



REQUEST FOR PROPOSALS (RFP)

ISSUE DATE: August 18, 2008

RFP No. 9023

TITLE: Murray Drive and Whittamore Road
Water Main Extension

COMMODITY CODE: 926-90

ISSUED BY:
City of Chesapeake
Purchasing Division
306 Cedar Road, 5th Floor
Chesapeake, Virginia 23322

USING DEPARTMENT:
City of Chesapeake
Department of Public Utilities
306 Cedar Road, 2nd Floor
Chesapeake, Virginia 23322

PERIOD OF CONTRACT: Six (6) months from Notice to Proceed.

SEALED PROPOSALS WILL BE RECEIVED UNTIL **5:00 P.M., August 28, 2008** for furnishing the services described herein. See Section VII for specific instructions for the completion of proposals.

All Inquiries For Information Should Be Directed To Michael Thomas, Procurement Specialist, Phone: (757) 382-6359, Fax: (757) 382-6900, Email: mlthomas@cityofchesapeake.net.

All questions must be submitted in writing to the Purchasing Division before **5:00 p.m., August 22, 2008**. If necessary, an addendum will be issued in the form of a facsimile and posted on the City's website at: www.CityOfChesapeake.net

IF PROPOSALS ARE MAILED, SEND DIRECTLY TO THE PURCHASING DIVISION AT THE ADDRESS SHOWN ABOVE. IF HAND-DELIVERED, DELIVER TO: City Hall, Purchasing Division, 306 Cedar Road, 5th Floor, Chesapeake, VA 23322.

In Compliance With This Request for Proposal And To All The Conditions Imposed Therein and Hereby Incorporated By Reference, The Undersigned Offers, And Agrees To Furnish Services requested in the solicitation.

THIS SECTION TO BE COMPLETED BY OFFEROR

NAME AND ADDRESS OF FIRM:

Date: _____

By: _____ (Sign in Ink)

Name: _____ (Please Print)

_____ Zip Code: _____

Title: _____

FEI/FINT NO: _____

Phone _____ Fax _____

TABLE OF CONTENTS

Request for Proposal No. 9023

Murray Drive and Whittamore Road Water Main Extension

I.	BACKGROUND.....	3
II.	SCOPE OF SERVICES.....	3
III.	PROPOSAL FORMAT.....	4
IV.	SELECTION PROCESS.....	6
V.	EVALUATION OF PROPOSALS.....	6
VI.	EVALUATION OF SHORT-LISTED FIRMS.....	7
VII.	ORAL PRESENTATIONS.....	7
VIII.	SCHEDULE OF EVENTS.....	8
IX.	CONFLICTS AND QUESTIONS.....	8
X.	AWARD OF CONTRACT.....	9
APPENDIX A:		
	Contract Agreement	11
APPENDIX B:		
	Section I – Required General Terms and Conditions.....	18
	Section II – Special Terms and Conditions.....	24
APPENDIX C:		
	Certification of Compliance with Immigration Laws and Regulations.....	27

MURRAY DRIVE AND WHITTAMORE ROAD WATER MAIN EXTENSION

I. **Background:**

The purpose of this project is to extend public water mains along Centerville Turnpike, Fentress Road, Whittamore Road and Murray Drive. Tie-ins shall be made at Etheridge Manor Boulevard and Fentress Road.

II. **Scope of Services:**

The City of Chesapeake requires the services of an engineering firm to design the water main improvements at these various locations. This project must proceed in a timely fashion; therefore the successful firm must have adequate resources to not impede the completion of this project. Due to the size of the project, the design must optimize design and construction schedules. The water main along Centerville Turnpike must commence first. The goal is to have all water mains installed as quickly as practical.

All designs are to be in accordance with all applicable City, State and Federal laws, rules and regulations. For each of these projects, the specific tasks to be performed include:

1. Conduct field surveys of street rights-of-way and adjacent properties. Information gathered shall include horizontal and vertical data showing the location of all existing overhead and underground utilities (including, but not limited to water, sewer, storm drainage, gas, telephone, cable, TV, electric) and appurtenances, pavement, rights-of-way and property lines, easements, fences, structures, trees, and other physical or recorded data necessary for the proper design and construction of the facilities.
2. Conduct soil borings or utility locating services as necessary along the routing of the proposed water lines to provide additional information necessary to design the facilities to address corrosiveness of the soil, bedding requirements, select backfill material, conflicts with existing utilities, etc.
3. System hydraulic calculations for both Murray Drive and Whittamore Road shall be included in the project scope to identify the water main sizing and exact extent of system improvements.
4. Based on the information collected, design the water lines and appurtenances in accordance with the Chesapeake Public Facilities Manual, accepted design practice, and as noted above. Plans shall be prepared at a scale sufficient to depict the work required for construction. In no case shall the scale be smaller than 1 inch = 40 feet (horizontal), and 1 inch = 4 feet (vertical). Plans shall be prepared on 24" x 36" sheets. A cover sheet, traffic control plan, and necessary detail sheets shall be included.
5. Prepare complete contract documents. Material and work specifications shall be developed to complement the final construction plans. The consultant shall provide such changes and supplementary provisions as necessary to adapt the City's contract document format, including General Conditions, Special Conditions, Technical Specifications, etc., to this project.

6. Obtain all necessary approvals and permits from the appropriate Local, State and Federal agencies (i.e. Public Works, Planning, Virginia Department of Health, etc.).
7. Prepare detailed estimates of the quantities and types of materials needed and their estimated costs. Cost estimates shall be submitted with the 35% and 100% review submittals.
8. Perform all coordination for any necessary utility relocations between the affected utility and this project. This shall also include any work required under the Overhead High Voltage Line Safety Act.
9. Prepare easement and/or land acquisition plats, if necessary. All plats shall be field-verified prior to submittal to the City. Plats to be submitted are to be approved within two (2) months of the Notice to Proceed.
10. Submit to the City four (4) copies of the plans and contract documents for review. These reviews shall be at the thirty-five and ninety percent (35% and 90%) stages of the project. Consultant shall incorporate any mutually agreed upon modifications from these reviews. Final construction plans (100%) shall be provided once all comments have been addressed to the City's satisfaction.
11. For each project, thirty-five (35) numbered copies of the complete set of contract documents (plans and specifications) are to be provided to the City for distribution to Bidders. Additional copies as necessary shall be provided for distribution to Plan Rooms and review agencies.
12. Provide all engineering services necessary to place the work under contract through the competitive bidding process. This includes advertising for bids, pre-bid meeting, work interpretation, any addenda, bid opening, bid analysis and recommendations.
13. Plans and specifications for the Centerville Turnpike water main are to be complete in "ready to bid" form no more than four (4) months from Notice to Proceed; for Murray Drive and Whittamore Road water mains, six (6) months from Notice to Proceed.

III. **Proposal Format:**

The following information must be contained in the proposal:

1. Is the firm interested in performing the services; does their workload permit commencement within the required time period?
2. Names, qualifications, and business address of firm members who are proposed to perform services on this project, including manpower utilization information;
3. Names and qualifications of other or secondary consultants, if any, which would be utilized on this project and the scope of their involvement;
4. List of similar projects of this type that the key project personnel have designed and built, with cost, location, contract persons and telephone numbers noted, and whether the project was completed on time and within budget. Emphasis should be placed on those projects, which were

worked on by the key personnel as a team. Current GSA Forms 254 and 255 shall also be submitted with proposal.

5. Design schedule with number of days required to accomplish each task identified, including review by City and regulatory agencies; potential strategies to allow the City to expedite this project;

6. The proposed method of determining a fee for the professional services. However, the total amount of fee to be charged for this project is not required at this time;

7. Explain how the firm shall provide the engineering design services addressing the efficient utilization of personnel, time, meetings and reports. Specify how often project update meetings shall be scheduled with the City, and when completed project construction plans, specifications, contract documents and plats (if necessary) shall be submitted to the City;

8. Explain the firm's approach to contract administration and inspection with respect to interaction with the design team, utilization of personnel and time, and anticipated construction problems;

9. Identify the project manager (that person who shall work with the City on a day-to-day basis), and the project staff (including surveyors, designers, contract administrators and inspectors) giving their qualifications, experience and geographic location;

10. Identify the project manager's immediate supervisor, if any; also include respective qualifications, experience and geographic location;

A. Proposals shall be signed by an authorized representative of the offeror. All information requested must be submitted. Failure to submit all information requested may result in the Purchasing Division requiring prompt submission of missing information and/or giving a lowered evaluation of the proposal. Mandatory requirements are those required by law or such that they cannot be waived and are not subject to negotiation.

B. Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of content. Elaborate brochures and excessive promotional materials are not required or desired.

C. Proposals should be organized in the order in which the requirements are presented in the RFP. All pages of the proposal should be numbered. Each paragraph should reference the paragraph number of the corresponding section of the RFP. It is also helpful to cite the paragraph number, sub-number, and repeat the text of the requirement as it appears in the RFP. If a response covers more than one page, the paragraph number and sub-number should be cross repeated at the top of the next page. The proposal should contain a table of contents which cross references the RFP requirements. Information which the offeror desires to present that does not fall within an area of the requirement of the RFP should be inserted at an appropriate place or be attached at the end of the proposal and designated as additional material. Proposals that are not organized in this manner risk elimination from consideration if the evaluators are unable to find where the RFP requirements are specifically addressed.

- D. Each copy of the proposal should be bound or contained in a single volume where practical. All documentation submitted with the proposal should be contained in a single volume.
- E. Ownership of all data, materials and documentation originated and prepared for the City pursuant to the RFP shall belong exclusively to the City and shall be subject to public inspection in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by the offeror shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the offeror must invoke the protection of Section 2.2-4342 of the Code of Virginia, in writing, either before or at the time the data is submitted. The written notice must specifically identify the data or materials to be protected and state the reasons why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must be indicated on the specific words, figures, or paragraphs that constitute trade secret or proprietary information. The classification of an entire proposal as proprietary or trade secrets is not acceptable and will result in rejection and return of the proposal.

11. Identify the firm's strategy for designing the project, any problems which they expect to encounter and proposed method of resolution. All solutions proposed shall be non-proprietary.

12. Identify the firm's process for review of the design for feasibility of construction.

The proposal shall be no longer than twenty (20) pages (one-sided), including any graphics, dividers, tables, but excluding the GSA Forms 254 and 255. The minimum font size shall be 10 point. Six (6) copies shall be provided to the City of Chesapeake.

IV. **Selection Process:**

The selection of an engineering firm shall be conducted in accordance with the City of Chesapeake's Policy pertaining to Procurement of Professional Services, and in accordance with Chesapeake City Code Section 54-67, entitled "Competitive Negotiation" and any other applicable sections of Chesapeake City Code Chapter 54 entitled "Public Procurement."

V. **Evaluation of Proposals:**

The Selection Committee will review the proposals and develop a shortlist of firms to interview. During the review of proposals the City will focus on the following factors to develop the shortlist:

1. Completeness of the proposal; All questions are answered and issues addressed properly and accurately; (10%)
2. Qualifications, competence and depth of personnel, including work as a team; (35%)
3. Engineer's design strategy to minimize the time frame from start of design to completion of construction; anticipated problems and proposed solutions; (35%)
4. Any other pertinent criteria as determined by the City; (20%)

VI. **Evaluation of Short-listed Firms:**

In evaluating and ranking the short-listed firms for award of this project contract, the City shall focus on the following factors:

1. Specialized experience of the assigned personnel in the work required; (15%)
2. Record of the firm and assigned personnel in accomplishing work on other projects within the required time and estimate; (10%)
3. Is presentation appropriate for project; all questions answered and issues addressed properly and accurately? (10%)
4. Quality of work previously performed by the firm for the City. (Work reviewed by the City for others may also be used); (10%)
5. Evidence of any attempt to evade responsibility for evident design failures; (5%)
6. Qualifications, competence, and depth of personnel; (15%)
7. Availability of personnel to perform the work within a limited period of time following request for such work; (5%)
8. Engineer's design strategy to minimize the time frame from start of design to completion of construction; anticipated problems and proposed solutions; (15%)
9. Any other pertinent criteria as determined by the City; (15%)

After ranking the firms, the recommendation of award shall be finalized through competitive negotiation, starting with firm ranked as number one and move to the next ranked firm, if successful negotiations cannot be completed.

The City reserves the right to cancel this request for proposal or reject, in whole or in part, any or all proposals if it is determined to be in the best interest of the City to do so.

VII. **Oral Presentations:**

Offerors who submit a proposal in response to this RFP may be required to give an oral presentation of their proposal. This will provide an opportunity for the offeror to clarify or elaborate on the proposal. This is a fact finding and explanation session only and will not include negotiation. The City will schedule the time and location of these presentations. Oral presentations are an option of the issuing agency and may or may not be conducted. Should an Offeror receive a request for an oral presentation, the evaluation criteria relative to the oral presentation will be detailed in a written notice of the request.

All proposals must be submitted no later than 5:00 p.m. on August 28, 2008, to:

Victor Westbrook
 Purchasing and Contracts Manager
 City of Chesapeake
 Purchasing Division
 5th Floor City Hall
 306 Cedar Road
 Chesapeake, VA 23328

If you have any questions regarding this proposal, please contact Mr. Michael Thomas, Procurement Specialist II, at (757) 382-6359.

The successful firm will be required to execute a standard City-Consultant contract.

VIII. **Schedule of Events:**

The City will make every effort to adhere to the following schedule leading to the award of a contract; however, this schedule is subject to change. Offerors will be notified of significant schedule changes:

<u>Action</u>	<u>Responsibility</u>	<u>Date</u>
Issuance of RFP	City Purchasing	August 18, 2008
Submission of Questions	Potential Offerors	August 22, 2008
Submission of Proposal	Offerors	August 28, 2008
Consultant Interviews/ Selection of Finalists	Evaluation Committee	September 3, 2008
Contract Negotiations	Evaluation Committee	September 10, 2008
Contract Agreement/Award	Purchasing & Control Mgr.	September 19, 2008

IX. **Conflicts and Questions:**

Should there be conflicts between the proposal documents and the final executed contract document; the final contract shall take precedence.

Questions regarding this Request for Proposals should be directed in writing to the Purchasing Division. The Purchasing Division must receive all questions and requests for clarification before 5:00 p.m., August 22, 2008.

Ownership of all data, materials and documentation originated and prepared for the City pursuant to the RFP shall belong exclusively to the City and be subject to public inspection in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by the offeror shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the offeror must invoke the protection of § 2.2-4342 of the Code of Virginia, in writing, either before or at the time the data is submitted. The written notice must specifically identify the data or materials to be protected and state the reasons why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must be indicated on the specific words, figures, or paragraphs that constitute trade secret or proprietary information. The classification of an entire proposal as proprietary or trade secrets is not acceptable and will result in rejection and return of the proposal.

The City will only provide information (or access to the same) which is readily available, and does not propose to prepare any further special reports. The City reserves the right to charge its normal fees for materials copied.

The right is reserved, as the interests of the City may require, to revise and/or amend the specifications prior to the date set for acceptance of proposals; the acceptance date may be postponed if deemed necessary by the Purchasing Manager. Such revisions and amendments, if any, will be announced by an addendum to this solicitation.

XIV. **Award of Contract:**

- A. The City of Chesapeake shall engage in individual discussions with one or more offerors deemed fully qualified, responsible and suitable based on initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. Such offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts.

Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of the informal interviews, on the basis of evaluation factors published in this Request for Proposals and all information developed in the selection process to this point, the City shall select, in the order of preference, one or more offerors whose professional qualifications and proposed services are deemed most meritorious.

Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the City can be negotiated with terms and conditions considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and on, until such a contract can be negotiated. Should the City determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

- B. Any and all costs associated with the preparation of responses to this Request for Proposals, including site visits, oral presentations and any other costs shall be entirely the responsibility of the offeror and shall not be reimbursable in any manner by the City.

- C. The City reserves the right to reject any or all proposals, to waive any technicalities in proposals received, and to negotiate and to accept the proposal which shall be in the City's best interest.

- D. The City may cancel this Request for Proposals at any time prior to an award, and is not required to furnish a reason why a particular proposal was not deemed to be the most advantageous.

APPENDIX A
AGREEMENT
BETWEEN THE CITY OF CHESAPEAKE
AND
(SELECTED CONSULTANT)
FOR
PROFESSIONAL SERVICES
FOR
MURRAY DRIVE AND WHITTAMORE ROAD WATER MAIN EXTENSION

THIS AGREEMENT, dated _____, 2008, by and between the **CITY OF CHESAPEAKE**, a municipal corporation of the Commonwealth of Virginia hereinafter called the "City", party of the first part, and _____, hereinafter called the Consultant, party of the second part.

WHEREAS, The City requires professional engineering and inspection services on an annual basis and deems it desirable to secure the professional services of said Consultant in connection therewith, as described in the Request for Proposal Letter for the subject services issued by the City dated _____, 2008, a copy of which is attached hereto as Exhibit A and incorporated herein by reference, and

WHEREAS, the Consultant maintains that he is qualified and willing to undertake the services delineated herein.

NOW, THEREFORE, WITNESSETH: The City and the Consultant for the consideration hereinafter set forth, hereby agree as follows:

1. SCOPE OF SERVICES: The Consultant shall render the City complete professional services as follows:

Provide, in the manner described therein, all services detailed in Exhibit A.

The Consultant(s) represents that it will perform all tasks in accordance with generally accepted professional standards and the Consultant(s) further represents that it will provide the City the best possible advice and consultation within the Consultant (s) authority and capacity as a professional.

2. COMPENSATION TO CONSULTANT: The City shall pay the Consultant subject to the provisions set forth below, unless otherwise modified in a separate writing, and as further set forth in the Consultant's Fee Proposal dated _____, 2008, a copy of which is attached hereto as Exhibit A and which is incorporated herein by reference.

A. To Consultant

- (1) Consultant shall submit to the City not more than once a month, an itemized invoice for work, setting forth services that performed and charged therefore. The City shall pay such invoice within forty-five (45) days from the date of invoice. Ten (10) days shall be allowed to review the invoice for accuracy. All invoices shall show the City contract number and/or purchase order number; social security number (for individuals) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- (2) Any payment terms requiring payment in less than 45 days will be regarded as requiring payment 45 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 45 days, however.
- (3) All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the Consultant at the contract price, regardless of which City department is being billed.

- (4) The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- (5) **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, Consultant should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. See, Chesapeake Code §2-627. Charges which appear to be subject to the provisions of that ordinance will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the City shall promptly notify the Consultant, in writing, as to those charges which it considers unreasonable and the basis for the determination. An Consultant may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve a department of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia*, § 2.2-4363).

B. To Subcontractors

- (1) A Consultant awarded a contract under this solicitation is hereby obligated:
- (a) To pay the subcontractor(s) within seven (7) days of the Consultant's receipt of payment from the City for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 - (b) To notify the department and the subcontractor(s), in writing, of the Consultant's intention to withhold payment and the reason.
- (2) The Consultant is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the Consultant that remain unpaid seven (7) days following receipt of payment from the City, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier performing under the primary contract. A Consultant's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the City.

3. CONTRACT TERM:

The City of Chesapeake shall enter into agreement with the successful Offeror for a period of six (6) months from date of contract award, with the option to renew for six additional months.

4. RESPONSIBILITY OF THE PARTIES:

Consultant: The Consultant shall, without additional cost or fee to the City, correct or revise any errors or deficiencies in his performance. Neither the City's review, approval or acceptance of, nor payment for, any of the services required under this Agreement shall be deemed a waiver of rights by the City and the Consultant shall remain liable to the City for all costs which are incurred by the City as a result of the Consultant's negligent performance of any of the services furnished under this Agreement. The Consultant agrees and covenants that its agents and employees shall comply with all city, state, and federal laws, rules, and regulations applicable to the business to be conducted under the contract.

City: City shall provide the Consultant with all information and data in possession, which relates to the requirement for the Project. If the City becomes aware of any fault or defect in the Consultant's services, while under no obligation, the City may notify the Consultant of any fault or defect. The City shall furnish required information or services as expeditiously as reasonably possible for the orderly performance of the work. The City shall designate to the Consultant as the City's representative(s) who shall serve as the principal contact(s) and give direction to the Consultant throughout the duration of the work. The City shall provide access to and make all provisions for Consultant to enter upon public and private property as required by Consultant to perform its services.

5. **OWNERSHIP OF DOCUMENTS / CONFIDENTIALITY:** The Consultant shall provide to the City the original documents/ reports, logs and daily reports. All documents shall become the property of City upon payment of the applicable work order. The Consultant without prior written approval by the City shall not make any reports, information, data, drawings, specifications, estimates and summaries given to, prepared, or assembled by the Consultant under this Agreement available to any individual or organization.
6. **GOVERNING LAW AND VENUE:** This solicitation is subject to the provisions of the Code of the City of Chesapeake, Title 54, and the Code of Virginia Public Procurement Act, Va. Code §2.2-4300, et seq., any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia. Any litigation with respect thereto shall be brought in the courts of the City of Chesapeake, or the United States District Court for the Eastern District of Virginia, Norfolk Division, if independent federal jurisdiction exists. The Engineer shall comply with all applicable federal, state and local laws, rules and regulations. Contact the Purchasing Division at (757) 382-6359, for more information or to review the Chesapeake Procurement Ordinance.
7. **ANTI-DISCRIMINATION:** By submitting their proposals, Offerors certify to the City that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the Virginia Public Procurement Act (VPPA). If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (Code of Virginia, § 2.2-4343.1E). In every contract over \$10,000 the provisions in 1. and 2. below apply:
- A. During the performance of this contract, the Engineer agrees as follows:
- (1) The Consultant will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Consultant. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - (2) The Consultant, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, will state that such Consultant is an equal opportunity employer.
 - (3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for meeting these requirements.
- B. The Consultant will include the provisions of (1) above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
8. **DRUG-FREE WORKPLACE:** During the performance of this contract, the Consultant agrees to (i) provide a drug-free workplace for the Consultant's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Consultant's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Consultant that the Consultant maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or Vendor.

For the purposes of this section, “*drug-free workplace*” means a site for the performance of work done in connection with a specific contract awarded to a Consultant, the employees of who 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.

9. **ETHICS IN PUBLIC CONTRACTING:** Pursuant to Virginia Code §2.2-4367, et seq., and Chesapeake Code §54-166, by submitting their proposals, Offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
10. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By submitting their proposals, Offerors certify that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.
11. **DEBARMENT STATUS:** By submitting their proposals, Offerors certify that they are not currently debarred by the federal government, the Commonwealth of Virginia, or any political subdivision thereof from submitting proposals on contracts for the type of services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred. Should the City determine during the course of performance of the Contract that the Consultant is so debarred, the City may immediately terminate the Contract and seek all appropriate damages.
12. **MANDATORY USE OF CITY FORM, TERMS AND CONDITIONS:** Failure to submit a proposal on the official City form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the City reserves the right to decide, on a case-by-case basis, in its sole discretion, whether to reject such a proposal.
13. **CLARIFICATION OF TERMS:** If any prospective Offeror has questions about the specifications or other solicitation documents, the prospective Offeror should contact the Purchasing and Contracts Manager no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the Purchasing Division.
14. **SPECIAL TERMS - PRECEDENCE OF TERMS:** In the event, there are any Special Terms there is a conflict between any Contract Terms and Conditions and any Special Terms and Conditions set forth in Attachment C – Special Terms and Conditions, the Special Terms and Conditions shall apply. To the extent that any part of the Proposal or documentation provided by the Consultant conflicts with the Contract, as modified by Attachment C, the contract shall apply.
15. **QUALIFICATIONS OF OFFERORS:** The City may make such reasonable investigations as deemed proper and necessary to determine the ability of the Offeror to perform the services/furnish the goods and the Offeror shall furnish to the City all such information and data for this purpose as may be requested. The City reserves the right to inspect Offeror's physical facilities prior to award to satisfy questions regarding the Offeror's capabilities. The City further reserves the right to reject any Proposal if the evidence submitted by, or investigations of, such Offeror fails to satisfy the City that such Offeror is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.
16. **TESTING AND INSPECTION:** The City reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
17. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the Engineer in whole or in part without the written consent of the City.
18. **MODIFICATIONS OR CHANGES TO THE CONTRACT:** Modifications or changes can be made to the contract in any of the following ways:
 - A. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
 - B. The department utilizing any contract arising out of this solicitation may order changes within the general scope of the contract at any time by written notice to the Consultant. Changes within the scope of the contract include, but are not limited to, things such as services to be performed and the place of performance. The Consultant shall comply with the notice upon receipt. The Consultant shall be compensated for any additional costs incurred as the result of such change

order and shall give the City a credit for any savings. Said compensation shall be determined by one of the following methods:

- (1) By mutual agreement between the parties in writing; or
- (2) By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the Engineer accounts for the number of units of work performed, subject to the City's right to audit the Consultant's records and/or to determine the correct number of units independently; or
- (3) By ordering the Consultant to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Consultant shall present the City with all vouchers and records of expenses incurred and savings realized. The City shall have the right to audit the records of the Consultant, as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the City within thirty (30) days from the date of receipt of the written order from the City. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract, which appears as Appendix D – Dispute Resolution, or, in the absence of Appendix D, the matter will go to mediation, and upon failure to successfully mediate the dispute, then the matter may be litigated in the proper forum. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the Consultant from promptly complying with the changes ordered by the City or with the performance of the contract generally.

19. DEFAULT: In case of failure to deliver satisfactory services in accordance with the Contract terms and conditions, the City shall give written notice to the Engineer of the default. If the Consultant fails to cure the deficiency within thirty (30) days of the notice, then the City may immediately terminate the Contract, may procure replacement services from other sources and hold the Consultant responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies, which the City may have. For purposes of the Contract, "written notice" shall mean notice in writing transmitted by United States mail, courier service, personal delivery, facsimile machine, or email.

20. INSURANCE: By signing and submitting a proposal under this solicitation, the Offeror certifies that if awarded the contract, it will have the following insurance coverage's at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractors will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The Offeror further certifies that the Consultant and any subcontractors will maintain these insurance coverages during the entire term of the contract and that insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission will provide all insurance coverages.

21. INSURANCE COVERAGES AND LIMITS REQUIRED:

A. Workers' Compensation: Statutory requirements and benefits.

B. Employer's Liability: \$1,000,000.00.

C. Commercial General Liability: \$1,000,000.00. Combined single limit. Commercial General Liability is to include Premises/Operations Liability, Products and Completed Operations Coverage, and Independent Consultant's Liability or Owner's and Consultant's Protective Liability. The City of Chesapeake must be named as an additional insured when requiring a Consultant to obtain Commercial General Liability coverage.

D. Automobile Liability: \$1,000,000.00 - Combined single limit. (Only used if motor vehicle is to be used in the contract.)

E. Professional Liability Insurance: The Consultant shall maintain during the life of this contract such Professional Liability Insurance as shall protect the Consultant against claims for damages resulting from medical incidents which may arise from operations under this contract whether such operations be by the Consultant, the Consultant staff, or by any subcontractor or anyone directly or indirectly employed by either of them. The minimum acceptable limits of liability to be provided by such Professional Liability Insurance shall be as follows:

- (1) \$ 1,000,000.00 each incident
- (2) \$ 3,000,000.00 aggregate

22. **DISPUTE RESOLUTION:** Any dispute arising under the terms of the contract shall be resolved in accordance with the provisions of Attachment D – Dispute Resolution.. In the absence of the Attachment, any dispute must first go to mediation, and if the dispute is not concluded through mediation, then the dispute must be litigated in a proper forum within six (6) months of the termination of the mediation proceeding.
23. **ADVERTISING:** In the event a contract is awarded for services resulting from this proposal, no indication of such services to the City of Chesapeake will be used in advertising literature. The Consultant shall not state in any of its advertising or product literature that the City of Chesapeake or any department or agency of the City has used or uses its services.
24. **AUDIT:** The Consultant shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the City, whichever is sooner. The City auditors shall have full access to the right to examine any of said materials during said period.
25. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the City shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.
26. **PROPOSAL ACCEPTANCE PERIOD:** Any Proposal in response to this solicitation shall be valid for 90 days. At the end of the 90 days, the Proposal may be withdrawn at the written request of the Offeror. If the Proposal is not withdrawn at that time, it remains in effect until an award is made or the solicitation is canceled.
27. **CANCELLATION OF CONTRACT:** The City of Chesapeake reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 15 days written notice to the Consultant. Any contract cancellation notice shall not relieve the Consultant of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
28. **MINORITY/WOMEN OWNED BUSINESSES SUBCONTRACTING AND REPORTING:** Where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the Consultant is encouraged to offer such business to minority and/or women-owned businesses. Names of firms may be available from the Purchasing Division and various state and federal agencies. When such business has been subcontracted to these firms and upon completion of the contract, the Consultant agrees to furnish the purchasing office the following information: name of firm, phone number, total dollar amount subcontracted and type of service provided.
29. **INDEMNIFICATION:** Consultant agrees to indemnify, defend and hold harmless the City of Chesapeake, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the Consultant/any services of any kind or nature furnished by the Consultant, provided that such liability is not attributable to the sole negligence of the using agency or to failure of the using agency to use the materials, goods, or equipment in the manner already and permanently described by the Consultant on the materials, goods or equipment delivered.
30. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of the purchasing agency. In the event that the Consultant desires to subcontract some part of the work specified herein, the Consultant shall furnish the purchasing agency the names, qualifications and experience of their proposed subcontractors. The Consultant shall, however, remain fully liable and responsible for the work to be done by its subcontractors and shall assure compliance with all requirements of the contract.
31. **TAXES:** The Consultant shall pay all city, state, and federal taxes required by law enacted at the time proposals are received and resulting from the work or traceable thereto, under whatever name levied. Said taxes shall not be in addition to the contract price between the City and the Consultant, as the taxes shall be the Consultant shall hold an obligation of the Consultant and not of the City and the City harmless for it. The City of Chesapeake is exempt from the payment of federal excise taxes and the payment of State Sales and Use Tax on all tangible, personal property for its use or consumption. Tax exemption certificates will be furnished upon request.

32. **SEVERABILITY:** Should any part of this Contract be deemed void or otherwise unenforceable at law or equity, that part shall be deleted from the Contract, and the remainder of the terms shall be in full force and effect.

33. **FULL AGREEMENT:** This writing incorporates the full Contract, and no term of this Contract may be varied except in a writing signed by both parties. The Contract consists of this document and the following attached documents:

- A. Contract Agreement
- B. Request for Proposals
- C. Consultant’s Proposal
- D. Attachment A – Detailed Scope of Services
- E. Attachment B – Dispute Resolution
- F. Consultant’s Fee Proposal
- G. Certificates of Insurance
- H. Certification of Compliance with Immigration Laws and Regulations

WITNESS the following Signatures:

Consultant Firm

By: _____
_____(title)

Approved as to form: _____
Assistant City Attorney

Date

CITY OF CHESAPEAKE

By: _____
City Manager

APPENDIX B
SECTION I

**REQUIRED GENERAL TERMS AND CONDITIONS
GOODS AND PROFESSIONAL SERVICES
JULY 2008**

- A. *VENDORS MANUAL*
 - B. APPLICABLE LAWS AND COURTS
 - C. ANTI-DISCRIMINATION
 - D. ETHICS IN PUBLIC CONTRACTING
 - E. IMMIGRATION REFORM AND CONTROL ACT OF 1986
 - F. DEBARMENT STATUS
 - G. ANTITRUST
 - H. MANDATORY USE OF CITY FORM AND TERMS AND CONDITIONS
 - I. CLARIFICATION OF TERMS
 - J. PAYMENT
 - K. PRECEDENCE OF TERMS
 - L. QUALIFICATIONS OF BIDDERS OR OFFERORS
 - M. TESTING AND INSPECTION
 - N. ASSIGNMENT OF CONTRACT
 - O. CHANGES TO THE CONTRACT
 - P. DEFAULT
 - Q. TAXES
 - R. USE OF BRAND NAMES
 - S. TRANSPORTATION AND PACKAGING
 - T. INSURANCE
 - U. ANNOUNCEMENT OF AWARD
 - V. DRUG-FREE WORKPLACE
 - W. NONDISCRIMINATION OF CONTRACTORS
 - X. COOPERATIVE PROCUREMENT
- A. **VENDORS MANUAL:** This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at www.dgs.state.va.us/dps under "Manuals."
- B. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations. Provisions of the City of Chesapeake Ordinance on Procurement and any revisions also govern this solicitation thereto, which is hereby incorporated into this contract by reference. Contact the Purchasing Division at (757) 382-6359, for more information or to review the Chesapeake Procurement Ordinance.
- C. **ANTI-DISCRIMINATION:** By submitting their (bids/proposals), (bidders/offerors) certify to the City that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts,

only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).

In every contract over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the Contractor agrees as follows:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for meeting these requirements.
 2. The Contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- D. **ETHICS IN PUBLIC CONTRACTING:** By submitting their (bids/proposals), (bidders/offerors) certify that their (bids/proposals) are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other (bidder/offeror), supplier, manufacturer or subcontractor in connection with their (bid/proposal), and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
- E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By submitting their (bids/proposals), (bidders/offerors) certify that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.
- F. **DEBARMENT STATUS:** By submitting their (bids/proposals), (bidders/offerors) certify that they are 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 are they an agent of any person or entity that is currently so debarred.
- G. **ANTITRUST:** By entering into a contract, the Contractor conveys, sells, assigns, and transfers to the City of Chesapeake all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the City of Chesapeake under said contract.
- H. **MANDATORY USE OF CITY FORM AND TERMS AND CONDITIONS FOR IFBs AND RFPs:**
1. (For Invitation For Bids): Failure to submit a bid on the official City form provided for that purpose shall be a cause for rejection of the bid. Modification of or additions to any portion of the Invitation for Bids may be cause for rejection of the bid; however, the City reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid as non responsive. As a precondition to its acceptance, the City may, in its sole discretion, request that the bidder withdraw or modify non-responsive portions of a bid, which do not affect quality, quantity, price, or delivery. No modification of or addition to the provisions of the contract shall be effective unless reduced to writing and signed by the parties.
 2. (For Request For Proposals): Failure to submit a proposal on the official City form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms

and Conditions of the solicitation may be cause for rejection of the proposal; however, the City reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.

- I. **CLARIFICATION OF TERMS:** If any prospective (bidder/offeror) has questions about the specifications or other solicitation documents, the prospective (bidder/offeror) should contact the Purchasing and Contracts Manager no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the Purchasing Division.
- J. **PAYMENT:**
1. **To Prime Contractor:**
 - a. Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the City contract number and/or purchase order number, social security number (for individual Contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
 - b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
 - c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the Contractor at the contract price, regardless of which City department is being billed.
 - d. The following shall be deemed the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
 - e. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, Contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the City shall promptly notify the Contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A Contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve a department of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia*, § 2.2-4363).
 2. **To Subcontractors:**
 - a. A Contractor awarded a contract under this solicitation is hereby obligated:
 - (1) To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the City for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 - (2) To notify the department and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.
 - b. The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the City, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier Contractor performing under the

primary contract. A Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the City.

- K. **PRECEDENCE OF TERMS:** Paragraphs A-J of these General Terms and Conditions shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.
- L. **QUALIFICATIONS OF (BIDDERS/OFFERORS):** The City may make such reasonable investigations as deemed proper and necessary to determine the ability of the (bidder/offeror) to perform the services/furnish the goods and the (bidder/offeror) shall furnish to the City all such information and data for this purpose as may be requested. The City reserves the right to inspect (bidder's/offeror's) physical facilities prior to award to satisfy questions regarding the (bidder's/offeror's) capabilities. The City further reserves the right to reject any (bid/proposal) if the evidence submitted by, or investigations of, such (bidder/offeror) fails to satisfy the City that such (bidder/offeror) is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.
- M. **TESTING AND INSPECTION:** The City reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
- N. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the Contractor in whole or in part without the written consent of the City.
- O. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:
1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
 2. The Purchasing Division may order changes within the general scope of the contract at any time by written notice to the Contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Division a credit for any savings. Said compensation shall be determined by one of the following methods:
 - a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to the Purchasing Division's right to audit the Contractor's records and/or to determine the correct number of units independently; or
 - c. By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present the Purchasing Division with all vouchers and records of expenses incurred and savings realized. The Purchasing Division shall have the right to audit the records of the Contractor, as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Division within thirty (30) days from the date of receipt of the written order from the Purchasing Division. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by the Purchasing Division or with the performance of the contract generally.

- P. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the City, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies, which the City may have.
- Q. **TAXES:** Sales to the City are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The City's excise tax exemption registration number is 54-072-1442.
- R. **USE OF BRAND NAMES:** Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict (bidders/offerors) to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article, which the City, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The (bidder/offeror) is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the City to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the (bidder/offeror) clearly indicates in its (bid/proposal) that the product offered is an equal product, such (bid/proposal) will be considered to offer the brand name product referenced in the solicitation.
- S. **TRANSPORTATION AND PACKAGING:** By submitting their (bids/proposals), all (bidders/offerors) certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.
- T. **INSURANCE:** By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the contract, it will have the following insurance coverages at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The bidder or offeror further certifies that the Contractor and any subcontractors will maintain these insurance coverage's during the entire term of the contract and that all insurance coverage's will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

INSURANCE COVERAGES AND LIMITS REQUIRED:

1. Workers' Compensation - Statutory requirements and benefits.
 2. Employer's Liability - \$100,000.
 3. Commercial General Liability - \$1,000,000 combined single limit. Commercial General Liability is to include Premises/Operations Liability, Products and Completed Operations Coverage, and Independent Contractor's Liability or Owner's and Contractor's Protective Liability. The City of Chesapeake must be named as an additional insured when requiring a Contractor to obtain Commercial General Liability coverage.
 4. Automobile Liability - \$1,000,000 - Combined single limit. (Only used if motor vehicle is to be used in the contract.)
- U. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract over \$30,000, as a result of this solicitation, the Purchasing Division will publicly post such notice on the City's website (www.CityofChesapeake.net) for a minimum of 10 days.

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

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

- W. **NONDISCRIMINATION OF CONTRACTORS:** A bidder, offeror, or Contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, or disability, or against faith-based organizations. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the City shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

APPENDIX B**SECTION II****SPECIAL TERMS AND CONDITIONS
GOODS AND PROFESSIONAL SERVICES**

1. ADVERTISING
2. AUDIT
3. BID ACCEPTANCE PERIOD
4. IDENTIFICATION OF BID/PROPOSAL ENVELOPE
5. INDEMNIFICATION
6. MINORITY/WOMEN-OWNED BUSINESSES SUBCONTRACTING AND REPORTING
7. REFERENCES
8. TERMINATION OF CONTRACT
9. DISPUTES

1. **ADVERTISING** In the event a contract is awarded for supplies, equipment, or services resulting from this bid/proposal, no indication of such sales or services to the City of Chesapeake will be used in product literature or advertising. The Contractor shall not state in any of its advertising or product literature that the City of Chesapeake or any department or agency of the City has purchased or uses its products or services.
2. **AUDIT**: The Contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the City, whichever is sooner. The City auditors shall have full access to the right to examine any of said materials during said period.
3. **BID ACCEPTANCE PERIOD**: Any bid in response to this solicitation shall be valid for 90 days. At the end of the 90 days the bid may be withdrawn at the written request of the bidder. If the bid is not withdrawn at that time, it remains in effect until an award is made or the solicitation is canceled.
4. **IDENTIFICATION OF BID/PROPOSAL ENVELOPE**: If a special envelope is not furnished, or if return in the special envelope is not possible, the signed bid/proposal should be returned in a separate envelope or package, sealed and identified as follows:

From: _____

Name of Bidder/Offeror	Due Date	Time
Street or Box Number	IFB No./RFP No.	
City, State, Zip Code	IFB/RFP Title	

Name of Contract/Purchase Officer or Buyer _____

The envelope should be addressed as directed on Page 1 of the solicitation.

If a bid/proposal not contained in the special envelope is mailed, the bidder or offeror takes the risk that the envelope, even if marked as described above, may be inadvertently opened and the information compromised which may cause the bid or proposal to be disqualified. Bids/proposals may be hand delivered to the designated location in the office issuing the solicitation. No other correspondence or other bids/proposals should be placed in the envelope.

5. **INDEMNIFICATION**: Contractor agrees to indemnify, defend and hold harmless the City of Chesapeake, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the Contractor, provided that such liability is not attributable to the sole negligence of the City or

to failure of the City to use the materials, goods, or equipment in the manner already and permanently described by the Contractor on the materials, goods or equipment delivered.

- 6. **MINORITY/WOMEN OWNED BUSINESSES SUBCONTRACTING AND REPORTING:** Where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the Contractor is encouraged to offer such business to minority and/or women-owned businesses. Names of firms may be available from the buyer and/or from the Purchasing Division. When such business has been subcontracted to these firms and upon completion of the contract, the Contractor agrees to furnish the purchasing office the following information: name of firm, phone number, total dollar amount subcontracted and type of product/service provided.

- 7. **REFERENCES:** Bidders shall provide a list of at least 3 references where similar goods and/or services have been provided. Each reference shall include the name of the organization, the complete mailing address, the name of the contact person and telephone number.

	<u>ORGANIZATION</u>	<u>TELEPHONE</u>	<u>ADDRESS</u>	<u>CONTACT PERSON</u>
1.	_____	_____	_____	_____
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____

- 8. **TERMINATION OF CONTRACT:** The City may terminate the contract for cause or for convenience after giving thirty (30) days notice in writing to the Contractor. The written notice shall include a statement of reasons for the termination.

Termination for Cause: If the Contractor should breach the contract or fail to perform the services required by the contract, the City may terminate the contract for cause by giving written notice or may give the Contractor a stated period of time within which to remedy its breach of contract. If the Contractor shall fail to remedy the breach within the time allotted by the City, the contract may be terminated by the City at any time thereafter upon written notice to the Contractor or, in the alternative, the City may give such extension of time to remedy the breach as the City determines to be in its best interest. The City's forbearance by not terminating the contract for a breach of contract shall not constitute a waiver of the City's right to terminate nor acquiescence in future act or omissions by the Contractor of a like nature. If the contract is terminated for cause, breach of contract or failure to perform, the Contractor may be subject to a claim by the City for the costs and expenses incurred in securing a replacement Contractor to fulfill the obligations of the contract.

Termination for Convenience: The contract may be terminated by the City in whole or in part for the convenience of the City without a breach of contract by delivering to the Contractor a written notice of termination specifying the extent to which performance under the contract is terminated and the effective date of the termination. Upon receipt of such a notice of termination, the Contractor must stop work, including but not limited to work performed by subcontractors and consultants, at such time and to the extent specified in the notice of termination.

If the contract is terminated in whole or in part for the convenience of the City, the Contractor shall be entitled to those fees earned for work done prior to the notice of termination and thereafter shall be entitled to any fees earned for work not terminated, but shall not be entitled to lost profits for the portions of the contract which were terminated. The Contractor will be compensated for reasonable costs or expenses arising out of the termination for the convenience of the City for delivery to the City of all products of the services for which the Contractor has or will receive compensation.

Delivery of Materials: Any contract cancellation notice shall not relieve the Contractor of the obligation to deliver to the City all products of the services for which the Contractor has been or will be compensated. Unless otherwise agreed to in writing, the Contractor shall deliver the materials to the city within 30 days of

the Notice of Termination of the Contract. Failure to do so may result in action for "breach of contract" or "failure to perform".

Compensation Due the Contractor: Upon such termination, the Contractor shall be entitled to the compensation accrued to the date of termination. Payment of the balance of the accrued compensation shall be dependent on the Contractor providing the required project material to the City. Said fees which have been earned shall be billed to the City in accordance with the normal billing process, but in no case later than 60 days after the last work is performed. Any termination by the City for default, found by a court of competent jurisdiction not to have been justified as a termination for default, shall be deemed a termination for the convenience of the City.

The Contractor shall submit invoices for all such amounts in accordance with the normal billing process, but in no event later than 60 days after all services are performed. All amounts invoiced are subject to deductions for amounts previously paid. All payments due the Contractor under this contract are subject to appropriation by the Virginia General Assembly and Chesapeake City Council.

9. **DISPUTE RESOLUTION:**

- a. As to any dispute arising out of this Contract, either party may file a Demand for Mediation within thirty (30) days of the date the circumstances that give rise to the dispute occurred. The demand will include a basic statement of the grounds of the dispute. The opposing party shall file a response within fifteen (15) days of receipt of the Demand for Mediation. Parties may choose any mediator qualified under the laws of the Commonwealth of Virginia.
- b. Should mediation fail and the Architect/Engineer is the moving party in the dispute the Architect/Engineer must file a Demand for Arbitration within thirty (30) days of the date of the termination of the mediation procedure. The City may file a response within thirty (30) days, either accepting or rejecting arbitration. If the City fails to file a response within thirty (30) days, this shall be deemed a rejection of the arbitration. If the City accepts arbitration, it will also provide a response to the allegations set forth in the Demand for Arbitration.
- c. Should mediation fail and the City is the moving party, it may either file a Demand for Arbitration or litigate the matter in a Court of proper jurisdiction. If the City elects to file a Demand for Arbitration, it must do so within thirty (30) days of the termination of the mediation procedure. The Architect/Engineer shall file its response within thirty (30) days of the Demand for Arbitration.
- d. If the dispute is to be arbitrated, each party must choose an arbitrator within fifteen (15) days of the Response to the Demand for Arbitration. Those two arbitrators shall choose a third arbitrator. In the alternative, the parties may choose to use the American Arbitration Association ("AAA") to administer the arbitration. In either event, the course of the arbitration will proceed under AAA rules. Also, during any arbitration proceeding, the Federal Rules of Evidence shall apply.
- e. If the City refuses to arbitrate after the Architect/Engineer files a Demand for Arbitration, then the Architect/Engineer must litigate the matter in a Court of proper jurisdiction. Any action filed by either party to the Contract must be filed with the Court within six (6) months of the termination of the mediation procedure.

APPENDIX C

**CERTIFICATION OF COMPLIANCE WITH IMMIGRATION
LAWS AND REGULATIONS**

Section 54-72.2 of the Chesapeake City Code requires that any person or entity doing business with the City of Chesapeake, including its boards and commissions, shall include a sworn certification by the contractor or vendor of compliance with all federal immigration laws and regulations. These laws include the Federal Immigration Reform and Control Act, which makes it unlawful for a person or other entity to hire, recruit or refer for a fee for employment in the United States, an alien knowing the alien is unauthorized, and Section 40.1-11.1 of the Code of Virginia, which makes it unlawful for any employer to knowingly employ an alien who cannot provide documents indicating that he or she is legally eligible for employment in the United States. The state law, in particular, places an affirmative duty on employers to ensure that aliens have proof of eligibility for employment.

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

Type or print legibly when completing this form.

Legal Name of Contractor or Vendor:

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

Type of Business Entity:

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

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

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

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

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

Doing Business As:

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

Name and Position of Person Completing this Certificate:

Physical Business Address:

Primary Correspondence Address (If different from physical address):

Number of Employees:

Are all Employees Eligible for Employment in the United States?

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

Sworn this ____ day of _____, 200_ on behalf of [name of contractor/vendor] as evidenced by the following signature and seal:

Name of Contractor/Vendor: _____

Printed Name of Signatory: _____

Signature: _____

Date: _____

COMMONWEALTH OF VIRGINIA:
CITY OF CHESAPEAKE, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by _____.

Notary Public

Registration No.: _____

My commission expires: _____