CONTRACT 2025-039

FAIRFAX COUNTY WATER AUTHORITY
8570 Executive Park Avenue, Fairfax, Virginia 22031-2218
www.fairfaxwater.org

Agreement

Contract Title: Requirements for Sodium Bisulfite, Bulk

This Contract 2025-039 is made and entered into this 10th day of March 2025, the date the Agreement is fully executed by Fairfax County Water Authority, a political subdivision of the Commonwealth of Virginia, operating as Fairfax Water ("FW"), by and between FW and PVS Chemical Solutions, Inc. ("Contractor"), whose address is: 10900 Harper Avenue, Detroit, MI 48213.

In consideration of the mutual stipulations, agreements and covenants contained herein, the parties hereby agree as follows:

1. **Scope of Work:**

   The Scope of Work for this Contract generally is described as to provide as requested by FW the goods and services necessary for Requirements for Sodium Bisulfite, Bulk ("the Work"), as set forth in greater detail in Attachment A, Specifications and Appendix A, Chemical Requirements.

2. **Contract Price:**

   The Contract Price shall be as set forth in Attachment B, Pricing Schedule.

   FW will not compensate the Contractor for any Work beyond that included in Attachment B unless the additional Work is covered by a written Amendment to this Contract.

   The Contract Prices set forth in Attachment B include all costs, expenses, including reimbursable expenses, to provide the Work described in this Contract.

3. **Contract Documents:**

   The documents which form the entire Contract between FW and the Contractor ("Contract Documents") are as defined either in this Contract or in the Invitation for Bid, and are as set forth below.

   3.1. In the case of a conflict, the order of precedence shall be as follows:

3.1.1. Agreement and all modifications properly incorporated in the Agreement
3.1.2. Attachment A – Specifications
3.1.3. Appendix A – Chemical Requirements
3.1.4. Attachment B – Pricing Schedule
3.1.5. Attachment C – Standard Terms and Conditions
3.1.6. Attachment D – Certificate(s) of Insurance
3.1.7. IFB/Associated Documents

3.2. All provisions required by law to be included in this Contract or otherwise applicable to this Contract shall be deemed to be a part of this Contract, whether actually set forth herein or not.

3.3. The Contract Documents are complementary and what is called for by one is as binding as if called for by all. If the Contractor finds a conflict, error, ambiguity or discrepancy in the Contract Documents, it shall immediately, in writing call such conflict, error, ambiguity or discrepancy to the attention of the Owner before proceeding with the Work affected thereby. The Owner will promptly resolve the matter in writing. Work done by the Contractor after such conflicts, errors, ambiguities or discrepancies are discovered, or in the exercise of reasonable care reasonably should have been discovered, prior to written resolution thereof by the Owner shall be done at the Contractor's expense and risk. Any Work that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not it is specifically called for. Work, materials or equipment described in words which so applied have a well-known technical or trade meaning shall be deemed to refer to such recognized standards.

3.4. The Contractor will be held to a standard of strict compliance with the requirements of the Contract Documents in the performance of the Work, for giving Notice of any type to the Owner, and for making any submittal required for any purpose. The Contractor acknowledges and agrees that all time requirements set forth in the Contract Documents for any purpose are of the essence.

4. Definitions:

All words and terms shall have the meanings and terms assigned to them in the Contract Documents, unless a different meaning is clear from the context.

5. Contract Term:

5.1. The term of this Contract shall commence on the date the Agreement is fully executed by FW and expiring on the last day of the 12th month following execution of the Agreement by FW ('Contract Term'), unless otherwise stated as provided in the Contract Documents.

5.2. This Contract may be renewed ('Renewal Contract Term') by written Notice given by FW at any time prior to thirty (30) days after expiration of the preceding Initial Contract Term

or Renewal Contract Term. No representative of FW has any authority to order, direct, or request work after expiration of the Initial Contract Term or Renewal Contract Term and prior to a Renewal Contract Term in strict compliance with the renewal terms herein. FW, at its sole discretion, has the right, but is under no obligation, to exercise this right to renewal not to exceed three additional one-year periods and a fourth15-month period at the same terms and conditions.

6. **Contract Price Adjustment:**

The Contractor agrees that prices shall remain firm for the Contract Term.

7. **Non-Appropriation:**

All funds for payments by FW under any Contract awarded are subject to the availability of an annual appropriation for this purpose by FW. In the event of non-appropriation of funds by the FW for the Work provided under the Contract, FW will terminate the Contract, without termination charge or other liability to FW, on the last day of the then current fiscal year or when the appropriation made for the then current year for the Work covered by this Contract is spent, whichever event occurs first. FW will endeavor to provide reasonable Notice of such termination, but no formal notice of such termination is required of FW, and FW shall not order any Work to be provided after such termination date.

8. **Right to Terminate Contract:**

FW has the right to terminate this Contract for convenience at any time, or for default, all pursuant to the provisions of the Standard Terms and Conditions.

9. **Direction to Proceed:**

9.1. For Work to be performed by Contractor under this Contract, the Procurement Department will issue a Purchase Order. The Purchase Order will define the location of the Work to be performed and will define or, where specific definition cannot be provided, will estimate, the scope of the Work to be performed, the dates within which that Work is to be performed, and the price for that Work (collectively "Purchase Order Work"). Contractor shall not commence any Work until a written Purchase Order has been issued by the Procurement Department, and if it does so FW will be under no obligation to make payment for any Work performed prior to the issuance of the required Purchase Order. No employee or agent of FW other than the Procurement Department, or properly authorized designee, has authority to make any purchases or otherwise bind FW contractually. If a Purchase Order is issued by anyone other than the Procurement Department, it shall be the responsibility of the Contractor to confirm the authority of that person to bind FW. Provided, however, if the Contractor has received from the Procurement Manager prior written confirmation of a person's authority to bind FW, the Contractor may rely upon all Purchase Orders issued by that person within the scope of the stated authority as authorized.

9.2. Notwithstanding the foregoing, if the circumstances are such that there is not sufficient time for issuance of a Purchase Order, FW through the Procurement Manager, or authorized designee, may direct the Contractor to proceed by less formal writing or electronic communication, to be replaced by a Purchase Order by 5:00 P.M. on the next regular FW working day following issuance of such FW directive. Further, if emergency conditions exist which necessitate that the Contractor act to avoid or mitigate damage to person or property, the Contractor shall proceed and give written Notice to FW such emergency Work by 5:00 P.M. on the next regular FW working day following commencement of such emergency Work.

10. Estimated Quantities: No Guaranteed Minimum:

During the Initial Contract Term or any Renewal Contract Term, the Contractor shall furnish all of the Work described in the Contract Documents. The Contractor understands and agrees that there are no guaranteed minimum purchases and that FW has no obligation to the Contractor if no, or fewer, items or Work than any quantities estimated are required or requested by FW. Any quantities which are included in the Contract are the reasonable present expectations of those who are planning for FW for the term of Contract. The amount is only an estimate and the Contractor understands and agrees that FW is under no obligation to the Contractor to buy that amount, or any amount as a result of having provided this estimate or of having had any normal or otherwise measurable requirement in the past. The Contractor further understands that FW may require Work in excess of the estimated annual Contract amount and that such excess shall not give rise to any claim for compensation other than at the unit prices and/or rates set forth in this Contract.

11. Payment Procedures:

Contractor shall submit invoices for its Work, and such invoices will be processed by FW, all in accordance with the provisions of the Standard Terms and Conditions.

12. 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.

13. Notices:

Unless otherwise provided herein, all notices and other communications hereunder shall be deemed to have been given when made in writing and either (a) delivered in person, (b) delivered to an agent, such as an overnight or similar delivery service, or (c) deposited in the United States mail, postage prepaid, certified or registered, addressed as follows:

To the Contractor:

Bill Militello
Product Manager
10900 Harper Avenue
Detroit, MI 48213

To FW:

Elizabeth B. Dooley, CPPO, CPPB
Procurement Manager
8570 Executive Park Ave
Fairfax, VA 22031

14. **Governing Law; Venue, Waiver of Jury Trial:**

This 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.

15. **Binding Agreement:**

FW and the Contractor each binds itself, its successors and assigns to the other, its successors and assigns, in respect of all covenants, terms, conditions and obligations contained in each of the Contract Documents.

Signatures Appear on Following Page

CONTRACT 2025-039

Fairfax County Water Authority
8570 Executive Park Avenue
Fairfax, Virginia 22031

Procurement Contact:
Frances Tuangco
Phone: 703-289-6263
Email: ftuangco@fairfaxwater.org

By: _____
Name: Jamie Bain Hedges, P.E.
Title: General Manager
Date: 3/10/2025

PVS Chemical Solutions, Inc.
10900 Harper Avenue
Detroit, MI 48213

Contractor Contact:
Bill Militello
Phone: 716-825-5762
Email: bmilitello@pvschemicals.com

By: _____
Name: Jeffrey A. Daniel
Title: Vice President
Date: March 4, 2025

Attachments:

Attachment A	Specifications
Appendix A	Chemical Requirements
Attachment B	Pricing Schedule
Attachment C	Standard Terms and Conditions
Attachment D	Certificate(s) of Insurance

Attachment A

Specifications

1. Chemical Specifications

The Contract Year (CY) 2025 chemical specifications are contained in Appendix A: Chemical Requirements.

2. Spot Testing of Chemicals at Time of Delivery

FW reserves the right to have chemical shipments tested by an independent laboratory. Failure of a shipment to comply with the specification will be sufficient reason for rejection of the shipment. Should a shipment be rejected, it will be returned to the Contractor, who shall pay all handling and shipping charges in both directions. Upon notice of rejection of a shipment, the Contractor shall furnish another shipment immediately, which shall comply in all respects with the prescribed analysis. In the event the Contractor is unable to promptly furnish the chemical of acceptable quality, the jurisdiction will obtain the chemical elsewhere. Any additional cost incurred by the jurisdiction will be charged to the Contractor either as a credit against an outstanding invoice or as an invoice for immediate reimbursement.

3. Shipping

Contractor shall ship chemicals in accordance with standard commercial practices and all Federal, State and local laws and regulations. Contractor shall be solely responsible for the shipment until delivery at the designated facility.

4. Weight at Time of Delivery

FW reserves the right to weigh the shipments on their scales before and after delivery. In order to reduce the time and money required to resolve and adjust for minor weight differences, the net weight shown on the Contractor's weight ticket will be accepted unless it exceeds the net weight shown on the FW's ticket by more than 200 lbs. If the net weight shown on the Contractor's ticket exceeds the net weight on FW's ticket by more than 200 lbs., the net weight shown on FW's ticket will be used.

5. Virginia Department of Health Requirements

The Virginia Department of Health (VDH) requires that all containers are labeled in accordance with all applicable federal regulations. The Contractor is responsible for ensuring that state and federal regulatory compliance is maintained for any chemical and related container furnished under the contract. Failure to maintain compliance as specified in this paragraph or elsewhere in the contract may result in termination of the contract.

6. This Section Intentionally Deleted

7. **Estimated Quantities**

The quantities specified herein are estimates based upon current consumption and projected demand for the next contract year and shall not be construed to represent an amount which FW shall be obligated to purchase. The exact amounts ordered may be more or less subject to the actual needs of FW. Contractor agrees that FW will only be responsible for the amounts actually ordered.

8. **Priority Customer**

Contractor understands and acknowledges that FW provides services that are essential to the health and welfare of the public. Failure of a Contractor to provide chemicals under any Contract issued pursuant to the terms, conditions, and specifications contained in this Contract may jeopardize FW's ability to provide timely services, which may affect the health and welfare of the public served by FW. In the event of product shortages at any level of the production to delivery chain, Contractor agrees and affirms that FW will be given the earliest possible notice and the highest priority for allocation of the item(s) listed herein. To the extent that the Contractor must prioritize and/or allocate delivery among its customers, the requirements of FW will be honored before chemicals are provided to a customer with no obligations with regard to the public health and welfare. To the extent that chemicals are insufficient to meet the requirements of all of the clients who are responsible for the health and welfare of the public, the Chemicals will be allocated in a manner deemed to be fair and reasonable to all such clients.

9. **Warranty**

A. Contractor warrants that chemicals provided as a result of this Contract:
   1. Conform to the most current NSF 60/61 and/or ANSI/AWWA standards for water and/or wastewater chemicals,
   2. Conform in all respects to the chemical specifications contained herein,
   3. Are suitable for a public drinking water supply and/or waste water treatment,
   4. Are free from adulterants or impurities of any kind, and
   5. In addition to any other warranties expressed or implied, the specific warranties of Merchantability and Fitness for a Particular Purpose apply to all orders placed as a result of this Contract.

B. If at any time, any chemical supplied by the Contractor fails to conform to the specifications, then the Contractor shall, at no additional cost to FW, promptly replace any such chemical. If the Contractor is unable to remedy such nonconformity during a time period consistent with the requirements, FW may undertake to remedy the nonconformity and in such a case the Contractor shall reimburse FW for any costs thereby incurred.

10. **This Section Intentionally Deleted**

11. This Section Intentionally Deleted

12. Delivery

FW will establish its own delivery schedule based upon its own requirements and the Contractor's specified time to deliver after receipt of an order. Failure to honor delivery schedules (including partial deliveries) may result in damages to FW. FW may at their own option and convenience cure late, partial, or missing deliveries in any manner that best resolves the shortage. The Contractor is liable for any and all costs incurred by FW due to such failures and FW may recover any additional losses by deducting the outstanding amount from unpaid invoices, submitting an invoice to the Contractor, or any other method that best suits FW.

13. Delivery Requirements

A. All deliveries shall be between the hours 7:30 a.m. and 2:00 p.m., Monday through Friday unless requested by the Contractor and approved by the Site. As each delivery leaves the Contractor's yard, the Site is to be advised as to the driver's name and trailer number and estimated arrival time. Upon arrival, the driver will be required to show photo ID and the trailer number will be checked and verified before delivery is allowed on site. Failure to follow these procedures may result in a refusal of the delivery at the Contractor's risk and expense.
B. Contractor guarantees delivery of chemicals within the delivery schedule. Failure to deliver within the time specified, or as amended in writing by FW, or failure to make replacements of rejected chemicals, shall constitute a breach of contract. In the event of such breach, FW has the option to declare the Contractor in default and claim damages.
C. Contractor shall comply with all regulations for tank/truck unloading as established by the US DOT, as well as any State and local requirements for tank/truck unloading.
D. Chemical containers supplied by the Contractor shall be the sole responsibility of the Contractor at all times and in any circumstance. FW will not pay demurrage or other charges unless FW specifically requests that the Contractor leave the container beyond the delivery date.
E. The control number shall be provided to the Site at the same time as the other required delivery information. A broken seal prior to acceptance of the batch by the utility may be cause for refusal of the delivery.
F. All deliveries shall be accompanied by a receiving ticket under this contract that shall be supported by:

- Contractor's Name,
- Purchase Order and Call Order Number (release number),
- Date of Delivery and Date of Order,
- Materials furnished,
- Quantity, unit price and extension of each item, and total, in accordance with the contract,
- Name of authorized representative ordering the supplies.
- Certificate of Analysis, and

- Adequate certified documentation to convert weight ticket to contract unit of measure.

G. The Contractor's delivery ticket will be signed in duplicate by FW's designated representative. One copy will be given to the employee signing for the delivery and the second copy will be retained by the Contractor.
H. If required by FW, the Contractor will call the Site prior to delivery and shall email the Project Officer a copy of the driver's license, and a Chemical Shipping Itinerary sheet, which must include the manifest number and the above referenced information.
I. 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. If delivery is not made on time, the jurisdiction shall have the right to procure the material on the open market. Any additional costs incurred by FW as a result of the Contractors failure to provide timely delivery will be at the sole risk and expense of the Contractor.
J. FW reserves the unilateral right to reject any late or partial delivery. Any related costs shall be borne by the Contractor.
K. FW has the right to refuse delivery if chemical packaging is damaged, appears to have been tampered with, or is deemed to be a safety hazard or potential safety hazard.
L. Contractor(s) shall comply with all regulations for tank / truck routing and unloading as established by the US DOT, as well as any State and local requirements for tank / truck unloading.
M. All chemicals shall be delivered F.O.B. delivered. All cost for shipping, handling, insurance and related delivery charges must be included in the unit price for each item.
N. Delivery Free period shall be 5 hours for Powdered Activated Carbon and 2 hours for all other chemicals.
O. Hours of delivery will be determined by each jurisdiction.
P. Regardless of the reason, the Contractor shall be solely responsible for spills, and or delivering chemicals to the wrong storage locations/tanks. Any and all cost associated with remediation, including, but not limited to Hazmat, site cleanup, and tank cleaning etc., shall be the responsibility of the contractor.
Q. Contractors shall provide and maintain any and all special tools required to load or dispense chemicals. If required, contractor shall provide pre-set torque wrenches; and will be solely responsible for damages, leaks, etc. caused by malfunctioning or improperly set tools.
R. Delivery vehicles must be in good working order and compliant with all Federal, State, and local transportation laws and regulations. If Contractor intends to subcontract delivery to a third-party carrier, the Contractor must submit the name of the carrier and a complete list of all state and interstate violations for which the subcontractor, its drivers and or its vehicles have been cited within the past 2 years.

14. Inspection

FW reserves the right to inspect and test any chemical at any time during or after delivery. No inspection, test, approval or acceptance of any Commodity shall relieve Contractor from liability for defects or other failure to satisfy the requirements set forth in the Contract Documents.

15. Chemical Manufacturers or Distributors Only

Contractor's primary business should be the sale or distribution of chemicals.

End of Attachment A

Appendix A

Chemical Requirements

1. **Chemical Name**

Contract Item No.	Chemical
1	Sodium Bisulfite, Bulk, Gallons

2. **Delivery Addresses**

Fairfax Water (FW)

Site B: Griffith Treatment Facility
9600 Ox Road
Lorton, VA 22079

3. **Requirements**

A. GENERAL SPECIFICATIONS

Liquid Sodium Bisulfite is used as a dechlorinating agent or oxygen scavenger. Where it is used as a direct additive in the treatment of potable water, the chemical shall be certified as suitable for contact with or treatment of drinking water by an accredited certification organization in accordance with NSF/ANSI 60, Drinking Water Treatment Chemicals—Health Effects.

B. QUALITY/CONTENT

The product furnished shall have product content of 38% liquid sodium bisulfite free of adulterants or impurities which might cause hazards or stoppage in the operation of standard water and wastewater treatment equipment.

C. PACKAGING AND SHIPPING

Bulk – The contractor shall deliver liquid in tank trucks and offload it into storage tanks on located at each site.

End of Appendix A

Attachment B

Pricing Schedule

Contract Item No.	Description	Unit of Measure	Unit Price
1	Sodium Bisulfite, Bulk, Gallons	Gallon	$1.88

End of Attachment B

Attachment C

Standard Terms and Conditions

1. **Drug-Free Workplace**

During the Contract term , Contractor agrees to (i) provide a drug-free workplace for Contractor 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 Contractor 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 Contractor that 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, subconsultant, or vendor. For purposes hereof, a "drug-free workplace" shall mean the site for the performance of the Work contemplated hereby.

2. **Non-Discrimination by Contractor**

Contractor covenants and agrees as follows:

A. During the Term, Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of Contractor. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

B. Contractor, in all solicitations or advertisements for employees placed by or on behalf of Contractor, will state that Contractor is an equal opportunity employer.

C. Notices, advertisements, and solicitations placed in accordance with federal laws, rules, or regulations shall be deemed sufficient for the purpose of meeting the requirements of this Section.

Contractor will include the provisions of the foregoing Sections 3.2(A), (B), and (C) in every subcontract, subconsulting agreement, and purchase order over $10,000, in order that the provisions above will be binding upon each subcontractor, subconsultant, and vendor.

3. **Non-Discrimination by FW**

FW represents and warrants that it does not discriminate against faith-based organizations.

4. **No Employment of Unauthorized Aliens**

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

5. **Right of Audit**

Contractor covenants and agrees to retain all books, records, and other documents (electronic or otherwise) relating this Contract (the "Project Records") for at least five (5) years after final payment hereunder. Project Records will be deemed to exclude books, records, and other documents if and to the extent they are protected by the attorney-client privilege. FW and its authorized agents (the "Auditing Parties") shall have full access to and the right to examine the Project Records upon written request at any time, and from time to time, during the term of this Contract and for a period of five (5) years thereafter. Contractor hereby covenants and agrees that, within 10 days after it receives written notice from an Auditing Party, it will make the Project Records available for inspection and copying by such Auding Party during Contractor regular business hours, with copies being provided at a reasonable cost payable by the Auditing Party. Any failure on the part of Contractor to comply with the provisions of this Section will constitute a breach of the Contract and, regardless of whether such failure occurs during the term of the Contract, or within the five-year period commencing on the date of final payment hereunder, will constitute sufficient grounds for debarment Contractor. Contractor hereby agrees that it will pay and be responsible for all costs and expenses (including court costs and attorneys' fees) incurred by an Auditing Party in enforcing this provision.

6. **Dispute Resolution Process**

Contractual claims, whether for money or for other relief, will be submitted in writing to FW not later than 60 days after final payment; provided however, that written Notice of Contractor intention to file such claim must:

A. Be delivered to the attention of FW's Procurement Manager, at the address shown in the Notice provisions of the Contract, not later than five days after the occurrence or of the beginning of the Work upon which the claim is based; and
B. Contain a reasonably detailed description of the basis of the claim.

Contractor failure to comply with the foregoing requirements will result in a waiver of the claim. FW will make a written decision upon any such claim within 60 days after submittal of the claim. Contractor will not institute legal action prior to receipt of FW's decision on the claim unless FW fails to render such decision within 90 days after submittal of the claim. The decision of FW will be final, unless Contractor initiates legal action as provided in § 2.2-4364 of the Virginia Code. Failure of FW to render a decision within 90 days will not result in Contractor 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 Contractor right to immediately institute legal

action. No administrative appeals procedure pursuant to § 2.2-4365 of the Virginia Code has been established for contractual claims under this Contract.

7. **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. The Contractor agrees to use commercially reasonable efforts to provide assistance to FW to pursue any such claims.

8. **Non-Collusion**

The Contractor guarantees the proposal is not a product of collusion with any other offeror or supplier of goods or services, and no effort has been made to fix the proposal price of any offeror or to fix any overhead, profit or cost estimate of any proposal price.

9. **Arrearage**

During the term of the Contract, the Contractor shall not be 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.

10. **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 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

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.

11. 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 following 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 Procurement Contact identified on the cover page. Contract changes shall be in writing and shall be on official FW Procurement 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 Officer.

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 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 Procurement 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.

12. Contractor Responsibilities

A. The Contractor shall be responsible for all products and/or services as required by this Contract. The use of subcontractors is prohibited unless:

1. A request to include a subcontractor is included in the Bid; and,
2. The Bidder receives written approval to use a subcontractor prior to, or as part of the formal contract between the parties; or,
3. The Contractor receives approval to use a subcontractor if FW at its sole discretion determines subcontractor approval would expedite the fulfillment of the products/services as required by this Contract.

B. Even when properly authorized by FW, the use of a subcontractor does not relieve the Contractor of liability under the Contract. Subcontractors will be approved only when both the Contractor and the subcontractor meet the qualifications to provide quality control and assurance of the subcontracted work.

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 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 Officer.

13. Delivery Requirements

In the case of contracts that require delivery to FW:

A. Contractor guarantees delivery of Contract items within the timeframe specified herein or as indicated in the Contractor's Bid Submission Document. 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. National Terrorism Advisory System: If the National Terrorism Advisory System places the water / wastewater industry on a Bulletin, Elevated Alert, or Imminent Alert, all deliveries shall be between the hours 7:30 a.m. and 2:00 p.m., Monday through Friday unless specially requested by the Site. As each delivery leaves the Contractor yard, the Site is to be advised as to the driver's name and trailer number and estimated arrival time. Upon arrival, the driver will be required to show photo ID and the trailer number will be checked and verified before delivery is allowed on site. Failure to follow these procedures may result in a refusal of the delivery at the Contractor risk and expense. FW may add additional screening requirements if an Elevated Alert or Imminent Alert is in place.

14. 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 this Contract, are proper and in accordance therewith.

15. Examination of Records

Contractor agrees that during the Contract term, 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 this Contract, 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.

16. Formation of Contract

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. Any Change Orders or Amendments;
2. All Purchase Orders;
3. Any Addenda to the IFB;
4. The IFB (including all Appendices and Attachments hereto); and
5. The Bidder's completed Bid Submission Document (including any drawings and submittals).

B. The Contract to be entered into as a result of the 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 the 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.

17. Indemnification and Responsibility for Claims and Liability

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 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 obligations under this Contract.

D. 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.

18. 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 failure to comply with the requirements of the Contract; or (c) both of the foregoing clauses (a) and (b).

19. Pass-through Price Increases and Decreases

For annually renewable Contracts:

A. Increases: FW recognizes that the Contractor 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 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 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 subsection 1.20 above.
   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.

20. 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 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.
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 one.
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 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.

21. <u>Payment</u>

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 FEIN. Invoices are not to be sent to the Contract Project Officer, 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 Officer.

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.

22. Precedence of Terms

These General Terms and Conditions shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

23. Price Firm Period

Bid prices shall be firm and fixed and not be subject to change during the Contract Term.

24. Price and Title

All prices are for Commodities delivered F.O.B. the facility set forth on the Purchase Order and shall represent the entire cost to FW. Title for such Work shall pass to FW upon receipt and acceptance thereof at FW's designated facility.

25. Purchase and Sale Transaction

Any transaction for the purchase and sale of any Commodity shall be effected 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.

26. 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.

27. 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.

28. 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.

29. Warranty

A. The Contractor warrants that, unless otherwise specified, all materials in the work under the Contract shall be in accordance with the Contract documents. The Contractor further warrants that all workmanship shall be of the highest quality and in accordance with Contract documents and shall be performed by persons qualified at their respective trades.

B. Any implied warranties, including but not limited to the warranty for "Merchantability and Fitness for A Particular Purpose" cannot be waived and are a mandatory part of this solicitation and any ensuing Contract.

C. Should any defect or non-conformance with the foregoing warranties be noted by FW, the Project Officer will notify the Contractor of such defect or non-conformance. Notification will state either (1) that the Contractor shall replace or correct, or (2) FW does not require replacement or correction, but an equitable adjustment to the Contract price will be negotiated. If the Contractor is required to correct or replace, it shall be at no cost to FW and shall be subject to all provisions of this clause to the same extent as materials initially delivered. If the Contractor fails or refuses to replace or correct the deficiency, the office issuing the purchase order may have the materials corrected or replaced with similar items and charge the Contractor the costs occasioned thereby or obtain an equitable adjustment in the Contract price.

D. Materials and work not conforming to these warranties shall be considered defective.

E. This warranty of materials and workmanship is separate and independent from and in addition to any of the Contractor other guarantees or obligations in this Contract.

30. 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.

31. Insurance

A. 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.

B. 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 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 performance under this Contract.

C. 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.

D. 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

E. 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 $500,000 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 use of motor vehicles or other equipment and must cover both on-site and off-site operations.

F. Nothing contained herein will be deemed to operate as a waiver of FW's sovereign immunity under the law.

32. <u>Force Majeure</u>

If a delivery is delayed by Act of God, terrorism, war, embargo, fire, or explosion not caused by the negligence or intentional act of the Contractor or his subcontractors or supplier(s), a reasonable extension of time as FW deems appropriate may be granted. Upon receipt of a written request and justification for any extension from the Contractor, FW may in its sole discretion (i) extend the time for delivery of the Commodity; (ii) suspend the Contract in whole or in part and obtain one

or more of the Commodities elsewhere for a time, or (iii) terminate the Contract; all without liability to Contractor on the part of FW, as the case may be. Contractor's request and justification shall be subject to such substantiation and further inquiries as FW may require.

33. Time Is Of The Essence

Time is of the essence: All chemicals shall be delivered within the time or times specified on the Contractor's Bid Submission Document or otherwise set forth in the applicable Purchase Order. Notwithstanding the foregoing, the Contractor shall not be deemed to have breached the terms and conditions of the contract Documents to the extent any delay is due to circumstances beyond its reasonable control and without the fault or negligence of the Contractor provided that the Contractor first shall have provided Fairfax Water with written notice (to include e-mail) of any such delay within five days after the occurrence of events or circumstances causing the delay. After prior written warning to the Contractor, FW may declare the Contractor in default for unacceptable delays. If such a declaration is made, FW reserves the unilateral right to cure the default by obtaining the services of a qualified Contractor to complete the project and charge any additional or increased costs to the Contractor.

34. Contractor's Compliance and Safety Program

A. The Contractor shall comply with all applicable Federal, State, and local safety programs, regulations, standards, and codes, to include though not limited to:

1. The Virginia Uniform Statewide Building Code,
2. Building Officials & Code Administrators (BOCA) codes (together with adopted International Codes),
3. Virginia Department of Health (VDH) regulations,
4. Virginia Department of Environmental Quality (DEQ) regulations,
5. Virginia-OSH (VOSH) regulations, and
6. National Electric Code (NEC).

35. 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.

End of Attachment C