



INVITATION TO BID

City of Hampton
ISSUING OFFICE:

DATE: November 16, 2021

Consolidated Procurement Div.
1 Franklin Street, Suite 345
HAMPTON, VA 23669
TELEPHONE: (757) 727-2200
FAX: (757)727-2207

Attention of Bidder is Directed to Section
2.2-4367 to 2.2-4377 Code of Virginia
(Ethics In Public Contracting)

ITB ITEM NO. 22-221692AW
PROCUREMENT OFFICER Arminda Wiley Buyer
OPENING DATE December 9, 2021
OPENING TIME 10:00AM EST
PREBID CONFERENCE NONMANDATORY DATE: TIME:

SEALED BIDS will be received in the Issuing Office above until Opening Date and Opening Time as specified in this solicitation including any addenda issued by this office. HCS of Hampton is not responsible for late delivery by U.S. Postal mail or other couriers. All inquiries for information regarding this Invitation to Bid are to be directed to the Issuing Office as defined herein.

COMMODITY: Sports Equipment and Supplies Catalog Discount
Percentage to include Instructional Aids NIGP CODE: 78500

PLEASE FILL IN OFFEROR'S NAME & ADDRESS
IN THE SPACES PROVIDED BELOW:

THIS IS NOT AN ORDER

THE SCHOOL BOARD OF HCS OF HAMPTON HEREAFTER REFERRED TO AS "HCS", RESERVES THE RIGHT TO ACCEPT OR REJECT ANY AND ALL BIDS IN WHOLE OR IN PART AND WAIVE ANY INFORMALITIES IN THE BIDDING PROCESS. FURTHER, HCS RESERVES THE RIGHT TO ENTER INTO ANY CONTRACT DEEMED TO BE IN ITS BEST INTEREST. THE ENTIRE CONTENTS OF THE INVITATION TO BID, ANY ADDENDA, BIDDERS RESPONSE AND ANY CHANGE ORDERS SHALL BE INCORPORATED BY REFERENCE INTO ANY RESULTING CONTRACT.

THE SCHOOL BOARD OF HCS OF HAMPTON DOES NOT DISCRIMINATE AGAINST FAITH-BASED ORGANIZATIONS.

The School Board of HCS of Hampton is seeking bids from responsible and responsive bidders to provide an annual needs discount catalog percentage discount for sports equipment and supplies on an as needed basis to include Instructional Aids.

ACKNOWLEDGE RECEIPT OF ADDENDUM: #1____ #2____ #3____ #4____ (Please Initial)

THE SCHOOL BOARD OF HCS OF HAMPTON CANNOT LEGALLY AGREE TO ANY CLAUSE INDEMNIFYING THE CONTRACTOR FROM ANY DAMAGES ARISING OUT OF THE CONTRACT OR HOLDING THE CONTRACTOR HARMLESS. THE SUBMISSION OF A BID CONSTITUTES AN AGREEMENT BY THE CONTRACTOR NOT TO REQUEST SUCH LANGUAGE IN THE 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 BID REJECTION.

Authorized Agent:

Signature

Type or Print Name

Email Address
ENCLOSURES

Telephone Number

Fax Number

Company FEI/FIN#

ANTI-COLLUSION/NONDISCRIMINATION/DRUG-FREE WORKPLACE REQUIREMENTS

ANTI-COLLUSION CLAUSE:

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

THE UNDERSIGNED BIDDER HEREBY CERTIFIES THAT THIS AGREEMENT, 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 PERSONS, FIRM OR CORPORATION OTHER THAN THE UNDERSIGNED, HAVE, OR ARE, INTERESTED IN THIS PROPOSAL.

DRUG-FREE WORKPLACE:

DURING THE PERFORMANCE OF THIS CONTRACT, THE SUCCESSFUL BIDDER AGREES TO (I) PROVIDE A DRUG-FREE WORKPLACE FOR THE SUCCESSFUL BIDDER'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 SUCCESSFUL OFFEROR'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 SUCCESSFUL OFFEROR THAT THE SUCCESSFUL OFFEROR MAINTAINS A DRUG-FREE WORKPLACE; AND (IV) INCLUDE THE PROVISIONS OF THE FOREGOING CLAUSES IN EVERY SUBCONTRACT OR PURCHASE ORDER OF OVER \$10,000, SO THAT THE PROVISIONS WILL BE BINDING UPON EACH SUSUCCESSFUL OFFEROR OR VENDOR.

FOR THE PURPOSE OF THIS SECTION, "DRUG-FREE WORKPLACE" MEANS A SITE FOR THE PERFORMANCE OR WORK DONE IN CONNECTION WITH A SPECIFIC CONTRACT AWARDED TO A SUCCESSFUL OFFEROR IN ACCORDANCE WITH FEDERAL LAW, 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.

EMPLOYMENT DISCRIMINATION BY THE SUCESSFUL OFFEROR SHALL BE PROHIBITED:

1. DURING THE PERFORMANCE OF THIS CONTRACT, THE SUCCESSFUL BIDDER AGREES AS FOLLOWS:
 - a THE BIDDER, SHALL NOT DISCRIMINATE AGAINST ANY EMPLOYEE OR APPLICANT FOR EMPLOYMENT BECAUSE OF RACE, RELIGION, COLOR, SEX, NATIONAL ORIGIN, AGE, DISABILITY, OR ANY OTHER BASIS PROHIBITED BY STATE LAW RELATING TO DISCRIMINATION IN EMPLOYMENT, EXCEPT WHERE THERE IS A BONA FIDE OCCUPATIONAL QUALIFICATION REASONABLY NECESSARY TO THE NORMAL OPERATION OF THE SUCCESSFUL OFFEROR. THE SUCCESSFUL BIDDER AGREES TO POST IN CONSPICUOUS PLACES, AVAILABLE TO EMPLOYEES AND APPLICANTS FOR EMPLOYMENT, NOTICES SETTING FORTH THE PROVISIONS OF THIS NONDISCRIMINATION CLAUSE.
 - b. THE SUCCESSFUL BIDDER, IN ALL SOLICITATIONS OR ADVERTISEMENTS FOR EMPLOYEES PLACED BY OR ON BEHALF OF THE SUCCESSFUL BIDDER, SHALL STATE THAT SUCH SUCCESSFUL BIDDER 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.
2. THE SUCCESSFUL BIDDER WILL INCLUDE THE PROVISIONS OF THE FOREGOING PARAGRAPHS A, B, AND C IN EVERY SUBCONTRACT OR PURCHASE ORDER OF OVER \$10,000, SO THAT THE PROVISIONS WILL BE BINDING UPON EACH SUBCONTRACTOR OR VENDOR.

Name and Address of BIDDER:

Date: _____ Authorized Signature _____

Printed Name: _____ Title: _____

Phone Number: _____ Fax Number: _____

Email Address: _____

Federal Tax Identification Number/Social Security Number: _____

- Is Bidder a "minority" business? Yes No If yes, please indicate the "minority" classification below:
 African American Hispanic American American Indian Eskimo Asian American Aleut Other; Please Explain:
 Is Offeror Woman Owned? Yes No
 Is Offeror a Small Business? Yes No
 Is Offeror a Faith-Based Organization? Yes No

I. General Terms and Conditions

Contract Document:

This ITB, its Addenda, and Successful Bidder's bid will constitute the final contract, hereafter referred to as "this contract". These documents will be incorporated by reference into HCS purchase order awarding this contract.

Bid Binding for Ninety (90) Days:

Bidder agrees that its bid shall be binding and may not be withdrawn for a period of ninety (90) calendar days after the scheduled opening date of this Invitation for Bid.

Proprietary Information/Non-Disclosure:

Bidder 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 Bidder. Specifically, if Bidder seeks to protect any proprietary data or materials, pursuant to Section 2.2-4342, Bidder shall:

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 trade secrets or other proprietary information under separate cover in a sealed envelope clearly marked "**PROPRIETARY**".
4. Information submitted that does not meet the above requirements will be considered public information in accordance with State statutes.
5. CITY reserves the right to submit such information to HCS attorney for concurrence of the Bidder's claim that it is in fact proprietary.
6. 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.
7. Trade secrets or proprietary information submitted by a Bidder in conjunction with this ITB is not subject to public disclosure under the Virginia Freedom of Information Act (VFOIA).
8. Information submitted that does not meet the above requirements will be considered public information in accordance with the VFOIA.
9. An all-inclusive statement that the entire bid is proprietary is unacceptable. A statement that Bidder's costs and/or Bid pricing are to be protected is unacceptable. Bidder will be requested to remove any such statement(s) in order to be eligible for further evaluation and award.

Contract Modification(s):

After award, any and all modifications to this contract shall be mutually agreed to by both parties, in writing, and authorized by HCS Purchasing Agent or his designee via issuance of a change order (purchase order).

Bidder Obligation:

Bidder shall carefully examine the contents of this Invitation for Bid and any subsequent addenda. Failure to do so shall not relieve the Successful Bidder of its obligation to fulfill the requirements of any contract awarded as a result of this ITB.

Conditions of Work:

Bidder shall inform itself fully of the conditions relating to services required herein. Failure to do so will not relieve a Successful Bidder of the obligation to furnish all goods and/or services necessary to carry out the provisions of this contract

Prime Contractor:

If in its performance of this contract, Successful Bidder supplies goods or services by or through another party or subcontractor, Successful Bidder agrees that:

1. Successful Bidder shall act as the prime contractor for the goods and services to be provided under contract and shall be the sole point of contact with regard to all obligations under this contract.
2. Successful Bidder represents and warrants that Successful Bidder has made third parties or subcontractors aware of the proposed use and disposition of the other party's products or services, and that such other party has agreed in writing that it has no objection and that CITY is not liable to such third parties or subcontractors for any work performed under this contract.
3. The use of subcontractors and the work they perform must receive the prior written approval of HCS. HCS will designate a Contract Administrator to approve such work.
4. Successful Bidder shall be solely responsible for all work performed and materials provided by subcontractors.

5. Successful Bidder shall be responsible for the liability of subcontractors for the types and limits required of the Successful Bidder under this contract.

Subcontractors:

Contractor's use of subcontractors and the work they are to perform must receive written approval from the Contract Administrator at least ten (10) calendar days prior to the work being performed. Contractor shall be solely responsible for all work performed and materials provided by subcontractors. Contractor shall be responsible for the liability of subcontractors for the types and limits required of the Contractor.

Payments to Subcontractors:

In accordance with Title 2.2, Chapter 43, Article 4 of the Code of Virginia (Virginia Public Procurement Act), 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 in the Agreement, to the subcontractors on all amounts that remain unpaid after seven (7) days except for the amounts withheld as provided herein.

These same requirements shall be included in each subcontract and shall be applicable to each lower-tier subcontractor.

Contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section may not be construed to be an obligation of the City. An Agreement 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.

Non-Assignment:

Successful Offeror shall not assign its rights and duties under this Agreement without the prior written consent of HCS Contract Administrator.

Antitrust:

Any perceived anti-trust violation will be reported to the State Attorney General for possible enforcement of anti-trust laws.

Anti-collusion/Nondiscrimination Requirements Form:

The attached "Anti-collusion/Nondiscrimination Requirements" form, on page 2 of this ITB, shall be executed by Bidder and is to be submitted with Bidder's Proposal. The requirements set forth on said form shall be considered to be binding terms and conditions in any contract resulting from this ITB. A contract will not be awarded to a Bidder who has not signed the anti-collusion/nondiscrimination statement.

Hold Harmless/Indemnification:

It is understood and agreed that Contractor hereby assumes the entire responsibility and liability for any and all material 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 HCS 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 HCS, Contractor shall assume and defend at Contractor's sole expense any and all such suits or defense of claims made against HCS, its agents, volunteers, servants, employees or officials.

Notices:

All notices, requests, demands, and elections under this contract, other than routine operational communications, shall be in writing and shall be deemed to have been duly given on the date when hand-delivered, or on the date of the confirmed facsimile transmission, or on the date received when delivered by courier that has a reliable system for tracking delivery, or six (6) HCS business days after the date of mailing

when mailed by United States mail, certified mail, return receipt requested, postage prepaid. All notices shall be addressed to the following individuals:

To the School Board of the City of Hampton: HCS Contract Administrator as designated in this ITB.

To Contractor: Contractor's Contract Administrator as defined in Successful Bidder's Bid Response.

Either party may from time to time change the individual(s) to receive notices and/or its address for notification purposes by giving the other party written notice as provided above.

Non-Performance:

1. **Delivery Delays:** HCS reserves the right to procure goods and/or services to be provided under this 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 this contract.
2. **Unacceptable Deliveries (Rejections):** Upon notification by HCS that goods and/or service deliverables provided by the Contractor under this contract are damaged and/or not of the quality specified by HCS, such goods and/or service deliverables will be rejected. Contractor shall replace such rejected goods and/or service deliverables immediately or within a reasonable time as determined by HCS.
3. Contractor shall remove all rejected materials, equipment or supplies from the premises of HCS within ten (10) days of notification. Rejected goods and/or service deliverables not removed from City's premises within ten (10) days will be regarded as abandoned, shall become the property of HCS, and HCS shall have the right to dispose of such items.
4. HCS reserves the right to authorize immediate purchase from other sources against rejections.
5. **Liability:** Contractor shall be liable to HCS of Hampton for all costs incurred by HCS as a result of Contractor's failure to perform in accordance with the contract. Contractor's liability shall include, but not be limited to:
 - a. Damages and other delay costs, to include costs to procure goods/services from alternate suppliers.
 - b. Increased costs 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.
 - c. Warranty and rework costs, liability to third party, excess costs, attorney's fees and related costs incurred by HCS due to non-responsive performance of Contractor.

Termination Without Cause:

HCS may at any time, and for any reason, terminate this Contract by written notice to Contractor specifying the termination date, which shall be not less than thirty (30) 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 Contractor's Bid Proposal or in Paragraph I of this Contract. In the event of such termination, Contractor shall be paid such amount as shall compensate Contractor for the work satisfactorily completed, and accepted by HCS, at the time of termination. If HCS terminates this Contract, Contractor shall withdraw its personnel and equipment, cease performance of any further work under this Contract, and turn over to HCS any work completed or in process for which payment has been made.

Termination with Cause/Breach:

In the event that Contractor shall for any reason or through any cause be in default of the terms of this Contract, HCS may give Contractor written notice of such default by certified mail/return receipt requested at the address set forth in Contractor's Bid Proposal or in Paragraph I of this Contract. Unless otherwise provided, Contractor shall have ten (10) days from the date such notice is mailed in which to cure the default. Upon failure of Contractor to cure the default, City may immediately cancel and terminate this Contract as of the mailing date of the default notice. Upon termination, Contractor shall withdraw its personnel and equipment, cease performance of any further work under the Contract, and turn over to City any work in process for which payment has been made. In the event of violations of law, safety or health standards and regulations, this Contract may be immediately cancelled and terminated by HCS and provisions herein with respect to opportunity to cure default shall not be applicable. This contract may be terminated by either party in the event that the other party has failed to perform a material obligation or has otherwise breached a material term of this contract, if that other party has failed to cure that failure or breach within ten (10) days after receipt of written notice thereof from the other party.

Breach of Contract:

Contractor shall be deemed in breach of this contract if the Contractor:

Fails to comply with any terms of this contract;

Fails to cure such noncompliance within ten (10) calendar days from the date of HCS written notice or such other time frame, greater than ten (10) calendar days, specified by HCS Contract Administrator in the notice.

Fails to submit a written response to HCS's notification of noncompliance within ten (10) calendar days after the date of HCS notice.

All notices under this contract shall be submitted, either by fax or certified mail, return-receipt requested, to the respective contract administrator. Contractor shall not be in breach of this contract as long as its default was due to causes beyond the reasonable control of and occurred without any fault or negligence on the part of both the Contractor and its subcontractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of HCS of Hampton in its sovereign capacity, fires, floods, epidemics, strikes, freight embargoes, and unusually severe catastrophic weather such as hurricanes.

Applicable Law:

This 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, and all questions arising with respect thereto shall be determined in accordance with such laws.

Regardless of where actually delivered and accepted, this Contract shall be deemed to have been delivered and accepted by the parties in the Commonwealth of Virginia.

Compliance with All Laws:

Contractor shall comply with all federal, state and local statutes, ordinances, and regulations now in effect or hereafter adopted, in the performance of 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 this Contract prior to the initiation of work. **[If the contractor is a corporation, partnership or limited liability company, add]**: Contractor further expressly represents that it is a corporation, partnership, or limited liability company, that it is in good standing in the Commonwealth of Virginia and will remain in good standing throughout the term of this Contract. Contractor shall at all times observe all health and safety measures and precautions necessary for the sanitary and safe performance of Contractor's obligations hereunder. All City of Hampton business license, personal property, real estate and other applicable tax requirements shall be met by Contractor.

Immigration Reform and Control Act of 1986

Contractor/Vendor 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.

Venue:

Venue shall be in the Circuit Court of HCS of Hampton, Virginia, and the United States District Court for the Eastern District of Virginia, Norfolk Division, compliant with applicable laws and regulations, as deemed appropriate by HCS of Hampton. Any and all suits for any claims or for any and every breach or dispute arising out of this Agreement shall be maintained in the appropriate court of competent jurisdiction in the City of Hampton, or the United States District Court for the Eastern District of Virginia, Norfolk Division.

Severability:

If any provision of this contract is found by any court of competent jurisdiction to be invalid or unenforceable, the invalidity of such provision shall not affect the other provisions of this contract, and all other provisions of this contract shall remain in full force and effect.

Non-Appropriation of Funds:

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

Tax Exemption:

HCS of Hampton is exempt from federal excise tax and from all State and local taxes. Contractor shall not include such taxes in any invoices under this agreement. Upon request, HCS will furnish the Contractor with tax exemption certificates or HCS of Hampton's tax-exempt number.

Vendor's Invoices:

Contractor shall submit to HCS all invoices promptly upon completion of the requirements for installation, delivery, and acceptance of the Products and Services required under this contract. Invoices shall not include any costs other than those identified in the executed HCS purchase order awarding this contract or any subsequent change orders issued by the Consolidated Purchasing Division on behalf of HCS. 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:

Type and description of the Product or Service installed, delivered and accepted;

Serial numbers, if any;

Quantity delivered;

Charge for each item;

Extended total (unit costs x quantity);

This ITB number and City Purchase Order Number.

Contractual Disputes:

Any dispute concerning a question of fact as a result of a contract with HCS of Hampton which is not disposed of by agreement shall be decided by the Purchasing Agent or designee, who shall reduce his decision to writing and mail or otherwise forward a copy thereof to the contractor within thirty (30) days. The decision of Purchasing Agent or designee shall be final and conclusive unless the contractor appeals within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. A contractor may not institute legal action, prior to receipt of the public body's decision on the claim, unless the public body fails to render such decision within the time specified. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty days after final payment; however, written notice of the contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

Warranty/Guarantee:

Contractor guarantees against defective or faulty material or workmanship for at least one (1) year or for the manufacturer's standard warranty period, whichever is greater, from date of acceptance by HCS. 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 HCS.

Payment Terms:

To be eligible for payment, all labor, equipment and materials covered under Contractor's invoice must be completed and accepted by HCS. HCS agrees to make payments under this contract within thirty (30) days after receipt of a correct invoice for such payment. Where payment is made by mail, the date of postmark shall be deemed to be the date of payment. Any amounts due HCS of Hampton under the terms of this or any other agreement may be applied against Contractor's invoices with documentation for the basis of the adjustment attached. In no event shall any interest penalty or late fee accrue when payment is delayed because of disagreement between HCS and Contractor regarding the quantity, quality, time of delivery, or other noncompliance with the contract requirements for any Product or Service or the accuracy or correctness of any invoice. Payment terms offering a "prompt payment discount" of 20 days or greater may be considered in the evaluation of bids. All other payment terms shall be net thirty (30) calendar days or greater. Payment terms not specified by Bidder shall be Net 45 days.

Audits:

HCS 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 this 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 this Contract and for at least three years following the completion of this 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 HCS, through its 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, Virginia, which is convenient for HCS of Hampton.

This paragraph shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which HCS may have by state, city, or federal statute, ordinance, regulation, or agreement, whether those rights, powers, or obligations are express or implied.

Notice of Award:

Any contract resulting from this ITB will be publicly posted for inspection in the Consolidated Procurement Division, 1 Franklin Street, Suite 345, Hampton, Virginia.

Award:

HCS intends to award a contract to the lowest responsible and responsive bidder. At HCS's sole discretion, HCS may reject any or all bids in whole or in part if such action is determined to be in HCS's best interest. HCS reserves the right to enter into any contract deemed to be in its best interest, including the award of this contract to more than one contractor.

Disposition of Bids:

All materials submitted in response to this ITB will become the property of HCS of Hampton. One (1) copy of each bid 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 ITB.

Non-Exclusivity:

HCS reserves the right to procure goods or services covered under this contract from a third party when, in City's sole discretion; it is deemed to be in HCS's best interest.

Unauthorized Disclosure of Information:

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 this Contract. The Contractor shall save harmless and indemnify the City 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. Contractor shall, upon written demand by the City, assume and defend, at the Contractor's sole expense, any and all such suits or defense of claims alleging unauthorized disclosures of confidential information.

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 this Contract shall constitute a breach of the terms of this 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 reasonable attorney's fees that it may pay or incur as the result of seeking to prevent or stop any and all unauthorized disclosures of confidential information.

II. SPECIAL TERMS AND CONDITIONS

Contract Term:

This contract term shall be for one (1) year.

Contract Extension:

This contract may be extended upon mutual agreement of both parties for four (4) additional, one-year periods, upon the same prices, terms, and conditions set forth in the negotiated contract resulting from this ITB.

Time is of the Essence:

Time is of the essence in this Contract. Contractor expressly acknowledges that in the performance of its obligations, HCS is relying on timely performance and will schedule operations and incur obligations to third parties in reliance upon timely performance by Contractor and may sustain substantial losses by reason of untimely performance. ADD IF REQUIRED However, price increases/decreases may be considered for optional years based on most current Bureau of Labor Statics CPI-U Wage Rate of the South Region, but must not be greater than 5% annually.

Insurance:

Contractor shall submit to HCS Contract Administrator Certificates of Insurance, prior to beginning work under this contract and no later than ten (10) days after award of the contract.

All policies of insurance required herein shall be written by insurance companies licensed to conduct the business of insurance in Virginia, and acceptable to HCS, and shall carry the provision that the insurance will not be cancelled or materially modified without thirty days (30) prior written notice to HCS.

The certificates of insurance shall list HCS of Hampton, 1 Franklin Street, Hampton, Virginia 23669, as the additional insured for the specified project as outlined in this ITB.

Insurance shall be maintained during the entire term of the contract and any extensions and shall be of the following forms and limits:

<u>Forms</u>	<u>Limits</u>
Workers' Compensation	Statutory
Commercial General Liability, including Contractual Liability and Products and Completed Operations Coverage	\$1,000,000 Combined Single Limit
Umbrella/Excess Liability	\$2,000,000

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

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

The endorsement would be that which is attached to the policy that acknowledges the HCS as an also insured on all policies we have required to be endorsed.

This will be either a direct endorsement that actually names the HCS or a blanket endorsement that contract states that the HCS will be named as an also insured on the insurance policy.

Contractor shall provide the HCS with its social security number or federal taxpayer identification number prior to receiving any payments for services under this Contract.

Unauthorized Disclosure of Information:

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 this contract. The Contractor shall save harmless and indemnify HCS 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. Contractor shall, upon written demand by HCS, assume and defend, at the Contractor's sole expense, any and all such suits or defense of claims alleging unauthorized disclosures of confidential information.

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 this contract shall constitute a breach of the terms of this contract. HCS may proceed by appropriate court action, including seeking injunctive relief, to prevent continuing unauthorized disclosures, and Contractor shall save harmless and indemnify HCS for court costs, litigation expenses and attorney's fees that it may pay or incur as the result of seeking to prevent or stop any and all unauthorized disclosures of confidential information.

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 successful offeror(s). HCS of Hampton acts only as the issuing agent and is not responsible for placement of orders, payment or discrepancies of other participating Public Bodies.

Provider shall certify on Attachment B that all employees employed in support of this Contract who have direct contact with students, which is defined to mean being in the presence of students during regular school hours of during school-sponsored activities, have not been convicted of (i) a felony; or (ii) any offense involving the sexual molestation, physical or sexual abuse or rape of a child.

Copyright/Patent Indemnity:

Contractor shall pay all royalty and license fees relating to the items covered by this contract. In the event any third party shall claim that the manufacture, use and sales of the goods supplied under this contract constitute an infringement of any copyright, trademark, or patent, the Contractor shall indemnify HCS and hold HCS of Hampton harmless from any cost, expense, damage or loss incurred in any manner by HCS on account of any such alleged or actual infringement.

III. SCOPE OF WORK

General Requirements:

The School Board of the City of Hampton is seeking bids from qualified bidders to provide an annual needs catalog discount for Sporting Goods Equipment and Supplies to include Athletic Instructional Aides.

Specific Requirements:

Contractor shall perform services to the highest standards in the sporting goods and equipment industry. This contract shall constitute an annual needs discount to apply to all catalog items and catalogs offered by the bidder.

SPECIAL INSTRUCTIONS TO THE BIDDER:

Issuing Office:

Wherever used in this Invitation to Bid, Issuing Office will be:

Armina Wiley, Buyer

Consolidated Procurement Division

Community, Municipal Services/Education

1 Franklin Street, Suite 345

Hampton, VA 23669

Phone: (757) 727-2203

Email: awiley@hampton.gov

HCS Contract Administrator:

Wherever used in this Invitation to Bid and for purposes of any notices under this contract, HCS Contract Administrator will be:

Patricia Thompson

1 Franklin Street

Hampton VA 23669

Phone : 757-727-2012

Email: pthompson@hampton.k12.va.us

Contractor shall perform services to the highest standards in the Sporting Goods Equipment and Supplies to include Instructional aids industry.

Questions

Bidders must submit questions regarding this Invitation to Bid in writing to the Issuing Office at (757) 727-2207 or email awiley@hampton.gov no later than 4:30 PM EST November 30, 2021. Necessary replies will be issued to all bidders of record as addenda that shall become part of the contract documents. Oral instructions do not form a part of the bid documents.

Offeror is responsible for checking the Hampton/bids-contracts web site or contacting the Issuing Office within 48 hours prior to bid opening to secure any addenda issued for this ITB.

Late Submissions, Modifications, and Withdrawal of Bid

Bidders are responsible for submitting bids, and any modifications or withdrawals, so as to reach the Issuing Office designated in the ITB by the time specified in the ITB.

Any bid, modification, or withdrawal received at the Issuing Office designated in the ITB after the exact time specified for receipt of bids shall be considered "late" and will not be considered unless there is acceptable evidence to establish that it was received at the Issuing Office and was under the control of HCS prior to the time set for receipt of bids.

Acceptable evidence to establish the time of receipt at the Issuing Office includes the time/date stamp of that office on the bid wrapper, other documentary evidence of receipt maintained by the office, or oral testimony or statements of Consolidated Procurement Division personnel.

If an emergency or unanticipated event interrupts normal HCS processes so that bids cannot be received at the Issuing Office by the exact time specified in the ITB and urgent HCS requirements preclude modifications to the ITB, the time specified for receipt of bids will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal City processes resume.

Bids may be withdrawn by written notice received at any time before the exact time set for receipt of bids. A bid may be withdrawn in person by a Bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established, a formal written request to withdraw the Bid is submitted on the firm's letterhead, and the person signs a receipt for the bid.

Preparation of Bids

To be considered for award, a bid must comply in all material respects with the ITB. Bidders are expected to examine the drawings, specifications, and all instructions in this ITB. Failure to do so will be at the Bidder's own risk.

Each Bidder shall furnish the information required by the solicitation. The Bidder is expected to:

- Sign the bid and print or type its name and address on the cover of the ITB;
- Sign the ANTICOLLUSION/NON-DISCRIMINATION on page 2 of this ITB and complete all other information requested on the same page;
- Complete the pricing and Place of Performance information requested in the Pricing Schedule section of the ITB;
- Changes must be initialed by the authorized Agent signing the bid. For each lump sum price offered, Bidders must show, in its descriptive literature:
 - (a) Present the amount for the (Requested) equipment in the lump sum price; and
 - (b) Present the amount for labor and all other additional costs included in the lump sum price.

In case of discrepancy between a unit price and an extended price, the unit price shall govern as the correct price.

Bids for supplies or services other than those specified will not be considered unless authorized by the solicitation.

Bidders must state a definite time for delivery of supplies or for performance of services, unless otherwise specified in the solicitation. Time, if stated as a number of days, will be interpreted to include Saturdays, Sundays, and holidays.

Acknowledge Addenda on page 1 of this solicitation.

Descriptive Literature

"Descriptive literature," as used in this provision, means information furnished by a Bidder, such as cuts, illustrations, drawings, and brochures that shows a product's characteristics or construction or explains its operation. The term includes only that information required to evaluate the acceptability of the product and excludes other information for operating or maintaining the product.

Descriptive literature is required to establish, for the purpose of evaluation and award, details of the product offered that are specified elsewhere in the solicitation and pertain to significant elements including, but not limited to:

Design;

Materials;

Components;

Performance characteristics; and

Methods of manufacture, assembly, construction, or operation.

Descriptive literature, required elsewhere in this solicitation, must be:

Identified to show the item(s) of the offer to which it applies; and

Received by the time specified in this solicitation.

If the Bidder fails to submit required descriptive literature on time with the Bid submittal, HCS may reject the bid.

If the descriptive literature fails to show that the product offered conforms to the requirements of the solicitation, HCS will reject the bid.

Bid Submittal Requirements

Bids must be submitted utilizing the following requirements:

Bids shall be placed in a sealed envelope or package, and the envelope or package labeled with the Invitation for Bid's item number and the name and address of the Bidder.

Submit the original and one (1) copy of the Bid.

Bidders are encouraged to submit bids on recycled paper and to use double-sided copying.

All bids shall be received and time stamped in the Issuing Office no later than the Closing Date and Time shown on the cover page of this Invitation to Bid. Any bid received after the specified date and time (time stamped 10:01 a.m. or later) shall not be considered and shall be returned unopened to Bidder.

Bids received by telephone, telegraph, email, or facsimile shall not be accepted.

Bids must include all elements noted in the Bid Preparation paragraph above.

Bids should be submitted in the format specified on the pricing sheet.

Statement setting forth the basis for protection of proprietary information, if any, as detailed in the ***Proprietary Information/Disclosure*** section.

Bid Opening

The Issuing Office shall decide when the time set for opening bids has arrived. Bids received before the bid opening time will be publicly opened and, if practical, read aloud to the persons present, recorded and abstracted. Review of the abstract of the bids by interested persons will be permitted immediately after bid opening, as soon as prepared, if it does not unduly interfere with the conduct of HCS business, as determined by the Issuing Office. Bid records shall be open to public inspection only after a formal evaluation and award determination has been made by the Issuing Office.

Contact with HCS Staff, Representatives, and/or Agents:

Direct contact with HCS staff, representatives, and/or agents other than Consolidated Procurement Division staff on the subject of this ITB or any subject related to this ITB is expressly prohibited except with the prior knowledge of the Procurement Department.

A withdrawal of bid due to error shall be in accordance with Section 2.2-4330 B (1) of the Code of Virginia. The bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after conclusion of the bid opening procedure and shall submit original work papers with such notice.

FOREIGN AND DOMESTIC BUSINESSES-AUTHORITY TO TRANSACT BUSINESS IN THE COMMONWEALTH

Contractor whether organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity and shall provide proof thereof. 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 Agreement. Failure by the Contractor to remain in compliance with the provisions of this section shall be deemed a material breach of this Agreement.

Hampton City Schools does not discriminate on the basis of race, color, national origin, sex disability, age or other protected classes in its programs, activities, and employment practices and provides equal access to the Boy Scouts and other designated youth groups. The following person has been designated to handle inquiries regarding the non-discrimination policies: Robbin A. Ruth, Executive Director of Human Resources, One Franklin Street, Hampton, Virginia 23669 757-727-2318.

CITY OF HAMPTON, VIRGINIA and HAMPTON CITY PUBLIC SCHOOLS
INSTRUCTIONS AND INFORMATION
ON COMPLYING WITH CITY INSURANCE REQUIREMENTS

This information is to assist the contractor to understand the insurance requirements of the City of Hampton (City) and Hampton City Public Schools (HCS). Contractors are encouraged to share this information with insurance agents and brokers. **In all cases the RFP or ITB requirements override statements in this document.**

1. Agreement/Reference. All evidence of insurance must identify the nature of your business with the CITY/HCS. 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 or RFB 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 or HCS 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 **copy of the full insurance policy.**
- **Binders and Cover Notes** are also acceptable as interim evidence for up to 90 days from date of approval.
- **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 Para 6 below.)

Additional Insured Endorsements DO NOT apply to the following:

- Indication of compliance with statute, such as Workers' Compensation Law
- 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 or HCS. 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/HCS 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 or HCS is at risk of:

- **Third-party claims** which may arise out of your work or your presence or special event on city premises.
- **Sexual misconduct claims coverage** is a required coverage when the work performed involves minors.
- **Fire legal liability insurance** is required for persons occupying a portion of CITY or HCS 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 or HCS premises; it is not required for simple commuting unless CITY or HCS is paying mileage. However, compliance with Virginia law requiring auto 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 this 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. **Builder's Risk/Course of Construction** is insurance coverage that protects the owner's interests in the structure as well as materials, fixtures and/or equipment being used in the construction or renovation of a building or structure should those items sustain physical loss or damage from a covered cause. It is required during construction projects and must include building materials in transit and stored at or away from the project site. This would also include materials purchased by the City for installation or erection by the contractor.

13. **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 coverages may be needed for certain operations as outlined in the RFP or RFB.

IV. ATTACHMENT A: PRICING SCHEDULE

Discount Percentage and Delivery ITB 17-1082:

Discount Percentage	Delivery Time	Exceptions

BID PRICES: Shall be in the form of a firm catalog percentage during the contract period.

FOB: Destination

Attachment B – Minority and Women Owned Business Program

The City of Hampton (“COH”) is implementing new strategies to solicit and utilize minority and woman-owned businesses. To encourage and sustain utilization of minority and woman owned businesses, subcontracting goals have been established for City contracts of \$100,000 and above. The minority and woman-owned subcontracting goals are established by business categories.

The subcontracting goals established for this Contract include:

Minorities (MBE) 4.34% Non-minority women (WBE) 3.82%

Solicitation meetings will be held on contracts \$100,000 and above to assist in attaining the contract minority and woman owned business goals.

The City requires that each minority and woman-owned business become a certified Small, Woman and Minority owned business (SWAM) by the Virginia Department of Small Business and Supplier Diversity (SBSD).

Any minority or woman-owned business that is not a certified SWAM vendor will not be considered for meeting the Contract goals as established.

Prime Contract solicitations require bidders to include, as part of their proposal or bid, a subcontracting plan to include certified minority and woman-owned vendors during the course of the contract work.

- A listing of all certified minority and woman-owned subcontractor vendors
- The dollar value of each subcontract
- A description of type of work to be performed under each contract
- SWAM certification number and contact information for each minority and woman-owned firm

Prime Contractor subcontractor/supplier solicitation information will be submitted to document firms contacted for quotes.

Prime Contractor solicitations and resulting contracts will require each successful bidder to report actual subcontract payments quarterly the Procurement Department to ensure accurate utilization records.

Prime Contractors are to submit quarterly sub-contractor payment information on all certified minority and woman-owned vendors no less than quarterly after the Notice to Proceed (NTP) is issued by the Public Works Department.

Failure of a Prime Contractor to submit required documentation to the City can result in the withholding of a payment and/or other sanctions imposed by the City.

All bids submitted must include a subcontracting plan to be considered when determining the lowest responsible and responsive bidders by the City.

Changes to the subcontracting plan will require approval from the Procurement Office and Minority Business Program Office during the life of the contract. Failure of a contractor to adhere to its subcontracting plan may under certain circumstances, result in future loss of contracts and/or debarment from bidding by the City. In these cases contractors will be requested to submit documentation of good faith efforts used to meet their

subcontracting plan. Determination of efforts will be made on an individual contract basis. It is recommended that contractors pre-qualify or determine the subcontractors' capabilities prior to subletting work. Good Faith efforts are documented reasonable steps taken to achieve a Contract goal. These efforts are those taken by a bidder actively and aggressively trying to obtain the established goal. Mere pro forma efforts are not good faith efforts. It is not intended to be a mandatory checklist nor is it intended to be exclusive or exhaustive.

Other factors or types of efforts may be relevant in appropriate cases. The following is a list of types of actions which are considered good faith efforts:

- Soliciting through reasonable and available means (pre-bid meetings, advertisements, phone calls, community organizations, etc.)
- Selecting portions of the work to be subcontracted out to increase the likelihood that a Contract goal can be achieved.
- Providing interested firms with information necessary to respond in a timely manner to a request for solicitation
- Effectively using the services of available minority and woman-owned organizations, local, state and federal small business assistance offices, etc.

Documentation of such efforts can include a listing of M/WBE firm names, contact information, description of information provided and dates received quotes, etc. (Please note: this requirement should not be construed as authorizing or directing the exclusion of non-SWAM owned businesses; rather, the purpose is to include as many qualified businesses as possible). Any Prime Contractor that is a SBSB certified minority or woman-owned vendor that is awarded a contract of \$100,000 and above is not required to submit the above information as the Prime Contractor is itself such a certified business. This does not, however, relieve such a Prime from the obligation to achieve both Contract goals during the life of the Contract. The City reserves the right to review subcontracting plans and good faith efforts to ensure that both goals are achieved. The City will utilize a performance evaluation process that will include documenting the quality of work and business practices of all vendors used on City contracts of \$100,000 and above.

The suggested forms are attached for use by bidders to ensure consistent submission of required data.

**CITY OF HAMPTON
DEPARTMENTAL MINORITY AND WOMAN-OWNED BUSINESS SOLICITATION
TELEPHONE RECORD FOR GOODS AND SERVICES**

Date	Department	Bidder #1	Bidder #2	Bidder #3
Firm name				
Address				
Phone no.				
Fax no.				
Email address				
Quantity	Item description	Unit Price/Total Price	Unit Price/Total Price	Unit Price/Total Price

Completed by: _____ Date: _____

Department Director: _____

**CITY OF HAMPTON
SUBCONTRACTOR/SUPPLIER UTILIZATION FORM
POTENTIAL MINORITY AND WOMAN-OWNED BUSINESS PARTICIPATION**

Project no. _____ Date submitted: _____

Bid goal % _____ Total Contract Value _____

Firm name	Certification no.	Type (M/W)	Percent bid	Dollar value	Type of work

I/We propose that the certified SBSB businesses will be used on this Contract as stated herein and assure that during the life of the Contract. I/We will meet the goal established by the City of Hampton.

Bidder _____ Signature _____

Title _____ Date _____

**MBE/WBE Form 3
CITY OF HAMPTON**

SUBCONTRACTOR/SUPPLIER SOLICITATION AND UTILIZATION FORM (ALL)

Project no. _____ Date _____

The bidder certifies that this form accurately represents its solicitation and utilization or non-utilization as indicated of the SBSD certified minority and woman-owned businesses listed below for performance of work on this project. The bidder certifies that he/she has had direct contact (email, fax, phone) with the named firms regarding performing work on this project.

Bidder _____ Signature _____

Vendor no.	Name of firm	Telephone no.	SWAM Yes/No	Utilized Yes/No

CITY OF HAMPTON
MINORITY AND WOMAN-OWNED BUSINESS PAYMENT REPORT

Contractor _____ Date _____

Project no. _____ Reporting period _____ to _____

Firm name	Certification no.	SWAM type (M/WBE)	This quarter	To date	Type of work
Total dollar value amount paid to date to SWAM vendor					

I/We certify that the information provided is accurate, current and complete to the best of my/our knowledge.

Company _____

Print name _____ Title _____

Frequently Asked Questions (FAQ's) - MBE & WBE Goals

1. How do I know if there is a goal on a project?

It will be mentioned in the ITB (Invitation to Bid) or RFP (Request for Proposal). Bidders are encouraged to utilize certified SWaM vendors towards their efforts in meeting the MBE and WBE goals.

2. What is a SWaM vendor?

SWaM is the acronym for Small, Women and Minority owned businesses. A SWaM vendor is a business that has been certified by the Virginia Department of Small Business and Supplier Diversity (SBSD) and is listed in the SWaM Vendor Directory.

3. Where can I find a list of SWaM certified MBE and WBE businesses?

A list of certified SWaM businesses can be found on the following website:

- Virginia Department of Small Business and Supplier Diversity
<https://directory.sbsd.virginia.gov/#/>.
 - The SBSDD website allows searches by company name, SWaM type, NIGP commodity code or description and Zip & NIGP Code.

4. Is it possible to meet both the MBE and WBE goals utilizing one contractor?

No. It is not possible to meet both the MBE and WBE goals utilizing one contractor. These are two separate goals; one for MBE and one for WBE and are independent of each other.

5. I have worked with a minority owned business in the past, but they are not SWaM certified, can I still use them towards meeting the goal?

No. The City requires that each minority and woman-owned business become SWaM certified by SBSDD. Any minority or woman-owned business that is not a certified SWaM vendor will not be considered for meeting the contract goals as established.

6. I am a Minority /Woman Owned Business, but I am not SWaM certified, how do I get certified?

As found on the SBSDD website, there are four steps to get certified: Complete an online application, Print out your application, Collect your supporting documentation on the checklist and send the signed application form to the SBSDD. Visit their website at www.sbsd.virginia.gov to start the process.

7. I am a SWaM certified minority / woman owned business, do I still need to meet the MBE and WBE goals?

Yes. The City of Hampton encourages all prime contractors bidding on a project to document efforts and meet the goals.

8. Can I utilize vendors certified as a Small Business (S) that I found on the City of Hampton's Directory or the Virginia Department of Small Business and Supplier Diversity Directory?

You can, but it won't be counted towards meeting the MBE and WBE goals. To meet the MBE goal a business needs to be certified as a Minority Owned Business Enterprise (M), Minority Owned Small Business Enterprise (MS). To meet the WBE goal a business needs to be certified as a Woman Owned Business Enterprise (W) or Woman Owned Small Business Enterprise (WS).

9. Which forms do I have to turn in at bid opening?

There are 3 forms in your bid response forms pertaining to the Minority Business Program. At time of bid opening, submit Form 1 (Solicitation Telephone Record for Goods and Services), Form 2 (Subcontracting/Supplier Utilization Form) and Form 3 (Subcontractor/Supplier Solicitation and Utilization Form). *If awarded a contract, Payment Information will need to be submitted MONTHLY during the course of the contract using Form 4 (Minority and Woman-Owned Business Payment Report).*

10. Which is the official form to list the Minority and Woman Owned subcontractors I am proposing to utilize on the project?

Fill out Form 2 (Subcontracting/Supplier Utilization Form) completely. Bidders must include this form as part of their proposal or bid to list certified minority and woman-owned vendors they plan to utilize on the project. This form should include information on:

- The dollar value and percentage for each subcontractor
- A description of type of work to be performed
- SWAM certification number and contact information for each minority and woman-owned firm

11. I contacted a SWaM certified minority/women owned business, but I won't be utilizing them, how do I document this?

Fill out Form 2 (Subcontractor/Supplier Solicitation and Utilization Form) completely.

12. How do I document good faith efforts?

Fill out Form 2 (Subcontractor/Supplier Solicitation and Utilization Form Solicitation) completely. Documentation of such efforts can include a listing of M/WBE firm names, contact information, description of information provided and dates received quotes, etc.

13. If awarded a contract, on what form do I report the payments made to subcontractors?

Successful bidders on City contracts will be required to report actual subcontract payments quarterly to the City Department to ensure accurate utilization records. Fill out Form 4 (Payment Information) completely to report this information.

14. At what point must a vendor be SWaM certified in order to be counted towards meeting the MBE and WBE goals?

By the bid opening date when an Invitation to Bid (ITB) is due.

15. Who can I contact if I have specific questions or need additional help finding certified minority or woman owned businesses?

You can contact the City of Hampton's Minority Business Office located within the Economic Development Department at (757) 728-5179.

Attachment C - ADDITIONAL TERMS AND CONDITIONS FOR FEDERALLY-FUNDED TRANSACTIONS

The 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. In all federally-funded transactions, the contractor, vendor, or supplier (“Contractor”) is responsible for ensuring its compliance with all applicable Federal requirements. The following contract clauses shall be incorporated in any federally-funded contract awarded by the City of Hampton, Virginia, its governing body, officers, employees, and agents (“City”) as indicated below.

I. TERMS REQUIRED FOR ALL CONTRACTS

SUSPENSION AND DEBARMENT	
Authorizing Legislation	Executive Order 12549 (1986), Executive Order 12689 (1989), 2 C.F.R. Part 3000)
Required Contracts	All Contracts

- A. The contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, contractor is required to verify that neither the Contractor, nor its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- B. The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- C. This certification is a material representation of fact relied upon by the City. If it is later determined that Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/ or debarment.
- D. The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its respective lower tier covered transactions.

BYRD ANTI-LOBBYING AMENDMENT	
Authorizing Legislation	31 U.S.C. 1352, 45 C.F.R., Part 18, Appendix A
Required Contracts	All Contracts

- A. Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C.1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.
The certificate entitled Certification Regarding Lobbying (See “Appendix B” hereto) must be completed and returned with this Agreement.
- B. **Required Certification.** If applicable, contractors must sign and submit to the City the following certification:

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING
Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

PROCUREMENT OF COVERED MATERIALS	
Authorizing Legislation	42 U.S.C. § 6962, Section 6002 of the Solid Waste Disposal Act
Required Contracts	All Contracts Over \$10,000

- A. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:
 - 1. Competitively within a timeframe providing for compliance with the contract performance schedule;
 - 2. Meeting contract performance requirements; or
 - 3. At a reasonable price.
- B. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>.
- C. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

TERMINATION FOR CAUSE/CONVENIENCE	
Authorizing Legislation	2 C.F.R. Part 200, Appendix II (B)

Required Contracts	All Contracts
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See General Terms and Conditions.

ACCESS TO RECORDS	
Authorizing Legislation	DHS Standard Terms and Conditions v.3.0 (2013)
Required Contracts	All Contracts

The following access to records requirements apply to this contract:

- A. The Contractor agrees to provide City, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- B. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- D. In compliance with the Disaster Recovery Act of 2018, the City and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT	
Authorizing Legislation	29 C.F.R. 5.5(b)
Required Contracts	All Contracts Over \$100,000 Utilizing Mechanics or Laborers (as defined in 40 U.S.C. §§ 3701)

- A. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- B. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
- C. Withholding for unpaid wages and liquidated damages. The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same

prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

- D. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

CLEAN AIR ACT AND FEDERAL WATER POLLUTION ACT	
Authorizing Legislation	40 U.S.C. § 7401-7671(q), 33 U.S.C. § 1251-1387, 29 C.F.R. § 5.5(b)
Required Contracts	All Contracts Over \$150,000

A. Clean Air Act

- 1. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- 2. Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FEMA, and the appropriate Environmental Protection Agency (EPA) Regional Office.
- 3. Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

B. Federal Water Pollution Control Act

- 1. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- 2. Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the FEMA, and the appropriate EPA Regional Office.
- 3. Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

LEGAL/CONTRACTUAL/ADMINISTRATIVE REMEDIES FOR BREACH	
Authorizing Legislation	2 C.F.R. Part 200, Appendix II(A)
Required Contracts	All Contracts Over \$250,000

See General Terms and Conditions.

II. TERMS RECOMMENDED FOR ALL CONTRACTS

CONTRACT CHANGES OR MODIFICATIONS	
Recommended Contracts	All Contracts

See General Terms and Conditions.

COMPLIANCE WITH FEDERAL LAW REGULATIONS AND EXECUTIVE ORDERS	
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Recommended Contracts	All Contracts
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This is an acknowledgement that financial assistance will be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

NO OBLIGATION BY FEDERAL GOVERNMENT	
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Recommended Contracts	All Contracts
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The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the City, Contractor, or any other party pertaining to any matter resulting from the contract.

PROGRAM FRAUDULENT STATEMENTS OR RELATED ACTS	
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Authorizing Legislation	31 U.S.C. §§ 3729-3733
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Recommended Contracts	All Contracts
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The Contractor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.