

# **SECTION I**

## **GENERAL INFORMATION TO PROPOSERS**

### **1.1 INTRODUCTION**

This Request for Proposal (RFP) provides interested vendors with information to prepare and submit a Proposal for consideration by Essex County, Virginia (the “County”) to satisfy its requirements for an Organizational and Management Review. This RFP process is intended to identify potential Contractors with which the County may, in its sole discretion, choose to enter into a Contract for the proposed consulting services. It is expressly understood and agreed that the submission of a Proposal does not require or obligate the County to pursue a contract with any Proposer. All negotiations are subject to the consideration and approval of the County, which may, at its sole discretion, accept or reject any proposal. The County does not discriminate against any Proposer on any basis. This procurement will be performed in accordance with the Virginia Public Procurement Act.

### **1.2 DEFINITIONS**

For the purposes of this RFP, the following terms have the following meanings:

- (a) “**County**” shall mean Essex County, Virginia.
- (b) “**Contract**” shall mean the agreement between the County and vendor chosen as a result of this RFP, which addresses the requested goods and services.
- (c) “**Contractor**” shall mean the vendor or its assignee chosen by the County to supply the requested goods and perform the requested services.
- (d) “**Proposal**” shall mean the written document submitted to the Essex County Administrator.
- (e) “**Proposer**” shall mean an individual or business entity submitting a Proposal in response to this RFP.

### **1.3 ISSUING OFFICER**

The Essex County Administrator issues this RFP on behalf of the County.

### **1.4 RFP DOCUMENT**

Information provided herein is intended solely to assist Proposers in the preparation

of their Proposals. To the best of the County's knowledge, the information provided is accurate. However, the County does not warrant such accuracy, and any errors or omissions subsequently determined will not be construed as a basis for invalidating this RFP.

**1.5 PRIMARY CONTACT**

The primary contact for this RFP is:

Michael Lombardo, County Administrator  
202 S. Church Lane  
Tappahannock, Virginia 22560  
Phone: (804) 443-4311  
Email: [mlombardo@essex-virginia.org](mailto:mlombardo@essex-virginia.org)

**1.6 ADDENDA INTERPRETATIONS**

If it becomes necessary to revise any part of this RFP, a written addendum will be provided. The County is not bound by any oral clarifications changing the scope of the work for this project. All addenda issued by the County will become part of the official RFP and will be mailed to all registered Proposers based upon the contact information at the time of registration.

**1.7 LABELING OF PROPOSALS**

**All proposals must be submitted in a sealed envelope plainly marked, Organizational and Management Review RFP No. 2019-002 and address of the firm in the upper left hand corner.** No responsibility will attach to the County, any official or employee thereof, for the pre-opening, post-opening, or failure to open a proposal not properly addressed and identified.

**1.8 CONDITIONS OF PROPOSAL SUBMITTAL**

- A. The written proposal must be signed by a duly authorized official for the Proposing firm submitting the proposal and submitted no later than 4:00 PM on Friday, September 20, 2019. All Proposals received after the announced time and date of receipt, by mail or otherwise, will not be accepted and will be returned unopened.
- B. No proposal will be accepted from any persons, firm or corporation that is in arrears for any obligation to the County, or that otherwise may be deemed irresponsible or unresponsive by the County Board of Supervisors or County staff.
- C. Only one proposal will be accepted from any person, firm, or corporation.
- D. All proposals shall be prepared in a comprehensive manner as to content, but no necessity exists for expensive binders or promotional material.

**1.9 INSURANCE:**

The successful Proposer shall maintain the following insurance to protect it from claims under the Workmen’s Compensation Act, and from any other claims for personal injury, including death, and for damage to property that may arise from operations under this Agreement, whether such operations be by itself or by any subcontractor, or anyone directly or indirectly employed by either of them. Such insurance must be issued by a company admitted within the Commonwealth of Virginia and with at least a Best’s Key Rating of A:V1. The successful Proposer shall provide the County with a certificate of insurance showing such insurance to be in force and providing that the insurer shall give the County at least 30 days’ notice prior to cancellation or other termination of such insurance.

<b><u>TYPE OF COVERAGE</u></b>	<b><u>LIMITS</u></b>
Workers’ Compensation and Employer’s Liability including coverage under United States Longshoremen’s and Harbor Worker’s Act where applicable	Statutory, including Employer’s Liability of \$100,000.00 Each Accident \$500,000.00 Disease-Policy Limit \$100,000.00 Disease-Each Employee
Comprehensive General Liability endorsement coverages.	Including the Broad Form C.G.L.
Premises – Operations Bodily Injury Liability and Property Damage Liability Combined Including: Underground Hazard (U) Explosion and Collapse Hazard (XC)	\$1,000,000 Each Occurrence \$3,000,000 Aggregate
Independent Contractors – Owner’s Protective Bodily Injury Liability and Property Damage Liability Combined	\$1,000,000 Each Occurrence \$3,000,000 Aggregate
Completed Operations - Products Liability Bodily Injury Liability and Property Damage Liability Combined for five (5) years after payment	\$1,000,000 Each Occurrence \$3,000,000 Aggregate
Contractual Bodily Injury Liability and Property Damage Liability Combined	\$1,000,000 Each Occurrence \$3,000,000 Aggregate

in accordance with Agreement between  
Owner and Contractor

Personal Injury with Employee's Exclusion C deleted	\$1,000,000 Aggregate
Automobile Bodily Injury Liability and Property Damage Liability Combined covering all automobiles, trucks, tractors, trailers, or other automobile equipment, whether owned, non-owned, or hired by the Contractor	\$1,000,000 Per Accident
Umbrella/Excess Liability	\$1,000,000 Each Occurrence \$3,000,000 Aggregate
Professional Liability Insurance	\$1,000,000 Limit of Liability

1. The Contractor shall purchase and maintain insurance coverage on his tools, equipment and machinery and shall waive subrogation to the County for damage thereto.
2. The County reserves the right to require insurance of any Contractor in greater amounts provided notice of such requirements is stated in the Solicitation.

1.10 **INDEMNITY:**

The successful proposer agrees to defend, indemnify, and hold the County harmless from any and all causes of action or claims arising out of or related to the bidders performance on this project.

***END OF SECTION I***

## **SECTION II**

### **PROPOSALS**

#### **2.1 REJECTION OF PROPOSALS**

The County reserves the right to reject, at any time and for any reason, any and all Proposals received as a result of this RFP. The County's intent is to enter into a Contract as a result of this RFP. However, if after reviewing the Proposals received, the County determines that the County should not enter into any Contract, or to enter into a partial or different contract from the Contract contemplated by this RFP, the County will act in accordance with what the County determines at that time to be in its best interest. No Proposer or any other party has any entitlement, interest, or right in this decision by the County, and by submitting a Proposal, acknowledges the County's right to exercise its discretion in this regard without any right of recourse by the Proposer.

#### **2.2 PROPOSAL EVALUATION**

Any Proposal that has not met the completeness that is required as set forth to this RFP, may be rejected.

##### **2.2.1 Review and Evaluation of Proposals**

This Request for Proposals is issued in accordance with the Virginia Public Procurement Act §2.2-4300, et seq. of the *Code of Virginia*, 1950, as amended (the "Code"), and more particularly in accordance with the provisions for procurement of nonprofessional services as outlined in §2.2-4302.2.

Selection shall be made of two or more Proposers deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in this Request for Proposal, including price. Negotiations shall then be conducted with each of the Proposers so selected. The Proposer shall state any exception to any liability provisions contained in the Request for Proposal in writing at the beginning of negotiations, and such exceptions shall be considered during negotiation. Price shall be considered, but need not be the sole or primary determining factor. After negotiations have been conducted with each Proposer so selected, the County shall select the Proposer which, in its opinion, has made the best proposal and provides the best value, and shall award the contract to that Proposer. Should the County determine in writing and in its sole discretion that only one Proposer is fully qualified, or that one Proposer is clearly more highly qualified than the others under consideration, the County may negotiate and award a contract to that Proposer, regardless of any award made by the other County.

The process of competitive negotiation of a nonprofessional services contract that is being used in this case should not be confused with the different process of competitive sealed bidding or the process of competitive negotiation of a contract for professional services as those processes are outlined in the Code.

## **2.2 DISCLOSURE, OWNERSHIP OF PROPOSAL CONTENTS, AND CONFIDENTIALITY**

Technical and price information provided in Proposals will be held in confidence and will not be disclosed, revealed, or discussed with competitors. The Proposal of the selected Proposer will become the basis for any contract entered into and will become subject to the County's provision on public access to records and information.

To the extent a Proposer includes any uniquely proprietary or confidential information in the Proposal, the Proposer must clearly and unequivocally mark such information. The County will not reveal any such information to any third party, unless required to do so by law.

Proposers must agree to make no other distribution of their Proposal beyond that made to the Issuing Office.

## **2.3 PROPOSAL COSTS**

The County is not liable for any costs or expenses incurred by any Proposer in the preparation of the Proposal, attendance at any conference, or meeting related to this RFP. The County is not liable for payment of any amount to the selected Proposer until a Contract has been awarded and executed by Essex County and the Contractor has performed services pursuant to the Contract that entitle the Contractor to receive payment under the terms of the Contract.

## **2.4 PROPOSER**

The decision to award a contract will be made on the basis of the Proposer's overall ability to perform and respond to the RFP's requirements, to prove a high level of competence. Special emphasis will be placed upon capabilities of the Proposer's experience with completing organizational and management reviews and organizational restructuring.

The Proposer must be able to legally conduct business in the Commonwealth of Virginia.

## **2.6 SUB-CONTRACTORS**

It is intended that a single contractor have total responsibility for the Proposed Solution so as to assure a fully operational system. Therefore, any Proposer desiring to use sub-contractor(s) must identify each on a document supplied as an attachment to the Transmittal Letter and titled "Sub-Contractors" included with your Proposal. Include for each sub-contractor, their company's name, the company's principal owners, description of their involvement in the project, and qualifications for each aspect of the Proposed Solution they will be involved. The sub-contractor(s) cannot be changed after submission of the Proposal except with the written approval of the County.

The Contractor is responsible for all actions, workmanship, performance, and payment for their sub-contractor(s).

## **2.7 RFP PROCESS**

### **2.7.1 RFP RELEASE**

The RFP will be publicly advertised and released in accordance with the applicable laws of the State of Virginia and shall include the notification of the time and place when and where the RFP is due. The RFP may be obtained from:

April Rounds, Deputy Clerk  
202 S. Church Lane  
Tappahannock, Virginia 22560  
Office: (804) 443-4332  
Email: [arounds@essex-virginia.org](mailto:arounds@essex-virginia.org)

An electronic copy may be obtained via email from April Rounds, [arounds@essex-virginia.org](mailto:arounds@essex-virginia.org). Additionally, the RFP may be mailed to those businesses that are included on the County's list that are known to be a potential provider of goods and services of the type required by this RFP. Those who the County has mailed the RFP to and those who have requested a copy of the RFP will receive all information regarding the RFP. The information includes, but is not limited to, any amendments to the RFP, answers to inquiries received regarding the RFP, or changes in the RFP Schedule.

### **2.7.2 RFP INQUIRIES/QUESTIONS**

All questions/inquiries must be submitted in writing via mail or email to the primary contact. The County will review all inquiries received prior to the RFP submittal deadline and will email written answers to all recipients of the RFP. Direct contact with any of the County's departments or personnel may only be scheduled by the primary contact. During the review or preparation of the RFP

Proposal, if a Proposer discovers any errors, omissions or ambiguities, within the RFP, they should identify them in writing to the County prior to the RFP submission deadline.

**2.7.3 RFP REVISIONS**

Proposal Interpretations and Addenda Clarification may be issued to correct mistakes, answer questions, or resolve ambiguities during the proposal solicitation process. The County shall send any change to or interpretation of this RFP to each firm or individual to whom an RFP has been distributed. Any such changes or interpretations shall become a part of this RFP and may be incorporated into any contract awarded pursuant thereto.

**2.7.4 ECONOMY OF PREPARATION**

Proposals should be prepared simply and economically, thereby providing a straightforward, concise description of the Proposer's ability to meet the requirements of the RFP.

**2.7.6 PROPOSAL WITHDRAWAL**

The Proposer at any time up to the RFP Submission Deadline date and time identified in the Required RFP Schedule may withdraw their Proposal. If the Proposer desires to re-submit their Proposal, it must be re-submitted by the Proposal Submission Deadline as identified in the Required RFP Schedule.

**2.7.7 PROPOSER PRESENTATIONS**

A presentation may be needed if there are a number of equally qualified and priced proposals that warrant further review. Essex County Administration Staff will notify proposers in a timely manner.

**2.7.8 REQUIRED RFP SCHEDULE**

Consultants interested in responding to this RFP should submit two hard copies (one unbound) of their proposal **no later than 4:00 p.m. EST, September 20, 2019.**

The Office of the County Administrator  
202 S. Church Lane  
Tappahannock, VA 22560

A recap of important dates relating to this Request for Proposal are listed below:

Release of RFP: August 30, 2019  
Submission of Proposal: September 20, 2019  
Award of Contract: Expected by September 30, 2019

## **2.8 RFP PROPOSAL CONTENT AND FORMAT**

### **2.8.1 PROPOSAL SUBMISSION**

The County Administrator's Office must receive all Proposals no later than the Proposal Submission date and time identified in the RFP Schedule. Proposals may be mailed or hand-delivered, but in either case must be received and stamped by the specified date and time. **Late proposals will not be considered.**

Proposals must contain all Required Documentation, Guides and Certifications as requested by this RFP, otherwise the Proposal will be considered non-conforming and will be disqualified. The Proposer must supply Two (2) hard copies (8.5 X 11.0) of the Proposal and one electronic media in the form of a CD-ROM or USB Flash Drive. Proposers may use Microsoft Word (minimum version 6.0) for their Proposal, and Microsoft Excel (minimum version 5.0) to submit spreadsheet data. The Proposal container must bear the inscription: Essex County, Virginia, Organizational and Management Review as well as the name and address of the Proposer. The Proposal shall be addressed to the attention of:

Michael Lombardo, County Administrator  
202 S. Church Lane  
Tappahannock, VA 22560

The County reserves the right to request additional information from any, all or no Proposers after Proposal Submission.

Proposers shall distribute their RFP Proposals only to the County Administrator's Office. One (1) RFP Proposal must contain the original signature(s) of an official or officials authorized to bind the Proposer to its provisions. Additionally, the authorized signature(s) must appear on company letterhead.

Sections of the Proposal must be clearly labeled and pages numbered consecutively for ease of review. Responses must be provided in the same sequence as the statement, certification request, or question in the RFP.

In case of a difference between written words and figures in a Proposal, the amount stated in written words shall govern. Alterations or erasures are discouraged, but if present, must be crossed out and the corrections printed in ink or typewritten adjacent thereto. Each person signing the Proposal must initial each such correction.

## 2.9 **PROPOSAL ORGANIZATION**

Proposals must be organized in the following order of sections:

### **Section I Transmittal Letter**

The Proposal must include the name, title, address, telephone number, fax number, and email address of one (1) or more individuals who will serve as Proposer's contact for purposes of this RFP. The Proposer shall fully disclose details regarding its legal identity, i.e., corporation, partnership, etc. If the Proposer is a partnership, all partners must be named regardless of status, activeness, or percentage of ownership.

### **Section II Proposer Qualifications**

The Proposer must describe its qualifications and experience in providing the work described in this RFP. Experience should include examples of performing similar or related studies, this also should include details as to the type of study, approximate date of service delivery.

The Proposer shall provide a team organization chart, which lists the names of key personnel that will be assigned to this project along with a brief resume for each individual that describes their education and relevant professional work experience. A description of the work expected to be performed by each individual including an estimate of the amount of time each will be assigned to work on the project should also be provided. Any subcontractors anticipated to be utilized to perform work on this project, should be identified and brief resumes submitted.

The County reserves the right to approve all persons assigned to the project. No contract awarded pursuant to a proposal submitted in response to this RFP may be assigned, either in whole, or in part, without first receiving written consent from the County.

The Proposer must submit three (3) references of similar engagements during the last three (3) years. The references must have had experience with the Proposer similar in scope to those described in the RFP. The Proposer must name a contact person and contact information for whomever is responsible for the review at each provided reference.

### **Section III Preliminary Work Plan and Schedule of Performance**

#### **A. Work Plan**

The proposal should contain a detailed statement of the Proposer's understanding of the scope of services required under this RFP. The proposal should also contain

an explanation of the project approach including proposed methodology; Proposer's ability to meet the anticipated timeline; proposed interaction with staff; and any other features of the Proposer's ability to execute the requirements and achieve the objectives of this RFP. The proposal should also include a Preliminary Work Plan containing a description and timeline of the phases or segments into which the proposed project can logically be divided and performed.

**B. Schedule of Performance**

The proposal shall address separately each of the major tasks, activities, or significant milestones to be achieved, and a schedule of performance. If the Proposer expects that the services will extend beyond the timeframe specified in Section III of this RFP, the Proposer shall provide a justification for the extended time.

**Section IV Costs to Essex County, Virginia**

The Proposer will fully describe all costs for the Organizational and Management review the County will incur as a result of accepting your Proposal.

Describe in detail any other costs the County will incur as a result of selecting your Proposal.

By participating in this RFP and if your Proposal is selected, the Proposer agrees and indemnifies that the County is not responsible for any costs related to the requirements of this RFP, other than the County's staff expense, that are not identified in this section.

**Section V Required Information**

**A. Fee Analysis**

Proposals must include fee information that delineates the costs associated with providing consulting services being requested under this RFP. The schedule should include the following:

1. A Schedule of Fees that itemizes costs of providing all services required under this RFP broken down by (a) salaries, including work hours required and hourly rates for each employee; and (b) other expenses, such as travel, supplies, etc.
2. A Schedule of Payments that corresponds to completion of major tasks, milestones, or deliverables.

Should the County enter into negotiations with a successful Proposer that results in a revision to the scope of services in this RFP, the fees may correspondingly be negotiated to reflect the changes.

## **Section VI    Response to General Conditions**

### **A. Proposal Conditions or Limitations**

Proposals that set forth conditions or limitations to those set forth in the RFP may be considered non-responsive and, therefore, may be rejected. Notwithstanding any other provision of this RFP, the County reserves the right to reject any or all proposals, to waive any defects or informalities, to negotiate with Proposers, and to accept the proposal deemed to be in the best interest of the County.

### **B. Proposal Interpretations and Addenda**

Clarification may be issued to correct mistakes, answer questions, or resolve ambiguities during the proposal solicitation process. The County shall send any change to or interpretation of this RFP to each firm or individual to whom an RFP has been distributed. Any such changes or interpretations shall become a part of this RFP and may be incorporated into any contract awarded pursuant thereto.

### **C. County's Right of Withdrawal of RFP**

Notwithstanding any other provisions of this RFP, the County reserves the right to withdraw this RFP at any time without prior notice.

### **D. Withdrawal of Proposal**

A Proposer may withdraw a submitted proposal in writing at any time prior to the specified due date and time. A written request to withdraw, signed by an authorized representative of the Proposer shall be submitted to the County representative identified in Section VII. After withdrawing a previously submitted proposal, the Proposer may submit another proposal at any time up to the specified submission deadline. All proposals submitted and not withdrawn prior to the end of the submission deadline shall be firm and may not be withdrawn after the submission deadline for a period of sixty (60) calendar days.

### **E. Ownership of Records**

The County will retain ownership of all interim and final documents, surveys, analyses, and related reports either produced or developed in conjunction with the Consultant's contract. The Consultant is prohibited from copying or distributing any of these documents or other reports developed in conjunction with Essex County, Virginia, without written permission from the County.

## **2.10    NEWS RELEASES**

By participating in this RFP, Proposers agree that the County will review and approve all news releases pertaining to this RFP and/or subsequent Contract. All news releases will be submitted in writing to the Essex County Administrator for approval.

END OF SECTION II

## **SECTION III**

### **CONTRACT REQUIREMENTS**

#### **3.1 SCOPE OF SERVICES – GENERAL**

The scope of work shall include, but may not be limited to, the following:

1. Evaluate the effectiveness of the current organizational and management structure; determine whether functions can be consolidated; determine the basic requirements for personnel and determine whether the span of control and management staffing levels throughout the organization are appropriate to support the timely effective, and efficient delivery of service to the public as well as to ensure proper internal operations.
2. Determine sound personnel assignment and assignment of function throughout the organization. Create a staffing plan and organizational charts along with projected staffing models.
3. Benchmark the County's budget and organizational and management structure against peer organizations regionally and throughout the country and "best practices" throughout the industry (including the ICMA Performance Measurements standards).
4. Incorporate relevant goals and objectives identified in the Board of Supervisors 2018 Strategic Initiatives.
5. Determine how technology supports Department management and operations and how technology might be leveraged to improve management and operations.
6. Identify improvement opportunities in the County's organizational structure, management processes, procedures, operational practices and technology related to current service delivery.
7. Develop practical recommendations for improving the quality of the management processes and the overall efficiency and deployment of resources related to county operations, taking into account constraints and potentially available resources.

The consultant will have the opportunity to review and analyze a variety of reports and information produced by staff or others to assist it in the formulation of an organizational and management review.

#### **3.2 CONTRACT PROVISIONS**

##### **3.2.1 Bonding**

A performance bond may be required at the election of the county.

### **3.2.2 Additional provisions.**

A contract entered into with any Proposer pursuant to this RFP and any further solicitation will contain, among other provisions, those provisions contained in Exhibit 1.

### **3.3 SPECIAL CLAUSES**

#### **Inquiries**

All inquiries concerning this RFP should be addressed to:

Michael Lombardo  
Essex County Administration  
202 S. Church Drive, P.O. Box 1019  
Tappahannock, VA 22560  
(804) 443-4331

#### **Project Manager**

The County will designate a Project Manager for this project within ten (10) days of the Award Date. The County will provide written notice of this appointment to the Contractor and will provide notice of any subsequent changes. The Project Manager will be the Contractor's principal point of contact at the County regarding any matters pertaining to this Contract. The Project Manager is not authorized to waive or change any material terms of the Contract.

#### **County Responsibilities**

A user representative from each affected department will coordinate the participation of staff in the assessment process. The user representative will assist the Contractor in carrying out the observation/analysis of system workflow, interviews, and documentation reviews necessary to fulfill the requirements of the Statement of Work.

#### **Key Personnel**

- a) The Contractor's key personnel will be identified with specific roles and responsibilities included as required for the fulfillment of this Contract. Key personnel shall include one or more individuals who have extensive experience with organizational reviews in the public sector. Key personnel include the Project Manager, employees with specialized expertise, and any subcontracted consultants designated to perform work on this study. The assignment of key personnel shall remain unchanged during the term of the Contract.

- b) The Contractor's Project Manager shall oversee the performance of services and shall be the primary point of contact for services performed under the Contract. The Contractor's Project Manager shall be available to meet with the County's Project Manager to discuss progress or problems as the need arises.

### **Progress Reports**

The Contractor shall submit a progress report to the County's Project Manager as specified in the approved Work Plan. Each progress report shall describe the status of the Contractor's performance since the preceding report, including the products delivered, and the expected progress to be made in the next succeeding period. Each report shall describe the Contractor's activities by reference to the schedule of phases and tasks in the Work Plan.

*END OF SECTION III*

## **SECTION IV**

### **ATTACHMENTS**

#### **4.1 LIST OF ATTACHMENTS**

EXHIBIT 1. Contract General Terms and Conditions.

*END OF SECTION IV*

**EXHIBIT 1**  
**Contract General Terms and Conditions**

**1. General Provisions**

These General Terms and Conditions are attached to and a part of that certain \_\_\_\_\_ Agreement dated \_\_\_\_\_, 20\_\_ (the "Agreement") between Essex County, Virginia, and \_\_\_\_\_ (the "Contractor"). In the event of any conflict between any provision of these General Terms and Conditions and the Agreement, these General Terms and Conditions shall take precedence and control. Nothing in the Agreement or any document executed in connection therewith shall be construed as authority for either party to make commitments which will bind the other party beyond the scope of service contained therein. Unless defined herein, capitalized terms shall have the meaning defined and used in the Agreement. "Contractor" shall refer to all parties to the Agreement other than the County.

**2. Laws of the Commonwealth**

- A. The Agreement shall be governed in all respects whether as to validity, construction, performance, or otherwise by the laws of the Commonwealth of Virginia. The Contractor providing goods or services to the County under this Agreement represents and warrants to the County that it is:
1. Conforming to the provisions of the Civil Rights Act of 1964, as amended, the Virginia Fair Employment Contracting Act of 1975, as amended, and the Virginia Human Rights Act, as amended, where applicable.
  2. Not employing illegal alien workers or otherwise violating the provisions of the Immigration Reform and Control Act of 1986;
  3. Complying with federal, state and local laws and regulations applicable to the performance of the services procured; and
  4. In full compliance with the Virginia Conflict of Interest Act.
- B. In every contract of over \$10,000, the Contractor agrees during the performance of the Agreement that:
1. the Contractor (1) will not discriminate against any employee or applicant for employment because of race, religion, color, sex, disability, age, or national origin, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor, (2) will post in conspicuous places,

available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, and (3) will state that the Contractor is an equal opportunity employer in all solicitations or advertisements for employees placed by or on behalf of the Contractor under this Agreement. All 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;

2. the Contractor will include the provisions of the foregoing subparagraph 2.(B)(1) in every subcontract or purchase order under the Agreement of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor; and

C. In every contract of over \$10,000, the Contractor agrees during the performance of the Agreement that:

the Contractor shall A) provide a drug-free workplace for its employees; B) 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 its workplace and specify the actions which will be taken against any employee for a violation; C) state in all of its solicitations or advertisements for employees that it maintains a drug-free workplace; and D) include the provisions of this subparagraph in every subcontract or purchase order of over \$10,000, so that said provisions shall be binding upon each subcontractor or vendor.

For purposes of this sub-paragraph, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a the Contractor in accordance with the provisions of the Virginia Public Procurement Act, 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 Agreement.

D. In addition to the provisions contained in sub-paragraph C pertaining to drug-free workplaces, the Contractor shall comply with the federal Drug Free Workplace Act.

E. Pursuant to Section 2.2-4343.1 of the Code of Virginia of 1950, in all invitations to bid, requests for proposals, contracts, and purchase orders, the County does not discriminate against faith-based organizations.

"Faith-based Organization" means a religious organization that is or applies to be a contractor to provide goods or services for programs funded by the

block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193.

**3. Certifications.**

The Contractor certifies that:

1. its bid or offer (1) was made without prior participation, understanding, agreement, or connection with any corporation, firm or person submitting a bid/offer for the same materials, supplies, equipment, or services with respect to the allocation of the business afforded by or resulting from this Agreement, (2) was in all respects fair and without collusion or fraud, and (3) was and or is intended to be competitive and free from any collusion with any person, firm or corporation;
2. the Contractor has not offered or received any kickback from any other bidder or the Contractor, supplier, manufacturer, or subcontractor in connection with the bid/offer that resulted in this Agreement. A kickback is defined as an inducement for the award of a contract, subcontracts or order, in the form of any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged. Further, no person shall demand or receive any payment, loan, subscription, advance, and deposit of money, services or anything of value in return for an agreement not to compete on a public contract;
3. the Contractor is not a party to nor has it participated in nor is obligated or otherwise bound by agreement, arrangement or other understanding with any person, firm or corporation relating to the exchange of information concerning bids, prices, terms or condition upon which this Agreement is to be performed;
4. the Contractor understands that collusive bidding is a violation of the Virginia Governmental Frauds Act and federal law, and can result in fines, prison sentences, and civil damage awards and agrees to abide by all conditions of this proposal; and
5. the Contractor has not and will not confer on any public employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

#### **4. Warranties**

The Contractor represents and warrants that it has the requisite experience, skills, capabilities and manpower to perform the Services as provided for in the Contract Documents in a good and workmanlike fashion, that it is a corporation chartered or authorized to do business in Virginia having all necessary licenses required by law, that the person signing the Agreement has been fully authorized to do so, and his signature will legally bind the Contractor to the Agreement. Any goods or services furnished by the Contractor under the Agreement shall be new and covered by the most favorable warranties provided by the Contractor to any customer; the rights and remedies hereby provided are in addition to any and do not limit those otherwise available to the County. The Contractor agrees that if such warranties are in any respect breached, the Contractor will pay to the County the full contract price agreed to by the County to be paid for the supplies, materials, equipment or services furnished under the bid or proposal.

#### **5. Modifications, Additions or Changes**

Modifications, additions or changes to these terms and conditions may not be made except in writing and agreed to by the County; however, no fixed priced contract may be increased by more than twenty-five (25) percent of the amount of the agreement or \$50,000, whichever is greater, without the express approval of the Essex County Board of Supervisors by action taken in an open meeting. The amount of this Agreement may not be increased for any purpose without adequate consideration provided to the County.

#### **6. Hold Harmless**

The Contractor and all its subcontractors shall bear all loss, expense (including reasonable attorney's fees) and damage in connection with, and shall indemnify the County, its Board of Supervisors members, officers, employees and agents against and save them harmless from all claims, demands, and judgments made or recovered against them because of bodily injuries, including death at any time resulting there from, and/or because of damage to property, from any cause whatsoever, arising out of, incidental to, or in connection with the Services, whether or not due to any act of his or their employees, servants or agents and whether or not due to any act of omission or commission including negligence, except sole negligence, of Essex County, its Board of Supervisors members, officers, employees, and/or agents. Compliance by the Contractor with the insurance provisions hereof shall not relieve the Contractor from liability under this provision.

#### **7. Assignment**

The Agreement may not be assigned, sublet, or transferred without the written consent of the County.

## **8. Default**

In the case of default or breach by the Contractor or the failure of the Contractor to perform the Services in conformance with the specifications in the Agreement, the County shall give written notice to the Contractor specifying the manner in which the Agreement has been breached. If the County gives such notice of breach and the Contractor has not corrected the breach within seven (7) days of receipt of the written notice, the County shall have the right to immediately rescind, revoke or terminate the Agreement and in addition to any other remedies available at law to procure such services from other sources and hold the Contractor responsible for any and all excess cost occasioned thereby.

## **9. Audit**

The Contractor hereby agrees to retain all books, records, and other documents relative to this Agreement for five (5) years after final payment or after all other pending matters are closed, whichever is longer. The County and its authorized agents, state auditors, the grantor of the funds to the County, the Comptroller of Virginia or of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers and records of the Contractor which are directly pertinent to the Agreement for the purpose of making audits, examinations, excerpts or transcriptions.

## **10. Ownership of Documents**

Any reports, studies, photographs, negatives, or other documents prepared by the Contractor in the performance of its obligations under this Agreement shall be remitted to the County by the Contractor upon completion, termination or cancellation of this Agreement. The Contractor shall not use, willingly allow or cause to have such materials used for any purpose other than performance of the Contractor' obligations under this Agreement without the prior written consent of the County. The County shall own the intellectual property rights to all materials produced under this Agreement.

## **11. Payment and Performance Bond**

If required by law, or if required by the County, the Contractor shall furnish to the County performance and payment bonds in the amount of the Contract Sum, regardless of its amount, pursuant to Sections 2.2-4336 and 2.2-4337 of the *Code of Virginia*, 1950, as amended (the ("Code")) and shall otherwise fully comply with the requirements of such sections of the Code.

## **12. Required Payment**

Pursuant to Section 2.2-4354 of the Code, the Contractor covenants and agrees to:

- a. within seven (7) days after receipt of any amounts paid to the Contractor under the Agreement, (i) pay any subcontractor for its proportionate share of the total payment received from the County attributable to the Services

under the Agreement performed by such subcontractor, or (ii) notify the County and the subcontractor, in writing, of its intention to withhold all or a part of the subcontractor's payment and the reason therefor;

- b. provide its federal employer identification number or social security number, as applicable, before any payment is made to the Contractor under the Agreement; and
- c. pay interest at the legal rate or such other rate as may be agreed to in writing by the subcontractor and the Contractor on all amounts owed by the Contractor that remain unpaid after seven (7) days following receipt by the Contractor of payment from the County for Services performed by the subcontractor under the Agreement, except for amounts withheld pursuant to subparagraph 12, a above.
- d. include in its contracts with any and all subcontractors the requirements of a, b, and, c above.

**13. Liability Coverage.**

The Contractor shall take out and maintain during the life of the Agreement such bodily injury, liability and property damage liability insurance as shall protect it and the County from claims for damages for personal injury, including death, as well as from claims for property damage, which may arise from its activities under this Agreement. Such insurance shall at least have the coverages and be in the amounts set forth in Section 16 "Insurance and Bond Requirements" set forth below and shall name Essex County and the Essex County Board of Supervisors as Additional Insureds. Such insurance must be issued by a company admitted within the Commonwealth of Virginia and with at least a Best's Key Rating of A:V1. The Contractor shall provide the County with a certificate of insurance showing such insurance to be in force and providing that the insurer shall give the County at least 30 days' notice prior to cancellation or other termination of such insurance.

**14. Loss or Damage in Transit.** Delivery by the Contractor to a common carrier does not constitute delivery to County. Any claim for loss or damage incurred during delivery shall be between the Contractor and the carrier. The County accepts title only when goods are received regardless of the F.O.B. point. The County will note all apparent damages in transit on the freight bill and notify the Contractor. Discovery of concealed damages or loss will be reported by the County to the carrier and the Contractor within seven days of receipt and prior to removal from the point of delivery if possible. The Contractor shall make immediate replacement of the damaged or lost merchandise or be in default of the Agreement. It shall be the Contractor's responsibility to file a claim against the carrier. If damage is to a small quantity, with the approval of the County, the Contractor may deduct the amount of damage or loss from his or her invoice to the County in lieu of replacement.

**15. Termination for Default.**

In case of default by the Contractor for failure to deliver or perform in accordance with the Agreement’s specifications or terms and conditions, the County may procure the articles or services from other sources and hold the defaulting the Contractor responsible for any resulting additional purchase and administrative costs. The County will normally repurchase from the next low bidder or purchase competitively by re-solicitation. If the repurchase results in increased costs to the County, a letter will be sent to the defaulted the Contractor requiring payment for additional costs. When repayment is requested, the Contractor will be removed from future bidding until the repayment has occurred. The Contractor shall not be liable for any excess cost if the failure to perform arises out of any act of war, order of legal authority, strikes, act of God, or other unavoidable causes not attributed to their fault or negligence. Failure of a Contractor’ source to deliver is generally not considered to be an unavoidable cause. The burden of proof rests with the Contractor.

**16. Insurance and Bond Requirements**

The Contractor shall maintain the following insurance to protect it from claims under the Workers' Compensation Act, and from any other claims for personal injury, including death, and for damage to property that may arise from operations under this Agreement, whether such operations be by itself or by any subcontractor, or anyone directly or indirectly employed by either of them.

<u>TYPE OF COVERAGE</u>	<u>LIMITS</u>
Workers’ Compensation and Employer’s Liability including coverage under United States Longshoremen’s and Harbor Worker’s Act where applicable	Statutory, including Employer’s Liability of \$100,000.00 Each Accident \$500,000.00 Disease-Policy Limit \$100,000.00 Disease-Each Employee
Comprehensive General Liability endorsement coverages.	Including the Broad Form C.G.L.
Premises – Operations Bodily Injury Liability and Property Damage Liability Combined	\$1,000,000 Each Occurrence \$3,000,000 Aggregate
Including: Underground Hazard (U) Explosion and Collapse Hazard (XC)	

Independent Contractors – Owner’s Protective Bodily Injury Liability and Property Damage Liability Combined	\$1,000,000 Each Occurrence \$3,000,000 Aggregate
Completed Operations - Products Liability Bodily Injury Liability and Property Damage Liability Combined for five (5) years after payment	\$1,000,000 Each Occurrence \$3,000,000 Aggregate
Contractual Bodily Injury Liability and Property Damage Liability Combined in accordance with Agreement between Owner and Contractor	\$1,000,000 Each Occurrence \$3,000,000 Aggregate
Personal Injury with Employee’s Exclusion C deleted	\$1,000,000 Aggregate
Automobile Bodily Injury Liability and Property Damage Liability Combined covering all automobiles, trucks, tractors, trailers, or other automobile equipment, whether owned, non-owned, or hired by the Contractor	\$1,000,000 Per Accident
Umbrella/Excess Liability	\$1,000,000 Each Occurrence \$3,000,000 Aggregate
Professional Liability Insurance	\$1,000,000 Limit of Liability

1. The Contractor shall purchase and maintain insurance coverage on his tools, equipment and machinery and shall waive subrogation to the County for damage thereto.
2. The County reserves the right to require insurance of any Contractor in greater amounts provided notice of such requirements is stated in the Solicitation.

**17. No Waiver**

Any failure of the County to demand rigid adherence to one or more of the terms and provisions of the Agreement, including these General Terms and Conditions, on one or more occasions, shall not be construed as a waiver nor deprive the County of the right to insist upon strict compliance with the terms of this Agreement. Any waiver of a term of this Agreement, in whole or in part, must be in writing and signed by the party granting the waiver to be effective.

**18. Termination**

The County may terminate the Agreement for its convenience at any time upon written notice to the Contractor. The Contractor shall not be paid for any service rendered or expense incurred after receipt of such notice except such fees and expenses incurred prior to the effective date of termination that are necessary for curtailment of the Contractor's Services under this Agreement.

**19. Choice of Law**

To ensure uniformity of the enforcement of this Agreement, and irrespective of the fact that either of the parties now is, or may become, a resident of a different state, this Agreement is made and is intended to be performed in the Commonwealth of Virginia, and shall be governed by and construed in accordance with the laws of that state without regard to principles of conflicts of law.

**20. Severability**

If any provision of the Agreement, including any Appendix, is held to be illegal, invalid, or unenforceable, or is found to be against public policy for any reasons, such provision shall be fully severable and the Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never been part of the Agreement, and the remaining provisions of the Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision, or by its severance from the Agreement.

**21. Contractual Claims Procedure**

- A. Contractual claims or disputes by the Contractor, whether for money or other relief, except for claims or disputes exempted by law from the procedure set forth herein, shall be submitted in writing no later than sixty (60) days after final payment; provided, however, that the Contractor shall give the County written notice of its intention to file a claim or dispute within fifteen (15) days after the occurrence upon which the claim or dispute shall be based. Any written notice of the Contractor' intention to file such a claim or dispute need not detail the amount of the claim, but shall state the facts and/or issues relating to the claim in sufficient detail to identify the claim, together with its character and scope. Whether or not the Contractor files such written notice, the Contractor shall proceed with the Services as directed. If the Contractor fails to make its claim or dispute, or fails to give notice of its intention to do so as provided herein, then such claim or dispute shall be deemed forfeited.
- B. The County, upon receipt of a detailed claim, may at any time render its decision and shall render such decision within one hundred twenty (120)

days of final payment. Each such decision rendered shall be forwarded to the Contractor by written notice.

- C. If the Contractor disagrees with the decision of the County concerning any pending claim, the Contractor shall promptly notify the County by written notice that the Contractor is proceeding with the Services under protest. Any claim not resolved, whether by failure of the Contractor to accept the decision of the County or under a written notice of the Contractor' intention to file a claim or a detailed claim not acted upon by the governing body of the County, shall be specifically exempt by the Contractor from payment request, whether progress or final. Pendency of claims shall not delay payment of amounts agreed due in the final payment.
- D. The decision on contractual claims by the governing body of the County shall be final and conclusive unless the Contractor appeals within six months of the date of the final decision on the claim by instituting legal action in the appropriate circuit court.

**22. Subject to Annual Appropriation**

The Agreement is subject to annual appropriation by the Board of Supervisors of the Essex County. Neither the Agreement nor any amount due or to become due under the Agreement shall be deemed to constitute a debt or pledge of the faith and credit of the Commonwealth of Virginia or any political subdivision thereof, including the County. Neither the Commonwealth of Virginia nor any political subdivision thereof, including the County, shall be obligated to pay any amount due or to become due under this Agreement except from funds annually appropriated by the Board of Supervisors of Essex County for such purpose.

In the event of non-appropriation of funds for the items under this Agreement, the County may terminate this Agreement as to the Services for which funds have not been appropriated. Written notice will be provided to the Contractor as soon as possible after such action is taken.

**23. Forum Selection**

The parties hereby submit to the personal jurisdiction and venue of any state or federal court located within the Commonwealth of Virginia for resolution of any and all claims, causes of action or disputes arising out of or related to this Agreement and agree that service by certified mail to the addresses set forth in the Agreement or this Appendix shall constitute sufficient service of process for any such action. The parties further agree that any claims, causes of action or disputes arising out of, relating to or concerning this Agreement shall have jurisdiction and venue in the Circuit Court of Essex County, and shall be brought only in such Court.