

REQUEST FOR PROPOSAL

City of Virginia Beach
ISSUING OFFICE:

PURCHASING DIVISION
2388 LIBERTY WAY
VIRGINIA BEACH, VA 23456
TELEPHONE: (757) 385-4438 FAX: (757) 385-5601

DATE: **FEBRUARY 28, 2017**
(Revised 3/17/2017)

Attention of Offeror is Directed To Section
2.2-4367 – 2.2-4377 of Virginia Public
Procurement Act (VPPA) (Ethics In Public
Contracting)

RFP ITEM NO.
CITY-17-0017

CLOSING DATE
APRIL 25, 2017

CLOSING TIME
3:00 PM

PROCUREMENT OFFICER
DARLA SMITH

PLEASE FILL IN COMPANY NAME &
ADDRESS IN THE SPACES PROVIDED
BELOW:

RETURN THIS COPY

THIS IS NOT AN ORDER

THE CITY OF VIRGINIA BEACH RESERVES THE RIGHT TO ACCEPT OR REJECT ANY AND ALL PROPOSALS IN WHOLE OR IN PART AND WAIVE ANY INFORMALITIES IN THE COMPETITIVE NEGOTIATION PROCESS. FURTHER, THE CITY RESERVES THE RIGHT TO ENTER INTO ANY CONTRACT DEEMED TO BE IN THE BEST INTEREST OF THE CITY.

DESCRIPTION OF REQUEST FOR PROPOSAL

THIS DOCUMENT CONSTITUTES A REQUEST FOR SEALED PROPOSALS FROM QUALIFIED INDIVIDUALS AND/OR ORGANIZATIONS TO PROVIDE CONSULTING SERVICES FOR A STUDY/REVIEW OF THE CITY'S SMALL, WOMAN, AND MINORITY (SWaM) PROGRAMS IN ORDER TO ASSIST IN THE DETERMINATION OF:

The City of Virginia Beach, VA, hereinafter referred to as the City, seeks submittals in response to this Request for Proposals (RFP) from a consultant qualified and experienced in conducting a disparity study. The selected consultant shall conduct the study in a manner consistent with constitutional mandates, governing law, and best practices. In addition, the City will seek recommendations regarding service disabled veteran-owned businesses and employment services organizations, as those terms are defined by Va. Code §2.2-4310, for further review by the City. The proposed study is organized into three tasks, which will run concurrently. Each task will require a written report to the City. The consultant's final report shall outline the results of the disparity study and clearly and concisely offer the consultant's recommendations consistent with the results of the disparity study and governing law.

The Virginia Beach City Council has adopted a 10% goal for minority participation in City Contracts.

ACKNOWLEDGE RECEIPT OF ADDENDUM: #1 ___ #2 ___ #3 ___ #4 ___ (Please Initial)

IN COMPLIANCE WITH THIS SOLICITATION AND TO ALL THE CONDITIONS IMPOSED HEREIN, THE UNDERSIGNED AGREES TO EXECUTE THE CONTRACT AS A RESULT OF THIS SOLICITATION. AN AGENT AUTHORIZED TO BIND THE COMPANY SHALL SIGN THE FOLLOWING SECTION. FAILURE TO EXECUTE THIS PORTION MAY RESULT IN PROPOSAL REJECTION.

AUTHORIZED AGENT/SIGNATURE _____ TELEPHONE: _____

TYPE OR PRINT NAME: _____ DATE: _____

ENCLOSURE

ANTICOLLUSION/NONDISCRIMINATION/DRUG-FREE WORKPLACE CLAUSE

ANTICOLLUSION CLAUSE:

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

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

DRUG-FREE WORKPLACE:

DURING THE PERFORMANCE OF THIS CONTRACT, THE 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 SECTIONS I, II, AND III IN EVERY SUBCONTRACT OR PURCHASE ORDER OF OVER \$10,000, SO THAT THE PROVISIONS WILL BE BINDING UPON EACH SUBCONTRACTOR OR VENDOR.

FOR THE PURPOSE OF THIS SECTION, "DRUG-FREE WORKPLACE" MEANS A SITE FOR THE PERFORMANCE OR WORK DONE IN CONNECTION WITH A SPECIFIC CONTRACT AWARDED TO A CONTRACTOR IN ACCORDANCE WITH THIS CHAPTER, THE EMPLOYEES OF WHOM ARE PROHIBITED FROM ENGAGING IN THE UNLAWFUL MANUFACTURE, SALE, DISTRIBUTION, DISPENSATION, POSSESSION OR USE OF ANY CONTROLLED SUBSTANCE OR MARIJUANA DURING THE PERFORMANCE OF THE CONTRACT.

NONDISCRIMINATION CLAUSE:

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

Name and Address of Offeror:

Date:

By:

Signature in Ink

E-mail Address: _____

Telephone Number: _____ (____) _____

Fax Phone Number: _____ (____) _____

Printed Name

Title

Is your firm a "minority" business? Yes No If yes, please indicate the "minority" classification bellow:

African American Hispanic American American Indian Eskimo Asian American Aleut

Other; Please Explain: _____

Is your firm Woman Owned? Yes No

Is your firm a Small Business? Yes No

Is your firm Service Disabled Veteran Owned? Yes No



**City of Virginia Beach – Purchasing Division
Subcontracting Participation Plan
For Goods and Services**

Form CVAB – GS1

Project Name: _____
Bid/RFP Number: _____
Vendor: _____
Address: _____
City, State, Zip: _____
Contact Telephone: _____
Contact Email: _____
Project Name: _____

Total Bid/RFP Amount

Total Subcontracting Amount

Intent to utilize subcontractors **Yes** **No** (If Vendor intends to self-perform all work, check "NO" and skip to Signature Line below)

Firm/individual Name	Number (If certified with SBSD*)	Status (M, S, or W)	Scope of work to be Performed	Estimated Subcontractor Dollar Amount (if Known)	SBSD* Certified Y/N	MBCoord Approval	Verified
						(FOR OFFICE USE ONLY)	

IMPORTANT: PLEASE SUBMIT THIS PARTICIPATION PLAN WITH YOUR BID/RFP

By signing below, you attest that the above information is true and accurate to the best of your knowledge.

 Authorized Representative(Prime) Print Name Title Authorized Representative (Prime) Signature Date

*SBSD = Virginia Department of Small Business and Supplier Diversity

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I. PURPOSE:

The purpose of this solicitation is to secure consulting services regarding the study/review of the City's current Small, Woman, & Minority (SWaM) programs as described in more detail herein. Further, the Scope of Work, as defined herein and assembled in three tasks is a complete Disparity Study that conforms with Applicable Caselaw, as that term is defined herein.

II. BACKGROUND:

Organization Profile:

Located in the southeastern corner of Virginia, the Virginia Beach Metropolitan Statistical Area (MSA) is the 37th largest in the United States, with a population of over 1.67 million. Virginia Beach is the most populous city in Virginia and the 39th largest city in the United States, with approximately 447,489 residents and a population of around 1 million during the summer months. The City encompasses 307 square miles: 248 square miles of land, 59 square miles of water, and 38 miles of beachfront.

Virginia Beach has a unique environment. Within minutes, residents and visitors have access to the popular oceanfront resort area, bountiful wildlife preserves and parks, a vibrant financial district, urban amenities, pastoral rural areas, distinctive cultural centers and museums, a variety of military facilities, and neighborhoods as diverse as the people who call the city home. Virginia Beach is home to five military facilities with which Virginia Beach Public Safety Agencies exercise concurrent jurisdictions: Little Creek Amphibious Base, Fort Story, Naval Air Station Oceana, Camp Pendleton, and Dam Neck. More than a quarter million active duty military, retirees, dependents, and civilian military employees reside in the Hampton Roads region.

Organization Service Offerings:

The City provides the community with a wide variety of services which include: police and fire protection, education, library services, health and mental health services, road construction and maintenance, emergency medical services, water, sanitary sewer, storm water and waste management services, and a variety of social services. In addition to these core services, the government provides services requested by the community to improve the quality of life if its residents. These services include: parks, recreation centers, the Virginia Aquarium, the Amphitheater, the Farmers' Market, bike paths, landscaping, and community planning. As a final category, there are services that the community needs for the future. These services include economic development activities, growth management efforts, construction quality monitoring and strategic planning.

Project Background:

The city has worked for more than 20 years to establish and grow a small women and minority (SWaM) owned business procurement program. In 2008 the City Council adopted a resolution setting a 10% goal for minority participation in City Contracting. Other initiatives include a Small Business Enhancement Program (SBEP) implemented in 2012 and a Bond Waiver/Prequalification Program adopted in 2011.

It is the City's intent that this work will include consultant study and review the above mentioned programs, along with other related activities, policies, procedures, etc. and make recommendations to improve the program so that SWaM businesses, especially women minority owned businesses will increase their participation in City expenditures.

III. SCOPE OF WORK

A. **General Requirements/Objectives:**

The work requires a responsive, responsible consultant to conduct a Disparity Study Analysis (the "Study") to address the following issues:

1. Determine if a disparity exists in awarding contracts to minority-owned and women-owned businesses (W/MB) which are qualified and available to perform in the City's Relevant

Geographic Market Area (RGMA). For purposes of this RFP, "City Contracts" shall include construction, A/E, professional services, other services, and/or provide goods and equipment.

2. If a disparity as described above does exist, determine whether the effects of any past discrimination against W/MB in the City's procurement of Contracts existed or continues to exist within the RGMA, as a result of direct action by the City, or as a result of the City's role as a passive participant in discriminatory behavior practiced by entities that do business with the City.
3. If disparity as described above does exist in the utilization of W/MB, in the RGMA that results from any cause or causes described in the second issue, whether the use of only race- or gender-neutral based measures would be effective to remedy such discrimination.
4. The utilization of W/MB in City Contracts and procurement activities.
5. Determination of a method by which the City will originate goals that apply to the participation of W/MB in City Contracts. To the extent the City has such a method, evaluate the methodology.
6. If race- and/or gender-neutral measures alone would not be effective to remedy such discrimination, the proposer will, by rigorous and applicable statistical methods, determine the bases, and the mathematical or statistical formula(s), to be applied in formulating the City's diversity goals for its SWaM Businesses Program. The resultant formula should remain sufficiently narrowly tailored to refrain from needlessly violating the rights of non- SWaM or non- M/WBE businesses.

B. Study Overview

1. The selected proposer will perform a comprehensive, effective and legally supportable Study and provide a report for the City that satisfies the constitutional test for judicial "strict scrutiny" as expressed by the U.S. Supreme Court in *City of Richmond v. J.A. Croson*, 488 U.S. 469 (1989), and subsequent rulings issued by Commonwealth of Virginia and federal courts (including the Fourth Circuit Court of Appeals) (hereinafter "Applicable Caselaw").
2. The Study will evaluate the extent of discrimination, if any, against M/BE regarding participation in City Contracts.
3. The Study will be based on five years of historical data, from July 1, 2012 to June 30, 2017. The Study should include statistical analysis, empirical evidence and an assessment of any anecdotal and qualitative evidence of discrimination.
4. As part of their submission, proposers must provide a preliminary draft report on the validation of the City's current data on W/MB, availability and utilization in the RGMA.
5. The selected proposer shall commence work within twenty (20) calendar days following the City's approval of the contract for the Study. The work consists of the three (3) task orders outlined in the **Work Plan**. The successful proposer shall complete and deliver to the City an initial draft of the study not more than eighteen (18) months from commencement, and a final report not later than sixty (60) days from receipt of the City's review and feedback of draft. The proposer should demonstrate the benefits of amending these dates if different dates are suggested, and as provided in the Section VII.P.3, the schedule and timing proposed by the proposer is part of the evaluation scoring.

C. Proposer Credentials

1. Profile

Each proposal must include a profile of the proposer's experience developing and conducting disparity, availability and utilization studies of W/MB. Proposers should demonstrate their ability to meet the constitutional requirements set forth in the Applicable Caselaw. Profiles shall include, but not be limited to, any experience of proposer's personnel serving as designated testimonial or consulting expert witnesses under the Federal Rules of Civil Procedure or comparable state rules for procurement and contracting programs.

2. Principal Researcher

The proposal must identify a researcher who will be the principal point of contact and exercise responsibility for the overall conduct, day-to-day activities and timeliness of the Study (“Principal Researcher”). The Principal Researcher must have served in this capacity on a similar disparity or availability study. Other professional team members must also be identified by name, title, qualifications and duties to be performed in producing the study. Proposer agrees that the Principal Researcher and other key staff assigned to the Study shall remain available for contact, direction, and management by the City during the entirety of the project throughout the term of the contract as long as that individual is employed by the selected proposer. At least one member of proposer’s personnel assigned to the Study must have a doctorate degree in economics or statistics from an accredited university and be able to apply statistical measurements in conformity with scientifically valid and accepted methods.

3. References

All proposers must provide at least five (5) client references that have received comparable and satisfactory disparity, availability or utilization analysis services from the proposer within the past ten (10) years. Proposer shall include the contact person, governmental entity, address, phone number, project start and end dates, and a brief description of the project.

4. Staffing/Staff Replacement

All proposers shall provide a list of additional staff assigned to the study and must demonstrate its ability, if necessary, to provide qualified additional and/or replacement staff to meet the Study’s due date(s). Proposed replacement staff shall meet minimum qualifications and have experience comparable to the person(s) being replaced. Resume(s) and references may be requested for the proposed replacements. Substitution of professional personnel after the award may be a basis for termination of the study contract unless agreed to by the City. The City retains the right to object to any subtraction, addition or substitution of proposer staff assigned to the Study made twenty (20) days after the city’s approval of the project award. If the City objects to any subtraction, addition or substitution of proposer’s staff, proposer shall refrain from making any such change to the composition of its staff assigned to the Study.

5. Litigation Report

The Proposer shall provide a listing and disposition of all state and federal court cases, including its Principal Researcher, participated and which involved their research or consultation in disparity studies and availability and utilization studies.

D. Study Goal

The primary goal of this study is to analyze both statistical data and anecdotal information to address the following issues:

1. Study – A comprehensive study conforming to relevant legal requirements designed to ascertain:
 - a) Discriminatory Effect: The effects of past discrimination against W/MB in City Contracts, if any, exist or continue to exist within the RGMA, as a result of direct action by the City or as a result of the City’s role as a passive participant in discriminatory behavior practiced by entities that do business with the City.
 - b) Active Discrimination: Whether active racial and gender discrimination exists in the RGMA; whether there is a disparity between the utilization of W/MB in the RGMA compared to availability, and if not, whether there would be disparities but for the existence of programs, including the City’s SWaM Program.
2. Remedies – If there is evidence of discrimination, determine:
 - a) Whether race- and/or gender-neutral measures that would be effective to remedy

such discrimination.

- b) If current race- and/or gender-neutral based measures are deemed not to be effective to eliminate identified discrimination, whether narrowly tailored race- or gender-conscious remedies could be fashioned to effectively redress the discrimination.

E. Legal Framework

Proposers shall outline and discuss in detail the legal requirements for both race- and gender-conscious programs operated by local governments as set forth by the Applicable Caselaw and any other decisions, statutes, or authorities that bear on the abilities, legal rights and obligations of a local government in Virginia to implement race and gender conscious preference programs in the context of the Study and analysis described in the Study goal.

The Study shall include an explanation of the methods and practices to be employed by the City to comply with such legal requirements and shall also specifically address:

1. The application of the strict scrutiny standard of review for race-conscious remedies and the intermediate scrutiny standard of review for gender-conscious remedies; and
2. The method(s) by which identifiable discrimination against W/MB directly related to public entities' contracts can be determined.
3. Analysis of any available judicial or administrative public hearing transcripts, summaries, or findings as to allegations of commercial discrimination made against contractors, subcontractors, vendors, consultants including but not limited to the City of Virginia Beach, VA.
4. Proposers are encouraged to propose additional tasks or activities to be included in the study if they will substantially explain, justify or improve the results of the study. These suggestions should be itemized and separated from the required items on the cost proposal. Costs should be presented as hourly rates and Proposers should provide their experience in these additional tasks and activities.

F. Study Requirements

In order to provide the minimum deliverables as specified, the selected proposer will be expected to perform the work items delineated below at appropriate points during the project as well as all items necessary to provide the agreed upon deliverables in accordance with applicable legal and industry standards.

The selected proposer shall perform and the Study shall include, at a minimum, and without limitation, the following:

1. An examination of the utilization and availability of W/MB in public and private sector Contracts in the RGMA.
2. A written analysis and opinion on the validity of the City's current data on SWaM businesses utilization.
3. Definitions of all terms used in the Study.
4. Determination and analysis of the RGMA by industry, for purposes of assessing the availability of prime contractors and subcontractor businesses that are W/MB to participate in the City Contracts, based upon the narrowly tailored geographic, product market and zip codes where the majority of primes and subs are located; and define the relevant geographic market area based upon the discrete industry or industries from which such purchases are made. Include analysis on the effect of certified prime contractors in obtaining utilization of City-wide W/MB goals based on a percentage of Contract dollars awarded separately for prime and subcontracts.
5. While not a traditional disparity study component, the City desires a review of service disabled veteran businesses and employment services organizations in the RGMA to participate in City Contracts. Identify areas of growth and participation, and provide written

recommendation on remedies to increase growth participation.

6. A comprehensive review of all the City's Contracts (construction, architectural and engineering (A/E), professional services, other services, goods and equipment) and contracting policies, procedures, and practices contracting records and contract files for the Study period.
7. Review and analyze prior disparity and availability studies that relate to the RGMA and, to the extent possible, reconcile or distinguish those studies with the current findings of the Study.
8. Interview City staff responsible for issuing Contracts regarding the methods of contracting and types of contracts issued, procurement policies, actual procurement and W/MB contracting practices, and the market areas covered by solicitations, advertising and mailing.
9. Interview minority and non-minority trade association representatives that may have some insight into general industry and market dynamics that may potentially affect the formation, growth, and participation of W/MB.
10. Collect statistical data from various sources, including City records, and anecdotal information from testimony at public hearings, personal interviews, and telephone or other surveys from interested persons documenting past instances of discrimination against minority- or women-owned businesses (including non-minority women-owned businesses), small businesses, and opposing points of view, as appropriate, including direct evidence of corroboration, rebuttals, and denials.
11. Design and administer a survey or other method of accurate data collection to gain information from contractors, subcontractors, vendors and consultants (by ethnic group and gender) as to the type of work, capacity and utilization on various types of contracts, reasons for levels of utilization, identification of any forms and instances of discrimination (past or present) experienced by survey respondents while bidding (or submitting proposals on City Contracts, the effects and sources of past or present discrimination while bidding (or submitting proposals on City Contracts, and their interest in bidding (or submitting proposals) on the City contracts.
12. Collect, document and analyze anecdotal evidence, including ethnic, gender and industry categories based on the experience of businesses in the City's markets, including business owners (to include various ethnic, gender, and industry categories) in the RGMA to address identified statistical disparities and to identify barriers to business formation, utilization and growth. This shall include, but is not limited to, facilitating at least three (3) community stakeholder meetings. An invitation shall be sent to the City database of SWaM vendors and members of the Virginia Department of Small Business and Supplier Diversity database located in the City and information regarding the community stakeholder meetings shall be posted on the City's website. The community stakeholder meetings shall be at least one (1) hour. There should also be additional focus groups, and a website dedicated to receive input for the Study. Input obtained may also include interviews, surveys and other methods approved by the City. Summarize all anecdotal evidence collected and analyzed, including that obtained from similar studies conducted within the RGMA. Consult with any City program staff, trade association representatives, office records, and business directories for information regarding the number and identity of M/WB in the RGMA.
13. Research and analyze data obtained from the City's SWaM database to ascertain the level of W/MB availability and utilization of the same in the RGMA with respect to construction, A/E, goods and equipment, professional services, and other contracts typically awarded by the City.
14. Provide an accurate assessment of the number of businesses owned and controlled by minorities and/or women, in the RGMA.
15. Identify the group population of "ready, willing, and able" W/MB and non-W/MB contractors available to perform City-related or private sector construction, A/E, professional services, other services, and/or provide goods and equipment, within the RGMA through statistically

verifiable research methods.

16. Calculate the share of construction projects broken down into various sectors of City construction such as civil construction, and other types of City construction in the RGMA awarded to W/MB including all tiers of sub-contracting and the size (in dollar value) of such contracts.
17. Calculate the share of professional services purchases in the RGMA awarded to W/MB and non-W/MB firms including all levels of sub-contracting and the size (in dollar value) of such contracts;
18. Calculate the share of goods and services purchases in the RGMA awarded to W/MB and non-W/MB firms including all levels of sub- contracting and the size (in dollar value) of such contracts;
19. Evaluate the City's current utilization thresholds on City Contracts and make recommendations whether a goal should actually be established for the non-goal oriented contracts and whether certified firms can participate, leveraging the City's data and best practices. Evaluate City policies to determine whether a threshold value on professional services should be implemented.
20. Due to the volume of small dollar non contract purchase orders (less than \$100,000) and immediate need and small dollar purchases via purchasing card (Pcard) by the City, the proposer need only identify and evaluate a statistically sound sampling of such contracts from each of the various City departments. The Finance Director shall be briefed on the sampling methods prior to implementation. The proposer must determine if there are possible opportunities for W/MB with these purchases, review the City's policies on small purchases, determine whether the City should strengthen its policy on establish W/MB participation on these purchases, and submit recommendations to revising the policy, if needed.
21. Evaluation of the availability of waiver provisions and waivers issued from any or all City programs and the legal impact of their exclusion from being goal- oriented on the marketplace.
22. Analyze data collected, both statistical and anecdotal for each contracting category and established business enterprise or other study group and the performance of disparity analyses for RGMA firms in the RGMA utilized during the Study period.
23. A determination of the extent of discrimination against W/MB, if any, that would be expected to occur if the City SWaM Program(s) were discontinued.
24. An Analysis of efforts by firms to circumvent City SWaM Program policies and requirements by "fronts" and other methods.
25. Draft a detailed report together with related appendices of relevant findings and recommendations, and an executive summary of those findings and recommendations.
26. Assist City staff—as necessary—in preparation of testimony, presentation of Study findings and other relevant evidence, and making recommendations to the governing body.
27. Analyze statistical disparities in W/MB formation and projected growth rates. This may include the number of paid minorities and women in relevant companies;
28. Conduct an econometric analysis of statistical disparities concerning the access by W/MB to commercial capital, credit, bonding, and business, family, and social networks, as compared to non-W/MB firms. The analysis should control for other factors that may affect access and lending rates, such as size and net worth of the business.
29. Provide a statistical comparison of private sector utilization to availability categorized by industry and by major racial/ethnic and gender categories, particularly among large company currently doing business with the City, to determine any private sector disparity ratios in the relevant market area.
30. Evaluate the effectiveness of any race/gender neutral initiatives that have been used by the City.

31. Recommendations for activities to remedy the effects of any disparity identified and to reduce or eliminate any marketplace barriers that adversely affect the contract participation of W/MB.
32. Propose actions to improve or modify the contracting and procurement processes of the City to ensure that all W/MB have a fair and adequate opportunity to participate in the procurement and contracting processes.
33. If the Study support such measures, provide recommendations for narrowly-tailored race and/or gender-conscious measures to remedy identified effects of marketplace discrimination and to improve or modify the contracting and procurement processes so that all businesses have a fair and adequate opportunity to participate in City procurement and contracting processes even if no disparity is found.
34. Provide a recommendation as to whether W/MB goals should be disaggregated by race and ethnicity. Analyze and provide report on feasibility consistent with such recommendation.
35. Development of recommendations, including, where appropriate, specific goals by construction, A/E, professional services, other services, and goods and equipment categories, based on study findings, narrowly tailored to address the levels of discrimination, if any, found by the Study. Recommend goals, as applicable, based on prime and subcontracting separately.

G. Work Plan

The study shall consist of three separate task orders. Proposer shall price each task order separately. Each task shall include a written report to the City providing the findings of such task. The task orders shall contain at minimum:

Task 1 (Estimated completion: 45 days from Contract execution).

- Provides a review of the City's policies, procedures, SWaM programs, and race and gender neutral efforts, with a focus on woman-owned and minority-owned businesses.
- Review of City's aspirational goal and recommendations for future goals and additional programs based on results from disparity studies conducted in other municipalities within the region.
- Presents the methodology used to determine the City's relevant market area and statistical analysis of vendor utilization by the City for procurement of contracting, and services.

Task 2 (Estimated completion: 6 months from Contract execution).

- Provides a discussion of the availability of firms and the levels of disparity for vendors as well as a review of the multivariate analysis for the City.

Task 3 (Estimated completion: 12 months from Contract execution).

- Provides an analysis of the presence of disparity in the private sector and its effect on the ability of firms to win procurement contracts from the City.
- Presents an analysis of anecdotal data collected from the survey of business owners, personal interviews, focus groups, and public hearings.
- A summary of the findings based upon the analyses presented in previous phases.

At the beginning of the Study and on a date mutually agreed by the Parties, Proposer should deliver a work plan to address timing and resource allocations for fourteen (14) major-work tasks:

1. Finalize Study work plan.
2. Provide detailed report including but not limited to validation of the data provided by the City, within forty-five (45) days of the start of the contract.
3. Conduct detailed review of applicable legal standards and requirements.
4. Review current City policies, procedures and practices.
5. Analyze effectiveness of race- and gender-neutral and race- and gender-based programs in reducing or eliminating race or gender bias in public and private construction, A/E,

- professional services, other services, and/or provide goods and equipment contracting.
6. Conduct analysis to determine utilization of W/MB in public and private construction contracting, A/E, professional services, other services, and purchasing of goods and equipment in Relevant Geographic Market Area.
 7. Determine, within the RGMA, availability of W/MB to participate in City contracts and compare availability to City's current certified W/MB.
 8. Conduct analysis of utilization and availability data and determine disparities, if any.
 9. Conduct regression analysis based on current study data.
 10. Conduct surveys in person and by phone, mail, and public hearings.
 11. Collect and analyze anecdotal information.
 12. Collect and review allegations of discrimination or bias involving the City by contractors that are/were actively bidding (or submitting proposals) for City contracts.
 13. Identify race and gender neutral remedies and, if necessary, narrowly tailored race- and gender- conscious remedies; and
 14. Prepare final report.

H. Interim Reporting

The manager of the City Study shall be the Director of Finance or her designee ("City Study Manager"). At a minimum, monthly progress reports shall be submitted to the City Study Manager, who may schedule interim meetings with appropriate study staff at the City to facilitate and expedite the study work schedule. In the alternative, the Proposers may provide an interim reporting schedule whereby the proposer provides interim reporting to the City Study Manager throughout the duration of the contract. The proposer's interim reporting schedule will be incorporated into the final contract. The purpose of interim reporting is to maintain communication regarding schedule and progress; this is not intended to be a review of unstructured data.

I. Methodology

The proposal must provide a framework to analyze the City's active or passive role, if any, in discrimination against W/MB. Proposers must provide a description of the design and implementation of a study methodology to determine the availability of W/MB located within the RGMA that are ready, willing and able to do business with the City in the study categories and the City's utilization of such W/MB. The methodology description should also address the role or effects, if any, of the City's SWaM initiatives on the utilization of W/MB and describe the economic and statistical concepts, methods, and specific steps to analyze the following:

1. The time period to be studied in evaluating the City's activities;
2. A list of databases or other data sources to be relied upon and the means and methods by which such sources will be used to evaluate or determine the capacity of ready, willing and able W/MB to participate in City construction, A/E, professional services, other services, and goods and equipment contracting in the RGMA;
3. The utilization and availability of W/MB broken down by construction, A/E, professional services, other services and goods and equipment categories included in the Study, with separate availability estimates for each racial/ethnic group and women-owned businesses. Any statistical and/or other bases for adjustments to such estimates to measure the effects of discrimination on availability shall be fully explained. The rationale for the choice of data source(s), including their use and analysis to address weaknesses and inconsistencies of other race- or gender-conscious programs found in judicial decisions and related to the use of various sources (e.g., vendor lists, *Survey of Minority/Women owned Business Enterprises*, etc.), shall be fully stated. If more than one measure of availability and/or utilization is proposed, the proposal shall describe how the Proposer will evaluate such multiple measures and integrate their use in the study;
4. Statistical test(s) of any disparities between the availability of W/MB and their utilization by the City, and determine and discuss the evidence that should be examined to establish

whether, but for the City's prior affirmative efforts to include SWaM businesses in City construction, A/E, professional services, other services and goods and equipment contracting, the City has been or continues to be an active participant in discriminatory behavior practiced by entities that do business with the City;

5. A methodology for gathering statistical evidence of minorities', Caucasian females' and Caucasian males' access to the credit and capital needed to do business with the City.
6. A methodology for examining evidence of private sector utilization of W/MB and the relevance of such evidence;
7. A methodology for gathering anecdotal evidence of the experiences of W/MB in seeking, obtaining, and performing public and private sector construction, A/E, professional services, other services and goods and equipment contracts, as applicable;
8. A methodology to set overall annual construction, A/E, professional services, other services, and goods and equipment purchasing programs and contract-by-contract – including thresholds for where contract-by-contract goals are not appropriate – W/MB goals on City-funded contracts should the study's evidentiary analyses provide "strong" evidence warranting the adoption of such remedies by the City. Any analytic or statistical bases used to apply any adjustment to baseline estimates of W/MB availability to account for the effects of discrimination shall be clearly explained and documented.

J. **Discrimination**

The successful proposer will provide and evaluate as part of their proposal the following:

1. **Procurement Practices** - Contracting practices in the procurement of construction, A/E, professional services, other services and purchase of goods and equipment projects.
2. **Categories** - Classify the categories of contracts for construction, professional services, and goods and services typically awarded by the City (based on North American Industry Classification System standards or "NAICS" codes), NIGP Codes and the dollar amounts spent in each category;
3. **Willing and Available** - Determine the availability of W/MB (by ethnic group and gender) in the RGMA for each category of construction, A/E as well as professional services, other services, and goods and equipment contracts awarded by the City (based on NAICS codes). In analyzing availability, the proposer is required to precisely define its measure of availability and explain how such availability was calculated. The analysis of availability shall encompass all goods and services procured by the City (including professional services, goods, construction, and other services, and shall identify the relative percentage of W/MB that are available (by ethnic group and gender) in the RGMA for each NAICS category. Determine the availability of certified SWaM businesses, with a focus on woman-owned and minority-owned businesses, in the RGMA as reflected in the Small Business Administration (SBA), Central Contractor Registration (CCR), and other appropriate regional or federal databases including but not limited to the Virginia Department of Small Business and Supplier Diversity Database and, to the extent possible, estimate the availability in each category of construction, professional services and goods and services of non-certified firms that appear eligible to meet the requirements for such race-neutral business categories.

K. **Remedies**

If discriminatory practices are found, then the successful proposer must, if consistent with Applicable Caselaw and Virginia Statutes, suggest corrective actions appropriate to remedy past or current discrimination, including recommended goals by race or gender.

1. **Program Recommendations** – The successful proposer shall develop recommendations based on Study findings to ensure that the City is not active passive participant in discrimination, including potential changes to the SWaM Program (i.e., race- and gender-neutral or race- and gender- conscious remedies) that comply with applicable legal requirements and are supported by the data generated for the Study. If no local discrimination in City Contracts is found with respect to any racial or gender group, the Study shall

recommend any other modification to the City's contracting procedures that are designed to encourage participation all groups without regard to race.

2. **Recommend goals** - Where appropriate, goals for each construction category, A/E, professional services, other services, and goods and equipment contracts recommended by the Study shall be clearly explained and supported by citations to the relevant study evidence. The successful proposer shall review and provide written recommendations on the current threshold of non-goal-oriented contracts and review City's existing threshold and recommend whether policies regarding W/MB participation in these contracts should be modified.

L. **Final Report**

The Final Report shall contain the following required elements:

1. An in-depth legal analysis of relevant court cases including a discussion of weight given to evidence of discrimination.
2. An in-depth review of the City's contracting policies and procedures and the City's SWaM Program.
3. Present the methodology used in the collection of data regarding prime and subcontractor contracts in the various sectors of City construction, A/E, professional services, other services, and goods and equipment as they relate to market area, utilization, availability, and disparity.
4. Provide analysis of anecdotal evidence collected from personal interviews, a phone survey, and public hearings
5. Provide the survey instruments sent to primes for proposers to verify subcontractors and detailed lists of construction and subcontracts
6. Provide a list of NAICS codes and NIGP Code descriptions for the construction category
7. Provide a copy of anecdotal data collection instruments and all data collected.

The Final Report shall reflect the following required elements:

1. Collect, review and summarize the City's contracting manuals currently in use. The manuals reviewed are limited to those provided by the City.
2. Develop questionnaires and conduct interviews of key City contracting officials and staff to determine how existing contracting and purchasing policies have been implemented.
3. Interview W/MB and non-W/MB firms to determine whether barriers exist within the City's contracting procedures and programs.
4. Analyze the effect of the City's contracting procedures on the utilization of W/MB by the City.
5. Review applicable regulations and policies that guide W/MB programs and race-gender neutral programs.
6. Discuss with appropriate personnel in the City and W/MB owners the operations, policies, and procedures of the City's SWaM Programs. The policies and procedures reviewed are limited to those provided by the City.

M. **Time Line**

1. The first monthly progress report shall be delivered to the City not later than the end of the second week after the study contract is executed.
2. Upon completion of the **Work Plan**, the Proposer shall complete and deliver to the City an initial draft of the Final Report not later than eighteen (18) months from commencement, and the Final Report not later than sixty (60) days from receipt of the City's review and feedback of draft or as proposed and accepted by the City.

N. **Post Study Follow-Up**

1. Proposers shall, in their proposal, detail a post-study feedback strategy to include, at a minimum, one (1) follow-up meeting and recommendation on document and record retention and transfer.

O. Schedule of Deliverables

1. Unless other otherwise agreed by proposer and the City as memorialized by the resulting contracts, the deliverables will be as follows:
 - (1) Project Kickoff, Initial Analysis and Validation of City Data
 - (2) Legal Analysis and Update, Review City Policies and Procedures
 - (3) Data Collection, Cleanup, Obtain Missing Data, Collect Subcontract Data and Analysis
 - (4) Analysis of Relevant Geographic Market Area
 - (5) Private Sector Analysis
 - (6) Anecdotal Data Collection, Public Meetings
 - (7) Conduct Availability and Utilization
 - (8) Analysis and Statistical Significance Tests
 - (9) Develop Narrowly Tailored Remedies and Recommendations
 - (10) Draft Disparity Study Report
 - (11) Presentation of Final Disparity Report and Written Recommendations
 - (12) Reports to City Staff and the City Council at the completion of each Task.

P. Price

1. Budget
 - a) Proposers shall include a budget for the three Tasks as described below.
 - b) The proposed budgets for this project should be as detailed as possible and enclosed in a separate sealed envelope marked "Price Proposal". Please provide a schedule of hourly billing rates for any additional services. All reimbursable expenses, including copies, mail and mileage must be included in the budget. The Price Proposal requires a separate price to be provided for each Task.
2. Billing
 - a) Should occur on the basis of milestones, as supported by monthly status reports corresponding to the required deliverables.

The City will consider the overall pricing for the comprehensive solution in its selection process.

Q. Definitions

The City incorporates, by reference the definitions provided by the Virginia Public Procurement Act in §§ 2.2-4301 & 4310. The following terms have been defined herein:

Applicable Caselaw: the U.S. Supreme Court in *City of Richmond v. J.A. Croson*, 488 U.S. 469 (1989), and subsequent rulings issued by Commonwealth of Virginia and federal courts (including the Fourth Circuit Court of Appeals)

City Contracts: purchases of construction, A/E, professional services, other services, and/or provide goods and equipment

City Study Manager: the City Director of Finance or designee

Pcard: City Procurement Card

Principal Researcher: a researcher who will be the principal point of contact and exercise responsibility for the overall conduct, day-to-day activities and timeliness of the Study

RGMA: the City's relevant geographic market area was determined to be the southern localities within the Virginia Beach-Norfolk-Newport News MSA (Virginia Beach, Chesapeake, Norfolk, Suffolk, and Portsmouth).

SBEP: the Small Business Enhancement Program implemented by the City in 2013.

Study: the Disparity Study that is the subject of this Request for Proposals

SWaM: small, woman, and minority-owned business as certified by the Virginia Department of Small Business and Supplier Diversity

W/MB: Woman-owned and minority-owned businesses.

IV. GENERAL TERMS AND CONDITIONS

A. Term of Agreement

This Agreement shall commence upon award of contract and continue thereafter until accepted final report.

B. Escalation/De-Escalation

The City may consider price adjustments, after initial contract term, based solely upon manufacturer price increases/decreases. Successful Offeror shall provide to the City a written request for any such manufacturer increases/decreases. Such requests shall be addressed to the Issuing Office and shall be accompanied by written verifications of said price increases issued by the manufacturer. A minimum thirty-(30)-day advance notice period shall be required for such requests. Requests for price increases adjustments are subject to the review and approval of the City Purchasing Agent. Successful Offeror shall apply and implement immediately upon notification from manufacturer any and all price decreases for items included under any contract resulting from this Request for Proposal.

Any increase in cost shall not increase by a greater percentage than the percentage change in the Consumer Price Index of the U.S. City Consumer Price Index for Urban Consumers published by the United States Department of Labor during the previous twelve months or 5% whichever is lower.

C. Termination with Cause/Default/Cancellation

In the event that Contractor shall for any reason or through any cause be in default of the terms of this Agreement, the City may give Contractor written notice of such default by certified mail/return receipt requested at the address set forth in association contract or in Vendor's RFP response.

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

Upon termination, Contractor shall withdraw its personnel and equipment, cease performance of any further work under the Agreement, and turn over to the City any work in process for which payment has been made.

In the event of violations of law, safety or health standards and regulations, this Agreement may be immediately cancelled and terminated by the City and provisions herein with respect to opportunity to cure default shall not be applicable.

D. Nondiscrimination

Employment discrimination by Contractor shall be prohibited. During the performance of this Agreement, Contractor agrees as follows:

1. Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification/consideration reasonably necessary to the normal operation of Contractor. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
2. Contractor, in all solicitations or advertisements for employees placed by or on behalf of Contractor, will state that Contractor is an equal opportunity employer.
3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulations shall be deemed sufficient for the purpose of meeting the requirements of this section.
4. Contractor will include the provisions of the foregoing Sections 1, 2, and 3 in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

E. Drug Free Workplace

During the performance of this Agreement, Contractor agrees as follows:

1. Contractor will provide a drug-free workplace for Contractor's employees.
2. Contractor will 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 Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition.
3. Contractor will state in all solicitations or advertisements for employees placed by or on behalf of Contractor that Contractor maintains a drug-free workplace.
4. Contractor will include the provisions of the foregoing Sections 1, 2, and 3 in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

F. Faith Based Organizations

The City of Virginia Beach does not discriminate against Faith-Based Organization.

G. Compliance with Immigration Laws

Contractor does not currently, and shall not during the performance of this Agreement, knowingly employ an unauthorized alien, as defined in the federal Immigration Reform and Control Act of 1986.

H. Business Entity Registration

Foreign and domestic businesses authorize to transact business in the Commonwealth. The Contractor shall be registered and authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law. The Contractor shall submit proof of such registration to the City. Additionally, the Contractor 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 canceled at any time during the term of the contract.

I. Exclusivity

The City reserves the right to procure goods or services covered under this contract from a third party when, in the City's sole discretion, it is deemed to be in the City's best interest.

J. Compliance with All Laws

Contractor shall comply with all federal, state and local statutes, ordinances, and regulations now in effect or hereafter adopted, in the performance of scope of work set forth herein. Contractor represents that it possesses all necessary licenses and permits required to conduct its business and will acquire any additional licenses and permits necessary for performance of this Agreement prior to the initiation of work.

K. Venue

Any and all suits for any claims or for any and every breach or dispute arising out of this Agreement shall be maintained in the appropriate court of competent jurisdiction in the City of Virginia Beach, or the U.S. District Court for the Eastern District of Virginia, Norfolk District.

L. Agreement interpreted under laws of Virginia

This Agreement shall be deemed to be a Virginia contract and shall be governed as to all matters whether of validity, interpretations, obligations, performance or otherwise exclusively by the laws of the Commonwealth of Virginia, and all questions arising with respect thereto shall be determined in accordance with such laws. Regardless of where actually delivered and accepted, this Agreement shall be deemed to have been delivered and accepted by the parties in the Commonwealth of Virginia.

M. Business License Requirement

If the Contractor is a business, located in the City of Virginia Beach or at any time during the performance of this Agreement obtains situs for purposes of business license taxes, it shall be unlawful for such business to conduct or engage in such business, trade or occupation without having first obtained the proper license from the Commissioner of the Revenue of the City, and the Contractor covenants that it has a business license where one is required to perform this Agreement.

N. Independent Contractor

The Contractor shall agree and covenant that it is and shall be at all times, an independent contractor, and as such, shall have and maintain complete control over all of its employees and operations. Neither the Contractor nor anyone employed by it shall be, represent, act, purport to act, or be deemed to be an agent, representative, employee or servant of the City. Nothing in this section shall be deemed to absolve or otherwise limit the Contractor's liability and responsibility to safely and correctly perform its duties under this Agreement.

O. Representation Regarding City Employment; Conflict of Interest:

Contractor represents at the time of contracting and through the pendency of this Agreement that no one with an ownership interest in the Contractor or the Contractor's corporate entity, if applicable, or other employee of the Contractor is also an employee of the City of Virginia Beach, specifically in the City Department initiating or overseeing this Agreement. Contractor

further represents that no individual with an ownership interest in the Contractor or the Contractor's corporate entity, if applicable, or other employee has a spouse, other relative or person who resides with the individual that is currently an employee of the City of Virginia Beach, specifically in the City Department initiating or overseeing this Agreement. Should the Contractor have reasonable belief of a possible conflict of interest, that issue should immediately be brought to the attention of the City's Purchasing Division for review.

P. Integration/Merger

This Agreement and any appendices attached hereto constitute the entire agreement of the parties and supersedes all prior agreements, understandings and negotiations, whether written or oral, between the parties. This Agreement may not be modified, except in a writing signed by both parties that is expressly stated to be an amendment hereto.

Q. Severability

The provisions of this Agreement shall be deemed to be severable, and should any one or more of such provisions be declared or adjudged to be invalid or unenforceable, the remaining provisions shall be unaffected thereby and shall remain in full force and effect.

R. Environmental Liability

Any costs or expenses associated with environmentally related violations of the law, the creation or maintenance of a nuisance, or releases of hazardous substances, including, but not limited to, the costs of any clean up activities, removals, remediations, responses, damages, fines, administrative or civil penalties or charges imposed on the City, whether because of actions or suits by any governmental or regulatory agency or by any private party, as a result of the storage, accumulation, or release of any hazardous substances, or any noncompliance with or failure to meet any federal, state or local standards, requirements, laws, statutes, regulations or the law of nuisance by Contractor (or by its agents, officers, employees, subcontractors, consultants, subconsultants, or any other persons, corporations or legal entities employed, utilized, or retained by Contractor) in the performance of this Contract or related activities, shall be paid by Contractor. This paragraph shall survive the termination, cancellation or expiration of this Contract.

S. Waiver

No failure of the City to exercise any right or power given to it by law or by this Agreement, or to insist upon strict compliance by Contractor with any of the provisions of this contract, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of the City's right to demand strict compliance with the terms of this Agreement.

T. Interpretation

Whenever the context hereof shall require, the singular shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

U. Descriptive Headings

The descriptive headings appearing in this Agreement are for convenience only and shall not be construed either as a part of the terms, covenants, and conditions hereof or as an interpretation of such terms, covenants, and conditions.

V. Non-appropriation

It is understood and agreed between the Parties hereto that the City shall be bound and obligated hereunder only to the extent that the funds shall have been appropriated and budgeted for the purpose of this Agreement. In the event funds are not appropriated and budgeted in any fiscal year for payments due under this Agreement, the City shall immediately notify Contractor of such occurrence and this Agreement shall terminate on the last day of the

fiscal year for which appropriations were received without penalty or expense to the City of any kind whatsoever.

W. Assignment of Agreement

The Contractor shall not, without the prior written consent of the City, assign, delegate, or otherwise transfer, in whole or in part, the Agreement or any of the Contractor's rights or obligations arising hereunder. The City may, in its sole discretion, consent or decline to consent to any such assignment, delegation, or transfer, or may give its conditional consent thereto. In the event the City conditionally consents to such an assignment, delegation, or transfer, such consent may, without limitation, be conditional upon Contractor's remaining fully and unconditionally liable to the City for any breach of the terms of this Agreement by Contractor's transferee and for any damage or injury sustained by a third party or parties as a result of the intentional act or omission, negligence, or breach of warranty by Contractor's transferee.

X. Termination without Cause

The City may at any time, and for any reason, terminate this Agreement by written notice to Contractor specifying the termination date, which shall be not less than thirty (30) days from the date such notice is mailed. Notice shall be given to Contractor by certified mail/return receipt requested at the address set forth in this Agreement.

In the event of such termination, Contractor shall be paid such amount as shall compensate Contractor for the work satisfactorily completed, and accepted by the City, at the time of termination.

If the City terminates this Agreement without cause, Contractor shall withdraw its personnel and equipment, cease performance of any further work under this Agreement, and turn over to the City any work completed or in process for which payment has been made.

Y. Hold Harmless/Indemnification

It is understood and agreed that Contractor hereby assumes the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of Contractor, its subcontractors, agents or employees under or in connection with this Agreement or the performance or failure to perform any work required by this Agreement. Contractor agrees to indemnify and hold harmless the City and its agents, volunteers, servants, employees and officials from and against any and all claims, losses, or expenses, including reasonable attorney's fees and litigation expenses suffered by any indemnified party or entity as the result of claims or suits due to, arising out of or in connection with (a) any and all such damages, real or alleged, (b) the violation of any law applicable to this Agreement, and (c) the performance of the work by Contractor or those for whom Contractor is legally liable. Upon written demand by the City, Contractor shall assume and defend at Contractor's sole expense any and all such suits or defense of claims made against the City, its agents, volunteers, servants, employees or officials.

Z. Insurance

Contractor agrees to secure and maintain in full force and effect at all times during the term of this Agreement, the following policies of insurance:

1. Workers' Compensation Insurance of not less than \$500,000.
2. Comprehensive General Liability Insurance, including contractual liability and products and completed operations liability coverages, in an amount not less than one million dollars (\$1,000,000) combined single limits (CSL). Such insurance shall name the City of Virginia Beach as an additional insured.
3. Automobile Liability Insurance including coverage for non-owned and hired vehicles in an amount not less than one million dollars (\$1,000,000) combined single limits (CSL).

All policies of insurance required herein shall be written by insurance companies licensed to

conduct the business of insurance in Virginia, and acceptable to the City, and shall carry the provision, that the insurance will not be cancelled or materially modified without thirty days (30) prior written notice to the City. In certain cases, where coverage is unavailable through licensed carriers, certificates of insurance written by a Surplus Lines Carrier authorized by the Virginia State Corporation Commission to transact the business of insurance in Virginia and acceptable to the City of Virginia Beach may be approved. Contractor shall list the City of Virginia Beach as an additional insured, and furnish the City with certificate of insurance showing Contractor's compliance with the foregoing requirements.

AA. Notice

All notices and requests required or permitted hereunder shall be sent by United States certified mail, return receipt requested and to be effective, shall be postmarked not later than the final date for giving of such notice; or such notices may be sent by commercial messenger service, in which event, to be effective, such notices shall be delivered to a commercial messenger service not later than the final date for giving such notice.

Notices for the City of Virginia Beach shall be addressed as follows:

Darla Smith
Finance/Purchasing
2388 Liberty Way
Virginia Beach, VA 23456

Notices for Contractor shall be addressed in accordance with address provided in signed contract, or address shown in the Contractor's RFP submittal.

Such addresses may be changed at any time and from time to time by like written notice given by either party to the other.

BB. Offset/Setoff

The City may withhold the payment of any claim or demand by any person, firm or corporation against the City until any delinquent indebtedness or other liability, including taxes, due to the City from such person, firm or corporation shall first have been settled and adjusted.

CC. Audits

The City shall have the right to audit all books and records (in whatever form they may be kept, whether written, electronic or other) relating or pertaining to this Agreement (including any and all documents and other materials, in whatever form they may be kept, which support or underlie those books and records), kept by or under the control of Contractor, including, but not limited to those kept by Contractor, its employees, agents, assigns, successors and subcontractors. Contractor shall maintain such books and records, together with such supporting or underlying documents and materials, for the duration of this Agreement and for at least three years following the completion of this Agreement, including any and all renewals thereof. The books and records, together with the supporting or underlying documents and materials shall be made available, upon request, to the City, through its employees, agents, representatives, contractors or other designees, during normal business hours at Contractor's office or place of business in Virginia Beach, Virginia. In the event that no such location is available, then the books and records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location in Virginia Beach, Virginia, which is convenient for the City.

This paragraph shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which the City may have by state, city, or federal statute, ordinance, regulation, or agreement, whether those rights, powers, or obligations are express or implied.

DD. Cooperative Procurement

Any resultant contract of this solicitation may be extended to any public agency or body in the Commonwealth of Virginia to permit those public agencies or bodies to purchase at contract prices, in accordance with the terms, conditions and specifications of this bid (Code of Virginia Chapter 43, Article 2 §2.2-4304). The successful bidder shall deal directly with each public agency or body in regard to order placement, delivery, invoicing and payment.

EE. Submission and Disposition of Contractual Claims

Prompt knowledge by the City of an existing or impending claim for damages or other relief may alter the plans, scheduling, or other action of the City and/or result in mitigation or elimination of the effects of the claim. Therefore, a written statement providing the City with notice of the Contractor's intention to file a claim which (i) describes the act or omission by the City or its agents that the Contractor contends caused it damages or entitles it to other relief; and (ii) provides a description of the nature and amount of the claim. Such written statement shall be submitted to the City within 20 days of the time of the occurrence or beginning of the work upon which the claim is based; provided, however, if such damage is deemed certain in the opinion of the Contractor to result from its acting on an order from the City, it shall immediately take written exception to the order. For purposes of this provision, "claim" shall include, without limitation, any request for an increase in the contract price or time and any request for equitable adjustment. Submission of a notice of claim as specified shall be mandatory, and failure to submit such notice shall be a conclusive waiver to such claim for damages or other relief by the Contractor. Neither an oral notice or statement, nor an untimely notice or statement will be sufficient to satisfy the requirements herein.

The City will review the claim and render a final decision in writing within thirty (30) days of receipt of Contractor's written request for a final decision. Such decision shall be final and binding to the fullest extent allowed by law.

FF. Payments to Subcontractors

In accordance with Title 2.2, Chapter 43, Article 4 of the Code of Virginia (Virginia Public Procurement Act), the Contractor shall make payment to all subcontractors, as defined in the Code, within seven (7) days after receipt of payment from the City; or, shall notify the City and the subcontractor in writing of the intention to withhold all or part of the amount due with the reason for nonpayment. In the event payment is not made as noted, the Contractor shall pay interest at the rate of one percent (1%) per month, unless otherwise provided in the contract, to the subcontractor on all amounts that remain unpaid after seven (7) days except for the amounts withheld as provided herein.

These same requirements shall be included in each subcontract and shall be applicable to each lower-tier subcontractor. The Contractor shall provide the City with its social security number or federal taxpayer identification number prior to any payment being made under this Agreement.

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section may not be construed to be an obligation of the City. A contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

GG. Subcontractors

The use of subcontractors and the work they are to perform shall receive prior written approval of the contract administrator. The Contractor shall be solely responsible for all work performed and materials provided by subcontractors. The Contractor shall be responsible for the liability of subcontractors for the types and limits required of the Contractor.

V. SPECIAL TERMS AND CONDITIONS:

A. Payment Schedule

1. Payment for services rendered by the Offeror, shall be billed in accordance with the Pricing Schedule in Section **VIII. Pricing Schedule**.
2. Payment on invoices shall be Net 30 days after receipt of invoice.

B. Modification

There may be no modification of any resulting Contract, except in writing, executed by the authorized representatives of the City and the Contractor.

C. Company Personnel Standards

1. Personnel shall be trained/qualified to perform requested services. If any of the successful Offeror's personnel are not satisfactory in the performance of services to be furnished hereunder in a proper manner and satisfactory to the City, the Offeror shall remove any such personnel and replace them with satisfactory personnel.
2. Offeror shall use all reasonable care, consistent with its rights to manage and control its operations, not to employ any persons or use any labor or have any equipment or permit any condition to exist which shall or may cause or be conducive to pose any liability to the general public as well as any activity to be construed as a nuisance. The City retains the right to require the successful Offeror to halt all work activities until such conditions are resolved.

D. Claims for Extra Compensation

If Contractor encounters work and services not included in the resulting Contract or any supplement thereto but which in the opinion of Contractor is necessary for the successful completion of the Contract and requires extra compensation, Contractor shall, before it begins the work on which it bases its claim, promptly notify the City in writing of its intention to perform the work and to make claim for extra compensation. Notification by Contractor under the terms of this paragraph shall not be construed as proving the validity of the claim. No claim for extra compensation will be filed or considered unless notification is given as herein set forth.

Upon notification, the City shall promptly review any claim for extra compensation. If a claim is accepted by the City, it shall be paid as extra work in accordance with the terms of a supplemental agreement executed by the parties before such work is begun.

The amounts claimed as extra compensation by Contractor shall be separately itemized, become a part of the claim, and serve as documentation thereto. The amounts itemized shall be in sufficient detail to enable the City to analyze the need for the extra work and the costs claimed for the work.

E. Ownership

All intellectual property rights and other proprietary rights in any work resulting from the performance of services under any resulting Contract shall vest and be held in the name of the City.

F. Independent Contractor

The Contractor shall agree and covenant that it is and shall be at all times, an independent contractor, and as such, shall have and maintain complete control over all of its employees and operations. Neither the Contractor nor anyone employed by it shall be, represent, act, purport to act, or be deemed to be an agent, representative, employee or servant of the City. Nothing in this section shall be deemed to absolve or otherwise limit the Contractor's liability and responsibility to safely and correctly perform its duties under this contract.

VI. SPECIAL INSTRUCTIONS TO THE OFFEROR:

A. Contract Administrator

Whenever used in the Request for Proposal and for purposes of any notices under this contract, Contract Administrator shall be as described below:

City of Virginia Beach
Department of Finance
Taylor Adams
Purchasing Agent
(757) 385-8696
tadams@vbgov.com

B. Pre-Proposal Conference

A pre-proposal conference will be held in the Purchasing Division's conference room located at 2388 Liberty Way Drive, Virginia Beach, Virginia 23456. The conference will be held at **9:00 am, Tuesday, March 21, 2017**. Interested participants may call in at (757) 385-1785 (local number) and 1-(877) 222-2238 (long distance number). Access Meeting ID 5940. The purpose of the conference is to clarify and answer any questions associated with the solicitation. Any changes determined necessary as a result of this conference or any other source which may affect the responses to the solicitation shall be formally addressed by the Issuing Office via addenda. Attendance of this conference is not mandatory, but is advisable.

VII. GENERAL SUBMITTAL TERMS AND CONDITIONS:

A. Definitions of Terms

The following definitions of terms are used herein:

1. The term "City" refers to the City of Virginia Beach.
2. The term "Offeror" or "Proposer" refers to the person, firm, or company that provides a proposal in response to this Request For Proposal (RFP) and who may or may not be successful in achieving an opportunity to negotiate for the final award of a contract.
3. The term "Contractor" means the Offeror to which the contract will be awarded. References to the Contractor in this RFP shall also apply in full to any subcontractor for the named Contractor.

B. Submittal of Proposals

1. The proposal and required copies shall be placed in a sealed envelope or package that shall be identified with the Request for Proposal's item number, the Date and Time of closing, and the name and address of the Offeror.
2. An **original** and **Five (5) copies** of each proposal shall be submitted. In addition, the Offeror shall provide their proposal in electronic/digital read only format on DVD, CD or flash drive. The original proposal should be clearly marked "**ORIGINAL**" on its outside cover.
3. All proposals shall be received and time-stamped in the office location described below no later than **3:00 pm** local time, **Tuesday, April 25, 2017**. Proposals received after the specified date and time (time-stamped 3:01 p.m. or later) shall not be considered and shall be returned unopened to the Offeror.
4. Issuing Office:

City of Virginia Beach
Darla Smith
2388 Liberty Way
Virginia Beach, VA 23456
(757) 385-4438

5. Proposals received by telephone, telegraph, facsimile or any other means of electronic

transfer shall not be accepted.

6. An Offeror receiving a Request For Proposal from a source other than the Issuing Office or DemandStar by Onvia, should contact the Issuing Office to become an Offeror Of Record before submitting its proposal.

C. Examination

Offeror shall carefully examine the contents of this Request for Proposal and any subsequent addenda.

D. Questions

1. Questions concerning this solicitation may be made by telephone or in writing. Questions should be addressed to the Issuing Office not less than fifteen (15) working days prior to the closing date of the Request for Proposal. Telephonic questions should be directed to the appropriate person listed below:
 - a) Scope of Work Questions: Taylor Adams 757-385-4438
 - b) Procurement Questions: Darla Smith 757-385-4438
2. Any material changes to the solicitation document will be addressed by issuance of a written addendum to all Offerors of Record that will become part of the proposal documentation.
3. Oral instructions do not form a part of the proposal documents.
4. The Offeror shall check with the Issuing Office within forty-eight (48) hours prior to proposal closing to secure any addenda affecting bidding.

E. Conditions of Work

Each Offeror shall inform himself/herself fully of the conditions relating to the project and the employment of labor therein. Failure to do so will not relieve a successful Offeror of his obligation to furnish all materials and labor necessary to carry out the provisions of this agreement.

F. Anticollusion/Nondiscrimination//Drug-Free Workplace Form

The attached Anticollusion/Nondiscrimination/Drug-Free Workplace form incorporated herein (page 2) should be executed and returned with the proposal documents.

G. Subcontracting Participation Plan Form:

Offeror shall execute and return the Subcontracting Participation Plan (CVAB-GS1) Page 3, of this Request for Proposal. If the form is not returned with the Offeror's proposal, the form will be provided within three (3) days after notification that the Offeror has been shortlisted for further evaluation by the City.

H. Good-Faith Efforts – Certified Small, Woman, Minority, Service Disabled Veteran or Employment Services Organization

It is the policy of the City of Virginia Beach to encourage the participation of Small, Woman, Minority and Service Disabled Veteran owned businesses, or Employment Services Organizations in its procurement processes. The City expects Offerors to embrace these goals to the maximum extent possible. To the extent practicable, the submitted proposal should provide for the fair inclusion of these businesses in their proposal. The businesses shall be certified by the Virginia Department of Small Business and Supplier Diversity. List of certified businesses may be found at the following link:

[Virginia Department of Minority Business Enterprise - Small, Women and Minority \(SWaM\) Vendors Search](#)

I. Proposal Binding for One Hundred Twenty (120) Days

The Offeror agrees that this proposal shall be good and may not be withdrawn for a period of one hundred twenty (120) calendar days after the scheduled closing time for the Request For Proposal.

J. Proprietary Information

Offerors are advised that Section 2.2-4342 of the Code of Virginia, i.e., the Virginia Public Procurement Act, shall govern public inspection of all records submitted by the Offeror. Specifically, if Offeror seeks to protect any proprietary data or materials, pursuant to Section 2.2-4342, **Offeror 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 needed.** Furthermore, the Offeror shall submit proprietary information under separate cover, and the City reserves the right to submit such information to the City 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 proprietary information; however, all information contained within the body of the proposal not labeled proprietary or otherwise not meeting all three of the requirements of Section 2.2-4342 shall be public information in accordance with State statutes.

K. Proposal Costs

Prospective Offerors shall be responsible for all costs incurred in the development and submission of a proposal. The City assumes no contractual obligation as a result of the issuance of this RFP, the preparation or submission of a proposal by an Offeror, any cost associated with interviews and travel, or any other Offeror cost involved in a response.

L. Exceptions

Proposals should be as responsive as possible to the provisions stated herein, however, an Offeror may take exceptions to the provisions without their proposal being disqualified. During the evaluation process, the City will consider whether the impacts of any such exceptions are positive or negative. The Offeror should clearly indicate when exceptions or deviations are being taken and state the reason why. Notwithstanding the above, proposals received late shall be rejected.

M. Award

The award of a contract shall be the sole discretion of the City. The award shall be based upon the evaluation of all information as the City may request. The City reserves the right to accept or reject any or all proposals in whole or in part and to waive any informalities in the bidding. Further, the City reserves the right to enter into any contract deemed to be in the best interest of the City.

N. Fraud, Waste and/or Abuse

The City of Virginia Beach is committed to eliminating fraud and maintaining a highly ethical environment throughout our organization. The City's Fraud, Waste and Abuse Prevention Program, coordinated by the Office of the City Auditor, consists of a Fraud Hotline, web site, awareness training and investigation services. While this program is designed to assist City employees, departments, agencies and programs in preventing and detecting incidents of fraud, waste and abuse in the City of Virginia Beach, it is also available to City contractors for this same purpose. This program focuses on dishonest acts by City employees or its contractors. Therefore, if you suspect any Fraud, Waste and/or Abuse regarding a City employee or contractor please call the Fraud Hotline at (757)468-3330.

O. Public Notice of Award or Decision to Award

Public notice of the award or the announcement of the decision to award shall be provided by posting the appropriate notice on the "bid board" located in the Issuing Office, posting notice with DemandStar by Onvia, and mailing the notice to the Offerors who submitted proposals in response to the solicitation.

P. Preparation Guidelines

For consideration, all proposals should be as responsive as possible to the solicitation. In order to adequately evaluate the proposals, all Offerors should use the following format:

1. Experience (30 Points)

Offeror shall provide a concise description of their work experiences as it relates to the scope of work outlined herein. Said description should include, but not be limited to:

- a) Offeror's established experience record in providing comparable services.
- b) Number of years the Offeror has been providing these types of services;
- c) A minimum of five (5) references for whom Offeror has provided services comparable to those described in this RFP and or comparable to City's our size or larger. For each reference, detail:
 - (1) Name of firm;
 - (2) Address of firm;
 - (3) Name, title, e-mail address, phone, and fax of a contact for the firm;
 - (4) Number of years Offeror has served the firm; and
 - (5) Brief summary of scope of services provided.
- d) Independence and impartiality related to existing Virginia Beach Policy and Procedure.

2. Capability and Skills (30 Points)

Offeror shall provide a description of the qualifications and skills of the organization and personnel who shall be responsible for performance of the services. Such description shall, at a minimum, include the following:

- a) A description of the Offeror's company history and current operating characteristics to include the number of years in business, philosophy, ownership, number of employees, organizational chart, annual sales, geographic coverage, etc.
- b) A description of the Offeror's financial stability and other resources that most adequately ensures the delivery of acceptable services to the City. The Offeror shall indicate the type of organization they represent, i.e. individual, partnership or corporation. If the Offeror represents a corporation or partnership, the names of the President, Vice-President, Secretary, Treasurer and all principals or partners shall be listed.

The Offeror should provide financial statements – i.e. audited annual financial reports, for the previous three (3) years.

- c) A listing of the personnel that will be assigned to the project along with a summary of their qualifications and specific responsibilities for the project.
- d) Resources available to the organization for performance of the contract; including major subcontractors, work they will perform, approximate percentage of the total contract, term of agreement between Contractor and the subcontractor, and whether they are SWAM certified by the Virginia Department of Small Business and Supplier Diversity (SBSD). Resources for locating SBSWAM certified businesses may be found at the following link:

[Virginia Department of Small Business and Supplier Diversity](#)

3. Services to be Provided (25 Points)

Offeror should provide a description outlining the services to be performed. Such description should, at a minimum, provide the following information:

- a) Offeror's understanding of the project.
- b) Overall project plan.
- c) Listing and annotation as to the manner in which the Offeror proposes to meet each provision stipulated in the Scope of Work section of this RFP.
- d) Listing of all major tasks to be performed by the Offeror and the deliverable products associated with each task.
- e) Listing of the individual products to be provided.

- f) Time schedule associated with the completion of each task.
- g) List of any exceptions taken to the provisions of this RFP.

4. Price (15 Points)

Offeror shall provide a detailed description of the total cost to perform the services. The cost break down shall identify in separate detail the charges associated with each deliverable item and major task.

Q. Proposal Opening

At the time specified, the proposals received timely shall be opened. Only the names of the Offerors submitting proposals shall be read aloud. No other information will be provided at that time.

R. Evaluation

The City shall select two (2) or more Offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the factors listed below:

1. Offeror's experience in providing the services requested.
2. Offeror's capability and skill to perform the services.
3. Responsiveness of the written proposal to the purpose and scope of work.
4. Price. The total cost to provide the services described in the proposal.

The City intends to use a numerical scoring system in the evaluation, and such scoring will be the points assigned to each of the four factors listed above: Experience (30 points) ; Capability and Skill (30 points); Services to be Provided (25 points); and Price (15 points). There is a maximum of 100 possible points. A further description of these factors is set forth in Section VII. P ("Preparation Guidelines").

Negotiations shall then be conducted with each of 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. Should the City determine in its sole discretion that one Offeror is 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 City of Virginia Beach is not required to furnish a statement of the reason(s) why a proposal was not deemed to be the most advantageous.

S. Presentation/Demonstration

The City shall request the "short-listed" Offerors to conduct presentations/ demonstrations of the Offeror's proposed System's features and capabilities. Offeror presentations/ demonstrations shall be at a City site, at a date and time mutually agreed to between the City and Offeror, and shall be at the Offeror's expense.

T. Submittal

The Offeror shall submit the following documents/information:

1. Cover page of Request for Proposal with signature, title, and date;
2. Completed Anticollusion/Nondiscrimination/Drug-free Workplace form (page 2);
3. Completed Subcontracting Participation Plan form (page 3);
4. Proposal as requested herein under Section VII, Subsection N, entitled "Preparation Guidelines"

PRICING SCHEDULE

The proposed budgets for this project should be as detailed as possible and enclosed in a separate sealed envelope marked "Price Proposal". Please provide

