

**CITY OF RICHMOND
DEPARTMENT OF PROCUREMENT SERVICES
RICHMOND, VIRGINIA
(804) 646-5716
June 16, 2017**



Invitation for Bid T170023881
Sodium Hydroxide (Caustic Soda)

Due Date: June 29, 2017 / Time: 11:30 A.M.
Opening Date: June 29, 2017 / Time: 11:30 A.M.
Receipt Location: City Hall, 900 East Broad Street, 11th floor, Room 1104

Invitation for Bids Prepared by:

Name: Theresa L. Harris, CPPO, CPPB, VCO

Title: Contract Specialist

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City of Richmond, Department of Procurement Services

900 East Broad Street, Room 1104, Richmond, VA 23219

<http://www.richmondgov.com/Procurement/BidsProposals.aspx>

SIGNATURE SHEET

This signature sheet must be included as part of the bidder's bid, or the City will not consider the bid. The bidder's signature below certifies that this bid as submitted complies with, and the bidder agrees to be legally bound by, all terms and conditions set forth in Invitation for Bids No. **T170023881** for **Sodium Hydroxide (Caustic Soda)**. The undersigned hereby represents and warrants that the undersigned is duly authorized to sign and submit this bid on behalf of the bidder.

Complete Legal Name of Bidder Firm: _____

"Order from" Address: _____

"Remit to" Address: _____

Federal EIN / SSN: _____

Authorized Signature: _____

Printed Name of Signatory: _____

Title of Signatory: _____

Telephone Number with Area Code: _____

Fax Number with Area Code: _____

E-Mail Address: _____

Date: _____

STATEMENT OF NO OFFER

Bidders not submitting an offer for the commodity or service requested must fax this form to the Department of Procurement Services at (804) 646-5989 prior to the solicitation due date. Questions concerning requirements must be brought to the attention of the Contracting Officer responsible for this solicitation **at least ten business days prior to the solicitation closing date.**

IFB No.: _____ Service: _____

The undersigned firm declines to submit an offer on the IFB for the following reasons:

- Unable to meet statement of needs
- Requirements are unclear or restrictive (explain in remarks)
- Unable to meet required delivery or performance date
- Unable to meet insurance requirements
- Insufficient time to respond to the solicitation
- Do not offer requested commodity or service, please remove our name from the City of Richmond's bidder's list for this commodity or service only.
- Other (explain in remarks)

Remarks:

A firm's failure to return completed form may result in the removal from the City of Richmond bidder's list for the commodity or service requested above.

Firm Name: _____

Authorized Representative: _____

Signature: _____

Telephone: _____

Date: _____

STATE CORPORATION COMMISSION FORM

Complete Legal Name of Bidder Firm: _____

Virginia State Corporation Commission registration information. The bidder:

- is a corporation or other business entity with the following State Corporation Commission identification number:

-OR-

- is not a corporation, limited liability company, limited partnership, registered limited liability partnership, or business trust

-OR-

- is an out-of-state business entity that does not regularly and continuously maintain as part of its ordinary and customary business any employees, agents, offices, facilities, or inventories in Virginia (not counting any employees or agents in Virginia who merely solicit orders that require acceptance outside Virginia before they become contracts, and not counting any incidental presence of the bidder in Virginia that is needed in order to assemble, maintain, and repair goods in accordance with the contracts by which such goods were sold and shipped into Virginia from bidder's out-of-state location)

-OR-

- is an out-of-state business entity that is including with this bid an opinion of legal counsel which accurately and completely discloses the undersigned bidder's current contacts with Virginia and describes why those contacts do not constitute the transaction of business in Virginia within the meaning of section 13.1-757 or other similar provisions in Titles 13.1 or 50 of the Code of Virginia

-OR-

- has not completed any of the foregoing options but currently has pending before the State Corporation Commission an application for authority to transact business in the Commonwealth of Virginia and wishes to be considered for a waiver to allow the bidder to submit the State Corporation Commission identification number after the due date for bids. The bidder shall promptly provide any information the City requires to enable the City to properly evaluate the bidder's request for such a waiver. The City reserves the right to determine in its sole discretion whether to allow such a waiver.

BID FORM

Description	Quantity	U/M	Total Extended Price
Sodium Hydroxide – 100%	900,000	pounds	\$_____ / per pound

Quantity is estimated only. Price per pound shall be based on 100% strength of Sodium Hydroxide.

Bidders shall state time allowed for unloading truck load-deliveries. _____/Hour
Bid with less than 2 hours will not be considered.

Based on F.O.B., Delivery point please furnish the following:

1. Point of Origin _____
2. Method _____ Delivery Time (appx) _____

Furnish name of supplier: _____
(Supplier must be NSF 60 certified)

Prompt Payment Discount: The City's standard payment terms are net 45 days after receipt of invoice or delivery of good or services, whichever is later. If the contractor would like to offer a prompt payment discount for payments made sooner than 45 days, please note the prompt payment discount percentage and number of days, e.g., 2% 10 days, in the following blank: _____ . Offering a prompt payment discount will not be considered in determining the lowest responsive and responsible bidder. Additionally, if the City either chooses to not take the prompt payment discount offered or does not meet the payment timeframe for taking the discount, the payment terms will default to the City's standard net 45 days payment terms.

Signature

PART I **SPECIFICATIONS**

1. BACKGROUND

- a. The City of Richmond, Virginia, desires to contract with a firm for the purpose of furnishing and delivering Sodium Hydroxide (Caustic Soda) to the Department of Public Utilities (DPU).
- b. Based on a 25% caustic, the City of Richmond uses approximately 200,750 gallons per year.
- c. The operation for the Water Purification Plant must not be interrupted and the storage capacity of the plant is limited, therefore, the continuity of supply is of prime importance. The supplier must be able to make shipments in quantities needed at the time specified

2. STATEMENT OF WORK

- a. Delivery of the Sodium Hydroxide shall be made in tanks dedicated for Sodium Hydroxide alone. Common carrier transport is not acceptable. Tank trucks must be capable of off-loading against a thirty (30) foot head. Tank car deliveries are not acceptable.
- b. Sodium Hydroxide deliveries shall not be unloaded before written approval by the shift supervisor. A one pint sample shall be provided with each delivery.
- c. An MSDS sheet and documentation that the product meets AWWA standards shall be provided with each Sodium Hydroxide delivery.
- d. To meet the grade and quality in accordance with AWWA specification B501-93 and meet NSF 60 standards, the product shall include the following items:
 - 1) Liquid Sodium Hydroxide supplied shall contain approximately 25% NaOH.
 - 2) Liquid Sodium Hydroxide supplied shall not exceed 100 degrees F.
 - 3) The Sodium Hydroxide supplied shall contain no soluble material or organic substances in quantities capable of producing deleterious or injurious effects on the health of those consuming the water that has been properly treated with the Sodium Hydroxide.
- e. While it is recognized that the product will be delivered in a liquid form of less than 100% strength the price should be quoted for a ton (2000 pounds) of 100% Sodium Hydroxide. Estimated usage is based on 25% strength.

f. Delivery shall be Monday – Friday (excluding holidays) to the Water Treatment Plant located at 3920 Douglasdale Road, Richmond, VA 23221.

3. **CONTRACT AWARD**

Award shall be made to the responsive, responsible bidder who submits the lowest Total Extended Price.

4. **PRICING**

- a. All pricing shall be provided on the City’s Bid Form and shall be in U.S. Dollars.
- b. All quantities shown are estimates only and the City Of Richmond, Department of Public Utilities (DPU) shall provide the precise quantities needed when placing an order for delivery with the contractor.
- c. Price adjustments. Contractors may submit a request for contract price increases once annually for each renewal year. The increases shall be limited to the increase specified in the Bureau of Labor Statistics producer Price Index – Not Seasonally Adjusted for Chemicals and Allied Products (Series ID WPU06), for the 12 month period ending 90 days prior to the end of the then current contract year. No price increase shall be authorized until the end of the term contract period for the contract.
- d. The procurement office will notify the using agencies and contractor in writing of the effective date of any increase that is approved. However, the contractor shall fill all purchase orders received prior to the effective date of the price adjustment at the old contract prices.
- e. The contractor is further advised that the decreases which affect the cost of materials shall be communicated immediately to the procurement office and followed up in writing. Price decreases are subject to implementation at any time and shall be immediately conveyed to the City.

END OF SPECIFICATIONS

PART II
INSTRUCTIONS TO BIDDERS

1. **AUTHORIZED SIGNATURE**

All bids must be signed in order to be considered. If the bidder is a firm or corporation, the bidder must show the title of the individual executing the bid and a resolution authorizing the individual to sign the bid and subsequent contract.

2. **AWARD**

Pursuant to City Code § 21-55(a), the City will make the award to the lowest responsive and responsible bidder. Whenever the City, in its sole discretion, deems it to be in the City's best interest to do so, the City reserves the right:

- A. To conduct any test it deems advisable.
- B. To make all evaluations necessary.
- C. To cancel this solicitation or to reject any or all bids, in whole or in part, as authorized by City Code § 21-72(a).
- D. To waive informalities as authorized by City Code § 21-72(b).
- E. To delete items prior to making the award.
- F. To negotiate an adjustment of the bid price with the lowest responsive and responsible bidder if and to the extent permitted by City Code § 21-55(b).
- G. To award to more than one bidder as authorized by City Code § 21-55(a).

Each bidder to whom a contract is to be awarded must register with the City prior to award through the City's Supplier Registration Portal (<http://www.richmondgov.com/Procurement/SupplierPortal.aspx>) and provide the banking information necessary to facilitate Automated Clearing House electronic payments. This registration is a condition of award.

3. **BIDDERS NOT DEBARRED**

By signing its bid in response to this Invitation for Bids, the bidder warrants and represents that neither its organization nor any of its officers, directors, partners or owners is currently barred from bidding on contract by any agency of the federal government, any agency of the Commonwealth of Virginia, any agency of any other state, or any other public body or agency thereof.

4. **CONTRACTOR MISREPRESENTATION**

- A. If any bidder knowingly makes a material misrepresentation in submitting information to the City, such misrepresentation will be sufficient grounds for rescinding any contract awarded under this solicitation to that bidder.
- B. Any bidder falsely representing past or proposed Minority Business Enterprise / Emerging Small Business participation may be in breach of contract. Upon determination of a breach, the City shall have all available remedies for breach of contract.

5. **DELIVERY AND TIME FOR HOLDING OF BID**

- A. General terms such as “stock,” “immediately,” and “as soon as possible,” if included as part of a bid, will not be deemed more favorable to the City than any required delivery terms and, in the absence of any required delivery terms, may result in the bidder being deemed nonresponsive.
- B. By signing its bid, the bidder offers and agrees, if the City accepts its bid within 90 calendar days from the date of the opening of bids, to furnish any and all items upon which prices are quoted at the same prices set opposite each item, delivered to the point specified in this Invitation for Bids, and at the time specified in the bid.

6. **DESCRIPTIVE LITERATURE**

The bidder shall submit with its bid descriptive literature of equipment or supplies, which it proposes to furnish, if such articles are of a different manufacture than those specified herein. Should the description furnished in such literature differ from the specifications submitted by the City, and no mention is made to the contrary, it shall be construed to mean that the bidder proposes to furnish equipment or supplies in accordance with such description and not in accordance with the City's specifications, and its bid will be evaluated accordingly.

7. **DISQUALIFICATION DUE TO PARTICIPATION IN PREPARATION OF SOLICITATION.**

- A. City Code § 21-281(a) prohibits any person who, for compensation, prepares a solicitation for or on behalf of the City from submitting a response to that solicitation or any portion thereof.
- B. For purposes of this section 7 (“Disqualification Due to Participation in Preparation of Solicitation”), the word “prepares” has the meaning set forth in City Code § 21-281(b) and thus includes but is not limited to the following:
 - (1) Serving as a director or deputy director of the agency which has initiated the procurement;
 - (2) Serving as the director of procurement services after the department of procurement services has received information on an agency's intent to procure;

- (3) Serving as the procurement manager for the agency which has initiated the procurement;
 - (4) Serving as the procurement officer in charge of the procurement;
 - (5) Assisting in the development of specifications for invitations for bids or requests for proposals;
 - (6) Attending an evaluation committee meeting that is closed to the public;
 - (7) Voting on or scoring a bid or proposal; or
 - (8) Any other participation in the procurement process which could lead to unfair advantage.
- C. Pursuant to City Code § 21-281(c), the Chief Administrative Officer shall make the determination that a person is disqualified from submitting a response to a particular solicitation because of that person's participation in preparing that solicitation.
- D. If a person planning to submit a response to a solicitation contacts the Chief Administrative Officer concerning such a disqualification, such person and the person's firm shall be disqualified from responding to the solicitation for violating the City's no contact policy because the person discussed the solicitation with a City representative other than the contract specialist responsible for the procurement.
- E. In accordance with City Code § 21-281(d), any person who has been disqualified pursuant to this section 7 ("Disqualification Due to Participation in Preparation of Solicitation") and City Code § 21-281 may appeal the Chief Administrative Officer's determination of disqualification by following the administrative appeals procedure set forth in City Code § 21-168 or by instituting legal action as provided in City Code § 21-169.

8. **ETHICS IN PUBLIC CONTRACTING; NO KICKBACKS OR CONFLICTS OF INTEREST**

- A. By signing this solicitation, the bidder certifies that he has not violated any provisions of Federal law, the Code of Virginia, the Richmond City Code or Charter. The bidder certifies that its bid is made without collusion or fraud and that the bidder has not offered or received any kickbacks or inducements from any other bidder, supplier, manufacturer or subcontractor in connection with its bid and that the bidder has 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. The bidder agrees that if such warranty is in any respect breached, the bidder will pay

to the City the full price agreed by the City to be paid for the supplies, materials, equipment or services to be furnished under the bidder's bid.

- B. By signing and submitting its bid in response to this Invitation for Bids, the bidder represents and warrants that it is in compliance with the provisions of section 2.3 ("Anti-Kickback Provision") of the General Terms and Conditions included with this Invitation for Bids and, further, that the bidder's firm has no business or personal relationships with any other companies or persons that could be considered as a conflict of interest or potential conflict of interest to the City, and that there are no principals, officers, agents, employees, or representatives of the bidder's firm that have any business or personal relationships with any other companies or persons that could be considered as a conflict of interest or a potential conflict of interest to the City, pertaining to any and all work or services to be performed as a result of this Invitation for Bids and any resulting contract with the City.

9. **EXCEPTIONS**

An exception is any condition, limitation, restriction, term or other deviation from the requirements of the Invitation for Bids that is a condition of the bidder's bid or that the bidder expects to become part of a contract with the City. Bidders are strongly discouraged from taking exceptions to the requirements of the Invitation for Bids. Exceptions may result in the City declaring the bidder's bid to be non-responsive. Any exceptions taken must refer to the specific language of the Invitation for Bids to which the bidder objects and must be included with the bid on a separate page. The City shall be entitled to assume that the absence of any exceptions constitutes the bidder's willingness to comply with all requirements of all parts of the Invitation for Bids.

10. **INCORPORATION OF POLICIES AND PROCEDURES**

This solicitation is subject to the provisions of the Chapter 21 of the Code of the City of Richmond, the Department of Procurement Services Policies and Procedures and any revisions thereof, all of which are hereby incorporated into this solicitation by reference. Copies of these documents may be viewed at the City's website (www.RichmondGov.com).

11. **LICENSES, PERMITS, AND FEES.**

All bids submitted shall have included in price the cost of any business or professional licenses, permits or fees required by the City of Richmond or the Commonwealth of Virginia.

12. **MINORITY BUSINESS ENTERPRISE / EMERGING SMALL BUSINESS PARTICIPATION**

The City has a commitment to the development of its minority and emerging small business communities. The City therefore encourages the use of minority business enterprises and emerging small businesses on all City contracts to the fullest extent reasonably possible. For this particular solicitation, it has been determined that minority business enterprise and emerging small business participation of 0% is reasonably possible given the availability of minority business enterprises and emerging small businesses for the scope of work covered by this solicitation. The City's Office of Minority Business

Development is available at 646-3985 as a resource in identifying local MBEs and ESBs. Bidders' assistance in helping the City achieve its priorities is greatly appreciated.

13. **WITHDRAWAL OF BIDS**

13.1 **CONDITIONS FOR WITHDRAWAL**

13.1.1 **BEFORE DEADLINE FOR RECEIPT**

A bidder may withdraw the bidder's bid before the deadline fixed in this Invitation for Bids for the receipt of bids by submitting a written notice to the person identified on the cover sheet of the Invitation for Bids as the preparer of the Invitation for Bids. The written notice must be signed by the person who signed the bid, provided that another person may sign the written notice instead if a valid power of attorney authorizing such other person to sign on behalf of the person who signed the bid is attached to the written notice.

13.1.2 **AFTER DEADLINE FOR RECEIPT**

Pursuant to section 21-53(d) of the Code of the City of Richmond, a bidder may withdraw the bidder's bid after the deadline fixed in this Invitation for Bids for the receipt of bids only for the reasons set forth in subsections (a) and (b) of section 21-53 of the Code of the City of Richmond and the provisions of this section 13.

13.2 **PROCEDURE FOR WITHDRAWAL DUE TO ERROR OR MISTAKE**

- A. Bids will be opened on the date and at the time fixed in the Invitation for Bids, as amended by any addendum. Bids are usually opened at the time of the deadline for the receipt of bids fixed in the Invitation for Bids, as amended by any addendum.
- B. The bidder shall give notice in writing of the claim of right to withdraw the bid within two business days after the conclusion of the bid opening procedure and shall submit the bidder's original work papers, documents and materials used in the preparation of the bid with such notice. Under these procedures, the mistake shall be proved only from the original work papers, documents and materials delivered as required in this section 13.2. The work papers, documents and materials submitted by the bidder shall, at the bidder's request, be considered trade secrets or proprietary information subject to the conditions of section 21-5(f) of the Code of the City of Richmond.
- C. The failure of a bidder to submit the bidder's original work papers, documents and materials used in the preparation of the bidder's bid at or prior to the time fixed for the opening of bids constitutes a waiver by the

bidder of the bidder's right to withdraw the bidder's bid due to an error or mistake.

- D. Pursuant to section 21-53(e) of the Code of the City of Richmond, no bid shall be withdrawn under this section when the result would be the awarding of the Contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent.
- E. Pursuant to section 21-53(f) of the Code of the City of Richmond, if a bid is withdrawn in accordance with this section 13.2, the lowest remaining bid shall be deemed to be the low bid.
- F. Pursuant to section 21-53(g) of the Code of the City of Richmond, no bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person to whom the Contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted. The person or firm to whom the Contract was awarded and the withdrawing bidder are jointly liable to the City in an amount equal to any compensation paid to or for the benefit of the withdrawing bidder.
- G. Pursuant to section 21-53(h) of the Code of the City of Richmond, the Director of Procurement Services shall notify the bidder in writing within five business days of the Director's decision regarding the bidder's request to withdraw the bidder's bid. If the Director of Procurement Services denies the withdrawal of a bid under the provisions of this section 13.2, the Director of Procurement Services shall state in such notice the reasons for the decision and award the Contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder. At the same time that the notice is provided, the Director of Procurement Services shall return all work papers and copies thereof that have been submitted by the bidder.

13.3 **CONSEQUENCE IF BID NOT WITHDRAWN**

If the bidder does not withdraw the bidder's bid as provided in this section 13, or if the bidder is not permitted to withdraw the bidder's bid as described in section 13.2(G), the City shall not be liable for any costs associated with mistakes or errors in the bid, and in no event may the amount of the Contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of the bidder from the consequences of an error in the bidder's bid or offer.

14. **NON-DISCRIMINATION**

The City does not discriminate against faith-based organizations. By signing its bid, the bidder, if a faith-based organization, agrees that it understands the requirements of City Code § 21-43 (Va. Code § 2.2-4343.1).

15. **ORAL EXPLANATIONS OR INTERPRETATIONS**

- A. All inquiries requesting clarification of this Invitation for Bids should be made in writing no later than ten business days prior to the closing date to the Contract Specialist identified on the cover page of this solicitation. If submitting an inquiry by facsimile transmission, the bidder should notify the Contract Specialist by telephone that the person is faxing the inquiry. All inquiries should clearly state the number of this Invitation for Bids. Because each bidder may have different needs for information, that bidder must make whatever inquiries it deems necessary in order to respond to the Invitation for Bids. Inquiries that the Contract Specialist determines to be pertinent to all solicited bidders will be answered by addenda to all solicited bidders.
- B. No oral explanation in regard to the meaning of this Invitation for Bids will be made and no oral instructions will be given before the award of the contract. Any explanation, interpretation or modification of the Invitation for Bids that is pertinent to all solicited bidders will be made only by an addendum duly issued by the City, a copy of which will be mailed or delivered to each bidder known to have received the Invitation for Bids. The City shall not be responsible for any other explanations or interpretations anyone presumes to make on behalf of the City before the expiration of the ultimate time set for the receipt of bids.
- C. From time to time, addenda may be issued that will provide clarifications or supplemental information about the Invitation for Bids documents. All persons receiving Invitation for Bids documents issued by the City will be provided copies of addenda. If a bidder fails to acknowledge any addendum that (i) has a material effect on the bid (i.e., that relates to price, quantity, quality or delivery) and (ii) is not merely administrative, the City may consider that bidder's bid incomplete, and the bid thus may be rejected as non-responsive. The bidder shall acknowledge receipt of all addenda as part of its bid and on the form provided for that purpose by the City. The bidder shall be solely responsible for verifying the existence of all addenda items.
- D. Any contact with any City representative concerning this Invitation for Bids other than that outlined in subsection (A) of this section is prohibited. Any such unauthorized contact may disqualify the bidder from this procurement.
- E. The Specifications and the General Terms and Conditions attached to this Invitation for Bids are hereby expressly made a part of and incorporated into this Invitation for Bids. The Specifications and the General Terms and Conditions shall be a part of any contract that results from this Invitation for Bids. This Invitation for Bids also includes a sample of the City's form contract as an attachment. All conditions contained in this attached contract are hereby expressly made a part of and incorporated into this Invitation for Bids.

16. **POSTING OF INTENT TO AWARD**

Following the selection and signing of a contract, the Purchasing Officer will notify those bidders whose bids are not selected of the name of the selected bidder. Bidders should note that it may take up to two months to award this contract.

17. **PUBLIC INSPECTION OF RECORDS.**

- A. All proceedings, records, contracts and other public records relating to the procurement transaction that this solicitation concerns shall be open to the inspection of any citizen or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act.
- B. Any bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids, but prior to award, except in the event that the City decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract.
- C. Pursuant to City Code § 21-5(f) (Va. Code § 2.2-4342(F)), trade secrets or proprietary information submitted by a bidder in connection with this procurement transaction shall not be subject to the Virginia Freedom of Information Act, provided that the bidder (i) invokes the protections of this section prior to or upon submission of the data or other materials, (ii) identifies the data or other materials to be protected, and (iii) states the reasons why protection is necessary.
- D. Budgets and price quotations are considered public information in bids submitted to the City. Classifying budgets and price quotations as “proprietary” or “confidential” may render the bid non-responsive. Classifying aspects of the bid that are not trade secrets or proprietary may render the bid non-responsive.
- E. All bids submitted under this solicitation will become the property of the City and will not be returned.

18. **SAMPLES**

Samples of items, if requested, shall be furnished without charge, upon request within ten days. Failure on the part of the bidder to provide such samples within the specified time frame or to comply with these instructions may be cause to consider the bid as non-responsive. If not destroyed and upon request at the time of submission, samples will be returned at the bidder’s expense.

19. **SEPARATE INVITATIONS**

Bid responses for separate bid invitations shall not be combined on the same form or placed in the same envelope. Such bids may not be considered.

20. **STATE CORPORATION COMMISSION FORM**

- A. State law requires most business entities to register with the Commonwealth of Virginia’s State Corporation Commission to obtain legal authorization to transact

business in Virginia. A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity 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 the City 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.

- B. Each bidder organized or authorized to transact business in the Commonwealth of Virginia pursuant to Title 13.1 or Title 50 of the Code of Virginia shall include in its bid the identification number issued to it by the State Corporation Commission. Any bidder that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 of the Code of Virginia, or as otherwise required by law, shall include in its bid a statement describing why the bidder is not required to be so authorized. Each bidder shall indicate the above information on the State Corporation Commission Form included with the Invitation for Bids.
- C. By signing its bid in response to this Invitation for Bids, the bidder represents and warrants that all information the bidder submits on its completed State Corporation Commission Form is true and complete at the time the bidder submits its bid and will remain true and complete throughout the duration of any contract between the City and the bidder that results from this Invitation for Bids. The bidder agrees that the process by which compliance with Title 13.1 and Title 50 of the Code of Virginia is checked during the solicitation stage (including without limitation the State Corporation Commission Form provided) is streamlined and not definitive, and the City's use and acceptance of such form, or its acceptance of the bidder's statement describing why the bidder was not legally required to be authorized to transact business in the Commonwealth of Virginia, shall not be conclusive of the issue and shall not be relied upon by the bidder as demonstrating compliance.

21. **SUBMISSION OF BIDS**

- A. Unless otherwise specified in the solicitation, the below provisions apply. Packages containing bids should be sealed and marked in the lower left-hand corner with the invitation number and the date and hour of opening of bids. Failure to do so may cause bid not to be considered.
- B. Bids shall be submitted on the forms furnished. Erasures or other changes in the bid must be annotated and initialed by the individual signing the bid.
- C. Bids containing any conditions, omissions, unexplained erasures or alterations or items not called for on the bid sheet may be rejected by the City as being incomplete.

- D. Bids submitted in pencil may be cause for rejection.
- E. Should any additions or deductions or any changes in price or specifications be written or otherwise set forth on the outside of any sealed package purporting to contain a bid, such package shall be returned unopened to the bidder.
- F. The City is not responsible for the mishandling of any bid not properly identified on the outside of the package.
- G. The City is not responsible for bids delivered to places other than as indicated in the bid package.
- H. Late bids shall be deemed non-responsive and shall not be accepted.

22. **UNIT PRICING**

Unless lump sum price is specifically requested, unit and extended prices should be given. Failure to do so may cause the bid not to be considered. In case of error in extension of prices in the bid, the unit price shall govern.

23. **USE OF BRAND NAMES**

Where a brand or trade name appears in the specifications, it is understood that the brand or trade name referred to, or its approved equal, shall be furnished. If the bidder proposes an equal of the brand or trade name referred to, the bidder must furnish full particulars. If no mention is made of any exceptions, it is assumed that the bidder is bidding on the article mentioned and not an approved equal, and the bidder will be required to deliver the exact article specified. The City shall decide, in its sole discretion, if a proposed equal will be approved.

END OF INSTRUCTIONS TO BIDDERS

PART III
GENERAL TERMS AND CONDITIONS

1.0 **Duration of Contract.**

1.1 **Commencement and Expiration.** This Contract shall commence on the Commencement Date set forth in the Goods and Services Contract and shall expire two (2) years later, unless terminated earlier in accordance with the provisions of this Contract.

1.2 **Extension of Contract.** The City reserves the right to extend the Contract for any reason for a period or periods up to but not to exceed 12 months. This extension clause may be exercised when the City determines that an extension of the Contract is advantageous to the City. Any extension beyond 12 months will be subject to the City's renewal clause as set forth in this Contract. This provision in no way affects or alters the City's ability to renew the Contract consistent with the renewal option clause. If it is then decided to renew the resulting Contract, the renewal date will commence on the day following the last day of the contract extension.

1.3 **Renewal.** The City may, at its sole option, renew this Contract for up to two (2) one-year renewal terms by furnishing the Contractor with written notice of its decision to renew at least 60 calendar days before the expiration of the then-current term.

2.0 **Contractor Responsibilities.**

2.1 **Independent Contractor.** The Contractor shall provide the services required under this Contract as an independent contractor.

2.2 **Advertising.** The Contractor shall not use any indication of its services to the City for commercial or advertising purposes without the prior written consent of the Director of Procurement Services.

2.3 **Anti-Kickback Provision.** The Contractor warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the Contractor to solicit or secure this Contract and that it has not paid or agreed to pay any company or person other than a bona fide employee working solely for the Contractor any fee, commission, percentage, brokerage fee, gifts or other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the City shall have the right to annul or void this Contract without liability or, in its sole discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

2.4 **Century Compliance.** The Contractor warrants that the hardware, software and firmware products, provided for the City's use or used by the Contractor to provide any service or commodity that is the subject of this Contract, individually and in

combination, shall successfully process, store and perform calculations with dates regardless of the century in which the dates occur.

2.5 **Compliance with Laws.** The Contractor shall comply with the provisions of any statutes, ordinances, rules, regulations, or other laws enacted or otherwise made effective by any local, state, or federal governmental entity which may be applicable to the performance of this Contract and shall obtain all necessary licenses and permits thereunder.

2.6 **Contractor Misrepresentation.**

2.6.1 **In General.** If the Contractor knowingly makes a material misrepresentation in submitting information to the City, such misrepresentation will be sufficient grounds for rescinding the award of this Contract.

2.6.2 **MBE/ESB Participation.** By issuing the Invitation for Bids, the City intends that MBE / ESB participation proposed as part of any bid in response hereto be binding on the Contractor. Consequently, if the Contractor falsely represents proposed MBE/ESB participation, or fails to comply with proposed participation, the Contractor may be in breach of contract. Upon determination of a breach, the City shall have all available remedies for breach of contract, which may include, but is not limited to, one or more of the following: (i) forfeiture, (ii) investigation, and (iii) debarment.

2.7 **Drug-Free Workplace.**

2.7.1 **Policy.** City Council Resolution No. 2000-R197-191 prohibits the City from contracting with any contractor that fails to comply with this policy. The Contractor certifies that it has taken and will continue to take appropriate and effective action to (i) educate its employees about the dangers of drug abuse in the workplace, (ii) provide its employees with effective drug counseling, rehabilitation and employee assistance programs, any or all, (iii) discipline employees who violate the requirement of a drug-free workplace, and (iv) minimize, to the greatest extent possible, the risks of drugs entering the workplace. The Contractor is also prohibited from contracting with any other party that fails to comply with this policy. Failure by the Contractor or its subcontractor to comply with the provisions outlined above will be cause for termination of the Contract.

2.7.2 **Contractor's Plan.** The Contractor shall implement and maintain a Drug-Free Workplace Plan specific to the services and work covered by this Contract that is implemented and effectively used throughout the duration of this Contract to accomplish the requirements of section 2.7.1 ("Policy") above.

2.8 **Human Rights.**

2.8.1 **Civil Rights Act Compliance.** During the performance of this Contract, the Contractor agrees, pursuant to Resolution No. 74-R8-11 adopted February 25, 1974 by the Council

of the City of Richmond, to comply fully with Titles VI and VII of the Civil Rights Act of 1964, as amended, and all regulations promulgated thereunder.

The essence of this requirement is found in the United States Code Annotated, Title 42, Section 2000e-2, which states in part:

- “a. It shall be an unlawful employment practice for an employer:
 - (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin; or
 - (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex or national origin.”

By entering into this Contract, the Contractor certifies that it has complied with Titles VI and VII of the Civil Rights Act of 1964, as amended.

2.8.2 **Richmond City Code Compliance.** Pursuant to section 21-70 of the Code of the City of Richmond (2004), as amended:

- (a) During the performance of this Contract, the Contractor agrees as follows:
 - (1) The Contractor shall 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. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - (2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, shall state that such Contractor is an equal opportunity employer.
 - (3) 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.

- (b) During the performance of this Contract, the Contractor shall include the provisions of subsection (1) of the section in every subcontract or purchase order of over \$10,000.00, so that the provisions will be binding upon each subcontractor or vendor.

2.9 **Intellectual Property.** The Contractor represents and warrants that all goods and services that it will furnish under this Contract do not and will not infringe on any valid copyright, patent, service mark or trademark. The Contractor shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by the Contractor or used by the Contractor in the performance of its services. The Contractor shall defend, hold harmless and indemnify the City from all suits or claims for infringement of any patent rights or copyrights arising out of such selection.

2.10 **Personnel.** The personnel designated in the management summary for key positions shall not be changed except with the permission of the City. The City will only approve such change when, in its opinion, the substitute personnel have equal or greater qualifications and experience than those they replace.

2.11 **Property of Work.**

2.11.1 **Work Product.** Any material, report or product, whether in electronic or paper form, that results from the execution of this Contract shall be the sole property of the City. The Contractor shall not copyright any material or reports. Upon request, the Contractor shall turn over all work papers and related documents to the City.

2.11.2 **City Property.** Any data or material with which the City furnishes the Contractor shall remain the property of the City. When it no longer needs such data or material for its performance of this Contract, the Contractor shall return such data or material to the City or destroy such data or material using a method approved by the City.

3.0 **Payment.**

3.1 **Basis.** The City shall pay the Contractor for all goods delivered and services performed under this Contract in accordance with the pricing provisions set forth in the Bid.

3.2 **Deliveries.** All deliveries shall be F.O.B. destination to the destination specified on the Bid Form. All bid prices are for F.O.B. destination and include only the actual freight rate costs at the lowest and best rate, based upon the actual weight of goods to be shipped. The required time for delivery will be as stated on the Bid Form unless the Contractor proposes a time for delivery that the City deems to be more favorable to the City than the required time for delivery stated on the Bid Form, in which case the Contractor's proposed time for delivery will govern. The required time for delivery is stated either as a fixed date by which the Contractor must make delivery or as a number of calendar days following the City's issuance of a purchase order within which the Contractor must make delivery.

- 3.3 **Terms.** The City's payment terms are Net 45 unless the bidder proposes payment terms that the City deems to be more favorable to the City than Net 45 by printing such payment terms in the space provided on the Bid Form. Time allowed for cash discounts will be computed from the date of the City's receipt of a proper invoice or the date of delivery to the City of the items invoiced, whichever is later.
- 3.4 **Subject-to-Appropriations.** All payments and other performance by the City under this Contract are subject to annual appropriations by the City Council; consequently, this Contract shall bind the City only to the extent that the City Council appropriates sufficient funds for the City to perform its obligations hereunder.
- 3.5 **When City Obligated to Pay.** The City shall not be obligated to purchase or pay for any goods or services covered by this Contract unless and until they are ordered and either delivered or performed, as the case may be.
- 3.6 **Offset Clause.** Pursuant to the Richmond City Charter, the City may withhold the payment of any claim or demand by any person, firm or corporation against the City until any delinquent indebtedness or other liability due the City from such person, firm or corporation shall first have been settled and adjusted.
- 3.7 **Taxes.** All bids shall be submitted exclusive of direct Federal, State and Local Taxes. The City is exempt from payment of State Sales and Use Tax on all tangible personal property purchased or leased for its use or consumption and will furnish its tax exemption certificate upon request. However, if the bidder believes that certain taxes are properly payable by the City, it may list such taxes separately in each case directly below the respective item bid price.
- 3.8 **Invoices.** The Contractor shall submit invoices that include a unique invoice number, the applicable City purchase order number, and the Contractor's federal Taxpayer Identification Number. All invoices submitted by the Contractor must set forth each item billed in sufficient detail to enable the City to ensure that the item was ordered and corresponds with the contract price for such item. If the Contractor does not include all of the required information on the invoice, the City may reject and return the invoice unpaid. The Contractor shall submit the original invoice to the City's Department of Finance at either:

accountspayable@richmondgov.com

or

City of Richmond
Accounts Payable
900 East Broad Street
Richmond, VA 23219.

The City prefers that the original invoice be sent to the above electronic mail address to facilitate timely payment. The Contractor shall submit a duplicate invoice to the attention of the “Requester” identified on the purchase order at the “Ship To” address identified on the purchase order.

- 3.9 **MBE/ESB Participation—Reporting Requirement.** In cases where the Contractor uses a MBE or ESB subcontractor or vendor, it shall indicate the percentage of the invoiced amount that such MBE or ESB subcontractor or vendor performed on the MBE-3 form available on the City’s website. The Contractor shall submit this form directly to the Office of Minority Business Development. The Contractor may contact the City’s Office of Minority Business Development at (804) 646-3985 for questions or clarifications on the reporting policy. At the end of its performance of this Contract, the Contractor shall submit a summary in a format designated by the City of all payments made to MBE or ESB subcontractors or contractors.
- 3.10 **Payment by ACH.** The Contractor agrees that the City may make all payments to the Contractor, at the City’s option, of any or all amounts due under this Contract through the Automated Clearing House network.
- 4.0 **Indemnification and Insurance.**
- 4.1 **Indemnification.** The Contractor shall indemnify, defend and hold harmless the City, its officers, agents and employees from and against any and all losses, liabilities, claims, damages and expenses (including court costs and reasonable attorneys’ fees) arising from any material default or breach by the Contractor of its obligations specified in this Contract, as well as all claims arising from errors, omissions, negligent acts or intentional acts of the Contractor, its officers, agents and employees. Further, the Contractor shall assume the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of the Contractor, its subcontractors, its agents or its employees under or in connection with this Contract. The Contractor shall hold harmless and indemnify the City and its agents, its volunteers, its servants, its employees, and its officers from and against any and all claims, losses or expenses, including but not limited to court costs and attorneys’ fees, which either or both of them may suffer, pay or incur as the result of claims or suits due to, arising out of or in connection with any and all such damage, real or alleged. The Contractor shall, upon written demand by the City, assume and defend at the Contractor’s sole expense any and all such claims or legal actions.
- 4.2 **Insurance.** The Contractor shall provide and maintain throughout the life of this Contract insurance in the kinds and amounts specified in this section with an insurer licensed to transact insurance business in the Commonwealth of Virginia. Each insurance policy, endorsement and certificate of insurance shall be signed by duly authorized representatives of such insurers and shall be countersigned by duly authorized local agents of such insurers.

4.2.1 **Costs and Premiums.** The Contractor shall pay all premiums and other costs of such insurance. The consideration paid or to be paid to the Contractor for the performance of the Contract includes the premiums and other costs of such insurance, and the City shall not be responsible therefor.

4.2.2 **Policy Requirements.** All insurance contracts and policies shall provide, or be endorsed to provide, as follows:

- (i) Subrogation against the City shall be waived.
- (ii) The City and its officers, employees, agents and volunteers shall be named as an additional insured, except for Workers Compensation and Professional Liability.
- (iii) Coverage will not be canceled, non-renewed or materially modified in a way adverse to the City without 30 days' written notice to the City.
- (iv) The insolvency or bankruptcy of any of the insured shall not release the insurer from its obligation to satisfy claims otherwise within the coverage of such policies.

No insurance contract or policy shall be expanded to afford coverage which is greater than the maximum coverage approved for writing in the Commonwealth of Virginia.

4.2.3 **Evidence to Be Furnished.**

4.2.3.1 **Endorsements.** The Contractor shall furnish the City with a copy of the policy endorsement naming the City and its officers, employees, agents and volunteers as an additional insured for each policy, other than Workers Compensation and Professional Liability, required under this section 4.2 ("Insurance"). The Contractor shall furnish the City with copies of such other endorsements as may be required under this Contract upon request by the City therefor.

4.2.3.2 **Certificates of Insurance.** The Contractor shall furnish the City with a certificate of insurance evidencing the above coverage, indicating that the City and its officers, employees, agents and volunteers are named as additional insured for each policy, other than Workers Compensation and Professional Liability, and that the coverage will not be canceled, non-renewed or materially modified in a way adverse to the City without 30 days' written notice to the City. All certificates of insurance shall show the City's Contract Number.

4.2.3.3 **Contracts and Policies.** The Contractor is not required to furnish the City with copies of insurance contracts or policies required by this section 4.2 ("Insurance") unless requested at any time by the City's Director of Procurement Services.

4.2.4 **Schedule of Coverage.** The Contractor shall provide and maintain the following types of insurance in accordance with the requirements of this section 4.2 (“Insurance”):

- (i) Commercial General Liability Insurance with a combined limit of not less than \$1,000,000 per occurrence.
- (ii) Automobile Liability Insurance with a combined limit of not less than \$1,000,000 per occurrence.
- (iii) Statutory Workers’ Compensation and Employers’ Liability Insurance with the Alternate Employer Endorsement WC 000301.
- (iv) Either (a) for professional services, Professional Liability Insurance with limits of not less than \$1,000,000 per claim, or (b) for non-professional services, Errors and Omissions Insurance with limits of not less than \$1,000,000 per claim.

5.0 **Assignment, Delegation and Subcontracting.**

5.1 **By City.** The City may assign its rights or delegate its duties, in whole or in part, under this Contract by written notice delivered to the Contractor. Such transfer of rights or duties shall take effect upon the date specified in the notice or upon the assumption, if necessary, of the delegated duties by the assignee, whichever is later.

5.2 **By Contractor.** The Contractor shall not assign its rights or delegate its duties, or any part thereof, under this Contract without the prior written consent of the City. Further, the Contractor shall not assign, sublet or transfer its interest or any part thereof in this Contract by means or as part of any sale, merger, consolidation, assignment or any other event that would result in new or different ownership, control, operation or administration of the Contractor’s business affairs without the prior written consent of the City.

5.3 **Subcontracting.** This Contract shall not be subcontracted without the prior written approval of the City’s Director of Procurement Services.

6.0 **Remedies and Termination.**

6.1 **Default.** In case of default of the Contractor or if the Contractor fails to deliver the supplies or services ordered by the time specified, the City, after due notice in writing, may procure them from other sources and hold the Contractor responsible for any excess cost occasioned thereby. This remedy shall be in addition to any other remedies available to the City.

6.2 **Termination with Cause.**

6.2.1 **Notice.** The City may terminate this Contract with cause at any time for the Contractor’s failure to perform its obligations under this Contract or to otherwise adhere to the terms

and conditions of this Contract by delivery of written notice to the Contractor of the City's intent to so terminate. Such notice shall be delivered at least seven calendar days prior to the date of termination and shall otherwise be given in accordance with the requirements of this Contract for the delivery of notices.

6.2.2 **Cure.** If the Contractor cures the failure to perform or otherwise adhere to the terms and conditions of this Contract to the City's satisfaction, indicated in writing to the Contractor, during this seven calendar day period, then the City's notice of termination with cause shall be deemed null and void.

6.2.3 **Effect.** Any such termination shall not relieve the Contractor of the obligation to deliver or perform, or both, on all outstanding orders issued prior to the effective date of termination. The City shall have full right to use that which the Contractor delivers or performs in any manner when and where the City may designate without claim on the part of the Contractor for additional compensation not set forth in the order.

6.3 **Termination without Cause.**

6.3.1 **Notice.** The City may terminate this Contract without cause by delivery of written notice to the Contractor of the City's intent to so terminate. Such notice shall be delivered at least 90 calendar days prior to the date of termination and shall otherwise be given in accordance with the requirements of this Contract for the delivery of notices.

6.3.2 **Effect.** Any such termination shall not relieve the Contractor of the obligation to deliver or perform, or both, on all outstanding orders issued prior to the effective date of termination. The City shall have full right to use that which the Contractor delivers or performs in any manner when and where the City may designate without claim on the part of the Contractor for additional compensation not set forth in the order.

6.4 **Termination by Contractor.**

6.4.1 **Notice.** The Contractor may terminate this Contract if the City Council does not appropriate sufficient funds for the City to perform its obligations under this Contract by delivery of written notice to the City of the Contractor's intent to so terminate. Such notice shall be delivered at least 45 calendar days prior to the date of termination and shall otherwise be given in accordance with the requirements of this Contract for the delivery of notices.

6.4.2 **Cure.** If the City cures the non-appropriation of funds by appropriating sufficient funds during this 45 calendar day period, then the Contractor's notice of termination shall be deemed null and void.

6.4.3 **Effect.** Upon such termination, the Contractor shall have no further obligations under this Contract.

- 6.5 **Waiver.** The waiver by either party of any term or condition of this Contract shall not be deemed to constitute either a continuing waiver thereof or a waiver of any further or additional right that such party may hold under this Contract.
- 7.0 **Dispute Resolution.**
- 7.1 **Governing Law.** All issues and questions concerning the construction, enforcement, interpretation and validity of this Contract, or the rights and obligations of the City and the Contractor in connection with this Contract, shall be governed by, and construed and interpreted in accordance with, the laws of the Commonwealth of Virginia, without giving effect to any choice of law or conflict of laws rules or provisions, whether of the Commonwealth of Virginia or any other jurisdiction, that would cause the application of the laws of any jurisdiction other than those of the Commonwealth of Virginia.
- 7.2 **Construction and Interpretation.** Each of the parties has had the opportunity to have its legal counsel review this Contract on its behalf. If an ambiguity or question of intent arises with respect to any provision of this Contract, this Contract will be construed as if drafted jointly by the parties. Neither the form of this Contract, nor any language herein, shall be construed or interpreted in favor of or against either party hereto as the sole drafter thereof.
- 7.3 **Contractual Claims.**
- 7.3.1 **Notice and Submission.** The Contractor shall give written notice of its intention to file a contractual claim at the time of the occurrence or the beginning of the work upon which the claim is based. In addition to such notice of its intention to file a claim, the Contractor shall submit all contractual claims, whether for money or other relief, in writing to the Director of Procurement Services no later than 60 calendar days after final payment. (*See City Code § 21-167(a); see also Va. Code § 2.2-4363(A).*)
- 7.3.2 **Required Contents of Claim Submission.** The Contractor's claim submission shall (i) set forth the primary, secondary and indirect claim issues in a clear, concise manner, (ii) identify the specific contract provisions, schedule impact and cost consequences related to each claim issue, and (iii) include all factual data supporting the claim as well as all supporting cost and delay data. The Director of Procurement Services, in the Director's sole discretion, may return claim submissions lacking any of the elements enumerated in the preceding sentence for resubmission or review the claim as though the missing elements are not factually present to support the claim. Such return of a claim submission shall not toll the 60-day period within which the Contractor must submit a claim.
- 7.3.3 **Procedures and Time Limit.** The procedures set forth in this section 7.3 ("Contractual Claims") and in City Code § 21-167 shall govern the consideration of contractual claims. The Director of Procurement Services shall issue a written decision on a claim no later than 90 calendar days after receipt of such claim in writing from the Contractor. (*See City Code § 21-167(b); see also Va. Code § 2.2-4363(B).*)

- 7.3.4 **No Action before Decision.** The Contractor may not invoke administrative procedures as provided in City Code § 21-168 or institute legal action as provided in City Code § 21-169 prior to receipt of the decision on the claim, unless the Director of Procurement Services fails to render such decision within the 90-day time limit. A failure of the Director of Procurement Services to render a final decision within the 90-day time limit shall be deemed a final decision by the City denying the claim. (*See* City Code § 21-167(c); *see also* Va. Code § 2.2-4363(D).)
- 7.3.5 **Finality of Decision.** The decision of the Director of Procurement Services shall be final and conclusive unless the Contractor appeals within 30 calendar days of the date of the final decision on the claim by the Director either as provided in City Code § 21-168 for administrative appeals or, in the alternative, by instituting legal action as provided in City Code § 21-169. (*See* City Code § 21-167(d); *see also* Va. Code § 2.2-4363(E).)
- 7.3.6 **No Cessation of Performance.** Nothing in this section 7.3 (“Contractual Claims”) shall be construed to authorize or permit the Contractor, while pursuing, by any available procedure, an appeal of a contractual claim or dispute, to cease performance of the Contract while such claim or dispute is pending. (*See* City Code § 21-167(e).)
- 7.4 **Alternative Dispute Resolution.** The Director of Procurement Services, with the concurrence of the City Attorney, may agree in writing on behalf of the City to submit particular disputes arising from this Contract to arbitration and to utilize mediation and other alternative dispute resolution procedures; however, any such procedures entered into by the City shall be nonbinding. (*See* City Code § 21-170; *see also* Va. Code § 2.2-4366.)
- 7.5 **Forum and Venue Choice.** Any and all disputes, claims and causes of action arising out of or in connection with this Contract, or any performances made hereunder, shall be brought, and any judicial proceeding shall take place, only in a federal or state court located in the city of Richmond, Virginia. The Contractor accepts the personal jurisdiction of any court in which an action is brought pursuant to this article for purposes of that action and waives all jurisdiction- and venue-related defenses to the maintenance of such action.
- 8.0 **Miscellaneous Provisions.**
- 8.1 **Audit.** The City reserves the right to audit all aspects of this Contract, including but not necessarily limited to (i) the Contractor’s financial capability and accounting system, (ii) the basis for progress payments, (iii) the Contractor’s compliance with applicable laws and (iv) appropriate vendor records. The City further reserves the right to review, on demand and without notice, all files of the Contractor or any subcontractor or vendor employed by the Contractor to provide services or commodities under this Contract where payments by the City are based on records of time, salaries, materials or actual expenses. The Contractor shall maintain all records

subject to audit under this provision for a period of not less than five years after the expiration or earlier termination of this Contract locally or in a manner deliverable at the Contractor's expense to a location in the metropolitan Richmond area.

8.2 **Captions.** This Contract includes the captions, headings and titles appearing herein for convenience only, and such captions, headings and titles shall not affect the construal, interpretation or meaning of this Contract.

8.3 **Force Majeure.** If either party is unable to perform its obligations under this Contract due to acts of God or circumstances beyond its reasonable control, such obligations shall be suspended as long as those circumstances persist, provided that the delaying party promptly notifies the other party of the delay and the causes. Except where the delay is caused by an act or omission of the delaying party, any costs arising from such delay shall be borne by the party incurring the delay.

8.4 **Merger / Entire Agreement.** This Contract, including the exhibits incorporated herein, constitutes both a complete and exclusive statement and the final written expression of all the terms of this Contract and of the entire understanding between the Contractor and the City regarding those terms. No prior written agreements or contemporaneous or prior oral agreements between the Contractor and the City regarding this Contract's subject matter shall be of any effect.

8.5 **Modification.** This Contract shall not be amended, modified, or otherwise changed except in the form of a City Contract Modification signed by the authorized representatives of the Contractor and the City in accordance with the City's Purchasing Policies and Procedures.

8.6 **No Third-Party Beneficiaries.** Notwithstanding any other provision of this Contract, the City and the Contractor hereby agree that: (i) no individual or entity shall be considered, deemed or otherwise recognized to be a third-party beneficiary of this Contract; (ii) the provisions of this Contract are not intended to be for the benefit of any individual or entity other than the City or the Contractor; (iii) no individual or entity shall obtain any right to make any claim against the City or the Contractor under the provisions of this Contract; and (iv) no provision of this Contract shall be construed or interpreted to confer third-party beneficiary status on any individual or entity. For purposes of this section, the phrase "individual or entity" means any individual or entity, including, but not limited to, individuals, contractors, subcontractors, vendors, sub-vendors, assignees, licensors and sub-licensors, regardless of whether such individual or entity is named in this Contract.

8.7 **Notices.**

8.7.1 **In General.** Any written notice by either party to the Contract shall be sufficiently given by any one or combination of the following, whichever shall first occur: (i) delivered by hand to the last known business address of the person to whom the notice is due, (ii) delivered by hand to the person's authorized agent, representative or officer

wherever they may be found or (iii) enclosed in a postage prepaid envelope addressed to such last known business address and delivered to a United States Postal Service official or mailbox. Notice is effective upon such delivery.

8.7.2 **Address.** All notices to the City shall clearly indicate the City's Contract Number and shall be directed to:

Director of Procurement Services
Department of Procurement Services
City of Richmond
900 East Broad Street, Room 1104
Richmond, Virginia 23219

All notices to the Contractor shall be directed to the contact person stated at the address given in the Contractor's bid.

END OF GENERAL TERMS AND CONDITIONS

PART IV
SPECIAL TERMS AND CONDITIONS

1.0 **COOPERATIVE PROCUREMENT**

- A. Pursuant to City Code § 21-40 / Va. Code § 2.2-4304, this procurement is being conducted on behalf of other public bodies as well as the City. Other public bodies must make their own legal determinations as to whether use of this Contract is consistent with their laws, regulations and other policies.
- B. Unless the Contractor took exception to the requirements of this section at the time the Contractor submitted its response to the solicitation resulting in this Contract, the Contractor shall allow public bodies, as defined by the Virginia Public Procurement Act, within the United States of America to make purchases under this Contract at the prices set forth herein and in accordance with the terms, conditions and specifications of this Contract. Exception to this requirement by a respondent to the solicitation shall not affect any evaluation by the City of that respondent's response to the solicitation.
- C. The Contractor shall deal directly with any public body that elects to use this Contract. Solely for purposes of the relationship between the Contractor and such other public body that makes purchases under this Contract, such other public body shall have the rights and obligations ascribed to the City by this Contract.
- D. The City, its officers and its employees shall not be responsible for the placement of orders, invoicing, payments, contractual disputes or any other transactions between the Contractor and any other public body. In no event shall the City, its officers or its employees be responsible for any costs, damages or injuries resulting to any party from the use of the resulting contract by another public body. Should another public body make purchases under the resulting contract and breach or default in its obligations to the Contractor, the City shall have no liability for such breach or default by the other public body.
- E. The City assumes no responsibility for any notification of the availability of this Contract for use by other public bodies. However, the Contractor may conduct such notification after award of this Contract.
- F. The Contractor shall furnish the City with semiannual reports identifying all other public bodies which used this Contract within the six months preceding the report, the quantities purchased from the Contractor by each, and the dollar amounts paid to the Contractor by each.

<ADD OTHER SPECIAL TERMS AND CONDITIONS AS NEEDED. LEGAL REVIEW MAY BE REQUIRED DEPENDING ON WHAT IS BEING ADDED.>