

IMPORTANT NOTICE

THIS IS AN ELECTRONIC PROCUREMENT (eBID) SUBMISSIONS WILL ONLY BE ACCEPTED ELECTRONICALLY VIA THE BONFIRE (EUNA) PORTAL (<https://fairfaxcounty.bonfirehub.com>)

Fairfax County Government uses a procurement portal powered by Bonfire Interactive for accepting and evaluating proposals. To register, visit <https://fairfaxcounty.bonfirehub.com>. Additional assistance is also available at Support@GoBonfire.com. **Offerors must register in the Bonfire portal in order to download the RFP documents and submit a response to this RFP.**

Submitting proposals via the Bonfire (Euna) portal is **mandatory**. Fairfax County will not accept proposals submitted by paper, telephone, facsimile ("FAX") transmission, or electronic mail (e-mail) in response to this RFP. Reference Special Provisions, **SUBMISSION OF PROPOSAL** for additional information.

Fairfax County strongly encourages offerors to submit proposals well in advance of the proposal submission deadline. A proposal submission is not considered successful unless all necessary files have been uploaded and the 'Submit & Finalize' step has been completed. Offerors are responsible for the consequences of any failure to plan ahead in the submission of its Proposal.

SPECIAL PROVISIONS

1. PURPOSE AND SCOPE:

- 1.1. The purpose of this Request for Proposal ("RFP") is to solicit sealed proposals from qualified Offerors to establish one or more Indefinite Delivery/Indefinite Quantity (IDIQ) contracts for Information Technology ("IT") Staff Augmentation services for Fairfax County, Virginia, and Fairfax County Public Schools ("FCPS").
- 1.2. This procurement is conducted by Fairfax County Government ("FCG") and is established as a cooperative procurement, allowing other public bodies to participate and utilize the resulting contracts. FCG and FCPS intend to award multiple contracts to provide Staff Augmentation services. These contracts will offer flexibility to procure services on an as-needed basis throughout the contract term; an award does not guarantee work. Task orders, Scope of Work ("SOW"), request, etc. should be issued intermittently based on evolving requirements. The County and participating public bodies reserve the right to complete services among the awarded Contractors at their discretion; however, they are not required to do so and may engage directly with a Contractor on a case-by-case basis.
- 1.3. The IDIQ contracts will cover the following IT Staff Augmentation labor categories:
 1. Infrastructure Technical Support
 2. Application Development Support
 3. Cyber Security Support
 4. Geographical Information Systems ("GIS") and Mapping Technical Support
 5. Unified Communications Support
 6. Radio and Wireless Communications
 7. Service Desk/NOC Support

2. MINIMUM PRE-QUALIFICATIONS:

Offerors submitting a response must meet the following minimum qualifications. **Failure to meet the minimum pre-qualification requirements will result in the Offeror's proposal being determined non-responsive.**

- 2.1. Offerors are required to properly fill out and sign Attachment I (Minimum Pre-Qualifications Checklist Sheet).
- 2.2. All firms are required to have been in business for a minimum of five (5) years as of the date of submission of the response to the RFP.
- 2.3. Federal funds may be expended under these contracts; therefore, the offeror(s) must agree by signing and accepting the federal terms and conditions without exceptions (ref. **Attachment F, G, and H**).
- 2.4. Offerors are required to provide a signed and completed IT Services Provider CONSULTANT/CONTRACTOR AGREEMENT (**Attachment D**) and FCPS Vendor Code of Conduct and Expectations (**Attachment E**).
- 2.5. Offerors are required to have existing staff in each working title for the IT Staff Augmentation labor category or categories the offeror is submitting a proposal(s) to. Verification will be demonstrated through the submission of resumes or bios for their current employee and should indicate education, background, and recent relevant experience in the respective category/field. Resumes or bios must be of existing staff at the responding firm and resumes or bios should indicate that they are currently employed by the offeror. For each working title, offeror must provide at least one resume or bio of current professionals currently employed by the organization who have been placed on similar engagements in the past three years. Include certifications (e.g., as with cybersecurity CISSP, CISM, CEH, OSCP, or equivalents) and detail their hands-on project roles.)

SPECIAL PROVISIONS**3. CONTRACT PERIOD AND RENEWAL:**

- 3.1. The period of the contract shall be a term of five (5) years. This contract may be renewed for up to an additional five (5) years, one year at a time or any combination thereof, as mutually agreed upon. Automatic contract renewals are prohibited.
- 3.2. The obligation of the County to pay compensation due the contractor under the contract or any other payment obligations under any contract awarded pursuant to this Request for Proposal is subject to appropriations by the Fairfax County Board of Supervisors to satisfy payment of such obligations. The County's obligations to make payments during subsequent fiscal years are dependent upon the same action. If such an appropriation is not made for any fiscal year, the contract shall terminate effective at the end of the fiscal year for which funds were appropriated and the County will not be obligated to make any payments under the contract beyond the amount appropriated for payment obligations under the contract. The County will provide the contractor with written notice of non-appropriation of funds within thirty (30) calendar days after action is completed by the Board of Supervisors. However, the County's failure to provide such notice shall not extend the contract into a fiscal year in which sufficient funds have not been appropriated.

4. BACKGROUND:

- 4.1. **Fairfax County Government ("FCG"):** Fairfax County, Virginia is located in the northeast corner of Virginia and has an area of approximately 395 square miles with a diverse population of over 1,100,000 residents. FCG has over 50 departments located in over 200 facilities throughout the County. Currently, FCG facilities include the main government center campus, twenty-five (25) Public Libraries, twenty-three (23) Police locations, forty-six (46) Fire and Rescue locations, and in addition many more community, health, human services, and park locations. FCG's Department of Information Technology ("DIT") manages and implements all aspects of information technology solutions and supporting infrastructure that enable county agencies to deliver services and information to citizens and the community and implement operational efficiencies. DIT establishes standards and architecture for the information and communications systems that are implemented in County government agencies throughout the County.
- 4.2. **Fairfax County Public Schools ("FCPS"):** FCPS is the largest school system in the Commonwealth of Virginia and the 10th largest in the United States. The school system consists of approximately 250 schools and work sites serving almost 181,000 students in grades Kindergarten through 12th grade and approximately 24,000 full-time staff/employees across Fairfax County Virginia. For information about FCPS, visit the website at: <http://www.fcps.edu/>. FCPS' current technical environment includes client server systems serving both instructional and administrative applications. Most applications will be accessed through school-wide LANs and a large distributed wireless network which connects sites through the Institutional Network (INET). To support this enterprise FCPS has established a robust network infrastructure to support with a distribution ring of 200 Gigabytes (GB) over fiber (connected to a Cox circuit of 100GB, and a CenturyLink circuit of 20G for a total of 120GB. Each elementary school has a dedicated 1.2GB circuit. In addition, middle schools have a 2GB dedicated circuit, secondary schools have 4GB dedicated circuit and high schools have a 3G dedicated circuit. FCPS Wide-Area-Network (WAN) connects over 250 sites throughout Fairfax County. A centralized Network Operation Center (NOC) hosts more than 2,000 physical and virtual servers and hundreds of enterprise applications. FCPS also has a backup NOC for disaster recovery purposes. A variety of technologies are deployed to keep FCPS users safely connected including firewalls, switches, Wireless Access Points and controllers, Windows, Unix servers.

FCPS has several helpful resources that are available online to assist Offerors in learning more about the FCPS:

Resource	URL
Information Technology	https://www.fcps.edu/departments/information-technology

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Strategic Plan
Purchasing Services

<https://www.fcps.edu/about-fcps/strategic-plan>
<https://www.fcps.edu/get-involved/doing-business-fcps>

- 4.3. The current contracts for these services can be viewed on the Fairfax County Contract Register at <https://www.fairfaxcounty.gov/cregister/> by entering one of the following contract numbers 4400005604, 4400005606, 4400005607, 4400005610, 4400005623, 4400005624, 4400005627, 4400005630, 4400005633, 4400005636, 4400005813, and 4400010820 in the contract number field.
- 4.4. Budget is subject to annual appropriations for County needs. Please refer to the Incumbent vendor information (excel file) and <https://www.fairfaxcounty.gov/topics/financialtransparency> for information on spending to date.

5. TECHNOLOGY PROFILES AND ADDITIONAL REQUIREMENTS:**5.1. Fairfax County Information Technology Profile and Requirements:**

- 5.1.1. To meet the requirements of this solicitation, proposals for providing IT staff augmentation support should comprehensively address all aspects of the related labor category, including skill sets, experience, and availability of proposed personnel. The offeror will describe their organizational experience in delivering services and solutions in the particular labor category. Submissions from general staffing firms or vendors without demonstrable delivery experience in the IT category will be disqualified. The Offeror will be responsible for demonstrating that supplied staff fully integrate with existing County teams and projects. The County will provide guidance on the methodology and design required for each support area in each future work order. Offeror must demonstrate ability to integrate the augmented staff into existing County processes and workflows. Any solutions developed or implemented by staff augmentation support must be fully integrated into the core County software, database and interfaces and seamlessly integrate with county technologies. Proposals must detail the following; organizational skill sets and expertise, proposed staffing models, ensure augmented staff can seamlessly integrate and use existing county frameworks, methodologies, and tools. This includes a commitment to adhering to the County's security guidelines and best practices. The Offeror should ensure that the proposal includes, examples of relevant case studies, past work or projects in government settings, and a clear plan for onboarding and integrating these staff members within the County's existing IT organization. Proposals must demonstrate offerors ability to provide staff that can meet one or more of the supported areas and show competencies in the core technologies used by the county. Information about Fairfax County IT Projects, Standards, environments and platforms can be found in the Information Technology Plan, <https://www.fairfaxcounty.gov/informationtechnology/it-plan>.
- 5.1.2. Fairfax County IT Management Overview – The Department of Information Technology (DIT) is the County's central IT agency that establishes standards and architecture for information and communication systems for all County agencies. DIT provides leadership, process, governance, resources, and expertise in deploying information technology, and provides technology infrastructure, and designs, develops, implements and maintains enterprise-wide and agencies' specific applications. The Director of DIT is also the County's Chief Information Officer and has authority for strategic leadership for technology investments, and direction in deployment of technology county-wide, and oversees implementation of policy and IT projects. DIT has a Project Management Office that works with all agencies' Project Managers (PM) in reviewing project plans for performance and scope, and approving project expenditures. DIT assigns a technical PM who is responsible for working with project System Integrators (SI) and staff augmentation support on the technical implementation processes.

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- 5.1.3. The County prefers solutions use industry standards out-of-the-box, including contemporary best practices for solution architecture, configurability, integration, user access and data security; be available 24x7x365; are scalable and meet reasonable performance requirements; and allow for appropriate maintenance windows.
- 5.1.4. Any solutions custom built by an SI, then DIT will specify the standard for the build and the underlying infrastructure which contractors must adhere to.
- 5.1.5. If support is for a commercial licensed software product, it is expected that work is based on its manufacture specifications and not manipulated outside its developed architecture and development standards. The solution design should recommend the hardware and database environment that ensures optimal performance, supportability and reliability.
- 5.1.6. Solution support may be required on technology that is hosted outside the County's IT environment, such as a subscription service. Augmented staff must adhere to County IT Security standards for data security and privacy and user access from the county's local and remote network. DIT will specify remote access specifications.
- 5.2. **County Network Environment:**
- 5.2.1. The County's technology architecture is a tactical asset that defines technology components necessary to support business operations and the infrastructure required for implementation of technologies in response to the changing needs of government business and industry evolution. It is a multi-layered architecture that includes:
- Application and Data Architectures,
 - Platform Architecture,
 - Network Architecture,
 - Internet Architecture, and
 - Security Architecture.
- 5.2.2. More information about the County's enterprise architecture is available in the Information Technology Plan, published by the County DIT, at <https://www.fairfaxcounty.gov/informationtechnology/it-plan>
- 5.3. **Requirements for Solutions Supported by Staff Augmentation:**
- 5.3.1. All information systems delivery and management is governed by the Architecture Review Board (ARB) and other program specific committees that are chartered to manage scope and functionality delivery issues, and advise and/or direct development efforts and promote conformance to a variety of standards, including but not limited, to those in the Information Technology Plan, <https://www.fairfaxcounty.gov/informationtechnology/it-plan>. Offerors with staff augmentation support in the various domains may be required to review solution architecture with the DIT ARB while supporting the county. The DIT ARB provides technical review and sign-off of Solution designs.
- 5.3.2. In general, solutions that are installed on premises at Fairfax County use industry standards and must meet the following requirements, which are described in the Information Technology Plan, <https://www.fairfaxcounty.gov/informationtechnology/it-plan>:
- Enterprise Architecture and Standards,
 - Application Platforms and Architecture, and
 - Database and Operating Systems.

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- 5.3.3. Deviations: Deviations from the architecture and standards may become a barrier to the sustainability of the County's integration and interoperability posture and may be subject to further review. When responding to various statements of work during the duration of this contract, offerors must specifically disclose all aspects of the proposed solution which deviate from the documented standards and desired architectures, and provide approaches for consideration about the manner in which non-standard components may be integrated.
- 5.3.4. Graphical User Interfaces: The County has standard templates that are required for its websites to have maximum consistency across applications and content. Any hosted applications and most COTS applications should be able to present through the County template or simulation for County brand and identity. Alternatives to using these templates must be arranged through the County DIT.
- 5.4. **IT/Cyber Security:**
 - 5.4.1. All solution components must meet Information Security practices as described in the Fairfax County Information Technology Security Policy:
https://www.fairfaxcounty.gov/informationtechnology/sites/informationtechnology/files/assets/security/pm70-05_01.pdf.
 - 5.4.2. The Contractor must provide complete Fairfax County Project Proposal Matrix for Meeting Information Technology Security Policy Requirements (**Attachment C**) upon request by the County.
 - 5.4.3. Contractors implementing solutions must be compliant with all federal and Virginia laws and regulations governing the access, use and management of Personally Identifiable Information (PII), Payment Card Industry (PCI) compliant and meet Americans with Disabilities Act (ADA) requirements.
 - 5.4.4. Offerors must include in their proposals the completed **Attachment D: Fairfax County IT Services Provider Consultant/Contractor Agreement**, for the firm and its personnel that have roles in the implementation and management of the solution implementation and post implementation maintenance and support, as applicable. This requirement is non-negotiable.
 - 5.4.5. Contractor personnel are subject to monitoring by the County IT Security Office (ISO), and any person of the Contractor or its subcontractors or representatives that breach IT Security Policy and/or ethics are automatically removed from the engagement.
 - 5.4.6. Sensitive and Confidential Information: Sensitive or Confidential information may not be removed from Fairfax County premises or systems unless the information's owner has approved such removal or exposure in advance. This includes, but is not limited to, various active data services, (REST, WebSocket, GraphQL, etc.) portable computer hard disks, portable memory devices (including USB drives), tape cartridges, and paper documents containing sensitive or confidential information. This paragraph does not apply to authorized off-site backups which are in encrypted form.
 - 5.4.7. Authorized Tools and Programs: Except as otherwise expressly authorized by DIT/ISO, users shall not download, install or run security programs or utilities that reveal weaknesses in the security of a system. For example, Fairfax County users shall not run password cracking programs, network reconnaissance/discovery software/applications, key loggers, packet sniffers, network mapping tools, port scanners or any other non-approved programs while connected in any manner to the Fairfax County network infrastructure.

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- 5.4.8. Remote Access: Authorized users accessing the County's network remotely shall abide by security policies and procedures to protect the County's equipment, data, and network access as if they were working on premises.
- A. Remote access is a service provided by the County and shall be used for authorized business purposes only. To this end, management shall approve every request for remote access.
 - B. Remote access to the Fairfax County network shall be done using the DIT provided or supported services that are approved by the Information Security Office.
 - C. Agencies or individuals who wish to implement non-standard Remote Access solutions to the Fairfax County production network shall obtain prior approval from DIT and the Information Security Office.
 - D. Secure remote access shall be strictly controlled. Control will be enforced via remote access authentication using security tokens that provide one-time password authentication or public/private keys with strong pass-phrases. Furthermore, users may not share passwords or access devices to permit others onto the County network.
 - E. Remote Access control will be enforced via network and system level auditing. This information will be readily available for monitoring and review by appropriate personnel.
 - F. External access to and from information systems shall meet Fairfax County remote access standards and guidelines.
 - G. Reconfiguration of a home user's equipment for the purpose of split-tunneling or dual homing is not permitted.
 - H. All hosts that are connected to Fairfax County internal networks via remote access technologies shall use the most up-to-date anti-virus software.
 - I. By using remote access technology with personal equipment, users shall understand that their machines are a de facto extension of Fairfax County's network, and as such are subject to the same standards that apply to County-owned equipment; therefore, their machines shall be configured to comply with Fairfax County policies and DIT standards for anti-virus software and patch management.
 - J. The County monitors its networks and systems for security violations. Users agree to this monitoring when they use the service.
 - K. The link shall be encrypted whenever a computer network connection is established between a County computer and another computer at a location outside an official Fairfax County office, and whenever this connection transmits, or is likely to transmit sensitive information.
- 5.5. **Ownership of and Access to Data, Source Code:**
- 5.5.1. All County data is and must remain the sole property of the County. Therefore, all tools and capabilities native to the Offeror's solution should be available to the County to allow for full access to that data. All tables, layouts, queries, stored procedures, XML schema and other content developed to support the operation of a database and/or County applications in the Fairfax environment become the property of the County, and shall be available to the appropriate County personnel as needed and upon request.

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- 5.5.2. Source code shall revert to the County if the Contractor files for bankruptcy or protection from creditors in a court of law. The County shall have full rights to use source code for any purposes other than resale. The same applies if the Contractor is merged or acquired and the software is no longer supported. Software source code will be updated to reflect the most current version of the software source code materials including all adjustments and configuration made for Fairfax County.
- 5.5.3. Once contract is awarded, Contractor must provide documentation about schemas or database table organization at a level of detail that enables report writers to navigate and extract all information necessary to produce ad hoc reports.
- 5.5.4. All source code developed under a given task order must remain the sole property of the County. Contractor may request permission to re-use portions of the code written by their staff, however, this request must be made in writing to the Fairfax County Department of Procurement and Material Management for review and approval.
- 5.5.5. The above is not meant to include proprietary programs, tools or other intellectual property. However, such claim to proprietary content cannot intrude on the County's right to access its data without undue interference or additional cost.
- 5.5.6. Data owned by Fairfax County may not be used by the Contractor for any purposes without the express written consent of the appropriate County representative. Data covered under specific federal, state and local privacy laws are confidential. Any breach of privacy is cause for termination of contract.
- 5.5.7. Data Access (Off-Premise): If the solution is hosted outside the County's network the County requires 24/7 access to all data and all communications, transactions, and all other records of business concerning the software in relation to the agencies that utilize and/or access HCSIS.
- 5.6. **Standard County Data:**
 - 5.6.1. Certain elements are standardized in format and content to enable enterprise-wide data usability, coordination of services, analysis, and public safety. New systems that use any of these elements are required to meet these requirements and any deviation from the standard must be documented and approved by the CTO.
- 5.7. **Infrastructure Requirements:**
 - 5.7.1. Contractors supporting solutions implemented and hosted at the County, must ensure all infrastructure needs are specified and approved. Contractors must maintain for County technical documentation and hardware proposals for consideration in their support capacity
 - 5.7.2. For a proposed solution the County may require up to six separate computing environments, with the ability to run concurrently, for sandbox, development, testing, training, acceptance, and production. To ensure that each environment is technically equivalent, duplicate servers and workstations as specified below shall be utilized except where virtual machine technology is preferred by the County. The County will work with the Contractor to duplicate or approximate other relevant environmental considerations such as the network and system loading to ensure realistic testing scenarios are facilitated.

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- 5.7.3. When responding to statements of work, solution hardware requirements should be listed in detail to include make and model required for the full implementation of the application. All hardware components must be sized appropriately to ensure that the performance requirements of the Contractor's application will be met. Equipment specifications provided by the County within this RFP shall be considered as minimal requirements. Deviations for hardware proposed will be finalized during final design stages of the project.
- 5.7.4. The County maintains a four-year replacement program for workstations and a four-year replacement program for servers and associated ancillary equipment. The Contractor shall prepare technology refreshment specifications and costs for installed hardware currently under maintenance agreement every four years or when requested.
- 5.8. **Disaster Recovery/Continuity of Operations:**
 - 5.8.1. For solutions developed using staff augmentation from this contract, regardless of the architecture of the solutions or systems the Contractor supports, , the Contractor shall be continually ready to invoke a Business Continuity and Disaster Recovery ("BC-DR") plan that at a minimum addresses the following scenarios: (i) The central computer installation and resident software are destroyed or damaged, (ii) System interruption or failure resulting from network, operating hardware, software, or operational errors that compromises the integrity of transactions that are active in a live system at the time of the outage, (iii) System interruption or failure resulting from network, operating hardware, software or operational errors that compromises the integrity of data maintained in a live or archival system, (iv) System interruption or failure resulting from network, operating hardware, software or operational errors that does not compromise the integrity of transactions or data maintained in a live or archival system but does prevent access to the system, i.e., causes unscheduled system unavailability. The BC-DR plan shall account for and be in effect during the entire period beginning with project kickoff and ending with the end of any turnover period. If Contractor is fully supporting BC-DR then BC-DR plans must be prior approved by the County.
 - 5.8.2. Fairfax County operates a contemporary near real-time co-location site for county applications and data off-site. Any solutions supported must be able to seamlessly fail-over and be active-active. If components of the supported solutions are a subscription service hosted by the Offeror or third-party data-center, the contractors must include provisions and descriptions of its DR site and procedures. Fairfax County must have direct access to inspect the host and co-location sites.
 - 5.8.3. The Contractor's Disaster Recovery plan should document the processes necessary to respond to system disruption or a disaster that would affect the system.
 - 5.8.4. The Contractor's Disaster Recovery plan shall identify the activities, resources, and procedures needed to carry out processing requirements for a prolonged period of time.

6. STATEMENT OF NEEDS:

Qualified offerors are encouraged to submit a proposal to provide IT Staff Augmentation services to FCG and FCPS agencies on an as-needed basis.

- 6.1. It is the intent of the County to establish IDIQ contract(s) with qualified firm(s) for each labor category of IT staff Augmentation that will allow the County to request Staffing on an "as needed basis." A request for staffing will be initiated by the County indicating a work description, the job category(ies) required, the number of staff, and the anticipated length of engagement the professional may be engaged. The requests are generally on-site but may from time to time be remote on an as needed basis by the County.

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- 6.2. The County may request that the individual offered by the offeror(s) be made available for an interview. The Contractor(s) will be allowed ten (10) business days to present resumes of proposed individuals for a specific work order from the time of the request by the County. The individuals selected must be fully qualified and available to begin work within fifteen (15) business days from the date they are selected by the County. All personnel issues will be addressed by the Contractor(s) within 24 hours of notification by the County.
- 6.3. The Labor Categories are aggregated into seven (7) major groups. The offerors shall respond to at least one of the Labor Categories and must be able to provide all working titles in the Labor Category. Fairfax County is in search of IT Specialists within a given category who can demonstrate well-developed competencies, with a standing reputation as experts in a given discipline. The County requires the Labor Categories and working titles as described in this RFP be the governing title, while the County realizes that firms have their own unique labor category titles, for the ease of managing the contract the Labor Category and working titles and descriptions as defined in this section and the attached **Exhibit A** shall be the controlling title.
- 6.4. The Offeror must describe their evaluation and quality control procedures to monitor the performance of the Offeror assigned staff. Offerors should speak to procedures for addressing any deficiencies in performance and steps for remediation and address the following: 1) Assurance that the selected staff can be retained for future work orders if the contract is renewed or extended; 2) The Offeror's recommended administrative procedures which deals with submissions and approval of leave (vacation time), sick leave, and other absences; 3) The Offeror must include estimate of the amount of leave the staff may be entitled to during the year; 4) The Offeror must address their recommended procedures for a reduction in the number of staff assigned if Fairfax County decides to reduce the number of IT Contractors need on the project; 5) Assurance that an individual meets the requirements per Special Provisions, paragraph 6.2.; 6) If the County terminate work under this contract.
- 6.5. While on site work is not required in some cases, the Offeror shall describe their ability for their assigned staff to work on-site within FCG, DIT, FCPS, or other County agency sites or other offsite locations as mutually agreed upon. The primary location for FCG and DIT will be Fairfax County Government Center complex, 12000 Government Center Parkway, Fairfax, Virginia 22035.
- 6.6. Working hours for IT Staff Augmentation: The Offerors' staff are expected to perform their assigned duties during the County's normal hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, with a 30-minute lunch break:
 - A. The Offeror is required to follow the FCG and/or FCPS Holiday calendar and inclement weather policies as applicable or directed by authorized FCG or FCPS personnel. Holiday calendars are published annually or may be obtained from FCG or FCPS authorized personnel. The hours that do not work are not billable to the County.
 - B. The County may need the offeror to be on call where the Offeror's staff may be required to participate in the on-call rotation. The rotation intervals vary per assignment.
 - C. The Offeror(s) shall supply time sheets for their staff/consultants. The Offeror's staff or consultants shall not work simultaneously on work for other customers while working at Fairfax County.
- 6.7. The Offeror shall describe what document is provided to their clients when providing IT Staff Augmentation. Provide a sample or samples of the documents presented to the offeror's clients (i.e. scope of work (SOW), quote, proposal, etc.).

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- 6.8. The Offeror shall describe how their company ensures staff stays up to date with technology and their program to maintain IT certification, demonstrating continued involvement in the industry and commitment to developing skills and knowledge, and participating in activities to keep the offeror up to date on changes in the profession, such as policy, technology, and tradecraft.

7. COUNTY'S RESPONSIBILITIES:

- 7.1. For IT Staff Augmentation the County will either specify in its request or give the firm fifteen (15) calendar days' notice when a specific engagement under this contract(s) is to be terminated and the professional(s) are no longer needed.
- 7.2. **IT Staff Augmentation:** The County should provide the equipment required for tasks to be performed; unless otherwise specified when a task is issued, typically a Windows device and printer access via a shared network, network access, and a Contractor e-mail account. The County should provide necessary work supplies, workspace, and access to a communication device for Fairfax County and FCPS purposes. Consultants should use their company or personal equipment for access to his/her company access needs. **Any communications and data done on the County network is the property of Fairfax County.**
- 7.3. **The County reserves the right to approve and dismiss Contractor Staff.**

8. TECHNICAL PROPOSAL INSTRUCTIONS:

The offeror must submit the Technical Proposal for IT Staff Augmentation services as instructed in Bonfire (Euna) containing the following information, in searchable, PDF format. This information will be considered the minimum content of the proposal. Proposal contents shall be arranged in the same order and identified with headings as presented herein.

8.1. Minimum Pre-Qualifications:

- **Attachment I (signed and completed)**
- **Documentation reflects firm having been in business for a minimum of 5 years**
- **Attachment D (signed and completed)**
- **Attachment E (signed and completed)**
- **Attachment F, G, H (signed and completed)**
- **Resumes or Bios verification of employees in working titles for a Labor Category listed in Exhibit A (ref. Special Provisions, paragraph 2.5.) (example Labor Category: Infrastructure Technical Support, need to provide 20 resumes or bios for employees in each working title listed.)**

8.2. DPMM Cover Sheet (DPMM32) signed

8.3. Technical Proposal:

1. **Cover Letter:** The letter will indicate the principal or officer of the Offeror organization who will be the County's primary point of contact during negotiations. This individual must have the authority to negotiate all aspects of the scope of services and provisions on behalf of the Offeror.

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2. **Understanding of the Statement of Needs:** The Offeror must present a description of their understanding of the needs of this solicitation. The technical narrative should address separately each of the "Statement of Needs" described in the Request for Proposal and responses should be keyed to appropriate paragraph numbers providing the following information below:
 - a. Statement and discussion of the requirements as they are analyzed by the offeror.
 - b. Offeror's proposed technical approaches and a detailed outline of the proposed program for executing the requirements of the Statement of Needs and achieving project objectives.
 - c. Preliminary layouts, sketches, diagrams, other graphic representations, calculations, and other data as may be necessary for presentation, substantiation, justification, or understanding of the Statement of Needs as applicable.
 - d. Offeror should demonstrate an awareness of potential difficulties in the completion of this undertaking, and a plan for surmounting them. Special attention should be given to methodological issues that will be encountered in such a project.
 - e. The offeror should include detailed descriptions of activities that are to occur, significant milestones, and anticipated deliverables as applicable.
3. **Treatment of the Issues:** In this section, the offeror may also comment if deemed appropriate, on any aspect of the Request for Proposal, including suggestions on possible alternative approaches to the coverage, definition, development, and organization of the issues presented in the "Statement of Need" section, and may propose alternative approaches.
4. **Statement of Qualifications:** The Statement of Qualifications must include the following:
 1. **Organizational Experience:** Offeror must describe their qualifications and experience to perform the work described in this RFP. Responding firms should have direct relevant experience in the respective category/field for at least five (5) years from the date of this RFP. Proposals will only be accepted from organizations that have directly provided staff augmentation services for at least three (3) years within the last five (5) years for federal, state, or local governments. Submissions from general staffing firms or vendors without demonstrable delivery experience will be disqualified. Responding firms must have existing staff in the respective labor category who would be available to fulfill Fairfax County needs. Information about experience should include direct experience with specific subject matters. The Offeror's record should reflect from the date of this RFP a minimum of five (5) years of experience in work of a similar nature and magnitude to that being proposed. Relevant experience must be associated with contracts or services not more than five years prior to the date of this RFP. Offeror must have performed staff augmentation engagements in the submitted category with at least three distinct clients within the past five years. Each contract must have lasted a minimum of three years and involved mid-to-senior level professionals like those described in the working titles. Offeror must submit three (3) case studies demonstrating past staff augmentation engagements. Each case study should include:
 - a. Federal, State, Local Government client name
 - b. Project scope, roles provided, and duration
 - c. Key outcomes and performance metrics
 - d. Contact information for client references

SPECIAL PROVISIONS

2. Personnel: Full-time and part-time staff, proposed consultants and subcontractors who may be assigned direct work on this contract should be identified. Information is required which will show the specific persons who at this time would compose personnel for a task or work group, their specific qualifications, and recent relevant experience. Offerors must have direct employment with proposed staff. Brokers or third-party staffing agencies submitting on behalf of subcontractors without direct delivery oversight will not be considered.

The Offeror should indicate a corporate head count of current personnel who could perform each working title role. For instance, in the case of application development, 3 Senior Programmers, 4 intermediate programmers, etc.

All Offeror personnel assigned to work on-site at Fairfax County may be required to undergo a criminal history check and sign a non-disclosure agreement. Off-site personnel may also be subject to a criminal history check depending on the sensitivity of the data involved. Note that arrangements for required criminal history checks must be made in advance with appropriate County personnel. The County reserves the right to reject any personnel proposed by the offeror for any reason.

The Offeror(s) must provide IT staff at Senior and Intermediate levels of competency. The following qualifications and work experience requirements listed below shall apply unless otherwise specified in **Exhibit A**:

- **Senior Level:** relates to very experienced and highly qualified individuals who are technically proficient and able to work with minimum supervision. Senior Level professionals should have as a minimum five (5) years relevant work experience unless otherwise stated and are expected to have appropriate and related certification in the associated field of work, and/or equivalent experience relevant to the position.
- **Intermediate Level:** relates to experienced and qualified individuals who are technically proficient and able to work with minimal to moderate supervision. Intermediate Level professionals should have a minimum of three (3) years' relevant work experience unless otherwise stated.

The personnel named in the technical proposal will remain assigned to the project throughout the period of this contract. No diversion or replacement may be made without submission of a resume of the proposed replacement with final approval being granted by the County Procurement Agent.

3. Staffing Plan: The staffing plan should indicate a chart that partitions the time commitment of each professional staff member across the proposed tasks and a timeline for the engagements. It is mandatory that this section identifies the key personnel who are to work on the contract, their relationship to the Offeror organization. This requirement includes Consultants as well as regular employees of the offeror, if relevant.
- a. The County will only accept Offeror personnel who have significant, relevant experience with the offeror's systems and can show a successful track record at locations of similar size and complexity as Fairfax County.
 - b. Support personnel proposed must have the necessary level of training and experience with the application suite to ensure that the County is receiving expert-level support. The Offeror must provide the County with a listing of all certificates, training courses and other relevant evidence to document the level of expertise of proposed support personnel.

SPECIAL PROVISIONS

- c. Offeror shall describe its processes for assigning staff to specific projects, along with the credentials of the staff members. Offeror should include how it will involve the County to ensure projects are staffed to be successful.

The Contractor will provide a staffing plan in response to the County Tasks orders, Scope of Work ("SOW"), request, etc. describing the Contractor's proposed staff distribution to accomplish this work.

4. **Financial Statements:** The Offeror shall provide an income statement and balance sheet from the most recent reporting period.
5. **References:** The Offeror will provide a reference for at least three (3) clients. Special notation must be made of similar staff augmentation assignments relevant solutions created, or duties performed and must also include the following: reference names/Jurisdiction, summary service description, reference address, operational contact name, operational contact phone number, company project manager, company project manager phone number, technical contact name, technical contact phone number, and date(s) of engagement "from" and "to". The contacts listed must have direct knowledge of the work and the Offeror performance (ref. **Attachment II**).
6. **Exceptions to the RFP:** Offerors may take exceptions to the terms, however, some of the terms may not be negotiable (ref. **Attachment B**).
- 8.4. **Fairfax County Forms:**
- Attachment A1, Offeror Data Sheet
 - Attachment A2, Virginia State Corporation Commission Registration Information
 - Attachment A3, Request for Protection of Trade Secrets or Proprietary Information Pursuant to Article 2, Section 5.C.3 of the Purchasing Resolution and Va. Code Ann. § 2.2-4342(F)
 - Attachment A4, Business, Professional and Occupational License
 - Attachment A5, Certification Regarding Debarment or Suspension
 - Attachment A6, Certification Regarding Ethics in Public Contracting
 - Attachment A7, Fairfax County's Business Classification Schedule
 - Attachment B, Affirmation of Legally Required Contract Terms
 - Attachment C, Fairfax County Project Proposal Matrix for Meeting Information Technology Security Policy Requirements (sample)
 - All issued Addenda (as applicable).

9. COST PROPOSAL INSTRUCTIONS:

- 9.1. The offeror must submit a cost proposal in fully indexed, searchable, supported by cost and pricing data adequate to establish the reasonableness of the proposed fee. The following information should be submitted as part of the cost proposal:

The cost of each task or segment of the task shall be itemized.

- a. **IT Staff Augmentation:** The Offerors are required to provide rates that are fully loaded. Fully loaded rates shall include but are not limited to overhead cost, administrative fees, travel, meal expenses, hotel, etc. The County will not pay any additional cost of any kind. Breakdown of other expenses such as clerical support, other overhead costs, supplies, etc. (ref. **Pricing Schedule – IT Staff Augmentation**).

10. CONSULTATION SERVICES:

- 10.1. The Contractor's staff must be available for consultation with County staff on an as-needed basis between 8:00 A.M. and 4:30 P.M., Eastern Time, Monday through Friday.

SPECIAL PROVISIONS**11. PRICING:**

- 11.1. The subsequent contract will be a firm-fixed price agreement. The fee(s) will remain firm and will include all charges that may be incurred in fulfilling the requirements of the contract during the first 365 days. Changes in cost for any subsequent contract years may be based on the Consumer Price Index (CPI-U), Consumer Price Index Summary, All items or other relevant indices as determined solely by the Procurement Agent. Changes in cost shall not exceed a five percent (5%) increase for the given year.
- 11.2. The request for a change in the unit price shall include as a minimum, (1) the cause for the adjustment; (2) proposed effective date; and, (3) the amount of the change requested with documentation to support the requested adjustment (i.e., appropriate Bureau of Labor Statistics, Consumer Price Index All items (CPI-U), etc.). Increases are not guaranteed, but will be granted at the discretion of the Purchasing Agent.
- 11.3. Offeror will dynamically from month to month provide the County the lowest available price for any/all collective or individual solutions implemented to meet or exceed that of any contract the offeror has. The price will never increase for any reason without prior approval from an authorized Fairfax County Government representative. Price decreases shall be made in accordance with paragraph 40 of the General Conditions & Instructions to Offerors.

12. TRADE SECRETS/PROPRIETARY INFORMATION:

- 12.1. Trade secrets or proprietary information submitted by an offeror in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, offerors must invoke the protections of this section prior to or upon submission of the data or other materials.
- 12.2. **The offeror must identify the data or other materials to be protected and state the reasons why protection is necessary.** Disposition of material after award(s) should be stated by the offeror.
- 12.3. Request for Protection of Trade Secrets or Proprietary Information (**Attachment A3**) is provided as a courtesy to assist offerors desiring to protect trade secrets or proprietary information from disclosure under the Virginia Freedom of Information Act.
- 12.4. The classification of an entire proposal document, line-item prices, and/or total proposal prices as proprietary or trade secrets is not acceptable and may result in rejection of the proposal.

13. CONTACT FOR CONTRACTUAL MATTERS:

- 13.1. All communications and requests for information and clarifications shall be directed to the following procurement official:

Yong Kim, CPPB, Contract Specialist III
 Department of Procurement and Material Management
 Telephone: (703) 324-3217; TTY: 711
 E-mail: yong.kim@fairfaxcounty.gov

- 13.2. No attempt shall be made by any offeror to contact members of the Selection Advisory Committee ("SAC") about this procurement (ref. Section 18.3.).

14. REQUIRED SUBMITTALS:

- 14.1. Each Offeror responding to this RFP should supply all the documentation required in the RFP. Failure to provide documentation with the Offeror's response to the RFP may result in the disqualification of the Offeror's proposal.

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- 14.2. Failure to sign “**Attachment B**” (Affirmation of Legally Required Contract Terms) may result in rejection of the offeror’s proposal.

15. SUBMISSION OF PROPOSAL:

- 15.1. Proposals must be received electronically through Fairfax County’s online Procurement Portal at: <https://fairfaxcounty.bonfirehub.com>, on or before the Submittal Deadline. Submissions will only be accepted through the portal. Fairfax County will not accept proposals submitted by paper, telephone, facsimile (“FAX”) transmission, or electronic mail (i.e., e-mail) in response to this RFP. Proposal submissions and registration are free of charge. Offerors can register for a free account at: <https://fairfaxcounty.bonfirehub.com>, which will be required when preparing a submission. Documents may be uploaded at any time during the open period. The official time used for receipt of proposals/modifications is the time stamp within the Bonfire (Euna) portal. No other clocks, calendars or timepieces are recognized. For technical questions related to a submission contact Bonfire (Euna) at Support@GoBonfire.com or click on the link “Contact Bonfire Support here” under Need Help?. (Note: it takes an average of 16 minutes to an hour for a response). Therefore, offerors shall take the necessary steps to submit their proposals in advance.
- 15.2. If, at the time of the scheduled proposal closing Fairfax County Government is closed due to inclement weather or another unforeseeable event, the proposal closing will still proceed electronically through the Bonfire (Euna) system.
- 15.3. Technical Information: Uploading large documents may take time, depending on the size of the file(s) and your Internet connection speed. You will receive an email confirmation receipt with a unique confirmation number once you finalize your submission. Minimum system requirements for the Bonfire (Euna) portal - Microsoft Edge, Google Chrome, or Mozilla Firefox. JavaScript must be enabled. Browser cookies must be enabled.
- 15.4. It is the Offeror’s responsibility to clearly identify and to describe the services being offered in response to the Request for Proposal. Offerors are cautioned that organization of their response, as well as thoroughness is critical to the County’s evaluation process. The RFP forms must be completed legibly and in their entirety; and all required supplemental information must be furnished and presented in an organized, comprehensive and easy to follow manner.
- 15.5. Unnecessarily elaborate brochures of other presentations beyond that sufficient to present a complete and effective proposal is not desired.
- 15.6. By executing the cover sheet (DPMM32), Offeror acknowledges that they have read this Request for Proposal, understand it, and agree to be bound by its terms and conditions.

16. ADDENDA:

- 16.1. Offerors are reminded that changes to the proposal, in the form of addenda, are often issued between the issue date and within three (3) days before the due date. All addenda shall be signed and submitted as instructed on the addenda.
- 16.2. The last day to submit questions to be addressed in the addendum will be addressed in Bonfire (Euna) under “Questions Due Date.” All questions pertaining to this RFP shall be submitted to dpmteam1@fairfaxcounty.gov. **Questions submitted in Bonfire (Euna) will not be considered, therefore, please make sure to send your questions to the e-mail address above.**
- 16.3. Notice of addenda will be posted on eVA and Bonfire (Euna). It is the Offeror’s responsibility to monitor the web page for the most current addenda at <https://fairfaxcounty.bonfirehub.com>.

SPECIAL PROVISIONS**17. PROPOSALS ACCEPTANCE PERIOD:**

- 17.1. Any proposal submitted in response to this solicitation shall be valid for 365 days. At the end of the days the proposal may be withdrawn at the written request of the offeror. If the proposal is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.

18. BASIS FOR AWARD:

- 18.1. This RFP is being utilized for competitive negotiation. Under the competitive negotiation process, a contract may be awarded to the responsible offeror whose proposal is determined to be the most advantageous to the County, taking into consideration price and the evaluation factors set forth in the RFP. The County reserves the right to make multiple awards as a result of this solicitation.
- 18.2. Separate Selection Advisory Committees ("SACs") have been established for each labor category relevant to this procurement. Each SAC will review and evaluate proposals submitted for its assigned labor category. If an Offeror submits proposals covering multiple labor categories, each corresponding SAC will evaluate the portion of the proposal related to its category. Each SAC will conduct a preliminary evaluation of the proposals assigned to it, based on the information provided and the established evaluation criteria. After this review, the cost proposals of the highest-rated Offeror(s) within each labor category will be evaluated.
- 18.3. No Offeror, including any of their representatives, subcontractors, affiliates and interested parties, shall contact any member of a SAC or any person involved in the evaluation of the proposals. SAC members will refer any and all calls related to this procurement to the procurement official named in 13.1. above. Failure to comply with this directive may, at the sole discretion of the County, result in the disqualification of an Offeror from the procurement process.
- 18.4. The County Purchasing Agent may arrange for discussions with firms submitting proposals, if required, for the purpose of obtaining additional information or clarification.
- 18.5. Offerors are advised that, in the event of receipt of an adequate number of proposals, which, in the opinion of the County Purchasing Agent, require no clarifications and/or supplementary information, such proposals may be evaluated without further discussion. Consequently, offerors should provide complete, thorough proposals with the offeror's most favorable terms. Should proposals require additional clarification and/or supplementary information, offerors should submit such additional material in a timely manner.
- 18.6. **Proposal Evaluation Criteria:**

The following factors will be considered in the award of this contract(s):

IT Staff Augmentation (out of 100 points):

- Qualification of firm with appropriately qualified and experienced personnel (Special Provisions, Section 8.3. sub-section 4., Statement of Qualifications) **(40 points)**
- Technical approach and compliance with Special Provisions, Section 6.1., Statement of Need (ref. Special Provisions, Section 8.3. sub-section 2, Understanding of the Statement of Needs) **(30 points)**
- Reasonableness of Cost Proposal(s) (ref. Special Provision, Section 9.1. sub-section a.) **(30 points)**

SPECIAL PROVISIONS

- 18.7. **Reference Checks:** The County may contact references provided with the proposal. The Offeror's ability to meet the service requirements of its customers, and its responsiveness to its clients will be evaluated through discussions with Offeror references supplied in Offeror Qualifications and supplemental discovery work, as necessary. Research will target areas concerning offeror history, such as implementation success, cost overruns, project support and post implementation support, and may include inquiries concerning the product, such as stability, flexibility, and usability.

Note: The County may contact any other site that may have experience with the Offeror's products.

- 18.8. Each SAC will then conduct a final evaluation of the proposals. Selection shall be made of two or more Offerors deemed to be fully qualified and best suited among those submitting proposals to the labor categories, on the basis of the factors involved in the RFP, including price if so stated in the RFP. Negotiations shall then be conducted with each of the Offerors so selected. The County will consider all cost and business terms to be negotiable and will not be artificially constrained by an Offeror's internal corporate policies. In short, Offerors that contend they lack flexibility because of their corporate policy on a particular negotiation item will face a significant disadvantage and may not be elevated to the final negotiation phase. After negotiations have been conducted with each offeror so selected, the County shall select the Offeror which, in its opinion, has made the best proposal, and shall award the contract to that Offeror.
- 18.9. Should the County determine in writing and in its sole discretion that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror. Each SAC will make appropriate recommendations to the County Purchasing Agent, if appropriate, prior to the actual award of contract.
- 18.10. Proposals which, after discussion and submission of additional clarification and/or supplementary information, are determined to meet the specifications of this RFP will be classified as "acceptable". Proposals found not to be acceptable will be classified as "unacceptable" and no further discussion concerning same will be conducted.
- 18.11. The County may cancel this RFP or reject proposals at any time prior to an award and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.

19. INSURANCE:

- 19.1. The Contractor is responsible for its work and every part thereof, and for all materials, tools, equipment, appliances, and property of any and all description used in connection therewith. The Contractor assumes all risk of direct and indirect damage or injury to the property or persons used or employed on or in connection with the work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the contract.
- 19.2. The Contractor shall, during the continuance of all work under the contract provide the following:
- a. Statutory Workers' Compensation and Employer's Liability insurance in limits of not less than \$1,000,000 to protect the Contractor from any liability or damages for any injuries (including death and disability) to any and all of its employees, including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia.
 - b. Commercial General Liability insurance in the amount of \$1,000,000 per occurrence/ \$2,000,000 in aggregate, to protect the Contractor, its sub-Contractors, and the interest of the County, its officers, employees and agents against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation under the Contract or in connection with the contracted work.

SPECIAL PROVISIONS

- c. Owned, non-owned, and hired Automobile Liability insurance, in the amount of \$1,000,000 per occurrence/aggregate, including property damage, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the Contractor. In addition, all mobile equipment used by the Contractor in connection with the contracted work, will be insured under either a standard Automobile Liability policy, or a Commercial General Liability policy.
 - d. Professional Liability Insurance in the amount of \$1,000,000 per claim to cover each individual professional staff.
- 19.3. Liability Insurance "Claims Made" basis:
- a. If the liability insurance purchased by the Contractor has been issued on a "claims made" basis, the Contractor must comply with the following additional conditions. The limit of liability and the extensions to be included as described previously in these provisions, remain the same.
 - b. The Contractor must either:
 - 1. Agree to provide certificates of insurance evidencing the above coverage for a period of two years after final payment for the contract. This certificate shall evidence a "retroactive date" no later than the beginning of the Contractor's or sub-contractor's work under this contract, or
 - 2. Purchase the extended reporting period endorsement for the policy or policies in force during the term of this contract and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself.
- 19.4. Liability insurance may be arranged by a combination of primary and excess or umbrella policies
- 19.5. Any deductibles and/or self-insured retentions greater than \$50,000 must be disclosed to and approved by the County's Risk manager prior to the commencement of services. Use of large deductibles and/or self-insured retentions will require proof of financial ability as determined by the County.
- 19.6. After a period of five-years from Agreement Date, the County may reasonably require higher limits of insurance or additional insurance coverage against other hazards for which insurance is reasonably obtainable and which, at the time, are commonly insured against in the case of similar properties conducting similar activities within the geographic area of the Property, whether or not such additional insurance requirements are otherwise described or contemplated herein.
- 19.7. The Contractor agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A: VII.
- 19.8. European markets including those based in London, and the domestic surplus lines markets that operate on a non-admitted basis are exempt from this requirement provided that the Contractor's broker can provide financial data to establish that a market is equal to or exceeds the financial strengths associated with the A.M. Best's rating of A: VII or better.
- 19.9. The Contractor will provide an original, signed Certificate of Insurance citing the contract number and such endorsements as prescribed herein and The County of Fairfax, its officers, employees and agents shall be named as an "additional insured" for all liability policies and it shall be stated on the Insurance Certificate that this coverage "is primary to all other coverage the County may possess."
- 19.10. The Contractor will secure and maintain all insurance certificates of its subcontractors, which shall be made available to the County on demand.

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- 19.11. Contractor waives and must require (by endorsement or otherwise) all its insurers to waive subrogation rights against the County and other additional insureds for losses paid under the insurance policies required by this Contract or other insurance applicable to the Contractor or its subcontractors. The waiver must apply to all deductibles and/or self-insured retentions applicable to the required or any other insurance maintained by the Contractor or its subcontractors. Where permitted by law, Contractor must require similar written express waivers of subrogation and insurance clauses from each of its subcontractors.
- 19.12. The Contractor will provide on demand certified copies of all insurance policies related to the contract within ten business days of demand by the County. These certified copies will be sent to the County from the Contractor's insurance agent or representative.
- 19.13. No change, cancellation, or non-renewal shall be made in any insurance coverage without a 30-day written notice to the County. The Contractor shall furnish a new certificate prior to any change or cancellation date. The failure of the Contractor to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished.
- 19.14. Compliance by the Contractor and all subcontractors with the foregoing requirements as to carrying insurance shall not relieve the Contractor and all subcontractors of their liabilities provisions of the contract.
- 19.15. Nothing contained in the specifications shall be construed as creating any contractual relationship between any subcontractor and the County. The Contractor is as fully responsible to the County for the acts and omissions of the subcontractors and of persons employed by the Contractor as it is for acts and omissions of person directly employed by Contractor.
- 19.16. Precaution shall be exercised at all times for the protection of persons (including employees) and property.
- 19.17. The Contractor and all subcontractors are to comply with applicable federal, state, and local occupational safety and health requirements, including, but not limited to, the Occupational Safety and Health Act of 1970, Public Law 91-596, as it may apply to this contract.

20. METHOD OF ORDERING:

- 20.1. The County may use two (2) different methods of placing orders from the final contract: Purchase Orders (PO's) and approved County procurement cards.
- 20.2. A Purchase Order (PO) may be issued to the contractor on behalf of the County agency ordering the items/services covered under this contract. The purchase order indicates that sufficient funds have been obligated as required by Title 15.2-1238 of the Code of the Commonwealth of Virginia.
- 20.3. Procurement Card orders and payments may also be made by the use of a Fairfax County or Fairfax County Public Schools "Procurement" Card. The Procurement Card is currently a Master Card. Contractors are encouraged to accept this method of receiving orders.
- 20.4. Regardless of the method of ordering used, solely the contract and any modification determine performance time and dates.
- 20.5. Performance under this contract is not to begin until receipt of the purchase order, Procurement Card order, or other notification to proceed by the County Purchasing Agent and/or County agency to proceed. Purchase requisitions shall not be used for placing orders.

21. REPORTS AND INVOICING:

- 21.1. The Contractor must maintain all records in compliance with federal and state regulations. The Contractor(s) must submit to the Project Manager, monthly statistical reports and an annual tabulated report.

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- 21.2. If multiple departments are involved, the Contractor must invoice each Project Manager separately. Invoices for all users of the contract must meet County requirements, unless otherwise indicated. The Contractor must send the Project Manager(s) an itemized monthly invoice (or as agreed to between the parties), which must include the information listed below:

- a. Project Milestone;
- b. Project Phase and task;
- c. Contract number and PO Number;
- d. Date of services;
- e. The type of services; and,
- f. The itemized cost for each item/service.

Describe ability to customize invoices/billing based on Fairfax County requirements; give examples.

- 21.3. The Contractor will provide each County department a monthly and year-to-date utilization report which lists all information shown above in paragraph 21.2, a-f. The Contractor will mail the invoices and the utilization reports to the addresses identified in the final contract.

22. CHANGES:

- 22.1. Fairfax County may, at any time, by written order, require changes in the services to be performed by the Contractor. If such changes cause an increase or decrease in the Contractor's cost of, or time required for, performance of any services under this contract, an equitable adjustment shall be made, and the contract shall be modified in writing accordingly. The County Procurement Agent must approve all work that is beyond the scope of this RFP.
- 22.2. No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written authorization of the Fairfax County Procurement Agent.

23. DELAYS AND SUSPENSIONS:

- 23.1. The County may direct the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time deemed appropriate for the convenience of the County. The County will extend the Contractor's time of completion by a period of time that in the discretion of the County Purchasing Agent is reasonably suited for completion of work. The County may further amend the contract by mutual agreement for any increase in the cost of performance of the contract (excluding profit) resulting solely from the delay or suspension of the contract. No adjustment shall be made under this clause for any delay or interruption resulting from any other cause, including the fault or negligence of the Contractor.
- 23.2. If the County does not direct the Contractor, in writing, to suspend, delay, or interrupt the contract, the Contractor must give the County Purchasing Agent written notice if Fairfax County fails to provide data or services that are required for contract completion by the Contractor. The County may extend the Contractor's time of completion by a period of time that in the discretion of the County Purchasing Agent is reasonably suited for completion of work. The County may further amend the contract by mutual agreement for any increase in the cost of performance of the contract (excluding profit) resulting solely from the delay or suspension of the contract. No adjustment shall be made under this clause for any delay or interruption resulting from any other cause, including the fault or negligence of the Contractor.
- 23.3. The Contractor shall continue its work on other phases of the project or contract, if in the sole discretion of the County Purchasing Agent such work is not impacted by the County's delay, suspension, or interruption. All changes to the work plan or project milestones shall be reflected in writing as a contract amendment.

SPECIAL PROVISIONS**24. ACCESS TO AND INSPECTION OF WORK:**

- 24.1. The Fairfax County Procurement Agent, Chief Technical Officer, departments, or their respective authorized designees will, at all times, have access to the work being performed under this contract wherever it may be in progress or preparation.

25. OTHER SERVICES:

- 25.1. The Contractor must establish formal evaluation and quality control procedures to monitor each facet of the final contract. The evaluation and quality control procedures must provide sufficient information to allow the County's administrators to monitor the program's progress and effectiveness. The County's administrators will use the quality control report to evaluate the effectiveness of the program on an annual basis. The Contractor will submit the quality control report to the Contract Administrator identified in the final contract not later than January 1 of each contract year.

26. DATA SOURCES:

- 26.1. The County will provide the Contractor all available data possessed by the County that relates to this contract. However, the Contractor is responsible for all costs for acquiring other data or processing, analyzing, or evaluating County data.

27. SAFEGUARDS OF INFORMATION:

- 27.1. Unless approved in writing by the County Procurement Agent, the Contractor may not sell or give to any individual or organization any information, reports, or other materials given to, prepared, or assembled by the Contractor under the final contract.

28. ORDER OF PRECEDENCE:

- 28.1. In the event of conflict, the Acceptance Agreement (provided at contract award) and the Special Provisions shall take precedence over the General Conditions and Instructions to Bidders, **(Appendix A)**.

29. SUBCONTRACTING:

- 29.1. If one or more subcontractors are required, the contractor is encouraged to utilize small, minority-owned, and women-owned business enterprises. For assistance in finding subcontractors, contact the Virginia Department of Small Business and Supplier Diversity <https://www.sbsd.virginia.gov>; local chambers of commerce and other business organizations. by Fairfax County, as a small, minority-owned, and/or woman-owned business, and the type and dollar value of the subcontracted goods/services provided.

30. USE OF CONTRACT BY OTHER PUBLIC BODIES:

- 30.1. Reference Paragraph 71, General Conditions and Instructions to Bidders, Cooperative Procurement. Offerors are advised that the *resultant* contract(s) may be extended, with the authorization of the Offeror, to other public bodies, or public agencies or institutions of the United States to permit their use of the contract at the same prices and/or discounts and terms of the resulting contract. If any other public body decides to use the final contract, the Contractor(s) must deal directly with that public body concerning the placement of orders, issuance of purchase orders, contractual disputes, invoicing, and payment. The County of Fairfax acts only as the "Contracting Agent" for these public bodies. Failure to extend a contract to any public body will have no effect on consideration of your offer.
- 30.2. It is the Contractors responsibility to notify the public body(s) of the availability of the contract(s).

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- 30.3. Other public bodies desiring to use this contract will need to make their own legal determinations as to whether the use of this contract is consistent with their laws, regulations, and other policies.
- 30.4. Each public body has the option of executing a separate contract with the Vendor(s). Public bodies may add terms and conditions required by statute, ordinances, and regulations, to the extent that they do not conflict with this contract's terms and conditions. If, when preparing such a contract, the general terms and conditions of a public body are unacceptable to the Contractor, the Contractor may withdraw its extension of the award to that public body.
- 30.5. Fairfax County **shall not** be held liable for any costs or damages incurred by another public body as a result of any award extended to that public body by the Contractor.

31. NEWS RELEASE BY VENDORS:

- 31.1. As a matter of policy, the County does not endorse the products or services of a Contractor. News releases concerning any resultant contract from this solicitation will not be made by a Contractor without the prior written approval of the County. All proposed news releases will be routed to the Procurement Agent for review and approval.

32. AMERICANS WITH DISABILITIES ACT REQUIREMENTS:

- 32.1. Fairfax County Government is fully committed to the Americans with Disabilities Act (ADA) which guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and all County programs, activities and services. Fairfax County government contractors, subcontractors, vendors, and/or suppliers are subject to this ADA policy. All individuals having any County contractual agreement must make the same commitment. Your acceptance of this contract acknowledges your commitment and compliance with ADA.
- 32.2. Fairfax County is committed to a policy of nondiscrimination in all County programs, services, and activities and will provide reasonable accommodations upon request. Offerors requesting special accommodations should call the Department ADA representative at (703) 324-3201 or TTY 711. Please allow two (2) working days in advance of the event to make the necessary arrangements.

33. HIPAA COMPLIANCE:

- 33.1. Fairfax County Government has designated certain health care components as covered by the Health Insurance Portability and Accountability Act of 1996. The successful vendor will be designated a business associate pursuant to 45 CFR part 164.504(e) of those agencies identified as health care components of the County, including the Fairfax-Falls Church Community Services Board, upon award of contract. The successful vendor shall be required to execute a Fairfax County Business Associate Agreement and must adhere to all relevant federal, state, and local confidentiality and privacy laws, regulations, and contractual provisions of that agreement. These laws and regulations include, but are not limited to: (1) HIPAA – 42 USC 201, et seq., and 45 CFR Parts 160 and 164; and (2) Va Code – Title 32.1, Health, § 32.1-1 et seq. The vendor shall have in place appropriate administrative, technical, and physical safeguards to ensure the privacy and confidentiality of protected health information.
- 33.2. Further information regarding HIPAA Compliance is available on the County's website at <https://www.fairfaxcounty.gov/HIPAA/>.

SPECIAL PROVISIONS**34. STATE CORPORATION COMMISSION IDENTIFICATION NUMBER:**

- 34.1. Pursuant to *Code of Virginia*, §2.2-4311.2 subsection B, a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its bid or proposal the identification number issued to it by the State Corporation Commission (SCC). Any bidder or offeror 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 or as otherwise required by law is required to include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized. Any bidder or offeror that fails to provide the required information may not receive an award. (ref. **Attachment A4**)

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

COUNTY OF FAIRFAX
COMMONWEALTH OF VIRGINIA

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

BIDS ON SOLICITATIONS ISSUED BY THE COUNTY WILL BIND BIDDERS TO THE APPLICABLE CONDITIONS AND REQUIREMENTS IN THE GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS (GCIB) UNLESS OTHERWISE SPECIFIED IN THE SOLICITATION AND SUBJECT TO APPLICABLE STATE, LOCAL, AND FEDERAL LAWS.

BIDDERS OR THEIR AUTHORIZED REPRESENTATIVES SHOULD INFORM THEMSELVES FULLY AS TO THE CONDITIONS, REQUIREMENTS, AND SPECIFICATIONS OF EACH COUNTY PROCUREMENT BEFORE SUBMITTING BIDS. FAILURE TO DO SO WILL BE AT THE BIDDER'S OWN RISK AND RELIEF CANNOT BE SECURED ON THE PLEA OF ERROR.

1. **AUTHORITY**-The Purchasing Agent has the sole responsibility and authority for purchasing supplies, materials, equipment, and services, except as excluded in the Fairfax County Purchasing Resolution. The Purchasing Agent's responsibility and authority includes, but is not limited to, issuing and modifying solicitations, negotiating and executing contracts, and placing purchase orders. In discharging these responsibilities, the Purchasing Agent may be assisted by contract specialists. Unless specifically delegated by the Purchasing Agent, no other County officer or employee is authorized to order supplies or services, enter into purchase negotiations or contracts, or in any way obligate the government of the County of Fairfax for an indebtedness. Any purchase ordered or contract made that is contrary to these provisions and authorities shall be of no effect, void, and does not bind the County.
2. **DEFINITIONS**- Unless otherwise defined in the GCIB, capitalized terms shall have the meanings defined by the Fairfax County Purchasing Resolution.

AGENCY: Any Department, Agency, Authority, Commission, Board or other unit in the Administrative Service of the County.

BID: The offer of a bidder to provide specific goods or services at specified prices and/or other conditions specified in the solicitation.

BIDDER/OFFEROR: Any individual, company, firm, corporation, partnership or other organization bidding on solicitations issued by the Purchasing Agent and offering to enter into contracts with the County. The term "bidder" will be used throughout this document and shall be construed to mean "offeror" where appropriate.

CONTRACTOR: Any individual, company, firm, corporation, partnership or other organization to whom an award is made by the County.

INVITATION FOR BID (IFB): A request which is made to prospective suppliers (bidders) for their quotation on goods or services desired by the County. The issuance of an IFB will contain or incorporate by reference the specifications and contractual terms and conditions applicable to the procurement.

PURCHASING AGENT: The Purchasing Agent employed by the Board of Supervisors of Fairfax County, Virginia.

REQUEST FOR PROPOSAL (RFP): A request for an offer from prospective offerors which will indicate the general terms which are sought to be procured from the offeror. The RFP will specify the evaluation factors to be used and will contain or incorporate by reference other contractual terms and conditions applicable to the procurement.

SOLICITATION: The process of notifying prospective bidders that the County wishes to receive bids on a set of requirements to provide goods or services. The notification of County requirements may consist of public advertising (newspaper, County Web Site, or other electronic notification), the mailing of Notices of Solicitation, Invitation for Bid (IFB) or Request for Proposal (RFP), the public posting of notices, issuance of an informal solicitation to include telephone calls to prospective bidders.

CONDITIONS OF BIDDING

3. **BID FORMS**-Unless otherwise specified in the solicitation, all bids must be (i) submitted on the forms provided by the County, including the bid Cover Sheet and Pricing Schedule(s); (ii) properly signed in ink in the identified spaces; and (iii) submitted in a sealed envelope or package.

If the bid prices or any other submissions differ on the copy of the submitted bid, the ORIGINAL copy shall prevail.

4. **LATE BIDS & MODIFICATIONS OF BIDS**-
 - a. Bids or proposals received after the date and time specified for receipt in the solicitation will not be considered.
 - b. If an emergency, unanticipated event, or closing of County offices interrupts or suspends normal County business operations

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

so that bids cannot be received at the County office designated for receipt of bids by the exact time specified in the solicitation, then bids will be due at the same time of day specified in the solicitation on the first work day that normal County business operations resume.

- c. The official time used for receipt of bids/modifications is the time and date stamp clock located in the Department of Procurement & Material Management. No other clocks, calendars or timepieces are recognized. All bidders must ensure all bids/modifications are received prior to the scheduled due date/time.
5. **WITHDRAWAL OF BIDS**- Bids shall be withdrawn only as set forth in the Fairfax County Purchasing Resolution.
6. **ERRORS IN BIDS**-When an error is made in extending total prices, the unit bid price will govern. Erasures in bids must be initialed by the bidder. Bidders are cautioned to recheck their bids for possible error. Errors discovered after public opening cannot be corrected and the bidder will be required to perform if its bid is accepted.
7. **LABELING OF BIDS** – All bids and proposals submitted in response to a County solicitation must be submitted in a sealed envelope or package identified with the solicitation number, title, and bidder's name and address clearly marked on the outside of the envelope or package.
8. **ACCEPTANCE OF BIDS/BINDING 90 DAYS**-Unless otherwise specified, all formal bids submitted shall be binding for ninety (90) calendar days following bid opening date, unless extended by mutual consent of all parties.
9. **CONDITIONAL BIDS**-Conditional bids may be rejected in whole or in part.
10. **BIDS FOR ALL OR PART**-The Purchasing Agent reserves the right to make award on all items in the aggregate or on any of the items on an individual basis, whichever is in the best interest of the County. A bidder may restrict its bid to consideration in the group aggregate by so stating, but must name a single unit price on each item bid. Any bid in which the bidder names a total price for all the articles without quoting a unit price for each and every separate item may not be considered for award.
11. **AREA BIDS**-For the purchase and delivery of certain goods and services the County may be divided into Areas (e.g., Areas I, II, III, and IV). When such goods and services are included in the Pricing Schedule, bidders may bid on all areas or an individual area. A map showing the areas of the County will be furnished with the solicitation when required.
12. **RECEIPT OF BIDS**-Bids received prior to the time of opening will be securely kept, unopened by the County. No responsibility will attach to the Purchasing Agent or her representative for the premature opening of a bid not properly addressed and identified. Unless specifically authorized in the solicitation, telegraphic, electronic, or facsimile bids/modifications will not be considered by the County.
13. **BID OPENING**-All bids received in response to an Invitation for Bid (IFB) will be opened at the date, time and place specified, read publicly, and made available for inspection as provided in paragraph 64, General Conditions and Instructions to Bidders. The Purchasing Agent's representative assigned to open the bids will decide when the specified time for bid opening has arrived. Tabulations of bids received are posted on the County's website at: <https://www.fairfaxcounty.gov/procurement/bid-tab>.

Proposals received in response to a Request for Proposal (RFP) will be made available as provided in Paragraph 63, General Conditions and Instructions to Bidders.
14. **OMISSIONS & DISCREPANCIES**-Any items or parts of any equipment listed in this solicitation that clearly necessary for the operation and completion of such equipment, but are: (i) not fully described by the County; or (ii) are omitted by the County from such specification, shall be considered a part of such equipment even if not directly specified or called for in the specifications.

If a bidder finds discrepancies or ambiguities in, or omissions from, the solicitation, including the drawings and/or specifications, it shall notify the Purchasing Agent at least five (5) days prior to the date set for the opening of bids. If necessary, the Purchasing Agent will send a written addendum for clarification to all bidders no later than three (3) days before the date set for opening of bids. Notifications regarding specifications will not be considered if received within five days of the date set for opening of bids.
15. **BIDDER INTERESTED IN MORE THAN ONE BID**-If more than one bid is offered by a bidder, directly or indirectly, all such bids may be rejected. A bidder who has quoted prices on work, materials, or supplies to a bidder is not disqualified from quoting prices to other bidders or firms submitting a bid directly for the work, materials or supplies.
16. **TAX EXEMPTION**-The County is exempt from the payment of any federal excise or any Virginia sales tax. Fairfax County's Federal Excise Tax Exemption Number is 54-74-0127K.
17. **PROHIBITION AGAINST UNIFORM PRICING**-The Purchasing Agent encourages open and competitive bidding by all possible means and endeavors to obtain the maximum degree of open competition on all purchase transactions using the methods of procurement authorized by the Fairfax County Purchasing Resolution. Each bidder, by virtue of submitting a bid, guarantees that it has not been a party with other bidders to an agreement to bid a fixed or uniform price. Violation of this implied guarantee shall render void the bids of participating bidders. Any disclosure to or acquisition by a competitive bidder, in advance of the opening of the bids, of the terms or conditions of the bid submitted by another competitor may render the entire proceedings void and may require re-advertising for bids.
18. **UNBALANCED BIDS**—A Bid shall be mathematically unbalanced if the Bid contains unit pricing that does not reflect reasonable

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

costs (including actual labor and material cost, overhead and profit) for the performance of the bid item(s) in question. A Bid shall be materially unbalanced if there is a reasonable doubt that award of the mathematically unbalanced Bid will result in the lowest ultimate cost to the County. A Bid that is, in the sole discretion of the County Purchasing Agent, both mathematically and materially unbalanced, may be rejected as non-responsive.

SPECIFICATIONS

- 19. CLARIFICATION OF TERMS**—If any prospective bidder has questions about the specifications or other solicitation documents, the prospective bidder should contact the contract specialist whose name appears on the face of the solicitation no later than five working dates before the due date. Any revisions to the solicitation will be made only by addendum issued by the contract specialist.
- 20. BRAND NAME OR EQUAL ITEMS**—Unless otherwise provided in the Invitation for Bid, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named; it conveys the general style, type, character, and quality of the article desired. Any article that the County in its sole discretion determines to be the equivalent of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The bidder is responsible for clearly and specifically identifying the product being offered and providing sufficient descriptive literature, catalog cuts and technical detail to enable the County 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. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the bidder clearly indicates in its bid that the product is an equivalent product, such bid will be considered to offer the brand name product referenced in the solicitation.
- 21. SPECIFICATIONS**—When a solicitation contains a specification that states no substitutes, no deviation therefrom will be permitted and the bidder will be required to furnish articles in conformity with that specification.

The bidder must abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully complete every part as the true intent and meaning of the specifications and drawings. Whenever the mention is made of any articles, material, or workmanship to be in accordance with laws, ordinances, building codes, underwriter's codes, A.S.T.M. regulations or similar expressions, the requirements of these laws, ordinances, etc., shall be construed as to the minimum requirements of these specifications.

AWARD

- 22. AWARD OR REJECTION OF BIDS**—The Purchasing Agent shall award the contract to the lowest responsive and responsible bidder complying with all provisions of the IFB, provided the bid price is reasonable and it is in the best interest of the County to accept it. Awards made in response to a RFP will be made to the highest qualified offeror whose proposal is determined, in writing, to be the most advantageous to the County taking into consideration the evaluation factors set forth in the RFP. The Purchasing Agent reserves the right to award a contract by individual items, in the aggregate, or in combination thereof, or to reject any or all bids and to waive any informality in bids received whenever such rejection or waiver is in the best interest of the County. Award may be made to as many bidders as deemed necessary to fulfill the anticipated requirements of Fairfax County. The Purchasing Agent also reserves the right to reject the bid of a bidder deemed to be a non-responsible bidder.

In determining the responsibility of a bidder, the following criteria will be considered:

- a. The ability, capacity and skill of the bidder to perform the contract or provide the service required;
 - b. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
 - c. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
 - d. The quality of performance of previous contracts or services;
 - e. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or services;
 - f. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
 - g. The quality, availability and adaptability of the goods or services to the particular use required;
 - h. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;
 - i. Whether the bidder is in arrears to the County on debt or contract or is a defaulter on surety to the County or whether the bidder's County taxes or assessments are delinquent; and
 - j. Such other information as may be secured by the Purchasing Agent having a bearing on the decision to award the contract.
- If an apparent low bidder is not awarded a contract for reasons of non-responsibility, the Purchasing Agent shall so notify that bidder and shall have recorded the reasons in the contract file.

- 23. NOTICE OF ACCEPTANCE/CONTRACT DOCUMENTS**—A written award (or Acceptance Agreement) mailed or otherwise furnished to the successful bidder within the time for acceptance specified in the solicitation shall result in a binding contract. The following documents, which are included in the solicitation, are incorporated by reference in and made part of the resulting contract:
- a. County of Fairfax Solicitation Form (Cover Sheet) and other documents which may be incorporated by reference, if applicable
 - b. Acceptance Agreement
 - c. General Conditions and Instructions to Bidders
 - d. Special Provisions and Specifications
 - e. Pricing Schedule
 - f. Any Addenda/Amendments/Memoranda of Negotiations

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

- 24. TIE-BIDS** – If all bids are for the same total amount or unit price (including authorized discounts and delivery times), and if the public interest will not permit the delay of re-advertisement for bids, the Purchasing Agent is authorized to award the contract to the tie bidder that has its principal place of business in the County, or if there be none, to the resident Virginia tie bidder, or if there be none, to one of the tie bidders by drawing lots in public; or the Purchasing Agent may purchase the goods or services in the open market except that the price paid shall not exceed the lowest contract bid price submitted for the same goods or services. The decision of the County to make award to one or more such bidders shall be final.

25. PROMPT PAYMENT DISCOUNT-

- a. Unless otherwise specified in the solicitation, prompt payment discounts requiring payment in less than fifteen (15) days will not be considered in evaluating a bid for award. However, even though not considered in the evaluation, such discounts will be taken if payment is to be made within the discount period.
- b. If a discount for prompt payment is allowed, the discount period will begin on the date of receipt of a properly completed invoice or acceptance of materials or services, whichever is later.
- c. For determining acceptance of supplies in accordance with the provisions of the prompt payment discount paragraph, inspection and acceptance shall be accomplished only after examination (including testing) of supplies and services to determine whether the supplies and services conform to the contract requirements.

For the purpose of earning the discount, payment is deemed to be made as of the date of mailing of the County check or issuance of an Electronic Funds Transfer, or completion of a credit card transaction.

- 26. INSPECTION-ACCEPTANCE-** Acceptance shall occur only after receipt and inspection provided such inspection, as appropriate, is accomplished within a reasonable time. The County reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
- 27. DEFINITE BID QUANTITIES-**Where definite quantities are specifically stated, acceptance will bind the County to order quantities specified and to pay for, at contract prices, all such supplies or services delivered that meet specifications and conditions of the contract. However, the County will not be required to accept delivery of any balances unordered, as of the contract expiration date, unless the Contractor furnished the Purchasing Agent with a statement of unordered balances not later than ten (10) days after the termination date of the contract.
- 28. REQUIREMENT BID QUANTITIES-**On "Requirement" bids, acceptance will bind the County to pay for, at unit bid prices, only quantities ordered and delivered. Where the County specifies estimated quantities, the Contractor shall not be required to deliver more than ten (10) percent in excess of the estimated quantity of each item, unless otherwise agreed upon.

CONTRACT PROVISIONS

- 29. TERMINATION OF CONTRACTS-**Contracts will remain in force for (i) the full period specified or (ii) until all articles ordered before date of termination, but arriving after the termination date, are satisfactorily delivered, accepted, and any further requirements and conditions are met, unless the Contract is:

- a. Terminated prior to expiration date by satisfactory deliveries of entire contract requirements, or upon termination by the County for Convenience or Cause.
- b. Extended upon written authorization of the Purchasing Agent and accepted by Contractor, to permit ordering of unordered balances or additional quantities at contract prices and in accordance with contract terms.

30. TERMINATION FOR CONVENIENCE-

- a. A contract may be terminated in whole or in part by the County in accordance with this clause whenever the Purchasing Agent determines that such a termination is in the best interest of the County. Any such termination will be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance is terminated and the date upon which termination becomes effective.
- b. An equitable adjustment in the contract price shall be made by the Purchasing Agent for completed service, but no amount shall be allowed for anticipated profit on unperformed services. Paragraph 30.b shall survive termination of the contract.

31. TERMINATION OF CONTRACT FOR CAUSE-

- a. If, through any cause, the Contractor fails to fulfill in a timely and proper manner its obligations under this contract, or if the Contractor violates any of the covenants, agreements, or stipulations of this contract, the County has the right to terminate the contract. Any such termination will be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance is terminated and the date upon which termination becomes effective. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, and reports prepared by the Contractor under the contract shall, at the option of the County, become the County's property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.
- b. Termination of the Contract for Cause does not relieve the Contractor of liability to the County for damages sustained by the County by virtue of any breach of contract by the Contractor for the purpose of set off until such time as the exact amount of damages due to the County from the Contractor is determined.

- 32. CONTRACT ALTERATIONS-**No alterations in the terms of a contract shall be valid or binding upon the County unless made in

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

writing and signed by the Purchasing Agent or her authorized agent.

- 33. SUBLETTING OR ASSIGNMENT** -It is mutually understood and agreed that the Contractor shall not assign, transfer, convey, sublet or otherwise dispose of his or her contractual duties to any other person, firm or corporation, without the previous written consent of the Purchasing Agent. If the Contractor desires to assign its right to payment of the contract, Contractor shall notify the Purchasing Agent immediately, in writing, of such assignment of right to payment. In no case shall such assignment of contract relieve the Contractor from its obligations or change the terms of the contract.
- 34. FUNDING-** The obligation of the County to pay compensation due the Contractor under the contract or any other payment obligations under any contract awarded pursuant to this contract is subject to appropriations by the Fairfax County Board of Supervisors to satisfy payment of such obligations. The County's obligations to make payments during subsequent fiscal years are dependent upon the same action. If such an appropriation is not made for any fiscal year, the contract shall terminate effective at the end of the fiscal year for which funds were appropriated and the County will not be obligated to make any payments under the contract beyond the amount appropriated for payment obligations under the contract. The County will provide the Contractor with written notice of non-appropriation of funds within thirty (30) calendar days after action is completed by the Board of Supervisors. However, the County's failure to provide such notice will not extend the contract into a fiscal year in which sufficient funds have not been appropriated.
- 35. DELIVERY/SERVICE FAILURES-**If a Contractor (i) fails to deliver goods or services within the time specified or within a reasonable time as interpreted by the Purchasing Agent; or (ii) fails to make replacements or corrections of rejected articles or services when so requested, immediately or as directed by the Purchasing Agent, then the Purchasing Agent shall have the authority to purchase in the open market goods or services of comparable grade or quality to replace goods or services not delivered or rejected. On all such purchases, the Contractor shall reimburse the County, within a reasonable time specified by the Purchasing Agent, for any expense incurred in excess of contract prices. Such purchases shall be deducted from the contract quantities if applicable. Should public necessity demand it, the County reserves the right to use or consume articles delivered or services performed which are substandard in quality, subject to an adjustment in price to be determined by the Purchasing Agent.
- 36. NON-LIABILITY-**The Contractor shall not be liable in damages for delay in shipment or failure to deliver when such delay or failure is the result of fire, flood, strike, the transportation carrier, act of God, act of Government, act of an alien enemy or by any other circumstances which, in the Purchasing Agent's opinion, are beyond the reasonable control of the Contractor. Under such circumstances, however, the Purchasing Agent may, at her discretion terminate the contract.
- 37. NON-DISCRIMINATION-**During the performance of this contract, the Contractor agrees as follows:
- The Contractor 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. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
 - 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.
 - 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.
 - The Contractor will include the provisions of the foregoing paragraphs a, b, and c above in every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.
 - Contractor shall, throughout the term of this contract, comply with the Human Rights Ordinance, Chapter 11 of the Code of the County of Fairfax, Virginia, as reenacted or amended. Contractor shall further require that all of its subcontractors will comply with the Human Rights Ordinance, Chapter 11 of the Code of the County of Fairfax, Virginia, as reenacted or amended.
- 38. SMALL, WOMEN-OWNED, AND MINORITY-OWNED BUSINESS USE-**
- It is the declared policy of the County of Fairfax, through its Small and Minority Business Enterprise Program, that Fairfax County and its employees undertake every effort to increase opportunity for use of small or minority businesses in all aspects of procurement to the maximum extent feasible.
 - Where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such subcontracting opportunities to small, women and minority businesses.
 - Where Federal grants or monies are involved, it is the policy of Fairfax County, through its agents and employees, to comply with the requirements set forth in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, as they pertain to small and minority business use.
- 39. GUARANTEES & WARRANTIES-**All guarantees and warranties required shall be furnished by the Contractor and shall be delivered to the Purchasing Agent before contract execution. Unless otherwise stated, manufacturer's standard warranty applies.
- 40. PRICE REDUCTION-**If the Contractor makes a general price reduction for any material covered by the solicitation to customers generally, an equivalent price reduction shall apply to this contract for the duration of the contract period (or until the price is further reduced). Such price reduction shall be effective at the same time and in the same manner as the reduction in the price to customers generally. For purpose of this provision, a "general price reduction" shall mean any horizontal reduction in the price of an article or service offered (1) to Contractor's customers generally, or (2) in the Contractor's price schedule for the class of customers (i.e., wholesalers, jobbers, or retailers), which was used as the basis for bidding on this solicitation. An occasional sale at a lower price, or sale of distressed merchandise at a lower price is not a "general price reduction" under this provision.

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

The Contractor shall submit its invoice at such reduced prices indicating on the invoice that the reduction is pursuant to the "Price Reduction" provision of the contract documents. The Contractor will also within ten days of any general price reduction notify the Purchasing Agent of such reduction by letter. FAILURE TO DO SO MAY RESULT IN TERMINATION OF THE CONTRACT.

41. **CHANGES**-If in the Purchasing Agent's opinion, it becomes proper or necessary in the execution of this contract to make any change in design, or to make any alterations that will increase the expense, the Purchasing Agent shall determine an equitable adjustment to the Contractor's compensation.

No payment shall be made to the Contractor for any extra material or services, or of any greater amount of money than stipulated to be paid in the contract, unless some changes in or additions to the contract requiring additional outlay by the Contractor are first expressly authorized and ordered in writing by contract amendment or otherwise furnished by the Purchasing Agent.

42. **PLACING OF ORDERS**-Orders against contracts will be placed with the Contractor by Purchase Order or Procurement Card (P-Card) executed and released by the Purchasing Agent or their designee. When a Blanket Purchase Order has been released by the Purchasing Agent, telephonic orders may be placed directly with the Contractor by authorized personnel in the ordering Agency.

DELIVERY PROVISIONS

43. **SHIPPING INSTRUCTIONS - CONSIGNMENT**-Unless otherwise specified in the solicitation each case, container, package, etc., delivered under the contract must be plainly marked, stating the Contractor's name, purchase order number, and delivery address as indicated in the order. Deliveries must be made within the hours of 8:00 AM - 3:00 PM. Deliveries at any other time will not be accepted unless specific arrangements have been previously made with the receiver at the delivery point. No deliveries will be accepted on Saturdays, Sundays and holidays, unless previous arrangements have been made. It shall be the responsibility of the Contractor to insure compliance with these instructions for items that are drop-shipped.

44. **RESPONSIBILITY FOR MATERIALS OR GOODS TENDERED**-Unless otherwise specified in the solicitation, the Contractor is responsible for the materials or supplies covered by the contract until they are delivered at the delivery point designated by the County. The Contractor bears all risk of loss on rejected materials or supplies after notice of rejection. Rejected materials or supplies must be removed by and at the expense of the Contractor promptly after notification of rejection, unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the Contractor within ten (10) days after date of notification, the County may return the rejected materials or supplies to the Contractor at its risk and expense or dispose of them as the County's own property.

45. **INSPECTIONS**-Inspection and acceptance of materials or supplies will be made after delivery at the designated destinations unless otherwise stated. If inspection is made after delivery at the designated destination, the County will bear the expense of inspection except for the value of samples used in case of rejection. Final inspection is conclusive except in regard to latent defects, fraud or such gross mistakes as to amount to fraud. Final inspection and acceptance or rejection of the materials or supplies will be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the County for such materials or supplies as are not in accordance with the specifications.

46. **COMPLIANCE**-Delivery must be made as ordered and in accordance with the contract or as directed by the Purchasing Agent when not in conflict with the contract. The decision of the Purchasing Agent as to reasonable compliance with delivery terms shall be final. If the Contractor claims the delay in receipt of goods was caused by the County, the Contractor must provide evidence satisfactory to the Purchasing Agent supporting the Contractor's claim. Any request for extension of delivery time from that specified in the contract must be approved by the Purchasing Agent, such extension applying only to the particular item or shipment affected. If the Contractor is delayed by the County, there shall be added to the time of completion a time equal to the period of such delay caused by the County. However, the Contractor shall not be entitled to claim damages or extra compensation for such delay or suspension. These conditions may vary for construction contracts. See contract for the individual instructions.

47. **POINT OF DESTINATION**-All materials shipped to the County must be shipped F.O.B. DESTINATION unless otherwise stated in the contract or purchase order. The materials must be delivered to the "Ship to" address indicated on the purchase order.

48. **ADDITIONAL CHARGES**-Unless bought F.O.B. "shipping point" and Contractor prepays transportation, no delivery charges shall be added to invoices except when express delivery is authorized and substituted on orders for the method specified in the contract. In such cases, difference between freight or mail and express charges may be added to invoice.

49. **METHOD AND CONTAINERS**-Unless otherwise specified, goods shall be delivered in commercial packages in standard commercial containers that are constructed to ensure acceptance by common or other carrier for safe transportation to the point of delivery. Containers become the property of the County unless otherwise specified by bidder.

50. **REPLACEMENT**-Materials or components that have been rejected by the Purchasing Agent, in accordance with the terms of a contract, shall be replaced by the Contractor at no cost to the County.

51. **PACKING SLIPS OR DELIVERY TICKETS**-All shipments must be accompanied by Packing Slips or Delivery Tickets and must contain the following information for each item delivered:

- a. The Purchase Order Number,
- b. The Name of the Article and Stock Number (Supplier's),

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

- c. The Quantity Ordered,
- d. The Quantity Shipped,
- e. The Quantity Back Ordered,
- f. The Name of the Contractor.

Contractors are cautioned that failure to comply with these conditions is sufficient reason for the County's refusal to accept the goods.

BILLING

- 52. BILLING-**Billing for the Fairfax County Public Schools and for County agencies: Unless otherwise specified on the contract or purchase order (PO), invoices are to be submitted for each purchase order immediately upon completion of the shipment or services. Invoices should be mailed to the "BILL TO" address on the PO or to the appropriate address specified in the contract.

PAYMENTS

- 53. PAYMENT-**Payment shall be made after satisfactory performance that is in accordance with all provisions of the contract, and upon receipt of a properly completed invoice. The County reserves the right to withhold any or all payments or portions thereof for Contractor's failure to perform in accordance with the provision of the contract or any subsequent modifications.
- 54. PARTIAL PAYMENTS-**Unless otherwise specified, partial payments will be made upon acceptance of materials or services so invoiced if in accordance with completion date. However, up to 5 percent (5%) of the value of the entire order may be retained until completion of contract.
- 55. PAYMENT FOR EQUIPMENT, INSTALLATION, AND TESTING-**When equipment requires installation (which includes erection, setting up or placing in position, service, or use) and testing, and the installation or testing is delayed, payment may be made on the basis of 50% of the contract price when such equipment is delivered on the site. A further allowance of 25% may be made when the equipment is installed and ready for test. The balance shall be paid after the equipment is tested and found to be satisfactory. If the equipment must be tested, but installation is not required to be made by the Contractor or if the equipment must be installed but testing is not required, payment may be made on the basis of 75% at the time of delivery and the balance shall be paid after satisfactory test or installation is completed.

GENERAL

- 56. GENERAL GUARANTY-**Contractor agrees to:
- a. Save the County, its agents and employees harmless from liability of any nature or kind for the use of any copyrighted or uncopyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a contract for which the Contractor is not the patentee, assignee, licensee or owner.
 - b. Warrant that when the contract includes a software license, or use of licensed software, the Contractor is the owner of the Software or otherwise has the right to grant to the County the license to use the Software granted through the Contract without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party.
 - c. Protect the County against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery.
 - d. Furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work or to the work of other contractors, for which his or her workers are responsible.
 - e. Pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules, regulations, and policies of the County.
 - f. Protect the County from loss or damage to County owned property while it is in the custody of the Contractor.
- 57. SERVICE CONTRACT GUARANTY-**Contractor agrees to:
- a. Furnish services described in the solicitation and resultant contract at the times and places and in the manner and subject to conditions of those documents provided that the County may reduce the said services at any time.
 - b. Enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence.
 - c. All work and services rendered in strict conformance to all laws, statutes, and ordinances and the applicable government rules, regulations, methods, and procedures.
 - d. Allow services to be inspected or reviewed by an employee of the County at any reasonable time and place selected by the County. The County is under no obligation to compensate Contractor for any services not rendered in strict conformity with the contract.
 - e. Stipulate that the presence of a County Inspector shall not lessen the obligation of the Contractor for performance in accordance with the contract requirements, or be deemed a defense on the part of the Contractor for infraction thereof. The Inspector is not authorized to revoke, alter, enlarge, relax, or release any of the requirements of the contract documents. Any omission or failure on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material. Notification of an omission or failure will be documented by the Purchasing Agent.

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

58. INDEMNIFICATION-

- a. **General Indemnification.** Contractor must indemnify, keep and save harmless, and defend the County, its agents, officials, employees and volunteers against Claims that may accrue or arise against the County as a result of the granting a contract, if the Claim was caused by the negligence or error, or omission of the Contractor, its employees, its subcontractor, or its subcontractor's employees. As used in this Section, a Claim includes: injuries, death, damage to property, breach of data security, suits, liabilities, judgments, or costs and expenses. Upon request by the County, the Contractor must at its own expense: appear, defend, and pay all attorney's fees and all costs and other expenses related to the Claim. If, related to a Claim, any judgment is rendered against the County or a settlement reached that requires the County to pay money, the Contractor must at its own expense satisfy and discharge the same. Contractor expressly understands and agrees that any performance bond or insurance protection required by this Contract, or otherwise provided by the Contractor, does not limit the Contractor's responsibility to indemnify, keep and save harmless, and defend the County as provided in this Contract.
- b. **Intellectual Property Indemnification.** In addition to the General Indemnification, Contractor will indemnify the County for and defend the County against third-party claims for infringement of any valid United States patent, trademark or copyright by the Contractor's products, software, services, or deliverables. Contractor must indemnify the County for any loss, damage, expense or liability, including costs and reasonable attorney's fees that may result by reason of any such claim.

In the event of a claim covered by this subparagraph, and in addition to all other obligations of Contractor in this Paragraph 58, Contractor must at its expense and within a reasonable time: (a) obtain a right for the County to continue using such products and software, or allow Contractor to continue performing the Services; (b) modify such products, software, services or deliverables to make them non-infringing; or (c) replace such products or software with a non-infringing equivalent. If, in the Contractor's reasonable opinion, none of the foregoing options is feasible Contractor must immediately notify the County and accept the return of the products, software, services, or deliverables, along with any other components rendered unusable as a result of the infringement or claimed infringement, and refund to the County the price paid to Contractor for such components as well as any pre-paid fees for the allegedly infringing services, including license, subscription fees, or both. Nothing in Paragraph 59, however, relieves the Contractor of liability to the County for damages sustained by the County by virtue of any breach of contract related to a third-party infringement claim.

- c. **Right to Participate in Defense.** The County may, at its sole expense, participate in the defense or resolution of a Claim. Contractor will have primary control of the defense and resolution of the Claim, except when such defense or resolution requires the County to (i) admit liability or wrongdoing; or (ii) to pay money. In either of these cases Contractor must obtain the County's prior written consent before raising such defense or entering into such resolution.
- d. **No Indemnification by the County.** The parties agree that under applicable law the County cannot indemnify or defend the Contractor. To the extent any promise or term contained in this Contract, including any exhibits, attachments, or other documents incorporated by reference therein, includes an indemnification or obligation to defend by the County, that promise or term is stricken from this Contract and of no effect.

59. OFFICIALS NOT TO BENEFIT-

- a. Each bidder, offeror, or contractor shall certify, upon signing a bid, proposal, or contract, that to the best of their knowledge no Fairfax County official or employee having official responsibility for the procurement transaction, or member of their immediate family, has received or will receive any financial benefit of more than nominal or minimal value relating to the award of this contract. For purposes of this Paragraph, "financial benefit" means any payment, loan, subscription, advance, deposit of money, services personal use rebates or anything of more than nominal or minimal value, present or promised, unless consideration of substantially equal or greater value is exchanged. If a financial benefit has been received or will be received, this fact must be disclosed with the bid or proposal or as soon thereafter as it appears that a financial benefit will be received. Failure to disclose the information prescribed above may result in suspension or debarment, or rescission of the contract made, or could affect payment pursuant to the terms of the contract.
- b. Whenever there is reason to believe that a financial benefit of the sort described in paragraph "a" has been or will be received in connection with a bid, proposal or contract, and that the Contractor has failed to disclose such benefit or has inadequately disclosed it, the County Executive, as a prerequisite to payment pursuant to the contract, or at any other time, may require the Contractor to furnish, under oath, answers to any interrogatories related to such possible benefit.
- c. In the event the bidder or offeror has knowledge of financial benefits as outlined above, this information should be submitted with the bid or proposal. If the above does not apply at time of award of contract and becomes known after inception of a contract, the bidder or offeror must disclose such facts to the Fairfax County Purchasing Agent, 12000 Government Center Parkway, Suite 427, Fairfax, Virginia 22035-0013. Relevant Invitation/Request for Proposal Number (see cover sheet) should be referenced in the disclosure.

- 60. LICENSE REQUIREMENT-**All firms doing business in Fairfax County, shall obtain a license as required by Chapter 4, Article 7, of The Code of the County of Fairfax, Virginia, as amended, entitled "Business, Professional and Occupational Licensing (BPOL) Tax." Questions concerning the BPOL Tax should be directed to the Department of Tax Administration, telephone (703) 222-8234 or visit: <https://www.fairfaxcounty.gov/taxes/business/understanding-bpol-tax>. The BPOL Tax number must be indicated in the space provided on the Cover Sheet, "Fairfax License Tax No." when appropriate.

- 61. AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** 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

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

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 Fairfax County pursuant to the Fairfax County Purchasing Resolution 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. Fairfax County may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

- 62. COVENANT AGAINST CONTINGENT FEES-**The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For violation of this warranty, the County shall have the right to terminate or suspend this contract without liability to the County or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
- 63. VIRGINIA FREEDOM OF INFORMATION ACT-**All proceedings, records, contracts and other public records relating to procurement transactions 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 except as provided below:
- a. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.
 - b. Any competitive sealed bidding 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 County 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. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award except in the event that the County decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to the public inspection only after award of the contract except as provided in paragraph "c" below. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.
 - c. Trade secrets or proprietary information submitted by a bidder, offeror or Contractor in connection with a procurement transaction or prequalification application submitted pursuant to the prequalification process identified in the Special Provisions, shall not be subject to the Virginia Freedom of Information Act; however, the bidder, offeror or Contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.
 - d. Nothing contained in this section shall be construed to require the County, when procuring by "competitive negotiation" (Request for Proposal), to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous to the County.
 - e. The County cannot maintain as confidential any information, data, or records obtainable through the Virginia Freedom of Information or similar law. This includes records or information that have not been properly designated as trade secret or proprietary information pursuant to Va. Code Ann. § 2.2-4342(F).
 - f. A bidder or offeror shall not designate as trade secrets or proprietary information (a) an entire bid, proposal, or prequalification application; (b) any portion of a bid, proposal, or prequalification application that does not contain trade secrets or proprietary information; or (c) line item prices or total bid, proposal, or prequalification application prices.

BIDDER/CONTRACTOR REMEDIES

64. INELIGIBILITY-

- a. Any person or firm suspended or debarred from participation in County procurement shall be notified in writing by the Purchasing Agent.
 - 1. The Notice of Suspension shall state the reasons for the actions taken and such decision shall be final unless the person or firm appeals within ten (10) days of receipt of the Notice by instituting legal action as provided in the Code of Virginia.
 - 2. The Notice of Debarment shall state the reasons for the actions taken and the decision shall be final unless the person or firm appeals within ten (10) days of receipt of the Notice by instituting legal action as provided in the Code of Virginia.
- b. The Purchasing Agent shall have the authority to suspend or debar a person or firm from bidding on any contract for the causes stated below:
 - 1. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
 - 2. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a County Contractor;
 - 3. Conviction under the state or federal antitrust statutes arising out of the submission of bids or proposals;
 - 4. Violation of contract provisions, as set forth below, of a character which is regarded by the Purchasing Agent to be so serious as to justify suspension or debarment action:
 - a. failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - b. a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more

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contracts; provided, that failure to perform or unsatisfactory performance caused by acts beyond the control of the Contractor shall not be considered to be a basis for suspension or debarment;

5. Any other cause the Purchasing Agent determines to be so serious and compelling as to affect responsibility as a Contractor, such as debarment by another governmental entity for any cause listed herein, or because of prior reprimands;
 6. The contractor has abandoned performance, been terminated for default on a Fairfax County project, or has taken any actions that inure to the detriment of Fairfax County or a Fairfax County project ;
 7. The Contractor is in default on any surety bond or written guarantee on which Fairfax County is an obligee.
- c. If, upon appeal, it is determined that the action taken by the Purchasing Agent was arbitrary or capricious, or not in accordance with the Constitution of Virginia, statutes or regulations, the sole relief available to the person or firm shall be restoration of eligibility. The person or firm may not institute legal action until all statutory requirements have been met.

65. APPEAL OF DENIAL OF WITHDRAWAL OF BID-

- a. A decision denying withdrawal of a bid submitted by a bidder or offeror shall be final and conclusive unless the bidder appeals the decision within ten (10) days after receipt of the decision by instituting legal action as provided in the Code of Virginia. The bidder or offeror may not institute legal action until all statutory requirements have been met.
- b. If no bid bond was posted, a bidder refused withdrawal of bid under the provisions of Article 2, Section 5.A.8, of the Fairfax County Purchasing Resolution, prior to appealing, shall deliver to the County a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.
- c. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, the sole relief shall be withdrawal of the bid.

66. APPEAL OF DETERMINATION OF NONRESPONSIBILITY-

- a. Any bidder who, despite being the apparent low bidder, is determined not to be a responsible bidder for a particular County contract shall be notified in writing by the Purchasing Agent. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten (10) days of receipt of the notice by instituting legal action as provided in the Code of Virginia. The bidder may not institute legal action until all statutory requirements have been met.
- b. If, upon appeal, it is determined that the decision of the Purchasing Agent was arbitrary or capricious and the award for the particular County contract in question has not been made, the sole relief available to the bidder shall be a finding that the bidder is a responsible bidder for the County contract in question. Where the award has been made and performance has begun, the County may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing Contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing Contractor be entitled to lost profits.

67. PROTEST OF AWARD OR DECISION TO AWARD-

- a. Any bidder or offeror may protest the award or decision to award a contract by submitting a protest in writing to the Purchasing Agent, or an official designated by the County of Fairfax, no later than ten (10) days after the award or the announcement of the decision to award, whichever occurs first. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit such protest in the same manner no later than ten days after posting or publication of the notice of such contract as provided in Article 2, Section 2, of the Fairfax County Purchasing Resolution. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction which are subject to inspection under Article 2, Section 5.C of the Fairfax County Purchasing Resolution, then the time within which the protest must be submitted shall expire ten days after those records are available for inspection by such bidder or offeror under Article 2, Section 5.C, or at such later time as provided herein. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The Purchasing Agent shall issue a decision in writing within ten (10) days of the receipt of the protest stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten (10) days of receipt of the written decision by instituting legal action as provided in the Code of Virginia. Nothing in this section shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation for Bid or Request for Proposal.
- b. If prior to award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The Purchasing Agent shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be declared void by the County. Where the award has been made and performance has begun, the Purchasing Agent may declare the contract void upon a finding that this action is in the best interest of the County. Where a contract is declared void, the performing Contractor shall be compensated for the cost of performance at the rate specified in the contract up to the time of such declaration. In no event shall the performing Contractor be entitled to lost profits.

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- c. Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this article shall not be affected by the fact that a protest or appeal has been filed.
- d. An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest, no further action to award the contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

68. CONTRACTUAL DISPUTES-

- a. Any dispute concerning a question of fact as a result of a contract with the County which is not disposed of by agreement shall be decided by the Purchasing Agent, who shall reduce her decision to writing and mail or otherwise forward a copy to the Contractor within ninety (90) days. The decision of the Purchasing Agent shall be final and conclusive unless the Contractor appeals within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. A Contractor may not institute legal action, prior to receipt of the Purchasing Agent's decision on the claim, unless the Purchasing Agent fails to render such decision within the time specified.
- b. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty days after final payment; however, written notice of the Contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

69. LEGAL ACTION-No bidder, offeror, potential bidder or offeror, or Contractor shall institute any legal action until all statutory requirements have been met. Statutory requirements include, but are not limited to, the requirements of the Virginia Public Procurement Act, as reflected in the Fairfax County Purchasing Resolution and the requirement that any contractor seeking monetary relief or damages from the County must submit its claim to the Board of Supervisors in compliance with Virginia Code § 15.2-1243 through 1249.

70. VENUE: This contract and its terms, including but not limited to, the parties' obligations, the performance due, and the remedies available to each party, are governed, construed, and interpreted in accordance with the laws of the Commonwealth of Virginia. Any jurisdiction's choice of law, conflicts of laws, rules, or provisions that would cause the application of any laws other than those of the Commonwealth of Virginia do not apply. Any and all disputes, claims, and causes of action arising out of or in any way connected with this contract or its performance must be brought in the applicable court of Fairfax County, or in the United States District Court for the Eastern District of Virginia, Alexandria Division.

71. COOPERATIVE PURCHASING-The County or any entity identified in the Fairfax County Purchasing Resolution, Article 1, Section 3 may participate in, sponsor, conduct or administer a cooperative procurement agreement as set forth in the Fairfax County Purchasing Resolution.

72. DRUG FREE WORKPLACE-During the performance of a contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract 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 conjunction with a specific contract awarded to a Contractor in accordance with this section, 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.

73. IMMIGRATION REFORM AND CONTROL ACT-Contractor agrees that it does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.

74. AUDIT OF RECORDS The parties agree that the County or its agent must have reasonable access to and the right to examine any records of the contractor involving transactions related to the contract or compliance with any clauses thereunder, for a period of three (3) years after final payment. The contractor shall include these same provisions in all related subcontracts. For purposes of this clause, the term "records" includes documents, and papers regardless of whether they are in written form, electronic form, or any other form.

75. PERSONALLY IDENTIFIABLE INFORMATION: Contractor will comply with all applicable laws regarding safeguarding and protection of personally identifiable information made available through this Contract. Contractor must report to the County all breaches that result in exposure of the County's data or other incidents compromising the security of the County's data. For purposes of this section "County data" means data that the Contractor accesses, stores, or hosts pursuant to this Contract and includes "personal information" defined by Virginia Code § 18.2-186.6 or "medical information" defined by Virginia Code § 32.1-127.1:05. Such reports must be made to the County immediately upon discovery of the breach and no later than three days from when Contractor discovered the breach. The requirements of this paragraph are in addition to and do not relieve Contractor of its obligation to comply with any requirements imposed by law regarding data breaches. If any notices to individuals or third parties are required by applicable law due to a data breach, the parties will cooperate to ensure that such notice is timely provided.

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If Contractor experiences a breach of protected health information governed under HIPAA, or substance use disorder information governed under 42 CFR Part 2, the terms of any Business Associate or Qualified Service Organization Agreement between the parties will control.

- 76. NONVISUAL ACCESS-**All information technology, which is purchased or upgraded by the County under this contract, must comply with the following access standards from the date of purchase or upgrade until the expiration of the Contract:
- a. Effective, interactive control and use of the technology (including the operating system), applications programs, and format of the data presented, shall be readily achievable by nonvisual means;
 - b. the technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom the blind or visually impaired individual interacts;
 - c. Nonvisual access technology shall be integrated into networks used to share communications among employees, program participants, and the public; and
 - d. The technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired. A covered entity may stipulate additional specifications in any procurement.
 - e. Compliance with the nonvisual access standards set out this Section is not required if the Board of Supervisors determines that (i) the information technology is not available with nonvisual access because the essential elements of the information technology are visual and (ii) nonvisual equivalence is not available.

APPROVED:

/S/ Elizabeth D. Teare
COUNTY ATTORNEY

/S/ LeeAnne Pender
COUNTY PURCHASING AGENT