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Request for Proposal No. 9001

Project Management and Construction Inspection Services

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APPENDIX A:

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I. **PURPOSE:**

The City of Chesapeake is soliciting proposals from qualified firms to provide Project Management and Construction Inspection Services for construction projects. The contractor shall oversee public funded construction projects to include a wide spectrum of construction consulting to ensure that the City receives full advantage of funded projects. Consulting shall also include the provision of advice, peer review and guidance as required for each project.

II. **SCOPE OF SERVICES:**

Acting as an extension of City staff, the contractor shall oversee complex construction projects to ensure the designers, contractors, subcontractors, architects and others contain costs, meet time and quality control requirements to ensure all expectations are met. Also coordinates with regulatory agencies and City staff as part of the construction management team. Consultant services include, but are not limited to:

- A. Developing financial estimates and timing for capital improvement projects.
 - Provides estimates of project costs and construction changes during construction.
 - Predicting estimated bid amounts and extent of competition for specific projects.
 - Providing cost comparisons.
 - Evaluating alternative design and site solutions.
 - Review of financing options and alternatives.
 - Developing cash flow analyses.
- B. Monitoring and analyzing construction costs and schedules to protect the interest of the City.
 - Reviewing and consulting on milestone schedules for maximum financing and scheduling.
 - Developing baseline schedules for projects.
 - Critical path analysis and reporting requirements.
 - Developing scheduling scenarios based on competition and labor availability.
 - Schedule, attend/chair, and participate in routine progress meetings to ensure authorized work is progressing to schedule/cost and problem areas are identified and resolved.
- C. Providing construction milestone reporting.
 - As projects progress, provide regular written status reports indicating progress made or difficulties.
 - Provide schedule updates, status reports and analyses.
 - Provide look-ahead reporting.
 - Provide multi-project scheduling.
- D. Coordinate capital improvement projects to maximize benefits to the City.
 - Establish program objectives goals.
 - Prepare program procedures and management plan.
 - Prequalify providers and suppliers.
 - Evaluate proposals and contract documents.
 - Manage change order process.
 - Manage payment process.
 - Develop creative strategies to increase and enhance performance of construction projects.
 - Investigate and respond to inquiries and concerns from contractors, City staff, the general public, and other organizational agencies.
- E. Develop and maintain partnership and reporting relationships with the Department of Public Works and other departments within the City to ensure construction projects are cost effective and managed beyond expectation.
 - Ensure that the City receives full advantages of staff resources available to the projects.
 - Develop a network of experts to provide advice, guidance and peer review.
 - Develop value analysis program to identify most effective design.

- F. Develop project controls and risk management strategies to maximize benefits on behalf of the City.
- Develop a program that provides a link to estimates, budgets, schedules, progress management and earned value.
 - Delineate projects within a program.
 - Identify measures to control project objectives, budgets and completion dates.
 - Identify risk, prioritized by importance for the City.
 - Devise mitigation plans and strategies.
 - Classify risks according to likelihood of occurrence and estimate impact.
- G. Provide Construction Inspection Services that assures quality construction in accordance with approved plans and specification.
- A minimum of three years active construction experience.
 - Certified by VDOT in grading, drainage, structures, hydraulic cement concrete, bituminous concrete or bituminous paving.
 - IMSA Traffic Signal Level II will be required for Traffic Signal work.
 - Additional certifications will be required for inspections of Facilities and Public Utilities work.
 - Knowledgeable in good construction practices; able to interpret contracts, special provisions, plans and specifications; able to exercise sound judgment; able to see engineering and test equipment; be accurate and neat in recording data and preparing records and able to maintain a harmonious relationship with the City, contractors and the public.
 - The contractor shall provide transportation for each inspector.
 - The inspector will perform inspection of all work while contractor is working.
 - The Inspector shall maintain a daily diary of all work accomplished along with quantities for pay items. Check all materials and supplies into and out of stored materials stock pile as shown on the Stored Materials Form. Review and certify Contractor's Payment Voucher and Certificate for Payment. Receive all delivery tickets and certification forms for materials utilized on project. All original records, diaries, certifications and delivery receipts shall be delivered to the City at the completion of the project.
 - The inspector shall maintain a set of construction record drawings separate from contractor. At completion of project, supply construction record drawings in AutoCAD, 2008 format on construction plan files supplied by the City.
 - Inspector shall have all necessary equipment and tools to perform inspection services. Inspector shall have a digital pager and cellular phone to allow City staff to reach him at any time.
9. Provide expert technical witnesses on behalf of the city in the event of a legal proceeding in return for the compensation of the hourly rate of pay plus payroll burden, overhead and fee as provided in proposal and travel expenses at cost.

III. **SCHEDULE OF EVENTS:**

The City will make every effort to adhere to the following schedule leading to the award of a contract; however, this schedule is subject to change. Offerors will be notified of significant schedule changes:

<u>Action</u>	<u>Responsibility</u>	<u>Date</u>
Issuance of RFP	City Purchasing	September 26, 2008
Pre-Proposal Conference	City, Potential Offerors	October 2, 2008
Submission of Questions	Potential Offerors	October 6, 2008
Submission of Proposal	Offerors	October 15, 2008
Consultant Interviews/ Selection of Finalists	Evaluation Committee	October 29, 2008

Contract Negotiations	Evaluation Committee	November 7, 2008
Contract Agreement/Award	Purchasing & Control Mgr.	November 14, 2008

IV. **CONFLICTS AND QUESTIONS:**

Should there be conflicts between the proposal documents and the final executed contract document; the final contract shall take precedence.

Questions regarding this Request for Proposals should be directed in writing to the Purchasing Division. All questions and requests for clarification must be received by the Purchasing Division before 5:00 p.m., October 6, 2008.

V. **PRE-PROPOSAL CONFERENCE:**

An optional Pre-Proposal Conference will be held at 10:00 a.m., October 2, 2008, in Public Works Conference Room 1, 3rd Floor City Hall, 306 Cedar Road Chesapeake, VA 23322. The purpose of this conference is to allow potential offerors an opportunity to present questions and obtain clarification relative to any aspect of this solicitation. Bring a copy of the solicitation with you to the conference. Any changes resulting from this conference will be issued in a written addendum to the solicitation.

VI. **PROPOSAL PREPARATION AND INSTRUCTIONS:**

In order to be considered for selection, offerors must submit a complete response to this solicitation. One (1) original and seven (7) copies of the proposal must be submitted to the Purchasing Division. No other distribution of the proposal shall be made by the offeror.

- A. Proposals shall be signed by an authorized representative of the offeror. All information requested must be submitted. Failure to submit all information requested may result in the Purchasing Division requiring prompt submission of missing information and/or giving a lowered evaluation of the proposal. Mandatory requirements are those required by law or such that they cannot be waived and are not subject to negotiation.
- B. Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of content. Elaborate brochures and excessive promotional materials are not required or desired.
- C. Proposals should be organized in the order in which the requirements are presented in the RFP. All pages of the proposal should be numbered. Each paragraph should reference the paragraph number of the corresponding section of the RFP. It is also helpful to cite the paragraph number, sub-number, and repeat the text of the requirement as it appears in the RFP. If a response covers more than one page, the paragraph number and sub-number should be cross repeated at the top of the next page. The proposal should contain a table of contents which cross references the RFP requirements. Information which the offeror desires to present that does not fall within an area of the requirement of the RFP should be inserted at an appropriate place or be attached at the end of the proposal and designated as additional material. Proposals that are not organized in this manner risk elimination from consideration if the evaluators are unable to find where the RFP requirements are specifically addressed.
- D. Each copy of the proposal should be bound or contained in a single volume where practical. All documentation submitted with the proposal should be contained in a single volume.
- E. Ownership of all data, materials and documentation originated and prepared for the City pursuant to the RFP shall belong exclusively to the City and shall be subject to public inspection in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by the offeror shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the offeror must invoke the protection of Section 2.2-4342 of the Code of Virginia, in writing, either before or at the time the data is submitted. The written notice must specifically identify the data or materials to be

protected and state the reasons why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must be indicated on the specific words, figures, or paragraphs that constitute trade secret or proprietary information. The classification of an entire proposal as proprietary or trade secrets is not acceptable and will result in rejection and return of the proposal.

VII. **SPECIFIC PROPOSAL INSTRUCTIONS:**

Proposals should be as thorough and as detailed as possible so that the City may properly evaluate the organization's capabilities to provide required services. However, the offeror shall limit the proposal to a total of thirty (30) pages exclusive of appendices. This page count will apply to figures and tables. The pages of the proposal shall not be larger than or must be folded to 8.5 inches by 11 inches.

Offerors are required to submit the following as a complete proposal:

- A. This RFP cover sheet and addendum, if any, signed and filled out as required.
- B. A statement that the firm is interested in performing the services, and evidence that the firm's workload would permit the prompt commencement and completion of the project.
- C. A detailed statement indicating the organizational structure under which the firm proposes to conduct business.
- D. A detailed and specific approach and schedule for achieving each item of the preceding Scope of Services and the objectives of the RFP, including any other data or material presented in sufficient detail for each factor to be evaluated in accordance with the evaluation criteria. This includes a description of the firm's philosophy and basis for providing these services.
- E. A detailed explanation of expertise and experience of the offeror in managing similar programs relative to the scope of work contained in this RFP. This section should include recent similar experience, capabilities of resource persons, the names and telephone numbers of past clients and references for whom such described work has been performed. The lead project manager who will do on-site work must be identified. The lead project manager must attend the RFP presentation/interview. The percentage of time to be allocated to the project by key personnel must also be shown.
- F. If subcontracting is to be used, the offeror shall submit a list of those subcontractor personnel who will be assigned for direct work on the contract and the approximate time each will be devoting to work on the resultant contract. The offeror shall provide resumes giving the educational background, professional experience, and special qualifications of personnel providing services in accordance with this contract. These resumes shall be certified in writing that the information is accurate and complete, and that the individual will participate in the resultant contract. The offeror shall describe the proposed subcontractor's past performance and effectiveness in similar work. The offeror shall submit a list of the types of similar work performed by the subcontractor(s) within the last five (5) years. The offeror shall submit references, government and/or private sector, which can provide knowledgeable input about prior performance.
- G. The offeror may include any management information which it feels is pertinent, such as historical background of the company, biographical sketches of key personnel to be assigned to the work, proposed organization to perform the work, subcontract structure and principal components to be subcontracted, and experience in similar or related fields.
- H. A listing of references as addressed in Appendix A, Section II, Item 7.
- I. Describe the recommended method of compensation.

VIII. **SUBMITTAL PROCESS AND INFORMATION:**

One (1) original (specifically marked "Original"), and seven (7) copies of the proposal shall be submitted. Facsimile copies will not be accepted. The City will accept **sealed proposals**, until 5 p.m. on October 15, 2008, delivered to:

Victor Westbrook
 Purchasing and Contract Manager
 City of Chesapeake
 306 Cedar Road, 5th Floor
 Chesapeake, Virginia 23322

Offerors that submit a response to this RFP may be required to make an oral presentation of their proposal with participation by key personnel. The City reserves the right to request clarification of information submitted. Failure to provide this additional information within a reasonable time period, as specified by the City, shall be reason for the offeror's proposal to be considered non-responsive.

The City of Chesapeake shall not be responsible for any expense incurred by the offeror in preparing and submitting a proposal, for answering any subsequent inquiries, interviews for evaluation, or contract negotiations. All submissions are final, and may not be withdrawn.

Ownership of all data, materials and documentation originated and prepared for the City pursuant to the RFP shall belong exclusively to the City and be subject to public inspection in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by the offeror shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the offeror must invoke the protection of § 2.2-4342 of the Code of Virginia, in writing, either before or at the time the data is submitted. The written notice must specifically identify the data or materials to be protected and state the reasons why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must be indicated on the specific words, figures, or paragraphs that constitute trade secret or proprietary information. The classification of an entire proposal as proprietary or trade secrets is not acceptable and will result in rejection and return of the proposal.

The City will only provide information (or access to the same) which is readily available, and does not propose to prepare any further special reports. The City reserves the right to charge its normal fees for materials copied.

The right is reserved, as the interests of the City may require, to revise and/or amend the specifications prior to the date set for acceptance of proposals; the acceptance date may be postponed if deemed necessary by the Purchasing Manager. Such revisions and amendments, if any, will be announced by an addendum to this solicitation.

IX. **SELECTION CRITERIA:**

A Selection Committee composed of representatives from the City of Chesapeake will evaluate each proposal received and submit a recommendation to the Purchasing and Contracts Manager. The City will evaluate each proposal pursuant to its standard procurement procedures consistent with the procurement of services through competitive negotiation. Selection will be made on the basis of responsive/responsible determination, qualifications and experience, references, resources and cost of services. All factors will be scored based solely on the City's evaluation:

<u>Factors</u>	<u>Point Value</u>
1. Qualifications	35%
• Specialized experience, expertise and qualifications	

- of the firm.
 - Specialized experience, expertise and qualifications of key project team members assigned to this project.
2. Past Performance 30%
- Record and experience level of the firm in accomplishing work on other similar projects in the required time.
 - Quality of work previously performed by the firm.
 - Response during project, follow-up during project, and follow-up after project completion.
 - The fees charged for services on past projects.
3. Resources 25%
- Availability of personnel to perform the work within the period of time following request for such work.
 - Access to and knowledge of necessary technology.
 - Use of Chesapeake based small business firm
4. Cost Proposal 10%

After the review and rating of proposal(s) by the Selection Committee, the individual scores will be averaged and ranked. Offerors will be ranked in descending order of numerical predominance.

ORAL PRESENTATIONS: Offerors who submit a proposal in response to this RFP may be required to give an oral presentation of their proposal. This will provide an opportunity for the offeror to clarify or elaborate on the proposal. This is a fact finding and explanation session only and will not include negotiation. The City will schedule the time and location of these presentations. Oral presentations are an option of the issuing agency and may or may not be conducted. Should an Offeror receive a request for an oral presentation, the evaluation criteria relative to the oral presentation will be detailed in a written notice of the request.

X. **AWARD OF CONTRACT:**

- A. The City of Chesapeake shall engage in individual discussions with one or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. Such offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts.

Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of the informal interviews, on the basis of evaluation factors published in this Request for Proposals and all information developed in the selection process to this point, the City shall select, in the order of preference, one or more offerors whose professional qualifications and proposed services are deemed most meritorious.

Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the City can be negotiated with terms and conditions considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and on, until such a contract can be negotiated. Should the City determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

- B. Any and all costs associated with the preparation of responses to this Request for Proposals, including site visits, oral presentations and any other costs shall be entirely the responsibility of the offeror and shall not be reimbursable in any manner by the City.
- C. The City reserves the right to reject any or all proposals, to waive any technicalities in proposals received, and to negotiate and to accept the proposal which shall be in the City's best interest.
- D. The City may cancel this Request for Proposals at any time prior to an award, and is not required to furnish a reason why a particular proposal was not deemed to be the most advantageous.

XI. **COST PROPOSAL:**

Offerors shall provide hourly rates for the various categories of personnel proposed for the contract.

APPENDIX A**SECTION I****REQUIRED GENERAL TERMS AND CONDITIONS
GOODS AND PROFESSIONAL SERVICES
JULY 2002**

- A. *VENDORS MANUAL*
 - B. APPLICABLE LAWS AND COURTS
 - C. ANTI-DISCRIMINATION
 - D. ETHICS IN PUBLIC CONTRACTING
 - E. IMMIGRATION REFORM AND CONTROL ACT OF 1986
 - F. DEBARMENT STATUS
 - G. ANTITRUST
 - H. MANDATORY USE OF CITY FORM AND TERMS AND CONDITIONS
 - I. CLARIFICATION OF TERMS
 - J. PAYMENT
 - K. PRECEDENCE OF TERMS
 - L. QUALIFICATIONS OF BIDDERS OR OFFERORS
 - M. TESTING AND INSPECTION
 - N. ASSIGNMENT OF CONTRACT
 - O. CHANGES TO THE CONTRACT
 - P. DEFAULT
 - Q. TAXES
 - R. USE OF BRAND NAMES
 - S. TRANSPORTATION AND PACKAGING
 - T. INSURANCE
 - U. ANNOUNCEMENT OF AWARD
 - V. DRUG-FREE WORKPLACE
 - W. NONDISCRIMINATION OF CONTRACTORS
 - X. COOPERATIVE PROCUREMENT
- A. **VENDORS MANUAL:** This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at www.dgs.state.va.us/dps under "Manuals."
- B. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations. This solicitation is also governed by provisions of the City of Chesapeake Ordinance on Procurement and any revisions thereto, which is hereby incorporated into this contract by reference. Contact the Purchasing Division at (757) 382-6359, for more information or to review the Chesapeake Procurement Ordinance.
- C. **ANTI-DISCRIMINATION:** By submitting their (bids/proposals), (bidders/offerors) certify to the City that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).

In every contract over \$10,000 the provisions in 1. and 2. below apply:

1. 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 any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - 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 these requirements.
 2. The Contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- D. **ETHICS IN PUBLIC CONTRACTING:** By submitting their (bids/proposals), (bidders/offerors) certify that their (bids/proposals) are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other (bidder/offeror), supplier, manufacturer or subcontractor in connection with their (bid/proposal), and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
- E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By submitting their (bids/proposals), (bidders/offerors) certify that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.
- F. **DEBARMENT STATUS:** By submitting their (bids/proposals), (bidders/offerors) certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.
- G. **ANTITRUST:** By entering into a contract, the Contractor conveys, sells, assigns, and transfers to the City of Chesapeake all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the City of Chesapeake under said contract.
- H. **MANDATORY USE OF CITY FORM AND TERMS AND CONDITIONS FOR IFBs AND RFPs:**
1. **(For Invitation For Bids):** Failure to submit a bid on the official City form provided for that purpose shall be a cause for rejection of the bid. Modification of or additions to any portion of the Invitation for Bids may be cause for rejection of the bid; however, the City reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid as non responsive. As a precondition to its acceptance, the City may, in its sole discretion, request that the bidder withdraw or modify non responsive portions of a bid which do not affect quality, quantity, price, or delivery. No modification of or addition to the provisions of the contract shall be effective unless reduced to writing and signed by the parties.
 2. **(For Request For Proposals):** Failure to submit a proposal on the official City form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the City reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.

I. **CLARIFICATION OF TERMS:** If any prospective (bidder/offeror) has questions about the specifications or other solicitation documents, the prospective (bidder/offeror) should contact the Purchasing and Contracts Manager no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the Purchasing Division.

J. **PAYMENT:**

1. To Prime Contractor:

- a. Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the City contract number and/or purchase order number, social security number (for individual Contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the Contractor at the contract price, regardless of which City department is being billed.
- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- e. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, Contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the City shall promptly notify the Contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A Contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve a department of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia, § 2.2-4363*).

2. To Subcontractors:

- a. A Contractor awarded a contract under this solicitation is hereby obligated:
 - (1) To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the City for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 - (2) To notify the department and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.
- b. The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the City, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier Contractor performing under the primary contract. A Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the City.

- K. **PRECEDENCE OF TERMS:** Paragraphs A-J of these General Terms and Conditions shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.
- L. **QUALIFICATIONS OF (BIDDERS/OFFERORS):** The City may make such reasonable investigations as deemed proper and necessary to determine the ability of the (bidder/offeror) to perform the services/furnish the goods and the (bidder/offeror) shall furnish to the City all such information and data for this purpose as may be requested. The City reserves the right to inspect (bidder's/offeror's) physical facilities prior to award to satisfy questions regarding the (bidder's/offeror's) capabilities. The City further reserves the right to reject any (bid/proposal) if the evidence submitted by, or investigations of, such (bidder/offeror) fails to satisfy the City that such (bidder/offeror) is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.
- M. **TESTING AND INSPECTION:** The City reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
- N. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the Contractor in whole or in part without the written consent of the City.
- O. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:
1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
 2. The Purchasing Division may order changes within the general scope of the contract at any time by written notice to the Contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Division a credit for any savings. Said compensation shall be determined by one of the following methods:
 - a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to the Purchasing Division's right to audit the Contractor's records and/or to determine the correct number of units independently; or
 - c. By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present the Purchasing Division with all vouchers and records of expenses incurred and savings realized. The Purchasing Division shall have the right to audit the records of the Contractor, as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Division within thirty (30) days from the date of receipt of the written order from the Purchasing Division. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by the Purchasing Division or with the performance of the contract generally.

- P. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the City, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the City may have.
- Q. **TAXES:** Sales to the City are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The City's excise tax exemption registration number is 54-072-1442.
- R. **USE OF BRAND NAMES:** Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict (bidders/offerors) to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the City, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The (bidder/offeror) is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the City to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the (bidder/offeror) clearly indicates in its (bid/proposal) that the product offered is an equal product, such (bid/proposal) will be considered to offer the brand name product referenced in the solicitation.
- S. **TRANSPORTATION AND PACKAGING:** By submitting their (bids/proposals), all (bidders/offerors) certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.
- T. **INSURANCE:** By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the contract, it will have the following insurance coverages at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The bidder or offeror further certifies that the Contractor and any subcontractors will maintain these insurance coverage's during the entire term of the contract and that all insurance coverage's will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.
- INSURANCE COVERAGES AND LIMITS REQUIRED:**
1. Workers' Compensation - Statutory requirements and benefits.
 2. Employer's Liability - \$100,000.
 3. Commercial General Liability - \$1,000,000 combined single limit. Commercial General Liability is to include Premises/Operations Liability, Products and Completed Operations Coverage, and Independent Contractor's Liability or Owner's and Contractor's Protective Liability. The City of Chesapeake must be named as an additional insured when requiring a Contractor to obtain Commercial General Liability coverage.
 4. Automobile Liability - \$1,000,000 - Combined single limit. (Only used if motor vehicle is to be used in the contract.)
- U. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract over \$30,000, as a result of this solicitation, the Purchasing Division will publicly post such notice on the City's website (www.CityofChesapeake.net) for a minimum of 10 days.
- V. **DRUG-FREE WORKPLACE:** During the performance of this contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and

applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each sub-contractor or vendor.

For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a Contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

- W. **NONDISCRIMINATION OF CONTRACTORS:** A bidder, offeror, or Contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, or disability, or against faith-based organizations. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the City shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.
- X. **COOPERATIVE PROCUREMENT:** Any resultant contract of this solicitation may be extended to any public agency or body in the Commonwealth of Virginia to permit those public agencies or bodies to purchase at contract prices, in accordance with the terms, conditions, and specifications of this bid. The contractor shall deal directly with each public agency or body in regard to order placement, delivery, invoicing, and payment.

APPENDIX A**SECTION II****SPECIAL TERMS AND CONDITIONS
GOODS AND PROFESSIONAL SERVICES**

1. ADVERTISING
2. AUDIT
3. BID ACCEPTANCE PERIOD
4. IDENTIFICATION OF BID/PROPOSAL ENVELOPE
5. INDEMNIFICATION
6. MINORITY/WOMEN-OWNED BUSINESSES SUBCONTRACTING AND REPORTING
7. REFERENCES
8. TERMINATION OF CONTRACT
9. DISPUTES

1. **ADVERTISING** In the event a contract is awarded for supplies, equipment, or services resulting from this bid/proposal, no indication of such sales or services to the City of Chesapeake will be used in product literature or advertising. The Contractor shall not state in any of its advertising or product literature that the City of Chesapeake or any department or agency of the City has purchased or uses its products or services.
2. **AUDIT**: The Contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the City, whichever is sooner. The City auditors shall have full access to the right to examine any of said materials during said period.
3. **BID ACCEPTANCE PERIOD**: Any bid in response to this solicitation shall be valid for 90 days. At the end of the 90 days the bid may be withdrawn at the written request of the bidder. If the bid is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.
4. **IDENTIFICATION OF BID/PROPOSAL ENVELOPE**: If a special envelope is not furnished, or if return in the special envelope is not possible, the signed bid/proposal should be returned in a separate envelope or package, sealed and identified as follows:

From: _____

Name of Bidder/Offeror	Due Date	Time
Street or Box Number	IFB No./RFP No.	
City, State, Zip Code	IFB/RFP Title	

Name of Contract/Purchase Officer or Buyer _____

The envelope should be addressed as directed on Page 1 of the solicitation.

If a bid/proposal not contained in the special envelope is mailed, the bidder or offeror takes the risk that the envelope, even if marked as described above, may be inadvertently opened and the information compromised which may cause the bid or proposal to be disqualified. Bids/proposals may be hand delivered to the designated location in the office issuing the solicitation. No other correspondence or other bids/proposals should be placed in the envelope.

5. **INDEMNIFICATION**: Contractor agrees to indemnify, defend and hold harmless the City of Chesapeake, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the Contractor, provided that such liability is not attributable to the sole negligence of the City or

to failure of the City to use the materials, goods, or equipment in the manner already and permanently described by the Contractor on the materials, goods or equipment delivered.

- 6. **MINORITY/WOMEN OWNED BUSINESSES SUBCONTRACTING AND REPORTING:** Where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the Contractor is encouraged to offer such business to minority and/or women-owned businesses. Names of firms may be available from the buyer and/or from the Purchasing Division. When such business has been subcontracted to these firms and upon completion of the contract, the Contractor agrees to furnish the purchasing office the following information: name of firm, phone number, total dollar amount subcontracted and type of product/service provided.

- 7. **REFERENCES:** Bidders shall provide a list of at least 3 references where similar goods and/or services have been provided. Each reference shall include the name of the organization, the complete mailing address, the name of the contact person and telephone number.

	<u>ORGANIZATION</u>	<u>TELEPHONE</u>	<u>ADDRESS</u>	<u>CONTACT PERSON</u>
1.	_____	_____	_____	_____
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____

- 8. **TERMINATION OF CONTRACT:** The City may terminate the contract for cause or for convenience after giving thirty (30) days notice in writing to the Contractor. The written notice shall include a statement of reasons for the termination.

Termination for Cause: If the Contractor should breach the contract or fail to perform the services required by the contract, the City may terminate the contract for cause by giving written notice or may give the Contractor a stated period of time within which to remedy its breach of contract. If the Contractor shall fail to remedy the breach within the time allotted by the City, the contract may be terminated by the City at any time thereafter upon written notice to the Contractor or, in the alternative, the City may give such extension of time to remedy the breach as the City determines to be in its best interest. The City's forbearance by not terminating the contract for a breach of contract shall not constitute a waiver of the City's right to terminate nor acquiescence in future act or omissions by the Contractor of a like nature. If the contract is terminated for cause, breach of contract or failure to perform, the Contractor may be subject to a claim by the City for the costs and expenses incurred in securing a replacement Contractor to fulfill the obligations of the contract.

Termination for Convenience: The contract may be terminated by the City in whole or in part for the convenience of the City without a breach of contract by delivering to the Contractor a written notice of termination specifying the extent to which performance under the contract is terminated and the effective date of the termination. Upon receipt of such a notice of termination, the Contractor must stop work, including but not limited to work performed by subcontractors and consultants, at such time and to the extent specified in the notice of termination.

If the contract is terminated in whole or in part for the convenience of the City, the Contractor shall be entitled to those fees earned for work done prior to the notice of termination and thereafter shall be entitled to any fees earned for work not terminated, but shall not be entitled to lost profits for the portions of the contract which were terminated. The Contractor will be compensated for reasonable costs or expenses arising out of the termination for the convenience of the City for delivery to the City of all products of the services for which the Contractor has or will receive compensation.

Delivery of Materials: Any contract cancellation notice shall not relieve the Contractor of the obligation to deliver to the City all products of the services for which the Contractor has been or will be compensated. Unless otherwise agreed to in writing, the Contractor shall deliver the materials to the city within 30 days of

the Notice of Termination of the Contract. Failure to do so may result in action for "breach of contract" or "failure to perform".

Compensation Due the Contractor: Upon such termination, the Contractor shall be entitled to the compensation accrued to the date of termination. Payment of the balance of the accrued compensation shall be dependent on the Contractor providing the required project material to the City. Said fees which have been earned shall be billed to the City in accordance with the normal billing process, but in no case later than 60 days after the last work is performed. Any termination by the City for default, found by a court of competent jurisdiction not to have been justified as a termination for default, shall be deemed a termination for the convenience of the City.

The Contractor shall submit invoices for all such amounts in accordance with the normal billing process, but in no event later than 60 days after all services are performed. All amounts invoiced are subject to deductions for amounts previously paid. All payments due the Contractor under this contract are subject to appropriation by the Virginia General Assembly and Chesapeake City Council.

9. **DISPUTE RESOLUTION:**

- a. As to any dispute arising out of this Contract, either party may file a Demand for Mediation within thirty (30) days of the date the circumstances that give rise to the dispute occurred. The demand will include a basic statement of the grounds of the dispute. The opposing party shall file a response within fifteen (15) days of receipt of the Demand for Mediation. Parties may choose any mediator qualified under the laws of the Commonwealth of Virginia.
- b. Should mediation fail and the Architect/Engineer is the moving party in the dispute the Architect/Engineer must file a Demand for Arbitration within thirty (30) days of the date of the termination of the mediation procedure. The City may file a response within thirty (30) days, either accepting or rejecting arbitration. If the City fails to file a response within thirty (30) days, this shall be deemed a rejection of the arbitration. If the City accepts arbitration, it will also provide a response to the allegations set forth in the Demand for Arbitration.
- c. Should mediation fail and the City is the moving party, it may either file a Demand for Arbitration or litigate the matter in a Court of proper jurisdiction. If the City elects to file a Demand for Arbitration, it must do so within thirty (30) days of the termination of the mediation procedure. The Architect/Engineer shall file its response within thirty (30) days of the Demand for Arbitration.
- d. If the dispute is to be arbitrated, each party must choose an arbitrator within fifteen (15) days of the Response to the Demand for Arbitration. Those two arbitrators shall choose a third arbitrator. In the alternative, the parties may choose to use the American Arbitration Association ("AAA") to administer the arbitration. In either event, the course of the arbitration will proceed under AAA rules. Also, during any arbitration proceeding, the Federal Rules of Evidence shall apply.
- e. If the City refuses to arbitrate after a Demand for Arbitration is filed by the Architect/Engineer, then the Architect/Engineer must litigate the matter in a Court of proper jurisdiction. Any action filed by either party to the Contract must be filed with the Court within six (6) months of the termination of the mediation procedure.

APPENDIX B**CERTIFICATION OF COMPLIANCE WITH IMMIGRATION
LAWS AND REGULATIONS**

Section 54-72.2 of the Chesapeake City Code requires that any person or entity doing business with the City of Chesapeake, including its boards and commissions, shall include a sworn certification by the contractor or vendor of compliance with all federal immigration laws and regulations. These laws include the Federal Immigration Reform and Control Act, which makes it unlawful for a person or other entity to hire, recruit or refer for a fee for employment in the United States, an alien knowing the alien is unauthorized, and Section 40.1-11.1 of the Code of Virginia, which makes it unlawful for any employer to knowingly employ an alien who cannot provide documents indicating that he or she is legally eligible for employment in the United States. The state law, in particular, places an affirmative duty on employers to ensure that aliens have proof of eligibility for employment.

Accordingly this certification shall be completed and attached to all contracts and agreements for goods and services made by the City of Chesapeake or any of its boards and commissions. Failure to attach a completed certification shall render the contract or agreement void.

Type or print legibly when completing this form.

Legal Name of Contractor or Vendor:

(Note: This is your name as reported to the IRS. This should match your Social Security card or Federal ID Number.)

Type of Business Entity:

Sole proprietorship (Provide full name and address of owner):

Limited Partnership (Provide full name and address of all partners):

General Partnership (Provide full name and address of all partners):

Limited Liability Company (Provide full name and address of all managing members):

Corporation (Provide full name and address of all officers):

Doing Business As:

If Applicable (Note: This is the name that appears on your invoices but is not used as your reporting name.)

Name and Position of Person Completing this Certificate:

Physical Business Address:

Primary Correspondence Address (If different from physical address):

Number of Employees:

Are all Employees Eligible for Employment in the United States?

Under penalties of perjury, I declare on behalf of the contractor/vendor listed above that to the best of my knowledge and based upon reasonable inquiry, each and every one of the contractor's/vendor's employees are eligible for employment in the United States as required by the Federal Immigration Reform and Control Act of 1986 and Section 40.1-11.1 of the Code of Virginia. I further declare on behalf of the contractor/vendor shall use due care and diligence to ensure that all employees hired in the future will be eligible for employment in the United States. I affirm that the information provided herein is true, correct, and complete.

Sworn this ____ day of _____, 200_ on behalf of ____ [*name of contractor/vendor*]_____ as evidenced by the following signature and seal:

Name of Contractor/Vendor: _____

Printed Name of Signatory: _____

Signature: _____

Date: _____

COMMONWEALTH OF VIRGINIA:
CITY OF CHESAPEAKE, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by _____.

Notary Public

Registration No.: _____
My commission expires: _____