



INVITATION FOR BID

Issue Date: Monday, November 22, 2021

IFB No. 22-014-5030-SB-R

Original Equipment Manufacturer (OEM) Water and Sewer Parts

Bid Due Date / Time:

Tuesday, December 14, 2021

2:00 P.M. Eastern Standard Time (EST)

Bid Opening Date / Time:

Tuesday, December 14, 2021

2:15 P.M. Eastern Standard Time (EST)

Questions Due Date / Time:

Tuesday, December 7, 2021

4:30 P.M. Eastern Standard Time (EST)

Electronic bid submission via eVA.virginia.gov ONLY!

Senior Contracts Officer

Andrew Sukeforth

(540) 658-8014

Email: asukeforth@StaffordCountyVA.gov

TERMS & CONDITIONS

In compliance with this IFB and all conditions imposed in this IFB, the undersigned firm hereby offers and agrees to furnish all goods and services required by this IFB at the prices indicated in the pricing schedule, and the undersigned firm hereby certifies that all information provided below and in any schedule attached hereto is true, correct, and complete.

BIDDER INFORMATION

Virginia Contractor License No. Required _____
Not Required

Name of Firm: _____

Address of Firm: _____

By (Signature in Ink) _____ Date: _____

Name (print) _____ Title (print) _____

Phone: _____ Email: _____

In accordance with Virginia Code § 2.2-4343.1, as amended, Stafford County does not discriminate against faith-based organizations. The County does not discriminate against a bidder because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law.

TABLE OF CONTENTS

1. PURPOSE	5
2. SCOPE OF WORK	5
3. AWARD	6
4. BID CHECKLIST	7
5. BIDDER'S INSTRUCTIONS	8
6. METHOD OF PAYMENT	12
7. GENERAL CONDITIONS	12
8. BIDDER REMEDIES	14
9. CONTRACTUAL TERMS AND CONDITIONS	16
10. SPECIAL TERMS AND CONDITIONS	25
11. REFERENCES	27
12. TRADE SECRETS/PROPRIETY INFORMATION IDENTIFICATION	28
13. SMALL AND MINORITY BUSINESS ENTERPRISES	29
14. VIRGINIA STATE CORPORATION COMMISSION (SCC) REGISTRATION INFORMATION	30

Attachment A – Pricing Sheet

NOTE TO PROSPECTIVE BIDDERS:

- This solicitation is subject to the provisions of the Stafford County Information for Bid (IFB) and any attachments, exhibits, revisions or amendments thereto, which are hereby incorporated into this bid in their entirety. Special Terms and Conditions and Specifications attached shall also be part of your bid. The Bid Package is available at no charge on the Commonwealth of Virginia's electronic procurement system, eVA, www.eva.virginia.gov and the County Website. Please be observant of all Bid instructions and specifications. Should any questions arise concerning this Bid, contact the Procurement Office at asukeforth@StaffordCountyVA.gov. The deadline for questions shall be December 7, 2021 at 4:30 p.m.
- Please note the meaning of the following terms as used in this Invitation for Bid (IFB): The term "bidder" as referenced in this solicitation refers to the individual or firm preparing and submitting a bid in response to this Invitation for Bid. The term "Contractor" refers to an individual or firm that has entered into an agreement to provide goods or services to Stafford County, Virginia, its officers, employees and agents (the "County"). In addition, it also refers to a firm who, when awarded the contract, will be responsible for goods and services required, as a result of this solicitation.

1. **PURPOSE**

The Stafford County Department of Utilities, Field Operations Division, (Department) is responsible for the continued reliability of the water distribution and wastewater collection systems. There is a continuous need for parts for the construction of water and wastewater infrastructure and parts for the repair/replacement of sewer lines, water lines and fire hydrants within the County. The purpose of this Invitation for Bid (IFB) is to solicit bids from qualified bidders to establish a term contract to provide Original Equipment Manufacturer (OEM) Water and Sewer Parts on an as-needed basis.

2. **SCOPE OF WORK**

- a. Bidders shall provide fixed prices for items listed in categories one through eleven (1-11) on Attachment A -Pricing Sheet.
- b. Bidders shall provide a minimum of a one percent (1%) discount on category twelve (12) on Attachment A - Pricing Sheet. Category 12 is for all other parts **not explicitly listed** in categories 1-11. Multiple discounts may not be listed.

Bidders must provide a way for the County to access the Manufacturer's Parts List and Pricing List at time of submittal of bid. Electronic access is preferred or shall be made available upon request by the County at any time throughout the contract term. Parts and Pricing Lists shall be the currently published National Standard Manufacturer's Price List or the current Vendor's Retail Price List.

- c. **Bidders must submit a price for all line items within a category in order to be considered for award for that category.**
- d. The County reserves the right to award to up to two vendors per category. If there are two awards made in a category, the lowest responsive and responsible bidder shall be the primary vendor and the second lowest responsive and responsible bidder shall be the secondary vendor, for the ordering of parts. If the primary vendor cannot successfully meet an individual order in a reasonable amount of time (delivery within 3 business days for stock items and delivery within 2 weeks for special order/non-stock) due to delivery deadlines, stock issues, etc., then the secondary vendor will be contacted to fill the individual order. A record shall be kept by the Department documenting the need to use the secondary vendor. The primary vendor would be contacted for the next individual order of parts.
- e. All parts shall be shipped F.O.B. Destination to the to the Utilities Department Field Operations Center, 71 Coal Landing Road, Stafford, Virginia 22554, unless otherwise stated in the Contract or Purchase Order.
- f. The Contract term shall be effective from the Date of Award (anticipated February 1, 2022) through January 31, 2023, and shall have the option to be renewed for four (4) successive one (1) year periods.

3. AWARD

3a. LOWEST RESPONSIVE AND RESPONSIBLE BIDDER.

- The Contract(s) will be awarded to the lowest responsive and responsible bidder(s).
 - **Award of Categories 1-11**

The lowest responsive and responsible bidder for categories 1-11 shall be determined by the lowest total price per category set forth on Attachment A- Pricing Sheet of the IFB. The award will be to the lowest responsive and responsive bidder as applicable.

 - As provided in Section 2 (d) above, the County reserves the right to award up to two (2) vendors for categories 1-11. If there are two awards, these shall be to the two bidders providing the lowest total prices per category. The lowest bidder shall be the primary, while the second lowest bidder shall be the secondary.
 - **Award of Category 12**

The lowest responsive and responsible bidder for category 12 shall be the vendor providing the highest minimum discount percentage as set forth on Attachment A- Pricing Sheet of the IFB.

 - As provided in Section 2 (d) above, the County reserves the right to award up to two (2) vendors for category 12. If there are two awards, these shall be to the bidders providing the two highest offered percentage discounts. The highest offered percentage discount bidder shall be the primary, while the second highest percentage discount bidder shall be the secondary.
- a. A responsive bidder shall mean a bidder who has submitted a bid which conforms, in all material respects, to the bidding documents.
- b. Responsible bidder shall mean a bidder who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability which will assure good faith performance. In determining responsibility, the following criteria will be considered:
 - i. The ability, capacity and skill of the bidder to perform the contract or provide the service required;
 - ii. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
 - iii. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
 - iv. The quality of performance of previous contracts or services. For example, the following information will be considered:
 - 1. The administrative and consultant cost overruns incurred by County on

- previous contracts with bidder,
- 2. The bidder's compliance record with contract general conditions on other projects,
- 3. The submittal by the bidder of excessive and/or unsubstantiated extra cost proposals and claims on other projects,
- 4. The bidder's record for completion of the work within the contract time or within contract milestones and bidder's compliance with scheduling and coordination requirements on other projects,
- 5. The bidder's demonstrated cooperation with the County, Engineer and other contractors on previous contracts,
- 6. Whether the work performed and materials furnished on previous contracts was in accordance with the contract documents, and
- 7. Whether the work performed on other contracts was of high quality;
- v. The previous and existing compliance by the bidder with laws and ordinances relating to contracts or services;
- vi. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
- vii. The quality, availability and adaptability of the goods or services to the particular use required;
- viii. The ability of the bidder to provide future maintenance and service for the warranty period;
- ix. The number and scope of the conditions attached to the bid;
- x. Whether the bidder is in arrears to Stafford County on debt or contract or is a defaulter on surety to Stafford County or whether the bidder's Stafford County taxes or assessments are delinquent; and
- xi. Such other information as may be secured by the County, having a bearing on the decision to award the contract, to include, but not limited to:
 - 1. The ability, experience and commitment of the bidder to properly and reasonably plan, schedule, coordinate and execute the work,
 - 2. Whether the bidder has ever been debarred from bidding or found ineligible for bidding on any other projects.
- c. The purpose of the above is to enable the County, in its opinion, to select the bid which is in the best interests of the County. The ability of the low bidder to provide the required bonds will not of itself demonstrate responsibility of the bidder.
- d. The County reserves the right to require from the bidder: (1) submissions of additional references, to include a listing of previous and current projects and (2) financial statements indicating current financial status prepared in accordance with generally accepted accounting principles, by a CPA licensed to do business in Virginia.

4. BID CHECKLIST

- 4a.** Bidders are required to include the following with their bid. Failure to provide these items **will** result in rejection of the bid.

- A. IFB Coversheet (Page 2)
- B. Attachment A - Pricing Sheet

- 4b. Bidders are requested to include the following with their bid. Failure to provide these items may result in rejection of the bid.

- A. Reference List
- B. Trade Secret / Proprietary Information Identification Form (when applicable)
Small and Minority Business Data Form
- C. State Corporation Commission Form
- D. Complete W-9 Form
- E. Any IFB Addenda

5. **BIDDER'S INSTRUCTIONS**

- 5a. **BID FORMS.** Unless otherwise specified in the solicitation, all bids must be (i) submitted on the forms provided by the County, including the bid Cover Sheet and Pricing Sheet(s) and (ii) properly signed in ink in the identified spaces.

- 5b. **ACCEPTANCE OF BIDS/BINDING 90 DAYS.** Unless otherwise specified, all formal bids submitted shall be binding for ninety (90) calendar days following bid opening date, unless extended by mutual consent of all parties.

5c. **ADDENDA.**

- A. Every request for such interpretation should be in writing addressed to the Stafford County Central Procurement Office, and to be given consideration must be received by December 7, 2021 at 4:30 p.m. Emailed requests are acceptable and preferred. Emails are to be sent to the Procurement Office at asukeforth@StaffordCountyVA.gov.
- B. Any and all such interpretations and any supplemental instructions will be in the form of written Addenda to the bidding documents which, if issued, will be available on the Stafford County Website (<http://staffordcountyva.gov/Bids.aspx?CatID=23>) and eVA (www.eva.virginia.gov), no later than seven (7) days prior to the date fixed for the receiving of bids. The County will not be responsible for any other explanations or interpretations of the proposed documents.
- C. If, in the opinion of the County the deadline for the submission of bids does not provide sufficient time for consideration of any Addendum, then such deadline may be extended at the discretion of the County.
- D. Contractor is required to acknowledge receipt of each Addendum by signing it and submitting it by the bid deadline. It shall be the responsibility of each bidder to contact the Contract Officer identified on the cover page to this IFB prior to submission of a bid hereunder in order to determine whether any Addenda have been issued in connection with this procurement. Notwithstanding any provision to the contrary, the failure of any bidder to receive any Addenda shall neither constitute grounds for withdrawal of its bid, nor relieve such bidder from any responsibility for incorporating the provisions of any Addenda in its proposal. All Addenda so issued shall become part of the contract

- 5d. **BID OPENING.** All bids received in response to an Invitation for Bid (IFB) will be opened at the date and time specified, read publicly via WebEx, and made available for inspection. The Director of Procurement or designee ("Contract Officer") representative assigned to open the bids will host a public bid opening via WebEx once the specified time for bid opening has arrived.

WebEx Meeting Information:

<https://scva-gov.webex.com/scva-gov/j.php?MTID=m260bc88a985c19295e2aa5bac8d06006>

Tuesday, Dec 14, 2021 2:15 pm | 1 hour | (UTC-05:00) Eastern Time (US & Canada)

Meeting number: 2332 858 2235

Password: mrNUPqWd385

Join by video system

Dial 23328582235@scva-gov.webex.com

You can also dial 173.243.2.68 and enter your meeting number.

Join by phone

+1-415-655-0001 US Toll

Access code: 233 285 82235

5e. MODIFICATION OR WITHDRAWAL OF BID.

- A. **Clerical Mistake.** A bidder may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith and the mistake was a clerical mistake, as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.
- B. **Clerical and Judgement Mistake.** If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid that shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.
- C. **Notice.** The bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice.
- D. No bid shall be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in

which the ownership of the withdrawing bidder is more than five percent (5%).

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

5f. LATE BIDS.

- A. Bids received after the date and time specified for receipt in the solicitation will not be considered.
- B. If an emergency, unanticipated event, or closing of County offices interrupts or suspends normal County business operations so that bids cannot be received at the County office designated for receipt of bids by the exact time specified in the solicitation, then bids will be due at the same time of day specified in the solicitation on the first work day that normal County business operations resume. The official time used for receipt of bids is the time and date stamp clock located in the County Procurement Office. No other clocks, calendars or timepieces are recognized. All bidders must ensure all bids are received prior to the scheduled due date/time.

5g. CONDITIONAL BIDS. Conditional bids may be rejected in whole or in part.

5h. BIDS FOR ALL OR PART. The Contract Officer reserves the right to make award on all items in the aggregate or on any of the items on an individual basis, whichever is in the best interest of the County. A bidder may restrict its bid to consideration in the group aggregate by so stating, but must name a single unit price on each item bid. Any bid in which the bidder names a total price for all the articles without quoting a unit price for each and every separate item may not be considered for award.

5i. ERRORS IN BIDS. In the event there is a mathematical error on the pricing schedule, the unit price for each item shall prevail. Bidders are cautioned to recheck their bids for possible error. Erasures in bids must be initialed by the bidder.

5j. OMISSIONS & DISCREPANCIES. Any items or parts of any equipment listed in this solicitation that clearly necessary for the operation and completion of such equipment, but are: (i) not fully described by the County; or (ii) are omitted by the County from such specification, shall be considered a part of such equipment even if not directly specified or called for in the specifications. If a bidder finds discrepancies or ambiguities in, or omissions from, the solicitation, including the drawings and/or specifications, it shall notify the Contract Officer listed on the first page of this IFB at least seven (7) business days prior to the date set for the opening of bids.

5k. NEGOTIATION WITH RESPONSIBLE AND RESPONSIVE BIDDER. If the bid of the lowest responsive and responsible bidder exceeds the available funds for such project, then the Contract Officer may negotiate with the apparent low bidder in order to obtain a contract price within available funding limits.

Such negotiation may include, but is not necessarily limited to:

- A. Reduction of scope, goods, services, insurance, or construction procured.
- B. Adjustment of the bid price.
- C. Substitution of materials.
- D. Changes in the period for project completion.
- E. The conditions and procedures for such negotiations shall be as set out in the Procurement Policies and Regulations Stafford County, Virginia, as last revised (“Stafford County Procurement Policy”).

Notwithstanding the foregoing, the Contract Officer has the right to cancel any solicitation, to reject any or all bids, even after negotiations with the low bidder and to waive any informality in bids.

5l. DEBARMENT. By submitting a bid, the bidder is certifying that he/she is not currently debarred by the State.

5m. TAX EXEMPTION. The County is exempt from the payment of any federal excise or any Virginia sales tax. Stafford County's Federal Excise Tax Exemption Number is **0001910140**.

5n. PROHIBITION AGAINST UNIFORM PRICING. The Contract Officer encourages open and competitive bidding by all possible means and endeavors to obtain the maximum degree of open competition on all purchase transactions using the methods of procurement authorized by Stafford County Procurement Policy and VPPA. Each bidder, by virtue of submitting a bid, guarantees that it has not been a party with other bidders to an agreement to bid a fixed or uniform price. Violation of this implied guarantee shall render void the bids of participating bidders. Any disclosure to or acquisition by a competitive bidder, in advance of the opening of the bids, of the terms or conditions of the bid submitted by another competitor may render the entire proceedings void and may require re-advertising for bids.

5o. COOPERATIVE PURCHASING. Bidders are advised that the County will extend all resultant contracts, with the authorization of the bidder, to the Metropolitan Washington Council of Governments jurisdictions and other jurisdictions and political subdivisions of the Commonwealth of Virginia to permit their ordering of supplies and/or services at the prices and terms of the resulting contract. If any other jurisdiction decides to use the final contract, the contractor must deal directly with that jurisdiction or political subdivision concerning the placement of orders, issuance of the purchase order, contractual disputes, invoicing and payment. Stafford 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 or your bid. It is the responsibility of the awarded contractor to notify the jurisdictions and political subdivisions of the availability of the contract. Stafford County shall not be held liable for any costs or damage incurred by another jurisdiction as a result of any award extended to that jurisdiction or political subdivision by the awardee.

5p. OFFICIALS NOT TO BENEFIT. Each bidder shall certify, upon signing a bid, that to the best of their knowledge no Stafford County official or employee having official procurement responsibility as provided in Article 6 of the Virginia Public Procurement Act, Virginia Code § 2.2-4367, *et seq.*, as amended, and the Stafford County Procurement Policy, or member of their immediate family, has received or will receive any financial

benefit of more than nominal or minimal value relating to the award of the contract. If such a benefit has been received or will be received, this fact shall be disclosed with the bid or as soon thereafter as it appears that such a benefit will be received. Failure to disclose the information prescribed above may result in suspension or debarment, or rescission of the contract made, or could affect payment pursuant to the terms of the contract.

5q. AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH. A bidder organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 of the Code of Virginia shall include in its bid the identification number issued to it by the State Corporation Commission. Any bidder that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law shall include in its bid a statement describing why the bidder is not required to be so authorized. Any bidder described herein 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 Article is granted by the County Administrator (https://cisiweb.scc.virginia.gov/z_container.aspx).

5r. W-9 FORM. Each bidder will submit a completed W-9 form with their bid. In the event of a contract award, this information is required in order to issue purchase orders and payments the bidder. A copy of this form can be downloaded from <http://www.irs.gov/pub/irs-pdf/fw9.pdf>

6. METHOD OF PAYMENT

The Contractor will be paid on the basis of invoices submitted. Payments will be made thirty (30) days after receipt of a proper invoice or receipt of goods or services, whichever is later. The Department will have the option of paying the Contractor in less than thirty (30) days if a discount is offered for expedient payment.

Invoices shall be submitted to the following address:

County of Stafford, Virginia
Utilities Department
Attn: James Canty
PO Box 339
Stafford, VA 22555

7. GENERAL CONDITIONS

7a. BRAND NAME OR EQUAL ITEMS. Unless otherwise provided in the IFB, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named; it conveys the general style, type, character, and quality of the article desired. Any article that the County in its sole discretion determines to be the equivalent of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The bidder is responsible for clearly and specifically identifying the product being offered and providing sufficient descriptive literature, catalog cuts and technical detail to enable the County to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make, or

manufacturer specified. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the bidder clearly indicates in its bid that the product is an equivalent product, such bid will be considered to offer the brand name product referenced in the solicitation.

7b. SPECIFICATIONS. When a solicitation contains a specification that states no substitutes, no deviation therefrom will be permitted and the bidder will be required to furnish articles in conformity with that specification. The bidder must abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully complete every part as the true intent and meaning of the specifications and drawings. Whenever the mention is made of any articles, material, or workmanship to be in accordance with laws, ordinances, building codes, or similar expressions, the requirements of these laws, ordinances, etc., shall be construed as to the minimum requirements of these specifications. Each bidder shall bear responsibility for thoroughly examining this solicitation in its entirety. The submission by a bidder of a bid in response to this solicitation shall be deemed to constitute a representation on the part of such bidder that it has thoroughly examined this solicitation and has submitted any and all questions and comments it may have regarding the meaning or interpretation of this solicitation to the County in the manner prescribed herein.

- A. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.
- B. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the County decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract.
- C. The County reserves the right to impose restrictions over the inspection of procurement transaction records to ensure the security and integrity of the records.
- D. Trade secrets or proprietary information submitted by a bidder in connection with a procurement transaction shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) if the bidder has (i) invoked the protections of this section prior to or upon submission of the data or other materials, (ii) identified the data or other materials to be protected, and (iii) stated the reasons why protection is necessary. When applicable, bidder shall submit the Trade Secret / Proprietary Information Identification Form with his/her bid. A bidder shall not designate as trade secrets or proprietary information (a) an entire bid; (b) any portion of a bid that does not contain trade secrets or proprietary information; or (c) line item prices or total bid prices.

7c. TIE-BIDS: If all bids are for the same total amount or unit price (including authorized discounts and delivery times), and if the public interest will not permit the delay of re-advertisement for bids, the Director of Procurement shall give preference to goods produced in Virginia, or goods and services provided by the resident Virginia tie bidder; otherwise contract award shall be decided by lot. However, if the contract is for goods, then preference shall be given to the bidder whose goods contain the greatest amount of recycled content. The decision of the County to make award to one or more such tie bidders shall be final.

7d. PREFERENCE FOR ENERGY-EFFICIENT AND WATER-EFFICIENT GOODS:
When in the course of procuring goods, if two or more bids for products that are Energy Star

certified, meet Federal Energy Management Program (FEMP) designated efficiency requirements, appear on FEMP's Low Standby Power Product List, or are Water Sense certified, the County may only select among those bids unless, before selecting a different bid, the County provides a written statement that demonstrates the cost of the products that are Energy Star certified, meet FEMP-designated efficiency requirements, appear on FEMP's Low Standby Power Product List, or are Water Sense certified was unreasonable.

7e. DEFINITE BID QUANTITIES: Intentionally omitted.

7f. REQUIREMENT BID QUANTITIES: On "Requirement" bids, acceptance will bind the County to pay for, at unit bid prices, only quantities ordered and delivered. Where the County specifies estimated quantities, the Contractor shall not be required to deliver more than ten (10) percent in excess of the estimated quantity of each item, unless otherwise agreed upon by the Contract Officer before contract execution. Unless otherwise stated, manufacturer's standard warranty applies.

7g. INSURANCE. In addition to any other forms of insurance or bonds required in the Specifications, the Contractor shall provide and maintain the following insurance:

- A. **Workers' Compensation and Employer's Liability:** Workers' Compensation insurance in accordance with statutory requirements, and Employer's Liability insurance in limits of not less than \$500,000 (each employee) or a maximum limit of \$1,000,000, 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.
- B. **Automobile Liability:** A minimum of \$2,000,000 combined single limit for each occurrence for property damage liability and bodily injury liability including death in Automobile Liability coverage. The policy shall cover all persons involved, at any time, and arising out of the ownership, maintenance, or use of owned, non-owned, borrowed, leased, rented, or hired automobiles. In addition, all mobile equipment used by the Contractor in connection with the contracted work, will be insured under a standard Automobile Liability policy. The Garage Keeper's Liability coverage shall also be maintained where appropriate.
- C. **Comprehensive General Liability:** Comprehensive General Liability insurance at a minimum \$1,000,000 per occurrence, written on an occurrence basis, including ongoing and completed operations; contractual liability; and \$2,000,000 general aggregate. In addition, Comprehensive General Liability policy shall include a per project aggregate endorsement. Completed project aggregate endorsement shall continue in force for three (3) years following completion of the Contract.
- D. Intentionally omitted.
- E. Additional insurance provisions that apply to all Contracts include:
 - (i) **Additional Insured:** The Stafford County Board of Supervisors, its officers, employees, agents, and volunteers shall be named as Additional Insured on the Automobile and Comprehensive General Liability coverage listed above, and it shall be stated on the insurance certificate that this coverage "is primary and non-contributory to all other coverage the County may possess."

- (ii) Liability Insurance "Claims Made" basis: If the liability insurance purchased by the contractor has been issued on a "claims made" basis, the contractor must comply with the following additional conditions. The limit of liability and the extensions to be included as described previously in these provisions, remain the same. The contractor must either:
 1. Agree to provide certificates of insurance evidencing the above coverage for a period of two years after final payment for the contract. This certificate shall evidence a "retroactive date" no later than the beginning of the contractor's or sub contractor's work under the contract, or
 2. Purchase the extended reporting period endorsement for the policy or policies in force during the term of the 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.
 - (iii) Excess or Umbrella Liability Policy: Liability insurance may be arranged by Comprehensive General Liability and Automobile Liability policies for the full limits required, or by a combination of underlying liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.
- F. All contractors shall provide shall provide thirty days (30) notice of cancellation of any insurance policy. Each of the policies shall include a waiver of subrogation against Stafford County, its officers, employees, agents and volunteers.
- G. The insurance specified herein shall be with an insurance company acceptable to the parties hereto and licensed to do business in the Commonwealth of Virginia. All insurance must be obtained before any work is commenced and kept in effect until its completion. If any of the work is sublet, similar insurance shall be obtained by or on behalf of the subcontractor to cover their operation.
- H. Current insurance certificates documenting compliance with these coverage requirements shall be provided to the Contract Officer prior to the award of any contract.

8. BIDDER REMEDIES

8a. APPEAL OF DENIAL OF WITHDRAWAL OF BID. The County Administrator or a designee shall hear appeals of protests to the Chief Financial Officer's decision for refusal to allow withdrawal of bids. The County Administrator or a designee shall provide for a hearing, the opportunity to present pertinent information and shall issue a written decision containing findings or facts. The findings of fact shall be final and conclusive, , unless, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation for Bid, the sole relief shall be withdrawal of the bid. No determination on an issue of law shall be final if appropriate legal action is instituted in a timely manner.

8b. APPEAL OF DETERMINATION OF NONRESPONSIBILITY.

- A. Any bidder who, despite being the apparent low bidder, is determined not to be a responsible bidder, shall be notified in writing by the Chief Financial Officer of (i)

the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five (5) business days after receipt of the notice.

- B. Within ten (10) business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The Chief Financial Officer shall issue its written determination of responsibility based on all information in the possession of the County, including any rebuttal information, within five business days of the date the County received the rebuttal information. At the same time, the Chief Financial Officer shall notify, with return receipt requested, the bidder in writing of its determination. The determination of nonresponsibility shall be final unless the bidder appeals the decision within ten days after receipt of the determination.
- C. If, upon appeal to the County Administrator or his designee, it is determined that the decision of the Chief Financial Officer, was arbitrary or capricious, or otherwise in error and the award for the particular County contract in question has not been made, the sole relief available to the bidder shall be a finding that the bidder is a responsible bidder for the County contract in question.
- D. Where the award has been made and performance has begun, the County may declare the contract void upon a finding that this action is in the best interest of the County. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

8c. PROTEST OF AWARD OR DECISION TO AWARD.

- A. Any bidder may protest the award or decision to award a contract by submitting a protest in writing to the Chief Financial Officer no later than ten (10) days after the award or the announcement of the decision to award, whichever occurs first; provided, however, that no protest shall lie for a claim that the selected bidder is not a responsible bidder. The written protest shall include the basis for the protest and the relief sought. The Chief Financial Officer shall issue a decision in writing within ten (10) days of the receipt of the protest stating the reasons for the action taken. This decision shall be final unless the bidder appeals within ten (10) days of receipt of the written decision.
- B. If prior to award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The Chief Financial Officer shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be declared void by the County. Where the award has been made and performance has begun, the Chief Financial Officer may declare the contract void upon a finding that this action is in the best interest of the County. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance at the rate specified in the contract up to the time of such declaration. In no event shall the performing contractor be

entitled to lost profits.

- C. Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this section shall not be affected by the fact that a protest or appeal has been filed.
- D. An award need not be delayed for the period allowed a bidder to protest, but in the event of a timely protest, no further action to award the contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

9. CONTRACTUAL TERMS AND CONDITIONS

- 9a. CONTRACT TERM.** The period of the contract shall be one year from date of award. The contract may be renewed for four additional one-year periods, as mutually agreed upon.
- 9b. PAYMENT.** Payment shall be made after satisfactory performance that is in accordance with all provisions of the contract, and upon receipt of a properly completed invoice. The County reserves the right to withhold any or all payments or portions thereof for contractor's failure to perform in accordance with the provision of the contract or any subsequent modifications.
- 9c. PARTIAL PAYMENTS.** Unless otherwise specified, partial payments will be made upon acceptance of materials or services so invoiced if in accordance with completion date. However, up to 5 percent (5%) of the value of the entire order may be retained until completion of contract.
- 9d. PAYMENT FOR EQUIPMENT, INSTALLATION, AND TESTING.** When equipment requires installation (which includes erection, setting up or placing in position, service, or use) and testing, and the installation or testing is delayed, payment may be made based on 50% of the contract price when such equipment is delivered on the site. A further allowance of 25% may be made when the equipment is installed and ready for test. The balance shall be paid after the equipment is tested and found to be satisfactory. If the equipment must be tested, but installation is not required to be made by the contractor or if the equipment must be installed but testing is not required, payment may be made based on 75% at the time of delivery and the balance shall be paid after satisfactory test or installation is completed.
- 9e. PRICE INCREASES.** Price increases may be negotiated only at the time of renewal. Upon a determination by the County to renew the contract for an additional term, written notification will be given to the contractor. If the County elects to exercise the option to renew the contract for an additional one-year period, the contract price(s) for the additional one year shall not exceed the contract price(s) of the original contract increased by the Consumer Price Index for all Urban Consumers (CPI-U), or 3%, whichever the lesser.
- 9f. MOST FAVORED NATION.** If the contractor makes a general price reduction for any material covered by the IFB to customers generally, an equivalent price reduction shall apply to the contract for the duration of the contract period (or until the price is further reduced). Such price reduction shall be effective at the same time and in the same manner

as the reduction in the price to customers generally. For purpose of this provision, a "general price reduction" shall mean any horizontal reduction in the price of an article or service offered (i) to contractor's customers generally, or (ii) in the contractor's price schedule for the class of customers (i.e., wholesalers, jobbers, or retailers), which was used as the basis for bidding on this solicitation. An occasional sale at a lower price, or sale of distressed merchandise at a lower price is not a "general price reduction" under this provision. The contractor shall submit its invoice at such reduced prices indicating on the invoice that the reduction is pursuant to the "Price Reduction" provision of the contract documents. The contractor will also within ten (10) days of any general price reduction notify the Contract Officer of such reduction by letter. Failure to do so may result in termination of the contract.

- 9g. PRICE RENEGOTIATION.** The County reserves the right, at any time during the contract term or any extension of the term, to renegotiate with the contractor a reduction in the compensation paid to the contractor that is less than the compensation initially agreed to by the contractor and the County at the time of contract execution/issuance of the purchase order. The County may initiate such negotiations whenever the County determines that it is in the County's best fiscal interests to do so. Notwithstanding any other provision of the contract/purchase order to the contrary; the County may terminate the contract/purchase order immediately and without penalty if the County is unable to renegotiate the compensation with the contractor to an amount which the County determines to be appropriate.
- 9h. CONTRACT EXTENSION.** The County has the right to extend any contract(s) awarded as a result of this IFB for up to one hundred eighty (180) days following any term on the contract.
- 9i. NON-APPROPRIATION OF FUNDS.** The obligations of the County to pay compensation due to the contractor pursuant to the contract or any other payment obligations under any contract awarded pursuant to the contract are subject to appropriations by the Stafford County Board of Supervisors to satisfy payment of such obligations. The County's obligations to make payments during subsequent fiscal years are dependent upon the same action. If such appropriation is not made for any fiscal year, the contract shall terminate effective at the end of the fiscal year for which funds were appropriated and the County will not be obligated to make any payments under the contract beyond the amount appropriated for payment obligations under the contract. The County will provide contractor with written notice of non-appropriation of funds thirty (30) days after action is completed by the Board of Supervisors, but failure to give such notice shall be of no effect and the County shall not be obligated under the contract beyond the date of non-appropriation.
- 9j. TERMINATION FOR CONVENIENCE.** A contract may be terminated in whole or in part by the County in accordance with this clause whenever the Contract Officer determines that such a termination is in the best interest of the County. Any such termination shall be effected by delivery to the contractor of a Notice of Termination specifying the extent to which performance shall be terminated and the date upon which termination becomes effective. An equitable adjustment in the contract price shall be made for completed service, but no amount shall be allowed for anticipated profit on undelivered goods or unperformed services.
- 9k. TERMINATION OF CONTRACT FOR CAUSE.** If, through any cause, the contractor

fails to fulfill in a timely and proper manner its obligations under the contract, or if the contractor violates any of the covenants, agreements, or stipulations of the contract, the County shall have the right to terminate the contract. Any such termination shall be effected by mailing or delivery to the contractor of a Notice of Termination specifying the extent to which performance shall be terminated and the date upon which termination becomes effective. In such event all finished or unfinished documents, data, studies, surveys, drawings, maps, models, and reports prepared by the contractor under the contract shall, at the option of the County, become its property and the contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents. Termination of the contract for cause does not relieve the contractor of liability to the County for damages sustained by the County by virtue of any breach of contract by the contractor until such time as the exact amount of damages due to the County from the contractor is determined.

9l. DELIVERY/SERVICE FAILURES.

- A. In case any items are defective in material or workmanship or otherwise not in conformity with the requirements of the, the County shall have the right either to reject them (with or without instructions as to their disposition) or to require their correction.
- B. Items which have been rejected or required to be corrected shall be removed or, if permitted or required by the Contract Officer, corrected in place by and at the expense of the contractor promptly after notice, and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed.
- C. If the contractor fails promptly to remove such items which are required to be removed or promptly to replace or correct such items, the County may either (i) by contract amendment or otherwise, replace or correct such items and contractor shall reimburse the County, within a reasonable time specified by the Contract Officer, for any reasonable expense incurred in excess of the contract prices; or terminate the contract for default as provided below.
- D. Unless the contractor corrects or replaces such items within the delivery schedule, the Contract Officer may require the delivery of such items at a reduction in price, which is equitable under the circumstances.
- E. Acceptance or rejection of the goods shall be made as promptly as practicable after delivery, except as otherwise provided in the contract; but failure to inspect and accept or reject goods shall neither relieve the contractor from responsibility for such goods as are not in accordance with the contract requirements nor impose liability on the County. The inspection and test by the County of the goods does not relieve the contractor from any responsibility regarding defects or other failures to meet the contract requirements which may be discovered prior to acceptance.

9m. SUBLETTING OF CONTRACT OR ASSIGNMENT OF CONTRACT FUNDS. It is mutually understood and agreed that the contractor shall not assign, transfer, convey, sublet or otherwise dispose of his or her contractual duties to any other person, firm or corporation, without the previous written consent of the Contract Officer. In no case shall such assignment of contract relieve the contractor from its obligations or change the terms of the contract.

9n. PAYMENTS TO SUBCONTRACTORS.

- A. The contractor is obligated to take one of the two following actions within seven days after receipt of amounts paid to the contractor by the County for work performed by any subcontractor under the contract (i) pay the subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by the subcontractor under the Contract; or (ii) Notify the County and the subcontractor, in writing, of the contractor's intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.
- B. The contractor is obligated to pay interest to the subcontractor on all amounts owed by the contractor to the subcontractor that remain unpaid after seven (7) days following receipt by the contractor of payment from the County for work performed by the subcontractor under the contract, except for amounts withheld as allowed in subparagraph (ii), above. Unless otherwise provided under the terms of the contract, interest shall accrue at the rate of one percent per month.
- C. The contractor shall include in each of its subcontracts, if any are permitted, a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor. The contractor's obligation to pay an interest charge to a subcontractor pursuant to this paragraph may not be construed to be an obligation of the County. A contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.
- D. A contractor, if a proprietorships, partnerships, and/or corporations, shall provide the County with its federal employer identification number, or if an individual contractor, their social security number.

9o. AUDIT OF RECORDS. The parties agree that County or its agent must have access to and the right to examine any books, documents, papers, and records of the contractor involving transactions related to the contract or compliance with any clauses thereunder, for a period of five (5) years after final payment. The contractor must include this requirement in all subcontracts related to the contract.

9p. GENERAL GUARANTY. Contractor agrees to:

- A. Warrant that, unless otherwise specified, all materials, parts, and equipment provided under the contract shall be new, in first class condition, and in accordance with the contract documents. Parts shall be fully guaranteed against defects in material and workmanship for a period of twelve (12) months following date of final acceptance.
- B. Warrant that all workmanship shall be of the highest quality and in accordance with contract documents and shall be performed by persons qualified at their respective trades.
- C. Warrant that when the contract includes a software license, or use of licensed software, the contractor is the owner of the software or otherwise has the right to grant to the county the license to use the software granted through the contract without violating or

infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party.

- D. Save the County, its agents and employees harmless from liability of any nature or kind for the use of any copyrighted or uncopyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a contract for which the contractor is not the patentee, assignee, licensee or owner
- E. Protect the County against latent defective parts or workmanship and to repair or replace any damages or marring occasioned in transit or delivery.
- F. Furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work or to the work of other contractors, for which his or her workers are responsible.
- G. Pay for all necessary permits, licenses and fees and give all notices and comply with all laws, ordinances, rules, regulations, and policies of the County.
- H. Protect the County from loss or damage any County-owned property while it is in the custody of the contractor.

9q. SERVICE CONTRACT GUARANTY. Contractor agrees to:

- A. Furnish services described in the solicitation and resultant contract at the times and places and in the manner and subject to conditions of those documents provided that the County may reduce the said services at any time.
- B. Enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence.
- C. Render all work and services in strict conformance to all laws, statues, and ordinances and the applicable government rules, regulations, methods, and procedures.
- D. Allow services to be inspected or reviewed by an employee of the County at any reasonable time and place selected by the County. The County is under no obligation to compensate Contractor for any services not rendered in strict conformity with the contract.
- E. Stipulate that the presence of County staff shall not lessen the obligation of the Contractor for performance in accordance with the contract requirements, or be deemed a defense on the part of the contractor for infraction thereof. County staff are not authorized to revoke, alter, enlarge, relax, or release any of the requirements of the contract documents. Any omission or failure on the part of the staff to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material. Notification of an omission or failure will be documented by the Contract Officer.

9r. INDEMNIFICATION.

- A. General Indemnification: Contractor must indemnify, keep and save harmless, and defend the County, its agents, officials, employees and volunteers against claims that may accrue or arise against the County as a result of the granting a contract, if the claim was caused by the negligence or error, or omission of the contractor, its employees, its subcontractor, or its subcontractor's employees. As used in this Section, a claim includes: injuries, death, damage to property, breach of data security, suits, liabilities, judgments, or costs and expenses. Upon request by the County, the contractor must at its own expense: appear, defend, and pay all attorney's fees and all costs and other expenses related to the claim. If, related to a claim, any judgment is rendered against the County or a settlement reached that requires the County to pay money, the Contractor must at its own expense satisfy and discharge the same. Contractor expressly understands and agrees that any performance bond or insurance protection required by the contract, or otherwise provided by the Contractor, does not limit the Contractor's responsibility to indemnify, keep and save harmless, and defend the County as provided in the contract.

- B. Intellectual Property Indemnification: In addition to the General Indemnification, contractor will indemnify the County for and defend the County against third-party claims for infringement of any valid United States patent, trademark or copyright by the contractor's products, software, services, or deliverables. Contractor must indemnify the County for any loss, damage, expense or liability, including costs and reasonable attorney's fees that may result by reason of any such claim. In the event of a claim covered by this subparagraph, and in addition to all other obligations of contractor in this Paragraph, contractor must at its expense and within a reasonable time: (i) obtain a right for the County to continue using such products and software, or allow Contractor to continue performing the Services; (ii) modify such products, software, services or deliverables to make them non-infringing; or (iii) replace such products or software with a non-infringing equivalent. If, in the Contractor's reasonable opinion, none of the foregoing options is feasible Contractor must immediately notify the County and accept the return of the products, software, services, or deliverables, along with any other components rendered unusable as a result of the infringement or claimed infringement, and refund to the County the price paid to contractor for such components as well as any pre-paid fees for the allegedly infringing services, including license, subscription fees, or both. Nothing this Paragraph, however, relieves the contractor of liability to the County for damages sustained by the County by virtue of any breach of contract related to a third-party infringement claim.

- C. Right to Participate in Defense. The County may, at its sole expense, participate in the defense or resolution of a Claim. Contractor will have primary control of the defense and resolution of the claim, except when such defense or resolution requires the County to (i) admit liability or wrongdoing; or (ii) to pay money. In either of these cases contractor must obtain the County's prior written consent before entering into such settlement or resolution.

- D. No Indemnification by the County. The parties agree that under applicable law the County cannot indemnify or defend the contractor. To the extent any promise or term contained in the contract, including any exhibits, attachments, or other documents incorporated by reference therein, invoices, or quotes, requires an indemnification or obligation to defend by the County, that promise or term is stricken from the contract

and of no effect.

- 9s. CONTRACTOR STATUS.** The contractor is an independent contractor and neither the contractor nor its employees or subcontractors will, under any circumstances, be considered employees, servants, partners, or agents of the County except for such purposes as may be specifically enumerated herein, nor shall anything contained in the contract be construed to create any partnership or joint venture between the parties. The contractor is solely responsible for the employment, selection, management, and supervision of its own participants and for ensuring that its participants abide by all applicable rules for security, safety and general conduct. To the extent any promise or term contained in the contract, or contractor's documents, including any exhibits, attachments, or other documents incorporated by reference therein, invoices, quote documents, limits all liability on the part of the Contractor to an amount less than the amount of actual damages caused by the actions of the Contractor or its agents and employees shall be stricken and have no force or effect against the County. The contractor shall maintain exclusive control over its operations. The County will not provide to the contractor any insurance coverage or other benefits, including workers' compensation, normally provided by the County for its employees.
- 9t. NON-DISCRIMINATION.** During the performance of the contract, the Contractor agrees as follows:
- A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
 - B. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
 - C. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
 - D. The Contractor will include the provisions of the foregoing paragraphs A, B, and C above in every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.
- 9u. DRUG FREE WORKPLACE.** During the performance of a contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract of over \$10,000, so

that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in conjunction with a specific contract awarded to a Contractor in accordance with this section, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

- 9v. IMMIGRATION REFORM AND CONTROL ACT.** Contractor agrees that it does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.
- 9w. NO SMOKING.** Smoking in all County buildings is prohibited. The County may designate a smoking area outside County facilities. The contractor shall only use those designated smoking areas. Certain County facilities, both inside and outside, may be entirely smoke free. The contractor shall inquire if a facility is entirely smoke free.
- 9x. BACKGROUND CHECKS.** Background checks of the contractor, or its employees and/or subcontractors may be conducted at the discretion of the County after the contractor identifies those persons who will be working under the contract. When this occurs, the contractor shall not send any workers to the job site whose information has not been provided for the County's background check. The background checks will be paid for by the County. If it is determined, in the County's sole judgment, that an individual is not suitable due to the results of a background check, the County has right of refusal for that individual. If the contractor needs to have materials delivered to the job site, deliveries from outside vendors must be approved in advance by the Department.
- 9y. CONTRACT ALTERATIONS:** The contract documents set forth the entire agreement between the County and the contractor. The County and the contractor agree that no representative or agent of either of them has made any representation or promise with respect to the parties' agreement which is not contained in the contract documents. No contract document may be amended unless in writing, signed by the parties hereto, and approved as to form by the County Attorney.
- 9z. CONTRACTUAL DISPUTES.**
 - A. Any dispute concerning a question of fact as a result of the contract shall be decided by the County Administrator, or designee, who shall render his/her decision in writing and mail or otherwise forward a copy to the contractor within 90 days of the receipt of the claim. The decision of the County Administrator, or designee, shall be final and conclusive unless the contractor appeals the decision as provided in the Code of Virginia (1950, as amended). The contractor may not institute a legal action, prior to receipt of the County Administrator's, or his/her designee, decision on the claim, unless the County Administrator, or designee, fails to render such a decision within the time specified.
 - B. The Contractor's contractual claims, whether for money or other relief, shall be submitted in writing to the County Administrator, or designee, no later than 60 days after the final payment; however, written notice of the contractor's intention to file such a claim shall have been given at the time of the occurrence or beginning of the work upon which claim is based. Nothing herein shall preclude the contractor from

submission of an invoice for final payment within a certain amount of time after completion and acceptance of the goods and/or services. Pendency of claims shall not delay payment of amounts agreed due in the invoice for final payment.

9aa. FORCE MAJEURE.

- A. A party is not liable for failure to perform the party's obligations if such failure is as a result of acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster); federal, state, or locally declared a state of emergency; war; invasion; act of foreign enemies; hostilities (regardless of whether war is declared); civil war; rebellion, revolution, insurrection, military or usurped power or confiscation; terrorist activities; nationalization; government sanction; blockage; embargo; strikes at national level or industrial disputes at a national level or strike or industrial disputes by labor not employed by the affected party, its subcontractors or its suppliers and which affect an essential portion of the contracted for works but excluding any industrial dispute which is specific to the performance of the works or the contract; or the interruption or failure of electricity or telephone service.
- B. If a party asserts force majeure as an excuse for failure to perform the party's obligation, that party must immediately notify the other party in writing giving full particulars of the event of force majeure and the reasons for the event of force majeure preventing that party from, or delaying that party in performing its obligations under the contract and that party must use its reasonable efforts to mitigate the effect of the event of force majeure upon its or their performance of the contract and to fulfill its or their obligations under the Contract.
- C. An event of force majeure does not relieve a party from liability for an obligation which arose before the occurrence of that event, nor does that event affect the obligation to pay money in a timely manner which matured prior to the occurrence of that event. Contractor has no entitlement and County has no liability for: (1) any costs, losses, expenses, damages or the payment of any part of the contract price during an event of force majeure; and (2) any delay costs in any way incurred by the Contractor due to an event of force majeure.

9bb. LEGAL ACTION. No bidder or potential bidder, or contractor shall institute any legal action until all statutory requirements have been met.

9cc. VENUE. The contract and its terms, including but not limited to, the parties' obligations, the performance due, and the remedies available to each party, are governed, construed, and interpreted in accordance with the laws of the Commonwealth of Virginia. Any jurisdiction's choice of law, conflicts of laws, rules, or provisions that would cause the application of any laws other than those of the Commonwealth of Virginia do not apply. Any and all disputes, claims, and causes of action arising out of or in any way connected with the contract or its performance must be brought in the applicable court of Stafford County, or in the United States District Court for the Eastern District of Virginia, Alexandria Division.

9dd. SEVERABILITY. In the event that any provision shall be adjudged or decreed to be invalid, by a court of competent jurisdiction, such ruling shall not invalidate the entire Contract but shall pertain only to the provision in question and the remaining provisions shall continue to be valid, binding and in full force and effect.

9ee. WAIVER. No waiver of any provision of the Contract shall constitute a waiver of any

other provision nor shall any waiver of the contract constitute a continuing waiver unless otherwise expressly provided.

9ff. NOTICES. Any questions pertaining to the Contract shall be directed to the Stafford County Procurement Office. Unless otherwise provided herein, all notices and other communications required by the contract shall be deemed to have been given when made in writing and either (a) delivered in person, (b) delivered by an agent, such as an overnight or similar delivery service, or (c) deposited in the United States mail, postage prepaid, certified or registered, address listed on the front page cover of this IFB. Notice is deemed to have been received: (i) on the date of delivery if delivered in person; (ii) on the first business day after the date of delivery if sent by same day or overnight courier service; or (iii) on the third business day after the date of mailing, if sent by certified or registered United States Mail, return receipt requested, postage and charges prepaid.

9gg. SURVIVAL OF TERMS. Upon discharge of the Contract by termination or expiration, terms and conditions related to Insurance, Indemnification, Warranty, Disputes, Notice, and Governing Law, Venue, and Jurisdiction shall continue and survive in full force and effect.

9hh. GRANT AND FEDERAL FUNDS PROVISION. When a project or purchase of goods and services is funded in part or all by grant funds, the Contractor shall observe all rules and regulations according to the grant fund award documentation. Contractor has the responsibility to comply with all grant fund reporting requirements and any or all award documentation terms and conditions. In addition, the project or purchase of goods or services funded in whole or in part by the federal government are subject to the requirements of 2 C.F.R. §§ 200.317 – 200.326 and 2. C.F.R. Part 200, Appendix II, as amended.

10. SPECIAL TERMS AND CONDITIONS

INTENTIONALLY OMITTED

11. REFERENCES

The bidder is required to state, in detail, in the space provided below what work of a character similar to that included in the proposed Contract has been done, to give references and such other detailed information as will enable the County to judge his responsibility, experience, skill and financial standing. Bids from Contractors inexperienced in this particular type of work will not be considered.

Please provide in the spaces below, the name(s) of the project(s), a point of contact for each project, and current contact information for the point of contact.

1. _____

2. _____

3. _____

4. _____

5. _____

12. TRADE SECRETS/PROPRIETARY INFORMATION IDENTIFICATION

IF NO PROTECTION IS NEEDED STATE “N/A” ON THE TABLE BELOW AND SIGN.

Trade secrets or proprietary information submitted by any Bidder/Offeror in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act, however, the Bidder/Offeror must invoke the protection of §2.2-4342(F) of the Code of Virginia, in writing, prior to or upon submission of the data or other materials, and must clearly and specifically identify the data or other materials to be protected, and state the reasons why protection is necessary. **The proprietary or trade secret material submitted must be identified by the Bidder/Offeror on the table below.** If the Bidder/Offeror fails to identify any protected information on the table below, the Bidder/Offeror by return of this form, hereby releases the County and all of its employees from any and all claims, damages, demands or liabilities associated with the County’s release of such information, and agrees to indemnify it for all costs, expenses and attorney’s fees incurred by the County as a result of any claims made by Bidder/Offeror regarding the release of such information. By submitting its bid or proposal, Bidder/Offeror understands and agrees that any language seeking protection from public disclosure, any specific documents or information, unless identified on the table below, are null and void and of no legal or binding effect on the County. The classification of line item prices, and/or total bid prices as proprietary or trade secrets is not acceptable. If, after being given reasonable time, the Bidder/Offeror refuses to withdraw such a classification designation, the bid/proposal will be rejected.

SECTION/TITLE	PAGE NUMBER(S)	REASON(S) FOR WITHHOLDING FROM DISCLOSURE

By (Signature in Ink) _____ Date: _____

Name (print) _____ Title (print) _____

13. SMALL AND MINORITY BUSINESS ENTERPRISES

The Procurement Policies and Regulations of Stafford County, Virginia and relevant Federal and State Laws, Orders and Regulations, require Stafford County to ensure that its procurement practices are non-discriminatory and promote equality of opportunity for Small, Women-Owned, Minority-Owned, and Service Disabled Veteran-Owned (SWaM) Business Enterprises.

Definitions:

1. Small Business:

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

2. SWaM Business:

A business entity which is operated and controlled by a SWaM entity.

- (a) The terms "operated and controlled" shall mean that the managerial and official staff of this entity shall be comprised of minority persons, sufficient in ratio and gross earnings to demonstrate that the business transactions are, in fact, controlled by minority persons; and that the primary power, direct or indirect, to influence the management of this entity shall rest with minority persons or a corporation, partnership, or sole proprietorship in which minority persons collectively own operate, control and share in earnings of fifty one (51%) percent or more of such an enterprise.
- (b) SWaM entities shall be defined as provided in Virginia Code § 2.2-4310, as amended.

PLEASE CHECK THE FOLLOWING INFORMATION RELEVANT TO YOUR FIRM:

SWaM Business Firm:	Yes _____	No _____
Small Business Firm:	Yes _____	No _____

The above information is requested for statistical purposes only. All firms tendering responses will receive equal consideration for award.

CONTACT FOR ADMINISTRATION:

NAME: _____

ADDRESS (OFFICE): _____

TELEPHONE (OFFICE): _____

14. VIRGINIA STATE CORPORATION COMMISSION (SCC) REGISTRATION INFORMATION.

The Bidder, _____:

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

_____ **-OR-**

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

is an out-of-state business entity that does not regularly and continuously maintain as part of its ordinary and customary business any employees, agents, offices, facilities, or inventories in Virginia (not counting any employees or agents in Virginia who merely solicit orders that require acceptance outside Virginia before they become contracts, and not counting any incidental presence of the 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 offeror's out-of-state location) **-OR-**

is an out-of-state business entity that is including with this proposal 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):

Authorized Signature

Date

Title

[END OF INVITATION FOR BID]