



May 15, 2019

**NOTICE TO PUBLIC
RFP #201921**

**CONSULTING SERVICES, RATE STUDY AND ORGANIZATIONAL STRUCTURE ANALYSIS FOR
THE FREDERICK-WINCHESTER SERVICE AUTHORITY**

The City of Winchester, on behalf of the Frederick-Winchester Service Authority, will accept proposals until 2:00 p.m. local time on June 18, 2019, in the office of the Finance Department - Purchasing Division, 15 North Cameron Street, 4th Floor - Rouss City Hall, Winchester, VA 22601. This RFP is for professional consulting services to the Frederick-Winchester Service Authority for completing an organizational structure analysis and a complete rate/financial study. The Contract will be with the Frederick-Winchester Service Authority.

Copies of this Request for Proposal may downloaded at: <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 cost of providing these services. 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 may require, 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 reserves the right to accept or reject any proposals, in whole or in part, and to waive any informality.***

Fifteen (15) copies of the proposal and an electronic copy in .pdf format are to be submitted in a sealed envelope bearing the Offerors company name, mailing address, the RFP name, the RFP number, and the date/time due to :

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

BY: Michael Marzullo
Purchasing Agent

**CITY OF WINCHESTER
DEPARTMENT OF FINANCE
15 N. Cameron Street
Winchester, VA 22601**

**REQUEST FOR PROPOSALS FOR CONSULTING SERVICES FOR
THE FREDERICK-WINCHESTER SERVICE AUTHORITY
FOR A RATE STUDY AND ORGANIZATIONAL STRUCTURE ANALYSIS**

RFP #201921

May 15, 2019

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A. INTRODUCTION AND PURPOSE

INTRODUCTION:

The Frederick-Winchester Service Authority (FWSA) was created in 1974 by action taken by the City of Winchester and the County of Frederick, Virginia. The Authority is a public body existing under the provisions of the Virginia Water and Waste Authorities Act that is part of the Code of Virginia (1950) as amended. The Authority has one distinct purpose which is to acquire, finance, construct, operate and maintain facilities for the abatement of pollution by the treatment of sewage collected from the City of Winchester and the County of Frederick (Frederick Water), but not including sewage collection facilities.

The Authority can be viewed as a “wholesaler” of wastewater treatment services. To perform its intended purpose, the Frederick-Winchester Service Authority owns three wastewater treatment facilities located in Frederick County, Virginia: the Opequon Water Reclamation Facility, Parkins Mill WWTP, and the Crooked Run WWTP. The Parkins Mill WWTP and Crooked Run WWTP are operated by Frederick Water and only serve their customers.

The Opequon Water Reclamation Facility (OWRF), a 12.6 MGD ENR facility, has gone through extensive expansion and treatment upgrades to comply with Chesapeake Bay nutrient regulations and to provide needed capacity for future residential and industrial development planned in its service area which includes the City of Winchester and portions of Frederick County. The OWRF also has a large waste-to-energy process that accepts hauled, high strength waste from industrial customers. The OWRF is operated by the City of Winchester under an operational agreement with the FWSA.

The customers that the FWSA charges for treatment services provided at the OWRF are:

- City of Winchester
- Frederick Water
- Clarke County (hauled waste)
- Private septic waste haulers
- High strength waste industrial customers (hauled waste)

The current organizational structure of the FWSA consists of the following:

- A nine (9) person Board of Directors
 - Five (5) members are appointed by the Winchester City Council
 - Three (3) members are appointed by the Frederick County Board of Supervisors
 - One (1) member is appointed jointly by the Winchester City Council/Frederick County Board of Supervisors
- One (1) part-time Executive Director who reports to the Board of Directors
- One (1) full-time Administrative Assistant who reports to the Executive Director

There are multiple written agreements that govern the makeup and operations of the FWSA. Copies of these agreements are provided as attachments to this RFP.

While the OWRF has undergone several significant changes in the past ten years, the organizational structure of the FWSA has not changed. This has led to concerns from the Board of Directors that the current organizational structure of the FWSA should be analyzed and possible modifications considered to help ensure the long term success of the organization. Furthermore, a detailed rate study of the fees charged to the customers of the OWRF has never been completed by a consultant and the Board of Directors feels that such a study is necessary so that the rates charged are fair to all customers and reflect the actual cost of service.

PURPOSE:

The purpose of this solicitation is to select one firm to conduct this multi-faceted study. The specific components of this study are provided in the Scope of Services below.

This Request for Proposal (RFP), plus the resulting agreement, shall be consistent with, and governed by the Act, the Virginia Public Procurement Act (VPPA).

PRE-PROPOSAL CONFERENCE:

None scheduled.

SCHEDULE OF EVENTS:

- | | |
|--------------------------------------|---------------------------------------|
| 1. RFP Distribution | May 15, 2019 |
| 2. Proposal Submissions Due (Part I) | June 18, 2019 at 2:00 P.M. local time |
| 3. Interviews (If necessary) | July 2019 |
| 4. Award of Contract (TBD) | August 2019 |

CONTRACT TERM

All work for this Contract shall be completed within 180 days following the date of the signed Contract.

B. SCOPE OF SERVICES

The following are the primary tasks that shall be completed by the consultant:

- Review the complete history of the Frederick-Winchester Service Authority (FWSA) from the original incorporation in 1974 to present. Included in this review will be all agreements signed by the associated primary participants (FWSA, City of Winchester, Frederick County, and Frederick Water) including:
 - Articles of Incorporation and amendments
 - Inter-municipal Agreement and amendments
 - Operations Agreement
 - Pretreatment Agreement
 - FWSA Rules and Regulations

Previous studies that have been completed by the FWSA will also be reviewed.

- Review the current operations and structure of the FWSA. This will include individual meetings with each FWSA Board member, the FWSA Executive Director, City of Winchester staff, Frederick County staff, and Frederick Water staff to learn their perspectives and issues that they feel are the most important.

- Make recommendations for the future operations and structure of the FWSA that may include amendments to the Articles of Incorporation and the Inter-municipal Agreement. These recommendations should be based on providing a structure for the long term success of the FWSA that ensures the FWSA operates efficiently and is fair and equitable to all participants and that the FWSA is positioned and ready to meet the future wastewater treatment needs of the primary participants. Succession planning should be included in the recommendations.
- Review the current rates the FWSA charges to all customers including: the City of Winchester, Frederick Water, Clark County, septage haulers, and high strength waste customers.
- Based on performing a detailed cost allocation analysis, make recommendations for the rates that should be charged to all customers that are fair, equitable, and reflect the actual cost of service.
- Review projected expenditures and revenues for the next five (5) years and analyze the projected rates over this period. As a part of this analysis, make recommendations on the amount of cash reserves that the FWSA should maintain for all purposes (operations and capital improvements).
- Review the current methods used to measure the flow from the City of Winchester and Frederick Water and the operation and maintenance of the sewer trunk main from the City's metering station to the OWRF and make recommendations on possible changes that ensures the methods employed are fair and equitable to both the City of Winchester and Frederick Water.
- Provide all findings and recommendations in a written report.
- Provide a presentation to the Board of Directors summarizing the primary findings and recommendations at a regular Board meeting.

C. SELECTION PROCEDURE

This Request for Proposals is divided into two parts:

- Part I - Written Submission; and
- Part II - Interviews and Presentations from Part I short-listed firms, only.

In general, the selection of a firm will be conducted by the following process:

PART I

1. A written proposal shall be submitted in the form defined under Submittal Requirements (Section D).
2. A Selection Committee, determined by the FWSA, will evaluate and rank all firms.
3. Firms will be evaluated and ranked in accordance with the Part I – Evaluation Criteria (Section E).

PART II

1. Based on the results of the process to this point, the highest ranked firms may be invited to make a presentation to the Selection Committee. The Selection Committee may also conduct formal interviews with these firms.
2. The Selection Committee will complete the final evaluation and rank the firms as set forth in Evaluation Criteria (Section E).

D. SUBMITTAL REQUIREMENTS

1. GENERAL INSTRUCTIONS:

- a. RFP Response: In order to be considered for selection, offerors must submit a complete response to this RFP. Fifteen (15) copies of the proposal and one (1) original electronic copy in .pdf format are to be submitted in a sealed envelope bearing the 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. No other distribution of the proposal shall be made by the offeror.
- b. Late Proposals: It is the responsibility of the firm to insure the Purchasing Agent receives the submittal by the proposal due date and time. Late Proposals will be returned to offeror unopened, if the container is properly identified with the firm's return address.

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. Each paragraph in the proposal should reference the paragraph number of the corresponding section of the RFP. It is also helpful to cite the paragraph number, sub-letter, 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-letter should be 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 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. 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 that single volume.
- e. Limit your Proposal to a maximum of **forty (40) total pages**. Thirty pages shall include: **ALL** exhibits, resumes, letters, attachments, and enclosures. Dividers are allowed and will not count towards your forty pages.

- f. Ownership of all data, materials and documentation originated and prepared for the FWSA pursuant to the RFP shall belong exclusively to the FWSA 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.
3. **PART I - SUBMITTAL CONTENT:** Written proposals shall contain the following information presented in the following order:
 - a. List the three most relevant studies completed by the firm within the last three years. Include descriptions, project dates, client name and contact person, address and phone number.
 - b. Summary qualifications of key individuals (and office location for each) to be assigned to the work. A Project Manager must be assigned. Full resumes may be attached, but count towards the twenty page maximum. Resumes must exhibit qualifications and experience of the individual in the type of work to be conducted with emphasis on projects similar in nature to those expected.
 - c. List the outside services to be used. Describe the anticipated scope of work by sub-consultants and how they will be coordinated. Specific names of sub-consultants are not required, but preferred at this time. The intent of this section is to ascertain what outside services the firm will require.
 - d. Describe the methodology and procedures that will be implemented for all work. Identify who will be responsible for the quality assurance program and how the program works within the firm. Provide specific examples of the firm's experience in meeting deadlines and completing the work within budget.
 - e. Provide a detailed cost breakout and a not-to-exceed cost of completing all work. Hourly billing rates and total hours should be utilized. Also include reimbursable expenses.
 - f. Verify that required insurance coverage is available (*insurance certificates need not be submitted until the award stage*).
 4. **PART II - SUBMITTAL CONTENT:** At the FWSA's sole discretion, interviews and presentations may be conducted consisting of the following:
 - a. Presentation by Firms and Formal Interview (Optional): In the event the FWSA requests an interview, questions that may be asked are: Summarize the firm's experience and qualifications to complete this study. Presentation may depict how staff will be organized to accomplish the work and where they will be located. Demonstrate the availability of resources for the successful completion of the task orders, including office locations and percentage of time that the project manager and staff members will be allocated to the FWSA. Question and Answer period may follow.

E. EVALUATION CRITERIA

Each member of the Selection Committee will individually evaluate each firm on the basis of the following criteria. A composite ranking will then be developed that ranks the firms from first to last.

PART I - Evaluation Criteria and Scoring

Criteria	Maximum Possible Score
Experience and qualifications of Firm and Project Team	40
Experience and qualifications of the Project Manager	25
Cost of completing the study	20
Overall quality and completeness of proposal	15
Maximum Possible Score	100

PART II - Evaluation Criteria

- Final adjustments to Part I criteria may be made by the Selection Committee, if interviews are conducted.
- References: Three (3) references may be contacted.

Compensation: Offeror will not be compensated for the cost of proposal preparation whether or not an award is consummated.

Investigations: The Selection Committee may make such reasonable investigations, as it deems proper and necessary to determine the ability of the firm to perform the work. The Selection Committee and/or its representative(s) reserves the right to inspect the firm's physical premises prior to award to satisfy questions regarding the firm's capabilities.

F. QUESTIONS

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

Perry Eisenach, Public Services Director
City of Winchester
15 N. Cameron St
Winchester, VA 22601
perry.eisenach@winchesterva.gov

All questions will be answered in writing and compiled in a document that will be posted on the City's website where this RFP is located at:

<http://www.winchesterva.gov/purchasing/itbrfp>

G. SPECIAL TERMS AND CONDITIONS:

- a. **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 Frederick-Winchester Service Authority (FWSA), whichever is sooner. The FWSA, its authorized agents, and/or FWSA auditors shall have full access to and the right to examine any of said materials during said period.
- b. **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 Bid/Proposal for the purpose of combining requirements to increase efficiency or reduce administrative expenses.
- c. **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 FWSA will be used in product literature or advertising. The contractor shall not state in any of its advertising or product literature that the FWSA or any agency or institution of the Commonwealth has purchased or uses its products or services.
- d. **BID ACCEPTANCE PERIOD:** Any bid in response to this solicitation shall be valid for (60) days. At the end of the (60) 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.
- e. **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.
- f. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of the FWSA. In the event that the contractor desires to subcontract some part of the work specified herein, the contractor shall furnish the FWSA the names, qualifications and experience of their proposed subcontractors. The contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.
- g. **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 Frederick-Winchester Service Authority. On request, the contractor shall promptly provide an acknowledgment or assignment in a tangible form satisfactory to the FWSA to evidence the FWSA's sole ownership of specifically identified intellectual property created or developed in the performance of the contract.

J. FWSA REQUIRED GENERAL TERMS AND CONDITIONS:

- A. APPLICABLE LAWS AND COURTS
- B. ANTI-DISCRIMINATION
- C. ETHICS IN PUBLIC CONTRACTING
- E. IMMIGRATION REFORM AND CONTROL ACT OF 1986
- F. DEBARMENT STATUS
- G. ANTITRUST
- H. MANDATORY USE OF FWSA 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. SEVERABILITY
- P. CHANGES TO THE CONTRACT
- Q. DEFAULT

- R. TAXES
- S. USE OF BRAND NAMES
- T. TRANSPORTATION AND PACKAGING
- U. INSURANCE
- V. ANNOUNCEMENT OF AWARD
- W. DRUG-FREE WORKPLACE
- X. NONDISCRIMINATION OF CONTRACTORS
- Y. AVAILABILITY OF FUNDS
- Z. LICENSES AND PERMITS
- AZ. TERMINATION
- BZ. HOLD HARMLESS INDEMNIFICATION
- CZ. CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION
- DZ. BID PRICE CURRENCY

These General Terms and Conditions are required for all sealed and unsealed written or verbal solicitations issued by the FWSA.

- A. **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. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.
- B. **ANTI-DISCRIMINATION:** By submitting their (bids/proposals), (bidders/offerors) certify to the FWSA 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.
- C. **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.

- D. **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.
- E. **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 County 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.
- F. **ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the FWSA 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 FWSA under said contract.
- G. **MANDATORY USE OF TERMS AND CONDITIONS:** Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the bid/proposal; however, the FWSA reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid/proposal.
- H. **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.
- I. **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 state 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 FWSA 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*).
 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 FWSA for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 - (2) To notify the agency 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 FWSA, 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 FWSA.

K. 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 FWSA 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 and take precedence.

The FWSA's procurement, Contractor's response and written negotiation summary shall form part of the Contract. In the case of conflicts, discrepancies, errors or omissions among the FWSA's procurement, the Contractor's response, written negotiation summary and the main body of the Contract, the documents and amendments to them shall take precedence and govern in the following order:

1. Contract
2. Negotiation Summary
3. FWSA's Procurement Document(s)
4. Contractor's Response
5. Other Documents

L. QUALIFICATIONS OF (BIDDERS/OFFERORS): The FWSA 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 FWSA all such information and data for this purpose as may be requested. The FWSA 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 FWSA further reserves the right to reject any (bid/proposal) if the evidence submitted by, or investigations of, such (bidder/offeror) fails to satisfy the FWSA 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 FWSA 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 FWSA.

O. 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.

P. 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 FWSA. 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 .

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 FWSA 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 FWSA a credit for any savings. Said compensation shall be determined by one of the following methods:

1. By mutual agreement between the parties in writing; or

2. 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 FWSA's right to audit the contractor's records and/or to determine the correct number of units independently; or
3. 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 FWSA with all vouchers and records of expenses incurred and savings realized. The FWSA 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 FWSA within thirty (30) days from the date of receipt of the written order from the FWSA. 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 established by the FWSA. 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 FWSA or with the performance of the contract generally.

Q. DEFAULT: In case of failure to deliver goods or services in accordance with the contract terms and conditions, the FWSA, 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 FWSA may have.

R. TAXES: Sales to the FWSA are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request.

S. USE OF BRAND NAMES: Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict (bidders/offers) 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 FWSA 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.

T. TRANSPORTATION AND PACKAGING: By submitting their (bids/proposals), all (bidders/offers) 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.

U. 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 these insurance coverages 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 FWSA 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. The insurer must have an A.M. Best rating of A- or better.

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 FWSA must be named as an additional insured and so endorsed on the policy by the insurer. A notation on the certificate of insurance is not sufficient.

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:

Profession/Service Limits

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 2008, as follows:

July 1, 2008 - \$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 Engineer: \$2,000,000 per occurrence, \$6,000,000 aggregate

Surveying: \$1,000,000 per occurrence, \$1,000,000 aggregate

V. **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.

W. **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.

X. **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.

Y. AVAILABILITY OF FUNDS: In the event that funds are not appropriated for this Contract for any FWSA fiscal year, following the FWSA's current year, the Contract shall terminate automatically as of the last day for which funds were appropriated without the FWSA providing written notice to the Contractor prior to the date of termination. The FWSA shall not consider termination of the Contract pursuant to this section default. Upon such termination, the FWSA shall be released from any obligation to make future payments and shall not be liable for cancellation or termination charges.

Z. LICENSES AND PERMITS: Contractors will be responsible for all licenses and permits, if required.

AZ TERMINATION:

- a. Termination for Convenience: The FWSA may terminate a contract, in whole or in part, whenever the FWSA determines that such termination is in the best interest of the FWSA, 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 FWSA may terminate the contract for default. Upon termination for default, payment may be withheld at the discretion of the FWSA. The Vendor will be paid for work satisfactorily performed prior to termination.

BZ 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 FWSA, its officers, employees, agent and representatives thereof from all suits, actions, claims of any kind (including claims for 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.

CZ. CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION: The contractor assures that information and data obtained as to personal facts and circumstances related to patients or clients will be collected and held confidential, during and following the term of this agreement, and will not be divulged without the individual's and the agency's written consent and only in accordance with federal law or the Code of Virginia. Contractors who utilize, access, or store personally identifiable information as part of the performance of a contract are required to safeguard this information and immediately notify the agency of any breach or suspected breach in the security of such information. Contractors shall allow the FWSA to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. Contractors and their employees working on this project may be required to sign a confidentiality statement.

DZ. BID PRICE CURRENCY: Prices are to be stated in US dollars unless otherwise specified in the solicitation.

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K. CONTRACT
#201921

THIS CONTRACT WAS MADE AND ENTERED INTO THIS ____ DAY OF _____, 2015, BY AND BETWEEN _____, F.I.N. OR S.S. NUMBER _____ (“CONTRACTOR”), AND THE **FREDERICK-WINCHESTER SERVICE AUTHORITY**, (“FWSA”).

WHEREAS, THE FWSA HAS PREVIOUSLY ISSUED REQUEST FOR PROPOSAL 201921 (RFP #”201921”), DATED MAY 15, 2019, TO PROVIDE CONSULTING SERVICES TO THE FWSA, AS MORE FULLY DESCRIBED AND REQUESTED IN THE RFP, AND;

WHEREAS, CONTRACTOR HAS SUBMITTED A PROPOSAL IN RESPONSE TO THE RFP DATED _____ 2019, SIGNED BY _____ WHICH STATES QUALIFICATIONS, SERVICES AND PRICING ASSIGNED TO THE FWSA.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS HEREIN CONTAINED, THE PARTIES COVENANT AND AGREE AS FOLLOWS:

1. THE CONTRACTOR SHALL PROVIDE THE FWSA THE SERVICES OUTLINED IN RFP #201921, WHICH IS INCORPORATED IN ITS ENTIRETY HEREIN BY REFERENCE. THE FWSA SHALL PAY THE CONTRACTOR THE ASSIGNED HOURLY RATES AND FEES SET FORTH IN THE PROPOSAL. THE CONTRACTOR SHALL FORWARD AN INVOICE FOR SUCH WORK TO THE FWSA ON OR ABOUT THE FIRST DAY OF EACH MONTH DURING THE TERM OF THIS CONTRACT. THE FWSA SHALL PAY SUCH INVOICE IN ACCORDANCE WITH THE PROMPT PAYMENT ACT PROVISIONS OF THE VIRGINIA PUBLIC PROCUREMENT ACT, WHICH ARE INCORPORATED HEREIN BY REFERENCE.
2. THE TERM OF THIS CONTRACT SHALL BE A PERIOD OF 180 DAYS FROM DATE OF THIS CONTRACT. THE FWSA RESERVES THE RIGHT TO CANCEL AND TERMINATE THIS CONTRACT, WITHOUT PENALTY, UPON TEN (10) DAYS WRITTEN NOTICE TO CONTRACTOR. THE PARTIES UNDERSTAND AND AGREE THAT THE FWSA, AT ITS SOLE OPTION, MAY RENEW THIS CONTRACT FOR AN ADDITIONAL 180 DAY PERIOD.
3. **APPLICABLE LAW AND VENUE:** THE PARTIES AGREE THAT THIS CONTRACT FOR SERVICES SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH 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.
4. IF ANY PROVISION OF THIS AGREEMENT IS FOUND TO BE ILLEGAL, INVALID OR UNENFORCEABLE, THAT SHALL NOT AFFECT THE VALIDITY OR ENFORCEABILITY OF ANY OTHER PROVISION OF THIS AGREEMENT.

5. THE CONTRACTOR HAS, AT THE TIME OF ITS EXECUTION OF THIS CONTRACT, PROVIDED THE FWSA WITH A CERTIFICATE OF INSURANCE SHOWING THAT IT HAS CURRENTLY IN FORCE ALL OF THE INSURANCE REQUIRED BY RFP #201921. CONTRACTOR COVENANTS THAT SUCH CERTIFICATE SHALL REMAIN IN FULL FORCE AND EFFECT THROUGHOUT THE TERM OF THIS CONTRACT, AND THAT IT WILL PROMPTLY NOTIFY THE FWSA IN THE EVENT, SUCH INSURANCE IS NO LONGER IN EFFECT FOR WHATEVER REASON.

IN WITNESS WHEREOF, THE PARTIES HAVE SIGNED THIS INSTRUMENT ON THE DATE INDICATED BELOW, WITH ONE (1) FULLY SIGNED ORIGINAL DELIVERED TO CONTRACTOR AND ONE (1) FULLY SIGNED ORIGINAL DELIVERED TO THE FWSA.

CONTRACTOR:

FWSA:

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____