

HAMPTON VA

REQUEST FOR PROPOSALS – NON-PROFESSIONAL SERVICES

ISSUE DATE: FEBRUARY 21, 2023	RFP #: 23-30AW (RE-BID)	NGIP CODE: 96171, 96200, 96205
DATE/TIME OF CLOSING: MARCH 28, 2023 AT 10:00 AM EST	BUYER NAME: ARMINDA WILEY	COMMODITY: SPECIAL EVENTS TALENT MANAGEMENT SERVICES
THE CITY OF HAMPTON IS SEEKING PROPOSALS FROM QUALIFIED OFFERORS FOR A SPECIAL EVENTS TALENT MANAGEMENT SERVICES ON AN AS NEEDED BASIS.		
ACKNOWLEDGE RECEIPT OF ATTACHMENTS: A_____ B_____ C _____ D_____ (Please initial)		
ACKNOWLEDGE RECEIPT OF ADDENDUM (S): 1 _____ 2_____ 3 _____ 4_____ (Please initial)		
Pre-Proposal Conference: N/A		
OFFEROR NAME:		

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:

Arminda Wiley, Senior Buyer Phone: 757-727-2203
Consolidated Procurement Division Email: awiley@hampton.gov
1 Franklin Street, Suite 345
Hampton, Virginia 23669

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

Tamara Bullock, MPA, CPRP Phone: 757-727-8319
Business Services Administrator Email: tamara.bullock@hampton.gov
Hampton Parks, Recreation & Leisure Services
22 Lincoln Street, 5th Floor
Hampton, Virginia 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.
- 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.
 - 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.

III. SCOPE OF CONTRACT.

- A. Statement of Needs.** The purpose of this Request for Proposal (RFP) is to obtain proposals from qualified offerors, or a team of offerors, to provide talent management services for City of Hampton special events, festivals, and programs located in Hampton, Virginia on an as needed basis.
- B. General Requirements.** Contractor shall perform to the highest standard in determining specific services that shall include talent (bands, performers, etc.), talent-related requirements and promotion services for Parks, Recreation and Leisure Services special events.
- C. Specific Requirements:**
 Contractor to provide talent management services for City of Hampton events, festivals, and programs located in Hampton, Virginia on an as needed basis. Such services will be specifically tailored to public assembly events and Contractor shall work with the Parks, Recreation and Leisure Services Special Event staff prior to and during the Parks, Recreation and Leisure Services Special Event to determine appropriate needs. This Contract may be used by any department within the City of Hampton on an as needed basis.

Contractor shall provide talent (bands, performers, etc.), talent-related requirements, and promotion services as provided below.

1. Services provided shall include, talent (bands, performers, etc.), talent-related requirements, and promotion services for Parks, Recreation and Leisure Services special events. Talent formats must be family-friendly (i.e., music genres such as Motown, Oldies & Jazz).
2. Talent must be self-contained (Equipment, Sound, Monitors, Power Strips, etc.).
3. Contractor responsible for any talent-related requirements to include items on rider (lodging, meals, transportation, crew, backline, etc.), unless otherwise provided by the City as agreed in advance as requested by Contractor.
4. Parks, Recreation and Leisure Services special events are family-friendly events; bands and other performers are not permitted to drink alcohol, smoke, or use foul language as part of the performance or when on-site.
5. Talent must promote the Parks, Recreation and Leisure Services, or other City special events two weeks leading up to the specified performance date (Website, Facebook, Twitter, Instagram, Blogs, etc.).

Event Cancellation Policy is as follows:

Weather-Related Cancellations

- If the City deems it necessary to cancel the Parks, Recreation and Leisure Services special event up to five (5) hours before the Parks, Recreation and Leisure Services Special Event begins, the City will not be obligated to pay any monies to the Contractor.
- If the City deems it necessary to cancel the Parks, Recreation and Leisure Services special event less than five (5) hours before the Parks, Recreation and Leisure Services special event begins and the Contractor has begun setting up, the City will be obligated to pay 50% of the contract fee to the Contractor. The check for 50% of the contract fee will be forwarded to the Contractor within 30 days after the scheduled date for the Parks, Recreation and Leisure Services special event.
- If the City deems it necessary to cancel the Parks, Recreation and Leisure Services special event less than five (5) hours before the Parks, Recreation and Leisure Services special event begins and the Contractor has completed set-up and is ready to perform, the Purchaser will be obligated to 100% of the contract fee to the Contractor. The Contractor will receive the fee within 30 days after the scheduled date for the Parks, Recreation and Leisure Services special event.

Non-Weather-Related Cancellations

- The City reserves the right to cancel an individual event or an entire season with a minimum of fourteen (14) day notice to the Contractor. The City will not be obligated to pay any monies to the contractor with fourteen (14) day notice.
- The City reserves the right to waive the fourteen (14) day notice in cases of inclement weather.

Contractor shall carry out their duties in a manner which conforms to standards of good practice of the talent management services industry. Contractor must have demonstratable, responsible experience in providing talent management services of at least 10,000 in attendance.

All proposals should include talent management services pricing for the annual Parks, Recreation and Leisure Services special events identified below. Additionally, all proposals should include pricing for talent management services at other Parks, Recreation and Leisure Services special event on an as needed basis. Proposals should demonstrate types of events and types of talent that Contractor has experience with. The City reserves the right to award multiple contracts should it be determined by the City, in its sole discretion, to be in the City's best interested as specific herein.

The City shall provide specific instructions to Contractor regarding types of bands or other talent needed for each Parks, Recreation and Leisure Services special event. Contractor must provide scouted proposal as soon

as possible for purposes of advertising the Parks, Recreation and Leisure Services special event, but no later than fourteen (14) days prior to the start date of the Parks, Recreation and Leisure Services special event for City review and approval. The scouted proposal must include a proposed talent list, a proposed song or performance list, itemized budget, talent biographies, and social media links. The City has sole discretion to approve or deny talent selections.

The following annual Parks, Recreation and Leisure Services special event are anticipated, with specific 2022 and 2023 dates listed. At the sole discretion of the City, Special Events may be added or deleted during the term of the resulting contract, and all dates and hours are subject to change. No minimum number of events are guaranteed.

Special Event	Date(s)	Location	Anticipated Needs
Groovin' by the Bay	Sundays, June 11 — August 27, 2023, 5:00 pm – 8:00 pm nightly (bands in place by 4: 00 pm)	Mill Point Park	Weekly bands with name recognition and a following to perform 5:00 pm-8:00 pm using own sound.
Crabtown Seafood Festival	September 2, 2023 11:00 am-7:00 pm	Mill Point Park and surrounding area	Bands for one (1) performance stage with name recognition and a following to perform on a schedule as set by Contractor between 11:00 am and 7:00 pm to include changeovers.
Holiday Wonder Walk	December 15-25, 2023 5:00 pm-8:00 pm nightly	Water Walk Trail	Variety of 2-4 strolling entertainers and novelty performers nightly 5:00 pm-8:00 pm

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 permission of the Purchasing Agent or designated representative.
- B. **Questions.** Offerors must submit questions regarding the RFP in writing to the Issuing Office or email questions to awiley@hampton.gov no later than 3:30 PM EST on March 7, 2023. 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 - Scope of Work
 - b. Tab 2 - Past Project Experience & References
 - c. Tab 3 - Capability & Skills
 - d. Tab 4 - Project Schedule & Proposed Timeline
 - e. Tab 5 - Project Fee Structure & Cost Estimate
 - f. Tab 6- Exceptions/Alternatives
 - g. Tab 7 - Small, Minority and Woman Owned Business participation
 - iii. All proposal pages must be numbered
 - iv. Attachments:
 - a. Attachments C, D and E
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 and one (1) flash drive 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. Scope of Work - 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.
2. Past Project Experience & References - 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.
3. Capability and Skill – Credentials and Experience of Team: 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.
4. Project Schedule & Proposed Timeline: Submit a schedule for project and a proposed timeline.

5. Project Fee Structure & Cost Estimate -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.
6. Minority/Woman Owned Programs. Provide details about your status as a minority or woman owned business.
7. 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.

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	Maximum Points
Experience	30 points
Capability and Skills	25 points
Services to be Provided	15 points
Exceptions/Alternatives	15 points
Costs	10 points
Minority/Woman Owned	5 points
Total	100 points

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. Each additional year is referred to as a “Renewal Period”. Said Renewal Period shall occur automatically unless written notice is given by the City or the Contractor no later than thirty (30) days before the expiration of the current period.
- 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
Commercial General Liability (CGL) Required but not limited to: Bodily Injury and Property Damage Personal & Advertising Injury Damage to Rented Premises Premises liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Liquor Liability (only if applicable)	\$1,000,000 per occurrence limit
Business or Commercial Automobile Liability Coverage for Any Auto Required	\$1,000,000
Umbrella or Excess Liability	\$2,000,000 min
Workers' Compensation Employer's Liability	Per Virginia Statute \$1,000,000 min
Waiver of Subrogation All lines of liability	Required Waiver of Subrogation All lines of liability
Certificates of Insurance (COI's) must be accompanied by an endorsement naming the City of Hampton, the Economic Authority, and their elected and appointed officials, agents, employees and volunteers as additional insureds.	

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 one (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: _____

Attachment D – 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) 3.68% Non-minority women (WBE) 3.30%

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 SBSD 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 _____

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 SBSB 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 SBSD 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 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.

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

As found on the SBSD 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 SBSD. 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.

Revised date: April 16, 2019

ATTACHMENT E – ADDITIONAL TERMS AND CONDITIONS FOR FEDERALLY FUNDED TRANSACTIONS

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. 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 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

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.

DOMESTIC PREFERENCES FOR PROCUREMENTS	
Authorizing Legislation	2 C.F.R. Part 200, Appendix II(L)
Required Contracts	All Contracts

A. As appropriate and to the extent consistent with law, the Contractor should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

B. For purposes of this section:

1. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
2. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

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. ADDITIONAL TERMS REQUIRED FOR CONSTRUCTION CONTRACTS

EQUAL EMPLOYMENT OPPORTUNITY	
Authorizing Legislation	2 C.F.R. PART 200 APPENDIX II(C)
Required Contracts	Required in All Construction Contracts (as defined in 41 C.F.R. § 60-1.3)

During the performance of this contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
3. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.
4. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
6. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
7. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
8. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Vendors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance

of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

DAVIS-BACON ACT	
Authorizing Legislation	40 U.S.C. §§ 3141-3144 and 3146-3148, 29 C.F.R. Part 5; 2 C.F.R. PART 200 APPENDIX II(D)
Required Contracts	Required in Certain Construction Contracts Over \$2,000*

- A. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. Vendor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- B. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- C. Additionally, Contractors are required to pay wages not less than once a week.

* Please note that the Davis-Bacon Act requirements (prevailing wage rates) do not apply to projects funded under the American Rescue Plan Act of 2021 (“ARPA”).

COPELAND ANTI-KICKBACK ACT	
Authorizing Legislation	40 U.S.C. 3145
Required Contracts	Required in All Construction Contracts Over \$2,000

- A. Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- B. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- C. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.