INVITATION FOR BIDS (IFB)

Date: May 19, 2017

IFB NUMBER: 0609-17-SWUU

IFB SUBJECT: SOUTH WASHINGTON UTILITY UNDERGROUNDING
Phase 1 – South Washington Street Access to Transit

SEALED BIDS TO BE SUBMITTED ONLY TO:
Purchasing Office / City Of Falls Church
300 Park Avenue, Rm 300 East
Falls Church, Virginia 22046 / Phone (703) 248-5007

SEALED BIDS DUE DATE AND TIME: by no later than Friday, June 9, 2017 @ 11:00:00 A.M.
prevailing local time (Purchasing Office clock)

Bids are to be presented for time and date validation **ONLY to the City of Falls Church Purchasing Office**.

All inquiries should be made in writing and forwarded to the City's Purchasing Agent, via email to jwise@fallschurchva.gov with copy to kbattle@fallschurchva.gov by no later than five (5) business days prior to the Bid due date (**Monday, June 5, 2017 by 12:00 P.M.**).

NON-MANDATORY PRE-BID MEETING: Friday, June 2, 2017 at 10:00 am *(see p. 7 for details)*.

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THIS PAGE AND REQUIRED ATTACHMENTS MUST BE SIGNED AND RETURNED WITH BID
See Bid Submission Checklist

In compliance with this Invitation for Bids and to all the conditions imposed herein, the undersigned offers and agrees to furnish the goods and/or services in accordance with the attached signed bid.

Please type or legibly print all information.

LEGAL NAME & ADDRESS OF FIRM:

_____ By:_____
Company's Legal Name *Authorized Representative - Signature in Ink*

_____ Name:_____
Street Address (not PO Box)

_____ Title: _____

_____ Zip: _____ Date _____

Phone: _____ Email: _____

FAX: _____ VA SCC Business Registration # _____
See Attachment D Proof of Authority To Transact Business In VA

***Bid Package contains appropriately marked proprietary and/or confidential Information*. ❑ No ❑Yes**

The City of Falls Church is committed to the letter and spirit of the Americans with Disabilities Act. This document will be made available in alternate format upon request. Call 703 248-5007, (TTY 711).

The City of Falls Church does not discriminate against faith-based organizations in accordance with the Code of Virginia, § 2.2-4343.1 or against any Bidder because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

IFB # 0609-17-SWUU
South Washington Utility Undergrounding
Phase 1 – South Washington Street Access to Transit

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SEE ALSO ADDITIONAL ATTACHMENTS:

(Separate pdf or Excel documents to be downloaded by all Bidders)

ATTACHMENT A **BID SHEET** - Excel Spreadsheet format

ATTACHMENTS B-G (REQUIRED FORMS):

- **B1 COMPANY INFORMATION**
- **B2 PROJECT-SPECIFIC INFORMATION**
- **C COMPANY REFERENCES & CURRENT PROJECTS**
- **D PROOF OF AUTHORITY TO TRANSACT BUSINESS IN VA**
- **E BID BOND**
- **F PERFORMANCE BOND** *(for Contract Awardee)*
- **G PAYMENT BOND** *(for Contract Awardee)*

ATTACHMENT H **SPECIAL PROVISIONS**

ATTACHMENT I **PLANS**

ATTACHMENT J **DPW GENERAL PROVISIONS FOR CONSTRUCTION PROJECTS**

ATTACHMENT K **TREE & LANDSCAPE SPECIFICATIONS**

ATTACHMENT L **CITY OF FALLS CHURCH STANDARD DETAILS**

ATTACHMENT M **VDOT RFID UTILITY MARKER SPECIFICATIONS**

ATTACHMENT N **CITY OF FALLS CHURCH – OPEN CUTS & PAVEMENT**

BID SUBMISSION CHECKLIST *Recommended for use by Bidders*

I. SUBJECT

The City of Falls Church ("City") is soliciting competitive bids from licensed, qualified firms with recent Dominion experience to perform utility undergrounding along the South Washington Street corridor from Tinner Hill to Hillwood Avenue. The South Washington Utility Undergrounding Project is Phase 1 of the City's *South Washington Street Access to Transit* effort, and is further described herein. The awarded Contractor shall furnish all necessary labor, supervision, equipment, tools, material, supplies, transportation and resources necessary to complete the Work in accordance with the plans and specifications in this Invitation For Bid ("IFB") and its attachments.

The City seeks to have this project completed by January 31, 2018.

II. GENERAL

A. ACCESS TO IFB: This IFB and any addenda are available on the City of Falls Church's ("City's") website: www.fallschurchva.gov/Bids. This solicitation and any associated addenda may also be published through eVA, the Commonwealth of Virginia's electronic procurement portal for registered suppliers (http://eva.virginia.gov).

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

All addenda will become part of any resulting contract and must be signed and submitted with your bid.

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

James R. Wise, Purchasing Agent
The City of Falls Church
300 Park Ave, Falls Church, VA 22046
jwise@fallschurchva.gov / Phone: 703-248-5007
with a copy to kbattle@fallschurchva.gov

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

Oral answers will not be authoritative.

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

E. ACCEPTANCE OF BIDS - BINDING 180 DAYS: All bids submitted shall be binding for one hundred eighty (180) calendar days following solicitation opening date, unless extended by mutual consent of all parties.

F. CONTACT RESTRICTED: No Bidder shall initiate or otherwise have contact with any City representative or employee, other than the Purchasing Agent or Purchasing Agent's designee, concerning or related to this IFB, after the date of this solicitation's release and before award or cancellation of this IFB except with the foreknowledge and permission of the Purchasing Agent or his/her representative. Any contact in contradiction to this

requirement is prohibited and may cause the disqualification of the Bidder from this procurement process.

G. INFORMATION RESTRICTED: All requests to or from a Bidder, potential Bidder or other third party regarding information about this Solicitation, including its interpretation, progress, and/or award status should be referred directly to the City's Purchasing Agent or designee. Failure to comply with this requirement may be cause for a Bidder's disqualification. This restriction does not apply to reasonable and necessary communications with existing or potential subcontractors or partners for the sole purpose of a Bidder's Bid Package development under this Solicitation.

H. This solicitation is being conducted in accordance with the guidelines of the Competitive Sealed Bidding method of contractor selection per the Virginia Public Procurement Act (VPPA) which is incorporated herein by reference.

III. COMPETITION INTENDED

It is the City's intent that this Invitation for Bids (IFB) permits competition. It shall be the Bidder's responsibility to advise the City's Purchasing Agent, in writing, if any language, requirement, specification, etc., or any combination thereof, inadvertently restricts or limits the requirements stated in this IFB to a single source. Such written notification must be received by the Purchasing Agent no later than ten (10) days prior to the date set for the bids to be received. Any such notification shall be sent to the City's Purchasing Agent's email address: jwise@fallschurchva.gov with a copy to kbattle@fallschurchva.gov. Confirmation of email receipt shall be the responsibility of the notifying Bidder.

Nothing herein is intended to exclude any responsible Bidder or in any way restrain or restrict competition. All qualified Bidders are encouraged to submit bids.

IV. ELIGIBILITY

A. The following are minimum requirements for bid submission:

1. The Bidder must submit its Virginia State Corporation Commission ("SCC") registration number or justification for exemption. See Section below entitled "Proof of Authority to Transact Business in Virginia."

2. The Bidder must be currently licensed in accordance with any specific requirements of this solicitation and the Code of Virginia (Licensed Engineer, Contractor's license, etc).

   It is the Contractor's sole responsibility to have knowledge of the applicable license (s), if any, associated with this solicitation's scope of work. Any applicable license(s) shall be maintained during the term of any resultant contract.

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

C. Any current debarment (Federal, state or local jurisdiction) must be disclosed on the Company Information Form attached to this solicitation.

D. The Contractor represents and warrants:

1. Contractor is financially solvent and experienced in and competent to perform this type of work.

2. Contractor is familiar with all Federal, State, municipal and department laws, ordinances and regulations, which may in any way affect the work of those employed therein, including but not limited to any special acts relating to the work or to the project of which it is a part.

3. That such temporary and permanent work required by the Contractor can be satisfactorily constructed and used for the purpose of which it is intended and that such construction will not injure any person, or damage any property.

V. PROOF OF AUTHORITY TO TRANSACT BUSINESS IN VIRGINIA

A. State Corporation Commission (SCC) registration requirements effective July 1, 2010 require that your bid/proposal include the identification number issued by the State Corporation Commission as proof of registration or justification for non-registration, per the requirements in this section. **Please complete the Proof of Authority to Transact Business in Virginia form (Attachment D) at the end of this solicitation and submit it with your bid. Failure to provide this information or providing inaccurate or purged information may result in your bid/proposal being rejected.**

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

C. Any Bidder that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law shall include in its bid a signed statement attached to the Cover Sheet of this IFB, describing why the Bidder is not required to be so authorized under Title 13.1 or Title 59 of the Code of Virginia. Any Bidder described herein that fails to provide the required information or for whom such signed exception is not considered valid by the City, shall not receive an award unless a waiver is granted, in writing, by the City Manager.

D. The identification number issued by the VA SCC IS NOT the same as a firm's Tax ID Number (TIN).

VI. RIGHTS OF THE CITY

A. Among the indisputable rights of the City specified herein, the City, at its sole discretion may:

1. Cancel, withdraw or re-advertise this IFB; accept or reject all or any part of bids; and/or waive minor technicalities/informalities.

2. Award a contract to multiple vendors by individual items, in the aggregate, or in combination thereof whenever any such actions are in the best interest of the City.

3. Issue Invitation for Bids for similar goods/services and other projects as the need may occur; issue Purchase Orders and/or expand or otherwise modify existing Purchase Orders for goods/services similar to that being bid hereunder, in consideration of the City's knowledge and/or evaluation of each Contractor's qualifications, expertise, capabilities, performance record, current ability to perform, location and/or distance to the project, and any and all other factors as may be pertinent to the particular project and for the convenience of the City.

4. Add, delete or change goods, locations, frequency of service, or other factors related to the goods and or services under contract dependent upon requirements that may develop during the contract period and cannot guarantee the amount of work or predict future funding for any resultant contract.

5. Use any or all ideas presented in reply to this solicitation, subject only to the limitations regarding proprietary/confidential data of Bidder.

B. This is an Invitation for Bids and is in no way to be misconstrued as a commitment to purchase on the part of the City.

VII. NON-MANDATORY PREBID MEETING

A non-mandatory PreBid Meeting is scheduled for **Friday, June 2, 2017** at **10:00 AM** (Dogwood Conference Room, G level, City Hall, 300 Park Avenue, Falls Church, VA 22046). Although not mandatory, participation is strongly encouraged. The purpose of the PreBid meeting is to allow Bidders an opportunity to present questions and obtain clarification relative to any facet of this IFB.

Failure to attend the PreBid meeting and/or review the site will not prohibit Bidder from submitting a bid. The Bidder is responsible for ascertaining conditions at the site and claims, as a result of failure to inspect the job site, will not be considered.

Please bring a copy of this IFB to the conference. Any material IFB changes resulting from this conference will be issued in a written addendum to the solicitation.

VIII. SCOPE OF WORK & REQUIREMENTS

A. **Specific Requirements & Provisions**

Refer to the *Plans (Attachment I)*, *Special Provisions (Attachment H)* and all additional IFB Attachments for detailed requirements and descriptions of the minimum requirements and standards to complete the Work.

B. **Brand Names & Proposed Equals**

This IFB and its attachments contain information regarding specific materials and in some cases, preferred manufacturers have been identified. However, unless otherwise provided for in this solicitation, the name of a certain brand, make or manufacturer does not restrict Bidders to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired.

Any item that the City, **in its sole discretion**, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. Failure to furnish adequate data for evaluation purposes may result in declaring an offer non-responsive. **Unless the Bidder clearly indicates in its Bid (as listed in Attachment B2, Project-Specific Information form, Section D) that a product offered is a "proposed equal" product, such Bid will be considered to offer the brand name product specified in this solicitation.**

C. **Descriptive Literature Required**

1. For any proposed equivalent or substitute brand name materials, Bidders are required to furnish manufacturer's descriptive literature.
2. Such literature must be furnished with the Bid and shall be labeled with the IFB Number and the Supplier's name.

Bidders shall note, itemize and clearly indicate if the description furnished in such literature differs from the specifications detailed by the City. If no mention is made to the contrary, it shall be construed to mean that the Bidder proposes to furnish materials in accordance with such description and not in accordance with the City's specifications, and its bid will be evaluated accordingly.

IX. CONTRACT TERM & EXTENSION

A. If a contract is awarded, it shall cover the target period from date of award (or as soon thereafter as possible, as determined by the City) through a twelve-month period (initial term). (NOTE: The contract term does not equate to the Time for Completion of Work.)

B. The City may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.

C. NON-APPROPRIATION OF FUNDS - All funds for payments by the City for goods/services under contract are subject to the availability of general or specific annual appropriation for this purpose by the City of Falls Church City Council, as applicable. In

the event of non-appropriation of funds by the City Council for the goods/services provided under contract, the City will terminate the contract, without termination charge to the City, on June 30th of the then current fiscal year or when the appropriation made for the then current year for the goods/services covered by the contract is spent, whichever event occurs first.

X. BID SECURITY – BID BOND

A. The Bid must be accompanied by a bid bond, a certified check upon a solvent bank or trust company, made payable to the order of "The City of Falls Church," or cash escrow in an amount not less than 5 (five) percent of the total bid price submitted.

B. The bid security of the unsuccessful Bidders will be returned within 5 (five) days after the execution of the Contract or, if no such Contract has been executed, within 180 (one hundred eighty) days after the date of opening Bids. The bid security of the successful Bidder will be returned only after he has duly executed the Contract and furnished the required bonds and insurance.

C. Bids shall be firm and irrevocable for 180 (one hundred eighty) days after the date fixed for opening the Bids unless such time period is extended by mutual consent of the parties.

XI. CONTRACT SECURITY - PERFORMANCE AND PAYMENT BONDS

A. The Contractor shall furnish Performance Bond and Payment Bonds in sums equal to the amount of projected annual contract requirements. The Performance Bond shall remain in full force throughout all contract terms and through the one year warranty/guarantee period following completion and acceptance. The bonds shall utilize City forms as found in Attachments E and F.

B. The Performance and Payment Bonds shall be issued by a solvent and responsible surety company licensed to conduct business in the Commonwealth of Virginia, named in the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Department, and acceptable to the City. These bonds shall be delivered and countersigned by a local authorized representative of such Surety who is a resident of the Commonwealth of Virginia, regularly commissioned and licensed in the Commonwealth and producing satisfactory evidence to the City of the person or persons executing the bonds to execute them on behalf of the Surety. The Performance and Payment Bonds shall serve as security for the faithful performance of this Contract, and for the payment of all persons performing labor and furnishing materials and services in connection with this Contract.

C. The premiums on the Performance and Payment Bonds shall be paid by the Contractor.

D. If at any time the City becomes dissatisfied with any Surety or Sureties upon the Performance and Payment Bonds, or if for any other reason such bond shall cease to be adequate security for the City, as determined by the City in its sole discretion, the Contractor shall, within five (5) days after notification, substitute acceptable bonds in such form and sum and signed by such other sureties as may be satisfactory to the City. The premiums on such Bonds shall be paid by the Contractor. No further partial payments shall be deemed due or be made until the new sureties have qualified.

E. Notwithstanding any provisions in these Contract Documents to the contrary, the Contractor may furnish the City with a certified check or cash escrow in the amount of the Contract Sum and in a form acceptable to the City in lieu of the payment bond, the performance bond, or both.

XII. PRICES AND PRICE ADJUSTMENTS

A. All Contract unit prices will remain fixed through the initial Contract term.

B. Prices shall be stated in units of quantity specified. No additional charges shall be passed to the City, including any applicable taxes, delivery or surcharges. Prices quoted shall be the final cost to the City. In case of error in the extension of prices, the unit price shall govern.

C. Bid prices, unless otherwise specified, will be NET 30 F.O.B. destination, freight prepaid and include all charges that may be imposed in fulfilling the terms of the Contract including transportation and handling charges fully prepaid by the Contractor to destination in the City, unless otherwise specified, and subject only to any discount for prompt payment that may be provided in this Invitation.

XIII. PROMPT PAYMENT DISCOUNT

A. Unless otherwise specified herein, prompt payment discounts requiring payment in less than fifteen (15) days will not be considered in evaluating a 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. In connection with any discount offered, time will be computed from the date an undisputed invoice is received by the City. In the event the Bidder does not indicate a prompt payment discount, it shall be construed to mean NET 30 days.

C. For the purpose of earning the discount, payment is deemed to be made as of the date of mailing of the City check or issuance of an Electronic Funds Transfer, if applicable.

XIV. PROJECTED REQUIREMENTS/ESTIMATED QUANTITIES:

A. Unless otherwise specified, any quantities detailed in this solicitation are estimates only, and are given for the information of Bidders and for the purpose of bid evaluation. They do not indicate the actual quantity of services that will be ordered or may be required to meet the specifications or requirements in the Scope of Work since the actual volume will depend upon requirements that develop during the contract period.

B. No bid will be considered which stipulates that the City shall guarantee to order a specific service, task or quantity thereof.

XV.SUBCONTRACTORS

A. As used in this solicitation, the term “subcontractor” shall also include firms and/or persons either directly or indirectly employed by Contractor, partners identified in the proposal, and/or others furnished by or acting at Contractor’s direction or on Contractor’s behalf under the contract.

B. In the event that the Bidder desires to subcontract some part of the work specified in this solicitation, the Bidder shall furnish the City the names, qualifications, and experience of the proposed material/key subcontractors and the percentage of the work under any resultant contract to be performed by each with the proposal. The Bidder shall provide services as the Prime Contractor.

C. Subcontractors may be used for not more than forty-nine percent (49%) of the work performed unless otherwise approved in advance by the City. If in the proposal Contractor specifies the subcontractors it will use in the performance of service under the contract resulting from this IFB, and the work performed by those identified subcontractor(s) will not exceed 49% of the total job, City pre-authorization will not be required.

D. If, however, during the course of the contract, the Bidder wishes to use a subcontractor(s) other than the firms identified in the IFB, and/or the subcontractor(s) will perform more than 49% of the project work, advance written notice and approval of the City shall be required.

E. The Contractor shall be responsible for completely supervising and directing the work under the Contract and all subcontractors that they may utilize. Subcontractors who perform work under the Contract shall be responsible to the prime Contractor. The

Contractor agrees to be fully responsible for the payment to, performance, acts and omissions of their subcontractors/partners and of persons employed by them.

F. The City reserves the right to reasonably reject the successful firm's selection of subcontractors.

G. The Contractor shall remain fully liable and responsible for: supervising and directing the work to be done by his/her subcontractor(s) including those persons either directly or indirectly employed by Contractor and shall assure compliance with all the requirements of the contract; payment to; performance, acts and omissions of their subcontractors, partners and of all persons employed by them and to assure that the subcontractors' insurance is in compliance with the requirements of this solicitation and for assuring that all sub-contractors, partners, and/or others furnished by or acting at Contractor's direction or on Contractor's behalf, comply and remain in compliance with all federal, state, and local laws, rules, regulations, orders and other legal requirements that are directly or indirectly related to the performance under the contract, including procurement of required permits, certificates, licenses, insurance, approvals, and/or inspections.

H. The Contractor shall not enter into any subcontract with any subcontractor who has been suspended or debarred from participating in contracting programs by any agency of the United States Government, the Commonwealth of Virginia or any other state.

I. The Contractor shall insert appropriate clauses in all subcontracts to bind subcontractors to the terms and conditions of this contract insofar as they are applicable to the work of subcontractors. The City reserves the right to request a copy of all subcontracts.

J. Nothing contained in the contract shall create any contractual relationship between any subcontractor and the City.

XVI. LICENSES & VIRGINIA CONTRACTORS

A. Please refer to *Special Provisions* (Attachment J) for specific licensing and certification requirements related to this Contract.

B. In accordance with VA Code Sections 54.1-1100 et seq. certain licenses for contractors, tradesmen and others are required. Each Bidder is responsible to determine which license(s), if any, is required to have under such sections to perform the work specified in this IFB.

C. Bidders shall note the applicable VA License Number and include a copy of the applicable license(s) with their bid.

D. If no licenses are required, Bidder shall so state on the Company Information Appendix.

E. The Code of Virginia does not allow an unlicensed contractor to submit a bid where the resultant contract will require a license.

F. All Subcontractors utilized by the Contractor shall be properly licensed for the work they are to perform.

XVII. TRADE SECRETS OR PROPRIETARY INFORMATION

A. Trade secrets or proprietary information submitted by a Bidder in response to this Invitation for Bids shall not be subject to public disclosure under the Virginia Freedom of Information Act. <u>However, the Bidder must invoke the protection of this section prior to or upon submission of data or materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary (Section 2.2-4342F of the Code of Virginia)) for consideration and acceptance by the City as trade secrets or proprietary information.</u>

B. If the bid contains any proprietary or trade secret material, such notice must be attached as the **first page of the bid, and clearly identify the material/information** by some distinct method such as highlighting/underlining or submission in a separate and clearly labeled section. In addition, the Bidder must (1) indicate only the specific words, figures, or

paragraphs that constitute trade secret or proprietary information and (2) clearly state the justifiable reason why protection is necessary.

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

XVIII. DEBARMENT STATUS

By submitting a bid, the Bidder (including any partner, associate, or subcontractor associated with the provision of goods/services under this solicitation) certifies that they are not (1) currently debarred from conducting business or submitting bids/proposals on contracts by any local government or agency of the Commonwealth of Virginia, or the Federal Government; (2) an agent of any person or entity that is currently debarred from conducting business or submitting bids/proposals on contracts by any local government or agency of the Commonwealth of Virginia, or the Federal Government; or (3) suspended, proposed for debarment, excluded or disqualified under the non-procurement common rule, or otherwise declared ineligible from receiving Federal contracts, certain subcontracts, and certain Federal assistance and benefits. For procurements that are to be funded by Federal monies, the City will confirm a vendor's status via the U.S. Government's System for Award Management (SAM) available at www.sam.gov.

XIX. AMBIGUITY, CONFLICT OR OTHER ERRORS IN THE IFB

A. If a Bidder discovers any ambiguity, conflict, discrepancy, omission, or other error in the IFB, it shall immediately notify the City of such error in writing and request modification or clarification of the document. The City will make modifications to material issues by issuing a written revision and will give written notice via addendum posted on the City's website (www.fallschurchva.gov/Bids) and eVA, the Commonwealth of Virginia's electronic procurement portal for registered suppliers (http://eva.virginia.gov).

B. The Bidder is responsible for clarifying any ambiguity, conflict, discrepancy, omission, or other error in the Invitation for Bids prior to submitting the bid or it shall be waived. Any proposals that include assumed clarifications and/or corrections without required authentication of same may be subject to rejection by the City.

XX. CONTRACT DOCUMENTS

A. This solicitation, including all addenda, attachments, exhibits and/or appendices hereto, shall become a part of any contract that may be awarded in addition to any IFB clarifications, responses to questions/issues and Contractor's Bid.

B. In addition to the Bidder's bid (including any clarifications), to the extent they are included in or incorporated by the solicitation, the following documents are hereby incorporated in and shall form a part of the resulting contract:

1. City Solicitation Form/Award Notice and other documents which may be incorporated by reference, if applicable.
2. General Conditions and Instructions to Bidders.
3. Special Provisions.
4. Pricing Schedules.
5. Any Addenda/Amendments.
6. Purchase Order.

C. A written award notice (or Acceptance Agreement, contract, or Purchase order) mailed (or otherwise furnished) to the successful Offeror within the time for acceptance specified in the solicitation shall be deemed to result in a binding contract.

D. There is no binding agreement, no contractual relationship, no understanding nor mutual assent until a contract is signed, executed and exchanged by and between the Offeror and the City.

E. The contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The contract may be amended or modified only by written modification.

XXI. BID PREPARATION

A. Before submitting a bid, the Bidder must read the entire solicitation. Failure to read any part of this solicitation shall not relieve the Contractor of its contractual obligations.

B. The Bid Forms and IFB Cover page must be completed and clearly printed in blue or black ink or by typewriter or computer (except for authorized Bidder representative signature).

C. All information requested must be submitted. Bids which are substantially incomplete or lack key information may be rejected by the City at its discretion. Bid contents should be arranged in the same order and identified with headings as may be presented herein.

XXII. BID SUBMISSION COVENANTS

The Bidder's signature on the IFB Cover page covenants and certifies acknowledgement and compliance with the following:

1. Fully Informed - The Bidder acknowledges that it has read this solicitation, understands it, has satisfied itself from its own investigation of the conditions to be met and/or goods to be provided, fully understands Bidder's obligation, agrees to be bound by this solicitation's terms and conditions, and will not make any claim for, or have right to cancellation or relief from the contract because of any misunderstanding or lack of information. In addition the Bidder has or will provide properly trained employees, staff, subcontractors (if approved by the City), or other personnel; and has familiarized itself with all federal, state, and local laws, ordinances, and rules and regulations; that in any manner may affect the cost, delivery, progress, or performance of goods and/or work proposed and to be provided under this IFB.

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

3. Employees/Officials Not to Benefit

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

      If such a benefit has been received or will be received, this fact shall be disclosed with the bid 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 or contract, and that the contractor has failed to disclose such benefit or has inadequately

disclosed it, the City Manager, as a prerequisite to payment pursuant to the contract, or at any other time, may require the Contractor to furnish, under oath, answers to any interrogatories related to such possible benefit.

c. In the event the Bidder has knowledge of benefits as outlined above, this information should be submitted with the bid. If the above does not apply at time of award of contract and becomes known after inception of a contract, the Bidder shall address the disclosure of such facts to the City of Falls Church, 300 Park Avenue, Falls Church, VA 22046. Relevant Invitation For Bid Number should be referenced in the disclosure.

4. Licenses and Insurance - The firm submitting the Bid is licensed and registered to do business in the Commonwealth of Virginia and has the current Contractor's license(s), as may be required under this solicitation, as of the date of Bidder submission.

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

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

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

7. Employment Discrimination By Contractor Prohibited - During the performance of any resultant contract, the Bidder will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, and Section 2.2-4311 of the Virginia Public Procurement Act which provides that:

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

   a. During the performance of this contract, the contractor agrees as follows:
      1) The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
      2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.

3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

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

8. Drug Free Workplace - In every Contract over $10,000 the following shall apply:

During the performance of any resultant contract, the contractor agrees to (1) provide a drug-free workplace for the contractor's employees; (2) 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; (3) 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 (4) 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.

XXIII.BID SUBMISSION REQUIREMENTS

A. Bidder shall complete and submit **one (1) original and two (2) copies** of each bid document below unless otherwise specified. If the Bid Package contains proprietary or confidential information in accordance with the section “Trade Secrets or Proprietary Information” herein, the Bidder shall also submit a separate, redacted version of the bid sealed and clearly marked as such on the outside envelope.

B. Each Bidder must use the attached Bid Sheet / Price Schedule Forms (Attachment A, separate downloadable Excel spreadsheet) to submit a bid.

C. A complete bid shall consist of the following minimum required documents:

1. **Signed Cover Sheet** - First Page of this IFB, completed and signed in ink by a person authorized to bind the company.

2. **Any IFB Addenda (dated & signed)**, Proprietary Information (see Section XV.B) and/or exceptions for VA SCC Business Registration, if applicable.

3. Required Forms

- **Attachment A – Bid Sheet / Price Schedule**
  (Bidders to use separate downloadable Excel spreadsheet)

  Text, price ranges, multiple entries and/or zeros ($0) in any price specified line item is unacceptable. All Unit Price boxes must be completed with a dollar figure. Interlineations, text, price ranges and multiple entries on any line item are unacceptable. Any such entries will result in a nonresponsive bid. In the case of zeros ($0) and lines with blank entries, the City shall interpret this to mean that the work or task being requested is being performed free of charge.

- **Attachment B1 - Company Information**

- **Attachment B2 - Project-Specific Information**

Including Equipment Listing, Long Lead Items, and any "Proposed Equals" as applicable

- **Attachment C - Company References & Current Projects**
- **Attachment D - Proof of Authority to Transact Business in Virginia** (dated & signed)
- Copy of Virginia Class A **Contractor's license**
- **Proposed Schedule**
- **Resume of Project Superintendent**
- **Written Warranty,** on company letterhead, which Bidder proposes to furnish
- **Descriptive Literature for any Proposed Equals** - Documentation and descriptive literature for any alternative materials proposed by the Bidder and listed in Attachment B-2. Such documentation must include letters of acceptability signed by persons of the appropriate authority of the respective utility company

All information and prices must be completed for every line item on the bid forms listed above.

All other pages should be retained in Bidder's file.

D. Bids shall be placed in a sealed, opaque envelope, and clearly marked in the lower left-hand corner with the Company Name, IFB number, IFB title, and the date/time bids are scheduled to be received. Bids are to be submitted by mail, courier or delivered in person ONLY to:

City Of Falls Church
Attn: Purchasing Agent
300 Park Avenue, Room 300 East, 3rd Floor, East Wing
Falls Church, Virginia 22046

E. The City's Purchasing Office is open for the receipt of bids from 8:30 AM until 4:00 PM, Monday through Friday (excluding City holidays). **PLEASE NOTE THE SUBMISSION DEADLINE TIME SPECIFIED ON THE IFB COVER PAGE.** The City is not responsible for deliveries attempted outside of these time periods or misdirected to other offices.

F. **Any bid received after the date and time due for bid submission as noted on the cover page, whether by mail or otherwise, will not be accepted or considered.** The time of receipt shall be determined by the time the bid is signed in at the Purchasing Office using the Purchasing Office clock as the official time. Bidders are solely responsible for ensuring that their bid is stamped by Purchasing Office personnel by the deadline indicated.

The City is not responsible for delays in the delivery of mail by the U.S. Postal Service, private couriers, the intra-City mail system or delivery by other means. Bidders are solely responsible for ensuring that their bid is received and stamped by Purchasing Office personnel by the deadline indicated.

G. The City, and its officers, employees or agents will not be responsible for the opening of a bid envelope or package prior to the scheduled opening if that envelope or package is not appropriately sealed and marked as specified.

H. If the City declares administrative or liberal leave, scheduled receipt of bids will be extended to the next business day after which administrative or liberal leave has been canceled.

I. Bidders are solely responsible for checking the City's Website to insure that they have the most current information regarding the IFB.

J. Oral bids or bids delivered by electronic means such as facsimile and e-mail are not allowed and bids so delivered will not be considered.

K. All erasures, interpolations, and other changes in the bid shall be signed or initialed by the Bidder. Carelessness in quoting business terms (i.e. prices), or in preparation of the bid will not relieve the Bidder. When an error is made in extending total prices, the unit price will govern. Bidders are cautioned to recheck their bids for possible error. Errors discovered after negotiation, if applicable, cannot be corrected, and the Bidder will be required to perform if its bid is accepted, except as otherwise provided herein.

L. Conditional bids are subject to rejection in whole or in part.

M. Under no circumstances shall any Bidder whose bid has not been awarded be entitled to any claim for compensation under this solicitation.

N. The City accepts no responsibility for any expense incurred by the Bidder in the preparation and presentation of a bid, such expenses to be borne exclusively by the Bidder.

XXIV. PUBLIC BID OPENING

A. All bids received in response to this Invitation for Bids (IFB) by the due date and time will be opened and read publicly on **Friday, June 9, 2017**, shortly after 11:00 AM, in the **Oak Conference Room**, 3rd Floor East, 300 Park Avenue, Falls Church, VA 22046.

B. The Bid Tabulation will be posted on the City's website: www.fallschurchva.gov/Bids.

XXV. BID EVALUATION/CONTRACT AWARD

A. Award will be made 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 City to accept it.

1. Responsiveness relates to compliance in all material aspects with the provisions of the solicitation, including specifications and terms and condition. Failure to comply with the requirements and/or terms and conditions set forth in this IFB may result in a bid being declared nonresponsive.
2. Responsible Bidder means a person/firm who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability that will assure good faith performance, and who has been prequalified, if required.

B. Before the Contract is awarded, the bidder submitting the lowest responsive bid must satisfy the City that it has the requisite organization, capital, equipment, ability, resources, personnel, management, business integrity, and experience in the type of municipal work for which it has submitted a bid. The bidder shall verify to the City that it has the sufficient and qualified personnel to provide for the Contract Work. Failure by the lowest responsive bidder to sufficiently satisfy the City of its ability to meet any of the above requirements may serve as grounds for rejection of the bid.

C. The City reserves the right to waive informalities and consider factors other than price as will protect and preserve the interests of the City.

D. The following factors, among such others as will protect and preserve the interests of the City, may also be considered in making an award:

a. Availability of construction equipment required to perform services as well as the qualification of personnel to perform the work.
b. Total Bid price(s) as set forth on each Bid Form (Price Schedule).
c. The specified terms, extended warranty, discounts, etc. of the Bid
d. The quality of and record of performance on previous contracts or services into which the Bidder may have entered into with the City or other public bodies or corporations (references).

e. The previous and existing compliance by the Bidder with laws and ordinances relating to other contracts, purchase orders, items and/or services provided by Bidder in other matters.

f. The character, integrity, reputation, judgment, experience and efficiency of the Bidder and quality of performance on previous contracts or services;

g. Whether the Bidder can perform the Contract and/or perform the services and/or provide the items promptly, or within the time specified, without delay or interference taking into consideration other business commitments;

h. The necessary facilities, organization, experience and technical skills as well as sufficiency of the financial resources and ability of the Bidder to perform the Contract and/or provide the services and/or items requested in the IFB.

i. The ability and availability of the Bidder to provide quality and timely maintenance, service, and/or parts.

j. The availability and capability of local and regional vendor support as it affects the quantity, quality, and timeliness of the goods and/or services.

k. Such other information as may be secured by the Purchasing Agent having a bearing on the decision to award the contract.

l. The City expressly reserves the right to reject the bid of such Bidder, if such records disclose that said Bidder, in the opinion of the City, has not properly performed such contracts or has habitually and without just cause neglected the payment of bills, or has otherwise disregarded his obligations to subcontractors, suppliers or employees.

E. To be considered for an award, a Bidder must comply in all material respects with the IFB.

F. The City 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 interests of the City. The City also reserves the right to reject the bid of a Bidder deemed to be a non-responsible Bidder.

G. NEGOTIATIONS WITH LOWEST RESPONSIVE AND RESPONSIBLE BIDDER - Unless all bids are canceled or rejected, the City reserves the right granted by Section §2.2-4318 of the Code of Virginia to negotiate with the lowest responsive, responsible Bidder to obtain a contract price within the funds available to the City whenever such low bid exceeds the City's available funds.

For the purpose of determining when such negotiations may take place, the term "available funds" shall mean those funds which were budgeted by the City for the contract prior to the issuance of the written Invitation for Bids. The City shall initiate such negotiations by written notice to the lowest responsive, responsible Bidder that its bid exceeds the available funds and the City wishes to negotiate a lower contract price. The times, places and manner of negotiating shall be agreed to by the City and the lowest responsive, responsible Bidder. Negotiations with such Bidder may include discussions and modifications of the scope of work, specifications, quantity, quality, or other cost saving mechanisms. Any such negotiated contract shall be subject to final approval of the City, at the sole discretion of the City.

H. TIE BIDS: In the case of a tie bid, the City may give preference to goods, services, and construction produced in the City or provided by persons, firms or corporations having principal places of business in the City. If such choice is not available, preference shall then be given to goods and services produced in the Commonwealth pursuant to Section 2.2-43 24 of the Code of Virginia. If no City or Commonwealth choice is available, the tie shall be decided by lot.

I. SINGLE BID RESPONSE/INSUFFICIENT COMPETITION: If only one bid is received for a solicitation or the City otherwise concludes that there is insufficient competition (i.e. only one responsive and responsive Bidder), the City will make a written determination whether to award or to reject the bid. If it is decided to make the award based on a single bid response, the City will make a determination that the prices are fair and reasonable. This determination may be based on price analysis, value analysis or a combination thereof.

Price Analysis techniques may include, but are not limited to: comparison with prices for functionally similar items, prices paid by other consumers, prices set forth in a public price list or commercial catalog, City estimates, or the evaluation of two or more similar contracts, if available, awarded to the Bidder within the past two (2) years. In all cases, the Bidder agrees to fully cooperate with the City by providing reasonably requested information. If a determination is made that the prices are not fair and reasonable, then the City may reject the bid, cancel the solicitation and resolicit.

J. All awards for goods and non-professional services over $100,000 are contingent upon City Council approval.

XXVI. BID MODIFICATION/WITHDRAWAL

A. Prior to Bid Opening - A bid may be modified or withdrawn by the Bidder any time prior to the time and date set for the receipt of Bids. The Bidder shall notify the Purchasing Office of its intentions in writing containing the original signature of the Bidder.

1. If a change in the bid is requested, the modification must be so worded by the Bidder as to not reveal the original amount of the Bid but should simply provide the desired addition, subtraction or modification, so that the final price or terms of the bid will not be known to the City until the sealed bids are opened. Modifications shall not be made on the outer envelope or packaging
2. Modified and withdrawn bids may be resubmitted to the Purchasing Office up to the time and date set for the receipt of bids.
3. Except as otherwise provided herein, no bid can be withdrawn after the time set for the receipt of Bids and for one hundred eighty (180) days thereafter.

B. After Bid Opening - Bids that have been appropriately opened by the City cannot be changed, adjusted, corrected or modified in any way other than complete withdrawal. The City's procedures for withdrawal of bids (whether construction or other than construction) is that set forth in Code of Virginia, §2.2-4330(A)(i), which allows withdrawal of a Bid due to an error such as an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a Bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the Bid.

Withdrawal must be requested within two (2) days of the Bid opening by delivering to the City original work papers, documents, and materials used in preparation of the Bid. Work papers, documents, and materials submitted in support of a withdrawal of bids may be considered as trade secrets or proprietary information subject to the conditions of the Virginia Freedom of Information Act. The Purchasing Office will inspect the written evidence submitted by the Bidder with the request and if the Purchasing Office can verify to its satisfaction and sole discretion that the mistake was a non-judgmental mistake, the Bidder will be allowed to withdraw the bid.

No bid shall be withdrawn under this section when the result would be the awarding of the contract on another bid of the same Bidder or of another Bidder in which the ownership of the withdrawing Bidder is more than five percent.

If the City denies the withdrawal of a bid under the provisions of this section, it shall notify the Bidder in writing stating the reasons for its decision and award the contract to such Bidder at the bid price, provided such bidder is a responsible and responsive Bidder.

C. Effect of Bid Withdrawal - If a bid is withdrawn under the authority of this Section, the lowest remaining bid shall be deemed to be the low bid.

No Bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

Work papers, documents, and materials submitted in support of a withdrawal of bids may be considered as trade secrets or proprietary information subject to the conditions of the Virginia Freedom of Information Act.

XXVII. NOTICE /ACCEPTANCE AGREEMENT

A. A written award notice (or Acceptance Agreement, contract, or Purchase order) mailed (or otherwise furnished) to the successful Bidder within the time for acceptance specified in the solicitation shall be deemed to result in a binding contract.

B. The successful Bidder, within a period of ten (10) days from the date of the City's acceptance and approval of their bid, shall be expected to sign the contract (or accept the Purchase Order) and to submit the Certificate of Insurance as required in the relevant article of the contract. Failure to do so may cause the bid to be considered withdrawn.

C. Performance under any resultant contract shall not begin until receipt of the City's Purchase Order. Contractors providing goods or services without a signed City purchase order do so at their own risk. The City will not be liable for payment of any purchases made by its employees without appropriate purchase authorization signed by City's Purchasing Agent.

XXVIII. PROTEST OF AWARD OR DECISION TO AWARD

Any Bidder may protest the award or decision to award only in accordance with the provisions of Sections 2.2-4357 through 4364 of the Code of Virginia, and only if such is provided for in such Code section.

XXIX. NOTICE OF AWARD

Public announcement of an Award and/or Intent to Award will be posted on the City's website: www.fallschurchva.gov/Bids.

XXX. DOCUMENTATION OF CONTRACTOR PERFORMANCE ISSUES

The City has instituted the Documentation of Contractor Performance Issue (DCPI) procedure to assist staff in documenting Contractor/Consultant performance issues. This procedure is intended to improve the quality of services by facilitating communication between the City and Contractors/Consultants with regard to issues requiring remedial action. This procedure is not considered punitive but should a Contractor/Consultant receive repeated DCPI issuances, the City will consider taking additional steps, including but not limited to the issuance of a "Notice to Cure" and termination of the contract.

XXXI. COOPERATIVE PROCUREMENT

A. As authorized in Section 2.2-4304 of the Code of Virginia, this procurement is being conducted as a cooperative procurement on behalf of or in conjunction with other public bodies. In accordance with the Virginia Public Procurement Act, any resultant contract may be used by public bodies, agencies, institutions and/or localities of the several states, territories of the United States, and the District of Columbia with the consent of the Contractor at the same prices and/or discounts and terms.

B. Each jurisdiction and/or political subdivision has the option of executing a separate agreement with the Contractor after making their own legal determination as to whether the use of this contract is consistent with their laws, regulations, and other policies. Such other contracts may contain general terms and conditions unique to those jurisdictions and/or political subdivisions. If, when preparing such a contract, the general terms and conditions of a jurisdiction are unacceptable to the Contractor, the Contractor may withdraw its extension of the award to that public body or political subdivision.

C. It is the responsibility of the Contractor to notify the jurisdictions and/or political subdivisions of the availability of any contract resulting from this solicitation.

XXXII. TAX EXEMPTION

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

XXXIII. ANTI-DISCRIMINATION

By submitting their bids, Bidders certify to the City that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the Virginia Public Procurement Act (VPPA). If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (Code of Virginia § 2.2-4343.1E)

XXXIV. TRANSPORTATION AND PACKAGING

By submitting their bids, all Bidders certify and warrant that the price offered for FOB destination – Freight Prepaid & Allowed includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked.

XXXV. VDOT and/or FEDERAL GOVERNMENT CONTRACT REQUIREMENTS

A. If any purchase order, task(s) or task order under any contract resulting from this RFP is to be funded in whole or in part by the Virginia Department of Transportation (VDOT) or any other State or Federal Government funding source, the Consultant shall comply with supplemental terms and conditions. This shall include the utilization of Disadvantaged Business Enterprises (DBEs), as applicable, and required by any state and/or federal agency for such applicable tasks and/or projects. The City reserves the right to amend the contract, as is permitted, for inclusion of such terms, conditions and provisions.

B. For each purchase order, task or task order issued under the contract to be funded by VDOT or Federal Government sources, the City shall notify Contractor of the funding source and the Contractor shall comply with the associated requirements.

C. Necessary specifications, provisions and clauses in Federal and/or VDOT documents, including but not limited to the most current versions of the *Virginia Department of Transportation Road and Bridge Specifications, Virginia Department of Transportation Road and Bridge Standards*, and the *Virginia Work Area Protection Manual* are incorporated herein by reference and made a part hereof.

D. If any task issued by the City is funded by grant monies, the Offeror and the City shall adhere to terms and conditions specified in individual grant agreements.

E. On December 26, 2013 new consolidated guidance was issued by the federal government in the form of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200). The purpose of the

"Uniform Guidance" was to streamline and establish standardized administrative requirements, cost principles, and audit requirements for Federal Awards to non-Federal entities. As a sub-Grantee of federal funds, the City and its consultants/contractors must agree to compliance with all applicable federal regulations, recognizing that (1) these funds are subject to applicable statutory provisions and regulations; and (2) grant awards are subject to the applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200).

XXXVI. ORDER OF PRECEDENCE

A. In the event that there is a conflict between any specific terms, conditions and/or provisions of this IFB, the specific provisions of the IFB shall take precedence over the "Standard Provisions" which shall take precedence over the "General Conditions and Instructions to Bidders" sections herein.

B. In the event there is a conflict between any specific terms, conditions and/or provisions of contract documents resulting from this solicitation, the contract shall take precedence over the IFB which shall take precedence over the Bidder's response to the IFB unless otherwise stipulated in the contract.

C. For tasks or projects funded by any Federal Government agency, in the event there is a conflict between the specific terms, conditions and/or provisions of any contract documents resulting from this IFB and the terms, conditions and/or provisions of such agency, that agency's terms, conditions and provisions shall take precedence.

XXXVII. CITY OF FALLS CHURCH STANDARD PROVISIONS

A. Section Headings: The headings of the sections in the "Standard Provisions" and/or "General Conditions and Instructions to Bidders" are inserted for convenience only and are not intended to affect the meaning or interpretation of this solicitation or any resultant contract.

B. Subject to all state and local laws and all rules, regulations and limitations imposed by legislation of the federal government, bids on all solicitations issued by the City will bind Bidders to applicable conditions and requirements herein set forth unless otherwise specified in the solicitation.

1. Authority to Transact Business in Virginia

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

Any foreign corporation transacting business in Virginia shall secure a certificate of authority, as required by Section 13.1-757 of the Code of Virginia, from the State Corporation Commission, Post Office Box 1197, Richmond, Virginia 23209. The Commission may be reached at (804) 371-9733. The consequences of failing to secure a certificate of authority are set forth in Virginia Code Section 13.1-758.

2. Choice Of Law and Courts

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

3. Compliance With Laws

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

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

4. Authorized Dealer/Distributor Responsibilities

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

5. Procedures

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

All communications between the parties relating to material contractual issues shall be through

the Purchasing Agent and any material change to the contract must be approved in writing by the Purchasing Agent and the Contractor to be deemed binding.

6. Key Personnel/ Project Staff

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

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

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

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

7. Purchase Orders

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

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

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

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

Orders for less than $1,000.00 do not require a Purchase Order.

8. Work Site Damages

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

9. Ownership of Documents, Materials and Products

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

Contract, compilation of notes, work sheets, and any and all interim and final products and materials shall be the sole property of the City.

Any reports, specifications, drawings, blueprints, negatives or other documents/deliverables obtained or prepared by the Consultant in the performance of its obligations under the Contract shall be the exclusive property of the City of Falls Church, and all such materials shall be returned to the owner upon completion, termination, or cancellation of this Contract. The Consultant shall provide both hard copies and electronic copies of all deliverables produced under this contract, in formats as requested by the City. Consultant shall deliver signed/sealed documents as required by law and as requested by the City. The Consultant shall not use, willingly allow, or cause such materials to be used for any purpose other than performance of all Consultant work under the Contract without the prior written consent of the City. Documents and materials developed by the Consultant under the Contract shall be the property of the City; however, the Consultant may retain file copies, which may not be used without prior written consent of the Owner.

10. Use Of Information:

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

11. Workmanship, Inspection and Acceptance

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

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

The City reserves the right and may, from time to time, conduct any test and/or make inspections of the work performed, being performed or goods delivered or being delivered under the contract. Any inspection by the City does not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements. The presence of an authorized City representative or agent (“Inspector”) shall not lessen the obligation of the Contractor for performance in accordance with the contract requirements, or be deemed a defense on the part of the Contractor for infraction thereof. The Inspector is not authorized to revoke, alter, enlarge, relax, or release any of the requirements of the contract documents. Any omission or failure on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material. Notification of an omission or failure will be documented by the Purchasing Agent.

If goods or services do not conform to requirements, in addition to all other rights and remedies City may have, the City may reject the goods or services in full or part. Non-conforming goods may be returned or non-conforming services rejected at the City's option for refund, credit or replacement at Contractor's expense. Goods rejected upon receipt remain the property of

Contractor. The City's inspection, or lack of inspection, shall not affect any express or implied warranties, nor shall the City waive any rights to return goods which contain latent defects discovered in the testing of the City's products containing such goods. Nothing in this section affects or limits any of the City's rights or remedies available under the contract.

Nothing in this section shall prohibit or restrict the City's right to return goods not accepted by the City within a reasonable period of time without penalty or restocking fees.

If the City has paid Contractor for all or part of the Services that are ultimately rejected or not accepted by the City, or if the City later determines that Contractor's performance of Services was performed in a manner that breached the terms of this Agreement, Contractor shall (in addition to any other remedy available to City) return to City all amounts paid for such Services.

12. Task Order Cost Proposals

The City may require the Contractor to provide a cost proposal for an individual task order to include the Contractor's hours to perform the work based upon their fixed hourly rates contained in any resultant contract. The cost proposal shall also contain the Contractor's costs separated by task; detailed subcontractor costs; a narrative describing work to be performed and the estimated time for completion and other details as may be required by the City. After review and acceptance of the task order proposal, the City will issue a purchase order to perform the work, or if the task is for less than one thousand dollars ($1,000), the City may issue an Authorization to Proceed letter, signed by a duly authorized City representative. The proposal shall be prepared at no additional cost to the City.

When the scope of services for the task order involves work of such a nature that the Contractor cannot reasonably estimate the time which would be required to provide the services, the City may, at its sole option, agree to an Hourly Rate Purchase Order based on the actual hours worked times the hourly rates indicated in the Contractor's binding fee schedule and other approved expenses. A maximum Purchase Order fee or cost not to exceed limitation shall be agreed upon for Hourly Rate Purchase Orders. When an Hourly Rate Purchase Order is used, the Contractor shall submit detailed time records, documentation for other expenses, and such other evidence as the City may require to support the Contractor's billing request.

For Services required by the City that are not specifically identified in the Contract Fee Schedule but covered under the scope of this Contract, the Consultant shall submit to the City Project Manager, in the task order cost proposal, the detailed costs for these Services.

Any Contractor Technician time shall only be payable for on-site time. Any overtime rates require advance written notice and approval of the City. Such approved overtime rates shall only apply after forty (40) hours of work per week.

For architectural or professional engineering services relating to construction projects, the sum of all Task Orders/projects performed in one contract term and the project fee of any single task order/project shall not exceed limits set in the current VPPA.

13. BPOL License Requirement

Contractor shall be licensed in accordance with the City's "Business, Professional, and Occupational Licensing (BPOL) Tax" Ordinance. All questions regarding the BPOL license requirement and tax should be referred to the Office of the Commissioner of the Revenue, 300 Park Avenue, Suite #104E, Falls Church, Virginia 22046-3301; Phone: (703) 248-5019; Fax: (703) 248-5212.

14. Payment Terms

Payment will be made to Contractor once each month based upon satisfactory and actual services rendered and/or goods received and invoices submitted by Contractor. All such invoices will be paid net thirty (30) days after receipt of an undisputed invoice unless (1) more favorable terms are stated on Contractor's invoice and the City elects to pay on such terms, or (2) any items thereon are questioned, in which event payment will be withheld pending

verification of the amount claimed and the validity of the claim. The Contractor shall provide complete cooperation during any such investigation.

Payment terms shall appear on Contractor's invoice. Any discount period shall be computed from the date of proper receipt of the Contractor's correct invoice. Late payment charges shall not exceed the allowable rate specified in §2.2-4352 of the VPPA (1% per month).

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

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

15. Invoicing

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

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

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

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

The City will not honor, process or pay invoices submitted by subcontractors.

16. Changes

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

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

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

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

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

17. Additions/Deletions:

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

18. Safety

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

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

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

Contractor(s) shall be held responsible for the safety of their employees and any unsafe acts or conditions that may cause injury or damage to any persons or property within and around the work site area under this contract. The City has sole right to dismiss contractors and/or sub-contractors for non-compliance to the above rules and regulations and/or safety violation. The contractor must rectify all safety concerns prior to continuance of work.

19. Communications

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

20. Warranties and Guarantees

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

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

All warranties shall survive inspection, acceptance and payment.

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

The Contractor agrees to: furnish services described in the solicitation and resultant contract at the times and places and in the manner and subject to conditions therein set forth provided that the City may reduce the said services at any time; enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence; and render all work and services

in strict conformance to all laws, statues, and ordinances and the applicable rules, regulations, methods, and procedures of all government boards, bureaus, offices, and other agents.

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

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

21. Default

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

22. Contract Disputes Resolution

Arbitration shall not be applicable for the resolution of disputes between City and Contractor. Disputes by the Contractor with respect to this Contract shall be decided in the first instance by the City's Purchasing Agent. The Purchasing Agent will, after receipt of a letter from the Contractor addressed to the Purchasing Agent detailing the nature of the dispute, pertinent facts, and the Contractor's desired outcome, reduce his/her decision to writing and mail or otherwise furnish a copy thereof to the Contractor. This decision shall be final and binding unless within twenty (20) days from the date of such decision the Contractor submits or otherwise furnishes and the Purchasing Agent receives a written appeal addressed to the Purchasing Agent and City Manager. The decision by the City Manager shall be final and binding unless set aside by a Court of competent jurisdiction as fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not to be supported by any evidence. Pending a final determination of a properly appealed decision, the Contractor shall proceed diligently with the performance of the Agreement in accordance with that decision.

Contractual claims, whether for money or other relief, shall be submitted by Contractor in writing no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Any notice or dispute shall be delivered to the City's Purchasing Agent, 300 Park Avenue, 3rd Floor East Wing, Falls Church, VA and shall include a description of the factual basis for the dispute and a statement of the amounts claimed or other relief requested.

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

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

Any notices to be given hereunder shall be given in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by facsimile, or (d) by a commercial overnight courier that guarantees next day delivery and provides a receipt. Any notice shall be effective only upon delivery, which for any notice given by facsimile shall mean notice which has been received by the party to whom it is sent as evidenced by confirmation slip from that person.

23. Termination

Subject to the provisions below, the contract may be terminated by the City upon written notice; but if any work or service hereunder is in progress, but not completed as of the date of termination,

then the contract may be extended upon written approval of the City until said work or services are completed and accepted.

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

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

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

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

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

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

24. Delays/Service Failure

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

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

25. Indemnification

The Contractor agrees to indemnify and hold harmless the City of Falls Church, Virginia, its officers, agents, and employees from any liability, claim, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the contractor or any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the sole negligence of the using department or to failure of the using department to use the materials, goods or equipment in the manner already and permanently described by the contractor on the materials, goods or equipment delivered. The Contractor agrees to protect the City from claims involving infringement of patent or copyrights.

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

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

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

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

26. Insurance

a. The Contractor is responsible for its work and for all materials, tools equipment, appliances, and property of any and all description used in connection therewith. The Contractor assumes all risk of direct and indirect damage of or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the contract, or in any way whatsoever with the contracted work.

b. The Contractor shall, during the continuance of all work under the contract provide the insurance as detailed below:

    1) Maintain statutory Workers' Compensation and Employer's Liability insurance in limits of not less than $100,000 to protect the contractor from any liability or damages for any injuries (including death and disability) to any and all of its employees, volunteers, or subcontractors including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia, or which may be hereinafter enacted.

    2) Commercial General Liability - $1,000,000 combined single limit coverage with $2,000,000 general aggregate covering all premises and operations and including Personal Injury, Completed Operations, Contractual Liability

and, where applicable to the project (as determined by APS), Products and Independent Contractors. The general aggregate limit shall apply to this project.

3) Maintain owned, non-owned, and hired Automobile Liability insurance, in the amount of $1,000,000 per occurrence/aggregate, including property damage, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the contractor. In addition, all mobile equipment used by the contractor in connection with the contracted work, will be insured under either a standard Automobile Liability policy, or a Commercial General Liability policy. The Garage Keeper's Liability coverage shall also be maintained where appropriate.

4) Maintain Contractors Liability insurance in the amount of $1,000,000 per occurrence/aggregate to insure against loss due to liability imposed upon an owner/contractor for acts arising out of the operations of independent contractors/subcontractors or out of an owner's/contractor's supervisory activity.

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

Professional Services: Professional services (work performed by an independent contractor, within the scope of the practice of accounting, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy, or professional engineering) shall require a certificate of insurance showing professional liability/errors and omissions coverage insurance with companies authorized or licensed to do business in Virginia, prior to the commencement of services. Certain other service providers shall meet the same requirements (including but not limited to asbestos design/inspection/or abatement contractors, and other health care practitioners).

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

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

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

6) Maintain Environmental Impairment Liability Insurance (if applicable) including sudden and accidental pollution and in transit coverage as well as coverage for storage at site in the limits of $2,000,000 per occurrence/aggregate where appropriate.

7) Liability insurance may be arranged by General Liability and Automobile Liability policies for the full limits required or by a combination of underlying Liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.

8) Liability Insurance "Claims Made" basis: If the liability insurance purchased by the contractor has been issued on a "claims made" basis, the contractor must comply with the following additional conditions. The limit of liability and the extensions to be included as described previously in these provisions, remain the same. The Contractor must either:

   (a) Agree to provide certificates of insurance evidencing the above coverage for a period of two years after final payment for the contract. This certificate shall evidence a "retroactive date" no later than the beginning of the Contractors or sub-contractors work under this contract, or

   (b) Purchase the extended reporting period endorsement for the policy or policies in force during the term of this contract and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself.

9) The Contractor agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A:VI.

10) The Contractor will provide an original, signed Certificate of Insurance citing the contract number and such endorsements as prescribed herein before any work is started. In addition, the Contractor will secure and maintain all insurance certificates of its subcontractors, which shall be made available to the City on demand.

11) The Contractor will provide on demand certified copies of all insurance policies related to the contract within ten (10) business days of demand by the City. These certified copies will be sent to the City from the Contractors insurance agent or representative. During the period of the contract, the City reserves the right to require the contractor to furnish certificates of insurance for the coverage required

c. No change, cancellation, or non-renewal shall be made in any insurance coverage without a forty-five (45) day advance written notice to the City. The Contractor shall furnish a new certificate prior to any change or cancellation. The failure of the Contractor to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished.

d. Compliance by the Contractor and all subcontractors with the foregoing requirements as to carrying insurance shall not relieve the Contractor and all subcontractors of their liabilities provisions of the contract.

e. Contractual and other liability insurance provided under this contract shall not contain a supervision, inspection or engineering services exclusion that would preclude the City from supervising and/or inspecting the project as to the end result. The Contractor shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of the subcontractors.

f. Nothing contained in the specifications shall be construed as creating any contractual relationship between any subcontractor and the City. The Contractor shall be as fully responsible to the City for the acts and omissions of the subcontractors and of persons employed by subcontractors as it is for acts and omissions of persons directly employed by the Contractor.

g. The City, its officers and employees shall be named as an “additional insured” in the Automobile and General Liability policies and it shall be stated on the Insurance Certificate that this coverage “is primary to all other coverage the City may possess.”

h. Where required by federal and/or state agreements with the City, offeror/bidder will cooperate and comply with the City’s requirements under such agreement and add

third party additional insured. When the City's funding sources so require, the Contractor shall agree to the City's reasonable requests and furnish the Insurance Certificate containing specified wording (e.g., naming the Northern Virginia Transportation Authority - NVTA or its Bond Trustee as "additional insured" for Special Transportation Fund projects).

i. If an "ACORD" Insurance Certificate form is used by the Contractor's insurance agent, the words, "endeavor to" and "….. but failure to mail such notice shall impose no obligation or liability of any kind upon the company" in the "Cancellation" paragraph of the form shall be deleted or crossed out.

j. Insurance coverage required by this solicitation shall be in force throughout the contract term. Should the Contractor fail to provide acceptable evidence of current insurance within five (5) days of written notice at any time during the contract term, the City shall have the absolute right to terminate the contract without any further obligation to the Contractor, and the contractor shall be liable to the City for the entire additional cost of procuring the uncompleted portion of the contract at the time of termination.

27. Correspondence

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

28. Quality

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

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

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

29. Brand Name Or Equivalent Items

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

30. Bonding/Contract Security

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

31. News Release/Publicity By Contractors

As a matter of policy, the City does not endorse the products or services of a Contractor. News releases or other publicity concerning any resultant contract from this solicitation will not

be made by a Contractor without the prior written approval of the City. All proposed news releases will be routed to the Purchasing Agent for review and consideration of approval.

32. Emergency Purchases

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

33. Americans With Disabilities Act Requirements

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

34. Immigration Reform And Control Act

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

35. 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.

36. Funding

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

37. Assignment

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

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

38. Force Majeure

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

39. Record Retention/Audits

The Contractor shall maintain accurate records of all invoices, amounts billable to and payments made by the City, during the performance of the contract and for a period of three

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

40. Payments To Subcontractors

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

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

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

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

The Contractor shall include this provision in each of its subcontracts requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor. The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this provision may not be construed to be an obligation of the City.

41. Time Of The Essence

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

Maintaining design schedules is of critical importance to City projects. Design changes or developments that may affect design schedules should be evaluated for time impact at the onset. If delay of over 10 days is foreseen, the Consultant shall give immediate written notice to the City Project Manager. The Consultant must keep the City advised at all times of status of work. Default in scheduled completion (without documented reasons) or failure to meet scope of services, shall authorize the City to purchase services elsewhere and charge full increase in cost to the defaulting Consultant or deduct the costs from any balance owed the Consultant.

42. Reports

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

43. Antitrust

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

44. Relationship of the Parties

The Contractor will be legally considered to be acting solely as an independent contractor and neither the Contractor nor its employees or subcontractors will, under any circumstances, be

considered servants or agents of the City. The City will not be legally responsible for any negligence or other wrongdoing by the Contractor, its servants or agents. The City will not withhold from the contract payments to the Contractor any federal or state unemployment taxes, federal or state income taxes, social security tax, or any other amounts for benefits to the Contractor. Further, the City will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation, normally provided by the City for its employees or officers.

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

45. Severability

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

46. Non-Waiver

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

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

47. Non-Exclusive Market Rights

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

48. HIPAA Compliance

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

49. Confidentiality And Return Of Records

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

including "hard copies" of computer records, and at the City's request, shall destroy all computer records created as a result of the City's request for services under this Contract.

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

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

50. Copyright

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

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

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

51. Data Sources

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

52. Conflict Of Interest

In the event that a conflict of interest arises with Contractor acting as the City's authorized Contractor on a specific job, the City reserves the right to seek professional services elsewhere on the specific job over which the conflict arose.

53. Shipping And Billing

Unless instructed otherwise by the City, Contractor shall, for Purchase Orders placed hereunder: (1) deliver entire quantity of items ordered to the destination designated in the Purchase Order in accordance with any specific shipping instructions; (2) enclose a packing memorandum with each shipment and when more than one package is shipped, identify the one containing the memorandum; (3) legibly mark or label on the outside of the shipping container the City's Purchase Order number, commodity description and quantity on all packages and shipping papers; (4) render itemized invoices showing Purchase Order number to the billing address on the Purchase Order and (5) utilize standard commercial packaging, packing and shipping containers.

Products shall be shipped by Contractor, F.O.B. Destination, from Contractor's nearest facility capable of meeting the City's requirements using the most cost effective common carrier with transportation charges prepaid by Contractor and added as a separate item to the invoice to be paid by the City. In no event will City be liable for premium shipping modes unless previously authorized.

54. Provisions Required By Law Deemed Inserted

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

XXXVIII. GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

A. The general rules and conditions which follow apply to all purchases and become a definite part of each formal solicitation and resulting contract award issued by the City, unless otherwise specified. Bidders or their authorized representatives are expected to inform themselves fully as to the conditions, requirements, and specifications 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.

B. Subject to all state and local laws and all rules, regulations and limitations imposed by legislation of the federal government, bids on all solicitations issued by the City will bind Bidders to applicable conditions and requirements herein set forth unless otherwise specified in the solicitation.

C. If there is a conflict between the terms and conditions in this “General Conditions and Instructions to Bidders” and the Specific Provisions and/or conditions in other attachments to this solicitation, the latter shall take precedence.

1. DEFINITIONS: The terms defined in this section shall have the meanings set forth below whenever they appear regardless of case (capitalized or not), unless the context in which they are used clearly requires a different meaning or a different definition is described for a particular section or provision:

    a. BID: The offer of a Bidder to provide specific goods or services at specified prices and/or other conditions specified in the solicitation (Invitation for Bids).

    b. BIDDER: 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 City.

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

    d. CITY: City of Falls Church.

    e. DAY: Unless otherwise specified “day” or “days” shall mean calendar days

    f. GOODS/PRODUCTS: All material, equipment, supplies, printing, and/or automated data processing/information technology hardware and software.

    g. INFORMALITY: A minor defect or variation of a bid from the exact requirements of the invitation for bid which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.

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

    ~~i.~~ OPEN MARKET PROCUREMENT: A method of competitive bidding for the purchase or lease of goods, non-professional services or for the purchase of insurance, construction, or construction management when the estimated cost thereof shall be less than $50,000.

    j. PURCHASING AGENT: The Purchasing Agent/Manager employed by the City of Falls Church

    k. SERVICES: Any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

l. SOLICITATION: As applicable the IFB or process of notifying prospective Bidders that the City wishes to receive bids on a set of requirements to provide goods or services.

m. STATE: Commonwealth of Virginia.

CONDITIONS OF SOLICITATION RESPONSE

2. FORMS: Unless otherwise specified in the solicitation, all bids shall be submitted on the forms provided, including the Pricing Schedule(s), properly signed in ink in the proper spaces and submitted in a sealed envelope. Should the bid prices and/or any other submissions differ on the copy of the submitted bid, the ORIGINAL copy shall prevail.

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

4. ACCEPTANCE OF BIDS - BINDING 180 DAYS: Unless otherwise specified, all bids submitted shall be binding for one hundred eighty (180) calendar days following solicitation opening date, unless extended by mutual consent of all parties.

5. BIDS FOR ALL OR PART: Unless otherwise specified in the solicitation, the City 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 City. A Bidder may restrict his/her bid to consideration in the aggregate by so stating but shall 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.

6. OMISSIONS & DISCREPANCIES: Any items or parts of any equipment listed in this solicitation which are not fully described or are omitted from such specification, and which are clearly necessary for the completion of such equipment and its appurtenances, shall be considered a part of such equipment although not directly specified or called for in the specifications. Should a Bidder find discrepancies or ambiguities in, or omissions from, the solicitation, including the drawings and/or specifications, he or she shall notify the Purchasing Agent at least five (5) business 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) business 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.

7. BIDDER INTERESTED IN MORE THAN ONE SOLICITATION: If more than one bid is offered by any one party, either directly or by or in the name of his or her clerk, partner, or other persons, all such bids may be rejected. A party who has quoted prices on work, materials, or supplies to a Bidder is not thereby disqualified from quoting prices to other Bidders or firms submitting a bid directly for the work, materials or supplies.

8. SUBSTITUTIONS: No substitutions or cancellations permitted without prior written approval by the Purchasing Agent.

9. CONDITION OF COMMODITIES: All items bid shall be new, latest model, design or pack and in first class condition, including containers suitable for shipments and storage, unless otherwise indicated in bid invitation request. Verbal agreements to the contrary will not be recognized.

10. SAMPLES: Samples, if required, must be furnished free of expense to the City on or before date specified; if not destroyed in examination, they will be returned to Bidder, if requested, at Bidder's expense. Each sample must be marked with the Bidder's name and address, City's request number and opening date. DO NOT ENCLOSE IN OR ATTACH PROPOSAL TO SAMPLE.

11. PROHIBITION AGAINST UNIFORM PRICING: In submitting a solicitation response each Bidder shall, by virtue of submitting a bid, guarantee that he or she 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.

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

13. QUALIFICATIONS OF BIDDERS: The City may make such reasonable investigations as deemed proper and necessary to determine the ability of the Bidder to perform the services/furnish the goods, and the Bidder shall furnish to the City all such information and data for this purpose as may be requested. The City reserves the right to inspect the Bidder's physical facilities prior to award to satisfy questions regarding the Bidder's capabilities. The City further reserves the right to reject any bid if the evidence submitted by, or investigations of, such bid fails to satisfy the City that such Bidder is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

BIDDER REMEDIES

14. APPEAL OF DENIAL OF WITHDRAWAL OF BID:
    a. A decision denying withdrawal of a bid submitted by a Bidder 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 may not institute legal action until all statutory requirements have been met.

    b. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was arbitrary or capricious, the sole relief shall be withdrawal of the bid.

15. 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 City 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 City was arbitrary or capricious and the award for the particular City 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 City contract in question. Where the award has been made and performance has begun, the City 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.

SPECIFICATIONS

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

17. FEDERAL SPECIFICATIONS: Any Federal Specifications referred to herein may be obtained from the GSA Federal Supply Service Bureau - Specification Section, 470 East L'Enfant Plaza, S.W., Suite #8100, Washington, D.C. 20407 (Voice: 1-202-619-8925, Fax: 1-202-619-8978).

SHIPPING/DELIVERY PROVISIONS

18. SHIPPING: Unauthorized advance shipments and shipments other than for the quantity ordered are returnable at Contractor's expense. Delivery shall not be deemed complete until the goods have been actually received by City at its facility.

19. RESPONSIBILITY FOR SUPPLIES TENDERED: Unless otherwise specified in the solicitation, the Contractor shall be responsible for the materials or supplies covered by the contract until they are delivered at the designated point, but the Contractor shall bear all risk on rejected materials or supplies after notice of rejection. Rejected materials or supplies must be removed by and at the expense of the Contractor promptly after notification of rejection, unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the Contractor within ten (10) days after date of notification, the City may return the rejected materials or supplies to the Contractor at his or her risk and expense or dispose of them as its own property.

20. PACKING SLIPS OR DELIVERY TICKETS: All shipments shall be accompanied by Packing Slips or Delivery Tickets and shall contain the following information for each item delivered: The Purchase Order Number, Name of the Article and Stock Number (Supplier's), Quantity Ordered, Quantity Shipped, Quantity Back Ordered, and Name of the Contractor. Contractors are cautioned that failure to comply with these conditions may be considered sufficient reason for refusal to accept the goods.

21. COMPLIANCE: Delivery must be made as ordered and in accordance with the solicitation or as directed by the City when not in conflict with the bid. The decision of the City as to reasonable compliance with delivery terms shall be final. Burden of proof of delay in receipt of goods by the City shall rest with the Contractor. Any request for extension of time of delivery from that specified must be approved by the City, such extension applying only to the particular item or shipment affected. Should the Contractor be delayed by the City, there shall be added to the time of completion a time equal to the period of such delay caused by the City. However, the contractor shall not be entitled to claim damages or extra compensation for such delay or suspension. These conditions may vary for construction contracts. See Standard or Specific Provisions for the individual solicitation.

22. POINT OF DESTINATION: All materials shipped to the City must be shipped F.O.B. DESTINATION, Freight prepaid and allowed unless otherwise stated in the contract or purchase order. The materials must be delivered to the "Ship to" address indicated on the purchase order.

23. 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.

24. METHOD AND CONTAINERS: Unless otherwise specified, goods shall be delivered in commercial packages in standard commercial containers, so constructed as to ensure acceptance by common or other carrier for safe transportation to the point of delivery. Containers become the property of the City unless otherwise specified by Bidder.

25. 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 City.

GENERAL PROVISIONS

26. CONTRACT ALTERATIONS: No alterations in the terms of a contract shall be valid or binding upon the City unless made in writing and signed by the City's authorized representative.

27. BANKRUPTCY: If the Contractor should be adjudged bankrupt, or make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of the Contractor's insolvency, then the City may without prejudice to any other right or remedy, terminate the contract Contractor and procure such goods or services from other sources. In such event, the Contractor shall be liable to the City for any additional cost occasioned by such failure or other default. In such cases, the Contractor shall not be entitled to receive any further payment if the expense of finishing the contract requirements, including compensation for additional managerial and administrative services shall exceed the unpaid balance of the contract price, the Contractor shall pay the difference to the City.

28. SUBCONTRACTING: If one or more subcontractors are required, the contractor is encouraged to utilize small, minority-owned and women-owned business enterprises. For assistance in finding subcontractors, contact the Virginia Department of Business Assistance http://www.dba.state.va.us/; the Virginia Department of Minority Business Enterprise http:/www.dmbe.state.va.us; local chambers of commerce and other business organizations. As part of the contract award, if requested by the

City, the prime contractor agrees to provide the names and addresses of each subcontractor that subcontractor s status as defined by the Commonwealth of Virginia as small, minority-owned and/or woman-owned business and the type and dollar value of the subcontracted goods/services provided.

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

29. LABELING OF HAZARDOUS SUBSTANCES: If the items or products requested by this solicitation are "Hazardous Substances" as defined by 10.1-1400 of the Code of Virginia (1950), as amended, 42 U.S.C. § 11001 et seq., or 42 U.S.C. § 9601 et seq., then the Bidder, by submitting his bid, certifies and warrants that the items or products to be delivered under this contract shall be properly labeled as required by the foregoing sections and that by delivering the items or products that the Bidder does not violate any of the prohibitions of Sec. 10.1-1400 et seq., or the Code of Virginia or Title 15 U.S.C. Sec. 1263.

30. MATERIAL SAFETY DATA SHEETS: Material Safety Data Sheets (MSDS) and descriptive literature shall be provided with the bid or delivered materials for each chemical and/or compound offered. Failure of the Bidder to submit such data sheets may be cause for declaring the bid as non-responsive.

31. LEGAL ACTION: No Bidder, potential Bidder, or subcontractor shall institute any legal action until all statutory requirements have been met.

32. GUARANTEES & WARRANTIES: All guarantees and warranties required shall be furnished by the Contractor and shall be delivered to the Purchasing Agent before final payment on the contract is made. Unless otherwise stated, manufacturer's standard warranty applies.

33. GENERAL GUARANTY: The Contractor agrees to:
    a. Save the City, its agents and employees harmless from liability of any nature or kind for the use of any copyrighted or un-copyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a Contract for which the Contractor is not the patentee, assignee, licensee or City.
    b. Protect the City against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery.
    c. Furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work or to the work of other contractors, for which his or her workers are responsible.
    d. Pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules, and regulations of the City.
    e. Protect the City from loss or damage to City owned property while it is in the custody of the Contractor.

34. SERVICE CONTRACT GUARANTY: The Contractor agrees to:
    a. Furnish services described in the solicitation and resultant contract at the times and places and in the manner and subject to conditions therein set forth provided that the City may reduce the said services at any time.
    b. Enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence.
    c. Render all work and services in strict conformance to all laws, statues, and ordinances and the applicable rules, regulations, methods, and procedures of all government boards, bureaus, offices, and other agents.
    d. Allow services to be inspected or reviewed by an employee of the City at any reasonable time and place selected by the City. The City shall be under no obligation to compensate the Bidder for any services not rendered in strict conformity with the contract.
    e. Stipulate that the presence of a City inspector shall not lessen the obligation of the Bidder for performance in accordance with the contract requirements, or be deemed a defense on the part of the Bidder 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.

35. COVENANT AGAINST CONTINGENT FEES-The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For violation of this warranty, the City shall have the right to terminate or suspend this contract without liability to the City or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

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