# PRE-PROPOSAL CONFERENCE

RFP2000002200

Title Searches and Settlement Services

A mandatory pre-proposal conference will be held at 9:00 A.M. on March 31, 2017, at the Fairfax County Government Center, 12000 Government Center Parkway, Conference Room 9/10, Fairfax Virginia. The purpose of this conference is to allow potential offerors an opportunity to present questions and obtain clarification relative to any facet of this solicitation.

Due to the importance of all offerors having a clear understanding of the specifications/scope of work and requirements of this solicitation, attendance at this conference will be a prerequisite for submitting a proposal. Proposals will only be accepted from those offerors who are represented at this preproposal conference. Attendance at the conference will be evidenced by the representative's signature on the attendance roster. Bring a copy of the solicitation with you. Any changes resulting from this conference will be issued in a written addendum to the solicitation.

All questions pertaining to this RFP should be submitted in writing to the contract specialist at cindy.joy@fairfaxcounty.gov. and or dpsmteam2@fairfaxcounty.gov prior to the pre-proposal conference

# FAIRFAX COUNTY

**DEPARTMENT OF PROCUREMENT AND MANAGEMENT**
12000 GOVERNMENT CENTER PARKWAY, SUITE 427
FAIRFAX, VIRGINIA 22035-0013

www.fairfaxcounty.gov/dpmm

**V I R G I N I A**

TELEPHONE: (703) 324-3201 FAX: (703) 324-3228 TTY: 711


| | | |
|---|---|---|
| **ISSUE DATE**: March 15, 2017 | **REQUEST FOR PROPOSAL NUMBER:** 2000002200 | **TITLE:** Title Searches and Settlement Services |
| **DEPARTMENT:** Public Works and Enviromental Services | **DUE DATE/TIME:** April 13, 2017 at 11:00 a.m. | **CONTRACT SPECIALIST :** Cindy Joy, CPPB 703-324-3276, cindy.joy@fairfaxcounty.gov |

**Proposals** - In accordance with the following and in compliance with all terms and conditions, unless otherwise noted, the undersigned offers and agrees, if the proposal is accepted, to furnish items or services for which prices are quoted, delivered or furnished to designated points within the time specified. It is understood and agreed that with respect to all terms and conditions accepted by Fairfax County the items or services offered and accompanying attachments shall constitute a contract.

**Note**: Fairfax County does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment in the performance of its procurement activity.

**NAME AND ADDRESS OF FIRM:**

Telephone/Fax No.: _____

E-Mail Address: _____

Federal Employer Identification No or

Federal Social Security No.(Sole Proprietor) _____

Prompt Payment Discount: __% for payment within____days/net ____days

State Corporation Commission (SCC) Identification No. _____

**By signing this bid, Bidder certifies, acknowledges, understands, and agrees to be bound by the conditions set forth in the General Conditions and Instructions to Bidders as described in Appendix A, the Certification Regarding Ethics in Public Contracting set forth in Appendix B, and by any other relevant certifications set forth in Appendix B.**

**BUSINESS CLASSIFICATION – Described in Appendix B -** CHECK ONE: ☐ LARGE (Y) ☐ SMALL (B)

☐ MINORITY-OWNED SMALL (X) ☐ MINORITY OWNED LARGE (V) ☐ WOMEN-OWNED SMALL (C)

☐ WOMEN OWNED LARGE (A) ☐ NON PROFIT (9)

CHECK ONE: ☐ INDIVIDUAL ☐ PARTNERSHIP ☐ CORPORATION

State in which Incorporated: _____

_____ _____

Vendor Legally Authorized Signature — Date

_____ _____

Print Name and Title

Sealed proposals subject to terms and conditions of this Request for Proposal will be received by the Fairfax County Purchasing Agent at 12000 Government Center Parkway, Suite 427, Fairfax, Virginia 22035-0013 until the date/time specified above.

AN EQUAL OPPORTUNITY PURCHASING ORGANIZATION



# SPECIAL PROVISIONS

1. **SCOPE OF SERVICES:**

1.1. The purpose of this Request for Proposal is to solicit sealed proposals for the establishment of a contract or contracts through competitive negotiation for complete Title Searches, Title Insurance, and Comprehensive Settlement Services. These services will include, but will not be limited to sophisticated title insurance underwriting, title searches, document preparation, document filing and recording, escrow and settlement services in accordance with the terms and conditions of the Request for Proposal. The Fairfax County Redevelopment and Housing Authority, Fairfax County Park Authority, Fairfax-Falls Church Community Services Board, the Department of Public Works and Environmental Services — Land Acquisition Division, as well as various other departments may use this contract on an as needed basis.

1.2. PLEASE NOTE THAT THE COUNTY INTENDS TO AWARD MORE THAN ONE CONTRACT TO QUALIFIED OFFERORS UNDER THIS REQUEST FOR PROPOSAL. A PROPOSAL FOR FEWER THAN ALL SERVICES DOES NOT EXCLUDE AN OFFEROR FROM CONSIDERATION.

2. **PRE-PROPOSAL CONFERENCE:**

2.1. A mandatory pre-proposal conference will be held on March 31, 2017 at 9:00 A.M. in the Fairfax County Government Center, Conference Center Room 9/10, 12000 Government Center Parkway, Room 9/10 Fairfax, Virginia. To request reasonable ADA accommodations, call the Department of Procurement and Material Management ADA representative at (703) 324-3201 or TTY 711. Please allow seven working days in advance of the event to make the necessary arrangements.

2.2. The purpose of the pre-proposal conference is to give potential offerors an opportunity to ask questions and to obtain clarification about any aspect of this Request for Proposal. Offerors may submit any questions pertaining to the RFP, in writing, prior to the pre-proposal conference to first Cindy Joy at, cindy.joy@fairfaxcounty.gov.

3. **CONTRACT PERIOD AND RENEWAL:**

3.1. This contract will begin on the date of award and terminate on July 31, 2022. Automatic contract renewals are prohibited. Contract renewals must be authorized by and coordinated through the County's Procurement Department. The County reserves the right to renew the contract one year at a time for five additional years.

3.2. The obligation of the County to pay compensation due the contractor under the contract or any other payment obligations under any contract awarded pursuant to this Request for Proposal is subject to appropriations by the Fairfax County Board of Supervisors to satisfy payment of such obligations. The County's obligations to make payments during subsequent fiscal years are dependent upon the same action. If such an appropriation is not made for any fiscal year, the contract shall terminate effective at the end of the fiscal year for which funds were appropriated and the County will not be obligated to make any payments under the contract beyond the amount appropriated for payment obligations under the contract. The County will provide the contractor with written notice of non-appropriation of funds within 30 calendar days after action is completed by the Board of Supervisors. However, the County's failure to provide such notice shall not extend the contract into a fiscal year in which sufficient funds have not been appropriated.

4. **BACKGROUND:**

4.1. Fairfax County and Political subdivisions therein acquire real property, including improvements, by purchase, exchange, condemnation, proffer, gift, lease, conveyance or otherwise. The usage of the various agencies are listed below:

## SPECIAL PROVISIONS

4.2. **Department of Public Works and Environmental Services - Land Acquisition Division**: The Land Acquisition Division (LAD) acquires land, land rights or right-of-way as required to implement capital projects (including public-private partnerships), oversees and conducts property analysis including land title research, appraisal or appraisal overview and conducts negotiations with land owners to acquire property rights through the use of all types of transfer processes including eminent domain.

a. Title Abstracts & Title Search Reports. Historically, LAD orders title reports estimated to be 50 – 100 per year with prior annual orders in excess of $100,000. Title searches required are a minimum 60-year search or to the source deed into the owner at the 60-year mark, whichever is longer for each report. Title report orders have included multiple properties to search, occasionally requiring 20 to 50 title reports, but multiple orders of this size are infrequent.

b. Title Insurance. The LAD purchases title insurance for properties acquired, including unimproved and improved parcels as well as tiered coverage for properties under construction. Title policies purchased by LAD have averaged up to five properties annually.

d. Escrow and Settlement Services. The LAD deposits funds in escrow, and requires settlement services, including title bring downs immediately prior to recordations. LAD requirements for settlement services have averaged up to five closings annually with land values generally ranging between $500,000 and $10,000,000.

4.3. **Housing and Community Development**: HCD has developed tax credit affordable multifamily and senior assisted living housing projects. It has also financed and constructed group home facilities, and issued millions of dollars in bond financing. In addition, the FCRHA administers the following an Affordable Dwelling Unit (ADU) program as part of the Zoning Ordinance; an Workforce Dwelling Unit program as part of the Board of Supervisors Workforce Housing Policy, and other inclusionary zoning first-time homebuyer programs and Loan Programs secured by subordinate liens. Virtually all these transactions require title services, including title insurance.

4.4. **Fairfax County Park Authority**: FCPA acquires park land as needed to strategically provide recreational opportunities to the citizens of Fairfax County. During the last three years FCPA has acquired approximately 15 parcels of land through outright purchases.

a. Title Search Reports: Estimated to be 3 – 6 per year. Title searches required are a minimum 60-year search or to the source deed into the owner at the 60-year mark, whichever is longer, for each report. Land values generally between $500,000 and $5,000,000.

b. Title Insurance: Purchases title insurance for properties acquired, including unimproved and improved parcels as well as tiered coverage for properties under construction.

c. Escrow and Settlement Services: FCPA deposits escrow for disbursement of escrow funds. Services required have included the execution and recordation of deeds, HUD-1 Settlement Statements and/or Closing Disclosures, and other documents pertaining to land transfers with delivery of recorded documents to FCPA.

d. Foreclosures: Clears title, lien issues, providing settlement and escrow services on forclosure properties.

e. Life Estates: Clearing title, lien issues, providing settlement and escrow services for life estates.

## SPECIAL PROVISIONS

4.5. **Facilities Management Department**: - FMD manages County land as needed.

a. Title Search Reports: Estimated to be 50 – 100 per year. Title searches requiredare a minimum 60-year search or to the source deed into the owner at the 60-year mark, whichever is longer, for each report. The title report request could include investigations of bundles of 20 or more properties however, requests of this type have been rare.

b. Title Insurance: Purchases title insurance for properties acquired, including unimproved and improved parcels as well as tiered coverage for properties under construction Escrow and Settlement Services: FCPA deposits escrow for disbursement of escrow funds. Services required have included the execution and recordation of deeds, HUD-1 Settlement Statements and/or Closing Disclosures, and other documents pertaining to land transfers withdelivery of recorded documents to FCPA.

4.6. Other County agencies may also utilize the contract for similar services. Current rates paid for the various services can be viewed from our contract register www.fairfaxcounty.gov/cregister, (enter 4400003283) in the contract number field, and click the submit button. The Notice of Award and amendments links will lead you to the documents that will provide current pricing in like order.

5. **TASKS TO BE PERFORMED:**

Support the analysis and acquisition of real property for transportation, capital improvements, stormwater, and other public projects. Transactions include, but are not limited to, a wide variety of complex matters involving multimillion dollar financings and refinancings of housing properties, both those owned, as well as those financed by the Fairfax County Redevelopment and Housing Authority, analysis and acquisitions of real property are for various County uses, including uses as adult day care facilities, group homes, and recreational facilities. In recognition that the transactions often involve real property with challenging title issues and very sophisticated parties with unique demands, it will be necessary in many instances to provide legal title counsel and issue a variety of uncustomary endorsements providing affirmative title insurance coverage. In this regard, the title services offeror must have the authority to make major underwriting decisions for the title insurance company, providing insurance coverage or, at a minimum, possess a thorough knowledge of underwriting standards and the ability and authority to negotiate promptly special title insurance coverage with the underwriters for the title insurance company.

Qualified Offerors are encouraged to submit a proposal with a comprehensive demonstration of how they will render required services including, depending on the project's Statement of Work, any one or more of the following tasks listed. Note that the Offerors should indicate in their proposal whether the Offeror is willing and capable to perform all listed services or only a specific subset of services. If the Offeror indicates the proposal is only for fewer than all services, the proposal should clearly indicate which services the Offeror intends to offer. **A proposal for fewer than all services does not exclude an Offeror from consideration**.

5.1. **Title Reports**: Include all encumbrances, such as outstanding mortgages, liens, covenants, restrictions, easements, and rights-of-way. Such work shall be in conformance to typical title industry standards and guidelines. Reports must include a narrative synthesis of the property boundary and discrepancies about the boundary, along with any surveys for full fee/total property acquisitions. Copies of documents within the chain of title, including easements, shall be provided. The number of searches required for a project will vary. Depending on the size of the project multiple title searches may be required, however, there are occasional projects that may require 50 or more title searches. One "hard"/paper copy of the complete report is required for submission. It should include, at a minimum, a copy of each of the following documents:

## SPECIAL PROVISIONS

a. The most current deed
b. The deed(s) of trust
c. Any will(s) relating to the most current deed
d. An abstract for each transaction in the chain of title for the required review period of 60 years or to the source deed into the owner at the 60-year mark, whichever is longer, for each report.Receive orders for title searches from County departments in the following manner:
e. Letter of Request from the County
f. Assessment Printout
g. Plat(s)
h. Listing of all properties requiring title searches
i. Furnish written clarifications to reports in a timely manner at no additional cost, when it is determined by the County that such reports require clarification of form, facts, reasonable conclusions.
j. Deliver the requested title report within 30 calendar days or as agreed to with the County.

5.2. **Escrow and Settlement Services:** Including, but not limited to holding money in escrow, recording deed(s) of easement, gift(s), or conveyance (provided by the County), subordination agreements and amendments to affordable dwelling unit covenants, processing partial releases and other documents required for legal recordation.

Advance incidental costs, if any, including, but not limited to those needed for judgment reports, lien reports, tax adjustments, or recording fees that are customarily the responsibility of their client (the County). Prior to the settlement, the Successful Offeror shall send to the County a copy of a pro forma settlement sheet, the draft deed(s), and all other documents requested by the County. Upon recordation, the Successful Offeror shall provide the County with a copy of the deed as recorded, together with the original recorder's receipt, executed settlement sheets, receipt for taxes paid, and all other documents requested. The County shall reimburse the Successful Offeror for all valid advanced incidental costs or fees.

5.3. **Title Insurance:** Provide title insurance as requested by the County. In recognition that some transactions title matters may be identified, addressed either by deleting references thereto from exceptions to title in the owner's and lender's title insurance policies or by issuing an endorsement providing affirmative title insurance coverage. There over, the contractor(s) should have authority to make major underwriting decisions for the title insurance company, providing insurance coverage or, at a minimum, must have a thorough knowledge of underwriting standards and the ability to negotiate special title insurance coverage with the underwriters for the title insurance company. In addition, without limitation, the contractor(s) should be able to delete exceptions to title coverage typically contained on Schedule B of the standard ALTA owner's and lender's policies, such as boundary discrepancies that would be identified by an accurate survey, easements not of record, parties in possession, etc. Title Insurance and Underwriting Services for all transactions shall be provided regardless of insured interests.

5.4. **Housing and Community Development:**

a. Escrow and Settlement Services. Title work to be performed will be in conjunction with land development transactions. Deposit escrow application along with title searches/bringdowns (as appropriate) and settlement services, including title insurance.

b. Inclusionary zoning with restrictive covenants escrow and settlement services. Estimated 20 purchases and 20 sales to moderate income first-time homebuyers and 5 FCRHA purchases for the Fairfax County Rental Program, with most settlements taking place at 3700 Pender Drive, Fairfax, VA 22030 during regular business hours.

c. Performs, at a minimum, a comprehensive sixty-year title examination, and shall include parcel identification number; legal description; current assessment value, tax amount and status; deed(s)/chain of title; open mortgages; open recorded judgments, liens, probate documents, foreclosure filings; bankruptcy filings; and all other recorded documents affecting the subject property;

## SPECIAL PROVISIONS

d. Preparation and delivery of a title report or title insurance commitment, including all encumbrances, such as outstanding mortgages, liens, covenants, restrictions, and easements applicable to the property and must identify any discrepancies about the property's boundaries. The commitment must agree to issue an owner's policy of title insurance in standard American Land Title Association (ALTA) marketability of title format without exception to unfiled mechanics' and material men's liens.

e. Provide a copy of the deeds or other conveyance documents in the chain of title for the search period and all documents that give rise to title exceptions.

f. Provide legal description in format prescribed by HCD legal counsel.

g. Perform escrow, closing, or settlement services, including preparing the settlement statement (including calculation of all recordation costs and pro-rations, the report of sale to the IRS, and such other documents as are customarily the responsibility of a settlement agent; securing pay-off information from the holders or all outstanding liens affecting the property; receiving funds (to be held in escrow separate and apart from the funds of Fairfax County Redevelopment and Housing Authority (FCRHA) or HCD; providing a specimen title commitment and/or insurance policy, five business days prior to closing, if requested; distributing funds, in accordance with settlement statement as approved by the FCRHA/HCD, to grantor(s) and others as appropriate; performing pre-recordation title run-down within two business days of receiving contract from HCD; recording documents in order specified in title instructions; consulting with HCD and HCD's legal counsel as necessary; and; providing, after settlement, the original recording receipts, fully executed settlement statements, receipts for taxes paid, and, as appropriate recorded copies or the originals of all recorded documents.

h. Provide/Issue a standard ALTA owner's title insurance policy.

i. Template Settlement Instructions for sales from FCRHA to moderate income homebuyer, with time frames to be adhered by:

> This letter shall serve as escrow instructions to you in connection with the closing of the purchase of the Property by [Purchaser Name] [and Purchaser2 Name] Borrower(s)".
>
> 1. The lender's closing department needs to provide the <u>final</u> closing figures to [Title company name] so you can prepare the Closing Disclosure (or HUD-1) for our review five (5) to seven (7) days before settlement.
>    A Termite Inspection fee of $_____ [was paid by the seller / will be paid at closing].
> 2. You must also provide a copy of the [ADU/FTHB-DS] *Deed* for our review five (5) to seven (7) days before settlement. The *Deed* must include specific restrictive language approved by the County Attorney. The forms of these deeds are provided. Please note that it cannot be changed without authorization by the County Attorney.
> 3. You must use the Addendum to Settlement Statement form as approved by the County Attorney.
> 4. All documents prepared for recording must use the Borrower's name(s) as it appears on Borrower's identification: [Purchaser Name] [and Purchaser2 Name]
> 5. You will receive from the FCRHA a signed and executed Monetary Lien for recording, which includes a legal description of the property.
> 6. Within 48 hours (2 business days) of settlement you must have recorded among the land records of Fairfax County, Virginia, the following documents in this order:

## SPECIAL PROVISIONS

a. ADU Covenants signed by the FCRHA prior to settlement;
b. Deed recorded immediately after the ADU Covenants;
c. Lender's Deed of Trust (DOT*)* recorded immediately after the Deed;
d. Monetary Lien, which will be provided to you already signed prior to settlement, recorded immediately after the DOT

7. You must promptly disburse any excess Funds received by [Title company name] to the FCRHA. The check must be accompanied with the settlement statement.
8. Following recordation of documents, promptly (within 48 hours/2 business days) deliver the following:
    a. a copy of the recorded Covenants, Deed, and Monetary Lien
    b. a copy of the final signed Closing Disclosure ;
    c. a copy of the signed Termite Inspection Report and;
9. Deliver the above documents by courier or hand delivery to:
   Fairfax County Department of Housing and Community Development
   c/o [HCD Name]
   Homeownership and Relocation Services Division Suite 100
   3700 Pender Drive
   Fairfax, VA 22030-6039

j. Provide a list all other languages spoken and understand other then English.
k. Provide the number of closing with first-time homebuyers?
l. Provide what corporated technology to produce settlement documents and the approval process to make changes to documents.

6. **TECHNICAL PROPOSAL INSTRUCTIONS:**

6.1. The offeror must submit the Technical Proposal in a separate binder containing the following information. This information will be considered the minimum content of the proposal. Proposal contents shall be arranged in the same order and identified with headings as presented herein.

a. Title Reports: Perform a comprehensive sixty-year title examination (or to the last source deed into the owner at the 60-year mark, whichever is longer for each parcel), and shall include parcel identification number; legal description; current assessment value, tax amount and status; deed(s)/chain of title; open mortgages; open recorded judgments, liens, probate documents, foreclosure filings; bankruptcy filings; and all other recorded documents affecting the subject property.

b. Title Insurance. Provides title insurance for acquired properties structured in staggered coverage amounts, i.e., coverages escalating in unison with the progression of the project. Preparation and delivery of a title report and title insurance commitment, including all encumbrances, such as outstanding mortgages, liens, covenants, restrictions, and easements applicable to the property and must identify any discrepancies about the property's boundaries. The commitment must agree to issue an owner's policy of title insurance in standard American Land Title Association (ALTA) marketability of title format without exception to unfiled mechanics' and material men's liens

c. Escrow and Settlement Services. Deposit escrow application along with title bringdowns (as appropriate) and settlement services Perform escrow, closing, or settlement services, including preparing the settlement statement (including calculation of all recordation costs and pro-rations, the report of sale to the IRS, and such other documents as are customarily the responsibility of a settlement agent; securing pay-off information from the holders or all outstanding liens affecting the property; receiving funds; providing a specimen title commitment and/or insurance policy, five business days prior to closing, if requested; distributing funds, in accordance with settlement statement as approved by the County, to grantor(s) and others as appropriate; performing pre-recordation title run-down within two business days of receiving contract from the County; recording documents in order specified in title instructions; consulting with the County and the Office of the County Attorney (OCA) as necessary; and; providing, after settlement, the original recording receipts, fully executed settlement statements, receipts for taxes paid, and, as appropriate recorded copies or the originals of all recorded documents.

6.2. Preliminary Work Plan:

The offeror must present a description of the phases or segments into which the proposed program can logically be divided and performed, together with flow charts. The technical narrative should address separately each of the tasks described in the Request for Proposal and responses should be keyed to appropriate paragraph numbers. This section should also contain a discussion of any changes proposed by the offeror that substantially differs from the project scope described in these Special Provisions.

This section should include detailed descriptions of activities that are to occur, significant milestones, and anticipated deliverables.

6.3. Treatment of the Issues: In this section, the offeror may also comment if deemed appropriate, on any aspect of the Request for Proposal, including suggestions on possible alternative approaches to the coverage, definition, development, and organization of the issues presented in the “Tasks to be Performed” section, and may propose alternative approaches.

6.4. Statement of Qualifications: The statement of Qualifications must include a description of organizational and staff experience, and resumes of proposed staff.

a. Organizational and Staff Experience: Offerors must describe their qualifications and experience to perform the work described in this Request for Proposal. Information about experience should include direct experience with the specific subject matter. Include a organizational chart of staff who work on closing/settlement.

b. References: Special notation must be made of similar or related programs performed and must include organization names, addresses, names of contact persons, and telephone numbers for such reference.

c. Personnel: Full-time and part-time staff, proposed consultants and subcontractors who may be assigned direct work on this project should be identified. Information is required which will show the composition of the task or work group, its specific qualifications, and recent relevant experience. Special mention shall be made of direct technical supervisors and key technical personnel, and approximate percentage of the total time each will be available for this project. The technical areas, character and extent of participation by any subcontractor or consultant activity must be indicated and the anticipated sources will be identified. Resumes of staff and proposed consultants are required indicating education, background, recent relevant experience with the subject matter of the project. Current telephone numbers must be included.

d. A staffing plan is required which describes the Offeror's proposed staff distribution to accomplish this work. The staffing plan should indicate a chart that partitions the time commitment of each professional staff member across the proposed tasks and a timeline for the project. It is mandatory that this section identify the key personnel who are to work on the project, their relationship to be contracting organization, and amount of time to be devoted to the project. Demonstrate succession of key personnel. This includes Consultants as well as regular employees of the offeror, if relevant.

e. Sample Title Abstract: The applicant will provide with their proposal a title search including the longer of 60 years or the last conveyance of the property for the property whose Fairfax County tax map number is 054-2-04-0304, and whose property address is 5215 Ellicott Court, Centreville, VA 20120.

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

7. **CONSULTATION SERVICES:**The contractor's staff must be available for consultation with County staff on an as-needed basis between 8:00 AM and 5:00 PM, Eastern Time, Monday through Friday.

8. **COST PROPOSAL INSTRUCTIONS:**

8.1. The offeror must submit a cost proposal in a separate binder fully supported by cost and pricing data adequate to establish the reasonableness of the proposed fee (see Price Summary Sheet – appendix B). The following information should be submitted as part of the cost proposal:

a. Settlement Services.
b. Title Examination (60-year minimum search or to the source deed into the owner at the 60-year mark)
c. Title Examination Fee – two or more contiguous lots in the same subdivision,
d. Title Bringdown,
e. Title Search (per hour/minimum, Acreage Search (per hour/minimum)
f. Title Binder Issuance,Copies of recorded documents per page,Copies of other documents per page.
g. Overnight mail (per package),Courier Charges (per delivery).
h. Escrow Services.
i. Advancement of incidental costs (per advance,Litigation Support (per hour).
j. Encumbrance Release,Document Preparation (per hour), Special Consultation (per hour).
k. Wire Handling Fee
l. Consent To Easement
m. Title Insurance Consideration (range from $100,000 to $10,000,000)

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

8.2. Offerors must provide a price breakdown for each service separately as well as totals for services provided together if price differ.

9. **PRICING:**

9.1. The subsequent contract will be a firm-fixed price agreement. The fee(s) will remain firm and will include all charges that may be incurred in fulfilling the requirements of the contract during the first 365 days. Changes in cost for any subsequent contract years may be based on the Consumer Price Index (CPI-U), U. S. City Averages, or other relevant indices.

9.2. The request for a change in the unit price shall include as a minimum, (1) the cause for the adjustment; (2) proposed effective date; and, (3) the amount of the change requested with documentation to support the requested adjustment (i.e., appropriate Bureau of Labor Statistics, Consumer Price Index (CPI-U)).

## SPECIAL PROVISIONS

9.3. Price decreases shall be made in accordance with paragraph 43 of the General Conditions & Instructions to Offerors. (Appendix A)

10. **TRADE SECRETS/PROPRIETARY INFORMATION:**

10.1. Trade secrets or proprietary information submitted by an offeror in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, offerors must invoke the protections of this section prior to or upon submission of the data or other materials.

10.2. The offeror must identify the data or other materials to be protected and state the reasons why protection is necessary. Disposition of material after award(s) should be stated by the offeror.

11. **CONTACT FOR CONTRACTUAL MATTERS:**

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

Cindy Joy, CPPB, Contract Specialist
Department of Procurement and Material Management
Telephone: (703) 324-3276
Cindy.joy@fairfaxcounty.gov

11.2. No attempt shall be made by any offeror to contact members of the Selection Advisory Committee (SAC) about this procurement (see paragraph 16.3).

12. **REQUIRED SUBMITTALS:**

12.1. Each Offeror responding to this Request for Proposal must supply all the documentation required in the RFP. Failure to provide documentation with the Offeror's response to the RFP will result in the disqualification of the Offeror's proposal.

13. **SUBMISSION OF PROPOSAL:**

13.1. One (1) original (duly marked) and seven (7) copies of the Technical proposal, and one (1) original (duly marked) and seven (7) copies of the Cost proposal (Appendix B) shall be delivered to the following address in sealed envelopes or packages with the proposal number, title and the offerors name and address on the outside. It is requested that one copy of the proposal be provided in a CD format. The offeror must include a notarized statement that the CD version is a true copy of the printed version. Electronically stamped delivery receipts are available.

Department of Procurement and Material Management Management
12000 Government Center Parkway, Suite 427
Fairfax, Virginia 22035-0013
Telephone: 703-324-3201

13.2. Offerors are reminded that changes to the request for proposal, in the form of addenda, are often issued between the issue date and within five (5) days before the due date of the solicitation. All addenda MUST be signed and submitted to the Department of Procurement and Material Management, 12000 Government Center Parkway, Suite 427, Fairfax, VA 22035 before the due date/time or must accompany the proposal. Notice of addenda will be posted on eVA and the DPMM current solicitation webpage. It is the Offeror's responsibility to monitor the web page for the most current addenda at www.fairfaxcounty.gov/solicitation.

13.3. It is the Offeror's responsibility to clearly identify and to describe the services being offered in response to the Request for Proposal. Offerors are cautioned that organization of their response, as well as thoroughness is critical to the County's evaluation process. The RFP forms must be completed legibly and in their entirety; and all required supplemental information must be furnished and presented in an organized, comprehensive and easy to follow manner.

## SPECIAL PROVISIONS

13.4. Unnecessarily elaborate brochures of other presentations beyond that sufficient to present a complete and effective proposal is not desired. Elaborate artwork, expensive paper, bindings, visual and other presentation aids are not required. The County encourages the use of recycled paper, therefore it is urged that proposals be submitted on paper made from or with recycled content and be printed on both sides.

13.5. Each original and set of the seven (7) copies of the proposal shall consist of:

a. Cover sheet (DPMM32)

b. Technical proposal as required in the Special Provisions, paragraph 6, TECHNICAL PROPOSAL INSTRUCTIONS.

c. Cost proposal as required in the Special Provisions paragraph 8, COST PROPOSAL INSTRUCTIONS. (Appendix B should be included in the Cost proposal).

13.6. By executing the cover sheet (DPMM32), Offeror acknowledges that they have read this Request for Proposal, understand it, and agree to be bound by its terms and conditions. Proposals may be submitted by mail or delivered in person.

14. **LATE PROPOSALS:**

14.1. Proposals received in the Office of the County Purchasing Agent after the date and time prescribed shall not be considered for contract award and shall be returned to the offeror.

15. **PERIOD THAT PROPOSALS REMAIN VALID:**

15.1. Proposals will remain valid for a period of one-hundred and twenty days (120) calendar days after the date specified for receipt of proposals.

16. **BASIS FOR AWARD:**

16.1. This Request for Proposal is being utilized for competitive negotiation. Under the competitive negotiation process, a contract may be awarded to the responsible offeror whose proposal is determined to be the most advantageous to the County, taking into consideration price and the evaluation factors set forth in the Request for Proposal. The County reserves the right to make multiple awards as a result of this solicitation.

16.2. A Selection Advisory Committee has been established to review and evaluate all proposals submitted in response to this Request for Proposal. The Committee shall conduct a preliminary evaluation of all proposals on the basis of the information provided with the proposal, and the evaluation criteria listed below. Based upon this review, the cost proposals of the highest rated offeror(s) will then be reviewed.

16.3. No Offeror, including any of their representatives, subcontractors, affiliates and interested parties, shall contact any member of the Selection Advisory Committee or any person involved in the evaluation of the proposals. Selection Advisory Committee members will refer any and all calls related to this procurement to the procurement official named in 11.1 above. Failure to comply with this directive may, at the sole discretion of the County, result in the disqualification of an offeror from the procurement process.

16.4. Based on the results of the preliminary evaluation, the highest rated offeror(s) may be invited by the County Purchasing Agent to make oral presentations to the Selection Advisory Committee. This committee will then conduct a final evaluation of the proposals. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. After negotiations have been conducted with each offeror so selected, the County shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror.

## SPECIAL PROVISIONS

16.5. Should the County determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror. The Committee will make appropriate recommendations to the County Executive and Board of Supervisors, if appropriate, prior to actual award of contract.

16.6. Proposal Evaluation Criteria: The following factors will be considered in the award of this contract:

Title Abstract Services

a. Comprehensive 60 year search including: encumbrances, probate, judgements. = 12
b. Ability to search large and complex titles. = 12
c. Copies of All documents affecting title including all deeds in chain. = 12
d. Sufficient staff to deliver in excess of 20 title requests. = 10
e. Clear and Organized Cover Sheets. = 10
f. Association with OR an in-house attorney. = 10
g. Turnaround time. = 7
h. Document format presentation (clean, clear, easly understaoon). = 5
i. Access to CPAN = 5
j. Provide Abractor creditentials. = 5
k. Ability to obtain partial releases as necessary = 5
l. Years of active experience with Fairfax County = 4
m. E&O Coverage = 3

Settlement & Escrow Services

a. Perform escrow, closing, or settlement services, including preparation of the settlement statement including calculation of all recordation costs and pro-rations, the report of sale to the IRS, and such other documents as are customarily the responsibility of a settlement agent. = 12
b. Secure pay-off information from the holders or all outstanding liens affecting the property
c. Receive funds in escrow and distribute funds in accordance with settlement statement as approved by the County, to grantor(s) and others as appropriate = 12
d. Provide title commitment for an insurance policy, five business days prior to closing, if requested = 12
e. Perform pre-recordation title run-down within two business days of receiving contract from the County and record documents in order specified in the title instructions while consulting with the County Attorney (OCA) as necessary = 12
f. After settlement, provide the original receipts, fully executed settlement statements, receipts for taxes paid, and as appropriate, recorded copies or the originals of all recorded instruments = 12
g. Document format presentation (clean clear, easily understood) = 8
h. Access to CPAN = 8
i. Ability to obtain partial releases as necessary = 8
j. Years of active experience with Fairfax County = 4

HCD Special Settlement Requirements

a. Experience with Inclusionary Zoning and associated documents. Demonstrated experience and technology to support preparation of non-standard closing statements, including Restrictive Covenants, Deeds, Monetary Liens, Notices, and Subordination documents. Applicant can demonstrate technology and staff are able to adapt to specific required documents and language, i.e. not corporate approved documents only. Technical knowledge of inclusionary zoning settlement requirements. = 8

## SPECIAL PROVISIONS

b. Demonstrated ability to proof and provide accurate documents. Can document process for assuring accurate documents are provided to HCD staff and in proper recordation order. Have written procedures in place for review of legal description, deed book and page #s, property address, etc. identifying which staff are responsible for each step in the process. = 4

c. Demonstrated experience with first-time homebuyers (FTHB), including flexibility in changing closing dates/locations/times, ability to spend up to an hour and a half to thoroughly explain settlement documents to the FTHB from diverse populations and languages spoken and of moderate incomes levels. = 4

d. Have staff designated to respond to FTHB purchaser's questions regarding settlement process and explain various aspects of the closing requirements, as necessary. Have designated staff with experience working flexibly with county attorneys on document changes. Have designated point(s) of contact for each transaction. = 4

e. Have depth of staff who have the knowledge to respond to questions and unique situations surrounding closing documents and situations. = 4

f. Reasonableness of cost proposal(s).

16.7. Fairfax County reserves the right to make on-site visitations to assess the capabilities of individual offerors and to contact references provided with the proposal.

16.8. The County Purchasing Agent may arrange for discussions with firms submitting proposals, if required, for the purpose of obtaining additional information or clarification.

16.9. Offerors are advised that, in the event of receipt of an adequate number of proposals, which, in the opinion of the County Purchasing Agent, require no clarifications and/or supplementary information, such proposals may be evaluated without further discussion. Consequently, offerors should provide complete, thorough proposals with the offerors most favorable terms. Should proposals require additional clarification and/or supplementary information, offerors should submit such additional material in a timely manner.

16.10. Proposals which, after discussion and submission of additional clarification and/or supplementary information, are determined to meet the specifications of this Request for Proposal will be classified as "acceptable". Proposals found not to be acceptable will be classified as "unacceptable" and no further discussion concerning same will be conducted.

16.11. The County may cancel this Request for Proposal or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.

17. **INSURANCE:**

17.1. The contractor is responsible for its work and for all materials, tools, equipment, appliances, and property of any and all description used in connection with the project, whether owned by the contractor or by the County. The contractor assumes all risks of direct and indirect damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the contract, or in connection in any way whatsoever with the contracted work.

17.2. The Contractor shall, during the continuance of all work under the Contract provide the following:

a. Maintain statutory Worker's Compensation and Employer's Liability insurance in limits of not less than $100,000 to protect the Contractor from any liability or damages for any injuries (including death and disability) to any and all of its employees, volunteers, or subcontractors, including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia, or which may be hereinafter enacted.

## SPECIAL PROVISIONS

b. The contractor agrees to maintain Commercial General Liability insurance in the amount of $1,000,000 per occurrence/aggregate, to protect the contractor, its subcontractors, and the interest of the County, against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation under the contract or in connection with contracted work.

c. The contractor agrees to maintain Errors and Omissions insurance in the amount of $1,000,000 per claim.

d. Liability insurance may be arranged by General Liability and Automobile Liability policies for the full limits required, or by a combination of underlying Liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.

e. Rating Requirements:

1. The Contractor agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A: VI.
2. European markets including those based in London, and the domestic surplus lines markets that operate on a non-admitted basis are exempt from this requirement provided that the contractor's broker can provide financial data to establish that a market is equal to or exceeds the financial strengths associated with the A.M. Best's rating of A:VI or better.

f. Indemnification: Article 63 of the General Conditions and Instructions to Bidders (Appendix A) shall apply.

g. The Contractor will provide an original, signed Certificate of Insurance citing the contract number and such endorsements as prescribed herein, and shall have it filed with the County Purchasing Agent and/or Risk Manager before any work is started.

h. If the Contractor delivers services from a County-leased facility, the Contractor is required to carry property insurance on all equipment, to include County-owned installed and maintained equipment used by the contractor while in their care, custody and control for use under this contract.

17.3. No change, cancellation, or non-renewal shall be made in any insurance coverage without a forty-five day written notice to the County Purchasing Agent and/or Risk Manager. The Contractor shall furnish a new certificate prior to any change or cancellation date. The failure of the Contractor to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished.

17.4. Precaution shall be exercised at all times for the protection of persons (including employees) and property.

18. **METHOD OF ORDERING:**

18.1. The County may use two (2) different methods of placing orders from the final contract: Purchase Orders (PO's) and approved County procurement cards.

18.2. A Purchase Order (PO) may be issued to the contractor on behalf of the County agency ordering the items/services covered under this contract. An issued PO will become part of the resulting contract. The purchase order indicates that sufficient funds have been obligated as required by Title 15.2-1238 of the Code of the Commonwealth of Virginia.

18.3. Procurement Card orders and payments may also be made by the use of a Fairfax County or Fairfax County Public Schools "Procurement" Card. The Procurement Card is currently a Master Card. Contractors are encouraged to accept this method of receiving orders.

18.4. Regardless of the method of ordering used, solely the contract and any modification determine performance time and dates.

## SPECIAL PROVISIONS

18.5. Performance under this contract is not to begin until receipt of the purchase order, Procurement Card order, or other notification to proceed by the County Purchasing Agent and/or County agency to proceed. Purchase requisitions shall not be used for placing orders.

19. **REPORTS AND INVOICING:**

19.1. The Contractor must maintain all records in compliance with federal and state regulations. The Contractor(s) must submit to each program administrator, monthly statistical reports and an annual tabulated report.

19.2. The Contractor must invoice each County department using the final contract separately. Invoices for all users of the contract must meet County requirements, unless otherwise indicated. The Contractor must send each department an itemized monthly invoice (or as agreed to between the parties), which must include the information listed below:

a. Employee name;
b. The name of the County department;
c. Date of services
d. The type of services; and,
e. The itemized cost for each item/service.

19.3. County departments must receive monthly invoices by the 10th of each month following the month the Contractor provided the service. In addition, the Contractor will provide each County department a monthly and year-to-date utilization report which lists all information shown above in paragraph 19.2, a-e. The Contractor will mail the invoices and the utilization reports to the individuals identified in the final contract.

20. **PAYMENTS:**

20.1. The County will pay the Contractor based upon completion, acceptance, and approval by the County of each task outlined in the Special Provisions, paragraph 5, TASKS TO BE PERFORMED.

21. **CHANGES:**

21.1. Fairfax County may, at any time, by written order, require changes in the services to be performed by the Contractor. If such changes cause an increase or decrease in the Contractors cost of, or time required for, performance of any services under this contract, an equitable adjustment shall be made and the contract shall be modified in writing accordingly. The County Purchasing Agent must approve all work that is beyond the scope of this Request for Proposal.

21.2. No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written authorization of the Fairfax County Purchasing Agent.

22. **DELAYS AND SUSPENSIONS:**

22.1. The County may direct the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time deemed appropriate for the convenience of the County. The County will extend the Contractor's time of completion by a period of time that in the discretion of the Purchasing Agent is reasonably suited for completion of work. The County may further amend the contract by mutual agreement for any increase in the cost of performance of the contract (excluding profit) resulting solely from the delay or suspension of the contract. No adjustment shall be made under this clause for any delay or interruption resulting from any other cause, including the fault or negligence of the Contractor.

## SPECIAL PROVISIONS

22.2. If the County does not direct the Contractor, in writing, to suspend, delay, or interrupt the contract, the Contractor must give the County Purchasing Agent written notice if Fairfax County fails to provide data or services that are required for contract completion by the Contractor. The County may extend the Contractor's time of completion by a period of time that in the discretion of the Purchasing Agent is reasonably suited for completion of work. The County may further amend the contract by mutual agreement for any increase in the cost of performance of the contract (excluding profit) resulting solely from the delay or suspension of the contract. No adjustment shall be made under this clause for any delay or interruption resulting from any other cause, including the fault or negligence of the Contractor.

22.3. The Contractor shall continue its work on other phases of the project or contract, if in the sole discretion of the Purchasing Agent such work is not impacted by the County's delay, suspension, or interruption. All changes to the work plan or project milestones shall be reflected in writing as a contract amendment.

**ACCESS TO AND INSPECTION OF WORK:**

22.4. The Fairfax County Purchasing Agent and using agencies will, at all times, have access to the work being performed under this contract wherever it may be in progress or preparation.

23. **PROJECT AUDITS:**

23.1. The Contractor shall maintain books, records and documents of all costs and data in support of the services provided. Fairfax County or its authorized representative shall have the right to audit the books, records and documents of the contractor under the following conditions:

a. If the contract is terminated for any reason in accordance with the provisions of these contract documents in order to arrive at equitable termination costs
b. In the event of a disagreement between the contractor and the County on the amount due the Contractor under the terms of this contract;

c. To check or substantiate any amounts invoiced or paid which are required to reflect the costs of services, or the Contractor's efficiency or effectiveness under this contract; and,

d. If it becomes necessary to determine the County's rights and the contractor's obligations under the contract or to ascertain facts relative to any claim against the Contractor that may result in a charge against the County.

23.2. These provisions for an audit shall give Fairfax County unlimited access during normal working hours to the Contractor's books and records under the conditions stated above.

23.3. Unless otherwise provided by applicable statute, the contractor, from the effective date of final payment or termination hereunder, shall preserve and make available to Fairfax County for a period of three (3) years thereafter, at all reasonable times at the office of the Contractor but without direct charge to the County, all its books, records documents and other evidence bearing on the costs and expenses of the services relating to the work hereunder.

23.4. Fairfax County's right to audit and the preservation of records shall terminate at the end of three (3) years as stated herein. The Contractor shall include this "Right of Audit and Preservation of Records" clause in all subcontracts issued by it and they shall require same to be inserted by all lower tier subcontractors in their subcontracts, for any portion of the work.

23.5. Should the Contractor fail to include this clause in any such contract or lower tier contract, or otherwise fail to insure Fairfax County's rights hereunder, the Contractor shall be liable to Fairfax County for all reasonable costs, expenses and attorney's fees which Fairfax County may have to incur in order to obtain an audit or inspection of or the restoration of records which would have otherwise been available to Fairfax County from said persons under this clause. Such audit may be conducted by Fairfax County or its authorized representative.

# SPECIAL PROVISIONS

24. **DATA SOURCES:**

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

25. **SAFEGUARDS OF INFORMATION:**

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

**ORDER OF PRECEDENCE:**

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

26. **SUBCONTRACTING:**

26.1. If one or more subcontractors are required, the contractor is encouraged to utilize small, minority-owned, and women-owned business enterprises. For assistance in finding subcontractors, contact the Virginia Department of Business Assistance, http://egov1.virginia.gov/dbecert.html and the Virginia Department of Minority Business Enterprise, local chambers of commerce and other business organizations.

26.2. As part of the contract award, the prime contractor agrees to provide the names and addresses of each subcontractor, that subcontractor's status as defined by Fairfax County, as a small, minority-owned and/or woman-owned business, and the type and dollar value of the subcontracted goods/services provided. Reference Appendix B to this solicitation.

27. **USE OF CONTRACT BY OTHER PUBLIC BODIES:**

27.1. Reference Paragraph 75, General Conditions and Instructions to Bidders, Cooperative Purchasing. Offerors are advised that the resultant contract(s) may be extended, with the authorization of the Offeror, to other public bodies, or public agencies or institutions of the United States to permit their use of the contract at the same prices and/or discounts and terms of the resulting contract. If any other public body decides to use the final contract, the Contractor(s) must deal directly with that public body concerning the placement of orders, issuance of purchase orders, contractual disputes, invoicing and payment. The County of Fairfax acts only as the "Contracting Agent" for these public bodies. Failure to extend a contract to any public body will have no effect on consideration of your offer. (See Appendix B for sample listing).

27.2. It is the Contractors responsibility to notify the public body(s) of the availability of the contract(s).

27.3. Other public bodies desiring to use this contract will need to make their own legal determinations as to whether the use of this contract is consistent with their laws, regulations, and other policies.

27.4. Each public body has the option of executing a separate contract with the Contractor(s). Public bodies may add terms and conditions required by statute, ordinances, and regulations, to the extent that they do not conflict with the contracts terms and conditions. If, when preparing such a contract, the general terms and conditions of a public body are unacceptable to the Contractor, the Contractor may withdraw its extension of the award to that public body.

27.5. Fairfax County shall not be held liable for any costs or damages incurred by another public body as a result of any award extended to that public body by the Contractor.

# SPECIAL PROVISIONS

28. **NEWS RELEASE BY VENDORS:**

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

29. **AMERICANS WITH DISABILITIES ACT REQUIREMENTS:**

29.1. Fairfax County Government is fully committed to the Americans with Disabilities Act (ADA) which guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and all County programs, activities and services. Fairfax County government contractors, subcontractors, vendors, and/or suppliers are subject to this ADA policy. All individuals having any County contractual agreement must make the same commitment. Your acceptance of this contract acknowledges your commitment and compliance with ADA.

29.2. Fairfax County is committed to a policy of nondiscrimination in all County programs, services, and activities and will provide reasonable accommodations upon request. Bidders requesting special accommodations should call the Department ADA representative at (703) 324-3201 or TTY 711. Please allow seven (7) working days in advance of the event to make the necessary arrangements.

30. **STATE CORPORATION COMMISSION IDENTIFICATION NUMBER:**

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

# COUNTY OF FAIRFAX
# COMMONWEALTH OF VIRGINIA

## GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

(Vendor: The general rules and conditions which follow apply to all purchases and become a definite part of each formal solicitation and resulting contract award issued by the DEPARTMENT OF PURCHASING & SUPPLY MANAGEMENT, unless otherwise specified. Bidders or their authorized representatives are expected to inform themselves fully as to the conditions, requirements, and specifications before submitting bids; failure to do so will be at the bidder's own risk and relief cannot be secured on the plea of error.)

Subject to all State and local laws, policies, resolutions, and regulations and all rules, regulations and limitations imposed by legislation of the Federal Government, bids on all solicitations issued by the DEPARTMENT OF PURCHASING & SUPPLY MANAGEMENT will bind bidders to applicable conditions and requirements herein set forth unless otherwise specified in the solicitation.

**I. AUTHORITY** -The Purchasing Agent has the sole responsibility and authority for negotiating, placing and when necessary modifying every solicitation, contract and purchase order (except for capital construction projects) issued by the County of Fairfax. In the discharge of these responsibilities, the Purchasing Agent may be assisted by assigned buyers. Unless specifically delegated by the County Purchasing Agent, no other County officer or employee is authorized to order supplies or services, enter into purchase negotiations or contracts, or in any way obligate the government of the County of Fairfax for an indebtedness. Any purchase ordered or contract made which is contrary to these provisions and authorities shall be of no effect and void and the County shall not be bound thereby.

**2. DEFINITIONS**-

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

BEST VALUE: As predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to a public body's needs.

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

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

CONSULTANT SERVICES: Any type of services required by the County, but not furnished by its own employees, which is in its nature so unique that it should be obtained by negotiation on the basis of demonstrated competence and qualification for the type of service required and at fair and reasonable compensation, rather than by competitive sealed bidding.

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

COUNTY: County of Fairfax.

GOODS: All material, equipment, supplies, printing, and automated data processing/information technology hardware and software.

INFORMALITY: A minor defect or variation of a bid or proposal from the exact requirements of the invitation to bid or the request for proposal which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.

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

PROFESSIONAL SERVICES: Any type of professional service performed by an independent contractor within the practice of accounting, actuarial services, architecture, dentistry, land surveying, landscape architecture, law, medicine, optometry, pharmacy, or professional engineering (which shall be procured as set forth in the Code of Virginia §2.2-4301 in the definition of competitive negotiation at paragraph 3 (a), and in conformance with the Fairfax County Purchasing Resolution).

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

QUICK QUOTE (QQ): A method of competitive bidding for the purchase or lease of goods, non professional services or for the purchase of insurance, construction, or construction management when the estimated cost thereof shall be less the $50,000.

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

RESPONSIBLE BIDDER/OFFEROR: An individual, company, firm, corporation, partnership or other organization having the capability in all respects to perform fully the contract requirements, and also having the moral and business integrity and reliability which will assure good faith performance, and having been prequalified, if required. (Reference paragraph 24, General Conditions and Instructions to Bidders).

## General Conditions and Instructions to Bidders

RESPONSIVE BIDDER/OFFEROR: An individual, company, firm, corporation, partnership or other organization having submitted a bid which conforms in all material respects to the invitation for bid or request for proposal.

SERVICES: Any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

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

STATE: Commonwealth of Virginia.

**CONDITIONS OF BIDDING**

**3. BID FORMS**-Unless otherwise specified in the solicitation, all bids shall be submitted on the forms provided, to include the bid Cover Sheet and Pricing Schedule(s), properly signed in ink in the proper spaces and submitted in a sealed envelope or package. The item pages of the Pricing Schedule which do not include any items for which a bid is required need not be included in the submission of a bid.

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

**4. LATE BIDS & MODIFICATIONS OF BIDS**-

a. Any bid/modification received at the office designated in the solicitation after the exact time specified for receipt of the bid/modification is considered a late bid/modification. A late bid/modification will not be considered for award except under the following conditions only:

   1. It was sent by registered or certified mail not later than the fifth (5th) calendar date prior to the date specified for receipt of the bid/modification; or

   2. The bid/modification was sent by mail and it is determined by the County Purchasing Agent that the late receipt was due solely to mishandling by the County after receipt at the address specified in the solicitation.

b. If an emergency or unanticipated event or closing interrupts or suspends normal County business operations so that bids cannot be received at the County office designated for receipt of bids by the exact time specified in the solicitation, the due date/time specified for receipt of bids will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal County business operations resume.

c. The official time used for receipt of bids/modifications is the Bid Clerk's time and date stamp clock located in the Department of Procurement and Material Management. All bidders are responsible for ensuring all bids/modifications are received prior to the scheduled due date/time.

d. A late hand-carried bid, or any other late bid not submitted by mail, shall not be considered for award.

**5. WITHDRAWAL OF BIDS**-

a. A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his or her bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid which shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. The bidder shall give notice in writing to the Purchasing Agent of his or her claim of right to withdraw his or her bid within two (2) business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice.

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

   1. Requests for withdrawal of bids prior to opening of such bids shall be transmitted to the County Purchasing Agent in writing.

   2. Requests for withdrawal of bids after opening of such bids but prior to award shall be transmitted to the County Purchasing Agent, 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.

## General Conditions and Instructions to Bidders

c. No bid may be withdrawn under this paragraph when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent.

d. If a bid is withdrawn under the authority of this paragraph, the lowest remaining bid shall be deemed to be the low bid.

e. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person 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 was submitted.

f. If the county denies the withdrawal of a bid under the provisions of this paragraph, it shall notify the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder.

*g.* Work papers, documents, and materials submitted in support of a withdrawal of bids may be considered as trade secrets or proprietary information subject to the conditions of the Virginia Freedom of Information Act.

**6. ERRORS IN BIDS**-When an error is made in extending total prices, the unit bid price will govern. Erasures in bids must be initialed by the bidder. Carelessness in quoting prices, or in preparation of bid otherwise, will not relieve the bidder. Bidders are cautioned to recheck their bids for possible error. Errors discovered after public opening cannot be corrected and the bidder will be required to perform if his or her bid is accepted.

**7. MAILING OF BIDS** – All bids and proposals submitted in response to a Fairfax County solicitation shall be submitted in a sealed envelope or package identified with the solicitation number, title, bidder's name and address, and due date/time of opening/closing clearly marked on the outside of such envelope or package.

**8. COMPLETENESS**-To be responsive, a bid must include all information required by the solicitation.

**9. ACCEPTANCE OF BIDS/BINDING 90 DAYS**-Unless otherwise specified, all formal bids submitted shall be binding for ninety (90) calendar days following bid opening date, unless extended by mutual consent of all parties.

**10. CONDITIONAL BIDS**-Conditional bids are subject to rejection in whole or in part.

**11. BIDS FOR ALL OR PART**-Unless otherwise specified by the County Purchasing Agent or by the bidder, the Purchasing Agent reserves the right to make award on all items in the aggregate or on any of the items on an individual basis, whichever is in the best interest of the County. A bidder may restrict his or her bid to consideration in the aggregate by so stating but shall name a single unit price on each item bid. Any bid in which the bidder names a total price for all the articles without quoting a unit price for each and every separate item may not be considered for award.

**12. AREA BIDS**-For the purchase and delivery of certain goods and services the County may be divided into Areas (e.g., Areas I, II, III, and IV). When such goods and services are included in the Pricing Schedule, bidders may bid on all areas or an individual area. A map showing the areas of the County will be furnished with the solicitation when required.

**13. TIME FOR RECEIVING BID**-Bids received prior to the time of opening will be securely kept, unopened. The representative of the Purchasing Agent assigned to open them will decide when the specified time has arrived, and no bid received thereafter will be considered, except as provided in paragraph 4, General Conditions and Instructions to Bidders. No responsibility will attach to the Purchasing Agent or his or her representative for the premature opening of a bid not properly addressed and identified. Unless specifically authorized in the solicitation, telegraphic, electronic, or facsimile bids/modifications will not be considered.

**14. BID OPENING**-All bids received in response to an Invitation for Bid (IFB) will be opened at the date, time and place specified, read publicly, and made available for inspection as provided in paragraph 68, General Conditions and Instructions to Bidders. Tabulations of bids received are posted on the Department of Purchasing & Supply Management Bulletin Board as well as the County's web site: http://www.fairfaxcounty.gov/dpsm/bidtab.htm.Proposals received in response to a Request for Proposal (RFP) will be made available as provided in paragraph 68, General Conditions and Instructions to Bidders.

**15. 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.

Should a bidder find discrepancies or ambiguities in, or omissions from, the solicitation, including the drawings and/or specifications, he or she shall notify the Purchasing Agent at least five (5) days prior to the date set for the opening of bids. If necessary, the Purchasing Agent will send a written addendum for clarification to all bidders no later than three (3) days before the date set for opening of bids. Notifications regarding specifications will not be considered if received within five days of the date set for opening of bids.

**16. RESPONSE TO SOLICITATIONS**-In the event a vendor cannot submit a bid on a solicitation, he or she is requested to return the solicitation cover sheet with an explanation as to why he or she is unable to bid on these requirements.

**17. BIDDER INTERESTED IN MORE THAN ONE BID**-If more than one bid is offered by any one party, either directly or by or 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.

## General Conditions and Instructions to Bidders

**18. 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. However, when under established trade practice any federal excise tax is included in the list price, a bidder may quote the list price and shall show separately the amount of federal tax, either as a flat sum or as a percentage of the list price, which shall be deducted by the County. Fairfax County's Federal Excise Tax Exemption Number is 54-74-0127K. Contractors located outside the Commonwealth of Virginia are advised that when materials are picked up by the County at their place of business, they may charge and collect their own local/state sales tax. Materials used in the performance of construction contracts are subject to Virginia Sales/Use Tax as described in Section 630-10-27J of the Virginia Retail Sales and Use Tax Regulations.

**19. PROHIBITION AGAINST UNIFORM PRICING**-The County Purchasing Agent shall encourage open and competitive bidding by all possible means and shall endeavor to obtain the maximum degree of open competition on all purchase transactions using the competitive sealed bidding, competitive negotiation, or open market methods of procurement. In submitting a bid each bidder shall, by virtue of submitting a bid, guarantee that he or she has not been a party with other bidders to an agreement to bid a fixed or uniform price. Violation of this implied guarantee shall render void the bids of participating bidders. Any disclosure to or acquisition by a competitive bidder, in advance of the opening of the bids, of the terms or conditions of the bid submitted by another competitor may render the entire proceedings void and may require re-advertising for bids.

### SPECIFICATIONS

**20. QUESTIONS CONCERNING SPECIFICATIONS**-Any information relative to interpretation of specifications and drawings shall be requested of the Purchasing Agent, in writing, in ample time before the opening of bids. No inquiries, if received by the Purchasing Agent within five (5) days of the date set for the opening of bids, will be given any consideration. Any material interpretation of a specification, as determined by the County Purchasing Agent, will be expressed in the form of an addendum to the specification which will be sent to all prospective bidders no later than three (3) days before the date set for receipt of bids. Oral answers will not be authoritative.

**21. BRAND NAME OR EQUAL ITEMS**-Unless otherwise provided in the invitation for bid, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named; it conveys the general style, type, character, and quality of the article desired, 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.

**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.

The bidder 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.

**23. FEDERAL SPECIFICATIONS**-Any Federal Specifications referred to herein may be obtained from the GSA Federal Supply Service Bureau - Specification Section, 470 East L'Enfant Plaza, S.W., Suite #8100, Washington, D.C. 20407 (Voice: 1-202-619-8925, Fax: 1-202-619-8978).

### AWARD

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

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

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

## General Conditions and Instructions to Bidders

**25. NOTICE OF ACCEPTANCE/CONTRACT DOCUMENTS**-A written award (or Acceptance Agreement) mailed (or otherwise furnished) to the successful bidder within the time for acceptance specified in the solicitation shall be deemed to result in a binding contract. The following documents which are included in the solicitation shall be incorporated by reference in the resulting contract and become a part of said contract:

a. County of Fairfax Solicitation Form/Acceptance Agreement (Cover Sheet) and other documents which may be incorporated by reference, if applicable,
b. General Conditions and Instructions to Bidders,
c. Special Provisions and Specifications,
d. Pricing Schedule,
e. Any Addenda/Amendments/Memoranda of Negotiations

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

**27. PROMPT PAYMENT DISCOUNT**-

a. Unless otherwise specified in the solicitation, prompt payment discounts requiring payment in less than fifteen (15) days will not be considered in evaluating a bid for award. However, even though not considered in the evaluation, such discounts will be taken if payment is to be made within the discount period.

b. In connection with any discount offered, time will be computed from the date of delivery of the supplies to the carrier when delivery, inspection and acceptance are at the point of origin; or, from date of delivery, inspection and acceptance at destination; or, from date correct invoice or voucher is received in the office specified by the County, if the latter is later than the date of acceptance. In the event the bidder does not indicate a prompt payment discount, it shall be construed to mean NET 30 days.

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

**28. INSPECTION-ACCEPTANCE**-For determining acceptance of supplies in accordance with the provisions of the prompt payment discount paragraph, inspection and acceptance shall be accomplished only after examination (including testing) of supplies and services to determine whether the supplies and services conform to the contract requirements. Acceptance shall occur only after receipt and inspection provided such inspection, as appropriate, is accomplished within a reasonable time.

**29. DEFINITE BID QUANTITIES**-Where definite quantities are specifically stated, acceptance will bind the County to order quantities specified and to pay for, at contract prices, all such supplies or services delivered that meet specifications and conditions of the contract. However, the County will not be required to accept delivery of any balances unordered, as of the contract expiration date, unless the Contractor furnished the Purchasing Agent with a statement of unordered balances not later than ten (10) days after the termination date of the contract.

**30. REQUIREMENT BID QUANTITIES**-On "Requirement" bids, acceptance will bind the County to pay for, at unit bid prices, only quantities ordered and delivered. Where the County specifies estimated quantities, the Contractor shall not be required to deliver more than ten (10) percent in excess of the estimated quantity of each item, unless otherwise agreed upon.

### CONTRACT PROVISIONS

**31. TERMINATION OF CONTRACTS**-Contracts will remain in force for full periods specified and/or until all articles ordered before date of termination shall have been satisfactorily delivered and accepted and thereafter until all requirements and conditions shall have been met, unless:

a. Terminated prior to expiration date by satisfactory deliveries of entire contract requirements, or upon termination by the County for Convenience or Cause.

b. Extended upon written authorization of the Purchasing Agent and accepted by Contractor, to permit ordering of unordered balances or additional quantities at contract prices and in accordance with contract terms.

**32. TERMINATION FOR CONVENIENCE**-A contract may be terminated in whole or in part by the County in accordance with this clause whenever the County Purchasing Agent shall determine that such a termination is in the best interest of the County. Any such termination shall be effected by delivery to the Contractor at least five (5) working days prior to the termination date of a Notice of Termination specifying the extent to which performance shall be terminated and the date upon which termination becomes effective. An equitable adjustment in the contract price shall be made for completed service, but no amount shall be allowed for anticipated profit on unperformed services.

## General Conditions and Instructions to Bidders

**33. TERMINATION OF CONTRACT FOR CAUSE**-

a. If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner his or her obligations under this contract, or if the Contractor violates any of the covenants, agreements, or stipulations of this contract, in addition to the County's remedies under the contract and all other rights available at law or in equity, the County shall have the right to immediately terminate this contract. Such termination shall be effected by delivering a notice of termination to the Contractor at any time specifying the effective date of such termination. In such event all finished or unfinished documents, data, studies, surveys, drawings, maps, models, and reports prepared by the Contractor under the contract shall, at the option of the County, become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.
b. Notwithstanding the above, the Contractor shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of contract by the Contractor for the purpose of set off until such time as the exact amount of damages due to the County from the Contractor is determined.

**34. CONTRACT ALTERATIONS**-No alterations in the terms of a contract shall be valid or binding upon the County unless made in writing and signed by the Purchasing Agent or his or her authorized agent.

**35. SUBLETTING OF CONTRACT OR ASSIGNMENT OF CONTRACT FUNDS**-It is mutually understood and agreed that the Contractor shall not assign, transfer, convey, sublet or otherwise dispose of his or her contractual duties to any other person, firm or corporation, without the previous written consent of the Purchasing Agent. If the Contractor desires to assign his or her right to payment of the contract, Contractor shall notify the Purchasing Agent immediately, in writing, of such assignment of right to payment. In no case shall such assignment of contract relieve the Contractor from his or her obligations or change the terms of the contract.

**36. FUNDING**-A contract shall be deemed binding only to the extent of appropriations available to each Agency for the purchase of goods and services.

**37. DELIVERY/SERVICE FAILURES**-Failure of a Contractor to deliver goods or services within the time specified, or within reasonable time as interpreted by the Purchasing Agent, or failure to make replacements/corrections of rejected articles/services when so requested, immediately or as directed by the Purchasing Agent, shall constitute authority for the Purchasing Agent to purchase in the open market articles/services of comparable grade/quality to replace the services, articles rejected, and/or not delivered. On all such purchases, the Contractor shall reimburse the County, within a reasonable time specified by the Purchasing Agent, for any expense incurred in excess of contract prices. Such purchases shall be deducted from the contract quantities if applicable. Should public necessity demand it, the County reserves the right to use or consume articles delivered or services performed which are substandard in quality, subject to an adjustment in price to be determined by the Purchasing Agent.

**38. NON-LIABILITY**-The Contractor shall not be liable in damages for delay in shipment or failure to deliver when such delay or failure is the result of fire, flood, strike, the transportation carrier, act of God, act of Government, act of an alien enemy or by any other circumstances which, in the Purchasing Agent's opinion, are beyond the control of the Contractor. Under such circumstances, however, the Purchasing Agent may, at his or her discretion, cancel the contract.

**39. NEW GOODS, FRESH STOCK**-All Contractors, unless otherwise specifically stated, shall provide new commodities, fresh stock, latest model, design or pack.

**40. NON-DISCRIMINATION**-During the performance of this contract, the Contractor agrees as follows:

a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such Contractor is an equal opportunity employer.
c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
d. The Contractor will include the provisions of the foregoing paragraphs a, b, and c above in every subcontract or purchase order of over $10,000 so that the provisions will be binding upon each subcontractor or vendor.
e. Contractor and Subcontractor hereunder shall, throughout the term of this contract, comply with the Human Rights Ordinance, Chapter 11 of the Code of the County of Fairfax, Virginia, as reenacted or amended.

**41. SMALL AND MINORITY BUSINESS UTILIZATION**

a. It is the policy of the County of Fairfax as declared by the Fairfax County Board of Supervisors' adoption of a Small and Minority Business Enterprise Program, April 6, 1981, that Fairfax County and its employees undertake every effort to increase opportunity for utilization of small or minority businesses in all aspects of procurement to the maximum extent feasible.
B Where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such subcontracting opportunities to small, women and minority businesses.
c. Where Federal grants or monies are involved it is the policy of Fairfax County, through its agents and employees, to comply with the requirements set forth in the U.S. Office of Management and Budget Circular No. A-102, uniform administrative requirements for Grants and Cooperative Agreements with State and Local Governments, as they pertain to small and minority business utilization.

## General Conditions and Instructions to Bidders

**42. GUARANTEES & WARRANTIES**-All guarantees and warranties required shall be furnished by the Contractor and shall be delivered to the Purchasing Agent before final payment on the contract is made. Unless otherwise stated, manufacturer's standard warranty applies.

**43. PRICE REDUCTION**-If at any time after the date of the bid the Contractor makes a general price reduction in the comparable price of any material covered by the contract to customers generally, an equivalent price reduction based on similar quantities and/or considerations shall apply to this contract for the duration of the contract period (or until the price is further reduced). Such price reduction shall be effective at the same time and in the same manner as the reduction in the price to customers generally. For purpose of this provision, a "general price reduction" shall mean any horizontal reduction in the price of an article or service offered (1) to Contractor's customers generally, or (2) in the Contractor's price schedule for the class of customers, i.e., wholesalers, jobbers, retailers, etc., which was used as the basis for bidding on this solicitation. An occasional sale at a lower price, or sale of distressed merchandise at a lower price, would not be considered a "general price reduction" under this provision. The Contractor shall submit his or her invoice at such reduced prices indicating on the invoice that the reduction is pursuant to the "Price Reduction" provision of the contract documents. The Contractor in addition will within ten days of any general price reduction notify the Purchasing Agent of such reduction by letter. FAILURE TO DO SO MAY REQUIRE TERMINATION OF THE CONTRACT. Upon receipt of any such notice of a general price reduction, all ordering offices will be duly notified by the Purchasing Agent.

The Contractor, if requested, shall furnish, within ten days after the end of the contract period, a statement certifying either (1) that no general price reduction, as defined above, was made after the date of the bid, or (2) if any such general price reductions were made, that as provided above, they were reported to the Purchasing Agent within ten (10) days and ordering offices were billed at the reduced prices. Where one or more such general price reductions were made, the statement furnished by the Contractor shall include with respect to each price reduction (1) the date when notice of any such reduction was issued, (2) the effective date of the reduction, and (3) the date when the Purchasing Agent was notified of any such reduction.

**44. CHANGES**-Should it become proper or necessary in the execution of this contract to make any change in design, or to make any alterations which will increase the expense, the Purchasing Agent shall determine an equitable adjustment. No payment shall be made to the Contractor for any extra material or services, or of any greater amount of money than stipulated to be paid in the contract, unless some changes in or additions to the contract requiring additional outlay by the Contractor shall first have been expressly authorized and ordered in writing by contract amendment or otherwise furnished by the Purchasing Agent.

**45. PLACING OF ORDERS**-Orders against contracts will be placed with the Contractor on a Purchase Order (or Procurement Card) executed and released by the Purchasing Agent or his or her designee. The Purchase Order must bear the appropriate contract number and date. Where Blanket Purchase Agreements (BPAs) have been executed and a Blanket Purchase Order has been released by the Purchasing Agent, telephonic orders may be placed directly with the Contractor by authorized personnel in the ordering Agency.

### DELIVERY PROVISIONS

**46. 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 AM - 3:00 PM. Deliveries at any other time will not be accepted unless specific arrangements have been previously made with the receiver at the delivery point. No deliveries will be accepted on Saturdays, Sundays and holidays, unless previous arrangements have been made. It shall be the responsibility of the Contractor to insure compliance with these instructions for items that are drop-shipped.

**47. RESPONSIBILITY FOR SUPPLIES TENDERED**-Unless otherwise specified in the solicitation, the Contractor shall be responsible for the materials or supplies covered by the contract until they are delivered at the designated point, 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.

**48. INSPECTIONS**-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.

**49. COMPLIANCE**-Delivery must be made as ordered and in accordance with the solicitation or as directed by the Purchasing Agent when not in conflict with the bid. The decision of the Purchasing Agent 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 Agent, 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 or extra compensation for such delay or suspension. These conditions may vary for construction contracts. See Special Provisions for the individual solicitation.

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

## General Conditions and Instructions to Bidders

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

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

**53. WEIGHT CHECKING**-Deliveries shall be subject to re-weighing over official sealed scales designated by the County. Payments shall be made on the basis of net weight of materials delivered. Normal shrinkage may be allowed in such instances where shrinkage is possible. Net weights only, exclusive of containers or wrapping, shall be paid for by the County.

**54. DEMURRAGE AND RE-SPOTTING**-The County will be responsible for demurrage charges only when such charges accrue because of the County's negligence in unloading the materials. The County will pay railroad charges due to the re-spotting of cars, only when such re-spotting is ordered by the County.

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

**56. 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:

1. The Purchase Order Number,
2. The Name of the Article and Stock Number (Supplier's),
3. The Fairfax County Identification Number (FCIN), if specified in the order,
4. The Quantity Ordered,
5. The Quantity Shipped,
6. The Quantity Back Ordered,
7. 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.

### BILLING

**57. BILLING**-Billing for the Fairfax County Public Schools and for County agencies: Unless otherwise specified on the contract or purchase order (PO), invoices are to be submitted, in DUPLICATE, for each purchase order immediately upon completion of the shipment or services. If shipment is made by freight or express, the original Bill of Lading, properly receipted, must be attached to the invoice. Invoices should be mailed to the "BILL TO" address on the PO or to the appropriate address specified in the contract.

### PAYMENTS

**58. PAYMENT**-Payment shall be made after satisfactory performance of the contract, in accordance with all of the provisions thereof, and upon receipt of a properly completed invoice. Fairfax County reserves the right to withhold any or all payments or portions thereof for Contractor's failure to perform in accordance with the provision of the contract or any modifications thereto.

**59. PARTIAL PAYMENTS**-Unless otherwise specified, partial payments will be made upon acceptance of materials or services so invoiced if in accordance with completion date. However, up to 5 percent (5%) of the value of the entire order may be retained until completion of contract.

**60. PAYMENT FOR EQUIPMENT, INSTALLATION, AND TESTING**-When equipment requires installation (which shall also be interpreted to mean erection and/or setting up or placing in position, service, or use) and test, and where such installation or testing is delayed, payment may be made on the basis of 50% of the contract price when such equipment is delivered on the site. A further allowance of 25% may be made when the equipment is installed and ready for test. The balance shall be paid after the equipment is tested and found to be satisfactory. If the equipment must be tested, but installation is not required to be made by the Contractor or if the equipment must be installed but testing is not required, payment may be made on the basis of 75% at the time of delivery and the balance shall be paid after satisfactory test or installation is completed.

### GENERAL

**61. GENERAL GUARANTY**-Contractor agrees to:

a. Save the County, its agents and employees harmless from liability of any nature or kind for the use of any copyrighted or uncopyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a contract for which the Contractor is not the patentee, assignee, licensee or owner.
b. Protect the County against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery.
c. Furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work or to the work of other contractors, for which his or her workers are responsible.
d. Pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules and regulations of the County.
e. Protect the County from loss or damage to County owned property while it is in the custody of the Contractor.

## General Conditions and Instructions to Bidders

**62. SERVICE CONTRACT GUARANTY**-Contractor agrees to:

a. Furnish services described in the solicitation and resultant contract at the times and places and in the manner and subject to conditions therein set forth provided that the County may reduce the said services at any time.
b. Enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence.
c. All work and services rendered in strict conformance to all laws, statues, and ordinances and the applicable rules, regulations, methods and procedures of all government boards, bureaus, offices and other agents.
d. Allow services to be inspected or reviewed by an employee of the County at any reasonable time and place selected by the County. Fairfax County shall be under no obligation to compensate Contractor for any services not rendered in strict conformity with the contract.
e. Stipulate that the presence of a County Inspector shall not lessen the obligation of the Contractor for performance in accordance with the contract requirements, or be deemed a defense on the part of the Contractor for infraction thereof. The Inspector is not authorized to revoke, alter, enlarge, relax, or release any of the requirements of the contract documents. Any omission or failure on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material. Notification of an omission or failure will be documented by the Purchasing Agent.

**63. INDEMNIFICATION**-Contractor shall indemnify, keep and save harmless the County, its agents, officials, employees and volunteers against claims of injuries, death, damage to property, theft, patent claims, suits, liabilities, judgments, cost and expenses which may otherwise accrue against the County in consequence of the granting of a contract or which may otherwise result therefrom, if it shall be determined that the act was caused through negligence or error, or omission of the Contractor or his or her employees, or that of the subcontractor or his or her employees, if any; and the Contractor shall, at his or her own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith; and if any judgment shall be rendered against the County in any such action, the Contractor shall, at his or her own expense, satisfy and discharge the same. Contractor expressly understands and agrees that any performance bond or insurance protection required by this contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County as herein provided.

**64. OFFICIALS NOT TO BENEFIT**-

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

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

**66. AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with a Fairfax County pursuant to the Fairfax County Purchasing Resolution shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. Fairfax County may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

**67. COVENANT AGAINST CONTINGENT FEES**-The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For violation of this warranty, the County shall have the right to terminate or suspend this contract without liability to the County or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

**68. VIRGINIA FREEDOM OF INFORMATION ACT**-All proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act (Reference Section 4.D., of the Fairfax County Purchasing Resolution)

## General Conditions and Instructions to Bidders

**BIDDER/CONTRACTOR REMEDIES**

**69. INELIGIBILITY-**

a. Any person or firm suspended or debarred from participation in County procurement shall be notified in writing by the County Purchasing Agent.

1. The Notice of Suspension shall state the reasons for the actions taken and such decision shall be final unless the person or firm appeals within thirty (30) days of receipt of the Notice by instituting legal action as provided in the Code of Virginia.
2. The Notice of Debarment shall state the reasons for the actions taken and the decision shall be final unless the person or firm appeals within thirty (30) days of receipt of the notice by instituting legal action as provided in the Code of Virginia.

b. The County Purchasing Agent shall have the authority to suspend or debar a person or firm from bidding on any contract for the causes stated below:

1. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

2. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a County contractor;

3. Conviction under the state or federal antitrust statutes arising out of the submission of bids or proposals;

4. Violation of contract provisions, as set forth below, of a character which is regarded by the County Purchasing Agent to be so serious as to justify suspension or debarment action:

(a) failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
(b) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided, that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for suspension or debarment;

5. Any other cause the County Purchasing Agent determines to be so serious and compelling as to affect responsibility as a contractor, such as debarment by another governmental entity for any cause listed herein, or because of prior reprimands;

6. The contractor has abandoned performance or been terminated for default on any other Fairfax County project;

7. The contractor is in default on any surety bond or written guarantee on which Fairfax County is an obligee.

c. If, upon appeal, it is determined that the action taken by the County Purchasing Agent was arbitrary or capricious, or not in accordance with the Constitution of Virginia, statutes or regulations, the sole relief available to the person or firm shall be restoration of eligibility. The person or firm may not institute legal action until all statutory requirements have been met.

**70. APPEAL OF DENIAL OF WITHDRAWAL OF BID-**

a. A decision denying withdrawal of a bid submitted by a bidder or offeror shall be final and conclusive unless the bidder appeals the decision within ten (10) days after receipt of the decision by instituting legal action as provided in the Code of Virginia. The bidder or offeror may not institute legal action until all statutory requirements have been met.

b. If no bid bond was posted, a bidder refused withdrawal of bid under the provisions of Article 2, Section 4 a.9, of the Fairfax County Purchasing Resolution, prior to appealing, shall deliver to the County a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.

c. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was arbitrary or capricious, the sole relief shall be withdrawal of the bid.

**71. APPEAL OF DETERMINATION OF NONRESPONSIBILITY-**

a. Any bidder who, despite being the apparent low bidder, is determined not to be a responsible bidder for a particular County contract shall be notified in writing by the County Purchasing Agent. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten (10) days of receipt of the notice by instituting legal action as provided in the Code of Virginia. The bidder may not institute legal action until all statutory requirements have been met.

b. If, upon appeal, it is determined that the decision of the County Purchasing Agent was arbitrary or capricious and the award for the particular County contract in question has not been made, the sole relief available to the bidder shall be a finding that the bidder is a responsible bidder for the County contract in question. Where the award has been made and performance has begun, the County may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

## General Conditions and Instructions to Bidders

**72. PROTEST OF AWARD OR DECISION TO AWARD-**

a. Any bidder or offeror may protest the award or decision to award a contract by submitting a protest in writing to the County Purchasing Agent, or an official designated by the County of Fairfax, no later than ten (10) days after the award or the announcement of the decision to award, whichever occurs first. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit such protest in the same manner no later than ten days after posting or publication of the notice of such contract as provided in Article 3, Section 4, of the Fairfax County Purchasing Resolution. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction which are subject to inspection under Article 2, Section 4d of the Fairfax County Purchasing Resolution, then the time within which the protest must be submitted shall expire ten days after those records are available for inspection by such bidder or offeror under Article 2, Section 4d, or at such later time as provided herein. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The County Purchasing Agent shall issue a decision in writing within ten (10) days of the receipt of the protest stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten (10) days of receipt of the written decision by instituting legal action as provided in the Code of Virginia.

b. If prior to award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The County Purchasing Agent shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be declared void by the County. Where the award has been made and performance has begun, the County Purchasing Agent may declare the contract void upon a finding that this action is in the best interest of the County. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance at the rate specified in the contract up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

c. Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this article shall not be affected by the fact that a protest or appeal has been filed.

d. An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest, no further action to award the contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

**73. CONTRACTUAL DISPUTES-**

a. Any dispute concerning a question of fact as a result of a contract with the County which is not disposed of by agreement shall be decided by the County Purchasing Agent, who shall reduce his decision to writing and mail or otherwise forward a copy to the contractor within ninety (90) days. The decision of the County Purchasing Agent shall be final and conclusive unless the contractor appeals within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. A contractor may not institute legal action, prior to receipt of the County Purchasing Agent's decision on the claim, unless the County Purchasing Agent fails to render such decision within the time specified.

b. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty days after final payment; however, written notice of the contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

**74. LEGAL ACTION-**No bidder, offeror, potential bidder or offeror, or contractor shall institute any legal action until all statutory requirements have been met.

**75. COOPERATIVE PURCHASING-**The County may participate in, sponsor, conduct or administer a cooperative procurement agreement on behalf of or in conjunction with one or more other public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, or the District of Columbia, for the purpose of combining requirements to increase efficiency or reduce administrative expenses in any acquisition of goods and services. Except for contracts for professional services, a public body may purchase from another public body's contract even if it did not participate in the request for proposal (RFP) or invitation for bid (IFB), if the RFP or IFB specified that the procurement was being conducted on behalf of other public bodies. Nothing herein shall prohibit the assessment or payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.

**76. PROFESSIONAL AFFILIATION**-The Department of Purchasing & Supply Management holds membership in the National Institute of Governmental Purchasing, Inc., a non-profit, educational and technical organization that includes among its goals and objectives the study, discussion, and recommendation of improvements in governmental purchasing and the interchange of ideas and experiences on local state, and national governmental purchasing problems.

## General Conditions and Instructions to Bidders

**77. DRUG FREE WORKPLACE-**During the performance of a contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract of over $10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in conjunction with a specific contract awarded to a contractor in accordance with this section, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

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

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

**80. CONTRACTOR NOT TO BENEFIT:** Contractor agrees that the goods and/or services provided to Fairfax County pursuant to this Agreement are for the benefit of Fairfax County and that Contractor shall not undertake any actions or efforts stemming from or related to this Agreement that shall inure to the detriment of Fairfax County. Any information provided to the Contractor for the performance of this Contract shall not be used for any other purpose without the written consent of the Purchasing Agent.

***APPROVED:***

***/S/ Elizabeth Teare***
***COUNTY ATTORNEY***

***/S/ Cathy A. Muse***
***COUNTY PURCHASING AGENT***

# OFFEROR DATA SHEET

NAME OF OFFEROR:_____

ADDRESS: _____

_____

E-MAIL ADDRESS: _____

Name and e-mail addresses of both service and fiscal representatives (Key Personnel) who would handle this account.

Service Representative: _____
Telephone Number: (___) _____
E-Mail Address: _____

Fiscal Representative: _____
Telephone Number: (___) _____
E-Mail Address: _____

Payment Address, if different from above:

_____

_____

## VIRGINIA STATE CORPORATION COMMISSION (SCC) REGISTRATION INFORMATION

The bidder:

□ is a corporation or other business entity with the following SCC identification number: _____ **-OR-**

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

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

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

Please check the following box if you have not checked any of the foregoing options but currently have pending before the SCC an application for authority to transact business in the Commonwealth of Virginia and wish to be considered for a waiver to allow you to submit the SCC identification number after the due date for bids: □

**PRICE SUMMARY**

| SERVICES PROVIDED | RATE | TOTAL |
|---|---|---|
| Title Examination: Longer of 60 years or last conveyance | | |
| Title Examination Review and Certification | | |
| Title Bring Down | | |
| Title Binder Issuance, Copies of recorded documents per page, Copies of other documents per page | | |
| Overnight mail (per package) & Courier Charges (per delivery) | | |
| Advancement of incidental costs (per advance) | | |
| Litigation Support (per hour) | | |
| | | |
| Encumbrance Release, Document Preparation (per hour) Special Consultation (per hour) | | |
| Wire Handling Fee | | |
| Consent to Easement | | |
| Title Insurance, Attach Rate Schedule for Premiums | | |
| **TOTAL COST FOR TITLE EXAMINATION SERVICES:** | | |
| | | |
| **Housing and Community Developement:** | | |
| | | |
| | | |
| Escrow Services Only (w/o settlement) | | |
| Settlement Services | | |
| Encumbrance Release, Document Preparation (per hour) Special Consultation (per hour) | | |
| Abstract or Title Search | | |
| Title Insurance Binder | | |
| Document Prep | | |
| Notary Fees | | |

| SERVICES PROVIDED | RATE | TOTAL |
|---|---|---|
| Attorney's Fees (other) | | |
| Title Insurance (per thousand dollars coverage) | | |
| Lender's Coverage | | |
| Owner's Coverage | | |
| Insured Closing Protection Letter | | |
| | | |
| | | |

## BUSINESS, PROFESSIONAL AND OCCUPATIONAL LICENSE

All firms located or operating in Fairfax County must obtain a Business, Professional and Occupational License (BPOL) as required by Chapter 4, Article 7, of the Code of the County of Fairfax, Virginia. In order for the Department of Tax Administration to determine your BPOL requirement prior to contract award, it is necessary for you to provide the following information:

- If you currently have a Fairfax County business license, please submit a copy with your proposal.

- Do you have an office in: Virginia ☐ Yes ☐ No
  Fairfax County ☐ Yes ☐ No

- Date business began/will begin work in Fairfax County

A detailed description of the business activity that will take place in Fairfax County. If business is located outside of Fairfax County, give the percentage of work actually to be done in the County

_____

_____

_____

_____

_____

_____

_____

_____ _____
Signature Date

**Complete and return this form or a copy of your current Fairfax County Business License with your proposal.**

## CERTIFICATION REGARDING DEBARMENT OR SUSPENSION

In compliance with contracts and grants agreements applicable under the U.S. Federal Awards Program, the following certification is required by all offerors submitting a proposal in response to this Request for Proposal:

1. The Offeror certifies, to the best of its knowledge and belief, that neither the Offeror nor its Principals are suspended, debarred, proposed for debarment, or declared ineligible for the award of contracts from the United States federal government procurement or nonprocurement programs, or are listed in the *List of Parties Excluded from Federal Procurement and Nonprocurement Programs* issued by the General Services Administration.

2. "Principals," for the purposes of this certification, means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager, plant manager, head of a subsidiary, division, or business segment, and similar positions).

3. The Offeror shall provide immediate written notice to the Fairfax County Purchasing Agent if, at any time prior to award, the Offeror learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. This certification is a material representation of fact upon which reliance will be placed when making the award. If it is later determined that the Offeror rendered an erroneous certification, in addition to other remedies available to Fairfax County government, the Fairfax County Purchasing Agent may terminate the contract resulting from this solicitation for default.

**Printed Name of Representative:** _____

**Signature/Date:** _____/_____

**Company Name:** _____

**Address:** _____

**City/State/Zip:** _____

**SSN or TIN No:** _____

## Listing Of Local Public Bodies

REFERENCE PARAGRAPH 29 OF THE SPECIAL PROVISIONS,"USE OF CONTRACTS BY OTHER PUBLIC BODIES." You may select those public bodies that this contract may be extended to; a "blank" will signify a "NO" response:

| | | | |
|---|---|---|---|
| | Alexandria Public Schools, VA | | Manassas Park, Virginia |
| | Alexandria Sanitation Authority | | Maryland-National Capital Park & Planning Commission |
| | Alexandria, Virginia | | Maryland Transit Administration |
| | Arlington County, Virginia | | Metropolitan Washington Airports Authority |
| | Arlington Public Schools, Virginia | | Metropolitan Washington Council of Governments |
| | Bladensburg, Maryland | | Montgomery College |
| | Bowie, Maryland | | Montgomery County, Maryland |
| | Charles County Public Schools, MD | | Montgomery County Public Schools |
| | College Park, Maryland | | Northern Virginia Community College |
| | Culpeper County, Virginia | | Omni Ride |
| | District of Columbia | | Potomac & Rappahannock Trans. Commission |
| | District of Columbia Courts | | Prince George's County, Maryland |
| | District of Columbia Public Schools | | Prince George's County Public Schools |
| | DC Water and Sewer Authority | | Prince William County, Virginia |
| | Fairfax County Water Authority | | Prince William County Public Schools, VA |
| | Fairfax, Virginia (City) | | Prince William County Service Authority |
| | Falls Church, Virginia | | Rockville, Maryland |
| | Fauquier County Government and Schools, Virginia | | Spotsylvania County Schools, Virginia |
| | Frederick, Maryland | | Stafford County, Virginia |
| | Frederick County Maryland | | Takoma Park, Maryland |
| | Gaithersburg, Maryland | | Upper Occoquan Sewage Authority |
| | Greenbelt, Maryland | | Vienna, Virginia |
| | Herndon, Virginia | | Virginia Railway Express |
| | Leesburg, Virginia | | Washington Metropolitan Area Transit Authority |
| | Loudoun County, Virginia | | Washington Suburban Sanitary Commission |
| | Loudoun County Public Schools | | Winchester, Virginia |
| | Loudoun County Sanitation Authority | | Winchester Public Schools |
| | Manassas, Virginia | | |
| | Manassas City Public Schools, Virginia | | |
| | | | |
| | | | |

**Complete and return this form with your proposal.**

_____
Vendor Name

# BUSINESS CLASSIFICATION

**DEFINITIONS**

***Small Business*** – means a business, independently owned or operated by one or more individuals who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees, or average annual gross receipts of $10 million or less averaged over the previous three years. One or more of the individual owners shall control both the management and daily business operations of the small business.

***Minority-Owned Business*** - means a business concern that is at least 51% owned by one or more minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more minority individuals.

***Woman-Owned Business*** – means a business that is at least 51% owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more women.

**YOU MUST CLASSIFY YOUR BUSINESS/ORGANIZATION BY MARKING THE APPROPRIATE BOXES ON THE COVER SHEET (DPSM32).** This designation is required of all business/organizations including publicly traded corporations, non-profits, sheltered work shops, government organizations, partnerships, sole proprietorships, etc.

**COUNTY OF FAIRFAX**
**DEPARTMENT OF PURCHASING & SUPPLY MANAGEMENT**
**SMALL AND MINORITY BUSINESS ENTERPRISE PROGRAM**
12000 Government Center Parkway, Suite 427
Fairfax, Virginia 22035-0013

**Fax: 703-324-3228**

**SUBCONTRACTOR (S) NOTIFICATION FORM**

Contract Number/Title: _____

Prime Contractors Name: _____

Prime Contractor's Classification: _____

You are required to provide the County with names, addresses, anticipated dollar amount and small/minority classification of each first-tier subcontractor (ref. paragraph 26, Special Provisions). Please complete this form and return it with your submission.

**Please check here if you are not using a subcontractor:** _____

| SUBCONTRACTOR(S) NAME | STREET ADDRESS | CITY | STATE | ZIP CODE | ANTICIPATED DOLLAR AMOUNT | VENDOR CLASSIFICATION |
|---|---|---|---|---|---|---|
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |

**Complete and return this form with your proposal.**

Please provide the following information on your company letter head:

Vendor name: _____

Doing Business As/(Trade Name): _____

DUNS # (if applicable): _____

Corporate Address **(Address Listed on W9):** _____

_____ Zip code: _____ (please include last four digits)

**Remittance Address** ☐ **:**

_____

_____ Zip code: _____ (please include last four digits)

Contact name: _____

Email: _____

Phone: _____ FAX: _____

Standard Method of Communication: EMAIL ☐ FAX ☐ MAIL ☐ OTHER ☐

**Purchase Order Address** ☐

_____

_____ Zip code: _____ (please include last four digits)

Contact name: _____

Email: _____

Phone: _____ FAX: _____

Standard Method of Communication: EMAIL ☐ FAX ☐ MAIL ☐ OTHER ☐

Form **W-9**
(Rev. December 2014)
Department of the Treasury
Internal Revenue Service

# Request for Taxpayer Identification Number and Certification

**Give Form to the requester. Do not send to the IRS.**

Print or type
See **Specific Instructions** on page 2.

**1** Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

**2** Business name/disregarded entity name, if different from above

**3** Check appropriate box for federal tax classification; check only **one** of the following seven boxes:

☐ Individual/sole proprietor or single-member LLC ☐ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate

☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____

**Note.** For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner.

☐ Other (see instructions) ▶

**4** Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) _____

Exemption from FATCA reporting code (if any) _____

*(Applies to accounts maintained outside the U.S.)*

**5** Address (number, street, and apt. or suite no.)

Requester's name and address (optional)

**6** City, state, and ZIP code

**7** List account number(s) here (optional)

## Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

**Note.** If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.

**Social security number**

| | | | – | | | – | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | |

**or**

**Employer identification number**

| | | – | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
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## Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

| **Sign Here** | **Signature of U.S. person** ▶ | **Date** ▶ |
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# General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments**. Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at *www.irs.gov/fw9*.

## Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

*If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding.* See *What is backup withholding?* on page 2.

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting?* on page 2 for further information.