



TOWN OF SMITHFIELD

"The Ham Capital of the World"

REQUEST FOR PROPOSALS

RFP #20-006

September 22, 2020

Town of Smithfield

310 Institute St

Smithfield, VA 23430

<https://www.smithfieldva.gov/>

Debris Removal Services

Sealed Proposals, subject to the conditions and instructions contained herein, will be received at the above office until the time and date shown below (local prevailing time), for furnishing the items or services described in the proposal.

Scope of Work: The Town of Smithfield (Town) is interested in receiving proposals from qualified Offerors to provide scheduled routine tree and debris removal in the Town of Smithfield's rights of way and drainage easements for a three (3) year term. The contract may also include immediate assistance with cleanup and debris removal when necessary. The Town reserves the right to make multiple awards to ensure required services can be provided in a timely manner.

Proposal Due Prior to: October 16, 2020 at 5:00 PM

Contract Officer:

Michael Coburn, Purchasing Agent, mcoburn@isleofwightus.net

****AN ELECTRONIC RESPONSE IS REQUIRED****

The Purchasing Agent, Michael Coburn, is the sole contact official for the Town of Smithfield with respect to this RFP. All questions and/or comments should be directed to him at this email address: mcoburn@isleofwightus.net. The respondents to this RFP shall not contact, either directly or indirectly, any other employee or agent of the Town regarding this RFP. Any such unauthorized contact may disqualify the bidder from the procurement.

Company Name: _____

Address: _____

City / State / Zip: _____

Telephone: _____

FAX No.: _____

E-mail: _____

Print Name: _____

Title: _____

Signature: _____

Date: _____

SOLICITATION DOCUMENTS

Request for Proposals (RFP) documents, including any addenda, are available via the Purchasing website: <https://www.smithfieldva.gov/>, and on the Commonwealth's bid board (eVA) <http://eva.virginia.gov/>. Email is the preferred method for asking question and will get a faster response, but other written forms are acceptable.

Proposals should be sent as a .pdf attachment to mcoburn@isleofwightus.net and copied to lking@smithfieldva.gov . The electronic submittal shall be 150 MB, or less, saved as a .pdf document and should conserve disk space to allow easy transfers of data.

QUESTIONS

Questions pertaining to this RFP should be directed to Michael Coburn, Purchasing Agent, mcoburn@isleofwightus.net AND Lesley King, Town Clerk, lking@smithfieldva.gov, prior to: **October 9th, 2020**. All questions must be submitted *in writing*; telephone inquiries will not be considered.

IF YOU NEED ANY REASONABLE ACCOMMODATION FOR ANY TYPE OF DISABILITY IN ORDER TO PARTICIPATE IN THIS PROCUREMENT, PLEASE CONTACT THE PROJECT MANAGER AS SOON AS POSSIBLE.

We do not have means to keep a plan-holders list, or the names of firms that have downloaded copies of the RFP from various websites. Please check the Town's website prior to submitting your proposal to ensure that a complete up-to-date package has been received.

In compliance with this Request for Proposals, and subject to all the conditions thereof, the undersigned offers, if the offer is accepted within one hundred and twenty (120) calendar days from the date of the receipt of proposals, to furnish any or all of the items and/or services upon which prices are quoted, at the price set, to be delivered at the time and place specified herein. The undersigned certifies he has read, understands, and agrees to all terms, conditions, and requirements of this Request for Proposals, and is authorized to contract on behalf of firm.

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GENERAL

The Town of Smithfield is requesting proposals from qualified contractors to provide scheduled routine tree and debris removal (other than hazardous material) in the Town's rights of way and drainage easements for a term of three (3) years. The contract may also include immediate assistance with clean-up and debris removal when necessary. Offerors should hold a current business license and be properly licensed/registered to operate in the State of Virginia. Offerors should be able to provide all services referenced herein or assemble a team which can do so.

Items listed in the Scope of Services' paragraph are minimum requirements which shall be provided as part of this contract.

The Town reserves the right to make multiple awards to ensure cleanup and debris removal is accomplished in a timely manner. If multiple firms are selected the town will rank the firms to allow a sequence wherein the highest qualified firm is called first, then the next, etc.

CONTRACT PERIOD

The contract period shall be for a three (3) year term from the date of award.

NOTE: The Town operates on a fiscal year from July 1 through June 30. Purchase orders are good through the end of a current fiscal year. New purchase order(s) are issued at the beginning of each fiscal year to cover the remainder of the current contract period and subsequent renewal periods.

SCOPE OF SERVICES

Debris Removal Services provided under this contract shall include but may not be limited to the following tasks.

- Contractor shall be available to conduct work as required for normal improvements to storm drainage areas.
- When necessary Contractor shall be immediately available after hurricane or other disasters to assist with emergency clean-up.
- Contractor shall be available within 24 hours after a minor storm.
- Contractor shall be responsible for disposal of material.
- Contractor shall provide a complete list of equipment available.
- Contractor shall provide hourly rates for labor and equipment associated with this proposal.
- Work shall consist of clearing and removing storm generated debris as directed by the Town of Smithfield. Operations includes multiple, scheduled passes of each site, location and right-of-way
- Contractor shall provide equipment, operators and laborers for debris removal operations.
- Contractor shall be knowledgeable of the rules and regulations governing the transport of heavy and/or oversized equipment.

- Contractor must be duly licensed to perform work in accordance with the Commonwealth of Virginia code requirements.
- Contractor shall obtain all necessary permits to complete the work, but at minimum must hold a business license and contractor's license from each AUTHORIZED AGENCY where services are performed. Copies of all permits and business license shall be submitted to the Director of Public Works as soon as available.
- Contractor shall be responsible for correcting any notices of violations issued as a result of the CONTRACTOR'S or any subcontractor's actions or operations during the performance of this contract. Corrections for any such violations shall be at no additional cost to the Town of Smithfield.
- Contractor shall conduct the work so as not to interfere with the disaster response and recovery activities of federal, state or local governments or agencies, or of any public utilities or other private contractor.
- Contractor shall be responsible for control of pedestrian and vehicular traffic in the work area as per the Virginia Work Area Protection Manual.

The work shall be completed in accordance with the most current edition of the Hampton Roads Regional Standards and the Town of Smithfield Design Standards.

The contractor shall provide the town administration, residents, and businesses the dates the scheduled work is going to be performed and estimated completion date a minimum of 5 days prior to the work beginning. Property (private or public) that is damaged during construction shall be landscaped, repaired and/or replaced to meet or exceed original condition at the contractor's expense and town staff's satisfaction.

SUBMITTALS/QUALIFICATIONS:

The Offeror is required to submit an electronic proposal as explained in this document. Please provide sufficient information supporting your qualifications to meet the Evaluation Criteria to follow under that heading. Some minimal information is as follows:

The Request for Proposal (RFP) document with any addenda acknowledgements filled out, signed, and scanned as required.

A cover letter outlining the following organizational information:

- Name of company (or other business entity) submitting proposal
- Type of business entity (i.e. corporation or partnership)
- References on prior work fitting the scope of this RFP.
- Number of years business has been working in Debris Removal Services or hauling.
- Name, location, and telephone number of the firm's representative to contact
- Hourly rate for labor and equipment to be provided.
- Hauling and disposal fees by the cubic yard.
- A complete list of equipment available to perform the contract.

If the proposer intends to subcontract any of the work set forth in this RFP, then the proposer shall include the subcontractor's name, address, telephone number and the function that the subcontractor shall perform, including references.

EVALUATION CRITERIA (Listed in Order of Importance)

Each proposal will be evaluated based upon the following published criteria, including compliance with the RFP instructions and the mandatory terms and conditions set forth within the RFP document. The objective of the evaluation will be to select the firm who, in the sole discretion of the Town offers the best value and fit for the needs of the governmental entity. Each proposal will be evaluated on the following criteria:

Criteria:

1. Offeror's experience.
2. Offeror's qualification in providing services outlined in the RFP
3. Offeror's ability to meet time requirements outlined in RFP
4. Offeror's past performance
5. Offeror's cost to provide services outlined in the Scope of Services

EVALUATION PROCEDURES

Proposals will be evaluated, and interviews scheduled with selected firms in accordance with the "*Competitive Negotiation for non-professional services*" method as outlined in the Virginia Public Procurement Act. A numerical evaluation will not be used, but rather the decision will be based on the respective strengths and/or weaknesses of Offerors perceived by the Evaluation Committee. The Town may require formal presentations for short-listed Offerors, with the intent to negotiate with two or more offerors, depending upon the results of this solicitation. As allowed under the Code of Virginia, if in the opinion of the Evaluation Committee that one offer is clearly more highly qualified, negotiations may be held with only that firm.

In addition, the Town reserves the right to make multiple awards to ensure cleanup and debris removal is accomplished in a timely manner. If multiple firms are selected the town will rank the firms to allow a sequence wherein the highest qualified firm is called first, then the next, etc.

Since this contract is based on what may happen, it is understood that the scope of work may vary or expand depending upon current conditions. There is no guarantee of any amount of work, but rather a supposition that one or more Contractors may be called to perform should conditions warrant.

REFERENCES

Please provide a minimum of 3 similar projects successfully completed within the past 5 years.

NAME AND ADDRESS OF CONTRACTING ENTITY

BRIEF OVERVIEW AND DURATION OF PROJECT PRINCIPAL CLIENT (NAME) AND PHONE NUMBER: _____

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CONDITIONS AND INSTRUCTIONS

Rev: 03/23/2020

1. **Use of Form:** All proposals should be submitted in electronic (.pdf) format in accordance with this form. The Offeror may attach/scan other information as required to the electronic document that will be made a part of the proposal. Electronic submittals on CD, DVD, memory sticks, or other electronic media will be accepted if delivered prior to the closing time. The preferred method of delivery is by an attachment to an email addressed to: mcoburn@isleofwightus.net The published Conditions and Instructions shall supersede any additional writings submitted with the proposal. Such writings shall be clearly marked and noted as an exception.
2. **Submittals:** Except as noted above, all proposals shall be sent as an attachment to email to: mcoburn@isleofwightus.net. The subject line must show the proposal number and name. This form shall be included as part of your submittal; else, your response may be considered 'non-responsive.'
3. **Late Proposals:** Proposals and amendments thereto sent electronically to Purchasing after the date and/or time specified, will not be considered. It will be the responsibility of the Offeror to see that their proposal is properly sent to Purchasing as specified. There will be no exceptions. Electronic proposals sent as an email attachment will show the date and time sent. This date will be used to determine whether a submittal was timely or not. To be considered, the submittal must be sent prior to the closing date published on the front cover.
4. **County's Offices Closures:** Should the County's offices, or the electronic network connectivity prevent receipt of proposals at the time of the scheduled proposal closing, the proposals will be opened on the next business day of the County, at the original scheduled hour, or as soon as connectivity is restored during normal business hours. The opening is not a public event. The names and number of responses shall not be disclosed until negotiations are complete and a decision to award has been made. At that time the file will be made available to Offerors to review.
5. **This contract may be subject to federal oversight. The vendor, as applicable, will comply with 2 CFR 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) Part 317-326 (Procurement Standards) and Section 2 CFR 200.404 (Cost Reasonableness).**
6. **Offer/Acceptance:** Each proposal is received with the understanding that the acceptance in writing by the Town of the offer to furnish the prescribed or services and deliverables as described therein, shall constitute a contract between the Offeror and the Town which shall bind the Offeror to furnish and deliver those services and products at the prices stated and in accordance with the conditions of the accepted proposal and an fully executed Agreement; and the Town on its part to order from such Offeror, except for causes beyond reasonable control; and pay for, at the agreed prices, all goods and/or services specified and delivered.
7. **Withdrawal of Proposals:** Proposals may be withdrawn (cancelled) any time by submitting such a request in writing on the issuing company's letterhead either by email, in person, or by certified mail.
8. **Addenda:** If issued, addenda to this solicitation will be posted on the Town's website (<https://www.smithfieldva.gov/>) and on the Commonwealth's bid board (eVA) <http://eva.virginia.gov/>. It is the Offeror's responsibility to check the website or contact the Purchasing Division prior to the submittal deadline to ensure that the Offeror has a complete, up-to-

date package. Acknowledgement of all issued Addenda should be indicated on the proposal form.

9. **Award**: Award will be made to the Offeror considered at the Town's sole determination after following the procedure outlined herein. The process used for this solicitation shall be Competitive Negotiation for Non-Professional Services as outlined in the Virginia Public Procurement Act.
10. **Town's Rights**: The Town reserves the right to reject any and all proposals, and to waive any informality if it is determined to be in the best interest of the Town. Offeror's selected for award may not necessarily be the same depending upon the Town's specific needs and the Offeror's ability to handle such requirements.
11. **Delivery**: The time of delivery of services must be stated in definite terms. If time of delivery for different goods and/or services varies, the Offeror shall so state.
12. **Silence of Specifications**: The apparent silence of these specifications and any supplemental specifications as to any detail or the omission from the specifications of a detailed description concerning any point shall be regarded as meaning that only the best commercial practices are to prevail and correct type, size and design are to be used. All interpretations of these specifications shall be made on the basis of this statement.
13. **Capacity of Offeror**: All proposals must be signed by a responsible officer or employee having the authority to bind the firm in contract. The Offeror agrees that its contract performance shall be in strict conformance with the contract documents.
14. **Rights to Damages**: By signing this proposal, the Offeror assigns to the Town any and all rights that it may have under the antitrust laws of the United States and the Commonwealth of Virginia in any way arising from or pertaining to this proposal. This provision is remedial in nature and is to be liberally construed by any court in favor of the Town.
15. **Anti-Collusion**: The Offeror certifies by signing this Request for Proposals that this proposal is made without prior understanding, agreement, or accord with any other person or firm submitting a proposal for the same goods and/or services and that this proposal is in all respects bona fide, fair, and not the result of any act of fraud or collusion with another person or firm engaged in the same line of business or commerce. Any false statement hereunder may constitute a felony and can result in a fine and imprisonment, as well as civil damages. Should Contractors or sub-contractors have interest in multiple submittals, this clause does not apply except when done so as an act of collusion or fraud.
16. **Indemnification**: The Contractor shall defend, indemnify and hold the Town, and the Town's employees, agents, and volunteers, harmless, from and against any and all damage claim, liability, cost, or expense (including, without limitation, attorney's fees and court costs) of every kind and nature (including, without limitation, those arising from any injury or damage to any person, property or business) incurred by or claimed against the Contractor, its employees, agents, and volunteers, or incurred by or claimed against the Town, the Town's employees, agents, and volunteers, arising out of, or in connection with, the performance of all services hereunder by the Contractor. This indemnification and hold harmless includes, but is not limited to, any financial or other loss including, but not limited to, any adverse regulatory, agency or administrative sanction or civil penalties, incurred by the Town due to the negligent, fraudulent or criminal acts of the Contractor or any of the Contractor's officers, shareholders, employees, agents, Contractor s, sub-Contractors, or any other person or entity acting on behalf of the Contractor. Unless otherwise provided by law, the Contractor's indemnification obligations hereunder shall not be limited in any way by the amount or type of damages, compensation, or benefits payable by or for the Contractor under worker's

compensation acts, disability benefit acts, other employee benefit acts, or benefits payable under any insurance policy. This paragraph shall survive the termination of the contract including any renewal or extension thereof.

17. **Copyright Protection:** The Contractor agrees to defend and save the Town, its agents, officials, and employees, harmless from liability of any nature or kind, for use of any copyright, composition, secret process, patented or unpatented invention, articles or appliances furnished or used in the performance of the contract, or which the Contractor is not the patentee, assignee, or licensee, to the same extent as provided in the above paragraph.
18. **Laws, Regulations:** The Contractor shall keep fully informed of all federal, state, and local laws, ordinances and regulations that in any manner affect the conduct of the work. The Contractor shall at all times observe and comply with all such laws, ordinances and regulations.
19. **Alien employment:** The Contractor certifies that he does not and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ unauthorized aliens as defined in the federal Immigration Reform and Control Act of 1986, as amended and every contractor with more than an average of 50 employees for the previous 12 months entering into a contract in excess of \$50,000 to perform work or provide services pursuant to such contract shall comply with the provisions of Section 2.2-4308.2 "Employment Eligibility," as amended from time to time. This includes but is not limited to registration and participation in the E-Verify program to verify information and work authorization of its hired employees performing work pursuant to such public contract and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The contractor shall maintain a copy of such affidavit for the duration of the contract. Failure to comply will lead to termination of this Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination. If this contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of 1 year after the date of termination.
20. **SCC Authorization:** All Offerors authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50, as amended, shall include the identification number issued to it by the State Corporation Commission. Any Offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50, as amended, or as otherwise required by law shall include in its proposal or proposal a statement describing why the Offeror or Offeror is not required to be so authorized.

SCC Number, or Statement: _____

Any business entity that enters into a contract with a public body pursuant to this chapter shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1, or Title 50, as amended, to be revoked or cancelled at any time during the term of the contract. The Town may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

21. **Contractor's License:** If any of the services promulgated under this solicitation consist of construction work, it is required under Title 54.1, Chapter 11, Code of Virginia, for a contractor who performs or manages construction, removal, repair, or improvement when the total value referred to in a single contract or project is:

One hundred twenty thousand dollars (\$120,000) or more, or the total value of all such construction, removal, repair or improvements undertaken by such person within any twelve-month period is seven hundred fifty thousand dollars (\$ 750,000) or more shall show evidence of being licensed as a Class A Contractor.

Ten thousand dollars (\$10,000) or more, but less than one hundred twenty thousand dollars (\$120,000) or the total value of all such construction, removal, repair, or improvement undertaken by such person within any twelve-month period is one hundred and fifty thousand dollars (\$150,000) or more, but less than seven hundred fifty thousand dollars (\$750,000) shall show evidence of being licensed as a Class B Contractor.

Over one thousand (\$1,000) but less than ten thousand (\$10,000), or the total value of all such construction, removal, repair, or improvements undertaken by such person within any twelve-month period is one hundred and fifty thousand dollars (\$150,000) shall show evidence of being licensed as a Class C Contractor.

The Town shall require master certification as a condition of licensure or certification of electrical, plumbing and heating, ventilation and air conditions contractors.

A valid business license from the Town may be required. The bidder shall complete whichever of the following notations as appropriate:

“Licensed Class ‘A’ Virginia Contractor Number .”

“Licensed Class ‘B’ Virginia Contractor Number .”

“Licensed Class ‘C’ Virginia Contractor Number .”

22. **Default:** In event of default by the Contractor, the Town reserves the right to procure the goods and/or services from other sources and hold the Contractor liable for any excess cost occasioned thereby. Such actions taken by the Town shall not release the Contractor from additional remedies that may be allowed by law.
23. **Availability of Funds:** When a contract resulting from this solicitation involves multiple fiscal periods, such contract shall be deemed in force only to the extent of appropriations available to each department for the purchase of such goods and/or services. The Town’s extended obligations on those contracts that envision extended funding through successive fiscal periods shall be contingent upon actual appropriations for the following years.
24. **Appeals Procedure:** Upon your request, administrative appeals information will be provided that shall be used for hearing protests of a decision to award, or an award, appeals from refusal to allow withdrawal of proposals, appeals from disqualification, appeals for debarment or suspension, or determination of non-responsibility and appeals from decision or disputes arising during the performance of a contract. To be timely all appeals shall be made within the time periods set forth by the Virginia Public Procurement Act, §2.2-4357, et seq. Contact the buyer at once for assistance.
25. **Faith-based Organizations:** The Town of Smithfield, does not discriminate against faith-based organizations.
26. **Anti-Discrimination:** By submitting their proposals, Offerors certifies that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair

Employment Contracting Act of 1975, as amended, where applicable, the Virginians with Disabilities Act, the Americans with Disabilities Act and 2.2-4311 of the Virginia Public Procurement Act (VPPA). If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (Code of Virginia 2.2.4343.1E).

In every contract over \$10,000 shall include the following provisions:

1. During the performance of this contract, the Contractor agrees as follows:
 - a) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, service-disabled veterans or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will 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 these requirements.
 2. The Contractor will include the provisions of Section a, b, and c above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each sub-Contractor or vendor.
27. **Drug-Free Workplace:** During the performance of this contract, the Contractor agrees to (1) provide a drug-free workplace for the Contractor's employees; (2) post in conspicuous place, 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; (3) state in all solicitation or advertisement for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (4) 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 sub-Contractor 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, 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.
28. **Assignment of Contract:** A contract shall not be assignable by the Contractor in whole or in part without the written consent of the Town, whichever applies.
29. **Independent Contractor:** The Contractor and any employees, agents, or other persons or entities acting on behalf of the Contractor shall act in an independent capacity and not as officers, employees, or agents of the Town.

30. **Scheduling and Delays:** The parties to any contract resultant of this solicitation acknowledge that all or part of the work to be performed hereunder may be delayed and extended at the option of the Town. Such delays may be caused by delays, denials and modifications of the various state or federal permits, or for other reasons. The Town shall not be required to pay any of the Contractor's direct or indirect costs, or claims for compensation, extended overhead, or other damage or consequential damages arising out of or related to any delays or interruptions required or ordered by the Town. If the Town delays the project for any reason for a continuous period of ninety (90) days or more, the Town, and Contractor will negotiate a mutually agreeable adjustment to the Contractor's award amount. Notwithstanding the above, in construction contracts, to the extent that an unreasonable delay is caused by the act or omissions of the Town due to causes within the Town's control, the above waiver or release shall not apply.

31. **Governing Law:** This Agreement is made, entered into, and shall be performed in the Town of Smithfield, Virginia, or within the County of Isle of Wight, and shall be governed by the applicable laws of the Commonwealth of Virginia without regard to its conflict of law rules. In the event of litigation concerning this Agreement, the parties agree to the exclusive jurisdiction and venue of the Circuit Court of Isle of Wight, Virginia; however, in the event that the federal court has jurisdiction over the matter, then the parties agree to the exclusive jurisdiction and venue of the U.S. District Court for the Eastern District of Virginia, Norfolk Division.

The Contractor shall not cause a delay in services because of the pending or during litigation proceedings, except with the express, written consent of the Town, or written instruction/order from the Court.

32. **Severability:** If any provision of a contract resulting from this solicitation, or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this contract, or the application of such provision to persons or circumstances other than those which it is invalid or unenforceable, shall not be affected hereby, and each provision of this contract shall be valid and enforced to the full extent permitted by law.

33. **Termination for Convenience:** The Town may at any time, and for any reason, terminate this Contract by written notice to Contractor specifying the termination date, which shall be not less than thirty (30) days from the date such notice is mailed.

Notice shall be given to Contractor by certified mail/return receipt requested at the address set forth in Contractor's Proposal or as provided in this Contract. In the event of such termination, Contractor shall be paid such amount as shall compensate Contractor for the work satisfactorily completed, and accepted by the Town, at the time of termination. If the Town terminates their Contract, Contractor shall withdraw its personnel and equipment, cease performance of any further work under this Contract, and turn over any work completed or in process for which payment has been made.

After the first contract term the Contractor may at any time, and for any reason, terminate the Contract by written notice to the Town specifying the termination date, which shall not be less than thirty (30) days from the date such notice is mailed.

34. **Termination for Cause:** In the event that Contractor shall for any reason or through any cause be in default of the terms of this Contract, the Town may give Contractor written notice of such default by certified mail/return receipt requested at the address set forth in Contractor's Proposal/ or as provided in this Contract.

Unless otherwise provided, Contractor shall have ten (10) days from the date such notice is mailed in

which to cure the default. Upon failure of Contractor to cure the default, the Town may immediately cancel and terminate this Contract as of the mailing date of the default notice.

Upon termination, Contractor shall withdraw its personnel and equipment, cease performance of any further work under the Contract, and turn over to the Town any work in process for which payment has been made. In the event of violations of law, safety or health standards and regulations, this Contract may be immediately cancelled and terminated by the Town and provisions herein with respect to opportunity to cure default shall not be applicable.

35. **Contact Prohibition:** Direct contact with Town's departments other than Purchasing, on the subject of this proposal is expressly forbidden except with the foreknowledge and permission of the Purchasing Agent. Violation may result in a determination that your firm is ineligible for an award.
36. **Additional Conditions:** The Conditions and Instructions in this solicitation are intended to apply to the resulting contract and shall supersede any conflicting terms offered. Any additional conditions an Offeror intends be considered must be submitted with the proposal and noted as an exception. Such exceptions may result in a finding that the submittal is 'non-responsive' to the proposal, negating possibility of an award to that Offeror. Contractual documents submitted by the successful firm after an award will not be accepted.
37. **Contractor Failure to Perform:** Failure of the Contractor to perform the contract by reason of the Town's non-acceptance of additional conditions submitted after the award shall result in termination of the contract by the Town, and may result in debarment of the Contractor for a period of up to three (3) years. Termination and /or debarment of the Contractor shall not constitute a waiver of any other rights or remedies available to the Town by law or contract.
38. **Conflict:** In the event of a conflict between the contract documents, including these Conditions and Instructions, the contract documents shall control.
39. **Records and Inspection:** The Contractor shall maintain full and accurate records with respect to all matters covered under this contract, including, without limitation, accounting records, written policies, procedures, time records, telephone records, and any other supporting evidence used to memorialize, reflect, and substantiate charges or fees related to this contract. The Contractor's records shall be open to inspection and subject to audit and/or reproduction, during normal working hours, by the Town and its employees, agents or authorized representatives after giving at least three (3) days' notice to the Contractor. The Town shall have access to such records from the effective date of this contract, for the duration of the contract, and for five (5) years after the date of final payment by the Town to the Contractor pursuant to this contract or any renewal or extension of this contract. The Town's employees, agents or authorized representatives shall have access to the Contractor's facilities, shall have access to all necessary records and shall be provided adequate and appropriate work-space, in order to conduct audits.
40. **Rights and Remedies Not Waived:** In no event shall the making by the Town of any payment to the Contractor or the waiver by the Town of any provision under this contract including any obligation of the Contractor, constitute or be construed as a waiver by the Town of any other provision, obligation, breach of covenant, or any default which may exist under this contract on the part of the Contractor, and the making of any such payment by the Town while any such breach or default exists shall not impair or prejudice any right or remedies available to the Town.
41. **Entire Agreement:** A resultant contract and any additional or supplementary documents incorporated herein by reference contain all the terms and conditions agreed upon by the parties hereto, and no

other agreements, oral or otherwise, regarding the subject matter of this contract or any part thereof shall have any validity or bind any of the parties hereto. The contract shall not be modified, altered, changed or amended unless in writing and signed by the parties hereto.

42. **Conflicts of Interests:** Contractor shall not accept or receive commissions or other payments from third parties for soliciting, negotiating, procuring, or effecting insurance on behalf of the Town. The Town may not procure supplies, equipment, materials or other goods from a Contractor on the same project.
43. **Responsibility of Contractor:** The Contractor shall, without additional costs or fee to the Town, correct or revise any errors or deficiencies in his performance. Neither the Town's review, approval or acceptance of, nor payment for any of the services required under this Agreement shall be deemed a waiver of rights by the Town, and the Contractor shall remain liable for all costs which are incurred by the Town as a result of the Contractor's negligent performance of any of the services furnished under this Agreement.
44. **Changes and Additions:** It shall be the responsibility of the Contractor to notify the Town in writing, of any necessary modifications or additions in the Scope of this Agreement. Compensation for changes or additions in the Scope of this Agreement will be negotiated and approved by the Town in writing.

It is understood and agreed to by both the Town and the Contractor that such modifications or additions to this Agreement shall be made only by the full execution of the Town's standard Agreement change order form. Furthermore, it is understood and agreed by both parties that any work done by the Contractor on such modification or addition to this Agreement prior to the Town's execution of its standard Agreement change order form shall be at the total risk of the Contractor and said work may not be compensated by the Town.

45. **Exemption from Taxes:** The Town are exempt from State Sales Tax and Federal Excise Tax. Tax Exemption Certificate indicating the Town's tax-exempt status will be furnished upon request.
46. **Debarment Status:** By submitting a proposal, proposers certify that they are not currently debarred by the Commonwealth of Virginia from submitting proposals or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.
47. **Safety:** All Contractor's and sub-contractor's performing services for the Town are required and shall comply with all Occupational Safety and Health Administration (OSHA), State and Town Safety and Occupational Health Standards and any other applicable rules and regulations. Also, all Contractors and sub-Contractors shall be held responsible for the safety of their employees and any unsafe acts or conditions that may cause injury or damage to any persons or property within and around the work site area under this contract.
48. **License Requirement:** All firms doing business in the Town are required to be licensed in accordance with the Town's business license ordinance. Wholesale and retail merchants without a business location in the jurisdiction are exempt from this requirement. Any questions concerning business licenses should be directed to the respective Commissioner of the Revenue's Office.
49. **Contractor's Form:** In cases where the Town may accept the Contractor's form agreement, whereas certain standard clauses that may appear in the Contractor's form agreement cannot be accepted by

the Town, and in consideration of the convenience of using that form, and this form, without the necessity of negotiating a separate contract document, the parties hereto specifically agree that, notwithstanding any provisions appearing in the attached Contractor's form contract, the Town's contract addendum shall prevail over the terms of the Contractor's agreement in the event of a conflict.

50. **Offeror's Qualifications:** Only proposals from established Contractors for work similar in scope to work herein shall be considered; the Town reserves the right to request specific reference information prior to award. Offeror shall demonstrate that they have adequate and appropriate manpower, tools and equipment to respond and perform in accordance with the provisions herein. The Town may, at their option, disqualify an Offeror and reject his proposal for cause. Reasons deemed to be sufficient for this action shall include, but not be limited to, the following:
- Evidence of collusion among Offeror.
 - Receipt of more than one proposal on any project from an individual, or from a corporation. This restriction does not apply to sub-contractors.
 - Default on any previous contract.
 - For unreasonable failure to complete a previous contract within the specified time or for being in arrears on an existing contract without reasonable cause for being in arrears.
 - Inability to perform as revealed by an investigation of the Proposer's financial statement, experience and/or plant and equipment.
 - Offeror does not meet project-specific requirements, as identified in the Contract Documents
51. **Pricing to be F.O.B. Destination – Freight Allowed:** Pricing shall be F.O.B. destination-freight included for all competitive proposals. F.O.B. Destination-Freight Included shall include all shipping costs to the location(s) at the unit cost. No additional shipping charges shall be allowed.
52. **Contract Quantities:** The quantities specified in the Request for Proposals are estimates only unless otherwise clearly noted and are given for the information of Offeror and for the purpose of proposal evaluation. They do not indicate the actual quantity that will be required, since such volume will depend upon requirements that may develop during the contract period. Quantities shown shall not be construed to represent any amount which the Town shall be obligated to purchase under the contract or relieve the Contractor of his obligation to fill all orders placed by the Town except as clearly noted.
53. **Competition Intended:** It is the Town's intent that the Request for Proposals (RFP) permits competition. It shall be the Offeror's responsibility to advise the Buyer in writing if any language requirement, specification, etc., or any combination thereof, inadvertently restricts or limits the requirements stated in this RFP to a single source. Such notification must be received by the Purchasing Agent prior to the date set for proposals to close.
54. **Insurance:** The successful Offeror shall procure, maintain, and provide proof of, insurance coverage for injuries to persons and/or property damage as may arise from or in conjunction with, the work performed on behalf of the Town by the Offeror, his agents, representatives, employees or sub-Contractors. Proof of coverage as contained herein shall be submitted fifteen (15) days prior to the commencement of work and such coverage shall be maintained by the Offeror for the duration of the contract period; for occurrence policies. Claims made policies must be in force or that coverage purchased for three (3) years after contract completion date.

1. General Liability: Coverage shall be as broad as: Comprehensive General Liability endorsed to include Broad Form, Commercial General Liability Form including Products/Completed Operations.
 - a) Minimum Limits, General Liability:

| | |
|-------------|---------------------------------|
| \$1,000,000 | General Aggregate Limit |
| \$1,000,000 | Products & Completed Operations |
| \$1,000,000 | Personal and Advertising Injury |
| \$1,000,000 | Each Occurrence Limit |
| \$50,000 | Fire Damage Limit |
| \$5,000 | Medical Expense Limit |
2. Automobile Liability: Coverage sufficient to cover all vehicles owned, used, or hired by the Offeror, his agents, representatives, employees or sub-Contractors.
 - a) Minimum Limits, Automobile Liability:

| | |
|-------------|-----------------------|
| \$1,000,000 | Combined Single Limit |
| \$1,000,000 | Each Occurrence Limit |
| \$5,000 | Medical Expense Limit |
3. Workers' Compensation: Limits as required by the Workers' Compensation Act of Virginia. Employers Liability, \$1,000,000.
4. Professional Liability:
 - a) The successful Offeror shall provide the Town with an Errors and Omissions Liability Policy (E&O Policy). The policy shall cover the Town for all sources of liability which would be covered by the latest edition of the standard Errors and Omissions Liability Coverage Form, as filed for use in the Commonwealth of Virginia by the Insurance Services Office, without the attachment of restrictive endorsements.
 - b) The Town policy shall be endorsed to include the Town 's officials, officers, agents and employees as insured. The E&O Policy shall include the successful Offeror and the Offeror's sub-Contractors of every tier as the Offeror designated in the declarations.
 - c) The minimum E&O Policy limits to be provided by the successful Offeror (inclusive of any amounts provided by an umbrella or excess policy) shall be \$1,000,000 per occurrence combined single limit for bodily injury liability and property damage liability. The limits afforded by the E&O Policy (or umbrella or excess policy with respect to it) shall apply only to the Town and Town's officials, officers, agents and employees and only to claims arising out of or in connection with the work under this contract.
 - d) Notice of Cancellation and/or Restriction - The policy must be specifically endorsed to provide the Town with forty-five (45) days' notice of cancellation, non-renewal, change in coverage, and/or restriction.
5. Coverage Provisions:
 - a) All deductibles or self-insured retention shall appear on the certificate(s).
 - b) The Town, its' officers/ officials, employees, agents and volunteers shall be added as "additional insured" as their interests may appear. This provision does not apply to Professional Liability or Workers' Compensation/Employers' Liability.
 - c) The Offeror's insurance shall be primary over any applicable insurance or self-insurance maintained by the Town.
 - d) Shall provide 30 days written notice to the Town before any cancellation, suspension, or void of coverage in whole or part, where such provision is reasonable.

- e) All coverage for sub-Contractors of the Offeror shall be subject to all of the requirements stated herein.
- f) All deductibles or self-insured retention shall appear on the certificate(s) and shall be subject to approval by the Town. At the option of the Town, either; the insurer shall reduce or eliminate such deductible or self-insured retention; or the Offeror shall be required to procure a bond guaranteeing payment of losses and related claims expenses.
- g) Failure to comply with any reporting provisions of the policy(s) shall not affect coverage provided the Town, its' officers/officials, agents, employees and volunteers.
- h) The insurer shall agree to waive all rights of subrogation against the Town, its' officers/officials, agents, employees or volunteers for any act, omission or condition of premises which the parties may be held liable by reason of negligence.
- i) The Offeror shall furnish the Town certificates of insurance including endorsements affecting coverage. The certificates are to be signed by a person authorized by the insurance company(s) to bind coverage on its' behalf, if executed by a broker, notarized copy of authorization to bind, or certify coverage must be attached.
- j) All insurance shall be placed with insurers maintaining an A.M. Best rating of no less than an A: VII. If A.M. Best rating is less than A: VII, approval must be received from Town's Risk Officer.
- k) All coverage designated herein shall be as broad as the Insurance Services Office (ISO) forms filed for use with the Commonwealth of Virginia.

55. **Payments to Sub-contractors:** Within seven days after receipt of amounts paid by the Town for work performed by a sub-contractor under this contract, the Contractor shall either:

- 1. Pay the Sub-contractor for the proportionate share of the total payment received from the Town attributable to the work performed by the Sub-contractor under this contract; or,
- 2. Notify the Town, and Sub-contractor, in writing, of his intention to withhold all or a part of the Sub-contractor's payment and the reason for non- payment.

The Contractor shall pay interest to the Sub-contractor on all amounts owed that remain unpaid beyond the seven-day period except for amounts withheld as allowed in item b. above.

Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month.

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

The Contractor's obligation to pay an interest charge to a Sub-contractor pursuant to this provision may not be construed to be an obligation of the Town.

55. **Default on Taxes:** The Town reserves the right to withhold payment to any contractor that is in arrears, or in default to the Town on any debt or Contract, or that has defaulted as a surety, or

otherwise on any obligation to the Town.

56. **Contractual Disputes:** The Contractor shall give written notice to the Purchasing Officer of his intent to file a claim for money or other relief at the time of the occurrence or the beginning of the work upon which the claim is to be based.

The written claim shall be submitted to the Purchasing Officer no later than sixty (60) days after final payment. If the claim is not disposed of by agreement, the Purchasing Officer shall reduce his decision to writing and mail or otherwise forward a copy thereof to the Contractor within thirty (30) days of receipt of the claim.

The Purchasing Officer's decision shall be final unless the Contractor appeals within thirty (30) days by submitting a written letter of appeal to the Town Manager or a designee. A decision will be rendered within sixty (60) days of receipt of the appeal.

57. **Responsibility for Making Corrections:** The Contractor without additional costs or fee to the Town, correct or revise any errors or deficiencies in its performance, The Town's review, approval, or acceptance of, nor payment of any of the services required under the contract shall not be deemed a waiver of rights by the Town as a result of the Contractor's negligent performance of any of the services furnished under the contract.

SIGNATURE SHEET
(Submit with Proposal)

My signature certifies that the proposal as submitted complies with all Terms and Conditions as set forth.

My signature also certifies that the accompanying proposal is not the result of, or affected by, any unlawful act of collusion with another person or company engaged in the same line of business or commerce, or any act of fraud punishable under Title 18.2, Chapter 12, Article 1.1 of the Code of Virginia, 1950, as amended. Furthermore, I understand that fraud and unlawful collusion are crimes under the Virginia Governmental Frauds Act, the Virginia Government Bid Rigging Act, and Virginia Antitrust Act, and Federal Law, and can result in fines, prison sentences, and civil damage awards.

My signature also certifies that this firm has no business or personal relationships with any other companies or persons that could be considered as a conflict of interest or potential conflict of interest to the Town and that there are no principals, officers, agents, employees, or representatives of this firm that have any business or personal relationships with any other companies or persons that could be considered as a conflict of interest or a potential conflict of interest to the Town of Smithfield, pertaining to any and all work or services to be performed as a result of this request and any resulting contract with the Town.

I hereby certify that I am authorized to sign as a Representative for the Firm:

Complete Legal Name of Firm: _____

Address: _____

Federal ID No.: _____

Telephone No. _____ Fax No. _____

Name (type/print): _____ Title: _____

Signature: _____

ANTICOLLUSION/NONDISCRIMINATION/DRUG FREE WORKPLACE CLAUSES

ANTICOLLUSION CLAUSE:

IN THE PREPARATION AND SUBMISSION OF THIS BID, SAID BIDDER DID NOT EITHER DIRECTLY OR INDIRECTLY ENTER INTO ANY COMBINATION OR ARRANGEMENT WITH ANY PERSON, FIRM OR CORPORATION, OR ENTER INTO ANY AGREEMENT, PARTICIPATE IN ANY COLLUSION, OR OTHERWISE TAKE ANY ACTION IN THE RESTRAINT OF FREE, COMPETITIVE BIDDING IN VIOLATION OF THE SHERMAN ACT (15 U.S.C. SECTION 1), SECTIONS 59.1-9.1 THROUGH 59.1-9.17 OR SECTIONS 59.1-68.6 THROUGH 59.1-68.8 OF THE CODE OF VIRGINIA.

THE UNDERSIGNED BIDDER HEREBY CERTIFIES THAT THIS AGREEMENT, OR ANY CLAIMS RESULTING THEREFROM, IS NOT THE RESULT OF, OR AFFECTED BY, ANY ACT OF COLLUSION WITH, OR ANY ACT OF, ANOTHER PERSON OR PERSONS, FIRM OR CORPORATION ENGAGED IN THE SAME LINE OF BUSINESS OR COMMERCE; AND, THAT NO PERSON ACTING FOR, OR EMPLOYED BY, THE TOWN OF SMITHFIELD HAS AN INTEREST IN, OR IS CONCERNED WITH, THIS BID; AND, THAT NO PERSON OR PERSONS, FIRM OR CORPORATION OTHER THAN THE UNDERSIGNED, HAVE, OR ARE, INTERESTED IN THIS BID.

DRUG-FREE WORKPLACE:

DURING THE PERFORMANCE OF THIS CONTRACT, THE OFFEROR AGREES TO (I) PROVIDE A DRUG-FREE WORKPLACE FOR THE OFFEROR'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 OFFEROR'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 OFFEROR THAT THE OFFEROR MAINTAINS A DRUG-FREE WORKPLACE; AND (IV) INCLUDE THE PROVISIONS OF THE FOREGOING SECTIONS I, II, AND III IN EVERY SUBCONTRACT OR PURCHASE ORDER OF OVER \$10,000, SO THAT THE PROVISIONS WILL BE BINDING UPON EACH SUBOFFEROR OR VENDOR.

FOR THE PURPOSE OF THIS SECTION, "DRUG-FREE WORKPLACE" MEANS A SITE FOR THE PERFORMANCE OR WORK DONE IN CONNECTION WITH A SPECIFIC CONTRACT AWARDED TO A OFFEROR 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.

NONDISCRIMINATION CLAUSE:

1. EMPLOYMENT DISCRIMINATION BY BIDDER SHALL BE PROHIBITED.
2. DURING THE PERFORMANCE OF THIS CONTRACT, THE SUCCESSFUL BIDDER SHALL AGREE AS FOLLOWS:
 - A. THE BIDDER, WILL NOT DISCRIMINATE AGAINST ANY EMPLOYEE OR APPLICANT FOR EMPLOYMENT BECAUSE OF RACE, RELIGION, COLOR, SEX, NATIONAL ORIGIN, AGE, DISABILITY, OR ANY OTHER BASIS PROHIBITED BY STATE LAW RELATING TO DISCRIMINATION IN EMPLOYMENT, EXCEPT WHERE THERE IS A BONA FIDE OCCUPATIONAL QUALIFICATION/CONSIDERATION REASONABLY NECESSARY TO THE NORMAL OPERATION OF THE BIDDER. THE BIDDER AGREES TO POST IN CONSPICUOUS PLACES, AVAILABLE TO EMPLOYEES AND APPLICANTS FOR EMPLOYMENT, NOTICES SETTING FORTH THE PROVISIONS OF THIS NONDISCRIMINATION CLAUSE.
 - B. THE BIDDER, IN ALL SOLICITATIONS OR ADVERTISEMENTS FOR EMPLOYEES PLACED ON BEHALF OF THE BIDDER, WILL STATE THAT SUCH BIDDER 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.
 - D. BIDDER WILL INCLUDE THE PROVISIONS OF THE FOREGOING SECTIONS A, B, AND C IN EVERY SUBCONTRACT OR PURCHASE ORDER OF OVER \$10,000, SO THAT THE PROVISIONS WILL BE BINDING UPON EACH SUBOFFEROR OR VENDOR.

| | |
|------------------------------------|------------------|
| Name and Address of Bidder: | Date: |
| | By: |
| | Signature In Ink |
| | |

| | |
|--------------------------|--------------|
| | Printed Name |
| Telephone Number: () | |
| Fax Phone Number: () | Title |
| FIN/SSN#: | |

Is your firm a "minority" business? Yes No

If yes, please indicate the "minority" classification below:

African American
 Hispanic American
 American Indian
 Eskimo
 Asian American
 Aleut Other;

Please Explain: _____

FEMA Required Clauses

2 CFR § 200.326 and 2 CFR Part 200, Appendix II

Non-Discrimination:

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

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and order of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as

provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in the work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant order of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

Compliance with the Contract Work Hours and Safety Standards Act.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.”

Clean Air Act

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.”

Debarment and Suspension.

a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.

b. Non-federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security’s regulations at 2 C.F.R. Part 3000 (Non-procurement Debarment and Suspension).

c. These regulations restrict awards, sub-awards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. See 2 C.F.R. Part 200, Appendix II, ¶ H; and *Procurement Guidance for Recipients and Subrecipients Under 2 C.F.R. Part 200 (Uniform Rules): Supplement to the Public Assistance Procurement Disaster Assistance Team (PDAT) Field Manual* Chapter IV, ¶ 6.d, and Appendix C, ¶ 2 [hereinafter *PDAT Supplement*]. A contract award must not be made to parties listed in the SAM Exclusions. SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at www.sam.gov. See 2 C.F.R. § 180.530; *PDAT Supplement*, Chapter IV, ¶ 6.d and Appendix C, ¶ 2.

d. In general, an “excluded” party cannot receive a Federal grant award or a contract within the meaning of a “covered transaction,” to include sub-awards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and subrecipients. The key to the exclusion is whether there is a “covered transaction,” which is any nonprocurement transaction (unless excepted) at either a “primary” or “secondary” tier. Although “covered transactions” do not include contracts awarded by the Federal Government for purposes of the non-procurement common rule and DHS’s implementing regulations, it does include some contracts awarded by recipients and subrecipient.

e. Specifically, a covered transaction includes the following contracts for goods or services:

- (1) The contract is awarded by a recipient or subrecipient in the amount of at least \$25,000.
- (2) The contract requires the approval of FEMA, regardless of amount.
- (3) The contract is for federally required audit services.
- (4) A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either the approval of FEMA or is in excess of \$25,000.

d. The following provides a debarment and suspension clause. It incorporates an optional method of verifying that contractors are not excluded or disqualified:

Suspension and Debarment

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by (insert name of subrecipient). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (name of state agency serving as recipient and name of subrecipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the recipient.”

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements (To be submitted with each bid or offer exceeding \$100,000) The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

Procurement of Recovered Materials

(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired—

(i) Competitively within a timeframe providing for compliance with the contract performance schedule;

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

(2) Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

Additional FEMA Requirements.

“Access to Records. The following access to records requirements apply to this contract:

(1) The contractor agrees to provide (insert name of state agency or local or Indian tribal government), (insert name of recipient), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.”

Other terms:

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval.

This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor will comply will all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

Termination for Convenience: The Town may at any time, and for any reason, terminate this Contract by written notice to Contractor specifying the termination date, which shall be not less than thirty (30) days from the date such notice is mailed. Notice shall be given to Contractor by certified mail/return receipt requested at the address set forth in Contractor's Bid Proposal or as provided in this Contract. In the event of such termination, Contractor shall be paid such amount as shall compensate Contractor for the work satisfactorily completed, and accepted by the Town, at the time of termination. If the Town terminates this Contract, Contractor shall withdraw its personnel and equipment, cease performance of any further work under this Contract, and turn over to the Town any work completed or in process for which payment has been made.

Termination for Cause: In the event that Contractor shall for any reason or through any cause be in default of the terms of this Contract, the Town may give Contractor written notice of such default by certified mail/return receipt requested at the address set forth in Contractor's Bid/Proposal or as provided in this Contract.

Unless otherwise provided, Contractor shall have ten (10) days from the date such notice is mailed in which to cure the default. Upon failure of Contractor to cure the default, the Town may immediately cancel and terminate this Contract as of the mailing date of the default notice.

Upon termination, Contractor shall withdraw its personnel and equipment, cease performance of any further work under the Contract, and turn over to the Town any work in process for which payment has been made. In the event of violations of law, safety or health standards and regulations, this Contract may be immediately cancelled and terminated by the Town and provisions herein with respect to opportunity to cure default shall not be applicable.