



MORIN BUILDING
8570 EXECUTIVE PARK AVENUE
FAIRFAX, VIRGINIA 22031

INVITATION FOR BID

Bid No: 23-045

Requirement: Regularly Scheduled Solid Waste and Recycling Pickup and Disposal Services, and As Needed Tire Pickup and Disposal Services

Date Issued: August 8, 2023

Deadline for Questions: Prior to 10:00 a.m., August 16, 2022

Sealed Bid Due Date: Prior to 2:00 p.m., August 23, 2022

IFB Delivery Location: Fairfax Water
Procurement Department
8570 Executive Park Avenue
Fairfax, Virginia 22031

IFB Virtual Bid Opening Instructions **Microsoft Teams meeting**
Join on your computer or mobile app
[Click here to join the meeting](#)
Meeting ID: 210 563 715 035
Passcode: jNDmaw
[Download Teams](#) | [Join on the web](#)
Or call in (audio only)
[+1 571-348-5786](tel:+15713485786),203015688# United States, Arlington
Phone Conference ID: 203 015 688#

Procurement Contact: Tammy L. Spinks, CPPB
Procurement Specialist III
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1. INTRODUCTION AND OBJECTIVE

1.1 Introduction

- A. Chartered in 1957 by the Virginia State Corporation Commission as a public, non-profit water utility, Fairfax Water is governed by a 10-member Board composed of Fairfax County citizens and appointed by the elected Fairfax County Board of Supervisors. A general manager, supported by a staff of 475 water professionals, manages the day-to-day operations of Fairfax Water.
- B. Fairfax Water is Virginia's largest water utility and one of the 25 largest water utilities in the country, serving one out of every four Virginians who obtain their water from public utilities. Nearly two million people in the Northern Virginia communities of Fairfax, Loudoun, Prince William, Fort Belvoir, Herndon, Dulles, Vienna, Alexandria, Falls Church, and Fairfax City depend on Fairfax Water for superior drinking water.

1.2 Objective

The objective of this Invitation to Bid (IFB) is to award a one-year contract, with four 1-year renewal options, to the lowest responsive and responsible Bidder to provide municipal solid waste, recycling, and tire pickup and disposal services as specified and defined herein.

2. DEFINITIONS

- A. **Award** – means the decision by FW to execute a contract after all necessary approvals have been obtained.
- B. **Bid** – means the response by a Bidder to an Invitation for Bids issued by a procurement agency to obtain goods or services.
- C. **Bidder** – means any person submitting a response to an IFB.
- D. **Contract** – means the formal agreement as a result of this solicitation.
- E. **Contract Completion** – means the point in time when FW Project Manager confirms in writing that the contract has been completed as contracted for and the Contractor is released from any further obligations. All remaining payments due the Contractor shall be approved for payment at this time.
- F. **Contractor** – means the successful Bidder receiving a contract as a result of this solicitation.
- G. **Default** – means that the Contractor has failed to fulfill its contractual obligations properly and on time.
- H. **FW** – means Fairfax Water. The terms Owner and FW have the same meaning.
- I. **Notice** – The term “Notice” or the requirement to notify means a written communication delivered in person, by facsimile, or by certified or registered mail to the individual or firm, or to an officer of the Contractor for whom it is intended.
- J. **Owner** – Fairfax County Water Authority.
- K. **Project** – The term “Project” means the same as the phrase “the Work.”

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- L. **Site PM** – means the FW employee assigned to the site or sites for purposes of oversight of the Work. The Project Manager is responsible for all aspects of the contract (excluding contract modifications) after contract award, including but not limited to approving design changes, and authorizing payment for completed work.
- M. **Specifications** – The term “Specifications” describes the physical or functional characteristics or the nature of a good, service or construction item required. It may include a description of any requirement for inspecting, testing, or preparing a good, services or construction item for delivery.
- N. **Work** – The word “Work” shall include all material, labor equipment and tools, appliances, machinery, transportation, and appurtenances necessary to perform and complete the Contract, and any such additional items not specifically indicated or described which can be reasonably inferred as belonging to the item described or indicated or as required by industry practice, custom or usage to complete the project as proposed by the Bidder and accepted by FW.

3. SPECIFICATIONS/SCOPE OF WORK

3.1 Scope of Work

A. Delivery of Solid Waste and Recycling Containers, and 30-Yard Tire Roll-off Containers:

- 1. **Delivery of all equipment is required on September 25, 2023.**
- 2. The Contractor shall perform the first solid waste and recycling pickup up within 3 Business Days of the equipment delivery. After the first pickup, services shall continue, without interruption, on the frequency schedule as specified in Paragraph B of this Section.
- 3. The Contractor shall perform tire pick up and disposal services on an **As Needed** basis. Fairfax Water will issue notice, via email or other trackable method, to the Contractor that tire pickup and disposal services are needed at the applicable FW site. The Contractor shall have 5-business days to complete the service. The Contractor shall not haul away any tire container without first supplying a replacement container at the site.

B. Regularly Scheduled Municipal Solid Waste and Recycling Pickup and Disposal Services:

The Contractor shall furnish all equipment, labor, transportation, insurance, and all other usual and customary supplies to perform regularly scheduled municipal waste and recycling collection services, in the container quantities and pickup frequencies, and in accordance with all applicable federal, state, or local ordinances, as specified below:

- 1. Morin Office Building
8570 Executive Park Avenue
Fairfax, Virginia 22031

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Equipment, Quantity and Pickup Frequency

8-Yard Solid Waste Container 1 Each 3 times/week
8-Yard Recycling Container 1 Each 1 times/week

2. Planning and Engineering (P&E) Office Building
8460 Arlington Boulevard
Fairfax, Virginia 22031

Note: This location is next door to the Morin Office Building and shares the same parking lot. The awarded contractor shall provide services to each location on the same day.

Equipment, Quantity and Pickup Frequency

8-Yard Solid Waste Container 1 Each 3 times/week
8-Yard Recycling Container 1 Each 1 times/week

3. Chantilly Maintenance and Warehouse Facility
4401 Henninger Court
Chantilly, Virginia 29151

Equipment, Quantity and Pickup Frequency

8-Yard Solid Waste Container 2 Each 2 times/week
8-Yard Recycling Container 1 Each 1 time/week

4. Corbalis Water Treatment Plant
1295 Fred Morin Road
Herndon, Virginia 20170

Equipment, Quantity and Pickup Frequency

6-Yard Solid Waste Container 1 Each 2 times/week
8-Yard Solid Waste Container 1 Each 2 times/week
8-Yard Recycling Container 2 Each 1 time/week

5. Griffith Water Treatment Plant
9600 Ox Road
Lorton, Virginia 22079

Equipment, Quantity and Pickup Frequency

6-Yard Solid Waste Container 1 Each 2 times/week
8-Yard Recycling Container 1 Each 1 time/week

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6. Newington Maintenance and Warehouse Facility
8001 Cinder Bed Road
Lorton, Virginia 22079

Equipment, Quantity and Pickup Frequency

6-Yard Solid Waste Container	2 Each	2 times/week
8-Yard Recycling Container	1 Each	1 time/week

7. Murray Maintenance and Warehouse Facility
2930 Industry Lane
Fairfax, Virginia 22031

Equipment, Quantity and Pickup Frequency

6-Yard Solid Waste Container	2 Each	2 times/week
8-Yard Recycling Container	1 Each	1 time/week

C. As Needed Tire Disposal Services and Equipment.

The Contractor shall furnish all equipment, labor, transportation, insurance, and all other usual and customary supplies, to perform As Needed tire pickup and disposal services, in the container quantities and pickup frequencies, and in accordance with all applicable federal, state, or local ordinances, as specified below:

1. Chantilly Maintenance and Warehouse Facility
4401 Henninger Court
Chantilly, Virginia 29151

Equipment, Quantity and Pickup Frequency

30-Yard Roll-Off	1 Each	As Needed
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2. Newington Maintenance and Warehouse Facility
8001 Cinder Bed Road
Lorton, Virginia 22079

Equipment, Quantity and Pickup Frequency

30-Yard Roll-Off	1 Each	As Needed
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D. All supplies and services provided shall conform to the specifications set forth in this solicitation and any amendments thereto. Refuse collected under this contract is expected to include items

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that fit into the Contractor-furnished containers and to be acceptable to a landfill as municipal waste, recyclable materials, or tires, as applicable.

- E. All waste shall be disposed of at properly certified and licensed recycling or landfill facility.
- F. The Contractor shall be in full compliance with all applicable Federal, State, and County laws ordinances, codes, regulations, and requirements. Failure to maintain full compliance with these requirements shall be grounds for immediate termination of the resulting contract.

3.2 Contractor Furnished Equipment

- A. All equipment shall be furnished by the Contractor and shall remain the property of the Contractor.
- B. All solid waste containers shall be equipped with sliding loading ports on two non-adjacent sides. All containers shall be equipped with lightweight, top-loading lids of plastic, fiberglass, or other suitable material. If requested by FW, the Contractor shall provide a locking mechanism or hardware to prevent unauthorized use of containers. Locking mechanism or hardware shall be provided at no additional cost to FW.
- C. Refuse and recycling containers shall be labeled in English and Spanish indicating the material accepted. In addition, single stream recycling containers shall include a decal indicating the materials accepted for recycling (e.g., mixed paper, corrugated cardboard, and metal, plastic and glass food and beverage containers) and shall also include the chasing arrows symbol.
- D. Refuse and recycling collection containers that become damaged or unsightly, regardless of the cause of damage or condition, shall be repaired, replaced, or cleaned as required by FW and at no additional cost to FW. FW reserves the right to request relocation of any contractor-owned container at no additional cost. Service requests for contractor relocation shall be honored within three business days.

3.3 **Contractor Written Prohibited Items Policy:**

The Contractor's written prohibited items policy specifying all items prohibited from being placed in Contractor owned equipment shall be incorporated into and become part of any contract awarded as a result of this solicitation. In all cases post contract award, should a Contractor fail to include their written prohibited items policy with their Bid Submission Form, Fairfax Water will not be liable for any damages to the Contractor owned equipment associated with placing prohibited items in the Contractor owned equipment, or liable to the Contractor for paying any additional fines or fees associated with the proper disposal of those items.

NOTE: See Section 4.5 for additional instructions on including this mandatory submittal with your Bid Submission Form.

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3.4 Bid Prices and Acceptance

All bid prices shall be the net cost. Bid pricing shall include the cost of labor and general and administrative overhead, transportation, fuel and environmental surcharges, container rental fees, lift charges, delivery and pick up charges, handling charges, or any other usual and customary charges for the services provided. FW will not pay any additional charges not disclosed on the Bid Submission Form.

3.5 Site Security

Access to secure locations shall be coordinated with the designated FW On-site Project Manager post contract award.

3.6 Superintendence by Contractor

- A. The Contractor shall be responsible, in all respects, for all damage caused by the Contractor to FW property in the performance of the Work. Any damage caused by the Contractor to FW property shall be promptly reported to the FW Project Manager, either in person or by phone call, with a mandatory follow-up email detailing the damage. The Contractor shall promptly report any existing damage to FW property upon their arrival at the Work site to the FW Project Manager. In all cases of damage, the notification email shall include photos documenting the damage
- B. The Contractor shall at all times enforce strict discipline and good order among the workers on the project. The Contractor shall not assign to the Work any unfit person, anyone not skilled in the work assigned to him, or anyone who will not work in harmony with those employed by the Contractor, subcontractors, FW or FW's separate Contractors and their subcontractors.
- C. FW may require the Contractor to remove from a FW site, any employee FW deems to be incompetent, careless, not working in harmony with others on the site, or otherwise objectionable.

4. INSTRUCTIONS TO BIDDERS

4.1 Questions and Communications

- A. All contact between prospective bidders and FW with respect to this solicitation will be formally held at scheduled meetings or in writing issued by the Procurement 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 or comments that are submitted after the deadline set forth on the cover page to this solicitation will not be answered.

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B. FW will respond to all questions and comments that are received by the deadline and that 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. 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.

4.2 Instructions for Submitting Bids

A. The deadline for submitting bids and the location of the bid opening is shown on the cover page. **All bids must be submitted in a sealed package(s), no other form of submission will be accepted** (i.e., email, facsimile, etc.). 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

B. Bid packages must be identified on the outside as follows:

From:	_____	_____
Name of Bidder		Due Date
Street	S A M P L E	IFB No.
City, State, Zip Code:		IFB Title

Attn: Tammy Spinks

4.3 Virtual Bid Opening

Bids will be opened immediately following the bid submission deadline. Interested parties may attend the virtual bid opening by using the following information:

Microsoft Teams meeting

Join on your computer, mobile app or room device

[Click here to join the meeting](#)

Meeting ID: 210 563 715 035

Passcode: jNDmaw

[Download Teams](#) | [Join on the web](#)

Or call in (audio only)

[+1 571-348-5786,,203015688#](#) United States, Arlington

Phone Conference ID: 203 015 688#

4.4 Familiarity with Specifications

A. Each Bidder shall bear responsibility for thoroughly examining this solicitation in its entirety. In the event that a bidder has any questions or comments regarding the proper meaning or intent

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of any aspect of this solicitation, then the bidder shall submit all such questions and comments in writing to the Procurement Contact identified on the cover sheet of this solicitation.

- B. The submission of a bid by a Bidder in response to this solicitation shall be deemed to constitute a representation on the part of such Bidder that it has thoroughly examined this solicitation and has submitted all questions and comments it may have regarding the meaning or interpretation of this solicitation to Fairfax Water in the manner prescribed herein.

4.5 Bid Form with Mandatory Submittal Instructions

- A. Attachment 1 and 1A comprise the full Bid Submission Form. Attachment 1 shall be completed and signed by an agent who is fully authorized to bind the individual or organization submitting the offer to sell to the specifications, terms, and conditions contained herein as well as any addenda to this solicitation.

B. **MANDATORY SUBMITTAL ATTACHMENTS**

1. Attachment 1A is the Pricing Sheet. The pricing sheet is an Excel worksheet separated into two parts: Part 1 Regularly Scheduled Solid Waste and Recycling Pickup and Disposal Services, and Part 2 As Needed Tire Pickup and Disposal Services.

- a. The pricing sheet has restricted fields that only allow the Bidder to enter bid pricing as follows:

- 1) PART 1 REGULARLY SCHEDULED SOLID WASTE AND RECYCLING PICKUP AND DISPOSAL SERVICES: The available fields to input bid pricing are:

COLUMN E – Weekly Rental Unit Cost

COLUMN H – Weekly Lift Charge

COLUMN F – Total Weekly Rental Cost, COLUMN J – Total Weekly Lift Charges, COLUMN L – Total Weekly Rental Charge + Total Weekly Lift Charges, and COLUMN N – Total Yearly Cost will automatically calculate the Bidder's total bid price for each category, by site and in the aggregate for all sites.

- 2) PART 2 AS NEEDED TIRE PICKUP AND DISPOSAL SERVICES: The available fields to input bid pricing are:

COLUMN E – Monthly Rental Unit Cost

COLUMN H – As Needed Lift Charge

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COLUMN F – Total Monthly Rental Cost, COLUMN J – Total Estimated Lift Charges, and COLUMN L – Total Estimated Yearly Costs will automatically calculate the Bidder’s total bid price for each category, by site and in the aggregate for both sites.

3) ROW 82, COLUMN N will automatically calculate the Bidder’s total bid price for Parts 1 + Part 2.

b. **To be deemed responsive to this solicitation, all Bidders shall attach a completed and printed version of Attachment 1A with their Bid Submission Form. Any bids received without a properly completed Attachment 1A will be deemed as non-responsive to this solicitation and the Bidder’s bid will be rejected and no longer eligible for award.**

2. **WRITTEN PROHIBITED ITEMS POLICY.** The Bidder shall attach a copy of their written prohibited items policy with their Bid Submission Form. **NOTE: See Section 3.3 for applicable specifications associated with this mandatory submittal.**

C. Attachment 2 is the Reference Form. Each bidder shall include at least three references with their bid submission packet. References shall be from customers of comparable size and scope of operations as FW to whom the bidder has supplied the same services within the past 24-months. References must be able to attest without reservation to the fact that the bidder provided the contracted services without any significant problem of any kind, and at any time during the contract period. Bidders shall not list FW as a reference for purposes of this solicitation.

D. Attachment 3 is the IRS Form W-9 Request for Taxpayer Identification Number and Certification. Each bidder shall include a completed form with their bid submission packet.

E. In addition to the mandatory insurance requirements listed in Section 5.23 Insurance, **at the request of FW**, the Bidder shall submit a list of all insurance claims made against it within the past 36-months. Failure to submit this information within 10 calendar days of request by FW will result in rejection of the bid as non-responsive and the bid will not be eligible for award.

4.6 Proprietary Information

A. Except as provided herein or as otherwise set forth in §2.2-4342 of the Virginia Public Procurement Act (Va. Code Ann. §2.2-4300 et seq., the “Act”), all proceedings, records, contracts and other public records relating to procurement transactions 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,

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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.

4.7 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 Procurement Contact prior to the date specified in the Questions and Communications 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.

4.8 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.

4.9 Late Bids

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

4.10 Arrearage

By submitting a Bid in response to this solicitation, the individual or firm submitting the bid shall be deemed to represent that it is not in arrears in the payment of any obligation due and owing FW, the Commonwealth of Virginia, or any public body in the Commonwealth of Virginia, including but not limited to any obligation to pay taxes and/or employee benefits. Bidder further agrees that it

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shall make diligent efforts to avoid becoming in arrears during the Term of any Contract awarded hereunder.

4.11 Contract Award

- A. Contract award will be made to the lowest responsive and responsible bidder based on lowest total cost.
- B. Whenever the lowest responsive and responsible bidder or bidders is a resident of a state other than Virginia and such state under its laws allows a resident contractor of that state a percentage preference, a like preference shall be allowed to the lowest responsive and responsible bidder who is a resident of Virginia and is the next lowest bidder. If the lowest bidder is a resident contractor of a state with an absolute preference, the bid preference shall not be considered.

4.12 Public Notice of Award

Public notice of award will be posted on the official FW web site:
<https://www.fairfaxwater.org/contracts>

4.13 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. Any bidder that fails to provide the required information may not receive an award.

4.14 Cancellation

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

4.15 Compliance with Laws, Regulations and Codes

The Bidder hereby represents and warrants that:

- 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

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D. 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.

4.16 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.

4.17 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.

4.18 Unit Prices Prevail

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

4.19 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 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,

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or the associated price reductions are not within available funds, then Fairfax Water will terminate negotiations and reject all bids.

4.20 References

Each bidder shall include at least three references with their bid submission packet (see Attachment 2 References). References shall be from customers of comparable size and scope of operations as FW to whom the bidder has supplied similar services for a minimum of 24-months. References must be able to attest without reservation to the fact that the bidder provided the contracted services without any significant problem of any kind, and at any time during the contract period. Bidders shall not list FW as a reference for purposes of this solicitation

4.21 Incorporation by Reference

This solicitation is issued in accordance with, and controlled by, the Virginia Public Procurement Act (VPPA), which is incorporated into and made part of the solicitation by reference. By submitting a bid in response to this solicitation, all bidders acknowledge the VPPA and agree to be bound by it. A copy of the VPPA is available for inspection at the Purchasing Department at FW. It is also available at this site:

<https://law.lis.virginia.gov/vacodepopularnames/virginia-public-procurement-act/>

5. CONTRACT TERMS AND CONDITIONS

5.1 Term of Contract

The term of the contract shall be from date of award through September 30, 2024, with four 1-year renewal options through September 30, 2028.

5.2 Annual Economic Price Adjustment

- A. Contractors may submit a request for a contract price increase once annually. Any annual increase in prices or rates shall be limited to the most recently published Consumer Price Index for All Urban Consumers (CPI-U) for Washington-Arlington-Alexandria (unadjusted for seasonal changes) for the 12-month period ending 90 days prior to the end of the then current contract year.
- B. If the CPI-U for Washington-Arlington-Alexandria is not the appropriate index for the item(s) being bid, the bidder may substitute any other single BLS price index (e.g. Producer Price Index – metals) providing that the substitute price index constitutes the greatest component of the contract item. Multiple price indexes will not be considered for the same bid item. Bidder must specify the specific BLS Group and BLS Item that is to be used (e.g. BLS Group: Metals and products; BLS Item: Pressure pipe and fittings, ductile iron (BLS Series ID# WPU10150237) on their Bid Submission Form. The specific BLS index identified by the Bidder on their Bid Submission Form will be used for the duration of the contract. If the substituted BLS index is discontinued by the BLS during any contract term, the Bidder may submit a request to the Procurement Contact to change the substituted BLS index to a different BLS index so as long as the newly substituted BLS index meets the requirements of this paragraph. If an alternate BLS index does not exist, or if the Contractor fails to request a change in the BLS index, the Contractor will automatically revert to the CPI-U for Washington-Arlington-Alexandria for the remainder of the contract terms.
- C. Any request for contract price increases must be submitted at least 60 days prior to the end of the then current contract year.

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- D. Issuance of a written renewal document and/or purchase order for the optional years will constitute notice of renewal. Failure to renew by the expiration date of the then current contract year will not automatically cancel the contract. FW may retroactively renew the contract at any time prior to the last day of the following contract year providing that FW has not formally canceled the contract.
- E. Negative BLS index: If the agreed upon index is a negative number the contractor shall reduce contract rates by the same amount for new contract year.
- F. By submission of a bid, Contractors agree and accept the terms of items A, B, C, D and E above for the duration of the contract.

5.3 Anti-Discrimination

By submitting a bid in response to the solicitation, Bidder certifies to FW that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and §11-51 of the Virginia Public Procurement Act.

A. During the performance of the 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, or disabilities, except where religion, sex or national origin 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, will 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 for the purpose of meeting these requirements.

B. The Contractor will include the provisions above in every subcontract or purchase order so that the provisions will be binding upon each subcontractor or vendor.

C. Fairfax Water does not discriminate against faith-based organizations on the basis of the organization's religious character, or impose conditions that (a) restrict the religious character of the faith-based organization, except as provided by law, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.

5.4 Antitrust

By entering into a contract, the Contractor conveys, sells, assigns, and transfers to FW all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by FW.

5.5 Assignment of Interest

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

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5.6 Availability of Funds

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

5.7 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.

5.8 Compliance with Laws, Regulations and Codes

The Contractor hereby represents and warrants that:

- 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 the Contract;
- C. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under the Contract; and
- D. It shall obtain at its expense, all licenses, permits, insurance, and governmental approval, if any, necessary to the performance of its obligations under the Contract.

5.9 Contract Formation

- A. The words "Contract" and "Purchase Order" are used interchangeably unless the context otherwise plainly requires. The documents comprising the Contract shall be accorded the following order of precedence:
 - 1. The Contract including any Amendments or Change Orders;
 - 2. All Purchase Orders;
 - 3. Any Addenda to the IFB;
 - 4. This IFB (including all Appendices and Attachments hereto); and
 - 5. The Bidder's completed Bid Tabulation Form (including any drawings and submittals).
- B. The contract to be entered into as a result of this IFB shall be by and between the Bidder as Contractor and FW. It shall include the following items, which are listed in order of precedence:
 - 1. The fully executed contract between the parties, or FW Purchase Order,
 - 2. The IFB and any Addenda to the IFB,
 - 3. The Bidder's response to the IFB (including any drawings and submittals), and
 - 4. All correspondence between the parties regarding this IFB.
- C. Anything called for by one of the contract documents and not called for by the others shall be of like effect as if required or called for by all, except that a provision clearly designed to negate or alter a provision contained in one or more of the other contract documents shall have the intended effect.

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5.10 Contract Changes / Change Orders

- A. No verbal agreement or conversation with any officer, agent, or employee of FW either before or after the execution of any Contract resulting from this solicitation or follow-on negotiations, shall affect or modify any of the terms, conditions, specifications, or obligations contained in the solicitation, or resulting Contract. No alterations to the terms and conditions of the Contract shall be valid or binding upon FW unless made in writing and signed by the purchasing contact identified on the cover page. Contract changes shall be in writing and shall be on official FW Purchasing Department letterhead. In any event and in all circumstances, the Contractor shall be solely liable and responsible for any Contract changes, deviations, etc., made without first receiving written authorization to deviate from the Contract by the FW Project Manager.
- B. Changes can be made to the contract in any of the following ways:
 - 1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
 - 2. FW may order changes within the general scope of the contract at any time by Notice to the Contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give FW a credit for any savings. Said compensation shall be determined by one of the following methods:
 - a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to FW's right to audit the Contractor's records and/or to determine the correct number of units independently; or
 - c. By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present FW with all vouchers and records of expenses incurred and savings realized. FW shall have the right to audit the records of the Contractor, as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by Notice to the Purchasing Department. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by FW or with the performance of the contract generally.

5.11 Contractual Disputes *

- A. Contractual claims, whether for money or for other relief, will be submitted in writing not later than 60 days after final payment; provided however, that written notice of the Contractor's intention to file such claim must:
 - 1. Be delivered to the attention of FW's Procurement Representative assigned to the contract at the address shown on the signature page of the resultant service agreement contract not later than five days after the occurrence or of the beginning of the Work upon which the claim is based; and
 - 2. Contain a reasonably detailed description of the basis of the claim otherwise the claim will be deemed to have been waived. FW will make a written decision upon any such claim within 60 days after submittal of the claim. The Contractor shall not institute legal action prior to receipt of FW's decision on the claim unless FW fails to render such decision within 90 days after submittal of the claim. The decision of FW will be final, unless the Contractor initiates legal action as provided in Section 2.2-4364 of the Virginia Code. Failure of FW to render a decision within 90 days will not result in the Consultant being awarded the relief claimed, nor will it result in any other relief or penalty. The sole result of FW's failure to render a decision within the time allotted will be

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the Consultant's right to immediately institute legal action. No administrative appeals procedure pursuant to Section 2.2-4365 of the Virginia Code has been established for contractual claims under this Agreement.

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

5.12 Contractor's Responsibilities

- A. The Contractor shall be responsible for all products and or services as required and specified herein. The use of subcontractors is prohibited unless:
 - 2. A request to include a subcontractor is included in the bid and,
 - 3. The Bidder receives written approval to use a subcontractor prior to, or as part of the formal contract between the parties.
- B. Even when properly authorized by FW, the use of a subcontractor does not relieve the Contractor of liability under the contract.
- C. The Contractor, at its sole expense, shall be responsible for damage to FW and non-FW property as a result of its failure, or its subcontractor's failure to protect such facilities and utilities.
- D. The Contractor, at its sole expense, shall immediately repair or replace FW property damaged by (or caused by) the Contractor or its Subcontractor(s). Replacements will be of equal or better quality than the property damaged property, and all such work must be approved by FW Project Manager.

5.13 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.

5.14 Delivery

- A. By submitting a bid in response to this solicitation, the Bidder guarantees delivery of contract items within the timeframe specified herein or as indicated in the bidders bid submission form. Failure to deliver within the time specified, or as amended in writing by FW, or failure to make replacements of rejected Contract items, shall constitute a breach of contract and may be grounds for a declaration of default in addition to any other remedies FW may be entitled to.
- B. Deliveries must be made by within the delivery time specified in the bid submission document. If a delay is anticipated, the Contractor must provide as much advanced notice as possible to FW. Failure to honor a delivery schedule may result in damages to FW. The Contractor is liable for any and all costs incurred by FW due to such failures.

5.15 Drug-free Workplace to be Maintained by Contractor*

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

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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.

5.16 Employment Discrimination by Contractor Prohibited; Required Contract Provisions*

The following provision is required to be in every contract of more than \$10,000 (Virginia Public Procurement Act, § **2.2-4311**)

A. During the performance of any ensuing 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, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the 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, will 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 for the purpose of meeting the requirements of this section.

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.

5.17 Ethics in Public Contracting

Contractor hereby certifies that it has familiarized itself with Article 4 of Title 11 of the Virginia Public Procurement Act, Section 11-72 through 80, Virginia Code Annotated, and that all amounts received by it, pursuant to a contract resulting from this solicitation, are proper and in accordance therewith.

5.18 Examination of Records

Bidder agrees that in any resulting contract, either FW or its duly authorized representative shall have access to and the right to examine and copy any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to any resulting contract. This obligation shall expire five years after the final payment for the final service performed as a result of any and all contract(s) awarded pursuant to this solicitation, or until audited by FW, whichever is sooner. Contractor will provide reasonable access to any and all necessary documents and upon demand provide copies of documents if so required by FW or its representative(s). FW will reimburse the Contractor for any reasonable expenses it incurs as a result of such a request.

5.19 Faith-Based Organizations

FW does not discriminate against faith-based organizations.

5.20 Governing Law; Venue; Waiver of Jury Trial

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.

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5.21 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.

5.22 Indemnification and Responsibility for Claims and Liability

With respect to any contract that results from this solicitation, Bidder is bound by the following:

- A. The Contractor shall indemnify, save harmless and defend FW, or any employee of FW, against liability for any suits, actions, or claims of any character whatsoever arising from or relating to the performance of the Contractor or its subcontractors under this contract.
- B. FW has no obligation to provide legal counsel or defense, or pay attorney's fees to the Contractor or its subcontractors in the event that a suit or action of any character is brought by any person not party to the contract, against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this contract.
- C. FW has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this contract.
- D. The Contractor shall immediately notify FW of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from or related to the Contractor's obligations under the contract. If such a claim or suit is brought, the Contractor will cooperate, assist, and consult with FW in the defense or investigation of any suit or action made or filed against FW as a result of or relating to the Contractor's performance under this contract.
- E. The Contractor shall pay all royalties and license fees necessary for performance of the contract. The Contractor shall defend all suits or claims for infringement of any patent rights or other proprietary rights arising from or related to performance of the resulting contract and shall save FW harmless from any loss, including Attorneys' fees arising out of any such claim.

5.23 Insurance

- A. In addition to the mandatory insurance requirements listed in this Section and, at the request of FW, any Bidder may be required to provide a list of all insurance claims made against it within the past 36 months. FW reserves the right to reject any bid if in FW's opinion the amount or number of claims is deemed to be excessive. A Bidder's failure to comply with this requirement may result in rejection of its bid. If no claims have been made, then the Bidder shall so state in its bid. Fairfax Water may require such information from the Contractor as it deems necessary to assess the Contractor's financial ability to pay any deductibles with respect to the insurance policies required hereunder.
- B. Before commencing the work, the Contractor shall procure and maintain at its own expense, minimum insurance in forms and with insurance companies acceptable to FW to cover loss or liability arising out of the Work. All insurance policies must be underwritten by insurers authorized to conduct business within the Commonwealth of Virginia and must have a Best's rating of at least A- and a financial size of class VIII or better in the latest edition of Best's Insurance Reports.
- C. The Contractor shall immediately notify FW of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from or related to the Contractor's obligations under the contract. If such a claim or suit is brought, the Contractor will cooperate, assist, and consult with FW in the defense or investigation of any suit or action made or filed against FW as a result of or relating to the Contractor's performance under this contract.

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- D. With the exception of Workers' Compensation and Employers' Liability Insurance, all additional insurance policies specified herein shall name FW as an additional insured with regard to work performed under any subsequent Contract
- E. The Contractor will provide FW with copies of certificates of insurance coverage and proof of payment of all premiums. Each certificate of insurance must include: (a) an endorsement from the insurer that certifies that the Contractor maintains the referenced policy in full force and effect; (b) where applicable, a statement indicating that FW is included as an additional insured; and (c) a provision requiring that not less than 30 days written notice will be given to FW before any policy or coverage is canceled or modified in any material respect. Without limiting the requirements set forth above, the insurance coverages will include a minimum of:
1. Workers' Compensation and Employers' Liability Insurance: Statutory requirements and benefits as required by the Commonwealth of Virginia; and
 2. Required Commercial General Liability Insurance: This insurance must be written on an "occurrence" basis and shall be endorsed to include FW as an additional insured and shall provide at a minimum the following:

◆ General Aggregate Limit (Other than Products-Completed Operations)	\$1,000,000
◆ Products-Completed Operations Aggregate Limit	\$ 500,000
◆ Personal & Advertising Injury Limit	\$ 500,000
◆ Each Occurrence Limit	\$ 500,000
<u>For Construction Contracts:</u>	
◆ Directors & Officers – Errors & Omissions	\$2,000,000
- F. Business Automobile Liability Insurance: This insurance coverage must extend to any motor vehicles or other motorized equipment regardless of whether it is owned, hired, or non-owned and must cover Bodily Injury and Property Damage with a combined single limit of at least \$1,000,000 each accident. This insurance must be written in comprehensive form and must protect the Contractor and FW against claims for injuries to members of the public and/or damage to the property of others arising from the Contractor's use of motor vehicles or other equipment and must cover both on-site and off-site operations.
- G. Nothing contained herein will be deemed to operate as a waiver of FW's sovereign immunity under the law.

5.24 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.

5.25 No Waiver or Estoppel

Neither the inspection by FW nor any of its employees, nor any payment of money, nor payment for, nor acceptance of any Commodity by FW, nor any extension of time shall operate as a waiver of any provision of this Contract, or of any power herein reserved to the Owner or of any right to damage herein provided. No waiver of any breach of this Contract shall be held to be a waiver of any other subsequent breach. All remedies provided in this Contract to FW shall be construed as cumulative and shall be in addition to each and every other remedy herein provided. Neither FW, nor any officer, employee, or authorized representative of FW, will be bound, precluded, or estopped by any action, determination, decision, acceptance, return, certificate, or payment made or given under or in connection with the Contract by any officer, employee or authorized representative of the Owner, at any time either before or after final completion and acceptance of the Work and payment therefore from: (a) showing the true and correct classification, amount, quality, or character of the Commodities delivered, or that any determination, decision, acceptance, return certificate or payment was incorrect or was improperly made in any respect, or that the Commodities or any part thereof do not in fact conform to the requirements of the Contract; (b) demanding and recovering from the Contractor any overpayment made to the Contractor or such damages as FW may sustain by reason of the Contractor's failure to comply with the requirements of the Contract; or (c) both of the foregoing clauses (a) and (b).

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5.26 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.

5.27 Pass-through Price Increases and Decreases

For annually renewable contracts:

- A. Increases: FW recognizes that the Contractor's sources of supply and transportation may pass onto the Contractor unanticipated and significant price increases. FW will consider requests by the Contractor to allow "pass-through" price increases when accompanied with sufficient proof. Only the Contractor's direct supplier's price increases will be considered. FW reserves the right to accept or reject all such requests. FW will not allow price increases that are greater than the amount passed on to the Contractor, or for a period outside of the then current contract year.
- B. Decreases:
 - 1. Pass through price increases shall cease at the end of the then current contract year and contract pricing will return to the pre-pass-through rate. The contractor will be eligible for and only upon request, the annual economic price increase as defined in Section 5.2 Annual Economic Price Adjustment.
 - 2. Prior to the end of the then current contract year, the pass-through increase shall be reduced or eliminated when and as the cause of the increase is reduced or eliminated.
- C. Pass through price increases will not be a substitute for poor planning by the Contractor. Pass through increase will not be allowed for the first six months of any contract year. Price increases will be effective upon the date such a request is received in writing; and will not be made retroactive.

5.28 Partial Invalidity

Neither any payment for, nor acceptance of, the whole or any part of the services by FW, nor any extension of time, shall operate as a waiver of any provision of any Contract resulting from this IFB, nor of any power herein reserved to FW, or any right to damages herein provided, nor shall any waiver of any breach of any Contract be held to be a waiver of any other or subsequent breach. Failure of FW to require compliance with any term or condition of any Contract shall not be deemed a waiver of such term or condition or a waiver of the subsequent enforcement thereof.

5.29 Payment Clauses Required in All Contracts

Section § 2.2-4352 of the Virginia Public Procurement Act requires the following:

- A. That any contract awarded by FW include the following clauses:
 - 1. The Contractor shall take one of the two following actions within seven days after receipt of amounts paid to the contractor by FW for work performed by any subcontractor(s) under the contract:
 - a. The Contractor shall pay its subcontractor(s) for the proportionate share of the total payment received from FW attributable to the work performed by the subcontractor under that contract; or
 - b. Notify FW and any subcontractor(s), in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.
 - 2. Bidders shall include in their offer submissions either: (i) if an individual contractor, their social security numbers; and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification numbers.

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3. The contractor shall pay interest to the subcontractor(s) on all amounts owed by the Contractor that remain unpaid after seven days following receipt by the Contractor of payment from FW for work performed by the subcontractor under the contract, except for amounts withheld as allowed in subdivision 1.
4. Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month.
- B. 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 with respect to each lower-tier subcontractor.
- C. A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of FW. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

5.30 Payment

- A. Invoices: All invoices are to be sent directly to 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.
- B. Terms: All payments will be Net 30 from the date of receipt of a valid invoice at FW Finance Department. Payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- C. Invoices: The Contractor shall submit invoices for items ordered, delivered and accepted, directly to the Finance Department, to the attention of Accounts Payable. Invoices shall show FW Purchase Order or contract number and are subject to review and approval by FW Project Manager
- D. Partial Payments: Requests for partial payments or advanced payments must be submitted as part of the Price Bid along with a justification. FW reserves the right to accept, reject or negotiate requests for partial payments. If the request is rejected, the Bidder must waive the requirement in order to remain in consideration.
- E. Refunds: If the Contractor is declared to be in default, FW will be eligible for a full and immediate refund for all payments made to the Contractor. Partial Payments: Requests for partial payments or advanced payments must be submitted as part of the Price Offer along with a justification. FW reserves the right to accept, reject or negotiate requests for partial payments. If the request is rejected, the Bidder must waive the requirement in order to remain in consideration.
- F. Unreasonable Charges: Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, final payment is contingent on a determination of reasonableness with respect to all invoiced charges. Charges that appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, FW shall promptly notify the Contractor, in writing, as to those charges that it considers unreasonable and the basis for the determination.

5.31 Price Firm Period

Bid pricing shall be firm and fixed as originally offered and accepted for the first 12 months of the contract.

5.32 Prices for Goods and Services

All prices for the goods and services specified herein shall be delivered F.O.B. the facility set forth on the Purchase Order and shall represent the entire cost to FW for the Contractor to provide the goods and services to FW.

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5.33 Purchase and Sale Transaction

Any transaction for the purchase and sale of any Commodity shall be affected by FW's issuance to the Contractor of a Purchase Order, in which event the Contractor covenants and agrees to furnish all Commodities described therein in strict accordance with the terms and conditions of such Purchase Order and the other documents that together constitute the Contract.

5.34 Rider Clause

Subject to the mutual agreement between the parties, any contract awarded on the basis of this solicitation may be used by any public entity (to include jurisdictions comprising the Metropolitan Washington Council of Governments), to enter into a contract for the services described and defined herein. For single purchases, the contract may be used for up to 12 months from the actual date of contract award. For multi-year contracts, the contract may be used throughout the effective period of the contract. Contracts awarded as a result of this solicitation will be subject to these terms and conditions, and/or such terms and conditions as may be required by the controlling body for the public agency using the contract. Pricing shall be as offered by the successful Offeror and subsequently accepted by FW.

5.35 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.

5.36 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.

5.37 Taxes

FW is exempt from Federal Excise Taxes, Virginia State Sales and Use Taxes, and the District of Columbia Sales Taxes and Transportation Taxes. FW's tax identification number is 54-6025290.

5.38 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.

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- 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.

5.39 Virginia Freedom of Information Act

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

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**ATTACHMENT 1
BID SUBMISSION FORM**

COMPANY NAME: _____

ADDRESS: _____

CONTACT PERSON: _____

TELEPHONE: _____ E-MAIL: _____

FAX: _____ FED ID #: _____

VIRGINIA STATE CORPORATION COMMISSION (SCC) REGISTRATION INFORMATION

The bidder:

is a corporation or other business entity with the following SCC identification number:

-OR-

is not a corporation, limited liability company, limited partnership, registered limited liability partnership, or business trust

-OR-

is an out-of-state business entity that does not regularly and continuously maintain as part of its ordinary and customary business any employees, agents, offices, facilities, or inventories in Virginia (not counting any employees or agents in Virginia who merely solicit orders that require acceptance outside Virginia before they become contracts, and not counting any incidental presence of the offeror in Virginia that is needed in order to assemble, maintain, and repair goods in accordance with the contracts by which such goods were sold and shipped into Virginia from offeror's out-of-state location)

-OR-

is an out-of-state business entity that is including with this proposal an opinion of legal counsel which accurately and completely discloses the undersigned offeror's current contacts with Virginia and describes why those contacts do not constitute the transaction of business in Virginia within the meaning of § 13.1-757 or other similar provisions in Titles 13.1 or 50 of the Code of Virginia.

Please check this box if you have not completed any of the foregoing options but currently have pending before the SCC an application for authority to transact business in the Commonwealth of Virginia and wish to be considered for a waiver to allow you to submit the SCC identification number once issued (Fairfax Water reserves the right to determine in its sole discretion whether to allow such waiver):

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COMPANY NAME: _____

MANDATORY SUBMITTAL LIST:

1. Printed Attachment 1A Pricing Pages Attached: _____ **YES** _____ **NO**

NOTE: Per Section 4.5 of the solicitation, to be deemed responsive to the solicitation, all Bidders shall attach a completed and printed version of Attachment 1A with their Bid Submission Form. Any bids received without a properly completed Attachment 1A will be deemed as non-responsive to this solicitation and the Bidder's bid will be rejected and no longer be eligible for award

2. Prohibited Items Policy Attached: _____ **YES** _____ **NO**

NOTE: Per Section 3.3 of the solicitation, in all cases post contract award, should a Contractor fail to include their written policy with their Bid Submission Form, Fairfax Water will not be liable for any damages to the Contractor owned equipment associated with placing prohibited items in the Contractor owned equipment, or liable to the Contractor for paying any additional fines or fees associated with the disposal of those items.

Bidder's Chosen Index for All Future Contract Price Adjustments:

*****Per Section 5.2 of the solicitation, if the Bidder does not designate a specific BLS Index for annual rate increases, the default index shall be the CPI-U for Washington-Arlington-Alexandria (unadjusted for seasonal changes) for the 12-month period ending 90 days prior to the end of the then current contract year.*****

PAYMENT TERMS:

_____ FW's minimum payment term is Net 30 unless a prompt payment discount is offered. Prompt payment discounts are not a requirement to place a bid and will not be considered as part of the award criteria. All Bids will be interpreted as Net 30 unless otherwise specified herein. By submitting an offer to sell in response to this solicitation, all bidders acknowledge and agree to a minimum of Net 30 terms.

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 on this Bid Submission Form, and that I am fully authorized to bind the firm to the specifications, terms, and conditions of this solicitation, as well as any addenda thereto.

Signature: _____ Printed Name: _____

Title: _____ Date: _____

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ATTACHMENT 2 – REFERENCES

COMPANY 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: _____