

Fairfax Water

8570 EXECUTIVE PARK AVENUE
FAIRFAX, VIRGINIA 22031

Request for Proposals

Number: 16-04

Title: Professional Engineering Services
Dam Engineering Services
Basic Ordering Agreement

Date Issued: March 28, 2016

Deadline for Questions: 2:00 p.m., April 8, 2016

Deadline for Submitting Proposals: 2:00 p.m., April 19, 2016

Proposals to Be Delivered to: Procurement Department
Fairfax Water
8570 Executive Park Avenue
Fairfax, Virginia 22031

Procurement Contact: Patricia Utt, CPPB
Senior Construction Buyer
Telephone: 703-289-6265
Facsimile: 703-289-6262
E-Mail: Procpu@fairfaxwater.org

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1. SUMMARY INFORMATION

1.1 Introduction and Objective

The Fairfax County Water Authority, doing business as Fairfax Water (FW) was created under the Virginia Water and Waste Authorities Act pursuant to resolutions adopted by Fairfax County on September 26, 1957. FW is managed by a ten member Board of Directors appointed for three-year terms by the Fairfax County Board of Supervisors.

The objective of this Request for Proposals (RFP) is to award a Basic Ordering Agreement (BOA) for professional engineering services for the design and construction of water mains and other related work.

1.2 Contract Award

A Contract will be awarded, if at all, to the Offeror whose proposal is determined to be the most advantageous to FW. The successful Offeror will be notified by issuance of a notice of award. Public notice of award will be posted on the official FW web site at:

<http://www.fairfaxwater.org/procurement/index.htm>

1.3 Definitions

Whenever used in this RFP or in the other Contract Documents, the following terms have the following meanings, which are applicable to both the singular and plural and the male and female gender thereof:

- A. **Acceptance** – FW’s acceptance of the project from the Consultant upon confirmation from the Project Manager and the Consultant that the project is totally complete in accordance with the contract requirements and that all defects have been eliminated. Final acceptance is confirmed by the making of final payment of the Contract Sum, as adjusted by any change orders.
- B. **Award** – means the decision by FW to award a Contract after all necessary approvals have been obtained.
- C. **Contract** – means the written agreement which, following conclusion of negotiations and any Award hereunder, will be executed by FW and the successful Offeror. Upon execution, the Contract will memorialize the terms and conditions pursuant to which the services described herein will be performed (including the negotiated fees and any modifications to the Standard Terms and Conditions, among other matters) and will incorporate by reference the remaining Contract Documents. The form of Contract is attached as Attachment A to this RFP.
- D. **Consultant** – The person, firm, partnership, corporation, or other legal entity with whom FW enters into a Contract to perform the services contemplated by this RFP

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and includes the plural number and the feminine gender when such are named in the contract as the Consultant.

- E. **Contract Documents** – means the documents referred to in Subsection 4.11 of this RFP. The Contract Documents are deemed to constitute a Basic Ordering Agreement.
- F. **Contract Term** – means the period of time described in Section 4.13 of this RFP.
- G. **Default** – means that the Consultant has failed to fulfill one or more of its obligations in accordance with the Contract Documents.
- H. **Evaluation Committee** – Means the group of individuals appointed by FW to review, evaluate, and rank each Proposal and to make a recommendation for award.
- I. **Notice** – The term “Notice” or the requirement to notify means all communications, notices, demands, instructions, claims, approvals, and disapprovals required or permitted under the Contract Documents. To be effective, Notices must be in writing and will be effective if delivered by U.S. Mail, hand delivery, or facsimile transmission to the business address or fax number of the Consultant as stated on its Proposal; or if delivered in person to the Consultant, or any officer or principal of the Consultant. Unless otherwise specified herein, Notices will be deemed to have been duly served on FW if delivered by U.S. Mail, hand delivery, or facsimile transmission to both: (i) the Director of Planning & Engineering, Fairfax Water, 8560 Arlington Blvd, Fairfax, Virginia 22031, fax number (703) 289-6382; and (ii) the Procurement Contact whose name, address and fax number are set forth on the cover page of this RFP. Any Notice that is sent by fax to a party hereunder will be effective, and will be deemed to have been received, only upon delivery of a duplicate copy by another means of delivery authorized herein. Either party may, by written notice delivered in the manner prescribed herein, change its address for receipt of Notices hereunder.
- J. **Offeror** – means any person, firm, corporation, or other legal entity who submits a proposal in response to this RFP.
- K. **Project Manager** – means the FW employee assigned to this Project for purposes of oversight of the project. The Project Manager will be responsible for all aspects of the Contract (excluding contract modifications) after contract award, including but not limited to approving design changes, and authorizing payment for completed work, etc.
- L. **Proposal** – means the response by an Offeror to this Request for Proposals issued by FW. The response may include but is not limited to a description of

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technical expertise, work experience, and other information requested in the solicitation.

M. **RFP** – means this Request for Proposals and includes any document, whether attached or incorporated by reference, and any Addenda.

N. **Specifications** – The term “Specifications” refers to the written technical description of materials, equipment, construction systems, standards, and workmanship to be applied to the Work and certain administrative details applicable thereto.

O. **Task Order** – means the written order issued to the Consultant by FW from time to time during the Contract Term, as described in Section 2.1 of this RFP.

1.4 Hours of Operation and Holidays

The normal hours of operation are 8:00 a.m. through 4:30 p.m.; Monday through Friday excluding FW holidays. FW normally observes Virginia bank holidays. The Project Manager will provide the then current list of holidays after contract award.

1.5 Minimum Qualifications

In order to be deemed qualified to perform the services described in this RFP, an Offeror must demonstrate satisfactory prior experience on projects of a nature and scope similar to the services described herein. Specifically, a firm must have experience with dams, with preference to those in Virginia, including an in-depth knowledge of relevant regulations, rules, and guidelines of Virginia’s Department of Conservation and Recreation (DCR) Dam Safety, and all other relevant laws and regulations. To document qualifications the Offeror must provide all requested information described in Section 3.9(B)(5) of this RFP with respect to a minimum of four (4) projects completed within the last five (5) years that satisfy the following criteria:

1. Experience with dam safety, operations, maintenance, engineering design, security, inundation mapping, dam break analyses, hydraulics, inspections, and regulatory planning. Specifically, the Offeror must have knowledge of and experience with the following:
 - a. The Commonwealth of Virginia’s Impounding Structure Regulations
 - b. Dam operation and maintenance activities and associated engineering design
 - c. Dam security activities
 - d. Dam break and flood emergency planning
 - e. Emergency exercise design, planning and implementation (familiarity with FEMA IS139 Exercise Design course or equivalent is desirable)
 - f. State and Federal water quality rules and regulations.
 - g. Spillway, stream channel, and outlet works hydraulic analyses

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END SECTION 1

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SECTION 2

2. SPECIFICATIONS/SCOPE OF WORK

2.1 Description and Summary Requirements

The intent of this procurement is for FW to contract with an engineering firm to provide engineering services relative to impounding structure (dam) safety, management and operation. Services include, but are not limited to, design engineering, regulatory consulting, dam safety/engineering inspections, geotechnical investigations, inundation studies, emergency planning, surveying and general dam safety consulting. Issues include, but are not limited to, regulatory compliance, maintenance, repair, rehabilitation, operation, condition monitoring, and other concerns that may be identified during routine and non-routine inspections. The services contemplated by this RFP may include meetings and negotiations with Virginia Dam Safety Officials.

All work performed shall be assigned by means of formal Task Orders which will relate to individual projects and be issued in writing by FW from time to time during the Contract term. Each Task Order shall correspond to a clearly defined scope. The scope of work on each Task Order shall be negotiated and listed in hours by position (engineer, surveyor, draftsman, etc.). The successful Offeror will be compensated by multiplying the hours actually worked for each position with the rates negotiated prior to contract award and made part of the Contract Documents. FW reserves the right to issue no Task Orders, to perform the Work using in-house resources or other contractors, or to otherwise assign work as it deems appropriate in accordance with established procedures, all as determined to be in the best interest of FW. Any Task Order issued hereunder will include the scope of work and associated fee for each task. A Task Order Example (Attachment E) is included for information only and will not be part of the evaluation. Examples of general Task Order types include the following:

- A. **Emergency Action Plan Exercises and Drills:** The Contractor will work with FW staff to research, develop and implement Emergency Action Plan Exercises for the Occoquan Dams. These may include Tabletop, Functional and Full Scale Exercises as well as Annual Orientations and Drills.
- B. **Operation and Maintenance Plans:** The Contractor will support FW staff in completing and implementing Operation and Maintenance (O&M) Plans.
- C. **Emergency Action Plans:** The Contractor will provide support for developing and/or updating FW impounding structure emergency action plans. This may include but is not limited to:
 - 1. Conducting dam break analysis using HEC-GeoRAS or other available computer models.

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2. Preparing inundation zone and floodplain mapping in GIS format. The Contractor should understand current and proposed requirements of the Virginia DCR.

- D. Hydraulic and Hydrologic Expertise: The Contractor will provide expertise and guidance on issues related to the capacity of the spillway, downstream erosion or energy dissipation issues, outlets, or other hydraulic issues associated with the dam structure. The Contractor will also provide expertise in inundation modeling and mapping.

- E. Regulatory Support: As needed, the Contractor will assist FW with Virginia DCR Operation and Maintenance Certificates for the Upper and/or Lower Occoquan Dams. Activities may include but are not limited to performing studies, updating plans and other documents, addressing inquiries, and documenting information.

- F. Dam Safety Management Practices: As needed, the Contractor will assist FW with identifying dam safety best practices for activities that may impact impounding structures. This includes, but is not limited to, evaluation of geotechnical, seismic, and blasting activities to avoid impact on nearby impounding structures.

- G. General Impounding Structure Engineering Support: The Contractor will provide general consulting engineering support for impounding structure issues or concerns related to FW facilities. This may include but is not limited to concerns or corrective action needs that arise as a result of periodic inspections and annual reviews, updates of plans and other documents, and design work in support of these activities.

2.2 Computer Compatibility and Cyber Security Insurance

- A. FW currently uses AutoCAD 2013, ArcGIS and Microsoft Office 2010. By submitting a proposal in response to this RFP, the Offeror agrees that if awarded the Contract all data will be provided to FW using the computer software products listed above or the most current version as directed by FW. Alternate products may be proposed provided that they are backward and forward compatible throughout the term of the Contract. If the Consultant provides data that is or becomes incompatible, the Consultant will replace the data with data in a compatible format within three days of notification by FW. Because of the potential degradation of electronic medium over time, in the event of a conflict between any sealed original drawings and the electronic files, the sealed drawings will govern. The use of alternate products will be considered in evaluating your proposal.
- B. In addition to the mandatory insurance requirements set forth in Section 4.23 (Insurance), the following insurance coverage will be deemed to be included among the listing of required types of insurance coverage listed in Section

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4.23(A): Cyber Security Liability Insurance Coverage: \$5,000,000 per occurrence.

2.3 Safety/OSHA Requirements

In the process of performing work under this RFP, Offerors are advised that it may be necessary for the successful Offeror and/or its employees and subcontractors to enter into permit-required confined spaces or other potentially hazardous environments. Prior to beginning any work under this RFP, the Offeror will be required to attend a mandatory safety plan review meeting to discuss safety-related matters including, but not limited to site access, confined space entry, fall protection, and lockout/tagout. It will be the responsibility of the successful Offeror to ensure that its employees and subcontractors are properly trained and certified to enter and work in these hazardous environments under a formal confined space entry program. Furthermore, it will be the responsibility of the successful Offeror and any subcontractors to provide their own safety-related equipment including, but not limited to monitoring and personal protective equipment and energy isolating locks to be installed in conjunction with FW's lockout/tagout of all energy sources. The successful Offeror will not be permitted to use FW's safety equipment for work under this project nor can they work under FW's confined space entry permit. If awarded a contract hereunder, the Offeror covenants and agrees to fulfill the obligations set forth in this Section.

2.4 Insurance Claims Against Offeror

In addition to the mandatory insurance requirements listed in Section 4.23 (Insurance) and at the request of FW, any Offeror may be required to submit a list of all insurance claims made against it within the past 12 months. FW reserves the right to reject any offer or proposal if in FW's opinion the amount or number of claims is deemed to be excessive. Failure to provide this information may result in rejection of a proposal.

2.5 FW's Responsibilities

- A. FW will designate in writing a person to act as FW's representative with respect to the services to be rendered under the Contract. In the event that a representative is not so designated within 30 days after the date of the Contract, such representative will be deemed to be FW's Director of Planning & Engineering. Such person will have complete authority to issue Task Orders, transmit instructions, and receive information with respect to the successful Offeror's services on the Project.
- B. FW will, in a timely manner, make available to the successful Offeror, to the extent it is in the possession of FW, all information pertinent to the Project or Task Order, including previous reports and any other data relative to design or construction of the Project, including, as may be applicable and without limitation, the following:
 - 1. Data prepared by or services of others, including without limitation, borings, probing and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment;

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2. Environmental assessments;
 3. Property, boundary, easement, right of way, topographic and utility surveys;
 4. Property descriptions;
 5. Zoning, deed and other land use restrictions; and
 6. For existing facilities: reports, construction documents, operations data, maintenance logs and other pertinent data.
- B. In providing the foregoing information, FW makes no representation or warranty about its accuracy or completeness. The successful Offeror will make such investigations and inquiries as it deems necessary in order to verify the accuracy and sufficiency of any such information.

2.6 Insurance Claims Against Offeror

In addition to the mandatory insurance requirements listed in Section 4.23 (Insurance) and at the request of FW, Offerors will submit a list of all insurance claims made against it within the past 12 months. FW reserves the right to reject any offer if in FW's opinion the amount or number of claims is deemed to be excessive. Failure to provide this information may result in rejection of your proposal.

END SECTION 2

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SECTION 3

3. SUBMISSION OF PROPOSALS AND METHOD OF EVALUATION

3.1 General

The following general information is provided and will be carefully followed by all Offerors to ensure that proposals are properly prepared.

- A. A Transmittal Form (see Attachment C to this RFP) or a transmittal letter prepared on the Offeror's business stationery must accompany the proposal. A transmittal letter may be substituted for the attached form. The Transmittal Form or transmittal letter, as the case may be, must be signed by a duly authorized representative of the Offeror.
- B. Each Offeror must furnish all information required by this RFP.
- C. FW reserves the right to conduct discussions with qualified Offerors in any manner necessary to serve the best interest of FW and consistent with the Virginia Public Procurement Act (Va. Code Ann. §2.2-4300 et seq., the "Act").

3.2 Proprietary Information

- A. Except as provided herein or as otherwise set forth in §2.2-4342 of the Virginia Public Procurement Act (Va. Code Ann. §2.2-4300 et seq., the "Act"), all proceedings, records, contracts and other public records relating to procurement transactions will be open to inspection in accordance with the Virginia Freedom of Information Act (Va. Code Ann. §2.2-3700 et seq., the "Virginia FOIA").
- B. Each Offeror has the right to identify data or other materials submitted in connection with this procurement as trade secrets or proprietary information, which will not be subject to inspection pursuant to either §2.2-4342 of the Act or the Virginia FOIA, by completing and submitting Attachment D to FW prior to or at the time of submission of its proposal.

3.3 Questions and Communications

- A. All contact between prospective Offerors and FW with respect to this solicitation will be formally held at scheduled meetings or in writing through the Issuing Office. Questions and comments regarding the meaning or interpretation of any aspect of this solicitation must be submitted in writing to the Procurement Contact identified on the cover page to this solicitation and must be received by the Procurement Contact on or before the deadline for submitting questions that is specified on such cover page. Only written questions will be accepted. Questions and/or comments which are submitted after the deadline set forth on the cover page to this solicitation will not be answered.

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- B. FW will respond to all timely questions and comments that are properly submitted hereunder and are deemed to address a matter that is relevant and substantive in nature within a reasonable period of time, in the form of a written Addendum that will be transmitted to all prospective Offerors at the addresses furnished to FW for such purpose. Oral communications between FW and any Offeror regarding the interpretation or meaning of any aspect of this RFP are not authorized and may not be relied upon for any purpose.

3.4 Addenda to the RFP

- A. FW reserves the right to amend this solicitation at any time prior to the deadline for submitting Bids or Proposals. If it becomes necessary to revise any part of this RFP, notice of the revision will be given in the form of an Addendum that will be provided to all prospective Offerors who are on record with FW as having received this solicitation. If, in the opinion of FW, the deadline for the submission of proposals does not provide sufficient time for consideration of any Addendum, then such deadline may be extended at the discretion of FW.
- B. It will be the responsibility of each Offeror to contact the Purchasing Contact identified on the cover page to this solicitation prior to submission of a proposal hereunder in order to determine whether any Addenda have been issued in connection with this procurement. Notwithstanding any provision to the contrary, the failure of any Offeror to receive any Addenda will neither constitute grounds for withdrawal of its proposal nor relieve such Offeror from any responsibility for incorporating the provisions of any Addenda in its proposal. Upon issuance by FW, Addenda will be deemed to have become a part of this RFP to the same extent as if set forth fully herein.

3.5 Duration of Proposals

Proposals will be valid for a minimum of 120 days following the deadline for submitting offers. If an award is not made during that period, all offers will be automatically extended for another 120 days. Offers will be automatically renewed until such time as either an award is made or proper notice is given to FW of Offeror's intent to withdraw its offer. Offers may only be withdrawn by submitting Notice at least 15 days before the expiration of the then current 120-day period.

3.6 Arrearage

By submitting an offer in response to this solicitation, the Offeror will be deemed to represent that it is not in arrears in the payment of any obligation due and owing FW, the Commonwealth of Virginia, or any other public body in Virginia. This representation will be deemed to include the payment of taxes and employee benefits. The Offeror further agrees that, in the event it is awarded a contract hereunder, it will not become in arrears to any such public body during the term of the contract.

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3.7 Instructions for Submitting Proposals

- A. The deadline for submitting Proposals is shown on the cover sheet. Proposals will be opened in accordance with the provisions of the Virginia Public Procurement Act. There will be no public proposal opening. The list of prospective Offerors will be available for public inspection only after Contract award or upon cancellation of the solicitation.
- B. Except as set forth below, the attached Transmittal Form (Attachment C) must accompany the proposal. The purpose of the Transmittal Form is to formally submit the Proposal to FW and to bind the Offeror to the terms, conditions and specifications contained in the solicitation. The Transmittal Form must be signed by an individual who is authorized to bind the Offeror to all matters set forth in the proposal. A transmittal letter may be substituted for the attached Transmittal Form. If used, the transmittal letter must include an affirmative statement that binds the firm to the terms, conditions and specifications contained in the RFP and must be signed by a duly-authorized representative of the Offeror. The letter must include all of the information contained on the Transmittal Form.
- C. Submit 10 sets of your Proposal. Identify one volume as "ORIGINAL", and include all originally signed documents in it.
- D. Proposals must be submitted in a sealed package(s). No other form of submission will be accepted (i.e., E-mail, Facsimile, etc.). Proposal packages must be identified on the outside as follows:

From: _____

_____ <i>Name of Offeror</i>	_____ <i>Due Date</i>
_____ <i>Street</i>	_____ <i>RFP No.</i>
_____ <i>City, State, Zip Code</i>	_____ <i>RFP Title</i>

3.8 Late Proposals

Proposals or unsolicited amendments to proposals arriving after the closing date and time will not be considered. Proposals received after the proposal submission deadline will be returned to the Offeror unopened providing that sufficient proposal identification information is shown on the outside of the proposal envelope.

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3.9 Proposal Organization

- A. Proposals will address the following general topics and also emphasize the Offeror's qualifications to perform the services. Proposals will be evaluated on the basis of the information presented by the Offeror and the evaluation criteria set forth in this RFP.
- B. Offerors will follow the proposal format outlined in this section. Failure to adhere to the prescribed format may result in rejection of the Offeror's proposal. All proposal elements will be included in the Technical Proposal and will include at a minimum the following:
1. Transmittal Form or Transmittal Letter
 2. Written Narrative: Each Offeror must provide a written narrative that includes, at a minimum, the following:
 - a. brief history of the firm and its organization,
 - b. the name and contact information of the principal or officer who will serve as the primary point of contact for the Offeror and who will have authority to negotiate on behalf of the Offeror, and
 - c. general description of the Offeror's experience in providing the services described in this RFP, including any special qualifications, experience, awards, etc. At the election of the Offeror, the written narrative may be included in the Offeror's transmittal letter.
 3. Proposal Section 1 – Project Approach: The purpose of this section is to present the Offeror's understanding of the project requirements. This section will include a preliminary proposed management plan based on a proposed scope of services outlined in this RFP, including coordination of multiple concurrent tasks and how they will be accomplished to meet schedule and budget constraints. Include in this section a discussion of any joint ventures and subcontractors to be used. A discussion of the Offeror's approach to quality control/quality assurance will be included in this section. The responsibilities of each joint venture contractor or subcontractor will also be discussed. The Offeror should address how FW staff will be integrated into the services to be provided under this RFP.
 4. Proposal Section 2 – Project Personnel: This section will contain the names, background, and experience on similar types of projects of the key personnel proposed for these services. An organizational chart showing duties, responsibilities and the lines of communication will be included in this section. Résumés that demonstrate experience on similar projects and specify the individual's duties on those projects will be included as an appendix to the proposal. Include in this section guarantees that, for so long as its members continue to be employed by the Offeror, the project team will remain as proposed and will be assigned to this project

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for its duration. Following award of a Contract hereunder (if any), any substitution or other change in project team personnel must be approved in advance by FW.

5. Proposal Section 3 – Experience And Qualifications:

a. This section should discuss the experience and qualifications of the Offeror and the project team in the performance of projects of similar size and nature as that described herein. For joint ventures, the experience of both firms as it relates to this project must be discussed. In order for an Offeror to be deemed qualified to perform the services described in this RFP, the experience listed in this section of the proposal must contain detailed descriptions of a minimum of four (4) projects completed within the last five (5) years of a scope similar to that outlined in this RFP; identify the role of the Project Manager and other key team members' participation in the referenced projects. The following types of projects must be included in the references and must satisfy each of the following requirements:

- i. a. At least one project must include routine inspections of regulated concrete dam(s), preferably in Virginia
- ii. b. At least one project must include design and implementation of a tabletop or functional dam emergency action plan exercise
- iii. c. At least one project must include development of dam break inundation maps and associated hydraulic and hydrologic modeling
- iv. d. At least one project must include a geotechnical study/investigation for upgrading or constructing a dam

b. Using Attachment A (“References”), provide at least four project references as listed above. At least one of the four references provided must be for a client for whom the Offeror has provided at least one complete year of services under a BOC or similar multi task order contract for design consultant services. Each of the four project references in this Section should include the title of the project, contact name, telephone number, email address, and mailing address of an individual employed by the project owner. This contact shall be a person having direct knowledge of the scope of work and the Offeror’s performance during the contract. The Offeror shall be responsible for providing current and accurate contact information regarding each of its listed references. FW reserves the right to require additional references from the Offeror, or to obtain additional references from other sources not provided by the Offeror..

6. Proposal Section 4 - Financial Responsibility: The Offeror will provide evidence of financial responsibility including a certified copy of the Offeror’s most recent audited financial statement. In the absence of a recent audited financial statement, the Offeror may submit for consideration by FW a certified copy of its most recent unaudited financial statement, provided that it was prepared by an independent accounting firm in accordance with generally accepted accounting principles.

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Unless such information is included in the Offeror's Written Narrative (see item B, above), the Offeror additionally will provide a statement indicating the length of time the firm has been in business, the number and location(s) of its office(s), the approximate number of clients and the current number of full-time employees.

3.10 Evaluation Committee and Criteria

- A. **Evaluation Committee:** FW will establish an Evaluation Committee (the "Committee") to review, evaluate, and rank each proposal. The Committee will be composed of the Purchasing Contact identified on the cover page and other individuals designated by FW. The Committee may request additional technical assistance from other sources.
- B. **Evaluation Criteria:** Each proposal will be reviewed for compliance with the requirements of this RFP. The Offeror assumes responsibility for addressing all necessary technical and operational issues in order to meet the objectives of the RFP. Each proposal will be evaluated and ranked according to the criteria set forth below:
1. **Technical Competence:** List projects that are similar in nature and scope to the services described in this RFP. Projects shall include dam safety management projects, emergency action plan development, emergency plan exercise development and facilitation, operations and maintenance plan development and dam regulatory compliance projects. Describe the nature of the work, the level of complexity and any unique problems associated with the work. List the dam safety/emergency exercise courses that members of the project team have designed and/or participated in, including a description of the courses.
 2. **Project Approach:** Evaluation of the Offeror's understanding of the Work, as well as an evaluation of the preliminary management plan and proposed scope of services.
 3. **Quality of Work:** Demonstrate the Offeror's commitment to high quality work. Describe in Section 1 of the proposal those practices of the Offeror that assure that high quality work is delivered to the client.
 4. **Cost Control:** Describe the firm's practices that demonstrate an ability to perform work within the budget established for a project.
 5. **Professional Registration:** The Offeror will provide a list of employees proposed to work on this contract that are registered as professional engineers and licensed in the Commonwealth of Virginia. The submittal must show current registration for the Project Manager and senior designers who will be conducting or as required sealing the work.
 6. **Timeliness:** The Offeror will describe how the firm assures that work is completed within the client's schedule. Describe the Offeror's current and planned workload. Describe how the Offeror plans to keep the project team together during the course of the project.

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7. **Financial Responsibility:** The Offeror will establish financial responsibility by including in Section 4 of your proposal a certified audited financial statement and related information for its most recently completed fiscal year.
8. **Communication:** The Offeror will discuss the approach, tools and methods it uses in order to present projects to governing bodies, regulators and the general public. The firm should be able to demonstrate its ability to successfully communicate the benefits of controversial projects. Also discuss the firm's approach to internal communication with the project team.
9. **Principal Participation:** Include in Section 2 of the proposal the résumé of the Principal or Officer of the firm who will have responsibility for oversight of the work to be performed for FW. Briefly describe how the oversight will be accomplished.
10. **Compliance with Standard Terms and Conditions:** Include any proposed modifications and/or exceptions to the Standard Terms and Conditions contained in this RFP.

3.11 Acceptable and Unacceptable Proposals and Rejection of Offers

FW reserves the right to: (a) reject any or all proposals received; (b) cancel this RFP at any time prior to award; and/or (c) waive informalities in the event that FW determines such action is in its best interests. Proposals must meet or exceed the mandatory requirements of this RFP. If an Offeror does not meet a mandatory requirement it will be rejected.

3.12 Oral Presentations

Finalists may be required to make individual presentations to the Committee as part of the technical evaluation process. If so notified by FW, the Offeror must provide a presentation within two calendar weeks of notification or as may be arranged by FW. Failure to provide a satisfactory presentation will be grounds for a declaration that the offer is non-responsive. Presentations will be conducted only at FW's offices.

3.13 Final Ranking and Selection

Each proposal will be ranked by the Evaluation Committee based upon the evaluation criteria set forth in this RFP. Selection will be based upon the Evaluation Committee's judgment of the Offeror's ability to perform the scope of services in a responsible manner using the highest standards of quality. FW will be the sole judge of the Offeror's responsiveness and responsibility.

3.14 Negotiation

FW staff will engage in individual discussions with two or more Offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. At the conclusion of discussions,

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on the basis of evaluation factors set forth in the RFP and all information developed in the selection process, FW will select in the order of preference two or more Offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations will then be conducted, beginning with the Offeror ranked first.

In the event that FW determines in writing and in its sole discretion that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that Offeror. FW reserves the right to negotiate any aspect of the proposal or the Contract in any manner that best serves the needs of FW and is within the scope of this RFP. FW is under no obligation to award, but may do so based upon an analysis of submitted proposals and subsequent interviews and negotiations.

END SECTION 3

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SECTION 4

4. STANDARD TERMS AND CONDITIONS

The Agreement for Service (“Contract” or “Agreement”) with the successful offeror will contain the following Terms and Conditions. Offerors taking exception to these terms and conditions or intending to propose additional or alternative language must (a) identify with specificity the FW Terms and Conditions to which they take exception or seek to amend or replace; and (b) include any additional or different language with their proposal. Failure to both identify with specificity those terms and conditions the offeror takes exception to or seeks to amend or replace as well as to provide offeror’s additional or alternate Contract terms may result in rejection of the proposal. **While FW may accept additional or different language if so provided with the proposal, the Terms and Conditions marked with an asterisk (*) are mandatory and nonnegotiable.**

4.1 Access to Documents

FW and its duly authorized representatives (each, an “Auditing Party”) will, at any time and from time to time during the term of the Contract and until the date that is three years after the date on which final payment has been made thereunder and all other pending matters have been resolved, have access to all Project Documents in the possession, custody, control or ownership of the Consultant for purposes of performing an audit, examination, excerpt and/or transcription. The Project Documents (as defined in Section 4.27 below) will include, but will not be limited to: job diaries, bid proposal worksheets, subcontracts, purchase orders, daily reports, invoices, scheduling materials, financial and accounting records, internal memoranda, notes and other documents, records and materials relating in any way to the Project; provided, however, that the term “Project Documents” will in no event be construed to include documents, records or other materials protected by the attorney-client privilege. The Consultant hereby covenants and agrees that, within 10 days after the Consultant receives written notice from an Auditing Party, it will:

- A. Make the Project Documents available for inspection and copying during the Consultant’s regular business hours by such Auditing Party, with copies being provided at a reasonable cost payable by the Auditing Party; and
- B. Deliver to the Auditing Party an index of all documents and materials which the Consultant claims are protected by the attorney-client privilege, stating for each such document the addressee(s), the author(s), any other recipients, the date, length (if applicable), the type of document or material, and a description of the subject matter sufficient to assess the applicability of the claim of privilege without revealing information itself privileged. Any failure on the part of the Consultant to comply with the provisions of this Section will constitute a breach of the Contract and, regardless of whether such failure occurs during the term of the Contract, or within the three year period commencing on the date of final payment hereunder, will constitute sufficient grounds for debarment of the Consultant. The Consultant hereby agrees that it will pay

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and be responsible for all costs and expenses (including court costs and attorney's fees) incurred by an Auditing Party in enforcing this provision.

4.2 Antitrust

By entering into a contract, the Consultant conveys, sells, assigns, and transfers to FW 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 FW.

4.3 Annual Economic Price Adjustment

- A. The Consultant may submit a request for an economic price adjustment once annually for each renewal year. Economic price adjustments will be limited to the increase specified in the Consumer Price Index –Urban for the 12-month period ending 90 days prior to the end of the then current contract year. As employed herein, the term “Consumer Price Index” will mean the Consumer Price Index for all Urban Users for the Metropolitan Washington DC area as published by the Bureau of Labor Statistic, US Department of Labor. No other economic price adjustments will be allowed.
- B. The request for an economic price adjustment will be in writing and will include at a minimum the cause for the adjustment; and the amount of the change request with documentation to support the requested adjustment (i.e. appropriate BLS, Consumer Price Index (CPI-U).
- C. Negative BLS index: If the agreed upon index is a negative number, then the Consultant will, upon notice by FW, immediately reduce contract rates by the corresponding amount for the subsequent renewal year.

4.4 Assignment of Interest

The Consultant will not assign any interest in any resulting Contract and will not transfer any interest in the same without prior written consent of FW, which FW will be under no obligation to grant.

4.5 Authorization to Transact Business in Virginia *

Each Consultant that is organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership, or registered as a registered limited liability partnership hereby represents and warrants as follows: (a) it is authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Virginia Code, or as otherwise required by law; and (b) it will not allow its existence to lapse or its certificate of authority or registration to transact business in Virginia, if so required under Title 13.1 or Title 50 of the Virginia Code, to be revoked or cancelled at any time during the term of this Contract.

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4.6 Availability of Funds *

It is understood and agreed between the parties hereto that FW will be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this Contract.

4.7 Cancellation

FW may cancel this RFP at any time and for any reason prior to award.

4.8 Compliance with Laws

The Offeror hereby represents, warrants, covenants, and agrees as follows:

- A. It is qualified to do business in the Commonwealth of Virginia and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- B. It is not in arrears with respect to the payment of any monies due and owing FW, the Commonwealth of Virginia, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it will not become in arrears to any such entity during the term of this Contract;
- C. It will comply with all federal, state and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
- D. It will obtain at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary for the lawful performance of its obligations under this Contract.
- E. The Consultant hereby covenants and agrees to comply with all federal, state and local laws, rules, regulations, guidelines, and orders applicable to the Project and/or the work and services to be performed hereunder (collectively referred to herein as the "Applicable Laws").
- F. The parties hereby acknowledge and agree that all provisions required by any Applicable Law to be set forth in this Request for Proposals will be deemed to have been included herein as if, and to the same extent as though, such provisions were to have been set forth in the Request for Proposals in their entirety.

4.9 Consultant's Representations

- A. The Consultant represents and warrants to FW that it is a duly organized and licensed entity that employs qualified and experienced personnel who specialize in performing the type of engineering services required hereunder. The Consultant covenants and agrees to provide a sufficient number of personnel (hereinafter referred to as the "Project Team") who are suitably qualified and experienced and who are in all respects acceptable to FW to perform the Work in an efficient and timely manner. Individual

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members of the Project Team and their normal work location will be identified by the Consultant in its Proposal and incorporated by reference in the Agreement. The Project Team may not be replaced, substituted or relocated for so long as they remain in the employ of the Consultant, without the prior written consent of FW. The Consultant covenants and agrees that, for so long as they are in the employ of the Consultant, members of the Project Team will be readily available to perform the Work as required by FW.

- B. The Consultant covenants and agrees to provide engineering services in accordance with generally accepted and currently recognized engineering practices, procedures and principles, and to exercise the same professional standard of care and of quality as is customarily exercised under similar circumstances by professional engineers providing services in the Washington, D.C., metropolitan area. The Consultant additionally covenants and agrees to diligently and conscientiously devote its resources to the performance of the Work during the term of the Contract.
- C. The representations and warranties of the Consultant contained in the Contract Documents will survive the execution of the Contract.
- D. No third party is entitled to rely on any of the representations, warranties and agreements of FW and the Consultant contained in the Contract Documents. FW and the Consultant assume no liability to any third party because of any reliance on the representations, warranties and agreements of FW and the Consultant contained in the Contract Documents.

4.10 Contract Changes or Amendments

No verbal agreement or conversation with any officer, agent or employee of FW either before or after the execution of any Contract resulting from this RFP or follow on negotiations, will affect or modify any of the terms, conditions, specifications, or obligations contained herein, or any resulting Contract. No alterations to the terms and conditions of the Contract or any Task Order will be valid or binding upon FW unless made in writing and signed by duly-authorized representatives of the Consultant and FW.

4.11 Contract Documents

- A. The Contract will consist of the following items, which are listed in order of precedence and which together will be referred to as the "Contract Documents:"
 - 1. Any Contract Changes or Amendments as discussed in Section 4.10;
 - 2. Any Task Orders (as applicable for Basic Ordering Agreements);
 - 3. The fully-executed Contract, and all exhibits thereto, including Scopes of Work and Not to Exceed Fee estimates, as applicable;
 - 4. Any Addenda to the RFP;

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5. The RFP; and
6. The successful Offeror's Proposal.

In resolving any conflict, error, ambiguity, or discrepancy between or among any of the Contract Documents, the Contract Documents will be accorded the order of precedence set forth above.

- B. Anything called for by one of the Contract Documents and not called for by the others will be of like effect as if required or called for by all, except that a provision clearly designed to negate or alter a provision contained in one or more of the other Contract Documents will have the intended effect.
- C. All time limits stated in the Contract Documents, including but not limited to the time for completion of the work, are of the essence.
- D. FW and the Consultant will be legally bound by the terms of the Contract Documents upon FW's issuance of Notice to Proceed or a Task Order hereunder. The Consultant will commence the work upon the Consultant's receipt of a Notice to Proceed or Task Order or upon such later date as may be set forth in such Notice or Task Order.

4.12 Contractual Disputes *

- A. Contractual claims, whether for money or for other relief, will be submitted in writing not later than 60 days after final payment; provided however, that written notice of the Consultant's intention to file such claim must:
 1. Be delivered to the attention of FW's Senior Construction Buyer and Director of Planning & Engineering, at the address shown on the cover sheet of this RFP, not later than five days after the occurrence or of the beginning of the Work upon which the claim is based; and
 2. Contain a reasonably detailed description of the basis of the claim otherwise the claim will be deemed to have been waived. FW will make a written decision upon any such claim within 60 days after submittal of the claim. The Consultant will not institute legal action prior to receipt of FW's decision on the claim unless FW fails to render such decision within 90 days after submittal of the claim. The decision of FW will be final, unless the Consultant initiates legal action as provided in Section 2.2-4364 of the Virginia Code. Failure of FW to render a decision within 90 days will not result in the Consultant being awarded the relief claimed, nor will it result in any other relief or penalty. The sole result of FW's failure to render a decision within the time allotted will be the Consultant's right to immediately institute legal action. No administrative appeals procedure pursuant to Section 2.2-4365 of the Virginia Code has been established for contractual claims under this Agreement.

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- B. No claim of any nature will be made against FW by or on behalf of a subcontractor unless the Consultant has first: (a) evaluated such claim thoroughly and determined it to be meritorious; (b) issued a written notice to the subcontractor finding the subcontractor's claim to be meritorious and setting forth any additional compensation or additional days to be paid or granted to the subcontractor on account of such claim; and (c) paid the subcontractor in full for such claim. In presenting such a claim, the Consultant will provide FW with a copy of the written notice to the subcontractor and with evidence of payment in full of the subcontractor's claim. No such claim will exceed the amount actually paid to the subcontractor.

4.13 Contract Term and Renewal

- A. **Contract Term:** Any Contract resulting from this RFP will commence on the date of the Contract and will continue for a term of one year or when the cumulative total project fees incurred hereunder reach \$5,000,000, whichever occurs first. The Contract may be renewed for up to four additional one-year terms, at the sole option and discretion of FW. The initial term and any renewal terms will be collectively referred to herein as the "Contract Term."
- B. **Renewal:** FW may elect to renew the Contract by issuing notice to the Consultant within 30 days prior to the expiration of the then-current term or as otherwise set forth below. Renewal will be at the then current rates, terms and conditions (see Section 4.3 Annual Economic Price Adjustments and Section 4.31 Price Firm Period). Failure to renew the Contract by the expiration date of the then current contract year will not automatically cancel the contract. FW may retroactively renew the contract at any time prior to the last day of the following contract year providing that FW has not formally canceled the contract.
- C. The maximum billing for the engineering services performed during any contract year during which this Contract is in effect will be \$5,000,000. No unused amounts may be carried forward from one contract year to another contract year. Individual Task Orders will not exceed \$1,000,000.

4.14 Debarment Status

Neither the Consultant nor any officer or employee thereof has been debarred or suspended, or otherwise excluded from or ineligible for participation in, any public procurement activity of a nature similar to this RFP. The Consultant will not knowingly engage any subcontractor who has been debarred or suspended or who is otherwise excluded from or ineligible for participation in a public procurement activity and will include in each of its subcontracts and subcontractor agreements certifications on the part of its subcontractors that satisfy the requirements of this provision.

4.15 Drug-Free Workplace to be Maintained by Consultant *

During the performance of the Contract, the Consultant agrees to:

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- A. Provide a drug-free workplace for the Consultant's employees;
- B. Post in conspicuous places, available to the Consultant's 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;
- C. State in all solicitations or advertisements for employees placed by or on behalf of the Consultant that the Consultant maintains a drug-free workplace; and
- D. 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.

4.16 Employment Discrimination by Consultant Prohibited *

- A. During the performance of the Contract, the Consultant agrees as follows:
 - 1. The Consultant will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or 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 Consultant. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - 2. The Consultant, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, will state that such Consultant is an equal opportunity employer.
 - 3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation will be deemed sufficient for the purpose of meeting the requirements of this Section.
- B. The Consultant will include the provisions of the foregoing paragraphs (A)1, 2 and 3 in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

4.17 Ethics in Public Contracting *

The Offeror hereby certifies that it has familiarized itself with Sections 2.2-4367 through 4377 of the Act ("Ethics in Public Contracting"), and that all amounts received by it and all actions by or on behalf of the Consultant, pursuant to a contract resulting from this solicitation, will be proper and in accordance therewith.

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4.18 Notice of Required Disability Legislation Compliance *

FW is required to comply with State and Federal disability legislation: The Rehabilitation Act of 1973 Section 504, The Americans with Disabilities Act (ADA) for 1990 Title II and The Virginians with Disabilities Act of 1990.

Specifically, FW may not, through its contractual and/or financial arrangements, directly or indirectly avoid compliance with Title II of the Americans with Disabilities Act, Public Law 101-336, which prohibits discrimination by public entities on the basis of disability. Subtitle A protects qualified individuals with disability from discrimination on the basis of disability in the services, programs, or activities of all State and local governments. It extends the prohibition of discrimination in federally assisted programs established by the Rehabilitation Act of 1973 Section 504 to all activities of State and local governments, including those that do not receive Federal financial assistance, and incorporates specific prohibitions of discrimination on the basis of disability in Titles I, III, and V of the Americans with Disabilities Act. The Virginians with Disabilities Act of 1990 follows the Rehabilitation Act of 1973 Section 504.

4.19 Familiarity with Specifications

- A. Each Offeror will bear responsibility for thoroughly examining this RFP in its entirety. In the event that an Offeror has any questions or comments regarding the proper meaning or intent of any aspect of this solicitation, then such Offeror will submit all such questions and comments in writing to the Procurement Contact identified on the cover sheet of this solicitation in accordance with the provisions of Paragraph 3.3 (Questions and Communications) hereof.
- B. The submission by an Offeror of a Proposal in response to this RFP will be deemed to constitute a representation on the part of such Offeror that it has thoroughly examined this RFP and has submitted any and all questions and comments it may have regarding the meaning or interpretation of this solicitation to FW in the manner prescribed herein.

4.20 Governing Law; Venue; Waiver of Jury Trial *

Notwithstanding any provision to the contrary, this solicitation and any resulting Contract will be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without reference to conflict of law principles. Any dispute arising hereunder that is not otherwise resolved by the parties will be resolved by a court of competent jurisdiction in the Commonwealth of Virginia. The Consultant and FW hereby waive any right such party may have to a trial by jury in connection with any such litigation.

4.21 Incorporation by Reference

- A. This solicitation is issued in accordance with, and controlled by, the Virginia Public Procurement Act (VPPA), which may be accessed at the following website:

<http://www.fairfaxwater.org>

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- B. The terms, conditions and specifications contained herein including any attachments or addenda are incorporated into any contract issued as a result of this solicitation.

4.22 Indemnification

The Consultant will indemnify and hold harmless FW and FW's members, officers, authorized representatives and employees from and against any and all claims, losses, liabilities, damages and expenses (including reasonable attorneys' fees and costs) arising out of or in connection with:

1. Any material breach of the representations, warranties, agreements and covenants of the Consultant contained in the Contract Documents;
2. any injuries to persons or property caused by any negligent or wrongful act or omission of the Consultant or its subcontractors, subcontractors, employees, or other authorized representatives;
3. any claims filed by the Consultant which are adjudicated in favor of FW; or
4. any claims filed against FW by a subcontractor or employee of the Consultant.

4.23 Insurance

A. The Consultant will procure and maintain at its own expense, throughout the duration of the Contract, insurance of such type and in such amounts as may be necessary to protect its interests and the interests of FW against hazards or risks of loss as hereinafter specified. All such insurance will be underwritten by responsible and solvent companies, acceptable to FW, and authorized to do business in the Commonwealth of Virginia. All insurance policies must be from insurers authorized to conduct business within the Commonwealth of Virginia and must have a Best's rating of at least A- and a financial size of class VIII or better in the latest edition of Best's Insurance Reports. Each such policy of insurance will contain a provision requiring that not less than 30 days written notice will be given to FW before any policy or coverage is canceled. Without limiting the requirements set forth herein, the insurance coverages will include a minimum of:

1. Worker's Compensation and Employer's Liability insurance as required by the Commonwealth of Virginia.
2. Business Automobile and Vehicle Liability Insurance. This insurance will be written in comprehensive form and will protect the Consultant and FW against claims for injuries to members of the public and/or damages to the property of others arising from the Consultant's use of motor vehicles or any other equipment and will cover operation with respect to on-site and off-site operations. Such insurance coverage will extend to any motor vehicles or other equipment

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irrespective of whether the same is owned, non-owned, or hired. The limit of liability will not be less than a \$1,000,000 combined single limit, each accident.

3. **Commercial General Liability.** This insurance will be written in comprehensive form and will protect the Consultant and FW against claims arising from injuries to members of the public or damage to property of others arising out of any negligent act or omission to act of the Consultant or of any of its agents, employees, or subcontractors. The limit of liability will not be less than \$1,000,000 combined single limit.
 4. **Professional Liability Insurance.** Unless otherwise expressly agreed in writing by the Consultant and FW, the Consultant will furnish professional liability insurance coverage, including errors and omissions, in an amount not less than \$2,000,000. Professional subcontractors will provide limits commensurate with the responsibilities of their work.
- B. The insurance coverage specified above will constitute minimum requirements and FW will be included as an additional insured in insurance coverages identified in Sections 4.22(A)(2) and (3).
- C. Within 15 days after the award of the Contract, or at least 15 days prior to the expiration of any certificate of coverage provided in connection with a multi-year contract, the Consultant will submit to the Senior Construction Buyer certificates of insurance evidencing the coverage specified above.
- D. FW may require such information from the Consultant as it deems necessary to assess the Consultant's financial ability to pay any deductibles under the foregoing policies of insurance.
- E. Nothing herein will be deemed to operate as a waiver of FW's sovereign immunity under the law.

4.24 No Employment of Unauthorized Aliens *

The Consultant hereby covenants and agrees that it does not, and will not during the term of the Contract, knowingly employ an unauthorized alien (as such term is defined in the federal Immigration Reform and Control Act of 1986).

4.25 Faith Based Organizations *

FW does not discriminate against faith-based organizations.

4.26 No Waiver or Estoppel

- A. Failure by FW in any instance to insist upon observance or performance by the Consultant of any of the terms, conditions or provisions set forth in the Contract will not be deemed a waiver of any such terms, conditions or provisions. No waiver will be

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binding upon FW unless in writing and signed by FW, and any such waiver will be limited to the particular instance referred to in the written document memorializing the waiver. Neither any payment for, nor acceptance of, the whole or any part of the services by FW, nor any extension of time, will operate as a waiver of any provision of any Contract resulting from this RFP, nor of any power herein reserved to FW, or any right to damages herein provided, nor will any waiver of any breach of any Contract be held to be a waiver of any other or subsequent breach.

- B. Neither FW, nor any officer, member or employee thereof, will be bound, precluded, or estopped by any action, determination, decision, acceptance, return, certificate, or payment made or given under or in connection with the Contract, at any time either before or after final completion and acceptance of the Work and payment therefor.

4.27 Ownership of Project Documents

All designs, drawings, specifications and other instruments of service created by or on behalf of the Consultant in connection with the Project, and any and all copyrights and other intellectual property rights therein (together referred to herein as the "Instruments of Service") will be deemed for all purposes to be the property of FW. All other work products of the Consultant in connection with the Project and all documents and records in the possession, custody or control of the Consultant relating to the Project (together referred to herein as the "Project Documents") will be and will remain the property of the Consultant. Notwithstanding the foregoing, at any time during the term of the Contract and until the expiration of three years from the date of final payment hereunder, FW and its duly authorized representatives will have access to and will have the right to examine and copy the Project Documents as set forth in Section 4.1 above. Except as expressly set forth herein, this provision is not intended to and will not be construed to confer upon any person or entity that is not a party of the Contract any right of access to the Project Documents under statute or otherwise.

4.28 Payment

- A. During the performance of the Work, the Consultant will prepare and submit to FW each month an invoice in an acceptable form (the "Invoice") describing the Work performed in the preceding month, the hours expended by employee, employee position, employee billing rate, billable costs, and the itemized Direct Expenses incurred (as such term is defined below). All Invoices will be transmitted in writing to FW's Accounts Payable Department with a copy to FW's Director of Planning & Engineering. The Invoice will be divided into parts consistent with the Scope of Work or Task Order to which it relates and will, where applicable, indicate a total part value, total invoice value and total billed-to-date value for each part. The Invoice will include the Consultant's federal employer identification number. FW will pay an approved Invoice within 30 days after its receipt. Any amounts not paid when due will accrue interest at the rate of 1% per month.

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- B. Direct Expenses are those incurred by virtue of the Work and do not include those incidental to the normal conduct of business. Direct Expenses include, but are not limited to, authorized travel and subsistence (which will be limited to common carrier, coach class, and a per diem authorized in advance by FW), ground transportation, laboratory fees, computer charges, reproduction expenses, and special supplies. Reports, drawings and specifications prepared by the Consultant will be furnished to FW at the cost of reproduction. Note: Direct Expenses allowances will be established prior to contract award and may not be accelerated during the term of the Contract. Reimbursement for ground transportation will be limited to the amount currently authorized for FW employees.

4.29 Payment Clauses Required in All Contracts *

- A. Within seven calendar days after receipt of each payment from FW, the Consultant will:
1. Pay each Subcontractor an amount equal to the percentage of the Work attributable to such Subcontractor; or
 2. Notify FW and the Subcontractor in writing of the intention to withhold all or part of the amounts due the Subcontractor, and state the reason for such withholding.
- B. In the event the Consultant fails to submit a timely invoice, and that failure is due exclusively to the actions of the Consultant, each Subcontractor will have the right to be paid by the Consultant upon demand, the amounts due.
- C. The Consultant will pay interest on amounts owed to any Subcontractor which remain unpaid seven days after the Consultant's receipt of payment from FW, provided, however, that amounts owed any Subcontractor which have been withheld properly, pursuant to this Section, will not accrue interest. Interest on amounts due any Subcontractor and unpaid will accrue at the rate of .5% per month; provided, however that the Consultant's obligation to pay interest hereunder will in no event be construed to be an obligation of FW. No contract modification will be made, and no cost reimbursement claim will be submitted, for purposes of reimbursement for the interest charge.
- D. The Consultant will include in each of its subcontracts agreements a provision requiring each of its subcontractors to include or otherwise be subject to the same payment and interest requirements with respect to each lower tier subcontractor.
- E. Upon completion of the work or Task Order, Fairfax Water will prepare a Consultant evaluation reflecting the quality of the work performed. The evaluation will be provided to the Consultant for review and information.

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- F. Upon completion of the work, a final payment affidavit and release of claims form will be executed by the Consultant. FW will not process final payment until such documentation has been received.

4.30 Precedence of Terms

By submitting a proposal in response to this solicitation, the Offeror agrees that the terms and conditions contained in this RFP will control any contract arising from this solicitation. To the extent that a conflict arises or is found to exist between the Offerors' proposal and this solicitation, including any addenda thereto, the terms, conditions and specifications contained in this solicitation and any addenda thereto will in all cases prevail.

4.31 Price Firm Period

Proposal Prices: Pricing will be firm and fixed as originally offered and accepted for the first 12 months of any resulting Contract.

4.32 Prohibition Against Contingent Fees

The Consultant warrants that he has not employed any company or person other than a bona fide employee working for the Consultant to solicit or secure this Agreement and that he has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Consultant any favor, commission, percentage, gift, or any other compensation contingent upon or resulting from the award or making of this or any other agreement. In the event of breach of this provision, FW will have the right to terminate this or any other agreement with the Consultant without liability, and, in its discretion, to deduct from amounts due under this Agreement, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration, as well as the cost of such recovery including, without limitation, reasonable attorney's fees.

4.33 Subcontractor Services

In the event that services of subcontractors are authorized in advance by FW for portions of the Work, the Consultant will be responsible for contracting for these services. In such event the Consultant will so notify FW in writing and identify such subcontractors that may be required. FW in its sole and absolute discretion, will have the right to determine whether subcontractors are to be used and must agree with the rates to be paid to such subcontractors. FW reserves the right to reject any subcontractors proposed by the Consultant. In the event these subcontracted services are utilized and unless otherwise directed by FW, the Consultant will obtain at least three proposals and furnish these proposals, with the Consultant's recommendation, to FW for its approval prior to engaging any subcontractor.

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4.34 Tax Exemption *

FW is exempt from Federal Excise Taxes, Virginia State Sales and Use Taxes, and the District of Columbia Sales Taxes and Transportation Taxes. FW's tax exempt number is 54-6025290. The Consultant's obligation to pay any such taxes is not impacted in any way by its contractual relationship with FW.

4.35 Termination of Contract

A. Termination for Cause. In the event that the Consultant:

1. fails to perform the Work in accordance with the terms and conditions set forth in the Contract and does not cure such failure within three business days after receipt of written notice from FW specifying such failure;
2. otherwise fails to perform any material obligation set forth therein; or
3. becomes insolvent, is adjudicated bankrupt, makes an assignment for the benefit of creditors or enters into bankruptcy or dissolution proceedings, then FW, without prejudice to any other rights or remedies it may have at law or in equity, will have the right to terminate the Contract by issuing a written notice of termination to the Consultant. Such notice of termination will describe in reasonable detail the grounds for the termination and will take effect on the later of:
 1. the date specified as the effective date of termination in the notice; or
 2. if no such date is specified, the date of Consultant's receipt of such notice of termination, as determined in accordance with these Contract Documents.

If, after issuance of a notice of termination under this Section 4.35(A), it is determined for any reason that cause for such termination did not exist, then the rights and obligations of the parties will be the same as if the notice of termination had been delivered under the provisions of Section 4.35(B) hereof; provided, however, that the Consultant in such event will be deemed to have received seven days prior written notice of such termination. In such event, any compensation due the Consultant pursuant to Section 4.35(B) will be offset by the cost to FW of remedying the default by the Consultant. The Consultant will in no event be entitled to receive any consequential damages or any anticipated profits with respect to Work not yet furnished to, and accepted by, FW as of the effective date of any such termination.

B. Termination for Convenience. FW will have the right to terminate the services of the Consultant at its own convenience for any reason or no reason upon seven days prior written notice to the Consultant. In the event of termination under this Section, the Consultant will receive compensation for all Work completed through the date of such termination; provided, however, that upon receipt of notice of termination the Consultant will, as soon as practicable, suspend all Work within its control (including

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Work performed by subcontractors or special contractors, if any) and will not incur any additional expense for which it seeks compensation. Furthermore, daily compensation for Work performed during the period between notice of termination and termination will in no event exceed: (i) the average daily compensation paid to the Consultant for Work performed during the three months immediately preceding the date of the notice of termination, or (ii) in the event the Contract is terminated prior to the date three months after the date of execution hereof, the average daily compensation paid to the Consultant for Work performed during the period beginning on the date hereof and ending on the date immediately preceding the date of the notice of termination.

4.36 Successors and Assigns

The Contract will not be assigned, sublet or transferred, in whole or in part, by operation of law or otherwise, by either of the parties hereto except with the prior written consent of the other. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will operate to release or discharge the assignor from any duty or responsibility under the Contract. Nothing contained in this Section will prevent the Consultant, with the consent of FW, from employing (in accordance with the terms of the Contract Documents) such independents and subcontractors as the Consultant may deem appropriate to assist in the performance of his responsibilities hereunder. Subject to the provisions of this Section, the Contract Documents will be binding upon and inure to the benefit of each of the parties thereto, and their respective successors and assigns.

4.37 Virginia Freedom of Information Act

Except as provided herein, all proceedings, records, contracts and other public records relating to procurement transactions will be open to the inspection of any citizen, any interested person, firm, or corporation, in accordance with the Virginia FOIA.

END SECTION 4

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ATTACHMENT A

BASIC ORDERING AGREEMENT FOR ENGINEERING SERVICES

CONTRACT NO. _____

THIS AGREEMENT, made and entered into as of the _____ day of _____, 20__ , by and between the **FAIRFAX COUNTY WATER AUTHORITY**, hereinafter called "FW", and _____, hereinafter called the "Contractor," covers professional engineering services to be provided by the Contractor and the fees to be paid by FW in return for the performance of these services (the "Contract").

1. SERVICES TO BE PROVIDED; CONTRACT TERM

The work to be performed by the Contractor hereunder (the "Work") generally consists of consulting and engineering services relating to the following: _____ . The Contractor hereby agrees to perform all Work during the Contract Term in accordance with the Contract Documents. The Work will be assigned pursuant to one or more written Task Orders that will be authorized and issued by FW's Director of Planning & Engineering. The scope of services for each Task Order issued hereunder will be set forth in writing and incorporated therein. Each Task Order will include an estimate of hours for all staff positions involved. Any agreed-upon modifications to FW's Standard Terms and Conditions (as contained in Section 4 of the RFP) are set forth on Exhibit A to this Contract and incorporated by reference into the Contract Documents. The Project Team (as defined in the Standard Terms and Conditions) is listed on Exhibit B and incorporated by reference herein.

2. ENGINEERING FEES

- A. During the Contract Term (as defined in the Standard Terms and Conditions), the Contractor will perform the Work described in Section 1 above for a fee based on the negotiated hours for each Task Order multiplied by hourly rates set forth on Exhibit C "Rates and Fees" (subject to adjustment in the manner prescribed in the Standard Terms and Conditions).
- B. The maximum billing for Work performed during any contract year during which this Contract is in effect will be \$5,000,000. No unused amounts may be carried forward from one contract year to another. Individual Task Orders will not exceed \$1,000,000.
- C. Billings for the Work, including all Direct Expenses, will not exceed the maximum estimated amount set forth in the Task Order without the written approval of FW. The parties to this Contract must agree to any changes in the maximum estimated amounts, which will then be incorporated into the corresponding Task Order by written amendment.

3. PAYMENTS

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Payment under this Contract will be made in the manner prescribed in the Standard Terms and Conditions.

4. TIME OF COMPLETION

- A. Time is of the essence with respect to the Consultant's performance of the Work. The Work included in the Contract will be completed to the satisfaction of FW within the negotiated schedule for each Task Order.
- B. Neither FW nor the Contractor will be liable for any fault or delay caused by any acts of God, war, strikes, walkouts, fires or natural calamities.

6. REMEDIES NOT EXCLUSIVE

Unless otherwise expressly provided herein, all remedies provided for in this Contract will be in addition to all other remedies available to FW, at law or in equity.

7. CONTRACT DOCUMENTS

The Contract Documents listed in Section 4.12 of the Special Terms and Conditions, constitute the entire agreement between FW and the Contractor with respect to the Work. The parties hereby agree to be bound by and subject to the Contract Documents.

8. MISCELLANEOUS

- A. Capitalized terms which are used and otherwise defined in this Contract will have the meanings given them in Section 1 of the RFP.
- B. This Contract may be executed in any number of counterparts, each of which will be deemed an original and all of which together will constitute one document.
- C. This Contract will be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without reference to conflict of law principles.

[SIGNATURES ON FOLLOWING PAGE]

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IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed by their duly-authorized representatives as of the day and year first above written.

[FIRM NAME]

By: _____

Name: _____

Title: _____

FAIRFAX WATER

By: _____

Charles M. Murray
General Manager

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ATTACHMENT B
REFERENCES

OFFERORS' NAME: _____

1. **COMPANY NAME:** _____

ADDRESS: _____

CONTACT PERSON: _____

TELEPHONE: (____) - _____ - _____

FAX: (____) - _____ - _____

E-MAIL: _____

2. **COMPANY NAME:** _____

ADDRESS: _____

CONTACT PERSON: _____

TELEPHONE: (____) - _____ - _____

FAX: (____) - _____ - _____

E-MAIL: _____

3. **COMPANY NAME:** _____

ADDRESS: _____

CONTACT PERSON: _____

TELEPHONE: (____) - _____ - _____

FAX: (____) - _____ - _____

E-MAIL: _____

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OFFERORS' NAME: _____

4. **COMPANY NAME:** _____

ADDRESS: _____

CONTACT PERSON: _____

TELEPHONE: (____) - _____ - _____

FAX: (____) - _____ - _____

E-MAIL: _____

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**ATTACHMENT C
 TRANSMITTAL FORM**

By submitting this Transmittal Form in response to the above-referenced RFP, the Offeror hereby acknowledges and agrees that: (a) Fairfax Water has the right to conduct such research and verification with regard to the information set forth in the Offeror's proposal and attachments as it deems reasonably necessary and appropriate under the circumstances, including contacting project owners and other involved parties for references with respect to the Offeror's prior performance; and (b) in the event that the Offeror is awarded a contract hereunder, the Offeror agrees to execute a contract with Fairfax Water in substantially the form of Attachment A pursuant to which the Offeror will agree to perform the services described in the RFP in accordance with the terms and conditions set forth in Section 4 of the RFP (subject to any agreed-upon "modifications) and the fee schedule agreed upon by Fairfax Water and the Offeror.

Applicant must provide all information requested herein.

Please type or print clearly in black ink.

Offeror's Full Legal Name	Type of Entity and State of Organization or Incorporation
Offeror's Principal Address	Offeror's Mailing Address (if different)
Name and Title of Offeror's Principal Contact for Purposes of this RFP	Telephone No. and E-Mail Address of Principal Contact
	Offeror's SSN or Federal Employer ID No.

In accordance with Section 2.2-4311.2 of the Virginia Code, provide the identification number issued to the Offeror by the Virginia State Corporation Commission (VSCC) in the space provided below. If the Offeror is not required to be authorized to transact business in Virginia under Title 12.1 or Title 50, or any other law; provide a statement as to why your firm is not required to be so authorized Offeror's VSCC ID Number: _____

~~or~~
Offeror's Statement as to why it is not required to be authorized to transact business in Virginia (attach additional sheets, as necessary):

 Name of Applicant

 Signature of Authorized Representative

 Name of Representative

 Title

 Date

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ATTACHMENT D

**PUBLIC DISCLOSURE OF
TRADE SECRETS AND/OR PROPRIETARY INFORMATION**

Under the Virginia Public Procurement Act, an Offeror may elect to designate portions of its proposal as trade secrets or proprietary information. In order to obtain protection from mandatory public disclosure laws, an Offeror must complete the chart below by identifying with specificity each item of information for which protection is sought and providing an explanation as to why protection from public disclosure is necessary. In order to be effective, an Offeror must identify any trade secrets or proprietary information set forth herein at or prior to submission of its proposal.

OFFERORS' NAME: _____

<u>SECTION:</u>	<u>DESCRIPTION OF INFORMATION</u>	<u>JUSTIFICATION</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Note: If this Attachment D is left blank, the Applicant's Qualification Statement will be deemed *not* to contain any trade secrets or proprietary information and will result in your firm's proposal being subject to public inspection. Requests for protection after the deadline for submission of proposals will not be eligible for consideration.

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**ATTACHMENT E
TASK ORDER EXAMPLE**

TASK ORDER NO. 1

**UPPER AND LOWER OCCOQUAN DAMS BIENNIAL CONSULTANT INSPECTION
UPPER OCCOQUAN DAM TOE INSPECTION**

TASK ORDER UNDERSTANDING

Background

The purpose of this Task Order is to perform a biennial consultant inspection for the Upper and Lower Occoquan dams as required by state regulation under the purview of the Virginia Department of Conservation & Recreation Division of Dam Safety and Floodplain Management (VDCR). In addition, as recommended by the last FERC Part 12D Safety Inspection (August 2010) and the last VDCR biennial consultant inspection (August 2014), the toe of the Upper Occoquan Dam should be inspected approximately every five to ten years. The last inspection was completed in 2010 and there is some concern regarding excess stone that has been deposited in the area as a result of dam upgrade project activity between 2009 and 2012. Therefore, this Task order will also include an inspection of the dewatered Upper Dam toe area during the biennial inspection.

The Upper Dam (ID # 15304) is a concrete gravity structure consisting of non-overflow monoliths and raw water intake at the right abutment (looking downstream), an uncontrolled (ungated) ogee spillway section and a short, non-overflow monolith at the left abutment. The spillway structure is 523 feet in length and 65 feet in height. A concrete retaining wall and chute deflects high flows away from the left rock abutment. All structures are founded on competent bedrock. The last biennial consultant inspection was performed on July 31, 2014.

The Lower Dam (ID # 15305) is a concrete gravity structure consisting of a raw water intake at the right abutment (looking downstream), an uncontrolled (ungated) concrete ogee spillway section and a short, non-overflow monolith at the left abutment. The spillway structure is approximately 400 feet long and ranges in height from 10 to 30 feet. All structures are founded on competent bedrock. The last biennial consultant inspection was performed on July 31, 2014.

Since both structures are run-of-river dams, the objective is to perform the inspections on a day when there is no spillway discharge and enough freeboard to safely evacuate the toe of the Upper Dam. This will maximize the visible portion of each structure. This is likely to occur during the summer months and must be closely coordinated with FW staff so that

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the toe of the Upper Dam. This will maximize the visible portion of each structure. This is likely to occur during the summer months and must be closely coordinated with FW staff so that the toe of the Upper Dam can be dewatered prior to the inspection date. In any event, barring unforeseen circumstances, the inspections are to be performed and associated reports finalized no later than November 1, 2016.

WORK SCOPE

Task 101: Biennial Consultant Inspections

Consultant shall perform the biennial consultant inspections and obtain any necessary information and photo documentation to prepare separate inspection reports and Virginia DCR 199-098 Forms for each dam. The inspection report and form for each dam will be sealed by a Professional Engineer registered in Virginia.

It is assumed that the inspection for each dam will be performed on the same day within a total six-hour period. The Consultant will not perform any underwater investigations or operate any valves or outlet works as part of this task order.

The Consultant shall provide a draft of the inspection report and form for each dam for review and comment by Fairfax Water (FW). After FW has provided written review comments to the Consultant, the Consultant will provide final copies (three hardcopies and one digital copy) of each inspection report and form for record purposes and for submission to VDCR.

Task 102: Inspection of Dewatered Upper Dam Toe

Consultant shall perform a detailed visual inspection and photo log of the dewatered toe of the Upper Occoquan Dam, obtaining any necessary information to prepare a report on the conditions of this area. The inspection report from the August 31, 2010 toe inspection (Attachment A) shall be reviewed and used as a baseline for the inspection. The inspection report will be sealed by a Professional Engineer registered in Virginia.

It is assumed that the toe inspection will be performed on the same day as the biennial inspections in Task 101, all within a total six-hour period. The Consultant will not perform any underwater investigations or operate any valves or outlet works as part of this task order.

The Consultant shall provide a draft of the inspection report for review and comment by Fairfax Water (FW). After FW has provided written review comments to the Consultant, the Consultant will provide final copies (three hardcopies and one digital copy) of the inspection report for record purposes and for submission to VDCR.

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MEETINGS

Formal Meetings included in the scope of work include:

1. Inspection Scheduling Conference Call
2. Actual Field Inspection
3. Draft Report Review Conference Call

SCHEDULE

The Consultant shall complete this task order in accordance with the following schedule:

Upper and Lower Dam Inspection Reports/ Forms, Upper Dam Toe Inspection Report
Inspections..... Before October 1, 2016
Draft Reports/Forms Within two weeks after the inspections.
Draft Report Conf. Call....Within One week after Draft Reports/Form Submittal
Final Reports/Forms Within one week after receipt of written review comments.

FEE ESTIMATE

The not to exceed fee for providing engineering and related services for this project is \$XXXX as shown on Attachment B.

BASIS OF PAYMENT

This work is being performed in accordance with the Basic Ordering Agreement for Dam Engineering Services between Fairfax Water and the Consultant dated Month Day, 2016.