

TOWN OF  
**Herndon**  
DEPARTMENT OF FINANCE

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**REQUEST FOR PROPOSAL**  
**(SEALED)**

**RFP # 22-12**

**Smart City Services**

**DELIVER SEALED PROPOSALS BY:**

**March 22, 2022, at 3:00 p.m. Eastern**

Submit all inquiries concerning this Request for Proposal in writing to:

Gerald W. Amacker (Jerry), CPPB, VCO, VCA  
Purchasing Agent

Town of Herndon  
777 Lynn Street  
Herndon, VA 20170-4602

Email Inquiries to:

[gerald.amacker@herndon-va.gov](mailto:gerald.amacker@herndon-va.gov)

**TOWN OF HERNDON  
REQUEST FOR PROPOSAL (RFP)  
(SEALED)**

**RFP Number:** 22-12

**Issue Date:** February 16, 2022

**Title:** Smart City Services

**Commodity:** 03528, 12050, 20464, 20664, 28555, 28556, 28557, 28576, 28580, 65515, 65520, 65529, 65535, 72663, 80330, 80380, 83845, 85553, 91551, 92037, 92682, 93942.

**Issuing Entity:** Purchasing Department  
777 Lynn Street  
Herndon, Virginia 20170-4602

**Period of Contract:** Commencing upon the execution of the contract for five years with two (2) five-year renewal options.

**Work Site:** Herndon, VA 20170

If proposals are mailed, send directly to the Issuing Entity shown above. If proposals are hand delivered, deliver to: Front Counter; 777 Lynn Street, Herndon, Virginia. Direct all inquiries for information to Gerald W. Amacker (Jerry), Purchasing Agent at (703) 435-6800 ext. 2048 or at the above listed email address.

\*\*\*\*\***FACSIMILES OR EMAILED PROPOSALS ARE NOT ACCEPTED**\*\*\*\*\*

In compliance with this Request for Proposal (RFP) and subject to all conditions imposed therein, the undersigned agrees to furnish the services at the prices indicated on the Offeror's proposal.

**A public proposal opening will not occur due to Covid-19.**

**A non-mandatory Pre-Proposal Conference and site visit will be held on Friday March 4, 2022, at 10:00 a.m. at the Herndon Municipal Center 777 Lynn Street (2<sup>nd</sup> Floor Conference Room), Herndon, VA. 20170.**

Potential Offerors shall direct all questions or inquiries in writing **no later than March 9, 2022, 3:00 p.m.** to Gerald W. Amacker 777 Lynn Street, Herndon, Virginia 20170 or [gerald.amacker@herndon-va.gov](mailto:gerald.amacker@herndon-va.gov) Revisions to the solicitation are made only by addendum issued by the Purchasing Office.

The Town will post addendums, proposal tabulations and award information on its Procurement Webpage at: <http://herndon-va.gov/departments/finance/purchasing> and on the Commonwealth of Virginia Department of General Services' central electronic procurement website (eVA) <https://eva.virginia.gov/> and on the Purchasing bulletin board.

**Note: This public body does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.**

TABLE OF CONTENTS

RFP # 22-12

Smart City Services

SECTION	TITLE	PAGE
I.	BACKGROUND & PURPOSE .....	4
II.	CONTRACT PERIOD .....	4
III.	INSTRUCTION TO OFFERORS .....	4
IV.	SCOPE OF SERVICES .....	8
V.	EVALUATION AND AWARD CRITERIA .....	10
VI.	AWARD PROCESS .....	12
VII.	RIGHT TO REJECT PROPOSALS .....	12
VIII.	DEADLINE FOR SUBMISSIONS .....	12
IX.	CONTRACTUAL ORDER OF PRECEDENCE .....	12
X.	DELAYS AND SUSPENSIONS .....	13
	GENERAL TERMS & CONDITIONS .....	13
	PROPOSAL FORM .....	36 – 41
	ATTACHMENT* A - BUSINESS, PROFESSIONAL AND OCCUPATIONAL LICENSE .....	37
	ATTACHMENT* B – REFERENCES .....	38
	ATTACHMENT* C – CONTRACTOR CERTIFICATION, AGREEMENT, AND AFFIDAVIT .....	39 - 40
	ATTACHMENT* D - STATE CORPORATION COMMISSION FORM .....	41

**\* DENOTES – MUST SUBMIT WITH PROPOSAL**

## **I. BACKGROUND & PURPOSE**

### **BACKGROUND**

In June 2018, the town entered into a Pilot Project Agreement with Vivacity DC, Inc. to explore and evaluate the impact of smart city technologies and services through the installation of remote-controlled LED lights equipped with radio communications and Internet-of-Things (IoT) sensor equipment in downtown Herndon.

Under the agreement, the pilot project included the replacement of 10 existing streetlight poles with LED smart poles and two additional streetlight LED smart poles.

The enhancements enabled the remote monitoring and management system for the new streetlights; provided a public Wi-Fi network downtown; an electric vehicle charging station and IoT sensors for other smart city services.

### **PURPOSE**

The purpose of this Request for Proposal (RFP) is to obtain the services of a licensed, qualified, and experienced contractor to design, engineer, construct and manage the integrated fiber optic cable and wireless network to continue the smart city services. This shall include installation, maintenance, repair, and parts. The Smart City Services shall include lighting poles, public Wi-Fi network for downtown, Cameras, Electric Vehicle Charging Station and Emergency Push Button/Intercom system.

The town intends to allow access to infrastructure including conduit, power facilities and electrical services, as well as required authorization to third parties via a License Agreement (approved by Town Council) and any necessary instruments thereto including required insurance.

## **II. CONTRACT PERIOD**

The initial term of this contract is for five years commencing upon the date that the contract is fully executed. The contract has two (2) five-year mutual optional renewals. Automatic renewals are not permitted. License Agreement and any necessary instruments must be in place during the contract period.

## **III. INSTRUCTIONS TO OFFERORS**

### **3.1 Offerors Responsibility:**

Offerors shall examine the scope of services, terms and conditions and locations of this Request for Proposal and shall exercise their own judgment as to the nature and total amount of all work required for acceptable performance. The Town cannot accept any plea of ignorance of conditions that exist or that may hereinafter exist, or of conditions or difficulties encountered in the work as a result of failure to make the necessary examination and investigation as an excuse for any failure or omission on the part of the offeror to fulfill in every detail the requirements of this Request for Proposal or is acceptable as a basis for any claims whatsoever for extra compensation.

### **3.2 Competition Intended:**

It is the Town's intent that this Request for Proposal (RFP) permits competition. It shall be the Offeror's responsibility to advise the Purchasing Agent 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. The Purchasing Agent must receive such notification not later than five (5) business days prior to the date set for acceptance of proposals.

### 3.3 Conditions for submitting an offer:

A. Proposal Forms: For consideration for selection, Offeror must submit a complete response to this solicitation. A complete response will consist of the return of the following documents:

1. One (1) original on a flash/thumb drive and three (3) hard copies of the offeror's proposal and include completed pages 36-41 of this RFP with the offeror's proposal.

An authorized representative of the Offeror's firm **shall sign** the official Town of Herndon Proposal Form and deliver it along with the firm's proposal to the proper location by the time and date as specified on the cover page.

B. Envelope Identification: The Offeror shall return the signed proposal in a self-addressed envelope labeled with "**RFP 22-12 Smart City Services.**" In the event the proposal contains bulky subject material, firmly affix the mailing envelope provided to any other wrapper being used. The Town is not responsible for premature opening or late arrival of proposals improperly addressed or identified. If a proposal is mailed in an envelope, not as specified, the Offeror takes the risk that the Town may inadvertently open the envelope and the information compromised which may cause disqualification of the proposal. The Town reserves the right to declare such a proposal as non-responsive. The Offeror may hand deliver sealed proposal to the designated location.

C. Late Proposals: Proposals received after the published time and date of acceptance shall be date and time stamped, marked "late," and retained unopened in the procurement file. In addition, the Town will not accept hand-delivered proposals that are presented after the published time and date of acceptance. The Town does not accept liability for late or non-receipt of proposals.

### 3.4 Extension of Contract:

The initial contract will have two five-year renewals associated with it for a maximum of fifteen (15) consecutive years under the terms and conditions of the original contract. The Contract Administrator will recommend to the Purchasing Agent, in writing, any intentions to extend the contract approximately 90 days prior to the expiration date. If the Town elects to exercise the option to extend the contract for an additional five-year period, the contract price for the additional five years shall increase 5%.

### 3.5 License Requirement:

A. The Town requires that all firms doing business in the Town have a license in accordance with the Town's "Business, Professional and Occupational Licensing" (BPOL) Tax Ordinance. **A BPOL license is not required to submit a proposal for this effort but will be required prior to award of the contract.** Wholesale and retail merchants without a business location in the Town are exempt from this requirement. Direct all questions concerning the BPOL tax to the Finance

Department, Revenue Office, telephone number (703) 435-6813.

- B. The signature on this solicitation certifies that the Contractor is properly licensed for providing the goods/services specified or will have the proper license prior to the awarding of the contract.
- C. All Contractors doing business in the Town are required to possess a valid Virginia Contractor's License as applicable.

**3.6 Ethics in Public Contracting:**

- A. The provisions contained in Sections 2.2-4367 of the Virginia Public Procurement Act as set forth in the Code of Virginia (1950), as amended, are applicable to all contracts solicited or entered into with the Town of Herndon.
- B. By submitting their proposal, all Offerors certify that their proposal are made without collusion or fraud and they have not offered or received any kickbacks or inducements from any other Offeror, supplier, manufacturer or subcontractor in connection with their 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.

**3.7 Debarment Status:**

By submitting a proposal and/or acceptance of a Town Purchase Order or Contract, all firms certify that they are not currently debarred from doing business with or in the Commonwealth of Virginia, nor are they an agent of any person or entity that is currently debarred from doing business with or in the Commonwealth of Virginia.

**3.8 Addenda:**

The Town will issue all addenda by close of business, Friday March 11, 2022, via Town's Procurement webpage, posting on the Procurement bulletin board located at 777 Lynn Street and the Commonwealth of Virginia e-procurement webpage (eVA). **All such addenda shall be signed and dated by the contractor and returned with their proposal.** All such addenda shall become a part of the solicitation documents in the proposal and shall become a Contract Document. The Town accepts no liability for late proposals or non-receipt of addenda.

**3.9 Qualifications:**

The Offeror shall provide the names, addresses, email addresses, and telephone numbers of at least two (2) other firms or government agencies for whom a similar type of work has been performed in the past two (2) years.

- A. The Town will consider, in determining the qualifications of a offeror, their record in performance of any contracts for the services into which they may have entered with the Town or with other public bodies or corporations; and, the Town expressly reserves the right to reject the proposal of such offeror, if such record discloses that said offeror, in the opinion of the Town, has not properly performed such contracts or has habitually and without just cause neglected the payment of bills, or has

otherwise disregarded his obligations to subcontractors, suppliers or employees.

- B. The Town will make an investigation as to the ability of the offeror to perform the work. The Town of Herndon reserves the right to reject any proposal, if the evidence submitted by, or investigation of offeror, fails to satisfy the Town that such offeror is properly qualified by experience and financial status to carry out the obligations of the contract and to complete the work contemplated therein. The Town will not accept conditional offers.
- C. The Town reserves the right to inspect offeror's facility, prior to award, to satisfy questions regarding the offeror's capabilities.

**3.10** Projected Requirements/Estimated Quantities:

The quantities specified in this solicitation are estimated only and are given for the information of offerors and for the purpose of proposal evaluation. They do not indicate the actual quantities that will be ordered since the actual volume will depend upon requirements that develop during the contract period.

**3.11** Prices and Price Adjustment

- A. All prices/discounts shall be FOB destination and shall include all charges that may be imposed in fulfilling the terms of this contract. Prices/discounts shall remain firm for the duration of the contract.
- B. The request for a change in the unit price shall include as a minimum, (1) the cause for the adjustment. (2) proposed effective date; and (3) the amount of the change requested with documentation to support the requested adjustment (appropriate bureau of Labor Statistics, Consumer Price Index (CPI), change in manufacturer's price, etc.)

**3.12** Vendor Capabilities/Inspections

Upon request, any offeror may be required to give evidence that the offeror maintains a permanent place of business and has the following to support this: Adequate on-site inventory to deliver the items properly and expeditiously has adequate insurance for both itself and any subcontractors; has adequate financial status to meet obligations incidental to the work and has appropriate technical expertise. The offeror's failure to demonstrate the capabilities and resources listed above shall result in a determination of non-responsibility and shall be cause of rejection of the proposal.

**3.13** Cancellation of Orders

Purchases made under this contract are for readily available items specified herein. Time is of the essence in furnishing the items ordered. The Town reserves the right to cancel the order and/or refuse delivery if the items ordered are not furnished within the period of time specified in this contract.

**3.14** Additions/Deletions

The Town reserves the right to add similar items/services or delete items/services specified in the subsequent contract as requirements change during the period of the Contract. The Town

of Herndon and the Contractor will mutually agree to prices for items/services to be added to the contract. Contract amendments will be issued for all additions or deletions.

#### IV. SCOPE OF SERVICES

Brand name or equal products and services are allowed. Lighting and poles will have to be approved by the Town's Historical District Review Board as the lighting and poles are in Herndon's historical district.

##### 4.1 Fiber Network:

This solution requires city-wide dedicated fiber network connecting the following existing equipment:

- Network Switches – Transition & FS (Qty 7)
- Ruckus Wi-Fi AP (Qty 6)
- Environmental Units (Qty 3)
- Axis & Mobotix Cameras (Qty 3 Axis Cameras & Qty 1 Mobotix Camera)
- Intellistreets – Lighting control & Speaker system and Emergency Push Button/Intercom (Qty 3 Light control, Qty 1 Speaker System & Qty 1 Push Button/Intercom)
- Power Meter monitoring (Qty 3)
- Fortinet Firewalls (Internet Connection) (Qty 1)
- Charging station (Qty 1)

The fiber network is connected between the following in ground cabinet locations: (See Drawing)

- Town Hall
  - Vault 1 (Control point for L1 & L2)
    - Wi-Fi Access Point
    - Emergency Blue Push Button
    - 360-degree Camera
    - Intercom
    - Pole Light controller
    - Network Switch
  - Vault 2
    - Wi-Fi Access Point
  - Pump Room
    - Main switch
    - Firewall/Router
    - Internet entry point
    - Network Switch
- Parking Lot (Bakery)
  - Vault 12 (Control point for Poles L10, L11, L12 & L13)
    - Wi-Fi Access Point
    - Pole Light Controller
    - Network Switch



- Vault 13
  - Network Switch
- Old Town Hall Area
  - Vault L5 (Control point for Poles L3, L4, L5, L6 & L7)
    - Network Switch
    - Pole light controller
  - Vault C9
    - Cameras
      - People counter camera
      - 360-degree camera
      - PTZ camera
    - Wi-Fi Access Point
    - Network Switch

#### 4.2 Maintenance:

Maintenance is required 2 times a year:

- Check underground vaults for any leakage or damage.
- Check Pump Room equipment for any damage.
- Clean and adjust fan speeds in the Fall (Lower speed) and Spring (Increase speed)
- Other maintenance/repair beyond the required two is T&M

#### 4.3 Monitoring & Control responsibilities:

All devices are remotely monitored by a Network Management System maintained by eX2.

All Pole Lighting, Push Blue, Speakers, Intercom, Mobotix camera are maintained by [www.intellistreets.com](http://www.intellistreets.com) – (Intellistreets works with eX2 for any calls)

Firewall/Router – VPN control maintained by eX2 partners

Axis camera (People Counter is a cloud-based system) – eX2

Cloud based video recording/viewing – Genetec Stratocast – eX2

Axis Cameras – eX2

Network Switches – eX2

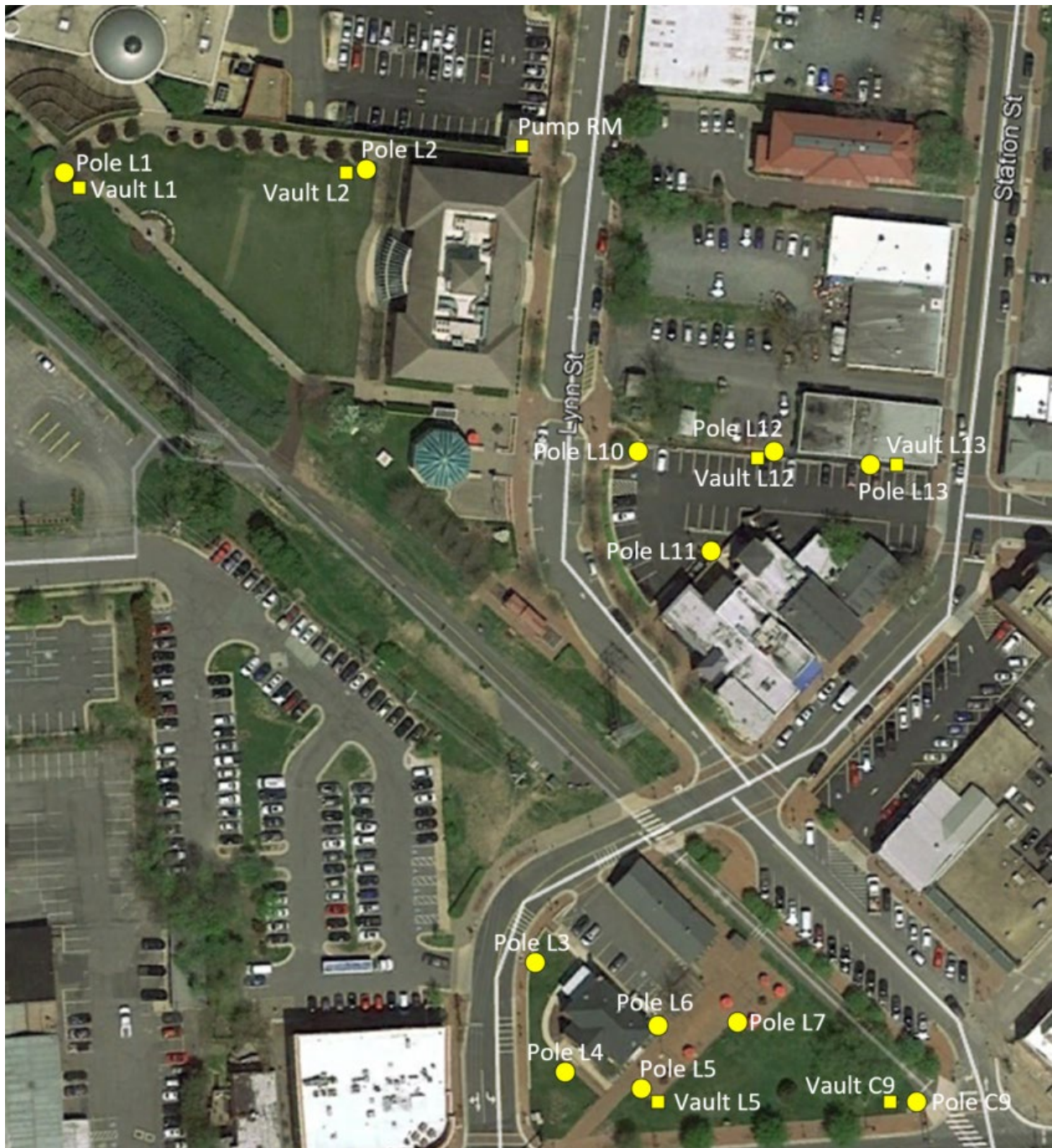
Power meters & environment devices – eX2

Wi-Fi access points – eX2 & partners

Internet – eX2 & partners

Maintain Fiber – eX2 & partners

Power – Town of Herndon



## V. EVALUATION AND AWARD CRITERIA

### A. EVALUATION CRITERIA

1. The Purchasing Agent reserves the right to award a contract by individual items, in the aggregate, or in combination thereof, or to reject any or all proposals and to waive any informality in proposals received whenever such rejection or waiver is in the best interest of the Town. An Evaluation Committee has been established to review and evaluate all proposals submitted in response to this Request for Proposal. The Committee shall conduct a preliminary evaluation of all proposals on the basis of the information provided with the proposal, and the evaluation criteria listed below.

2. No Offeror, including any of their representatives, subcontractors, affiliates and interested parties, shall contact any member of the Evaluation Committee or any person involved in the evaluation of the proposals. Evaluation Committee members will refer any and all calls related to this procurement to the Purchasing Agent. Failure to comply with this directive may, at the sole discretion of the Town, result in the disqualification of an Offeror from the procurement process

**EVALUATION CRITERIA**

The Town will select the proposal that is responsive and the most advantageous to the Town as determined by the Town. The Town intends to award a contract, subject to the terms of this RFP, to the Offeror that offers the best overall value. The Town will evaluate proposals based on the criteria as listed below. An evaluation committee will independently review, evaluate, and rank each proposal received using the following criteria.

**First Impression Score - 5-point scale:**

0 = The proposal fails to address the criterion or cannot be assessed due to missing or incomplete information.

1 = Poor. The criterion is inadequately addressed, or there are serious inherent weaknesses.

2 = Fair. The proposal broadly addresses the criterion, but there are significant weaknesses.

3 = Good. The proposal addresses the criterion well, but a number of shortcomings are present.

4 = Very Good. The proposal addresses the criterion very well, but a small number of shortcomings are present.

5 = Excellent. The proposal successfully addresses all relevant aspects of the criterion. Any shortcomings are minor.

Numbers:

Maximum Score for any Criteria is 5.0.

Scores are entered in whole or half numbers.

Determine weighted score by multiplying Weight time Score.

Maximum Total Weighted Score is 500.

<b>CRITERIA</b>	<b>Weight</b>	<b>Score</b>	<b>Weighted Score</b>
The Offeror’s responsiveness and compliance with the RFP requirements and conditions.	<b>15</b>		
Proposed solution.	<b>35</b>		
Examples of similar projects.	<b>20</b>		
Offeror’s qualifications.	<b>15</b>		
Overall price for the project and yearly software maintenance costs.	<b>15</b>		
<b>TOTALS</b>	<b>100</b>		

## VI. AWARD PROCESS

The Town of Herndon Evaluation Committee shall engage in individual discussions with two or more Offerors deemed fully qualified to provide the services as described in this RFP. Repetitive informal interviews are permissible. Each Offeror is encouraged to elaborate on their qualifications and performance data or staff qualifications pertinent to the proposed project, as well as alternate concepts.

Evaluation Committee members shall not disclose proprietary information from competing Offerors to the public, other staff or to competitors.

At the conclusion of the informal interviews, on the basis of evaluation factors published in the Request for Proposals and all information developed in the selection process to this point, the Town shall select, in the order of preference, two or more Offerors, if possible, whose professional qualifications and proposed services are deemed more meritorious. The Town shall then conduct negotiations beginning with the Offeror ranked first. At this negotiation stage the Town may discuss and/or request binding estimates of costs, fee per task, and, if desirable, binding estimates of hours and hourly costs for requested services. If a contract that is satisfactory and advantageous to the Town is negotiated at a price considered fair and reasonable, the Evaluation Committee shall make a recommendation to the Town Council advising of an award to that Offeror. Otherwise, the Evaluation Committee shall formally terminate negotiations with the Offeror ranked first and shall begin conducting negotiations with the Offeror ranked second, and so on until such a contract is negotiated at a fair and reasonable price.

**The Town may negotiate and award a contract to an Offeror that it determined, in writing, is the single fully qualified Offeror, or that one Offeror is clearly more highly qualified and suitable than the others under consideration.**

## VII. RIGHT TO REJECT PROPOSALS

An authorized representative of the firm shall sign all proposals, and the Offeror shall submit all information as requested. Failure to submit all requested information may result in the rejection of the proposal.

The Town of Herndon reserves the right to cancel this RFP and/or reject any or all proposals and waive any informalities in any proposal.

## VIII. DEADLINE FOR SUBMISSION

For selection consideration, the Offeror shall submit a complete response to the Request for Proposal by the stipulated deadline. Forward proposals via mail service or hand-delivered to:

**Town of Herndon  
Attn: Purchasing  
777 Lynn Street  
Herndon, Virginia 20170-4602**

The Town must receive all proposals no later than **Tuesday March 22, 2022, at 3:00 p.m.** Each proposal, one (1) original on a flash/thumb drive and three (3) copies, must be appropriately signed by an authorized representative of the Offeror, and must be submitted in a sealed envelope or package. Clearly mark the proposal envelope with “**RFP # 22-12 Smart City Services**” and the specified opening date and time.

## **IX. CONTRACTUAL ORDER OF PRECEDENCE**

In the event of conflict, the provisions of the Contract and any subsequent amendments shall take precedence over any other contractual documents. The Contract consists of the following documents (the “Contract Documents”), that in the event of conflict shall have the following priority (highest to lowest):

### **9.1 Contract Amendment(s)**

### **9.2 Contract:**

- a. Solicitation 22-12 and addendums
- b. Signed Offeror’s Proposal as submitted
- c. Duly Signed Summary of Negotiations and Acceptance

## **X. DELAYS AND SUSPENSIONS**

**10.1** The Town may direct the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time deemed appropriate for the convenience of the Town. The Town will extend the Contractor's time of completion by a period of time that in the discretion of the Purchasing Agent is reasonably suited for completion of work. The Town may further amend the contract by mutual agreement for any increase in the cost of performance of the contract (excluding profit) resulting solely from the delay or suspension of the contract. No adjustment shall be made under this clause for any delay or interruption resulting from any other cause, including the fault or negligence of the Contractor.

**10.2** If the Town does not direct the Contractor, in writing, to suspend, delay, or interrupt the contract, the Contractor must give the Town Purchasing Agent written notice if the Town fails to provide data or services that are required for contract completion by the Contractor. The Town may extend the Contractor's time of completion by a period of time that in the discretion of the Purchasing Agent is reasonably suited for completion of work. The Town may further amend the contract by mutual agreement for any increase in the cost of performance of the contract (excluding profit) resulting solely from the delay or suspension of the contract. No adjustment shall be made under this clause for any delay or interruption resulting from any other cause, including the fault or negligence of the Contractor.

**10.3** The Contractor shall continue its work on other phases of the project or contract, if in the sole discretion of the Purchasing Agent such work is not impacted by the Town’s delay, suspension, or interruption. All changes to the work plan or project milestones shall be reflected in writing as a contract amendment.

## **GENERAL TERMS AND CONDITIONS**

Vendor: The general rules and conditions that follow apply to all purchases and become a definite part of each formal solicitation and resulting Contract award issued by the Town of Herndon, unless otherwise specified. Bidders, Offerors, Contractors, Vendors, or their authorized representatives are expected to inform themselves fully as to the conditions, requirements, scope of work or specifications before submitting bids or proposals; failure to do so is, solely, at the Bidder’s, Offeror’s, Contractor’s or Vendor’s own risk and relief cannot be secured on the plea of error.

Subject to all State and local laws, policies, resolutions, and regulations and all accepted rules, regulations and limitations imposed by legislation of the Federal Government, bids or proposals on all solicitations

issued by Town of Herndon will bind Bidders or Offerors to applicable conditions and requirements herein set forth unless otherwise specified in the solicitation.

**1. AUTHORITY** – The Procurement Official has the sole responsibility and authority for negotiating, placing and when necessary, modifying every solicitation, Contract, and purchase order (except for capital construction projects) issued by the Town. In the discharge of these responsibilities, the Procurement Official may be assisted by assigned buyers. Unless specifically delegated by the Procurement Official, no other Town officer or employee is authorized to order supplies or services, enter into purchase negotiations or Contracts, or in any way obligate the government of the Town for indebtedness. Any purchase ordered, or Contract made which is contrary to these provisions and authorities shall be of no effect and void and the Town shall not be bound thereby.

## **2. DEFINITIONS**

**AGENCY:** Any Department, Agency, Authority, Commission, Board, or other unit in the Administrative Service of the Town.

**BEST VALUE:** As predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to a public body's needs.

**BID:** The offer of a Bidder to provide specific goods or services at specified prices and/or other conditions specified in the solicitation.

**BIDDER/OFFEROR:** Any individual, company, firm, corporation, partnership, or other organization bidding on solicitations issued by the Procurement Official and offering to enter into Contracts with the Town. The term "Bidder" will be used throughout this document and shall be construed to mean "Offeror" where appropriate.

**BRAND NAME OR EQUAL SPECIFICATION:** A brand name specification to describe the standard of quality, performance, and other characteristics needed to meet the town requirements and which provides for the submission of equivalent products.

**CONTRACTOR:** Any individual, company, firm, corporation, partnership, or other organization to whom an award is made by the Town.

**GOODS:** All material, equipment, supplies, printing, and automated data processing/information technology hardware and software.

**INFORMALITY:** A minor defect or variation of a bid or proposal from the exact requirements of the invitation to bid or the request for proposal which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.

**INVITATION FOR BID (IFB):** A request which is made to prospective suppliers (Bidders) for their quotation on goods or services desired by the Town. The issuance of an IFB will contain or incorporate by reference the specifications and contractual terms and conditions applicable to the procurement.

**PROFESSIONAL:** Any type of professional service which is either: 1) performed by an independent Contractor within the practice of accounting, actuarial services, architecture, dentistry, land surveying, landscape architecture, law, medicine, optometry, pharmacy, or professional engineering (which shall be procured as set forth in the Code of Virginia §2.2-4301 in the definition of competitive negotiation and in conformance with the Purchasing Regulations, required but not furnished by its own employees, which is in its nature so unique that it should be obtained by negotiation on the basis of demonstrated competence

and qualification for the type of professional service required and at fair and reasonable compensation rather than by competitive sealed bidding.

**PROCUREMENT OFFICIAL:** The Procurement Official employed by the Town Council of the Town of Herndon.

**REQUEST FOR PROPOSAL (RFP):** A request for an offer from prospective Offerors that will indicate the general terms which are sought to be procured from the Offeror. The RFP will specify the evaluation factors to be used and will contain or incorporate by reference other contractual terms and conditions applicable to the procurement.

**RESPONSIBLE BIDDER/OFFEROR:** An individual, company, firm, corporation, partnership, or other organization having the capability in all respects to perform fully the Contract requirements, and also having the moral and business integrity and reliability which will assure good faith performance, and having been prequalified, if required.

**RESPONSIVE BIDDER/OFFEROR:** An individual, company, firm, corporation, partnership, or other organization having submitted a bid which conforms in all material respects to the invitation for bid or request for proposal.

**SERVICES:** Any work performed by an independent Contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials, and supplies.

**SOLICITATION:** The process of notifying prospective Bidders or Offerors that the Town wishes to receive bids or proposals on a set of requirements to provide goods or services. The notification of the Town requirements may consist of public advertising (newspaper, Town Web Site, or other electronic notification), the mailing of Notices of Solicitation, Invitation for Bid (IFB) or Request for Proposal (RFP) or telephone calls to prospective Bidders or Offerors.

**STATE:** Commonwealth of Virginia.

3. **CLARIFICATION OF TERMS** - If any prospective Bidder/Offeror has questions about the specifications or other solicitation documents, the prospective Bidder/Offeror should contact, **in writing**, the Purchasing Agent NO LATER THAN TEN (10) WORKING DAYS BEFORE due date. Revisions to the solicitation are made only by addendum issued by the Purchasing Office. Questions shall be answered in writing via addendum and shall be posted on the Commonwealth of Virginia's Procurement Website (eVA), the Town of Herndon's website and the Town's procurement bulletin board.
4. **PROPOSAL FORMS** – Unless otherwise specified in the solicitation, all proposals submitted shall include (pages 36-41), properly signed in ink in the proper spaces and submitted in a sealed envelope. Should the proposal prices and/or any other submissions differ on the copy of the submitted proposal, the ORIGINAL copy shall prevail.
5. **LATE PROPOSALS & MODIFICATIONS OF PROPOSALS** –
  - a. Any proposal/modification received at the office designated in the solicitation after the exact time specified for receipt of the proposal/modification is considered a late proposal/modification. The time/date stamp clock located at the front counter at 777 Lynn Street, Herndon, VA 20170 shall serve as the official authority to determine lateness of any proposal. A late proposal/modification will not be considered for award except under the following conditions only:

1. It was sent by registered or certified mail not later than the fifth (5th) calendar date prior to the date specified for receipt of the proposal/modification; or
  2. The proposal/modification was sent by mail, and it is determined by the Procurement Official that the late receipt was due solely to mishandling by the Town after receipt at the address specified in the solicitation.
- b. If the Town declares administrative or liberal leave, the Town will extend to the next business day proposal openings or receipt of proposals.
- c. A late hand-carried proposal will not be accepted, or any other late proposal not submitted by mail, shall not be considered for award.
- 6. ERRORS IN PROPOSALS** – When an error is made in extending total prices, the unit price will govern. Erasures in proposals must be initialed by the Offeror. Carelessness in quoting prices or in preparation of a proposal otherwise, will not relieve the Offeror. Offerors are cautioned to recheck their proposals for possible errors. Errors discovered after public opening cannot be corrected and the Offeror will be required to perform if his or her proposal is accepted.
- 7. IDENTIFICATION OF PROPOSAL ENVELOPE** – The signed proposal and requested copies should be returned in an envelope or package, sealed, and identified with the following information:
- The title as indicated on the cover page of this RFP  
RFP Number  
Proposal due date and time  
Vendor name and complete mailing address (return address)
- If a proposal is not addressed with the information as shown above, the Offeror takes the risk that the envelope may be inadvertently opened, and the information compromised, which may cause the proposal to be disqualified. The Offerors may hand deliver proposals to the designated location in the office issuing the solicitation. The Offeror should not place any other correspondence or other documents in the envelope.
- 8. COMPLETENESS** – To be responsive, a proposal must include all information required by the solicitation.
- 9. ACCEPTANCE OF PROPOSALS** – Unless otherwise specified, all formal proposals submitted shall be valid for a minimum period of one hundred twenty (120) calendar days following the date established for acceptance. At the end of the one hundred twenty (120) calendar days the proposal may be withdrawn at the written request of the Offeror. If the proposal is not withdrawn at that time, it remains in effect until an award is made or the solicitation is canceled.
- 10. CONDITIONAL PROPOSALS** – Conditional proposals are subject to rejection in whole or in part.
- 11. PROPOSALS FOR ALL OR PART** – Unless otherwise specified by the Procurement Official or by the Offeror, the Procurement Official reserves the right to make award on all items in the aggregate or on any of the items on an individual basis, whichever is in the best interest of the Town. An Offeror may restrict his or her proposal to consideration in the aggregate by so stating but shall name a single unit price on each item proposed. Any proposal in which the Offeror names a total price for all the articles without quoting a unit price for each and every separate item may not be considered for award.



12. **PRICING** – The subsequent Contract will be a firm-fixed price agreement. The fee(s) will remain firm and will include all charges that may be incurred in fulfilling the requirements of this initial Contract. If the Town elects to exercise the option to renew the Contract for an additional five-year period, the Contract price(s) for the additional five years shall increase 5%.
13. **TIME FOR RECEIVING PROPOSALS** – Proposals received prior to the time of opening are securely kept, unopened. The representative of the Procurement Official assigned to open them will decide when the specified time has arrived, and no proposal received thereafter is considered. No responsibility will attach to the Procurement Official or his or her representative for the premature opening of a proposal not properly addressed and identified. The Procurement Official will not consider telegraphic, electronic, or facsimile proposal/modifications, unless specifically authorized in the solicitation.
14. **PROPOSAL OPENING** – The Procurement Officer or designee will open all proposals received in response to a Request for Proposal (RFP) at the date, time and place specified, and the name of the offerors read publicly.
15. **OMISSIONS & DISCREPANCIES** – Any items or parts of any equipment listed in this 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 an Offeror find discrepancies or ambiguities in, or omissions from, the solicitation, including the drawings and/or specifications, he or she shall notify the Procurement Official at least ten (10) days prior to the date set for the opening of proposals. If necessary, the Procurement Official will post a written addendum for clarification to all Offerors no later than three (3) days before the date set for opening of proposals. Notifications regarding specifications will not be considered if received within five (5) days of the date set for opening of proposals.
16. **OFFEROR INTERESTED IN MORE THAN ONE PROPOSAL** – The Procurement Officer or designee will reject multiple proposals, if more than one proposal is offered by any one party, either directly or by or in the name of his or her clerk, partner, or other persons. A party who has quoted prices on work, materials, or supplies to an Offeror is not thereby disqualified from quoting prices to other Offerors or firms submitting a proposal directly for the work, materials, or supplies.
17. **TAX EXEMPTION** – The Town is exempt from the payment of any federal excise or any Virginia sales tax. The price offered must be net, exclusive of taxes. However, when under established trade practice any federal excise tax is included in the list price, an Offeror may quote the list price and shall show separately the amount of federal tax, either as a flat sum or as a percentage of the list price, which shall be deducted by the Federal Excise Tax Exemption Number is **54-6001349**. Contractors located outside the Commonwealth of Virginia are advised that when materials are picked up by the Town at their place of business, they may charge and collect their own local/state sales tax. Materials used in the performance of construction Contracts are subject to Virginia Sales/Use Tax as described in Section 630-10-27J of the Virginia Retail Sales and Use Tax Regulations.
18. **PROHIBITION AGAINST UNIFORM PRICING** – The Procurement Official shall encourage open and competitive proposals by all possible means and shall endeavor to obtain the maximum degree of open competition on all purchase transactions using the competitive negotiation, or open market methods of procurement. In submitting a proposal each Offeror shall, by virtue of submitting a proposal, guarantee that he or she has not been a party with other Offerors to an agreement to propose a fixed or uniform price. Violation of this implied guarantee shall render void the proposals of participating Offerors. Any disclosure to or acquisition by a competitive Offeror,

in advance of the opening of the proposals, of the terms or conditions of the proposal submitted by another competitor may render the entire proceedings void and may require re-advertising for proposals.

19. **DEBARMENT STATUS** - By participating in this procurement, the vendor certifies that they are not currently debarred by the Commonwealth of Virginia or the Town of Herndon from submitting a response for the type of goods and/or services covered by this solicitation. Vendor further certifies that they are not debarred from filling any order or accepting any resulting order, or that they are an agent of any person or entity that is currently debarred by the Commonwealth of Virginia or the Town of Herndon.
20. **NO CONTACT POLICY** – No Offeror shall initiate or otherwise have contact related to the solicitation with any Town representative or employee, other than the Purchasing Department, after the date and time established for receipt of proposals. Any contact initiated by an Offeror with any Town representative, other than the Purchasing Department, concerning this solicitation is prohibited and may cause the disqualification of the Offeror from this procurement process.
21. **CRIMINAL SANCTIONS** – The provisions referenced in Ethics in Public Contracting supplement, but do not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interest Act (§ 2.1-639.1 et seq.), the Virginia Governmental Frauds Act (§ 18.2-498.1 et seq.), and Articles 2 (§ 18.2-438 et seq.) and 3 (§ 18.2-446 et seq.) of Chapter 10 of Title 18.2. The provisions apply notwithstanding the facts that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act.
22. **INSURANCE** - Whenever any work and/or services are provided, either in or on Town owned property, the following shall apply:
  - a. The Contractor shall provide the Procurement Official with a Commonwealth of Virginia Certificate of Insurance PRIOR to the commencement of any work under the Contract and agrees to maintain such insurance until the completion of the Contract. The minimum limits of liability shall be:
    1. The contractor will maintain workers' compensation coverage in compliance with the laws of the Commonwealth of Virginia. The coverage must have statutory limits and be with an insurer licensed to conduct business in the Commonwealth of Virginia. The insurer must have an A. M. Best rating of A- or better. As an alternative, it is acceptable for the contractor to be insured by a group self-insurance association that is licensed by the Virginia Bureau of Insurance. The contractor will also carry employers' liability insurance with a limit of at least \$100,000 bodily injury by accident/\$500,000 bodily injury by disease policy limit/\$100,000 bodily injury by disease each employee.
    2. The contractor will maintain a general liability policy with **\$2,000,000** combined single limits. Coverage is to be on an occurrence basis with an insurer licensed to conduct business in the Commonwealth of Virginia. The insurer must have an A. M. Best rating of A- or better. The insurer must list the **Town of Herndon** as an **additional insured**. The endorsement must be issued by the insurance company. A notation on the certificate of insurance is not sufficient. If the vendor sells alcohol, \$5 million will be required.

Broad Form Comprehensive General Liability--\$2,000,000 per occurrence coverage to include:

Premises - Operations; Products/Completed Operations; Contractual; Independent Contractors; Owners and Contractors Protective; Personal Injury (Libel, Slander,

Defamation of Character, etc.);

3. Automotive Liability--\$1,000,000.00 per occurrence.

4. Professional Liability/Errors and Omissions

5. Profession/Services: Limits

Accounting	\$1,000,000 per occurrence, \$3,000,000 aggregate
Architecture	\$2,000,000 per occurrence, \$6,000,000 aggregate
Asbestos Design, Inspection or Abatement Contractor	\$1,000,000 per occurrence, \$3,000,000 aggregate
Health Care Practitioner	\$1,750,000 per occurrence, \$3,000,000 aggregate
Insurance/Risk Management	\$1,000,000 per occurrence, \$3,000,000 aggregate
Landscape/Architecture	\$1,000,000 per occurrence, \$1,000,000 aggregate
Legal	\$1,000,000 per occurrence, \$5,000,000 aggregate
Professional Engineer	\$2,000,000 per occurrence, \$6,000,000 aggregate
Surveying	\$1,000,000 per occurrence, \$1,000,000 aggregate

- b. The Town reserves the right to require higher limits on any Contracts provided notice of such requirement is stated in the solicitation. The Town is to be named as an additional or co-insured. A thirty- (30) day written notice of cancellation or non-renewal shall be furnished by certified mail to the Procurement Official at the address indicated on the solicitation.
- c. Contractor's signature of the solicitation constitutes his/her certification that, if awarded the Contract, he/she shall obtain the required coverage as specified above and proof of coverage as contained herein shall be submitted within ten (10) calendar days after notice of award. The Contractor's signature also signifies that this coverage shall be maintained for the duration of the Contract. "Claims made" policies must be in force or that coverage purchased for three (3) years after Contract completion date.

- 23. **QUESTIONS CONCERNING SPECIFICATIONS** – Any information relative to interpretation of specifications and drawings shall be requested of the Procurement Official, in writing, in ample time before the opening of proposals. Inquiries, if received by the Procurement Official within ten (10) days of the date set for the opening of proposals, are not given any consideration. Any material interpretation of a specification, as determined by the Procurement Official, will be expressed in the form of an addendum to the specification which will be posted for all prospective Offerors to review no later than three (3) days before the date set for receipt of proposals. Oral answers will not be provided.
- 24. **BRAND NAME OR EQUAL ITEMS** – Unless otherwise provided in the request for proposal, the name of a certain brand, make or manufacturer does not restrict Offerors 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 Town 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.
- 25. **FORMAL SPECIFICATIONS** – When a solicitation contains a specification which states no substitutes, no deviation there from, is permitted and the Offeror is required to furnish articles in conformity with that specification. The Offeror 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 is 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., is construed as to the minimum requirements of these specifications.

26. **CONDITION OF ITEMS** - All items offered shall be new, current model year, in first class condition, including containers suitable for shipment and storage, unless otherwise indicated in solicitation. The Town does not recognize verbal agreements in support of this requirement.
27. **AWARD OR REJECTION OF PROPOSALS** – The Procurement Official shall award the Contract to the responsive and responsible Offeror selected by an evaluation committee complying with all provisions of the RFP, provided the proposal pricing is reasonable and it is in the best interest of the Town to accept it. The Procurement Official reserves the right to award a Contract by individual items, or to reject any or all proposals and to waive any informality in proposals received whenever such rejection or waiver is in the best interest of the Town. Award may be made to as many Offerors as deemed necessary to fulfill the anticipated requirements of the Town.
28. **NOTICE OF ACCEPTANCE/CONTRACT DOCUMENTS** – All award notices are issued by the Town to the successful Offeror. Procurement opportunities, addendums, and award notices are posted on the Town of Herndon's Procurement webpage and on the Commonwealth of Virginia's Procurement Webpage (eVA).

The following documents that are included in the solicitation are incorporated by reference in the resulting Contract and become a part of said Contract:

- a. Authority of Solicitation Form/Acceptance Agreement (Cover Sheet) and other documents which may be incorporated by reference, if applicable,
  - b. General Conditions and Instructions to Offerors,
  - c. Special Provisions and Specifications
  - d. Pricing Schedule,
  - e. Any addenda/amendments/Memoranda of Negotiations
29. **PROTEST OF AWARD OR DECISION TO AWARD** –
    - a. Any Bidder or Offeror may protest the award or decision to award a Contract by submitting a protest in writing to the Procurement Official, or an official designated by the Town, no later than ten (10) days after the award or the announcement of the decision to award, whichever occurs first. Any potential Bidder or Offeror on a Contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such Contract shall submit such protest in the same manner no later than ten (10) days after posting or publication of the notice of such Contract. However, if the protest of any actual or potential Bidder or Offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction which are subject to inspection, then the time within which the protest must be submitted shall expire ten days after those records are available for inspection by such Bidder or Offeror or at such later time. No protest shall lie for a claim that the selected Bidder or Offeror is not a responsible Bidder or Offeror. The written protest shall include the basis for the protest and the relief sought. The Procurement Official shall issue a decision in writing within ten (10) days of the receipt of the protest stating the reasons for the action taken. This decision shall be final unless the Bidder or Offeror appeals within ten (10) days of receipt of the written decision by instituting legal action as provided in the Code of Virginia.

b. If prior to award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The Procurement Official shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a Contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the Contract may be declared void by the Town. Where the award has been made and performance has begun, the Procurement Official may declare the Contract void upon a finding that this action is in the best interest of the Town. Where a Contract is declared void, the performing Contractor shall be compensated for the cost of performance at the rate specified in the Contract up to the time of such declaration. In no event shall the performing Contractor be entitled to lost profits.

c. Pending final determination of a protest or appeal, the validity of a Contract awarded and accepted in good faith in accordance with this article shall not be affected by the fact that a protest or appeal has been filed.

d. An award need not be delayed for the period allowed a Bidder or Offeror to protest, but in the event of a timely protest, no further action to award the Contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

**30. LEGAL ACTION** – No Bidder, Offeror, potential Bidder or Offeror, or Contractor shall institute any legal action until all statutory requirements have been met.

**31. CONTRACTUAL DISPUTES** - Contractual claims, whether for money or other relief, shall be submitted to the Procurement Official in writing no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file a claim for compensation above that required by the contract shall be given at the time of occurrence or beginning of work upon which the claim is based. If such notice is not given, any claim for additional compensation or time extension arising from or related to such occurrence or work shall conclusively be deemed waived. The Contractor shall continue performance during the pendency of any claim or dispute and following any decision thereon. The Procurement Official shall render a final decision on any such claim within sixty (60) days of its submission or within one hundred twenty (120) days after final payment, whichever is later. Failure by the Procurement Official to render a decision shall be deemed a denial of the claim as of the latest date a response was required.

**32. TERMINATION OF CONTRACTS** – Contracts will remain in force for full periods specified and/or until all articles ordered before date of termination shall have been satisfactorily delivered and accepted and thereafter until all requirements and conditions shall have been met, unless:

a. Terminated prior to expiration date by satisfactory deliveries of entire Contract requirements, or upon termination by the Town for Convenience or Cause.

b. Extended upon written authorization of the Procurement Official and accepted by Contractor, to permit ordering of unordered balances or additional quantities at Contract prices and in accordance with Contract terms.

**33. TERMINATION FOR CONVENIENCE** – A Contract may be terminated in whole or in part by the Town in accordance with this clause whenever the Procurement Official shall determine that such a termination is in the best interest of the Town. Any such termination shall be affected by delivery to the Contractor at least thirty (30) days prior to the termination date of a Notice of Termination specifying the extent to which performance shall be terminated and the date upon which termination becomes effective. An equitable adjustment in the Contract price shall be made

for completed service, but no amount shall be allowed for anticipated profit on unperformed services.

**34. TERMINATION OF CONTRACT FOR CAUSE –**

a. If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner his or her obligations under this Contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Contract, the Town shall thereupon have the right to terminate, specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. In such event all finished or unfinished documents, data, studies, surveys, drawings, maps, models, and reports prepared by the Contractor under the Contract shall, at the option of the Town, become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.

b. Notwithstanding the above, the Contractor shall not be relieved of liability to the Town for damages sustained by the Town by virtue of any breach of Contract by the Contractor for the purpose of set off until such time as the exact amount of damages due to the Town from the Contractor is determined.

**35. TERMINATION DUE TO UNAVAILABILITY OF FUNDS IN SUCCEEDING FISCAL YEARS** - If funds are not appropriated or otherwise made available to support continuation of the performance of this Contract in a subsequent fiscal year, then the Town shall cancel the Contract and, to the extent permitted by law, the Town shall reimburse the Contractor for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the Contract.

**36. CONTRACT ALTERATIONS** – No alterations in the terms of a Contract shall be valid or binding upon the Town unless made in writing and signed by the Procurement Official or his or her authorized agent.

**37. MODIFICATION OF CONTRACT** – the Procurement Official may upon agreement with the Contractor, issue a written modification to the Contract within the general scope thereof, during performance. However, no fixed-price Contract may be increased over the life of the Contract by amounts totaling more than twenty percent (20%) of the amount of the Contract or fifty thousand dollars (\$50,000) whichever is LESS without the advance written approval of the Town Council. In no event may an increase in the amount of any contract occur for any purpose without adequate consideration. Relief of an Offeror from the consequences of an error in its pricing is prohibited without adequate consideration. Should it become proper or necessary in the execution of this Contract to make any change in design or to make any alterations that will increase the expense, the Procurement Official shall determine an equitable adjustment. The Town will make no payment to the Contractor for any extra material or services, or of any greater amount of money than stipulated as compensation in the Contract, unless some changes in or additions to the Contract requiring additional outlay by the Contractor shall first have been expressly authorized and ordered in writing by Contract amendment or otherwise furnished by the Procurement Official.

**38. PRICE REDUCTION** – If at any time after the date of the award the Contractor makes a general price reduction in the comparable price of any material covered by the Contract to customers generally, an equivalent price reduction based on similar quantities and/or considerations shall apply to this Contract for the duration of the Contract period (or until the price is further reduced). Such price reduction shall become effective at the same time and in the same manner as the reduction in the price to customers generally. For purpose of this provision, a "general price reduction" shall mean any horizontal reduction in the price of an article or service offered (1) to Contractor's customers generally, or (2) in the Contractor's price schedule for the class of

customers, i.e., wholesalers, jobbers, retailers, etc., that was used as the basis for proposing on this solicitation. An occasional sale at a lower price, or sale of distressed merchandise at a lower price, is not considered a "general price reduction" under this provision. The Contractor shall submit his or her invoice at such reduced prices indicating on the invoice that the reduction is pursuant to the "Price Reduction" provision of the Contract documents. The Contractor in addition will, within ten days of any general price reduction, notify the Procurement Official of such reduction by letter. FAILURE TO DO SO MAY REQUIRE TERMINATION OF THE CONTRACT. Upon receipt of any such notice of a general price reduction, the Procurement Official will duly notify all ordering offices.

The Contractor, if requested, shall furnish, within ten (10) days after the end of the Contract period, a statement certifying either (1) that no general price reduction, as defined above, was made after the date of the award, or (2) if any such general price reductions were made, that as provided above, they were reported to the Procurement Official within ten (10) days and ordering offices were billed at the reduced prices. Where one or more such general price reductions were made, the statement furnished by the Contractor shall include, with respect to each price reduction, (1) the date when notice of any such reduction was issued, (2) the effective date of the reduction, and (3) the date when the Procurement Official was notified of any such reduction.

39. **CHANGES, ADDITIONS, DELETIONS** - No changes, additions, deletions or substitutions of specifications, terms and conditions, quantity, unit of issue, delivery date, delivery charges, or price will be permitted without the prior written approval from the Purchasing Office of the Town of Herndon.
40. **PRICING ERRORS** - In case of an error in price extension, the firm fixed unit price shall govern.
41. **ESTIMATED QUANTITIES/NON-EXCLUSIVITY OF CONTRACTOR** - The Town does not guarantee any minimum or maximum quantities. Quantities as specified are approximate and are prepared for the solicitation. The exact quantities are as stated at time of order placement.
42. **SAMPLES** - Samples if required, must be furnished free of expense to the Town of Herndon on or before date specified; if not destroyed in examination, they will be returned to Offeror, if requested, at his expense. Each sample must be marked with Offeror's name and address, Town's request number and opening date.
43. **NON-LIABILITY** – The Contractor shall not be liable in damages for delay in shipment or failure to deliver when such delay or failure is the result of fire, flood, strike, the transportation carrier, act of God, act of Government, act of an alien enemy or by any other circumstances which, in the Procurement Official's opinion, are beyond the control of the Contractor. Under such circumstances, however, the Procurement Official may, at his or her discretion, cancel the Contract.
44. **TOWN RIGHTS** - The Town reserves the right to accept or reject all or any part of proposals, waive minor technicalities/informalities and award the contract to the offeror with the highest total number of factor points or most qualified and best suited Offeror to best serve the interest of the Town.
45. **ANTI-TRUST** - By entering into a contract, the Offeror conveys, sells, assigns, and transfers to the Town of Herndon all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Town of Herndon under said contract.

46. **CONTRACT DOCUMENTS** - The Contract entered into by the parties shall consist of those documents as listed on the cover sheet of this document. This includes all addendums and contract modifications.
47. **MULTIPLE AWARDS** - The Town reserves the right to award multiple contracts for all of the specified item(s) or service(s) to more than a single responsive and responsible Offeror. The Town may, also, award multiple contracts to the Offeror with the highest number of factor points for each required good, service or equipment.
48. **ADDITIONS/DELETIONS** – The Town reserves the right to add similar items/services or delete items/services specified in the resultant Contract as requirements change during the period of the Contract. The Town and the Contractor mutually agree to prices for items/services to be added to the Contract. Contract amendments will be issued for all additions or deletions.
49. **GUARANTEES & WARRANTIES** – The Contractor shall furnish all required guarantees and warranties and shall deliver them to the Procurement Official and Contract Administrator before final payment on the Contract is made. Unless otherwise stated, manufacturer's standard warranty applies.
50. **GENERAL GUARANTY** – Contractor agrees to:
- a. Save the Town, its agents, and employees harmless from liability of any nature or kind for the use of any copyrighted or uncopyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a Contract for which the Contractor is not the patentee, assignee, licensee, or owner.
  - b. Protect the Town against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery.
  - c. Furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work or to the work of other Contractors, for which his or her workers are responsible.
  - d. Pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules, and regulations of the Town.
  - e. Protect the Town from loss or damage to Town owned property while it is in the custody of the Contractor.
51. **SERVICE CONTRACT GUARANTY** – Contractor agrees to:
- a. Save the Town, its agents, and employees harmless from liability of any nature or kind for the use of any copyrighted or uncopyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a Contract for which the Contractor is not the patentee, assignee, licensee, or owner.
  - b. Protect the Town against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery.
  - c. Furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work or to the work of other Contractors, for which his or her workers are responsible.



d. Pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules, and regulations of the Town.

e. Protect the Town from loss or damage to the Town owned property while it is in the custody of the Contractor.

**52. COPYRIGHT** - No vendor may copyright any work produced by/for the Town without the Town's written consent.

**53. INDEMNIFICATION** - The Contractor agrees to indemnify, defend and hold harmless the Town of Herndon, Virginia, its officers, agents, and employees from any claim, damages and action of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the contractor or any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the sole negligence of the using department or failure of the using department to use the materials, goods or equipment in the manner already and permanently described by the contractor on the materials, goods or equipment delivered.

The vendor agrees to protect the Town from claims involving infringement of patent or copyrights.

**54. OFFICIALS NOT TO BENEFIT** –

a. Each Offeror shall certify, upon signing their proposal, that to the best of his or her knowledge, no Town official or employee having official responsibility for the procurement transaction, or member of his or her immediate family, has received or will receive any financial benefit of more than nominal or minimal value relating to the award of this Contract. If such a benefit has been received or will be received, this fact shall be disclosed with the proposal or as soon thereafter as it appears that such a benefit will be received. Failure to disclose the information prescribed above may result in suspension or debarment, or rescission of the Contract made, or could affect payment pursuant to the terms of the Contract.

b. Whenever there is reason to believe that a financial benefit of the sort described in paragraph a has been or will be received in connection with a proposal or Contract, and that the Contractor has failed to disclose such benefit or has inadequately disclosed it, the Town Executive, as a prerequisite to payment pursuant to the Contract, or at any other time, may require the Contractor to furnish, under oath, answers to any interrogatories related to such possible benefit.

c. In the event the Offeror has knowledge of benefits as outlined above, this information should be submitted with the proposal. If the above does not apply at time of award of Contract and becomes known after inception of a Contract, the Offeror shall address the disclosure of such facts to the Town.

**55. COVENANT AGAINST CONTINGENT FEES** – The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For violation of this warranty, the Town shall have the right to terminate or suspend this Contract without liability to the Town or in its discretion to deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

**56. PLACING OF ORDERS** – Orders against Contracts will be placed with the Contractor on a Purchase Order executed and released by the Procurement Official or his or her designee. The Purchase Order must bear the appropriate Contract number and date. Where Blanket Purchase

Orders (BPOs) have been executed and a Blanket Purchase Order has been released by the Procurement Official, telephonic orders may be placed directly with the Contractor by authorized personnel in the Town.

57. **DELIVERY** - Proposals must show number of days required to place material in using agency's receiving area under normal conditions. Failure to state delivery time obligates Offeror to complete delivery within 14 calendar days. A five (5) day difference in delivery promise may break a tie proposal. Proposals must show the number of working days required to complete the service. This information should be stated even though a delivery date/schedule is contained in the solicitation. Unrealistically short or long delivery promised may cause proposal to be disregarded. Consistent failure to meet delivery promises without valid reason shall constitute default. Delivery shall be made during normal working hours, Monday through Friday 8:00 a.m. - 5:00 p.m., unless otherwise specified in the solicitation or prior approval for another time period has been obtained.
58. **RESPONSIBILITY FOR SUPPLIES TENDERED** – Unless otherwise specified in the solicitation, the Contractor shall be responsible for the materials or supplies covered by the Contract until they are delivered at the designated point, but the Contractor shall bear all risk on rejected materials or supplies after notice of rejection. Rejected materials or supplies must be removed by and at the expense of the Contractor promptly after notification of rejection unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the Contractor within ten (10) days after date of notification, the Town may return the rejected materials or supplies to the Contractor at his or her risk and expense or dispose of them as its own property.
59. **INSPECTIONS** – Inspection and acceptance of materials or supplies will be made after delivery at destinations herein specified unless otherwise stated. If inspection is made after delivery at destination herein specified, the Town will bear the expense of inspection except for the value of samples used in case of rejection. Final inspection shall be conclusive except in regard to latent defects, fraud or such gross mistakes as to amount to fraud. Final inspection and acceptance or rejection of the materials or supplies will be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the Town for such materials or supplies as are not in accordance with the specifications.
60. **COMPLIANCE** – Delivery must be made as ordered and in accordance with the solicitation or as directed by the Procurement Official when not in conflict with the proposal. The decision of the Procurement Official as to reasonable compliance with delivery terms shall be final. Burden of proof of delay in receipt of goods by the purchaser shall rest with the Contractor. Any request for extension of time of delivery from that specified must be approved by the Procurement Official, such extension applying only to the particular item or shipment affected. Should the Contractor be delayed by the Town, there shall be added to the time of completion a time equal to the period of such delay caused by the Town. However, the Contractor shall not be entitled to claim damages or extra compensation for such delay or suspension. These conditions may vary for construction Contracts. See Special Provisions for the individual solicitation.
61. **REPLACEMENT** – Materials or components that have been rejected by the Procurement Official, in accordance with the terms of a Contract, shall be replaced by the Contractor at no cost to the Town.
62. **METHOD OF PAYMENT** - For all transactions not made through a Town authorized credit card (purchase-card, p-card), the Town will provide an authorized purchase order. Upon satisfactory delivery of the merchandise and/or satisfactory completion of the services, the Contractor shall submit all invoices and statements with the referenced/associated purchase order number included to:

**TOWN OF HERNDON  
ACCOUNTS PAYABLE  
777 LYNN STREET  
HERNDON, VA 20170-4602**

Or send electronically to: [accounts.payable@herndon-va.gov](mailto:accounts.payable@herndon-va.gov)

The prices and payments shall serve as full compensation for the labor, tools, equipment, transportation, overhead and all other incidentals necessary to complete the specified terms and conditions.

**63. PAYMENT TERMS** - Unless otherwise provided in the solicitation, payment will be made forty-five (45) days after receipt of a proper invoice, or forty-five (45) days after receipt of all goods or acceptance of work, whichever is the latter.

- a. Invoices for items/services ordered, delivered/performed, and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/Contract. All invoices shall show the Contract number, purchase order number and any federal employer identification number.
- b. Any payment terms requiring payment in less than 45 days will be regarded as requiring payment 45 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 45 days, however.
- c. The date of payment shall be deemed the date of postmark in all cases where payment is made by mail.

**64. PAYMENT TO SUBCONTRACTORS** – A Contractor awarded a Contract under this solicitation is hereby obligated:

- a. To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the Town for the proportionate share of the payment received for work performed by the subcontractor(s) under the Contract; (or)
- b. To notify the Town and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.

The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the Contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the Town, except for amounts withheld as stated in b above. The date of mailing of any payment by U.S. mail is deemed to be payment to the addressee. These provisions apply to each sub-tier Contractor performing under the primary Contract. A Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Town.

- c. The Contractor shall bill all goods or services provided under this contract or purchase order at the contract price, regardless of which Town Department is being billed.
- d. Unreasonable Charges. It may become difficult to determine final job costs, accurately, at the time orders are placed under certain emergency procurements and for most time and material purchases. In such cases, contractors are placed on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. The Town will research and challenge charges that appear as unreasonable and will hold that portion of the invoice in

abeyance until a settlement is reached. Upon determining that invoiced charges are not reasonable, the Town shall promptly notify the contractor, in writing, as to those charges that it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement is not reached within thirty (30) days of notification. The provisions of this section do not relieve the Town of its prompt payment obligations with respect to those charges that are not in dispute (Code of Virginia, § 2.2-4363).

**65. PAYMENT**

Payment shall be made after satisfactory performance of the Contract, in accordance with all of the provisions thereof, and upon receipt of a properly completed invoice. The Town reserves the right to withhold any or all payments or portions thereof for Contractor's failure to perform in accordance with the provision of the Contract or any modifications thereto.

**66. PARTIAL PAYMENTS**

Unless otherwise specified, partial payments will be made upon acceptance of materials or services so invoiced if in accordance with completion date. However, up to 5 percent (5%) of the value of the entire order may be retained until completion of Contract.

**67. PAYMENT FOR EQUIPMENT, INSTALLATION, AND TESTING** – When equipment requires installation (which shall also be interpreted to mean erection and/or setting up or placing in position, service, or use) and test, and where such installation or testing is delayed, payment may be made on the basis of 50% of the Contract price when such equipment is delivered on the site. A further allowance of 25% may be made when the equipment is installed and ready for test. The balance shall be paid after the equipment is tested and found to be satisfactory. If the equipment must be tested, but installation is not required to be made by the Contractor or if the equipment must be installed but testing is not required, payment may be made on the basis of 75% at the time of delivery and the balance shall be paid after satisfactory test or installation is completed.

**68. PROMPT PAYMENT DISCOUNT**

a. Unless otherwise specified in the solicitation, prompt payment discounts requiring payment in less than fifteen (15) days will not be considered in evaluating a proposal for award. However, even though not considered in the evaluation, such discounts will be taken if payment is to be made within the discount period.

b. In connection with any discount offered, time will be computed from the date of delivery of the supplies to the carrier when or, from date correct invoice or voucher is received in the office specified by the Town, if the latter is later than the date of acceptance. In the event the Offeror does not indicate a prompt payment discount, it shall be construed to mean NET 45 days. For the purpose of earning the discount, payment is deemed to be made as of the date of mailing of the Town check.

**69. ANTI-DISCRIMINATION** - By submitting their proposals, Offerors certify to the Town that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as 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. 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 recipients 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.

In every contract over \$10,000.00 the provision in 1 and 2 shall apply:

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, or national origin except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of the 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 to the purpose of meeting the requirements of this section.
2. The contractor will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000.00, so that the provisions will be binding upon each subcontractor or vendor.

70. **APPLICABLE LAWS AND COURTS** - Any Town contract is governed in all respects by the laws of the Commonwealth of Virginia, and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall be responsible for compliance with all the laws of the Commonwealth of Virginia, all ordinances and regulations of the Town of Herndon and such other standards, codes, and regulations having application to the work involved. The Contractor shall be responsible for securing all approvals and permits including occupancy and paying all charges bearing on the design and construction of a project. All permits shall be filed in the name of the Town of Herndon and shall be coordinated through the Director of Public Works.
71. **DEFAULT** - In case of failure to deliver goods and/or services in accordance with the contract terms and conditions, the Town of Herndon, after due written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy is in addition to any other remedies which the Town of Herndon may have.
72. **ASSIGNMENT OF CONTRACT** - Neither party shall assign contract without the **prior written** consent of the other party, nor shall any contract be entered into or assigned to any party that is debarred from doing business with or in the Commonwealth of Virginia.
73. **VALID CONTRACT** - In order to validate any contract document entered into with the Town of Herndon, an authorized person as defined by the Town's Procurement Ordinance and Regulations shall execute it.
74. **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH** - A Contractor organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so, required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described above that enters into a contract with a public body pursuant to the Virginia Public

Procurement Act 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, to be revoked or cancelled at any time during the term of the Contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section. **See Virginia State Corporate Commission website to register.**

75. **STATE CORPORATION COMMISSION IDENTIFICATION NUMBER** - Pursuant to Code of Virginia, §2.2- 4311.2 subsection B, a Bidder or Offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its bid or proposal the identification number issued to it by the State Corporation Commission (SCC). Any Bidder or Offeror that does not require authorization to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law is required to include in its bid or proposal a statement describing why the Bidder or Offeror does not require such authorization. Indicate the above information on the SCC Form provided. Contractor agrees that the process by which compliance with Titles 13.1 and 50 is checked during the solicitation stage (including without limitation the SCC Form provided) is streamlined and not definitive, and the Town's use and acceptance of such form, or its acceptance of Contractor's statement describing why the Bidder or Offeror was not legally require authorization to transact business in the Commonwealth, shall not be conclusive of the issue and shall not be relied upon by the Contractor as demonstrating compliance.
76. **PRECEDENCE OF TERMS** - The following General Terms and Conditions, APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, DEBARMENT STATUS, ANTITRUST, CLARIFICATION OF TERMS, PAYMENT shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.
77. **QUALIFICATIONS OF (BIDDERS/OFFERORS)** - The Town of Herndon may make such reasonable investigations as deemed proper and necessary to determine the ability of the (Bidders/Offerors) to perform the services/furnish the goods and the (Bidder/Offeror) shall furnish to the Town all such information and data for this purpose as is requested. The Town reserves the right to inspect (Bidder's/Offeror's) physical facilities prior to award to satisfy questions regarding the (Bidder's/Offeror's) capabilities. The Town further reserves the right to reject any (bid/proposal) if the evidence submitted by, or investigations of, such (Bidder/Offeror) fails to satisfy the Town that such (Bidder/Offeror) is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.
78. **TESTING, INSPECTION AND ACCEPTANCE** - The Town reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications. For determining acceptance of supplies in accordance with the provisions of the prompt payment discount paragraph, inspection and acceptance shall be accomplished only after examination (including testing) of supplies and services to determine whether the supplies and services conform to the Contract requirements. Acceptance shall occur only after receipt and inspection provided such inspection, as appropriate, is accomplished within a reasonable time.
79. **DEFINITE PROPOSAL QUANTITIES** – Where definite quantities are specifically stated, acceptance will bind the Town to order quantities specified and to pay for, at Contract prices, all such supplies or services delivered that meet specifications and conditions of the Contract. However, the Town will not be required to accept delivery of any balances unordered, as of the Contract expiration date, unless the Contractor furnished the Procurement Official with a statement of unordered balances not later than ten (10) days after the termination date of the Contract.

80. **REQUIREMENT PROPOSAL QUANTITIES** – On "Requirement" proposals, acceptance will bind the Town to pay for, at unit proposal prices, only quantities ordered and delivered. Where the Town specifies estimated quantities, the Contractor shall not be required to deliver more than ten (10) percent in excess of the estimated quantity of each item, unless otherwise agreed upon.
81. **AVAILABILITY OF FUNDS** - It is understood and agreed between the parties herein that the Town shall be bound hereunder only to the extent of the funds available or that may hereafter become available for the purpose of this agreement.
82. **GUARANTEE OF WORK** – Notwithstanding any other provisions of this contract, the Town of Herndon does not guarantee or make any assurance that any services/work or any particular volume of services/work will be ordered from the Contractor/s under this contract.
83. **PROPOSAL PRICE CURRENCY** - Unless stated otherwise in the solicitation, Offerors shall state bid/offer prices in U.S. dollars.
84. **DRUG-FREE WORKPLACE** - During the performance of this contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
85. **IMMIGRATION REFORM AND CONTROL ACT OF 1986** - By entering into a written contract with the Town of Herndon, the Contractor certifies that it does not and will not during the performance of this Contract violate (i) the provisions of the Federal Immigration Reform and Control Act of 1986, as amended and §40.1-11.1, Code of Virginia, which prohibits the employment of illegal aliens and (ii) the provisions of Federal and State employment and wage hour laws. The Contractor shall include and enforce the language in the last sentence in every subcontract issued under this Contract and shall require the subcontractor to do the same.
86. **VIRGINIA FREEDOM OF INFORMATION ACT** – 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 except as provided below:
- a. Cost estimates relating to a proposed procurement transaction prepared by or for a public body 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 all bids but prior to award, except in the event that the Town 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. 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 Town 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 except as provided in paragraph "c" below. Any

inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

- c. Trade secrets or proprietary information submitted by a Bidder, Offeror or Contractor in connection with a procurement transaction or prequalification application submitted pursuant to the prequalification process identified in the Special Provisions, shall not be subject to the Virginia Freedom of Information Act; however, the Bidder or Offeror will submit proprietary information under separate cover. Offeror or Contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary. Bidders shall not mark sections of their bid as proprietary if they are to be part of the award of the Contract and are of a "Material" nature. The Town reserves the right to submit such information to its Town Attorney for concurrence of the Offeror's claim that it is in fact proprietary. References may be made within the body of the proposal to the proprietary information; however, all information contained within the body of the proposal shall be "public information" in accordance with State statutes.
- d. Nothing contained in this section shall be construed to require the Town, when procuring by "competitive negotiation" (Request for Proposal), to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous to the Town.

## **87. INELIGIBILITY –**

- a. Any person or firm suspended or debarred from participation in Town procurement shall be notified in writing by the Procurement Official.
  - 1. The Notice of Suspension shall state the reasons for the actions taken and such decision shall be final unless the person or firm appeals within thirty (30) days of receipt of the Notice by instituting legal action as provided in the Code of Virginia.
  - 2. The Notice of Debarment shall state the reasons for the actions taken and the decision shall be final unless the person or firm appeals within thirty (30) days of receipt of the notice by instituting legal action as provided in the Code of Virginia.
- b. The Procurement Official shall have the authority to suspend or debar a person or firm from bidding/proposing on any Contract for the causes stated below:
  - 1. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private Contract or subcontract, or in the performance of such Contract or subcontract;
  - 2. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification, or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a Town Contractor;
  - 3. Conviction under the state or federal antitrust statutes arising out of the submission of bids or proposals;
- c. Violation of Contract provisions, as set forth below, of a character which is regarded by the Procurement Official to be so serious as to justify suspension or debarment action:



1. Failure without good cause to perform in accordance with the specifications or within the time limit provided in the Contract; or
2. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more Contracts; provided, that failure to perform or unsatisfactory performance caused by acts beyond the control of the Contractor shall not be considered to be a basis for suspension or debarment;
- d. Any other cause the Procurement Official determines to be so serious and compelling as to affect responsibility as a Contractor, such as debarment by another governmental entity for any cause listed herein, or because of prior reprimands;
- e. The Contractor has abandoned performance or been terminated for default on any other the Town project.

- 88. SUBCONTRACTS** - The Contractor shall not subcontract any portion of the work without prior written consent of the purchasing agency. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish the purchasing agency the names, qualifications and experience of their proposed subcontractors. The Contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements

Subject to all State and local laws, policies, resolutions, and regulations and all accepted rules, regulations and limitations imposed by legislation of the Federal Government, proposals on all solicitations issued by Town of Herndon will bind Offerors to applicable conditions and requirements herein set forth unless otherwise specified in the solicitation.

**89. USE OF PREMISES AND REMOVAL OF DEBRIS:**

- a. The Contractor shall:

- (1) Perform his contract in such a manner as not to interrupt or interfere with the operation of any existing activity on the premises or with the work of any contractor;
- (2) Store his apparatus, materials, supplies, and equipment in such orderly fashion at the site of the work as will not unduly interfere with the progress of his work or the work of any other contractor; and
- (3) Place upon the work or any part thereof only such loads as are consistent with the safety of that portion of the work.

- b. The Contractor expressly undertakes, either directly or through his subcontractor(s), to affect all cutting, filling, or patching of his work required to make the same conform to the drawings and specifications, and, except with the consent of the owner, not to cut or otherwise alter the work of any other contractor. The Contractor shall not damage or endanger any portion of the work or premises, including existing improvements, unless called for by the contract.

- c. The Contractor expressly undertakes, either directly or through his subcontractor(s), to clean up frequently all refuse, rubbish, scrap materials, and debris caused by his operations, to the end that at all times the site of the work shall present a neat, orderly, and workmanlike appearance. No such refuse, rubbish, scrap material, and debris shall be left within the completed work nor buried on the building site but shall be removed from the site and properly disposed of in a licensed landfill or otherwise as required by law.

- 90. AUDIT** – The Contractor shall retain all books, records, and other documents relative to this Contract for five (5) years after final payment, or until audited of Town, whichever is sooner. The Town shall have full access to and the right to examine any of said materials during said period.
- 91. CONFIDENTIALITY** - The Contractor acknowledges and understands that its employees may have access to proprietary, business information, or other confidential information belonging to the Town. Therefore, except as required by law, the Contractor agrees that its employees will not:
- a. Access or attempt to access data that is unrelated to their job duties or authorizations as related to this Contract.
  - b. Access or attempt to access information beyond their stated authorization.
  - c. Disclose to any other person or allow any other person access to any information related to the Town or any of its facilities or any other user of this Contract that is proprietary or confidential. Disclosure of information includes, but is not limited to, verbal discussions, FAX transmissions, electronic mail messages, voice mail communication, written documentation, “loaning” computer access codes and/or another transmission or sharing of data.

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

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

**92. CONTINUITY OF SERVICES –**

- a. The Contractor recognizes that the services under this contract are vital to the Agency and must be continued without interruption and that, upon contract expiration, a successor, either the Agency or another contractor, may continue them. The Contractor agrees:
  - i. To exercise its best efforts and cooperation to affect an orderly and efficient transition to a successor;
  - ii. To make all Agency owned facilities, equipment, and data available to any successor at an appropriate time prior to the expiration of the contract to facilitate transition to successor; and
  - iii. That the Agency Contracting Officer shall have final authority to resolve disputes related to the transition of the contract from the Contractor to its successor.
- b. The Contractor shall, upon written notice from the Contract Officer, furnish phase-in/phase-out services for up to ninety (90) days after this contract expires and shall negotiate in good faith a plan with the successor to execute the phase-in/phase-out services. This plan shall be subject to the Contract Officer’s approval.
- c. The Contractor shall be reimbursed for all reasonable, pre-approved phase-in/phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-

out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract. All phase-in/phase-out work fees must be approved by the Contract Officer in writing prior to commencement of said work.

- 93. USE OF CONTRACT BY OTHER POLITICAL JURISDICTIONS** – Offerors are advised that all resultant contracts will be extended, with the authorization of the Offeror, to Metropolitan Washington Council of Governments jurisdictions and other jurisdictions and political subdivisions of the Commonwealth of Virginia to permit their ordering of supplies and/or services at the prices and terms of the resulting contract. If any other jurisdiction decides to use the final contract, the Contractor must deal directly with that jurisdiction or political subdivision concerning the placement of orders, issuance of the purchase order, contractual terms, contractual disputes, invoicing, and payment. The Town acts only as the “Contracting Agent” for these jurisdictions and political subdivision. Failure to extend a contract to any jurisdiction will have no effect on consideration of Contractors proposal.

It is the awarded vendor’s responsibility to notify the jurisdictions and political subdivision of the availability of the contract.

Each participating jurisdiction and political subdivision have the option of executing a separate contract with the awardee. Contracts entered into with them may contain general terms and conditions unique to those jurisdictions and political subdivisions. If, when preparing such a contract, the general terms and conditions of a jurisdiction are unacceptable to the awardee, the awardee may withdraw its extension of the award to that jurisdiction.

The Town shall not be held liable for any costs or damage incurred by another jurisdiction as a result of any award extended to that jurisdiction or political subdivision to the awardee.

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# TOWN OF HERNDON

777 Lynn Street  
Herndon, VA 20172  
(703) 435-6800 Ext. 2048

## PROPOSAL FORM

Have all Specifications included in this Request for Proposal been met?

Yes       No

If no, please list all exceptions in detail on separate sheet.

Person to contact regarding this bid: \_\_\_\_\_

Title: \_\_\_\_\_ Phone: \_\_\_\_\_

Email Address: \_\_\_\_\_

Name of person authorized to bind the Firm: \_\_\_\_\_

Name of Company: \_\_\_\_\_

Address: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

**By signing this bid, bidder certifies, acknowledges, understands, and agrees to be bound by the conditions set forth in the contents of the bid including the General Terms and Conditions.**

ATTACHMENT A

BUSINESS, PROFESSIONAL AND OCCUPATIONAL LICENSE

All firms located or operating in the Town of Herndon must obtain a Business, Professional and Occupational License (BPOL) as required in the Municipal Code, Article VII, and local license tax authorized, Code of Virginia, § 58.1-3700 et seq. **A BPOL license is not required to submit a proposal for this solicitation. If notified of award, a BPOL license will be required before execution of the contract.**

In order for the Department of Tax Administration to determine BPOL requirement prior to contract award, it is necessary to provide the following information:

- If you currently have a Town of Herndon business license, please submit a copy with your proposal.
- Do you have an office in:
 

Virginia	<input type="checkbox"/> yes	<input type="checkbox"/> no
Town of Herndon	<input type="checkbox"/> yes	<input type="checkbox"/> no
- Date business began/will begin work in the Town of Herndon

\_\_\_\_\_

Provide a description of the business activity that will take place in the Town of Herndon:

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\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

Please return this form and a copy of current Town of Herndon business license in proposal. Contract award may not be made if omitted.

**ATTACHMENT B**

**REFERENCES**

**QUALIFICATIONS OF OFFEROR:** Offeror must have the capability and capacity in all respects to fully satisfy the contractual requirements.

Indicate the length of time you have been in business providing this type of service and/or product.  
\_\_\_\_\_years, \_\_\_\_\_months

Provide a list of at least three (3) similar accounts, that your firm has provided similar goods and/or services to in the past three (3) years.

1. Company Name: \_\_\_\_\_  
Contact: \_\_\_\_\_  
Phone Number: \_\_\_\_\_  
Email address: \_\_\_\_\_  
Job Dates: \_\_\_\_\_ Beginning: \_\_\_\_\_ End: \_\_\_\_\_

2. Company Name: \_\_\_\_\_  
Contact: \_\_\_\_\_  
Email address: \_\_\_\_\_  
Phone Number: \_\_\_\_\_  
Job Dates: \_\_\_\_\_ Beginning: \_\_\_\_\_ End: \_\_\_\_\_

3. Company Name: \_\_\_\_\_  
Contact: \_\_\_\_\_  
Email address: \_\_\_\_\_  
Phone Number: \_\_\_\_\_  
Job Dates: \_\_\_\_\_ Beginning: \_\_\_\_\_ End: \_\_\_\_\_

**ATTACHMENT C**

**TOWN OF HERNDON**

**Contractor Certification, Agreement, and Affidavit**

**As to Eligibility for Employment in the United States**

**Affidavit**

This \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ appeared before me, a notary public for the jurisdiction identified below, \_\_\_\_\_ the \_\_\_\_\_ of \_\_\_\_\_ (Contractor) who after being duly sworn made oath as follows:

1. This instrument supplements and is part of the contract between the Town of Herndon, Virginia (Town) and \_\_\_\_\_ Contractor (contract).
2. The consideration to support this instrument is the same consideration that supports the contract.
3. Contractor certifies that it does not and will not during the performance of this contract violate (i) the provisions of the Federal Immigration Reform and Control Act of 1986, as amended, and §40.1-11.1, Code of Virginia, which prohibit the employment of aliens not legally eligible for employment in the United States, and (ii) the provisions of Federal and State employment and wage hour laws. To carry out and support a major element of the above certification, the Contractor certifies to the Town that all Contractors' employees and all employees of each of Contractor's subcontractors working on the subject of this contract are legally eligible for employment in the United States.
4. As to each such employee the federal I-9 employment eligibility verification process, or federal Employment Eligibility Verification (E-Verify) Program, or both, has been undergone.
5. Contractor agrees to update this assurance for new employees and to be audited by the Town for compliance with the contractual provision identified as in 3(i) above. During this audit, Contractor shall provide Town access to any public documentation that relates to verifying the employees' legal eligibility for employment in the United States and that relates to employees of the Contractor or of any subcontractor working on the subject of this contract, in cases where the Town harbors a reasonable suspicion that such employee(s) may be not legally eligible for employment in the United States. The documentation will indicate that the federal I-9 employment eligibility verification process or the federal Employment Eligibility Verification (E-Verify) Program or both as to each such employee has been undergone. The Contractor shall not produce documentation in this regard that is explicitly prohibited by federal or Virginia law from public disclosure.
6. The Contractor shall include and enforce the language in this paragraph in every subcontract issued under this contract and shall require the subcontractor to do the same.

[Contractor]

Name: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Commonwealth of Virginia:  
County of Fairfax:

Subscribed, sworn to, and acknowledged this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_, by  
\_\_\_\_\_ the \_\_\_\_\_ of  
\_\_\_\_\_ [Contractor], a  
\_\_\_\_\_ [here put type of entity], on behalf of this entity.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

Notary registration number: \_\_\_\_\_

**\*Please return this executed form with your proposal. Contract award will not be considered if omitted. \***



**ATTACHMENT D**

**State Corporation Commission Form**

**State Corporation Commission Form Virginia State Corporation Commission (SCC) registration information.**

The offeror:

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

-OR-

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

-OR-

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

-OR-

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

**\*\*NOTE\*\*** >> Check in the following space if you have not completed any of the foregoing options but currently have pending before the SCC an application for authority to transact business in the Commonwealth of Virginia and wish to be considered for a waiver to allow you to submit the SCC identification number after the due date for proposals (the Commonwealth reserves the right to determine in its sole discretion whether to allow such waiver): \_\_\_\_\_