

**JAMES CITY COUNTY**  
**on behalf of the**  
**WILLIAMSBURG-JAMES CITY COUNTY PUBLIC**  
**SCHOOL DIVISION**  
**REQUEST FOR PROPOSALS**

**No. 19-13885**

**ENTERPRISE INFORMATION REPORTING, STRATEGIC MANAGEMENT  
SYSTEM (RE-SOLICITATION)**



**THIS PUBLIC BODY DOES NOT DISCRIMINATE AGAINST  
FAITH-BASED ORGANIZATIONS**

**March 2019**



James City County Purchasing Office  
101-F Mounts Bay Road, Suite 300  
Williamsburg, VA 23185  
Phone: (757) 253-6644/6646  
Fax: (757) 253-6753

Email: [Kitty.Hall@jamescitycountyva.gov](mailto:Kitty.Hall@jamescitycountyva.gov)  
<https://jamescitycountyva.gov/467/Bids-Requests-For-Proposals>

JAMES CITY COUNTY, VIRGINIA  
REQUEST FOR PROPOSALS No. 19-13885

Title: Enterprise Information Reporting/Strategic Management System

Issue Date: March 1, 2019

Due Date: April 4, 2019, 2PM, local time at the Purchasing Office

Submit: **SEALED PROPOSALS, Five (5), One (1) Original and Four (4) copies. Return this signed cover sheet.**

Inquiries: Kitty Hall, (757) 253-6644/6646, [Kitty.Hall@jamescitycountyva.gov](mailto:Kitty.Hall@jamescitycountyva.gov)

All questions regarding this RFP shall be directed to Kitty Hall not later than 2:00pm on March 14, 2019, via email [Kitty.Hall@jamescitycountyva.gov](mailto:Kitty.Hall@jamescitycountyva.gov). All questions that are pertinent to the RFP will be answered in the form of an addendum which will be placed on James City County website: <http://www.jamescitycountyva.gov/467/Bids-Requests-For-Proposals>

**This public body does not discriminate against faith-based organizations.**

In compliance with this Request for Proposal and subject to all the conditions thereof, the undersigned offers to furnish the goods/services requested and certifies he/she has read, understands, and agrees to all terms, conditions and requirements of this proposal and is authorized to contract on behalf of the firm named below. By my signature on this solicitation, I certify that this firm/individual is properly licensed for providing the goods/services specified.

The Undersigned certifies that he (they) are the only person (persons) interested in said project and that it is made without connection with other persons submitting a proposal on the same scope of services; that the proposal is made without collusion, fraud, or reservation; that no official or employee of the Owner is directly or indirectly interested in said proposal, or any portion thereof.

PROPRIETARY INFORMATION YES ( ) NO ( )

Trade secrets or proprietary information is hereby submitted and identified. Reasons for protection and exclusion from the Virginia Freedom of Information Act (2.1-340 et seq.) is set forth below. (Additional sheet may be added if necessary.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Offerors should indicate on the Cover Sheet the portions of their proposal that are proprietary. Please list the page numbers and the reason(s). **Do not mark the whole proposal proprietary. If Proprietary information is stated, Offerors shall submit One (1) Original and One (1) Redacted copy (removing any proprietary data or material.** Clearly identify on the Cover Sheet the “Original” and “Redacted” copy, as “Redacted Copy of Original Proposal” RFP# 19-13885 Enterprise Information Reporting/Strategic Management System”

Company Name: \_\_\_\_\_

Contractor License# \_\_\_\_\_ Type: \_\_\_\_\_

\*State Corporation Commission ID # \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ FAX: \_\_\_\_\_

Email Address: \_\_\_\_\_

Federal Tax ID: \_\_\_\_\_

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

Acknowledgement of Addendums: #1 \_\_\_\_\_ #2 \_\_\_\_\_

**\*State Corporation Commission Requirement per the Virginia Public Procurement Act, VPPA:**

**§ 2.2-4311.2. Compliance with state law; foreign and domestic businesses authorized to transact business in the Commonwealth.** -- A. All public bodies shall include in every written contract a provision that 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 or as otherwise required by law.

B. Pursuant to competitive sealed bidding or competitive negotiation, all public bodies shall include in the solicitation a provision that requires a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 to include in its bid or proposal the identification number issued to it by the State Corporation Commission. Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law shall include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized.

C. Any bidder or offeror described in subsection B that fails to provide the required information shall not receive an award unless a waiver of this requirement and the administrative policies and procedures established to implement this section is granted by the Director of the Department of General Services or his designee or by the chief executive of a local governing body.

D. Any business entity described in subsection A that enters into a contract with a public body pursuant to this chapter shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract.

E. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

**\*Virginia State Corporation Commission (“SCC”) registration information: The undersigned Offeror:**

is a corporation or other business entity with the following SCC identification number: \_\_\_\_\_ **-OR-**

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

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

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

**\*\*NOTE\*\*** >> Check the following box if you have not completed any of the foregoing options but currently have pending before the SCC an application for authority to transact business in the Commonwealth of Virginia and wish to be considered for a waiver to allow you to submit the SCC identification number after the due date for proposals (the Commonwealth reserves the right to determine in its sole discretion whether to allow such waiver):

**NON COLLUSION AFFIDAVIT**

Williamsburg-James City County Public School Division, project: RFP 19-13885

\_\_\_\_\_ Date: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA  
(City/County)

This day personally appeared before the undersigned, a Notary Public in and for the City/County and State aforesaid,

who having been first duly sworn according to law, did depose and aver as follows:

(a) That he/she is \_\_\_\_\_  
(Owner, Partner, President, etc.)

of

\_\_\_\_\_  
*(insert name of Bidder)*

(b) That he/she is personally familiar with the bid \_\_\_\_\_  
submitted in connection with the above captioned Owner's project.

(c) That said Bid was formulated and submitted in good faith as the true Bid of said Bidder.

1. In preparation and submission of this Bid, the Bidder did not either directly or indirectly, enter into any combination or agreement 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) 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.
2. The undersigned Bidder hereby certifies that neither this Bid nor any claim resulting therefrom, is the result of, or affected by, any act of collusion with, or any act of another person or persons, firm or corporation engaged in the same line of business or commerce; and that no person acting for or employed by the Owner has any personal interest in this Bid.
3. The undersigned hereby further agrees that upon request of the Owner, the records and books pertaining to this Bid shall be voluntarily supplied, furnished, and released to the Owner.
4. The undersigned hereby further certifies that the Bidder has not knowingly falsified, concealed, misled, or covered up by any trick, scheme, or device a material fact in connection with this bid. The undersigned also certifies that the Bidder has not made any false, fictitious or fraudulent statements or representations or made or used any false writing or documents knowing the same to contain any false, fictitious or fraudulent statement or entry in connection with this Bid.



5. The undersigned further agrees that the Bidder shall comply with section 2.2-4374 of the Code of Virginia, 1950, as amended, and has not bought or purchased any equipment from any person employed by the Owner as an independent contractor to furnish architectural or engineering services for this Project, nor from any partnership, association or corporation in which such architect or engineer has a pecuniary interest.
6. The undersigned further agrees to require all subcontractors, consultants, sub-consultants, or any other persons, corporations, or legal entities providing or furnishing labor, material, equipment or work related to this project to execute this anti-collusion statement as a condition of payment. This paragraph is expressly limited to those in a direct contractual relationship with the undersigned of over \$10,000 except those persons whose only direct contractual agreement with the undersigned is an employment contract.
7. All Covenants and Agreements made by the Contractor are made by it on behalf of the Contractor and its successors, personal representatives and assigns, the same as if they had been specifically named in each instance.

And further this deponent saith not.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

My commission expires: 20\_\_

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Notary Public

**CERTIFICATION REGARDING DEBARMENT**

This is to certify that this person/firm/corporation is not now debarred or enjoined by the Federal Government or by the Commonwealth of Virginia or by any other state, or by any town, city, or county, from submitting Bids on contracts for construction covered by this solicitation, nor are they an agent of any person or entity that is now so debarred or enjoined.

\_\_\_\_\_  
Name of Official

\_\_\_\_\_  
Title

\_\_\_\_\_  
Firm or Corporation

\_\_\_\_\_  
Date



**CERTIFICATION OF COMPLIANCE WITH § 22.1-296.1 OF THE CODE OF VIRGINIA, 1950, AS AMENDED.**

I, \_\_\_\_\_, a duly authorized representative and officer of \_\_\_\_\_ (Contractor's name), in accordance with § 22.1-296.1 the Code of Virginia, 1950, as amended, hereby certifies that the employees, subcontractors, partners, and representatives who will be in direct contact with students (i) have not been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child; and (ii) have not been convicted of a crime of moral turpitude. For the purposes of this certification, "direct contact with students" is defined as "being in the presence of students during regular school hours or during school-sponsored activities."

Any person making a materially false statement regarding any such offense shall be guilty of a Class 1 misdemeanor and, upon conviction, the fact of such conviction shall be grounds for the revocation of the contract to provide such services and, when relevant, the revocation of any license required to provide such services. Williamsburg-James City County Public School Division shall not be liable for materially false statements regarding the certifications required by the Code of Virginia. The contractor is responsible for ensuring that each of its employees, subcontractors, partners, and representatives who will be in direct contact with students have [also executed a copy of this certification agreement] and shall maintain such certifications on file for the duration of the contract period.

I understand that I am required to update this certification if I become aware of changed circumstance.

I do understand the above information and certify that the above statements are true.

\_\_\_\_\_  
(Contractor's Authorized Office – Signature)

\_\_\_\_\_  
(Contractor's Authorized Officer – Printed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)



## CERTIFICATION OF COMPLIANCE WITH IMMIGRATION LAWS AND REGULATIONS

Section 40.1-11.1 of the \_\_\_\_\_ City/County Code requires that any person or entity doing business with the City/County of \_\_\_\_\_, including its boards and commissions, shall include a sworn certification by the Contractor of compliance with all federal immigration laws and regulations. These laws include the Federal Immigration Reform and Control Act, which makes it unlawful for a person or other entity to hire, recruit or refer for a fee for employment in the United States, an alien knowing the alien is unauthorized, and Section 40.1-11.1 of the Code of Virginia, which makes it unlawful for any employer to knowingly employ an alien who cannot provide documents indicating that he or she is legally eligible for employment in the United States. The state law, in particular, places an affirmative duty on employers to ensure that aliens have proof of eligibility for employment.

Accordingly this certification shall be completed and attached to all contracts and agreements for goods and services made by the City/County of \_\_\_\_\_ or any of its boards and commissions. Failure to attach a completed certification shall render the contract or agreement void.

***Type or print legibly when completing this form.***

Legal Name of Contractor: (Note: This is your name as reported to the IRS. This should match your Social Security card or Federal ID Number.)

Type of Business Entity:

Sole proprietorship (Provide full name and address of owner):

Limited Partnership (Provide full name and address of all partners):

General Partnership (Provide full name and address of all partners):

Limited Liability Company (Provide full name and address of all managing members):

Corporation (Provide full name and address of all officers):

Doing Business As:

If Applicable (Note: This is the name that appears on your invoices but is not used as your reporting name.)

Name and Position of Person Completing this Certificate:

Physical Business Address:

Primary Correspondence Address (If different from physical address):

Number of Employees:

**Are all Employees Who Work in the United States Eligible for Employment in the United States?**

Under penalties of perjury, I declare on behalf of the Contractor listed above that to the best of my knowledge and based upon reasonable inquiry, each and every one of the Contractor's employees who work in the United States are eligible for employment in the United States as required by the Federal Immigration Reform and Control Act of 1986 and Section 40.1-11.1 of the Code of Virginia. I further declare on behalf of the Contractor that it shall use due care and diligence to ensure that all employees hired in the future who will work in the United States will be eligible for employment in the United States. I affirm that the information provided herein is true, correct, and complete.

Sworn this \_\_\_\_ day of \_\_\_\_\_, 201\_ on behalf of \_\_\_\_\_ as evidenced by the following signature and seal:

Name of Contractor: \_\_\_\_\_

Printed Name of Signatory: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA:

CITY/COUNTY OF \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

Registration No.: \_\_\_\_\_

**RETURN SIGNED COVER SHEET (ALL PAGES) WITH PROPOSAL**

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## **ENTERPRISE INFORMATION REPORTING/STRATEGIC MANAGEMENT SYSTEM**

### **1.0 PROJECT INTRODUCTION**

#### **1.1 PURPOSE**

The purpose of this Request for Proposals (RFP) is to solicit sealed proposals from qualified vendors for an Enterprise Information Reporting/Strategic Management System. Williamsburg-James City County Public Schools (WJCCPS) is entering into a new 5-Year Strategic Plan and the current need is for an enterprise-level reporting system that will be able to connect to numerous data stores, present automated dashboards and report views of selected metrics with the ability to further drill-down into related data.

Through this sealed Request for Proposal (RFP), WJCCPS is seeking to identify an entity (individual person, firm, partnership or corporation, hereafter referred to as 'Vendor') who can most fully meet the needs of the Division as specified in this document and any associated attachments.

#### **1.2 COMPETITION INTENDED**

It is the Division's intent that this Request for Proposal (RFP) permit competition. It shall be the offeror's responsibility to advise the Purchasing Director in writing if any language, requirement, specification, etc., or any combination thereof, inadvertently restricts or limits the requirements stated in this RFP to a single source. The Purchasing Director must receive such notification not later than five (5) business days after solicitation release date.

#### **1.3 MINIMUM QUALIFICATIONS**

Offerors submitting proposals for the Enterprise Information Reporting/Strategic Management System shall have, at a minimum, the following qualifications.

- The Firm for the proposed solution(s) shall provide documentation showing that it has a minimum of five (5) years' experience in implementing the proposed solution(s) in localities or school divisions of at least the size and scope of the WJCCPS Division.
- The offeror shall provide documentation showing that the proposed software is successfully installed in a minimum of five (5) localities/ public school systems of at least the size and scope of the Division.
- The Firm for the proposed software solution shall not have filed for bankruptcy protection during the past five (5) years.

#### **1.4 ABOUT THE DIVISION**

The Williamsburg-James City County Public School Division, (WJCCPS) has a current enrollment of approximately 11,500 students and consists of 9 elementary, 4 middle, and 3 high schools with two additional locations for central office and operations. The division enterprise systems include Synergy student information system, Munis Financial/Human Resources system, and several subordinate systems including Café Enterprise for Child Nutrition, Transfinder for Transportation, School Dude for Facilities Management, and others.

#### **1.5 ABOUT THE PROJECT**

WJCCPS is seeking proposals from firms or individuals to provide installation, setup, development of initial dashboards and reports, revision/addition/support of dashboards in a defined ongoing fashion, training for division users and technology staff, and user-level and developer-level documentation for an enterprise-level information reporting and strategic management system.

WJCCPS Strategic Plan 2018-2023, Elevate Beyond Excellence, includes 6 main goals:

1. Academic Achievement/College & Career Readiness
2. Educational Equity
3. Communication & Engagement
4. Safety & Security
5. Human Capital & Positive Culture
6. Organizational Efficiency & Effectiveness

Each main goal is supported by several strategy areas, subordinate tactics, metrics, and key performance indicators. The various strategies will range from “one and done” type projects to ongoing initiatives that will continue through the life of the plan. Strategies may be static, slightly modified, or completely changed from plan year to plan year. The division website for the strategic plan may be accessed at the following url: [www.wjccschools.org/strategicplan/](http://www.wjccschools.org/strategicplan/). Questions that the proposed system should be able to support within these goals and strategies include; How well are our students growing and achieving? How many of our students accumulate certain risk factors that put them at risk for dropping out? And others.

## 2.0 STATEMENT OF NEEDS

2.1 The proposal should meet the following requirements:

### A. Product Requirements

- The system must be user-friendly, interactive, and intuitive
- The system must be an enterprise tool - allowing for various levels of user roles
- The system must support multiple departments, goals, and changing strategy criteria
- The system must support various types of data display to include text, graphics, video, and hyperlinks
- The system must be web enabled – cloud based is acceptable with appropriate security controls
- Must provide for security of data (SSL, etc) and an audit trail of changes
- Must provide for secure access of data supporting various roles and levels
- The system should be able to provide for single sign-on or LDAP integration
- Ability to drill security down to field and user level
- Connect to any data source (database, spreadsheet, etc) with secure protocols
- Ability to generate reports in a variety of formats (PDF, Excel, HTML, RTF)
- Ability for end users to change their own report criteria and parameters without IT assistance
- Ability for end users to modify report format (sort and filter / manipulate columns of data) without IT assistance
- Ability to build summary and drill-down type reports
- Ability to build reports with calculated subtotals and totals
- Ability to represent report data graphically – detail types of graphs supported
- Ability to generate dashboard-type presentations
- Ability to schedule reports and deliver reports via email, as PDF, Excel, RTF. Delivered reports must be able to have security within them so each recipient only sees their own information
- Ability to be branded using the division’s plan and identity
- The system must be flexible and base information displays based upon user roles and levels of access
- The system should support end-user access from a variety of device types such as desktop & laptop computer, tablet, and smart phone, IOS, Windows, Android, etc.
- The system should support all popular browsers and versions such as Chrome, Internet Explorer, Edge, Mozilla, Firefox, etc.

## B. Vendor Requirements

- Professional Services employees with Education experience, history of providing these specific types of services successfully to the education industry.
- Provide unlimited training (initial training will be onsite, ongoing training can include online webex type, live and pre-recorded)
- Provide initial training during the setup/delivery phase for key users and report developers on-site using the division's system and data. (specify length and type of training)
- The division does not have dedicated staff for this system, proposals should include providing dedicated professional resources to develop initial dashboards around the above stated goals, with limited revisions and expansions up to 2 times per year (summer and semester break). Specify either number of reports & dashboards, or time allowance for development services.
- Provide a help desk and online knowledge base
- Provide setup, ongoing maintenance, and support for the full lifecycle of the system
- Provide a project plan from initial award to live use with detailed weekly progress reporting
- Identify the vendor representative (account manager, project manager) responsible to the division as the single point of contact for all issues, phases, and components of the project
- Provide data to support the vendor's ability to successfully complete the project to include staffing levels, dedicated resources to this project, references for similar projects

## C. General Requirements

- The system must provide for ease of use and be scalable to support different metrics and KPIs over the years of the strategic plan
- The division does not have technical resources to provide for full-time management of the system, it must be designed to be used and manipulated easily by end users
- The system must be designed to be able to provide for a public-facing dashboard with proper security, as well as detailed level, interactive dashboards for internal staff
- The system must provide for "static" manually entered data as well as automated feeds
- The system should support multiple years of the plan and reported data to compare historical baseline data to current performance and trends
- The system should utilize generally available and standard technical architecture as its platform. The division primarily uses Microsoft Windows, SQL Server, Sharepoint, and Office 365.

## D. Timeline

WJCCPS invites vendors responding to this proposal with recommended project plans to include critical dates and milestones for a successful implementation. The following high-level guidance should be taken into account when developing these plans.

1. Should WJCCPS issue an award, the expected timeframe for an award would be in or around May - June 2019.
2. Initial baseline data would be available for some, but not indicators during the implementation phase which is expected to be during July - September 2019.
3. Initial dashboards, training, and go-live are expected by October, 2019.

## 3.0 GENERAL SUBMITTAL GUIDELINES

### 3.1 Submission of Proposals

Before submitting a proposal, read the ENTIRE solicitation including the Contract Terms and Conditions. Failure to read any part shall not relieve the Contractor of its contractual obligations. The Price proposal shall be submitted on the Request for Proposal pricing forms. Include other information as requested or required. The proposal container

must be completely and properly identified. The face of the container shall indicate the RFP number, time and date of acceptance, and the title of the RFP. Proposals must be received by the Purchasing Office PRIOR to the hour specified on the acceptance date. Proposals may either be mailed or hand delivered to James City County-Purchasing Office, 101-F Mounts Bay Road, Suite 300, Williamsburg VA 23185. Faxed and e-mailed proposals will NOT be accepted.

### 3.2 Questions and Inquiries

Questions and inquiries, submitted in writing, will be accepted from any and all offerors. The Purchasing Department is the sole point of contact for this solicitation unless otherwise instructed herein. Unauthorized contact with other Division staff or Division consultants regarding the RFP may result in the disqualification of the offeror. Material questions will be answered in writing via Addendum. **Deadline for questions to be submitted in writing via email to: [Kitty.Hall@jamescitycountyva.gov](mailto:Kitty.Hall@jamescitycountyva.gov) not later than 2:00 pm on March 14, 2019.** It is the responsibility of all offerors to ensure that they have received all addenda. Addendums will be posted on the county website and may be viewed/downloaded from <https://jamescitycountyva.gov/467/Bids-Requests-For-Proposals>

### 3.3 Proprietary Information

Trade secrets or proprietary information submitted by an offeror in connection with this solicitation shall not be subject to disclosure under the Virginia Freedom of Information Act; however, pursuant to Section 2.2-4342 of the Code of Virginia, the offeror must invoke the protections of this section prior to or upon submission of the data or other materials, and must clearly identify the data or other materials to be protected and state the reasons why protection is necessary. Failure to abide by this procedure may result in disclosure of the offeror's information. Offerors shall not mark sections of their proposal as proprietary if they are to be part of the award of the contract and are of a "Material" nature.

### 3.4 Authority to Transact Business in Virginia

Any foreign corporation, LLC, or LLP transacting business in Virginia shall secure a certificate of authority from or register with the State Corporation Commission (SCC), as required by Sections 13.1-757, 13.1-1051 or 50-73.138 of the Code of Virginia. The SCC may be reached at (804) 371-9733 or at <http://www.scc.virginia.gov/division/clk/diracc.htm>. Certain isolated transactions or sales conducted through independent Contractors may not require a certificate of authority. Bidders should consult the Code of Virginia for more information.

### 3.5 Late Proposals

LATE proposals will be returned to offeror UNOPENED, if RFP number, acceptance date and offeror's return address is shown on the container.

### 3.6 Notice of Award

A Notice of Award will be posted on the County's website <https://jamescitycountyva.gov/467/Bids-Requests-For-Proposals> and on the bulletin board located in the James City County Purchasing Office, 101-F Mounts Bay Road, Williamsburg VA 23185

### 3.7 W-9 Form Required

Each offeror shall submit a completed W-9 form with their proposal. In the event of contract award, this information is required in order to issue purchase orders and payments to your firm. A copy of this form can be downloaded from <http://www.irs.gov/pub/irs-pdf/fw9.pdf>.

### 3.8 Guidelines

By virtue of submitting a proposal, offerors are acknowledging understanding and acceptance of the following:

- 3.8.1 The Division reserves the right to reject any or all proposals at the sole discretion of the Division, as unacceptable. The Division reserves the right to reconsider any proposal submitted at any phase of the procurement. It also reserves the right to meet with select offerors at any time to gather additional information. Furthermore, the Division reserves the right to add or delete functionality up until the final contract signing.
- 3.8.2 All third party software solutions proposed as part of this package are subject to the same guidelines of this RFP, unless otherwise stated.
- 3.8.3 If the Division is not satisfied with the qualifications, price, or experience of the implementation firm or any third-party solution, it reserves the right to request that the software firm provide another implementation partner or serve as the prime contractor for the implementation. All firms submitting proposals, by virtue of doing so, are recognizing that the Division retains this option.
- 3.8.4 All offerors submitting proposals agree that their proposal is valid for a minimum of one (1) year after submission to the Division. The Division reserves the right to reject as unacceptable any offer that specifies less than one (1) year of acceptance time. Upon mutual agreement between the Division and the offeror, the acceptance time for the offeror's proposal may be extended.
- 3.8.5 Proposals should be limited to no more than 150 paginated (total front and back) pages for any initiative, excluding required forms and attachments included in this RFP. Proposals should not include marketing or sales literature, white papers, or other superfluous materials not directly related to the requirements of this RFP.

### 3.9 Determination of Responsibility

In addition to the minimum qualifying criteria outlined in this RFP and any other criteria outlined in this RFP, the offeror has the burden of demonstrating affirmatively its responsibility in connection with this solicitation. The Division reserves the right to consider an offeror non-responsible who has previously failed to perform properly or to complete, in a timely manner, contracts of a similar nature, or if investigation shows the offeror is unable to perform the requirements of the contract.

- 3.9.1 An offeror may be requested at any time by the Division to provide additional information, references and other documentation and information that relates to the determination of responsibility. Failure of an offeror to furnish requested information as or when required may constitute grounds for a finding of non-responsibility of the prospective offeror.
- 3.9.2 The Division may deny the award, renewal, or assignment of a contract to or for any offeror who is in default of payment of any money due the Division.
- 3.9.3 The factors which may be considered in connection with a determination of responsibility include, but are not limited to:
  - 3.9.3.1 The ability, capacity, organization, facilities, and skill of the offeror to perform the contract or provide the goods or services required;
  - 3.9.3.2 The ability of the offeror to perform the contract or provide the services within the time specified without delay, interruption or interference;
  - 3.9.3.3 The integrity, reputation, and experience of the offeror, and its key personnel;
  - 3.9.3.4 The quality of performance of previous contracts or services for the Division or other entities. Past unsatisfactory performance, for any reason, is sufficient to justify a finding of non-responsibility.

- 3.9.3.5 The previous and existing compliance by the offeror with laws and ordinances relating to the contract or services;
- 3.9.3.6 The sufficiency of financial resources of the offeror to perform the contract or provide the services;
- 3.9.3.7 The certification of an appropriate accounting system, if required by the contract type;
- 3.9.3.8 The offeror's evidence of ability to furnish a payment and performance bond may be considered evidence of responsibility; and
- 3.9.3.9 Past debarment by the Division or other entity.

### 3.10 Incurred Costs

Offerors submitting proposals do so entirely at their expense. There is no expressed or implied obligation by the Division to reimburse any individual or firm for any costs incurred in preparing or submitting proposals, for providing additional information when requested by the Division or for participating in any selection interviews and contract negotiations. Furthermore, at their own cost, offeror finalists will be required to complete a detailed Statement of Work that will be part of the implementation contract before the contract is signed.

### 3.11 Retention of Material

The Division reserves the right to retain all proposals regardless of which response is selected. All proposals and accompanying documents become the property of the Division.

### 3.12 Solicitation Availability and Contact with Division Staff

Offerors are specifically directed NOT to contact any Division personnel or consultants, other than specified personnel identified in this RFP, for meetings, conferences or technical discussions that are related to the RFP. Unauthorized contact with any Division personnel may be cause for rejection of the offeror's proposal. The decision to select a proposal is solely that of the Division.

### 3.13 Interpretations or Changes

Should any offeror find discrepancies, omissions or ambiguities in this RFP, the offeror should at once request in writing an interpretation from the General Inquiry contact as identified on the Cover Sheet of the RFP. All questions will be answered to the extent possible in the form of a solicitation amendment. Interpretations or changes to this RFP made in any other manner will not be binding. Amendments issued by the Division will be available on the County's website. It is the responsibility of the offeror, prior to submitting a response to the RFP, to determine whether all solicitation addendums have been received and that their requirements are satisfied in the offeror's RFP response.

### 3.14 Verbal Explanations

Verbal explanations or instructions given by a Division employee to an offeror in regard to this solicitation will not be binding on the Division. Any information given to an offeror in response to a request will be furnished to all offerors as an addendum to this solicitation, if the Division deems this information necessary for the preparation of proposals, or if the lack of the information would be detrimental to uninformed offerors. Only an amendment issued by the James City County Purchasing Office will be considered to be binding on the Division.

### 3.15 Protests

Offerors may refer to Sections 2.2-4357 through 2.2-4364 of the Code of Virginia to determine their remedies concerning this competitive process



### 3.16 Cooperative Procurement

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

## 4.0 SUBMITTAL REQUIREMENTS

### 4.1 Exceptions to the RFP

All requested information in this RFP shall be supplied. Offerors may take exception to certain requirements, including the terms and conditions, in this RFP. All exceptions shall be clearly identified in this section and accompanied by a written explanation providing a description of the advantages or disadvantages to the Division as a result of the exceptions. The Division, at its sole discretion, may negotiate or reject any exceptions or specifications within the proposal.

### 4.2 Proposal Pricing

Proposal pricing shall include and specify all initial fees, licenses, and costs. Specify one-time costs, ongoing maintenance and/or licensing fees, all recurring costs for a minimum of five (5) years, and;

Specify all software, plugins, or other required supporting systems that may be needed and associated costs.

### 5.0 Procedures

The extent and character of the services to be performed by the Contractor shall be subject to the general control and approval of the appropriate Project Manager (to be determined). The Contractor shall not comply with requests and/or orders issued by other than the Project Manager acting within their authority for the Division.

### 5.1 Delays

If delay is foreseen, the Contractor shall give immediate written notice to the Purchasing Office and Project Manager. The Contractor must keep the Division advised at all times of the status of the order. Default in promised delivery (without accepted reasons) or failure to meet specifications, authorizes the Purchasing Office to purchase supplies elsewhere and charge full increase in cost and handling to defaulting Contractor.

### 5.2 Confidentiality and Security.

The Contractor shall not copy, display to other parties, or distribute Division data, information, reports, or other materials given to, prepared or assembled by the Contractor without the express written permission of the Division.

The Contractor shall not copy, display to other parties, or distribute Division owned programs proprietary data or information without the express written permission from the Division.

The Contractor shall use only Division approved access technologies for remote access to Division networks, servers, and applications. For remote access for purposes related to this Contract, the approved access technology is the Division's SharePoint designated project site.

The Contractor shall access Division networks, servers, and applications only for business reasons associated with the provision of services to the Division.

The Contractor shall use hardened passwords for all access related to Division networks, servers, and applications. Such passwords shall contain at least eight (8) characters, and shall contain at least one (1) each: alpha character, numeric character, and special character.

Hardware operating system software and applications software provided through this Contract shall be provided with all known security vulnerability patches applied.

5.3 Business, Professional, and Occupational License Requirement

All firms or individuals located or doing business in James City County are required to be licensed in accordance with the County's "Business, Professional, and Occupational Licensing (BPOL) Tax" Ordinance during the initial term of the Contract or any renewal period.

Wholesale and retail merchants without a business location in James City County are exempt from this requirement. Questions concerning the BPOL Tax should be directed to the Office of Commissioner of Revenue, telephone (757) 253-6699.

5.4 Payment of Taxes

All Contractors located or owning property in James City County shall assure that all real and personal property taxes are paid.

The Division will verify payment of all real and personal property taxes by the Contractor prior to the award of any Contract renewal.

5.5 Insurance

The Contractor shall be responsible for its work and every part thereof, 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 or injury to the property or persons used or employed on or in connection with the work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Contract.

The Contractor and all subcontractors shall, during the continuance of all work under the Contract provide the following:

Workers' compensation and Employer's Liability to protect the Contractor from any liability or damages for any injuries (including death and disability) to any and all of its employees, including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia.

Comprehensive General Liability insurance to protect the Contractor, and the interest of the Division, its officers, employees, and agents against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation under the Contract or in connection with the contracted work. The General Liability insurance shall also include the Broad Form Property Damage endorsement, in addition to coverage for explosion, collapse, and underground hazards, where required.

Automobile Liability insurance, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the Contractor.

The Contractor agrees to provide the above referenced policies with the following limits. Liability insurance limits may be arranged by General Liability and Automobile policies for the full limits required, or by a combination of underlying policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.

Workers' Compensation:	
Coverage A:	Statutory
Coverage B:	\$100,000
General Liability:	
Per Occurrence:	\$5,000,000
Personal/Advertising Injury:	\$5,000,000
General Aggregate:	\$5,000,000

Products/Completed Operations:	\$5,000,000 aggregate
Fire Damage Legal Liability:	\$100,000
GL Coverage, excluding Products and Completed Operations, should be on a Per Project Basis	
Automobile Liability:	
Combined Single Limit:	\$5,000,000

Contractor will maintain at its expense: Professional Liability Insurance in the amount of \$5,000,000 including coverage for errors and omissions caused by Contractor's negligence in the performance of its duties under this agreement.

Additionally, the following coverage(s) are required:

Cyber Liability Insurance: Technology Error's & Omission: - \$2,000,000/per occurrence  
Cyber Security Liability & Network Security (access) including coverage for subcontractors and the following at \$5,000,000/per occurrence:

- denial of services
- Breach of Privacy
- remediation
- fines and penalties
- Virus
- Unauthorized Access
- Security Breach
- Loss of Use and Resulting Business Interruption
- Intellectual Property Infringement

The following provisions shall be agreed to by the Contractor:

No change, cancellation, or non-renewal shall be made in any insurance coverage without a forty-five (45) day written notice to the Division. The Contractor shall furnish a new certificate prior to any change or cancellation date. The failure of the Contractor to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished. 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 limits of liability and the extensions to be included as described previously in these provisions, remain the same.

The Contractor must either:

1. Agree to provide certificates of insurance evidencing the above coverage for a period of two (2) years after final payment for the Contract for General Liability policies. This certificate shall evidence a "retroactive date" no later than the beginning of the Contractor's work under this Contract, or 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.
2. The Contractor must disclose the amount of deductible/self-insured retention applicable to the General Liability and Automobile Liability. The Division reserves the right to request additional information to determine if the Contractor has the financial capacity to meet its obligations under a deductible/self-insured plan. If this provision is utilized, the Contractor will be permitted to provide evidence of its ability to fund the deductible/self-insured retention.
3. 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:VII.
4. European markets including those based in London, and the domestic surplus lines market that operate on a non-admitted basis are exempt from this requirement provided that the Contractor's

broker can provide financial data to establish that a market's policyholder surpluses are equal to or exceed the surpluses that correspond to Best's A:VII Rating.

5. a. The Contractor will provide an original signed Certificate of Insurance and such endorsements as prescribed herein.
  - b. The Contractor will provide on request certified copies of all insurance coverage related to the Contract within ten (10) business days of request by the Division. These certified copies will be sent to the Division from the Contractor's insurance agent or representative. Any request made under this provision will be deemed confidential and proprietary.
  - c. Any certificates provided shall indicate the Contract name and number.
6. The Division, its officers and employees shall be named as an "additional insured" on the Automobile and General Liability policies and it shall be stated on the Insurance Certificate with the provision that this coverage "is primary to all other coverage the Division may possess." (Use "loss payee" where there is an insurable interest).
  7. Compliance by the Contractor with the foregoing requirements as to carrying insurance shall not relieve the Contractor of their liabilities provisions of the Contract.
  8. Precaution shall be exercised at all times for the protection of persons (including employees) and property.
  9. The Consultant is to comply with the Occupational Safety and Health Act of 1970, Public Law 91-956, as it may apply to this Contract.
  10. 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.
  11. The Contractor agrees to waive all rights of subrogation against the Division, its officers, employees, and agents.

#### 5.6 Hold Harmless Clause

The Contractor shall, indemnify, defend, and hold harmless the Division from loss from all suits, actions, or claims of any kind brought as a consequence of any negligent act or omission by the Contractor. The Contractor agrees that this clause shall include claims involving infringement of patent or copyright. For purposes of this paragraph, "Division" and "Contractor" includes their employees, officials, agents, and representatives. "Contractor" also includes subcontractors and suppliers to the Contractor. The word "defend" means to provide legal counsel for the Division or to reimburse the Division for its attorneys' fees and costs related to the claim. This section shall survive the Contract.

#### 5.7 Safety

All Contractors and subcontractors performing services for the Division are required and shall comply with all Occupational Safety and Health Administration (OSHA), State and County/City Safety and Occupational Health Standards and any other applicable rules and regulations. Also all Contractors and subcontractors 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.

#### 5.8 Permits

It shall be the responsibility of the Contractor to comply with County ordinances by securing any necessary permits. The County shall waive any fees involved in securing County permits.

#### 5.9 Notice of Required Disability Legislation Compliance

James City County government is required to comply with state and federal disability legislation: The Rehabilitation Act of 1973 Section 504, The Americans with Disabilities Act (ADA) for 1990 Title II and The Virginians with Disabilities Act of 1990.

Specifically, James City County, may not, through its contractual and/or financial arrangements, directly or indirectly avoid compliance with Title II of the Americans with Disabilities Act, Public Law 101-336, which prohibits discrimination by public entities on the basis of disability. Subtitle A protects qualified individuals with disability from discrimination on the basis of disability in the services, programs, or activities of all State and local governments. It extends the prohibition of discrimination in federally assisted programs established by the Rehabilitation Act of 1973 Section 504 to all activities of State and local governments, including those that do not receive Federal financial assistance, and incorporates specific prohibitions of discrimination on the basis of disability in Titles I, III, and V of the Americans with Disabilities Act. The Virginians with Disabilities Act of 1990 follows the Rehabilitation Act of 1973 Section 504.

#### 5.10 Ethics in Public Contracting

The provisions contained in Sections 2.2-4367 through 2.2-4377 of the Virginia Public Procurement Act as set forth in the 1950 Code of Virginia, as amended, shall be applicable to all Contracts solicited or entered into by the Division. A copy of these provisions may be obtained from the Purchasing Office upon request.

The above-stated provisions supplement, but do not supersede, other provisions of law including, but not limited to, the Virginia 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 and 3 of Chapter 10 of Title 18.2. The provisions apply notwithstanding the fact that the conduct described may not constitute a violation of the Virginia State and Local Government Conflict of Interests Act.

#### 5.11 Drug-free Workplace

Every Contract of over \$10,000 shall include the following provisions:

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying Employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific Contract awarded to a Contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of the Contract.

#### 5.12 Exemption from Taxes

Pursuant to Va. Code § 58.1-609.1, the Division is exempt from Virginia State Sales or Use Taxes and Federal Excise Tax, therefore the Contractor shall not charge the Division for Virginia State Sales or Use Taxes or Federal Excise Tax on the finished goods or products provided under the Contract. However, this exemption does not apply to the Contractor, and the Contractor shall be responsible for the payment of any sales, use, or excise tax it incurs in providing the goods required by the Contract, including, but not limited to, taxes on materials purchased by a Contractor for incorporation in or use on a construction project. Nothing in this section shall prohibit the Contractor from including its own sales tax expense in connection with the Contract in its Contract price.

#### 5.13 Substitution of Project Manager

The Contractor's Project Manager shall not be substituted without written approval by the Purchasing Office.

The Division, however, reserves the right to replace any Contractor assigned Project Manager or personnel who are considered unacceptable by the Division. Replacement personnel must meet or exceed the person(s) expertise assigned under this Agreement. The Contractor shall further agree to work in good faith to ensure satisfactory turnover and knowledge transfer from one person to the other in the event of Division approved personnel changes. The Contractor shall agree not to bill the Division for duplicate time used for circumstances where the replacement person(s) is being oriented and trained to the Division's project.

#### 5.14 Workmanship and Inspection

All work under this Contract shall be performed in a skillful and workmanlike manner. The Contractor and its employees shall be professional and courteous at all times. The Division may, in writing, require the Contractor to remove any employee from work for reasonable cause as determined by the Division. Further, the Division may, from time to time, make inspections of the work performed under the Contract. Any inspection by the Division does not relieve the Contractor from any responsibility in meeting the Contract requirements.

#### 5.15 Inconsistent Provisions

Notwithstanding any provisions to the contrary in any Contract terms or conditions supplied by the Contractor, the County's Terms and Conditions herein supersedes the Contractor's terms and conditions, in the event of any inconsistency.

#### 5.16 Warranty of Services

##### System Software Solution Performance Warranty

Contractor represents and warrants that the system software solution provided under this Contract will: (i) meet the acceptance or completion criteria as set forth in the Statement of Work, the design document and/or any change order; (ii) be free from all material defects; and (iii) perform in accordance with the requirements set forth in the Statement of Work, the design document and/or any change orders, for a minimum of twenty-four (24) months following final acceptance of the System by the Division.

##### A. System Integration Warranty

Contractor represents and warrants that, for a minimum of twenty-four (24) months following final acceptance of the System by the Division, all Contractor-provided and/or third-party equipment and/or software installed under this Contract, including all components thereof, (i) is compatible and will operate with one another and with the Division's hardware, software, and network environment as exists at **[pre-defined milestone or date]**, (ii) shall function properly as a fully integrated and implemented system, and (iii) when operated together will not cause any material delays, defects, or problems with the system software solution System. The parties acknowledge that, under the provisions of this Warranty, in the event that the implementation of one component causes errors in another software component(s), the Contractor shall be obligated, at no additional cost to the Division, to remedy the error in one or all components, as the case may be, regardless of whether or not the latter component's warranty period may have expired.

##### B. Component Services, Software and Equipment Warranties

The Contractor warrants that all services performed and software and equipment provided under this Contract to meet each milestone will at the time of the Division's acceptance of each milestone be free from defects in workmanship and conform to the requirements of this Contract and that they will remain so through final acceptance of the System by the Division, and for a period of twenty-four (24) months following final acceptance of the System by the Division. To the extent software, equipment and services will be provided by entities other than the Contractor,

the Contractor shall require third party warranties to conform to this provision and pass through all warranties to the Division if said warranties will continue beyond the expiration date of this Contract. Contractor will provide the Division with a written list of all third-party IP or products and related warranties that Contractor plans to provide or use as part of the systems software solution.

C. Software Warranties

The Contractor shall warrant that the contents of its proposal accurately reflect the software's capability to satisfy the requirements of this Contract's Statement of Work. In addition, the Contractor shall require software vendors to warrant that the software provided under this Contract will conform in all material respects to those requirements and to specifications stated in the software vendor's license. Said software warranties shall remain in place for minimum of twenty-four (24) months following final acceptance of the System by the Division In addition to the above and not as a limitation, Contractor provides the following warranties.

D. Third Party Agreements Warranty

Contractor represents and warrants that Contractor's performance does not and shall not violate any agreement or obligation between the Contractor and a third party.

E. Third Party Intellectual Property Rights Warranty

Contractor represents and warrants that any and all work, products, and/or services implemented pursuant to this Agreement and/or delivered to the Division do not and will not infringe any Intellectual Property Right held by any third party.

F. Warranty Repairs

The Division's remedy for a violation of any performance, product or integration warranty shall be as follows: If any services, software or equipment provided under the Contract fails during normal use, or fails to comply with the Contract's requirements, during the warranty period, the Contractor shall correct the failure at no cost to the Division after written notice is received from the Division. Corrections shall be undertaken in accordance with the table contained in each appendix for the system proposed on.. The Division shall determine the severity level. If, after making all reasonable efforts, the Contractor is unable to correct the failure, the Division shall be entitled to receive a refund equal to the amount paid for the services, software and/or equipment in question; provided, however, if the failure prevents the Division from using the system software solution, in whole or substantial part, for its intended purpose, the Division will be entitled to receive a refund equal to the entire amount paid for the said System, plus reasonable escalation.

While the warranty periods are in effect, the Contractor shall maintain a log of all warranty issues and the resulting action. The Contractor shall submit a monthly report listing all warranty claims submitted during that calendar month as well as a short annotation describing the resulting action. Warranty issues shall be reported to the Contractor on a form provided by the Division.

#### 5.17 Invoicing and Payment

All invoices will be paid promptly by the Division unless 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 firm shall provide complete cooperation during any such investigation. All invoices shall be forwarded to the Project Manager for review and acceptance for payment.

1. Payment terms will be net 30 days from receipt of approved invoice unless otherwise proposed by an Offeror. Prompt payment discounts offered will be considered.

Upon receipt and verification of undisputed invoice, the Division will render payment within thirty (30) days.

Individual Contractors shall provide their social security numbers, and proprietorships, partnerships, and corporations shall provide their federal employer identification number on the pricing form.

#### 5.18 Payments to Subcontractors

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

- A. Pay the subcontractor for the proportionate share of the total payment received from the Division attributable to the work performed by the subcontractor under this Contract; or
- B. Notify the Division and subcontractor, in writing, of his 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 (7) day period except for amounts withheld as allowed in item B. above.

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

The Contractor shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements as set forth above 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 Division.

#### 5.19 Assignment of Contract

The Contractor is prohibited from assigning, transferring, conveying, subletting, or otherwise disposing of this agreement or its rights, title or interest therein or its power to execute such agreement to any other person, company or corporation without the prior consent and approval in writing by the Division.

#### 5.20 Termination of Contract. (Referenced in Attached General Terms and Conditions #53)

#### 5.21 Ownership of Information

5.21.1 All work products and information pertaining to records, property, financial, or other information acquired under the scope of this Contract shall be strictly confidential and shall be considered works for hire and become the property of the Division. Any such works will not be stamped with the Contractors' proprietary marking. The Contractor shall return all information to the Division upon termination, and/or request and shall not utilize any of the information for purposes outside of the scope of this Contract or without express approval of the Division.

5.21.2 The selected software offeror shall provide their proposed systems' source code and software documentation, this also includes source code and documentation for all third-party proposed products to the Division, or establish an escrow account with the exact version of the source code, software documentation and third-party source code and documentation being implemented by the Division within thirty (30) days of execution and effective date of the Contract. The selected software offeror must provide to the Division, or escrow, the original, unaltered code, and software documentation which must be replaced with the as-built code subsequent to completing the a) testing, b) acceptance and c) implementation phases of this project. The selected software offeror shall notify the Division every time code versions are sent to escrow. This is required to ensure that the Division has unrestricted



access to use of the source code and software documentation in the event the selected software offeror ceases to exist, ceases to support the application, or otherwise terminates its relationship and/or ownership to the product.

#### 5.22 Duration of Obligation

The Contractor agrees that all of Contractor's obligations and warranties which directly or indirectly are intended by their nature or by implication to survive Contractor performance, do survive the completion of performance, termination for default, termination for convenience, or termination by mutual consent of the Contract.

#### 5.23 Accounting System and Audit, Accurate Information

5.23.1 The Contractor certifies that all information the Contractor has provided or will provide to the Division is true and correct and can be relied upon by the Division in awarding, modifying, making payments, or taking any other action with respect to this Contract including resolving claims and disputes. Any false or misleading information is a ground for the Division to terminate this Contract for cause and to pursue any other appropriate remedy. The Contractor certifies that the Contractor's accounting system conforms to generally accepted accounting principles, is sufficient to comply with the Contract's budgetary and financial obligations, and is sufficient to produce reliable financial information.

5.23.2 The Division may examine the Contractor's and any first tier subcontractor's records to determine and verify compliance with the Contract and to resolve or decide any claim or dispute arising under this Contract. The Contractor and any first tier subcontractor must grant the Division access to these records at all reasonable times during the Contract term and for three (3) years after final payment. If the Contract is supported to any extent with federal or state funds, the appropriate federal or state authorities may also examine these records. The Contractor must include the preceding language of this paragraph in all first tier subcontracts.

#### 5.24 Contract Price Adjustments

Prices quoted are firm for a period of two (2) years after the execution of a Contract by the Division. The Division will consider only one price adjustment annually after the initial contract term. A request for price adjustment from the Contractor will not be approved unless the Contractor submits to the Division sufficient justification and documentation to support the Contractor's request based on Contractor's increase in net costs in delivery of goods and services under the Contract. A request for any price adjustment may not be approved if it exceeds the lesser of five percent (5%) or the amount of the annual percentage change of the Consumer Price Index (CPI) for the twelve (12) month period immediately prior to the date of the request, based upon the CPI for all urban consumers issued for the Washington-Baltimore, DC-MD-VA-WV Metropolitan area, by the United States Department of Labor, Bureau of Labor Statistics for ALL ITEMS. A price adjustment may only be approved prospectively by a written Contract change order executed by the Purchasing Office.

#### 5.25 Non-Disclosure and Security

It will be mandatory for all personnel (primary Contractor and subcontractors) to sign the Non-Disclosure Statement (Attachment B – Sample Non-Disclosure Form). The Contractor will have access to Division data that will be of a confidential or privileged nature. All Contractor staff must sign and adhere to the Division's Non-Disclosure Statement, and may be required to sign and adhere to individual Department Nondisclosure Statements to perform work in specific departments. The Division reserves the right to update such policies as needed.

#### 5.26 Use of Division Name

No advertising, sales promotion or other materials of the Contractor or its agents or representatives may identify or reference this Contract or the Division in any manner absent the Division's prior written consent. As a condition of entering into this Contract, the Contractor further agrees to refrain from the following, absent the Division's prior

written approval: (a) making any statement to the media regarding the subject matter of this Contract; or (b) making any statement to the media on any issue which is in the Division's judgment likely to cause the Division or County staff to be viewed as anything other than neutral with respect to the subject matter of this Contract, or cast doubt on the competence or integrity of the Division or the Contractor. Failure to comply with this requirement by the Contractor shall constitute a material breach and shall entitle the Division to terminate this Contract for default.

#### 5.27 Notices

All notices and other communications hereunder shall be deemed to have been given when made in writing and either (a) delivered in person, (b) delivered to an agent, such as an overnight or similar delivery service, or (c) deposited in the United States mail, postage prepaid, certified or registered, addressed as follows:

**TO CONTRACTOR:**

**TO DIVISION:**  
WJCCPS DIVISION  
PO BOX 8783  
Williamsburg VA 23188  
Attn: Department TBD

#### 5.28 Work Under the Contract

Work may not commence under this Contract until all conditions for commencement are met, including execution of the Contract by both parties, compliance with insurance requirements, encumbrance of funds, and issuance of any required notice to proceed. The Contractor's work shall be continuous and uninterrupted throughout the Contract and the Contractor shall take all reasonable measures necessary to ensure timely delivery of work.

### **6.0 SPECIAL TERMS AND CONDITIONS**

#### 6.1 Definitions

**Equipment:** As used herein, the terms equipment, product, or system shall include hardware and software (when applicable) and any materials or supporting documentation. Such documentation may include but is not limited to: users' guides, operations manuals with part lists, copies of all applicable warranties, and any other pertinent information necessary for the proper operation and maintenance of the equipment being acquired.

**Software:** As used herein, the terms software, product, or software products shall include all related materials and documentation whether in machine readable or printed form.

#### 6.2 Data Sources

The Division will provide the Contractor all available data possessed by the Division that relates to this Contract. However, the Contractor shall be responsible for all costs for acquiring other data or processing, analyzing or evaluating Division data.

#### 6.3 Excessive Downtime

If proposed solution is an Application Service Provider (ASP), the Contractor shall guarantee the Division twenty-four (24) hours of availability seven (7) days a week. Exceptions to this guarantee will be for Contractor's maintenance of the software/platform/services provided to the Division or the Contractor's overall system architecture. Contractor shall notify the Division via e-mail to assigned Division first contact fourteen (14) days in advance of any outage scheduled outside of the daily hours of non availability. Contractor shall provide the Division the date and time any outage scheduled outside of the daily hours of non availability will begin and end. Contractor shall notify the Division of the actual end of the outage. If an unplanned outage occurs or becomes necessary the Contractor shall notify the Division twelve (12) hours before or as soon as possible after the outage begins. Contractor shall notify the Division when the unplanned outage ends and when resumption of Division operations is possible.

#### 6.4 Latest Software Version

Any software product(s) provided under the Contract shall be the latest version available to the general public as of the due date of this solicitation.

#### 6.5 Maintenance

Contractor shall provide five (5) year maintenance cost for each initiative. Those five (5) year costs shall be firm for the five (5) year term. Upon expiration of the specified initial warranty period the Division will issue annual purchase orders for the system maintenance. Price for any subsequent years after the initial five (5) year term may be negotiated at time of renewal. Each successive period of maintenance may be ordered by the Division in writing at least thirty (30) days prior to expiration of the existing maintenance period.

#### 6.6 Software Upgrades

Division shall be entitled to any and all upgraded versions of the software covered in the Contract that becomes available from the Contractor. These upgrades shall be at no cost to Division and shall be included in the maintenance warranty and subsequent maintenance renewals.

#### 6.7 Software Disposition

Unless otherwise instructed by the Contractor, the Division shall render unusable all copies of software acquired under the Contract within thirty (30) days of termination of its license; however, Division shall reserve the right to retain one (1) copy of the software for archival purposes when appropriate.

#### 6.8 Ceasing Operations

If the Contractor plans to cease supporting/hosting the system Division is using, the Contractor shall provide the Division with all Division data in a usable format. Contractor personnel are to provide full cooperation as requested by Division on such matters. The data shall remain confidential.

#### 6.9 Term of Software License

Unless otherwise stated in the solicitation, the software license(s) identified in the pricing schedule shall be purchased on a perpetual basis and shall continue in perpetuity. However, Division reserves the right to terminate the license at any time, although the mere expiration or termination of this Contract shall not be construed as intent to terminate the license. All acquired license(s) shall be for use at any computing facilities, on any equipment, by any number of users, and for any purposes for which it is procured.

#### 6.10 Third Party Acquisition of Software

The Contractor shall notify the Division in writing should the intellectual property, associated business, or all of its assets be acquired by a third party. The Contractor further agrees that the Contract's Terms and Conditions, including any and all license rights and related services, shall not be affected by the acquisition. Prior to completion of the acquisition, the Contractor shall obtain, for Division's benefit and deliver thereto, the assignee's agreement to fully honor the terms of the Contract.

#### 6.11 Title to Software

The Contractor represents and warrants that it is the sole owner of the software or, if not the owner, that it has received all legally required authorizations from the owner to license the software, has the full power to grant the rights required by this solicitation, and that neither the software nor its use in accordance with the Contract will violate or infringe upon any patent, copyright, trade secret, or any other property rights of another person or organization.

#### 6.12 Warranties Against Shutdown Devices

The Contractor warrants that the equipment and software provided under the Contract shall not contain any lock, counter, CPU reference, virus, worm, or other device capable of halting operations or erasing or altering data or programs. Contractor further warrants that neither it, nor its agents, employees, or subcontractors shall insert any shutdown device following delivery of the equipment and software.

#### 6.13 Security Requirements

For an Application Service Provider ASP solution to be accepted it shall meet the following conditions:

- The Contractor's physical security systems, arrangements, policies and procedures shall be found sufficient to Division.
- The Contractor's IT security architecture, and procedures and access to hosted data procedures shall be acceptable to Division

#### 6.14 Ownership of Intellectual Property

All copyright and patent rights to all papers, reports, forms, materials, creations, or inventions created or developed in the performance of this Contract shall become the sole property of the Division. On request, the Contractor shall promptly provide an acknowledgment or assignment in a tangible form satisfactory to the Division to evidence the Division's sole ownership of specifically identified intellectual property created or developed in the performance of the Contract.

### 7.0 **METHOD OF AWARD**

#### 7.1 Evaluation of Proposals

The Division shall make an award on the basis of best value. Best value is defined as a combination of quality, price, and the elements of required services that in total are optimal relative to the Division's needs.

Criteria is based on points allocated to those firms that successfully demonstrate the ability to provide a software system solution for all Division initiatives. The evaluation criteria to be used during this phase includes the following: **TOTAL POSSIBLE POINTS: 120**

- Ease of use (20 points).
- Data visualization (20 points)
- Level of support (20 points)
- Security of system/data (20 points)
- Data connection ability (20 points)
- Cost of System acquisition, ongoing maintenance and upgrades, and other cost components (20 points).

#### 7.2 As requested by the Division, Interviews, Demonstrations, References and Best and Final Offers (BAFO)

##### Functional Software Demonstrations

The main objective of the demonstration phase will be to assess the extent the vendor's product will meet the business needs of the Division. These vendors elevated to this phase will be invited to participate in an interview with the committee which may be done as a separate activity, or in conjunction with two on-site reviews, consisting of:

- 1) a full demonstration of the system capabilities to the initial review team that will include up to twelve (12) senior level division personnel, and;

2) a user-level training (should not be a sales presentation) of the system use to include accessing the system, updating data, manipulating reports, and exporting reports to an audience that will include staff from various levels.

References will also be part of the evaluation criteria for this phase.. The Division will be seeking what other client's experiences have been with software and vendor performance and relationships, the ease and cost of upgrades and maintenance, and full-time staffing needs once implementation is complete.

Selection shall be made of two (2) or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal. It is anticipated that at least two (2) offerors will remain for further evaluation.

### 7.3 Contract Negotiations

Selection shall be made of two (2) or more offerors for each initiative deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the Division shall select the offeror, which, in its opinion, has made the best proposal and award the contract to that offeror. Should the Division determine in writing and in its sole discretion that only one offeror is fully qualified or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.

The Division will ask for written clarification/updates to the initial proposal from the finalists, including any exceptions the vendors may have to contract conditions included in the RFP. Discovery sessions will allow all parties to seek clarification on project scope, expectations, and ask any needed questions. Negotiations with elevated offerors will seek any information the Division needs to satisfy concerns and issues and may include a review of certain software functionality and/or any aspect of the proposal where questions remain. Software licensing agreements will be reviewed in detail with these offerors, and exceptions to the proposed contract conditions will be reviewed and evaluated.

Once contractual issues are reviewed, the Division will move forward with one finalist upon the condition that the parties are able to agree upon a contractual Statement of Work. Software and implementation services agreements will be finalized. If agreement cannot be reached with the finalist vendor, the Division may elevate any of the other proposals submitted in response to the RFP for further evaluation and negotiations. Furthermore, the Division reserves the right to elevate any previously non-elevated offeror if the Division deems it in its best interest.

### 7.4 Award

As part of the award process, the Division reserves the rights to:

- Accept or reject any or all proposals;
- Waive any informality in proposals received;
- Accept or reject any or all of the items in the proposal;
- Award the contract in whole or in part and/or negotiate any or all items with individual offerors if it is deemed in the Division's best interest;
- Make no selection if proposals are deemed to be outside the fiscal constraint or not in the best interests of the Division;
- Waive any irregularities and technicalities and may, at its sole discretion, request a clarification or other information to evaluate any or all proposals;
- Prior to awarding the contract, require offerors to submit evidence of qualifications or any other information the County may deem necessary;
- Prior to award cancel the RFP or portions thereof, without penalty.

**ATTACHMENTS:**

**Attachment A- General Terms and Conditions**

**Attachment B- Sample Non-Disclosure Form**

**JAMES CITY COUNTY**

**GENERAL TERMS & CONDITIONS AND INSTRUCTIONS TO BIDDERS**

These CONDITIONS AND INSTRUCTIONS TO BIDDERS shall be binding on all bidders or offerors and are incorporated by reference in all contracts resulting from any written Request for Quotes, Invitation to Bid or Request for Proposals issued, collectively the (“Request”), to which they are attached. Use of the term “bid” in these General Terms & Conditions and Instructions to Bidders is not intended to be restricted to an Invitation to Bid and shall also affect written Request for Quotes, Invitation to Bid or Request for Proposals. The Purchasing Office is responsible for the purchasing activity of James City County, a political subdivision of the Commonwealth of Virginia, and the James City Service Authority, herein referred to collectively as “James City County” or “County”. Bidder/Offeror or their authorized representatives are expected to inform themselves fully as to the conditions, requirements, and specifications before submitting bids/proposals: failure to do so will be at the bidder’s/offeror’s own risk and except as provided by law, relief cannot be secured on the plea of error.

Subject to all Federal, State and local laws, policies, resolutions, regulations, rules, limitations and legislation including the County Purchasing Policy and the County Purchasing Manual, bids/proposals on all solicitations issued by the Purchasing Office will bind bidders/ offerors to applicable conditions and requirements herein set forth unless otherwise specified in the solicitation.

**Cooperative Purchasing**--James City County issues this solicitation in accordance with Section 2.2-4304 of the Virginia Public Procurement Act and Chapter 1, Section 5 of the James City County Purchasing Policy, and on behalf of the members of the Southeastern Virginia Governmental Purchasing Cooperative (SVGPC), as well as other public bodies, governmental jurisdictions and school divisions.

Bidders/Offerors are advised that all resultant contracts will be extended, with the authorization of the bidder/offeror, to other public bodies, governmental jurisdictions and school divisions as may be interested. Should other entities decide to use the final contract, the contractor shall deal directly with that jurisdiction or political subdivision concerning the placement of orders, issuance of the purchase orders, contractual disputes, invoicing and payments. James City County acts only as the “Contracting Agent” for these jurisdictions and political subdivisions. Failure to extend a contract to any jurisdiction will have no effect on consideration of your bid or offer.

It is the responsibility of the contractor to notify the public bodies, jurisdictions and political subdivisions of the availability of the contract.

Each participating public body, jurisdiction and political subdivisions has the option of executing a separate contract with the contractor. Such contracts may contain general terms and conditions unique to those jurisdictions and 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 jurisdiction.

James City County shall not be held liable for any costs or damages incurred by another public body or jurisdiction as a result of any award extended to that public body, jurisdiction or political subdivision by the contractor.

SVGPC members reserve the right to make awards to the lowest responsive and responsible offeror during the contract term. SVGPC members not explicitly named in the IFB are not obligated to participate, nor is the successful offeror obligated to contract with other SVGPC members.

- |                                      |   |
|--------------------------------------|---|
| City of Chesapeake                   | Newport News Public Schools                   |
| City of Hampton                      | Williamsburg/James City County Public Schools |
| City of Newport News                 | York County Public Schools                    |
| City of Norfolk                      | Christopher Newport University                |
| City of Portsmouth                   | College of William & Mary                     |
| City of Virginia Beach               | Norfolk State University                      |
| City of Williamsburg                 | Tidewater Community College                   |
| County of Gloucester                 | Jamestown/Yorktown Foundation                 |
| County of James City                 | Southeastern Public Service Authority         |
| County of King William               | County of York                                |
| Thomas Nelson Community College      | Portsmouth Redevelopment & Housing            |
| Newport News Redevelopment & Housing | CAS Norfolk Regional Office                   |
| DDS Tidewater Regional Office        |   |

1. **AUTHORITY AND COOPERATIVE PURCHASING**-The County Purchasing Director has the sole responsibility and authority for negotiating, placing and when necessary modifying every solicitation, contract and purchase order issued by James City County. In the discharge of these responsibilities, the County Purchasing Director may be assisted by assigned buyers. Unless specifically delegated by the County Purchasing Director, no other County officer or employee is authorized to order supplies or services, enter into purchase negotiations or contracts, or in any way obligate the government of the County of James City for an indebtedness. Any purchase order or contract made which is contrary to these provisions and authorities shall be of no effect and void and the County shall not be bound thereby.
2. **COMPETITION INTENDED:** It is the County's intent that this solicitation permit competition. It shall be the Bidder's/Offeror's responsibility to advise the Purchasing Director in writing if any language, requirement, specification, etc., or any combination thereof, stifles competition or inadvertently restricts or limits the requirements stated in this solicitation to a single source. The Purchasing Director must receive such notification not later than five (5) business days after solicitation release date

### CONDITIONS OF BIDDING

3. **CLARIFICATION OF TERMS –**
  - a. Questions. If any Bidder/Offeror has questions about the specifications or other solicitation documents, the prospective Bidder/ Offeror should contact the buyer whose name appears on the face of the solicitation no later than five (5) business days after solicitation release date. Any revisions to the solicitation will be made only by addendum issued by the buyer. Notifications regarding specifications may not be considered if received more than five (5) business days of the release date of the solicitation.
  - b. Exceptions:
    - i. Information Technology procurements. Exceptions to liability provisions must be stated by the offeror in writing at the beginning of negotiations.
4. **Compliance with Contractual Terms and Financial Responsibility:** Architectural or Engineering services.
  - i. Offerors shall provide relevant financial data demonstrating the firm's capability to successfully perform over the life of the contract.
  - ii. Provide a definitive statement of intent to comply with the contract terms and conditions as delineated in this RFP. If proposed terms and conditions are not acceptable as described, please provide a statement that you intend to take exception to the contract terms and conditions. Once offerors are ranked for negotiation the County may ask you to note and explain any exceptions. Failure to agree to terms required by law or County purchasing regulations may be grounds for disqualification of the proposal.
  - iii. Acknowledge and describe any proposed deviations from the Scope of Services.

5. **USE OF COUNTY FORM AND TERMS AND CONDITIONS:** Failure to submit a solicitation on the official James City County form provided for that purpose or unauthorized modification of or additions to any portion of the solicitation documents may be a cause for rejection of the bid/proposal if the price, quality, quantity, delivery, necessary assurances, performance of the contract and other factors deemed important to the solicitation will be affected. James City County reserves the right to decide, on a case-by-case basis, in its sole discretion, whether to reject any bid or proposal which has been modified. The County shall not be responsible for any errors or omissions of the bidder/proposer. The solicitation shall be signed by a representative authorized to legally bind the firm. By signing the solicitation, the bidder/offeror agrees to the terms and conditions of the solicitation and certifies that they have inspected the job site(s) and are aware of the conditions under which the work must be accomplished. Claims, as a result of failure to inspect the job site, shall not be considered by the County.

6. **LATE BIDS/PROPOSALS & MODIFICATION OF BIDS/ PROPOSALS:**

Any bid/proposal/modification received at the office designated in the solicitation after the exact time specified for receipt of the bid/proposal/modification is considered a late bid/proposal/ modification.

James City County is not responsible for delays in the delivery of the mail by the U.S. Postal Service, private carriers or the inter-office mail system. It is the sole responsibility of the Bidder/Offeror to ensure their bid/proposal reaches the Purchasing Office by the designated date and hour.

- a. The official time used in the receipt of bids/ proposals is that time stamped by the automatic time stamp machine in the Purchasing Office. Date/time stamps marked after the designated time of receipt will be rejected.
- b. Late bids/proposals/modifications will be returned to the Bidder/Offeror UNOPENED, if solicitation number, acceptance date and Bidder/Offeror's return address is shown on the container.
- c. If the County closes its offices due to inclement weather scheduled bid openings or receipt of proposals will be extended to the next business day, same time.
- d. Vendors may modify their bids prior to the date and time specified for the bid opening. Facsimile modification of bids shall not be accepted unless the solicitation allowed such submission.

### 7. **WITHDRAWAL OF BIDS/PROPOSALS:**

A bidder/offeror for a contract other than for public construction may request withdrawal of his or her bid/proposal under the following circumstances:

- a. Bids/Proposals may be withdrawn on written request from the Bidder/offeror received at the address shown in the solicitation prior to the time of acceptance.
- b. Requests for withdrawal of bids/proposals after opening of such bids/proposals but prior to award shall be transmitted to the County Purchasing Director, in writing, accompanied by full documentation supporting the request. If the request is based on a claim of error, documentation must show the basis of the error. Such documentation may take the form of supplier quotations, vendor work sheets, etc. If bid bonds were tendered with the bid, the County may exercise its right of collection.
- c. Bids/proposals shall not be withdrawn after award of a contract or issuance of a purchase order. No plea or claim of mistake in a solicitation or resulting contract or purchase order shall be available as a defense in any legal proceeding brought upon a contract or purchase order awarded to a bidder/offeror as a result of the breach or nonperformance of such contract or purchase order.

No Bid/Proposal may be withdrawn under this paragraph when the result would be the awarding of the contract on another Bid/Proposal of the same bidder/offeror or of another bidder/offeror in which the ownership of the withdrawing bidder/offeror is more than five percent. In the case of Invitation for Bids, if a bid is withdrawn under the authority of this paragraph, the lowest remaining bid shall be deemed to be the low bid. No bidder/offeror who is permitted to withdraw a bid/proposal 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/proposal was submitted.

### 8. **CANCELLATION OF BIDS/PROPOSALS**

If James City County intends to issue another Solicitation within a reasonable time after cancellation of the bid/proposal for the same materials, services or construction, any responses received under the canceled solicitation shall be retained in the Procurement file,



and James City County shall withhold responses from public inspection, if the Purchasing Director makes a Written Determination that such action is advantageous to James City County. After Award of a Contract under a subsequent solicitation, responses submitted in response to the canceled solicitation shall be open for public inspection.

9. **ERRORS IN BIDS/PROPOSALS** – When an error is made in extending total prices, the unit bid price will govern. Erasures in bids/proposals must be initialed by the bidder/offeror. Carelessness in quoting prices, or in preparation of bid/proposal otherwise, will not relieve the Bidder/Offeror of his responsibilities to provide the good or service. Bidders/Offerors are cautioned to recheck their bids/proposals for possible errors. Errors discovered after public opening cannot be corrected and the bidder will be required to perform if his or her bid is accepted.

10. **IDENTIFICATION OF BID/PROPOSAL ENVELOPE:** The signed bid/proposal and requested copies should be returned in a separate envelope or package, sealed and identified with the following information:

**ADDRESSED AS INDICATED ON PAGE 1**  
**IFB/RFP NUMBER**  
**TITLE**  
**BID/PROPOSAL DUE DATE AND TIME**  
**VENDOR NAME AND COMPLETE MAILING ADDRESS**  
**(RETURN ADDRESS)**

If a bid/proposal is not addressed with the information as shown above, the Bidder/Offeror takes the risk that the envelope may be inadvertently opened and the information compromised, which may cause the bid/proposal to be disqualified. Bids/Proposals may be hand delivered to the designated location in the office issuing the solicitation. No other correspondence or other proposals should be placed in the envelope.

11. **ACCEPTANCE OF BIDS/PROPOSALS:** Unless otherwise specified, all formal bids/proposals submitted shall be valid for a minimum period of ninety (90) calendar days following the date established for acceptance. At the end of the ninety (90) calendar days the bid/proposal may be withdrawn at the written request of the Bidder/Offeror. If the proposal is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.

12. **PRICING:**

- a. Bidder warrants by virtue of bidding that prices, terms, and conditions quoted in his bid will be firm for acceptance for a period of ninety (90) days from the date of bid opening unless otherwise stated by the County or Bidder.
- b. Prices should be stated in units of quantity as specified in the bid form.
- c. Life cycle cost analysis may be considered when determining the lowest responsive and responsible bid. This analysis may consider, in addition to purchase price, any proposed upward or downward escalator clauses proposed for the initial contract term and any potential renewal terms; operating and related costs over the life of the item including maintenance, down time, energy costs, salvage value, etc.
- d. Bid prices shall be for complete installation ready for the County's use and shall include all applicable freight and installation charges; extra charges will not be allowed.
- e. When an annual contract is not requested by the County, and the bid is for products or services to be delivered on a one-time only or staggered basis, only firm pricing shall be given consideration. General terms such as "price in effect at time of delivery" shall not be considered for award.

13. **CONDITIONAL BIDS:** Conditional bids are subject to rejection in whole or in part if the price, quality, quantity, delivery, necessary

assurances, performance of the contract and other factors deemed important to the solicitation will be affected.

14. **OPENING:** At the time fixed for the opening of responses to a bid, all bids will be opened and the names of the bidders and the amount bid shall be read aloud and made readily available to the public.

If a public opening of a Request for Proposals is held, only the names of the offerors will be read publicly.

15. **RESPONSE TO SOLICITATIONS:** In the event a vendor cannot submit a bid on a solicitation, the vendor is requested to return the solicitation cover sheet with an explanation as to why the vendor is unable to bid on these requirements. Because of the large number of firms listed on the County's Bidders List, it may be necessary to delete from this list the names of those persons, firms or corporations who fail to respond after having been invited to bid for three (3) successive solicitations. Such deletion will be made only after formal notification of the intent to remove the firm from the County's Bidder's List.

16. **BIDDER INTERESTED IN MORE THAN ONE BID:** 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.

17. **TAX EXEMPTION:** The County is exempt from the payment of any federal excise or any Virginia sales tax. The price bid must be net, exclusive of taxes. Tax exemption certificates will be furnished if requested by the Bidder/Offeror.

18. **DEBARMENT STATUS:** By submitting their bids/proposals, Bidders/Offerors certify that they are not currently debarred by James City County, the Commonwealth of Virginia, the Federal Government, any local government or government agency/entity/authority from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

19. **ETHICS IN PUBLIC CONTRACTING:** The provisions contained in Sections 2.2-4367 through 2.2-4377, Code of Virginia, as amended, shall be applicable to all contracts solicited or entered into by James City County. By submitting their bids/proposals, all Bidders/Offerors certify that their bids/proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Bidder, Offeror, supplier, manufacturer or subcontractor in connection with their bid/proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

The Bidder/Offeror certifies that to the best of his knowledge, no employee of the County, nor any member thereof, nor any public agency or official impacted by the solicitation or resulting contract has any pecuniary interest in the business of the Bidder/Offeror, and that no person associated with the Bidder/Offeror has any interest that would conflict in any manner with the performance of the contract resulting from this solicitation.

20. **VENDOR REWARDS/GIFT PROGRAMS:** It is the policy of the County not to participate in any rewards programs offered by vendors and not to accept any gifts or gift cards, or other rewards from vendors for purchases made by the County. If you customarily provide, or if you plan to provide, rewards programs, gifts or gift cards, or other rewards to your customers for purchases made by such customers, you must identify this fact in your bid and demonstrate in the bid how you have applied the value of such rewards to a reduction in the price of the goods and/or services being offered to the County.

21. **PERFORMANCE BOND:** When requested in the bid, the County shall require the successful bidder to furnish a performance bond and labor and material payment bond with surety satisfactory to the County Attorney in the amount of the contract price at a time of or prior to execution of the contract.
22. **NO CONTACT POLICY:** No Bidder/Offeror shall initiate or otherwise have contact related to the solicitation with any County employee, other than the Purchasing Office, after the date and time established for receipt of bids/proposals. Any contact initiated by a Bidder/Offeror with any County representative, other than the Purchasing Office, concerning this solicitation is prohibited and may cause the disqualification of the Bidder/Offeror from this procurement process.
23. **LICENSES, PERMITS, AND FEES:** All bids submitted shall have included a list of any business and professional licenses, permits, or fees required by James City County or the Commonwealth of Virginia.
24. **QUALIFICATIONS OF BIDDERS AND SUBCONTRACTORS:** The apparent low Bidder shall submit to the Owner a list of all Subcontractors who will be performing work on the project. An experience statement with shall accompany such list pertinent information as to similar projects and other evidence of experience and qualification for each such Subcontractor, person and organization and documented work history of the subcontractor with the Bidder. If the Owner, after due investigation, has reasonable objection to any proposed Subcontractor, other person or organization, the Owner may, before giving the Notice of Award, request the apparent low Bidder to submit an acceptable substitute without an increase in Bid price. If the apparent low Bidder declines to make any such substitution, the contract shall not be awarded to such Bidder, but his declining to make any such substitution will not constitute grounds for sacrificing his Bid Security. For any Subcontractors, other person or organization so listed and to whom Owner does not make written objection prior to the giving of the Notice of Award, it will be deemed the Owner has no objection.

## SPECIFICATIONS

25. **BRAND NAME OR EQUAL ITEMS:** Unless otherwise provided in the solicitation, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named; it conveys the general style, type, character, and quality of the article desired, and any article which the County 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. The Bidder is responsible to clearly and specifically indicate the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable James City County to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding, only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data to enable James City County to determine if the product offered meets the requirements of the solicitation may result the bid being declared non-responsive. Unless the Bidder clearly indicates in its bid/proposal that the product offered is "equal" product, such bid/proposal will be considered to offer the brand name product referenced in the solicitation.
26. **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.
27. **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.

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

28. **EQUIPMENT STANDARDS.** Any equipment delivered shall be standard new equipment, latest model, the best quality, and the highest grade work, except as otherwise specifically stated in bid. Any part of nominal appurtenances which are usually provided in the manufacturer's stock model shall be furnished.
29. **ANNUAL CONTRACT USAGE REQUIREMENTS:** Whenever a bid is sought seeking a source of supply for an annual contract for products or services, the quantities or usage shown are estimates only. No guarantee or warranty is given or implied by James City County as to the total amount that may not be purchased from any resulting contracts. These quantities are for Bidder's information only and will be used for tabulation and presentation of bid.

## AWARD

30. **AWARD OR REJECTION OF BIDS:** The Purchasing Director shall award the contract to the lowest responsive and responsible bidder complying with all provisions of the IFB, provided the bid price is reasonable and it is in the best interest of the County to accept it. Awards made in response to a RFP will be made to the highest qualified offeror whose proposal is determined, in writing, to be the most advantageous to the County taking into consideration the evaluation factors set forth in the RFP. The Purchasing Director reserves the right to award a contract by individual items, in the aggregate, or in combination thereof, or to reject any or all bids/proposals and to waive any informality in bids/proposals received whenever such rejection or waiver is in the best interest of the County. Award may be made to as many bidders/offerors as deemed necessary to fulfill the anticipated requirements of James City County. The Purchasing Director reserves the right to negotiate with the lowest responsive, responsible bidder should bids exceed available funds. The Purchasing Director shall reject the bid if the bidder is deemed to be a non-responsive or non-responsive bidder.
31. **PUBLIC INSPECTION OF CERTAIN RECORDS:** Shall be per the Virginia Public Procurement Act (VPPA) 2.2-4342
32. **QUALIFICATIONS OF BIDDERS OR OFFERORS:** James City County may make such reasonable investigations as deemed proper and necessary to determine the ability of the Bidder/Offeror to perform the work/furnish the item(s) and the Bidder/Offeror shall furnish to James City County all such information and data for this purpose as may be requested. James City County reserves the right to inspect Bidder's/Offeror's physical facilities prior to award to satisfy questions regarding the Bidder's/Offeror's capabilities. James City County further reserves the right to reject any bid or proposal if the evidence submitted by or investigations of, such Bidder/Offeror fails to satisfy James City County that such Bidder/Offeror is properly qualified to carry out the obligations of the contract and to complete the work/furnish the item(s) contemplated therein.
33. **TIE BIDS:** In the case of a tie bid, the County may give preference to goods, services and construction produced in the County or provided by persons, firms or corporations having principal places of business in the County. If such choice is not available, preference shall then be given to goods and services produced in the Commonwealth pursuant to Code of Virginia § 2.2-4324. If no County or Commonwealth choice is available, the tie shall be decided by lot.

42. **FACTORS OTHER THAN PRICE IN AWARD DECISION:** The following factors, in addition to price (as they apply), shall be a consideration in the award decision:

- a. The quality of performance/workmanship of previous contracts, services or products, or references which attest to other specific experiences;
- b. The timely completion of previous contracts or services or the timely delivery of past orders; or references which attest to other specific experiences;
- c. The sufficiency of financial resources and its impact on ability of the bidder to perform the contract or provide the services;
- d. The County reserves the right to conduct on-site inspections of any bidder's facilities prior to award. The results of said inspection will be considered by the County in determining bidder's capabilities of successfully administering to this contract;
- e. The ability and availability of the bidder to provide both quality and timely maintenance, service, and/or parts;
- f. The resale value, life cycle costing, and value analysis of a product;
- g. The availability and capability of local and regional vendor support as it affects the quantity, quality, and timeliness of the work or products required;
- h. Delivery of a product and timely completion of a project as stated by vendor in bid;
- i. Substantial compliance or noncompliance with specifications set forth in bid as determined by the County;
- j. Product or parts inventory capability as it relates to a particular bid; and
- k. Results of product testing.

#### CONTRACT PROVISIONS

35. **APPLICABLE LAW AND COURTS:** Any contract resulting from this solicitation shall be governed in any respects by the laws of Virginia, and any litigation with respect thereto shall be brought in the Circuit Court or General District Court of James City County, Virginia. The Contractor shall comply with applicable federal, state and local laws and regulations.
36. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By entering into this contract, vendor certifies that it does not and will not during the performance of this contract knowingly employ an unauthorized alien as defined in, or otherwise violate the provisions of, the federal Immigration Reform and Control Act of 1986, as amended.
37. **OBLIGATIONS OF COUNTY AND CONTRACTOR:** County: The County shall furnish to the contractor all available information as listed in the solicitation that may be useful for the contract work. The County shall assist the contractor in obtaining access to enter upon public and private property as required to perform the contract work. The County shall designate a representative who shall serve as the principal contact and give direction to the contractor throughout the duration of the contract. Contractor: The contractor represents that he has, or shall secure at his expense, all personnel, including subcontractors, required to perform and complete the Scope of Work.
38. **CONFIDENTIALITY AND OWNERSHIP OF DATA:** Any reports, information, intellectual property, data, drawings, specifications, estimates and summaries given to or prepared or assembled by the contractor under the Scope of Work of the contract, shall not be made available to any individual or organization by the contractor without prior written approval of the County. All of these items shall

become the property of the County upon payment of fees as required by the contract.

39. **REPORTS OF WORK:** The County and the contractor shall schedule progress meetings at appropriate intervals throughout the duration of the contract. These meetings shall provide for the exchange of information related to the status of the Scope of Work, anticipated progress and any problems that have occurred.
40. **ANTI-TRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to James City County all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust law of the United States and James City County, relating to the particular goods or services purchased or acquired by James City County under said contract. Consistent and continued tie bidding could cause rejection of bids by the Purchasing Director and/or investigation for Anti-Trust violations.
41. **PAYMENT TERMS:** Unless otherwise provided in the solicitation payment will be made thirty (30) days after receipt of a proper invoice with complete supporting documentation, or thirty (30) days after receipt of all goods or acceptance of work, whichever is the latter. For construction projects, the County may retain five percent (5%) of the total amount of each partial progress payment to assure faithful performance of the contract by the contractor. The County will release all retainage upon final payment.
  - a. Invoices for items/services ordered, delivered/performed and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the contract number, purchase order number, and any federal employer identification number.
  - b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
  - c. The date of payment shall be deemed the date of postmark in all cases where payment is made by mail.
42. **PAYMENT TO SUBCONTRACTORS:** A contractor awarded a contract under this solicitation is hereby obligated:
  - a. To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from James City County for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
  - b. To notify James City County and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.

The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from James City County, except for amounts withheld as stated in b above. The date of mailing of any payment by U.S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of James City County.
43. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the Contractor in whole or in part without the written consent of the Purchasing Director.
44. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, James City County, 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 another remedies which James City County may have.

45. **AVAILABILITY OF FUNDS:** It is understood and agreed between the contractor and the County herein that the County shall be bound hereunder only to the extent of the funds available or which hereafter become available for the purpose of the contract.
46. **ANTI-DISCRIMINATION:** By submitting their bids/proposals, Bidders/Offerors certify to James City County that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and the Code of Virginia § 2.2-4311, as amended. 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 shall be subject to audit by the public body. (Code of Virginia § 2.2-4343.1.E).

In every contract over \$10,000 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, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this 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 a. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

47. **NONDISCRIMINATION OF CONTRACTORS:** A bidder, offeror, or contractor shall not be discriminated against in the solicitations or award of this contract because of race, religion, color, sex, national origin, age or disability or against faith-based organizations. If the award of this contract is made to a faith-based organization and an individual who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, James City County shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, service, or disbursements from an alternative provider.
48. **INVOICES:** Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the IFB/RFP number and/or purchase order number.

49. **PRECEDENCE OF TERMS:** In the event there is a conflict between the General Terms and Conditions and any Special Terms and Conditions, the Special Terms and Conditions shall apply.
50. **CHANGES TO THE CONTRACT:** There shall be no extra work allowed on the contract without prior written authorization in the form of a change order signed by the Purchasing Director or the County Administrator. No officer, agent or employee of the County is authorized to give verbal instructions to increase the Scope of Work and the contractor shall not use verbal instructions as the basis for additional costs. Changes can be made to the contract in any of the following ways by the issuance of a Change Order:
- a. The parties may agree to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
  - b. James City County may order changes within the general scope of the contract at any time by written notice to the Contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give the County a credit for any savings. Said compensation shall be determined by one of the following methods:
    - 1) By mutual agreement between the parties in writing; or
    - 2) By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the County's right to audit the Contractor's records and/or determine the correct number of units independently; or
    - 3) By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present the County with all vouchers and records of expenses incurred and savings realized. The County shall have the right to audit the records of the Contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Office within thirty (30) days from the date of receipt of the written order from the Purchasing Office. If the parties fail to agree on an amount of adjustment, the questions of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for relieving disputes provided by the Disputes Clause of the contract. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by the County or with the performance of the contract generally.
  - c. No modification for a fixed price contract may be increased by more than 25% or \$50,000, whichever is greater, without the advanced written approval of the Board of Supervisors.
51. **AUTHORIZATION TO TRANSACT BUSINESS, STATE REGISTRATION OF CONTRACTORS (IF APPLICABLE) AND COUNTY BUSINESS LICENSE:** 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 or as otherwise required by law.

Pursuant to competitive sealed bidding or competitive negotiation, all bidders or offerors organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 are required to include in its bid or proposal the identification number issued to it by the State Corporation Commission. Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law shall include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized.

Attention is directed to Chapter 11, title 54.1 of the Code of Virginia (Re: State registration of contractors), which requires that all bidders must show evidence of the proper license under the provision of this chapter before such bid is considered.

All firms doing business in James City County are required to be licensed in accordance with the County's "Business, Professional, and Occupational Licensing (BPOL) Tax" Ordinance. Wholesale and retail merchants without a business location in James City County are exempt from this requirement. Questions concerning the BPOL Tax should be directed to the Business License Inspector, telephone (757) 253-6698.

52. **PROPRIETARY INFORMATION:** Section 2.2-4342F of the Code of Virginia states: "Trade secrets of proprietary information submitted by a bidder, offeror, or contractor in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the bidder, offeror, or contractor must invoke the protections of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary." Declaring an entire bid or proposal response as proprietary is unacceptable.

53. **INDEMNIFICATION:** The Contractor hereby binds himself and his successors to indemnify, defend, and save harmless James City County, its officers, agents or employees, from all suits and actions of every name and description brought against it or them, and all costs or damages to which it or they may be put, on account of, or by reason of any injury or alleged injury to the person or property of another, resulting from or on account of the negligent acts, errors or omissions, recklessness or intentionally wrongful conduct of the Contractor or his agents in the performance of the contract; and that the whole or so much of the moneys due to the contractor under and by virtue of this Contract, as such or may be considered necessary by the County, shall and may be retained until all such suits and claims for damages as aforesaid shall have been settled, and evidence to that effect furnished to the satisfaction of the County. The said Contractor further agrees to indemnify and save harmless James City County against any and all claims, suits or demands that may accrue to, be suffered by, or adjudicated against it by reason of any injury sustained by any of the Contractor's employees in and about the said work, under and pursuant to the provisions of the Workman's Compensation Law or any amendments thereto, and the Contractor shall produce certificates or other satisfactory evidence of ample protection against such liability.

54. **NOTICE OF REQUIRED DISABILITY LEGISLATION:** The County government is required to comply with State and Federal disability legislation: The Rehabilitation Act of 1973 Section 504, The Americans with Disabilities Act (ADA) of 1990 Title II and the Virginia with Disabilities Act of 1990. Specifically, the County, may not, through its contractual and/or financial arrangements, directly or indirectly avoid compliance with Title II or the Americans with Disabilities Act, Public Law 101-336, which prohibits discrimination by public entities on the basis of disability. Subtitle A protects qualified individuals with disability from discrimination on the basis of disability in the services, programs, or activities of all State and local governments. It extends the prohibition of discrimination in federally assisted programs established by the Rehabilitation Act of 1973 Section 504 to all activities of State and local governments, including those that do not receive Federal financial assistance, and incorporates specific prohibitions of discrimination on the basis of disability in Titles I, III, and V of the Americans with Disabilities

Act. The Virginians with Disabilities Act of 1990 follows the Rehabilitation Act of 1973 Section 504.

55. **DRUG-FREE WORKPLACE:** During the performance of this contract, the contractor agrees to adhere to the no alcohol, no smoking policy, and no foul language while on property, and will (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

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

56. **Non-Responsive Performance:**

**Delivery Delays:** James City County reserves the right to procure goods and/or services to be provided under this contract from other sources in the event Successful Bidder fails to deliver such goods and/or service deliverables in accordance with delivery dates and time frames set forth in this contract. **Unacceptable Deliveries (Rejections):** Upon notification by James City County that goods and/or service deliverables provided by the Successful Bidder under this contract are damaged and/or not of the quality specified by James City County, such goods and/or service deliverables will be rejected. Successful Bidder shall replace such rejected goods and/or service deliverables immediately or within a reasonable time as determined by James City County. Successful Bidder shall remove all rejected materials, equipment or supplies from the premises of James City County within ten (10) days of notification. Rejected goods and/or service deliverables not removed from James City County premises within ten (10) days will be regarded as abandoned, shall become the property of James City County, and James City County shall have the right to dispose of such items. James City County Purchase From Alternate Sources: James City County reserves the right to authorize immediate purchase from other sources against delayed deliveries and/or rejections. The Successful Bidder shall reimburse James City County promptly for excess costs incurred by James City County for such purchases. Any such purchases will be deducted from the contract amount. In the event James City County cost of obtaining goods and/or service deliverables from other sources be less, Successful Bidder shall have no claim to the difference. **Liability:** Successful Bidder shall be liable to James City County for all costs incurred by James City County as a result of Successful Bidder's failure to perform in accordance with the contract. Successful Bidder's liability shall include, but not be limited to: Damages and other delay costs, to include costs to procure goods/services from alternate suppliers. Increased costs of performance, such as extended overhead and increased performance costs resulting from performance delays caused by Successful Bidder and/or rejections of Successful Bidder's goods and/or service deliverables. Warranty and rework costs, liability to third party, excess costs, attorney's fees and related costs incurred by James City County due to non-responsive performance of Successful Bidder.

57. **BREACH OF CONTRACT:** Successful Bidder shall be deemed in breach of this contract if the Successful Bidder: Fails to comply with any terms of this contract; Fails to cure such noncompliance within five (5) calendar days from the date of the Owner written notice or such other time frame, greater than five (5) calendar days, specified by the JCC Contract Administrator in the notice; Successful Bidder fails to submit a written response to the Owner notification of noncompliance within five (5) calendar days after the

date of the Owner notice. All notices under this contract shall be submitted, by email followed up with hard copy by certified mail, return-receipt requested, to the respective contract administrator. Successful Bidder shall not be in breach of this contract as long as its default was due to causes beyond the reasonable control of and occurred without any fault or negligence on the part of both the Successful Bidder and its sub-contractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of Owner in its sovereign capacity, fires, floods, epidemics, strikes, freight embargoes, and unusually severe catastrophic weather such as hurricanes.

58. **TERMINATION:** Subject to the provisions below, the County upon thirty (30) days advance, written notice to the other party may terminate the contract. Upon receipt of a notice of termination, the contractor shall cease all work underway on behalf of the County unless advised by the County to do otherwise. In the event of termination, Contractor shall be compensated only for the services as set forth in the contract provided to the satisfaction of the County and expenses incurred as of the date of termination. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

a. Termination for Convenience: In the event that the contract is terminated upon request and for the convenience of the County, without the required thirty (30) days advance notice, then the County shall be responsible for payment of services up to the termination date.

b. Termination for Cause: Termination by the County for cause, default or negligence on the part of the contractor shall be excluded from the foregoing provision; termination costs, if any shall not apply. However, pursuant to the Default paragraph of these General Conditions, the County may hold the contractor responsible for any resulting additional purchase and administrative costs. Any payment due to the contractor at the time of termination may be adjusted to the extent of any additional costs occasioned to the County by reason of the contractor's default. The thirty (30) days advance notice requirement is waived in the event of Termination for Cause.

c. Termination Due to Unavailability of Funds in Succeeding Fiscal Years: When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year, the contract shall be canceled.

59. **CONTRACTOR RESPONSIBILITY FOR COUNTY PROPERTY:** The Contractor shall be responsible for damages to County property caused by work performed by itself or its subcontractors. The Contractor shall be responsible for maintaining the area surrounding and adjoining the work site in their current condition. Property damage to surrounding or adjoining areas caused directly or indirectly by actions or omissions of the Contractor shall be replaced or remedied by the Contractor, to the satisfaction of the County, at the Contractor's expense.

60. **COPYRIGHTS OR PATENT RIGHTS:** The bidder certifies by submission of bid that there has been no violation of copyrights or patent rights in manufacturing, producing, or selling the product or services shipped or ordered as a result of this bid. The successful bidder shall, at his own expense, defend any and all actions or suits charging such infringement, and will save James City County, its officers, employees, and agents harmless from any and all liability, loss, or expense occasioned by any such violation.

61. **DELIVERY:** In the appropriate space, the bidder shall state the time of proposed delivery or project completion in number of calendar days. Unless otherwise specified, calendar days shall be presumed. Unless otherwise specified, quote the earliest delivery possible, as this may be considered a factor in making award. Delivery expressed in calendar days may be given preference over such general terms as "stock immediately," and "as soon as possible." As time will be of the essence for any orders places as a result of this bid, the County reserves the right to cancel such

orders, or any part thereof, without obligation, if delivery is not made at the time(s) specified on bid form.

62. **INDEPENDENT CONTRACTOR:** The contractor shall be legally considered an independent contractor and neither the contractor nor its employees shall, under any circumstances, be considered servants or agents of James City County or James City Service Authority; and the County shall be at no time legally responsible for any negligence or other wrongdoing by the contractor, its servants, or agents. The County shall 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 County shall not provide to the contractor any insurance coverage or other benefits, including Worker's Compensation, normally provided by the County for its employees.

63. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of the Purchasing Director. In the event that the contractor desires to subcontract some part of the work, the contractor shall furnish the Purchasing Director the names, qualifications and experience of the proposed subcontractors. The contractor shall remain fully liable and responsible for the work to be done by its subcontractors and shall assure compliance with all requirements of the contract.

64. **HOLIDAYS:** The Contractor shall receive approval of the County, in advance, of any work to be performed on Holidays. James City Service Authority/James City County observes the following Holidays:

New Year's Day	1 <sup>st</sup> day of January
Martin Luther King's Birthday	3 <sup>rd</sup> Monday in January
President's Day	3 <sup>rd</sup> Monday in February
Memorial Day	Last Monday in May
Independence Day	4 <sup>th</sup> day in July
Labor Day	1 <sup>st</sup> Monday in September
Veteran's Day	11 <sup>th</sup> day in November
Thanksgiving Day	4 <sup>th</sup> Thursday in November
Day after Thanksgiving	4 <sup>th</sup> Friday in November
Christmas Eve	24 <sup>th</sup> day in December
Christmas Day	25 <sup>th</sup> day of December

**DELIVERY PROVISION**

65. **SHIPPING INSTRUCTIONS-CONSIGNMENT:** Unless otherwise specified in the solicitation each case, crate, barrel, package, etc., delivered under the contract must be plainly stenciled or securely tagged, stating the Contractor's name, purchase order number, and delivery address as indicated in the order. Where shipping containers are to be used, each container must be marked with the purchase order number, name of the Contractor, the name of the item, the item number, and the quantity contained therein. Deliveries must be made within the hours of **8:00 a.m. – 3:00 p.m.** Deliveries at any other time will not be accepted unless specific arrangements have been previously made with the designated individual at the delivery point. No deliveries will be accepted on Saturdays, Sundays and holidays unless previous arrangements have been made. It shall be the responsibility of the contractor to insure compliance with these instructions for items that are drop-shipped.

66. **RESPONSIBILITY FOR SUPPLIES TENDERED:** The Contractor shall be responsible for the materials or supplies covered by the contract until they are delivered at the designated point, and a physical inspection is made and material is requested or rejected, 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 County 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.

67. **TESTING AND INSPECTIONS:** James City County reserves the right to conduct any test/inspection it may deem advisable to assure supplies and services conform to the specification. Inspection and acceptance of materials or supplies will be made after delivery at destinations herein specified unless otherwise stated. If inspection is made after delivery at destination herein specified, the County will bear the expense of inspection except for the value of samples used in case of rejection. Final inspection shall be conclusive except in regard to latent defects, fraud or such gross mistakes as to amount to fraud. Final inspection and acceptance or rejection of the materials or supplies will be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the County for such materials or supplies as are not in accordance with the specifications.

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

69. **POINT OF DESTINATION:** All materials shipped to the County must be shipped F.O.B. DESTINATION unless otherwise stated in the contract. The materials must be delivered to the "Ship To" address indicated on the purchase order.

70. **REPLACEMENT:** the Contractor at no cost to the County shall replace Materials or components that have been rejected by the Purchasing Office, in accordance with the terms of the contract.

71. **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:

- a. Purchase Order Number/Contract Number
- b. Name of Article and Stock Number,
- c. Quantity Ordered,
- d. Quantity Shipped,
- e. Quantity Back Ordered,
- f. The Name of the Contractor.

Contractors are cautioned that failure to comply with these conditions shall be considered sufficient reason for refusal to accept the goods.

72. **SAMPLES:** Evidence in the form of samples may be requested if brand being quoted upon is other than as specified. The County reserves the right to request that such samples be furnished at the time of bid opening. The County also reserves the right to request samples after the date of bid opening. Requested samples must be furnished free of expense to the County and if not used in testing or destroyed, will, upon request, be returned at the bidder's expense.

#### **BIDDER/CONTRACTOR REMEDIES**

73. **PROTEST OF AWARD OR DECISION TO AWARD:** Any Bidder/ Offeror who desires to protest the award or decision to award a contract, by James City County shall submit such protest in writing to the County no later than ten (10) days after public notice of the award or announcement of the decision to award, whichever comes first. No protest shall lie for a claim that the selected bidder/Offeror is not a responsible Bidder/Offeror. The written protest shall include the basis for the protest and the relief sought. The Purchasing Director shall issue a decision in writing within ten (10) days stating the reasons for the action taken. This decision shall be final unless the bidder/offeror appeals within ten (10) days of the written decision by instituting legal action. Nothing in this

paragraph shall be construed to permit an offeror to challenge the validity of the terms or conditions of the solicitation.

#### **74. DISPUTES:**

Claims. Written notice of the Contractor to file a claim must be given at the time of the occurrence or beginning of the work upon which the claim is based. Such claims, whether for money or other relief, shall be submitted in writing to the County's Purchasing Director no later than sixty (60) days after final payment. The Purchasing Director shall give written notification of the final decision on such claim to the Contractor within thirty (30) days of the date the claim was received. The Contractor may not institute legal action before receiving the Purchasing Director's final written decision, unless the Purchasing Director fails to render such decision within the specified time. Pendency of claims shall not delay payment of amounts agreed due in the final payment. (Code of Virginia, § 2.2-4363).

Claims Relief. Under certain circumstances beyond the control of the Contractor, such as acts of God, sabotage, and fire or explosion not caused by negligence of the Contractor or its agent, the Purchasing Director may extend the time limit for performance required by this Contract. Any such extension must be issued in writing and signed by the Purchasing Director.



**Purchasing Department**

101 F Mounts Bay Rd, Suite 300, Williamsburg, Virginia 23185  
(757) 253-6646 Fax Number: (757) 253-6753

Date: \_\_\_\_\_

James City County, Virginia  
Non-Disclosure Statement

I understand that, under this Contract, I may be permitted access to certain Division/ County or State records of a confidential or privileged nature. Those records may include personal property records, motor vehicle records, financial records, personnel records, and other records of a sensitive nature.

I will not disclose any confidential, privileged, or sensitive records or any contents of same, to any person unless authorized to do so in writing by a County employee responsible as custodian of the records in question. I acknowledge that I do not have the authority to make decisions concerning the release of any such records. I will not use confidential or privileged records, unless authorized to do so by the Division/County.

I understand that this duty not to disclose any confidential, privileged, or sensitive information is a continuing duty after this Contract expires or is terminated. I understand that the unauthorized disclosure of privileged or confidential information may subject me to civil damages, civil penalties, or criminal prosecution.

Contractor Employee/Date

\_\_\_\_\_

Contractor Project Manager/Date

\_\_\_\_\_

County Contract Administrator/Date

\_\_\_\_\_