

## REQUEST FOR PROPOSAL

**RFP NUMBER:** 12-07

**RFP SUBJECT:** CDL DRUG TESTING SERVICES

**PROPOSALS SHOULD BE SUBMITTED TO:**

Purchasing Agent  
Town of Vienna  
127 Center Street, S.  
Vienna, Virginia 22180

**SEALED PROPOSALS**

**DUE DATE AND TIME: DECEMBER 20, 2011 AT 11:00 AM**

All inquiries should be made, in writing, to Gina Gilpin, Purchasing Agent, at [ggilpin@viennava.gov](mailto:ggilpin@viennava.gov) by **DECEMBER 15, 2011 AT 2:00 PM.**

In compliance with this Request For Proposal and to all the conditions imposed herein, the undersigned offers and agrees to furnish the services in accordance with the attached signed proposal or as mutually agreed upon by subsequent negotiation.

NAME & ADDRESS OF FIRM:

\_\_\_\_\_

\_\_\_\_\_

EEI/FIN NO: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ TITLE: \_\_\_\_\_

(Date)

TELEPHONE NO: \_\_\_\_\_ EMAIL: \_\_\_\_\_

**REQUEST FOR PROPOSAL**

**RFP 12-07  
CDL DRUG TESTING SERVICES**

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## 1. ADVERTISEMENT

### REQUEST FOR PROPOSAL

Sealed proposals will be received by the Town of Vienna, Virginia at the Purchasing Office, 127 Center Street, South, Vienna, Virginia 22180, for:

- **RFP 12-07 CDL DRUG TESTING SERVICES**
- **PROPOSALS DUE: DECEMBER 20, 2011 at 11:00 AM**

On the above proposal due date and at the time specified, proposals so received will be publicly opened and logged. Copies of solicitations are available online at [www.viennava.gov](http://www.viennava.gov) and from the Purchasing Agent at the above address or by calling (703) 255-6359 during normal business hours (8:00 AM - 4:30 PM), daily except Saturday, Sunday, and Holidays.

PUBLICATION:  
THE EXAMINER  
December 12, 2011

**2. PURPOSE & OVERVIEW**

The intent and purpose of this Request for Proposal (RFP) is to establish a contract through competitive negotiation between the Town of Vienna to establish and a single provider for random drug testing services.

The Town has in place a "reasonable suspicion" alcohol and substance abuse regulation to meet the requirements of the Drug Free Workplace Act and also a regulation for employees who are holders of Commercial Drivers Licenses.

The FHWA Omnibus Transportation Employee Testing Act includes the requirement for random drug testing for certain employees in local government who are in safety-sensitive positions requiring certain types of Commercial Driver's License (CDL).

The Town is required to random test individuals in these positions for alcohol and controlled substance abuse, maintain records on such testing for review and inspection, and assure that all testing procedures and equipment used meets Federal guidelines.

The Town will be required to provide testing for pre-employment conducted after an offer to hire, reasonable suspicion, random, return-to-duty, post accident and follow up.

The Town has identified 53 safety-sensitive positions subject to random drug testing.

<u>Annual Estimates</u>	<u>Alcohol Test</u>	<u>Controlled Substance Test</u>
Follow-up	2	2
Random	12	24
Post Accident	5	5

**3. SCOPE OF SERVICES**

During the term of the contract awarded pursuant to this RFP, the vendor shall provide services which address, but are not necessarily limited to, the following:

1. Collection personnel trained to strictly follow the specimen collection procedures detailed in Urine Specimen Collection Guidelines, Drug and Alcohol Policy and Compliance, US Department of Transportation.
2. Strict compliance with the urinalysis testing procedures set forth by US Department of Transportation Workplace Drug Testing program guidelines (49 CFR Part 40), which requires that urinalysis testing is confidential, professional and consistent.
3. MRO services.
4. Emergency response (post accident).

5. Split samples.
6. Random and reasonable suspicion program review and compliance.
7. Training of management, supervisors and workers.
8. Quarterly and annual reports
9. Confirmation of positive results within 72 hours.
10. Retention of positive specimens for one year (frozen).
11. On site as well as off site test locations for sample collection convenient to Town workers.

#### **4. CONTRACT TERM**

The term of this agreement shall be for one (1) year, subject to renewal for three (3) additional one-year periods at the sole and final discretion of the Town of Vienna. No change in costs at renewals shall exceed the change in the Consumer Price Index for all Wage Earners for this region.

The Town as a municipal corporation of the Commonwealth of Virginia is obligated and bound by the terms of this Agreement only to the extent that funds are lawfully appropriated therefore and are allocated and available to pay its obligations hereunder. In the event that and at such time as funds have not been appropriated or are not allocated and available to pay the Town's obligations under this Agreement, then the Town shall not be liable for any obligation to pay for the services referred to in this Agreement.

#### **5. EVALUATION CRITERIA**

Proposals shall be evaluated based on the criteria listed below. Firms submitting proposals shall include statements addressing the following:

- a. The ability, capacity and skill of the contractor, its staff, and employees to perform the services. 15%
- b. Credentials, character, integrity, reputation, experience, references and financial responsibility of contractor. 15%
- c. Cost and cost related aspects of administering the program. 35%
- d. The contractor's ability to respond to the particular needs of the Town of Vienna. 35%

**6. PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS**

**A. GENERAL REQUIREMENTS**

1. RFP RESPONSE: In order to be considered for selection, Offerors must submit a complete response to this RFP. One (1) original and three (3) copies of each proposal must be submitted to the Purchasing Office at 127 Center Street S, Vienna, VA 22180. The envelope/box shall clearly indicate the RFP number and name and the due date and time. No other distribution of proposals shall be made by the Offeror.

Written, sealed Proposals for the goods, insurance or services identified must be submitted no later than the date and time set forth elsewhere in this Request.

Proposals received by the Town after the date and time prescribed shall not be considered for Contract award and shall be returned unopened to the Offeror.

2. PROPOSAL PREPARATION: Proposals must be signed by an authorized representative of the Offeror. All information requested must be submitted. Failure to submit all information requested may result in the Purchasing Agent requiring prompt submission of missing information and/or giving a lowered evaluation of the proposal. Proposals which are substantially incomplete or lack key information may be rejected by the Town at its discretion. Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of context. Each copy of the proposal should be bound in a single volume.
3. ORAL PRESENTATION: Offerors who submit a proposal in response to this RFP may be required to give an oral presentation of their proposal to the Evaluation Committee. This will provide an opportunity for the offeror to clarify or elaborate on the proposal, but will in no way change the original proposal. The Purchasing Agent will schedule the date, time and location of these presentations. Oral presentations are an option and may not be conducted. Therefore, proposals should be complete.

**B. SPECIFIC REQUIREMENTS**

Proposals should be as thorough and detailed as possible so that the Evaluation Committee may properly evaluate the Offeror's capabilities to provide the required services. Offerors are required to submit the following as a complete proposal:

1. RFP cover page, signed and completed as required.
2. Section 9 - References.
3. A written narrative statement to include:

- a. A discussion of the implementation of the Controlled Substance and Alcohol Testing program that should include but not necessarily limited to:
  - i. Program and procedures development and implementation.
  - ii. Orientation of management.
  - iii. Management and supervisory training.
- b. Program elements discussed should include but not necessarily be limited to:
  - i. Availability of service including after hours and weekends
  - ii. On site collections
  - iii. After-care follow-up
  - iv. Program monitoring, evaluation, and reporting
  - v. Monitoring and evaluation of community resources
  - vi. Confidentiality of records
- c. Organizational information about the offeror should include:
  - i. Current organizational structure
  - ii. Vitae of proposed staff
  - iii. Copies of current staff licenses and /or credentials
  - iv. Business licenses and certificates of accreditation if applicable
  - v. Proof of current liability and malpractice coverage
  - vi. Three letters of support from current clients
  - vii. Mechanisms to increase services as employees are added during the year
- d. Contractor’s billing procedures and proposed fee. Rates should be guaranteed for a minimum of one (1) year from the effective date of of the signed contract. Rate adjustments will be effective on the anniversary date provided at least ninety (90) days written notice is given in advance. The ability to provide 2 or 3-year rate guarantees will be viewed favorably.

**7. AWARD OF CONTRACT**

The Town of Vienna Evaluation Committee shall engage in individual discussions with two (2) or more of the offerors deemed fully qualified by the Evaluation Committee. Repetitive informal interviews shall be permissible. Such offerors shall be encouraged to elaborate on their qualifications and performance data or staff qualifications pertinent to the requested services.

At the discussion stage, the Town may discuss non-binding estimates of total project costs including, but not limited to non-binding estimates of cost of services.

Proprietary information from competing offerors shall not be disclosed to the public or to the competitors.

At the conclusion of the informal interviews, on the basis of evaluation factors published in the Request for Proposals and all information developed in the selection process to this point, the Evaluation Committee, shall select, in the order of preference, two or more offerors whose qualifications and proposed services are deemed more meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the Town of Vienna can be negotiated at a price considered fair and reasonable, the Town Council shall be advised and make the award to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price.

Should the Evaluation Committee determine in writing that only one (1) offeror is fully qualified, or that one (1) offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

## 8. SPECIAL TERMS AND CONDITIONS

**Precedence of Terms:** In the event that there is a conflict between the General Terms and Conditions and any Special Terms and Conditions used in this section, the Special Terms and Conditions shall apply.

- A. Mandatory Use of Town Forms and Terms and Conditions: Failure to submit a proposal accompanied by the signed and dated Cover Sheet provided shall be a cause for rejection of the proposal. Return of the complete document is required. Modification of or additions to any portion of the solicitation may be cause for rejection of the proposal; however, the Town of Vienna reserves the right to decide, on a case-by-case basis, in its sole discretion, whether or not such a proposal should be considered as non-responsive.

Offerors are reminded that changes to the RFP, in the form of addenda, are often issued between the issue date and within three business (3) days before the closing of the RFP. Offerors are solely responsible for checking the Town website to ensure that they have the most current information regarding the RFP.

All addenda must be signed and submitted with your bid.

- B. Ownership of Material: Ownership of all data, materials and documentation originated and prepared for the Town of Vienna pursuant to the RFP shall belong exclusively to the Town and be subject to public inspection in accordance with the Virginia Freedom of Information Act. Trade secrets and proprietary information submitted by an offeror shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the offeror must invoke the protections of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary.
- C. Default: In case of failure to deliver services in accordance with the contract terms and conditions, the Town of Vienna, after due oral or written notice, may procure them from other sources and hold the Consultant responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Town of Vienna may have.

- D. Obligation of Offeror: By submitting a proposal, the offeror covenants and agrees that he has satisfied himself, from his own investigation of the conditions to be met, that he fully understands his obligation and that he will not make any claim for, or have right to cancellation or relief from the contract because of any misunderstanding or lack of information.
- E. Withdrawal/Modification of Proposals: Proposals may be withdrawn or modified by written notice received from offerors prior to the time fixed for proposal receipt.
- F. Receipt and Opening of Proposals: In the case of proposals received in response to a Request for Proposals, public openings are not required; however, if a public opening is held, only the names of the offerors are read aloud.
- G. Qualifications of Offerors: The Town of Vienna may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the work, and the offeror shall furnish to the Town of Vienna all such information and data for this purpose as may be requested. The Town of Vienna reserves the right to inspect the offeror's physical facilities prior to award to satisfy questions regarding the offeror's capabilities. The Town of Vienna further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy the Town that such offeror is properly qualified to carry out the obligations of the contract and to complete the work contemplated therein.
- H. Debarment Status: By submitting their proposals, all offerors certify that they are not currently debarred from submitting proposals on contracts by any agency of the Commonwealth of Virginia, nor are they an agent of any person or entity that is currently debarred from submitting proposals on contracts by any agency of the Commonwealth of Virginia.
- I. Cancellation of Contract: The Town of Vienna reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty upon ten (10) days written notice to the consultant. Any contract cancellation notice shall not relieve the consultant of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
- J. Insurance: By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the contract, it will have following insurance coverages at the time the work commences:

Insurance Coverages and Limits Required:

1. Worker's Compensation – Statutory requirements and benefits.
2. Employers Liability - \$100,000.
3. Broad Form Comprehensive General Liability - \$1,000,000 Combined Single Limit coverage to include: Premises – Operations; Products/Completed

Operations; Contractual; Independent Contractor's Liability; Owner's and Contractor's Protective Liability and Personal Injury Liability (Libel, Slander, Defamation of Character, etc.)

4. Automobile Liability - \$500,000 Combined Single Limit

Professional Liability/Errors and Omissions Coverage – Proof of professional liability coverage must accompany the Consultant's written proposal.

Additionally, it will maintain these, if available during the entire term of the contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

During the period of the contract, the Town reserves the right to require the consultant to furnish certificates of insurance for the coverage required.

**The Town of Vienna, Virginia is to be named as additional insured on the Comprehensive General Liability and Automobile Liability policies and this is to be so noted on applicable Certificates of Insurance. The Certificates shall be delivered to the Town of Vienna PRIOR to the commencement of any work.**

A thirty (30) day written notice of cancellation or non-renewal shall be furnished by certified mail to the purchasing office at the address indicated on the solicitation.

The proposer's signature on this solicitation constitutes certification that, if awarded the contract, their firm shall obtain the required coverage as specified herein within ten (10) days of notification of award.

- L. Rights of the Town of Vienna: The Town of Vienna further reserves the right to request information relative to experience, reference and/or financial status of a firm.

9. REFERENCES

MUST BE COMPLETED AND RETURNED WITH PROPOSAL

NAME OF COMPANY \_\_\_\_\_

QUALIFICATION OF OFFEROR: Offerors must have the capability and capacity in all respects to fully satisfy the contractual requirements. Indicate the length of time you have been in business providing this type of service and/or product; \_\_\_\_\_Years, \_\_\_\_\_Months. Provide a list of at least three (3) accounts, preferably governmental, that your firm has provided similar goods and/or services to in the past twelve (12) months. PLEASE TYPE.

1. FIRM NAME - \_\_\_\_\_

ADDRESS - \_\_\_\_\_

CONTACT/TITLE - \_\_\_\_\_

PHONE NUMBER - \_\_\_\_\_ EMAIL- \_\_\_\_\_

PROJECT - (DATE SERVICES/GOODS PROVIDED WITH BRIEF DESCRIPTION OF PROJECT)-

2. FIRM NAME - \_\_\_\_\_

ADDRESS - \_\_\_\_\_

CONTACT/TITLE - \_\_\_\_\_

PHONE NUMBER - \_\_\_\_\_ EMAIL- \_\_\_\_\_

PROJECT - (DATE SERVICES/GOODS PROVIDED WITH BRIEF DESCRIPTION OF PROJECT)-

3. FIRM NAME - \_\_\_\_\_

ADDRESS - \_\_\_\_\_

CONTACT/TITLE - \_\_\_\_\_

PHONE NUMBER - \_\_\_\_\_ EMAIL - \_\_\_\_\_

PROJECT - (DATE SERVICES/GOODS PROVIDED WITH BRIEF DESCRIPTION OF PROJECT)-

**SECTION 10. GENERAL TERMS AND CONDITIONS**

**VENDOR:** THE GENERAL TERMS AND CONDITIONS WHICH FOLLOW APPLY TO ALL PURCHASES AND BECOME A DEFINITE PART OF EACH FORMAL INVITATION FOR BID, REQUEST FOR PROPOSALS, PURCHASE ORDER AND/OR OTHER AWARD ISSUED BY THE TOWN OF VIENNA, VIRGINIA, UNLESS OTHERWISE SPECIFIED IN THE SOLICITATION DOCUMENTS. BIDDERS/OFFERORS OR THEIR AUTHORIZED REPRESENTATIVES ARE EXPECTED TO FULLY INFORM THEMSELVES AS TO THE CONDITIONS, REQUIREMENTS, AND SPECIFICATIONS BEFORE SUBMITTING BIDS/PROPOSALS; FAILURE TO DO SO WILL BE AT THE BIDDERS/OFFERORS' OWN RISK AND HE CANNOT SECURE RELIEF ON THE PLEA OF ERROR.

SUBJECT TO STATE, COUNTY AND LOCAL LAWS AND ALL RULES, REGULATIONS AND LIMITATIONS IMPOSED BY LEGISLATION OF THE FEDERAL GOVERNMENT, BIDS/PROPOSALS ON ALL SOLICITATIONS ISSUED BY THE PURCHASING OFFICE WILL BIND BIDDERS/OFFERORS TO APPLICABLE CONDITIONS AND REQUIREMENTS HEREIN SET FORTH UNLESS OTHERWISE SPECIFIED IN THE SOLICITATION.

1. **CLARIFICATION OF TERMS:** If any prospective bidder/offeror has questions about the specifications or other solicitation documents, the prospective bidder/offeror should contact the Purchasing Agent or the person whose name appears on the face of solicitation NO LATER THAN SEVEN (7) WORKING DAYS BEFORE opening/closing date. Any revisions to the solicitation will be made only by addendum issued by the Purchasing Agent.
2. **PREPARATION & SUBMISSION:** In order to be considered for selection, the bidder/offeror must submit a complete response to the Invitation For Bid/Request For Proposals. One (1) original and one (1) copy of each bid/proposal must be submitted on the Town of Vienna Bid/Proposal Forms provided. The bid/proposal shall be signed by an authorized representative of the bidders/offerors' firm and delivered to the proper location by the time and date specified on the cover page.
3. **ENVELOPE IDENTIFICATION:** The signed bids must be returned in a sealed envelope and identified as follows: "SEALED BID", show the IFB number, IFB subject, opening time, opening date, and bidder's name and address. In the case of proposals, the signed proposal cover page and proposal must be returned in a sealed envelope, marked clearly on the outside "SEALED COMPETITIVE NEGOTIATION", show the RFP number, RFP subject, closing time, closing date, and offeror's name and address.  
  
If a bid/proposal is mailed in an envelope, not identified as specified, the bidder/offeror takes the risk that the envelope may be inadvertently opened and the information compromised which may cause the bid/proposal to be disqualified. The Town reserves the right to declare such a bid/proposal as non-responsive. Bids/proposals may be hand delivered to the designated location.
4. **LATE BIDS/PROPOSALS:** LATE bids/proposals will be returned to bidder/offeror UNOPENED, if the IFB/RFP number and return address is shown on the envelope.
5. **QUOTATIONS TO BE F.O.B. DESTINATION:** Quote F.O.B. DESTINATION for all competitive sealed bids. If otherwise, show exact cost to deliver.
6. **PRICING ERRORS:** In case of an error in price extension, the firm fixed unit price shall govern.
7. **BID/PROPOSAL ACCEPTANCE PERIOD:** Bids shall be binding upon the bidder for sixty (60) days following the bid opening date. Proposals shall be binding upon the offeror for ninety (90) days following the proposal due date. Any bid/proposal on which the bidder/offeror shortens the acceptance period may be rejected.

8. **CORRECTION OR WITHDRAWAL OF BIDS AND CANCELLATION OF AWARDS UNDER COMPETITIVE SEALED BIDDING:** Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, shall be permitted. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the Town or fair competition shall be permitted. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Purchasing Agent. No bid may be withdrawn when the result would be to award the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent (5%). If a bid is withdrawn, the lowest remaining bid shall be deemed to be the low bid. If the Purchasing Agent, the Using Department, or a designee of such, denies the withdrawal of a bid, he shall notify the bidder in writing stating his decision.
9. **TAX EXEMPTION:** The Town of Vienna is exempt from State Sales Tax and Federal Excise Tax. The Town's Federal Tax ID Number is 54-6001654. DO NOT INCLUDE TAX IN BID. Tax Exemption Certificate furnished by the Town of Vienna on request.
10. **USE OF BRAND NAME OR EQUAL:** Unless otherwise provided in the solicitation, the name of a certain brand, make or manufacturer does not restrict bidders/offerors to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the Town of Vienna, in its sole discretion, determines to be equal to that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The bidder/offeror is responsible to clearly and specifically indicate the product being offered and to provide sufficient descriptive literature, catalogs and technical details to enable the Town of Vienna to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid non-responsive. Unless the bidder/offeror clearly indicates in its bid/proposal that the product offered is an "EQUAL" product, such bid/proposal will be considered to offer the brand name product referenced in the solicitation.
11. **SAMPLES:** Samples, if required, must be furnished free of expense to the Town of Vienna on or before date specified; if not destroyed in examination, they will be returned to bidder, if requested, at his expense. Each sample must be marked with the bidder's name and address, Town's request number and opening date. DO NOT ENCLOSE IN OR ATTACH BID TO SAMPLE.
12. **DELIVERY:** Bids must show number of days required to place material in using agency's receiving area under normal conditions. Proposal must show the number of days required to provide the services/reports as specified.  
  
Failure to state delivery time obligates bidder/offeror to complete delivery in fourteen (14) calendar days or as specified. A five (5) day difference in delivery promise may break a tie bid. An unrealistically short or long delivery promise may cause a bid/offer to be disregarded. Consistent failure to meet delivery promise without valid reason may cause removal from bid list. Delivery shall be made during normal working hours, 8:00 am to 4:30 pm Monday through Friday, unless prior approval for another time period has been obtained from Consignee.
13. **DEFAULT:** In case of failure to deliver goods/services in accordance with the contractual terms and conditions, the Town of Vienna, Virginia, after due oral or written notice, may procure them from other sources and hold the defaulting Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Town of Vienna may have.

## RFP 12-07– CDL DRUG TESTING SERVICES

14. **CONDITION OF ITEMS:** All items bid/proposed shall be new and in first class condition, including containers suitable for shipments and storage, unless otherwise indicated in bid invitation/proposal request. Verbal agreements to the contrary will not be recognized.
15. **SUBSTITUTIONS:** No substitutions or cancellations permitted without prior written approval by the Purchasing Agent.
16. **RIGHTS OF THE TOWN OF VIENNA:** The Town reserves the right to accept or reject all or any part of bids/proposals, waive minor technicalities/informalities and award the contract to the lowest responsive and responsible bidder or most qualified and best suited offeror to best serve the interest of the Town.
17. **ANTI-TRUST:** By entering into a contract, the bidder/offeror conveys, sells, assigns, and transfers to the Town of Vienna all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Town of Vienna under said contract. Consistent and continued tie bidding could cause rejection of bids by the Purchasing Agent and/or investigation for Anti-Trust violations.
18. **INDEMNIFICATION:** The Contractor agrees to indemnify, defend and hold harmless the Town of Vienna, Virginia, its officers, agents, and employees from any claim, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the contractor or any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the sole negligence of the using department or to failure of the using department to use the materials, goods or equipment in the manner already and permanently described by the contractor on the materials, goods or equipment delivered. The vendor agrees to protect the Town from claims involving infringement of patent or copyrights.
19. **TIE BIDS:** If there is a tie for low bid and all other considerations are equal, and if the public interest will not permit the delay of re-advertising for bids, the award shall be determined by drawing lots in public.
20. **PROHIBITION AS SUBCONTRACTORS UNDER COMPETITIVE SEALED BIDDING:** No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.
21. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the Contractor, in whole or in part, without the prior written consent of the Town of Vienna, Virginia.
22. **CONTRACT DOCUMENTS:** The contract entered into by the parties shall consist of the Invitation For Bid/Request For Proposal, the signed bid/proposal submitted by the Contractor, the Town of Vienna's standard Purchase Order, the Mandatory/Special Specifications, Terms and Conditions, and the General Terms and Conditions, all of which shall be referred to collectively as the Contract Documents.  
  
If the contractor has a standard contract form, this form shall be submitted with the bid/proposal submittal for the Town's review of its terms and conditions.
23. **LICENSE REQUIREMENT:** All firms doing business in the Town of Vienna are required to be organized or authorized to transact business in the Commonwealth of Virginia or include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized. Additionally all firms doing business in the Town of Vienna are required to be licensed in accordance with the Town's "Business, Professional and Occupational Licensing (BPOL) Tax" Ordinance. Wholesale and retail merchants without a business location in the Town are exempt from this requirement. Questions concerning the BPOL Tax should be directed to

the Finance Department, Business License Office, Telephone number (703) 255-6321. The BPOL License number must be indicated on the submitted bid form.

24. **AWARD:** The contract shall be awarded to the lowest responsive and responsible bidder or the most qualified and best suited offeror.

The Town Council will award all contracts in the amount of ten thousand dollars (\$10,000.00) or more.

The Purchasing Agent will award all contracts less than ten-thousand dollars (\$10,000.00).

The Purchasing Agent shall sign all contract documents, with the exception of "Construction" contracts, and issue a purchase order to the successful bidder/offeror.

25. **METHOD OF PAYMENT:** Upon satisfactory delivery of the merchandise and/or satisfactory completion of the services, all invoices and statements shall reference the purchase order number and be submitted to:

Town of Vienna  
ATTN: ACCOUNTS PAYABLE  
127 Center St., S.  
Vienna, VA 22180.

The prices and payments shall be full compensation for the labor, tools, equipment, transportation and all other incidentals necessary to complete the specified terms and conditions.

26. **ANTI-DISCRIMINATION:** By submitting their bids/proposals all bidders/offerors certify to the Town of Vienna that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, where applicable, and Section 2.2-4311 of the Virginia Public Procurement Act which provides:

In every contract over \$10,000.00 the provisions in A and B below apply:

- a. During the performance of this contract, the contractor agrees as follows:

The Contractor 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 contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor, is an equal opportunity employer.

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.

- b. The Contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over \$10,000.00, so that the provisions will be binding upon each subcontractor or vendor.

27. **ETHICS IN PUBLIC CONTRACTING:** The provisions contained in Sections 2.2-4367 through 2.2-4377 of the Virginia Public Procurement Act as set forth in the Code of Virginia (1950), as amended, shall be applicable to all contracts solicited or entered into by the Town of Vienna. A copy of these provisions may be obtained from the Purchasing Agent upon written request.

By submitting their bids/proposals, all bidders/offerors certify that their bids/proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other

bidder/offeror, supplier, manufacturer or subcontractor in connection with their bid/proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

28. **CRIMINAL SANCTIONS:** The provisions referenced in Item 27 supplement, but do not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interests Act (§§ 2.2-3100 et seq.), the Virginia Governmental Frauds Act (§§ 18.2-498.1 et seq.), and Articles 2 (§§ 18.2-438 et seq.) and 3 (§§ 18.2-446 et seq.) of Chapter 10 of Title 18.2. The provisions apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act.
29. **APPLICABLE LAW AND COURTS:** Any contract resulting from this solicitation shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall comply with applicable federal, state and local laws and regulations.
30. **LABELING OF HAZARDOUS SUBSTANCES:** If the items or products requested by this solicitation are "Hazardous Substances" as defined by 10.1-1400 of the Code of Virginia (1950), as amended, 42 U.S.C. § 11001 et seq., or 42 U.S.C. § 9601 et seq., then the bidder/offeror, by submitting his bid/proposal, certifies and warrants that the items or products to be delivered under this contract shall be properly labeled as required by the foregoing sections and that by delivering the items or products that the bidder/offer does not violate any of the prohibitions of Sec. 10.1-1400 et seq., or the Code of Virginia or Title 15 U.S.C. Sec. 1263.
31. **MATERIAL SAFETY DATA SHEETS:** Material Safety Data Sheets (MSDS) and descriptive literature shall be provided with the bid/proposal or delivered materials for each chemical and/or compound offered. Failure of the bidder/offeror to submit such data sheets may be cause for declaring the bid/proposal as non-responsive.
32. **DEBARMENT STATUS:** By submitting their bids, Bidders certify that they are not currently debarred by the Commonwealth of Virginia or any Political Subdivision from submitting bids on contracts for the type of services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.
33. **COOPERATIVE PROCUREMENT:** As authorized in Section 2.2-4304 of the Code of Virginia this procurement is being conducted on behalf of and may be used by public bodies, agencies, institutions and localities of the several states, territories of the United States, and the District of Columbia with the consent of the Contractor.