



INVITATION TO BID

City of Hampton

ISSUING OFFICE:

Consolidated Procurement Div.
1 Franklin Street, Suite 345
HAMPTON, VA 23669
TELEPHONE: (757) 727-2203
FAX: (757) 727-2207

DATE: May 8, 2012

Attention of Bidder is Directed To Section
2.2-4367 to 2.2-4377 Code of Virginia
(Ethics In Public Contracting)

FORMAL BIDS will be received in the Issuing Office above until Opening Date and Opening Time as specified in this solicitation including any addenda issued by this office. The City of Hampton is not responsible for late delivery by U.S. Postal mail or other couriers. All inquiries for information regarding this Invitation to Bid are to be directed to the Issuing Office as defined herein.

COMMODITY: Plant Mix Hot Asphalt NIGP CODE: 745.21 745.68

**PLEASE FILL IN OFFEROR'S NAME & ADDRESS
IN THE SPACES PROVIDED BELOW:**

THIS IS NOT AN ORDER

ITB ITEM NO.
12-84E

PROCUREMENT OFFICER
Nevador Evans, CPPB,
Buyer

OPENING DATE
May 21, 2012

OPENING TIME
2:00 P.M. EST

PREBID CONFERENCE
N/A

THE CITY OF HAMPTON HEREAFTER REFERRED TO AS THE "CITY", RESERVES THE RIGHT TO ACCEPT OR REJECT ANY AND ALL BIDS IN WHOLE OR IN PART AND WAIVE ANY INFORMALITIES IN THE BIDDING PROCESS. FURTHER, THE CITY RESERVES THE RIGHT TO ENTER INTO ANY CONTRACT DEEMED TO BE IN ITS BEST INTEREST. THE ENTIRE CONTENTS OF THE INVITATION TO BID, ANY ADDENDA, BIDDERS RESPONSE AND ANY CHANGE ORDERS SHALL BE INCORPORATED BY REFERENCE INTO ANY RESULTING CONTRACT.

THE CITY OF HAMPTON DOES NOT DISCRIMINATE AGAINST FAITH-BASED ORGANIZATIONS

Plant Mix Hot Asphalt

The City of Hampton is seeking bids from responsive and responsible bidders to furnish Plant Mix Hot Asphalt per scope herein. Contract will be awarded "in-part" to a primary and secondary supplier.

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

IN COMPLIANCE WITH THIS SOLICITATION AND TO ALL THE CONDITIONS IMPOSED HEREIN, THE UNDERSIGNED AGREES TO PERFORM ANY CONTRACT AWARDED AS A RESULT OF THIS SOLICITATION. THE FOLLOWING SECTION SHALL BE SIGNED BY AN AGENT AUTHORIZED TO BIND THE COMPANY. FAILURE TO EXECUTE THIS PORTION MAY RESULT IN BID REJECTION.

Authorized Agent:

Signature

Type or Print Name

Email Address

Telephone Number

Fax Number

Company FEI/FIN#

ENCLOSURES

ANTI-COLLUSION/NONDISCRIMINATION/DRUG-FREE WORKPLACE REQUIREMENTS

ANTI-COLLUSION CLAUSE:

IN THE PREPARATION AND SUBMISSION OF THIS PROPOSAL, SAID BIDDER DID NOT EITHER DIRECTLY OR INDIRECTLY ENTER INTO ANY COMBINATION OR ARRANGEMENT WITH ANY PERSON, FIRM OR CORPORATION, OR ENTER INTO ANY AGREEMENT, PARTICIPATE IN ANY COLLUSION, OR OTHERWISE TAKE ANY ACTION IN VIOLATION OF THE SHERMAN ACT (15 U.S.C. SECTION 1), SECTIONS 59.1-9.1 THROUGH 59.1-9.17 OR SECTIONS 59.1-68.6 THROUGH 59.1-68.8 OF THE CODE OF VIRGINIA.

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

DRUG-FREE WORKPLACE:

DURING THE PERFORMANCE OF THIS CONTRACT, THE SUCCESSFUL BIDDER AGREES TO (I) PROVIDE A DRUG-FREE WORKPLACE FOR THE SUCCESSFUL BIDDER'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 SUCCESSFUL OFFEROR'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 SUCCESSFUL OFFEROR THAT THE SUCCESSFUL OFFEROR 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 SUSUCCESSFUL OFFEROR OR VENDOR.

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

EMPLOYMENT DISCRIMINATION BY THE SUCESSFUL OFFEROR SHALL BE PROHIBITED:

1. DURING THE PERFORMANCE OF THIS CONTRACT, THE SUCCESSFUL BIDDER AGREES AS FOLLOWS:
 - a. THE BIDDER, SHALL NOT DISCRIMINATE AGAINST ANY EMPLOYEE OR APPLICANT FOR EMPLOYMENT BECAUSE OF RACE, RELIGION, COLOR, SEX, NATIONAL ORIGIN, AGE, DISABILITY, OR ANY OTHER BASIS PROHIBITED BY STATE LAW RELATING TO DISCRIMINATION IN EMPLOYMENT, EXCEPT WHERE THERE IS A BONA FIDE OCCUPATIONAL QUALIFICATION REASONABLY NECESSARY TO THE NORMAL OPERATION OF THE SUCCESSFUL OFFEROR. THE SUCCESSFUL BIDDER AGREES TO POST IN CONSPICUOUS PLACES, AVAILABLE TO EMPLOYEES AND APPLICANTS FOR EMPLOYMENT, NOTICES SETTING FORTH THE PROVISIONS OF THIS NONDISCRIMINATION CLAUSE.
 - b. THE SUCCESSFUL BIDDER, IN ALL SOLICITATIONS OR ADVERTISEMENTS FOR EMPLOYEES PLACED BY OR ON BEHALF OF THE SUCCESSFUL BIDDER, SHALL STATE THAT SUCH SUCCESSFUL BIDDER 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.
2. THE SUCCESSFUL BIDDER 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 SUBCONTRACTOR OR VENDOR.

Name and Address of BIDDER:

Date: _____ Authorized Signature _____

Printed Name: _____ Title: _____

Phone Number: _____ Fax Number: _____

Email Address: _____

Federal Tax Identification Number/Social Security Number: _____

Is Bidder a "minority" business? ☐ Yes ☐ No

☐ African American ☐ Hispanic American

Is Offeror Woman Owned? ☐ Yes ☐ No

Is Offeror a Small Business? ☐ Yes ☐ No

If yes, please indicate the "minority" classification below:

☐ American Indian ☐ Eskimo ☐ Asian American ☐ Aleut ☐ Other; Please Explain:

Is Offeror a Faith-Based Organization? ☐ Yes ☐ No

I. PURPOSE

The purpose of this ITB is to solicit sealed bids from responsive and responsible bidders to furnish Plant Mix Hot Asphalt as needed per material specifications in pricing schedule.

II. SCOPE OF WORK

A. General Requirements:

Asphalt required shall meet Virginia Department of Transportation (VDOT) standards for types SM9.5, SM9.5D, BM25.0D, and IM19.0D; and shall be used for the maintenance and construction of roadways and parking lots within the City of Hampton.

B. Specific Requirements:

1. **Asphalt meeting the above requirements in Section 111A.I shall be made available to the City for pickup during the hours of 7am and 5pm EST, Monday through Friday.**
2. **The City reserves the right to use multiple vendors to supply asphalt if deemed in the best interest of the City as a result of plant breakdowns, travel distance, or any other event that may cause the City to incur additional costs. The City also reserves the right to offer and/or accept/reject the optional three one (1) year renewal options.**
3. **Increases/decreases of products shall be based on the latest Bureau of Labor Statistics Producer Price Index (PPI) for Asphalt commodity Cost 05810112 "Asphalt" of the South Region.**
4. **Review of pricing shall occur every 90 days from date of award, using previous month's PPI index and mutually agreed upon by both parties.**
5. **Pickup will be within a 25 mile radius. Per VDOT 211.03, the minimum lay down temperature is 250 degrees and asphalt must remain at that temperature or above for successful lay down.**

III. SPECIAL INSTRUCTIONS TO THE BIDDER

C. Definitions:

Issuing Office:

Wherever used in this Invitation to Bid, Issuing Office will be:

Nevador Evans, CPPB,

Buyer

Consolidated Procurement Division

Community, Municipal Services/Education

1 Franklin Street, Suite 345

Hampton, VA 23669

Phone: (757) 727-2200

Fax: (757) 727-2207

Email: nevans@hampton.gov

City Contract Administrator:

Wherever used in this Invitation to Bid and for purposes of any notices under this contract, City Contract Administrator will be:

Tyler Richardson

Public Works Street Operations

550 N. Back River Rd.

Hampton, VA 23669

Phone: (757) 726-2916,
Fax: (757)-726-2822
Email: prichardson@hampton.gov

D. Bidders of Record

Bidders receiving a copy of this ITB from a source other than the Issuing Office must contact the Issuing Office via email at nevans@hampton.gov and provide Bidder's name, address, contact person, telephone and fax number, and the ITB Item Number. Bidder will be added to the bidder's list and will receive notification of any addenda to the ITB. Bidders are encouraged to check www.hampton.gov/bids-contracts for any addenda prior to submitting bids.

E. Questions

Bidders must submit questions regarding this Invitation to Bid in writing to the Issuing Office at (757) 727-2207 or email preferably, nevans@hampton.gov **no later than 4:30 PM EST May 16, 2012**. Necessary replies will be issued to all bidders of record as addenda that shall become part of the contract documents. Oral instructions do not form a part of the bid documents.

Offeror is responsible for checking the www.hampton.gov/bids-contracts - web site or contacting the Issuing Office within 48 hours prior to bid opening to secure any addenda issued for this ITB.

F. Late Submissions, Modifications, and Withdrawal of Bid

Bidders are responsible for submitting bids, and any modifications or withdrawals, so as to reach the Issuing Office designated in the ITB by the time specified in the ITB.

Any bid, modification, or withdrawal received at the Issuing Office designated in the ITB after the exact time specified for receipt of bids shall be considered "late" and will not be considered unless there is acceptable evidence to establish that it was received at the Issuing Office and was under the control of the City prior to the time set for receipt of bids.

Acceptable evidence to establish the time of receipt at the Issuing Office includes the time/date stamp of that office on the bid wrapper, other documentary evidence of receipt maintained by the office, or oral testimony or statements of Consolidated Procurement Division personnel.

If an emergency or unanticipated event interrupts normal City processes so that bids cannot be received at the Issuing Office by the exact time specified in the ITB and urgent City requirements preclude modifications to the ITB, the time specified for receipt of bids will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal City processes resume.

Bids may be withdrawn by written notice received at any time before the exact time set for receipt of bids. A bid may be withdrawn in person by a Bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established, a formal written request to withdraw the Bid is submitted on the firm's letterhead, and the person signs a receipt for the bid.

G. Preparation of Bids

To be considered for award, a bid must comply in all material respects with the ITB. Bidders are expected to examine the drawings, specifications, and all instructions in this ITB. Failure to do so will be at the Bidder's own risk.

Each Bidder shall furnish the information required by the solicitation. The Bidder is expected to:

- Sign the bid, page 1 and print or type its name and address on the cover of the ITB;
- Sign the ANTICOLLUSION/NON-DISCRIMINATION on page 2 of this ITB and complete all other information requested on the same page;
- Complete the pricing and Place of Performance information requested in the Pricing Schedule section of the ITB;

- Changes must be initialed by the authorized Agent signing the bid. For each lump sum price offered, Bidders must show, in its descriptive literature:

- (a) Present the amount for the (Requested) equipment in the unit cost and extended cost columns; and
- (b) Present the amount for labor and all other additional costs included in the lump sum price.

In case of discrepancy between a unit price and an extended price, the unit price shall govern as the correct price.

Bids for supplies or services other than those specified will not be considered unless authorized by the solicitation.

Bidders must state a definite time for delivery of supplies or for performance of services, unless otherwise specified in the solicitation. Time, if stated as a number of days, will be interpreted to include Saturdays, Sundays, and holidays.

H. Descriptive Literature

"Descriptive literature," as used in this provision, means information furnished by a Bidder, such as cuts, illustrations, drawings, and brochures, that shows a product's characteristics or construction or explains its operation. The term includes only that information required to evaluate the acceptability of the product and excludes other information for operating or maintaining the product.

Descriptive literature is required to establish, for the purpose of evaluation and award, details of the product offered that are specified elsewhere in the solicitation and pertain to significant elements including, but not limited to:

- a. Design;
- b. Materials;
- c. Components;
- d. Performance characteristics; and
- e. Methods of manufacture, assembly, construction, or operation.
- f. Descriptive literature, required elsewhere in this solicitation, must be:
 - g. Identified to show the item(s) of the offer to which it applies; and
 - h. Received by the time specified in this solicitation.
 - i. If the Bidder fails to submit required descriptive literature on time with the Bid submittal, the City may reject the bid.
 - j. If the descriptive literature fails to show that the product offered conforms to the requirements of the solicitation, the City will reject the bid.

I. Bid Submittal Requirements

Bids must be submitted utilizing the following requirements:

All bids shall be received by due date and time indicated on page one (1) of solicitation. The time and date of bid will be determined by stamped date and time of receipt by Procurement. If delivered in person or by courier, the bid will be time stamped in the Issuing Office no later than the Closing Date and Time shown on the cover page of this Invitation For Bids. Any bid received after the specified date and time (time stamped 2:01 P.M. or later) shall not be considered.

Bids received by email or facsimile will not be accepted.

Bids must include all elements noted in the Bid Preparation paragraph above.

Bids should be submitted in the format specified in the Supplies/Services/Prices section of the ITB.

Statement setting forth the basis for protection of proprietary information, if any, as detailed in the ***Proprietary Information/Disclosure*** section.

J. Bid Opening

The Issuing Office shall decide when the time set for opening bids has arrived. Bids received before the bid opening time will be publicly opened and, if practical, read aloud to the persons present, recorded and abstracted. Review of the abstract of the bids by interested persons will be permitted immediately after bid opening, if it does not unduly interfere with the conduct of City business, as determined by the Issuing Office.

Copies of the abstract will not be provided until a formal evaluation and award determination has been made by the Issuing Office.

K. Contact with City Staff, Representatives, and/or Agents:

Direct contact with City staff, representatives, and/or agents other than Consolidated Procurement Division staff on the subject of this ITB or any subject related to this ITB is expressly prohibited except with the prior knowledge and permission of the Purchasing Agent or designated representative.

L. Cooperative Procurement

Section 2.2-4304 Code of Virginia (VPPA) will apply to this solicitation. Other Public Bodies may utilize any contract(s) issued pursuant to this solicitation by placing its own order(s) directly with the successful offeror(s). The City of Hampton acts only as the issuing agent and is not responsible for placement of orders, payment or discrepancies of other participating Public Bodies.

IV. GENERAL TERMS AND CONDITIONS

A. Contract Document:

This ITB, its Addenda, and Successful Bidder's bid will constitute the final contract, hereafter referred to as "this contract". These documents will be incorporated by reference into the City purchase order awarding this contract.

B. Bid Binding For Ninety (90) Days:

Bidder agrees that its bid shall be binding and may not be withdrawn for a period of ninety (90) calendar days after the scheduled opening date of this Invitation for Bid.

C. Proprietary Information/Non-Disclosure:

Bidder is advised that the Virginia Public Procurement Act (Section 2.2-4342, Code of Virginia, 1950 as amended) shall govern public inspection of all records submitted by Bidder. Specifically, if Bidder seeks to protect any proprietary data or materials, pursuant to Section 2.2-4342, Bidder shall:

1. Invoke the protections of this section prior to or upon submission of the data or other materials,
2. Provide a statement that identifies the data or other materials to be protected and that states the reasons why protection is necessary.
3. Submit trade secrets or other proprietary information under separate cover in a sealed envelope clearly marked "**PROPRIETARY**".
4. Information submitted that does not meet the above requirements will be considered public information in accordance with State statutes.
5. HC reserves the right to submit such information to the HC attorney for concurrence of the Bidder's claim that it is in fact proprietary.
6. References to the proprietary information may be made within the body of the Proposal; however, all information contained within the body of the Proposal shall be public information in accordance with State statutes.
7. Trade secrets or proprietary information submitted by a Bidder in conjunction with this ITB is not subject to public disclosure under the Virginia Freedom of Information Act (VFOIA).
8. Information submitted that does not meet the above requirements will be considered public information in accordance with the VFOIA.
9. An all-inclusive statement that the entire bid is proprietary is unacceptable. A statement that Bidder's costs and/or Bid pricing are to be protected is unacceptable. Bidder will be requested to remove any such statement(s) in order to be eligible for further evaluation and award.

D. Contract Modification(s):

After award, any and all modifications to this contract shall be mutually agreed to by both parties, in writing, and authorized by the City Purchasing Agent or his designee via issuance of a change order (purchase order).

E. Bidder Obligation:

Bidder shall carefully examine the contents of this Invitation for Bid and any subsequent addenda. Failure to do so shall not relieve the Successful Bidder of its obligation to fulfill the requirements of any contract awarded as a result of this ITB.

F. Conditions of Work:

Bidder shall inform itself fully of the conditions relating to services required herein. Failure to do so will not relieve a Successful Bidder of the obligation to furnish all goods and/or services necessary to carry out the provisions of this contract

G. Prime Contractor:

If in its performance of this contract, Successful Bidder supplies goods or services by or through another party or subcontractor, Successful Bidder agrees that:

1. Successful Bidder shall act as the prime contractor for the goods and services to be provided under contract and shall be the sole point of contact with regard to all obligations under this contract.
2. Successful Bidder represents and warrants that Successful Bidder has made third parties or subcontractors aware of the proposed use and disposition of the other party's products or services, and that such other party has agreed in writing that it has no objection and that City of Hampton (COH) is not liable to such third parties or subcontractors for any work performed under this contract.
3. The use of subcontractors and the work they perform must receive the prior written approval of COH. COH will designate a Contract Administrator to approve such work.
4. Successful Bidder shall be solely responsible for all work performed and materials provided by subcontractors.
5. Successful Bidder shall be responsible for the liability of subcontractors for the types and limits required of the Successful Bidder under this contract.

H. Subcontractors:

Contractor's use of subcontractors and the work they are to perform must receive written approval from the Contract Administrator at least ten (10) calendar days prior to the work being performed. Contractor shall be solely responsible for all work performed and materials provided by subcontractors. Contractor shall be responsible for the liability of subcontractors for the types and limits required of the Contractor.

I. Non-Assignment:

Successful Offeror shall not assign its rights and duties under this Agreement without the prior written consent of the City Contract Administrator.

J. Antitrust:

Any perceived anti-trust violation will be reported to the State Attorney General for possible enforcement of anti-trust laws.

K. Anti-collusion/Nondiscrimination Requirements Form:

The attached "Anti-collusion/Nondiscrimination Requirements" form, on page 2 of this ITB, shall be executed by Bidder and is to be submitted with Bidder's Proposal. The requirements set forth on said form shall be considered to be binding terms and conditions in any contract resulting from this ITB. A contract will not be awarded to a Bidder who has not signed the anti-collusion/nondiscrimination statement.

L. Hold Harmless/Indemnification:

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

M. Notices:

All notices, requests, demands, and elections under this contract, other than routine operational communications, shall be in writing and shall be deemed to have been duly given on the date when hand-delivered, or on the date of the confirmed facsimile transmission, or on the date received when delivered by courier that has a reliable system for tracking delivery, or six (6) City business days after the date of mailing when mailed by United States mail, registered or certified mail, return receipt requested, postage prepaid. All notices shall be addressed to the following individuals:

To City of Hampton: City Contract Administrator as designated in this ITB.

To Contractor: Contractor's Contract Administrator as defined in Successful Bidder's Bid Response.

Either party may from time to time change the individual(s) to receive notices and/or its address for notification purposes by giving the other party written notice as provided above.

N. Non-Performance:

1. Delivery Delays: the City reserves the right to procure goods and/or services to be provided under this contract from other sources in the event Contractor fails to deliver such goods and/or service deliverables in accordance with delivery dates and time frames set forth in this contract.
2. Unacceptable Deliveries (Rejections): Upon notification by the City that goods and/or service deliverables provided by the Contractor under this contract are damaged and/or not of the quality specified by the City,

such goods and/or service deliverables will be rejected. Contractor shall replace such rejected goods and/or service deliverables immediately or within a reasonable time as determined by the City.

3. Contractor shall remove all rejected materials, equipment or supplies from the premises of the City within ten (10) days of notification. Rejected goods and/or service deliverables not removed from City's premises within ten (10) days will be regarded as abandoned, shall become the property of the City, and the City shall have the right to dispose of such items.
4. The City reserves the right to authorize immediate purchase from other sources against rejections.
5. Liability: Contractor shall be liable to the City of Hampton for all costs incurred by the City as a result of Contractor's failure to perform in accordance with the contract. Contractor's liability shall include, but not be limited to:
 - a. Damages and other delay costs, to include costs to procure goods/services from alternate suppliers.
 - b. Increased costs of performance, such as extended overhead and increased performance costs resulting from performance delays caused by Contractor and/or rejections of Contractor's goods and/or service deliverables.
 - c. Warranty and rework costs, liability to third party, excess costs, attorney's fees and related costs incurred by the City due to non-responsive performance of Contractor.

O. Termination Without Cause:

The City may at any time, and for any reason, terminate this Contract by written notice to Contractor specifying the termination date, which shall be not less than thirty (30) days from the date such notice is mailed. Notice shall be given to Contractor by certified mail/return receipt requested at the address set forth in Contractor's Bid Proposal or in Paragraph I of this Contract. In the event of such termination, Contractor shall be paid such amount as shall compensate Contractor for the work satisfactorily completed, and accepted by the City, at the time of termination. If the City terminates this Contract, Contractor shall withdraw its personnel and equipment, cease performance of any further work under this Contract, and turn over to the City any work completed or in process for which payment has been made.

P. Termination With Cause/Breach:

In the event that Contractor shall for any reason or through any cause be in default of the terms of this Contract, City may give Contractor written notice of such default by certified mail/return receipt requested at the address set forth in Contractor's Bid Proposal or in Paragraph I of this Contract. Unless otherwise provided, Contractor shall have ten (10) days from the date such notice is mailed in which to cure the default. Upon failure of Contractor to cure the default, City may immediately cancel and terminate this Contract as of the mailing date of the default notice. Upon termination, Contractor shall withdraw its personnel and equipment, cease performance of any further work under the Contract, and turn over to City any work in process for which payment has been made. In the event of violations of law, safety or health standards and regulations, this Contract may be immediately cancelled and terminated by the City and provisions herein with respect to opportunity to cure default shall not be applicable. This contract may be terminated by either party in the event that the other party has failed to perform a material obligation or has otherwise breached a material term of this contract, if that other party has failed to cure that failure or breach within ten (10) days after receipt of written notice thereof from the other party.

Q. Breach of Contract:

Contractor shall be deemed in breach of this contract if the Contractor:

Fails to comply with any terms of this contract;

Fails to cure such noncompliance within ten (10) calendar days from the date of City written notice or such other time frame, greater than ten (10) calendar days, specified by the City Contract Administrator in the notice.

Fails to submit a written response to the City's notification of noncompliance within ten (10) calendar days after the date of the City notice.

All notices under this contract shall be submitted, either by fax or certified mail, return-receipt requested, to the respective contract administrator. Contractor shall not be in breach of this contract as long as its default was due to causes beyond the reasonable control of and occurred without any fault or negligence on the part of both the Contractor and its subcontractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the City of Hampton in its sovereign capacity, fires, floods, epidemics, strikes, freight embargoes, and unusually severe catastrophic weather such as hurricanes.

R. Applicable Law:

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

S. Compliance With All Laws:

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

limited liability company, that it is in good standing in the Commonwealth of Virginia and will remain in good standing throughout the term of this Contract. Contractor shall at all times observe all health and safety measures and precautions necessary for the sanitary and safe performance of Contractor's obligations hereunder. All City of Hampton business license, personal property, real estate and other applicable tax requirements shall be met by Contractor.

T. Venue:

Venue shall be in the Circuit Court of the City of Hampton, Virginia, and the United States District Court for the Eastern District of Virginia, Norfolk Division, compliant with applicable laws and regulations, as deemed appropriate by the City of Hampton.

U. Severability:

If any provision of this contract is found by any court of competent jurisdiction to be invalid or unenforceable, the invalidity of such provision shall not affect the other provisions of this contract, and all other provisions of this contract shall remain in full force and effect.

V. Non-Appropriation of Funds:

It is understood and agreed between the parties hereto that the City shall be bound and obligated hereunder only to the extent that the funds shall have been appropriated and budgeted for the purpose of this Contract. In the event funds are not appropriated and budgeted in any fiscal year for payments due under this Contract, the City shall immediately notify Contractor of such occurrence and this Contract shall terminate on the last day of the fiscal year for which (an) appropriation(s) (was) were received without penalty or expense to the City of any kind whatsoever.

W. Tax Exemption:

The City of Hampton is exempt from federal excise tax and from all State and local taxes. Contractor shall not include such taxes in any invoices under this agreement. Upon request, the City will furnish the Contractor with tax exemption certificates or the City of Hampton's tax exempt number.

X. Vendor's Invoices:

Contractor shall submit to the City all invoices promptly upon completion of the requirements for installation, delivery, and acceptance of the Products and Services required under this contract. Invoices shall not include any costs other than those identified in the executed City purchase order awarding this contract or any subsequent change orders issued by the Consolidated Purchasing Division on behalf of the City. All shipping costs are the Contractor's responsibility, except to the extent such charges are identified in the executed City purchase order or change orders. Contractor's invoices shall provide at a minimum:

Type and description of the Product or Service installed, delivered and accepted;

Serial numbers, if any;

Quantity delivered;

Charge for each item;

Extended total (unit costs x quantity);

This ITB number and City Purchase Order Number.

Y. Contractual Disputes:

Any dispute concerning a question of fact as a result of a contract with the City of Hampton which is not disposed of by agreement shall be decided by the Purchasing Agent or designee, who shall reduce his decision to writing and mail or otherwise forward a copy thereof to the contractor within thirty (30) days. The decision of Purchasing Agent or designee shall be final and conclusive unless the contractor appeals within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. A contractor may not institute legal action, prior to receipt of the public body's decision on the claim, unless the public body fails to render such decision within the time specified. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty days after final payment; however, written notice of the contractor'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. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

Z. Warranty/Guarantee:

Contractor guarantees against defective or faulty material or workmanship for at least one (1) year or for the manufacturer's standard warranty period, whichever is greater, from date of acceptance by the City. To furnish adequate protection from damage for all work and to repair damages of any kind for which Contractor or Contractor's workmen are responsible, to the building or equipment, to Contractor's own work, or to the work of others. Any merchandise or service provided under the contract which is or becomes defective during the warranty period shall be replaced by the Contractor free of charge with the specific understanding that all replacements shall carry the same guarantee as the original equipment or service (one year or manufacturer's standard warranty period, whichever is greater, from the date of acceptance of the replacement). Contractor shall make any such replacement immediately upon receiving notice from the City.

AA. Payment Terms:

To be eligible for payment, all labor, equipment and materials covered under Contractor's invoice must be completed and accepted by the City. The City agrees to make payments under this contract within thirty (30) days after receipt of a correct invoice for such payment. Where payment is made by mail, the date of postmark shall be deemed to be the date of payment. Any amounts due the City of Hampton under the terms of this or any other agreement may be applied against Contractor's invoices with documentation for the basis of the adjustment attached. In no event shall any interest penalty or late fee accrue when payment is delayed because of disagreement between the City and Contractor regarding the quantity,

quality, time of delivery, or other noncompliance with the contract requirements for any Product or Service or the accuracy or correctness of any invoice. Payment terms offering a "prompt payment discount" of 20 days or greater may be considered in the evaluation of bids. All other payment terms shall be net thirty (30) calendar days or greater. Payment terms not specified by Bidder shall be Net 45 days.

BB. Audits:

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

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

CC. Notice of Award:

Any contract resulting from this ITB will be publicly posted for inspection in the Consolidated Procurement Division, 1 Franklin Street, Suite 345, Hampton, Virginia.

DD. Award:

The City intends to award a contract to the lowest responsible and responsive bidder. At the City's sole discretion, City may reject any or all bids in whole or in part if such action is determined to be in the City's best interest. The City reserves the right to enter into any contract deemed to be in its best interest, including the award of this contract to more than one contractor.

EE. Disposition of Bids:

All materials submitted in response to this ITB will become the property of the City of Hampton. One (1) copy of each bid will be retained for official files, will become a matter of public record after award of the contract, and will be open to public inspection subject to the **Proprietary Information/Disclosure** section of this ITB.

FF. Non-Exclusivity:

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

V. SPECIAL TERMS AND CONDITIONS

A. Contract Terms:

This solicitation is for awarding a FIRM price contract for 90 days from the date of issuance of purchase order, subject to increase/decrease after the first 90 days and review of pricing. If no increase is warranted, initial pricing will continue until such time there is a PPI increase. A review will be made every 90 days in concert with the contractor.

B. Contract Extension:

This contract may be extended upon mutual agreement of both parties for three (3) additional, one (1) year renewal options upon conditions specified under Paragraph B.3 and B4, page 3 of this solicitation.

C. Time is of the essence in this Contract. Contractor expressly acknowledges that in the performance of its obligations, the City is relying on timely performance and will schedule operations and incur obligations to third parties in reliance upon timely performance by Contractor and may sustain substantial losses by reason of untimely performance.

D. Insurance:

Contractor shall submit to the City Contract Administrator Certificates of Insurance, prior to beginning work under this contract and no later than ten (10) days after award of the contract.

All policies of insurance required herein shall be written by insurance companies licensed to conduct the business of insurance in Virginia, and acceptable to the City, and shall carry the provision that the insurance will not be cancelled or materially modified without thirty days (30) prior written notice to the City.

The certificates of insurance shall list the City of Hampton, 1 Franklin Street, Hampton, Virginia 23669, as the additional insured for the specified project as outlined in this ITB.

Insurance shall be maintained during the entire term of the contract and any extensions and shall be of the following forms and limits:

<u>Forms</u>	<u>Limits</u>
Workers' Compensation	Statutory
Automobile Liability	\$1,000,000 Combined Single Limit
Commercial General Liability, including Contractual Liability and Products and Completed Operations Coverage	\$1,000,000 Combined Single Limit
Umbrella/Excess Liability	\$2,000,000

The establishment of minimum limits of insurance by the City does not reduce or limit the liability or responsibilities of the Contractor.

E. Unauthorized Disclosure of Information:

Contractor shall assume the entire responsibility and liability for any and all damages caused by or resulting from or arising out of the negligent or willful unauthorized disclosure of confidential information on the part of the Contractor, its subcontractors, agents or employees under or in connection with this contract. The Contractor shall save harmless and indemnify the City and its agents, volunteers, servants, employees and officers from and against any and all claims, losses or expenses, including but not limited to attorney's fees, which either or both of them may suffer, pay or incur as the result of claims or suits due to, arising out of or in connection with, any and all such unauthorized disclosures, real or alleged. Contractor shall, upon written demand by the City, assume and defend, at the Contractor's sole expense, any and all such suits or defense of claims alleging unauthorized disclosures of confidential information.

Any negligent or willful unauthorized disclosure of confidential information on the part of the Contractor, its subcontractors, agents or employees under or in connection with this contract shall constitute a breach of the terms of this contract. The City may proceed by appropriate court action, including seeking injunctive relief, to prevent continuing unauthorized disclosures, and Contractor shall save harmless and indemnify the City for court costs, litigation expenses and attorney's fees that it may pay or incur as the result of seeking to prevent or stop any and all unauthorized disclosures of confidential information.

F. Copyright/Patent Indemnity:

Contractor shall pay all royalty and license fees relating to the items covered by this contract. In the event any third party shall claim that the manufacture, use and sales of the goods supplied under this contract constitute an infringement of any copyright, trademark, or patent, the Contractor shall indemnify the City and hold the City of Hampton harmless from any cost, expense, damage or loss incurred in any manner by the City on account of any such alleged or actual infringement.

VI. ATTACHMENT A: Pricing Schedule

ITEM	DESCRIPTION	QTY(TONS)	PRICE PER TON (CITY PICK UP)
1	SM 9.5A	25,000	
2	SM 9.5D	4,000	
3	IM 19.0A	5,000	
4	IM 19.0D	4,000	
5	BM 25.0A	15,000	
6	BM 25.0D	4,000	

Quantities are estimates only and in no way binds the City for purchase from awarded suppliers. Prices quoted shall be FIRM-Fixed for the initial 90 days and reviewed every 90 days thereafter as specified herein.

For City use only: total cost per round trip, to include mileage and personnel costs will be calculated by City using actual mileage (x) 2 plus travel distance time in minutes (x) employee salary per hour.

Provide actual mileage from plant to City _____ (x) 2 (x) 0.51 per mile =\$ _____

Travel distance time in minutes _____.

Delivery: State your earliest FIRM delivery or performance date _____. This may become a factor in making the award.

VII. MINORITY AND WOMAN-OWNED BUSINESS PROGRAM

The City of Hampton is implementing new strategies to solicit and utilize minority and woman-owned businesses. To encourage and sustain utilization of minority and woman owned businesses, subcontracting goals have been established for the City of Hampton contracts of \$100,000 and above. The minority and woman-owned subcontracting goals are established by business categories.

The subcontracting goals established for this contract include:

Minorities (MBE) 1.13% Non-minority women (WBE) 2.04%

Solicitation meetings will be held on contracts \$100,000 and above to assist in attaining the contract minority and woman owned business goals.

The City of Hampton requires that each minority and woman-owned business become a certified Small, Woman and Minority owned business (SWAM) by the State Department of Minority Business Enterprises (DMBE).

Any minority or woman-owned business that is not a certified SWAM vendor will not be considered for meeting the contract goals as established or included in the City of Hampton utilization data.

Prime Contract solicitations require bidders to include, as part of their proposal or bid, a subcontracting plan to include certified minority and woman-owned vendors during the course of the contract work.

- A listing of all certified minority and woman-owned subcontractor vendors
- The dollar value of each subcontract
- A description of type of work to be performed under each contract
- SWAM certification number and contact information for each minority and woman-owned firm

Prime Contractor subcontractor/supplier solicitation information will be submitted to document firms contacted for quotes.

Prime Contractor solicitations and resulting contracts will require each successful bidder to report actual subcontract payments quarterly to the City Procurement Department to ensure accurate utilization records.

All bids submitted must include a subcontracting plan to be considered when determining the lowest responsible and responsive bidders by the City of Hampton.

Changes to the subcontracting plan will require approval from the Procurement Office and Minority Business Program Office during the life of the contract.

Failure of a contractor to adhere to its subcontracting plan may under certain circumstances, result in future loss of contracts and/or debarment from bidding by the City of Hampton. In these cases contractors will be requested to submit documentation of good faith efforts used to meet their subcontracting plan. Determination of efforts will be made on an individual contract basis. It is recommended that contractors pre-qualify or determine the subcontractors' capabilities prior to subletting work.

Good Faith efforts are documented reasonable steps taken to achieve a contract goal. These efforts are those taken by a bidder actively and aggressively trying to obtain the established goal. Mere pro forma efforts are not good faith efforts. The following is a list of types of actions which are considered good faith efforts. It is not intended to be a mandatory checklist nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

- Soliciting through reasonable and available means (pre-bid meetings, advertisements, phone calls, community organizations, etc.)
- Selecting portions of the work to be subcontracted out to increase the likelihood that a contract goal can be achieved.
- Providing interested firms with information necessary to respond in a timely manner to a request for solicitation
- Effectively using the services of available minority and woman-owned organizations, local, state and federal small business assistance offices, etc.

Documentation of such efforts can include a listing of M/WBE firm names, contact information, description of information provided and dates received quotes, etc.

(Please note: this requirement should not be construed as authorizing or directing the exclusion of non-SWAM owned businesses; rather, the purpose is to include as many qualified businesses as possible).

Any Prime Contractor that is a DMBE certified minority or woman-owned vendor that is awarded a contract of \$100,000 and above is not required to submit the above information as the Prime Contractor is itself such a certified business. This does not, however, relieve such a Prime from the obligation to achieve both contract goals during the life of the contract. The City of Hampton reserves the right to review subcontracting plans and good faith efforts to ensure that both goals are achieved.

The City of Hampton will utilize a performance evaluation process that will include documenting the quality of work and business practices of all vendors used on the City of Hampton contracts of \$100,000 and above.

The following forms are attached for use by bidders to ensure consistent submission of required data. These forms must be submitted with the proposal response.

THE CITY OF HAMPTON

SUBCONTRACTOR/SUPPLIER UTILIZATION FORM POTENTIAL MINORITY AND WOMAN-OWNED BUSINESS PARTICIPATION

Project no. _____ Date submitted: _____

Bid goal % _____ Total Contract Value _____

Firm name	Certification no.	Type (M/W)	Percent bid	Dollar value	Type of work

I/We propose that the certified DMBE businesses will be used on this contract as stated herein and assure that during the life of the contract. I/We will meet the goal established by the City of Hampton.

Bidder _____

Signature _____

Title _____ Date _____

THE CITY OF HAMPTON

SUBCONTRACTOR/SUPPLIER SOLICITATION AND UTILIZATION FORM (ALL)

Project no. _____ Date _____

The bidder certifies that this form accurately represents its solicitation and utilization or non-utilization as indicated of the DMBE certified minority and woman-owned businesses listed below for performance of work on this project. The bidder certifies that he/she has had direct contact (email, fax, phone) with the named firms regarding performing work on this project.

Bidder _____ Signature _____

Vendor no.	Name of firm	Telephone no.	SWAM Yes/No	Utilized Yes/No

Frequently Asked Questions (FAQ's) - MBE & WBE Goals

1. How do I know if there is a goal on a project?

It will be mentioned in the ITB (Invitation to bid) or RFP (Request for Proposal). Bidders are encouraged to utilize certified SWaM vendors towards their efforts in meeting the MBE and WBE goals.

2. What is a SWaM vendor?

SWaM is the acronym for Small, Women and Minority owned businesses. A SWaM vendor is a business that has been certified by the Virginia Department of Minority Business Enterprise (DMBE) and is listed in the SWaM Vendor Directory.

3. Where can I find a list of SWaM certified MBE and WBE businesses?

A list of certified SWaM businesses can be found at the following websites:

- City of Hampton Small Business Directory: www.hampton.gov/ed/minority_business_office.html

The directory allows searches by SWaM type, city location and description of work.

- Virginia Department of Minority Business Enterprise: www.dmb.state.va.us

The DMBE website allows searches by company name, SWaM type, NIGP commodity code or description and Zip & NIGP Code.

4. Is it possible to meet both the MBE and WBE goals utilizing one contractor?

No. It is not possible to meet both the MBE and WBE goals utilizing one contractor. These are two separate goals; one for MBE and one for WBE and are independent of each other.

5. I have worked with a minority owned business in the past, but they are not SWaM certified, can I still use them towards meeting the goal?

No. The City requires that each minority and woman-owned business become SWaM certified by DMBE. Any minority or woman-owned business that is not a certified SWaM vendor will not be considered for meeting the contract goals as established or included in the City utilization data.

6. I am a Minority /Woman Owned Business, but I am not SWaM certified, how do I get certified?

As found on the DMBE website, there are four Steps to get certified: Complete an online application, Print out your application, Collect your supporting documentation on the checklist and send the signed application form to the DMBE. Visit their website at www.dmb.state.va.us to start the process.

7. I am a SWaM certified minority / woman owned business, do I still need to meet the MBE and WBE goals?

Yes. The City of Hampton encourages all prime contractors bidding on a project to document efforts and meet the goals.

8. Can I utilize vendors certified as a Small Business (S) that I found on the City of Hampton's / Department of Minority Business Enterprise directory?

You can, but it won't be counted towards meeting the MBE and WBE goals. To meet the MBE goal a business needs to be certified as a Minority Owned Business Enterprise (M), Minority Owned Small Business Enterprise (MS). To meet the WBE goal a business needs to be certified as a Woman Owned Business Enterprise (W) or Woman Owned Small Business Enterprise (WS).

9. Which forms do I have to turn in at bid opening?

There are 3 forms in your bid document pertaining to the Minority Business Program. At time of bid opening, submit Attachment 'A' (Subcontracting Plan) and Attachment 'B' (Solicitation Information). If awarded a contract, Attachment 'C' (Payment Information) will need to be submitted quarterly during the course of the contract.

10. Which is the official form to list the Minority and Woman Owned subcontractors I am proposing to utilize on the project?

Fill out Attachment 'A' (Subcontracting Plan) completely. Bidders must include this form as part of their proposal or bid to list certified minority and woman-owned vendors they plan to utilize on the project. This form should include information on:

- The dollar value and percentage for each subcontractor
- A description of type of work to be performed
- SWaM certification number and contact information for each minority and woman-owned firm

11. I contacted a SWaM certified minority/women owned business, but I won't be utilizing them, how do I document this?

Fill out Attachment 'B' (Solicitation Information) completely.

12. How do I document good faith efforts?

Fill out Attachment 'B' (Solicitation Information) completely. Documentation of such efforts can include a listing of M/WBE firm names, contact information, description of information provided and dates received quotes, etc.

13. If awarded a contract, on what form do I report the payments made to subcontractors?

Successful bidders on City contracts will be required to report actual subcontract payments quarterly to the City Procurement Department to ensure accurate utilization records. Fill out Attachment 'C' (Payment Information) completely to report this information.

14. At what point must a vendor be SWaM certified in order to be counted towards meeting the MBE and WBE goals?

By the bid opening date when an ITB (Invitation to bid) or RFP (Request for Proposal) is due.

15. Who can I contact if I have specific questions or need additional help finding certified minority or woman owned businesses?

You can contact the City of Hampton's Minority Business Office located within the Economic Development Department at (757) 727-6237.