



## **GENERAL TERMS, CONDITIONS AND INSTRUCTIONS TO BIDDERS AND CONTRACTORS**

These General Terms, Conditions and Instructions to Bidders and Contractor (hereinafter referred to as the “General Conditions”) shall apply to all purchases and be incorporated into and be a part of each Solicitation (as defined below) and every Contract (as defined below) awarded by the City of Franklin, a political subdivision of the Commonwealth of Virginia (hereinafter referred to as the “the City”). Bidders, Offerors and Contractors or their authorized representatives are expected to inform themselves fully as to these General Conditions before submitting Bids or Proposals to and/or entering into any Contract with the City: failure to do so will be at the Bidder’s/Contractor’s own risk and except as provided by law, relief cannot be secured on the plea of error.

Subject to all Federal, State and local laws, policies, resolutions, regulations, rules, limitations and legislation, including the City’s Procurement Policies and Procedures, Bids or Proposals on all Solicitations issued by City will bind Bidders or Offerors, as applicable, and Contracts will bind Contractors, to all applicable terms, conditions, instructions, rules and requirements herein set forth unless otherwise SPECIFICALLY set forth by the City in writing in the Solicitation or Contract. All provisions of these General Conditions are material to any contract between the City and a Contractor.

### **INTRODUCTION**

1. VIRGINIA PUBLIC PROCUREMENT ACT AND ETHICS IN PUBLIC CONTRACTING: The Virginia Public Procurement Act of Virginia Code §§ 2.2-4300 et seq. (hereinafter the “VPPA”) is incorporated herein by reference. Nothing in these General Conditions is intended to conflict with the VPPA and in case of any conflict, the VPPA controls. Specifically, the provisions of Article 6 of the VPPA (Virginia Code §§ 2.2-4367 through 2.2-4377) relating to ethics in contracting, shall be applicable to all Solicitations and Contracts solicited or entered into by the City. By submitting their Bids or signing any Contract, all Bidders and Contractors certify that they have not violated any of the provisions of Article 6 of the VPPA, including, but not limited to, that their Bids are made without collusion or fraud and

that they have not offered or received any kickbacks or inducements.

2. DEFINITIONS: The definitions of Virginia Code §§ 2.2-4301, 2.2-4302.1 and 2.2-4302.2 are specifically incorporated herein by reference and as used in these General Conditions, whether capitalized or not, any of such defined terms have the same meaning as such terms have under the VPPA: such defined terms include: “Affiliate”, “Best Value”, “Business”, “Competitive Negotiation”, “Competitive Sealed Bidding”, “Construction”, “Construction Management Contract”, “Design-Build Contract”, “Employment Services Organization”, “Goods”, “Informality”, “Job Order Contracting”, “Multiphase Professional Services Contract”, “Nonprofessional Services”, “Potential Bidder or Offeror”, “Professional Services”, “Public Body”, “Public Contract”, “Responsible Bidder or Offeror”, “Responsive Bidder”, “Reverse Auctioning” and “Services”. Additionally, as used in these General Conditions, the following terms, whether capitalized or not, have the following meanings:

a. Bid/Proposal: The offer of a Bidder or Offeror to provide specific Goods or Services at specified prices and/or other conditions specified in the Solicitation. The term “Bid” is used throughout these General Conditions and where appropriate includes the term “Proposal” or any modifications or amendments to any Bid or Proposal.

b. Bidder/Offeror/Vendor: Any individual(s), company, firm, corporation, partnership, or other organization bidding or offering on any Solicitation issued by the City and/or offering to enter into Contracts with the City. The term “Bidder” is used throughout these General Conditions and where appropriate includes the term “Offeror” and/or “Vendor”.

c. Contract: Any contract to which the City will be a party.

d. Contractor: Any individual(s), company, firm, corporation, partnership, or other organization to whom an award is made by the City or who enters into any contract to which the City is a party.

e. City: The City of Franklin, a political subdivision of the Commonwealth of Virginia, including where applicable all agencies and departments of the City.

f. City Administrator: The City Manager of the City of Franklin and has signatory authority to bind the City to all contracts.

g. City Attorney: The City Attorney of the City of Franklin.

h. Purchasing Agent: The Director of Finance is the City's Purchasing Agent and is responsible for the purchasing activity of the City of Finance.

i. General Terms, Conditions and Instructions to Bidders and Contractors (also referred to herein as the "General Conditions"): These General Terms, Conditions and Instructions to Bidders and Contractors shall be attached to and made a part of all Solicitations by the City and all Contracts to which the City is party.

j. His: Any references to "his" shall include his, her, their, or its as appropriate.

k. Invitation to Bid (also referred to herein as an "IFB"): A request which is made to prospective Bidders for their quotation on Goods or Services desired by the City. The issuance of an IFB will contain or incorporate by reference the General Conditions and the other specifications and contractual terms and conditions applicable to the procurement.

l. Purchasing Agent: The Purchasing Agent employed by the City and to whom Bidders/Contractors can submit questions relating to any Bid or Contract.

m. Request for Proposal (also referred to herein as a "RFQ"): A request for an offer from prospective Offerors which shall indicate the general terms which are sought to be procured from Offerors. The RFQ will specify the evaluation factors to be used and will contain or incorporate by reference the General Conditions and other applicable contractual terms and conditions, including any unique capabilities or qualifications that will be required of the Contractor.

n. Solicitation: The process of notifying prospective Bidders or Offerors that the City wishes to receive Bids or Proposals on a set of requirements to provide Goods or Services. "Solicitation" includes any notification of the City requirements may consist of public advertising (newspaper, City's website, or other electronic notification), the mailing of notices of Solicitation, any Invitation for Quotes ("IFQ"), Initiations to Bid ("IFB"), or Requests for Proposal ("RFQ"), the public posting of notices, issuance of an Open Market Procurement ("OMP"), or telephone calls to prospective Bidders or Offerors.

o. State: The Commonwealth of Virginia.

3. AUTHORITY: The Purchasing Agent shall serve as the principal public purchasing official for the City, and shall be responsible for the procurement of goods, services, insurance, and construction in accordance with the City's Procurement Policies and Procedures. The Purchasing Agent has responsibility and authority for negotiating, placing and when necessary,

modifying every Solicitation and purchase order issued by the City. The City Administrator has signatory authority to bind the City to all contracts made lawfully.

No other City officer or employee is authorized to order supplies or Services, enter into purchase negotiations or Contracts, or in any way obligate the City for any indebtedness. Any purchase or contract made which is contrary to such authority shall be of no effect and void and the City shall not be bound thereby.

## **CONDITIONS OF BIDDING**

4. **COMPETITION INTENDED:** It is the City's intent to encourage and permit open and competitive bidding in all Solicitations. It shall be the Bidder's responsibility to advise the City in writing if any language, requirement, specification, etc., or any combination thereof, stifles competition or inadvertently restricts or limits the requirements stated in a Solicitation to a single source. The City must receive such notification not later than seven (7) business days prior to the deadline set for acceptance of the Bids. In submitting a Bid, the Bidder guarantees that he or she has not been a party with other Bidders to an agreement to bid a fixed or uniform price. Violation of this implied guarantee shall render the Bid of any Bidder involved void.

5. **DISCRIMINATION PROHIBITED:** Pursuant to Virginia Code § 2.2-4310, the City does not discriminate against Bidders, Offerors or Contractors because of race, religion, color, sex, national origin, age, disability, status as a service disabled veteran, or any other basis prohibited by state law relating to discrimination in employment. Whenever solicitations are made, the City shall include businesses selected from a list made available by the Department of Small Business and Supplier Diversity. Pursuant to Virginia Code § 2.2-4343.1, the City does not discriminate against "faith-based organizations", being a religious organization that is or applies to be a contractor to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Reconciliation Act of 1996, P.L. 104-193.

6. **CLARIFICATION OF TERMS:** Pursuant to Virginia Code § 2.2-4316, if any Bidder has questions or comments about the specifications or other Solicitation documents, the prospective Bidder should contact the City no later than seven (7) business days prior to the date set for the opening of Bids or receipt of Proposals. Any revisions to the Solicitation will be made only by written addendum issued by

the City. Notifications regarding specifications may not be considered if received in less than seven

(7) business days of the date set for opening of Bids/receipt of Proposals.

7. **MANDATORY USE OF CITY FORM AND TERMS AND CONDITIONS:** Unless otherwise specified in the Solicitation, all Bids must be submitted on the forms provided by the

City, including but not limited to, a Cover Sheet or Pricing Schedule, if applicable, properly signed in ink in the proper spaces and submitted in a sealed envelope or package. Unauthorized modification of or additions to any portion of the Solicitation may be cause for rejection of the Bid. However, the City reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject any Bid or Proposal which has been modified. These General Conditions are mandatory provisions of all Solicitations and all Contracts of the City.

8. **LATE BIDS & MODIFICATION OF BIDS:** Any Bid or modification thereto received at the office designated in the Solicitation after the exact time specified for receipt of the Bid is considered a late Bid or modification thereof. The City is not responsible for delays in the delivery of the mail by the U.S. Postal Service, private carriers, or the inter-office mail system. It is the sole responsibility of the Bidder to ensure their Bid reaches City by the designated date and hour. The following rules apply to all Bids submitted to the City:

a. The official time used in the receipt of Bids/Proposals is that time on the automatic time stamp machine in the Finance Department;

b. Late Bids or modifications thereof will be returned to the Bidder UNOPENED, if Solicitation number, due date and Bidder's return address is shown on the container;

c. If a Bid is submitted on time, however a modification thereto is submitted after the due date and time, then the City in its sole discretion may choose to consider the original Bid except that the City may not consider such original Bid if the Bid is withdrawn by the Bidder pursuant to Section 9 below; and

d. If an emergency or unanticipated event or closing interrupts or suspends the City's normal business operations so that Bids cannot be received by the exact time specified in the Solicitation, then the due date/time specified for receipt of Bids will be deemed to be extended to the same time of day specified in the Solicitation on the first workday on which normal City business operations resume.

9. **WITHDRAWAL OF BIDS:**

a. Pursuant to Virginia Code § 2.2-4330, a Bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his Bid from consideration if the price bid was substantially lower than the other Bids due solely to a mistake in the Bid, provided the Bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a Bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the Bid sought to be withdrawn.

If a Bid contains both clerical and judgment mistakes, a Bidder may withdraw his Bid from consideration if the price bid would have been substantially lower than the other Bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a Bid that shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the Bid sought to be withdrawn. The Bidder shall give notice in writing to the City of his or her claim of right to withdraw his or her Bid within two (2) business days after the conclusion of the Bid opening procedure and shall submit original work papers with such notice.

b. A Bidder for a Contract other than for public construction may request withdrawal of his or her Bid under the following circumstances:

i. Bids may be withdrawn on written request from the Bidder received at the address shown in the Solicitation prior to the time of opening.

ii. Requests for withdrawal of Bids after opening of such Bids but prior to award shall be transmitted to the City, in writing, accompanied by full documentation supporting the request. If the request is based on a claim of error, documentation must show the basis of the error. Such documentation may take the form of supplier quotations, Bidder work sheets, etc. If Bid bonds were tendered with the Bid, the City may exercise its right of collection.

c. No Bid may be withdrawn under this Section 9 when the result would be the awarding of the Contract on another Bid of the same Bidder or of another Bidder in which the ownership of the withdrawing Bidder is more than five percent (5%).

d. If a Bid is withdrawn under the authority of this Section 9 the lowest remaining Bid shall be deemed to be the low Bid.

e. No Bidder who, is permitted to withdraw a Bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the Contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn Bid was submitted.

f. The City shall notify the Bidder in writing within five (5) business days of its decision regarding the Bidder's request to withdraw its Bid. If the City denies the withdrawal of a Bid under the provisions of this Section 9, it shall State in such notice the reasons for its decision and award the Contract to such Bidder at the Bid price, provided such Bidder is a responsible and

responsive Bidder. At the same time that the notice is provided, the City shall return all work papers and copies thereof that have been submitted by the Bidder.

g. Under these procedures, a mistake shall be proved only from the original work papers, documents and materials delivered as required herein. The work papers, documents and materials submitted by the bidder shall, at the bidder's request, be considered trade secrets or proprietary information subject to the conditions of subsection F of Virginia Code § 2.2-4342.

10. **ERRORS IN BIDS:** When an error is made in extending total prices, the unit Bid price will govern. Erasures in Bids must be initialed by the Bidder. Carelessness in quoting prices, or otherwise in preparation of the Bid, will not relieve the Bidder. Bidders/Offerors are cautioned to recheck their Bids for possible error. Errors discovered after public opening cannot be corrected and the Bidder will be required to perform if his or her Bid is accepted.

11. **IDENTIFICATION ON BID ENVELOPE:** All Bids, Proposals and requested copies thereof submitted to the City shall be in a separate envelope or package, sealed and identified with the following information clearly marked on the outside of the envelope or package:

- a. Addressed as indicated on page 1 of the solicitation;
- b. Solicitation number;
- c. Title;
- d. Bid due date and time;
- e. Bidder's name and complete mailing address (return address); and
- f. Pursuant to Virginia Code § 2.2-4311.2, the Bidder's identification number issued by the State Corporation Commission, or if the bidder is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law shall include in its bids or proposal a statement describing why the bidder or offeror is not required to be so authorized.

If a Bid is not addressed with the information as shown above, the Bidder takes the risk that the envelope may be inadvertently opened and the information compromised, which may cause the Bid to be disqualified. Bids may be hand delivered to the designated location in the City's offices. No other correspondence or other Proposals/Bids should be placed in the envelope. Any Bidder or Offeror that fails to provide the information required in (f) above shall not receive an award unless a waiver is specifically granted by the City Administrator.

12. **ACCEPTANCE OF BIDS:** Unless otherwise specified, all formal Bids or Proposals submitted shall be valid for a minimum period of one hundred twenty (120) calendar days

following the date established for opening or receipt, respectively, unless extend by mutual agreement of the parties. At the end of the one hundred twenty (120) calendar days the Bid/Proposal may be withdrawn at the written request of the Bidder. Thereafter, unless and until the Proposal is withdrawn, it remains in effect until an award is made or the Solicitation is canceled by the City. The City may cancel any Solicitation at any time by notice of such cancelation to the Bidders.

13. **COMPLETENESS:** To be responsive, a Bid must include all information required by the Solicitation.

14. **CONDITIONAL BIDS:** Conditional Bids are subject to rejection in whole or in part.

15. **RESPONSE TO SOLICITATIONS:** In the event a Bidder cannot submit a Bid on a Solicitation, the Bidder is requested to return the Solicitation cover sheet with an explanation as to why the Bidder is unable to Bid on these requirements, or if there be no cover sheet for the Solicitation a letter to the City explaining the same.

16. **BIDDER INTERESTED IN MORE THAN ONE BID AND COLLUSION:** More than one bid from an individual, firm, partnership, corporation, or association under the same or different name will be rejected. Reasonable grounds for believing that a bidder is interested in more than one bid for the work contemplated will cause rejection of all bids in which the bidder is interested. Any or all bids may be rejected if there is any reason for believing that collusion exists among the bidders. Participants in such collusion may not be considered in future bids for the same work. Each bidder, as a condition of submitting a bid, shall certify that he is not a party to any collusive action as herein defined. However, a party who has quoted prices on work, materials, or supplies to a Bidder is not thereby disqualified from quoting prices to other Bidders or firms submitting a Bid directly for the work, materials, or supplies.

17. **BID OPENING:** Pursuant to Virginia Code § 2.2-4301, all Bids received in response to an IFB will be opened at the date, time and place specified, and announced publicly, and made available for inspection as provided in Section 21 of these General Conditions. Proposals received in response to an RFQ will be made available for inspection as provided in Section 21 of these General Conditions.

18. **TAX EXEMPTION:** The City is exempt from the payment of any federal excise or any Virginia sales tax. The price bid must be net, exclusive of taxes. Tax exemption certificates will be furnished if requested by the Bidder.

19. **DEBARMENT STATUS:** By submitting their Bids, Bidders certify that they are not



currently debarred from submitting Bids on Contracts by the City, nor are they an agent of any person or entity that is currently debarred from submitting Bids or Proposals on Contracts by the City or any agency, public entity/locality or authority of the State.

20. NO CONTACT POLICY: No Bidder shall initiate or otherwise have contact related to the Solicitation with any City representative or employee, other than the Purchasing Agent, after the date and time established for receipt of Bids. Any contact initiated by a Bidder with any City representative, other than the Purchasing Agent, concerning this Solicitation is prohibited and may cause the disqualification of the Bidder.

21. VIRGINIA FREEDOM OF INFORMATION ACT: As provided under Virginia Code § 2.2-4342, all proceedings, records, Contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act of Virginia Code §§ 2.2-3700 et seq., except:

a. Cost estimates relating to a proposed procurement transaction prepared by or for the City shall not be open to public inspection;

b. Any competitive sealed bidding Bidder, upon request, shall be afforded the opportunity to inspect Bid records within a reasonable time after the opening of Bids but prior to award, except in the event that the City decides not to accept any of the Bids and to reopen the Contract. Otherwise, Bid records shall be open to public inspection only after award of the Contract;

c. Any competitive negotiation Offeror, upon request, shall be afforded the opportunity to inspect Proposal records within a reasonable time after the evaluation and negotiations of Proposals are completed but prior to award except in the event that the City decides not to accept any of the Proposals and to reopen the Contract. Otherwise, Proposal records shall be open to the public inspection only after award of the Contract;

d. Any inspection of procurement transaction records under this Section 21 shall be subject to reasonable restrictions to ensure the security and integrity of the records;

e. Trade secrets or proprietary information submitted by a Bidder, Offeror or Contractor in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the Bidder, Offeror or Contractor must invoke the protections of this Section 21 prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and State the reasons why protection is necessary; and

f. Nothing contained in this Section 21 shall be construed to require the City, when procuring by “competitive negotiation” (RFQ), to furnish a Statement of reasons why a particular Proposal was not deemed to be the most advantageous to the City.

22. CONFLICT OF INTEREST: Bidder/Contractor certifies by signing any Bid/Contract to/with the City that no conflict of interest exists between Bidder/Contractor and City that interferes with fair competition and no conflict of interest exists between Bidder/Contractor and any other person or organization that constitutes a conflict of interest with respect to the Bid/Contract with the City.

## **SPECIFICATIONS**

23. OMISSIONS OR DISCREPANCIES: Any items or parts of any equipment listed in a Solicitation which are not fully described or are omitted from such specification, and which are clearly necessary for the completion of such equipment and its appurtenances, shall be considered a part of such equipment although not directly specified or called for in the specifications. Should a Bidder find a discrepancy or ambiguity in, or an omission from, the Solicitation, including the drawings and/or specifications, he or she shall so notify the City within twenty-four (24) hours of noting the discrepancy, ambiguity or omission and in any event no less than five (5) days prior to the date set for the opening of Bids. If necessary, the City will send a written addendum for clarification to all Bidders no later than three

(3) days before the date set for opening of Bids. Any notification regarding specifications received less than five (5) days prior to the date set for the opening of Bids may or may not be considered by the City in its sole discretion. The Bidder shall abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission but shall fully complete every part as the true intent and meaning of the specifications and drawings. Whenever the mention is made of any articles, material or workmanship to be in accordance with laws, ordinances, building codes, underwriter's codes, A.S.T.M. regulations or similar expressions, the requirements of these laws, ordinances, etc., shall be construed as to the minimum requirements of these specifications.

24. BRAND NAME OR EQUAL ITEMS: Pursuant to Virginia Code § 2.2-4315, unless otherwise provided in the Solicitation, the name of a certain brand, make or manufacturer does not restrict Bidders to the specific brand, make or manufacturer named; it conveys the general style, type, character, and quality of the article desired, and any article which the City in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The Bidder is responsible to indicate the product clearly and specifically being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the City to determine if the product offered meets the requirements of the Solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding, only the information furnished with the Bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a Bid non-responsive. Unless the Bidder clearly indicates in its Bid that the product offered is "equal" product, such Bid will be considered to offer the brand name product referenced in the Solicitation.

25. FORMAL SPECIFICATIONS: When a Solicitation contains a specification which states no substitutes, no deviation therefrom will be permitted, and the Bidder will be required to furnish articles in conformity with that specification.
26. CONDITION OF ITEMS: Unless otherwise specified in the Solicitation, all items shall be new, in first class condition.

## **AWARD**

27. RESPONSIBLE BIDDERS: In determining whether a Bidder is a responsible Bidder as defined herein, at minimum, the following criteria will be considered:
- a. The ability, capacity, and skill of the Bidder to perform the Contract or provide the service required under the Solicitation;
  - b. Whether the Bidder can perform the Contract or provide the service promptly, or within the time specified, without delay or interference;
  - c. The character, integrity, reputation, judgment, experience, and efficiency of the Bidder;
  - d. The quality of performance of previous Contracts or Services;
  - e. The previous and existing compliance by the Bidder with laws and ordinances relating to the Contract or Services;
  - f. The sufficiency of the financial resources and ability of the Bidder to perform the Contract or provide the service;
  - g. The quality, availability and adaptability of the Goods or Services to the particular use required;
  - h. The ability of the Bidder to provide future maintenance and service for the use of the subject of the Contract;
  - i. The number and scope of the conditions attached to the Bid;
  - j. Whether the Bidder is in arrears to the City on debt or Contract or is a defaulter on surety to the City or whether the Bidder's City taxes, or assessments are delinquent; and
  - k. Such other information as may be secured by the City, the Purchasing Agent having a bearing on the decision to award the Contract. If an apparent low Bidder is not awarded a Contract for reasons of nonresponsibility, the City shall so notify that Bidder and shall have recorded the reasons in the Solicitation or Contract file.
28. AWARD OR REJECTION OF BIDS; WAIVER OF INFORMALITIES: The City shall award the Contract to the lowest responsive and responsible Bidder complying with all provisions of the IFB, provided the Bid price is reasonable and it is in the best interest of the City

to accept it. Awards made in response to a RFQ will be made to the highest qualified Offeror whose Proposal is determined, in writing, to be the most advantageous to the City taking into consideration the evaluation factors set forth in the RFQ. The City reserves the right to award a Contract by individual items, in the aggregate, or in combination thereof, or to reject any or all Bids and to waive any informality in Bids received whenever such rejection or waiver is in the best interest of the City. Award may be made to as many Bidders/Offerors as deemed necessary to fulfill the anticipated requirements of the City. The City also reserves the right to reject the Bid if a Bidder is deemed to be a non-responsible Bidder. Pursuant to Virginia Code § 2.2-4319, an IFB, a RFQ, any other solicitation, or any and all bids or proposals, may be canceled or rejected by the City at any time. The reasons for cancellation or rejection shall be made part of the contract file. The City shall not cancel or reject an IFB, a RFQ, any other solicitation, bid or proposal solely to avoid awarding a contract to a particular responsive and responsible bidder or offeror.

29. **EXCLUSION OF INSURANCE BIDS PROHIBITED:** Pursuant to Virginia Code § 2.2-4320, notwithstanding any other provision of law or these General Conditions, no insurer licensed to transact the business of insurance in the State or approved to issue surplus lines insurance in the State shall be excluded from presenting an insurance bid proposal to the City in response to a RFQ or an IFB; excepting that the City may debar a prospective insurer pursuant to its Debarment Policy, see Chapter 2 of the City's Procurement Policies and Procedures.

30. **ANNOUNCEMENT OF AWARD:** Upon the award or announcement of the decision to award a Contract as a result of this Solicitation, the City will publicly post such notice on eVa: <https://eva.virginia.gov/index.html>.

31. **QUALIFICATIONS OF BIDDERS OR OFFERORS:** The City may make such reasonable investigations as deemed proper and necessary to determine the ability of the Bidder to perform the work/furnish the item(s) and the Bidder shall furnish to the City all such information and data for this purpose as may be requested. The City reserves the right to inspect Bidder's physical facilities prior to award to satisfy questions regarding the Bidder's capabilities. The City further reserves the right to reject any Bid or Proposal if the evidence submitted by or investigations of such Bidder fails to satisfy the City that such Bidder is properly qualified to carry out the obligations of the Contract and to complete the work/furnish the item(s) contemplated therein.

32. **TIE BIDS AND PREFERENCE FOR VIRGINIA PRODUCTS WITH RECYCLED CONTENT AND FOR VIRGINIA FIRMS:**

a. Pursuant to Virginia Code § 2.2-4328, in the case of a tie bid on an IFB only, the City may give preference to Goods, Services and construction produced in the City of Franklin or

provided by persons, firms or corporations having principal places of business in the City of Franklin. If such choice is not available, preference shall then be given to Goods produced in Virginia, or for goods, services or construction provided by Virginia persons, firms, corporations, pursuant Virginia Code § 2.2-4324. If no City or State choice is available, the tie shall be decided publicly by lot. The decision by the City to make award to one or more such Bidders shall be final.

b. Whenever the lowest responsive and responsible bidder is a resident of any other state 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 responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a price-matching preference, a like preference shall be allowed to responsive and responsible bidders who are residents of Virginia. If the lowest bidder is a resident contractor of a state with an absolute preference, the bid shall not be considered. The Department of General Services shall post and maintain an updated list on its website of all states with an absolute preference for their resident contractors and those states that allow their resident contractors a percentage preference, including the respective percentage amounts. For purposes of compliance with this Section 32, the City may rely upon the accuracy of the information posted on this website.

c. Notwithstanding the provisions of subsections a and b, in the case of a tie bid in instances where goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.

d. For the purposes of this Section 32, a Virginia person, firm or corporation shall be deemed to be a resident of Virginia if such person, firm or corporation has been organized pursuant to Virginia law or maintains a principal place of business within Virginia.

33. **NEGOTIATION WITH LOWEST RESPONSIBLE BIDDER:** Pursuant to Virginia Code § 2.2- 4318, unless cancelled or rejected, a responsive Bid from the lowest responsible Bidder shall be accepted as submitted, except that if the Bid from the lowest responsible Bidder exceeds available funds, the City may negotiate with the apparent low Bidder to obtain a Contract price within available funds. However, the negotiation may be undertaken only under conditions and procedures described in writing and approved by the City prior to issuance of the IFB and summarized therein.

## **CONTRACT PROVISIONS**

### **A. Anti-Discrimination:**

By submitting bids or proposals, bidders, offerors or contractors certify to City of Franklin (the "City") that they will conform to the provisions of the federal Civil Rights Act of 1964, as amended, the Virginia Fair Employment Act of 1975, as amended, where applicable,

the Virginians With Disabilities Act, the Americans With Disabilities Act and Section 2.2-4311 of the Virginia Public Procurement Act, which provides:

1. During the performance of this contract, the contractor agrees as follows:

a. The contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, political affiliation, veteran status, 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.

b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, shall state that such contractor is an equal opportunity employer.

c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

2. The contractor shall include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

3. Pursuant to Section 2.2-4343.1 of the Code of Virginia of 1950, as amended, in all invitations to bid, requests for proposals, contracts, and purchase orders, City of Franklin does not discriminate against faith-based organizations. "Faith-based Organization" means a religious organization that is or applies to be a contractor to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193.

B. Ethics in Public Contracting:

By submitting a bid or proposal, bidders, offerors or contractors certify that their bids or proposals are made in full compliance with the Virginia Conflicts of Interest Act and without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other bidder or offeror, supplier, manufacturer or subcontractor in connection with their bid or proposal and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

C. Immigration Reform and Control Act of 1986:

By submitting a bid or proposal, bidders, offerors or contractors certify that they do not and will not, during the performance of this contract, employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

D. Policy on Drug and Alcohol Abuse:

City of Franklin has adopted a Policy on Drug and Alcohol Abuse. By submitting a bid or proposal, bidders, offerors or contractors certify full compliance with this policy. A copy of the policy is available upon request. Further, in every contract over \$10,000 the following provisions apply:

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

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

E. Taxes:

City of Franklin (federal I.D. #54-6001284) is exempt from federal, state and local taxes. Taxes included on invoices will be deducted from the payment amount. Tax-exempt forms will be completed for a vendor upon request.

F. Delivery:

All costs and other charges associated with the delivery of a good or non-professional service shall be paid as indicated in the accepted bid or proposal. The City reserves the right to cancel all or any part of a contract without obligation if delivery is not made within the time period specified in the bid or proposal document or if the quantity or quality of products or non-professional services delivered is inadequate.

G. Required Signature:

Prior to executing any contractor, the City may request documentation of the signer's

authority.

H. Qualifications of Bidders, Offerors or Contractors:

The bidder, offeror, or contractor represents and warrants that it has the requisite experience, skills, capabilities, and manpower to perform the duties required by the contract in a good and workmanlike fashion and that it is authorized to do business in Virginia and has all necessary licenses required by law. The City of Franklin may make such reasonable investigations as deemed proper and necessary to determine the ability of a bidder, offeror or contractor to perform the work or supply the goods. The bidder, offeror or contractor shall furnish to the City all such information and data for this purpose as may be requested. The City reserves the right to inspect the bidder's, offeror's, or contractor's physical facilities prior to award to satisfy questions regarding the bidder's or offeror's capabilities. Further, the City reserves the right to reject any bid or proposal if the evidence submitted by, or investigations of, such bidder or offeror fails to satisfy the City that such bidder or offeror is properly qualified to carry out the obligations of the contract and to complete the work or supply the goods.

I. Changes to the Contract:

No fixed price contract may be increased by more than twenty-five (25) percent of the amount of the contract or \$50,000, whichever is greater. Changes can be made to the contract only by mutual agreement of the parties evidenced by a signed writing

J. Payment Terms:

All approved invoices will be paid within forty-five (45) days of receipt.

K. Default:

In case of default by the contractor for failure to deliver or perform in accordance with the contract's specifications or terms and conditions, the City may procure the articles or services from other sources and hold the defaulting the contractor responsible for any resulting additional purchase and administrative costs. The City will normally repurchase from the next low bidder or purchase competitively by re-solicitation. If the repurchase results in increased costs to the City, a letter will be sent to the defaulted contractor requiring payment for additional costs. When repayment is requested, the contractor will be removed from future bidding until the repayment has occurred. The contractor shall not be liable for any excess cost if the failure to perform arises out of any act of war, order of legal authority, strikes, act of God, or other unavoidable causes not attributed to their fault or negligence. Failure of a contractor's source to deliver is generally not considered to be an unavoidable cause. The burden of proof rests with the contractor.

L. Assignment:



The contract may not be assigned, sublet, or transferred without the written consent of the City of Franklin.

M. Hold Harmless:

The contractor and all its subcontractors shall bear all loss, expense (including reasonable attorney's fees) and damage in connection with, and shall indemnify the City of Franklin, its City Council members, officers, employees and agents against and save them harmless from all claims, demands, and judgments made or recovered against them because of bodily injuries, including death at any time resulting there from, and/or because of damage to property, from any cause whatsoever, arising out of, incidental to, or in connection with the contract. Compliance by the contractor with the insurance provisions hereof shall not relieve the contractor from liability under this provision.

N. Audit:

The Contractor hereby agrees to retain all books, records, and other documents related to this Agreement for five (5) years after final payment or after all other pending matters are closed, whichever is longer. The City and its authorized agents, state auditors, the grantor of the funds to the City, the Comptroller of Virginia or of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers and records of the Contractor which are directly pertinent to the Agreement for the purpose of making audits, examinations, excerpts or transcriptions.

O. Ownership of Documents:

Any reports, studies, photographs, negatives, or other documents prepared by the contractor in the performance of its obligations under this contract shall be remitted to the City upon completion, termination or cancellation of the contract. The Contractor shall not use, willingly allow or cause to have such materials used for any purpose other than performance of the contractor's obligations under this Agreement without the prior written consent of the City. The City shall own the intellectual property rights to all materials produced under this Agreement.

P. Payment and Performance Bond:

If required by law, the contractor shall furnish to the City performance and payment bonds in the amount of the Contract Sum, regardless of its amount, pursuant to Sections 2.2-4336 and 2.2-4337 of the Code of Virginia, 1950, as amended (the "Code") and shall otherwise fully comply with the requirements of such sections of the Code.

Q. Required Payment to Subcontractors:

Pursuant to Section 2.2-4354 of the Code, the contractor covenants and agrees to:

1. within seven (7) days after receipt of any amounts paid to the contractor under the Agreement, (i) pay any subcontractor for its proportionate share of the total payment received from the City attributable to the Services under the contract performed by such subcontractor, or (ii) notify the City and the subcontractor, in writing, of its intention to withhold all or a part of the subcontractor's payment and the reason therefor;
2. provide its federal employer identification number or social security number, as applicable, before any payment is made to the Contractor under the contract; and
3. pay interest at the legal rate or such other rate as may be agreed to in writing by the subcontractor and the contractor on all amounts owed by the contractor that remain unpaid after seven (7) days following receipt by the contractor of payment from the City for services performed by the subcontractor under the contract, except for amounts withheld pursuant to subparagraph 12, a above.
4. include in its contracts with any and all subcontractors the requirements of a, b, and, c above.

R. Liability Coverage:

The contractor shall take out and maintain during the life of the Agreement such bodily injury, liability and property damage liability insurance as shall protect it and the City from claims for damages for personal injury, including death, as well as from claims for property damage, which may arise from its activities under this contract.

S. Loss or Damage in Transit:

Delivery by the contractor to a common carrier does not constitute delivery to the City. Any claim for loss or damage incurred during delivery shall be between the contractor and the carrier. The City accepts title only when goods are received regardless of the F.O.B. point. The City will note all apparent damages in transit on the freight bill and notify the contractor. Discovery of concealed damages or loss will be reported by the City to the carrier and the contractor within seven days of receipt and prior to removal from the point of delivery if possible. the contractor shall make immediate replacement of the damaged or lost merchandise or be in default of this contract. It shall be the contractor's responsibility to file a claim against the carrier. If damage is to a small quantity, with the approval of the City, the contractor may deduct the amount of damage or loss from his or her invoice to the City in lieu of replacement.

T. No Waiver:

Any failure of the City to demand rigid adherence to one or more of the terms and provisions of the contract, including these General Terms and Conditions, on one or more occasions, shall not be construed as a waiver nor deprive the City of the right to insist upon strict compliance with the terms of the contract. Any waiver of a term of the contract, in whole or in part, must be in writing and signed by the party granting the waiver to be effective.

U. Termination:

The City may terminate the contract for its convenience and any or no cause at any time upon written notice to the contractor. the contractor shall not be paid for any service rendered or expense incurred after receipt of such notice except such fees and expenses incurred prior to the effective date of termination that are necessary for curtailment of the contractor's services under the contract.

V. Choice of Law:

To ensure uniformity of the enforcement of the contract, and irrespective of the fact that either of the parties now is, or may become, a resident of a different state, this contract is made and is intended to be performed in the Commonwealth of Virginia, and shall be governed by and construed in accordance with the laws of that state without regard to principles of conflicts of law.

W. Severability:

If any provision of the contract is held to be illegal, invalid, or unenforceable, or is found to be against public policy for any reasons, such provision shall be fully severable and the contract shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never been part of the contract, and the remaining provisions of the contract shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision, or by its severance from the contract.

X. Contractual Claims Procedure:

1. Contractual claims or disputes by the contractor, whether for money or other relief, except for claims or disputes exempted by law from the procedure set forth herein, shall be submitted in writing no later than sixty (60) days after final payment; provided, however, that the contractor shall give the City written notice of its intention to file a claim or dispute within fifteen (15) days after the occurrence upon which the claim or dispute shall be based. Any written notice of the contractor's intention to file such a claim or dispute need not detail the amount of the claim, but shall state the facts and/or issues relating to the claim in sufficient detail to identify the claim, together with its character and scope. Whether or not the contractor files such written notice, the contractor shall proceed with the services as directed. If the contractor

fails to make its claim or dispute, or fails to give notice of its intention to do so as provided herein, then such claim or dispute shall be deemed forfeited.

2. The City, upon receipt of a detailed claim, may at any time render its decision and shall render such decision within one hundred twenty (120) days of final payment. Each such decision rendered shall be forwarded to the contractor by written notice.

3. If the contractor disagrees with the decision of the City concerning any pending claim, the contractor shall promptly notify the City by written notice that the contractor is proceeding with the services under protest. Any claim not resolved whether by failure of the contractor to accept the decision of the City or under a written notice of the contractor' intention to file a claim or a detailed claim not acted upon by the governing body of the City, shall be specifically exempt by the contractor from payment request, whether progress or final. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

4. The decision on contractual claims by the governing body of the City shall be final and conclusive unless the contractor appeals within six months of the date of the final decision on the claim by instituting legal action in the appropriate circuit court.

Y. Subject to Annual Appropriation:

The contract is subject to annual appropriation by the City Council of the City of Franklin, Virginia. Neither the contract nor any amount due or to become due under the contract shall be deemed to constitute a debt or pledge of the faith and credit of the Commonwealth of Virginia or any political subdivision thereof, including the City. Neither the Commonwealth of Virginia nor any political subdivision thereof, including the City, shall be obligated to pay any amount due or to become due under this contract except from funds annually appropriated by the City Council of the City of Franklin for such purpose.

In the event of non-appropriation of funds for the items under this contract, the City may terminate this contract as to the services for which funds have not been appropriated. Written notice will be provided to the contractor as soon as possible after such action is taken.

Z. Forum Selection:

The parties hereby submit to the personal jurisdiction and venue of the Circuit Court of County of Southampton, Virginia, and the General District Court of City of Franklin, Virginia, for resolution of any and all claims, causes of action or disputes arising out of or related to this Agreement. The parties further agree that any claims, causes of action or disputes arising out of, relating to or concerning this contract shall have jurisdiction and venue in the Circuit Court of

County of Southampton, Virginia, and/or the General District Court of City of Franklin, Virginia, and shall be brought only in such courts.