



REQUEST FOR PROPOSALS

LEASE OF THE HOPEWELL CITY MARINA AND OPERATIONS AND MAINTENANCE OF EAST SIDE ONLY

DEPARTMENT OF RECREATION AND PARKS CITY OF HOPEWELL

RFP #: #24-13

DATE: DECEMBER 20, 2013

Sealed Proposals, subject to the general conditions and specifications hereby attached, will be received at the Office of the City Clerk, Second Floor, Municipal Building, 300 North Main Street, Hopewell, Virginia 23860 until, but not **later than 11:00 a.m. TUESDAY, JANUARY 14, 2014.**

1. To be considered for selection, Vendors must submit a complete response to this RFP. One (1) original, twelve (12) copies, and a portable document format (pdf) version of the proposal shall be submitted to the City of Hopewell, Virginia.
2. Regardless of delivery method of proposal, the **outside** of each envelope must clearly indicate the following: *(If Proposal is delivered by Federal Express, UPS, USPS Priority, etc. or any other means, the outside of **each** envelope **must also** clearly indicate):*

**Office of the City Clerk
Second Floor
Municipal Building
300 North Main Street
Hopewell, Virginia 23860**

Closing Date of Proposal: January 14, 2014

**Lease of City Marina and Operations and Maintenance, East Side Only
RFP #24-13**

3. Proposals by telephone, telegraph, or facsimile **will not** be accepted.
4. **ANY PROPOSAL RECEIVED AFTER 11:00 A.M. ON THE AFOREMENTIONED DATE OF OPENING, WHETHER BY MAIL OR OTHERWISE, WILL NOT BE CONSIDERED AND WILL BE RETURNED UNOPENED.**

Nothing herein is intended to exclude any responsible firm or in any way restrict competition. The selection process will be competitive negotiation as outlined in Chapter 2A of the Code of

the City of Hopewell, Virginia, and Section 2.2-4300 *et seq.* (Virginia Public Procurement Act) of the Code of Virginia.

All Proposals submitted must be signed by an individual authorized to bind the Offeror. Proposals submitted without such signature will be deemed non-responsive, and will not be considered. The City of Hopewell reserves the right to cancel the RFQ/RFP, to award in part or in whole or reject any and all proposals deemed to be in the City's best interest. The City may modify any requirements in the RFQ/RFP prior to the deadline by written notice to any Offeror requesting a copy of the RFQ/RFP. The City may modify the project's scope of services and required tasks during negotiation process with the successful Offeror. The City shall neither be obligated nor prohibited from awarding or amending any contract with the successful Offeror for services less than or greater than the scope of services contemplated in this proposal.

If you desire not to quote on this invitation, please forward your acknowledgement of NO PROPOSAL. FAILURE TO COMPLY WITH THIS REQUIREMENT WILL BE CAUSE FOR REMOVAL OF YOUR COMPANY'S NAME FROM THE QUALIFIED OFFEROR LIST.

The right is reserved to extend any resulting contract, for terms to be mutually negotiated and agreed upon.

All proposals are subject to general terms and conditions hereby attached and will be rejected if not properly executed.

Individual contractors must provide their social security numbers and other types of firms must provide their federal employer identification numbers in the payment clauses to be included in contracts.

The City reserves the right to be sole judge and to make the award in accordance with its own judgment as to what will best meet its requirements and be in the best interest of the City.

AVAILABILITY OF FUNDS: It is understood and agreed between the Offeror and the City that the City shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this quotation or agreement.

WITHDRAWAL OF PROPOSAL: No proposal may be withdrawn for a period of thirty (30) days from the date of opening unless the Offeror has made a clerical error. The Offeror shall give notice in writing of his claim of right to withdraw his bid within two (2) business days after the conclusion of the opening procedure and shall submit original work papers substantiating the error with such notice. The City reserves the right to reject any or all proposals, to waive all informalities, and to reject any or all items of any proposal.

Proposal and contracting procedures shall conform to all applicable regulations and provisions of the *City of Hopewell Procurement Ordinance* effective July 1, 2005, as amended; a copy of which is available for inspection at the Office of the City Clerk.



April Cone, Purchasing Agent

Please return the Proposals to the Office of the City Clerk, Municipal Building, Second Floor, 300 N. Main Street, Hopewell, Virginia 23860. Regardless of delivery method of Proposal, the **outside** of each envelope must clearly indicate the following: *(if Proposal is delivered by Federal Express, UPS, USPS Priority, etc. or any other means, the outside of **each** envelope **must also** clearly indicate):*

**Office of the City Clerk
Second Floor
Municipal Building
300 North Main Street
Hopewell, Virginia 23860
Closing Date of Proposal: January 14, 2014
Lease of City Marina and Operations and Maintenance, East Side Only
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In compliance with Invitation for RFP **#24-13** and subject to all conditions thereof and attached thereto, the undersigned offers and agrees if the proposal and conditions are accepted within ninety (90) calendar days from the date of opening, to furnish any and all of the items upon which the prices are quoted, at the price set opposite each item, delivered at the points as specified and as scheduled.

Note of Clarification:

All References to **BID** contained within this Invitation should be referred to as **PROPOSAL**.

NAME OF ORGANIZATION	
STREET ADDRESS	TELEPHONE NUMBER
CITY, STATE, ZIP CODE	FAX NUMBER
NAME (TYPE OR PRINT)	OFFICIAL TITLE
SIGNATURE	DATE
STATE CORPORATION COMMISSION ID#	IRS I.D. #

REQUEST FOR PROPOSALS
FOR LEASE OF THE CITY MARINA AND OPERATIONS AND
MAINTENANCE, EAST SIDE ONLY

The City of Hopewell, Virginia (the “City”) invites qualified Offerors with experience in waterfront operations to submit proposals to operate and maintain the City Marina property (the “Site”) located at 1051 Riverside Ave, Hopewell VA 23860. The site is strategically located adjacent to State Rt. 10 along the Appomattox River. The overriding intent of this RFP is to operate and maintain the Hopewell City Marina, **East side only**.

The City’s goal is to provide an enhanced gateway that capitalizes on the unique assets of the Site’s riverfront location and encourages the revitalization of the riverfront and the neighborhoods adjacent to the river. The City envisions the waterfront as part of a larger public river walk connecting the City Marina to downtown.

The City is seeking successful Offerors with demonstrated experience in operations and maintenance of waterfront facilities. Ultimately the selected entity and the City will enter into a long-term lease agreement for the operations and maintenance of the Site’s designated lease area (**East side only**) located on the map at Appendix A of this RFP.

Hopewell is a community of 23,000 residents and is located at the confluence of the Appomattox and James Rivers within the Richmond Metropolitan Area. The City is conveniently 20 miles southeast of and 25 minutes from the City of Richmond, Virginia. The approximate 8.5-acre property is situated on the south side of the Appomattox River immediately west of the Route 10 bridge and within 1.5 miles of the Appomattox’s confluence with the James River. This location offers the Site an outstanding advantage in terms of access to the Appomattox and James Rivers.

The Site is zoned B-3, Highway Corridor District. The Site provides a critical link in the long-term vision of a boardwalk along the Appomattox River; development of the Site is envisioned to include a public access boat ramp and an appropriate and feasible mix of uses that encourages citizens to utilize the river.

Currently a \$1.5 million renovation project is on-going which will include improvements to the covered slip areas, an addition of a second boat ramp, and reconfiguration of the ramp area, canoe launch, and parking lot which includes updated surfacing, improved lighting, and a marina office/restroom/retail area with 1276 sq. feet. A \$.5 million dredging project of the entire Site was completed in 2012.

1. Hopewell City Marina

General Information –

The City Marina property is currently managed by the City's Department of Recreation and Parks with a budget of \$98,450 for operations based upon anticipated revenues of \$98,450. The Site is approximately 4.3 acres consisting of a 44 boat slips (30 covered and 14 open boat slips) marina, a public boat ramp, and an office/restroom/retail area. There are two pump-out stations, one located on the waterside and the other located in the parking lot for trailer accessible vessels. Additionally the Site contains approximately 41 vehicle parking spaces and 66 trailer parking spaces.

Currently there are three staff members; a Marina Supervisor, Marina Attendant and a part-time Marina Maintenance Specialist.

The City is only interested in leasing the operations and maintenance of the Site's designated lease area (**east side only**) as shown on the map at Appendix A.

2. Goals

a. Operations and Maintenance - The City of Hopewell, Virginia (the "City") invites qualified Offerors with experience in waterfront operations to submit proposals to operate and maintain the City Marina property (the "Site") located at 1051 Riverside Avenue, Hopewell, Virginia 23860. Any lease agreement shall include the following general items/clauses. During the negotiation process, these items/clauses shall be addressed in more detail.

1. Term of lease – 3 year initial term with renewal options.
2. Rent – to be paid monthly with the option of minimum 5% increase.
3. Maintenance of grass and grounds.
4. Maintenance of wooden deck.
5. Clearing of all drainage pipes and ditches.
6. Vehicle parking.
7. Maintenance of building and covered dock.
8. Maintenance of outside equipment.
9. General cleaning of grounds and buildings.
10. Monitoring and restricting access to restricted areas.
11. Storm-water and pollution management.
12. Responsible for utilities.
13. Routine maintenance.
14. Alterations or improvements must be approved in advance.
15. Eminent Domain is applicable.
16. City shall inspect premises.

17. Default by tenant clause.
 18. Indemnification of City is applicable.
 19. Hazardous substance not allowed clause.
 20. Limitation of City's obligation clause.
 21. Insurance is required.
 22. City will declare reserved rights.
 23. EEOC/Drug Free clauses are applicable.
 24. All signage approved in advance.
 25. City will reserve the right to use the facility with 24 hour notice or sooner if an emergency.
 26. City may request one covered slip without compensation and may request an additional slip for temporary use.
 27. Property of tenant removal clause.
 28. Holding over clause.
 29. Severability clause.
 30. Joint Venture Disclaimer clause.
 31. Successors and assigns clause.
 32. Applicable Law, Construction clause.
 33. Notices Clause.
- b. **Public Accessibility** – Any operation must provide a continuous, uninterrupted public path that allows pedestrian access.
 - c. **Public Boat Ramp** – The operation must preserve the public boat ramp that is located on the Site.
 - d. **Slips** – The operation must preserve the slip areas located on the Site.
 - e. **Maintain View shed** – The operation for the Site should preserve/enhance the generous views of the riverfront from the Site.
 - f. **Recognition of the Site's Riverfront Context** – The operation of the Site should encourage appropriate and feasible water-related activities along the river's edge.

The City Marina is located in a prime location within the City, and offers easy access to major thoroughfares and excellent views of the Appomattox and James Rivers. The operations and maintenance plans for the marina shall preserve public access to the waterfront while providing exciting new recreational and retail opportunities coupled with the functionality of the marina to allow for maximization of the location. Continued public access to the river shall be preserved through a public boat launch, seasonal boat slips, and trail connections with the proposed waterfront boardwalk and city trail system.

3. Invitation

The City is seeking qualified Offerors with experience in operations and maintenance of waterfront facilities to submit proposals to operate and maintain the City-owned riverfront parcel.

The proposals are **to be received no later than 11:00 AM, January 14, 2014** and must be prepared in accordance with the guidelines described in Section 5 below. Unless requested by the City, no additional proposal information may be submitted by the Offerors after the January 14, 2014 deadline.

4. Evaluation Criteria

Proposals in response to this RFP will be evaluated by the City based on the evaluation criteria described below.

The evaluation of Offerors responding to the Request for Proposals will be completed in a systematic manner using the following evaluation criteria:

1. Financial capacity of the Offeror.
2. The proposed preliminary operations and maintenance program.
3. The qualifications and experience of the Offeror.
4. The proposed level of interaction between the Offeror and the City.
5. Completeness of the response to the Request for Proposals.

5. Information to Be Submitted By Respondents

Respondents shall submit one (1) original and twelve (12) copies, and a PDF version of the Proposal (the “Submittal”). Submittals shall address the following:

1. The name, address, telephone and facsimile numbers, and email address of the Respondent’s contact for the lease of and the operations and maintenance for the Site.
2. A conceptual operations and maintenance plan for the Site.
3. Rental quote for leasing of the Site.
4. A certified financial statement illustrating assets liabilities (including contingent liabilities).
5. The Offeror must clearly identify what it considers to be trade secret information and confidential commercial and financial information, and must so mark the information in accordance with the Virginia Public Procurement Act, §2.2-4342(F). Information correctly identified shall not be made public except as otherwise required by law. All responses prepared by the respondents under this request will be for the exclusive and deliberate use of the City of Hopewell.

6. Technical Assistance/ Qualification Submission Questions

Questions regarding proposal submissions should be directed to the City's Purchasing Agent, April Cone at (804) 541-2205 or acone@hopewellva.gov. Technical questions regarding this project should be directed to:

Office of the City Manager
300 N. Main Street
Hopewell, VA 23860
Telephone: (804) 541-2243
Fax: (804) 541-2248
E-Mail: mhaley@hopewellva.gov

In order to maintain equal access to information we request that you not contact anyone other than the individuals named above. If there are any changes to the scope of work, addenda will be issued by the Purchasing Agent to all known participants.

7. The Selection Process

A two-phase process has been established for soliciting participation in the finance, operations and maintenance of the Site's designated lease area (**east side only**). The City reserves the right to modify the process. If and when such changes in the schedule occur, notice will then be provided to entities involved at that stage of the selection process.

Phase I. Request for Proposals

For the Request for Proposals phase, Offerors are invited to prepare and submit a detailed technical proposal that provides a sufficient basis for City Council to assess entity financial capacity, and entity's capacity to operate and maintain a waterfront facility. This should include rental quote for leasing of Site.

Phase II. Ranking

The City Council will decide the final ranking of the proposals. Immediately after determining the final ranking, the City will begin negotiations for the lease to operate and maintain the Site's designated lease area (**east side only**). If an agreement cannot be successfully negotiated in a timely manner, the City has the right to terminate negotiations with the highest ranked Offeror, and begin negotiations with the next highest ranked Offeror. The Offeror ranked below the second highest Offeror would only be contacted if negotiations failed with the Offeror ranked immediately above them.

8. Tentative Selection Schedule

The City reserves the right to extend or otherwise modify the schedule. If and when such changes in the schedule occur, notice will then be provided to Offerors still involved at that stage of the selection process.

Event	Date
Request for Proposals Issued	December 20, 2013
RFP Submission Deadline by 11:00 a.m.	January 14, 2014
City Reviews Proposals	January 14, 2014
City Manager Authorized to Negotiate	TBD
Final Lease Agreement Approved by City Council	TBD

APPENDIX A – OVERVIEW OF HOPEWELL CITY MARINA SHOWING EAST SIDE PROPERTY



Riverside Harbor Park

N 21ST AVE

RIVERSIDE AVE

RIVERSIDE AVE

RIVERSIDE LOOP RD

APPENDIX B: GENERAL TERMS AND CONDITIONS

A. APPLICABLE LAWS AND COURTS: This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and the City of Hopewell, Virginia; any litigation with respect thereto shall be brought in the courts of the City. The contractor shall comply with all applicable federal, state and local laws, rules and regulations. This compliance includes obtaining a Hopewell business license, if required, before work is performed.

B. EMPLOYMENT DISCRIMINATION/DRUG-FREE WORKPLACE BY CONTRACTOR: By submitting the bids/proposals, the bidders/offerors certify to the City that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and §2.2-4311 of the *Virginia Public Procurement Act*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with the City 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 City. (Code of Virginia, § 2.2-4343.1E).

Every contract over Ten Thousand Dollars (\$10,000) shall include the provisions below. During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability or other basis prohibited by state law relating to discrimination employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
2. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements of this section.
4. To provide a drug-free workplace for the contractor's employees.
5. To 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.

6. To state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace.

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

The contractor will include the provisions of the foregoing paragraphs 1, 2, 3, 4, 5 and 6 in every subcontract or purchase order over Ten Thousand Dollars (\$10,000) so that the provisions will be binding upon each subcontractor or vendor.

- C. **DIRECT TAXES:** All bids/proposals shall be submitted exclusive of direct Federal, State, and local taxes. However, if the bidder/offeror believes that certain taxes are properly payable by the City, he may list such taxes separately in each case directly below the respective item bid/proposal price. Tax exemption certification will be furnished on request.
- D. **INDEMNITY:** The contractor agrees to defend, indemnify and hold harmless, the City of Hopewell and its members, officers, directors, employees, agents, and representatives from and against any and all claims, damages, demands, losses, costs and expenses, including attorney's fees, and any other losses of any kind or nature whatsoever including claims for bodily injuries, illness, disease, or death and physical property loss or damage in favor of contractor, its sub-contractors, their employees, agents, and third parties arising during the performance of services and resulting from tort, strict liability, or negligent acts or omissions of contractor, its sub-contractors and their employees or agents under the agreement, or resulting from breaches of contract, whatever by statute or otherwise.
Each contractor shall assume the responsibility for damage to or loss of its material, equipment or facilities located at the site and, in order to effect this limitation of liability, the contractor agrees to insure or self-insure such property against any such risk.
- E. **SALES TAXES:** The City is exempt from payment of State sales and use tax on all tangible personal property purchased or leased for its use or consumption. Certificate of Exemption will be furnished upon request.
- F. **QUOTATION FORM:** The bidder/offeror must sign and properly fill out all forms in this Bid/Proposal or be subject to being declared unresponsive. If unable to submit a Bid/Proposal, please sign and return this solicitation form, advising reason for no Bid/Proposal.
- G. **CONTRACTOR'S DEFAULT:** In case of default of the contractor, the City may procure the articles of service from other sources and hold the contractor responsible for any excess cost incurred thereafter.

- H. COMPUTATION OF TIME FOR DISCOUNTS:** Time in connection with discount offered, will be computed from date of delivery of the supplies or materials to carrier when final inspection and acceptance are at those points or from date correct invoice is received if latter is later than the date of delivery.
- I. ETHICS IN PUBLIC CONTRACTING:** By submitting the bids/proposals, the bidders/offerors certify that the bids/proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other bidder/offeror, supplier, manufacturer or subcontractor in connection with the bid/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.
- J. GOVERNMENTAL RESTRICTIONS:** In the event any governmental restrictions may be imposed which would necessitate alteration of the materials, quality, workmanship, or performance of the items offered in this Bid/Proposal prior to their delivery, it shall be the responsibility of the successful bidder/offeror to notify this office at once, indicating in his letter the specific regulation which requires such alterations. The City reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the contract.
- K. IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By entering into a written contract with the City of Hopewell, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the City, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
- L. DEBARMENT STATUS:** By submitting the bids/proposals, the bidders/offerors certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.
- M. ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the City of Hopewell, Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the City of Hopewell, Virginia under said contract.
- N. PAYMENT:** Payment by the City is due thirty days (30) after delivery is made to the City of Hopewell and inspection unless otherwise specifically provided: subject to any discounts allowed.

To Prime Contractor:

Invoices for items ordered, delivered 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 and/or purchase order number, social security number (for

individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).

All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.

The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized.

Unreasonable Charges: Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges, which appear to be unreasonable, will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the City shall promptly notify the contractor, in writing, as to those charges, which it considers unreasonable, and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification.

To Subcontractors:

A contractor awarded a contract under this solicitation is hereby obligated:

1. To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the City for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
2. To notify the City and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.
3. 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 City, except for amounts withheld as stated in (2) 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 City.

O. PRECEDENCE OF TERMS: Paragraphs A-N of these General Terms and Conditions shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

P. TESTING AND INSPECTION: The City reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

Q. ASSIGNMENT OF CONTRACT: A contract shall not be assignable by the contractor in whole or in part without the written consent of the City.

R. CHANGES TO THE CONTRACT: Changes can be made to the contract in any of the following ways:

1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
2. The Purchasing Department may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Department a credit for any savings. Said compensation shall be determined by one of the following methods:
 - a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Department's right to audit the contractor's records and/or to determine the correct number of units independently; or
 - c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Department with all vouchers and records of expenses incurred and savings realized. The Purchasing Department shall have the right to audit the records of the contractor, as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Department within thirty (30) days from the date of receipt of the written order from the Purchasing Department. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Virginia Public Procurement Act. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Department or with the performance of the contract generally.

- S. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the City, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies, which the City may have.
- T. **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 the City 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. The City may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.
- U. **INSURANCE:** The contractor shall secure and maintain in force, at his/her own expense all required forms of insurance and payment bonds to insure the completion for the work under contract to the satisfaction of the City and without damage to, or claims against the City. The contractor shall provide satisfactory evidence of bonds and insurance on behalf of the sub-contractors, before entering into an agreement to sublet any part of the work to be done under this contract.

The following performance and payment bonds and forms of insurance shall be secured by the contractor to cover all work under contract and to protect the contractor, the City, and general public against any damage of claims in connections with the performance of the contract. The bonds and insurance shall be by companies duly authorized to do business in the State of Virginia. Certificates of Insurance, naming the City as an additional insured for each type of coverage shall be required.

At the discretion of the purchasing agent, bidders/offerors may be required to submit with their bid/proposal a bid/proposal bond, or a certified check, in an amount to be determined by the purchasing agent, which shall be forfeited to the City as liquidated damage upon the bidder's/offeror's failure to execute a contract awarded to him/her or upon the bidder's/offeror's failure to furnish any required performance or payment bonds in connection with a contract awarded to him/her.

At the discretion of the purchasing agent, the winning contractor(s) may be required to submit a performance and payment bond to the City which shall be evoked upon contractor's failure to execute a contract awarded or the failure to satisfactorily complete work for which a contract or purchase order was awarded. Performance bond and payment bond in the amount of one hundred (100) percent of contract price is required as security of contract, or security for payment of all persons performing labor and furnishing materials in connection with the contract, and protecting the City from all damages or claims resulting from, or in connection with the performance of the contract or purchase order.

The performance bond and payment bond shall and does bind the surety company to protect the City from damages, claims or costs by failure of the contractor to make corrective action due to his financial solvency or for any other cause whatever.

INSURANCE COVERAGES AND LIMITS REQUIRED:

1. Worker's Compensation - Statutory requirements and benefits; require that the City of Hopewell, Virginia be added as an additional named insured on contractor's policy.
2. Employers Liability - \$500,000.
3. Comprehensive general liability for bodily injury liability and property damage liability shall be provided as to limits specified.
4. Contractor's protective liability shall be provided for bodily injury liability and property damage liability.
5. Fire and extended coverage shall be provided on the completed builder risk form if specified in bid specifications.
6. The contractor shall require each of his subcontractors to carry Workmen's Compensation Insurance and public liability and property damages liability.
7. Commercial General Liability - \$1,000,000 combined single limit. The City of Hopewell, Virginia is to be named as an additional named insured with respect to the services being procured. This coverage is to include Products and Completed Operations Coverage.
8. Automobile Liability – bodily injury and property damage shall be provided as to limits set forth in the specifications.

The contractor shall have executed and delivered to the City copies of all insurance certificates.

Executed copies of the performance bond shall become a part of all copies of the contract.

APPENDIX C: SPECIAL TERMS AND CONDITIONS

- A. **ADVERTISING:** In the event a contract is awarded for supplies, equipment, or services resulting from this bid/proposal, no indication of such sales or services to the City of Hopewell, Virginia will be used in product literature or advertising. The contractor shall not state in any of its advertising or product literature that the City of Hopewell, Virginia or any department or institution of the City has purchased or uses its products or services.
- B. **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 by the City of Hopewell, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.
- C. **AWARD OF CONTRACT:** Selection shall be of an offeror deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in the Request for Proposals, including price, if so stated in the Request for Proposals. Negotiations shall be conducted with the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the City shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. The City may cancel this Request for Proposals or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous (Code of Virginia, § 2.2-4359D). Should the City determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the contractor's proposal as negotiated.
- D. **BID/PROPOSAL ACCEPTANCE PERIOD:** Any bid/proposal in response to this solicitation shall be valid for 120 days. At the end of the 120 days the bid/proposal may be withdrawn at the written request of the bidder/offeror. If the bid/proposal is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.
- E. **CANCELLATION OF CONTRACT:** The Purchasing Department reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 30 days written notice to the contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 30 days written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
- F. **EXTRA CHARGES NOT ALLOWED:** The bid/proposal price shall be for complete installation ready for the City's use, and shall include all applicable freight and installation charges; extra charges will not be allowed.

G. MINORITY/WOMEN-OWNED BUSINESSES SUBCONTRACTING AND

REPORTING: Where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such business to minority and/or women-owned businesses. Names of firms may be available from the buyer and/or from the Division of Purchases and Supply. When such business has been subcontracted to these firms and upon completion of the contract, the contractor agrees to furnish the purchasing office the following information: name of firm, phone number, total dollar amount subcontracted and type of product/service provided.

H. PREPARATION AND SUBMISSION OF BIDS/PROPOSALS:

Bids/proposals must give the full business address of the bidder/offeror and be signed by him/her with his/her usual signature. Bids/proposals by partnerships must furnish the full name of all partners and must be signed in the partnership name by one of the members of the partnership or any authorized representative, followed by the designation of the person signing. Bids/proposals by corporations must be signed with the legal name of the corporation followed by the name of the State in which it is incorporated and by the signature and designation of the president, secretary, or other person authorized to bind it in the matter. The name of each person signing shall also be typed or printed below the signature. A bid/proposal by a person, who affixes to the signature the word "President," "Secretary," "Agent" or other designation without disclosing the principal, may be held to be the bid/proposal of the individual signing. When requested by the City, satisfactory evidence of the authority of the officer signing in behalf of the corporation shall be furnished.

I. WITHDRAWAL OR MODIFICATION OF BIDS/PROPOSALS:

Bids/proposals may be withdrawn or modified by written notice received from bidders/offerors prior to the deadline fixed for bid/proposal receipt. The withdrawal or modification may be made by the person signing the bid/proposal or by an individual(s) who is authorized by him on the face of the bid/proposal. Written modifications may be made on the bid/proposal form itself, on the envelope in which the bid/proposal is enclosed, or on a separate document. Written modifications, whether the original is delivered, or transmitted by facsimile, must be signed by the person making the modification or withdrawal.

J. RECEIPT AND OPENING OF BIDS/PROPOSALS:

It is the responsibility of the bidder/offeror to assure that his bid/proposal is delivered to the place designated for receipt of bids/proposals and prior to the time set for receipt of bids/proposals. Bids/proposals received after the time designated for receipt of bids/proposals will not be considered. Bids/proposals will be opened at the time and place stated in the advertisement, and their contents made public for the information of bidders/offerors and others interested who may be present either in person or by representative. The officer or agent of the City, whose duty it is to open them, will decide when the specified time has arrived. No responsibility will be attached to any officer or agent for the premature opening of a bid/proposal not properly addressed and identified.

K. NEGOTIATION WITH THE LOWEST BIDDER:

Unless all bids are cancelled or rejected, the City of Hopewell reserves the right granted by §2.2-4318 of the *Code of*

Virginia to negotiate with the lowest responsive, responsible bidder to obtain a contract price within the funds available to the agency whenever such low bid exceeds the city's available funds. For the purpose of determining when such negotiations may take place, the term "available funds" shall mean those funds which were budgeted by the agency for this contract prior to the issuance of the written Invitation for Bids. Negotiations with the low bidder may include both modifications of the bid price and the Scope of Work/Specifications to be performed. The city shall initiate such negotiations by written notice to the lowest responsive, responsible bidder that its bid exceeds the available funds and that the agency wishes to negotiate a lower contract price. The times, places, and manner of negotiating shall be agreed to by the city and the lowest responsive, responsible bidder.