



MORIN BUILDING
8570 EXECUTIVE PARK AVENUE
FAIRFAX, VIRGINIA 22031

INVITATION FOR BIDS

Number: 18-71
Requirement: Job Order Construction Services
Date Issued: November 1, 2018
Deadline for Questions: 5:00 p.m., Friday, November 23, 2018
Bid Due Date: Prior to 2:00 p.m., Thursday, December 13, 2018

As a condition of submitting a Bid, Bidders must attend a **Mandatory** pre-bid conference for the purpose of discussing the Job Order Contract (JOC or Contract) concept, Contract Documents, specifics of the Fairfax Water's JOC program, minimum qualifications required for Bidders, and JOC from a Contractor's viewpoint.

The **Mandatory** Pre-Bid Conference will be held on **Thursday, November 15, 2018 at 10:00 a.m.** in the Board Room of the Morin Building, 8570 Executive Park Avenue, Fairfax, VA 22030. Bidders must be in the Board Room prior to 10:00 a.m. and stay for the duration of the meeting in order to meet the attendance requirement for submitting a bid. **You must attend the Pre-Bid Conference or your bid will be deemed non-responsive and rejected. Bidders must sign in with the Procurement Representative as record of attendance. Late entry to the Pre-Bid Conferences will not be permitted.**

**IFB Delivery Location and
Place of Bid Opening:** Procurement Department
Fairfax Water
8570 Executive Park Avenue
Fairfax, Virginia 22031

Procurement Contact: Donald R. Legg, CPPO
Procurement Manager
Telephone: (703) 289- 6261
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1. INTRODUCTION AND OBJECTIVE

1.1 Introduction

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. Fairfax Water is managed by a ten-member Board of Directors appointed for three-year terms by the Fairfax County Board of Supervisors.

1.2 Objective

Fairfax Water (FW) seeks to award one (1) or more, with a maximum of three (3), Job Order Contracts (JOC or Contract) to qualified general contractors to provide for General Construction on an as-needed basis at various Fairfax Water facilities over a one (1) year Base Term and up to two (2) one (1) year additional Option Terms. A JOC is a competitively bid, firm fixed priced, indefinite quantity contract. The Work includes a collection of Tasks and related specifications that have pre-established unit prices. JOCs are to be used for the accomplishment of repair, alteration, construction, maintenance, rehabilitation, demolition and construction of infrastructure and buildings by means of individual Job Orders issued under the JOCs and related to discrete, identified Projects.

JOCs will generally be utilized to accomplish small to medium sized, Projects with a typical Job Order value within the range of \$10,000-\$100,000. However, Job Orders in the \$1,000 to \$5,000 range are also common. The typical Work is anticipated to include, but not be limited to, Projects such as: general construction, maintenance, renovations and replacement, etc. Types of trade work covered in this contract include but not limited to: electrical, roofing, carpentry, mechanical/HVAC, painting, plumbing, sitework, pipe maintenance and relining, concrete and asphalt. The maximum value of any individual Job Order is not expected to, but may, exceed \$500,000. The maximum annual amount to be spent on work covered under the resulting contract shall not exceed \$5 million with no individual job order exceeding \$500,000. FW makes no additional guarantee as to the minimum amount of Work that will be awarded under each of the JOCs.

2. DEFINITIONS

- A. *Addendum or Addenda*: the additional Contract provisions issued in writing by FW prior to the receipt of bids.
- B. *Adjustment Factor(s)*: the Contractor's competitively bid price adjustment(s) to the Unit Prices as published in the Unit Price Book (UPB).
- C. *Agreement*: FW-Contractor Agreement. The Agreement may also be referred to herein as the Contract or the Job Order Contract or the JOC. Reference to the Agreement may also include collective reference to the Contract Documents.
- D. *Award Criteria Figure*: the price calculated and provided on the Bid Form.
- E. *Base Term*: the one (1) year period commencing from the date of the execution of the Agreement.
- F. *Change Order*: a contractual modification which orders any combination of an addition to, deletion or revision of the Work, an adjustment to the Contract Sum or an adjustment to the Contract Period.
- G. *Contract Documents*: each of the various parts of the Agreement referred to in Section 6.2 hereof, both as a whole and severable.
- H. *Contractor*: the party identified as such in the Contractor Agreement, whether corporation, firm or individual, or any combination thereof, and its, their, his or her successors, personal

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representatives, executors, administrators and assigns. Anytime the term Contractor is used it means the Contractor or the Contractor's authorized representative.

- I. *Day*: calendar day unless explicitly stated otherwise.
- J. *Detailed Scope of Work*: A document setting forth the Work the Contractor is obligated to complete for a particular Job Order.
- K. *Fairfax Water*: Fairfax Water or its authorized representative. The term "Owner" may be used interchangeably with Fairfax Water (FW).
- L. *Final Completion*: the last date on which all of the following events have occurred: FW has determined that one hundred percent (100%) of the Work has been completed in accordance with the Job Order documents including satisfactory testing of all systems and equipment, delivery of all warranties, guarantees, O&M manuals, and certificates of occupancy (if any), final inspections have been completed and all contractual requirements for final payment have been met.
- M. *Holidays*: New Year's Day, Martin Luther King Jr.'s Birthday, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving, Christmas Eve, Christmas Day and any other day officially recognized by the FW as a non-working day for FW staff.
- N. *Incidental Design*: includes abbreviated drawings, sketches, and calculations, striping plan, shop drawings, modified or supplemental Technical Specifications and as-built drawings.
- O. *Install, Deliver, Furnish, Supply, Provide and Other Such Words*: such words mean the Work in question shall be put in place by the Contractor ready for use unless expressly provided to the contrary.
- P. *Job Order*: Under this Agreement, a FW "Purchase Order" is described as a "Job Order". Each individual Project to be accomplished under this Contract will be through the issuance of a Job Order. Each Job Order will reference a Detailed Scope of Work and state a firm fixed price (Job Order Amount), time duration for the completion of the Work (Job Order Completion Time), and any special conditions that might apply to that specific Job Order, such as Liquidated Damages.
- Q. *Job Order Amount*: the firm fixed price, lump sum amount indicated on each specific Job Order that FW is obligated to pay the Contractor upon completion of the Detailed Scope of Work in conformity with all terms of the Contract Documents.
- R. *Job Order Completion Time*: the period of time allotted for the Contractor to achieve Final Completion of a Job Order.
- S. *Job Order Contract (JOC)*: see Agreement above.
- T. *Joint Scope Meeting*: a Site meeting to discuss the Work with the Contractor before the Detailed Scope of Work is finalized.
- U. *Non Pre-priced Task*: a task not included in the Construction Task Catalog but within the general scope and intent of the Contract.
- V. *Normal Working Hours*: the hours of 7:00 a.m. to 5:00 p.m. Monday through Friday, except Holidays.
- W. *Notice To Proceed Date*: the date contained on the Job Order which designates when the Contractor is authorized to begin Work.

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- X. *Option Term*: additional one (1) year periods for which the Contract can be extended by mutual agreement of the Contractor and FW. The Contract contains two (2) Option Terms.
- Y. *Other Than Normal Working Hours*: the hours of 5:01 p.m. to 6:59 a.m. Monday through Friday and any time Saturday, Sunday, and Holidays.
- Z. *Pre-priced Task*: a task included within the Unit Price Book for which a Unit Price has been established.
- AA. *Progress Schedule*: a critical path or bar chart schedule submitted by the Contractor and subject to approval by FW showing the overall Job Order Completion Time and subdivided for each critical operation therein.
- BB. *Project*: collectively, the Work to be accomplished by the Contractor in satisfaction of a requirement or group of related requirements pursuant to one or more Job Orders.
- CC. *Price Proposal*: the Contractor prepared document quoting a lump sum, fixed price for the completion of the Detailed Scope of Work referenced in the Request for Price Proposal.
- DD. *Price Proposal Package*: the Contractor prepared package that in addition to the Contractor's Price Proposal contains, when appropriate, a proposed Progress Schedule for completing the Work, drawings, sketches, permits, catalog cuts, technical data, samples, subcontractor information, and other such documentation as FW may require for a specific Job Order.
- EE. *Purchase Order*: the written obligation document under the Contract and referred to as a "Job Order" throughout the Contract Documents.
- FF. *Request for Price Proposal (RFPP)*: a written request to the Contractor to prepare a Price Proposal for the Detailed Scope of Work referenced therein.
- GG. *Schedule of Values*: the Contractor provided allocation of the Job Order Amount to various portions of the Work pertaining to a specific Job Order used as the basis for FW's review of the Contractor's applications for payment.
- HH. *Shop Drawings*: drawings, schedules, data, catalogue cuts, manufacturers' published recommendations, charts, bulletins, brochures, illustrations, circulars, roughing drawings or formulae distributed by Contractors, subcontractors, manufacturers, material men, or suppliers for use in installing Work.
- II. *Site*: the area upon or in which the Contractor's operations are carried on, and such other areas adjacent thereto as may be designated as such by FW.
- JJ. *Specifications*: all of the directions, requirements and standards of performance applying to the Work as hereinafter detailed and designated in the Technical Specifications in the Contract Documents or any modification or supplement thereto.
- KK. *Subcontractor*: any person, firm or corporation, other than employees of the Contractor, who or which contracts with the Contractor or his Subcontractors to furnish, or actually furnishes labor, or labor and materials, or labor and equipment, at the Site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.
- LL. *Sub-subcontractor*: any person, firm or corporation, other than employees of the Subcontractor, who or which contracts with the Subcontractor or his Sub-subcontractors to furnish, or actually

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furnishes labor, or labor and materials, or labor and equipment, at the Site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Sub-subcontractor.

- MM. *Unit Price*: the price published in the Unit Price Book for a specific task. The Unit Prices are fixed for the duration of the Contract. Each Unit Price is comprised of the labor, equipment and materials costs to accomplish that specific task.
- NN. *Unit Price Book*: the current editions of the RS Means Facilities and Construction Cost Data and/or RS Means Repair and Remodeling Cost Data books.
- OO. *Work*: the furnishing by Contractor of all labor, materials, equipment and other incidentals necessary or convenient for the completion of the Job Orders issued pursuant to the Agreement.

3. OVERVIEW OF THE CONTRACT

The Unit Price Book (UPB) for the resulting contract shall mean the current editions of the RS Means Facilities Construction Cost Data and/or the RS Means Repair and Remodeling Cost Data books. The Fairfax, Virginia Weighted Average City Cost Index and the prices in the "Total, incl. O & P" column will be used. The total value of the applicable line items and their quantities will be multiplied by the City Cost Index and the Bidder's designated coefficient to determine the lump sum cost of job orders. Generally, the RS Means Facilities Construction Data book will be used for new construction and the RS Means Repair and Remodeling Cost Data book will be used for renovations. FW will determine the appropriate book to be used on each project.

3.1 The Process

Upon completion of the joint scoping process, Contractor shall prepare a DSOW and issue a RFPP further defining and restating the scope including any sketches, drawings, photographs and specifications and providing a line item proposal of the individual tasks, quantities, and costs. The proposal shall also include proposed subcontractors and specific equipment and product information for County approval. **Note: FW may elect to utilize our standard Section 700 General Conditions for Construction on any project it deems suitable. In those cases, Section 700 will be provided to the Contractor at the initial scoping meeting.**

3.2 Job Orders

A separate Job Order will be issued for each Project prior to the commencement of any Work by the Contractor, except in a declared State of Emergency as provided in Section 6.3.D.(5). A Job Order will reference the Detailed Scope of Work and set forth the Job Order Completion Time and the Job Order Amount. The Job Order Amount is determined by multiplying the pre-established Unit Prices for the appropriate tasks required to complete the Detailed Scope of Work by the appropriate quantities and the applicable Adjustment Factor. The Job Order Amount shall be a lump sum, fixed price for completing the Detailed Scope of Work. Unforeseen/latent conditions, additions to and deletions from the Detailed Scope of Work will be addressed via Change Orders.

3.3 Contractor Selection for Each Project

If multiple awards are made, FW may award an individual Job Order to any selected Contractor. Selection of the Contractor and award of the Job Order will be in compliance with established FW procedures and based on one or more of the following criteria:

- A. Contractor's specialized trade skills as it relates to other Contractors. If same trades then a rotational selection among all Contractors selected for said trade.
- B. Size of project, as it relates to FW's independent cost estimate or to an offer from any other contractor.

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- C. Balancing of work load (Job Order dollar volume and construction backlog) among Contractors.
- D. Evaluation of past and current performance on Job Orders of a similar nature and type of work, project size, construction management challenges, schedule performance, project cost management, design management requirements, etc.
- E. Contractor's responsiveness to the Owner on Job Orders.
- F. Management of Job Order dollar volume within bonding limitations of the Contractor.

3.4 Description of the Work

The Work will be set forth in the Detailed Scope of Work for individual Job Orders. The Contractor is required to complete each Detailed Scope of Work for the Job Order Amount within the Job Order Completion Time.

3.5 Work Sites

The Contractor will be required to perform Work at FW owned or controlled facility. It is anticipated that the Work will be distributed randomly throughout the geographic area comprising FW service area and the Contractor may be required to perform Work at multiple sites simultaneously.

3.6 Responsiveness

- A. The Contractor shall have a point of contact (i.e., email, voice mail or answering machine) where messages can be left. There should be a response no later than twenty-four (24) hours from when the message was left. Repeated failure to respond within the allotted timeframe shall, at the option of FW, result in non-renewal or termination of the Contract.
- B. FW has the option of declaring any needed work to be an emergency. **In the event of a natural or manmade disaster or any other catastrophes, the Contractor, when so directed, shall respond within two (2) hours of notification. See Section 6.3.D.(5).**

3.7 Compliance with Regulations

All Work performed by the Contractor under the Contract shall meet all applicable state and local building codes, ordinances and regulations and the Contractor shall be required to obtain all required permits and inspections. All subcontractors shall have a Virginia Class A contractor's license. Construction documents requiring the signature of a registered architect or Engineer.

3.8 Optional Use of Contract

Any contract resulting from this solicitation shall be an optional use contract. FW is in no way required to make purchases from the Contractor, and may, in its sole discretion, purchase identical and/or similar goods/services from other sources. Any estimates/quantities contained herein do not represent a purchase commitment by FW.

3.9 Project Management

A majority of FW projects will not require project management. Project Management personnel must have a minimum of three (3) years experience performing JOC contracting. Bidders shall provide with their bid names, resumes and work experience of all project management individuals associated with their company. Project Management staff will be required to coordinate projects with FW staff, Building Occupants and Subcontractors to provide updates on the project.

3.10 JOC Project Support Requirements

- A. The contractor shall provide computer software that provides the user with an automated version of the Unit Price Book items and price information, allow the user to select the desired Unit Price Book items and quantities from the automated listings, and based on these selections will extend and total the Unit

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Price Book costs for the project job order proposal. At least one (1) network copy of this software allowing unlimited users shall be provided to FW after Contract Award. Training for use of the software shall also be provided for ten (10) FW employees at no additional cost to FW.

- B. The supplier of the JOC software may from time to time issue updates to, or replacements for the software for the term of the contractor. All changes and updates to the software shall be made by the contractor and a new copy of the software shall be furnished to FW within two weeks. The Contractor shall promptly install the new software, at no additional cost to FW, and shall provide FW with computer printouts that adequately verify the incorporation of these changes.
- C. The Contractor shall not alter, append, delete or otherwise modify the programming, Unit Price Book items, or prices contained in JOC software, unless otherwise directed by FW.
- D. Each project proposal submitted by the Contractor shall contain a computer-generated printout of all proposed Unit Price Book items, quantities, extended prices, and total proposed cost.
- E. All unit prices are based on local labor, material and equipment prices for the direct cost of construction.

4. BIDDERS MINIMUM QUALIFICATIONS

Bidders must demonstrate that they have the resources and capability to provide the materials and services as described herein. All bidders shall submit the documentation indicated below with their bid. Failure to provide any of the required documentation may be cause for bid to be deemed non-responsive and/or non-responsible and rejected.

The following criteria shall be met in order to be eligible for this contract:

4.1 Debarment

By signing the Miscellaneous Bid Information Form contained in the IFB, bidders are certifying that bidder is not currently debarred by any local or state government or the Federal Government. Bidders shall provide in their bid, documentation related to all debarments that occurred within the last ten (10) years.

4.2 Qualifications

The following criteria shall be met in order to be eligible for this contract:

Demonstrate recent successful Job Order Contract experience within the past three (3) years by providing detailed information on similar Job Order Contract projects consistent with the description of anticipated work described in Section 1.2. Demonstration shall be by means of providing a minimum of five (5) completed JOC project references relating to comparable work as described in Section 1.2. Comparable work shall be JOC projects ranging between \$10,000 to \$100,000 or greater.

Each project reference is to include the name and location of the project, project description of sufficient detail to allow determination of projects size and scope, contract costs, project completion date, and name, address, current phone number, and e-mail addresses of architects and owners. Bidder hereby releases listed references from all claims and liability for damages that may result from the information provided by the reference.

Have in place and maintain for the duration of the Contract a full-service office within a forty (40) mile radius of the Fairfax Water Morin Building located at 8570 Executive Park Avenue, Fairfax, VA 22030. Provide documentation in your bid verifying distance of full service office from 8570 Executive Park Avenue, Fairfax, VA 22030.

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Provide evidence of a contractor's certificate of registration, whether resident or nonresident of Commonwealth of Virginia, as required by the following: Registered Commonwealth of Virginia Contractor: Class A. Include a copy of the Class A Contractor license certificate in bid.

Verification of Bonding Capability. Bidder shall include in their bid a letter from a surety or insurance company (with a Best's Financial Strength Rating of A or better and Financial Size Category VII or higher by A.M. Best Co.) stating that the Bidder is capable of obtaining a \$1,000,000 performance and payment bond, which bonds will cover the Projects and any warranty periods. The letter of surety shall clearly state the rating categorization noted above and reference the estimated contract value as identified in herein, in a manner similar to the notation provided below:

"As surety for [the above named Contractor], [XYZ Company] with A.M. Best Financial Strength Rating [rating] and Financial Size Category [Size Category] is capable of obtaining 100% Performance Bond and 100% Labor and Materials Payment Bond in the amount of the anticipated cost of construction, and said bonds will cover the Project and any warranty periods as provided for in the Contract Documents on behalf of the Contractor, in the event that such firm be the successful bidder and enter into a contract for this Project." This letter shall also state the Bidder's per project and total bonding program limits and that the Surety is authorized/licensed to do business in the Commonwealth of Virginia.

5. INSTRUCTIONS TO BIDDERS

5.1 Questions and Communications

All contact between prospective Bidders and FW with respect to this solicitation shall be 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 on or before the deadline for submitting questions. 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.

FW shall respond to all timely questions and comments that are properly submitted 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 Bidders at the addresses furnished to FW for such purpose. Oral communications between FW and any Bidder regarding the interpretation or meaning of any aspect of this IFB are not authorized and may not be relied upon for any purpose.

5.2 Bid Opening and Instructions for Submitting Bids

The deadline for submitting bids and the location for opening bids is shown on the cover sheet. Bids will be opened immediately following the deadline for submitting bids. Bids will be opened in accordance with the provisions of the Virginia Public Procurement Act.

5.3 Bid Submission Form

Attachment 1 is the bid submission form. It must be completed and signed by an agent who is fully authorized to bind the individual or organization submitting the offer to sell, to the terms, conditions and specifications contained herein as well as any addenda to this solicitation.

5.4 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

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records relating to procurement transactions shall 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. A Bidder, Offeror or Contractor shall have the right to identify data or other materials submitted in connection with this procurement as trade secrets or proprietary information, which shall not be subject to inspection pursuant to either §2.2-4342 of the Act or the Virginia FOIA, by submitting to Fairfax Water prior to or at the time of submission of its proposal or bid a separate, written notice on its letterhead stationery setting forth the following: (i) a statement indicating that the Bidder, Offeror, or Contractor wishes to invoke the protections of this section; (ii) an identification of the data or other materials for which protection is sought; and (iii) a statement with regard to why protection is necessary.

5.5 Exceptions/additions

No exceptions or additions to the Specifications/Scope of Work or Contract Terms and Conditions shall be permitted. Any questions or concerns regarding any part of the IFB shall be submitted to the Department of Procurement prior to the date specified in the Questions and Inquiries section above. Bids containing any exceptions to the Specifications/Scope of Work or Contract Terms and Conditions or submitting additional Terms and Conditions shall be deemed non-responsive and rejected. Exceptions or additions proposed after bid submission by the successful bidder shall not be accepted.

5.6 Addenda to the IFB

- A. FW reserves the right to amend this solicitation at any time prior to the deadline for submitting Bids. If it becomes necessary to revise any part of this IFB, notice of the revision will be given in the form of an Addendum that will be provided to all prospective Bidders who are on record with FW as having received this solicitation. If, in the opinion of FW, the deadline for the submission of bids does not provide sufficient time for consideration of any Addendum, then such deadline may be extended at the discretion of FW.
- B. It shall be the responsibility of each Bidder to contact the Purchasing Contact identified on the cover page to this solicitation prior to submission of a bid 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 Bidder to receive any Addenda shall neither constitute grounds for withdrawal of its bid, nor relieve such Bidder from any responsibility for incorporating the provisions of any Addenda in its proposal.
- C. Acknowledge receipt of each addendum by signing it and submitting it by the bid deadline. Failure to return a signed addendum may result in a bid being determined non-responsive.

5.7 Late Bids

Bids or unsolicited amendments to bids arriving after the bid submission deadline will not be considered.

5.8 Bid Evaluation/Contract Award

The Unit Price Book (UPB) for the resulting contract shall mean the current editions of the RS Means Facilities Construction Cost Data and/or the RS Means Repair and Remodeling Cost Data books. The Fairfax, Virginia Weighted Average City Cost Index and the prices in the “Total, incl. O & P” column will be used. The total value of the applicable line items and their quantities will be multiplied by the City Cost Index and the Bidder’s designated coefficient to determine the lump sum cost of job orders. Generally, the RS Means Facilities Construction Data book will be used for new construction and the RS Means Repair

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and Remodeling Cost Data book will be used for renovations. Fairfax County will determine the appropriate book to be used on each project.

- A. Bids will be evaluated starting with the bidder with the lowest coefficient. The County will make multiple awards from this solicitation.
- B. Bidders must show satisfactory evidence they have adequate experience for the proposed work covered in this bid and have the necessary financial and personnel resources to be responsive to the County's requirements.
- C. Pricing shall be based upon a coefficient multiplier (e.g. .95 or 1.10, etc.) to be applied to pre-described and pre-priced tasks contained in the RS Means Unit Price Book (UPB). The following coefficient multipliers shall be provided.
 - a. With Project Management – normal hours (M – F, 6:00 a.m. to 6:00 p.m.) except holidays
 - b. With Project Management – outside normal hours (M – F, 6:01 p.m. to 5:59 a.m.) and all-day Saturday, Sunday and holidays
 - c. Without Project Management - normal hours (M – F, 6:00 a.m. to 6:00 p.m.) except holidays
 - d. Without Project Management - outside normal hours (M – F, 6:01 p.m. to 5:59 a.m.) and all-day Saturday, Sunday and holidays
 - e. Non-Priced Tasks.
- D. Job orders for the Non-Pre-Priced Tasks Coefficient are only utilized if no line item exists in the UPB.
- E. Coefficients shall remain the same for the duration of this contract.
- F. The Master Text Specifications and all current national and local codes will apply to the work done under this contract. All work under this contract shall conform to the Virginia Uniform Statewide Building Code, the Public Facilities Manual and applicable County regulations.
- G. The successful bidder may self-perform construction work. All subcontractors shall have a Class A contractor's license. Construction documents requiring the signature of a registered architect or Engineer shall be prepared by firms engaged by the County and will be provided to the contractor.

5.9 Public Notice of Award

Public notice of award will be posted on the official FW website:
(<http://www.fcwa.org/procurement/index.htm>).

5.10 Authorization to do Business in Virginia

Each bidder that is organized or authorized to transact business in the Commonwealth of Virginia pursuant to Title 13.1 or Title 50 of the Virginia Code shall include with its bid the identification number issued to it by the Virginia State Corporation Commission. Any bidder that is not authorized to transact business in Virginia as a foreign entity under Title 13.1 or title 50 of the Virginia Code or as otherwise required by law shall include in its bid a statement describing why the bidder is not required to be so authorized.

5.11 Compliance with Laws, Regulations and Codes

The Bidder hereby represents and warrants that:

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- A. It is qualified and properly licensed 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 shall not become so in arrears during the term of this Contract;
- C. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and

It shall obtain at its expense, all licenses, permits, insurance, and governmental approval, if any, necessary to the performance of its obligations under this Contract.

5.12 Debarment Status

By submitting a Bid in response to this solicitation, each Bidder certifies that it is not currently debarred by the federal government, the Commonwealth of Virginia, or any agency or department thereof from submitting a bid or proposal in connection with any procurement project and that it is not an agent of any person or entity that currently is so debarred.

5.13 Duration of Bids

Bids shall be valid for a minimum of 90 days following the deadline for submitting bids. If an award is not made during that period, all bids shall be automatically extended for another 90 days. Bids will be automatically renewed until such time as either an award is made or proper notice is given to FW of Bidder's intent to withdraw its bid. Bids may only be withdrawn by submitting written notice at least seven days before the expiration of the then current 90-day period.

5.14 Protest

Bidders may refer to Sections 2.2-4357 through 2.2-4364 of the Code of Virginia to determine their remedies concerning this competitive process.

5.15 Unit Prices Prevail

In the event that there is a mathematical error on the summary sheet, the unit price for each item shall prevail. All costs to provide the goods and/or services specified in this solicitation shall be shown on the attached bid summary sheet. Line items left blank will be interpreted as at no cost to FW.

5.16 Negotiation with Low Bidder

If the lowest bid submitted by a responsive and responsible bidder exceeds available funds for this procurement, then Fairfax Water may, in its discretion, conduct negotiations with the lowest responsive and responsible bidder (the "Low Bidder") in an effort to obtain a contract price that is within available funds. In such event, Fairfax Water will notify the Low Bidder verbally or in writing that its bid exceeds available funds and will schedule a conference with the Low Bidder, Fairfax Water staff, and such advisors and consultants as Fairfax Water deems appropriate in order to discuss possible modifications to the scope of the procurement that may result in a price that is within available funds. The conference and any subsequent negotiations may be conducted in person or by telephone. If, during the conference, the parties arrive at an acceptable modification to the scope of the project and a contract price that is within available funds, then Fairfax Water may award a contract to the Low Bidder based upon the newly-modified terms and conditions. Otherwise, the Low Bidder will, within 15 days after the date of the conference (or such longer or shorter period as may be specified in writing by Fairfax Water), submit to Fairfax Water a written addendum to its original Bid Form which describes its proposed modification(s) to the scope of the procurement and sets forth the Low Bidder's newly adjusted bid price. Fairfax Water may conduct further negotiations with the Low Bidder or request additional clarifications or modifications. If the Low Bidder's proposed modifications are acceptable to Fairfax Water and the associated contract price is within available

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funds, then Fairfax Water may award a contract to the Low Bidder based upon the modified terms and conditions. If the proposed modifications are not acceptable to Fairfax Water, or the associated price reductions are not within available funds, then Fairfax Water will terminate negotiations and reject all bids.

5.17 References

Each Bidder shall submit with its Bid, three references (See Attachment 2 – References). References shall be from customers who have similar Job Order Contracts in place within the past 12 months. References shall be able to attest without reservation to the fact that the Bidder provided the contracted goods/services without a significant problem of any kind, and at any time during the contract period.

5.18 Insurance Claims against Bidder

In addition to the mandatory insurance requirements listed in Subsection 6.14 (Insurance Requirements) and at the request of FW, the apparent low bidder shall submit a list of all insurance claims made against it within the past 12 months. Failure to include this information within ten calendar days of request by FW may result in rejection of your bid.

6. STANDARD TERMS AND CONDITIONS

6.1 Contract Documents

Except for titles, subtitles, headings, running headlines, tables of content and indices (all of which are listed herein merely for convenience) the following, except for such portions thereof as may be specifically excluded, shall comprise the resultant Contract between FW and the Contractor pursuant to this IFB:

- a. FW Contractor Agreement
- b. FW's Invitation for Bid (IFB) No. 18-71 (which includes the Contract Terms and Conditions), including any Addenda
- c. R.S. Means Unit Price Book, Bidders shall maintain their own subscription
- d. The Contractor's bid submission (all parts)
- e. Notice of Award
- f. Performance and Labor and Material Payment Bonds and Insurance Certificates provided by Contractor
- g. Job Orders, Requests for Price Proposals, and Detailed Scopes of Work (including any referenced supplemental Specifications and/or drawings) issued by FW
- h. The Contractor's Price Proposals
- i. Written Modifications to the Agreement, signed by both parties, issued after the Contract has been executed.

6.2 Contract Base Term and Optional Terms

- A. The Base Term shall be for one (1) year from the date of the execution of the Agreement. The Agreement may be renewed based upon on the same terms and conditions, other than Bid Adjustment Factors, at the expiration of the Base Term upon mutual agreement of the parties. The renewal may be for up to two (2) additional one (1) year periods (Option Terms). The total duration of the Agreement, inclusive of all Option Terms, shall not exceed three (3) years.
- B. Notice of intent to exercise an Option Term will be given to the Contractor in writing by FW, ninety (90) days before the expiration date of the current term. The Contractor shall then accept or reject the Option Term in writing to FW within thirty (30) days. This notice will not be deemed to commit FW to exercise the Option Term, until such time as FW takes official action to commit to such a renewal.

6.3 Ordering Procedure

- A. Initiation of a Job Order - As a need arises or exists for performance by the Contractor; FW will notify the Contractor of a Project by issuing a notice of a Joint Scope Meeting. The Contractor shall be required to be available to attend a Joint Scope Meeting within forty-eight (48) hours from receipt of a notice of a Joint Scope Meeting (required response time shortened to two (2) hours in the event of an emergency. (See Section 3.6.B.)

The Contractor shall attend the Joint Scope Meeting and discuss, at a minimum:

1. The general Scope of the Work
2. Methods and alternatives for accomplishing the Work and value engineering
3. Access to the Site and protocol for admission/access
4. Hours of construction operation
5. Staging area
6. Specific quality requirements for equipment and material
7. Requirements for catalog cuts, technical data, samples, shop drawings and Incidental Design
8. The presence of hazardous materials
9. Temporary services and shutoffs
10. Safety issues/concerns/procedures
11. Permit requirements, if any
12. Liquidated Damages
13. Construction Duration
14. Date on which Price Proposal is due

- B. Detailed Scope of Work (DSOW); Development and Issuance of a Request for a Price Proposal (RFPP)

Upon completion of the joint scoping process, Contractor shall prepare a DSOW and issue a RFPP further defining and restating the scope including any sketches, drawings, photographs and specifications and providing a line item proposal of the individual tasks, quantities, and costs. The proposal shall also include proposed subcontractors and specific equipment and product information for County approval.

The RFPP will include at a minimum, the following information:

1. Master Agreement Number
2. Job Order Number
3. Project Location
4. Brief Project Description
5. Detailed Scope of Work
6. Technical Drawings
7. Price Proposal Due Date

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C. Preparation of the Price Proposal - Contractor will prepare its Price Proposals in accordance with the following:

1. Pre-priced Tasks: For Pre-priced Tasks the Contractor shall identify the task and quantities required from the UPB necessary to complete the DSOW.
2. Non Pre-priced Tasks: Non-Pre-priced Tasks shall be separately identified and submitted in the Price Proposal. Information in support of the Non Pre-priced Task shall include, but is not limited, to the following:
 - a) Catalog cuts, specifications, technical data, drawings, or other information as required evaluating the task.
 - b) If the Contractor performs the Work with its own forces, it shall submit three (3) independent quotes for all material to be installed and shall, to the extent possible, use pre-priced labor and equipment from the UPB. If the Work is to be subcontracted, the Contractor shall submit three (3) independent bids from Subcontractors. The Contractor shall not submit a quote or bid from any supplier or Subcontractor that the Contractor is not prepared to use. FW may require additional quotes and bids if the suppliers and Subcontractors are not acceptable or if the prices are deemed (in the sole judgment of FW) not to be reasonable.
 - c) The final price for non-pre-priced Tasks shall be according to the following formula:

For Work Performed with the Contractor's Own Forces:

A = The number of hours for each labor classification and hourly rates (for Trades *not* in the UPB)

B = Equipment costs (other than small tools)

C = Three independent quotes for all materials

Total Cost for self-perform work =

$(A+B+C) \times \text{NPP Adjustment Factor}$

For Work Performed by Subcontractors: If the Work is to be subcontracted, the Contractor must submit three (3) independent bids from Subcontractors. If three (3) quotes or bids cannot be obtained, the Contractor will provide in writing to FW, for County approval, the reason why three (3) quotes cannot be submitted.

D = Subcontractor Costs (supported by three quotes)

Total Cost of Non Pre-priced Task =

$D \times \text{NPP Adjustment Factor}$

- d) FW's determination as to whether a task is a Pre-priced Task or a non-Pre-priced Task shall be final, binding and conclusive.

D. Contractor's Price Proposal Package:

1. The Contractor's Price Proposal Package shall include, at a minimum:
 - a) Price Proposal (Detail and Summary)
 - b) Non Pre-priced Task Support (if applicable)
 - c) Catalog Cuts, Technical Data or Samples

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- d) List Of Anticipated Subcontractors, Anticipated Subcontract Values
 - e) Proposed Progress Schedule
 - f) Certificates For Any Special Insurance Required
 - g) Sample Warranties Or Guarantees For Materials, Equipment Or Systems Proposed
2. The Contractor's Price Proposal Package shall be submitted by the date indicated on the RFPP. All incomplete Price Proposal Packages shall be rejected. The time allowed for preparation of the Contractor's Price Proposal Package will depend on the complexity and urgency of the Job Order but should average between seven (7) and fourteen (14) days. On complex Job Orders, such as Job Orders requiring extensive approvals and permits, allowance will be made to provide adequate time for preparation and submittal of the Price Proposal Package and will be so reflected in the Price Proposal Package due date entered on the RFPP.
 3. The Contractor shall provide all Incidental Design services required in connection with a particular Job Order including drawings and information required for filing.
 4. Contractor shall make all necessary arrangements for and obtain all filings and permits required for the Work, including the preparation of all drawings and sketches, calculations and other documents and information that may be required thereof. If the Contractor is required to pay an application fee for filing a Project, a fee to obtain a building permit, or any other permit fee to any City, State or some other government or regulatory agency, then the amount of such fee paid by the Contractor for which a receipt is obtained shall be treated as a reimbursable cost for which FW will reimburse the Contractor dollar for dollar (1:1, no markup). The Contractor may include the fees incurred in its Price Proposal utilizing line item from the UPB for Reimbursable Fees and apply an Adjustment Factor of 1.0000. The costs of all activities required to obtain the permits (including expediting services) will be at the Contractor's expense.
 5. In emergency situations that may include or entirely consist of minor maintenance and repair Job Orders requiring immediate completion, the Job Order Price Proposal Package may be required quickly and the due date will be so indicated on the RFPP or, as described in Section 6.3.F, the Contractor may be directed to begin the Work immediately with the paperwork to follow.

E. Review of the Price Proposal Package and Issuance of a Job Order:

1. FW will evaluate (a) the entire Price Proposal and proposed tasks therein and compare these with the DSOW and any estimate FW may have prepared to determine the reasonableness of approach, including the nature and quantity of tasks proposed and the means and methods utilized, and; (b) all other components of the Price Proposal Package.
2. FW reserves the right to reject the Contractor's selection of Subcontractors on individual Job Orders. Failure to include the Subcontractor list in the Price Proposal Package submitted on each Job Order shall be cause for rejection of the Price Proposal as non-responsive.
3. FW reserves the right to reject a Price Proposal, or any other component of the Price Proposal Package, for any reason. FW also reserves the right not to issue a Job Order if it is determined, in the sole judgment of FW, not to be in FW's best interest. The Contractor shall have no claim to recover any costs arising out of or related to the development of the Price Proposal Package including but not limited to the costs to attend the Joint Scope Meeting, review of the DSOW, all costs associated with preparing a Price Proposal (and any other component of the Price Proposal Package), any Subcontractor

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costs incurred, and the costs to review the Price Proposal with FW. FW may pursue the performance of such Work by other means.

4. By submitting a signed Price Proposal to FW, the Contractor agrees to accomplish the Work set forth in the Detailed Scope of Work in accordance with the Request for Price Proposal at the price submitted. It is the Contractor's responsibility to include the necessary tasks and quantities in the Price Proposal prior to delivering it to FW.
 5. Each Job Order provided to the Contractor shall reference the Detailed Scope of Work and set forth the price to be paid (Job Order Amount) and the Job Order Completion Time. All clauses of the JOC shall be applicable to each Job Order. Each Job Order shall be accepted by the Contractor and approved by FW. A signed copy of the Job Order will be provided to the Contractor. Each Job Order shall include, as a minimum, the following information:
 - a) Master Agreement Number
 - b) Job Order Number
 - c) Project Location
 - d) Brief Project Description
 - e) Referenced Detailed Scope of Work and RFPP
 - f) Supplemental Technical Specifications (if applicable)
 - g) Job Order Completion Time
 - h) Acceptance Signature Block for the Contractor
 - i) Approval Block for FW's Authorized Representative
 - j) Notice to Proceed (NTP) Date
- F. In the event that an emergency response is necessary, the Contractor shall be required to follow alternative procedures as established by FW. The Contractor shall begin Work as directed, notwithstanding the absence of a fully developed Request for Price Proposal, DSOW, or Job Order. The Contractor shall be compensated in accordance with the Unit Price Book and Non-Pre-priced Tasks as if the Work had been ordered under the standard ordering procedure.
- G. Each Job Order issued is subject to the Agreement's terms and conditions.
- H. Any Job Order may require the performance of Work at multiple Sites.
- I. Unless otherwise authorized in writing by FW, the Contractor shall make no change which will increase either the Job Order Completion Time or the Job Order Amount.

6.4 Existing Conditions

By executing a Job Order, the Contractor represents that it has visited the Project Site(s) and familiarized itself with the local conditions under which the Work is to be performed. FW does not undertake to represent or warrant Site or local conditions.

6.5 Measurements and Dimensions

By Ordering Material or doing Work which is dependent upon coordination with existing building conditions, the Contractor shall verify all dimensions, elevations, grades and pitch by taking measurements at the building or Site and shall be responsible for the correctness of the same.

6.6 Commencement and Prosecution of the Work

A. Timing

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1. The Contractor must commence Work on the date set forth in the Job Order. Time being of the essence, the Contractor shall thereafter prosecute the Work diligently, using such means and methods of construction as will assure Final Completion within the Job Order Completion Time set forth in each Job Order.
- B. Supervision/Superintendent
1. The Contractor shall supervise and direct the Work, using his best skill and attention and he shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work.
 2. The Contractor shall keep on the Site, during the performance of all Work, a competent, foremen/superintendent who is fluent in English, and any necessary assistants, all satisfactory to FW. The Contractor's project manager/project lead (if different than the foremen/superintendent) must also be fluent in English. Neither the foremen/superintendent nor the project manager/project lead shall be changed for the length of a Job Order Project, except with the prior consent of FW, unless he/she proves to be unsatisfactory to the Contractor and ceases to be in his employ. The on-site superintendent shall represent the Contractor and have authority to act for the Contractor.
- C. Project/Contract Meetings
1. The Contractor and Subcontractors or their qualified representatives shall attend meetings with County's representatives, at a frequency as determined by FW, for the purpose of coordinating or expediting the Work.

6.7 Progress Schedules/Job Order Completion Time

- A. To enable the Work to be laid out and prosecuted in an orderly and expeditious manner, the Contractor shall submit with each Price Proposal a Progress Schedule, in bar chart or critical path method form, showing:
1. The anticipated time of commencement and completion of each of the critical operations/subdivisions of the Work to be performed under the Job Order;
 2. The sequence and interrelationship of each of these operations/subdivisions with the others and with those of other related Job Orders (if any); and,
 3. The estimated time required for fabrication or delivery, or both, of critical materials and equipment required for the Work.
- B. Progress Schedules will be negotiated separately for each Job Order. The Contractor's proposed Progress Schedule shall be revised as necessary and as directed by FW, until finally approved by FW, and after such approval, shall be strictly adhered to by the Contractor.
- C. Each Job Order issued shall contain a Notice to Proceed Date (NTP) and a Job Order Completion Time stated in calendar days. The Applicability of Liquidated Damages will be determined on a Job Order by Job Order basis and be communicated on the Request for Price Proposal (RFPP) and the applicability stated on the Job Order. The amount of Liquidated Damages, if applicable, shall be per the schedule contained at Section 6.11.B herein. The Job Order Completion Time shall include Work to be performed by others under subcontract and provide ample time for anticipated inspections.
- D. If the Contractor fails to adhere to the approved Progress Schedule, he must promptly adopt such other or additional means and methods of construction as will make up the time lost and will assure Final Completion in accordance with such Progress Schedule.
- E. If the Job Order Completion Time is determined to be so short that a Progress Schedule is not necessary or useful (as solely determined by FW) the requirement to submit a Progress Schedule with the Price Proposal Package may be waived in its entirety. However, the Contractor will communicate a proposed Job Order Completion Time (in calendar days) with the submission of the Price Proposal Package.

6.8 Date for Completion

The Contractor must complete the Work within the Job Order Completion Time specified in each Job Order.

6.9 Determining Date of Final Completion

- A. Final inspection of the Work by FW shall be made within five (5) days after receipt of the Contractor's written request. The Work will be deemed finally complete as of the date of such inspection if, upon such inspection, FW determines that the Contractor has achieved Final Completion of the Job Order.
- B. However, if such inspection, in the sole opinion of FW, reveals items of Work still to be performed, the Contractor shall promptly perform them and then request a re-inspection.

6.10 Delays

Time is of the essence. If delay is foreseen, the Contractor shall give immediate written notice to the Division of Procurement. FW has the right to extend the Job Order Completion Date if reasons appear, in the sole judgment of FW, to be valid. Contractor must keep FW advised at all times of the status of the Job Order Progress Schedule. Failure to achieve Final Completion within the Job Order Completion Time (without accepted reasons) or failure to meet Specifications, may result in assessment of Liquidated Damages (applicable on a Job Order By Job Order basis) and County's right to enforce other rights and remedies against Contractor as in 6.16 (B), and authorizes the Division of Procurement to purchase materials, equipment and services elsewhere and charge full increase in cost and handling to defaulting Contractor.

6.11 Liquidated Damages

- A. The applicability of Liquidated Damages shall be determined on a Job Order by Job Order basis, at the sole discretion of FW, and at the time the Request for Price Proposal is issued by FW.
- B. If Liquidated Damages are deemed to apply to a specific Job Order, FW will assess the amount of Liquidated Damages set forth in the Schedule below, cumulatively. However, FW reserves the right on a project by project basis to adjust the daily LD amount based on the risk associated with the project. This provision for Liquidated Damages does not bar FW's right to enforce other rights and remedies against Contractor, which are otherwise legally enforceable, including but not limited to, specific performance or injunctive relief.

SCHEDULE FOR LIQUIDATED DAMAGES

<u>Job Order Amount</u>	<u>Amount Per Calendar Day</u>
\$1.00 to \$25,000	\$100.00
\$25,001 to \$100,000	\$150.00
\$100,001 to \$500,000	\$250.00

- C. The applicability of the Liquidated Damages will be discussed with the Contractor at the Joint Scope Meeting and, if applicable, will be set forth thereafter in the Request for Price Proposal and in the Job Order. In the event the Contractor fails to complete the Work within the Job Order Completion Time, or if the Contractor, in the sole judgment of FW, has abandoned the Work, the Contractor must pay to FW the sum fixed in the table immediately above for each and every calendar Day that the time consumed in completing the Work exceeds the Job Order Completion Time, which said sum, in view of the difficulty of accurately ascertaining the loss which FW will suffer by reason of delay in the completion of the Work hereunder, is hereby fixed and agreed as the Liquidated Damages that FW will suffer by reason of such delay, and not as penalty.

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- D. Liquidated Damages received hereunder are not intended to be nor shall they be treated as either a partial or full waiver or discharge of FW's right to indemnification under Section 6.22, or the Contractor's obligation to indemnify FW, or to any other remedy provided for by Agreement or by law.
- E. FW will deduct and retain out of the monies which may become due hereunder, the amount of any such Liquidated Damages; and in case the amount which may become due hereunder shall be less than the amount of Liquidated Damages suffered by FW, the Contractor shall be liable to pay the difference upon demand by FW.
- F. The Contractor hereby waives any defense as to the validity of any Liquidated Damages stated herein as they may appear on grounds that such liquidated damages are void as penalties or are not reasonably related to actual damages.

6.12 Time Extensions for Weather

- A. The Job Order Completion Time applicable to each Job Order will not be extended due to inclement weather conditions that are normal to the general locality of Work Site. The Job Order Completion Time applicable to each Job Order includes an allowance for workdays (based on a five (5) day workweek) which, according to historical data, may not be suitable for construction work.
- B. The following is the schedule of monthly anticipated normal inclement weather workdays for the Project location (applicable to each and every Job Order) and will constitute the base line for monthly weather time extension evaluations.

ANTICIPATED NORMAL INCLEMENT WEATHER WORK-DAYS INCLUDED IN THE CONTRACT TIME OF PERFORMANCE											
J	F	M	A	M	J	J	A	S	O	N	D
A	E	A	P	A	U	U	U	E	C	O	E
N	B	R	R	Y	N	L	G	P	T	V	C
7	7	7	7	9	7	7	7	6	6	6	7

- C. The Contractor, in his planning and scheduling of the Work as required by the Contract Documents, shall allow for the normal inclement weather for the locality of the Work Site. If the Contractor believes that the progress of the Work has been adversely affected and that it will directly result in a failure to achieve Final Completion within the Job Order Completion Time, as a result of weather conditions above and beyond the amount normally expected, he shall submit a written request to FW for an extension of the Job Order Completion Date.
- D. The Contractor shall not be entitled to any money damages whatsoever for any delays resulting from inclement weather, whether normal or abnormal, foreseeable or unforeseeable. The Contractor and FW stipulate and agree that for delays due to weather the Contractor's sole relief is a time extension granted in accordance with this Section 6.9 Time Extensions for Weather.

6.13 Changes in the Work

- A. FW's Right to Make Changes

FW, without invalidating the Agreement, may at any time change the Detailed Scope of Work referenced in a Job Order by ordering additions to, deletions from, or modifications to the Work. The original Job Order will remain the same and a supplemental Job Order will be developed in accordance to the Ordering Procedure (Section 6.3) for developing all Job Orders

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set forth in the Agreement. The Contractor hereby expressly agrees that the Contractor shall have no right to a claim for damages or extended overhead because of changes made by FW. All such changes shall be performed under the conditions of the original Job Order and the underlying Agreement, except that any claim for extension of Job Order Completion Time caused thereby shall be adjusted at the time of signing of the Supplemental Job Order. All such changes in the Detailed Scope of Work shall be authorized only by a Supplemental Job Order signed by FW.

B. Cost to FW for Changes

The cost or credit to FW resulting from a change in the Detailed Scope of Work shall be calculated in accordance to the Ordering Procedure (Section 6.3) for developing all Job Orders set forth in the Agreement.

6.14 Insurance

A. The Contractor shall be responsible for its work and every part thereof, and for all materials, tools, equipment, appliances, and property of any and all description used in connection therewith. The Contractor assumes all risk of direct and indirect damage or injury to the property or persons used or employed on or in connection with the work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Contract.

B. The Contractor shall, during the continuance of all work under the Contract provide, and require that its subcontractors provide, the following:

1. Maintain Workers' Compensation and Employer's Liability to protect the Contractor from any liability or damages for any injuries (including death and disability) to any and all of its employees, including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia.

2. The Contractor agrees to maintain Comprehensive General Liability insurance to protect the Contractor, its subcontractors, and the interest of FW, its officers, employees, and agents against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation under the Contract or in connection with the contracted work. The General Liability insurance shall also include the Broad Form Property Damage endorsement, in addition to coverage for explosion, collapse, and underground hazards, where required.

3. The Contractor agrees to maintain owned, non-owned, and hired Automobile Liability insurance, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the Contractor. In addition, all mobile equipment used by the Contractor in connection with the contracted work, will be insured under either a standard Automobile Liability policy, or a Comprehensive General Liability policy.

4. Builder's Risk Policy:

The Contractor shall provide Builder's Risk and Fire and Extended Coverage insurance to protect FW and Contractor and subcontractors. Such insurable value shall reflect any increases to the Contract amount through Change Orders. Policy to be in Builder's Risk Completed Value forms, including the following:

a) Policies shall be written to include the names of Contractors and County and the words "as their interest may appear";

b) All insurance shall be in effect on or before the date when construction work is to commence; and

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- c) All insurance shall be maintained in full force and effect until the final acceptance of the project by FW.
- 5. The Contractor shall purchase and maintain such boiler and machinery insurance as may be required by the Contract Documents. This insurance shall include the interests of FW, the Contractor and subcontractors.
- 6. The Contractor agrees to provide the above referenced policies with the following limits. Liability insurance limits may be arranged by General Liability and Automobile Liability policies for the full limits required, or by a combination of underlying policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.

- a) Workers' Compensation:

Coverage A:	Statutory
Coverage B:	\$100,000

- b) General Liability:

Per Occurrence:	\$1,000,000
Personal/Advertising Injury:	\$1,000,000
General Aggregate:	\$2,000,000
Products/Completed Operations:	\$2,000,000
Fire Damage Legal Liability:	\$100,000

GL Coverage, excluding Products and Completed Operations, should be on a Per Project Basis

- c) Automobile Liability:

Combined Single Limit:	\$1,000,000
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- d) Builders' Risk:

100% of Value*

*100% of the insurable value of the Contract. Insurable value does not include site acquisition, site work, grading, infrastructure etc.

- e) Boiler & Machinery: (If applicable)

\$1,000,000

C. The following provisions shall be agreed to by the Contractor:

- 1. No change, cancellation, or non-renewal shall be made in any insurance coverage without a forty-five (45) day written notice to FW. The Contractor shall furnish a new certificate prior to any change or cancellation date. The failure of the Contractor to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished.

- 2. Liability Insurance "Claims Made" basis:

If the liability insurance purchased by the Contractor has been issued on a "claims made" basis, the Contractor must comply with the following additional conditions. The limits of liability and the extensions to be included as described previously in these provisions, remain the same. The Contractor must either:

- a) Agree to provide, prior to commencing work under the Contract, certificates of insurance evidencing the above coverage for a period of five (5) years after final payment for the Contract. This certificate shall evidence a "retroactive date" no

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later than the beginning of the Contractor's or subcontractor's work under this Contract, or

- b) Purchase the extended reporting period endorsement for the policy or policies in force during the term of this Contract and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself.
 - c) The Contractor agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A:VII.
 - d) European markets including those based in London, and the domestic surplus lines market that operate on a non-admitted basis are exempt from this requirement provided that the Contractor's broker can provide financial data to establish that a market's policyholder surpluses are equal to or exceed the surpluses that correspond to Best's A:VII Rating.
 - e) The Contractor will provide an original signed Certificate of Insurance and such endorsements as prescribed herein.
 - f) The Contractor will secure and maintain all insurance certificates of its subcontractors which shall be made available to FW on demand.
 - g) The Contractor will provide on request certified copies of all insurance coverage related to the Contract within ten (10) business days of demand by FW. These certified copies will be sent to FW from the Contractor's insurance agent or representative. Any request made under this provision will be deemed confidential and proprietary.
 - h) Any certificates provided shall indicate the Contract name and number.
 - i) FW, its officers and employees shall be endorsed to the Contractor's Automobile and General Liability policies as an "additional insured" with the provision that this coverage "is primary to all other coverage FW may possess." A Certificate of Insurance evidencing the additional insured status must be presented to FW along with a copy of the Endorsement.
 - j) Compliance by the Contractor and all subcontractors with the foregoing requirements as to carrying insurance shall not relieve the Contractor and all subcontractors of their liabilities provisions of the Contract.
- D. Contractual and other Liability insurance provided under this Contract shall not contain a supervision, inspection or engineering services exclusion that would preclude FW from supervising and/or inspecting the project as to the end result. The Contractor shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of the subcontractors.
- E. Nothing contained in the specifications shall be construed as creating any contractual relationship between any subcontractor and FW. The Contractor shall be as fully responsible to FW for the acts and omissions of the subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by it.
- F. Precaution shall be exercised at all times for the protection of persons (including employees) and property.
- G. The Contractor and all subcontractors are to comply with the Occupational Safety and Health Act of 1970, Public Law 91-956, as it may apply to this Contract.

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- H. Any loss insured under subparagraph 6.21.B.4 is to be adjusted with FW and made payable to FW as trustee for the requirements of any applicable mortgagee clause. The Contractor shall pay each subcontractor a just share of any insurance monies received by the Contractor, and by appropriate agreement, written where legally required for validity, shall require each subcontractor to make payments to his sub-subcontractors in similar manner.
- I. When FW finds it necessary to occupy or use a portion or portions of the work prior to substantial completion thereof, such occupancy shall commence with a mutual agreement between FW and Contractor. The insurance company or companies providing the property insurance recognize this contingency and shall provide evidence of such endorsement prior to commencement of work. This insurance shall not be canceled or lapsed for the unoccupied part of the building on account of such partial occupancy. Consent of the Contractor and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.
- J. If an "ACORD" Insurance Certificate form is used by the Contractor's insurance agent, the words "endeavor to" and "... but failure to mail such notice shall impose no obligation or liability of any kind upon the company" in the "Cancellation" paragraph of the form shall be deleted.
- K. The Contractor agrees to waive all rights of subrogation against FW, its officers, employees, and agents.

6.15 Hold Harmless Clause

The Contractor shall, indemnify, defend, and hold harmless FW from loss from all suits, actions, or claims of any kind brought as a consequence of any negligent act or omission by the Contractor. The Contractor agrees that this clause shall include claims involving infringement of patent or copyright. For purposes of this paragraph, "FW" and "Contractor" includes their employees, officials, agents, and representatives. "Contractor" also includes subcontractors and suppliers to the Contractor. The word "defend" means to provide legal counsel for FW or to reimburse FW for its attorney's fees and costs related to the claim. This section shall survive the Contract. FW is prohibited from indemnifying Contractor and/or any other third parties.

6.16 Safety

All Contractors and subcontractors performing services for the are required and shall comply with all Occupational Safety and Health Administration (OSHA), State and County Safety and Occupational Health Standards and any other applicable rules and regulations. Also, all Contractors and subcontractors shall be held responsible for the safety of their employees and any unsafe acts or conditions that may cause injury or damage to any persons or property within and around the work site area under this Contract.

6.17 Material Safety Data Sheet

By law, FW will not receive any materials, products, or chemicals which may be hazardous to an employee's health unless accompanied by a Material Safety Data Sheet (MSDS) when received. This MSDS will be reviewed by FW, and if approved, the materials, product or chemical can be used. If the MSDS is rejected, the Contractor must identify a substitute that will meet FW's criteria for approval.

6.18 Responsibilities

The Contractor shall be responsible for all damages to persons or property that occurs as a result of his fault or negligence. Contractor shall take proper safety and health precautions to protect the Work, the workers, the public and the property of others. Contractor shall also be responsible for

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all materials delivered and Work performed until completion and acceptance of the entire Work, except for any completed unit of construction thereof which theretofore may have been accepted.

6.19 Work Standards

All Work performed by the Contractor shall meet the standards set forth by the Technical Specifications and all other applicable regulations, codes (federal, state and local), directives, equipment specifications and manufacturer's instructions and recommendations inclusive of equipment or vehicles, supplies, parts or materials utilized to provide the required Work.

6.20 Incidental Design Services

The Detailed Scopes of Work under this Contract may, on occasion, require the Contractor to provide Incidental Design services. Examples of Incidental Design include abbreviated drawings, sketches, calculations, shop drawings, modified or supplemental Technical Specifications, and as-built drawings. Accordingly, the Contractor shall:

1. Ensure that any Incidental Designs meet all applicable Local, State and Federal (when applicable) regulations or codes and conform strictly to the guidelines and criteria outlined in the Technical Specifications. In case of uncertainty of detail, procedure or conflict, the Contractor shall request additional instruction from FW. The Contractor is responsible for producing competent, properly coordinated and thorough Incidental Design documents.
2. Visit all Sites of proposed Work, making the measurements necessary to delineate the extent, character and type of Work required at the Project Sites.
3. The Contractor shall bear all costs for such development of said Incidental Design documents.

6.21 As-Built Drawings, Shop Drawings and Samples

The Contractor shall review, approve and submit to FW all As-Built Drawings, Shop Drawings, Operations and Maintenance Manuals, Product Data and Samples required by and identified as part of the Detailed Scope of Work for approval. The Work shall be in accordance with approved submittals. All As-Built and Shop Drawings shall be provided in a media acceptable to FW.

6.22 Detailed Scope of Work (Including any Drawings) at the Site

The Contractor shall keep at the Site one copy of all Job Orders, Detailed Scopes of Work and associated drawings and applicable Specifications in good order and available to FW at the Site.

6.23 Permits

- A. It shall be the responsibility of the Contractor(s) to comply with County ordinances by securing the necessary permits and to be responsible for obtaining any and all other necessary licenses and permits, and for complying with any applicable federal, state, local or municipal laws, codes or regulations in connection with the prosecution of the Work.
- B. Any actual fees paid by the Contractor for permitting will be treated as a reimbursable cost for which FW will reimburse the Contractor dollar for dollar (1:1, no markup). The Contractor may include the fees incurred in its Price Proposal utilizing the line item from the UPB for Reimbursable Fees and apply an Adjustment Factor of 1.0000. The costs of all activities required to obtain the permits (including expediting services) will be at the Contractor's expense.

6.24 Ethics in Public Contracting

The provisions contained in Sections 2.2-4367 through 2.2-4377 of the Virginia Public Procurement Act as set forth in the 1950 Code of Virginia, as amended, shall be applicable to all Contracts solicited

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or entered into by FW. A copy of these provisions may be obtained from the Purchasing Agent upon request.

The above-stated provisions supplement, but do not supersede, other provisions of law including, but not limited to, the Virginia State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.), the Virginia Governmental Frauds Act (§ 18.2-498.1 et seq.) and Articles 2 and 3 of Chapter 10 of Title 18.2. The provisions apply notwithstanding the fact that the conduct described may not constitute a violation of the Virginia State and Local Government Conflict of Interests Act.

6.25 Employment Discrimination by Contractors Prohibited

Every Contract of over \$10,000 shall include the following provisions:

A. During the performance of this Contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, status as a service disabled veteran, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
2. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, shall state that such Contractor is an equal opportunity employer.
3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient to meet this requirement.

B. The Contractor will include the provisions of the foregoing paragraphs, 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.

6.26 Drug-free Workplace

Every Contract of over \$10,000 shall include the following provisions:

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

For the purpose of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a Contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of the Contract.

6.27 Faith-Based Organizations

FW does not discriminate against faith-based organizations.

6.28 Immigration Reform and Control Act of 1986

By entering this Contract, the Contractor certifies that it does not and will not during the performance of this Contract violate the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.

6.29 Exemption from Taxes

Pursuant to Va. Code § 58.1-609.1, FW is exempt from Virginia State Sales or Use Taxes and Federal Excise Tax, therefore the Contractor shall not charge FW for Virginia State Sales or Use Taxes or Federal Excise Tax on the finished goods or products provided under the Contract. However, this exemption does not apply to the Contractor, and the Contractor shall be responsible for the payment of any sales, use, or excise tax it incurs in providing the goods required by the Contract, including, but not limited to, taxes on materials purchased by a Contractor for incorporation in or use on a construction project. Nothing in this section shall prohibit the Contractor from including its own sales tax expense in connection with the Contract in its Contract price.

6.30 Condition of Items

All items shall be new, in first class condition, including containers suitable for shipment and storage, unless otherwise indicated herein. Verbal agreements to the contrary will not be recognized.

6.31 Substitutions

NO substitutions, additions or cancellations, including those of key personnel, are permitted after award without written approval by the Division of Procurement. Where specific employees are proposed by the Contractor for the work, those employees shall perform the work as long as those employees work for the Contractor, either as employees or subcontractors, unless FW agrees to a substitution. Requests for substitutions will be reviewed by FW and approval may be given by FW at its sole discretion.

6.32 Workmanship and Inspection

All work under this Contract shall be performed in a skillful and workmanlike manner. The Contractor and its employees shall be professional and courteous at all times. FW reserves the right to require immediate removal of any Contractor employee from FW service it deems unfit for service for any reason, not contrary to law. This right is non-negotiable and the Contractor agrees to this condition by accepting this Agreement. Further, FW may, from time to time, make inspections of the work performed under the Agreement. Any inspection by FW does not relieve the Contractor of any responsibility in meeting the Agreement requirements.

6.33 Guarantee

The Contractor shall be required, at its expense, to correct any Work that is found not to be in conformance with the Contract Documents or due to faulty materials or installation which may occur for a period of one (1) year from the date of completed construction. The Contractor shall, at no expense to FW, replace any defective materials during the period of guarantee. The Contractor shall correct such Work within five (5) working days after written notice from FW.

6.34 Warranty

Contractor warrants to FW that the construction, including all materials and equipment furnished as part of this Project, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents, and free of defects in materials and workmanship.

6.35 Cleaning Up

The Contractor shall at all times keep the premises free from accumulations of waste material or rubbish caused by his employees or Work. Contractor shall be responsible for the removal of all trash at the end of each day, or more frequently as may be required by the Contract Administrator. At the completion of the Work he shall remove all his rubbish from and about the building and all his tools, scaffolding and surplus materials and shall leave his Work “broom-clean” or its equivalent, unless more exactly specified in the Detailed Scope of Work.

6.36 Use of the Premises

The Contractor shall confine his plant, his apparatus, the staging and storage of materials, the operations of his forces and the Work to limits indicated by law, ordinances, permits or the Contract Documents and shall not unreasonably encumber the premises with his materials. The Contractor shall not load or permit any part of the Work to be loaded with weight that will endanger its safety. The Contractor shall enforce FW’s instructions regarding signs, advertisements, fires and smoking.

6.37 Debris Removal

A. Debris, rubbish, hazardous waste and non-usable material resulting from the Work under the Contract, to which FW does not claim a further interest, shall be disposed of off-site by the Contractor.

1. Non-hazardous waste - shall be disposed of at an authorized landfill. The primary waste disposal method to be utilized by the Contractor shall be hauling by truck (see paragraph C. below).
 - a) The Contractor shall include in his Price Proposal all appropriate waste disposal line items to cover transportation and disposal of said waste at an alternate landfill.
 - b) In the event that landfill tipping fees cannot be waived, the Contractor shall include in his Price Proposal all appropriate waste disposal line items to cover disposal of said waste.
2. Hazardous waste - shall be disposed of in accordance with all applicable local, state and federal laws and regulations and related manifest documentation provided to FW. The Contractor will dispose of said waste at a properly licensed/regulated landfill or disposal facility. The Contractor shall include in his Price Proposal all appropriate hazardous material disposal line items to cover transportation and disposal of said waste.

B. At no time shall the contractor utilize County dumpsters for debris disposal without prior County approval.

C. Dumpsters as a means of debris disposal shall only be used by the Contractor with prior written approval of FW. The specific Site location for any dumpster also requires approval by FW prior to placement. If dumpster usage is approved, the Contractor shall include the applicable task from the CTC in its Price Proposal.

6.38 Contract and Subcontractor Identification Badges

All Contractor and Subcontractor employees working at the Site are required to wear a company supplied photo ID badge. Badges must be clearly visible when worn. The size and content of the badges must be approved by FW at the start of the Contract.

6.39 Material Storage

FW will provide limited storage space at the Site in the Work area. Contractor assumes full, complete and non-delegable responsibility for the security of the equipment so stored. The Contractor assumes full, complete and non-delegable responsibility for determining that the material stored in this area will not overload the floor system. Any damage to the structure as a result of the Contractor overloading the floor shall be repaired by the Contractor at no cost to FW.

6.40 Indoor Air Quality

Frequently, the buildings in which Work is to be performed will be in use and occupied during construction. The Contractor shall schedule Work and provide temporary ventilation and/or isolation to ensure that fumes from welding, other construction tasks and out-gassing from construction materials do not migrate to occupied areas.

6.41 Ordering, Invoicing and Payment

All work requested under this Contract shall be placed on a FW Purchase Order. The Contractor shall not accept credit card orders or payments.

Contractor shall submit progress payments and invoices in duplicate at the end of each calendar month, such statement to include detailed breakdown of all charges, and shall be based on completion of tasks or deliverables for the period of time being billed.

A. Invoices shall be submitted to the FW Accounts Payable department by mail, fax, or e-mail. Invoices shall include the FW Purchase Order / Contract number and the contractor's FEIN. Invoices are not to be sent to the contract Project Manager, or other departmental reps. Failure to comply may result in late payments for which FW will not be liable.

Upon receipt of invoice and final inspection and acceptance of the equipment and/or service, FW will render payment, less retainage if applicable, within thirty (30) days unless any items thereon are questioned, in which event payment will be withheld pending verification of the amount claimed and the validity of the claim. The Contractor shall provide complete cooperation during any such investigation. Unless invoice items are questioned, the interest shall accrue at the rate of one percent (1%) per month for any late payments.

Individual Contractors shall provide their social security numbers, and proprietorships, partnerships, and corporations shall provide their federal employer identification number on the pricing form.

6.42 Construction Contract Retainages

The applicability of Contract retainages shall be determined on a Job Order by Job Order basis, at the sole discretion of FW, and at the time the Request for Price Proposal is issued by FW.

The Contractor shall be paid at least ninety-five percent (95%) of the earned sum when payment is due, with not more than five percent (5%) being retained to assure faithful performance of the Contract. All amounts withheld may be included in the final payment. Any subcontract, which provides for similar progress payments shall be subject to the same limitations.

6.43 Payments to Subcontractor

Within seven (7) days after receipt of amounts paid by FW for work performed by a subcontractor under this Contract, the Contractor shall either:

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- A. Pay the subcontractor for the proportionate share of the total payment received from FW attributable to the work performed by the subcontractor under this Contract; or
- B. Notify FW and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment and the reason for non-payment.

The Contractor shall pay interest to the subcontractor on all amounts owed that remain unpaid beyond the seven (7) day period except for amounts withheld as allowed in item B. above.

Unless otherwise provided under the terms of this Contract, interest shall accrue at the rate of one percent (1%) per month.

The Contractor shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements as set forth above with respect to each lower-tier subcontractor.

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this provision may not be construed to be an obligation of FW.

6.44 Construction Contract Performance and Payment Bonds

Within fifteen (15) calendar days after the effective date of the Agreement, the following bonds or security shall be delivered to FW and shall become binding on the parties upon the execution of the Contract:

- A. A performance bond satisfactory to FW, executed by a surety company authorized to do business in Virginia with a Best's Key Rating of Level A or better and in a financial size of Class VII or higher, or otherwise secured in a manner satisfactory to FW, for the faithful performance of the Contract in strict conformity with the plans, specifications and conditions of the Contract. The initial bond shall be in the amount of \$1,000,000 and shall increase thereafter based on the amount of work ordered by FR not to exceed \$5,000,000 in a single contract year; and
- B. A payment bond satisfactory to FW, executed by a surety company authorized to do business in Virginia with a Best's Key Rating of Level A or better and in a financial size of Class VII or higher, or otherwise secured in a manner satisfactory to FW, for the protection of all persons supplying labor and material to the Contractor or its subcontractors for the performance of the work provided for in the Contract. Labor and materials shall include public utility services and reasonable rentals of equipment, but only for the periods when the equipment rented is actually used at the site. The initial bond shall be in the amount of \$1,000,000 and shall increase thereafter based on the amount of work ordered by FR not to exceed \$5,000,000 in a single contract year.
- C. The amount of the performance and payment bonds shall increase without the necessity of any action by FW, to the same extent the Contract Price increases due to changes.
- D. The condition of the bonds is that if the Contractor shall in every respect discharge itself from its obligations under the Agreement, which Agreement is to be incorporated into the bonds by reference, then the bonds shall be void; otherwise, the bonds shall remain in full force and effect until released by FW.
- E. Surety shall expressly WAIVE any right to receive notice, review, approve any revisions to the plans, profiles, and specifications referred to in the Agreement and no such revision shall in any way affect the obligation of the Surety under the bonds.
- F. Surety shall be deemed to consent to any extension of time granted to Contractor to permit performance of the obligations of the Agreement, whether or not Surety receives notice of such extension of time, and the liability of Surety under the bonds shall not be discharged or affected by any such extension of time.

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- G. If at any time, any surety or sureties become insolvent or are determined by FW to be unable to adequately secure the interests of FW, the Contractor shall within thirty (30) days after such notice from County to do so, substitute an acceptable bond(s) in such form and sum and signed by such other sureties as may be satisfactory to County. The premium on such bond(s) shall be paid by the Contractor at no additional cost to FW provided reasonable justification can be provided by FW for its determination.
- H. A prime Contractor shall not be precluded from requiring each subcontractor to furnish a payment bond with surety thereon in an amount equal to one hundred percent (100%) of the Contract with such subcontractor.

6.45 Construction Contract Bond Forms and Copies; Alternative Forms

In lieu of a payment or performance bond, the Contractor may furnish a certified check or cash escrow in the face amount required for the bond. If approved by FW, a Contractor may furnish a personal bond, property bond, or bank or savings and loan association's letter of credit on certain designated funds in the face amount required for the payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords the same protection to FW equivalent to the corporate surety bond.

6.46 Assignment of Contract

The Agreement may not be assigned in whole or in part without the prior written consent of the Division of Procurement. The rights and obligations of the Contractor are personal and may be performed only by the Contractor. Any purported assignment that does not comply with this provision is void. This Agreement is binding upon and inures to the benefit of the parties and their respective permitted successors and assigns.

6.47 Fairfax Water's Right to Carry Out Work

- A. If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within seven (7) days after receipt of written Notice from FW to commence and continue correction of such default or neglect with diligence and promptness, FW may, without prejudice to any other remedy it may have, rectify such deficiencies as outlined in Section 6.47 Fairfax Water's Right to Perform Work and to Award Separate Contracts. In such case, an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for any Architect/Engineer ("A/E") additional services made necessary by such default, neglect or failure. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to FW.
- B. Neither FW nor the A/E nor their officers, agents, assigns or employees are in any way liable or accountable to the Contractor or its surety for the method by which work performed by FW, or at FW's direction, or any portion thereof, is accomplished or for price paid therefore. Notwithstanding FW's right to carry out a portion of the Work, maintenance and protection of the Work remains the Contractor's and Surety's responsibility as provided for in the Performance Bond and Guarantee of Contractor.

6.48 Fairfax Water's Right to Perform and Award Separate Contracts

- A. FW reserves the right to perform work related to the Project with its own forces, and to award separate contracts in connection with other portions of the Project or other work on the site.

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- B. When separate contracts are awarded for different portions of the Project or other Work on the site, the term Contractor in the Contract Documents in each case shall mean and Contractor who executes each separate Agreement.

FW reserves the right to perform Work related to any Job Order with its own forces and to award separate contracts in connection with other portions of any Job Order or other Work on the Site under these or similar Conditions of the Contract. The Contractor shall afford other Contractors working on the same Site reasonable opportunity for the introduction and storage of the other Contractor's materials and the execution of the other Contractor's Work. The Contractor shall properly regulate, schedule, connect, and coordinate his Work with any other Contractors on Site.

6.49 Termination of Contract

- A. For Cause. In the event that the Contractor: (1) fails to deliver any Commodity or Service in accordance with the time period established therefore in the Contract; or (2) fails to furnish any Commodity or Service which conforms in all respects to the requirements of the Contract; then FW, without prejudice to any other rights or remedies it may have at law or in equity (including its right to seek damages from the Contractor), shall have the right to terminate the Contract and any outstanding Purchase Orders by issuing a written notice of termination to the Contractor. Such notice of termination shall describe in reasonable detail the grounds for the termination and shall take effect immediately upon receipt by the Contractor.

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

- B. For Convenience. FW shall have the right to terminate the Contract and/or any outstanding Purchase Orders issued hereunder at its own convenience for any reason by giving seven business days prior written notice of termination to the Contractor. In such event, the Contractor shall be paid an amount equal to the actual cost of any Commodity delivered to, and accepted by, FW and the actual cost of any equipment, goods or materials ordered by the Contractor hereunder in good faith which could not be canceled, less the salvage value thereof, provided sufficient substantiation is furnished to FW. Any subcontract entered into by the Contractor in connection with the transactions contemplated hereby shall contain a similar termination provision for the benefit of the Contractor and FW. The Contractor shall in no event be entitled to receive anticipated profits on any Commodities not yet furnished to and accepted by FW as of the effective date of any such termination.
- C. Termination Due to Unavailability of Funds in Succeeding Fiscal Years: If funds are not appropriated or otherwise made available to support continuation of the performance of this Contract in a subsequent fiscal year, then the Contract shall be canceled and, to the extent permitted by law, the Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the Contract.

6.50 Claims and Disputes Procedure

- A. No claim shall be made under this Contract until and unless the Contractor has failed to obtain a Change Order pursuant to the previous sections of this Article. The Contractor shall give FW written Notice of its intent to file a claim within ten (10) calendar days of the occurrence giving rise to the claim, or at the beginning of the work upon which the claim is to be based, or after rejection of its Proposed Change Order, whichever is earlier.
- B. No claim shall be allowed and no amounts paid for any and all costs incurred if Notice of Intent to file a claim is not given to FW as herein provided.
- C. The complete written claim, with all supporting documentation, shall be submitted to the Purchasing Agent no later than sixty (60) days after the final payment. If the claim is not disposed of by agreement, the Purchasing Agent shall reduce his or her decision to writing and mail or otherwise forward a copy thereof to the Contractor within thirty (30) days of FW's receipt of the claim.
- D. The Purchasing Agent's decision shall be final unless the Contractor appeals within thirty (30) days by submitting a written letter of appeal to the FW General Manager. FW's General Manager shall render a decision within sixty (60) days of receipt of the appeal.
- E. No litigation shall be instituted prior to the exhaustion of the aforesaid claims process. The Contractor may not introduce factual matters in such litigation that were not set forth in the aforesaid claims process. Each party shall bear its own costs and expenses resulting from any litigation, including attorney's fees.

6.51 Severability

In the event that any provision shall be adjudged or decreed to be invalid by a court of competent jurisdiction, such ruling shall not invalidate the entire Agreement but shall pertain only to the provision in question and the remaining provisions shall continue to be valid, binding and in full force and effect.

6.52 Governing Law/Forum

Notwithstanding any provision to the contrary, this solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia. Any dispute arising hereunder which is not otherwise resolved by the parties shall be resolved by a court of competent jurisdiction in the Commonwealth of Virginia. The Contractor and FW hereby waive any right such party may have to a trial by jury in connection with any such litigation.

6.53 Conflict within the Construction Documents

In the event of conflicting provisions within the Contract Documents, the following order of precedence shall apply for resolution of the conflict:

- 1. The Agreement (as executed)
- 2. The Contract Terms and Conditions as contained herein.
- 3. The Detailed Scope (and all references therein) of Work applicable to each Job Order.
- 4. The remaining components of the IFB (including all attachments) in the order they are listed in Section 6.2.

6.54 Ingress/Egress, Staging and Site Restoration

- A. Ingress and egress shall be limited to designated easements of record and/or through written agreements with individual property owners. FW will direct this process and access details will be included in the Detailed Scope of Work associated with each specific Job Order.
- B. The parking and/or staging of Contractor vehicles, equipment, materials, etc., shall be limited to:

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1. Designated easements of record.
 2. Areas secured through written agreements with property owners.
 3. Designated parking areas subject to the laws of the City, County and the Commonwealth, as applicable.
- C. The Contractor is expected to display the utmost respect for the citizens of FW and their property during performance of the Work. All properties affected by the Work shall be restored, as nearly as possible, to their original condition unless directed otherwise by FW.

6.55 Licensure

To the extent required by the Commonwealth of Virginia (*see e.g.* 54.1-1100 *et seq.* of the Code of Virginia) or FW, the Contractor shall be duly licensed to perform the services required to be delivered pursuant to this Contract.

6.56 Authority to Transact Business in Virginia:

A Contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described herein that enters into a Contract with FW pursuant to the Virginia Public Procurement Act 2.2-4300 *et seq.* shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50 of the Code of Virginia, to be revoked or cancelled at any time during the term of the Contract. FW may void any Contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

6.57 Criminal Background Checks

The Contractor shall submit the names, social security numbers, and other information of its employees when requested. This information will only be used by FW to obtain nation-wide criminal background checks when FW, in its sole discretion, determines it necessary for reasons of security or confidentiality. When this occurs, the Contractor shall not send any workers to the job site whose information has not been provided for FW's background check. If the Contractor needs to have materials delivered to the job site, deliveries from outside vendors must be approved in advance by the project manager. These background checks when requested will be performed at FW's expense.

6.58 Fairfax Water's Right to Stop Work

If the Contractor fails to correct defective Work as required herein or persistently fails to carry out the Work in accordance with the Contract Documents, FW, by a written order, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated. However, this right of FW to stop the Work shall not give rise to any duty on the part of FW to exercise this right for the benefit of the Contractor or any other person or entity.

6.59 Counterparts

This Contract and any amendments or renewals hereto may be executed in a number of counterparts, and each counterpart signature, when taken with the other counterpart signatures, is treated as if executed upon one original of this Contract or any amendment or renewal. A signature by any party to this Contract provided by facsimile or electronic mail is binding upon that party as if it were the original.

6.60 Confidentiality

A. Contractor Confidentiality

The Contractor acknowledges and understands that its employees may have access to proprietary, business information, or other confidential information belonging to FW. Therefore, except as required by law, the Contractor agrees that its employees will not:

1. Access or attempt to access data that is unrelated to their job duties or authorizations as related to this Contract.
2. Access or attempt to access information beyond their stated authorization.
3. Disclose to any other person or allow any other person access to any information related to FW or any of its facilities or any other user of this Contract that is proprietary or confidential. Disclosure of information includes, but is not limited to, verbal discussions, FAX transmissions, electronic mail messages, voice mail communication, written documentation, "loaning" computer access codes and/or another transmission or sharing of data.

The Contractor understands that FW, or others may suffer irreparable harm by disclosure of proprietary or confidential information and that FW may seek legal remedies available to it should such disclosure occur. Further, the Contractor understands that violations of this provision may result in termination of the Agreement.

The Contractor understands that information and data obtained during the performance of this agreement shall be considered confidential, during and following the term of this Agreement, and will not be divulged without the Purchasing Agent's written consent and then only in strict accordance with prevailing laws. The Contractor shall hold all information provided by FW as proprietary and confidential and shall make no unauthorized reproduction or distribution of such material.

B. FW Confidentiality

In addition, FW understands that certain information provided by the Contractor during the performance of this Agreement may also contain confidential or proprietary information. All information will be maintained in accordance with the Virginia Freedom of Information Act.

6.61 Survival of Terms

Upon discharge of this Agreement, Sections (Notice, Hold Harmless, Warranties, Governing Law/Forum, Contractual Disputes) of these Terms and Conditions continue and survive in full force and effect.

6.62 Non-Waiver

No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of this Agreement constitute a continuing waiver unless otherwise expressly provided.

6.63 Self-Performance

The bidder shall self-perform, with its own organization, fifty percent (25%) of the value of the work on an annual basis throughout the life of the contract. Self-performance is defined as:

- Tradesman and/or craftsman, employed by the bidder, actually performing the work.
- Equipment operators, employed by the bidder, actually performing the work to include the cost of equipment owned by the bidder or the cost of equipment that the bidder has under a long-term lease. Long term is defined as six months or more.

Self-Performance does not include overhead, profit, or labor associated with Project Management.

6.64 Non-Discrimination

During the performance of this Contract, the Contractor agrees as follows:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, status as a service disabled veteran, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, shall state that such Contractor is an equal opportunity employer.
- C. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient to meet this requirement.

The Contractor will include the provisions of the foregoing paragraphs, 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.

END SECTION 6

IFB 18-71 – Job Order General Construction

ATTACHMENT 1

Bid Form

In compliance with the Invitation for Bid listed immediately below, the undersigned hereby offers and agrees to furnish all labor, equipment and materials and perform all Work for:

Job Order Contract (JOC) for General Construction Work

In strict accordance with the Contract Documents for the consideration of the amounts listed on the attached Schedule of Prices. The undersigned further agrees that, upon written acceptance of this Bid, mailed or otherwise furnished within ninety (90) calendar days after the date of receipt of Bids, he will, within fifteen (15) calendar days after notification of award, execute the Agreement and furnish performance and payment bonds in a form satisfactory to Fairfax Water with good and sufficient surety or sureties and deliver certificate(s) of insurance in full compliance with the Contract Documents.

SCHEDULE OF PRICES

The Contractor shall perform the tasks required by each individual Job Order issued pursuant to this Contract using the following Adjustment Factors:

- A. Coefficient Multiplier with Project Management, Normal Working Hours: The undersigned shall perform any and all functions called for in the Contract Documents and the individual Detailed Scope of Work associated with each Job Order, during Normal Working Hours (6:00 a.m. - 6:00 p.m. Monday through Friday, except Holidays) for the Unit Prices specified in the Unit Price Book (UPB) multiplied by the quantities necessary to complete the Detailed Scope of Work multiplied by the Adjustment Factor below:

	.				
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(Specify to four decimal places)

- B. Coefficient Multiplier with Project Management, Other Than Normal Working Hours: The undersigned shall perform any and all functions called for in the Contract Documents and the individual Detailed Scope of Work associated with each Job Order, during Other Than Normal Working Hours (6:01 p.m. to 5:59 a.m. Monday through Friday and any time Saturday, Sunday, and Holidays) for the Unit Prices specified in the Unit Price Book (UPB) multiplied by the quantities necessary to complete the Detailed Scope of Work multiplied by the Adjustment Factor below:

	.				
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(Specify to four decimal places)

- C. Coefficient Multiplier without Project Management, Normal Working Hours: The undersigned shall perform any and all functions called for in the Contract Documents and the individual

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Detailed Scope of Work associated with each Job Order, during Normal Working Hours (6:00 a.m. - 6:00 p.m. Monday through Friday, except Holidays) for the Unit Prices specified in the Unit Price Book (UPB) multiplied by the quantities necessary to complete the Detailed Scope of Work multiplied by the Adjustment Factor below:

	.				
--	---	--	--	--	--

- D. Coefficient Multiplier without Project Management, Other Than Normal Working Hours: The undersigned shall perform any and all functions called for in the Contract Documents and the individual Detailed Scope of Work associated with each Job Order, during Other Than Normal Working Hours (6:01 p.m. to 5:59 a.m. Monday through Friday and any time Saturday, Sunday, and Holidays) for the Unit Prices specified in the Unit Price Book (UPB) multiplied by the quantities necessary to complete the Detailed Scope of Work multiplied by the Adjustment Factor below:

	.				
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(Specify to four decimal places)

- E. Non Pre-priced Adjustment Factor: The undersigned shall perform any and all functions called for in the Contract Documents and the individual Detailed Scope of Work associated with each Job Order to work deemed not to be included in the UPB but within the general scope of the work.

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(Specify to four decimal places)

EXAMPLE: Write the Adjustment Factor to four decimal places as the following example illustrates.

1	.	1	9	9	8
----------	---	----------	----------	----------	----------

Or

0	.	9	9	9	9
----------	---	----------	----------	----------	----------

Note To Bidder: The Adjustment Factor provided for performing Work during Other Than Normal Working Hours must be greater than the Adjustment Factor provided for performing Work during Normal Working Hours and the Non Pre-priced Adjustment Factor shall not be less than 1.0500 and not higher than 1.2500.

Transfer below the competitively bid Adjustment Factors that you wrote in and complete the calculation for the Award Criteria Figure.

AWARD CRITERIA FIGURE

The following formula has been developed for the sole purpose of evaluating bids and awarding the Contract. Each bidder must complete the following calculation.

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Line 1.	Normal Working Hours with Project Management Adjustment Factor (A above).	_____ (1)
Line 2.	Multiply Line 1 by .50	_____ (2)
Line 3.	Other than Normal Working Hours with Project Management Adjustment Factor (B above).	_____ (3)
Line 4.	Multiply Line 3 by .5	_____ (4)
Line 5.	Normal work hours without Project Management Adjustment Factor (C above)	_____ (5)
Line 6.	Line 5 by .25	_____ (6)
Line 7	Other than Normal Working Hours without Project Management	_____ (7)
Line 8	Multiply Line 7 by .5	_____ (8)
Line 9.	Coefficient Multiplier Non-pre-priced items	_____ (9)
Line 10	Summation of lines 2, 4, 6, and 8 above.	_____ (10) (Award Criteria Figure)

Contractor shall write in numbers and words the Award Criteria Figure in the spaces below.

		.				
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Award Criteria Figure in Numbers

Award Criteria Figure in Words

Instructions to Bidder: Specify lines 1 through 9 to four (4) decimal places. Use conventional rounding methodology (i.e., if the number in the 5th decimal place is 0-4, the number in the 4th decimal remains unchanged; if the number in the 5th decimal place is 5-9, the number in the 4th decimal is rounded upward).

Note to Bidder: the weights in lines 2, 4, 6 and 8, above are for the purpose of calculating an Award Criteria Figure only. No assurances are made by FW that Work will be ordered under the Contract in a distribution consistent with the weighted percentages above. The Award Criteria Figure is only used for the purposes of determining the lowest bidder; when submitting Price Proposals related to Specific Job Orders, the bidder shall utilize one or more of the Adjustment Factors applicable to the Work being performed provided in A, B, C, D or E in the Schedule of Prices above.

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Bidder shall make no alterations, changes, or exclusions to the Bid Form or its phraseology. Bids may be rejected if they show any omissions, alterations of form, additions not called for, conditional or alternate Bids, or irregularities of any kind. All blank spaces shall be completed.

By my signature I certify that I am acting as an agent or in the case of an LLP, the Partner or Managing Partner for the firm identified below and I am fully authorized to bind the firm to the terms, conditions and specifications of this solicitation, as well as any addenda thereto.

Company Name: _____

Signature: _____ Printed Name: _____

Title: _____ Date: _____

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ATTACHMENT 2

REFERENCES

BIDDER'S 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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BIDDERS' NAME: _____

4. COMPANY NAME: _____

ADDRESS: _____

CONTACT PERSON: _____

TELEPHONE: (_____) - _____ - _____

FAX: (_____) - _____ - _____

E-MAIL: _____

5. COMPANY NAME: _____

ADDRESS: _____

CONTACT PERSON: _____

TELEPHONE: (_____) - _____ - _____

FAX: (_____) - _____ - _____

E-MAIL: _____