



Part D - General Terms and Conditions

Note: Unless otherwise expressly stated, these General Terms and Conditions apply to all City Solicitations and Contracts, regardless of procurement method or contract type. For construction Solicitations and Contracts, inspection, testing, acceptance, and correction of nonconforming Work are governed exclusively by **Part C – Construction Special Terms and Conditions**, and the inspection provisions of this **Part D** apply only to non-construction supplies and services.

1. Assignment

- 1.1. The Contractor may assign its rights to be paid amounts due or to become due as a result of the performance of this Contract to a bank, trust company, or other financing institution. The assignee under such an assignment may thereafter further assign its right under the original assignment to any type of financing institution.
- 1.2. Any assignment or reassignment under this Clause must cover all unpaid amounts payable under this Contract, and must not be made to more than one party, except that the one party to whom assignment or reassignment is made may act as agent or trustee for two or more parties participating in the financing of this Contract.

2. Assignment of Risk

- 2.1. The Contractor bears the risk of loss, damage, or destruction of the goods and any materials or equipment furnished under the Contract until **delivery to the City at the location specified in the Contract and acceptance by the City**.
- 2.2. Risk of loss transfers to the City upon delivery and acceptance, unless otherwise expressly stated in the Contract Documents. This provision does not relieve the Contractor of responsibility for correcting or replacing nonconforming goods or services in accordance with the Contract.

3. Audit and Price Adjustment

3.1. Audit:

All records, reports and documents relating to this Contract must be maintained by Contractor for a period of three (3) years following final payment (the "Audit Period"). Such records, reports and documents must be subject to review and audit by City and the City's consultants or auditors at mutually convenient times.

3.2. Price Adjustment for Defective Cost and Pricing Data:

If any price, including profit or fee, negotiated in connection with this Contract or any Change Order or modification under this Contract, was increased by any significant amount because the Contractor furnished cost or pricing data that were not complete, accurate and current as of the date agreed upon between the City and Contractor, the price or cost must be reduced accordingly, and this Contract must be modified to reflect the reduction. This right to a price reduction is limited to increases resulting from defects in data under which the submission and certification of cost or pricing data were required.

4. Brand Name or Equivalent

This provision is issued pursuant to Code of Virginia § 2.2-4315.



**City of Alexandria
Request for Proposal
RFP No.: 2037**

- 4.1. When it is determined to be impractical to develop a fully generic specification, a brand name, make, or manufacturer may be used in this Solicitation solely to describe the general style, type, character, and quality of the goods desired.
- 4.2. Unless expressly stated otherwise in the Solicitation Documents, the identification of a specific brand name, make, or manufacturer does not restrict Offerors to offering only the brand specified. Offerors may offer an equivalent product, provided the City of Alexandria, in its sole discretion, determines that the proposed product is equal in quality, workmanship, performance, economy of operation, and suitability for the intended purpose.
- 4.3. When a brand name or equivalent specification is used, the Solicitation Documents may identify salient characteristics that an offered equivalent must meet. It is the Offeror's responsibility to clearly demonstrate, through descriptive literature, technical data, samples (if required), or other information requested in the Solicitation Documents, that the proposed product meets or exceeds all stated salient characteristics.
- 4.4. The City shall be the sole judge of equivalency. Failure to provide sufficient information to allow the City to determine equivalency may result in the Solicitation Response being deemed nonresponsive.
- 4.5. When brand names or manufacturers are specified, and one or more of those identified are known to be Virginia-based brands or manufacturers, those known to be Virginian shall be listed prior to non-Virginia brands or manufacturers, in accordance with applicable law.

5. Choice of Law; Venue

This Contract is governed by the applicable provisions of the Alexandria City Code and the laws of the Commonwealth of Virginia. Any actions arising out of this Contract must only be brought in the Circuit Court for the City of Alexandria, Virginia.

6. Claims and Disputes

- 6.1. Claims. Contractual claims shall be submitted in writing not later than sixty (60) calendar days after the date of the final payment, provided however, that any claim not expressly reserved by the Contractor at the time of final payment, shall be deemed to be forever waived and released. No claim shall be considered by the City (and will be deemed to have been waived), unless the Contractor gives written notice of an intention to file such a claim at the time of the occurrence of the event giving rise to the claim or at the beginning of the work upon which the claim is based. Written notice of the Contractor's intention to file a claim shall not be sufficient unless Contractor complies with each of the following:
 - 6.1.1 The Contractor shall, within five (5) business days after the occurrence of the event giving rise to such claim or the beginning of the work upon which the claim is based, deliver to the Purchasing Agent and the Contracting Officer's Technical Representative written notice specifying that the Contractor has sustained or is sustaining injury, and detailing the basis of the claim against the City.
 - 6.1.2 Within twenty (20) business days after delivering such notice, the Contractor shall deliver to the Purchasing Agent and the Contracting



**City of Alexandria
Request for Proposal
RFP No.: 2037**

Officer's Technical Representative a sworn affidavit incorporating an itemized breakdown of the nature and amounts of any damages it has incurred or is incurring. This itemized breakdown shall be made to the fullest extent possible; otherwise the claim shall be deemed to be waived.

- 6.1.3 The Purchasing Agent or its designee shall make a determination of the claim within fifteen (15) business days after receipt of the itemized breakdown described in subparagraph 2. above, which decision shall be the final determination of the City.

- 6.2. Continuation of Work. The filing of a claim by the Contractor does not relieve the Contractor from their contractual duties relevant to the unaffected portion of the Work. The Contractor shall follow the City's direction concerning the Work, both under claim and unaffected.
- 6.3. Claims against City Officials. The Contractor shall make no claim whatsoever against any elected official, appointed official, authorized representative or employee of the City for, or on account of, anything done or omitted to be done in connection with this Contract.
- 6.4. Disputes. Disputes shall be resolved in accordance with Sections 3-3-107 and 3-3-108 of the Code of the City of Alexandria, as it may be amended from time to time.

7. Claims for Damages

- 7.1. The risk of loss will be on the Contractor until completion and acceptance and after any rejection, unless loss results from the negligence of the City.
- 7.2. Should a party to this Contract suffer injury or damage to person or property because of any act or omission of Contractor or any of their employees, subcontractors, agents or others for whose acts the Contractor is legally liable, a claim for damages must be made in writing within a reasonable time after the first observance of such injury or damage. The liability for such actions is borne by the Contractor.
- 7.3. Should damage to person or property result from an act of omission, accident, or third party, the Contractor must promptly notify the City of the incident and pursue a claim for compensation against the appropriate insurance of the third party or Contractor. This does not include damages related to force majeure.

8. Code Compliance

- 8.1. The Contractor must meet all applicable federal, EPA, OSHA and MDE guidelines for the services provided under this Contract. The Contractor's work must conform to all applicable manufacturers Specifications, in addition to any applicable federal, state, City, and other prevailing codes, laws, rules and regulations governing the Scope of Work.
- 8.2. The Contractor must save the City from all damages, penalties, suits, judgments, and/or accidents which may occur from not following the applicable codes, laws, rules and regulations.



9. Commercial Warranties

The Contractor agrees that the supplies or services furnished under this Contract must be covered by the most favorable commercial warranties the Contractor gives to any customer for such supplies or services, and that the rights and remedies provided herein are in addition to and do not limit any rights afforded to the City by any other condition of this Contract.

10. Compliance with Applicable Law

- 10.1. Contractors are expected to be familiar with and comply with all federal, state, and local laws, ordinances, codes, and regulations that may in any way affect the service offered. Ignorance on the part of the Contractor will in no way relieve it from responsibility for compliance.
- 10.2. The Bidder/Proposer hereby represents and warrants that:
 - 10.2.1 It is qualified to do business in the Commonwealth of Virginia and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
 - 10.2.2 It is not in arrears with respect to payment of any monies due and owing the Commonwealth of Virginia, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it must not become so in arrears during the term of this Contract;
 - 10.2.3 It must comply with Code of Virginia §40.1-29 and City of Alexandria Code 11-4.6 regarding non-payment of wages;
 - 10.2.4 It must comply with all federal, state, and local laws, regulations and ordinances applicable to its activities and obligations under this Contract; and
 - 10.2.5 It must obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

11. Compliance with the Bid or Proposal

- 11.1. It is the responsibility of each Bidder/Proposer to thoroughly examine the documents and other related data identified in the solicitation before submitting a Bid/Proposal in response to the solicitation.
- 11.2. Bidder/Proposer must ensure that their submission complies with all the requirements of the solicitation. Any submission that is not in strict compliance with all provisions of the solicitation may be deemed non-responsive and disqualified.

12. Compliance with the Immigration Reform and Control Act of 1986

During the performance of any contracted project, the Contractor must not knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986, as amended.

13. Conditional Bids or Proposals



Bidders/Proposers are cautioned not to take exception to the solicitation requirements. Taking exception to any solicitation requirements may result in a conditional Bid/Proposal. A conditional Bid/Proposal may be rejected in whole or in part.

14. Contract Term Deviations

Any deviation from the terms of the Contract must be submitted for contractual action to the following Contracting Officer (CO) for consideration:

Jordan Howar, Contract Specialist III

Department of Finance / Purchasing Division

100 North Pitt Street, Suite No. 301

Alexandria, VA 22314

Phone: 703.746.3997

Email: jordan.howar@alexandriava.gov

15. Copyright/License for Drawings and Specifications

The City must obtain ownership of all Copyrights/Licenses for all documents submitted by the Contractor as required by this Contract, including those documents prepared by consultants retained by the Contractor for the Project. All fees associated with the aforementioned must be included in the Contractors' cost proposal for the Project. The City's ownership of all Copyrights/Licenses of submitted documents includes all Common Law, Statutory, and other reserved rights to include, but not limited to the following:

15.1. Contractor's Use of Documents:

The Contractor may reuse documents prepared and submitted pursuant to this Contract in its practice, but only in their separate constituent parts and not as a whole; and

15.2. Royalties, Patents, and Copyrights:

The Contractor must pay all royalties license fees which may be due on the inclusion of any patented or copyrighted materials, methods, or systems selected by the Contractor or their consultants and incorporated in the design documents for this project. The Contractor must indemnify and hold the City, the construction contractor and sub-contractors harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection.

16. Drug-Free Workplace

16.1. Definition:

For the purposes of this Clause, "drug-free workplace" means a site for the performance of work done in connection with this Contract awarded to Contractor, in accordance with Chapter 3, Title 3, of the Code of the City of Alexandria, the employees of which are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of this Contract.

16.2. Drug-Free Workplace:



During the performance of this Contract, the Contractor agrees to:

- 16.2.1 Provide a drug-free workplace for the Contractor's employees;
- 16.2.2 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;
- 16.2.3 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
- 16.2.4 Include the provisions of the foregoing Clauses in every subcontract or Purchase Order over ten thousand dollars (\$10,000), so that the provisions will be binding upon each subcontractor or supplier.

17. Entire Agreement

The Contract Documents constitute the entire agreement among the parties pertaining to the contracted services and supersede all prior and contemporaneous agreements and understandings of the parties in connection therewith.

18. Equal Employment Opportunity

18.1. Discrimination Prohibited:

The Contractor hereby agrees not to discriminate against any employee or applicant for employment on account of race, color, sex, religion, ancestry, national origin, marital status, age, sexual orientation, disability, when such person is a qualified person with a 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.

18.2. Human Rights:

The Contractor hereby agrees to comply with the City's Human Rights Code found in Title 12, Chapter 4 of the City Code.

18.3. EOE Statement:

The Contractor hereby agrees to include in all solicitations or advertisements for employees placed by or on behalf of the Contractor the words "Equal Opportunity Employer" or a symbol approved by the Commission meaning the same.

18.4. Notice to Labor Unions:

The Contractor hereby agrees to notify each labor organization or representative of employees with which the Contractor is bound by a collective bargaining agreement or other contract of the Contractor's obligations pursuant to this equal employment opportunity Clause.



18.5. Reports to the City:

The Contractor hereby agrees to submit to the City Manager and the City's Human Rights Administrator, upon request, no more frequently than annually, regular equal employment opportunity reports on a form to be prescribed by the City's Human Rights Administrator with the approval of the City Manager, except that the Administrator may request more frequent special reports of particular employers provided the Commission has found such employers to have violated any provision of Chapter 4 of Title 12 of the Alexandria City Code.

18.6. Compliance with Federal Requirements Sufficient:

Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation must be deemed sufficient for the purpose of meeting the requirements of this Clause.

18.7. Accommodation of Disabled Workers:

The Contractor hereby agrees to make reasonable accommodation to the known physical or mental limitations of an otherwise qualified person with a disability who is an applicant or employee, unless the Contractor can demonstrate that the accommodation would impose an undue hardship on the operation of its business.

18.8. Reasonable Accommodations:

For the purposes of this Clause, reasonable accommodation may include: (i) making facilities used by employees readily accessible to and usable by persons with a disability; and (ii) job restructuring, part-time or modified work schedules, the acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

18.9. Undue Hardship:

In determining whether an accommodation would impose an undue hardship on the operation of the Contractor's business, factors to be considered include but are not limited to the following:

18.9.1 The overall size of the Contractor's business with respect to the number of employees, the number and type of facilities, and the size of the budget;

18.9.2 The Contractor's type of operation, including the composition and structure of the Contractor's work force; and

18.9.3 The nature and cost of the accommodation needed.

18.10. Refusal to Employ:

The Contractor may not deny any employment opportunity to a qualified person with a disability who is an employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

18.11. Subcontracts:

The Contractor hereby agrees to include the provisions in subsections **Part D, Clause 21 Federal, State, and Local Taxes**, inclusively, in every subcontract so that such provisions will be binding upon each Subcontractor.

18.12. Non-Compliance:



In the event of the Contractor's noncompliance with any provision of this equal employment opportunity Clause, upon a finding of such noncompliance by the City's Human Rights Commission and certification of such finding by the City Manager, the City Council of the City of Alexandria may terminate or suspend or not renew, in whole or in part, this Contract.

19. Ethics in Public Contracting

The provisions of law set forth in Article IV of the Virginia Public Procurement Act, entitled "Ethics in Public Contracting," Va. (Code §2.2-4367 et seq.), Alexandria City Code § 3-3-121 et seq.; the State and Local Government Conflict of Interest Act, Code of Virginia § 2.2-3100 et seq.; the Virginia Governmental Frauds Act, Code of Virginia § 18.2-498.1 et seq.; and Articles 2 and 3 of Chapter 10, Title 18.2 of the Code of Virginia, all as the same may be amended from time to time and are incorporated herein by reference. The Contractor must incorporate this Clause in its contracts with each subcontractor.

20. Federal Disaster Assistance and FEMA Compliance (When applicable)

The City will identify in the Solicitation or Contract Documents when federal disaster assistance funding applies.

- 20.1. When any portion of the Contract is funded, reimbursed, or otherwise supported by federal disaster assistance funds, including funds provided by the Federal Emergency Management Agency ("FEMA"), the Contractor shall comply with all applicable federal laws, regulations, and guidance governing the use of such funds, including but not limited to 2 C.F.R. Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) and applicable FEMA guidance.
- 20.2. To the extent that federal requirements applicable to FEMA-funded work conflict with provisions of the Virginia Public Procurement Act or this Contract, such federal requirements shall apply only to the extent required as a condition of receiving federal assistance, and only after the City has made any determination required by law that acceptance of such funds is in the public interest.
- 20.3. The Contractor acknowledges that compliance with applicable federal requirements is a condition of payment for FEMA-funded work and agrees to cooperate with the City, FEMA, the Commonwealth of Virginia, and any authorized auditors or inspectors in connection with audits, reviews, or documentation requests related to such funding.
- 20.4. Nothing in this section shall be construed to expand the scope of the Contract, authorize work outside the Contract, or waive any rights, remedies, or protections otherwise available to the City under this Contract or applicable law.

21. Federal, State, and Local Taxes

- 21.1. Except as may be otherwise provided in the Contract resulting from this solicitation, the Contract price includes all applicable federal, state, and local taxes and duties. The Contractor, and not the City, will be responsible for payment of all taxes, including sales and use taxes that are imposed on the Contractor. The Contractor understands that the City is exempt from taxes and that the Contractor is not



entitled to the benefit of, and cannot claim exemption under, any tax exemption to which the City is entitled.

- 21.2. Nevertheless, with respect to any Federal excise tax or duty on the transactions or property covered by this Contract, except as provided in **Part D, Clause 21.3** (below), if a statute, court decision, written ruling, or regulation takes effect after the Contract Date, and:
 - 21.2.1 Results in the Contractor being required to pay or bear the burden of any such Federal excise tax or duty or increase in the rate thereof which would not otherwise have been payable on such transactions or property as of the Contract date, the Contract price must be increased by the amount of such tax or duty or rate increase actually paid by the Contractor, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the Contract price as a contingency reserve or otherwise; or
 - 21.2.2 Results in the Contractor not being required to pay any such Federal excise tax or duty which would otherwise have been payable on such transactions or property as of the Contract date or which was the basis of an increase in the Contract price, the Contract price must be decreased by the amount of the relief refund, or draw-back, or that amount must be paid to the City. The Contract price must be similarly decreased if the Contractor, through its fault or negligence or its failure to follow instructions of the City, is required to pay or bear the burden of, or does not obtain a refund or drawback of, any such Federal excise tax or duty.
- 21.3. **Part D, Clause 21.2** inclusively (above) must not be applicable to social security taxes or to any other employment tax.
- 21.4. No adjustment of less than one hundred dollars (\$100) must be made in the Contract price pursuant to **Part D, Clause 21.2**, inclusively (above).
- 21.5. As used in **Part D, Clause 21.2**, inclusively (above), the term "Contract Date" means the date set for Bid/Proposal opening, or if this is a negotiated contract, the Contract Date. As to additional supplies or services procured by modification to this Contract, the term "Contract Date" means the date of such modification.
- 21.6. The Contractor must promptly notify the City of matters which will result in either an increase or decrease in the Contract price and must take action with respect thereto as directed by the City.

22. Felony Convictions

- 22.1. In accordance with § 2.2-4311 of the Code of Virginia, the Contractor certifies that neither the Contractor nor any of its principals has been convicted of a felony under the laws of the Commonwealth of Virginia or of the United States within the past five (5) years.
- 22.2. If the Contractor or any of its principals has been convicted of a felony within the past five (5) years, the Contractor must disclose such conviction to the City prior to award of the Contract.



- 22.3. Failure to make the required certification or disclosure constitutes a material misrepresentation and may result in termination of the Contract or other remedies available to the City.

23. Force Majeure

Except for defaults of subcontractors at any tier, the Contractor must not be liable for any excess costs if the failure to perform this Contract arises from causes beyond the control and without the fault or negligence of the Contractor. Excusable causes include, but are not limited to, acts of God or of the public enemy and acts of the federal or state government in either their sovereign or contractual capacities. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either, the Contractor must not be liable for any excess costs for failure to perform, unless the subcontracted goods or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

24. Freedom of Information

All records submitted to the City in connection with this Contract are subject to disclosure in accordance with the Virginia Freedom of Information Act, § 2.2-3700 et seq. of the Code of Virginia, as amended. Submission of a Response or other materials to the City does not create a presumption of confidentiality.

If the Contractor believes that any portion of its submission is exempt from disclosure under FOIA, the Contractor must clearly identify the specific material claimed to be exempt and cite the applicable statutory exemption at the time of submission. The City retains sole discretion to determine whether any material is subject to disclosure under FOIA and shall make such determinations in accordance with applicable law.

25. Indemnification

- 25.1. To the extent permitted by law, the Contractor must indemnify and save the City harmless from and against all actions, liability, claims, suits, damages, costs, statutory penalties, or expenses or any kind which may be brought or made against the City, its agents and employees, or which the City may pay or incur by reason of or in any manner resulting from injury, loss or damage to person or property and caused by the Contractor's, or Subcontractor's, willful or negligent performance of or failure to perform any of its obligations under the terms of this Contract.
- 25.2. The indemnification obligation must not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under workmen's compensation acts, disability benefit acts or other employee benefits acts with respect to any and all claims against the City or any of their agents or employees or any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

26. Independent Pricing

The Bidder/Offeror certifies that:



26.1. The prices in this offer have been arrived at independently without, for the purpose of restricting competition, any consultation, communication or agreement with any other Bidder/Proposer or competitor relating to these prices;

26.1.1 The prices in this offer have not been nor will be disclosed knowingly directly or indirectly to any other offeror or competitor before Bid/Proposal opening or Contract award unless otherwise required by law; and

26.1.2 No attempt has been made or will be made by the offeror to induce any other concern or individual to submit or not to submit an offer for the purpose of restricting competition.

27. Inspection of Supplies

Acceptance must be conclusive except for latent defects, fraud, or as otherwise provided in the Contract.

28. Insurance Requirements

28.1. The Contractor shall be required to maintain, in force, insurance as described below and approved by the City for the duration of the Contract. Insurance coverage shall be Contract specific or occurrence-based policy. The Contractor's Insurance Coverage shall be primary and non-contributory for any claims related to this Contract. **Claims Made policies are not acceptable.** Proof of acceptable insurance shall be required prior to Contract award and shall be maintained in full force for duration of Contract. The Contractor shall provide a complete copy of any policy including any endorsements and related documents via PDF if requested. The policies shall stipulate that the insurance coverage shall not be changed or canceled unless the insured and the Contracting Officer are notified in writing. The Contractor shall indemnify, and hold harmless the City, for any and all liability, claims, expenses, lawsuits, etc., arising from this Contract.

28.2. The Certificate of Insurance (COI) must have the City of Alexandria, VA named as an additional insured for Commercial General Liability and Automobile Liability Coverage. Additionally, the Certificate Holder section of the COI should read as follows:

City of Alexandria
C/O Purchasing Division
100 North Pitt Street
Suite Number 301
Alexandria, VA 22314

Insurance policies must be acceptable to the Contracting Officer and placed with companies that have an A.M. Best minimum Rating of A, Class VII or better. Insurers must be authorized to do business under the laws of the Commonwealth of Virginia. The insurance requirements for this procurement are as follows:

28.3. Workers' Compensation and Employers' Liability Insurance:

At a minimum, the Contractor must carry the Statutory Limits of Workers' Compensation Insurance required under the laws of the Commonwealth of Virginia, and Employer's Liability Insurance with limits of at least five hundred thousand dollars (\$500,000) per accident for Bodily Injury by



**City of Alexandria
Request for Proposal
RFP No.: 2037**

Accident and five hundred thousand dollars (\$500,000) policy limit/five hundred thousand dollars (\$500,000) each employee for Bodily Injury by Disease.

28.4. Automobile Liability Insurance:

The Contractor must purchase and maintain during the life of this Contract, the proper amount of comprehensive automobile liability insurance in the amount of no less than one million dollars (\$1,000,000) per accident for each owned, non-owned, and hired vehicle that is used in any way to complete Work, as required under the laws of the Commonwealth of Virginia whether vehicle is registered in Virginia or not.

28.5. Commercial General Liability Requirements:

The Contractor must purchase and maintain during the life of this Contract the following Commercial General Liability insurance coverage to include all Subcontractors with limits no less than:

- A. Two million dollars (\$2,000,000) Annual Aggregate;
- B. One million dollars (\$1,000,000) Per Occurrence;
- C. One million dollars (\$1,000,000) Products and Completed Operations; and
- D. One million dollars (\$1,000,000) Personal and Advertising Injury.

28.6. Umbrella Liability Coverage: Two million dollars (\$2,000,000) per Occurrence.

28.7. Subcontractor Insurance Requirements:

The Contractor must also require all first-tier Subcontractors who will perform work under this Contract to procure and maintain Virginia statutory limits of Workers' Compensation insurance. The Contractor must furnish the Contracting Officer's Representative with satisfactory evidence of the Subcontractors' insurance PRIOR to the Subcontractor performing and work.

28.8. Cyber Liability Coverage:

The Contractor shall purchase and maintain during the life of this Contract the following Cyber Liability insurance coverage to include all subcontractors with limits no less than:

- a) \$5,000,000.00 Annual Aggregate; and
- b) \$2,000,000.00 Per Occurrence.

Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by the Contractor in this agreement and shall include but not be limited to the following: claims involving invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion, and network security. This policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

29. Interpretation of Contract: Notice of Ambiguities



**City of Alexandria
Request for Proposal
RFP No.: 2037**

- 29.1. The written Contract that results from this solicitation, and any and all identified writings or documents incorporated by reference herein or physically attached hereto, constitute the parties' complete agreement and no other prior or contemporaneous agreements either written or oral must be considered to change, modify or contradict it. Any ambiguity in the Contract will not be strictly construed against the drafter of the Contract language but must be resolved by applying the most reasonable interpretation under the circumstances, giving full consideration to the intentions of the parties at the time of contracting.
- 29.2. It must be the obligation of the Contractor to exercise due diligence to discover and to bring to the attention of the COTR at the earliest possible time any ambiguities, discrepancies, inconsistencies, or conflicts in or between the specifications and the applicable drawings or other documents incorporated by reference herein. Failure to comply with such obligation must be deemed a waiver and release of any and all claims for extra costs or delays arising out of such ambiguities, discrepancies, inconsistencies and conflicts.

30. Non-Waiver

The failure of the Contractor or the City to exercise any right, power or option arising under this Contract or to insist upon strict compliance with the terms of this Contract, does not constitute a waiver of the terms and conditions of this Contract with respect to any other or subsequent breach thereof or a waiver by the Contractor or City of their rights at any time thereafter to require exact and strict compliance with all the terms thereof.

31. Notice

31.1. Written Notice:

All Notices required by the terms of this Contract must be in writing. For purposes of this Clause "writing" must include facsimile transmissions and electronic mail, provided that reasonable care is used to ensure that the Notice is received by its intended recipient.

31.2. Notice to Contractor:

Written notice may be served on the Contractor by mail, courier, facsimile transmission or electronic mail to the Contractor's office at the project or to the business address of the Contractor as stated in the Contract Documents. If delivered in person to the Contractor, written notice must be served on the Contractor's foreman or superintendent for the Project, or any officer or director of the Contractor.

31.3. Notice to City:

Written notice may be served on the City by mail, courier, facsimile transmission or electronic mail to the Contracting Officer's Technical Representative, with a copy to the Contracting Officer.

32. Oral Modification

No oral statements of any person whatsoever must, in any manner or degree, modify or otherwise affect the terms of the Contract.



33. Pre-Bid / Pre-Proposal Conferences

33.1. If a Pre-Bid/Pre-Proposal Conference is held, the date and time will be specified on **Part A – Solicitation General Information** in the Procurement Schedule. During this meeting, the requirements of this Solicitation will be reviewed and discussed.

If Mandatory: Prospective Respondents must attend. Those who do not attend will be ineligible to submit a Response. Any Response submitted by a non-attendee will be deemed non-responsive.

If Optional: Prospective Respondents are encouraged to attend, but attendance is not required to submit a Response.

Any changes to this Solicitation discussed during the conference or site visit are not binding unless included in a written addendum issued by the City.

Any substantive questions regarding the Solicitation must be submitted in writing in accordance with **Part A – Solicitation General Information** and submitted on or before the question deadline.

Respondents are responsible for reviewing all information related to this Solicitation, including information presented at the conference. By submitting a Bid or Proposal, the Respondent certifies that it is sufficiently familiar with the facilities, work requirements, and all conditions that may affect contract performance.

34. Protests and Appeals

Information regarding protests and appeals is provided in Article G, Chapter 3, Title 3 of the Alexandria City Code.

35. Prompt Payment

Payments under this Contract shall be made in accordance with the Virginia Prompt Payment Act, § 2.2-4347 et seq. of the Code of Virginia, as amended.

36. Proprietary and Confidential Information

Any records submitted to the City of Alexandria, VA (City) are available for inspection and copying upon request by any person or entity pursuant to the Virginia Freedom of Information Act. Any records the vendor believes to be exempt from disclosure must be specifically identified by the vendor on the submitted documents. The vendor may designate documents as trade secrets or proprietary information exempt from disclosure when submitting documents; however, designating the entire submission, prices, or any portion of the submission that does not contain trade secrets or proprietary information is prohibited by Virginia law. The vendor agrees to indemnify and hold harmless the City for loss, cost or expense resulting in whole or in part from any such identification or any denial of inspection based thereon.

37. Royalties and Patents

The Contract sum includes all royalties and costs arising from patents, trademarks, and copyrights in any way involved in the work. Whenever the Contractor is required or desires to use any design, device, material or process covered by letters of patent or copyright, the Contractor must indemnify and hold harmless the City and the architect, their officers,



agents and employees from any and all claims for infringement by reason of the use of any such patented design, device, tool, material, equipment, or process to be performed under this Contract, and must indemnify the City and the architect, their officers, agents, authorized representatives, and employees for any costs, expenses and damages which may be incurred by reason of any such infringement at any time during the prosecution and after the completion of services.

38. Samples

38.1. Samples:

Any samples of goods required by the City for inspection and testing must be furnished by the Contractor at the Contractor's expense. The samples furnished must be identical in all aspects to the goods specified in the Contract.

38.2. Return of Samples:

If not destroyed by testing, a sample provided to the City may be returned to the Contractor, at the Contractor's expense, if the Contractor requested the return of the sample at the time the sample was furnished to the City.

39. Severability

In the event any portion of this solicitation/Contract is found to be unconstitutional, illegal, null or void, by a court of competent jurisdiction, it is the intent of the City to sever only the invalid portion or provision, and that the remainder of the solicitation/Contract must be enforceable and valid, unless deletion of the invalid portion would defeat the clear purpose of the solicitation/Contract, or unless deletion of the invalid portion would produce a result inconsistent with the purpose and intent of the City in entering into this solicitation/Contract.

40. Small-, Minority-, and Women-Owned Business Outreach

The City is committed to increasing the opportunity for utilization of small, minority, and women-owned businesses in all aspects of procurement and has adopted a policy for increasing that participation. This policy is set forth in Sections 3-3-111 and 12-4-6 of the Code of the City of Alexandria. The City reserves the right to make multiple awards if the Purchasing Agent determines that such awards are in the best interest of the City and its program.

41. Specific Environmental Obligations

41.1. Buy Recycled Policy

The City prefers to buy products made with recovered materials whenever they meet performance standards, can be purchased competitively, and are available at a reasonable price within a reasonable period of time. The Purchasing Agent reserves the right to determine the price and the period of time as reasonable. All Offerors are required to identify in their Solicitation response all recycled products they are offering.

42. Successors, Assigns, and Legal Representatives

This Contract must not be assigned, sublet or transferred, in whole or in part, by operation of law or otherwise, by either of the parties hereto except with the prior written consent of



the other. Unless specifically stated to the contrary in any written consent to an assignment, no assignment must operate to release or discharge the assignor from any duty or responsibility under this Contract.

43. Survival

Any provision of the Contract that contemplates performance subsequent to any termination or expiration of the Contract must survive any termination or expiration of the Contract and must remain in full force and effect according to their terms.

44. Termination

44.1. Non-Appropriation of Funds:

This Contract is conditioned upon an annual appropriation made by the City Council of the City of Alexandria of funds sufficient to pay the compensation due the Contractor under this Contract. If such an appropriation is not made in any fiscal year, and the City lacks funds from other sources to pay the compensation due under this Contract, the City will be entitled, at the beginning of or during such fiscal year, to terminate this Contract. In that event, the City will not be obligated to make any payments under this Contract beyond the amount properly appropriated for Contract payments in the immediately prior fiscal year. The City will provide the Contractor written notice of termination of this Contract due to the non-appropriation of funds at least fifteen (15) calendar days before the effective date of the termination. However, the City's failure to provide such notice will not extend this Contract into a fiscal year in which funds for Contract payments have not been appropriated.

44.2. Termination for Convenience:

The City must have the right to terminate this Contract at its own convenience for any reason by giving fifteen (15) calendar days prior written notice of termination to the Contractor. In such event, the Contractor must be paid an amount equal to the lesser of:

44.2.1 The actual cost of any work, labor or materials actually performed or in place and the actual cost of any labor, equipment or materials ordered in good faith which could not be canceled, less the salvage value thereof, plus ten percent (10%), or

44.2.2 The pro rata percentage of completion based upon the Schedule of Values plus the actual cost of any labor, equipment or materials ordered in good faith which could not be canceled, less the salvage value thereof.

44.3. Subcontracts:

Each subcontract must contain a similar termination provision for the benefit of the Contractor and the City. The Contractor must not be entitled to receive anticipated profits on unperformed portions of the work. The City must have the right to employ an independent accounting firm to verify any amounts claimed by the Contractor to be due under this paragraph. The City must have the right of audit (and Contractor must have the obligations) stated in **Part D, Clause 3 Audit and Price Adjustment**, insofar as they pertain to amounts claimed to be due hereunder.

44.4. Termination for Default:



**City of Alexandria
Request for Proposal
RFP No.: 2037**

44.4.1 The parties agree that upon the occurrence of any of the following circumstances, then the City, without prejudice to any other rights or remedies it may have hereunder, must have the right to declare the Contractor in default in whole or in part. These circumstances include the following:

- If the Contractor fails to begin services when required to do so;
- If, at any time during the progress of the project, the City determines that the Contractor is not prosecuting the project with reasonable speed and diligence, or is delaying the project unreasonably or unnecessarily;
- If the force of workmen or the quality or quantity of material furnished is not sufficient to ensure completion of the services within the Contract Period and in accordance with the Contract Documents;
- If the Contractor fails to make prompt payments to suppliers or to subcontractors for the work performed in connection with this Contract;
- If the Contractor fails in any manner of substance to observe the provisions of this Contract; or
- If any of the services, machinery, or equipment is defective and is not replaced as herein provided.

44.4.2 In the event the City elects to declare the Contractor in default, the City must notify the Contractor and its sureties by written notice describing the nature of the default and providing the Contractor a right to cure such default within ten (10) calendar days after the date of the notice, or within such longer period as the City, in its sole and absolute discretion, may prescribe. In the event the default is not cured within the time period specified by the City, the City must have the right to take any actions necessary to correct or complete the work, provided however, that if the Contractor is declared to be in default under this paragraph more than twice during the course of performance of this Contract, then upon the third or subsequent such default, the City may proceed to terminate the Contract without further notice to the Contractor or the surety, whether such prior default(s) must have been cured.

44.4.3 The parties further agree that upon the occurrence of any of the following circumstances, then, without prejudice to any other rights or remedies the City may have, the City must have the right to terminate this Contract immediately, upon written notice to the Contractor. These circumstances include the following:

- If legal proceedings have been instituted by others than the City in such manner as to interfere with the progress of the work and to potentially subject the City to the peril of litigation or outside claims;
- If the Contractor is adjudicated bankrupt or makes an assignment for the benefit of creditors;
- If in any proceeding instituted by or against the Contractor, an order is made or entered granting an extension of the time of payment, composition, adjustment, modification, settlement or satisfaction of its debts or liabilities;
- If a receiver or trustee is appointed for the Contractor or the Contractor's property;



- If this Contract or any part hereof is sublet without the prior written consent of the City;
- If this Contract or any rights, monies, or claims hereunder are assigned in whole or in part by the Contractor, otherwise than as herein specified; or
- If the work to be done under this Contract is abandoned.

44.4.4 Immediately, but no later than three (3) business days after receipt of notice of termination under **Part D, Clause 44.4.2** (above), the Contractor must discontinue all further operations in connection with the project, or such specified part thereof, and must immediately vacate the site, or such specified part thereof, leaving untouched all plant, materials, equipment, tools, supplies and job site records.

44.4.5 If the Contractor defaults or neglects to perform the work in accordance with the Contract Documents and fails within a three (3) business days period after receipt of written notice from the City to commence and continue correction of such default or neglect, the City may, without prejudice to the other rights the City may have, correct such defaults or deficiencies by such means and in such manner, by contract with or without public letting, or otherwise as it may deem advisable, utilizing for such purpose without additional cost to the City such of the Contractor's plant, materials, equipment, tools and supplies remaining on the site, and also such subcontractors as it may deem advisable and may take any or all of the following actions:

- Delete part or parts of the work from this Contract and contract to have it performed by others;
- Supplement the Contractor's workforce;
- Withhold payments due the Contractor and use such payments to satisfy any claims for monies owed by the Contractor in connection with the project;
- Replace or repair any defective Work, machinery, or equipment; or
- Terminate the Contract.

44.4.6 The Contractor and its sureties must bear all costs associated with completing or correcting the work, including without limitation, the cost of re-letting, the amount of any liquidated damages, and any and all costs incurred in connection with the actions listed in this section. Any costs incurred in connection with completing or correcting the work must be deducted from the amounts then or thereafter due the Contractor. In the event such amounts are not sufficient to cover the costs incurred in connection with completing or correcting the work, the Contractor and its surety must pay to the City the amount of any deficiency.

45. Third-Part Beneficiary

It is specifically agreed between the parties executing this Contract that it is not intended by any of the provisions of this Contract to create in the public or any member thereof, third party beneficiary status in connection with the performance of the obligations herein without the written consent of the City and notwithstanding its concurrence in or approval



of the award of any contract or subcontract or the solicitation thereof in fulfilling the obligations of the Contract.

46. Transportation Costs and Other Fees or Expenses

46.1. Transportation Costs Included in Contract Sum:

Unless expressly included and itemized in the Contract, no charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or any other related transportation costs must be paid by the City.

46.2. FOB Shipments:

The Contractor must strictly follow Contract requirements regarding Free on Board (FOB) freight terms and routing instructions. If no mention of freight terms is stated, then the Contractor must deliver goods FOB destination, freight prepaid and allowed. The City may permit use of an alternate carrier, at no additional cost to the City, with the COTR's advance written authorization.

46.3. Damage to Goods:

When approved in advance in writing by the City, the Contractor may deliver the goods FOB place of shipment. For FOB place of shipment transactions, should any goods shipped under the Contract be received by the City in a damaged condition and any related freight loss and damage claim filed against the carrier(s) be wholly or partially declined by the carrier(s), with the inference that the damage was the result of the act of the shipper, such as inadequate packaging or loading or some inherent defect in the goods, the Contractor, at the City's request and at the Contractor's own expense, must assist the City in establishing carrier liability by supplying evidence that the goods were properly constructed, manufactured, packaged, and secured to withstand normal transportation conditions.