



FAIRFAX COUNTY

DEPARTMENT OF PROCUREMENT & MATERIAL MANAGEMENT

12000 GOVERNMENT CENTER PARKWAY, SUITE 427
FAIRFAX, VIRGINIA 22035-0013

VIRGINIA

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

ISSUE DATE: March 4, 2022	REQUEST FOR PROPOSAL NUMBER: 2000003466	TITLE: Home Delivered Nutrition
DEPARTMENT: Department of Family Services	DUE DATE/TIME: March 31, 2022 @ 2:00pm	CONTRACT SPECIALIST: Derek D. Solomon at 703-324-3603 or derek.solomon@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 proposal, Offeror certifies, acknowledges, understands, and agrees to be bound by the conditions set forth in the General Conditions and Instructions to Bidders as described in Exhibit A, the Certification Regarding Ethics in Public Contracting and all relevant certifications set forth in Attachment C.

Vendor Legally Authorized Signature

Date

Print Name

Title

Sealed proposals subject to terms and conditions of this Request for Proposal will be received by the Fairfax County Purchasing Agent by way of upload to Fairfax County's procurement portal at <https://fairfaxcounty.bonfirehub.com> until the date/time specified above.

AN EQUAL OPPORTUNITY PURCHASING ORGANIZATION



IMPORTANT NOTICE

THIS IS AN ELECTRONIC PROCUREMENT (eBID)

SUBMISSIONS WILL ONLY BE ACCEPTED ELECTRONICALLY VIA THE BONFIRE PORTAL

Fairfax County Government uses a procurement portal powered by Bonfire Interactive for accepting and evaluating proposals. To register, visit <https://fairfaxcounty.bonfirehub.com>. Additional assistance is also available at Support@GoBonfire.com.

Submitting proposals via the Bonfire portal is **mandatory**. Fairfax County will not accept proposals submitted by paper, telephone, facsimile ("FAX") transmission, or electronic mail (e-mail) in response to this RFP. Reference Special Provisions, Section 13, Submission of Proposal, for additional information for additional information.

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

SPECIAL PROVISIONS**1. SCOPE OF SERVICES:**

- 1.1. The purpose of this Request for Proposal is to solicit sealed proposals to establish a contract or contracts through competitive negotiation to prepare and deliver individually package fresh and flash frozen meal and/or Shelf Stable Meal Packs and perform a well-check that naturally occurs at the time of delivery for senior nutrition programs which includes, but not limited services listed below for the County of Fairfax, Virginia. Offeror may submit a proposal for one or both services listed below:
 - a. Home Delivered Nutrition Program Meals (Direct Client Home Delivery)
 - b. Shelf Stable Meal Packs
- 1.2. The Home Delivered Nutrition Program meals are delivered directly to client homes across Fairfax County, including Fairfax City and the City of Falls Church weekly. These locations may be modified throughout the term of the contract upon mutual agreement of the parties. The County makes no guarantees as to the minimum or maximum number of meals that will be required.
- 1.3. Successful offeror, regardless of background, must also sign and comply with Exhibit B, Confidentiality Agreement prior to providing this service. Additional provisions for background checks are included for home delivered nutrition.
- 1.4. Federal funds may be expended under the resulting contract; therefore, the Contractor shall be bound by the attached Federal Grant Terms and Conditions (Exhibit C) without exception.

2. PRE-PROPOSAL CONFERENCE:

- 2.1. An optional pre-proposal conference will be held on March 11, 2022, at 1:00 P.M. by Zoom web conferencing. For the pre-proposal web conference, participants are required to register prior to the meeting. Use the registration URL <https://us06web.zoom.us/meeting/register/tZEIc-Cprz0pHtOWYVCdQIhH6uYR-zcUDWcJ> to register and to receive the password to enter the Zoom meeting. The participants will be asked to wait in the waiting room until the host allows the participants to join the meeting.
- 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 derek.solomon@fairfaxcounty.gov.
- 2.3. To request reasonable ADA accommodations, call the Department of Procurement and Material Management ADA representative at 703-324-3201 or TTY 711. Allow seven working days in advance of the event to make the necessary arrangements.

3. CONTRACT PERIOD AND RENEWAL:

- 3.1. The contract period is July 1, 2022, through June 30, 2023.
- 3.2. Automatic contract renewals are prohibited. Contract renewals must be authorized by and coordinated through the County's Department of Procurement and Material Management (DPMM). The County reserves the right to renew the contract for four (4) additional one (1) year periods, or any combination thereof, if agreeable to all parties.
- 3.3. The obligation of the County to pay compensation due the Contractor under the contract or any other payment obligations under any contract awarded pursuant to this Request for Proposal is subject to appropriations by the Fairfax County Board of Supervisors to satisfy payment of such obligations. The County's obligations to make payments during subsequent fiscal years are dependent upon the same action. If such an appropriation is not made for any fiscal year, the contract shall terminate effective at the end of the fiscal year for which funds were appropriated and the County will not be obligated to make any payments under the contract beyond the amount appropriated for payment obligations under the contract. The County will provide the contractor with written notice of non-appropriation of funds within thirty (30) calendar days after action is completed by the Board of Supervisors. However, the County's failure to provide such notice shall not extend the contract into a fiscal year in which sufficient funds have not been appropriated.

4. BACKGROUND:

- 4.1. The Fairfax County Department of Family Services administers a Home Delivered Nutrition Program throughout Fairfax County, Fairfax City, and the City of Falls Church. All meals provided meet a minimum of 33 1/3 percent of the Dietary Reference Intake (DRI) for older adults, and in general, program participants must be age 60 or older and meet the eligibility guidelines established by the Virginia Department for Aging and Rehabilitative Services (DARS) for each of the programs. These programs are funded in part by DARS, which receives the funding for these programs from the Federal Administration on Aging, the federal agency responsible for administration of the Older American Act. Contractor performance is measured, in large part, on program participant satisfaction with the meals provided.

SPECIAL PROVISIONS

- 4.2. The Home Delivered Nutrition Program, also known as Meals on Wheels, provides approximately 366,008 meals to a total of 1,115 individuals per year. These meals are purchased by the County and delivered directly to clients. This program provides 11 meals per week that include a combination of flash frozen items which can be stored in the freezer for up to 6 months, and fresh, cold, boxed meals that last up to 7 days in the refrigerator. This program offers clients a choice of vegetarian or non-vegetarian meals and provides a well-check on the client at the time of delivery.
- 4.3. The Home Delivered Meal Program provides a 5-day supply of shelf stable emergency meal packs to help clients better prepare for any unforeseen disruption in service due to inclement weather or in case of emergencies. These emergency meals are distributed directly to clients at a minimum of two times per year, but additional supplies may be distributed, as needed. These meals are vacuum sealed, do not require refrigeration, and may be kept for a year. Meals are typically distributed in the fall before the winter season and in the springtime ahead of hurricane season. These meals meet the State standards for Nutrition and are reviewed by the staff Registered Dietician.
- 4.4. The current contract for these services can be viewed on the [Fairfax County Contract Register](#) by entering contract number 4400007686 in the contract number field.

5. FAIRFAX COUNTY RESPONSIBILITIES:

- 5.1. For home delivered meals, the county will provide the exact number of meals to be prepared two business days in advance of the scheduled service.
- 5.2. Coordinate dates and times for quarterly nutrition education from the County's dietitian.
- 5.3. Provide updated state and local standards and regulations as required.
- 5.4. Provide consultation and technical assistance as requested. Participate in quarterly menu planning meetings.
- 5.5. Provide well check expectations and training.
- 5.6. Annually survey participant satisfaction and solicit feedback regarding preferences and quality. The results will be shared with the contractor.

6. STATEMENT OF NEEDS:

- 6.1. Offerors should submit a technical narrative response form demonstrating their ability to provide the services listed in 1.1. above.

7. TECHNICAL PROPOSAL INSTRUCTIONS:

- 7.1. The offeror must submit their response to the Technical Proposal as instructed in Bonfire containing the following information. This information will be considered the minimum content of the proposal.
- a. Complete and sign the Fairfax County Cover Sheet (DPMM32)
 - b. Attachment A – **Home Delivered Nutrition Program Meals** - Technical Proposal Response Form
 - If proposing for Home Delivered Nutrition Program Meals (Direct Client Home Delivery)
 - c. Attachment B – **Shelf Stable Meal Packs** - Technical Proposal Response Form
 - If proposing for Shelf Stable Meal Packs
 - d. Attachment C – Forms
 - e. All issued Addenda
 - f. Supporting Documentation (if applicable)

8. COST PROPOSAL INSTRUCTIONS:

- 8.1. The offeror must submit their cost proposal response as instructed in Bonfire using Attachment D, Cost Proposal Response Form. The following information should be submitted as part of the cost proposal:
- a. For Home Delivered Nutrition Program Meals (Direct Client Home Delivery) – Meal price shall be inclusive of all cost associated with providing the meals including milk and all mileage and delivery costs.
 - b. For Shelf Stable Meal Packs

Caution: Failure to break down cost elements as described above may render the Cost proposal non-responsive.

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), or other relevant indices, not to exceed 3%. **Should a price increase be granted the prices will remain firm for 365 days.**

SPECIAL PROVISIONS

- 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), change in manufacturer's price, etc.).
- 9.3. Price decreases shall be made in accordance with paragraph 41 of the General Conditions & Instructions to Offerors. (Exhibit 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.
- 10.3. Request for Protection of Trade Secrets or Proprietary Information (Attachment C) is provided as a courtesy to assist offerors desiring to protect trade secrets or proprietary information from disclosure under the Virginia Freedom of Information Act.
- 10.4. The classification of an entire proposal document, line-item prices, and/or total proposal prices as proprietary or trade secrets is not acceptable and may result in rejection of the proposal.

11. CONTACT FOR CONTRACTUAL MATTERS:

- 11.1. All communications and requests for information and clarifications shall be directed to the following procurement official:
- Derek D. Solomon, Contract Specialist
Department of Procurement and Material Management
Telephone: 703-324-3603
Email: derek.solomon@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 may result in the disqualification of the Offeror's proposal.

13. SUBMISSION OF PROPOSAL:

- 13.1. Proposals must be received electronically through Fairfax County's online Procurement Portal at: <https://fairfaxcounty.bonfirehub.com>, on or before the Submittal Deadline. Submissions will only be accepted through the portal. Fairfax County will not accept proposals submitted by paper, telephone, facsimile ("FAX") transmission, or electronic mail (i.e., e-mail) in response to this RFP. Proposal submissions and registration are free of charge. Offerors can register for a free account at: <https://fairfaxcounty.bonfirehub.com>, which will be required when preparing a submission. Documents may be uploaded at any time during the open period. The official time used for receipt of proposals/modifications is the time stamp within the Bonfire portal. No other clocks, calendars or timepieces are recognized. For technical questions related to a submission contact Bonfire at Support@GoBonfire.com or click on the link "Contact Bonfire Support here" under Need Help? (Note: it takes an average of 16 minutes to an hour for a response). Therefore, offerors shall take the necessary steps to submit their proposals in advance.
- 13.2. Offerors can view all the user guide which provides step by step instructions regarding use of Bonfire: <https://support.gobonfire.com/hc/en-us/categories/360000773733-User-Guides>.

Listed below are some helpful guides that will assist offerors regarding Registration and Submission:

- [Vendor Registration](#)
- [Creating and uploading a submission](#)

- 13.3. If, at the time of the scheduled proposal closing Fairfax County Government is closed due to inclement weather or another unforeseeable event, the proposal closing will still proceed electronically through the Bonfire system.
- 13.4. Technical Information: Uploading large documents may take time, depending on the size of the file(s) and your Internet connection speed. You will receive an email confirmation receipt with a unique confirmation number once you finalize your submission. Minimum system requirements for the Bonfire portal - Internet Explorer 11, Microsoft Edge, Google Chrome, or Mozilla Firefox. JavaScript must be enabled. Browser cookies must be enabled.

SPECIAL PROVISIONS

- 13.5. 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.
- 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.

14. ADDENDA:

- 14.1. Offerors are reminded that changes to the solicitation, in the form of addenda, are often issued between the issue date and within three (3) days before the due date. All addenda shall be signed and submitted before the due date/time or must accompany the bid.
- 14.2. Notice of addenda will be posted on eVA and Bonfire. It is the Offeror's responsibility to monitor the web page for the most current addenda at <https://fairfaxcounty.bonfirehub.com>.

15. PROPOSAL ACCEPTANCE PERIOD:

- 15.1. Any proposal submitted in response to this solicitation shall be valid for 120 days. At the end of the days the proposal may be withdrawn at the written request of the offeror. If the proposal is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.

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.
- 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
- a. The following factors will be considered in the award for **Home Delivered Nutrition Program Meals (Attachment A)**:
 1. Technical Response Form, Section 4, and Section 5. **(25 points)**
 2. Technical Response Form, Sections 6 and 7 **(25 points)**
 3. Statement of Qualifications (Technical Response Form, Section 8) **(25 points)**
 4. Cost Reasonableness **(25 points)**

SPECIAL PROVISIONS

- b. The following factors will be considered in the award for **Shelf Stable Meal Packs (Attachment B)**:
1. Technical Response Form, Section 4, 5, and Section 6. **(25 points)**
 2. Technical Response Form, Sections 7 and 8 **(25 points)**
 3. Statement of Qualifications (Technical Response Form, Section 9) **(25 points)**
 4. Cost Reasonableness **(25 points)**
- 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:

- a. The Contractor is responsible for its work and every part thereof, and for all materials, tools, equipment, appliances, and property of any and all description used in connection therewith. The Contractor assumes all risk of direct and indirect damage or injury to the property or persons used or employed on or in connection with the work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission, or operation under the contract.
- b. The Contractor must during the continuance of all work under the contract provide the following:
- (1) Statutory Workers' Compensation and Employer's Liability insurance in limits of not less than \$1,000,000 to protect the Contractor from any liability or damages for any injuries (including death and disability) to any and all of its employees, including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia.
 - (2) Commercial General Liability insurance in the amount of \$1,000,000 per occurrence, \$2,000,000 in aggregate, to protect the Contractor, its subcontractors, and the interest of the County, its officers and employees against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation under the contract or in connection with the contracted work.
 - (3) Owned, non-owned, and hired Automobile Liability insurance, in the amount of \$1,000,000 per occurrence/aggregate, including property damage, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the Contractor. In addition, all mobile equipment used by the Contractor in connection with the contracted work, will be insured under either a standard Automobile Liability policy, or a Commercial General Liability policy.
- c. Liability Insurance "Claims Made" basis:
- (1) If the liability insurance purchased by the Contractor has been issued on a "claims made" basis, the Contractor must comply with the following additional conditions. The limit of liability and the extensions to be included as described previously in these provisions, remain the same.
 - (2) The Contractor must either:
 - i. Agree to provide certificates of insurance evidencing the above coverage for a period of two years after final payment for the contract. This certificate shall evidence a "retroactive date" no later than the beginning of the contractor's or sub-contractor's work under this contract, or
 - ii. Purchase the extended reporting period endorsement for the policy or policies in force during the term of this contract and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself.
- d. Liability insurance may be arranged by a combination of primary and excess or umbrella policies.
- e. Any deductibles and/or self-insured retentions greater than \$50,000 must be disclosed to and approved by the

SPECIAL PROVISIONS

County's Risk manager prior to the commencement of services. Use of large deductibles and/or self-insured retentions will require proof of financial ability as determined by the County.

- f. After a period of five-years from Agreement Date, the County may reasonably require higher limits of insurance or additional insurance coverage against other hazards for which insurance is reasonably obtainable and which, at the time, are commonly insured against in the case of similar properties conducting similar activities within the geographic area of the Property, whether or not such additional insurance requirements are otherwise described or contemplated herein.
- g. The Contractor agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A: VII.
- h. European markets including those based in London, and the domestic surplus lines markets that operate on a non-admitted basis are exempt from this requirement provided that the Contractor's broker can provide financial data to establish that a market is equal to or exceeds the financial strengths associated with the A.M. Best's rating of A: VII or better.
- i. The Contractor will provide an original, signed Certificate of Insurance citing the contract number and such endorsements as prescribed herein and The County of Fairfax, its officers, employees, and agents shall be named as an "additional insured" for all liability policies and it shall be stated on the Insurance Certificate that this coverage "is primary to all other coverage the County may possess."
- j. The Contractor will secure and maintain all insurance certificates of its subcontractors, which shall be made available to the County on demand.
- k. Contractor waives and must require (by endorsement or otherwise) all its insurers to waive subrogation rights against the County and other additional insureds for losses paid under the insurance policies required by this Contract or other insurance applicable to the Contractor or its subcontractors. The waiver must apply to all deductibles and/or self-insured retentions applicable to the required or any other insurance maintained by the Contractor or its subcontractors. Where permitted by law, Contractor must require similar written express waivers of subrogation and insurance clauses from each of its subcontractors.
- l. The Contractor will provide on demand certified copies of all insurance policies related to the contract within ten business days of demand by the County. These certified copies will be sent to the County from the Contractor's insurance agent or representative.
- m. No change, cancellation, or non-renewal shall be made in any insurance coverage without a 30-day written notice to the County. The Contractor shall furnish a new certificate prior to any change or cancellation date. The failure of the Contractor to deliver a new and valid certificate may result in suspension of all payments until the new certificate is furnished.
- n. Compliance by the Contractor and all subcontractors with the foregoing requirements as to carrying insurance shall not relieve the Contractor and all subcontractors of their liabilities provisions of the contract.
- o. Nothing contained in the specifications shall be construed as creating any contractual relationship between any subcontractor and the County. The Contractor is as fully responsible to the County for the acts and omissions of the subcontractors and of persons employed by the Contractor as it is for acts and omissions of person directly employed by Contractor.
- p. Precaution shall be exercised at all times for the protection of persons (including employees) and property.
- q. The Contractor and all subcontractors are to comply with applicable federal, state, and local occupational safety and health requirements, including, but not limited to, the Occupational Safety and Health Act of 1970, Public Law 91-596, as it may apply to this contract.

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. 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.

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. Contract and Purchase Order Number;
- b. 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. The Contractor will e-mail the invoices to fxcoinvoices@fairfaxcounty.gov.

20. CHANGES:

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

20.2. 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.

21. DELAYS AND SUSPENSIONS:

21.1. 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.

21.2. 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.

21.3. 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.

22. ACCESS TO AND INSPECTION OF WORK:

22.1. 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. DATA SOURCES:

23.1. 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.

24. SAFEGUARDS OF INFORMATION:

24.1. 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.

SPECIAL PROVISIONS**25. ORDER OF PRECEDENCE:**

- 25.1. 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, (Exhibit 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 Small Business and Supplier Diversity <https://www.sbsd.virginia.gov>; local chambers of commerce and other business organizations.

27. USE OF CONTRACT BY OTHER PUBLIC BODIES:

- 27.1. Reference Paragraph 72, 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.
- 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 contract's terms and conditions. If, when preparing such a contract, the general terms and conditions of a public body are unacceptable to the Contractor, the Contractor may withdraw its extension of the award to that public body.
- 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.

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. Allow seven (7) working days in advance of the event to make the necessary arrangements.

30. HIPAA COMPLIANCE:

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

SPECIAL PROVISIONS**31. STATE CORPORATION COMMISSION IDENTIFICATION NUMBER:**

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

Home Delivered Nutrition Meals - Technical Proposal Response Form

The offeror must complete/submit this Technical Proposal Response Form and any other information as instructed in Bonfire. This information will be considered the minimum content of the proposal.

Offeror should provide a written response to each item listed in each section 1-8.

1. ORGANIZATIONAL INFORMATION:

1.1. Provide the Name of firm submitting proposal; main office address; when organized; if a corporation, when and where incorporated; appropriate Federal, State, and County registration numbers.

2. FEDERAL GRANT TERMS AND CONDITIONS:

2.1. Does your organization agree to the attached Federal Grant Terms and Conditions (Exhibit A)?

3. FAIRFAX COUNTY RESPONSIBILITIES:

3.1. Does your organization agree to the Fairfax County Responsibilities listed in Section 5 of the Special Provisions?

4. REQUIRED ITEMS:

4.1. Does your organization agree with the following required items listed below if awarded a contract?

- a. Must have a Registered Dietitian Nutritionist (RDN) on staff or through an independent contractor to review menus for compliance with local, state and federal nutrition standards.
- b. Must have a current Permit to Operate a Food Establishment for the kitchen where the meals are prepared.
- c. Staff providing delivery of meals directly to clients' homes must have passed a criminal background check that includes at a minimum the Central Criminal Records Exchange (CCRE) through the Virginia State Police. Individuals found to have been convicted of a "barrier crime", as such term is defined in the Code of Virginia §63.2-1719 Definitions, shall not be permitted to provide this service. Individuals who have one misdemeanor that does not involve abuse or neglect and when the conviction is 5 years old or older will be allowed to provide this service. All individuals providing this service, regardless of background, must also sign and comply with Exhibit A, Confidentiality Agreement prior to providing this service.

5. TECHNICAL NARRATIVE for the Home Delivered Nutrition Program Meals:

Offeror should provide a written response to all items in this section.

5.1. Prepare, individually package, and deliver meals directly to client homes. Contact free delivery shall be performed to ensure social distancing when necessary.

- a. All cold and flash frozen meals shall be delivered weekly to program participants between 9:00 am and 2:00 pm. Each participant shall receive 11 meals weekly as listed below. The number of clients being served under this program varies depending on the need, and program participants can reside anywhere in Fairfax County. Offerors may bid on any or all of the County Regions identified on Exhibit A. Flexibility is required.
- b. Delivery Routes shall not exceed 2-hours or when meals exceed the safe zone, whichever comes first.
- c. Successful offeror shall provide Thermal Meal Delivery Bags for all meal deliveries.
- d. Agree to participate in the County Emergency Response if applicable.
- e. No utensils shall be provided with the meals.

5.2. There is a 15-minute grace period allowed for delivery of meals to accommodate unforeseen circumstances. There is zero tolerance for delays beyond this time. If there is a foreseeable delay in the delivery of meals, the contractor will immediately contact the County's Home Delivered Nutrition Manager to make alternative arrangements ensuring that the timeline is maintained.

5.3. Menu Planning and Nutrition Education Services:

- a. Provide menu cycles of at least six weeks and include portion sizes and nutritional analysis or the meal pattern. Participate in County quarterly menu cycle meetings with the County staff. The menus must be sensitive to the ethnic diversity of the participants, include seasonal menu changes, and offer both vegetarian (No meat, or poultry) and non-vegetarian options. No pork or nut products should be included in the menu. Menus will consist of both fresh, cold, refrigerated meals and flash frozen meals.
- b. Have written policies regarding use of standardized recipes, menu development, changes to menu items, recipe ingredients, and product changes. Collaborate with County staff and program participants of the food service program for the purposes of meal evaluation, menu planning, and making changes to the quality and presentation of the meals.

Home Delivered Nutrition Meals - Technical Proposal Response Form

- c. Provide an electronic version of the monthly menus to the FAAA Home Delivered Nutrition Program Coordinator that have been approved by the County's RDN at least 60 days prior to the start of the menu.
 - d. Print, distribute and provide Nutrition Education materials to clients, provided by FAAA Home Delivered Nutrition Program Coordinator, with the meal delivery at a minimum of two times per year and up to a quarterly basis, as needed.
- 5.4. Comply with the most up to date DARS Service Standards for Home Delivered Nutrition and the Menu Planning Guidelines, as applicable. The current standards and regulations can be viewed at the following links.
- a. [DARS Menu Planning Guidelines](#)
 - b. [DARS Service Standards for the Home Delivered Nutrition Program](#)
- 5.5. Inclement Weather or Other Emergency Service Schedule: Successful Offeror will be responsible for adjusting delivery schedule as needed to ensure client meals are not missed due to threat of inclement weather. This may include shifting scheduled delivery days ahead or back depending on the anticipated weather event.
- 5.6. Be available for consultation with County staff on an as-needed basis between 6:00 AM and 5:00 PM, Eastern Time, Monday through Friday, and be available by telephone 6:00 AM to 5:00 PM, 7 days a week in case of emergency.
- 5.7. Contractor must have a written Continuity of Operations plan. County staff must be informed immediately of any disruption or delay in services.
- 5.8. Flash frozen meals must be able to be stored in the freezer for up to 6 months, and the fresh, cold, boxed meals must last up to 7 days in the refrigerator.
- 5.9. The contractor is responsible for maintaining a Permit to Operate a Food Service Establishment in Fairfax County and ensure compliance with the standards set forth by the Fairfax County Health Department at all times.
- 5.10. Coordinate and cooperate with the County in planning periodic site visits for the purpose of monitoring the contract and services provided.
- 5.11. The county human services departments engage in a Performance Based model of measuring service effectiveness. To that end, a resultant contract shall meet the Fairfax County Department of Family Services' Performance measure for meals satisfaction from program participants. The contractor shall maintain a 90% meal satisfaction rate based on the County's annual satisfaction survey. Should the satisfaction rate fall below the 90% goal, the contractor shall submit a corrective action plan and work with the County to adjust the menu and/or service to bring the satisfaction to 90% or greater.
- 5.12. Adhere to the following Meal Delivery Steps (When English is primary language):
- a. Clients who are quarantining and may need a contact-free delivery, driver will call the client to verify they are home, leave the meals at the doorstep, then visually confirm the client can accept/ receive the meals (at a distance). Meals should not be left at the home unattended to ensure food safety.
 - b. Upon arrival at client residence, knock on the door, ring doorbell, or call as noted in the client delivery roster, to alert client you have arrived. If no response, make 2 additional attempts to reach the client. Some clients may be slow to answer due to possible mobility problems, brain fog, or hearing loss, to name a few reasons. Wait 10 minutes before leaving if no answer.

If client does not answer the door after 10 minutes, complete the following steps before moving on to the next delivery:
 1. Driver shall contact Contractor's administrative staff to notify there is no answer and leave a "Sorry we missed you!" card if no one opens the door. Drivers may not leave meals at an unanswered door.
 2. Contractor's administrative staff will call the Nutrition Case Manager to alert them that the driver is at the client's home and there is no answer.
 3. Nutrition Case Manager will contact Contractor's administrative staff to follow up on client status.
 4. Contractor's administrative staff will notify the driver of client status and next steps.
 - c. Greet the client and announce Meals on Wheels delivery when the door is answered.
 - d. Provide assistance by putting the food in the refrigerator or opening cartons if requested. Ensure the oldest food trays are moved to the front of refrigerator and/or freezer and newest items are placed in the back.

Home Delivered Nutrition Meals - Technical Proposal Response Form

- e. Before leaving, ask the client if they have any unmet needs to pass along to their Nutrition Case Manager to follow up on. Driver shall notify Contractor's administrative staff of any needs expressed after delivery. Contractor's administrative staff will provide information to Nutrition Case Manager by close of business on same meal delivery day by phone and email.
- 5.13. Adhere to the following Meal Delivery Steps (When English is not the client's primary language):
- a. Clients who are quarantining and may need a contact-free delivery, driver will call the client to verify they are home, leave the meals at the doorstep, then visually confirm the client can accept/ receive the meals (at a distance). Meals should not be left at the home unattended to ensure food safety.
 - b. When English is not the client's primary language it will be noted on the client delivery roster along with the following information: language spoken, alternate point of contact, and phone number. This information will be provided and updated by Fairfax AAA staff. When English is not the primary language, complete the following:
 - 1. Call the client's point of contact listed on the client delivery roster to notify them that meals are on their way 15 minutes in advance of the delivery.
 - a. Ask the point of contact if they are aware of any unmet needs for the client that they would like you to pass along to their Nutrition Case Manager to follow up with them. Notify Contractor's administrative staff of any needs expressed after delivery. Contractor's administrative staff will provide information to Nutrition Case Manager by close of business on same meal delivery day by phone and email.
 - c. Follow Meal Delivery Steps 5.12.b. 1-3 (as listed above under "meal delivery steps").
- 5.14. Adhere to the following Meal Delivery Emergency Steps should you encounter an emergency during the delivery:
- a. If the client has had an accident, has fallen, and is conscious:
 - 1. Do not move the client, except in a hazardous situation such as a fire.
 - 2. Contact 911. If the client objects to your calling 911, advise him or her that you must call.
 - 3. Ask the client to describe what happened, where it hurts, etc.
 - 4. After contacting 911, notify your designated Contractor's administrative staff.
 - 5. Contractor's administrative staff to notify assigned Nutrition Case Manager immediately following event.
 - b. If the client appears unconscious:
 - 1. Do not move him or her except in a hazardous situation such as a fire.
 - 2. Contact 911.
 - 3. After contacting 911, notify Contractor's designated administrative staff.
 - 4. Contractor's administrative staff to notify assigned Nutrition Case Manager immediately following event.
- 5.15. Adhere to the Meal Delivery Route Monitoring Steps:
- a. Contractor is responsible for maintaining logs that track the time and temperature of meals for each zip code delivered. Contractor's drivers are responsible for the safe handling of meals and are required to dispose of and replace meals that have temperatures that indicate they are out of the safety zone (above 41 degrees Fahrenheit).
 - 1. Drivers will record the time and temperatures of meals before leaving the vendor's site for each zip code.
 - 2. Drivers will record the time and temperatures of meals midway through delivering for each zip code.
 - 3. Drivers will record the time and temperatures of meals upon last meal delivery for each zip code.
 - 4. Contractor's administrative staff will send logs to the Fairfax Area Agency on Aging on the last day of each month.

Home Delivered Nutrition Meals - Technical Proposal Response Form

6. ANSWER THE FOLLOWING QUESTIONS:

- 6.1. Describe your organization's experience in serving meals catered to older adults?
- 6.2. Describe how your organization operated during the pandemic and what were the lessons learned?
- 6.3. Describe your organization's meal cancellation policy where the County will not be charged for a cancelled meal?
- 6.4. What is your organization's meal count ordering lead time?
- 6.5. Describe your organization's procedure for handling food recalls?
- 6.6. Describe your organization's food handling procedures?
- 6.7. Describe your organization's policy on delivery driver safety?
i.e., DMV record checks, point on license.
- 6.8. Describe your organization's plan for maintaining the required food temperature during transport?
- 6.9. Describe your organization's corrective actions if the transported food does not meet health department temperature requirements?
- 6.10. Describe how your organization ensures meals are delivered on time?
- 6.11. Describe your organization's delivery vehicle fleet to include number of vehicles/drivers?
- 6.12. Does your organization own a refrigerated vehicle?
- 6.13. Describe your organization's fleet management system or process?
- 6.14. How does your organization anticipate or plan for the following scenarios? Provide a brief description of how you will handle them.
 - a. Drivers call outs or driver shortages
 - b. Disabled vehicles,
 - c. Accidents or traffic delays

7. PROVIDE THE FOLLOWING INFORMATION:

- 7.1. Proposed six-week menu cycle to including the nutritional analysis or meal pattern.
- 7.2. A copy of the current Permit to Operate a Food Service Establishment in Fairfax County or other applicable authority, and copies of the three (3) most recent inspection reports made by the applicable health authority.
- 7.3. Detail policies and procedures for criminal background checks for staff.
- 7.4. Detailed plan for start-up, to include activities and milestones with associated dates (calculated by the number of days from the date of contract award).

8. STATEMENT OF QUALIFICATIONS:

- 8.1. Organizational and Staff Experience: Describe your 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 and the following information.
 - a. Copy of permit to operate a food establishment; and
 - b. Copy of all certified food manager license.
- 8.2. References: Provide three (3) references with special notation of similar or related programs performed and must include organization names, addresses, names of contact persons, and telephone numbers for such reference.
- 8.3. Personnel: Full-time and part-time staff, proposed consultants and subcontractors who may be assigned direct work on this project should be identified. The technical areas, character and extent of participation by any subcontractor or consultant activity must be indicated and the anticipated sources will be identified.
- 8.4. 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. This includes Consultants as well as regular employees of the offeror, if relevant.
- 8.5. Financial Statements: The offeror shall provide an income statement and balance sheet from the most recent reporting period.

Shelf Stable Meal Packs - Technical Proposal Response Form

The offeror must complete/submit this Technical Proposal Response Form and any other information as instructed in Bonfire. This information will be considered the minimum content of the proposal.

Offeror should provide a written response to each item listed in each section 1-9.

1. ORGANIZATIONAL INFORMATION:

1.1. Provide the Name of firm submitting proposal; main office address; when organized; if a corporation, when and where incorporated; appropriate Federal, State, and County registration numbers.

2. FEDERAL GRANT TERMS AND CONDITIONS:

2.1. Does your organization agree to the attached Federal Grant Terms and Conditions (Exhibit B)?

3. FAIRFAX COUNTY RESPONSIBILITIES:

3.1. Does your organization agree to the Fairfax County Responsibilities listed in Section 5 of the Special Provisions?

4. REQUIRED ITEMS:

4.1. Does your organization agree with the following required items listed below if awarded a contract?

- a. Successful Offeror(s) should have a Registered Dietitian Nutritionist (RDN) on staff or through an independent contractor to review menus for compliance with local, state and federal nutrition standards.
- b. Successful Offeror's staff providing delivery of meals directly to clients' homes must have passed a criminal background check that includes at a minimum the Central Criminal Records Exchange (CCRE) through the Virginia State Police. Individuals found to have been convicted of a "barrier crime", as such term is defined in the Code of Virginia §63.2-1719 Definitions, shall not be permitted to provide this service. Individuals who have one misdemeanor that does not involve abuse or neglect and when the conviction is 5 years old or older will be allowed to provide this service. All individuals providing this service, regardless of background, must also sign and comply with Exhibit A, Confidentiality Agreement prior to providing this service.

5. TECHNICAL NARRATIVE for providing Shelf Stable Meal Packs:

Offeror should provide a written response to all items in this section.

5.1. Provide and deliver to client residence a set of 5 meals which are shelf stable and should include a variety of meal options up to four times per year as requested. The meals should meet the following requirements:

- a. Contact free delivery shall be performed to ensure social distancing when necessary.
- b. Have a minimum of a one-year shelf life from date of distribution.
- c. Comply with most up to date DARS Service Standards for Home Delivered Nutrition and the Menu Planning Guidelines, as applicable. The current standards and regulations can be viewed at the following links.
 - 1. [DARS Menu Planning Guidelines](#)
 - 2. [DARS Service Standards for the Home Delivered Nutrition Program](#)
- d. Follow the meal pattern for older adults below
 - 2-3 oz of protein,
 - 1.5 cups of fruit/vegetables,
 - 2 oz grain,
 - 8 oz dry milk.

or

Follow the nutrient analysis below:

Nutrient Analysis

The table that follows represents the most current DRI values for use when planning and evaluating meals. Values are provided for one meal a day for the average older adult population served by the program. For programs serving two meals a day, the values in the compliance range must be doubled, and for three meals per day, the values are tripled. Menus that are documented as meeting the nutrient requirements through nutrient analysis software must provide the following:

Shelf Stable Meal Packs - Technical Proposal Response Form

Nutrient	Target Value per meal (1)	Compliance Range (2)
Calories (Kcal)	685	600-750
Protein (grams)	23 gm	Minimum of 14 gm pro in the entree/protein portion of the meal
Fat (grams)	23 gm	23-27 grams
Vitamin A (ug) (3)	300 ug or 1000 I.U.	>300 ug or 1000 I.U. averaged over one week
Vitamin C (mg)	30 mg	
Vitamin B6 (mg)	0.57 mg	
Vitamin B12 (ug) (4)	0.79 ug	
Calcium (mg)	400 mg	
Magnesium(mg)	140 mg	>110 mg
Zinc (mg)	3.1 mg	
Sodium (mg)	800 mg	>1,200 mg (5)
Fiber (gm)	10 gm	>8 gm

- (1) Target Value: This value represents one-third the Dietary Reference Intake.
- (2) Compliance Range: This range represents acceptable minimum or maximum values as specified by the State to allow for menu flexibility and client satisfaction.
- (3) Vitamin A content should be from vegetable (carotenoid) sources.
- (4) Fortified foods may be used to meet vitamin B12 needs.
- (5) Sodium is liberalized based on the information from the Mathematica study that demonstrated that for many participants the meal provides close to 40-50% of the participants daily intake and to allow for menu flexibility and client satisfaction.

- e. No pork, soy or nut products should be included in the meals.
- f. Provide the shelf stable meal options including the nutritional analysis or meal pattern used. The County is requesting the following meal options, but additional options may be proposed:

Tuna Salad	Chili with Beans	Beef Pot Roast	Beef and Potatoes
Beef Stew	Chicken Alfredo	Beans & Franks	Chicken and Dumplings
Chili Mac	Chicken Stew	Chicken Salad	Spaghetti with meat sauce

- 5.2. 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, and be available by telephone 7:00am to 6:00pm, 7 days a week in case of emergency.
 - 5.3. Contractor must have a written Continuity of Operations plan. County staff must be informed immediately of any disruption or delay in services.
 - 5.4. Coordinate and cooperate with the County in planning periodic site visits for the purpose of monitoring the contract and services provided.
 - 5.5. The county human services departments engage in a Results Based Accountability (RBA) model of measuring service effectiveness. To that end, a resultant contract shall meet the Fairfax County Department of Family Services' RBA measure for meals satisfaction from program participants. The contractor shall maintain a 90% meal satisfaction rate based on the County's annual satisfaction survey. Should the satisfaction rate fall below the 90% goal, the contractor shall submit a corrective action plan and work with the County to adjust the menu and/or service to bring the satisfaction to 90% or greater.
- 6. TECHNICAL NARRATIVE for delivery of the Shelf Stable Meal Packs:**
- 6.1. There is a 15-minute grace period allowed for delivery of meals to accommodate unforeseen circumstances. There is zero tolerance for delays beyond this time. If there is a foreseeable delay in the delivery of meals, the contractor will immediately contact the County's Home Delivered Nutrition Manager to make alternative arrangements ensuring that the timeline is maintained.
 - 6.2. Inclement Weather or Other Emergency Service Schedule: Vendor will be responsible for adjusting delivery schedule as needed to ensure client meals are not missed due to threat of inclement weather. This may include shifting scheduled delivery days ahead or back depending on the anticipated weather event.
 - 6.3. Adhere to the following Meal Delivery Steps (English is primary language):
 - a. Clients who are quarantining and may need a contact-free delivery, driver will call the client to verify they are home, leave the meals at the doorstep, then visually confirm the client can accept/ receive the meals (at a distance). Meals should not be left at the home unattended to ensure food safety.

Shelf Stable Meal Packs - Technical Proposal Response Form

- b. Upon arrival at client residence, knock on the door, ring doorbell, or call as noted in the client delivery roster, to alert client you have arrived. If no response, make 2 additional attempts to reach the client. Some clients may be slow to answer due to possible mobility problems, brain fog, or hearing loss, to name a few reasons. Wait 10 minutes before leaving if no answer.

If client does not answer the door after 10 minutes, complete the following steps before moving on to the next delivery:

- 1. Driver shall contact Contractor's administrative staff to notify there is no answer and leave a "Sorry we missed you!" card if no one opens the door. Drivers may not leave meals at an unanswered door.
 - 2. Contractor's administrative staff will call the Nutrition Case Manager to alert them that the driver is at the client's home and there is no answer.
 - 3. Nutrition Case Manager will contact Contractor's administrative staff to follow up on client status.
 - 4. Contractor's administrative staff will notify the driver of client status and next steps.
- c. Greet the client and announce Meals on Wheels delivery when the door is answered.
 - d. Provide assistance by putting the meals away if requested.
 - e. Before leaving, ask the client if they have any unmet needs to pass along to their Nutrition Case Manager to follow up on. Driver shall notify Contractor's administrative staff of any needs expressed after delivery. Contractor's administrative staff will provide information to Nutrition Case Manager by close of business on same meal delivery day by phone and email.

6.4. Adhere to the following Meal Delivery Steps (When English is not the client's primary language):

- a. Clients who are quarantining and may need a contact-free delivery, driver will call the client to verify they are home, leave the meals at the doorstep, then visually confirm the client can accept/ receive the meals (at a distance). Meals should not be left at the home unattended to ensure food safety.
- b. When English is not the client's primary language it will be noted on the client delivery roster along with the following information: language spoken, alternate point of contact, and phone number. This information will be provided and updated by Fairfax AAA staff. When English is not the primary language, complete the following:
 - 1. Call the client's point of contact listed on the client delivery roster to notify them that meals are on their way 15 minutes in advance of the delivery.
 - a. Ask the point of contact if they are aware of any unmet needs for the client that they would like you to pass along to their Nutrition Case Manager to follow up with them. Notify Contractor's administrative staff of any needs expressed after delivery. Contractor's administrative staff will provide information to Nutrition Case Manager by close of business on same meal delivery day by phone and email.
- c. Follow Meal Delivery Steps 6.3.b. 1-3, as listed above under "meal delivery steps."

6.5. Adhere to the following Meal Delivery Emergency Steps should you encounter an emergency during the delivery:

- a. If the client has had an accident, has fallen, and is conscious:
 - 1. Do not move the client, except in a hazardous situation such as a fire.
 - 2. Contact 911. If the client objects to your calling 911, advise him or her that you must call.
 - 3. Ask the client to describe what happened, where it hurts, etc.
 - 4. After contacting 911, notify your designated Contractor's administrative staff.
 - 5. Contractor's administrative staff to notify assigned Nutrition Case Manager immediately following event.
- b. If the client appears unconscious:
 - 1. Do not move him or her except in a hazardous situation such as a fire.
 - 2. Contact 911.
 - 3. After contacting 911, notify Contractor's designated administrative staff.
 - 4. Contractor's administrative staff to notify assigned Nutrition Case Manager immediately following event.

Shelf Stable Meal Packs - Technical Proposal Response Form

7. PROVIDE ANSWER THE FOLLOWING QUESTIONS:

- 7.1. Describe your organization's experience in providing shelf stable meals catered to older adults?
- 7.2. Describe how your organization operated during the pandemic and what were the lessons learned?
- 7.3. Describe your organization's meal cancellation policy where the County will not be charged for a cancelled meal?
- 7.4. What is your organization's shelf stable meal count ordering lead time?
- 7.5. Describe your organization's procedure for handling food recalls?
- 7.6. Describe your organization's food handling procedures?
- 7.7. Describe your organization's policy on delivery driver safety?
i.e., DMV record checks, point on license.
- 7.8. Describe how your organization ensures meals are delivered on time?
- 7.9. Describe your organization's delivery vehicle fleet to include number of vehicles/drivers?
- 7.10. Describe your organization's fleet management system or process?
- 7.11. How does your organization anticipate or plan for the following scenarios? Provide a brief description of how you will handle them.
 - a. Drivers call outs or driver shortages
 - b. Disabled vehicles,
 - c. Accidents or traffic delays

8. PROVIDE THE FOLLOWING INFORMATION:

- 8.1. Proposed shelf stable meals/packs including the nutritional analysis or meal pattern.
- 8.2. A copy of the current Permit to Operate a Food Service Establishment in Fairfax County or other applicable authority, and copies of the three (3) most recent inspection reports made by the applicable health authority.
- 8.3. Offeror should demonstrate an awareness of difficulties in the completion of this undertaking, and a plan for surmounting them. Special attention should be given to methodological issues that will be encountered in such a project.
- 8.4. Detail policies and procedures for criminal background checks.

9. STATEMENT OF QUALIFICATIONS:

- 9.1. Organizational and Staff Experience: Describe your 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 and the following information.
 - a. Copy of permit to operate a food establishment; and
 - b. Copy of all certified food manager license.
- 9.2. References: Provide three (3) references with special notation of similar or related programs performed and must include organization names, addresses, names of contact persons, and telephone numbers for such reference.
- 9.3. Personnel: Full-time and part-time staff, proposed consultants and subcontractors who may be assigned direct work on this project should be identified. The technical areas, character and extent of participation by any subcontractor or consultant activity must be indicated and the anticipated sources will be identified.
- 9.4. 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. This includes Consultants as well as regular employees of the offeror, if relevant.
- 9.5. Financial Statements: The offeror shall provide an income statement and balance sheet from the most recent reporting period.

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:

AFFIRMATION OF LEGALLY REQUIRED CONTRACT TERMS

BY SIGNING THIS AFFIRMATION, THE OFFEROR REPRESENTS THAT IT UNDERSTANDS THAT THE FOLLOWING CONTRACT TERMS ARE REQUIRED BY LAW AND CANNOT BE VARIED, REVISED, AMENDED, CHANGED, OR OTHERWISE NEGOTIATED:

1. **Funding:** The obligation of the County to pay compensation due the Contractor under the contract or any other payment obligations under any contract awarded pursuant to this contract is subject to appropriations by the Fairfax County Board of Supervisors to satisfy payment of such obligations. The County's obligations to make payments during subsequent fiscal years are dependent upon the same action. If such an appropriation is not made for any fiscal year, the contract shall terminate effective at the end of the fiscal year for which funds were appropriated and the County will not be obligated to make any payments under the contract beyond the amount appropriated for payment obligations under the contract. The County will provide the Contractor with written notice of non-appropriation of funds within thirty (30) calendar days after action is completed by the Board of Supervisors. However, the County's failure to provide such notice will not extend the contract into a fiscal year in which sufficient funds have not been appropriated.
2. **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 shall, throughout the term of this contract, comply with the Human Rights Ordinance, Chapter 11 of the Code of the County of Fairfax, Virginia, as reenacted or amended. Contractor shall further require that all of its subcontractors will comply with the Human Rights Ordinance, Chapter 11 of the Code of the County of Fairfax, Virginia, as reenacted or amended.
3. **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.
4. **No Indemnification by the County.** The parties agree that under applicable law the County cannot indemnify or defend the Contractor. To the extent any promise or term contained in this Contract, including any exhibits, attachments, or other documents incorporated by reference therein, includes an indemnification or obligation to defend by the County, that promise or term is stricken from this Contract and of no effect.
5. **Contractual Disputes:**
 - a. Any dispute concerning a question of fact as a result of a contract with the County which is not disposed of by agreement shall be decided by the Purchasing Agent, who shall reduce her decision to writing and mail or otherwise forward a copy to the Contractor within ninety (90) days. The decision of the Purchasing Agent shall be final and conclusive unless the Contractor appeals within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. A Contractor may not institute legal action, prior to receipt of the Purchasing Agent's decision on the claim, unless the Purchasing Agent fails to render such decision within the time specified.

AFFIRMATION OF LEGALLY REQUIRED CONTRACT TERMS

- 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.
6. **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.
7. **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.
8. **Audit of Records:** The parties agree that County or its agent must have access to and the right to examine any books, documents, papers, and records of the Contractor involving transactions related to the Contract or compliance with any clauses thereunder, for a period of three (3) years after final payment. The contractor must include this requirement in all subcontracts related to this Contract.
9. **Nonvisual Access:** All information technology, which is purchased or upgraded by the County under this contract, must comply with the following access standards from the date of purchase or upgrade until the expiration of the Contract:
- a. Effective, interactive control and use of the technology (including the operating system), applications programs, and format of the data presented, shall be readily achievable by nonvisual means;
 - b. The technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom the blind or visually impaired individual interacts;
 - c. Nonvisual access technology shall be integrated into networks used to share communications among employees, program participants, and the public; and
 - d. The technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired. A covered entity may stipulate additional specifications in any procurement.
 - e. Compliance with the nonvisual access standards set out this Section is not required if the Board of Supervisors determines that (i) the information technology is not available with nonvisual access because the essential elements of the information technology are visual and (ii) nonvisual equivalence is not available.

Signature/Date: _____ / _____

Printed Name/Title: _____ / _____

Company Name: _____

FAIRFAX COUNTY'S BUSINESS CLASSIFICATION SCHEDULE

PLEASE CLASSIFY YOUR BUSINESS/ORGANIZATION BY MARKING IN STEP 1. STEP 2 IS OPTIONAL. This designation is requested of all businesses/organizations including publicly traded corporations, non-profits, employment services organizations, government organizations, partnerships, sole proprietorships, etc. Fairfax County does not certify business classifications nor does it establish preferences or set-asides for specific classifications.

Examples:

- A small, Asian women-owned business would mark "Small" in Step 1, then "Women-Owned" and "Minority-Owned" in Step 2
- A small, service-disabled veteran and women-owned business would mark "Small" in Step 1, then "Women-Owned" and "Service-Disabled Veteran-Owned" in Step 2
- A government agency/public body would ONLY mark "Government/Public Body" in Step 1

NAME OF BUSINESS: _____ LAST 4 DIGITS OF TIN/EIN: _____

Step 1: Please indicate the classification of your business/organization. Select ONLY one (1) option.

Micro Small Large Non-Profit Government/Public Body Employment Services Organization

Step 2 (OPTIONAL): Please indicate what type of ownership your business/organization consists of. You may choose MORE than one (1) option.

Women-Owned Minority-Owned Service-Disabled Veteran-Owned

DEFINITIONS

Micro Business/Organization: "Micro business" means a business that has no more than twenty-five (25) employees AND no more than \$3 million in average annual revenue over the prior three-year period.

Small Business/Organization: "Small business" means a business that is at least 51% independently owned and controlled 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 these individual owners shall control both the management and daily business operations of the small business.

Minority-Owned Business: is a business that is at least 51% owned by one or more minority individuals 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 company or other entity is owned by one or more minority individuals and both the management and daily business operations are controlled by one or more minority individuals. Such individuals shall include Asian American, African American, Hispanic American, Native American, Eskimo, or Aleut.

Women-Owned Business: 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 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 who are U.S. citizens or legal resident aliens.

Service-Disabled Veteran: means a veteran who (i) served on active duty in the United States military ground, naval, or air service, (ii) was discharged or released under conditions other than dishonorable, and (iii) has a service - connected disability rating fixed by the United States Department of Veterans Affairs.

Service-Disabled Veteran-Owned Business: is a business that is at least 51 percent owned by one or more service -disabled veterans or, in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more individuals who are service-disabled veterans and both the management and daily business operations are controlled by one or more individuals who are service-disabled veterans.

Employment Services Organization: a private non-profit, state, or local government institution that provides employment opportunities for individuals who are developmentally, physically, or mentally impaired, to prepare for gainful work in the general economy. These services may include physical rehabilitation, training in basic work and life skills (e.g., how to apply for a job, attendance, personal grooming, and handling money), training on specific job skills, and providing work experience.

VIRGINIA STATE CORPORATION COMMISSION (SCC)
REGISTRATION INFORMATION

The offeror:

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 those 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 proposals:

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 Ethics in Public Contracting

In submitting this bid or proposal, and signing below, Bidder/Offeror certifies the following in connection with a bid, proposal, or contract:

Check one:

1. I have not given any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value to any public employee or official have official responsibility for a procurement transaction.

2. I have given a payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value to a public employee or official have official responsibility for a procurement transaction, but I received consideration in substantially equal or greater value in exchange.

If 2 is selected, complete the following:

Recipient: _____

Date of Gift: _____

Description of the gift and its value:

Description of the consideration received in exchange and its value:

Printed Name of Bidder/Offeror Representative: _____

Signature/Date: _____ / _____

Company Name: _____

Company Address: _____

City/State/Zip: _____

This certification supplements but does not replace the requirements set forth in paragraph 64 (OFFICIALS NOT TO BENEFIT) of the General Conditions and Instructions to Bidders included in this solicitation

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: _____

DUNS Number: _____

BYRD ANTI-LOBBYING CERTIFICATION
31 U.S.C. 1352 et seq.

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal Loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of and Federal contract, grant, loan, or cooperative agreement.
2. If any funds or than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The CONTRACTOR, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the CONTRACTOR understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

Printed Name of
Representative: _____

Signature/Date: _____

Company Name: _____

Address: _____

City/State/Zip: _____

DUNS Number: _____

Cost Proposal Response Form

1. Home Delivered Nutrition Program Meals (Direct Client Home Delivery):
Prices shall include all costs associated with providing the meals, including all mileage and delivery costs:

- 1.1. Check the County Region(s) you are proposing to serve. (Ref. Exhibit B):

Region 1 Region 2 Region 3 Region 4

- 1.2. Meal Price with Milk or Juice Option:

Cold Meal \$ _____ per meal

Flash Frozen Meal \$ _____ per meal

- 1.3. Meal Price with Lactose Free Milk Option:

Cold Meal \$ _____ per meal

Flash Frozen Meal \$ _____ per meal

2. Shelf Stable Meal Packs:

- 2.1. Check the County Region(s) you are proposing to serve. (Ref. Exhibit B):

Region 1 Region 2 Region 3 Region 4

- 2.2. Beans & Franks \$ _____ per meal
- 2.3. Beef and Potatoes \$ _____ per meal
- 2.4. Beef Pot Roast \$ _____ per meal
- 2.5. Beef Stew \$ _____ per meal
- 2.6. Chicken Alfredo \$ _____ per meal
- 2.7. Chicken & Dumplings \$ _____ per meal
- 2.8. Chicken Salad \$ _____ per meal
- 2.9. Chicken Stew \$ _____ per meal
- 2.10. Chili with Beans \$ _____ per meal
- 2.11. Chili Mac \$ _____ per meal
- 2.12. Spaghetti with meat sauce \$ _____ per meal
- 2.13. Tuna Salad \$ _____ per meal
- 2.14. Miscellaneous Meals \$ _____ per meal
List any other meals your organization provides that are not listed above.
- 2.15. Shelf Stable Meal Pack \$ _____ per meal pack
This should be a set price for any combination of five meals listed above.

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

Approved as of January 31, 2022

**COUNTY OF FAIRFAX
COMMONWEALTH OF VIRGINIA**

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

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

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

2. **DEFINITIONS:** Unless otherwise defined in the GCIB, capitalized terms shall have the meanings defined by the Fairfax County Purchasing Resolution.

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

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

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

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

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

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

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

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

CONDITIONS OF BIDDING

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

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

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

a. Bids or proposals received after the date and time specified for receipt in the solicitation will not be considered.

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

c. The official time used for receipt of bids/modifications is the time and date stamp clock located in the Department of Procurement & Material Management. No other clocks, calendars or timepieces are recognized. All bidders must ensure all bids/modifications are received prior to the scheduled due date/time.

5. **WITHDRAWAL OF BIDS:** Bids shall be withdrawn only as set forth in the Fairfax County Purchasing Resolution.

6. **ERRORS IN BIDS:** When an error is made in extending total prices, the unit bid price will govern. Erasures in bids must be initialed by the bidder. Bidders are cautioned to recheck their bids for possible error. Errors discovered after public opening cannot be corrected and the bidder will be required to perform if its bid is accepted.

7. **LABELING OF BIDS:** All bids and proposals submitted in response to a County solicitation must be submitted in a sealed envelope or package identified with the solicitation number, title, and bidder's name and address clearly marked on the outside of the envelope or package.

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

9. **CONDITIONAL BIDS:** Conditional bids may be rejected in whole or in part.

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

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

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

Approved as of January 31, 2022

areas of the County will be furnished with the solicitation when required.

12. **RECEIPT OF BIDS:** Bids received prior to the time of opening will be securely kept, unopened by the County. No responsibility will attach to the Purchasing Agent or her representative for the premature opening of a bid not properly addressed and identified. Unless specifically authorized in the solicitation, telegraphic, electronic, or facsimile bids/modifications will not be considered by the County.
13. **BID OPENING:** All bids received in response to an Invitation for Bid (IFB) will be opened at the date, time and place specified, read publicly, and made available for inspection as provided in paragraph 64, General Conditions and Instructions to Bidders. The Purchasing Agent's representative assigned to open the bids will decide when the specified time for bid opening has arrived. Tabulations of bids received are posted on the County's website at: <https://www.fairfaxcounty.gov/procurement/bid-tab>
Proposals received in response to a Request for Proposal (RFP) will be made available as provided in Paragraph 63, General Conditions and Instructions to Bidders.
14. **OMISSIONS & DISCREPANCIES:** Any items or parts of any equipment listed in this solicitation that clearly necessary for the operation and completion of such equipment but are: (i) not fully described by the County; or (ii) are omitted by the County from such specification, shall be considered a part of such equipment even if not directly specified or called for in the specifications.
If a bidder finds discrepancies or ambiguities in, or omissions from, the solicitation, including the drawings and/or specifications, it shall notify the Purchasing Agent at least five (5) days prior to the date set for the opening of bids. If necessary, the Purchasing Agent will send a written addendum for clarification to all bidders no later than three (3) days before the date set for opening of bids. Notifications regarding specifications will not be considered if received within five days of the date set for opening of bids.
15. **BIDDER INTERESTED IN MORE THAN ONE BID:** If more than one bid is offered by a bidder, directly or indirectly, all such bids may be rejected. A bidder who has quoted prices on work, materials, or supplies to a bidder is not disqualified from quoting prices to other bidders or firms submitting a bid directly for the work, materials or supplies.
16. **TAX EXEMPTION:** The County is exempt from the payment of any federal excise or any Virginia sales tax. Fairfax County's Federal Excise Tax Exemption Number is 54-74-0127K.
17. **PROHIBITION AGAINST UNIFORM PRICING:** The Purchasing Agent encourages open and competitive bidding by all possible means and endeavors to obtain the maximum degree of open competition on all purchase transactions using the methods of procurement authorized by the Fairfax County Purchasing Resolution. Each bidder, by virtue of submitting a bid, guarantees that it has not been a party with other bidders to an agreement to bid a fixed or uniform price. Violation of this implied guarantee shall render void the bids of participating bidders. Any disclosure to or acquisition by a competitive bidder, in advance of the opening of the bids, of the terms or conditions of the bid submitted by another competitor may render the entire proceedings void and may require re-advertising for bids.
18. **UNBALANCED BIDS:** A Bid shall be mathematically unbalanced if the Bid contains unit pricing that does not reflect reasonable costs (including actual labor and material cost, overhead and profit) for the performance of the bid item(s) in question. A Bid shall be materially unbalanced if there is a reasonable doubt that award of the mathematically unbalanced Bid will result in the lowest ultimate cost to the County. A Bid that is, in the sole discretion of the County Purchasing Agent, both mathematically and materially unbalanced, may be rejected as non-responsive.

SPECIFICATIONS

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

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

AWARD

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

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

- a. The ability, capacity and skill of the bidder to perform the contract or provide the service required;
- b. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
- c. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
- d. The quality of performance of previous contracts or services;
- e. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or services;
- f. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
- g. The quality, availability and adaptability of the goods or services to the particular use required;
- h. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;
- i. Whether the bidder is in arrears to the County on debt or contract or is a defaulter on surety to the County or whether the bidder's County

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

Approved as of January 31, 2022

- taxes or assessments are delinquent; and
- j. Such other information as may be secured by the Purchasing Agent having a bearing on the decision to award the contract. If an apparent low bidder is not awarded a contract for reasons of non-responsibility, the Purchasing Agent shall so notify that bidder and shall have recorded the reasons in the contract file.
23. **NOTICE OF ACCEPTANCE/CONTRACT DOCUMENTS:** A written award (or Acceptance Agreement) mailed or otherwise furnished to the successful bidder within the time for acceptance specified in the solicitation shall result in a binding contract. The following documents, which are included in the solicitation, are incorporated by reference in and made part of the resulting contract:
- County of Fairfax Solicitation Form (Cover Sheet) and other documents which may be incorporated by reference, if applicable
 - Acceptance Agreement
 - General Conditions and Instructions to Bidders
 - Special Provisions and Specifications
 - Pricing Schedule
 - Any Addenda/Amendments/Memoranda of Negotiations
24. **TIE-BIDS:** If all bids are for the same total amount or unit price (including authorized discounts and delivery times), and if the public interest will not permit the delay of re-advertisement for bids, the Purchasing Agent is authorized to award the contract to the tie bidder that has its principal place of business in the County, or if there be none, to the resident Virginia tie bidder, or if there be none, to one of the tie bidders by drawing lots in public; or the Purchasing Agent may purchase the goods or services in the open market except that the price paid shall not exceed the lowest contract bid price submitted for the same goods or services. The decision of the County to make award to one or more such bidders shall be final.
25. **PROMPT PAYMENT DISCOUNT-**
- 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.
 - If a discount for prompt payment is allowed, the discount period will begin on the date of receipt of a properly completed invoice or acceptance of materials or services, whichever is later.
 - For determining acceptance of supplies in accordance with the provisions of the prompt payment discount paragraph, inspection and acceptance shall be accomplished only after examination (including testing) of supplies and services to determine whether the supplies and services conform to the contract requirements.
- For the purpose of earning the discount, payment is deemed to be made as of the date of mailing of the County check or issuance of an Electronic Funds Transfer, or completion of a credit card transaction.
26. **INSPECTION-ACCEPTANCE:** Acceptance shall occur only after receipt and inspection provided such inspection, as appropriate, is accomplished within a reasonable time. The County reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
27. **DEFINITE BID QUANTITIES:** Where definite quantities are specifically stated, acceptance will bind the County to order quantities specified and to pay for, at contract prices, all such supplies or services delivered that meet specifications and conditions of the contract. However, the County will not be required to accept delivery of any balances unordered, as of the contract expiration date, unless the Contractor furnished the Purchasing Agent with a statement of unordered balances not later than ten (10) days after the termination date of the contract.
28. **REQUIREMENT BID QUANTITIES:** On "Requirement" bids, acceptance will bind the County to pay for, at unit bid prices, only quantities ordered and delivered. Where the County specifies estimated quantities, the Contractor shall not be required to deliver more than ten (10) percent in excess of the estimated quantity of each item, unless otherwise agreed upon.

CONTRACT PROVISIONS

29. **TERMINATION OF CONTRACTS:** Contracts will remain in force for (i) the full period specified or (ii) until all articles ordered before date of termination, but arriving after the termination date, are satisfactorily delivered, accepted, and any further requirements and conditions are met, unless the Contract is:
- Terminated prior to expiration date by satisfactory deliveries of entire contract requirements, or upon termination by the County for Convenience or Cause.
 - Extended upon written authorization of the Purchasing Agent and accepted by Contractor, to permit ordering of unordered balances or additional quantities at contract prices and in accordance with contract terms.
30. **TERMINATION FOR CONVENIENCE:**
- A contract may be terminated in whole or in part by the County in accordance with this clause whenever the Purchasing Agent determines that such a termination is in the best interest of the County. Any such termination will be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance is terminated and the date upon which termination becomes effective.
 - An equitable adjustment in the contract price shall be made by the Purchasing Agent for completed service, but no amount shall be allowed for anticipated profit on unperformed services. Paragraph 30.b shall survive termination of the contract.
31. **TERMINATION OF CONTRACT FOR CAUSE:**
- If, through any cause, the Contractor fails to fulfill in a timely and proper manner its obligations under this contract, or if the Contractor violates any of the covenants, agreements, or stipulations of this contract, the County has the right to terminate the contract. Any such termination will be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance is terminated and the date upon which termination becomes effective. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, and reports prepared by the Contractor under the contract shall, at the option of the County, become the County's property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.
 - Termination of the Contract for Cause does not relieve the Contractor of liability to the County for damages sustained by the County by virtue of any breach of contract by the Contractor for the purpose of set off until such time as the exact amount of damages due to the County from the Contractor is determined.
32. **CONTRACT ALTERATIONS:** No alterations in the terms of a contract shall be valid or binding upon the County unless made in writing and signed by the Purchasing Agent or her authorized agent.

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

Approved as of January 31, 2022

33. **SUBLETTING OR ASSIGNMENT:** It is mutually understood and agreed that the Contractor shall not assign, transfer, convey, sublet or otherwise dispose of his or her contractual duties to any other person, firm or corporation, without the previous written consent of the Purchasing Agent. If the Contractor desires to assign its right to payment of the contract, Contractor shall notify the Purchasing Agent immediately, in writing, of such assignment of right to payment. In no case shall such assignment of contract relieve the Contractor from its obligations or change the terms of the contract.
34. **FUNDING:** The obligation of the County to pay compensation due the Contractor under the contract or any other payment obligations under any contract awarded pursuant to this contract is subject to appropriations by the Fairfax County Board of Supervisors to satisfy payment of such obligations. The County's obligations to make payments during subsequent fiscal years are dependent upon the same action. If such an appropriation is not made for any fiscal year, the contract shall terminate effective at the end of the fiscal year for which funds were appropriated and the County will not be obligated to make any payments under the contract beyond the amount appropriated for payment obligations under the contract. The County will provide the Contractor with written notice of non-appropriation of funds within thirty (30) calendar days after action is completed by the Board of Supervisors. However, the County's failure to provide such notice will not extend the contract into a fiscal year in which sufficient funds have not been appropriated.
35. **DELIVERY/SERVICE FAILURES:** If a Contractor (i) fails to deliver goods or services within the time specified or within a reasonable time as interpreted by the Purchasing Agent; or (ii) fails to make replacements or corrections of rejected articles or services when so requested, immediately or as directed by the Purchasing Agent, then the Purchasing Agent shall have the authority to purchase in the open market goods or services of comparable grade or quality to replace goods or services not delivered or rejected. On all such purchases, the Contractor shall reimburse the County, within a reasonable time specified by the Purchasing Agent, for any expense incurred in excess of contract prices. Such purchases shall be deducted from the contract quantities if applicable. Should public necessity demand it, the County reserves the right to use or consume articles delivered or services performed which are substandard in quality, subject to an adjustment in price to be determined by the Purchasing Agent.
36. **NON-LIABILITY:** The Contractor shall not be liable in damages for delay in shipment or failure to deliver when such delay or failure is the result of fire, flood, strike, the transportation carrier, act of God, act of Government, act of an alien enemy or by any other circumstances which, in the Purchasing Agent's opinion, are beyond the reasonable control of the Contractor. Under such circumstances, however, the Purchasing Agent may, at her discretion terminate the contract.
37. **NON-DISCRIMINATION:** During the performance of this contract, the Contractor agrees as follows:
- The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
 - The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
 - Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
 - The Contractor will include the provisions of the foregoing paragraphs a, b, and c above in every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.
 - Contractor shall, throughout the term of this contract, comply with the Human Rights Ordinance, Chapter 11 of the Code of the County of Fairfax, Virginia, as reenacted or amended. Contractor shall further require that all of its subcontractors will comply with the Human Rights Ordinance, Chapter 11 of the Code of the County of Fairfax, Virginia, as reenacted or amended.
38. **SMALL, WOMEN-OWNED, AND MINORITY-OWNED BUSINESS USE:**
- It is the declared policy of the County of Fairfax, through its Small and Minority Business Enterprise Program, that Fairfax County and its employees undertake every effort to increase opportunity for use of small or minority businesses in all aspects of procurement to the maximum extent feasible.
 - Where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such subcontracting opportunities to small, women and minority businesses.
 - Where Federal grants or monies are involved, it is the policy of Fairfax County, through its agents and employees, to comply with the requirements set forth in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, as they pertain to small and minority business use.
39. **GUARANTEES & WARRANTIES:** All guarantees and warranties required shall be furnished by the Contractor and shall be delivered to the Purchasing Agent before contract execution. Unless otherwise stated, manufacturer's standard warranty applies.
40. **PRICE REDUCTION:** If the Contractor makes a general price reduction for any material covered by the solicitation to customers generally, an equivalent price reduction shall apply to this contract for the duration of the contract period (or until the price is further reduced). Such price reduction shall be effective at the same time and in the same manner as the reduction in the price to customers generally. For purpose of this provision, a "general price reduction" shall mean any horizontal reduction in the price of an article or service offered (1) to Contractor's customers generally, or (2) in the Contractor's price schedule for the class of customers (i.e., wholesalers, jobbers, or retailers), which was used as the basis for bidding on this solicitation. An occasional sale at a lower price, or sale of distressed merchandise at a lower price is not a "general price reduction" under this provision. The Contractor shall submit its invoice at such reduced prices indicating on the invoice that the reduction is pursuant to the "Price Reduction" provision of the contract documents. The Contractor will also within ten days of any general price reduction notify the Purchasing Agent of such reduction by letter. FAILURE TO DO SO MAY RESULT IN TERMINATION OF THE CONTRACT.
41. **CHANGES:** If in the Purchasing Agent's opinion, it becomes proper or necessary in the execution of this contract to make any change in design, or to make any alterations that will increase the expense, the Purchasing Agent shall determine an equitable adjustment to the Contractor's compensation.
- No payment shall be made to the Contractor for any extra material or services, or of any greater amount of money than stipulated to be paid in the contract, unless some changes in or additions to the contract requiring additional outlay by the Contractor are first expressly authorized and ordered in writing by contract amendment or otherwise furnished by the Purchasing Agent.
42. **PLACING OF ORDERS:** Orders against contracts will be placed with the Contractor by Purchase Order or Procurement Card (P-Card) executed and released by the Purchasing Agent or their designee. When a Blanket Purchase Order has been released by the Purchasing Agent, telephonic orders may be placed directly with the Contractor by authorized personnel in the ordering Agency.

DELIVERY PROVISIONS

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

Approved as of January 31, 2022

43. **SHIPPING INSTRUCTIONS – CONSIGNMENT:** Unless otherwise specified in the solicitation each case, container, package, etc., delivered under the contract must be plainly marked, stating the Contractor's name, purchase order number, and delivery address as indicated in the order. Deliveries must be made within the hours of 8:00 AM - 3:00 PM. Deliveries at any other time will not be accepted unless specific arrangements have been previously made with the receiver at the delivery point. No deliveries will be accepted on Saturdays, Sundays and holidays, unless previous arrangements have been made. It shall be the responsibility of the Contractor to insure compliance with these instructions for items that are drop-shipped.
44. **RESPONSIBILITY FOR MATERIALS OR GOODS TENDERED:** Unless otherwise specified in the solicitation, the Contractor is responsible for the materials or supplies covered by the contract until they are delivered at the delivery point designated by the County. The Contractor bears all risk of loss on rejected materials or supplies after notice of rejection. Rejected materials or supplies must be removed by and at the expense of the Contractor promptly after notification of rejection, unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the Contractor within ten (10) days after date of notification, the County may return the rejected materials or supplies to the Contractor at its risk and expense or dispose of them as the County's own property.
45. **INSPECTIONS:** Inspection and acceptance of materials or supplies will be made after delivery at the designated destinations unless otherwise stated. If inspection is made after delivery at the designated destination, the County will bear the expense of inspection except for the value of samples used in case of rejection. Final inspection is conclusive except in regard to latent defects, fraud or such gross mistakes as to amount to fraud. Final inspection and acceptance or rejection of the materials or supplies will be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the County for such materials or supplies as are not in accordance with the specifications.
46. **COMPLIANCE:** Delivery must be made as ordered and in accordance with the contract or as directed by the Purchasing Agent when not in conflict with the contract. The decision of the Purchasing Agent as to reasonable compliance with delivery terms shall be final. If the Contractor claims the delay in receipt of goods was caused by the County, the Contractor must provide evidence satisfactory to the Purchasing Agent supporting the Contractor's claim. Any request for extension of delivery time from that specified in the contract must be approved by the Purchasing Agent, such extension applying only to the particular item or shipment affected. If the Contractor is delayed by the County, there shall be added to the time of completion a time equal to the period of such delay caused by the County. However, the Contractor shall not be entitled to claim damages or extra compensation for such delay or suspension. These conditions may vary for construction contracts. See contract for the individual instructions.
47. **POINT OF DESTINATION:** All materials shipped to the County must be shipped F.O.B. DESTINATION unless otherwise stated in the contract or purchase order. The materials must be delivered to the "Ship to" address indicated on the purchase order.
48. **ADDITIONAL CHARGES:** Unless bought F.O.B. "shipping point" and Contractor prepays transportation, no delivery charges shall be added to invoices except when express delivery is authorized and substituted on orders for the method specified in the contract. In such cases, difference between freight or mail and express charges may be added to invoice.
49. **METHOD AND CONTAINERS:** Unless otherwise specified, goods shall be delivered in commercial packages in standard commercial containers that are constructed to ensure acceptance by common or other carrier for safe transportation to the point of delivery. Containers become the property of the County unless otherwise specified by bidder.
50. **REPLACEMENT:** Materials or components that have been rejected by the Purchasing Agent, in accordance with the terms of a contract, shall be replaced by the Contractor at no cost to the County.
51. **PACKING SLIPS OR DELIVERY TICKETS:** All shipments must be accompanied by Packing Slips or Delivery Tickets and must contain the following information for each item delivered:
- The Purchase Order Number,
 - The Name of the Article and Stock Number (Supplier's),
 - The Quantity Ordered,
 - The Quantity Shipped,
 - The Quantity Back Ordered,
 - The Name of the Contractor.

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

BILLING

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

PAYMENTS

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

GENERAL

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

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

Approved as of January 31, 2022

- b. Warrant that when the contract includes a software license, or use of licensed software, the Contractor is the owner of the Software or otherwise has the right to grant to the County the license to use the Software granted through the Contract without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party.
- c. Protect the County against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery.
- d. Furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work or to the work of other contractors, for which his or her workers are responsible.
- e. Pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules, regulations, and policies of the County.
- f. Protect the County from loss or damage to County owned property while it is in the custody of the Contractor.
- 57. SERVICE CONTRACT GUARANTY - Contractor agrees to:**
- a. Furnish services described in the solicitation and resultant contract at the times and places and in the manner and subject to conditions of those documents provided that the County may reduce the said services at any time.
- b. Enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence.
- c. All work and services rendered in strict conformance to all laws, statues, and ordinances and the applicable government rules, regulations, methods, and procedures.
- d. Allow services to be inspected or reviewed by an employee of the County at any reasonable time and place selected by the County. The County is under no obligation to compensate Contractor for any services not rendered in strict conformity with the contract.
- e. Stipulate that the presence of a County Inspector shall not lessen the obligation of the Contractor for performance in accordance with the contract requirements or be deemed a defense on the part of the Contractor for infraction thereof. The Inspector is not authorized to revoke, alter, enlarge, relax, or release any of the requirements of the contract documents. Any omission or failure on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material. Notification of an omission or failure will be documented by the Purchasing Agent.
- 58. INDEMNIFICATION:**
- a. General Indemnification. Contractor must indemnify, keep and save harmless, and defend the County, its agents, officials, employees and volunteers against Claims that may accrue or arise against the County as a result of the granting a contract, if the Claim was caused by the negligence or error, or omission of the Contractor, its employees, its subcontractor, or its subcontractor's employees. As used in this Section, a Claim includes: injuries, death, damage to property, breach of data security, suits, liabilities, judgments, or costs and expenses. Upon request by the County, the Contractor must at its own expense: appear, defend, and pay all attorney's fees and all costs and other expenses related to the Claim. If, related to a Claim, any judgment is rendered against the County or a settlement reached that requires the County to pay money, the Contractor must at its own expense satisfy and discharge the same. Contractor expressly understands and agrees that any performance bond or insurance protection required by this Contract, or otherwise provided by the Contractor, does not limit the Contractor's responsibility to indemnify, keep and save harmless, and defend the County as provided in this Contract.
- b. Intellectual Property Indemnification. In addition to the General Indemnification, Contractor will indemnify the County for and defend the County against third-party claims for infringement of any valid United States patent, trademark or copyright by the Contractor's products, software, services, or deliverables. Contractor must indemnify the County for any loss, damage, expense or liability, including costs and reasonable attorney's fees that may result by reason of any such claim.
- In the event of a claim covered by this subparagraph, and in addition to all other obligations of Contractor in this Paragraph 58, Contractor must at its expense and within a reasonable time: (a) obtain a right for the County to continue using such products and software, or allow Contractor to continue performing the Services; (b) modify such products, software, services or deliverables to make them non-infringing; or (c) replace such products or software with a non-infringing equivalent. If, in the Contractor's reasonable opinion, none of the foregoing options is feasible Contractor must immediately notify the County and accept the return of the products, software, services, or deliverables, along with any other components rendered unusable as a result of the infringement or claimed infringement, and refund to the County the price paid to Contractor for such components as well as any pre-paid fees for the allegedly infringing services, including license, subscription fees, or both. Nothing in Paragraph 59, however, relieves the Contractor of liability to the County for damages sustained by the County by virtue of any breach of contract related to a third-party infringement claim.
- c. Right to Participate in Defense. The County may, at its sole expense, participate in the defense or resolution of a Claim. Contractor will have primary control of the defense and resolution of the Claim, except when such defense or resolution requires the County to (i) admit liability or wrongdoing; or (ii) to pay money. In either of these cases Contractor must obtain the County's prior written consent before raising such defense or entering into such resolution.
- d. No Indemnification by the County. The parties agree that under applicable law the County cannot indemnify or defend the Contractor. To the extent any promise or term contained in this Contract, including any exhibits, attachments, or other documents incorporated by reference therein, includes an indemnification or obligation to defend by the County, that promise or term is stricken from this Contract and of no effect.
- 59. OFFICIALS NOT TO BENEFIT:**
- a. Each bidder, offeror, or contractor shall certify, upon signing a bid, proposal, or contract, that to the best of their knowledge no Fairfax County official or employee having official responsibility for the procurement transaction, or member of their immediate family, has received or will receive any financial benefit of more than nominal or minimal value relating to the award of this contract. For purposes of this Paragraph, "financial benefit" means any payment, loan, subscription, advance, deposit of money, services personal use rebates or anything of more than nominal or minimal value, present or promised, unless consideration of substantially equal or greater value is exchanged. If a financial benefit has been received or will be received, this fact must be disclosed with the bid or proposal or as soon thereafter as it appears that a financial benefit will be received. Failure to disclose the information prescribed above may result in suspension or debarment, or rescission of the contract made, or could affect payment pursuant to the terms of the contract.
- b. Whenever there is reason to believe that a financial benefit of the sort described in paragraph "a" has been or will be received in connection with a bid, proposal or contract, and that the Contractor has failed to disclose such benefit or has inadequately disclosed it, the County Executive, as a prerequisite to payment pursuant to the contract, or at any other time, may require the Contractor to furnish, under oath, answers to any interrogatories related to such possible benefit.
- c. In the event the bidder or offeror has knowledge of financial benefits as outlined above, this information should be submitted with the bid or proposal. If the above does not apply at time of award of contract and becomes known after inception of a contract, the bidder or offeror

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

Approved as of January 31, 2022

must disclose such facts to the Fairfax County Purchasing Agent, 12000 Government Center Parkway, Suite 427, Fairfax, Virginia 22035-0013. Relevant Invitation/Request for Proposal Number (see cover sheet) should be referenced in the disclosure.

60. **LICENSE REQUIREMENT:** All firms doing business in Fairfax County, shall obtain a license as required by Chapter 4, Article 7, of The Code of the County of Fairfax, Virginia, as amended, entitled "Business, Professional and Occupational Licensing (BPOL) Tax." Questions concerning the BPOL Tax should be directed to the Department of Tax Administration, telephone 703-222-8234 or visit: <https://www.fairfaxcounty.gov/taxes/business/understanding-bpol-tax>. The BPOL Tax number must be indicated in the space provided on the Cover Sheet, "Fairfax License Tax No." when appropriate.
61. **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with a Fairfax County pursuant to the Fairfax County Purchasing Resolution shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. Fairfax County may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.
62. **COVENANT AGAINST CONTINGENT FEES:** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For violation of this warranty, the County shall have the right to terminate or suspend this contract without liability to the County or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
63. **VIRGINIA FREEDOM OF INFORMATION ACT:** All proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act except as provided below:
- Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.
 - Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the County decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award except in the event that the County decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to the public inspection only after award of the contract except as provided in paragraph "c" below. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.
 - Trade secrets or proprietary information submitted by a bidder, offeror or Contractor in connection with a procurement transaction or prequalification application submitted pursuant to the prequalification process identified in the Special Provisions, shall not be subject to the Virginia Freedom of Information Act; however, the bidder, offeror or Contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.
 - Nothing contained in this section shall be construed to require the County, when procuring by "competitive negotiation" (Request for Proposal), to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous to the County.
 - The County cannot maintain as confidential any information, data, or records obtainable through the Virginia Freedom of Information or similar law. This includes records or information that have not been properly designated as trade secret or proprietary information pursuant to Va. Code Ann. § 2.2-4342(F).
 - A bidder or offeror shall not designate as trade secrets or proprietary information (a) an entire bid, proposal, or prequalification application; (b) any portion of a bid, proposal, or prequalification application that does not contain trade secrets or proprietary information; or (c) line-item prices or total bid, proposal, or prequalification application prices.

BIDDER/CONTRACTOR REMEDIES

64. **INELIGIBILITY:**
- Any person or firm suspended or debarred from participation in County procurement shall be notified in writing by the Purchasing Agent.
 - The Notice of Suspension shall state the reasons for the actions taken and such decision shall be final unless the person or firm appeals within ten (10) days of receipt of the Notice by instituting legal action as provided in the Code of Virginia.
 - The Notice of Debarment shall state the reasons for the actions taken and the decision shall be final unless the person or firm appeals within ten (10) days of receipt of the Notice by instituting legal action as provided in the Code of Virginia.
 - The Purchasing Agent shall have the authority to suspend or debar a person or firm from bidding on any contract for the causes stated below:
 - 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;
 - 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;
 - Conviction under the state or federal antitrust statutes arising out of the submission of bids or proposals;
 - Violation of contract provisions, as set forth below, of a character which is regarded by the Purchasing Agent to be so serious as to justify suspension or debarment action:
 - failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - 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;
 - Any other cause the Purchasing Agent determines to be so serious and compelling as to affect responsibility as a Contractor, such as debarment by another governmental entity for any cause listed herein, or because of prior reprimands;
 - The contractor has abandoned performance, been terminated for default on a Fairfax County project, or has taken any actions that inure to the detriment of Fairfax County or a Fairfax County project ;

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

Approved as of January 31, 2022

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

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

65. APPEAL OF DENIAL OF WITHDRAWAL OF BID:

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

66. APPEAL OF DETERMINATION OF NONRESPONSIBILITY:

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

67. PROTEST OF AWARD OR DECISION TO AWARD:

- a. Any bidder or offeror may protest the award or decision to award a contract by submitting a protest in writing to the Purchasing Agent, or an official designated by the County of Fairfax, no later than ten (10) days after the award or the announcement of the decision to award, whichever occurs first. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit such protest in the same manner no later than ten days after posting or publication of the notice of such contract as provided in Article 2, Section 2, of the Fairfax County Purchasing Resolution. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction which are subject to inspection under Article 2, Section 5.C of the Fairfax County Purchasing Resolution, then the time within which the protest must be submitted shall expire ten days after those records are available for inspection by such bidder or offeror under Article 2, Section 5.C, or at such later time as provided herein. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The Purchasing Agent shall issue a decision in writing within ten (10) days of the receipt of the protest stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten (10) days of receipt of the written decision by instituting legal action as provided in the Code of Virginia. Nothing in this section shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation for Bid or Request for Proposal.
- b. If prior to award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The Purchasing Agent shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be declared void by the County. Where the award has been made and performance has begun, the Purchasing Agent may declare the contract void upon a finding that this action is in the best interest of the County. Where a contract is declared void, the performing Contractor shall be compensated for the cost of performance at the rate specified in the contract up to the time of such declaration. In no event shall the performing Contractor be entitled to lost profits.
- c. Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this article shall not be affected by the fact that a protest or appeal has been filed.
- d. An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest, no further action to award the contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

68. CONTRACTUAL DISPUTES:

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

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

70. **VENUE:** This contract and its terms, including but not limited to, the parties' obligations, the performance due, and the remedies available to each party, are governed, construed, and interpreted in accordance with the laws of the Commonwealth of Virginia. Any jurisdiction's choice of

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

Approved as of January 31, 2022

law, conflicts of laws, rules, or provisions that would cause the application of any laws other than those of the Commonwealth of Virginia do not apply. Any and all disputes, claims, and causes of action arising out of or in any way connected with this contract or its performance must be brought in the applicable court of Fairfax County, or in the United States District Court for the Eastern District of Virginia, Alexandria Division.

71. **COOPERATIVE PURCHASING:** The County or any entity identified in the Fairfax County Purchasing Resolution, Article 1, Section 3 may participate in, sponsor, conduct or administer a cooperative procurement agreement as set forth in the Fairfax County Purchasing Resolution.
72. **DRUG FREE WORKPLACE:** During the performance of a contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in conjunction with a specific contract awarded to a Contractor in accordance with this section, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.
73. **IMMIGRATION REFORM AND CONTROL ACT:** Contractor agrees that it does not and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.
74. **AUDIT OF RECORDS:** The parties agree that the County or its agent must have reasonable access to and the right to examine any records of the contractor involving transactions related to the contract or compliance with any clauses thereunder, for a period of three (3) years after final payment. The contractor shall include these same provisions in all related subcontracts. For purposes of this clause, the term "records" includes documents, and papers regardless of whether they are in written form, electronic form, or any other form.
75. **PERSONALLY IDENTIFIABLE INFORMATION:** Contractor will comply with all applicable laws regarding safeguarding and protection of personally identifiable information made available through this Contract. Contractor must report to the County all breaches that result in exposure of the County's data or other incidents compromising the security of the County's data. For purposes of this section "County data" means data that the Contractor accesses, stores, or hosts pursuant to this Contract and includes "personal information" defined by Virginia Code § 18.2-186.6 or "medical information" defined by Virginia Code § 32.1-127.1:05. Such reports must be made to the County immediately upon discovery of the breach and no later than three days from when Contractor discovered the breach. The requirements of this paragraph are in addition to and do not relieve Contractor of its obligation to comply with any requirements imposed by law regarding data breaches. If any notices to individuals or third parties are required by applicable law due to a data breach, the parties will cooperate to ensure that such notice is timely provided. If Contractor experiences a breach of protected health information governed under HIPAA, or substance use disorder information governed under 42 CFR Part 2, the terms of any Business Associate or Qualified Service Organization Agreement between the parties will control.
76. **NONVISUAL ACCESS:** All information technology, which is purchased or upgraded by the County under this contract, must comply with the following access standards from the date of purchase or upgrade until the expiration of the Contract:
- Effective, interactive control and use of the technology (including the operating system), applications programs, and format of the data presented, shall be readily achievable by nonvisual means;
 - the technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom the blind or visually impaired individual interacts;
 - Nonvisual access technology shall be integrated into networks used to share communications among employees, program participants, and the public; and
 - The technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired. A covered entity may stipulate additional specifications in any procurement.
 - Compliance with the nonvisual access standards set out this Section is not required if the Board of Supervisors determines that (i) the information technology is not available with nonvisual access because the essential elements of the information technology are visual and (ii) nonvisual equivalence is not available.

APPROVED:

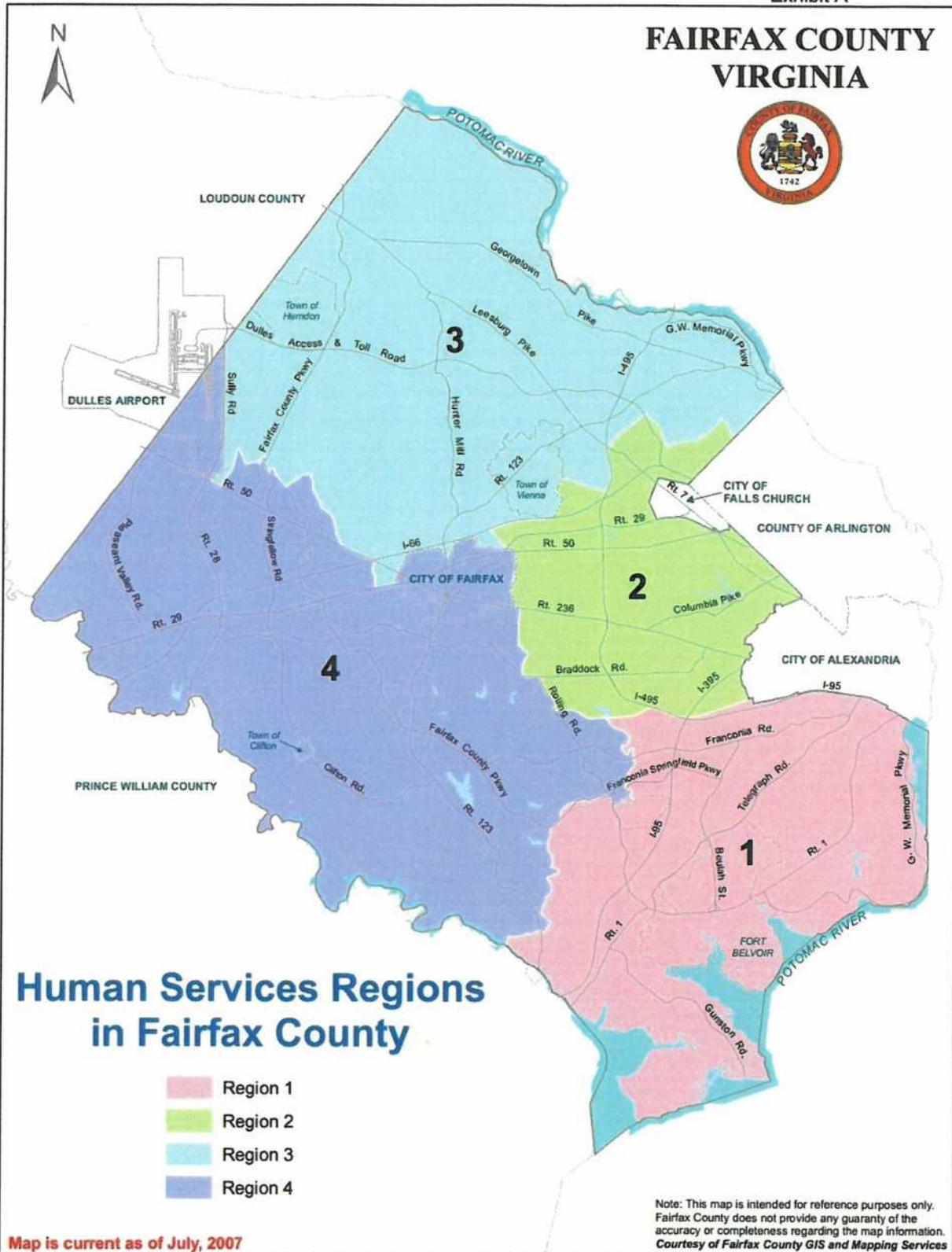
/S/ Elizabeth D. Teare
 COUNTY ATTORNEY

/S/ LeeAnne Pender
 ACTING COUNTY PURCHASING AGENT

Program Information

Exhibit A

FAIRFAX COUNTY VIRGINIA



Confidentiality Agreement

All information about clients is confidential and should not be discussed with others except in cases of potential or real danger. The contractor may be subject to warnings or possible immediate dismissal for breach of this conduct. The contractor must agree to the following:

1. Protect any personal information you learn about a client the same way you would want your private information protected in a hospital. If you've ever been a patient, you have probably assumed the medical staff would keep your information private. This includes your health and treatment information but may also include your financial, psychological, insurance, and possibly legal situation as well as that of your family members. Client information includes all of this and more.
2. Don't share any client's name or situation with family members or friends.
3. Don't discuss client names or situations in public or where it could be overheard by others.
4. Keep all client information and materials in a secure location. Do not copy or remove any client information from a Fairfax County building.
5. Don't discuss any client or their situation with anyone in the media. Immediately Refer any and all media inquiries to your supervisor and to the County point of contact.
6. If you have any issues or concerns about clients, their information, or confidentiality, immediately discuss these with your supervisor. A breach of confidentiality may result in immediate termination of your duties assigned under the Fairfax County contract and you may be personally liable for any breaches of confidentiality.

Name (Print): _____ Date: _____

Signature: _____



Federal Grant Terms and Conditions

Version 1.0 (Approved by the Office of the County Attorney January 4, 2022)

- A. **Nondiscrimination** – In performing this contract, CONTRACTOR will not exclude a person from participating in, deny them a benefit of, or discriminate against them because of race, color, religion, national origin, sex, disability, or age. See 42 U.S.C.A. § 2000d *et seq.*; 42 U.S.C.A. § 3601 *et seq.*; 42 U.S.C.A. § 6101 *et seq.*; 29 U.S.C.A § 794; 42 U.S.C.A § 12132; and 49 U.S.C.A. § 5332. The CONTRACTOR also agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability or age. See 29 U.S.C.A. § 623; 42 U.S.C.A. § 12101. In addition, the CONTRACTOR agrees to comply with applicable Federal implementing regulations regarding the subject matter of this clause.
- B. **Recycled Products** - CONTRACTOR must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- C. **Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended**—CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations of these standards by the CONTRACTOR must be reported to the U.S. Department of the Treasury and the Regional Office of the Environmental Protection Agency (EPA).
- D. **Debarment and Suspension.** CONTRACTOR certifies, by execution of Attachment B, that neither it nor any of its principals are presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- E. **Byrd Anti-Lobbying Amendment.** CONTRACTOR certifies by execution of Attachment C that it adheres to the federal restrictions on lobbying using federal funds.
- F. **Prohibition on certain telecommunications and video surveillance services or equipment.** CONTRACTOR certifies that equipment, services, or systems used in covered telecommunications equipment and provided to the COUNTY is not produced by Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- G. **Contract Work Hours and Safety Standards Act.** CONTRACTOR agrees to comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act. Specifically, CONTRACTOR must compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. This clause does not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- H. **Program Fraud, False or Fraudulent Statements, and Related Acts**
1. CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and all appropriate federal agency regulations apply to CONTRACTOR's actions pertaining to this Contract. Upon execution of this Contract, CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying CONTRACT. When submitting requests for payment under this Contract, the CONTRACTOR is deemed to certify or affirm the truthfulness and accuracy of any statement made in support of its request for payment. In addition to other penalties that may be applicable CONTRACTOR further acknowledges that if it makes, or caused to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor, to the extent the Federal Government deems appropriate. Finally, CONTRACTOR acknowledges that that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under this CONTRACT, the Federal Government reserves the right to impose the additional penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

Federal Grant Terms and Conditions

Version 1.0 (Approved by the Office of the County Attorney January 4, 2022)

2. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to the provisions.

I. Interest of Members of Congress

No member of or delegates to the Congress of the United States shall be admitted to a share or part of this Contract or to any benefit arising there from.

J. Protections for Whistleblowers.

1. In accordance with 41 U.S.C. § 4712, Contractor may not discharge, demote, or otherwise discriminate against an employee as a reprisal for disclosing information to any of the list of persons or entities provided below that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.
2. The list of persons and entities referenced in the paragraph above includes the following:
 - a. A member of Congress or a representative of a committee of Congress.
 - b. An Inspector General.
 - c. The Government Accountability Office.
 - d. A Treasury employee responsible for contract or grant oversight or management.
 - e. An authorized official of the Department of Justice or other law enforcement agency.
 - f. A court or grand jury; and/or
 - g. A management official or other employee of Contractor, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.
3. Contractor shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is entered into this ____ day of _____, by and between _____ ("Business Associate") and Fairfax County ("Fairfax County" or "Covered Entity"), as defined in Section 1.1 below.

RECITALS

- A. Fairfax County is a Hybrid Covered Entity. The County's covered components are subject to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").
- B. Business Associate is a _____.
- C. The parties desire to enter into this Agreement regarding the use and/or disclosure of Protected Health Information ("PHI") as required by HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act (Division A, Title XIII and Division B, Title IV, of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) (the "HITECH Act"), and their implementing regulations, including the Federal Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subparts A and E (the "Privacy Rule"), and the Security Standards for the Protection of Electronic Protected Health Information, 45 C.F.R. Part 160 and Part 164, Subpart C (the "Security Rule").

NOW, THEREFORE, in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. DEFINED TERMS.

- 1.1. Defined Terms. Capitalized terms used but not otherwise defined in this Agreement have the same meaning given to such terms in HIPAA, the HITECH Act, or the implementing regulations promulgated there under, including but not limited to the Privacy and Security Rules at 45 C.F.R. Part 160 and 45 C.F.R. Part 164. For purposes of this Agreement,
 - (a) "Covered Entity" means Fairfax County's covered components, and any Affiliate, and shall generally have the same meaning as the term "covered entity" at 45 C.F.R. § 160.103;
 - (b) "Business Associate" means _____ in reference to this Agreement and shall have the same meaning as the term "business associate" at 45 C.F.R. § 160.103.
 - (c) "Affiliate" means any entity that Controls, is under the Control of, or is under common Control with, the Covered Entity; "Affiliate" also means any entity that Controls, is under the Control of, or is under common Control with the Business Associate;
 - (d) "Control" or "Controls" means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity;
 - (e) "Protected Health Information" or "PHI" means individually identifiable health information that is: transmitted by electronic media; maintained in electronic media; or transmitted or maintained in any other form or medium.
 - (f) "Client" refers to patients and other individuals who receive and have received services from the Covered Entity; and for whom the covered Entity maintains any PHI.

2. BUSINESS ASSOCIATE OBLIGATIONS.

- 2.1. Business Associate Status. Business Associate acknowledges and agrees that it is a "business associate" as defined by the Privacy and Security Rules.
- 2.2. Business Associate's Use or Disclosure of PHI. Business Associate may use or disclose PHI only for the purpose of _____ [OR: *as necessary to perform the services set forth in the parties' Contract*] and only to the extent such use or disclosure of PHI (a) would not violate the Privacy Rule if done by Fairfax County, (b) is reasonably limited to the minimum necessary information to accomplish the intended purposes of the use or disclosure; (c) is in compliance with each applicable requirement of 45 C.F.R. § 164.504(e); and (d) is in compliance with the HITECH Act and its implementing regulations. Business Associate shall not use or disclose PHI other than as permitted or required by this Agreement or by applicable law.

2.3. Safeguards for Protection of PHI.

- (a) Business Associate will use appropriate safeguards to prevent use and/or disclosure of PHI other than as provided for by this Agreement.
- (b) Business Associate will comply with applicable Security Rule provisions set forth at 45 C.F.R. Part 164, Subpart C, including provisions relating to Security Standards General Rules (45 C.F.R. §164.306), Administrative Safeguards (45 C.F.R. § 164.308), Physical Safeguards (45 C.F.R. § 164.310), Technical Safeguards (45 C.F.R. § 164.312), Organizational Requirements (45 C.F.R. §164.314) and Policies and Documentation (45 C.F.R. § 164.316), and implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic PHI that Business Associate creates, receives, maintains or transmits on behalf of Fairfax County.
- (c) To the extent Business Associate is to carry out an obligation of Fairfax County under the Privacy Rule provisions set forth at 45 C.F.R. Part 164, Subpart E as directed by Fairfax County pursuant to the terms of this Agreement, Business Associate will comply with the requirements of the Privacy Rule that apply to Fairfax County in the performance of such obligation.
- (d) To the extent Business Associate includes information received from Fairfax County in research reports, such information may only be published in aggregate form in which PHI has been rendered non-identifiable such that the information cannot be re-identified.

2.4. Notification.

- (a) Business Associate will promptly report to Fairfax County's HIPAA Compliance Officer any use or disclosure of PHI not provided for by this Agreement of which Business Associate becomes aware. This includes, but is not limited to, reporting breached of Unsecured Protected Health Information as required at 45 C.F.R. 164.410.
- (b) Business Associate will report to Fairfax County's HIPAA Compliance Officer any Security Incident of which it becomes aware, in the following time and manner:
 - i. any actual, successful Security Incident will be reported to Fairfax County in writing within three (3) business days of the Business Associate's discovery of such actual, successful Security Incident.
 - ii. For any actual, successful Security Incident, or for any attempted, unsuccessful, Security Incident of which Business Associate becomes aware, Business Associate shall promptly complete a breach assessment tool (Appendix A) and provide the completed assessment to Fairfax County's HIPAA Compliance Officer within three (3) business days of completion.
- (c) Subject to any law enforcement delay required under 45 C.F.R. § 164.412, Business Associate will report to Fairfax County's HIPAA Compliance Officer in writing any Breach of Unsecured PHI within three (3) business days of discovery, and any such report shall include the identification of each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used or disclosed as a result of any such potential Breach, together with such other information regarding the potential Breach as is known to Business Associate at the time such report is made (such as the type of PHI involved in the event, the nature of the information accessed, acquired or disclosed, etc.) or promptly thereafter as such other information becomes available.
 - i. Fairfax County may require Business Associate to provide Notice to Individuals affected by a Breach caused by Business Associate, as required by 45 C.F.R. § 164.404. If Fairfax County provides the required Notice to Individuals as a result of Business Associate's Breach, Fairfax County reserves the right to be reimbursed by Business Associate all direct and indirect costs related to providing such Notice.

- 2.5. Mitigation. Business Associate will mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement or as the result of any Security Incident known to Business Associate.
- 2.6. Cooperation. Business Associate will work cooperatively with Fairfax County in connection with Fairfax County's investigation of any Breach and in connection with any notices Fairfax County determines are required as a result.
- 2.7. Subcontractors. Business Associate will ensure that any subcontractor that creates, receives, maintains or transmits PHI on behalf of Business Associate agrees to the same restrictions and conditions that apply through the applicable Engagement and this Agreement to Business Associate with respect to such PHI.
- 2.8. Client Rights Regarding PHI. The Privacy Rule grants Clients certain rights with regard to the PHI maintained in a "Designated Record Set" (as such term is defined in 45 C.F.R. § 164.501) about them. Fairfax County hereby agrees that the PHI provided to Business Associate shall not constitute a Designated Record Set or shall be limited to duplicates of information maintained in a Designated Record Set by the Fairfax County. However, to the extent Business Associate maintains PHI for an Individual in a Designated Record Set, Business Associate shall provide access to such PHI to Fairfax County or as directed by Fairfax County, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524. Business Associate shall document disclosures of PHI and such information related to such disclosures as would be required for Fairfax County to respond to a request by a Client for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 (and HITECH Act § 13405(c) when such requirements are effective as to Fairfax County) and shall provide such information to Fairfax County promptly upon written request by Fairfax County. Business Associate shall notify Fairfax County promptly if Business Associate receives a request from a Client to access, amend or receive an accounting of disclosures of Client's PHI.
- 2.9. Books and Records.
- (a) If Business Associate receives a request from the Secretary of Health and Human Services (the "Secretary") that Business Associate make available its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Fairfax County, to the Secretary for purposes of determining Fairfax County's compliance with the Privacy Rule, Business Associate shall promptly notify Fairfax County that it has received such a request. Upon Business Associate's receipt of a written directive to do so from Fairfax County, Business Associate will make the relevant internal practices, books, and records relating to the use and disclosure of PHI available to the Secretary.
- (b) Nothing in this section shall be construed to require Business Associate to disclose or produce to the Secretary communications that are subject to attorney-client privilege held by Business Associate with respect to legal advice it seeks from other legal counsel. Although Business Associate and Fairfax County are making a good faith effort to achieve conformance of these terms and conditions with the requirements of applicable law, Fairfax County acknowledges that Business Associate has not represented or warranted to Fairfax County, that these terms and conditions, including the procedures outlined in this paragraph, will be deemed by the Secretary or a court to satisfy the requirements of the Privacy and Security Rules or the HITECH Act.
- (c) Fairfax County's HIPAA Compliance Officer may make a written request (no more than twice per year) that Business Associate make available its internal HIPAA policies and procedures, risk assessments, training records, and other practices, books, and records relating to the use and disclosure of PHI received from or created or received by Business Associate on behalf of Fairfax County, for purposes of determining Business Associate's compliance with HIPAA. Upon Business Associate's receipt of the written request, Business Associate will make the relevant internal records available to Fairfax County's HIPAA Compliance Officer.

2.10. Use or Disclosure for Business Associate Administration.

Except as otherwise limited by the terms of this Agreement:

- (a) Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate; and
- (b) Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that disclosures are Required by Law or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

2.11. Reporting of Violations of Law. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with the Privacy Rule.

3. OBLIGATIONS OF COVERED ENTITY.

- 3.1. Notice of Privacy Practices. As applicable, Fairfax County shall notify Business Associate in writing of any and all limitations in its notice of privacy practices or its policies or procedures to the extent that any such limitation may affect Business Associate's use or disclosure of PHI.
- 3.2. Notice of Modifications. Fairfax County shall notify Business Associate in writing of any changes in, or revocation of, an authorization or other permission by a Client to use or disclose PHI to the extent that such change or revocation may affect the use or disclosure of PHI by Business Associate or its subcontractors.
- 3.3. Special Restrictions. Fairfax County shall notify Business Associate in writing of any restriction to the use or disclosure of PHI that Fairfax County has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- 3.4. Scope of Requests for Use or Disclosure. Except for the uses and disclosures of PHI contemplated by Sections 2.2 and 2.10 above, Fairfax County shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA, the HITECH Act, or their implementing regulations, if done by Fairfax County.

4. TERM AND TERMINATION.

- 4.1. Term. This Agreement shall be effective on the date first written above and shall expire upon [] OR [upon termination of the parties' underlying Contract].
- 4.2. Termination by Covered Entity. Upon Fairfax County's becoming aware of a breach of this Agreement by Business Associate, Fairfax County shall provide written notice of and an opportunity for Business Associate to cure the breach or end the violation of the Agreement. If the breach is not cured or the violation is not terminated within forty-five (45) days of the date of such notice, the Covered Entity may terminate this Agreement. Multiple breaches of this Agreement or violations by the Business Associate may result in termination of this Agreement with thirty (30) days' notice to Business Associate and without an opportunity to cure any further breach of violation.
- 4.3. Return of PHI. Upon any termination, expiration, or non-renewal of this Agreement, Business Associate will return or, at the request and expense of Fairfax County, destroy any PHI that Business Associate, its agents, or subcontractors then maintains in any form. If, however, Business Associate or the Fairfax County determine that such return or destruction is not feasible, such PHI will not be returned or destroyed and Business Associate will remain bound by the provisions of this Agreement as to such retained PHI until such PHI is returned to Fairfax County or destroyed.

5. MISCELLANEOUS

- 5.1. Notices. Any notice required or permitted under this Agreement will be given in writing to the Covered Entity at:

Tanya Bullock, HIPAA Compliance Officer
12000 Government Center Parkway, Suite 553
Fairfax, VA 22035
Phone: 703-324-2164

to the Business Associate at:

Notices will be deemed to have been received upon actual receipt, one business day after being sent by overnight courier service, or five (5) business days after mailing by certified or priority mail, whichever occurs first.

- 5.2. Governing Law. This Agreement will be governed by, and construed in accordance with, the laws of the Commonwealth of Virginia, without regard to its conflicts of laws principles.
- 5.3. No Third-Party Beneficiaries. This Agreement shall not in any manner whatsoever confer any rights upon or increase the rights of any third party.
- 5.4. Waiver. No delay or omission by either party to exercise any right or remedy under this Agreement will be construed to be either acquiescence or the waiver of the ability to exercise any right or remedy in the future.
- 5.5. Severability. In the event any part or parts of this Agreement are held to be unenforceable, the remainder of this Agreement will continue in effect.
- 5.6. Amendments. This Agreement may not be modified in any respect other than by a written instrument signed by both parties.
- 5.7. Assignment. This Agreement is not assignable by either party without the other party's written consent.
- 5.8. Renegotiation. The parties agree to negotiate in good faith any modification to this Agreement that may be necessary or required to ensure consistency with amendments to and changes in applicable federal and state laws and regulations, including but not limited to, HIPAA, the Privacy and Security Rules, the HITECH Act, and any regulations promulgated pursuant to HIPAA or the HITECH Act.
- 5.9. Regulatory and Statutory References. Any reference in this Agreement to HIPAA, the HITECH Act, the Privacy Rule the Security Rule, or any other regulations implementing HIPAA or the HITECH Act, shall mean such statute or regulation as in effect at the time of execution of this Agreement or, if and to the extent applicable, as subsequently updated, amended or revised.
- 5.10. Interpretation. Any ambiguity in the Agreement shall be resolved in favor of a meaning that permits the parties to comply with HIPAA.
- 5.11. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 5.12. Scope and Effect of Agreement. This Agreement sets forth the entire agreement and understanding between the parties relating to the subject matter hereof and supersedes and replaces, from the date of this agreement, all other prior discussions, representations, agreements and understandings of every kind or nature, whether oral or written, with respect to the subject matter here of, including without limitation each previously existing business associate agreement, if any, between Business Associate and the Covered Entity.

5.13. Survival. The provisions of Section 4.3 and Section 5 shall survive the termination of this Agreement.

IN WITNESS THEREOF, the parties have executed this Agreement as of the dates written below.

(Business Associate)

Fairfax County

(Covered Entity)

By:

By:

Name and Title:

Name and Title:

Date:

Date:
