



**REQUEST FOR PROPOSALS TITLE PAGE**  
**Include This Page as the First Page in Your Proposal Response**

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**City of Lynchburg, Virginia**  
**Procurement Division**

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Proposal Title: **Construction Management Services for the New Police Department Facility**

This is the City of Lynchburg's Request for Proposals No. 22-059, issued April 8, 2022. Direct inquires for information to: Stephanie Suter; Phone: 434-455-3963; Fax: 434-845-0711. All responses to this solicitation shall be in strict accordance with the requirements set forth in this bid document and the ensuing contract documents.

All requests for clarification of or questions regarding this request for proposal must be made in writing, by email to [stephanie.suter@lynchburgva.gov](mailto:stephanie.suter@lynchburgva.gov) and received by 2:00 p.m., May 5, 2022. Any alteration or changes to this Request for Proposals will be made only by written addendum issued by the City of Lynchburg, Procurement Division.

Sealed proposals will be publicly accepted prior to **4:00 p.m., May 12, 2022**, 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 stamped by Procurement Division staff before the deadline indicated above and acknowledge all addenda so issued in the space provided below. All Offerors are responsible for obtaining issued addenda from the City's Purchasing Division 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. Indicate which services you are requesting pre-qualification for below. Sign in ink and type or print requested information.

Full Legal Name of Offeror: \_\_\_\_\_

Fed ID: \_\_\_\_\_

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

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

Phone: ( ) \_\_\_\_\_

\_\_\_\_\_

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

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

\_\_\_\_\_

Typed or Printed Name, Title

City Procurement Manager's Signature: *Stephanie Suter*

## 1. 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, preferably on 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.

## **2. PROJECT OVERVIEW**

### **A. Purpose**

The City of Lynchburg, Virginia is seeking proposals for the services of a qualified and experienced firm to provide owner's representative services for a new Police Department facility.

### **B. Project Description**

The City of Lynchburg, Virginia is seeking proposals for the services of a qualified and experienced firm to provide owner's representative services for a new Police Department facility to be constructed as a design-build project under a Public-Private Education Facilities and Infrastructure Act (PPEA) comprehensive agreement. The design-build team will be referred to as the Developer in this document.

Currently, the Lynchburg Police Department (LPD) is spread out over several different facilities around the City. These facilities were originally constructed between 1900 and 1970. All of these facilities are too small for personnel and equipment, inadequate for the needs of the department and community, and in some cases not ADA accessible.

The new facility is currently at the conceptual design stage of the architectural design process and is expected to be a 2-3 story 100,000 SF state of the art building with room for future expansion to house a modern Police Department. The new site for this facility has been selected and purchased and is approximately 7.7 acres in size.

Following final site selection, there will be a process of negotiation and procurement with a development partner, scheduling, costing, design, phasing, construction, moving, operationalizing, and close-out.

This project is of the highest priority for the City, not only because of its size, cost, and complexity, but because of the critical nature of the services provided by LPD for the safety and security of our citizens. The quality and continuity of these services is of the utmost importance to the City. This project will have a high public profile and will directly impact how City safety services interacts with those whom they serve.

Therefore, the City is seeking an Owner's Representative to work with the City and provide experience and insight throughout the design and construction process to ensure a successful project.

Responsibilities of the selected firm or individual as Owner's Representative will involve participation in all aspects of project planning, design, and construction activities of the new facility with City Staff, LPD, the Developer, and other stakeholders. The Owner's Representative will be the City's principal agent and will be independent of all other project consultants.

Major project elements include but are not limited to: predevelopment activities that involve reviewing and commenting on planning, environmental considerations, cost estimating, cost allocation, site assembly activities; scheduling, oversight of the Developer during construction, project development activities that will involve final design and construction, and project close-out assistance.

### 3. SCOPE OF SERVICES

The Owner's Representative will have the following primary responsibilities:

- A. Coordinate planning and project implementation activities as needed on behalf of the City.
- B. Provide critical objective analysis of project designs, bids and proposals and participate, as directed, in the selection of consultants/contractors.
- C. Ensure that building design and construction incorporates sound methodologies/components.
- D. Review any needs analysis, project objectives, preliminary budgets, and preliminary schedule as provided by the Developer. Ensure that the Developer follows through on providing information which may be necessary to complete the project design.
- E. Review the Developer's cost estimates at the completion of each major phase of the project (schematic design, design development, construction documents) and provide an opinion of probable costs.
- F. Any additional design input and review, cost and schedule control(s), logistical planning, construction observation.
- G. Maintain a Request for Information (RFI) and Change Order (CO) construction log, including but not limited to recording any occurrence of construction work that might result in a claim for change in Contract Sum or Contract Time. It is expected that the Owner's Representative will regularly be on-site during the construction phase of the project.
- H. Review and comment on the Developer's Project Management Plan (PMP) for the duration of the project. A timetable with milestones should be included in this PMP. It is expected that this document will be considered a "working document", subject to revision as conditions warrant and approved by the City. The Owner's Representative will be expected to monitor the milestones of the project, and ensure that milestones are met by the Developer and City contractors.
- I. Communicate with the appropriate public and private-sector project representatives, as directed.
- J. Assist the City in maintaining and tracking project budgets and cost information.
- K. Attend Developer led progress meetings as necessary or directed.
- L. Gather, review, and maintain all project planning and development data and records.
- M. Prepare monthly reports, technical memorandums and written correspondence regarding project planning, development and progress matters, as necessary or directed.
- N. Implement procedures for the review and processing of applications by contractors and consultants for progress and final payments. Review contractor and consultant requests to ensure that all work being billed has been performed satisfactorily. Recommend payment or denial of payment to City.
- O. Project Closeout Services may include but not be limited to punch list, substantial completion certification, certificate of occupancy, moving co-ordination and set-up, final completion, project completion certification, record documents, O & M manuals, warranties, instructions, project acceptance recommendation, monitoring status and completion of the punch list items.
- P. Owner's Representative shall be available for assistance to the City in any project related litigation on a time and materials basis.
- Q. Coordinate with the Owner's design team on plan reviews and approvals. Provide review of proposed design drawings during Schematic Design, Design Development, and final construction documents, including evaluation of:
  - Constructability.

- Conformance to program and Owner requirements.
  - Conformance with cost and schedule.
  - Phasing and staged moving.
- R. Cost Evaluation & Value Engineering
- Review and validate Developer's proposed costs.
  - Review design and propose value engineering options.
  - Review and advise Owner regarding any proposed changes to costs during design and construction project phases.
- S. Review comprehensive agreement between Owner and Contractor to help ensure the responsibilities of each party and the services and deliverables provided are fair and reasonable, and that they are clearly and accurately defined.
- T. Construction Schedule Review
- Review proposed construction schedule for completeness and feasibility.
  - Seek opportunities to accelerate schedule.
  - Monitor progress against schedule during design and construction.
  - Review and advise Owner regarding any proposed changes to schedule or any potential missed milestones.
- U. Construction Administration & Observation
- Attend construction meetings.
  - Review contractor and developer applications for payment to confirm acceptable completion of the work. Catalog monthly applications in a Financial Status Report (FSR).
  - Provide periodic on-site construction observations to help ensure conformance with the construction documents.
  - Review critical submittals.
- V. Commissioning
- Commissioning Process During Design & Bid Phase
- Conduct a commissioning kick-off meeting with the project team.
  - Review the Owner's Project Requirements.
  - Review the Basis of Design as prepared by the Design team.
  - Attend meetings, design workshops, design reviews, and value engineering discussions during design. Participate in discussions relating to new technologies being evaluated to meet energy efficiency and sustainability requirements.
  - Perform commissioning design review and conduct a design review meeting at each review. Verify the Basis of Design in regard to the Owner's Project Requirements.
    - a. Schematic Design
    - b. Design Development
    - c. 90% Construction Document

d. 100% Construction Document

- Develop full commissioning specifications for all commissioned equipment. Coordinate this with the architect and engineers and integrate the commissioning specifications into the overall project specification package. The specifications shall follow the intent of ASHRAE Guideline 0-2005 The Commissioning Process. The commissioning specification will include a detailed description of the responsibilities of all parties, details of the commissioning process, reporting and documentation requirements (including formats), alerts to coordination issues, deficiency resolution, construction checklist and startup requirements, and the functional testing process.
- Develop a commissioning plan encompassing the design, construction, occupancy and operations phases.

Commissioning Process During the Construction Phase - During the construction phase, the Commissioning Agent will coordinate and direct commissioning activities in a logical, sequential and efficient manner using consistent protocols, clear and regular communications and consultations with all necessary parties, frequently update timeline, schedules, and technical expertise. The commissioning process activities accomplished by the Commissioning Agent during the construction phase include:

- Update construction phase commissioning plan and integrate with overall schedule.
- Organize the commissioning process components and conduct a commissioning kickoff meeting where the commissioning process requirements are reviewed with the commissioning team.
- Review submittals concurrent with the design professional's review for compliance with the Owner's Project Requirements.
- Coordinate and lead an integrated controls meeting.
- With necessary assistance and review from the installing contractors, develop and write construction checklists. Submit to Owner for approval.
- Perform monthly site visits, as necessary, to observe component and system installations. Accomplish a statistical review of construction focusing on the owner's design intent and the quality process. Coordinate field visits to attend planning and jobsite meetings during the same visit to obtain information on construction progress.
- Review construction-meeting minutes for revisions/substitutions relating to the Owner's design intent. Assist in resolving any discrepancies. Document construction checklist completion by reviewing completed construction checklists and by selected site observation.
- Attend project meetings and conduct commissioning team, coordinated with project meetings, as necessary to plan, develop the scope, coordinate, schedule activities and resolve problems.
- Witness initial HVAC piping pressure test and flushing to be confident that proper procedures were followed. Include testing documentation in the commissioning record.
- Witness initial ductwork testing and cleaning to be confident that proper procedures were followed. Include documentation in the commissioning record.
- Review mock-ups and/or initial first piece installation.
- Document systems startup by reviewing start-up reports and by selected site observation.
- Verify air and water systems balancing by spot testing and by reviewing completed reports and by selected site observation.

- With necessary assistance and review from installing contractors, write the functional test procedures. Submit to A/E and Owner for review and approval.
- Oversee and document the execution of the functional performance tests by the contractors. Coordinate retesting, as necessary, until satisfactory performance is achieved. Retesting beyond one day will be at the expense of the contractors.
- Maintain a master issues log and a separate testing record. Provide to the Owner written progress reports and test results with recommended actions.
- Review the Operations and Maintenance Manuals developed by the Contractors.
- Reviews the Systems Manual developed by the Contractors.
- Review training plans and program developed by the Contractors, recommend preapproval, and verify that the training is provided.
- Complete the final commissioning process report.

#### Commissioning Process During the Post-Occupancy Phase

- Coordinate and supervise required opposite season or deferred testing and deficiency corrections and provide the final testing documentation for the Commissioning Record and O&M manuals.
- Return to the site at 10-months into the 12-month warranty period. Review with facility staff the current building operation and the condition of outstanding issues related to the original and seasonal commissioning. Also, interview facility staff and identify problems or concerns they have with operating the building as originally intended.
- Make suggestions for improvements and for recording these changes in the O&M manuals. Identify areas that may come under warranty or under the original construction contract. Assist facility staff in developing reports and documents and requests for services to remedy outstanding problems.

#### W. Move Management

- Coordinate with movers for multiple personnel and equipment moves from current locations to new facility.
- Coordinate move schedule to minimize duplicate moves

#### X. Information Systems

- Coordinate with the City's and LPD's IT Department and their consultants to establish criteria for construction.
- Observe IT installation for compliance with City requirements.

#### Y. Close-Out

- Conduct punch-list walk-through with Owner. Issue punch-list and ensure punch-list items are corrected or completed.
- Track close-out document submissions.

The scope of services does not include testing and inspection, code compliance and enforcement, or safety and other regulatory enforcement.

#### **4. PROFESSIONAL STANDARD AND MINIMUM REQUIREMENTS**

Each proposal MUST meet all of the following Minimum Requirements in order to be considered for further proposal evaluation. Proposals that do not meet the following experience and quality requirements will be rejected from further evaluation and considered nonresponsive.

- A. The Principal in Charge must be a Virginia registered architect or engineer.
- B. The Owner's Representative should be a registered architect or professional engineer and have at least five (5) years of relevant experience in the construction and supervision of construction of buildings. In the event the Owner's Representative is not a registered architect or professional engineer they must have at least seven (7) years of relevant experience in construction and supervision of construction of buildings. Specific experience in the construction and supervision of construction of comparable Police facilities is preferred.

Offerors should demonstrate their ability to:

- A. Perform all tasks in accordance with generally accepted professional standards.
- B. Provide to the City the best possible advice and consultation within engineer's authority and capacity as a professional engineer.
- C. Comply with all applicable regulations, laws, ordinances and requirements of all applicable governmental agencies and authorities.
- D. Assign work to be performed to qualified personnel in sufficient numbers to meet negotiated performance schedules.

#### **5. PROPOSAL PREPARATION**

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 pages excluding the cover, title page, transmittal letter, and table of contents, by including all other materials. This is the page limit for all proposals regardless of the number of categories a firm is seeking pre-qualification. 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:

- A. Title Page
- B. Letter of transmittal including name, address and telephone number of firm, including the location of the office that will directly contract for the work.
- C. Summary of Firm's Qualifications to include:
  - Experience of the firm performing similar scope of services and serving as the owner's representative on similar projects.
  - A list of approximately five clients for whom projects related to police facility construction have been performed, who could attest to the quality of previous work, timeliness, diligence and ability to meet budget and schedule. Include project assignments, contact persons, addresses, telephone numbers and email addresses.
- D. Summary of Individual's Qualifications to include

- Resumes of all key individuals of the firm who would be involved in providing services under this contract. Resumes should adequately describe educational background, specific area of expertise, physical location, role/responsibility for this contract and related experience serving as the Owner's representative for police facility type of projects.

## **6. CRITERIA FOR PROPOSAL EVALUATION**

All proposals that adequately address the information requested in this RFP will be evaluated on the basis of professional experience, qualifications, and services to be performed, in addition to other criteria listed below. The City reserves the right to judge, appraise and reject all proposals submitted if in its best interest.

City staff will carefully review the written proposals. A select number of consultants may be invited to give oral presentations to a panel on their approach to the project, experience, and capabilities. The consultants to be interviewed will be notified regarding scheduled interviews.

**The proposals will be evaluated utilizing the following evaluation criteria:**

- A. Demonstrated competency and qualifications.
- B. Demonstrated understanding of the project.
- C. Proposed approach. How the firm proposes to execute the requested scope of services.
- D. Qualifications of key individuals assigned to the project.
- E. Adequacy of firm's resources available to provide the services for the Contracts within the time, budget and operational constraints that may be present and the comments and/or recommendations of the engineering firm's previous clients as well as others references.

## **7. 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, informal discussions will be held with two or more Offerors, and requests for nonbinding estimates of price for services will be made from each at that time. Price shall be considered, but need not be the sole determining factor. Once a top ranked firm has been selected, if an agreement cannot be reached, negotiations will be terminated with that firm, and negotiations begun 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.

## **8. 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 Administrator, 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. Serveability

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 Administrator, 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 Administrator, 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 Administrator 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 Administrator 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.