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- 1) **PROCUREMENT ORDINANCE:** This solicitation is subject to the provisions of the City of Chesapeake Procurement Ordinance and Chesapeake Purchasing Policies and Procedures Manual. A copy of the City's ordinance and Chesapeake Purchasing Policies and Procedures Manual is available for review at the purchasing office or accessible on the Internet at CityOfChesapeake.net/Purchasing.

 - 2) **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 in the courts of the City of Chesapeake, Virginia, or the United States District Court for the Eastern District of Virginia, if independent federal jurisdiction exists. The Contractor/Consultant shall comply with all applicable federal, state and local laws, rules and

regulations. This solicitation is governed by provisions of Chapter 54 of the Chesapeake City Code, and any revisions thereto, which are hereby incorporated into this contract by reference. Contact the Purchasing Division at (757) 382-6359, for more information. The City Code may be read online at <http://www.municode.com>.

- 3) **ANTI-DISCRIMINATION AND NONDISCRIMINATION IN CITY CONTRACTS:** 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).

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, sexual orientation, gender identity, national origin, age, disability, or any other basis prohibited by state law or federal 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 the purpose of meeting the requirements of this section.
 - d. The contractor will include the provisions of a., above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- 4) **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 bidders/offerors, supplier, manufacturer or subcontractor in connection with their bids/proposals, 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.
- 5) **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By submitting their (bids/proposals), (bidders/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.
- 6) **DEBARMENT STATUS:** By submitting their bids/proposals, bidders/offerors certify that they are not currently debarred by the Commonwealth of Virginia or any political subdivision or agency of

the Commonwealth from submitting bids/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.

- 7) **ANTITRUST:** By entering into a contract, the Contractor/Consultant 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 services purchased or acquired by the City of Chesapeake under said contract.
- 8) **MANDATORY USE OF CITY FORM:** Failure to submit a bid on the official City form provided for that purpose shall be a cause for rejection of the bid/proposal. Modification of or additions to any portion of the Bid/proposal may be cause for rejection of the bid/proposal; however, the City reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid/proposal as nonresponsive. As a precondition to its acceptance, the City may, in its sole discretion, request that the bidder/offeror withdraw or modify nonresponsive portions of a bid/proposal 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.
- 9) **CLARIFICATION OF TERMS:** If any bidders/offerors has questions about the specifications or other solicitation documents, the bidders/offerors should contact the buyer whose name appears on the face of the solicitation no later than 5 working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the City.
- 10) **PAYMENT:**
 1. To Contractor/Consultant:
 - a. Invoices for items ordered, delivered and accepted, or services rendered, shall be submitted by the Contractor/Consultant 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 Contractor/Consultants) 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 services provided under this contract or individual purchase order, that are to be paid for with public funds, shall be billed by the Contractor/Consultant at the contract price, regardless of which City department is being billed.
 - d. 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.
 - 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, Contractor/Consultants 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/Consultant, in writing, as to those charges which it considers unreasonable and the basis for the determination. A Contractor/Consultant may not institute legal action unless a settlement cannot be reached within 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/Consultant awarded a contract under this solicitation is hereby obligated:

- (1) To pay the subcontractor(s) within 7 days of the Contractor/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
- (2) To notify the Purchasing Division and the subcontractor(s), in writing, of the Contractor/Consultant's intention to withhold payment and the reason.

b. The Contractor/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 Contractor/Consultant that remain unpaid 7 days following receipt of payment from the City, except for amounts withheld as stated in (a)(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/Consultant performing under the primary contract. A Contractor/Consultant's obligation to pay interest to a subcontractor shall not be construed as an obligation of the City.

11) **CLAIMS:** In the event that a different administrative claim resolution process is not provided in the solicitation, the following claim process shall apply. In the event of a contractual dispute, Contractor/Consultant must submit a written notice of the dispute specifically entitled "notice of intent to file a claim" within ten (10) days of the occurrence on which the claim is based to the City Manager or designee. No more than thirty (30) days from the occurrence on which the claim is based, the Contractor/Consultant must submit a written statement of the basis of the claim together with a proposed remedy and all supporting evidence of the claim to the City Manager or designee. The timely and complete filing of the notice and claim are a prerequisite to recovery by the Contractor/Consultant, and failure to follow the claim process stated herein shall operate as a conclusive waiver of the claim by the Contractor/Consultant. Oral notice, the actual knowledge of a City employee or official, or an untimely or incomplete written notice and claim shall not be sufficient to satisfy the requirements of this provision.

The Contractor/Consultant may not institute legal action prior to the receipt of a final written decision by the City Manager or designee unless the City Manager or designee fails to render a decision within ninety (90) days of the submission of the claim. Failure of the City Manager or designee to render a decision within ninety (90) days shall be deemed a denial.

The decision of the City Manager or designee shall be final and conclusive unless the Contractor/Consultant appeals within six (6) months of the date of the final decision (or time specified for a final decision if no response is made) by instituting legal action as provided by Va. Code Section 2.2-4364.

The parties' contract and their performance obligations shall be governed, interpreted and enforced pursuant to the laws and regulations of, and in accordance with the laws of the

Commonwealth of Virginia without regard to the conflicts of law principles thereof. The Contractor/Consultant shall carry on the work and adhere to the progress schedule during all disputes or disagreements with the City. No work shall be delayed or postponed pending resolution of any disputes or disagreements, except as the City and the Contractor/Consultant may otherwise agree in writing.

- 12) **NO WAIVER OF LEGAL RIGHTS:** Neither the acceptance by the City or any representative of the City, nor any payment for or acceptance of the whole or any part of the Work, nor any extension of time, nor any possession taken by the City shall operate as a waiver of any portion of the Contract or of any power herein reserved or of any right to damages. A waiver of any breach of the Contract shall not be held to be a waiver of or implied course of dealing applicable to any other or subsequent breach. The City reserves all rights, privileges, immunities and defenses available to it at law.
- 13) **PRECEDENCE OF TERMS:** The 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.
- 14) **QUALIFICATIONS OF BIDDERS/OFFERORS:** The City may make such reasonable investigations as deemed proper and necessary to determine the ability of the bidders/offerors to perform the services and the bidders/offerors shall furnish to the City all such information and data for this purpose as may be requested. The City reserves the right to inspect bidders/offerors physical facilities prior to award to satisfy questions regarding the bidders/offerors capabilities. The City further reserves the right to reject any bids/proposals if the evidence submitted by, or investigations of, such bidders/offerors fails to satisfy the City that such bidders/offerors is properly qualified to carry out the obligations of the contract and to provide the services contemplated therein.
- 15) **TESTING AND INSPECTION:** The City reserves the right to conduct any test or inspection it may deem advisable to assure goods and services conform to the specifications.
- 16) **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the Contractor/Consultant in whole or in part without the written consent of the City.
- 17) **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways, provided that City staff other than the Procurement Administrator, City Manager, or designee shall have no authority to approve or order changes in the work that alter the terms and conditions of the Contract, except for changes permitted by the Chesapeake Purchasing Policies and Procedures Manual as to contract time or price that are mutually agreed and reduced to a written change order or contract modification:
 - a. The parties may agree in writing to modify the terms or conditions of the contract. Any additional services to be provided shall be of a sort that is ancillary and directly related to the contract services, or within the same product or service categories as were included in the contract award. Any 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 contract.
 - b. The Purchasing Division may order changes within the general scope of the contract at any time by written notice to the Contractor/Consultant. 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/Consultant shall comply with the notice upon receipt, unless the Contractor/Consultant intends to claim an adjustment to compensation, schedule, or other contractual impact that would be caused by complying with such notice, in which case the Contractor/Consultant shall, in writing, promptly notify the

Purchasing Division of the adjustment to be sought, and before proceeding to comply with the notice, shall await the Purchasing Division's written decision affirming, modifying, or revoking the prior written notice. If the Purchasing Division decides to issue a notice that requires an adjustment to compensation, the Contractor/Consultant 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:

- i. By mutual agreement between the parties in writing; or
- ii. By agreeing upon a unit price or using an hourly rate or a unit price set forth in the contract, if the work to be done can be expressed in hourly increments or units, and the Contractor/Consultant accounts for the number of hourly increments or units of work performed, subject to the Purchasing Division's right to audit the Contractor/Consultant's records and/or to determine the correct number of units independently; or
- iii. By ordering the Contractor/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 Contractor/Consultant 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/Consultant as it deems necessary to determine costs or savings. 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 Claims clause of this contract. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor/Consultant from promptly complying with the changes ordered by the Purchasing Division or with the performance of the contract generally.

- c. Any modification of a lump sum contract price is subject to the terms of City Code Section 54-71, which provides that such a contract may not be increased by the greater of more than \$10,000 or 10% of the original contract price without approval of the City Manager and notice to the City Council.

- 18) **DEFAULT:** In case of failure to deliver services in accordance with the Contract, the City, after due oral or written notice, may procure them from other sources and hold the Contractor/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.
- 19) **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.
- 20) **DRUG-FREE WORKPLACE:** During the performance of this contract, the Contractor/Consultant agrees to (i) provide a drug-free workplace for the Contractor/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 Contractor/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 Contractor/Consultant that the Contractor/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 Contractor/Consultant, 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.

- 21) **EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED:** During the performance of this contract, the Contractor/Consultant agrees as follows:
- a. The Contractor/Consultant will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor/Consultant. The Contractor/Consultant 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/Consultant, in all solicitations or advertisements for employees placed by or on behalf of the Contractor/Consultant, will state that such Contractor/Consultant is an equal opportunity employer.
 - c. . Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
 - d. . The Contractor/Consultant will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- 22) **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, subject to appropriations, for the purpose of this solicitation.
- 23) **PROPOSAL PRICE CURRENCY:** Unless stated otherwise in the solicitation, bidders/offerors shall state bid prices in US dollars.
- 24) **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** A Contractor/Consultant organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described above that enters into a contract with a public body pursuant to the Virginia Public Procurement Act shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may avoid any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.
- 25) **TERMINATION OF CONTRACT:** The City may terminate the contract for cause or for convenience after giving 30 days' notice in writing to the Contractor/Consultant. The written

notice shall state whether the termination is for convenience or cause. The notice shall be delivered by a commercial courier service or mailed certified with return receipt requested to the address listed on the bid/proposal, unless notice of a change of address has been provided to the Purchasing Division.

- a. **Termination for Cause:** If the Contractor/Consultant 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/Consultant a stated period of time within which to remedy its breach of contract. If the Contractor/Consultant 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/Consultant 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 because of a breach of contract shall not constitute a waiver of the City's right to terminate, nor shall the City's acquiescence in any future act or omission by the Contractor/Consultant. If the contract is terminated for cause, breach of contract or failure to perform, the Contractor/Consultant may be subject to a claim by the City for the costs and expenses incurred in securing a replacement Contractor/Consultant to fulfill the obligations of the contract. In the event a Cure Notice is required, the City will use the address provided to the City listed in the bids/proposals. It shall be the Contractor/Consultant's responsibility to notify the City in writing within 10 days of knowing a change of address. The written notice shall include the City's contract number and the effective date of the address change.

In the event the Contractor/Consultant breaches the contract or fails to perform the services required by the contract, in addition to terminating this contract for cause, the City reserves the right, in its sole discretion, to terminate for cause any other open contract that the Contractor/Consultant has with the City.

- b. **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/Consultant/Consultant 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/Consultant must stop work, including but not limited to work performed by Contractor/Consultant and subcontractor, 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/Consultant 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. .

- c. **DELIVERY OF MATERIALS:** Contract termination shall not relieve the Contractor/Consultant of the obligation to deliver to the City all products or services for which the Contractor/Consultant has been or will be compensated. Unless otherwise agreed to in writing, the Contractor/Consultant shall deliver the materials or other deliverables to the City within 30 days of the Notice of Termination of the Contract. Failure to do so may result in an action for "breach of contract" or "failure to perform".
- d. **COMPENSATION DUE THE CONTRACTOR/CONSULTANT:** In event of termination, the Contractor/Consultant 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/Consultant 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/Consultant 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 and offsets authorized by Contract. All payments due the Contractor/Consultant under this contract are subject to appropriation by the Chesapeake City Council.

- 26) **LITIGATION WITH THE CITY:** The City in its sole discretion may choose not to make an award to an bidders/offerors who is in litigation with the City at the time of bids/proposals evaluation. This provision also applies if any parent company, principal, officer, or wholly owned subsidiary of the bidders/offerors is in litigation with the City at the time of the bids/proposals evaluation.
- 27) **PRIOR DEFAULTED CONTRACTS:** The City in its sole discretion may choose not to make an award to an bidders/offerors who has previously defaulted on a contract with the City or has been debarred by another public entity. This provision also applies if any parent company, principal, officer, or wholly owned subsidiary of the bidders/offerors has previously defaulted on a contract with the City.
- 28) **CRIMINAL CONVICTIONS:** The City in its sole discretion may choose not to make an award to an bidders/offerors if any principal, officer, director, or staff member of the firm assigned to work under a contract awarded pursuant to this solicitation has been convicted of a felony or a misdemeanor involving moral turpitude in the past 10 years.
- 29) **INDEMNIFICATION:** Contractor/Consultant shall indemnify and hold harmless the City, 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 is caused in whole or in part by any negligent act, error, omission, recklessness, or intentionally wrongful conduct of the Contractor/Consultant or those for whom Contractor/Consultant is legally liable, including but not limited to any Subcontractor, any supplier, or any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by of a person or entity indemnified hereunder to the extent allowed by law. This paragraph shall not require indemnification for a particular claim, cost, loss or damage to the extent caused by or resulting solely from the negligence of the City, its officer, agent, employee, or a person or entity indemnified hereunder. With the prior, written approval of the City, Contractor/Consultant shall assume the defense of any such` liability claim(s) made against the City, its agents, volunteers, servants, employees or officials.

In any and all claims against the City, its officers, agents, or employees by any employee (or the survivor or personal representative of such employee) of the Contractor/Consultant or anyone for whom Contractor/Consultant is legally liable, including but not limited to any Subcontractor, any supplier, or any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor/Consultant or any such Subcontractor, supplier or other person or organization under workers' compensation acts, disability benefit acts or other employee benefit acts. Further, if the Contractor/Consultant subcontracts any work, it will require in its subcontracts that each Contractor/Consultant indemnify, defend and hold harmless the City as stated above.

- 30) **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.

- 31) **ADVERTISING:** In the event a contract is awarded for supplies, equipment, or services resulting from this solicitation, no indication of such sales or services to the City will be used in product literature or advertising. Without prior written approval from the proper authority of the City, the Contractor/Consultant shall not state in any of its advertising, product literature, or other promotional materials that the City or any department or agency of the City has purchased or uses its products or services.
- 32) **AUDIT:** The Contractor/Consultant shall retain all books, records, and other documents relative to this contract for 5 years after final payment, or until audited by the City, whichever is sooner. An auditor retained by the City or any state or federal funding source shall have full access to and the right to examine any of said materials during said period. In the event that a project is funded by state or federal funds, the rights of audit shall also extend to the respective state or federal agencies.
- 33) **BID/PROPOSAL ACCEPTANCE PERIOD:** Any bids/proposals in response to this solicitation shall be valid for 90 days. At the end of the 90 days the bids/proposals may be withdrawn at the written request of the bidders/offerors. If the bids/proposals is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.
- 34) **CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION:** The Contractor/Consultant assures that information and data obtained as to personal facts and circumstances related to patients or clients will be collected and held confidential, during and following the term of this agreement, and unless disclosure is required pursuant to court order, subpoena or other regulatory authority, will not be divulged without the individual's and the City's written consent and only in accordance with federal, state, and City Code. Contractor/Consultants who utilize, access, or store personally identifiable information as part of the performance of a contract are required to safeguard this information and immediately notify the City of any breach or suspected breach in the security of such information. Contractor/Consultants shall allow the City to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. Contractor/Consultants and their employees working on this project may be required to sign a confidentiality statement.
- 35) **E-VERIFY PROGRAM:** Pursuant to Code of Virginia, §2.2-4308.2., any employer with more than an average of 50 employees for the previous 12 months entering into a contract in excess of \$50,000 with any agency of the Commonwealth to perform work or provide services pursuant to such contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to such public contract. Any such employer who fails to comply with these provisions shall be debarred from contracting with the City of Chesapeake for a period up to one year. Such debarment shall cease upon the employer's registration and participation in the E-Verify program. If requested, the employer shall present a copy of their Maintain Company page from E-Verify to prove that they are enrolled in E-Verify.
- 36) **CHESAPEAKE BUSINESS LICENSE:** All firms doing business with the City are required to be properly licensed in accordance with the City of Chesapeake's "Business, Professional, and

Occupational Licensing (BPOL) Tax” ordinance. Wholesale and retail merchants not located in Chesapeake are exempt from this requirement. For questions concerning the applicability of the BPOL tax, contact the Commissioner of the Revenue at 757-382-6738.

- 37) **SMALL BUSINESS SUBCONTRACTING:** Unless the bidders/offerors is registered as a DSBSD-certified small business and where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the Contractor/Consultant is encouraged to offer such subcontracting opportunities to DSBSD-certified small businesses. This shall not exclude DSBSD-certified women-owned and minority-owned businesses when they have received DSBSD small business certification. No bidders/bidders/offerors or subcontractor shall be considered a Small Business, a Women-Owned Business or a Minority-Owned Business unless certified as such by the Virginia Department of Small Business and Supplier Diversity (DSBSD) by the due date for receipt of bids/proposals. If small business subcontractors are used, the prime Contractor/Consultant agrees to report the use of small business subcontractors by providing the Purchasing Division at a minimum the following information: name of small business with the DSBSD certification number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product/service provided.
- 38) **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of the Purchasing Division. In the event that the Contractor/Consultant desires to subcontract some part of the work specified herein, the Contractor/Consultant shall furnish the Purchasing Division the names, qualifications and experience of their proposed subcontractors. The Contractor/Consultant shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.
- 39) **METHOD OF AWARD:** Unless otherwise stated in the solicitation, the following is the default method of award if the procurement method is an IFB: An award will be made to the lowest responsive and responsible bidder. Evaluation will be based on net prices. Unit prices, extensions and grand total must be shown. In case of arithmetic errors, the unit price will govern. If cash discount for prompt payment is offered, it must be clearly shown in the space provided. Discounts for prompt payment will not be considered in making awards. The City reserves the right to conduct any tests it may deem advisable and to make all evaluations. The City reserves the right to reject any and all bids in whole or in part, to waive any informality, and to delete items prior to making an award.
- 40) **NON-EXCLUSIVE RELATIONSHIP:** Except as stated in a separate written agreement signed by the City and bidder/offeror, nothing in the in the solicitation shall prohibit the City from purchasing products and services similar to the products and services subject to this solicitation now or hereafter from other suppliers and/or contractors. In addition, the City retains the right to self-perform any or all services and work under the contract at any time.
- 41) **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract for all solicitations with an annual value of \$5,000.00 or more, the Purchasing Division will publicly post such notice on the Commonwealth of Virginia’s eVA VBO (www.eva.virginia.gov) and the Demand Star e-procurement website (www.demandstar.com) for a minimum of 10 days.