



James City County Purchasing Office
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Williamsburg, VA 23185
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<http://www.jccegov.com/purchasing/index.html>

**JAMES CITY COUNTY, VIRGINIA
REQUEST FOR QUOTE
09-0100**

Title: Toano Convenience Center Water Line

Issue Date: June 26, 2009

**Non-Mandatory Pre-Quote Meeting & Site Visit:
July 6, 2009, 10:00 AM at Job Location (directions attached)**

Due Date: July 16, 2009, 2:00PM local time in the Purchasing Office

**Submit: 1) Quote Form
2) Attachment B--Safety Certification Form**

FAXED OR EMAILED RESPONSES ARE ACCEPTABLE

Inquiries: Kitty Hall, Buyer I, Phone (757) 253-6646

This public body does not discriminate against faith-based organizations.

I. Instructions to Vendors & Scope of Work

Instructions to Vendors: This Request for Quote is issued by James City County ("Owner") to obtain quotes for a water line to service Toano Convenience Center, located at 1214 Jolly Pond Road, Williamsburg, VA 23188. The successful vendor shall perform the required work as per the Scope of Work. All work shall be completed within 30 days of the start date indicated in the Notice to Proceed.

Vendors shall submit a lump sum price for a complete turn key job as described in the Scope of Work.

All vendors shall be properly licensed by the Commonwealth of VA. All site supervisors assigned to this project shall have a minimum of 3 years supervisory experience.

All quotes must be received by **July 16, 2009 at 2pm in the Purchasing Office**. Award shall be made on the basis of Total Base Quote.

Scope of Work.

1. Contractor shall remove existing water service line and meter box with assembly and replace with a 5/8-inch water meter and box in accordance with JCSA Standards and Specifications. A 3/4-inch Type K copper service line shall be installed from the new water meter to the proposed yard hydrant location within the asphalt pavement area. Contractor shall use existing conduit placed under the asphalt pavement to prevent damage to the asphalt pavement. Install yard hydrant assembly in accordance with JCSA standards and specifications and the Virginia Department of Health regulation with frost proof container. Provide a 4-inch concrete curbing with sleeve for the hydrant assembly. All disturbed areas outside of the paved areas shall be compacted to 95% Standard Proctor, topsoil provided, seeded, fertilized and mulched to establish a vegetative cover. Plantings within the exiting landscaped can be temporarily removed for this

project but shall be replanted and mulched. Plantings that become diseased and/or die due to construction activity shall be replaced at Contractor's expense.

2. Parts and Materials

All parts and materials shall be provided by the Contractor, and shall conform to all applicable Standards and Specifications.

OPERATIONAL PROCEDURES:

1. Crews are expected to be fully equipped and 100 percent ready to start work when they report to the site. If the work does not progress at a satisfactory rate or is otherwise deemed unsatisfactory by James City County, the Owner reserves the right to terminate the assignment to that Contractor and re-award the project. No additional compensation will be allowed to the Contractor because of such termination.
2. Projects assigned to Contractor's under this contract are expected to be satisfactorily completed.

JCC RESPONSIBILITIES

Prior to issuance of Notice to Proceed, James City County will:

1. Issue Notice to Proceed as outlined above to provide Scope of Work and to initiate work on a Project.
2. Review and approve Contractor's plan for completing the job and Contractor's work schedule.
3. Inspect and certify satisfactory completion of all work performed under the contract. All workmanship shall be subject to inspection and examination by James City County at any time. James City County will have the right to reject defective workmanship or require correction of the work.
4. Inspections and approvals by James City County will not relieve the Contractor from its obligations to perform in accordance with the contract.
5. James City County reserves the right to approve all subcontractors.

CONTRACTOR RESPONSIBILITIES

1. Obtain all other necessary permits, utility markings, and variances necessary for the project and all costs shall be included in the quote offering.
2. Contractor is responsible for the actions of subcontractors employed on the Contractor's behalf to assist in the project.
3. Inspections and approvals by James City County shall not relieve the Contractor from its obligations to perform the work in accordance with the requirements of the Contract Documents.
4. The failure of James City County to reject or condemn workmanship not conforming to the Contract Documents shall not prevent the county from rejecting workmanship found not to be in accordance with the Contract Documents at any time prior to the acceptance of the completed work, nor shall it be considered a waiver of any nonconformance with the Contract Documents which may be discovered later, or as preventing the county at any time prior to the expiration of the guarantee period from recovering damages for work not in accordance with the Contract Documents.
5. The Contractor shall provide at his expense, the testing and inspection services required by the Contract Documents. The Owner will provide at his expense all inspection and testing services not required by the Contract Documents.

6. The Contractor shall furnish promptly without additional charge all reasonable facilities, labor and materials, necessary and convenient for making such tests as may be designated in the Contract Documents. The Contractor shall work with the Owner in scheduling and coordinating Owner provided testing or inspection services.
7. If the Contract Documents, laws, ordinances, rules, regulations require work (or part thereto) to specifically be inspected, tested, or approved by someone other than the Owner, the Contractor shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, pay all costs in connection therewith, and furnish the Owner the required certificates of inspection, or approval. The Contractor shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approval required for the Owner's acceptance of materials not provided by the Owner or equipment to be incorporated in the work, or of materials not provided by the Owner, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.
8. Unless otherwise specified, the Contractor shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and other facilities and all facilities and incidentals necessary for the furnishing, performance, testing, start-up, and completion of the work.
9. All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by the Owner, the Contractor shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable supplier except as otherwise provided in the Contract Documents.

II. **General Terms & Conditions:** Subject to James City County General Terms & Conditions, provided here as Attachment A.

III. **Special Terms & Conditions**

PRECEDENCE IN TERMS

In the event of a conflict, the Special Terms & Conditions shall take precedence.

CONTRACTORS TITLE TO MATERIALS

No materials or supplies for the work shall be purchased by the contractor or by any subcontractor subject to any security interest, installment or sales contract or any other agreement or lien by which an interest is retained by the seller or is given to a secured party. The contractor warrants that he has clear title to all materials and supplies which he uses in the work or for which he accepts payment in whole or in part.

EXTRA CHARGES NOT ALLOWED

The bidder's offered price for the work shall include furnishing, delivering and installing the required equipment; no extra charges shall be allowed.

DELIVERY AND STORAGE

It shall be the responsibility of the contractor to make all arrangements for delivery, unloading, receiving and storing materials. The owner will not assume any responsibility for receiving these shipments. Contractor shall check with the owner and make necessary arrangements for security and storage space if required.

FINAL INSPECTION

At the conclusion of the work, the contractor shall demonstrate to the authorized owner's representative that the work is fully operational and certify that it is in compliance with contract specifications and codes. Any deficiencies shall be promptly and permanently corrected by the contractor at the contractor's sole expense prior to final acceptance of the work.

WARRANTY

The contractor agrees that the goods or services furnished under any award resulting from this solicitation shall be covered by the most favorable commercial warranties the contractor gives any customer for such goods or

services and that the rights and remedies provided therein are in addition to and do not limit those available to the Owner by any other clause of this solicitation. A copy of this warranty should be furnished with the bid. At a minimum, all materials, equipment and labor shall be fully guaranteed by the contractor against defects resulting from the use of inferior materials, equipment, or workmanship for one (1) year from the date of final acceptance of the entire project by the owner in writing.

The contractor warrants that, unless otherwise specified, all materials and equipment incorporated in the work under the contract shall be new, in first class condition, and in accordance with the contract documents. The contractor further warrants that all workmanship shall be of the highest quality and in accordance with contract documents and shall be performed by persons qualified at their respective trades. Defects discovered during the warranty period shall be corrected by the contractor to the Owner's satisfaction, at no cost to the Owner and shall be subject to the provisions of this clause to the same extent as materials initially delivered.

WORK SITE DAMAGES

Any damage to existing utilities, equipment or finished surfaces resulting from the performance of this contract shall be repaired to the Owner's satisfaction at the contractor's expense.

SUPERINTENDENCE BY CONTRACTOR

The contractor shall have a competent foreman or superintendent, satisfactory to the Owner, on the job site at all times during the progress of the work. The contractor shall be responsible for all construction means, methods, techniques, sequences, and procedures, for coordinating all portions of the work under the contract except where otherwise specified in the contract documents, and for all safety and worker health programs and practices. The contractor shall notify the owner, in writing, of any proposed change in superintendent including the reason therefore prior to making such change.

USE OF PREMISES AND REMOVAL OF DEBRIS:

The contractor shall:

Perform his contract in such a manner as not to interrupt or interfere with the operation of any existing activity on the premises or with the work of any contractor;

Store his apparatus, materials, supplies, and equipment in such orderly fashion at the site of the work as will not unduly interfere with the progress of his work or the work of any other contractor; and

Place upon the work or any part thereof only such loads as are consistent with the safety of that portion of the work.

The contractor expressly undertakes, either directly or through his subcontractor(s), to effect all cutting, filling, or patching of his work required to make the same conform to the drawings and specifications, and, except with the consent of the owner, not to cut or otherwise alter the work of any other contractor. The contractor shall not damage or endanger any portion of the work or premises, including existing improvements, unless called for by the contract.

The contractor expressly undertakes, either directly or through his subcontractor(s), to clean up frequently all refuse, rubbish, scrap materials, and debris caused by his operations, to the end that at all times the site of the work shall present a neat, orderly, and workmanlike appearance. No such refuse, rubbish, scrap material, and debris shall be left within the completed work nor buried on the building site, but shall be removed from the site and properly disposed of in a licensed landfill or otherwise as required by law.

The contractor expressly undertakes, either directly or through his subcontractor(s), before final payment, to remove all surplus material, false work, temporary structures, including foundations thereof, plants of any description and debris of every nature resulting from his operations and to put the site in a neat, orderly condition; to thoroughly clean and leave reasonably dust free all finished surfaces including all equipment, piping, etc., on the interior of all buildings included in the contract; and to thoroughly clean all glass installed under the contract including the removal of all paint and mortar splatters and other defacements. If a contractor fails to clean up at the completion of the work, the owner may do so and charge for costs thereof to the contractor.

SAFETY

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work.

The Contractor shall submit a Safety Certification Form that includes the following information:

- A. The name and phone number of the individual who will be responsible to ensuring all applicable safety procedures are followed and personal protective equipment is used on the project site.
- B. The name and phone number of the individual who should be contacted in the event of an emergency.
- C. A copy of the Safety Certification Form is included as Attachment B.

WORK PERFORMANCE

The Contractor shall perform the work in accordance with manufacturer's recommendations and specifications.

CONTRACTOR RESPONSIBILITIES

Employees of the contractor must be able to work within a public setting without creating a disruption and conform to all policies, rules and regulations. Contractor shall require that their employees to be courteous at all times and not to use loud or profane language. Contractor shall require that its employees shall not trespass, loiter, cross property to adjoining premises, or tamper with property not covered by the contract resulting from this solicitation.

The Contractor shall be solely responsible for job site conditions and completely supervising and directing the work under this contract and all subcontractors that he may utilize. Subcontractors who perform work under this contract shall be responsible to the Contractor. The Contractor agrees that he is fully responsible for the acts and omissions of his subcontractors and of persons employed by them as he is for the acts and omissions of his own employees. These requirements will apply continuously and not be limited to working hours.

It is the contractor's responsibility to have equipment of suitable type, and in proper condition to operate and maintain uninterrupted schedules.

It is the contractor's responsibility to follow schedules and instructions provided by designated Owner contacts.

PROTECTION OF PERSONS AND PROPERTY

The Contractor expressly undertakes, both directly and through its subcontractors, to take every precaution at all times for the protection of persons and property, including James City Service Authority's (JCSA) employees and property.

EMERGENCY

In an emergency affecting the safety of life, the Work, or of the adjoining property, the Contractor, without special instruction or authorization from the Owner, shall act to prevent threatened loss or injury. Any compensation, claimed by the Contractor on account of emergency work, shall be determined by agreement between the Owner and the Contractor.

DAMAGES

The Contractor shall be responsible for damage or injury to property during the prosecution of the Work resulting from any act, omission, neglect, or misconduct in the method of executing the Work or attributable to defective Work or materials. This responsibility shall not be released until final acceptance of the Project by the James City Service Authority.

When direct or indirect damage is done to property by or on account of any act, omission, neglect or misconduct in the method of executing the Work or in consequence of the non-execution thereof on the part of the Contractor, the Contractor shall restore such property to a condition similar or equal to that existing before such damage was done by repairing, rebuilding or restoring, as may be directed by the Owner, or making settlement with the property owner. The Contractor shall secure from the property owner a release from any

claim against the Owner without additional compensation therefore. A copy of this release shall be furnished to the Owner.

RESTORATION

All private and public property disturbed in the process of construction shall be restored to the condition existing prior to construction. Proper notice shall be given to the owner and to the homeowners of any expected inconvenience or hazardous condition. Special care must be taken to prevent damage to trees and shrubs. Road surfaces adjacent to excavations shall be cleaned of soil with mechanical brooms at the end of the working day.

All surplus materials shall be disposed of in a manner acceptable to the Owner, and the construction area shall be left in a neat condition. No machinery or equipment shall be left or stored on the job site after the project is completed.

LABELING OF HAZARDOUS SUBSTANCES

If the items or products requested by this solicitation are "Hazardous Substances" as defined by Section 1261 of Title 15 of the United States Code (U.S.C.) or "Pesticides" as defined in Section 136 of Title 7 of the United States Code, then the bidder/offeror, by submitting his bid/proposal, certifies and warrants that the items or products to be delivered under this contract shall be properly labeled as required by the foregoing sections and that by delivering the items or products the bidder/offeror does not violate any of the prohibitions of Title 15 U.S.C. Section 1263 or Title 7 U.S.C. Section 136.

MATERIAL SAFETY DATA SHEETS

Material Safety Data Sheets and descriptive literature shall be provided for each chemical and/or compound offered.

DATE OF COMMENCEMENT AND COMPLETION

The date of commencement shall be established in a written Notice to Proceed issued by the Owner. Work under the Contract shall be completed within time frame established in the Notice to Proceed.

MATERIALS AND WORKMANSHIP

The Contract Documents describe the character and features of the materials and workmanship required to perform the Work. The Contract Documents require first class work and materials in all particulars. It is understood that the contract includes any and all work that may be necessary to connect the work done with the adjoining work in a proper and workmanlike manner.

The Owner reserves the right to employ an independent testing laboratory to conduct tests of materials, etc. as the Owner may deem necessary to assure complete compliance with the requirements of the specifications. The Contractor shall offer full cooperation with personnel in the employ of the Owner in making these tests.

NO DEVIATION FROM CONTRACT DOCUMENTS BY THE CONTRACTOR

In performing the Work, the Contractor shall not deviate from the Contract Documents without the written consent of the Owner. If the Contractor does deviate from the Contract, he shall correct the error at his expense in a manner satisfactory to the Owner.

INTERPRETATION OF CONTRACT DOCUMENTS

In case of discrepancy between or among Contract Documents, the Owner shall make such interpretations as may be deemed necessary for the fulfillment of the intent of the Contract Documents as construed by him and his decision shall be final.

The Contractor shall verify all figures and will be responsible for the proper coordination of all dimensions as well as the different parts of the Work.

DISCREPANCIES

The Contractor shall immediately report to the Owner, in writing, any discrepancies found between the Contract Documents and site conditions or any inconsistencies or ambiguities in the Contract Documents. The Owner

shall promptly correct such inconsistencies or ambiguities in writing. Work done by the Contractor after his discovery of such discrepancies, inconsistencies or ambiguities shall be done at the Contractor's risk.

CONTRACTOR'S INSURANCE

1. The Contractor shall purchase and maintain during the life of this contract such Comprehensive General Liability Insurance including product and completed operations liability insurance as will provide protection from Contractor's performance of the Work and Contractor's other obligations under the contract documents, whether such performance is by Contractor, or by subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and shall otherwise bear responsibility therefore. The Contractor further agrees that all limits will be made available which are excess of the amounts below:
 - A. **Workers Compensation and Employers Liability**

Coverage A - Statutory
Coverage B - \$100,000/\$100,000/\$500,000

A broad form of all states endorsement should be attached.
 - B. **Commercial General Liability Including Contractual and Completed Operations.**

Limit of Liability \$1,000,000 Per Occurrence
 - C. **Commercial Auto Liability Including Hired and Non-Owned Car Liability Coverage**

Limit of Liability \$1,000,000 Per Occurrence

The Contractor shall purchase and maintain during the life of this Contract such commercial automobile liability insurance including employer's non-ownership liability and hired car liability insurance to protect him and any subcontractors performing work covered by this Contract from claims for damages, whether such operations be by him or any subcontractor, or by anyone directly or indirectly employed by either of them.
 - D. **Excess Liability**

Contractors have the option of meeting the insurance requirements of B and C above with a single primary policy or by providing evidence of an excess policy that, in addition to the primary policy, provides the coverage and meets the limit requirements of the coverage as specified in B and C.
2. The Contractor shall file with the Owner, as herein before required, satisfactory proof of acceptable insurance coverage. Such proof shall, unless otherwise required by the Owner, consist of the following:
 - A. Certificates of insurance on the insurance carrier's standard form indicating all policies required by law and the Contract documents. Certificates of insurance shall be furnished in a number of copies equal to the number of counterparts of the Contract documents executed. Contractor shall notify Owner immediately if Contractor receives notification of non-renewal or cancellation.
3. James City County and James City Service Authority shall be named as an Additional Insured on the Commercial General Liability per ISO 2010 on a primary basis. James City County's and James City Service Authority's Commercial General Liability shall not contribute in any loss payment insured under the Contractor's Commercial General Liability policy.

**JAMES CITY COUNTY
REQUEST FOR QUOTE 09-0100
QUOTE FORM**

FROM: _____ (Name of Contractor)
_____ (Address)
_____ (Telephone & Fax Number)

FOR: **RFQ 09-0100:** The undersigned, having reviewed the above-referenced project and the requirements of the Request for Quote, hereby proposes to furnish labor, materials, delivery and warranty to provide services as described in the Scope of Work that is necessary to perform and complete the project in accordance with the Request for Quote.

Total Base Quote \$ _____ **Start Date:** _____
Completion Date: _____

- The Undersigned Agrees:
- A. To uphold the Quote for 90 days after submitting their Quote
 - B. To execute the work, if awarded a Purchase Order on the basis of this Quote.

The undersigned certifies that he (they) are the only person(s) interested in this Quote and that it is made without connection with other persons submitting a Quote on the same scope of services; that the Quote is fair and made without collusion, fraud, or reservation; that no official or employee of James City County or the James City Service Authority is directly or indirectly interested in said quote or any portion thereof.

My signature on this solicitation constitutes certification that I or my designated representative am aware of the conditions under which the work must be accomplished. Claims resulting from failure to ascertain the conditions under which the work must be accomplished will not be considered by the Owner. By my signature on this solicitation, I certify that this firm/individual is authorized to contract on behalf of the firm named below and is properly licensed for providing the goods/services specified.

Company Name: _____

License# _____ **Type:** _____

Address: _____

City/State/Zip: _____

Telephone: _____ **FAX:** _____

Email Address: _____

Federal Tax ID: _____

Print Name: _____ **Title:** _____

Signature _____ **Date** _____

RETURN WITH QUOTE FORM
Attachment B--Safety Certification Form

To: James City County

Project Title: _____ Contract No. _____

Project Safety Responsibility (Name) _____ Number: _____

Emergency Contact (Name) _____ Number: _____

The undersigned hereby attests that the project has been carefully evaluated for the safety risks it presents and all safety procedures required based on these risks by Virginia Occupational Safety & Health, referenced in the quote document, will be implemented. Virginia Occupational Safety & Health and all other applicable Federal, State and local laws referenced in the quote document, will be implemented. All workers on this project will be properly trained on the use of safety equipment and safe work practices.

By:

(Type Name and Title)

(Signature)

(Date)

JAMES CITY COUNTY

ATTACHMENT A--GENERAL TERMS & CONDITIONS and INSTRUCTIONS TO BIDDERS

Vendor. These CONDITIONS AND INSTRUCTIONS TO BIDDERS shall be binding on all bidders or offerors and are incorporated by reference in all contracts resulting from any written Request for Quotes, Invitation to Bid or Request for Proposals issued, collectively the (“Request”), to which they are attached. Use of the term “bid” in these General Terms & Conditions and Instructions to Bidders is not intended to be restricted to an Invitation to Bid and shall also affect written Request for Quotes, Invitation to Bid or Request for Proposals. The Purchasing Office is responsible for the purchasing activity of James City County, a political subdivision of the Commonwealth of Virginia, and the James City Service Authority, herein referred to collectively as “James City County” or “County”. Bidder/Offeror or their authorized representatives are expected to inform themselves fully as to the conditions, requirements, and specifications before submitting bids/proposals: failure to do so will be at the bidder’s/offeror’s own risk and except as provided by law, relief cannot be secured on the plea of error.

Subject to all Federal, State and local laws, policies, resolutions, regulations, rules, limitations and legislation including the County Purchasing Policy and the County Purchasing Manual, bids/proposals on all solicitations issued by the Purchasing Office will bind bidders/ offerors to applicable conditions and requirements herein set forth unless otherwise specified in the solicitation.

Cooperative Purchasing--James City County issues this solicitation in accordance with Section 2.2-4304 of the Virginia Public Procurement Act and Chapter 1, Section 5 of the James City County Purchasing Policy, and on behalf of the members of the Southeastern Virginia Governmental Purchasing Cooperative (SVGPC), as well as other public bodies, governmental jurisdictions and school divisions.

Bidders/Offerors are advised that all resultant contracts will be extended, with the authorization of the bidder/offeror, to other public bodies, governmental jurisdictions and school divisions as may be interested. Should other entities decide to use the final contract, the contractor shall deal directly with that jurisdiction or political subdivision concerning the placement of orders, issuance of the purchase orders, contractual disputes, invoicing and payments. James City County acts only as the “Contracting Agent” for these jurisdictions and political subdivisions. Failure to extend a contract to any jurisdiction will have no effect on consideration of your bid or offer.

It is the responsibility of the contractor to notify the public bodies, jurisdictions and political subdivisions of the availability of the contract.

Each participating public body, jurisdiction and political subdivisions has the option of executing a separate contract with the contractor. Such contracts may contain general terms and conditions unique to those jurisdictions and political subdivisions. If, when preparing such a contract, the general terms and conditions of a jurisdiction are unacceptable to the contractor, the contractor may withdraw its extension of the award to that jurisdiction.

James City County shall not be held liable for any costs or damages incurred by another public body or jurisdiction as a result of any award extended to that public body, jurisdiction or political subdivision by the contractor.

SVGPC members reserve the right to make awards to the lowest responsive and responsible offeror during the contract term. SVGPC members not explicitly named in the IFB are not obligated to participate, nor is the successful offeror obligated to contract with other SVGPC members.

City of Chesapeake
City of Hampton
City of Newport News
City of Norfolk
City of Portsmouth
City of Virginia Beach
City of Williamsburg
County of Gloucester
County of James City
County of King William
Thomas Nelson Community College
Newport News Redevelopment & Housing
DDS Tidewater Regional Office

Newport News Public Schools
Williamsburg/James City County Public Schools
York County Public Schools
Christopher Newport University
College of William & Mary
Norfolk State University
Tidewater Community College
Jamestown/Yorktown Foundation
Southeastern Public Service Authority
County of York
Portsmouth Redevelopment & Housing
CAS Norfolk Regional Office

1. AUTHORITY AND COOPERATIVE PURCHASING-The County Purchasing Director has the sole responsibility and authority for negotiating, placing and when necessary modifying every solicitation, contract and purchase order issued by James City County. In the discharge of these responsibilities, the County Purchasing Director may be assisted by assigned buyers. Unless specifically delegated by the County Purchasing Director, 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 James City for an indebtedness. Any purchase order or contract made which is contrary to these provisions and authorities shall be of no effect and void and the County shall not be bound thereby.

2. COMPETITION INTENDED: It is the County's intent that this solicitation permit competition. It shall be the Bidder's/Offeror's responsibility to advise the Purchasing Director in writing if any language, requirement, specification, etc., or any combination thereof, stifles competition or inadvertently restricts or limits the requirements stated in this solicitation to a single source. The Purchasing Director must receive such notification not later than five (5) business days prior to the deadline set for acceptance of the bids/proposals.

CONDITIONS OF BIDDING

3. CLARIFICATION OF TERMS - If any Bidder/Offeror has questions about the specifications or other solicitation documents, the prospective Bidder/ Offeror should contact the buyer whose name appears on the face of the solicitation no later than five (5) business days prior to the date set for the opening of bids or receipt of proposals. Any revisions to the solicitation will be made only by addendum issued by the buyer. Notifications regarding specifications may not be considered if received in less than five (5) business days of the date set for opening of bids/receipt of proposals.

4. USE OF COUNTY FORM AND TERMS AND CONDITIONS: Failure to submit a solicitation on the official James City County form provided for that purpose or unauthorized modification of or additions to any portion of the solicitation documents may be a cause for rejection of the bid/proposal if the price, quality, quantity, delivery, necessary assurances, performance of the contract and other factors deemed important to the solicitation will be affected. James City County reserves the right to decide, on a case-by-case basis, in its sole discretion, whether to reject any bid or proposal which has been modified. The County shall not be responsible for any errors or omissions of the bidder/proposer. The solicitation shall be signed by a representative authorized to legally bind the firm. By signing the solicitation, the bidder/offeror agrees to the terms and conditions of the solicitation and certifies that they have inspected the job site(s) and are aware of the conditions under which the work must be accomplished. Claims, as a result of failure to inspect the job site, shall not be considered by the County.

5. LATE BIDS/PROPOSALS & MODIFICATION OF BIDS/ PROPOSALS:

Any bid/proposal/modification received at the office designated in the solicitation after the exact time specified for receipt of the bid/proposal/modification is considered a late bid/proposal/ modification.

James City County is not responsible for delays in the delivery of the mail by the U.S. Postal Service, private carriers or the inter-office mail system. It is the sole responsibility of the Bidder/Offeror to ensure their bid/proposal reaches the Purchasing Office by the designated date and hour.

a. The official time used in the receipt of bids/ proposals is that time stamped by the automatic time stamp machine in the Purchasing Office. Date/time stamps marked after the designated time of receipt will be rejected.

- b. Late bids/proposals/modifications will be returned to the Bidder/Offeror UNOPENED, if solicitation number, acceptance date and Bidder/Offeror's return address is shown on the container.
- c. If the County closes its offices due to inclement weather scheduled bid openings or receipt of proposals will be extended to the next business day, same time.
- d. Vendors may modify their bids prior to the date and time specified for the bid opening. Facsimile modification of bids shall not be accepted unless the solicitation allowed such submission.

6. WITHDRAWAL OF BIDS/PROPOSALS:

A bidder/offeror for a contract other than for public construction may request withdrawal of his or her bid/proposal under the following circumstances:

- a. Bids/Proposals may be withdrawn on written request from the Bidder/offeror received at the address shown in the solicitation prior to the time of acceptance.
- b. Requests for withdrawal of bids/proposals after opening of such bids/proposals but prior to award shall be transmitted to the County Purchasing Director, in writing, accompanied by full documentation supporting the request. If the request is based on a claim of error, documentation must show the basis of the error. Such documentation may take the form of supplier quotations, vendor work sheets, etc. If bid bonds were tendered with the bid, the County may exercise its right of collection.
- c. Bids/proposals shall not be withdrawn after award of a contract or issuance of a purchase order. No plea or claim of mistake in a solicitation or resulting contract or purchase order shall be available as a defense in any legal proceeding brought upon a contract or purchase order awarded to a bidder/offeror as a result of the breach or nonperformance of such contract or purchase order.

No Bid/Proposal may be withdrawn under this paragraph when the result would be the awarding of the contract on another Bid/Proposal of the same bidder/offeror or of another bidder/offeror in which the ownership of the withdrawing bidder/offeror is more than five percent. In the case of Invitation for Bids, if a bid is withdrawn under the authority of this paragraph, the lowest remaining bid shall be deemed to be the low bid. No bidder/offeror who is permitted to withdraw a bid/proposal shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid/proposal was submitted.

7. ERRORS IN BIDS/PROPOSALS – When an error is made in extending total prices, the unit bid price will govern. Erasures in bids/proposals must be initiated by the bidder/offeror. Carelessness in quoting prices, or in preparation of bid/proposal otherwise, will not relieve the Bidder/Offeror of his responsibilities to provide the good or service. Bidders/Offerors are cautioned to recheck their bids/proposals for possible errors. Errors discovered after public opening cannot be corrected and the bidder will be required to perform if his or her bid is accepted.

8. IDENTIFICATION OF BID/PROPOSAL ENVELOPE: The signed bid/proposal and requested copies should be returned in a separate envelope or package, sealed and identified with the following information:

**ADDRESSED AS INDICATED ON PAGE 1
IFB/RFP NUMBER**

TITLE
BID/PROPOSAL DUE DATE AND TIME
VENDOR NAME AND COMPLETE MAILING ADDRESS
(RETURN ADDRESS)

If a bid/proposal is not addressed with the information as shown above, the Bidder/Offeror takes the risk that the envelope may be inadvertently opened and the information compromised, which may cause the bid/proposal to be disqualified. Bids/Proposals may be hand delivered to the designated location in the office issuing the solicitation. No other correspondence or other proposals should be placed in the envelope.

9. **ACCEPTANCE OF BIDS/PROPOSALS:** Unless otherwise specified, all formal bids/proposals submitted shall be valid for a minimum period of ninety (90) calendar days following the date established for acceptance. At the end of the ninety (90) calendar days the bid/proposal may be withdrawn at the written request of the Bidder/Offeror. If the proposal is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.

10. **PRICING:**

- a. Bidder warrants by virtue of bidding that prices, terms, and conditions quoted in his bid will be firm for acceptance for a period of ninety (90) days from the date of bid opening unless otherwise stated by the County or Bidder.
- b. Prices should be stated in units of quantity as specified in the bid form.
- c. Life cycle cost analysis may be considered when determining the lowest responsive and responsible bid. This analysis may consider, in addition to purchase price, any proposed upward or downward escalator clauses proposed for the initial contract term and any potential renewal terms; operating and related costs over the life of the item including maintenance, down time, energy costs, salvage value, etc.
- d. Bid prices shall be for complete installation ready for the County's use and shall include all applicable freight and installation charges; extra charges will not be allowed.
- e. When an annual contract is not requested by the County, and the bid is for products or services to be delivered on a one-time only or staggered basis, only firm pricing shall be given consideration. General terms such as "price in effect at time of delivery" shall not be considered for award.

11. **CONDITIONAL BIDS:** Conditional bids are subject to rejection in whole or in part if the price, quality, quantity, delivery, necessary assurances, performance of the contract and other factors deemed important to the solicitation will be affected.

12. **OPENING:** At the time fixed for the opening of responses to a bid, all bids will be opened and the names of the bidders and the amount bid shall be read aloud and made readily available to the public.

If a public opening of a Request for Proposals is held, only the names of the offerors will be read publicly.

13. **RESPONSE TO SOLICITATIONS:** In the event a vendor cannot submit a bid on a solicitation, the vendor is requested to return the solicitation cover sheet with an explanation as to why the vendor is unable to bid on these requirements. Because of the large number of firms listed on the County's Bidders List, it may be necessary to delete from this list the names of those persons, firms or corporations who fail to respond after having been invited to bid for three (3) successive solicitations. Such deletion will be made only after formal notification of the intent to remove the firm from the County's Bidder's List.

14. **BIDDER INTERESTED IN MORE THAN ONE BID:** If more than one bid is offered by any one party, either directly or by in the

name of his or her clerk, partner, or other persons, all such bids may be rejected. A party who has quoted prices on work, materials, or supplies to a bidder is not thereby disqualified from quoting prices to other bidders or firms submitting a bid directly for the work, materials or supplies.

15. **TAX EXEMPTION:** The County is exempt from the payment of any federal excise or any Virginia sales tax. The price bid must be net, exclusive of taxes. Tax exemption certificates will be furnished if requested by the Bidder/Offeror.

16. **DEBARMENT STATUS:** By submitting their bids/proposals, Bidders/Offerors certify that they are not currently debarred by James City County, the Commonwealth of Virginia, the Federal Government, any local government or government agency/entity/authority from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

17. **ETHICS IN PUBLIC CONTRACTING:** The provisions contained in Sections 2.2-4367 through 2.2-4377, Code of Virginia, as amended, shall be applicable to all contracts solicited or entered into by James City County. By submitting their bids/proposals, all Bidders/Offerors certify that their bids/proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Bidder, Offeror, supplier, manufacturer or subcontractor in connection with their bid/proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

The Bidder/Offeror certifies that to the best of his knowledge, no employee of the County, nor any member thereof, nor any public agency or official impacted by the solicitation or resulting contract has any pecuniary interest in the business of the Bidder/Offeror, and that no person associated with the Bidder/Offeror has any interest that would conflict in any manner with the performance of the contract resulting from this solicitation.

18. **PERFORMANCE BOND:** When requested in the bid, the County shall require the successful bidder to furnish a performance bond and labor and material payment bond with surety satisfactory to the County Attorney in the amount of the contract price at a time of or prior to execution of the contract.

19. **NO CONTACT POLICY:** No Bidder/Offeror shall initiate or otherwise have contact related to the solicitation with any County employee, other than the Purchasing Office, after the date and time established for receipt of bids/proposals. Any contact initiated by a Bidder/Offeror with any County representative, other than the Purchasing Office, concerning this solicitation is prohibited and may cause the disqualification of the Bidder/Offeror from this procurement process.

20. **LICENSES, PERMITS, AND FEES:** All bids submitted shall include a list of any business and professional licenses, permits, or fees required by James City County or the Commonwealth of Virginia.

SPECIFICATIONS

21. **BRAND NAME OR EQUAL ITEMS:** Unless otherwise provided in the solicitation, 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, and any article which the County in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The Bidder is responsible to clearly and specifically indicate the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable James City 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. Normally in competitive sealed bidding, only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data to enable James City County to determine if the product offered meets the requirements of the solicitation may result in the bid being declared non-responsive. Unless the Bidder clearly indicates in its bid/proposal that the product offered is "equal" product, such bid/proposal will be considered to offer the brand name product referenced in the solicitation.

- 22. **FORMAL SPECIFICATIONS:** When a solicitation contains a specification which states no substitutes, no deviation therefrom will be permitted and the bidder will be required to furnish articles in conformity with that specification.
- 23. **OMISSIONS & DISCREPANCIES:** Any items or parts of any equipment listed in this solicitation which are not fully described or are omitted from such specification, and which are clearly necessary for the completion of such equipment and its appurtenances, shall be considered a part of such equipment although not directly specified or called for in the specifications.

The Bidder/Offeror shall 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.

- 24. **EQUIPMENT STANDARDS.** Any equipment delivered shall be standard new equipment, latest model, the best quality, and the highest grade work, except as otherwise specifically stated in bid. Any part of nominal appurtenances which are usually provided in the manufacturer's stock model shall be furnished.
- 25. **ANNUAL CONTRACT USAGE REQUIREMENTS:** Whenever a bid is sought seeking a source of supply for an annual contract for products or services, the quantities or usage shown are estimates only. No guarantee or warranty is given or implied by James City County as to the total amount that may not be purchased from any resulting contracts. These quantities are for Bidder's information only and will be used for tabulation and presentation of bid.

AWARD

- 26. **AWARD OR REJECTION OF BIDS:** The Purchasing Director 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 Director reserves the right to award a contract by individual items, in the aggregate, or in combination thereof, or to reject any or all bids/proposals and to waive any informality in bids/proposals received whenever such rejection or waiver is in the best interest of the County. Award may be made to as many bidders/offerors as deemed necessary to fulfill the anticipated requirements of James City County. The Purchasing Director reserves the right to negotiate with the lowest responsive, responsible bidder should bids exceed available funds. The Purchasing Director shall reject the bid if the bidder is deemed to be a non-responsive or non-responsive bidder.
- 27. **QUALIFICATIONS OF BIDDERS OR OFFERORS:** James City County may make such reasonable investigations as deemed proper and necessary to determine the ability of the Bidder/Offeror to perform the work/furnish the item(s) and the Bidder/Offeror shall furnish to James City County all such information and data for this purpose as may be requested.

James City County reserves the right to inspect Bidder's/Offeror's physical facilities prior to award to satisfy questions regarding the Bidder's/Offeror's capabilities. James City County further reserves the right to reject any bid or proposal if the evidence submitted by or investigations of, such Bidder/Offeror fails to satisfy James City County that such Bidder/Offeror is properly qualified to carry out the obligations of the contract and to complete the work/furnish the item(s) contemplated therein.

- 28. **TIE BIDS:** In the case of a tie bid, the County may give preference to goods, services and construction produced in the County or provided by persons, firms or corporations having principal places of business in the County. If such choice is not available, preference shall then be given to goods and services produced in the Commonwealth pursuant to Code of Virginia § 2.2-4324. If no County or Commonwealth choice is available, the tie shall be decided by lot.
- 29. **FACTORS OTHER THAN PRICE IN AWARD DECISION:** The following factors, in addition to price (as they apply), shall be a consideration in the award decision:
 - a. The quality of performance/workmanship of previous contracts, services or products, or references which attest to other specific experiences;
 - b. The timely completion of previous contracts or services or the timely delivery of past orders; or references which attest to other specific experiences;
 - c. The sufficiency of financial resources and its impact on ability of the bidder to perform the contract or provide the services;
 - d. The County reserves the right to conduct on-site inspections of any bidder's facilities prior to award. The results of said inspection will be considered by the County in determining bidder's capabilities of successfully administering to this contract;
 - e. The ability and availability of the bidder to provide both quality and timely maintenance, service, and/or parts;
 - f. The resale value, life cycle costing, and value analysis of a product;
 - g. The availability and capability of local and regional vendor support as it affects the quantity, quality, and timeliness of the work or products required;
 - h. Delivery of a product and timely completion of a project as stated by vendor in bid;
 - i. Substantial compliance or noncompliance with specifications set forth in bid as determined by the County;
 - j. Product or parts inventory capability as it relates to a particular bid; and
 - k. Results of product testing.

CONTRACT PROVISIONS

- 30. **APPLICABLE LAW AND COURTS:** Any contract resulting from this solicitation shall be governed in any respects by the laws of Virginia, and any litigation with respect thereto shall be brought in the Circuit Court or General District Court of James City County, Virginia. The Contractor shall comply with applicable federal, state and local laws and regulations.
- 31. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By entering into this contract, vendor certifies that it does not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986, as amended.

32. OBLIGATIONS OF COUNTY AND CONTRACTOR:

County: The County shall furnish to the contractor all available information as listed in the solicitation that may be useful for the contract work. The County shall assist the contractor in obtaining access to enter upon public and private property as required to perform the contract work. The County shall designate a representative who shall serve as the principal contact and give direction to the contractor throughout the duration of the contract. Contractor: The contractor represents that he has, or shall secure at his expense, all personnel, including subcontractors, required to perform and complete the Scope of Work.

33. CONFIDENTIALITY AND OWNERSHIP OF DATA: Any reports, information, intellectual property, data, drawings, specifications, estimates and summaries given to or prepared or assembled by the contractor under the Scope of Work of the contract, shall not be made available to any individual or organization by the contractor without prior written approval of the County. All of these items shall become the property of the County upon payment of fees as required by the contract.

34. REPORTS OF WORK: The County and the contractor shall schedule progress meetings at appropriate intervals throughout the duration of the contract. These meetings shall provide for the exchange of information related to the status of the Scope of Work, anticipated progress and any problems that have occurred.

35. ANTI-TRUST: By entering into a contract, the contractor conveys, sells, assigns, and transfers to James City County all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust law of the United States and James City County, relating to the particular goods or services purchased or acquired by James City County under said contract. Consistent and continued tie bidding could cause rejection of bids by the Purchasing Director and/or investigation for Anti-Trust violations.

36. PAYMENT TERMS: Unless otherwise provided in the solicitation payment will be made thirty (30) days after receipt of a proper invoice with complete supporting documentation, or thirty (30) days after receipt of all goods or acceptance of work, whichever is the latter. For construction projects, the County may retain five percent (5%) of the total amount of each partial progress payment to assure faithful performance of the contract by the contractor. The County will release all retainage upon final payment.

- a. Invoices for items/services ordered, delivered/performed and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the contract number, purchase order number, and any federal employer identification number.
- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. The date of payment shall be deemed the date of postmark in all cases where payment is made by mail.

37. PAYMENT TO SUBCONTRACTORS: A contractor awarded a contract under this solicitation is hereby obligated:

- a. To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from James City County for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
- b. To notify James City County and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.

The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from James City County, except for amounts withheld as

stated in b above. The date of mailing of any payment by U.S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of James City County.

38. ASSIGNMENT OF CONTRACT: A contract shall not be assignable by the Contractor in whole or in part without the written consent of the Purchasing Director.

39. DEFAULT: In case of failure to deliver goods or services in accordance with the contract terms and conditions, James City County, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to another remedies which James City County may have.

40. AVAILABILITY OF FUNDS: It is understood and agreed between the contractor and the County herein that the County shall be bound hereunder only to the extent of the funds available or which hereafter become available for the purpose of the contract.

41. ANTI-DISCRIMINATION: By submitting their bids/proposals, Bidders/Offerors certify to James City County that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and the Code of Virginia § 2.2-4311, as amended. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts shall be subject to audit by the public body. (Code of Virginia § 2.2-4343.1.E).

In every contract over \$10,000 the provisions in a and b below apply:

- a. During the performance of this contract, the Contractor agrees as follows:
 - 1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - 2) 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.
 - 3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section.
- b. The Contractor will include the provisions of a. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

42. **NONDISCRIMINATION OF CONTRACTORS:** A bidder, offeror, or contractor shall not be discriminated against in the solicitations or award of this contract because of race, religion, color, sex, national origin, age or disability or against faith-based organizations. If the award of this contract is made to a faith-based organization and an individual who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, James City County shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, service, or disbursements from an alternative provider.
43. **INVOICES:** Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the IFB/RFP number and/or purchase order number.
44. **PRECEDENCE OF TERMS:** In the event there is a conflict between the General Terms and Conditions and any Special Terms and Conditions, the Special Terms and Conditions shall apply.
45. **CHANGES TO THE CONTRACT:** There shall be no extra work allowed on the contract without prior written authorization in the form of a change order signed by the Purchasing Director or the County Administrator. No officer, agent or employee of the County is authorized to give verbal instructions to increase the Scope of Work and the contractor shall not use verbal instructions as the basis for additional costs. Changes can be made to the contract in any of the following ways by the issuance of a Change Order:
- a. The parties may agree to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
 - b. James City County may order changes within the general scope of the contract at any time by written notice to the Contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give the County a credit for any savings. Said compensation shall be determined by one of the following methods.
 - 1) By mutual agreement between the parties in writing; or
 - 2) By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the County's right to audit the Contractor's records and/or determine the correct number of units independently; or
 - 3) By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present the County with all vouchers and records of expenses incurred and savings realized. The County shall have the right to audit the records of the Contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Office within thirty (30) days from the date of receipt of the written order from the Purchasing Office. If the parties fail to agree on an amount of adjustment, the questions of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for relieving disputes provided by the Disputes Clause of the contract. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by the County or with the performance of the contract generally.
- c. No modification for a fixed price contract may be increased by more than 25% or \$50,000, whichever is greater, without the advanced written approval of the Board of Supervisors.
46. **STATE REGISTRATION OF CONTRACTORS (IF APPLICABLE) AND COUNTY BUSINESS LICENSE:** Attention is directed to Chapter 11, title 54.1 of the Code of Virginia (Re: State registration of contractors), which requires that all bidders must show evidence of the proper license under the provision of this chapter before such bid is considered.
- All firms doing business in James City County are required to be licensed in accordance with the County's "Business, Professional, and Occupational Licensing (BPOL) Tax" Ordinance. Wholesale and retail merchants without a business location in James City County are exempt from this requirement. Questions concerning the BPOL Tax should be directed to the Business License Inspector, telephone (757) 253-6698.
47. **PROPRIETY INFORMATION:** Section 2.2-4342F of the Code of Virginia states: "Trade secrets of proprietary information submitted by a bidder, offeror, or contractor in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the bidder, offeror, or contractor must invoke the protections of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary." Declaring an entire bid or proposal response as proprietary is unacceptable.
48. **INDEMNIFICATION:** The Contractor hereby binds himself and his successors to indemnify, defend, and save harmless James City County, its officers, agents or employees, from all suits and actions of every name and description brought against it or them, and all costs or damages to which it or they may be put, on account of, or by reason of any injury or alleged injury to the person or property of another, resulting from or on account of the negligent acts, errors or omissions, recklessness or intentionally wrongful conduct of the Contractor or his agents in the performance of the contract; and that the whole or so much of the moneys due to the contractor under and by virtue of this Contract, as such or may be considered necessary by the County, shall and may be retained until all such suits and claims for damages as aforesaid shall have been settled, and evidence to that effect furnished to the satisfaction of the County. The said Contractor further agrees to indemnify and save harmless James City County against any and all claims, suits or demands that may accrue to, be suffered by, or adjudicated against it by reason of any injury sustained by any of the Contractor's employees in and about the said work, under and pursuant to the provisions of the Workman's Compensation Law or any amendments thereto, and the Contractor shall produce certificates or other satisfactory evidence of ample protection against such liability.
49. **NOTICE OF REQUIRED DISABILITY LEGISLATION:** The County government is required to comply with State and Federal disability legislation: The Rehabilitation Act of 1973 Section 504, The Americans with Disabilities Act (ADA) of 1990 Title II and the Virginia with Disabilities Act of 1990. Specifically, the County, may not, through its contractual and/or financial arrangements, directly or indirectly avoid compliance with Title II or the Americans with Disabilities Act, Public Law 101-336, which prohibits discrimination by public entities on the basis of disability. Subtitle A protects qualified individuals with disability from discrimination on the basis of disability in the services, programs, or activities of all State and local governments. It extends the prohibition of discrimination in federally assisted programs established by the Rehabilitation Act of 1973 Section 504 to all

activities of State and local governments, including those that do not receive Federal financial assistance, and incorporates specific prohibitions of discrimination on the basis of disability in Titles I, III, and V of the Americans with Disabilities Act. The Virginians with Disabilities Act of 1990 follows the Rehabilitation Act of 1973 Section 504.

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

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor, 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.

51. **TERMINATION:** Subject to the provisions below, the contract may be terminated by the County upon thirty (30) days advance written notice to the other party. Upon receipt of a notice of termination, the contractor shall cease all work underway on behalf of the County unless advised by the County to do otherwise. In the event of termination, Contractor shall be compensated only for the services as set forth in the contract provided to the satisfaction of the County and expenses incurred as of the date of termination. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

- a. Termination for Convenience: In the event that the contract is terminated upon request and for the convenience of the County, without the required thirty (30) days advance notice, then the County shall be responsible for payment of services up to the termination date.
- b. Termination for Cause: Termination by the County for cause, default or negligence on the part of the contractor shall be excluded from the foregoing provision; termination costs, if any shall not apply. However, pursuant to the Default paragraph of these General Conditions, the County may hold the contractor responsible for any resulting additional purchase and administrative costs. Any payment due to the contractor at the time of termination may be adjusted to the extent of any additional costs occasioned to the County by reason of the contractor's default. The thirty (30) days advance notice requirement is waived in the event of Termination for Cause.
- c. Termination Due to Unavailability of Funds in Succeeding Fiscal Years: When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year, the contract shall be canceled.

52. **CONTRACTOR RESPONSIBILITY FOR COUNTY PROPERTY:** The Contractor shall be responsible for damages to County property caused by work performed by itself or its subcontractors. The Contractor shall be responsible for maintaining the area surrounding and adjoining the work site in their current condition. Property damage to surrounding or adjoining areas caused directly or indirectly by actions or omissions of the Contractor shall be replaced or remedied by the Contractor, to the satisfaction of the County, at the Contractor's expense.

53. **COPYRIGHTS OR PATENT RIGHTS:** The bidder certifies by submission of bid that there has been no violation of copyrights or patent rights in manufacturing, producing, or selling the product or services shipped or ordered as a result of this bid. The successful bidder shall, at his own expense, defend any and all actions or suits charging such infringement, and will save James City County, its officers, employees, and agents harmless from any and all liability, loss, or expense occasioned by any such violation.

54. **DELIVERY:** In the appropriate space, the bidder shall state the time of proposed delivery or project completion in number of calendar days. Unless otherwise specified, calendar days shall be presumed. Unless otherwise specified, quote the earliest delivery possible, as this may be considered a factor in making award. Delivery expressed in calendar days may be given preference over such general terms as "stock immediately," and "as soon as possible." As time will be of the essence for any orders placed as a result of this bid, the County reserves the right to cancel such orders, or any part thereof, without obligation, if delivery is not made at the time(s) specified on bid form.

55. **INDEPENDENT CONTRACTOR:** The contractor shall be legally considered an independent contractor and neither the contractor nor its employees shall, under any circumstances, be considered servants or agents of James City County or James City Service Authority; and the County shall be at no time legally responsible for any negligence or other wrongdoing by the contractor, its servants, or agents. The County shall not withhold from the contract payments to the contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the contractor. Further, the County shall not provide to the contractor any insurance coverage or other benefits, including Worker's Compensation, normally provided by the County for its employees.

56. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of the Purchasing Director. In the event that the contractor desires to subcontract some part of the work, the contractor shall furnish the Purchasing Director the names, qualifications and experience of the proposed subcontractors. The contractor shall remain fully liable and responsible for the work to be done by its subcontractors and shall assure compliance with all requirements of the contract.

57. **HOLIDAYS:** The Contractor shall receive approval of the County, in advance, of any work to be performed on Holidays. James City Service Authority/James City County observes the following Holidays:

New Year's Day	1 st day of January
Martin Luther King's Birthday	3 rd Monday in January
President's Day	3 rd Monday in February
Memorial Day	Last Monday in May
Independence Day	4 th day in July
Labor Day	1 st Monday in September
Veteran's Day	11 th day in November
Thanksgiving Day	4 th Thursday in November
Day after Thanksgiving	4 th Friday in November
Christmas Eve	24 th day in December
Christmas Day	25 th day of December

DELIVERY PROVISION

58. **SHIPPING INSTRUCTIONS-CONSIGNMENT:** Unless otherwise specified in the solicitation each case, crate, barrel, package, etc., delivered under the contract must be plainly stenciled or securely tagged, stating the Contractor's name, purchase order number, and delivery address as indicated in the order. Where shipping containers are to be used, each container must be marked with the purchase order number, name of the Contractor, the name of the item, the item number, and the quantity contained therein. Deliveries must be made within the hours of **8:00 a.m. – 3:00 p.m.** Deliveries at any other time will not be accepted unless specific arrangements have been previously made with the

designated individual 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.

59. **RESPONSIBILITY FOR SUPPLIES TENDERED:** The Contractor shall be responsible for the materials or supplies covered by the contract until they are delivered at the designated point, and a physical inspection is made and material is requested or rejected, but the Contractor shall bear all risk 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 his or her risk and expense or dispose of them as its own property.

60. **TESTING AND INSPECTIONS:** James City County reserves the right to conduct any test/inspection it may deem advisable to assure supplies and services conform to the specification. Inspection and acceptance of materials or supplies will be made after delivery at destinations herein specified unless otherwise stated. If inspection is made after delivery at destination herein specified, the County will bear the expense of inspection except for the value of samples used in case of rejection. Final inspection shall be 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.

61. **COMPLIANCE:** Delivery must be made as ordered and in accordance with the solicitation or as directed by the Purchasing Office when not in conflict with the bid/contract. The decision as to reasonable compliance with delivery terms shall be final. Burden of proof of delay in receipt of goods by the purchaser shall rest with the Contractor. Any request for extension of time of delivery from that specified must be approved by the Purchasing Office, such extension applying only to the particular item or shipment affected. Should the Contractor be 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 of extra compensation for such delay or suspension. These conditions may vary for construction contracts.

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

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

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

- a. Purchase Order Number/Contract Number
- b. Name of Article and Stock Number,
- c. Quantity Ordered,
- d. Quantity Shipped,
- e. Quantity Back Ordered,
- f. The Name of the Contractor.

Contractors are cautioned that failure to comply with these conditions shall be considered sufficient reason for refusal to accept the goods.

65. **SAMPLES:** Evidence in the form of samples may be requested if brand being quoted upon is other than as specified. The County reserves the right to request that such samples be furnished at the time of bid opening. The County also reserves the right to request samples after the date of bid opening. Requested samples must be furnished free of expense to the County and if not used in testing or destroyed, will, upon request, be returned at the bidder's expense.

BIDDER/CONTRACTOR REMEDIES

66. **PROTEST OF AWARD OR DECISION TO AWARD:** Any Bidder/ Offeror who desires to protest the award or decision to award a contract, by James City County shall submit such protest in writing to the County no later than ten (10) days after public notice of the award or announcement of the decision to award, whichever comes first. No protest shall lie for a claim that the selected bidder/Offeror is not a responsible Bidder/Offeror. The written protest shall include the basis for the protest and the relief sought. The Purchasing Director shall issue a decision in writing within ten (10) days stating the reasons for the action taken. This decision shall be final unless the bidder/offeree appeals within ten (10) days of the written decision by instituting legal action. Nothing in this paragraph shall be construed to permit an offeror to challenge the validity of the terms or conditions of the solicitation.

67. **DISPUTES:**
Claims. Written notice of the Contractor to file a claim must be given at the time of the occurrence or beginning of the work upon which the claim is based. Such claims, whether for money or other relief, shall be submitted in writing to the County's Purchasing Director no later than sixty (60) days after final payment. The Purchasing Director shall give written notification of the final decision on such claim to the Contractor within thirty (30) days of the date the claim was received. The Contractor may not institute legal action before receiving the Purchasing Director's final written decision, unless the Purchasing Director fails to render such decision within the specified time. Pendency of claims shall not delay payment of amounts agreed due in the final payment. (Code of Virginia, § 2.2-4363).

Claims Relief. Under certain circumstances beyond the control of the Contractor, such as acts of God, sabotage, and fire or explosion not caused by negligence of the Contractor or its agent, the Purchasing Director may extend the time limit for performance required by this Contract. Any such extension must be issued in writing and signed by the Purchasing Director.