

March 21, 2018

**NOTICE TO PUBLIC
CITY OF WINCHESTER**

**ITB #201804
Pre-manufactured Burn Building Prop**

The City of Winchester will accept sealed bids until 2:00 pm local time on May 1, 2018 in the office of the Finance Department. - Purchasing Division, Rouss City Hall, Winchester, VA 22601, to provide a pre-engineered steel fire training center for the Winchester fire/Rescue Department per the attached Specifications.

Copies of this Invitation to Bid may be obtained upon request from the Office of the Finance Department-Purchasing Agent, telephone (540) 667-1815 ext. 1477. Bids/Proposals may be viewed on the City's web page: <http://www.winchesterva.gov>

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 or cost thereof. Should a bidder find discrepancies in, or omissions from the specifications or invitation to bid, he should notify the Purchasing Agent and obtain clarification prior to submitting bid. Only questions answered by formal written 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 sealed bids; the opening date may be postponed if deemed necessary by the 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 and all bids, cancel the bid, prior to award and waive informalities.***

Bids are to be submitted in a sealed envelope bearing the Bidder's company name, address, the proposal name, number and the date and time due and mailed or delivered to:

City of Winchester
Finance Department-Purchasing Division
15 N. Cameron Street
Winchester, VA 22601

BY: Michael Marzullo, CPPB
Purchasing Agent
City of Winchester, Virginia

INTRODUCTION AND PURPOSE

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.

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 2015 population was estimated at 27,284 with 7,650 single family attached and detached homes and over 4,000 multi-family dwelling units.

PURPOSE:

The purpose of this Invitation to Bid is to secure a firm fixed price for a pre-manufactured burn building prop.

The Contract will be administered by the Winchester Fire Department. 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 | March 21, 2018 |
| 2. Proposal Submissions Due | May 1, 2018 at 2:00 P.M. local time |
| 3. Interviews (If necessary) | TBD |
| 4. Award of Contract | TBD |

I. GENERAL:

1.0 BACKGROUND:

Through grant funding from the Virginia Department of Fire Programs (VD FP), the City of Winchester, Fire and Rescue Department (WFRD) have received funding to build a burn building prop. The VD FP grant approval is for a pre-manufactured steel structure meeting the VD FP Prototype 2A definition for class A fuels. The following links are samples for reference when bidding this prototype:

VD FP Sample Design:

<http://www.vafire.com/content/uploads/2017/03/Prototype-2-Class-A-Rev-04-11-13.pdf>

VD FP Sample Project Manual:

<https://www.vafire.com/content/uploads/2016/09/2013-07-09-Project-Manual-Rev04-11-2013.pdf>

Note: The bid package shall NOT include pricing for the erection of the steel structure or installation of required concrete foundation, concrete floors, or 15' concrete apron.

1.1 CODE COMPLIANCE:

The training simulator's primary structural and seismic design shall be in accordance with the building code having jurisdiction in the area of the project. Due to the nature of the intended use of these training towers, the stair design, the means of egress, fire wall requirements as well as other construction issues, are not expected to satisfy the criteria of buildings intended to accommodate public occupancy. This may require a building code variance in some locations; however, this simulator shall meet all applicable NFPA and OSHA standards. It is the responsibility of the owner to obtain such variance if required.

2.0 EXCEPTIONS TO THE SPECIFICATIONS:

- 2.1 Bidders taking exception to any part or section of these specifications shall indicate such exceptions on their bid. Failures to indicate any exceptions shall be interpreted as the bidder's intent to fully comply with the specifications as written. The City reserves the right to accept or reject any and all bids, in whole or in part, and to waive informalities and to cancel the bid at any time prior to award.

3.0 QUESTIONS AND CLARIFICATIONS:

- 3.1 Site visit(s), requests for information, or clarifications regarding the specifications should be addressed to: **Assistant Chief, Scott Kensinger at Scott.Kensinger@winchesterva.gov**

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- 3.2 Only questions answered by formal written Addenda will be binding; oral and other interpretations will be without legal effect.
- 3.3 Questions regarding this solicitation must be submitted in writing at least five (5) business days prior to the bid due date.

4.0 OWNER:

The Owner is the City of Winchester Fire/Rescue Department.

5.0 INSTRUCTIONS TO BIDDERS :

5.1 COPIES OF CONTRACT DOCUMENTS:

- 5.01 Bidding Documents may be examined and downloaded from the City's website at <http://www.winchesterva.gov/purchasing/itbrfp> at no charge.

City of Winchester, Virginia
Finance Department - Purchasing Division
Rouss City Hall, 1st Floor – Room 106
15 North Cameron Street
Winchester, Virginia 22601
Telephone: (540) 667-2378

- 5.02 Complete set of Bidding Documents shall be used in preparing bids; neither the Owner nor the Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents. Owner and Engineer in making copies of Bidding Documents available on the above terms do so only for the purpose of obtaining bids on the Work and do not confer a license or grant for any other use.

6.0 EXAMINATION OF CONTRACT DOCUMENTS:

- 6.01 Before submitting a bid, each bidder must examine the Contract Documents thoroughly, familiarize himself with federal, state, and local laws, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the work; and study and carefully correlate bidder's observations with the Contract Documents.
- 6.02 Before submitting his bid, each bidder will, at his own expense, make such additional investigations and tests as the bidder may deem necessary to determine his bid for performance of the work in accordance with time and other terms and conditions of the Contract Documents.
- 6.03 The submission of a bid will constitute an incontrovertible representation by the bidder that he has examined the Contract Documents and found them sufficient in scope and detail to indicate and convey understanding of all terms and conditions of the Work.

6.04 It is understood and agreed by the bidder that the estimate of quantities (if provided) are approximate, and are presented in order to obtain unit prices and approximate amount of the Contract. The Contractor shall make no claim against the City because of any estimate, tests or representations made by any officer or agent of the City, which may prove to be in any respect erroneous.

6.05 Proposals shall be signed by an authorized representative of the Contractor. 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.

7.0 **SPECIFICATIONS:**

Specifications are specified herein. The Owner, however, reserves the right to make adjustments to the scope of the work. Such adjustments shall be accomplished by appropriate Change Orders.

The technical specifications for the project are provided within this contract document, see bid form.

8.0 **INTERPRETATIONS:**

All questions about the discrepancies or ambiguities in the Contract Documents prior to the bid opening shall be submitted in writing via e-mail to the following:

Scott Kensinger, Assistant Chief: scott.kensinger@winchesterva.gov

Replies to questions will be issued by Addenda mailed or delivered to all parties recorded by the Purchasing Agent as having received the Bidding Documents or by posting on a Question and Answer Bulletin Board posted at the following location:

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

Questions received less than five (5) calendar days prior to the date for opening of bids may not be answered. Only questions answered by formal written Addenda or in writing on the Question and Answer Bulletin Board will be binding.

9.0 **SUBCONTRACTORS:**

9.01 The apparent successful bidder and any other bidder so requested, will within seven (7) days after the day of bid opening submit to Owner a list of all subcontractors and other

persons and organizations, including those who are to furnish the principal items of material and equipment, proposed for the work. Such list shall be accompanied by an experience statement with pertinent information as to similar projects and other evidence of qualification for each such subcontractor, person, and organization. If Owner or Engineer, after due investigation has reasonable objection to any proposed subcontractor, other person or organization, either may before giving the Notice of Award request the apparent successful bidder to submit an acceptable substitute without an increase in Bid price. If the apparent successful bidder declines to make any such substitution, the Contract shall not be awarded to such bidder, but his declining to make any such substitution will not constitute grounds for sacrificing his Bid Bond. Any subcontractor, other person, or organization so listed and to whom Owner or Engineer does not make written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and Engineer.

10 PREPARATION OF BID:

- 10.01** The Bid Form is included in these Specifications, and may not be altered in any way. Additional copies may be obtained from the City of Winchester. Additional information and remarks may be submitted as separate pages.
- 10.02** Bid Forms must be completed in ink or by typewriter. Prices, where indicated,/ must be stated in words and numerals; in case of conflict, words will take precedence.
- 10.03** Bids MUST give full firm name and address of bidder. Failure to manually sign bid may disqualify it. Person signing bid will show TITLE or AUTHORITY TO BIND THE FIRM IN A CONTRACT. Firm name and authorized signature must appear on bid in the space provided on the bid form. Those authorized to sign are as follows:
If a sole proprietorship, the owner may sign.
If a general partnership, any general partner may sign.
If a limited partnership, a general partner must sign.
If a limited liability company, a “member” may sign or a “manager” must sign if so specified by the articles or organization.
If a regular corporation, the CEO, President or Vice-President must sign.
Others may be granted authority to sign but the City requires that a corporate document authorizing him/her to sign be submitted with bid.
- 10.04** A bidder organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 of the Code of Virginia shall include in its bid or proposal the identification number issued to it by the State Corporation Commission (SCC). Any bidder that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law shall include in its bid or proposal a statement describing why the bidder is not

required to be so authorized. Any bidder described herein that fails to provide the required information may not receive an award unless a waiver of this requirement and the administrative policies and procedures established to implement this section is granted by the City Manager. The SCC may be reached at (804) 371-9733 or at <http://www.scc.virginia.gov/default.aspx>.

10.05 Bidder shall make acknowledgement on the Bid Form of receipt of all Addenda, the numbers of which shall be filled in the Bid Form.

11.0 SUBMISSION OF BIDS:

11.01 Bids shall be submitted at the time and place indicated in the Invitation to Bid and shall be included in an opaque sealed envelope, along with the Non-collusion Affidavit, and other required documents. The sealed envelope shall indicate the Project Title, name and address of the bidder, and State Registration No. of the bidder. If the bid is sent through the mail, or other delivery system, the sealed envelope shall be enclosed in a separate envelope with the notation "**BID ENCLOSED**" on the face thereof.

11.02 Timely delivery of the Bid shall be the sole responsibility of the Bidder. Bids must be received not later than the time and date stated in the Invitation to Bid. Bids by telephone, facsimile or other forms shall not be accepted.

12.0 MODIFICATION AND WITHDRAWAL OF BIDS:

12.01 Bids may be modified or withdrawn by an appropriate document duly executed (in the manner that a bid must be executed) and delivered to the place where bids are to be submitted at any time prior to opening of the bids. The request for withdrawal or modification must be in writing and signed by a person duly authorized to do so.

12.02 No bidder may withdraw his bid within thirty (30) calendar days after the actual date of the bid opening, except as allowed by the Code of the City of Winchester, Virginia, Section 21-43(a), which states "the Bidder shall give notice in writing of his claim of rights to withdraw this bid within two (2) business days after the conclusion of the bid opening procedure". Bidder shall submit to the Owner his original work papers, documents and materials used in preparation of his bid sought to be withdrawn.

13.0 OPENING OF BIDS:

13.01 Bids shall be opened publicly, and will be read aloud at the time and location indicated on the Invitation to Bid. An abstract of the amounts of the Bids shall be made available after the opening of bids.

13.02 All bids shall remain open for sixty (60) days after the day of the bid opening, but Owner may, in his sole discretion, release any bid and return the Bid Bond prior to that date.

14.0 AWARD OF CONTRACT:

- 14.01** Owner reserves the right to reject any and all bids, to waive any and all informalities and to negotiate Contract terms with the successful bidder, and the right to disregard all nonconforming, nonresponsive, or conditional bids. Discrepancies between words and figures shall be resolved in favor of words. Discrepancies between indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.
- 14.02** In evaluating bids, Owner will consider the qualifications of the bidders, whether or not the bids comply with the prescribed requirements, and alternates and unit prices if requested in the Bid Form. Owner may consider the qualifications and experience of subcontractors and other persons and organizations proposed for the work.
- 14.03** Owner may conduct such investigations as he deems necessary to assist in the evaluation of any bid and to establish the responsibility, qualifications, and financial ability of the bidders, proposed subcontractors and other persons and organizations, to do the work in accordance with the Contract Documents and to the Owner's satisfaction within the prescribed time.
- 14.04** Owner reserves the right to reject the bid of any bidder who does not pass any such evaluations to Owner's satisfaction.
- 14.05** If the Contract is to be awarded, it will be awarded on a Base Bid price basis to the lowest responsive and responsible bidder, and whose evaluation by the Owner indicates that the award will be in the best interest of the Project and the City. Discounts for prompt payment, liquidated damages, and cash incentives will not be part of the award.

15.0 NEGOTIATION WITH THE LOWEST BIDDER:

Unless all bids are cancelled or rejected, the City of Winchester reserves the right granted by § 2.2-4318 of the *Code of Virginia* to negotiate with the lowest responsive, responsible bidder to obtain a contract price within the funds available to the agency whenever such low bid exceeds the agency's available funds. For the purpose of determining when such negotiations may take place, the term "available funds" shall mean those funds which were budgeted by the agency for this contract prior to the issuance of the written Invitation for Bids. Negotiations with the low bidder may include both modifications of the bid price and the Scope of Work/Specifications to be performed. The agency shall initiate such negotiations by written notice to the lowest responsive, responsible bidder that its bid exceeds the available funds and that the agency wishes to negotiate a lower contract price. The times, places, and manner of negotiating shall be agreed to by the agency and the lowest responsive, responsible bidder.

16.0 REFERENCES

All bidders shall include, with their bids, a list of three (3) references for whom comparable work has been performed. Bidder hereby releases listed references from all claims and liability for damages which may result from the information provided by the reference. Bidders shall:

Provide a list of a minimum of three (3) projects of similar scope and size completed within the last eight (8) to ten (10) years. Lists are to include names and addresses of projects, brief description of the project, and names, addresses, current phone numbers. Failure to include references may be cause for rejection of the bid as non-responsive

17.0 BID FORM / BID REQUIREMENTS

The Burn Building Prop must meet or exceed the following criteria. The bidder shall acknowledge their ability to comply with each “Bid Requirements” and provide a total cost of the requirements. Manufacturer product specifications and schematic drawings shall be supplied with the bid. Additionally, the bidder shall acknowledge their ability to comply with the “Additional Bid Items” and provide a cost for each.

Item	Description	Comply	Not Comply	Cost	Remarks
1	The Burn Building prop super structure must have a minimum design life span of 20 years under the intended specified use.				
2	The Burn Building prop shall meet current NFPA, OSHA, federal, state, and local codes, and standards at time of design submittal to the board.				
3	Minimum height: two (2) stories				
4	Minimum first floor area: 1,100 s.f.				

5	Minimum second floor area: 781 s.f.				
6	Minimum lower roof area: 318 s.f.				
7	Minimum upper roof area: 436 s.f.				
8	Minimum exterior apron width: 15' width along all elevations				See note below
9	Minimum rooms within Burn Building prop: 8				
10	Minimum burn rooms: 2				
11	Minimum burn rooms per floor: 1				
12	Minimum area per burn room: 144 s.f.				
13	Minimum number of exterior galvanized stairs: 1				
14	Minimum number of interior galvanized stairs: 1				

15	Minimum rappelling anchors: 4-10,000lbs each located on 2 nd story flat roof				
16	All windows shall have hinged shutters				
17	All exterior openings shall have operable shutters and doors				
18	All window and door openings shall have coated metal frames				
19	Minimum number of windows: 5				
20	Minimum number of exterior doors: 3				
21	Minimum number of interior doors: 1				
22	Minimum number of roof access openings: 2				
23	Minimum number of means of egress per room: 2				

24	All floors and attic must pitch to drain water from interior of the training prop				
25	Second floor and attic space shall be cast-in-place concrete				See note below
26	Two separate roof systems must be provided to achieve a flat and sloped roof training surface				
27	An access opening must be provided through each roof surface with ability to provide a support for simulated wood roofing for training evolutions				
28	Prop must limit light penetration and be weather tight				
29	Exterior metal surfaces shall be coated to protect from exterior environmental exposure				
30	Interior metal surfaces shall be coated to protect surface from environmental exposure, expected use, and life span of Burn Building prop				
31	Temperature monitoring devices in each burn room as per VDFP specification				Provide Temperature monitoring system specification
32	Prop must have a Temperature Monitoring System as per VDFP specification				Provide Temperature monitoring system specification
33	Provide sealed design drawings and necessary calculations for the burn building prop and foundation				

	TOTAL of pre-manufactured steel Structure meeting the VDFP Prototype 2A definition for class A fuels.			\$	
	TOTAL of pre-manufactured steel structure meeting the VDFP Prototype 2A definition for class A fuels in words.				
	TOTAL for on-site delivery of building package			\$	
	TOTAL for on-site delivery of building package in words				
	Other cost (describe in remarks)			\$	
	Other cost in words				
	Other cost (describe in remarks)			\$	
	Other cost in words				
	Other cost (describe in remarks)			\$	
	Other cost in words				

Note: The bid package shall NOT include pricing for the erection of the steel structure or installation of required concrete foundation, concrete floors, or 15' concrete apron.

ADDITIONAL BID ITEMS

The bidder shall acknowledge their ability to comply with each requirement and provide a separate cost for each

Item	Description	Comply	Not Comply	Cost	Remarks
1	2 additional burn rooms (1 on each floor, 144 s.f. minimum each meeting above criteria)				
2	2-story galvanized exterior stairs on rappelling end of structure				
3	1-FDC connection on front of structure and sprinkler simulator in a 1 st floor burn room				
4	1 balcony on front of burn building prop located at a 2 nd story non-burn room window				
5	1 live burn attic prop				
	TOTAL of additional bid items			\$	
	TOTAL of additional bid items In words				
	TOTAL for on-site delivery of additional items			\$	
	TOTAL for on-site delivery of additional items in words				
	Other cost (describe in remarks)			\$	
	Other cost in words				
	Other cost (describe in remarks)			\$	

	Other cost in words				
	Other cost (describe in remarks)			\$	
	Other cost in words				

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Contractor Name: _____

Address: _____

**Phone
Number** _____

Tax id Number: _____

Contact Name and phone number: _____

17.01 Alternate Suppliers/Systems:

Any systems/materials not explicitly meeting the specifications stated herein, shall be pre-approved fourteen days prior to the bid due date. For all systems/materials in question, the supplier/contractor shall provide samples, written specifications, burn room insulation thermal performance values, warranties, full set of drawings, and MSDS. An itemized list must be provided that specifically references each item that deviates from this specification. In any case, all performance and warranty criteria stated herein must be met without exception.

17.02 Performance Bond

The Contractor shall furnish a performance bond, in an amount at least equal to the Contract Price as security for the faithful performance and Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period, except as provided otherwise by Laws or Regulations or by the Contract Documents.

CITY OF WINCHESTER

REQUIRED 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 CITY FORM AND TERMS AND CONDITIONS
- I. CLARIFICATION OF TERMS
- J. PAYMENT
- K. PRECEDENCE OF TERMS
- L. QUALIFICATIONS OF BIDDERS OR OFFERORS
- M. TESTING AND INSPECTION
- N. ASSIGNMENT OF CONTRACT
- O. 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 City of Winchester for procurements that are subject to the Winchester City Code unless changed, deleted or revised by the City Attorney.

- 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 following the Winchester City Code, Chapter 21-61. 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 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 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:

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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 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.
- H. **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 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.
- I. **CLARIFICATION OF TERMS:** If any prospective (bidder/offeror) has questions about the specifications or other solicitation documents, the prospective (bidder/offeror) should contact the 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.
- J. **PAYMENT:**
1. **To Prime Contractor:**
 - a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the 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 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*).

2. To Subcontractors:

- a. A contractor awarded a contract under this solicitation is hereby obligated:
 - (1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the City of Winchester 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 City of Winchester, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the City of Winchester.

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 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 and take precedence.

The City'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 City'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. City's Procurement Document(s)
- 4. Contractor's Response
- 5. Other Documents

L. **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.

- M. **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.
- N. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the contractor in whole or in part without the written consent of the City of Winchester.
- 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 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:
 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 City of Winchester'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 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.
- Q. **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.
- R. **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.

- S. **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.
- T. **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.
- 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 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. 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 City of Winchester 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:

<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 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 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.

Z. **LICENSES AND PERMITS:** Contractors will be responsible for all licenses and permits, if required. Any person, firm, or corporation responding to the City's procurement 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.

AZ **TERMINATION:**

- a. Termination for Convenience: The City of Winchester may terminate a contract, in whole or in part, whenever the City OF Winchester determines that such termination is in the best interest of the City of Winchester, 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 of Winchester may terminate the contract for default. Upon termination for default, payment may be withheld at the discretion of the City of Winchester. 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 City, 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 City 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.