

# HAMPTON VA

## REQUEST FOR PROPOSALS – NON-PROFESSIONAL SERVICES

<b>ISSUE DATE:</b> August 10, 2021	<b>RFP #:</b> 22-09TM	<b>NGIP CODE:</b> 95983, 96113
<b>DATE/TIME OF CLOSING:</b> November 2, 2021 at 10:00 AM	<b>BUYER NAME:</b> Tammy Martin	<b>COMMODITY:</b> Harbor Tour-Boat Service
<b>THE CITY OF HAMPTON IS SEEKING PROPOSALS FROM QUALIFIED OFFERORS TO PROVIDE SECURE TOUR BOAT OPERATIONS AND SERVICES TO FULFILL THE ROLE OF THE CITY OF HAMPTON'S OFFICIAL HARBOR TOUR PROUDCT AND VESSEL.</b>		
ACKNOWLEDGE RECEIPT OF ATTACHMENTS: A _____ B _____ C _____ D _____ E _____ (Please initial)		
ACKNOWLEDGE RECEIPT OF ADDENDUM (S): 1 _____ 2 _____ 3 _____ 4 _____ (Please initial)		
Pre-Proposal Conference –		
<b>OFFEROR NAME:</b>		

**COMPETITIVE NEGOTIATION.** This Request for Proposals (“RFP”) is subject to the competitive negotiation provisions outlined in Virginia Code §2.2-4302.2. In addition, **the City requires that proposals be sealed.** Sealed proposals will be received in the Issuing Office until Closing Date and Closing Time as specified in this solicitation including any addenda issued by this office. **Proposals received by telephone, email, facsimile, or any other means of electronic transfer will not be accepted** The City of Hampton is not responsible for late delivery by the United States Postal Service or any other courier. All inquiries for information regarding this RFP are to be directed to the Issuing Office as defined herein.

**THIS IS NOT AN ORDER.** The City of Hampton, hereafter referred to as “the City”, reserves the right to accept or reject any and all proposals in whole or in part and waives any informality in the competitive negotiation process. Further, the City reserves the right to enter into any one or more contracts deemed to be in its best interest. The entire contents of the RFP, and addenda, offeror’s proposal and negotiated changes shall be incorporated by reference into any resulting contract.

**The City of Hampton does not discriminate against faith-based organizations or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment in the performance of its procurement activity.**

**Offeror Information:**

Name of Offeror: \_\_\_\_\_ Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Email Address: \_\_\_\_\_ State Corporation Commission ID: \_\_\_\_\_

City of Hampton Business Prof. License Tax No.: \_\_\_\_\_

Federal Tax Identification Number: \_\_\_\_\_; **OR** Social Security Number (Sole Proprietor): \_\_\_\_\_

**NOTE: Numbers identified as social security numbers will be redacted in public documents.**

**Business Classification:**

Is Offeror a "minority" business?  Yes  No

African American  Hispanic American  Native American  Asian American

Other; Please Explain: \_\_\_\_\_

Is Offeror Woman Owned?  Yes  No

Is Offeror a Small Business?  Yes  No

Is Offeror a Faith-Based Organization?  Yes  No

Is Offeror a Disabled Veteran Business? (for informational purposes only)  Yes  No

**Check One:**  **INDIVIDUAL**  **PARTNERSHIP**  **CORPORATION**  **LLC**

**State in which Registered or Incorporated** \_\_\_\_\_

**By signing this proposal, Offeror certifies, acknowledges, understands, and agrees to be bound by the conditions set forth above, in the Proposal Terms and Conditions, and General Terms and Conditions as described in Attachment A.**

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

Issuing Office: Wherever used in this Request for Proposal, the Issuing Office Will Be:

Tammy Martin, Senior Buyer Phone: 757-727-2205  
Consolidated Procurement Division  
1 Franklin Street, Suite 345 Email: tmartin@hampton.gov  
Hampton, Virginia 23669

Wherever used in this Request for Proposal, the City Contract Administrator will be:

Mary Fugere Phone: 757-722-1222  
Hampton Convention & Visitor Bureau  
1919 Commerce Drive, Ste 290 Email: mary@hamptoncvb.com  
Hampton, VA 23669

## I. BACKGROUND

### Hampton, Virginia

Hampton is an independent city located in Virginia. It is on the southern end of the Virginia Peninsula, bordering the Chesapeake Bay. The City has a total area of 136.2 miles; 51.8 miles of it is land and 84.4 miles of it is water, with a total population of 137,436.

The City boasts a strong military and technology presence. Langley Air Force Base is home of the First Fighter Wing. NASA Langley Research Center, where America's first astronauts were trained, is now a major center for aviation research. Large employers include companies such as Alcoa Howmet, Craft Machine Works, Measurement Specialists, Inc., Sprint, and Verizon Communications. The City is also home to multiple medical facilities including Riverside Regional Medical Center, Sentara Healthcare, and the Hampton Veteran's Administration Medical Center. Hampton offers multiple higher education opportunities including Hampton University, Thomas Nelson Community College, Old Dominion University's Peninsula Higher Education Center, and the National Institute of Aerospace. More information about business opportunities and growth in Hampton can be found in the Hampton Community Profile, which may be accessed via the following link:

<http://www.hampton.gov/498/Community-Profile>

The City is served by two airports. The primary airport for the Hampton Roads area is Norfolk International Airport, on the opposite side of Hampton Roads in Norfolk. The region's secondary airport, Newport News/Williamsburg International Airport, is located on the Virginia Peninsula in Newport News.

Hampton is part of a dynamic metropolitan region. Besides Hampton, the region contains four other cities with populations greater than 100,000. Hampton Roads now has a population of more than 1.7 million and is the 37th largest MSA in the nation. Its effective buying power (EBI) according to Sales, Marketing and Management is more than \$20.8 billion.

Demographically, Hampton is in many ways typical of metropolitan America. Within its boundaries it contains an urban core, a ring of older, settled neighborhoods and newer suburban development. Its citizens' age, educational, occupational and socio-economic characteristics by and large reflect the typical American demographic profile. The City's demographic data may be accessed by the hyperlink: <http://hampton.gov/90/Demographics>

## II. PROPOSAL TERMS AND CONDITIONS

**A. Contract Documents.** This RFP, its addenda(s), Offeror's proposal, any additional information requested, negotiated changes, and the final awarded contract will constitute the final contract hereafter referred to as the "Contract". These documents will be incorporated by reference into the City Purchase Order(s) that award the Contract. The Contract shall be governed by the contract documents in the following order of precedence:

1. The final negotiated Contract
2. The RFP, its attachments, and its addenda
3. Any negotiated changes to the foregoing documents
4. Offeror's proposal

In the event that there is a Conflict between this RFP, its attachments and addenda, Bidder's Bid, or any related documents and the final negotiated Contract, the final negotiated Contract shall supersede and control.

- B. Copies of Contract Documents.** If Offeror is awarded the Contract, Offeror will receive electronic copies of all documents. All original documents will be maintained at the Issuing Office. If Offeror requires a certified copy of any document to which Offeror is entitled, the Issuing Office will accommodate that request.
- C. Proposal Binding for One Hundred Twenty (120) Days.** Offeror agrees that its proposal shall be binding and may not be withdrawn for a period of one hundred twenty (120) calendar days after the scheduled closing date of this RFP.
- D. Proprietary Information/Non-Disclosure.** Offeror is advised that the Virginia Public Procurement Act (Section 2.2-4342, Code of Virginia, 1950 as amended) shall govern public inspection of all records submitted by Offeror.

1. Offeror may invoke the protections of §2.2-4342 of the Code of Virginia to protect trade secrets, proprietary information and other confidential information provided by the Offeror:
  - i. Invoke the protections of this Section *prior to, or upon submission* of, the data or other materials.
  - ii. Provide a statement that identifies the data or other materials to be protected and that states the reasons why protection is necessary.
  - iii. Submit trade secrets or other proprietary information under separate cover in a sealed envelope clearly marked “**PROPRIETARY**”.
  - iv. References to the proprietary information may be made within the body of the proposal; however, all information contained within the body of the proposal shall be public information in accordance with State statutes.
  - v. An all-inclusive statement that the entire proposal is proprietary is unacceptable. A statement that Offeror’s costs and/or proposal pricing are to be protected is unacceptable. Offeror will be requested to remove any such statement(s) in order to be eligible for further consideration.
2. The City reserves the right to submit such information to the City Attorney for concurrence of the Offeror’s claim that it is in fact proprietary. Information submitted that does not meet the above requirements will be considered public information in accordance with the VFOIA.

- D. Offeror Obligation.** Offeror shall carefully examine the contents of this RFP and any subsequent addenda(s). Failure to do so shall not relieve the Offeror of its obligation to fulfill the requirements of any contract awarded as a result of this RFP.
- E. Conditions of Work.** Offeror shall inform itself fully of the conditions related to services required herein. Failure to do so will not relieve an Offeror of the obligation to furnish all goods and/or services necessary to carry out the provisions of the Contract.
- F. Cooperative Procurement.** Section 2.2-4304 Code of Virginia (VPPA) will apply to this solicitation. Other Public Bodies may utilize any contract(s) issued pursuant to this solicitation by placing its own order(s) directly with the Contractor(s) awarded the Contract(s). The City of Hampton acts only as the issuing agent and is not responsible for placement of orders, payment or discrepancies of other participating Public Bodies.
- G. Offeror Representations and Acknowledgements.** The attached “Offeror Representations and Acknowledgements” at Attachment C to this RFP, shall be executed by Offeror and is to be submitted with Offeror’s Proposal. The requirements set forth on said form shall be considered to be binding terms and conditions in any contract resulting from this RFP. A contract will not be awarded to an Offeror who has not signed the Offeror Representations and Acknowledgements.

**SCOPE OF CONTRACT.** The purpose of the Request for Proposal (RFP) is to secure tour boat operations and services to fulfill the role of the City of Hampton's official harbor tour product and vessel. The contractor should be extensively experienced in the operation of commercial boat tours.

- A. Contractor shall provide professional, consistently-operated tour service between the Hampton Public Pier, Hampton River, the Hampton Roads Harbor, and Norfolk Naval Base on points of interest between each of these notable sites. Fort Wool and Fort Monroe may also become future sites of passenger embarkation and debarkation.
- B. Departing from and returning to Downtown Hampton, boat tours of the Hampton River, Hampton Roads Harbor, Fort Wool (provided the island fort is accessible) and Norfolk Naval Base are to be offered on Tuesday through Sunday during the months of April through October. Daily operation of tours shall occur Memorial Day through Labor Day. The number of tours may be discussed; a minimum of one public tour should be offered daily, time of day to be determined by both the City and selected Contractor. From mid-April to Memorial Day and Labor Day through mid-October (and beyond if Contractor wishes to extend season) will consist of tours operating Tuesday through Saturday at a mutually agreed-upon time. Additional trips may be added at Contractor’s and City’s agreement. A two-hour tour length is preferable.
- C. Additional trips and tour times may be scheduled according to market demand and at and at Contractor’s discretion. Vessel shall be docked at the Hampton Public Pier in Downtown Hampton from April 1 to October 31 inclusive each year and available for group tours, schools, and special charters.

- D. In the case of inclement weather, Contractor may cancel the day's excursion, advising the City of their intentions in advance.
- E. Director of the Hampton Convention & Visitor Bureau, the administrator for this contract on behalf of the City, **will approve all Contractor admission rates on an annual basis.** Any modification of operating schedule, the number of trips, rates, etc., will require authorization by the Director of the Hampton Convention & Visitor Bureau. The City reserves the right to contract with a fast ferry or charter fishing services and any other maritime services that would serve as beneficial Hampton visitor experiences. Contractor is allowed complimentary docking space at Hampton Public Pier, as Contractor is required to base harbor tour operations at this location.
- F. Contractor agrees to provide Coast Guard approved, seaworthy vessels to meet the obligations of this RFP and to meet public demand. All vessels operated in fulfillment of RFP must load and unload from the Hampton Public Pier. Contractor may provide its own vessels or contract with other boat providers in order to meet public demand and fulfill agreement. If public demand consistently exceeds tour capacity, scheduling of additional tours may be discussed and determined necessary.
- G. If Contractor subcontracts a vessel or vessels to fulfill or to supplement passenger service from the Hampton Public Pier as part of the agreement, the subcontracted vessels will be subject to the same terms of operation and amusement tax as Contractor. If Contractor has not subcontracted vessel, full pickup and discharge rates, sales and amusement taxes, will apply.
- H. Contractor and City will closely monitor passenger counts as well as charters to determine whether Contractor is satisfactorily providing the required harbor tour services. In the event the Director of the Hampton Convention & Visitor Bureau asserts that Contractor is not meeting Visitor and City expectations, Contractor will be given thirty (30) days written notice to correct service and vessel deficiencies. If after thirty days issues of concern have not been corrected to the satisfaction of the director of Hampton Convention & Visitor Bureau, the agreement may be terminated and the City may procure other vessels to meet visitor demands. All vessels shall meet requirements set forth herein.
- I. Contractor shall assign only competent, qualified, presentable and capable persons to operate the boat and provide tours. Duties include communicating with professionalism, demonstration of exceptional customer service, and Hampton and achieving and maintaining a positive image for the benefit of the City at all times.
- J. Contractor agrees that in performing its obligations under the agreement it will not retain employees who fail to perform their duties.
- K. Director of Hampton Convention & Visitor Bureau must approve the historic content of the harbor tour narrative prior to commencement of tours in April. Historic content should include: colonial history and African American heritage; Hampton maritime and seafood history; significance of the Virginia Air & Space Science Center and NASA Langley in Hampton; Hampton University's legacy and overview of the buildings that can be seen from the Hampton River; the VA Medical Center; Fort Monroe and the activities available to visitors at the Fort; Fort Wool's history and overview of the structures on the island; Battle of the Ironclads; the ships, submarines, and carriers berthed at Naval Station Norfolk; and other notable Hampton and regional icons seen in Hampton Roads.
- L. Contractor shall designate a single representative point of contact for the duration of the agreement with the City. The designated contact person and telephone number(s) shall be listed on the last page of this contract and individual shall be available to the City if they are called upon.
- M. Contractor will maintain visitor information for harbor tour and other visitor attractions and activities, in effect performing the function of a Hampton "Visitor Center" in the Hampton Maritime Center building. This is to include, but is not limited to, providing directions, presenting brochures and maps, and answering guests' questions

N. . April 15 through October 1, the visitor services hours of operation are 9 am – 4pm. The remainder of the year, visitor information services will be extended to walk-in guest Tuesday through Saturday 10am - 2pm. Contractor agrees to assign staff that are sufficiently knowledgeable of Hampton visitor sites and experiences, and are capable of providing the required Visitor Center services with utmost professionalism and accuracy.

O. Contractor shall collect and provide data reflecting usage/attendance statistics as requested by the Hampton Convention & visitor Bureau such as, but not limited to, number of passengers by ticket category (such as adult, senior, children, military, Sea to Stars etc.), number of motor coaches, private charters monthly, etc., and number of walk-in visitors assisted.

**P. Criteria for Selection**

1. Proposals will be evaluated based on Demonstrated Experience, Capabilities & Skill, Product and Services, Price Value, and SWAM as specified herein, see below.

**Q. Fort Wool**

1. **At this time, Fort Wool is not accessible to visitors.**

2.

3. Before Fort Wool may be included in the Hampton harbor tour experience by Contractor, City must authorize Fort Wool's accessibility and availability to the City of Hampton and its agents. Unless the Hampton Convention & Visitor Bureau director grants approval for vessel to dock and offload guests at Fort Wool, Contractor must limit the sharing of the Fort Wool narrative to the confines of the harbor tour vessel as part of the regular tour narrative.

4. Staffing and security at Fort Wool during tour season remain the responsibility of the City and are at the discretion of the Director of Hampton Parks, Recreation & Leisure Services, with involvement of the Director of Hampton History Museum. Pending approved access to Fort Wool, Contractor is responsible for providing guided tours of Fort Wool. Contractor is responsible for staff and security at the point of boat arrival and departure at Fort Wool.

5. Neither the City nor Contractor shall be responsible to each other for any personal property left at Fort Wool or at the point of departure.

**R. Docking Facilities**

1. City will provide Contractor adequate year-round berthing facilities on the downtown waterfront at no cost.

2. Contractor acknowledges that Coast Guard/Police/Rescue vessels may occasionally require emergency dockage at Hampton Public Pier, resulting in the temporary displacement of the Contractor's vessel. Contractor agrees to coordinate dockage with those involved to minimize inconvenience and promote public safety.

3. City agrees to maintain the Contractor's docking area to adequately handle the landing, docking, and mooring of Contractor's vessel. City (and its contracted agent) shall be responsible at all times for timely and proper maintenance of the Hampton Public Pier dockage, and all associated shore facilities related to the berthing of the vessel covered by this RFP. This applies only to the extent of normal and ordinary maintenance and not that caused by the negligence or intentional conduct of Contractor or others. Any inadequacy of such normal upkeep of facilities noted by Contractor shall promptly be reported to the City through the Director of the Hampton Convention & Visitor Bureau. Any such normal repairs or maintenance, whether they are contractor requested or City initiated, shall be expeditiously undertaken. City shall incur no liability for interruption of Contractor's activities or business operation. City

acknowledges Contractor may acquire a larger vessel at a future date and will work with Contractor to accommodate a new vessel at the existing dock facilities or on the downtown waterfront at a mutually agreed up location.

4. At its own cost and expense, Contractor shall provide all tackle, boarding ramps, gear and labor for the docking and mooring of its vessel at Hampton Public Pier. Contractor shall provide at its own expense all necessary appliances and equipment to conduct business operations, and shall employ staff required for the comfortable accommodation of passengers.
5. City will maintain adequate, convenient and safe ingress and egress to the Contractor docking area for Contractor and passengers. Such access shall remain subject to appropriate regulation by the City. Permission is granted to Contractor to use a small utility vehicle for deliveries of light materials, supplies, etc. (not for passengers) on Hampton Public Pier, subject to reasonable regulations by the City.
6. Should access be granted, there are adequate docking facilities at Fort Wool for loading and unloading of boat passengers. Contractor acknowledges that other City-owned boats and Coast Guard vessels may dock at Fort Wool as required and will work cooperatively with those involved to minimize inconveniences. Contractor and City will coordinate third-party tour boat visitation at Fort Wool to ensure guest safety and manage customer expectations.

#### **R. Office/Operations Facility**

1. Space for Ticket sales and business office will be provided to Contractor on land-side of Hampton Maritime Center, 710 Settlers Landing Road, Hampton VA 23669. Hampton Maritime Center is administered by Hampton Convention & Visitor Bureau.
2. Gift shop merchandise displayed by Contractor must be limited to area designated as Contractor's sales and business office.
3. Contractor must take care to present a professional workspace so that the public's view of the work-area from inside and outside of Hampton Maritime Center creates a positive impression.

#### **S. Concessions**

1. Selected Contractor will provide food and beverage service on its vessels used to carry passengers between Hampton River, Fort Wool and Norfolk Naval Base. If alcoholic beverages are served, required licensing from the Commonwealth of Virginia applies.
2. All food service operations shall comply with Commonwealth and local health regulations; shall be subject to sales taxation; and shall be accurately reported to the City.
3. Contractor shall be fully responsible for trash, litter control and disposal of waste generated by its food service operations and shall maintain adequate containers for trash on board each vessel.

#### **T. Marketing**

1. Hampton Convention & Visitor Bureau will work collaboratively with Contractor on cooperative marketing initiatives up to a mutually agreed upon amount each year this agreement is in effect. City will when appropriate include Contractor, harbor tours and Fort Wool in its normal advertising and marketing programs, and will dedicate advertising and marketing strategies in support of Contractor and harbor tours. Special promotions may require discounted pricing or concession provided by Contractor; all promotions benefitting the harbor tour Contractor will be subject to Contractor agreement.
2. Each year during the term hereof, Contractor agrees to provide and distribute a brochure, run newspaper ads, direct mailings, and actively market boat trips to group tours, schools, travel agents, bus tour companies, conventions, hotels, motels, etc. Hampton Convention & Visitor Bureau agree to support Contractor's marketing efforts.

**U. Miscellaneous**

1. Nothing contained herein shall constitute an agency or employment relationship between the City and the Contractor, or between the City and any of Contractor's employees, agents or officers. Contractor shall remain an independent contractor who shall perform its obligations under the agreement on behalf of the City but not under the City's day-to-day direction or control.

**V. Liability and Insurance**

1. Contractor shall at all times obey and comply with all lawful requirements, orders, rules, regulations, laws and ordinances of all legally constituted public authorities in any way affecting its operation or said demise premises. In the event its vessel sustains disabling damage, Contractor agrees at its own expense to seek any appropriate reimbursements, to remove disabled vessel and its cargo, and to leave the dock, slip and approaches thereto by land and by water, free of any wreckage, whether of the vessel or its cargo. Contractor will adhere to this requirement regardless of how damage was sustained. City shall provide dockside sewage pump-out service at no cost to Contractor.
2. Contractor shall protect, defend, and save harmless City from all losses or claims arising because of spillage of waste materials, liquids, or fuels while loading/unloading or on the high seas operating on the area's waters.
3. Selected Contractor shall protect, defend, and save harmless the City from and against any and all losses, including claims for physical damage to property, bodily injury or death to any person or persons, and claims of any other nature, which may arise or be caused by Contractor during boarding, off-loading, and vessel operation. This also applies to any claim resulting from food and beverages purchased or related activities aboard vessel.
4. Selected Contractor shall maintain all insurance requirements listed below. The insurance policy shall include a municipal endorsement naming the City as additionally insured under the terms of the policy for all tour boat operations under the agreement. Contractor shall submit a Certificate of Insurance annually prior to the start of each season with municipal endorsement attached, to City through the Director of the Hampton Convention & Visitor Bureau.

**W. General Operating Conditions**

All Contractor vessels shall be Coast Guard inspected and approved, and operated by licensed staff. A copy of the Coast Guard inspection results is to be sent to the Director of the Hampton Convention & Visitor Bureau prior to the start of the season.

**X. Special Promotions**

Four times yearly, Hampton Convention & Visitor Bureau reserves the right to book the tour boat for special promotions, at a special fee of \$300 per two-hour charter. Contractor may opt to provide boat and services on a complementary basis.

**Y. Termination by Selected Contractor**

In the event the Contractor shall not generate Ticket Income for any calendar year period, provided they operated for a full harbor tour season (April through October), during the term of the agreement equal to or more than ONE HUNDRED THIRTY THOUSAND DOLLARS (\$130,000.00), the Contractor may elect to terminate the agreement by providing written notice to the City between September 15 and November 1 of that calendar year. In the event the Contractor shall provide such written notice, the agreement shall be terminated without further liability on the part of one party to the other, with the exception of any claims arising prior to the date of such determination on the part of one party to the other.



### III. INSTRUCTIONS TO OFFERORS

- A. Contact with City/City Staff, Representatives, and/or Agents.** Direct contact with City staff, representatives, and/or agents other than the Consolidated Procurement Division staff on the subject of this RFP or any subject related to this RFP is expressly prohibited except with the prior knowledge and
- B. Questions.** Offerors must submit questions regarding the RFP in writing to the Issuing Office via fax (757) 727-2207 or email questions to [tmartin@hampton.gov](mailto:tmartin@hampton.gov) no later than 4:30 PM EST on September 16, 2021. Necessary replies will be issued to all Offerors of Record as addenda that shall become part of the contract documents. Oral instructions do not form a part of the proposal documents. Offeror is responsible for checking website <http://www.Hampton.gov/bids-contracts> or contacting the Issuing Office within 48 hours prior to proposal closing to secure any addenda issued for this RFP.
- C. Changes or Modifications.** Changes or modifications to this RFP made prior to the date and time of closing will be addressed by addenda from the Issuing Office. Offerors are to acknowledge receipt of addenda in the space provided on the cover page of this RFP. Oral communications are not a part of the proposal documents. This RFP and any addenda shall be incorporated, by reference, into any resulting contract.
- D. RFP Closing.** Offeror shall ensure its sealed proposal is time stamped by the Issuing Office no later than the Closing Date and Time shown on the cover page of the RFP. Proposals received after the specified date and time (time stamped 10:01 AM or later) will not be considered and will be returned to the Offeror unopened.
- E. Proposal Submittal Requirements:**
1. Each proposal submission shall be submitted to the Issuing Office and shall include the following:
    - i. Pages 1-2 of this RFP and it will contain:
      - a. Original signature of an agent authorized to bind the company
      - b. Requested contact information
      - c. Company Federal Employer Identification Number
      - d. Acknowledgement of any addenda received
    - ii. Proposals are to be organized according to the following tabs:
      - a. Tab 1 - Experience
      - b. Tab 2 - Capabilities and Skills
      - c. Tab 3 - Services to be Provided
      - d. Tab 4 – Costs
      - e. Tab 5 - Exceptions
      - f. Tab 6 - Proposed Alternatives to the City Requirements
      - g. Tab 7 –Small, Minority and Woman Owned Business participation
    - iii. All proposal pages must be numbered
    - iv. Attachments:
      - a. Attachments C Representations and Acknowledgements
  2. Proposals must be submitted utilizing the following requirements:
    - i. Offerors shall submit sealed proposals in a labeled envelope or package with the Request for Proposal's Item Number and the name and address of the Offeror. Proposals received by telephone, email, facsimile, or any other means of electronic transfer will not be accepted.
    - ii. Submit the original, one flash drive and one (1) copy of the proposal.
    - iii. All proposals must be received and time stamped in the Issuing Office no later than the Closing Date and Time shown on the cover page of this RFP. Any proposal received after the specified date and time (10:01 AM EST or later) will not be considered and will be returned to the Offeror unopened.
    - iv. Proposals must include all elements noted in the "Preparation of Proposals" section below.
    - v. If the proposal contains trade secrets and/or proprietary information, please submit proprietary information or trade secrets in a separate envelope and mark it "proprietary." Any information

included in the envelope, shall be conspicuously labeled 'proprietary in red ink at the top of each page. Please note in your proposal where information has been included in the separate proprietary envelope and include a statement setting forth the basis for protection of proprietary information, if any, as detailed in the "Proprietary Information/Disclosure" section.

3. Offerors are encouraged to submit proposals on recycled paper.
4. Offerors should be thorough in addressing the Specific Requirements and the Proposal Submittal Requirements as outlined in this RFP.

#### **F. Proposal Content Evaluation**

1. Experience - Provide a concise description of all work experiences as they relate to the scope of work outlined herein. Said description should include, but not be limited to:
  - i. Offeror's established experience record in providing comparable services to organizations similar to the City of Hampton.
  - ii. Number and types of customers the Offeror has served with comparable services.
  - iii. Number of years Offeror has been providing these types of services.
  - iv. A minimum of five (5) references for which Offeror has completed services comparable to those described in this RFP. Include references for work performed in an environment comparable to the City of Hampton. For each reference, detail:
    - a. Name of firm
    - b. Address of firm
    - c. Name, title, address, email address, telephone and fax numbers of a contact for the firm
    - d. Number of years the Offeror has served the firm
    - e. Brief summary of scope of services provided to the firm
  - v. Other available documentation to verified Offeror's experience
  - vi. A statement detailing why the Offeror is the best candidate to provide the City of Hampton with the services requested in this RFP.
2. Capability and Skill - Describe the qualifications and skills of the organization to provide the services. Said description should provide, but not be limited to, the following information:
  - i. Background information about the organization, e.g., philosophy, ownership, size, facilities and locations, etc.
  - ii. Offerors management structure of the firm, e.g. organization chart of the firm, project team, etc.
  - iii. Size and location of the office that will serve the City of Hampton
  - iv. Offeror's qualifications to perform the services, including all resources available to Offeror for the performance of the Contract.
  - v. Qualifications and resumes of team members and other employees who will be managing and performing the services under the Contract. Projects and client services lists for team members may be submitted.
  - vi. Name, title, address, email address, telephone and fax numbers, and work hours of the Offeror's Representative for the following functions:
    - a. Contact person for prompt contract administration upon award of the Contract
    - b. Contact person during the period of evaluation
    - c. Authorized agent to accept any notices provided for in the Contract
  - vii. Indicate the type of organization you represent, i.e. individual, partnership or corporation. If the Offeror is a corporation, list the names of the President, Vice-President, Secretary, Treasurer and all Principals. If the Offeror is a partnership, include the names of all principals or partners.
  - viii. A detailed history of all mergers or acquisitions.
  - ix. A copy of the certificate verifying the firm is authorized to do business in the Commonwealth of Virginia, including State Corporation Commission Registration Number.
  - x. A copy of the Offeror's license to do business in Hampton, Virginia.
  - xi. If applicable - a detailed list of licenses held, including license class and number.
  - xii. Offeror's current financial condition. Provide supporting documentation and audited annual reports for the past three (3) years. If Offeror's company is privately held, supply sufficient information to document the company's financial status and capability to perform under the Contract. Include any financial ratings held by the firm.

- xiii. If Offeror intends to subcontract any part of the work under the Contract, indicate services to be subcontracted and subcontractor(s) to provide said services.
- 3. Services to be Provided - Provide a detailed description of the services to be provided under the Contract. Said description is to address, at a minimum:
  - i. An Introduction with an overview of Offeror's understanding of the scope of work and services to be provided.
  - ii. Best practice approaches to providing services to the City that enhance efficiency and effectiveness. Innovative solutions will be considered by the City.
  - iii. **EACH** of the *Specific Requirements* set forth under the *Scope of Work* specified in this RFP.
  - iv. A detail of any assistance, equipment, or other items the Offeror will require the City to furnish under the Contract.
  - v. A statement explaining why the Offeror's proposed solution would be the most advantageous to the City.
  - vi. Describe the one attribute that places the Offeror ahead of the competition.
- 4. Costs-Submit cost proposal to provide services specified. Offeror's prices will be subject to negotiations. After negotiations and award of this contract, Offeror's pricing for the services provided under this contract shall be a firm fixed price during the term of the contract and any extensions.
- 5. Exceptions/Alternatives.
  - i. Detail any exceptions taken to the *Scope of Work* and *Terms and Conditions* sections of this RFP. For each exception, specify the RFP page number, section number, and the exception taken. Offeror must not incorporate its standard contract document into its proposal, by reference or in full text, without listing each exception it represents to the terms and conditions of this RFP, as described in the *Exceptions/Alternatives* section of this RFP.
  - ii. Detail any proposed alternatives the City's requirements as outlined in this RFP.
- 6. Minority/Woman Owned Programs. Provide details about your status as a minority or woman owned business.

**G. Proposal Scoring.** The following numerical scale will be used to evaluate the proposal:

- 1. Exceptional (5): The submission exceeds expectations, excellent probability of success and in achieving all objectives. Very innovative.
- 2. Good (4): Very good probability of success. Achieves all objectives in reasonable fashion.
- 3. Acceptable (3): Has reasonable probability of success. Some objectives may not be met.
- 4. Poor (2): Falls short of expectations and has a low probability of success.
- 5. Unacceptable (1): Submission fails to meet requirements and the approach has no probability of success.

Criteria	Percentage/Number
Experience	25%
Capability and Skills	25%
Services to Be Provided	25%
Costs	20%
Minority/Woman Owned	5%

**H. Procedure for Evaluation of Proposals**

- 1. After the proposal opening, the City will select for further consideration two or more Offerors deemed to be fully qualified and best suited among those submitting proposals based on Offerors' responses to the information requested in this RFP.
  - i. The City may, in its sole discretion, determine in writing that only one offeror is fully qualified or is clearly more highly qualified and suitable than others under consideration, and may negotiate and award the Contract to that Offeror.
- 2. Based on the initial evaluation, the City may request the selected Offerors to make oral presentations. Thereafter, the City will conduct negotiations with each of the selected short-listed Offerors. Individuals

representing the Offeror during negotiations shall have the authority to negotiate and contractually bind the company to a contract.

- i. If in the City's opinion, presentations or demonstrations of the Offeror's proposed system's features and capabilities are warranted, the City will notify the appropriate Offerors. Such presentation or demonstration will be at the City site at a date and time mutually agreed to between the City and Offeror and will be at the Offeror's expense.
3. The City shall negotiate with Offerors, beginning with the Offeror ranked first. If a contract satisfactory and advantageous to the public body can be negotiated at a price considered fair and reasonable and pursuant to contractual terms and conditions acceptable to the public body, the award shall be made to that Offeror. If not, negotiations with the Offeror ranked first shall be formally terminated and negotiations shall be conducted with Offeror ranked second.
  - i. This process shall continue until a contract acceptable to the City can be negotiated and awarded. Note that negotiations may result in the award of multiple contracts. In that case, negotiations with prior Offerors may not be formally terminated before negotiations begin with a subsequently ranked Offeror.
4. The City is not required to furnish a statement of the reason(s) why a proposal was not deemed to be the most advantageous.

#### **I. Award**

1. The City intends to award the Contract to a fully qualified Offeror submitting the best proposal based on the criteria set forth herein and as determined by the City in its sole discretion.
  - i. Split Awards: At the City's sole discretion, the City may reject any or all proposals in whole or in part if such action is determined to be in the City's best interest.
  - ii. Multiple Awards: The City reserves the right to make awards under this RFP to more than one Offeror if the City determines that doing so is in the best interests of the City. If the City makes multiple awards under this solicitation, each Contract awarded will specify the portion of the scope of services awarded to each Offeror.
2. Any contract resulting from this RFP will be publicly posted for inspection in the Consolidated Procurement Division, 1 Franklin Street, Suite 345, Hampton, Virginia 23669.
3. The vendor(s) awarded this contract must be registered with eVA before the contract can be fully executed

- J. Disposition of Proposals.** All materials submitted in response to this RFP will become the property of the City. One (1) copy of each proposal will be retained for official files, will become a matter of public record after award of the Contract, and will be open to public inspection subject to the Proprietary Information/Disclosure section of this RFP.

## Attachment A – General Terms and Conditions

*These General Terms and Conditions are a sample of what may be included in the final contract awarded to Offeror and are subject to change.*

- I. **Term and Renewals.** This Contract shall continue in force for the term of one (1) year. This Contract may be extended upon the mutual agreement of both parties for up to four (4) optional, one (1) year periods upon the same prices, terms, and conditions as set forth in this Contract and the RFP.
- II. **Contractor Representations and Obligations**
  - A. **Performance by Contractor.** Contractor shall act as the prime contractor for the goods and services to be provided under the Contract and shall be the sole point of contact with regard to all obligations due under the Contract. To the extent Contractor employs subcontractors to perform obligations under the Contract, Contractor agrees that it will:
    1. Inform subcontractor of the proposed use and disposition of the subcontractor's products or services, and obtain a written statement from subcontractor that it has no objection and that the City is not liable to the subcontractor for any work performed under the Contract.
    2. Obtain prior written approval from the Contract Administrator at least ten (10) calendar days prior to the work subcontractor work being performed.
    3. Be solely responsible for all work performed and materials provided by subcontractors and for the liability of subcontractors for the types and limits required of the Contractor under the Contract.
  - B. **Authority to Transact Business.**
    1. At the commencement of the Contract, Contractor shall be authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity if so required under Title 13.1 or Title 50 of the Virginia code or as otherwise required by law.
    2. Contractor shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth to be revoked or cancelled at any time during the term of the Contract.
  - C. **Compliance with Law**
    1. Contractor shall comply with all federal, state and local statutes, ordinances, and regulations now in effect or hereafter adopted, in the performance of the scope work set forth herein. Contractor represents that it possesses all necessary licenses and permits required to conduct its business and will acquire any additional licenses and permits necessary for performance of the Contract prior to the initiation of work. Contractor shall maintain all such licenses and permits throughout the term of this Contract. Failure to maintain such licenses and permits and to provide copies to the City shall constitute a material breach of this Contract.
    2. Contractor does not, and shall not during the performance of the Contract, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.
  - D. **Nondiscrimination**
    1. During the performance of the Contract, Contractor shall:
      - i. 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/consideration reasonably necessary to the normal operation of Contractor. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and
      - ii. State that Contractor is an equal opportunity employer in all solicitations or advertisements for employees placed by or on behalf of Contractor. Notices, advertisements, and solicitations placed in accordance with Federal law, rule, or regulation are sufficient to meet the requirements of this section.

2. Contractor shall include the provisions of paragraph D.1 in every subcontract or purchase order over \$10,000.

#### **E. Drug-Free Workplace**

1. For purposes of this section, “drug-free workplace” means a site for the performance of work done in connection with the Contract with 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.
2. During the performance of the Contract, Contractor shall:
  - i. Provide a drug-free workplace for Contractor's employees;
  - ii. Post a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition. This statement must be posted in a conspicuous location available to all employees and applicants for employment.
  - iii. State that Contractor maintains a drug-free workplace in all solicitations or advertisements for employees placed by or on behalf of Contractor.
3. Contractor will include the provisions of Section E.2 in every subcontract or purchase order of over \$10,000.

**F. Payments to Subcontractors.** Contractor shall make payment to all subcontractors, as defined in the code, within seven (7) days after receipt of payment from the City; or shall notify the City and subcontractors in writing of the intention to withhold all or a part of the amount due along with the reason for nonpayment. In the event payment is not made as noted, Contractor shall pay interest at the rate of one (1) percent per month, unless otherwise provided, to the subcontractors on all amounts that remain unpaid after seven (7) days except for the amounts withheld as provided herein. Contractor’s obligation to pay an interest charge to a subcontractor pursuant to this section shall not be construed to be an obligation of the City. 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.

#### **G. Insurance**

1. If applicable, Contractor shall submit to the City Contract Administrator certificates of insurance with applicable endorsements to the policy attached, prior to beginning work under the Contract or no later than ten (10) days after the intent to award is issued, whichever occurs first.
2. All policies of insurance required herein shall be written by insurance companies licensed to conduct the business of insurance in Virginia, and acceptable to the City, and shall carry the provision that the insurance will not be cancelled or materially modified by the Contractor without thirty (30) days prior written notice to the City.
3. The certificate of insurance shall list the City of Hampton, 22 Lincoln Street, Hampton, Virginia 23669 and its elected and appointed officials, agents, employees and volunteers as additional insureds for the specified Project. The Endorsement to the policy would be that which is attached to the Contractor's liability policy that acknowledges the Purchaser(s) as additional insureds on all policies the Purchaser(s) are made additional insured(s). This shall be either a direct Endorsement that actually names the Purchaser(s) or a blanket Endorsement within the insurance policy that states that under a contractual agreement the Purchaser(s) will be named as additional insureds on the required insurance policy. Such insurance shall also contain an endorsement stating that the insurance is primary with respect to any self-insurance or insurance maintained by the City of Hampton.
4. Insurance shall be maintained during the entire term of the Contract and any extensions and shall be of the following forms and limits:

All required insurance coverages must be obtained from insurers authorized to do business in the Commonwealth of Virginia. The insurers must have a rating of "A" (financial strength) and a VII or greater in the latest edition of the A.M.'s Best Company's Insurance reports.	
Coverage Parts Required	Coverage Limits
<b>Commercial General Liability (CGL)</b> Required but not limited to: Bodily Injury and Property Damage Personal & Advertising Injury Damage to Rented Premises Premises liability Products & Completed Operations Contractual Liability	\$1,000,000 per occurrence \$2,000,000 aggregate \$100,000 min on damage to rented premises
<b>Business or Commercial Automobile Liability</b> Coverage for Any Auto Required	\$1,000,000
<b>Umbrella or Excess Liability</b>	\$3,000,000
<b>Workers' Compensation</b> <b>Employer's Liability</b>	Per Virginia Statute \$1,000,000 min
<b>Pollution Liability</b> Environmental Liability	\$1,000,000 min
<b>Marine General Liability</b>	\$2,000,000 min
<b>Waiver of Subrogation</b> All lines of liability	Required Waiver of Subrogation
Claims-made policies require the policy holder to provide evidence of a retroactive date on the policy no later than the beginning of the contractor's or sub-contractor's work <b>under this project</b> . Claims-made commercial general liability or pollution policies must provide an endorsement extending the claim reporting period of up to three (3) years <b>after the agreement</b> .	
Certificates of Insurance (COI's) must be accompanied by an endorsement naming City of Hampton and their elected and appointed officials, agents, employees and volunteers as additional insureds.	

**The Certificate of Insurance (COI) must have the certificate holder as:**

**City of Hampton**  
**22 Lincoln Street**  
**Hampton, Virginia 23669**

*Please note that single person contractors are not required to carry this insurance but must complete a Request for Waiver of Worker's Compensation with the City's Risk Management Department. If the Contractor has employees at any time during the Contract period, the Contractor must provide the minimum necessary coverage or a copy of the State's consent to self-insure.*

The establishment of minimum limits of insurance by the City does not reduce or limit the liability or responsibilities of the Contractor.

5. IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO IMMEDIATELY NOTIFY THE CITY SHOULD ANY POLICY BE CANCELLED. FAILURE TO NOTIFY THE CITY SHALL CONSTITUTE A MATERIAL BREACH OF THE CONTRACT.

**H. Hold Harmless/Indemnification.** It is understood and agreed that Contractor hereby assumes the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of Contractor, its subcontractors, agents or employees under or in connection with this Contract or the performance or failure to perform any work required by this Contract.

Contractor agrees to indemnify and hold harmless the City and its agents, volunteers, servants, employees and officials from and against any and all claims, losses, or expenses, including reasonable attorney's fees and litigation expenses suffered by any indemnified party or entity as the result of claims or suits due to, arising out of or in connection with (a) any and all such damages, real or alleged, (b) the violation of any law applicable to this Contract, and (c) the performance of the work by Contractor or those for whom Contractor is legally liable. Upon written demand by the City, Contractor shall assume and defend at Contractor's sole expense any and all such suits or defense of claims made against the City, its agents, volunteers, servants, employees or officials.

**G. Warranty/Guarantee.** Contractor guarantees against defective or faulty material or workmanship for at least on (1) year or for the manufacturer's standard warranty period, whichever is greater, from date of acceptance by the City. To furnish adequate protection from damage for all work and to repair damages of any kind for which Contractor or Contractor's workmen are responsible, to the building or equipment, to Contractor's own work, or to the work of others. Any merchandise or service provided under the Contract which is, or becomes, defective during the warranty period, shall be replaced by the Contractor free of charge with the specific understanding that all replacements shall carry the same guarantee as the original equipment or service (one year or manufacturer's standard warranty period, whichever is greater, from the date of acceptance of the replacement). Contractor shall make any such replacement immediately upon receiving notice from the City.

**H. Unauthorized Disclosure of Information.**

1. Contractor shall assume the entire responsibility and liability for any and all damages caused by or resulting from or arising out of the negligent or willful unauthorized disclosure of confidential information on the part of the Contractor, its subcontractors, agents or employees under or in connection with the Contract. The Contractor shall save harmless and indemnify the City of Hampton and its agents, volunteers, servants, employees and officers from and against any and all claims, losses or expenses, including but not limited to attorney's fees, which either or both of them may suffer, pay or incur as the result of claims or suits due to, arising out of or in connection with, any and all such unauthorized disclosures, real or alleged. The Contractor shall, upon written demand by the City of Hampton, assume and defend, at the Contractor's sole expense, any and all such suits or defense of claims alleging unauthorized disclosures of confidential information.
2. Any negligent or willful unauthorized disclosure of confidential information on the part of the Contractor, its subcontractors, agents or employees under or in connection with the Contract shall constitute a breach of the terms of the Contract. The City may proceed by appropriate court action, including seeking injunctive relief, to prevent continuing unauthorized disclosures, and Contractor shall save harmless and indemnify the City for court costs, litigation expenses and attorney's fees that it may pay or incur as the result of seeking to prevent or stop and any and all unauthorized disclosures of confidential information.

**III. Payment to Contractor**

**A. City Payment to Contractor**

1. City agrees to make payments under the Contract within thirty (30) days after receipt of a correct invoice, pursuant to Section III.B below, for such payment. Where payment is made by mail, the day of postmark shall be deemed the date of payment. Any amounts due to the City by Contractor under the terms of this or any other Contract may be applied against Contractor's invoices with documentation for the basis of the adjustment attached.
2. In no event shall any interest penalty or late fee accrue when payment is delayed because of disagreement between the City and Contractor regarding the quantity, quality, time of delivery, or other noncompliance with these Contract requirements for any product or service or the accuracy or correctness of any invoice. Payment terms offering a "prompt payment discount" of (twenty) 20 days or greater will be considered in



the evaluation of Proposals. All other payment terms shall be net thirty (30) calendar days or greater. Payment terms not specified by Contractor shall be net forty-five (45) days.

3. Contractor acknowledges and agrees that it is not entitled to any compensation in excess of the value of the work performed that has been approved by the City. Contractors and subcontractors are not entitled to anticipatory or unearned profits, unabsorbed overhead, opportunity costs, or consequential or other damages as a result of amendment or termination of the Contract.

**B. Contractor Invoices.** Contractor shall submit to the City all invoices promptly upon completion of the requirements for installation, delivery, and acceptance of the products and services required under the Contract. Invoices shall not include any costs other than those identified in the executed City Purchase Order awarding the Contract or any subsequent Change Orders issued by the Consolidated Procurement Division. All shipping costs are the Contractor's responsibility, except to the extent such charges are identified in the executed City Purchase Order or Change Orders. Contractor's invoices shall provide at a minimum:

1. Type and description of the product or service installed, delivered and accepted
2. Serial numbers, if any
3. Quantity delivered
4. Charge for each item
5. Extended total (unit cost x quantity)
6. This RFP number and the City Purchase Order number

**C. Reimbursable Expenses and Accounting Records**

1. Reimbursable expenses shall not include incidental expenses such as supplies, utilities, licensing fees, bond fees, and other fees which are normally included in overhead costs.
2. Expenses that are not normally part of III.C.1 and that directly relate to the scope of this Project may be reimbursed upon prior approval by the City. Examples of such expenses include, but are not limited to, reasonable travel, lodging, specifications and drawing reproduction beyond first two sets, and overtime that is authorized by the City.
3. Records of reimbursable expenses and expenses accrued as a result of additional services on the Project on the basis of a Multiple of Direct Personnel Expense shall be kept on a generally recognized accounting basis and shall be available to the City or his authorized representative at mutually convenient times.
4. Payment for reimbursable expenses shall be at cost, due monthly upon presentation of an invoice to the City. The City reserves the right to request proof of the expense before payment and reserves the right to refuse to pay any expense that was not previously approved by the City.

**D. Claims for Extra Compensation.**

1. If Contractor encounters work and services not included in the Contract or any supplement, but which, in the opinion of Contractor, is necessary for the successful completion of the Contract and requires extra compensation, Contractor shall, before it begins the work on which it bases its claim, promptly notify the City in writing of its intention to perform the work and to make a claim for extra compensation. Notification by Contractor under the terms of this paragraph shall not be construed as proving the validity of the claim or City's approval of the claim. **No claim for extra compensation will be filed or considered unless notification is given as herein set forth.**
  - i. The amounts claimed as extra compensation by Contractor shall be separately itemized, become a part of the claim, and serve as documentation of the claim.
  - ii. Itemized amounts shall be described in sufficient detail to enable the City to analyze the need for the extra work and the costs claimed for the work.
  - iii. Contractor shall not itemize any overhead costs in its claim for extra compensation if those overhead costs were not itemized in Contractor's original proposal for the work to be completed under the Contract.

- iv. If Contractor intends to claim the costs (other than attorney's fees) of preparing a claim for extra compensation, Contractor shall maintain these costs in a separate account, clearly coded and identified, in preparing the claim and these costs shall be subject to audit by the City.
2. Upon notification the City will promptly review any claim for extra compensation. If a claim is accepted by the city, it will be paid as extra work in accordance with the terms of a supplemental agreement executed by the parties before such work is begun.
3. **NOTE: Pursuant to the provisions of Virginia Code §2.2-4309, a public contract may include provisions for modification during performance, but no fixed-price contract may be increased by more than twenty-five percent (25%) of the amount of the contract or \$50,000, whichever is greater, without the advance written approval of the Hampton City Council.**

#### IV. Dispute Resolution

##### A. Procedure for Consideration of Contractual Claims

1. Prompt knowledge by the City of an existing or impending claim for damages or other relief may alter the plans, scheduling, or other action of City and /or result in mitigation or elimination of the effects of the claim. Therefore, Contractor shall provide City with written notice of Contractor's intention to file a claim which:
  - i. Describes the act or omission by City or its agents that contractor contends caused the damages or entitles it to other relief; and
  - ii. Provides a description of the nature and amount of the claim.
2. Contractor's written statement providing notice of the claim shall be submitted to city within twenty (20) days of the time of the occurrence or beginning of the work upon which the claim is based; provided, however, if such damage is deemed certain in the opinion of Contractor to result from its acting on an order from City, it shall immediately take written exception to the order. For purposes of this section, "claim" shall include, without limitation, any request for an increase in the Contract price or time and any request for equitable adjustment.
3. Submission of a notice of claim in compliance with the requirements described above shall be mandatory, and failure to submit a claim notice that complies with the requirements above shall be a conclusive waiver to such claim for damages or other relief by Contractor. Oral notice and untimely notice will be insufficient to satisfy the requirements stated in this section.
4. The City will review the claim and provide Contractor with a written decision thirty (30) days after its receipt of the claim. Contractor may not institute legal action prior to receiving the final decision of the City.

**B. Final Decision.** The final decision of the City shall be considered final and conclusive unless Contractor appeals the decision within three (3) months of the final decision or the due date of the final decision by instituting legal action.

**C. No Cessation of Performance.** Nothing in this section shall be construed to authorize or permit the Contractor to cease performance of the Contract while utilizing the dispute resolution procedures outlined in this section or any other dispute resolution procedures available to Contractor. Pendency of claims shall not delay payment of amounts agreed due in final payment.

#### V. Breach of Contract. Contractor shall be deemed in breach of the Contract if the Contractor:

- A. Fails to Comply with any terms or conditions of the Contract;
- B. Fails to cure such noncompliance within ten (10) calendar days from the date of the City's written notice or such other time frame specified by the City Contract Administrator in the notice; or
- C. Fails to submit a written response to the City's notification of noncompliance within ten (10) calendar days after the date of the City notice.

**VI. Notice of Defect.** In the event of a defect or impropriety in an invoice or in the goods or services provided to City by Contractor or a subcontractor, City shall notify the Contractor of the defect or impropriety if the defect or impropriety would prevent payment by the payment date. The notice shall be sent by the City fifteen (15) days after receipt of the improper invoice or defective goods or services.

**VII. Non-Performance**

- A. Failure to Deliver.** The City reserves the right to procure goods and/or services to be provided under the Contract from other sources in the event Contractor fails to deliver such goods and/or service deliverables in accordance with delivery dates and time frames set forth in the Contract.
- B. Unacceptable Deliveries or Performance (Rejections).** Upon notification by the City that goods and/or service deliverables provided by the Contractor under the Contract are damaged and/or not of the quality specified by the City, such goods and/or service deliverables will be rejected. Upon such notification, Contractor shall:
1. Replace such rejected goods and/or service deliverables immediately or within a reasonable time as determined by the City.
  2. Remove all rejected materials, equipment or supplies from the premises of the City within ten (10) days of notification. Rejected goods and/or service deliverables not removed from the City's premises within ten (10) days will be regarded as abandoned, shall become the property of the City, and the City shall have the right to dispose of such items.
- C. Alternative Goods and Services.** In the case of default by Contractor for failure to deliver or perform in accordance with the Contract specification or terms and conditions, the City may procure goods or services from other sources and hold Contractor liable for reasonable costs of completion directly attributable to Contractor's failure to perform. Contractor's liability shall include, but not be limited to:
1. Damages and other delay costs, to include costs to procure goods/services from alternate suppliers.
  2. Increased cost of performance, such as extended overhead and increased performance costs resulting from performance delays caused by Contractor and/or rejections of Contractor's goods and/or service deliverables.
  3. Warranty and rework costs, liability to third party, excess costs, attorney's fees and related costs incurred by the City due to non-responsive performance of Contractor.

**VIII. Termination of Contract**

**A. Without Cause**

1. The City may at any time, and for any reason, terminate the Contract by written notice to Contractor specifying the termination date, which shall be not less than fifteen (15) days from the date such notice is mailed. Notice shall be given to Contractor by certified mail/return receipt requested at the address set forth in Article I of the Contract.
2. In the event of such termination, Contractor shall be paid the work satisfactorily completed or partially completed, and accepted by the City, at the time of termination.
3. Upon receiving the notice of termination, Contractor shall withdraw its personnel and equipment, if any, cease performance of any further work under the Contract, and turn over to the City any work completed or in process for which City has paid.

**B. With Cause**

1. In the event that Contractor breaches any term of the Contract, the City may provide written notice of such breach to Contractor by certified mail/return receipt requested at the address set forth in Contractor's Bid Proposal or in Section 1 of the Contract.
2. Unless otherwise provided, Contractor shall have ten (10) days from the date such notice is mailed to cure the breach. Upon failure of Contractor to cure the breach, the City may immediately terminate the Contract as of the mailing date of the breach notice.

3. Upon termination, Contractor shall withdraw its personnel and equipment, if any, cease performance of any further work under the Contract, and turn over to the City any completed or partially completed work for which the City has paid.
4. In the event of violations of law, safety, or health standards and regulations, the Contract may be immediately cancelled and terminated by the City and provisions herein with respect to opportunity to cure default shall not be applicable.

**C. Non-Appropriation**

1. It is understood and agreed between the Parties hereto that the City shall be bound and obligated hereunder only to the extent that the funds shall have been appropriated and budgeted for the purpose of the Contract.
2. In the event funds are not appropriated and budgeted in any fiscal year for payments due under the Contract, the City shall notify Contractor of such occurrence in writing within thirty (30) days of non-appropriation, and the Contract shall terminate on the last day of the fiscal year for which (an) appropriation(s) (was) were received without penalty or expense to the City of any kind whatsoever.

**IX. Audit/Ownership of Documents/Freedom of Information Act**

- A. Audit.** The City shall have the right to audit all books and records (in whatever form they may be kept, whether written, electronic or other) relating or pertaining to the Contract (including any and all documents and other materials, in whatever form they may be kept, which support or underlie those books and records), kept by or under the control of Contractor, including, but not limited to those kept by Contractor, its employees, agents, assigns, successors and subcontractors. Contractor shall maintain such books and records, together with such supporting or underlying documents and materials, for the duration of the Contract and for at least three (3) years following the completion of the Contract, including any and all renewals thereof. The books and records, together with the supporting or underlying documents and materials shall be made available, upon request, to the City's employees, agents, representatives, Contractors or other designees, during normal business hours at Contractor's office or place of business in Hampton Virginia. In the event that no such location is available, then the books and records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location in Hampton chosen by the City.
- B. Ownership by City.** Ownership of all materials and documentation including the original drawings and the Plans and Specifications and copies of any calculations and analysis prepared pursuant to the Contract, shall belong exclusively to the City. Such materials and documentation, whether completed or not, shall be the property of the City whether the Work for which they are made is executed or not. The Contractor shall not use these materials on any other work or release any information about these materials without the express written consent of the City.
- C. Proprietary Information/Non-Disclosure.** Contractor is advised that the Virginia Public Procurement Act (Section 2.2-4342, Code of Virginia, 1950 as amended) shall govern public inspection of all documents submitted by Contractor. Contractor may invoke the protections of §2.2-4342 of the Code of Virginia to protect trade secrets, proprietary information, and other confidential information submitted by the Contractor:
  1. Invoke the protections of this Section *prior to, or upon submission of*, the data or other materials.
  2. Provide a statement that identifies the data or other materials to be protected and that states the reasons why protection is necessary.
  3. Submit proprietary or security information under separate cover in a sealed envelope clearly marked "PROPRIETARY".
  4. An all-inclusive statement that the entire proposal is proprietary is unacceptable. A statement that Contractor's costs and/or proposal pricing are to be protected is unacceptable. Contractor will be requested to remove any such statement(s) in order to be eligible for further consideration.

**D.** The City reserves the right to submit such information to the City Attorney for concurrence of the Contractor's claim that it is in fact proprietary. Information submitted that does not meet the above requirements will be considered public information in accordance with the VFOIA.

**X.** **Modification.** The Contract may only be modified in a writing executed by authorized representatives of the City and the Contractor.

**XI.** **Tax Exemption.** The City is exempt from federal excise tax and from all State and local taxes. Contractor shall not include such taxes in any invoices under the Contract. Upon request, the City will furnish the Contractor with tax exemption certificates or the City tax exempt number. The City's exemption from taxation does not transfer to Contractor for Contractor's purchases for supplies or services required to complete the Contract.

**XII.** **Miscellaneous.**

**A. Non-Assignment.** Contractor shall not assign its rights and duties under the Contract without the prior written consent of the City.

**B. Applicable Law.** The Contract shall be deemed to be a Virginia contract and shall be governed as to all matters, whether of validity, interpretations, obligations, performance, or otherwise, exclusively by the laws of the Commonwealth of Virginia. Regardless of where actually delivered and accepted, the Contract shall be deemed to have been delivered and accepted by the parties in the Commonwealth of Virginia.

**C. Venue.** Any and all suits for any claims or for any and every breach or dispute arising out of the Contract shall be maintained in the appropriate court of competent jurisdiction in the City of Hampton, or, if applicable, in the United States District Court for the Eastern District of Virginia, Newport News Division.

**D. Extent of Contract.** The Contract represents the entire Contract between the City and the Contractor and supersedes all prior negotiations, representations, or contracts, either written or oral.

**E. Severability.** If any part, term, or provision of the Contract, shall be found by a court of competent jurisdiction to be legally invalid or unenforceable, then such provision or portion thereof, shall be performed in accordance with applicable laws. The invalidity or unenforceability of any provision or portion of any contract document shall not affect the validity or any other provision or portion of the Contract.

**F. Non-Exclusivity.** The City reserve the right to procure goods or services covered under the Contract from a third party when, in the City's sole discretion, it is deemed to be in the City's best interest.

## Attachment B – Insurance Requirements

### CITY OF HAMPTON, VIRGINIA INSTRUCTIONS AND INFORMATION FOR COMPLYING WITH CITY INSURANCE REQUIREMENTS

This information is to assist the Contractor with understanding the insurance requirements of the City of Hampton (City). Contractors are encouraged to share this information with insurance agents and brokers. **In all cases the RFP requirements override statements in this document section.**

1. **Agreement/Reference.** All evidence of insurance must identify the nature of your business with the City. Clearly show any assigned number of a bid, contract, lease, permit etc. or give the project name and the job site or street address to ensure that your insurance is properly assigned to the correct project. **It is important that you provide the types of coverage and minimum dollar amounts specified in the RFP document.** Failure to provide the requested amounts may lead to disqualification and increase processing time.
2. **When to Submit.** Normally no work may begin until the certificate of insurance (COI) with proper endorsement has been received. It is important that the certificate and endorsement be provided as early as practicable. For “As-needed” contracts, insurance need not be submitted until a specific job has been awarded. Design Professionals coverage for new construction work may be submitted simultaneously with final plans and drawings, but before construction commences.
3. **Acceptable Evidence and Approval.** Proof of insurance is normally provided on an industry form known as the ACORD Certificate of Insurance. Insurance industry certificates other than the ACORD may be accepted after review. In addition to the ACORD form, an Insured Endorsement naming the City as an additional insured that has been completed by your insurance company or its designee must be attached to the COI. If the policy includes an automatic or blanket additional insured endorsement, the Certificate must state the City is an automatic or blanket additional insured and the substantiating endorsement must be attached. Attaching the section of the insurance policy covering contractual additional insureds may be used until the actual endorsement is received.

All evidence of insurance must be authorized for the insurance provider by a person with authority to bind coverage, whether that is the authorized agent/broker or insurance underwriter.

Acceptable alternatives to **ACORD Certificates and other Insurance Certificates:**

- A. A copy of the **full insurance policy**
- B. **Binders and Cover Notes** are also acceptable as interim evidence for up to 90 days from date of approval
- C. **Self-Insured** contractors or vendors must submit for review to the Risk Manager documentation of its financial ability to self-insure for each coverage required. (see paragraph 6 below)

Additional Insured Endorsements **DO NOT** apply to the following:

- A. Indication of compliance with statute, such as Workers’ Compensation Law
- B. Professional Liability insurance

4. **Renewal.** Upon renewal of any insurance policy, it is the responsibility of the contractor to provide the updated ACORD Certificate of Insurance or other acceptable documentation to the City. If your policy number changes you must also submit a new Additional Insured Endorsement with an Insurance Industry Certificate.
5. **Cancellation.** The contractor/vendor must inform the City thirty (30) days before insurance is cancelled or not renewed. The requirement for the insurance company to inform the additional insureds is not enforceable. Failure to inform must be considered a substantive violation of the contract and could result in the contract being cancelled.
6. **Alternative Programs/Self-Insurance.** Risk financing mechanisms such as Risk Retention Groups, Risk Purchasing Groups, off-shore carriers, captive insurance programs and self-insurance programs are subject to separate approval

after the City Risk Manager has reviewed the relevant documents. Any contractor or vendor that wishes to satisfy insurance requirements as a self-insured party must receive permission from the Risk Manager by submitting a request to the Risk Management Department.

7. **General Liability.** General liability insurance covering your operations (and products, where applicable) is required whenever the City is at risk of:
  - A. **Third party claims** which may arise out of your work or your presence or special event on City premises.
  - B. **Sexual misconduct claims coverage** is a required coverage when the work performed involves minors.
  - C. **Fire legal liability** insurance is required for persons occupying a portion of City premises.
8. **Automobile Liability** insurance is required only when vehicles are used in performing the work of your contract or when they are driven off-road on City premises. It is not required for simple commuting unless the City or is paying mileage. However, compliance with Virginia law requiring automobile liability insurance is a contractual requirement.
9. **Errors and Omissions** coverage will be specified on a project-by-project basis if you are working as a licensed or other professional. The length of the claims discovery period required will vary with the circumstances of the individual job.
10. **Workers' Compensation and Employer's Liability** insurance are not required for single-person contractors. However, under state law the minimum coverages (or a copy of the state's Consent to Self-Insure) must be provided if you have any employees at any time during the period of the contract. Contractors with no employees must complete a Request for Waiver of Workers' Compensation Insurance Requirement that can be obtained from Risk Management.

A **Waiver of Subrogation** on the coverage is required only for jobs where your employees are working on City premises under hazardous conditions, e.g., uneven terrain, scaffolding, caustic chemicals, toxic materials, power tools, etc. The Waiver of Subrogation waives the insurer's right to recover (from the City) any workers' compensation paid to an injured employee of the contractor.
11. **Property Insurance** is required for persons having exclusive use of premises or equipment owned or controlled by the City.
12. **Surety or Bond** coverage may be required to guarantee performance of work and payment to vendors and suppliers. A Fidelity Bond may be required to handle City funds or securities, and under certain other conditions. Specialty coverage may be needed for certain operations as outlined in the RFP.

# Attachment C

## Offeror Representations and Acknowledgements

\_\_\_\_\_ (initial) **NO CITY INDEMNIFICATION.** The City of Hampton cannot legally agree to any clause indemnifying the Offeror from any damages arising out of the contract or hold the Offeror harmless. The submission of a proposal constitutes an agreement by the Offeror not to request such language in a resulting contract. In compliance with this solicitation and to all the conditions imposed herein, the undersigned agrees to perform any contract awarded as a result of this solicitation. The following section shall be signed by an agent authorized to bind the company. Failure to execute this portion may result in proposal rejection.

\_\_\_\_\_ (initial) **ANTI-COLLUSION CLAUSE:**

IN THE PREPARATION AND SUBMISSION OF THIS PROPOSAL, SAID OFFEROR DID NOT EITHER DIRECTLY OR INDIRECTLY ENTER INTO ANY COMBINATION OR ARRANGEMENT WITH ANY PERSON, FIRM OR CORPORATION, OR ENTER INTO ANY CONTRACT, PARTICIPATE IN ANY COLLUSION, OR OTHERWISE TAKE ANY ACTION IN VIOLATION OF THE SHERMAN ACT (15 U.S.C. SECTION 1), SECTIONS 59.1-9.1. THROUGH 59.1-9.17 OR SECTIONS 58.1-68.6 THROUGH 59.1-68.8 OF THE CODE OF VIRGINIA.

THE UNDERSIGNED OFFEROR HEREBY CERTIFIES THAT THE CONTRACT, OR ANY CLAIMS RESULTING THEREFROM, IS NOT 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, CITY HAS AN INTEREST IN, OR IS CONCERNED WITH, THIS PROPOSAL; AND, THAT NO PERSON OR PERSON, FIRM OR CORPORATION OTHER THAN THE UNDERSIGNED, HAVE, OR ARE INTERESTED IN, THIS PROPOSAL.

\_\_\_\_\_ (initial) **DEBARMENT STATUS:** By submitting this proposal, Offeror certifies that it is not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor is it an agent of any person or entity that is currently so debarred.

\_\_\_\_\_ (initial) **MANDATORY USE OF CITY FORM AND TERMS AND CONDITIONS FOR RFPs:** By submitting a proposal, Offeror agrees that if awarded a Contract under this RFP, that Offeror, and any subcontractors Offeror uses for goods or services, will be required to utilize the City's Contract. If Offeror submits its own agreement for use, the City reserves the right to change any terms of the Offeror's agreement required for the City to meet its obligations under Virginia, local, and Federal law or regulations.

**By signing this proposal, Offeror certifies, acknowledges, understands, and agrees to be bound by the conditions set forth above, in the Proposal Terms and Conditions, and General Terms and Conditions as described in Attachment A.**

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

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

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_