and resultant contract at the times and places and in the manner and subject to conditions of those documents provided that the County may reduce the said services at any time.
 - Enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence.
 - All work and services rendered in strict conformance to all laws, statutes, and ordinances and the applicable government rules, regulations, methods, and procedures.
 - Allow services to be inspected or reviewed by an employee of the County at any reasonable time and place selected by the County. The County is under no obligation to compensate Contractor for any services not rendered in strict conformity with the contract.
 - Stipulate that the presence of a County Inspector shall not lessen the obligation of the Contractor for performance in accordance with the contract requirements, or be deemed a defense on the part of the Contractor for infraction thereof. The Inspector is not authorized to revoke, alter, enlarge, relax, or release any of the requirements of the contract documents. Any omission or failure on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material. Notification of an omission or failure will be documented by the Purchasing Agent.
57. **INDEMNIFICATION:**
- General Indemnification: Contractor must indemnify, keep and save harmless, and defend the County, its agents, officials, employees and volunteers against Claims that may accrue or arise against the County as a result of the granting a contract, if the Claim was caused by the negligence or error, or omission of the Contractor, its employees, its subcontractor, or its subcontractor's employees. As used in this Section, a Claim includes: injuries, death, damage to property, breach of data security, suits, liabilities, judgments, or costs and expenses. Upon request by the County, the Contractor must at its own expense: appear, defend, and pay all attorney's fees and all costs and other expenses related to the Claim. If, related to a Claim, any judgment is rendered against the County or a settlement reached that requires the County to pay money, the Contractor must at its own expense satisfy and discharge the same. Contractor expressly understands and agrees that any performance bond or insurance protection required by this Contract, or otherwise provided by the Contractor, does not limit the Contractor's responsibility to indemnify, keep and save harmless, and defend the County as provided in this Contract.
 - Intellectual Property Indemnification: In addition to the General Indemnification, Contractor will indemnify the County for and defend the County against third-party claims for infringement of any valid United States patent, trademark or copyright by the Contractor's products, software, services, or deliverables. Contractor must indemnify the County for any loss, damage, expense or liability, including costs and reasonable attorney's fees that may result by reason of any such claim.

In the event of a claim covered by this subparagraph, and in addition to all other obligations of Contractor in this Paragraph 58, Contractor must at its expense and within a reasonable time: (a) obtain a right for the County to continue using such products and software, or allow Contractor to continue performing the Services; (b) modify such products, software, services or deliverables to make them non-infringing; or (c) replace such products or software with a non-infringing equivalent. If, in the Contractor's reasonable opinion, none of the foregoing options is feasible Contractor must immediately notify the County and accept the return of the products, software, services, or deliverables, along with any other components rendered unusable as a result of the infringement or claimed infringement, and refund to the County the price paid to Contractor for such components as well as any pre-paid fees for the allegedly infringing services, including license, subscription fees, or both. Nothing in Paragraph 58, however, relieves the Contractor of liability to the County for damages sustained by the County by virtue of any breach of contract related to a third-party infringement claim.

General Conditions and Instructions to Bidders

- c. **Right to Participate in Defense.** The County may, at its sole expense, participate in the defense or resolution of a Claim. Contractor will have primary control of the defense and resolution of the Claim, except when such defense or resolution requires the County to (i) admit liability or wrongdoing; or (ii) to pay money. In either of these cases Contractor must obtain the County's prior written consent before entering into such settlement or resolution.
 - d. **No Indemnification by the County.** The parties agree that under applicable law the County cannot indemnify or defend the Contractor. To the extent any promise or term contained in this Contract, including any exhibits, attachments, or other documents incorporated by reference therein, includes an indemnification or obligation to defend by the County, that promise or term is stricken from this Contract and of no effect.
58. **OFFICIALS NOT TO BENEFIT:**
- a. Each bidder or offeror shall certify, upon signing a bid or proposal, that to the best of their knowledge no Fairfax County official or employee having official responsibility for the procurement transaction, or member of their immediate family, has received or will receive any financial benefit of more than nominal or minimal value relating to the award of this contract. If such a benefit has been received or will be received, this fact shall be disclosed with the bid or proposal or as soon thereafter as it appears that such a benefit will be received. Failure to disclose the information prescribed above may result in suspension or debarment, or rescission of the contract made, or could affect payment pursuant to the terms of the contract.
 - b. Whenever there is reason to believe that a financial benefit of the sort described in paragraph "a" has been or will be received in connection with a bid, proposal or contract, and that the Contractor has failed to disclose such benefit or has inadequately disclosed it, the County Executive, as a prerequisite to payment pursuant to the contract, or at any other time, may require the Contractor to furnish, under oath, answers to any interrogatories related to such possible benefit.
 - c. In the event the bidder or offeror has knowledge of benefits as outlined above, this information should be submitted with the bid or proposal. If the above does not apply at time of award of contract and becomes known after inception of a contract, the bidder or offeror shall address the disclosure of such facts to the Fairfax County Purchasing Agent, 12000 Government Center Parkway, Suite 427, Fairfax, Virginia 22035-0013. Relevant Invitation/Request for Proposal Number (see cover sheet) should be referenced in the disclosure.
59. **LICENSE REQUIREMENT:** All firms doing business in Fairfax County, shall obtain a license as required by Chapter 4, Article 7, of The Code of the County of Fairfax, Virginia, as amended, entitled "Business, Professional and Occupational Licensing (BPOL) Tax." Questions concerning the BPOL Tax should be directed to the Department of Tax Administration, telephone (703) 222-8234 or visit: <https://www.fairfaxcounty.gov/taxes/business/understanding-bpol-tax>. The BPOL Tax number must be indicated in the space provided on the Cover Sheet, "Fairfax License Tax No." when appropriate.
60. **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with a Fairfax County pursuant to the Fairfax County Purchasing Resolution shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. Fairfax County may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.
61. **COVENANT AGAINST CONTINGENT FEES:** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For violation of this warranty, the County shall have the right to terminate or suspend this contract without liability to the County or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
62. **VIRGINIA FREEDOM OF INFORMATION ACT:** All proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act except as provided below:
- a. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.
 - b. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the County decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award except in the event that the County decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to the public inspection only after award of the contract except as provided in paragraph "c" below. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.
 - c. Trade secrets or proprietary information submitted by a bidder, offeror or Contractor in connection with a procurement transaction or prequalification application submitted pursuant to the prequalification process identified in the Special Provisions, shall not be subject to the Virginia Freedom of Information Act; however, the bidder, offeror or Contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.
 - d. Nothing contained in this section shall be construed to require the County, when procuring by "competitive negotiation" (Request for Proposal), to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous to the County.
 - e. The County cannot maintain as confidential any information, data, or records obtainable through the Virginia Freedom of Information or similar law. This includes records or information that have not been properly designated as trade secret or proprietary information pursuant to Va. Code Ann. § 2.2-4342(F).

General Conditions and Instructions to Bidders

BIDDER/CONTRACTOR REMEDIES

63. INELIGIBILITY:

- a. Any person or firm suspended or debarred from participation in County procurement shall be notified in writing by the Purchasing Agent.
 1. The Notice of Suspension shall state the reasons for the actions taken and such decision shall be final unless the person or firm appeals within ten (10) days of receipt of the Notice by instituting legal action as provided in the Code of Virginia.
 2. The Notice of Debarment shall state the reasons for the actions taken and the decision shall be final unless the person or firm appeals within ten (10) days of receipt of the Notice by instituting legal action as provided in the Code of Virginia.
- b. The Purchasing Agent shall have the authority to suspend or debar a person or firm from bidding on any contract for the causes stated below:
 1. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
 2. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a County Contractor;
 3. Conviction under the state or federal antitrust statutes arising out of the submission of bids or proposals;
 4. Violation of contract provisions, as set forth below, of a character which is regarded by the Purchasing Agent to be so serious as to justify suspension or debarment action:
 - a. failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - b. a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided, that failure to perform or unsatisfactory performance caused by acts beyond the control of the Contractor shall not be considered to be a basis for suspension or debarment;
 5. Any other cause the Purchasing Agent determines to be so serious and compelling as to affect responsibility as a Contractor, such as debarment by another governmental entity for any cause listed herein, or because of prior reprimands;
 6. The contractor has abandoned performance, been terminated for default on a Fairfax County project, or has taken any actions that inure to the detriment of Fairfax County or a Fairfax County project;
 7. The Contractor is in default on any surety bond or written guarantee on which Fairfax County is an obligee.
- c. If, upon appeal, it is determined that the action taken by the Purchasing Agent was arbitrary or capricious, or not in accordance with the Constitution of Virginia, statutes or regulations, the sole relief available to the person or firm shall be restoration of eligibility. The person or firm may not institute legal action until all statutory requirements have been met.

64. APPEAL OF DENIAL OF WITHDRAWAL OF BID:

- a. A decision denying withdrawal of a bid submitted by a bidder or offeror shall be final and conclusive unless the bidder appeals the decision within ten (10) days after receipt of the decision by instituting legal action as provided in the Code of Virginia. The bidder or offeror may not institute legal action until all statutory requirements have been met.
- b. If no bid bond was posted, a bidder refused withdrawal of bid under the provisions of Article 2, Section 4.A.8, of the Fairfax County Purchasing Resolution, prior to appealing, shall deliver to the County a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.
- c. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, the sole relief shall be withdrawal of the bid.

65. APPEAL OF DETERMINATION OF NONRESPONSIBILITY:

- a. Any bidder who, despite being the apparent low bidder, is determined not to be a responsible bidder for a particular County contract shall be notified in writing by the Purchasing Agent. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten (10) days of receipt of the notice by instituting legal action as provided in the Code of Virginia. The bidder may not institute legal action until all statutory requirements have been met.
- b. If, upon appeal, it is determined that the decision of the Purchasing Agent was arbitrary or capricious and the award for the particular County contract in question has not been made, the sole relief available to the bidder shall be a finding that the bidder is a responsible bidder for the County contract in question. Where the award has been made and performance has begun, the County may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing Contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing Contractor be entitled to lost profits.

66. PROTEST OF AWARD OR DECISION TO AWARD:

- a. Any bidder or offeror may protest the award or decision to award a contract by submitting a protest in writing to the Purchasing Agent, or an official designated by the County of Fairfax, no later than ten (10) days after the award or the announcement of the decision to award, whichever occurs first. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit such protest in the same manner no later than ten days after posting or publication of the notice of such contract as provided in Article 2, Section 2, of the Fairfax County Purchasing Resolution. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction which are subject to inspection under Article 2, Section 4.D of the Fairfax County Purchasing Resolution, then the time within which the protest must be submitted shall expire ten days after those records are available for inspection by such bidder or offeror under Article 2, Section 4.D, or at such later time as provided herein. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The Purchasing Agent shall issue a decision in writing within ten (10) days of the receipt of the protest stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten (10) days of receipt of the written decision by

General Conditions and Instructions to Bidders

instituting legal action as provided in the Code of Virginia. Nothing in this section shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation for Bid or Request for Proposal.

- 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 Purchasing Agent 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 County. Where the award has been made and performance has begun, the Purchasing Agent may declare the contract void upon a finding that this action is in the best interest of the County. Where a contract is declared void, the performing Contractor shall be compensated for the cost of performance at the 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 or appeal, 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 allowed a bidder or offeror to protest, but in the event of a timely protest, no further action to award the contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

67. CONTRACTUAL DISPUTES:

- a. Any dispute concerning a question of fact as a result of a contract with the County which is not disposed of by agreement shall be decided by the Purchasing Agent, who shall reduce her decision to writing and mail or otherwise forward a copy to the Contractor within ninety (90) days. The decision of the Purchasing Agent shall be final and conclusive unless the Contractor appeals within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. A Contractor may not institute legal action, prior to receipt of the Purchasing Agent's decision on the claim, unless the Purchasing Agent fails to render such decision within the time specified.
- b. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty days after final payment; however, written notice of the Contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

68. LEGAL ACTION: No bidder, offeror, potential bidder or offeror, or Contractor shall institute any legal action until all statutory requirements have been met.

69. VENUE: This contract and its terms, including but not limited to, the parties' obligations, the performance due, and the remedies available to each party, are governed, construed, and interpreted in accordance with the laws of the Commonwealth of Virginia. Any jurisdiction's choice of law, conflicts of laws, rules, or provisions that would cause the application of any laws other than those of the Commonwealth of Virginia do not apply. Any and all disputes, claims, and causes of action arising out of or in any way connected with this contract or its performance must be brought in the applicable court of Fairfax County, or in the United States District Court for the Eastern District of Virginia, Alexandria Division.

70. COOPERATIVE PURCHASING: The County or any entity identified in the Fairfax County Purchasing Resolution, Article 1, Section 3 may participate in, sponsor, conduct or administer a cooperative procurement agreement as set forth in the Fairfax County Purchasing Resolution.

71. DRUG FREE WORKPLACE: During the performance of a contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in conjunction with a specific contract awarded to a Contractor in accordance with this section, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

72. IMMIGRATION REFORM AND CONTROL ACT: Contractor agrees that it does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.

73. AUDIT OF RECORDS: The parties agree that County or its agent must have access to and the right to examine any books, documents, papers, and records of the Contractor involving transactions related to the Contract or compliance with any clauses thereunder, for a period of three (3) years after final payment. The contractor must include this requirement in all subcontracts related to this Contract.

74. NONVISUAL ACCESS: All information technology, which is purchased or upgraded by the County under this contract, must comply with the following access standards from the date of purchase or upgrade until the expiration of the Contract:

- a. Effective, interactive control and use of the technology (including the operating system), applications programs, and format of the data presented, shall be readily achievable by nonvisual means;
- b. the technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom the blind or visually impaired individual interacts;
- c. Nonvisual access technology shall be integrated into networks used to share communications among employees, program participants, and the public; and

General Conditions and Instructions to Bidders

- d. The technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired. A covered entity may stipulate additional specifications in any procurement.
- e. Compliance with the nonvisual access standards set out this Section is not required if the Board of Supervisors determines that
 - (i) the information technology is not available with nonvisual access because the essential elements of the information technology are visual and
 - (ii) nonvisual equivalence is not available.

APPROVED:

/S/ Elizabeth D. Teare
COUNTY ATTORNEY

/S/ Cathy A. Muse
COUNTY PURCHASING AGENT

OFFEROR DATA SHEET

NAME OF OFFEROR: _____

ADDRESS: _____

E-MAIL ADDRESS: _____

Name and e-mail addresses of both service and fiscal representatives (Key Personnel) who would handle this account.

Service Representative: _____
Telephone Number: () _____
E-Mail Address: _____

Fiscal Representative: _____
Telephone Number: () _____
E-Mail Address: _____

Payment Address, if different from above:

Request for Protection of Trade Secrets or Proprietary Information Pursuant to Article 2, Section 4.D.3 of the Purchasing Resolution and Va. Code Ann. § 2.2-4342(F)

Request for Protection of Trade Secrets or Proprietary Information Pursuant to Article 2, Section 4.D.3 of the Purchasing Resolution and Va. Code Ann. § 2.2 4342(F)

This form is provided as a courtesy to assist vendors desiring to protect trade secrets and proprietary information from disclosure under the Virginia Freedom of Information Act. In order to receive protection, you must (a) invoke the protection prior to or upon submission of the data or other materials, (b) identify the data or other materials to be protected, and (c) state the reason(s) why protection is necessary. Each of these requirements must be met with respect to the particular information for which protection is sought.

a) Submission of this form with or without other reference to Article 2, Section 4.D.3 of the Purchasing Resolution or Va. Code Ann. § 2.2-4342(F) shall satisfy the invocation requirement with respect to data or other materials clearly identified herein.

b) Identify the specific data or other material for which protection is sought. Suggested forms of designation include: listing the Proposal Section, Tab, or Page numbers; attaching to this form a copy of the table of contents from your Proposal with the relevant trade secret or proprietary contents highlighted; or identifying herein a document stamp used within the Proposal to designate the relevant materials (e.g. "all portions of the Proposal marked "Proprietary" or "Trade Secret"). NOTE: The classification of an entire proposal document, line item prices, and/or total proposal prices as proprietary or trade secrets is not acceptable.

c) For each distinct section of data or other information identified in response to paragraph b), above, state the reason(s) why protection is necessary. NOTE: Your explanation must do more than simply stating the materials are "proprietary," or "trade secrets," or "not publically available." You may attach additional sheets to this form as needed.

Use of this form does not guarantee protection. It is incumbent upon each vendor to meet the prerequisites for protection of their trade secrets or proprietary information. Provision of this form does not constitute legal advice; you are encouraged to consult with your legal counsel prior to designation of materials for protection.

DATA/MATERIAL TO BE PROTECTED	SECTION NO., & PAGE NO.	REASON WHY PROTECTION IS NECESSARY

VIRGINIA STATE CORPORATION COMMISSION (SCC)
REGISTRATION INFORMATION

The bidder:

☐ is a corporation or other business entity with the following SCC identification number:

-OR-

☐ is not a corporation, limited liability company, limited partnership, registered limited liability partnership, or business trust **-OR-**

☐ is an out-of-state business entity that does not regularly and continuously maintain as part of its ordinary and customary business any employees, agents, offices, facilities, or inventories in Virginia (not counting any employees or agents in Virginia who merely solicit orders that require acceptance outside Virginia before they become contracts, and not counting any incidental presence of the bidder in Virginia that is needed in order to assemble, maintain, and repair goods in accordance with the contracts by which such goods were sold and shipped into Virginia from bidder's out-of-state location) **-OR-**

☐ is an out-of-state business entity that is including with this bid/proposal an opinion of legal counsel which accurately and completely discloses the undersigned bidder's current contacts with Virginia and describes why whose contacts do not constitute the transaction of business in Virginia within the meaning of § 13.1-757 or other similar provisions in Titles 13.1 or 50 of the Code of Virginia.

Please check the following box if you have not checked any of the foregoing options but currently have pending before the SCC an application for authority to transact business in the Commonwealth of Virginia and wish to be considered for a waiver to allow you to submit the SCC identification number after the due date for bids: ☐

BUSINESS, PROFESSIONAL AND OCCUPATIONAL LICENSE

All firms located or operating in Fairfax County must obtain a Business, Professional and Occupational License (BPOL) as required by Chapter 4, Article 7, of the Code of the County of Fairfax, Virginia. In order for the Department of Tax Administration to determine your BPOL requirement prior to contract award, it is necessary for you to provide the following information:

- If you currently have a Fairfax County business license, please submit a copy with your proposal.
- Do you have an office in: Virginia ☐ Yes ☐ No
 Fairfax County ☐ Yes ☐ No
- Date business began/will begin work in Fairfax County

A detailed description of the business activity that will take place in Fairfax County. If business is located outside of Fairfax County, give the percentage of work actually to be done in the County

Signature

Date

Complete and return this form or a copy of your current Fairfax County Business License with your proposal.

CERTIFICATION REGARDING DEBARMENT OR SUSPENSION

In compliance with contracts and grants agreements applicable under the U.S. Federal Awards Program, the following certification is required by all offerors submitting a proposal in response to this Request for Proposal:

1. The Offeror certifies, to the best of its knowledge and belief, that neither the Offeror nor its Principals are suspended, debarred, proposed for debarment, or declared ineligible for the award of contracts from the United States federal government procurement or nonprocurement programs, or are listed in the *List of Parties Excluded from Federal Procurement and Nonprocurement Programs* issued by the General Services Administration.
2. "Principals," for the purposes of this certification, means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager, plant manager, head of a subsidiary, division, or business segment, and similar positions).
3. The Offeror shall provide immediate written notice to the Fairfax County Purchasing Agent if, at any time prior to award, the Offeror learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. This certification is a material representation of fact upon which reliance will be placed when making the award. If it is later determined that the Offeror rendered an erroneous certification, in addition to other remedies available to Fairfax County government, the Fairfax County Purchasing Agent may terminate the contract resulting from this solicitation for default.

Printed Name of Representative: _____

Signature/Date: _____/_____

Company Name: _____

Address: _____

City/State/Zip: _____

DUNS No: _____

Certification Regarding Ethics in Public Contracting

In submitting this proposal, and signing below, Offeror certifies the following in connection with a proposal, or contract:

Check one:

☐

1. I have not given any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value to any public employee or official have official responsibility for a procurement transaction.

☐

2. I have given a payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value to a public employee or official have official responsibility for a procurement transaction, but I received consideration in substantially equal or greater value in exchange.

If 2 is selected, please complete the following:

Recipient: _____

Date of Gift: _____

Description of the gift and its value:

Description of the consideration received in exchange and its value:

Printed Name of Offeror Representative: _____

Signature/Date: _____ / _____

Company Name: _____

Company Address: _____

City/State/Zip: _____

This certification supplements but does not replace the requirements set forth in paragraph 55 (OFFICIALS NOT TO BENEFIT) of the General Conditions and Instructions to Bidders included in this solicitation.

Listing Of Local Public Bodies

REFERENCE PARAGRAPH 29 OF THE SPECIAL PROVISIONS,"USE OF CONTRACTS BY OTHER PUBLIC BODIES." You may select those public bodies that this contract may be extended to; a "blank" will signify a "NO" response:

	Alexandria Public Schools, VA		Manassas Park, Virginia
	Alexandria Sanitation Authority		Maryland-National Capital Park & Planning Commission
	Alexandria, Virginia		Maryland Transit Administration
	Arlington County, Virginia		Metropolitan Washington Airports Authority
	Arlington Public Schools, Virginia		Metropolitan Washington Council of Governments
	Bladensburg, Maryland		Montgomery College
	Bowie, Maryland		Montgomery County, Maryland
	Charles County Public Schools, MD		Montgomery County Public Schools
	College Park, Maryland		Northern Virginia Community College
	Culpeper County, Virginia		Omni Ride
	District of Columbia		Potomac & Rappahannock Trans. Commission
	District of Columbia Courts		Prince George's County, Maryland
	District of Columbia Public Schools		Prince George's County Public Schools
	DC Water and Sewer Authority		Prince William County, Virginia
	Fairfax County Water Authority		Prince William County Public Schools, VA
	Fairfax, Virginia (City)		Prince William County Service Authority
	Falls Church, Virginia		Rockville, Maryland
	Fauquier County Government and Schools, Virginia		Spotsylvania County Schools, Virginia
	Frederick, Maryland		Stafford County, Virginia
	Frederick County Maryland		Takoma Park, Maryland
	Gaithersburg, Maryland		Upper Occoquan Sewage Authority
	Greenbelt, Maryland		Vienna, Virginia
	Herndon, Virginia		Virginia Railway Express
	Leesburg, Virginia		Washington Metropolitan Area Transit Authority
	Loudoun County, Virginia		Washington Suburban Sanitary Commission
	Loudoun County Public Schools		Winchester, Virginia
	Loudoun County Sanitation Authority		Winchester Public Schools
	Manassas, Virginia		
	Manassas City Public Schools, Virginia		

Complete and return this form with your proposal.

Vendor Name

BUSINESS CLASSIFICATION

DEFINITIONS

Small Business – means a business, independently owned or operated by one or more individuals who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years. One or more of the individual owners shall control both the management and daily business operations of the small business.

Minority-Owned Business - means a business concern that is at least 51% owned by one or more minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more minority individuals.

Woman-Owned Business – means a business that is at least 51% owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more women.

YOU MUST CLASSIFY YOUR BUSINESS/ORGANIZATION BY MARKING THE APPROPRIATE BOXES ON THE COVER SHEET (DPMM32). This designation is required of all business/organizations including publicly traded corporations, non-profits, sheltered work shops, government organizations, partnerships, sole proprietorships, etc.



COUNTY OF FAIRFAX
DEPARTMENT OF PROCUREMENT AND MATERIAL MANAGEMENT
SMALL AND MINORITY BUSINESS ENTERPRISE PROGRAM
12000 Government Center Parkway, Suite 427
Fairfax, Virginia 22035-0013

Fax: 703-324-3228

SUBCONTRACTOR (S) NOTIFICATION FORM

Contract Number/Title: _____

Prime Contractors Name: _____

Prime Contractor's Classification: _____

You are required to provide the County with names, addresses, anticipated dollar amount and small/minority classification of each first-tier subcontractor (ref. paragraph 29, Special Provisions). Please complete this form and return it with your submission.

Please check here if you are not using a subcontractor: _____

SUBCONTRACTOR(S) NAME	STREET ADDRESS	CITY	STATE	ZIP CODE	ANTICIPATED DOLLAR AMOUNT	VENDOR CLASSIFICATION

Complete and return this form with your proposal.

Please provide the following information on your **company letter head**:

Supplier name: _____

Doing Business As/(Trade Name): _____

DUNS # (if applicable): _____

Business classification(s): _____ (Classification descriptions)

Certified by: _____ Certification #: _____ Date of expiration: _____

Corporate Address: _____

Zip code: _____ - _____ (please include last four digits)

Invoice/PO Address (if different from above): _____

Zip code: _____ - _____ (please include last four digits)

Email: _____

Phone: _____ FAX: _____

Contact name: _____

Contact email (if different from above): _____

Contact phone (if different from above): _____ contact fax#: _____

Request for Taxpayer Identification Number and Certification

Give Form to the
requester. Do not
send to the IRS.

Print or type See Specific Instructions on page 2.	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.	
	2 Business name/disregarded entity name, if different from above	
	3 Check appropriate box for federal tax classification; check only one of the following seven boxes: <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____ Note. For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner. <input type="checkbox"/> Other (see instructions) ▶ _____	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <i>(Applies to accounts maintained outside the U.S.)</i>
	5 Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	6 City, state, and ZIP code	
7 List account number(s) here (optional)		

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.

Social security number										
				-				-		
or										
Employer identification number										
					-					

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Sign Here	Signature of U.S. person ▶	Date ▶
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at www.irs.gov/fw9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)

- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding? on page 2.

By signing the filled-out form, you:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
- Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting?* on page 2 for further information.

Federal Grant Terms and Conditions

1. **Civil Rights Requirements – 29 U.S.C. § 62, 42 U.S.C. § 2000, 42 U.S.C. § 602, 42 U.S.C. § 12112, 42 U.S.C. § 12132, 49 U.S.C. § 5332**
 - a. **Nondiscrimination** – In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and all other provisions of Federal law, the CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the CONTRACTOR agrees to comply with applicable Federal implementing regulations.
 - b. **Equal Employment Opportunity** – The following equal employment opportunity requirements apply to the underlying contract:
 1. **Race, Color, Creed, National Origin, Sex** – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, the CONTRACTOR agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note), and with any applicable Federal Statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the course of this Project. The CONTRACTOR agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the CONTRACTOR agrees to comply with any implementing requirements the funding federal agency may issue.
 2. **Age** – In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and other applicable law, the CONTRACTOR agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the CONTRACTOR agrees to comply with any implementing requirements the funding federal agency may issue.
 3. **Disabilities** – In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the CONTRACTOR agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the CONTRACTOR agrees to comply with any implementing requirements the funding federal agency may issue.
 - c. The CONTRACTOR also agrees to include these requirements in each subcontract financed in whole or in part with Federal Assistance, modified only if necessary to identify the affected parties.
2. **Energy Conservation - 42 U.S.C. 6321 et seq.**

The CONTRACTOR agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
3. **Davis-Bacon Act**
Minimum wages.
 - i. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project], will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof] due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Federal Grant Terms and Conditions

- Contributions made or costs reasonably anticipated for bona fide fringe benefits under section I(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(I)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a) (1) (ii) of this section) and the Davis-Bacon poster (WH1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.
- ii. The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
 - a. The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - b. The classification is utilized in the area by the construction industry; and
 - c. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
 - iii. If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
 - iv. In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
 - v. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a) (1) (ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
 - a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

Federal Grant Terms and Conditions

- b. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

Withholding. Fairfax County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

Payrolls and basic records.

- i. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act], daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- ii. The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency] if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency]. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee [e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of

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the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- a. That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(h) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a) (3) (i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
- b. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
- c. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a) [3] (ii) (B) of this section.

The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

- iii. The contractor or subcontractor shall make the records required under paragraph (a) [3] [i] of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

Apprentices and trainees—

- i. **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's

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- hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- ii. **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- iii. **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5 [a] (1) through [10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

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Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

Certification of eligibility.

- i. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- ii. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- iii. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. **Contract Work Hours and Safety Standards Act.** The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by § 5.5(a) or 4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

- i. **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- ii. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
- iii. **Withholding for unpaid wages and liquidated damages.** The County of Fairfax shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
- iv. **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

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In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in § 5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. **Recycled Products** – 42 U.S.C. 6962

The Recycled Products requirements apply to all contracts for items designated by the EPA, when the County or the CONTRACTOR procures \$10,000 or more of one of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using federal funds.

The CONTRACTOR agrees to comply with all requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

6. **Clean Water Requirements** – 33 U.S.C. 1251 et seq.

- i. The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended. The CONTRACTOR agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to appropriate federal agencies including the appropriate EPA Regional Office.
- ii. The CONTRACTOR also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance.

7. **Clean Air** – 42 U.S.C. 7401 et seq.

The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

- i. The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The CONTRACTOR agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the funding federal agency, if any, and the appropriate EPA regional office.
- ii. The CONTRACTOR also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance.

8. **Program Fraud and False or Fraudulent Statements and Related Acts** – 31 U.S.C. 3801 et seq.

- a. The CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et. seq. and all appropriate federal agency regulations apply to its actions pertaining to this Project. Upon execution of the underlying contract, the CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract of the Federally assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the CONTRACTOR further acknowledges that if it makes, or caused to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the CONTRACTOR or to the extent the Federal Government deems appropriate.

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- b. The CONTRACTOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance, the Federal Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the CONTRACTOR, to the extent the Federal Government deems appropriate.
- c. The CONTRACTOR agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to the provisions.

9. Patent and Rights in Data

A. Rights in Data - The following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

- (a) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
 - 1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
 - 2. Any rights of copyright purchased by the Purchaser or CONTRACTOR using Federal assistance.

B. Patent Rights - The following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and CONTRACTOR agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until the Federal funding agency is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the CONTRACTOR status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the CONTRACTOR agree to take the necessary actions to provide, through the Federal funding agency, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

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(3) The CONTRACTOR also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

10. Rights to Inventions Made Under a Contract or Agreement.

If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

11. Interest of Members of Congress

No member of or delegates to the Congress of the United States shall be admitted to a share or part of this Contract or to any benefit arising there from.

12. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)

Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

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BYRD ANTI-LOBBYING CERTIFICATION

31 U.S.C. 1352 et seq.

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal Loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of and Federal contract, grant, loan, or cooperative agreement.
2. If any funds or than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The CONTRACTOR, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the CONTRACTOR understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

Printed Name of
Representative: _____

Signature/Date: _____

Company Name: _____

Address: _____

City/State/Zip: _____

DUNS No: _____