Request for Proposals (RFP)  
RFP 201710  
Body worn Cameras and Data Storage

Section I. INVITATION

The City of Winchester, Virginia is soliciting proposals from qualified companies to provide the Winchester Police Department, with approximately 195 officer worn body cameras. In addition, companies must provide a video storage solution, which partners with the provided body worn cameras, to store, manage, retrieve and share captured digital video. Qualified companies will also provide a Service Agreement which includes service on equipment, hardware and software for five (5) years with an option for five (5) twelve (12) month renewals.

Potential Vendors must demonstrate experiences in designing and maintaining body worn camera and backend server solutions. The intent of this request for proposals is to acquire body worn video camera for public safety use that offers ease of use, functionality, recording and storage capabilities. Potential Vendors shall only submit one proposal per firm.

Proposals that do not conform to the mandatory items as provided in the proposal instructions will not be considered.

Based upon results of the review and evaluation, the City may decide to proceed with an offer to one or more companies to furnish and potentially deploy units on a permanent basis throughout the Winchester Police Department.

Section II. GOALS AND OBJECTIVES

The intent of this request for proposals is to acquire body worn video camera for public safety use that offers ease of use, functionality, recording and storage capabilities. Potential Vendors will also be required to provide training on the use of body cameras and storage systems. All proposals submitted must address the key components discussed in the Technical Information and Requirements section.

The City will then select a limited Number of vendors to conduct a two (2) month (or longer) on-street field test of body worn cameras and storage solution by The Winchester, Virginia Police Department. All vendors not selected for this test will be eliminated and therefore not be considered to supply body worn cameras and/or a video storage solution to the City of Winchester, Virginia.
Section III. GENERAL CONDITIONS

TERMS

The agreement which results from this RFP will be a contract for a period of five (5) years. This agreement may be extended, on the same terms and conditions for an additional five (5), one (1) year terms, if the City exercises the option to do so.

DESIGNATED CONTACTS

Any explanation desired by a potential vendor regarding the meaning or interpretation of any RFP provision or questions must be submitted in writing via email to the procurement contact, Michael Marzullo, no later than 4:00PM on August 23, 2017. Michael Marzullo is the only individual who may be contacted regarding the RFP and all inquiries should be sent to Michael.Marzullo@winchesterva.gov. Responses to the questions will be posted on the City's RFP website.

SCHEDULE OF EVENTS

<table>
<thead>
<tr>
<th>ACTIVITY</th>
<th>DATE</th>
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<tbody>
<tr>
<td>1. Release Request for Proposal</td>
<td>August 18, 2017</td>
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<td>2. Deadline to submit written questions</td>
<td>September 7, 2017</td>
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<td>3. Deadline for submitting proposal</td>
<td>September 13, 2017 before 2:00PM Local Time</td>
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<td>4. Evaluation Committee Review</td>
<td>September, 2017</td>
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<td>5. Interviews for selected firms if necessary</td>
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<tr>
<td>6. Tentative contract award date</td>
<td>November, 2017</td>
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REFERENCES

The City reserves the right to check any reference(s), regardless of the source of the reference information, including but not limited to, those that are identified by the company in the proposal, those indicated through the explicitly specified contacts, those that are identified during the review of the proposal, or those that result from communication with other entities involved with similar projects.

COMMUNICATION WITH STAFF

From the date the RFP is issued until a contract is executed, communication regarding this project between potential vendors and individuals employed by the City is prohibited. Only written communication with the procurement contact, as listed on page one of this Request for Proposal, is permitted.

Once a determination is announced regarding the selection of a vendor, the Vendor will be permitted to speak with person(s) participating in contract negotiations.

Violation of these conditions may be considered sufficient cause to reject a vendor’s proposal and/or selection irrespective of any other condition.

The following exceptions to these restrictions are permitted:
• Contacts made pursuant to any pre-existing contracts or obligations; and
• Presentations, key personnel interviews, clarification sessions or discussions to finalize a contract, as requested by the City.

PROPRIETARY INFORMATION

All information and data contained in the proposal becomes the property of the City and becomes public information upon opening the proposal.

If the Potential Vendor wishes to have any information withheld from the public, such information must fall within the definition of proprietary information contained within the state’s Public Record statutes.

All proprietary information the Potential Vendor wishes the City to withhold from the public must be submitted in a sealed package, which is separate from the remainder of the bid. The separate package must be clearly marked PROPRIETARY on the outside of the package.

APPLICABLE LAW

The laws of the Commonwealth of Virginia shall govern, and the appropriate venue and jurisdiction for any litigation which may arise hereunder will be in those courts located in the Commonwealth of Virginia, regardless of the place of business, residence or incorporation of the Vendor.

Section IV. PROPOSAL SUBMISSION AND PROCESS

PROPOSAL FORMAT
The proposal submitted should not exceed thirty (30) pages. Other attachments may be included with no guarantee of review.

[Suggested option: All proposals shall be on 8-1/2” x 11” paper bound with tabbed dividers labeled by section to correspond with the evaluation information requested.]

The Potential Vendor shall submit one clearly labeled original and six copies of their proposal. The name of the Potential Vendor firm shall be indicated on the spine and/or cover of each binder.

Proposals shall be signed by an authorized representative of the offeror. All information requested must be submitted. Failure to submit all information requested may result in the City requiring prompt submission of missing information and/or giving a lowered evaluation of the proposal. Mandatory requirements are those required by law or such that they cannot be waived and are not subject to negotiation.

Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of content. Elaborate brochures and excessive promotional materials are not required or desired.

All proposals must be submitted in a sealed envelope plainly marked with the name and address of the Potential Vendor and the RFP number and title. No responsibility will attach to the City or any official or employee thereof, for the pre-opening of, post-opening of, or the failure to open a proposal not properly addressed and identified.

FAXED PROPOSALS ARE NOT ALLOWED AND WILL NOT BE CONSIDERED.

PROPOSAL REQUIREMENTS

The Potential Vendors shall provide the appropriate information in sufficient detail to demonstrate that the evaluation criteria has been satisfied as specified. To allow for easier comparison of proposals during
evaluation, proposals should contain the following sections and attachments and be arranged in consecutive order.

**Executive Summary.** This section shall serve to provide the City with the key elements and unique features of the proposal by briefly describing how the Potential Vendor is going to provide the best solution. The Executive Summary should include a schedule of major milestones to accomplish the implementation.

The Executive Summary should also include a list of high risk or problematic areas which were identified during the proposal process that are reasons for concern. Potential Vendor will not be evaluated on this paragraph and cannot lose evaluation points for listing areas of concern. These concerns will be addressed with the successful Vendor during negotiations.

**Experience & References.** Provide a list of at least three (3) references where you have provided similar goods and services to include name, address, contact name, phone number, number of cameras in use, number of years each has been using your system, and corresponding interfacing systems that will be used by the Department.

**Staff Qualifications and Availability.** Provide information concerning the experience, background and resumes of those persons who would actually perform work on the project. Indicate the present workload of the project staff to demonstrate their ability to devote sufficient time to meet the proposed schedule.

**Conceptual Treatment of Project and Work Plan.** Describe in more detail the approach to the project. Include a preliminary project plan that includes Potential Vendor’s concept of the project including the methodology to be used, proposed timeline, and the major deliverables to be produced. In addition, the Potential Vendor must provide and specify the roles and responsibilities for the City, Potential Vendor, and any companies providing the video storage solution. Include any assumptions and constraints.

**Body Worn Camera Selection and Assessment Tool.** All potential vendors must complete and submit this form for review by the Department.

**License Agreement, Software Maintenance Agreement and Hosted Agreement** must be provided for review and evaluation by the Department.

**BUDGET NARRATIVE**

The Potential Vendors shall provide a budget narrative. The proposed budgets must be complete, cost effective, and allowable (e.g., reasonable, allocable, and necessary for project activities). Vendors should demonstrate in their budget narratives how they will maximize cost effectiveness of grant expenditures. Budget narratives should generally describe cost effectiveness in relation to potential alternatives and the goals of the project. The narrative should be mathematically sound. The narrative should explain how the vendor estimated and calculated all costs, and how they are relevant to the completion of the proposed project. The narrative may include tables for clarification purposes but need not be in a spreadsheet format.

The Budget Narrative must include the following:

- Unit price for wearable cameras
- Unit price for camera accessories (mounts, collars, etc.)
- Unit price for evidence transfer managers (docking stations)
- Annual price for hardware maintenance and support
- Annual price for software maintenance and support
- Price for hosting storage for immediate access
- Price for hosting archival storage
- Hourly rates for training services
Specifically, the initial order is estimated to be for approximately 195 cameras, with the potential of additional orders based on funding availability. The equipment pricing will be used for purchases of equipment throughout the term of the contract. All yearly maintenance and support fees shall be provided at a “fixed” per year price. Operation of all software and hardware products shall be warranted for a period 36 months from the date of acceptance at no additional cost.

Section V. EVALUATION OF PROPOSAL

Proposals will be reviewed by an Evaluation Panel made up of representatives of the City. The Evaluation Panel will select a "short list" of qualified Service Providers who will be formally interviewed and may be requested to provide a formal demonstration to the City. The contract will be awarded to the Potential Vendor whose proposal the City determines, in its sole discretion, is the most advantageous to the City and in the City’s best interest. Evaluations will be based on the required criteria listed, and qualitative evaluation will also be based on:

- Ease of solution’s use
- Ability to meet the requirements of the RFP Scope of Services
- Maintenance, training, and support offering
- Cost of Services
- Acceptance of City’s RFP Terms and Conditions

Section VI. WITHDRAWAL OF PROPOSAL

Potential Vendors may request withdrawal of a posted, sealed proposal prior to the scheduled proposal opening time provided the request for withdrawal is submitted to the City's Purchasing Analyst in writing or a proposal release form has been properly filled out and submitted to the Purchasing & Contracts reception desk. Proposals must be re-submitted and time-stamped in accordance with the RFP document in order to be accepted.

No proposal may be withdrawn for a period of 90 calendar days after the date of proposal opening. All proposals received are considered firm offers during this period. The Potential Vendor’s offer will expire after 90 calendar days. If a Potential Vendor intended for award withdraws their proposal, that Potential Vendor may be deemed non-responsible if responding to future solicitations.

Section VII. REJECTION OF PROPOSAL

The City reserves the right to reject any and all proposals received by reason of this request.

ADDENDUM TO THE RFP

If any addendum is issued for this RFP, it will be posted on the City's web site as an Addendum at wichestervva.gov/purchasing. The City reserves the right to cancel or amend the RFP at any time before the bid opening.

Section VIII. TECHNOLOGY INFORMATION AND REQUIREMENTS

All potential vendors must provide detailed and specific information on the following characteristics and requirements of their body-worn camera systems.

[NOTE: For more information on body-worn camera implementation among law enforcement agencies, please refer to the Technology section of the Bureau of Justice Assistance’s National Body-Worn Camera Toolkit found at https://www.bja.gov/bwc/Topics-Technology.html.]

CAMERA AND SOFTWARE CONSIDERATIONS
Camera Characteristics:
• Maximum total combined weight of device to be worn by officers, in ounces
• Minimum recording capability on a single battery charge, in hours
• Minimum storage capacity on the device, in hours
• Minimum sustained stand-by battery life without recharging, in hours
• Recording indicator visible to the operator
• Ability for the officer/operator to turn the recording indicator off and on
• Minimum field of vision, in degrees
• Low light functionality similar to the human eye
• Ability to disable night vision function,
• Ability to transfer camera between multiple locations on the body
• Maximum number of wire or cable connections for the worn device
• Auto-tagging function for date/time, including hours, minutes, and seconds
• Additional product literature

Display and Access:
• Ability to view the video in the field
• Presence of enhanced user authentication
• Existence of a log showing users that have viewed and copied the video
• Ability to set and control the length of video retention by the System Administrator
• Identified management of account administration
• Ability to support multiple concurrent user log-ins
• Existence of customized search criteria
• Built in audio and video redaction capability
• Customizable logs/reports

Technical Capabilities:
• Capability with existing Department software


System Warranty:
• Minimum warranty for all patches, hardware, and software with option to extend warranty
• Articulated Return Material Authorization process
• Maximum time allowed for replacement of inoperable equipment by the vendor

Qualifications and Experience:
• The Potential Vendor shall provide a history of the business including the date established, the type of ownership or legal structure of the business (sole proprietor, partnership, corporation, etc.), the length of time that the firm has been operating as the legal entity, and the length of time the firm has been providing the requested service.
• The Potential Vendor shall list the proposed key members of staff to be assigned to the City’s contract including their roles and estimated participation in delivering the services.
• The Potential Vendor shall disclose and explain any litigation, threatened litigation, investigation, reorganization, receivership, filing, strike, audit, corporate acquisition, unpaid judgments or other action that could have an adverse impact on their ability to provide the required needs.
• The Potential Vendor shall disclose and explain whether they have been unable to complete a contract, been removed from a contract, or been replaced during a contract period in the past five years.
• If selected, Vendor, and any of their employees who work with the video system, must agree to submit and pass a criminal background check.
Storage

- Ability to export video in an industry standard file format
- Acknowledgment that all data is property of the city and must be made available at no additional cost
- Storage solution compliance with law enforcement Criminal Justice Information Services (CJIS) data protection and transport (i.e. SSL) standards. No external party-initiated connections will be allowed. The storage facility must be located within the United States (lower 48) including data storage for disaster recovery (DR) solutions. [NOTE: For additional information on CJIS standards, please see https://www.fbi.gov/about-us/cjis/cjis-security-policy-resource-center.]
- Clear indication of storage costs, equipment replacement costs, and cloud transactions costs. Disclosure of all additional costs.
- Ability to export audit trail along with video, including redactions. Identified scope of audit trail.
- Identified data integrity.
- Capability to produce digitally authenticated duplicates.
- Cloud-based storage
- Retrievable/searchable footage
- Secure information storage
- Automatic Redaction capability that is currently available. No product in the design phase. Not a separate product from software package
- Comprehensive metadata storage capability
- Storage system must be able to quickly extract segments of needed footage
- Audit trail capability
- Tamperproof camera and storage/review system
- Structured access based on administrator’s guidelines and rules
- Signal technology with supporting in-car or nearby devices such as EMD (Electronic
- Ongoing customer service and training support

Technical Component:

- Minimum 12-hour battery for all cameras
- 64 GB internal memory
- Ability to dock, charge and download at a single station (Dock and Walk)- can be interrupted during charging and download and able to pick up where it left off when re-docked.
- One button on/off use, ease in use
- Visible exterior recording indicator
- Customizable recording functions (i.e. pre-recording buffer, lowlight capability, etc.)
- Product warranty
- 24hr customer service availability
- Flexible mounting locations
- Immediate playback capability
- Ruggedized
- Ability to index data, e.g. officer name, serial number, date/time of recording, report number, and type of crime.
- Ability to automatically integrate with CAD systems and list or identify supported CAD vendors.
- Identified technical support and assistance that will include, but not be limited to the following: devices worn by police personnel, docking/charging stations, networking equipment, WAN/LAN connectivity, system software, system upgrades, and video retrieval software and procedures.
- Identified areas of expertise and resources available both nationally and locally to provide the requested services.
- Described process for video uploading
- Supported integration system to support integration for the backup of data (including video and database with audit logs) for data integrity in the event of corruption or malware.
• Supported local backend infrastructure in addition to CJIS compliant cloud storage with the ability to migrate in either direction at the discretion of the police department.

OWNERSHIP AND PUBLIC RECORDS

The City shall own all rights to the data and video that is stored at the Vendor’s host site, (if applicable) with no transfer, conveyance, assignment, or sharing of data ownership to/with the hosting provider, the City must follow the State’s Retention Records Schedule. It will be the responsibility of the City to notify the Vendor when the data can be deleted from the Vendor’s host site.

SUGGESTED OPTIONAL LANGUAGE

The City is a public agency as defined by state law, and as such, it is subject to the State’s Public Records Law. Under that law, all of the City’s records are public records (unless otherwise declared by law to be confidential) and are subject to inspection and copying by any person.

MAINTENANCE AND USER FEES

The City will not pay software maintenance or support fees until the functions and features are demonstrated as operational in production. The City shall be entitled to exercise its option to purchase Extended Maintenance for a given option period.

User account fees, if any, will include costs for all subscription licensed software provided by the Vendor, such as third-party modules, middleware, and integration. During implementation, testing, training, validation and integration, the Vendor will provide sufficient numbers of user access accounts to enable the team to achieve a successful "go-live" into production. User Account fees will be based on production system use. Training, Development and Test accounts will not be considered additional users for access purposes.

Section IX. EVALUATION OF SELECTED CAMERAS

Testing Period: The testing period will be performed, and during this time, the City will evaluate each camera to assess in a static and fluid environment based on the following:

• Ease of Camera Use
• Camera Functionality
• Camera Sturdiness
• Video Download Capability
• Ease of Storage System
• Data Distribution Capability
• Account Administration/Storage Rights

Vendors who pass the Technical Component evaluation criteria will be required to attend an assigned testing date and will provide training to police officers who will test that proposer’s camera.

Each Potential Vendor will indicate any pre set-up requirements needed from City staff or equipment required for training. On the assigned training day, each proposer will provide three working test units and training at no cost to the City. All units undergoing testing will be returned to the proposer at the proposer’s expense following the testing and grading of the units.


Testing Data:

• Upon completion of the test period, all data collected during the testing phase will be submitted to the City in its entirety at no cost and submitted in a readily viewable format.
• Data must be indexed and searchable by date and time of recording.
Data must be submitted to the Agency by a date agreed upon by both parties, after award.

CITY OF WINCHESTER

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 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:

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. **DEBARMEMENT 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 of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the bid/proposal; however, the City of Winchester reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid/proposal.

I. **CLARIFICATION OF TERMS:** If any prospective (bidder/offoror) has questions about the specifications or other solicitation documents, the prospective (bidder/offoror) 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/offeree) 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:

<table>
<thead>
<tr>
<th>Profession/Service</th>
<th>Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounting</td>
<td>$1,000,000 per occurrence, $3,000,000 aggregate</td>
</tr>
<tr>
<td>Architecture</td>
<td>$2,000,000 per occurrence, $6,000,000 aggregate</td>
</tr>
<tr>
<td>Asbestos Design, Inspection or Abatement Contractors</td>
<td>$1,000,000 per occurrence, $3,000,000 aggregate</td>
</tr>
<tr>
<td>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.)</td>
<td>$1,925,000 per occurrence, $3,000,000 aggregate</td>
</tr>
</tbody>
</table>
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.

<table>
<thead>
<tr>
<th>Category</th>
<th>Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insurance/Risk Management</td>
<td>$1,000,000 per occurrence, $3,000,000 aggregate</td>
</tr>
<tr>
<td>Landscape/Architecture</td>
<td>$1,000,000 per occurrence, $3,000,000 aggregate</td>
</tr>
<tr>
<td>Legal</td>
<td>$1,000,000 per occurrence, $5,000,000 aggregate</td>
</tr>
<tr>
<td>Professional Engineer</td>
<td>$2,000,000 per occurrence, $6,000,000 aggregate</td>
</tr>
<tr>
<td>Surveying</td>
<td>$1,000,000 per occurrence, $1,000,000 aggregate</td>
</tr>
</tbody>
</table>

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.