



REQUEST FOR PROPOSALS TITLE PAGE

Include This Page as the First Page in Your Proposal Response

City of Lynchburg, Virginia Procurement Division

Proposal Title: **Comprehensive Water Quality Improvement Plan**

This is the City of Lynchburg's Request for Proposals (RFP) No. 13-842, issued May 6, 2013. Direct inquiries for information should be directed to Stephanie Suter: e-mail: stephanie.suter@lynchburgva.gov; Phone: 434-455-3963; Fax: 434-845-0711. All requests for clarification of or questions regarding this RFP must be made in writing and received by 2:00 p.m., May 30, 2013. All responses to this solicitation shall be in strict accordance with the requirements set forth in this RFP document and the ensuing contract documents.

Sealed proposals will be publicly accepted prior to **4:00 p.m., June 6, 2013**; however, only the names of firms responding will be available for announcement. Proposals received after the stated due date and time shall not be considered. Submit proposals in a sealed, opaque envelope, and put the RFP number, title, due date and time on the lower left front. Offerors are responsible for having their proposal time stamped by Procurement Division staff before the deadline indicated above and acknowledge all addenda so issued in the space provided below. Any alteration or changes to this RFP will be made only by written addendum issued by the Procurement Division, and all Offerors are responsible for obtaining issued addenda from the City's Procurement website: <http://www.lynchburgva.gov/current-solicitations>.

Acknowledge receipt of addenda here: No. _____ Date: _____ No. _____ Date: _____

Submit Proposals: BY MAIL, GROUND DELIVERY, OR HAND DELIVER TO:

Procurement Division
Third Floor City Hall
900 Church Street
Lynchburg, Virginia 24504

Information the Offeror deems Proprietary is included in the proposal response in section(s): _____

See Paragraph B. on page 2 for guidelines on submitting proprietary information.

In compliance with this Request for Proposals and all the conditions imposed therein, the undersigned offers and agrees to furnish the services in accordance with the attached proposal or as mutually agreed by subsequent negotiations. By my signature below, I certify that I am authorized to bind the Offeror in any and all negotiations and/or contractual matters relating to this Request for Proposals. Sign in ink and type or print requested information.

Full Legal Name of Offeror: _____

Fed ID OR SOC. SEC. NO.: _____ Date: _____

Address: _____ Phone: (____) _____

_____ Fax: (____) _____

Signature: _____

Typed or Printed Name, Title

City Procurement Manager's Signature

I. SUBMISSION OF PROPOSALS

- A. **An original (1), so marked, and (5) copies, so marked, for a total of (6)** of your proposal document are required. In addition, one (1) copy of proposal in an electronic format, either floppy disk or CD in Microsoft Word format or PDF file format must also accompany your proposal. The City will not assume responsibility for reproduction where an insufficient number of copies have been supplied. In any such case, the City will notify the Offeror of the deficiency and request that the appropriate number of copies be delivered within 24 hours. Failure to comply with this or other requirements of this Request for Proposal shall be grounds for the City to reject such proposals. Telegraphic or facsimile submission of proposals is not acceptable and any such proposals will not be considered. Nothing herein is intended to exclude any responsible Offeror or in any way restrain or restrict competition. All responsible Offerors are encouraged to submit proposals.
- B. Submission of Proprietary Information: Trade secrets or proprietary information submitted by an Offeror in connection with this procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however the Offeror must invoke the protection of this section prior to or upon submission of the data or the materials, and must identify the data or other materials to be protected and state the reason why protection is necessary (Section 2.2-4342F of the Code of Virginia). **Offerors shall submit, in a separate section of the proposal, any information considered proprietary and any copyrighted material and clearly identify the information as proprietary and/or copyrighted information. Offerors may not declare their entire proposal proprietary nor may they declare proposed pricing to be proprietary.**

References may be made within the body of the proposal to proprietary information; however all information contained within the body of the proposal not in the separate section labeled proprietary shall be considered Public Information.

- C. Proposals having any erasures or corrections must be initialed by the Offeror in ink.
- D. The City reserves the right to accept or reject any or all proposals, to waive informalities, and to reissue any request for proposals and to award contracts to multiple Offerors. Any contract resulting from this Request for Proposal shall not be exclusive to the Successful firm. The City reserves the right to contract with firms not party to the resultant contract for similar work if it determines this to be in their best interest.
- E. By submitting a proposal response, the Offeror agrees that the proposal response will not be withdrawn for a period of 90 days following the due date for proposal responses.
- F. By submitting a proposal response, the Offeror certifies that it has not combined, conspired or agreed to intentionally rig, alter or otherwise manipulate, or to cause to be rigged, altered or otherwise manipulated its proposal response for the purpose of allocating purchases or sales to or among persons, raising or otherwise fixing the prices of the goods or services, or excluding other persons from dealing with the City.
- G. By submitting a proposal response, the Offeror certifies that its proposal is made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other Offeror, supplier, manufacturer or subcontracting firm in connection with its proposal; and that it has 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.
- H. The City will not be responsible for any expense incurred by any Offeror in preparing and submitting a proposal response. All proposals submitted will become the property of the City.

II. GENERAL INFORMATION AND OBJECTIVE

A. Invitation

The City of Lynchburg requests that firms submit a response to the RFP to provide professional engineering services for an integrated, water quality compliance plan to address the City's numerous water quality regulatory requirements including the Virginia Stormwater Management Program (VSMP) Phase II Municipal Separate Storm Sewer System (MS4) Permit, stormwater regulatory compliance, James River Basin (Bacteria) Total Maximum Daily Load (TMDL) and Chesapeake Bay TMDL, including consideration of the City's Combined Sewer Overflow (CSO) program. Services will include the coordination of program goals and the development of a cost effective and implementable strategy for water quality improvement within the City's watersheds. Qualified firms shall show expertise in the development of similar compliance strategy plans, including stormwater management, TMDL compliance, CSO programs, community outreach, finance/funding, assistance with legal and regulatory compliance issues, and utilization of mapping and geographic information systems (GIS).

B. Background

The City of Lynchburg is a community of roughly 75,000 residents encompassing approximately 50 square miles that is situated along the James River in the Central Virginia region. Approximately 45 miles of 254 total stream miles in the City are listed as impaired and have a pending TMDL Implementation Plan for bacteria impairments. Within the city there are over 30 miles of storm sewer pipes, over 10 miles of culverts and 4,200 inlets of which the overall condition is unknown. The City holds a MS4 permit with the State for discharge of stormwater runoff. The pending Small MS4 General Permit includes requirements to address pollutants identified in TMDL waste load allocations [WLA] through the development and implementation of TMDL Action plans that will then become part of the localities MS4 Program Plan.

There are two TMDLs that the City will be required to address. The Chesapeake Bay TMDL requires a waste load allocation for nitrogen, phosphorus and sediment. The James River Basin (Bacteria) TMDL requires reduction in sources of E. coli bacteria in the stream segments that have been identified as impaired. The City will also be required to develop action plans for pollutants identified in TMDLs approved after permit issuance if the impairment is included in the 2012 303(d)/305(b) Integrated Report and the report identified that the TMDL would be developed during that permit cycle. Currently, the lower James River is being studied for Chlorophyll-a impairment and the results of the study underway may have a significant impact on the City's water quality plan.

Related reference documents are posted and available to view and download from the City's Storm Water Management webpage: <http://www.lyncburgva.gov/stormwater-utilityms4-permit>.

C. Scope of Work

The City of Lynchburg anticipates the development a comprehensive and integrated Water Quality Compliance Plan for the City's various water quality challenges, which includes consideration of the Chesapeake Bay TMDL, the James River Basin TMDL, the Chlorophyll-A study (when applicable), other 303(d) listed impairments and the City's current and pending MS4 permit regulatory requirements. The ultimate outcome of this effort would be develop an implementable strategy towards meeting all regulatory requirements, improve water quality within the City's watersheds and meeting sustainability goals. An important task would be to assist the City with the development of a coordination strategy for all aspects of the City's Water Quality Program including an implementable compliance approach to all Federal, State and Local regulatory requirements and agency goals including DEQ, DCR and EPA. In 2011, the City implemented a stormwater utility and user fee to provide the revenue for meet the permit requirements. The plan should be achieved in a cost-effective manner and with a schedule commensurate with the ability of the City to raise funding while minimizing impact to the rate payers. A component of this project will be to assist the City in developing a [sustainable] capital improvement plan and funding plan and may include an asset renewal strategy. Additionally, it will be critical to garner public input and support for the Plan. Therefore, there will need to be public outreach and involvement during this process.

Tasks may include any or all of the following:

Task 1 - Data Compilation and Review

The consultant will compile and review existing data made available by the City and/or regulatory agencies. Data compilation will focus on, but may not be limited to, the following items:

- Existing geographic information system (GIS) data (land use, topographic data, impervious area, pervious area, parcels, roads, incorporated limits, major and sub-basin boundaries, soils, wetlands, water bodies);
- Existing studies and plans;
- Inventory of known water quality issues and streams with a TMDL impairment;
- Existing stormwater infrastructure inventory data (i.e., ponds, culverts, inlets, manholes, outfalls, etc.);
- Existing Best Management Practices (BMPs) Facilities owned by the City;
- Existing water quality monitoring data;
- Current Municipal Separate Storm Sewer System (MS4) National Pollutant Discharge Elimination System (NPDES) permit and recent annual reports; and,
- Existing TMDL documents and other water quality documents on impaired waters.

The consultant should also identify data gaps where additional information may be needed, and include methods of obtaining that data, during the planning process such as watershed assessments, stream erosion observations, stream condition assessment or stream-side buffer.

Task 2 - Surface Water Quality Assessment

For this task the consultant will summarize existing regulatory activities affecting surface water quality (TMDL, NPDES, etc.) as well as perform a city-wide pollutant load analysis that the City can use for TMDL compliance, MS4 compliance and water quality planning purposes. At a minimum, the pollutant load analysis will consider total nitrogen (TN), total phosphorus (TP), sediment and bacteria.

Task 2.1 – Regulatory Framework

The consultant will review and consider the applicability of existing and pending stormwater regulations that impact water quality within the City, namely the Chesapeake Bay TMDL, James River TMDL, the on-going Chlorophyll-a study, the MS4 program and other programs as appropriate. The consultant will prepare a memorandum summarizing the pending and current stormwater quality related regulations and potential activities for compliance and recommendations. An optional task may be to review the impact of EPA's Integrated Municipal Stormwater and Wastewater Planning Approach Framework on the City's regulatory requirements.

Task 2.2 – Water Quality Data Evaluation

The consultant will evaluate existing available water quality data for selected waters within the City. Extensive water quality modeling efforts have been performed in conjunction with the City's CSO Long Term Control Plan (LTCP) updates that may be used in this effort. The consultant will identify significant trends. At a minimum, the parameters to be analyzed should include Total Nitrogen (TN), Total Phosphorus (TP), Total Suspended Solids (TSS), and bacteria. The consultant will prepare a memorandum summarizing existing water quality trends within the City.

Task 2.3 – Pollutant Load Analysis

The consultant will develop a City-wide pollutant load analysis for relevant water quality parameters, as identified in previous tasks. Where possible, the loading analysis will build upon previous modeling efforts to quantify pollutant loads in the City. The loading analysis should be performed as necessary for related TMDLs in the City (for example, nutrients and sediment should be based on 2009 land use, as required by the Bay TMDL). The loading analysis should include an evaluation and comparison with current TMDL load allocations. Where modeling or previous load analysis has not been conducted, additional detailed modeling may be required to estimate loading rates. The consultant will summarize the loading analysis in a technical memorandum which should include tabulated pollutant load results by major watershed and/or sub-watershed in the City.

Task 3 – Identification of Pollutant Load Reduction Strategies

Based on the results of Tasks 1 and 2, the consultant will identify and recommend the types of activities and/or projects that may be implemented to help achieve pollutant load reductions as required by existing and/or pending regulations. These may be either structural and/or non-structural in nature. In addition to BMPs on publicly owned lands, the consultant will need to identify opportunities for implementation of BMPs on private property. The consultant will need to review incentives that would serve to encourage private property owners to either install or retrofit BMPs that would assist in meeting local waste load allocations. These options may include enhancing the city's credit program; investigating the use of cost-sharing opportunities in coordination with credits; or establishing market programs.

Once identified, the consultant shall develop preliminary cost estimates and pollutant reductions for all BMP opportunities. Next, the consultant will perform a cost vs. benefit analysis of each to support the development of a prioritization plan for identified improvements. A primary issue will be the expected gap between annual revenue and expected annual compliance costs, therefore the consultant will need to consider options that reduce the cost to rate payers while meeting regulatory requirements.

Task 4 – Evaluation of Existing Stormwater Conveyance Collection System

For this task the consultant will assist the City in the identification and prioritization of operations and maintenance (O&M) and capital improvement program (CIP) needs of the stormwater collection system. The consultant will perform data collection, survey, inspection, condition assessment, capacity analysis, master planning, maintenance standard operating procedures (SOPs) and prioritization, CIP budgeting and planning, evaluate the storm sewer system and existing best management practices (BMPs) for potential retrofits in order to address water quality, and may also develop construction documents or any other related storm sewer work. Information on the stormwater system conditions will be added to current GIS mapping, work management system and shall be sufficient for stormwater modeling.

Task 5 – Development of Local Water Quality Implementation Plan

The results of Tasks 1 through 4 above will be compiled and presented in a final Water Quality Compliance Plan. The plan should be comprehensive in nature such that the City may use the plan for compliance with the Chesapeake Bay TMDL and James River Basin TMDL, at a minimum. The plan shall summarize all recommended compliance strategies, potential costs, prioritization and implementation schedule.

The consultant will develop a comprehensive ranking matrix to prioritize the proposed projects. Ranking criteria should include public health and safety, regulatory compliance potential/ water quality benefits, drainage improvement/ flood control, improvement of asset reliability, ease in project implementation, and relationships with other projects, *i.e.*, shared initiatives/ cost-sharing (such as current or planned development and redevelopment projects), as well as green/ sustainability infrastructure bonus points.

The City of Lynchburg reserves the right to continue the contract into additional phases (as outlined by the consultant and City) that may include professional services for the preparation of plans, design drawings, specifications, construction administration and resident project field representatives for the orderly development of the Plan.

III. PROPOSAL PREPARATION

The proposal response must address the items included in the Scope of Services and the Criteria for Proposal interpretation of evaluation. Proposals should be prepared simply, providing straightforward and concise responses to requests for information and descriptions of qualifications and capabilities. Responses shall be limited to no more than twenty (20) pages excluding the cover, including all other materials. Each copy of the proposal must be bound with all documentation in a single volume where practical. Failure to do so will result in a lowered evaluation. Incomplete proposals may be determined nonresponsive.

Offerors should organize their proposals using the format described below:

- 1) Letter of transmittal including name, address and telephone number of firm, including the location of the office that will directly contract for the work. Include in this letter a brief summary as to why the firm(s) feels qualified to provide the requested services as well as all proposed team members.
- 2) Brief history of the firm,
- 3) Years in business as an established firm;
- 4) The name, position and telephone number of contact person authorized to conduct negotiations and authorize final contracts or otherwise bind the firm to a contractual relationship; and
- 5) A specific listing of services the firm is uniquely qualified to provide.
- 6) Specific staff experience, by professional and educational qualifications, as it relates to providing services for the project scope.
- 7) Proposed project manager and lead technical positions to be committed to this project and the availability of those individuals.
- 8) Understanding of the project and the proposed approach.
- 9) List 3 current and past work assignments of similar nature that the firm has directly contracted to provide within the last five years with names, address and telephone number of references.
- 10) A qualifying statement as to your firm's registry status with the Virginia State Corporation Commission.

IV. CRITERIA FOR PROPOSAL EVALUATION

The evaluation criteria that the City of Lynchburg will use to analyze qualifications for the ongoing consulting services are stated below.

Evaluation Criteria:

1. Demonstrated qualifications and competency of individuals assigned to project.
2. Demonstrated understanding of the project and needs of the City.
3. Proposed approach.
4. Demonstrated experience assisting similar communities with the implementation of water quality improvement programs, including TMDLs, stormwater master planning, VSMP program, asset management, and related CSO Program compliance issues. Experience in the Commonwealth of Virginia is preferable.

V. METHOD OF AWARD

Following evaluation of the written proposals as submitted, presentations shall be held prior to selection. The opportunity to present shall be made to two or more Offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, and respondents ranked 1, 2, 3 or more. Upon completion of the presentations the selection committee shall select the number 1 ranked firm and the City project manager shall begin negotiations with that firm in an attempt to reach an agreement to provide the services. Price shall be considered, but need not be the sole determining factor. If after negotiations have been conducted with the top ranked firm, an agreement cannot be reached, negotiations will be terminated with that firm, and negotiations began with the firm ranked number 2. This procedure will continue until an agreement is reached or negotiations are terminated and the services re-solicited. At any stage of the selection process 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.

VI. CONTRACT TERM

The initial term of this contract shall be for (TBD) from contract signing, upon mutual consent of the parties to the contract. Any time extensions granted by the City shall be by written amendment signed by both parties to the original agreement.

VII. GENERAL TERMS AND CONDITIONS

A. Subcontracting and Assignment of Work

The successful firm shall not subcontract or assign portions of the work, other than those specifically defined in the CONTRACT, without the express written consent of the City. A description of any work the Offeror proposes to subcontract shall be submitted to the City for review and approval along with the name and address of the individual, firm, or corporation that is the proposed subcontracting firm. This submittal shall also include a list of the key personnel that the subcontractor firm will assign to the project. All work performed by any subcontractor firm shall be coordinated by the successful firm and the successful firm will be responsible to the City for all work performed by any subcontracting firm or special consultant.

B. Payment for Services

Payments to the successful firm shall be made within 30 days after receipt of an approved invoice for services provided in the previous month. Backup documentation for each invoice shall be provided in detail satisfactory to the City. The successful firm's records and documentation supporting such invoices shall be made available to the City upon reasonable request. The successful firm agrees to retain all records, documents and support materials relevant to the CONTRACT for a period of five years following final payment.

C. Independent Successful firm

The successful firm is an independent successful firm and nothing contained in a subsequent CONTRACT shall constitute or designate such firm or any of its agents or employees as employees of the City.

D. Notification

Any notice required by the Contract shall be effective if given by registered mail, return receipt requested, to the Successful firm in the name and at the address given in its proposal submission; provided that change of address shall be effective if given in accordance with this paragraph. Unless otherwise specified, any notice to the City shall be given to the City of Lynchburg, Procurement

Manager, 900 Church Street, Lynchburg, VA 24504. The Successful firm agrees to notify the City immediately of any change of legal status or of address. Any notice provided in accordance with this paragraph shall be deemed to have been completed five calendar days after the date of mailing.

E. Termination and Ownership of Documents

The City reserves the right to terminate the contract upon written notice to the Successful firm. In the event of termination pursuant to this paragraph which is not the fault of the Successful firm, the Successful firm shall be paid for all services provided through the date of termination. The contract will terminate immediately upon failure of the City of Lynchburg, City Council to appropriate funds for its continuance.

The Successful firm agrees that all information and materials gathered and/or prepared by or for it under the terms of the CONTRACT shall be delivered to, become and remain the property of the City upon completion of the work or termination of the CONTRACT. The City shall have the right to use and reproduce the data and reports submitted hereunder, without additional compensation to the Successful firm.

F. Insurance

The selected firm shall be required to maintain in force such insurance, in amounts acceptable to the City, as will protect himself and the City from claims which may arise out of or result from the execution of the work, whether such execution be by himself, his employees, agents, subcontractor firms or by anyone for whose acts any of them may be liable. This coverage should include, at a minimum, Worker's Compensation, General Liability (including premises/operations, independent successful firms, products and completed operations, contractual liability and personal injury liability) and Professional Liability. All insurance shall be provided by companies authorized to conduct business in the Commonwealth. The selected firm shall furnish the City with an original Certificate of Insurance upon request. The Certificate should name the City as additional insured. The selected firm shall notify the City at least 30 days prior to policy cancellation, non-renewal or reduction of coverage.

G. Laws and Regulations

The Successful firm shall abide by all Federal, State and Local laws and regulations governing the provision of the services called for in the contract. The Successful firm shall give notice and comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of the work. Any legal proceedings arising out of or related to this agreement shall be filed by the parties in the City of Lynchburg General District Court or the Lynchburg Circuit Court.

H. Additional Services

The City may add to the Scope of Services or make changes in the Scope of Services any services of a similar nature to those specified in the Scope of Services of this Request for Proposals as mutually agreed to at a price mutually agreed upon.

I. Severability

Each paragraph and provision of the resultant contract will be severable from the entire agreement and if any provision is declared invalid, the remaining provisions shall remain in effect.

J. Licenses and Permits

The Successful firm shall secure and pay for all permits, governmental fees and licenses necessary for the proper execution and completion of the work which are legally required prior to and during the work. The City will not charge for any permits required by the City of Lynchburg.

K. Nondiscrimination

If the resultant contract exceeds \$10,000, during the performance of the contract, the Successful firm

agrees as follows:

- a. The Successful firm 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 Successful firm. The Successful firm agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- b. The Successful firm, in all solicitations or advertisements for employees placed by or on behalf of the Successful firm, will state that such Successful firm is an equal opportunity employer.
- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- d. The Successful firm will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontracted firm or vendor.

L. Payments to Successful Firms

In accordance with Virginia Code Section 2.2-4354 the Successful firm agrees that:

1. Should any contractor be employed by the Successful firm for the provision of any goods or services under this Contract, the Successful firm agrees to the following:
 - (a) The Successful firm shall, within seven days after receipt of any payments from the City pursuant to this Contract, either:
 - (1) Pay the subcontractor for the proportionate share of the total payment received from the City attributable to the goods or services provided by the subcontractor; or
 - (2) Notify the City, as applicable, and the subcontractor, in writing, of the intention to withhold all or a part of the subcontractors firm's payment with the reason for nonpayment. Written notice to the City shall be given to: City of Lynchburg, Procurement Manager, 900 Church Street, Lynchburg, VA 24504.
 - (b) The Successful firm shall pay interest to the subcontractors firm, at the rate of one percent per month on all amounts owed to the subcontractors firm that remain unpaid after seven days following receipt of payment from the City for goods or services provided under this Contract, except for amounts withheld under subparagraph (a)(2) above.
 - (c) The Successful firm shall include in each of its subcontracts a provision requiring each subcontractors firm to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractors firm.
 - (d) The Successful firm's obligation to pay an interest charge to a subcontractors firm shall not be an obligation of the City.
 - (e) No contract modification shall be allowed for the purpose of providing reimbursement for these interest charges. No cost reimbursement claim shall include any amount for reimbursement of these interest charges.
2. Invoice processing is to be in strict accordance with the rules and regulations set forth by the applicable Jurisdiction and the *Code of Virginia* Section 2.2-4352, requiring payment of invoices within 30 days of receipt of a proper invoice. No promises or commitments on the part of any employee of the Public Body shall bind the Jurisdiction to any other terms and/or conditions other than those set forth in procedures issued by the Public Body.
 - (a) Invoices shall be submitted to the City on a monthly basis. The City shall pay the amount of the invoice within thirty (30) days. However, the City shall have the right to verify information contained on an invoice and extend the time of payment until information is

received to correct any errors found therein. The invoices submitted shall include, at a minimum, the following information:

- (1) Project name, city and state project number;
- (2) City Project Manager;
- (3) City assigned Contract Number;
- (4) Not to exceed amount or lump sum amount;
- (5) Total payments requested to date;
- (6) Payments received;
- (7) Balance due;
- (8) Invoice number;
- (9) Period during which services were performed; and
- (10) Brief description of work covered by invoice.

- (b) Payments shall not be considered as evidence of satisfactory performance of the work either in whole or in part, nor shall any payment be construed as acceptance by the City of any defective work. The City reserves the right to withhold payment in the event the City believes that the work is unsatisfactory.

M. Contractual Claims

Contractual claims, whether for money or other relief, shall be submitted in writing no later than 60 days after final payment; however, written notice of the Successful firm's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Any notice or claim shall be delivered to the City's Procurement Manager, Third Floor City Hall, 900 Church Street, Lynchburg Virginia 24504 and shall include a description of the factual basis for the claim and a statement of the amounts claimed or other relief requested. The City's Procurement Manager shall render a decision on the claim and shall notify the Successful firm within 30 days of receipt of the claim. The Successful firm may appeal the decision of the City's Procurement Manager by providing written notice to the City Manager, within 15 days of the date of the decision. The City Manager shall render a decision on the claim within 60 days of the date of receipt of the appeal notice and such decision shall be final unless the Successful firm appeals the decision in accordance with the Virginia Public Procurement Act. Invoices for all services or goods provided by the Successful firm shall be delivered to the City no later than 30 days following the conclusion of the work or delivery of the goods.

N. Taxes

The Successful firm shall pay all City, State and Federal taxes required by law enacted at the time proposals are received and resulting from the work or traceable thereto, under whatever name levied. Said taxes shall not be in addition to the contract price as the taxes shall be an obligation of the Successful firm and not of the City and the City shall be held harmless for same by the Successful firm.

O. Indemnification

To the fullest extent permitted by law, the Successful firm, for itself, heirs, representatives, successors and assigns agrees to save, defend, keep harmless and indemnify the City and all of its officials, agents and employees (collectively, the "City") from and against any and all claims, loss, damage, injury, costs (including court costs and attorney's fees), charges, liability or exposure, however caused, resulting from, arising out of or in any way connected with the Successful firm's performance (or nonperformance) of the agreement terms or its obligations under this agreement.

P. Contract Assignment

The resultant contract may not be assigned, in whole or part, without the written consent of the City.

Q. Royalty and License Fees and Copyright, Trademark and Patent Protection

The Successful firm shall pay all royalty and license fees relating to the items covered by the contract. In the event any third party shall claim that the manufacture, use and sales of these goods offered hereby constitutes an infringement of any copyright, trademark, or patent, the Offeror shall indemnify and hold harmless the City from any cost, expense, damage or loss incurred in any manner by the City on account of such alleged infringement.

R. Responsibility for Property

The Successful firm shall be responsible for damages to property caused by work performed under the CONTRACT. Property damage to surrounding or adjoining areas caused directly or indirectly by actions or omissions of the Successful firm shall be repaired or replaced by the Successful firm, to the satisfaction of the Owner, at the Successful firm's expense.

S. Precedence of Documents

The precedence of documents shall be as follows: the CONTRACT, the Request for Proposals and the Offeror's response to the Request for Proposals.

T. Administrative Appeals Procedure

- (a) The following are the exclusive procedures for a bidder or offeror to protest the city's award or decision to award a contract.
- (1) Any protest to award a contract shall be in writing and shall be delivered so that it is received by the city manager not later than five (5) business days after announcement of the award or decision to award, whichever comes first. Otherwise any such protest shall be deemed to be waived.
 - (2) Except for a protest of an emergency or sole source procurement, a protest of a city award or decision to award a contract may only be made by a person who submitted a bid or proposal for the procurement at issue and who was reasonably likely to have its proposal accepted but for the city's decision. In the case of an emergency or sole source procurement, a protest may only be made by a person who can show that he was reasonably likely to have submitted a successful bid or proposal if the procurement had been other than emergency or sole source.
 - (3) Protests shall only be granted if (1) the protester has complied fully with this Sec. 18.1-6 and there has been a violation of law, the Lynchburg public procurement code, or mandatory terms of the solicitation that clearly prejudiced the protestor in a material way, or (2) a statute requires voiding of the decision.
 - (4) The city manager shall issue a written decision on a protest within ten (10) days of its receipt by the city manager.
 - (5) If the protest is denied, the protestor may only appeal the denial or otherwise contest or challenge procurement by then filing suit in the Lynchburg circuit court, Lynchburg, Virginia, and serving the city with such suit within ten (10) days of such denial. Otherwise, the city manager's decision shall be final and conclusive, and the protestor's right to appeal the denial or to otherwise contest or challenge the procurement shall be deemed to be waived.
 - (6) The city should defer award of a contract where the decision to award has been protested unless there is a written determination by the city manager that proceeding without delay is necessary to protect the public interest or unless the bid or offer of the prospective awardee would expire.
 - (7) The validity of a contract awarded and accepted in good faith shall not be affected by the fact that a protest or appeal is filed.
 - (8) The exclusive relief allowed if a protest is granted is to void the decision being protested. If a contract has already been awarded and performance under the contract has begun, the contract need not be voided if not in the public interest to do so. Under no circumstances will any monetary amount be allowed to the protestor as part of any relief granted.

(9) Strictly following these procedures shall be a mandatory prerequisite for protest of the city's award or decision to award a contract. Failure by a bidder to follow these procedures strictly shall preclude that bidder's protest and be deemed to constitute a waiver of any protest.

(b) A protest may not be based upon the alleged non-responsibility of a person to whom the city awards or makes a decision to award a contract.

U. Drug Free Workplace

In accordance with Sec 2.2-4312 of the Virginia Code, during the performance of this contract, the Consultant agrees to (i) provide a drug-free workplace for the consultant'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 Consultant'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 consultant that such consultant 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 sub-Consultant or vendor.

Successful consultant shall not use, possess, manufacture, or distribute alcohol or illegal drugs during the performance of the contract or while on City premises or distribute it to City employees.

Successful Consultant understands that a violation of these prohibitions constitutes a breach of the contract and that the City has the right cancel the contract.

For the purpose of this section, "Drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a Consultant, the employees 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.

V. Termination for Convenience

The performance of work under contract may be terminated by the Public Body upon written notice to the Contractor without cause, for any reason in whole or in part; whenever it is determined that such termination is in the Public Body's best interest. In the event of such termination, the rights and obligations of the parties, which by their nature survive termination of services covered by a contract, shall remain in full force and effect after termination. In the event of such termination, the Contractor shall be paid for services rendered and approved up to the date of termination. The Contractor may submit any termination claim within 60 days after receipt of the notice of termination.

W. Termination for Nonpayment

In the event the Public Body fails to make payment in accordance with applicable standard payment terms, the Contractor may declare the Public Body in default and exercise any right to cure such default. If the Public Body fails to cure such default within 30 days of receiving such written notice, the Contractor may, by giving written notice to the Jurisdiction, terminate the contract and/or the applicable Scope of Work as of the end of such 30-day period on such date as is specified in such notice of termination.

X. Notice of Cure

A cure letter is used when a contractor has failed to perform or deliver in accordance with the provisions of contract. Such notice provides the Contractor a period of time to correct or "cure" the deficiency and places Contractor on notice as to the consequences for failure to take the required corrective action. Such notice may be given orally or in writing. Notice of Cure informs the Contractor that non-conformance is a breach of contract and if the deficiency is not corrected within a stated number of days, the Public Body will terminate the contract for default and hold the Contractor liable for any excess costs.