



FEBRUARY 15, 2018

**NOTICE TO PUBLIC
REQUEST FOR PROPOSAL
RFP #201721**

**Utilization Review For The Department of Social Services
Re-issue**

The City of Winchester will accept proposals, on an on-going basis, in the office of the Finance Department - Purchasing Division, 15 North Cameron Street, 4th Floor - Rouss City Hall, Winchester, Virginia 22601 for Utilization Reviewer For The Department of Social Services as specified by the Scope of Services. The Contract will be administered by the Department of Social Services.

Copies of this Request for Proposal may be obtained upon request from the Office of the Finance Department-Purchasing Agent, telephone (540) 667-1815 ext. 1477, or they may be picked up at the above location. Bids/Proposals may be viewed on the City's web page: <http://www.winchesterva.gov/purchasing/itbrfp>

Offerors should carefully examine the specifications and fully inform themselves as to all conditions and matters, which would in any way affect the equipment/materials/service of cost thereof. Should an offeror find discrepancies in or omissions from the specification or request for proposal, he/she should notify the Purchasing Agent and obtain clarification prior to submitting the proposal. Only questions answered by formal Addenda will be binding; oral and other interpretations or classifications will be without legal effect.

The right is reserved, as the interest of the City of Winchester requires, to revise or amend the specifications prior to the date set for opening proposal; the opening date may be postponed if deemed necessary by the City's Purchasing Agent. Such revisions and amendments, if any, will be announced by written Addenda to the specifications. ***In addition, the City of Winchester reserves the right to accept or reject any proposals, in whole or in part, waive any informality and to cancel the bid at any time, prior to award.***

One (1) original hardcopy, are to be submitted in a sealed envelope bearing the Offerors company name, mailing address, the RFP name, the RFP number, the date and the time due mailed or delivered to:

City of Winchester
Finance Department - Purchasing Division
15 North Cameron Street, 4th Floor - Rouss City Hall
Winchester, Virginia 22601

BY: Michael Marzullo, CPPB
Purchasing Agent

A. INTRODUCTION AND PURPOSE

I Introduction:

The City, founded in 1744, is the oldest Virginia City west of the Blue Ridge Mountains. Located at the northern entrance to the Shenandoah Valley, the City is the medical, commercial, governmental and financial center for the surrounding area, and is the City seat of Frederick City. The City encompasses 9.3 square miles and is located at the crossroads of U.S. Highways 11, 17, 50, 522, Interstate 81 and State Route 7. Interstate 66, terminating 11 miles south of the City at Interstate 81, provides a third transportation artery to Washington, D.C., 72 miles to the southeast. The City's 2007 population was estimated at 26,000 with 7,650 single family attached and detached homes and over 4,000 multi-family dwelling units.

II. Purpose

The Children's Services Act (CSA) requires local Community Policy and Management Teams (CPMT) to "track the utilization and performance of residential placements using data and management reports to develop and implement strategies for returning children placed outside of the Commonwealth, preventing placements, and reducing lengths of stay in residential programs for children who can appropriately and effectively be served in their home, relative's homes, family-like setting, or their community" (§ 2.2-5206).

The City is accepting more than one qualified provider as to develop a pool of qualified providers.

III. Background

Currently the CSA Coordinator collects information from the children's files and sends it to the Utilization Review (UR) Officer at the Office of Children's Services. The UR Officer completes a desk review of the child's placement and sends recommendations to the CSA Coordinator. The CSA Coordinator shares the recommendations with the Case Worker and Provider.

Residential placements have increased in the last few years. Costs for those placements are rising, and the children are often in placement for long periods of time, because they have to meet program criteria in order to be discharge.

The Community Policy and Management Team propose using an outside agency/individual to conduct Utilization Reviews for residential placement that will be funded by CSA. This Utilization Reviewer would meet with the family, child and provider as well as gather written reports to determine if residential services are clinically appropriate, and effective at meeting the needs of the child and family. The Utilization Reviewer would attend Family Assessment and Planning Team (FAPT) with the family, and give their recommendations. The Utilization Reviewer would also provide a written report for FAPT. This in-depth utilization review would help FAPT make more informed decisions about the need for residential services and the length of residential stays. The anticipated result would be a reduction in the cost of residential placements for the locality and an increase in the use of community based services, utilizing the principles of system of care.

IV. Term of Contract:

The contract term shall be negotiated although the City requires the offeror to provide details within their proposal regarding a proposed contract term, including renewals.

V. Pre-Proposal Conference:

None required.

VI. Schedule of Events:

- | | |
|-----------------------------|-------------------|
| 1. RFP Distribution | February 15, 2018 |
| 2. Proposal Submissions Due | On going |
| 3. Interviews | TBD |
| 4. Award of Contract | TBD |

B. SCOPE OF SERVICES

The operations and services detailed in this section are to be performed for the City of Winchester on a contractual basis to meet the following minimum criteria:

I. Review Process

A. General:

1. The Utilization Reviewer shall provide utilization review services for the cases of children in residential/congregate care placements under the Children’s Services Act funding.
2. The purpose of utilization review is to provide the CPMT’s information, technical assistance and/or consultation to assist in:
 - Ensure services are provided with strict adherence to system of care philosophies and principles.
 - Making sound planning decisions to provide appropriate and effective services in the least restrictive environment for individual children.
 - Tailor services and supports to the unique strengths and needs of children and their families, ensuring goals and outcomes of the Individual Family Service plan are being addressed.
 - Provide critical examination of services at residential facilities, giving timely feedback to Case Managers and service providers.
 - Ensure discharge plan is created at the time of placement and updated regularly
 - Assist Case Manager to identify appropriate community based services for discharge
 - Build upon natural and community supports, through Family Team Meetings
 - Ensure family engagement is prioritized in the Family Team Meeting process
 - Complete a survey gap analysis, identify community needs and appropriately notify CPMT of any service gaps.

- Use public funds appropriately.
3. In performing utilization reviews, the Utilization Reviewer shall consider the placement of and services provided to children whose placements receive any funding through the CSA.

B. Scope of Review

1. The Provider shall complete a written initial review of the case within 30 days of the child's initial placement into a residential facility.
2. The Provider shall complete subsequent written reviews monthly while the child is in the residential placement.
3. The written review shall include, but shall not be limited to, the following
 - the appropriateness of the placement based on the individual needs and strengths of the child and family;
 - the appropriateness of the placement facility's treatment plan;
 - written progress reports and updates including progress or lack of progress on the Individual and Family Care Plan, developed by the Family Assessment and Planning Team, with the input from the youth and family;
 - recommendations for length of stay and discharge planning, including community based service planning, after discharge.
 - critical review of community based services for family and youth to ensure they support needs for successful discharge
4. Written reviews shall include the following elements:
 - Verification of date services initiated
 - Verification of delivery of services
 - Verification of quality of services
 - Progress in meeting identified, specific short-term outcomes and goals in Individual Family Service Plan
 - Progress in working toward identified, specific long range outcomes
 - Current medication status, as applicable
 - Verification of school attendance
 - Written materials outlining vendor treatment plans and progress reports
 - Participation of family/legal guardian in services
 - Strategies to engage families, if they are not currently participating
 - Steps to be taken if progress toward meeting outcomes is not being made. (May include changing services and/or vendors or reconsidering outcomes.)
 - Steps to be taken if outcomes are being met
 - a) Continue services necessary to meet outcomes and goals
 - b) Develop plan and time line to transition the child to less restrictive setting
 - Date for next utilization review
5. The Provider shall review all documents submitted by the Case Manager, such as treatment plans and monthly progress reports.

6. The Provider shall complete face to face meetings with the child monthly.
7. The Provider shall meet face to face with the family monthly.
8. The Provider shall also meet with Case Worker, providers and all major departments in the residential facility, providing services to the youth, monthly.
9. The Provider shall attend Family Team Meetings, provider meetings and FAPT Meetings with the family.
10. The Provider shall complete a written discharge plan, with the family, and Case Worker; and shall assist the family with ensuring appropriate supportive services are in place before discharge.
11. All written reports shall be completed timely and submitted to the CSA Coordinator.

C. Qualifications

Utilization Reviewer shall be a licensed clinical professional (exp. LCSW, LPC, LMHP, LMFT, Psychiatrist MD, PsyD) with demonstrated case management experience

D. Compensation

The compensation for the Utilization Reviewer will be based on the following tier system:

- **Tier 1: Local Placement.** This tier would represent those youth located within Winchester, Frederick or Clarke County. Because only minimal travel is required in these cases, the case rate would remain the same: **\$600/month/\$20 per diem**
- **Tier 2: Regional Placement.** This tier would represent those youth placed in the following localities and cities located within those localities: Loudoun, Fairfax, Prince William, Fauquier, Warren, Rockingham, Shenandoah, Paige, Arlington, City of Alexandria and the City of Harrisonburg The case rate would be **\$800/month/\$26.67 per diem**
- **Tier 3: Extended Area Placement.** This tier would represent those youth outside the local and regional placement areas as defined in tier 1 and tier 2. The case rate would be **\$1,200/month/\$40 per diem**
- **Tier 4: Out of State Placement.** This tier would represent those youth placed out of the state of Virginia, and would include consideration for payment for food, lodging and travel expenses on a case to case basis, with a minimum case rate of **\$1,400/month/\$46.67 per diem. Travel expenses would be negotiated on a case by case basis.**

Payment for partial month referrals will be based on the per diem amount. Fees may be greater or less than established rates based on case acuity, household and/or placement circumstances as determined by CSA Coordinator with CPMT approval.

The cost would be included on the CSA Budget Request and would have to be approved on a case by case basis by the FAPT and CPMT.

E. Outcomes

The intensive utilization review would give the FAPT and CPMT more comprehensive information to be able to monitor the quality of services and length of stays in residential facilities. The goal is to lessen the amount of residential placements, and the length of residential stays.

D. SUBMITTAL REQUIREMENT

1. GENERAL INSTRUCTIONS:

- a. RFP Response: In order to be considered for selection, offerors must submit a complete response to this RFP. One (1) original hardcopy, is to be submitted in a sealed envelope bearing the company name, mailing address, the RFP name and RFP number, mailed or delivered to: City of Winchester, Finance Department - Purchasing Division, 15 North Cameron Street, 4th Floor-Rouss City Hall, Winchester, Virginia 22601. No other distribution of the proposal shall be made by the offeror. As used in this RFP, the terms “must”, “shall”, “should” and “may” identify the criticality of requirements. “Must” and “shall” identify requirements whose absence will have a major negative impact on the suitability of the proposed solution. Items labeled as “should” or “may” are highly desirable, although their absence will not have a large impact and would be useful, but are not necessary. Depending on the overall response to the RFP, some individual “must” and “shall” items may not be fully satisfied, but it is the intent to satisfy most, if not all, “must” and “shall” requirements. The inability of an offeror to satisfy a “must” or “shall” requirement does not automatically remove that offeror from consideration; however, it may seriously affect the overall rating of the offeror’s proposal.
- b. 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 subjected to public inspection in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by an offeror shall not be subject to the public disclosure under the Virginia Freedom of Information Act; however, the offeror must invoke the protections of §2.24342F of the Code of Virginia, in writing, either before or at the time the data or other material 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 submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secrets or proprietary information. The classification of an entire proposal document, line item prices, and/or total proposal prices as proprietary or trade secrets is not acceptable and will result in rejection of the proposal.

2. PROPOSAL PREPARATION:

- a. Proposals shall be signed by an authorized representative of the offeror. All information requested should be submitted. Failure to submit all information requested may result in the Purchasing Agent requiring prompt submission of missing information and/or giving a lowered

evaluation of the proposal. Proposals which are substantially incomplete or lack key information may be rejected by the Purchasing Agent. Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation.

- b. Proposals shall 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. Avoid excessive content and unrelated work samples.
- 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. Information which the offeror desires to present that does not fall within any of the requirements of the RFP should be inserted at an appropriate place or be attached at the end of the proposal and designated as additional material. 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 that single volume.
- d. Limit your Proposal to a maximum of thirty (30) total pages. The thirty pages shall include: **ALL** exhibits, appendices, resumes, letters, attachments, and enclosures. Financial audit and dividers are allowed and will not count towards your thirty pages.

3. **ORAL PRESENTATION:**

- a. Offerors who submit a proposal in response to this RFP *may* be required to give an oral interview. These requests are at the City's sole discretion with the purpose to either clarify or highlight details in your proposal or provide additional information. Oral interviews are strictly fact finding sessions and do not include any negotiations.

4. **PROPOSAL CONTENT:** Proposal submittal shall contain the following information.

- Resume of experience
- Certificate of degree(s)
- License
- Three (3) references

E. EVALUATION AND AWARD CRITERIA

1. General: Proposals received will be evaluated by an Evaluation team consisting of end users and/or the requesting department who will review and rank offers. The criteria to be used to evaluate proposals are listed below. The evaluation will be based upon the information provided in the proposal; additional information that may be requested for clarification, or during negotiation, as well as information obtained from references and independent sources.

The evaluation of proposals will be based on the offer's response to the list of criteria.

Offerors will specifically address the criteria in their response. Offerors will describe any deviations or exceptions to the scope of work, specifications or requirements.

A proposal may be rejected if it is conditional or incomplete in the judgment of the City of Winchester.

2. Evaluation Criteria: Proposals will be evaluated using the following criteria:
 - a. Offeror education
 - b. Experience of the Offeror in providing services
 - c. Licensing
 - d. General knowledge of the Children's Services Act

3. Award: Selection shall be made of all offeror(s) deemed to be fully qualified and best suited among those submitting best value proposals on the basis of the evaluation factors included in this solicitation. Negotiations shall be conducted with the Offeror(s) whose proposal(s) represent the most advantageous and best offer. Awards will be made to the Offeror(s) which, in its opinion, represents the best overall combination of quality and various elements of required services, as stated in this solicitation, that in total are optimal relative to the agency's needs. The City of Winchester may cancel this solicitation 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 (Code of Virginia, § 2.2-4359 D). The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the contractor's offer as negotiated.

F. QUESTIONS

Questions regarding this solicitation must be submitted in writing at least five (5) days prior to the proposal due date. The Purchasing Agent will issue a written addendum to any inquiries that alter the scope of the proposal. All other contacts with City personnel concerning this solicitation are discouraged. Submit inquiries to:

Michael Marzullo, CPPB
Purchasing Agent
City of Winchester
15 N. Cameron St
Winchester, Virginia 22601
540-667-1815 Ext. 1477
Michael.Marzullo@winchesterva.gov

G. SPECIAL TERMS AND CONDITIONS:

1. **AUDIT:** The contractor shall retain all books, records, and other documents relative to this contract for three (3) years after final payment, or until audited by the City of Winchester, whichever is sooner. The City, its authorized agents, and/or City auditors shall have full access to and the right to examine any of said materials during said period.

2. **RENEWAL OF CONTRACT:** This contract may be renewed by the City of Winchester as negotiated within the original contract. Price increases may be negotiated only at the time of renewal providing measurable and supporting documentation for the escalation can be given to the City. De-escalation can be enacted at anytime during the Contract or any renewal of the Contract. Written notice of the City of Winchester's intention to renew shall be given approximately sixty (60) days prior to the expiration date of each contract period.
3. **COOPERATIVE PROCUREMENT:** Any successful Bidder/Offeror, may at his sole discretion, allow any public body, locality, authority, agency, and school board of the Commonwealth to participate in the Invitation to Bid for the purpose of combining requirements to increase efficiency or reduce administrative expenses.
4. **BID ACCEPTANCE PERIOD:** Any bid in response to this solicitation shall be valid for (180) days. At the end of the (180) 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.
5. **PRIME CONTRACTOR RESPONSIBILITIES:** The contractor shall be responsible for completely supervising and directing the work under this contract and all subcontractors that he may utilize, using his best skill and attention. Subcontractors who perform work under this contract shall be responsible to the prime contractor. The contractor agrees that he is as fully responsible for the acts and omissions of his subcontractors and of persons employed by them as he is for the acts and omissions of his own employees.
6. **SUBCONTRACTS:** No portion of the work shall be subcontracted.
7. **OWNERSHIP OF INTELLECTUAL PROPERTY:** All copyright and patent rights to all papers, reports, forms, materials, creations, or inventions created or developed in the performance of this contract shall become the sole property of the City of Winchester. On request, the contractor shall promptly provide an acknowledgment or assignment in a tangible form satisfactory to the City to evidence the City's sole ownership of specifically identified intellectual property created or developed in the performance of the contract.
8. **QUANTITIES:** Quantities (lots) set forth in this solicitation are estimates only.

H. CITY OF WINCHESTER REQUIRED GENERAL TERMS AND CONDITIONS:

1. APPLICABLE LAWS AND COURTS
2. ANTI-DISCRIMINATION
3. ETHICS IN PUBLIC CONTRACTING
4. IMMIGRATION REFORM AND CONTROL ACT OF 1986
5. DEBARMENT STATUS
6. ANTITRUST

7. MANDATORY USE OF CITY FORM AND TERMS AND CONDITIONS
8. CLARIFICATION OF TERMS
9. PAYMENT
10. PRECEDENCE OF TERMS
11. QUALIFICATIONS OF BIDDERS OR OFFERORS
12. TESTING AND INSPECTION
13. ASSIGNMENT OF CONTRACT
14. SEVERABILITY
15. CHANGES TO THE CONTRACT
16. DEFAULT
17. TAXES
18. USE OF BRAND NAMES
19. TRANSPORTATION AND PACKAGING
20. INSURANCE
21. ANNOUNCEMENT OF AWARD
22. DRUG-FREE WORKPLACE
23. NONDISCRIMINATION OF CONTRACTORS
24. AVAILABILITY OF FUNDS
25. LICENSES AND PERMITS
26. TERMINATION
27. HOLD HARMLESS

These General Terms and Conditions are required for all sealed and unsealed written solicitations issued by the City of Winchester for procurements that are subject to the Winchester City Code unless changed, deleted or revised by the City Attorney.

1. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed by the laws of the Commonwealth of Virginia. Any dispute arising from the performance or non-performance of this Agreement shall be resolved or otherwise litigated in the Circuit Court for the City of Winchester, Virginia or the Fourth Circuit Federal District Court in Harrisonburg, Virginia. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute following the Winchester City Code, Chapter 21-61. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.
2. **ANTI-DISCRIMINATION:** By submitting their (bids/proposals), (bidders/offerors) certify to the City of Winchester 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 Contractor, 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.
3. **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.
4. **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.
5. **DEBARMENT STATUS**: By submitting their (bids/proposals), (bidders/offerors) certify that they are not currently debarred by the Federal Government, Commonwealth of Virginia, or by any City, Town or City 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.

6. **ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the City of Winchester 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 Winchester under said contract.
7. **MANDATORY USE OF CITY FORM AND TERMS AND CONDITIONS:** Failure to submit a bid/proposal on the official City form provided for that purpose may be a cause for rejection of the bid/proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the bid/proposal; however, the City of Winchester reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid/proposal.
8. **CLARIFICATION OF TERMS:** If any prospective (bidder/offeror) has questions about the specifications or other solicitation documents, the prospective (bidder/offeror) should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the Purchasing Agent, or designee.
9. **PAYMENT:**
 1. **To Prime Contractor:**
 - a. Invoices for items ordered, delivered and accepted, or actual services performed 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 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.
 - 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 of Winchester 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 an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia, § 2.2-4363*).

10. **PRECEDENCE OF TERMS:** The following General Terms and Conditions APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, DEBARMENT STATUS, ANTITRUST, MANDATORY USE OF CITY FORM AND TERMS AND CONDITIONS, CLARIFICATION OF TERMS, PAYMENT 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.
11. **QUALIFICATIONS OF (BIDDERS/OFFERORS):** The City of Winchester 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 of Winchester all such information and data for this purpose as may be requested. The City of Winchester 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 of Winchester 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 of Winchester 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.
12. **TESTING AND INSPECTION:** The City of Winchester reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
13. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the contractor in whole or in part without the written consent of the City of Winchester.
14. **SEVERABILITY OF CONTRACT:** In the event that any provision shall be adjudged or decreed to be invalid, such ruling shall not invalidate the entire Agreement but shall pertain only to the provision in question and the remaining provisions shall continue to be valid, binding and in full force and effect.
15. **CHANGES TO THE CONTRACT:**
 1. A public contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than twenty-five percent of the amount of the contract or ten thousand dollars (\$10,000), whichever is greater, without the advance written approval of the City Council. In no event may the amount of any contract, without

adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer (Winchester City Code 21-44).

2. Changes can be made to the contract in any of the following ways:
 - a. 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.
 - b. The City of Winchester 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 City of Winchester a credit for any savings. Said compensation shall be determined by one of the following methods:
 3. By mutual agreement between the parties in writing; or
 4. 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 City of Winchester's right to audit the contractor's records and/or to determine the correct number of units independently; or
 5. 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 City of Winchester with all vouchers and records of expenses incurred and savings realized. The City of Winchester 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 City of Winchester within thirty (30) days from the date of receipt of the written order from the City of Winchester. 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 City of Winchester Code. 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 City of Winchester or with the performance of the contract generally.
16. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the City of Winchester, 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 of Winchester may have.

17. **TAXES:** Sales to the City of Winchester are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request.
18. **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 public body, 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 of Winchester 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.
19. **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.
20. **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 coverage 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 this insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the City of Winchester of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.
2. Employer's Liability - \$100,000.
3. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The City of Winchester must be named as an additional insured and so endorsed on the policy.
4. Automobile Liability - \$1,000,000 per occurrence. (Only used if motor vehicle is to be used in the contract.)

NOTE: In addition, various Professional Liability/Errors and Omissions coverages are required when soliciting those services as follows:

<u>Profession/Service</u>	<u>Limits</u>
Accounting	\$1,000,000 per occurrence, \$3,000,000 aggregate
Architecture	\$2,000,000 per occurrence, \$6,000,000 aggregate
Asbestos Design, Inspection or Abatement Contractors	\$1,000,000 per occurrence, \$3,000,000 aggregate

Health Care Practitioner (to include Dentists, Licensed Dental Hygienists, Optometrists, Registered or Licensed Practical Nurses, Pharmacists, Physicians, Podiatrists, Chiropractors, Physical Therapists, Physical Therapist Assistants, Clinical Psychologists, Clinical Social Workers, Professional Counselors, Hospitals, or Health Maintenance Organizations.)

\$1,925,000 per occurrence, \$3,000,000 aggregate

(Limits increase each July 1 through fiscal year 2010, as follows:

July 1, 2009 - \$2,000,000. This complies with §8.01-581.15 of the Code of Virginia.

Insurance/Risk Management	\$1,000,000 per occurrence, \$3,000,000 aggregate
Landscape/Architecture	\$1,000,000 per occurrence, \$1,000,000 aggregate
Legal	\$1,000,000 per occurrence, \$5,000,000 aggregate
Professional Firm	\$2,000,000 per occurrence, \$6,000,000 aggregate
Surveying	\$1,000,000 per occurrence, \$1,000,000 aggregate

21. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract over \$50,000, as a result of this solicitation, the Purchasing Agent will publicly post such notice on the City of Winchester’s web site (www.winchesterva.gov/purchasing) for a minimum of 10 days.

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

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

23. **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, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. 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 public body 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.
24. **AVAILABILITY OF FUNDS:** In the event that funds are not appropriated for this Contract for any City fiscal year, following the City's current year, the Contract shall terminate automatically as of the last day for which funds were appropriated without the City providing written notice to the Contractor prior to the date of termination. The City shall not consider termination of the Contract pursuant to this section default. Upon such termination, the City shall be released from any obligation to make future payments and shall not be liable for cancellation or termination charges.
25. **LICENSES AND PERMITS:** Contractors will be responsible for all licenses and permits, if required. Any person, firm, or corporation responding to this invitation to bid which is required to have a current and valid City of Winchester business license and, in fact, does not, will not be considered a "responsive bidder" as such term is defined by the Code of Virginia §2.2-4301, as amended. Any bid received from such an entity may be rejected, at the City's sole option, for that reason alone. In addition, the successful bidder or offeror will be required to produce affirmative evidence, satisfactory to the Purchasing Agent, or designee that it has such a license, or is not required to have such a license, prior to approval and execution of any contract to perform the work herein described.
- 26 **TERMINATION:**
- a. Termination for Convenience: The City may terminate a contract, in whole or in part, whenever the parties determine it to be in their best interest, without showing cause, upon giving ten (10) days written notice to the vendor.
 - b. Termination for Default: When the vendor has not performed or has unsatisfactorily performed the contract, the City may terminate the contract for default. Upon termination for default, payment may be withheld at the discretion of the City. The Vendor will be paid for work satisfactorily performed prior to termination.
- 27 **HOLD HARMLESS:** Bids/Proposal shall provide that during the term of the contract, including warranty period, for the successful bidder/offeror indemnifying, defending, and holding harmless the City, its officers, employees, agent and representatives thereof from all suits, actions, claims of any kind, including attorney's fees, brought on account of any personal injuries, damages, or violation of rights sustained by any person or property in consequence of any neglect in safeguarding contract

work, or on account of any act or omission by the contractor or his employees, or from any claims or amounts arising from violation of any law, bylaw, ordinance, regulation or decree. The vendor agrees that this clause shall include claims involving infringement of patent or copyrights.