

INVITATION FOR BID

IFB NUMBER: 18-06
IFB SUBJECT: TREE MAINTENANCE AND REMOVAL, AS NEEDED
BID OPENING: JULY 11, 2017 AT 11:00 AM
PUBLIC OPENING: PURCHASING OFFICE
127 CENTER STREET, SOUTH
VIENNA, VIRGINIA 22180

Inquiries concerning contractual or technical matters of this Invitation For Bid shall be made in writing and emailed, no later than July 5, 2017, to:

Gina Gilpin
Purchasing Agent
ggilpin@viennava.gov

NOTICE TO RECIPIENT

Your name appears on the Town of Vienna bidders listing or has been identified as a potential bidder desiring to receive Invitations for Bid for the commodity/service named above. Failure to respond to this invitation with either a bid proposal or a "no bid" may result in the removal of your firm's name from the referenced commodity/service listing. If "no bid", state the reason and return the bid form to the Purchasing Agent.

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IFB 18-06
TREE MAINTENANCE AND REMOVAL, AS NEEDED

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SECTION 1. POSTING NOTICE

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

- **IFB 18-06 TREE MAINTENANCE AND REMOVAL**
- **BID OPENING DATE: July 11, 2017 at 11:00 AM**

Copies of bid forms and specifications are available from the Purchasing Office at the above address, or by calling (703) 255-6359 during normal business hours (8:00am-4:30pm) daily except Saturday, Sunday, and Holidays. These will also be available on the Purchasing Section of the Town's Web Site (www.viennava.gov)

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SECTION 2. PURPOSE

The purpose of this Invitation For Bid is to establish a contract for tree maintenance, removal, and related work located in the public rights-of-way and on public properties for the Town of Vienna Department of Parks and Recreation, on an as needed basis. Bidders shall be certified by the International Society of Arboriculture (ISA), licensed, insured and bonded, and having the experience and equipment to perform tree maintenance and removal work in accordance with the specifications herein.

SECTION 3. SCOPE OF WORK

The contract shall cover the total cost of all labor, insurance, equipment, materials, personnel, transportation, supplies, etc. as necessary for or incidental to completion of the contract as outlined, herein, in accordance with the terms, conditions and specifications. The initial period of performance shall be from July 1, 2017 through June 30, 2018, with options for renewal annually for four (4) additional one year periods.

The successful bidder shall perform the tree work on Town owned properties, parks, rights-of-way and stream valley areas, and occasionally on private property. The work will consist primarily of pruning, removals and stump grinding on an as needed basis as directed by the Town Arborist.

The contractor will be expected to perform all pruning/removals deemed to be too large to be safely executed by the Town staff and equipment.

Tree Maintenance – per inch unit cost basis

Work generally consists of tree removal and maintenance pruning, removal of all brush/debris, and related work in public rights-of-way and Town parks and properties. The diameter (dbh) of a tree shall be measured at 4.5 feet above the existing grade level.

Stump Grinding:

Provide equipment and operator to grind stumps and major lateral roots to a depth of ten (10) inches below the surrounding grade. Backfilling of the holes with soil and removal of the grindings is not required. Stumps will generally be done in lots of five or more and billed at the hourly rate. Per inch rate will be used when the contractor is only grinding one stump.

SECTION 4. QUALIFICATIONS

Bidders must have been in the tree services business for at least the five (5) most recent years and shall employ an ISA certified arborist to supervise any work performed for the Town. Bidders shall provide the names, addresses and telephone numbers of at least three (3) other firms, or government agencies, NOT INCLUDING THE TOWN, for whom this type of work has been performed in the past 12 months.

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BIDDERS MUST COMPLETE AND THE REFERENCE SECTION OF THIS IFB

The Town of Vienna will consider, in determining the qualifications of a bidder, his record in performance of any contracts for the services into which he may have entered with the Town or with other public bodies or corporations; and, the Town of Vienna expressly reserves the right to reject the bid of such bidder, if such record discloses that said bidder, in the opinion of the Town, has not properly performed such contracts or has habitually and without just cause neglected the payment of bills, or has otherwise disregarded his obligations to subcontractors, suppliers or employees.

The Town of Vienna will make an investigation as to the ability of the bidder to perform the work. The Town of Vienna reserves the right to reject any bid, if the evidence submitted by, or investigation of bidder fails to satisfy the Town that such bidder is properly qualified by experience and financial status to carry out the obligations of the contract and to complete the work contemplated therein. Conditional bids will not be accepted.

SECTION 5. BID SUBMISSION

Bidders must use the attached Official Bid Form to submit their bid. All bids must show unit price, if applicable, and total price.

All bidders must return ONE (1) original and ONE(1) copy of the Official Bid Form as well as any issued addendums or any other documentation considered to be part of the Bid Package. Keep a copy of the IFB for your files and do not submit it with the Bid Package.

By signing the Official Bid Form, the bidder acknowledges they have read this solicitation, understand it, and agree to be bound by its terms and conditions. Bids may be submitted by mail or delivered in person.

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. The bids must be received at the following location before the date and time specified:

Office of the Purchasing Agent
127 Center Street S
Vienna, VA 22180

BIDS RECEIVED AFTER THE DATE OR TIME OF OPENING WILL NOT BE CONSIDERED FOR CONTRACT AWARD AND SHALL BE RETURNED TO THE BIDDER.

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

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SECTION 6. SPECIFICATIONS

1. The Contractor shall perform all tree removal and maintenance pruning in accordance with the National Arborist Association standards using industry recommended techniques. All dead and dying branches one (1) inch or larger in diameter (broomstick size) should be removed. Crossing branches will be rectified by removing one or both of the affected branches. Structurally weak branches should be removed. Broken branches should be trimmed back to a lateral branch; if the break occurs within the first half of the total branch length, the broken branch should be cut all the way back to the main stem or trunk. Suckers should be removed from the main trunk and major branches.
- 2) The use of tree spikes will NOT be allowed in any living tree except for tree removal operations or with the specific consent of the Town Arborist or the Director of Parks and Recreation.
- 3) The Contractor shall provide the manpower and the equipment routinely required to complete the work as specified and in accordance with bid prices. Prior to using any additional manpower or equipment for which the Contractor intends to assess the Town an extra fee, he must first receive approval from the Director of Parks and Recreation or the Town Arborist.
- 4) The Contractor shall remove and haul away all wood, brush and debris at the end of each day, unless directed otherwise by the Town Arborist.
- 5) The Contractor shall be fully responsible for requesting any and all assistance that may be necessary from the appropriate utility companies whenever overhead wires, etc. are in danger of damage during the performance of this contract.
- 6) The Contractor shall be held solely responsible for any and all damage to utilities, public and/or private property resulting from his work under this contract. Such damage will be repaired or replaced at no expense to the Town.
- 7) The Contractor shall be responsible for traffic control using appropriate warning signs, cones, flagmen, etc. and shall notify the Vienna Police Department at least one day in advance any time a street must be closed to vehicular traffic. Exceptions may be made for emergency work/conditions.
- 8) The Contractor shall arrange his schedule so that work is performed between the hours of 9:00AM and 3:30PM when working on main commuter routes to avoid disruption of rush hour traffic. Work at sites not anticipated to disrupt rush hour traffic may begin as early as 7:30AM and extend beyond 3:30PM.
- 9) The Contractor shall begin work on a given job within fourteen (14) days after notification to proceed is received from the Town's representative. Work of an "emergency" nature shall be started within twenty-four (24) hours of notification, including weekends and Holidays.
- 10) Once any tree operation, either pruning or removal, is begun it is to be completed the same day or the immediate following work day, weather permitting.

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- 11) The Contractor shall provide the Town with a written estimate of cost and hours required to complete the work requested and the date he will begin. This information shall be submitted to and approved by the Town Arborist or Director of Parks and Recreation PRIOR to any work being performed.
- 12) The three man aerial crew shall have a bucket with a minimum reach of 55 feet and include at least one qualified climber in case work needs to be done at a height beyond the reach of the bucket.
- 13) The Contractor shall provide a stump grinding machine and operator when requested. Stumps are usually ground in quantities of five or more per request/trip and billed at the hourly rate. The per-inch rate will be used when the contractor is called to grind only one stump. Stumps and any large above ground lateral roots are to be ground to a depth of ten (10) inches below the surrounding grade and the grindings raked into a pile. The Town will remove the grindings and backfill the hole(s).
- 14) The Contractor, upon completion of a job, shall notify the Town Arborist or the Director of Parks and Recreation for the purpose of an inspection to verify the specified work has been satisfactorily completed.
- 15) The Town will attempt to schedule sufficient quantities of work to provide the contractor at least a half-day of work at any one time.
- 16) The Town shall not be billed for time lost due to contractor's need to stop work due to equipment failure.
- 17) In the event of emergency conditions, the need for specialized equipment and/or the need for any chemical applications, the Town reserves the right to negotiate with any available firm.

SECTION 7. MANDATORY TERMS AND CONDITIONS

Requirements in Section VI have been specified as mandatory and must be met to the degree stated in these specifications in order for the bid to receive further consideration. Bids which fail to meet ALL of the mandatory requirements may be considered unacceptable and may not be considered for selection. Final acceptance of purchase will depend on the successful completion of all necessary work as specified. All attachments to this solicitation are incorporated into this Section and therefore, they are Mandatory Requirements.

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

All addenda must be signed and submitted with your bid.

Modification of Contract: The Town may, upon mutual agreement with the contractor, issue written modifications to the scope of work and within the general scope thereof, except that no modifications can be made which will result in an increase of the original contract price by a cumulative amount of

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more than \$50,000.00 or 25% whichever is greater, without the advance written approval of the Mayor and Council. (Section 2.2-4309 of Virginia Public Procurement Act).

Insurance: The Contractor shall provide the Purchasing Agent with a Certificate of Insurance PRIOR to the start of any work under the contract and agrees to maintain such insurance until the completion of the contract. The minimum limits of liability shall be:

Workers' Compensation -- Standard Virginia Workers' Compensation Policy.

Broad Form Comprehensive General Liability--\$3,000,000.00

Combined Single Limit coverage to include:

Premises - Operations; Products/Completed Operations;

Contractual; Independent Contractors; Owners and Contractors

Protective: Personal Injury (Libel, Slander, Defamation of Character, etc.)

Automobile Liability-- \$500,000.00 Combined Single Limit.

The Town of Vienna, Virginia is to be named as an additional named insured.

The policy 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.

My signature on this solicitation constitutes certification that, if I am awarded the contract, I shall obtain the required coverage as specified herein within ten (10) days of notification of award.

Progress Schedule: It is the intention of the Town, that all necessary paperwork (insurance, bonds, etc.) be completed and submitted to the Town within ten (10) working days of notice of award of contract. The actual work schedule shall be coordinated with the Town Arborist and performed on an as needed basis.

Hold Harmless Clause: Bids shall provide for the contractor holding harmless the Town of Vienna and representative thereof from all suits, actions, or claims of any kind brought on account of any injuries or damages sustained by any person or property in consequence of any neglect in safeguarding contract work, or on account of any act or omission by the contractor or its employees or from any claim or amounts arising or recovered under any law, bylaw, ordinance, regulation or decree.

Laws and Regulations: The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the work.

The Contractors and Subcontractors shall comply with the Virginia Contractor's Registration Law, Title 54, Chapter 7, Code of Virginia (1950), as amended.

All non-resident Contractors and Subcontractors submitting bids on the work described herein shall register with the Department of Labor and Industry under the provisions of Subsection 40.1-30 of the Code of Virginia (1950), as amended.

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This contract and all other contracts and subcontracts are subject to the provisions of Articles 3 and 5, Chapter 4, Title 40.1, Code of Virginia (1950), as amended, relating to labor unions and the "right to work", and all Contractors and Subcontractors, whether residents or non-residents of the Commonwealth, who perform work related to the project shall comply with all of said provisions.

The Contractor shall furnish the Owner copies of affidavits upon request giving original dates, renewal dates and expiration dates of all labor contracts related to any phase of the work to be performed on the job site under this contract.

The provisions of all rules and regulations governing safety as adopted by the Safety Codes Commission of the Commonwealth of Virginia, issued by the Department of Labor and Industry under Title 40.1 of the Code of Virginia 1950), as amended, shall apply to all work under this contract.

Superintendence By Contractor: The contractor is responsible for all means, methods, techniques, sequences and procedures and for coordinating all portions of the work under the Contract except where otherwise specified in the Contract Documents.

The Contractor shall, at all times, enforce strict discipline and good order among the workers on the project, and shall not employ on the work any unfit person or anyone not skilled in the work assigned to him/her.

The Contractor shall employ an English-speaking superintendent or foreman, at the work site, at all times. This person shall have full authority to act for the Contractor and in full accordance with the Department of Parks and Recreation Director or her designee's instructions.

The Town shall have the right to terminate the contract due to communication problems between the Contractor and/or his representative and the Town's representative.

Contractor's Title To Materials: No materials or supplies for the work shall be purchased by the Contractor or by any Subcontractor subject to any chattel mortgage or under a conditional sales or other agreement by which an interest is retained by the seller. The Contractor warrants that he has clear title to all materials and supplies for which he invoices for payment.

Protection of Persons and Property: The Contractor expressly undertakes, both directly and through its Subcontractors, to take every precaution at all times for the protection of persons and property, including Owner's employees and property and its own.

The Contractor shall use customary and reasonable precautions, including suitable protective coverings wherever necessary, to prevent damage to adjoining areas.

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work.

The Contractor shall continuously maintain adequate protection of all work from damage and shall protect the Owner's property from injury or loss arising in connection with this Contract.

The Contractor shall make good any such damage, injury or loss, except such as may be directly due to errors in the Contract Documents or caused by agents or employees of the Owner.

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The Contractor shall adequately protect adjacent property as provided by law and the Contract Documents, and shall provide and maintain all passageways, guard fences, lights and other facilities for protection required by public authority, local conditions, or any of the Contract Documents.

Owner's Right To Terminate Contract: The contract may be terminated by the Town for any one of the following reasons:

- (a) If the Contractor shall be adjudged bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed in account of his insolvency;
- (b) Substantial evidence that the progress being made by the Contractor is insufficient to complete the work within the specified time frame;
- (c) If the Contractor should persistently or repeatedly refuse or should fail, except in cases for which extensions of time is provided, to supply enough properly skilled workers or proper materials;
- (d) If Contractor should fail to make prompt payment to Subcontractors or for material or labor, persistently disregards laws, ordinances or the instructions of the Town, or otherwise be in substantial violation of any provisions of the Contract;
- (e) Failure of the Contractor to promptly make good any defects in materials or work or any defects of any other nature, the correction of which has been directed in writing by the Town;
- (f) Substantial evidence of collusion for the purpose of illegally procuring a contract or perpetrating fraud on the Town in the performance of work under contract.

Prior to termination of the Contract, the Contractor and his surety shall be notified in writing by the Town of the Condition which makes termination of contract imminent. Ten (10) days after this notice is given, if a satisfactory effort has not been made by the contractor or his surety to correct the conditions, the Town may declare the contract terminated and notify the Contractor and his surety accordingly.

Upon receipt of notice of contract termination, the Contractor shall immediately discontinue all operations. The Town may then proceed with the work in any lawful manner that they may elect until the project is final and complete.

The Town reserves the right to take possession of the premises and of all materials, tools and appliances thereon and finish the work by what ever method is deemed expedient. In such case, the Contractor shall not be entitled to receive any further payment. If the expense of finishing the work, including compensation for additional managerial and administrative services, shall exceed the unpaid balance of the contract price, the Contractor shall pay the difference to the Town. The expense incurred by the Town as herein provided, and the damage incurred through the Contractor's default, shall be certified by the Town. Termination of the contract under this section is without prejudice to any rights or remedies of the Town.

Defective Work: All work which has been rejected or condemned shall be repaired, or, if it cannot be

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satisfactorily repaired, removed and replaced at the Contractor's expense. Materials not conforming to the requirements of the specifications shall be removed immediately from the site of the work and replaced with satisfactory material by the Contractor at his expense. After receiving formal notice from the Town, if Contractor fails to make satisfactory repairs or to remove and replace rejected or condemned materials or work, the Town may recover for such defective work or materials on the Contractor's bond, or by action in a court having proper jurisdiction over such matters, or may employ labor and equipment to perform corrections and charge the cost for such to the Contractor, which costs will be deducted from any money due to Contractor.

Conditions at Site, Building or Structure: The contractor shall visit specified work site(s) prior to beginning work and shall be responsible for having ascertained pertinent local conditions such as location, accessibility and general character of the site. Claims, as a result of failure to do so, will not be considered by Owner.

Subcontracts: The Contractor shall, as soon as practicable after the signing of the Contract, notify the Owner in writing of the names of Subcontractors proposed for the principal parts of the work.

The Contractor shall not employ any subcontractor that is not responsible or otherwise suitable. The Owner shall not direct the Contractor to contract with any particular Subcontractor, however, the Owner may disapprove the use of any Subcontractor deemed unsuitable.

The Contractor agrees that he is fully responsible to the Owner for the acts or omissions of his Subcontractors and of persons either directly or indirectly employed by him.

Use of Premises and Removal of Debris: The Contractor expressly undertakes either directly or through its Subcontractor: To clean up all refuse rubbish, scrap materials and debris caused by its operations, to the extent that the site of the work shall present a neat, orderly and workmanlike appearance prior to leaving the site.

Work Site Damages: Any damage, including damage to finished surfaces resulting from the performance of this Contract shall be repaired to the Owner's satisfaction at the Contractor's expense.

Renewal of Contract: Upon written agreement of both parties, this contract may be renewed by the Town of Vienna for four (4) additional one year periods within thirty (30) days prior to the contract expiration date. An increase may be requested by the vendor, in writing to the Purchasing Agent, at the time of each contract renewal. Renewal increases shall not exceed the percentage increase of the CPI-U section of the Consumer Price Index of the US Bureau of Labor Statistics for the Washington/Arlington/Alexandria, DC, VA, MD, WV area for the latest 12 months for which statistics are available.

http://www.bls.gov/eag/eag.dc_washington_md.htm#eag_dc_washington_md.f.4

Renewal shall depend upon the performance of the Contractor during the term of the contract and the ability to follow the instructions of the Town Arborist and the Director of Parks and Recreation.

Temporary Suspension of Work: The Town shall have the authority to suspend the work wholly, or in part, for such period(s) as may be deemed necessary due to unsuitable weather, or such other conditions as are considered unfavorable for the prosecution of the work, or for such time as is necessary due to the Contractor's failure to carry out orders or perform any or all provisions of the contract.

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SECTION 8. ESTIMATED QUANTITIES

The quantities listed are *estimates* only and are for the purpose of bid comparison. This is a unit price contract; however, the Town will make the award on the lump sum of the items to the lowest responsive and responsible Bidder. The annual amount will be based on the amount that will be allocated by the Town Council for any fiscal year in which the work will be performed. Therefore, the Town reserves the right to increase or decrease quantities to make full use of the amount of funding that will be allocated for the project(s).

SECTION 9. AWARD OF CONTRACT

The Town of Vienna will make the award on a unit price basis to the lowest total from a responsive and responsible Bidder. The Town reserves the right to conduct any test it may deem advisable and to make all evaluations necessary. The Town also reserves the right to reject any or all bids in whole or in part, to waive informalities and to delete items prior to making the award, whenever it is deemed in the sole opinion of the Town to be in its best interest.

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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. TAXES:** The Town of Vienna is exempt from the payment of federal excise or state sales taxes on all tangible, personal property for its use or consumption except taxes paid on materials that will be installed by the bidder and become a part of real property.

If a bidder is bidding on materials that require installation by the bidder and become a part of real property, the applicable taxes shall be included in the lump sum bid price for the installation of the material and not as a separate charge for taxes. The taxes shall be an obligation of the successful bidder and not of the Town, and the Town shall be held harmless for same by the successful bidder.

The Purchasing Office will furnish a Tax Exemption Certificate (Form ST-12) upon request and if applicable to this contract.

When a bidder lists a separate tax charge on the Bid Form and the tax is not applicable to the purchase by the Town, the bidder will be allowed to delete the tax from its bid.
- 10. USE OF BRAND NAME OR EQUAL:**

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- a) 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.
- b) 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.
- c) It shall be understood that the burden of proof for an "equal" product shall be and remain the sole responsibility of the bidder. The Town's decision of approval or disapproval of a proposed alternate shall be final. Nothing herein is intended to exclude any responsible bidder, its product or service or in any way restrain or restrict competition.
11. **SAMPLES:** Samples, if required, must be furnished free of expense to the Town of Vienna on or before date 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.
15. **TOWN'S RIGHT TO TERMINATE THE CONTRACT:** The Contract may be terminated by the Town for any one of the following reasons:
- a) If the successful bidder should be adjudged bankrupt, or make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of the successful bidder's insolvency, or if the successful bidder should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to deliver the goods or services within the time specified, or if the bidder otherwise defaults, then the Town may without prejudice to any other right or remedy, and after giving the successful bidder seven (7) calendar days written notice, terminate the employment of the successful bidder and procure such goods or services from other sources. In such event, the successful bidder shall be liable to the Town for any additional cost occasioned by such failure or other default.
- b) In such cases, the successful bidder shall not be entitled to receive any further payment if the
- 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. **TRADE SECRETS/PROPRIETARY INFORMATION:** Trade secrets or proprietary information submitted by an Offeror in response to this Request for Proposal shall not be subject to public disclosure under the Virginia Freedom of Information Act (FOIA); however, the Offeror must invoke the protection of this section prior to or upon submission of data or materials to be protected and state the reasons why protection is necessary (Section 2.2-4342F of the Code of Virginia).
13. **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.
14. **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, expense of finishing the contract requirements, including compensation for additional; managerial and administrative services shall exceed the unpaid balance of the contract price, the successful bidder shall pay the difference to the Town.
- c) If the successful bidder should fail to make prompt payment to Subcontractor(s) for material or labor, persistently disregards laws, ordinances or the instruction of the Town, or otherwise be in substantial violation of any provisions of the Contract;
- d) Failure of the Contractor to promptly make good any defects in materials or work or any defects of any other nature, the correction of which has been directed in writing by the Town;
- e) Substantial evidence of collusion for the purpose of illegally procuring a contract or perpetrating fraud on the Town in the construction of work under contract.
- f) Prior to termination of the Contract, the successful bidder and his Surety shall be notified in writing by the Town of the condition which makes termination of contract imminent. Ten (10) days after this notice is given, if a satisfactory effort has not been made by the successful bidder or his Surety to correct the conditions, the Town may declare the Contract terminated and notify the successful bidder and his Surety accordingly.

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- g) Upon receipt of notice of contract termination, the successful bidder shall immediately discontinue all operations. The Town may then proceed with the work in any lawful manner that they may elect until the project is final and complete.
 - h) The Town reserves the right to take possession of the premises and of all materials, tools and appliances thereon and finish the work by whatever method is deemed expedient. In such case, the successful bidder shall not be entitled to receive any further payment. If the expense of finishing the work, including compensation for additional managerial and administrative services, shall exceed the unpaid balance of the contract price, the successful bidder shall pay the difference to the Town. The expense incurred by the Town as herein provided, and the damaged incurred through the Contractor's default, shall be certified by the Town.
 - i) Termination of the contract under this section is without prejudice to any rights or remedies of the Town.
 - j) The Town reserves the right to cancel and terminate any resulting contract, in whole or in part, without penalty, upon 60 days written notice to the Contractor/ Consultant. Any contract cancellation notice shall not relieve the Contractor/Consultant of the obligation to delivery and/or perform on all outstanding services performed prior to the effective date of cancellation.
 - k) Notwithstanding anything to the contrary contained in the contract between the Town and the successful bidder, the Town may, without prejudice to any other rights it may have, terminate the contract for convenience and with cause, by giving thirty (30) days written notice to the successful bidder.
 - l) In the event the Contract is terminated for cause related to the Contractor/Consultant's (or its Subcontractor's) hiring of unauthorized aliens, Contractor/Consultant, Contractor/Consultant hereby waives any claim to lost profits and the Town will proceed in accordance with subsections f) et seq. above.
16. **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.
17. **SUBSTITUTIONS:** No substitutions or cancellations permitted without prior written approval by the Purchasing Agent.
18. **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.
19. **NEGOTIATION WITH THE LOWEST BIDDER:**
- a) If all bids received exceed the available funds for the proposed purchase, the Town, pursuant to Town Code provisions, may meet with the lowest responsive and responsible bidder to discuss a reduction in the scope for the proposed purchase and negotiate a contract price within the available funds.
 - b) After bid negotiations, the lowest responsible bidder shall submit an addendum to its bid, which addendum shall include the change in scope for the proposed purchase, the reduction in price and the new contract value.
 - c) If the proposed addendum is acceptable to the Town, the Town may award a contract within funds available to the lowest responsible bidder based upon the bid as amended by the addendum.
 - d) If the Town and the lowest responsible bidder cannot negotiate a contract within available funds, all bids shall be rejected.
20. **CONTRACTOR'S PERFORMANCE:**
- a) Goods and services must be delivered and rendered strictly in accordance with this bid and shall not deviate in any way from the terms, conditions, prices, quality, quantity, delivery instructions, and specifications of this bid.
 - b) All goods and/or services delivered and/or rendered shall comply with all applicable federal, state, and local laws, and shall not infringe any valid patent or trademark. The successful bidder shall indemnify, keep, save, and hold the Town, its officers and employees, harmless from any liability for infringement and from any and all claims or allegations of infringement by the bidder or the Town, its officers and employees, arising from, growing out of, or in any way involved with the goods delivered or services rendered pursuant to this purchase.
 - c) In the event that suit is brought against the Town, its officers and/or its employees, either independently or jointly with the bidder, the bidder shall defend the Town, its officers and employees, in any such suit at no cost to them. In the event that final judgment is obtained against the Town, its officers, and/or its employees, either independently or jointly with the bidder, then the bidder shall pay such judgment, including costs and attorneys fees, if any, and hold the Town, its officers and employees, harmless there from.
 - d) The successful bidder shall ensure that its employees shall observe and exercise all necessary caution and discretion so as to avoid injury to person or damage to property of any and all kinds.
 - e) The successful bidder shall not, in its product literature or advertising, refer to this purchase or the use of the bidder's goods or services by the Town of Vienna, Virginia.
 - f) The successful bidder shall cooperate with Town officials in performing the specified work so that interference with the Town's activities will be held to a minimum.
21. **DRUG-FREE WORKPLACE TO BE MAINTAINED BY THE CONTRACTOR** (Code of Virginia Section 2.2-

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4312): During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibitions, (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with the Virginia Public Procurement Act, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession, or use of any controlled substance or marijuana during the performance of the contract.

22. **NO DISCRIMINATION AGAINST FAITH-BASED ORGANIZATIONS:**

The Town of Vienna does not discriminate against faith-based organizations as that term is defined in Virginia Code Section 2.2-4343.1.

23. **ANTI-TRUST:** By entering into a contract, the bidder/offeree 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.

24. **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.

25. **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.

26. **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.

27. **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.

28. **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.

29. **LICENSE REQUIREMENT:** 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) 255-5752. The BPOL License number must be indicated on the submitted bid form.

30. **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 twenty-thousand dollars (\$20,000.00) or more.

The Purchasing Agent will award all contracts less than twenty-thousand dollars (\$20,000.00).

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

31. **COMPENSATION:**

- a) It is the Town's policy not to pay for any goods or services until the same have been actually received.
- b) Individual contractors shall provide the Purchasing Office their social security numbers and proprietorships, partnerships and corporations shall provide the federal employer identification numbers (Code of Virginia, Section 2.2-4354.2). This information shall be provided in the space indicated on the Bid Form.
- c) The successful bidder shall submit a complete itemized invoice on each item or service, which is delivered under the contract. The successful bidder shall indicate the purchase order number

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- on the front of each invoice and on the outside of each package or shipping container.
- d) Cash discounts shall be deducted in accordance with the terms of the bid.
 - e) Payment shall be rendered to the successful bidder for satisfactory compliance with the general terms, conditions and specifications of this bid. The required payment date shall be either: (i) the date on which payment is due under the terms of the contract for the provision of such goods or services; or (ii) if such date is not established by contract, not more than forty-five (45) days after goods or services are received or not more than forty-five (45) days after the invoice is rendered, whichever is later (Code of Virginia, Section 2.2-4352).
 - f) Unless otherwise provided under the terms of the contract for the provisions of goods and services, if the Town fails to pay by the payment date, the Town agrees to pay the financial charge assessed by the successful bidder, which does not exceed one percent per month (Code of Virginia, Section 2.2-4354.4).
32. **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.

33. **SUCCESSFUL BIDDER'S OBLIGATION TO PAY SUBCONTRACTOR:**
- a) The successful bidder awarded the contract for this project shall take one of the two following actions within seven (7) days after the receipt of amounts paid to the successful bidder by the Town for work performed by the successful bidder's subcontractor(s) under the contract (Code of Virginia, Section 2.2-4354):
 1. Pay the subcontractor(s) for the proportionate share of the total payment received from the Town attributable to the work performed by the subcontractor(s) under the contract; or
 2. Notify the Town and subcontractor(s), in writing, of their intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.
 - b) The successful bidder shall pay interest to the subcontractor(s) on all amounts owed by the successful bidder that remain unpaid after seven (7) days following receipt by the successful bidder of payment from the Town for work performed by the subcontractor(s) under the contract, except for amounts withheld as allowed in subparagraph a (2) of this section. Unless otherwise provided

- under the terms of this contract, interest shall accrue at the rate of one percent (1%) per month.
- c) The successful bidder shall include in each of its subcontractors a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor(s).
 - d) The successful bidder's obligation to pay an interest charge to a subcontractor(s) pursuant to the payment clause in this section may not be construed to be an obligation of the Town. A contract modification may not be made for the purpose of providing reimbursement for such interest charge and a cost reimbursement claim may not include any amount for reimbursement for such interest charge.

34. **ANTI-DISCRIMINATION:** By submitting their bids/proposals all bidders/offers 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.

35. **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/offers certify that their bids/proposals are made without collusion

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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.

36. **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.
37. **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.
38. **LAWS AND REGULATIONS:** The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the work.

The Contractors and Subcontractors shall comply with the Virginia Contractor's Registration Law, Title 54.1, Chapter 11, Code of Virginia (1950), as amended.

All non-resident Contractors and Subcontractors submitting bids on the work described herein shall register with the Department of Labor and Industry under the provisions of Subsection 40.1-30 of the Code of Virginia (1950), as amended.

This contract and all other contracts and subcontracts are subject to the provisions of Articles 3 and 5, Chapter 4, Title 40.1, Code of Virginia (1950), as amended, relating to labor unions and the "right to work", and all Contractors and Subcontractors, whether residents or non-residents of the Commonwealth, who perform work related to the project shall comply with all of said provisions.

The Contractor shall furnish the Owner copies of affidavits upon request giving original dates, renewal dates and expiration dates of all labor contracts related to any phase of the work to be performed on the job site under this contract.

The provisions of all rules and regulations governing safety as adopted by the Safety Codes Commission of the Commonwealth of Virginia, issued by the Department of Labor and Industry under Title 40.1 of the Code of Virginia (1950), as amended, shall apply to all work under this contract.

The Contractor/Consultant shall comply with all laws and regulations of the Commonwealth of Virginia and the United States with respect to the employment of unauthorized aliens. Contractor/Consultant shall not hire or subcontract any portion of the work under this Contract to any individual the Contractor knows or reasonably should know to be an unauthorized alien as defined by 8 U.S.C. §1324a(h)(3). A violation of this provision shall constitute a material breach of the Contract and the Town may, in its sole discretion, terminate the contract.

39. **LABELING OF HAZARDOUS SUBSTANCES:** If the items or products requested by this solicitation are "Hazardous Substances" as defined by 3.1-250 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/offeror does not violate any of the prohibitions of Sec. 3.1-252 or the Code of Virginia or Title 15 U.S.C. Sec. 1263.
40. **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.
41. **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.
42. **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.
43. **RECORD RETENTION/TOWN AUDITS:**
- The successful bidder shall retain, during the performance of the contract and for a period of three (3) years from the completion of the contract, all records pertaining to the successful bidder's bid and any contract awarded pursuant to this Invitation for Bid. Such records shall include but not be limited to all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices, including successful bidder's copies of periodic estimates for partial payments; ledgers; cancelled checks; deposit slips; bank statements; journals; contract amendments and change orders; insurance documents; payroll documents; timesheets; memoranda; and correspondence. Such records shall be available to the Town on demand and without advance notice during the successful bidder's normal working hours.

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- b) Town personnel may perform in-progress and post-audits of the successful bidder's records as a result of a contract awarded pursuant to this Invitation for Bid. Files would be available on demand and without notice during normal working hours.

44. **MODIFICATION OF CONTRACT:** The Town may, upon mutual agreement with the Contractor, issue written modifications to the scope of work of this contract, and within the general scope thereof, except that no modifications can be made which will result in an increase of the original contract price by a cumulative amount of more than \$50,000.00 or twenty-five percent (25%) of the amount of the original contract, whichever is greater, without the advance written approval of the Mayor and the Town Council. (Section 2.2-4309 of Virginia Public Procurement Act).

Should it become necessary, for the best interest of the Town, to make modifications, the same shall be covered by change order. The Contractor shall not begin work on any alteration requiring a change order until the agreement, setting forth the changes/modifications, has been executed in writing by the Town and the Contractor.

If a satisfactory agreement cannot be mutually agreed to for any item requiring a change order, the Town reserves the right to terminate the contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the work.

The Town may, in writing, omit from the work any item, other than major items, found unnecessary to the project and such omission shall not be a waiver of any condition of the contract nor invalidate any of the provisions thereof. Major items may be omitted by change order.

The Contractor shall be paid for all work done toward the completion of the item prior to such cancellation, alteration or suspension of the work by the Town.

A major item shall be construed to be any item, the total cost of which is equal to or greater than ten percent (10%) of the total; contract amount for each separate alternate, computed on the basis of the proposed quantity and the contract unit price.

The Contractor/Consultant shall comply with all laws and regulations of the Commonwealth of Virginia and the United States with respect to the employment of unauthorized aliens. Contractor/Consultant shall not hire or subcontract any portion of the work under this Contract to any individual the Contractor knows or reasonably should know to be an unauthorized alien as defined by 8 U.S.C. §1324a(h)(3). A violation of this provision shall constitute a material breach of the Contract and the Town may, in its sole discretion, terminate the contract.

45. **SPECIFICATION FAMILIARITY:**
- a) It is the Bidder's responsibility to examine this entire IFB carefully. If a question arises as to the meaning or intent of these documents, inquiry must be made in writing to the Purchasing Agent.

- b) The submission of a bid shall indicate that the Bidder thoroughly understands the terms and conditions of the IFB.

46. **CONTRACT AND FORMS:**

- a) Bidders are advised that the Town does not sign standard contract forms that may be used by the bidder. The selected Bidder will be expected to enter into a contract with the Town for the commodities outlined in this IFB. The form of contract will be the Town's Purchase Order and/or Agreement.
- b) The bid form contains a signature line for the bidder that must be signed when submitting a bid. The signature certifies the bidder is an agent of officer authorized to bind the Contractor to the terms and conditions of the IFB.

47. **ADDENDA AND INTERPRETATIONS:** No interpretation of the meaning of these documents will be made to any bidder orally. Any request for an interpretation must be in writing addressed to Town of Vienna, 127 Center Street, South, Vienna, VA 22180, Attention: Purchasing Agent. Faxed inquiries to the Purchasing Department fax number will also be accepted. To be given consideration, requests must be received at least five days prior to the date fixed for the submission of Bids. Any and all such interpretations and any supplemental instructions will be returned in writing to the prospective bidder requesting such interpretations, or will be in the form of written addenda which, if issued, will be sent to all prospective bidders, at the respective addresses furnished for such purpose, not later than three days prior to the date fixed for the submission of Bids. Failure of any bidder to receive any such addenda or interpretations shall not relieve said bidder from any obligation under his Bid as submitted. All addenda so issued shall become part of the Contract Documents.

48. **INSURANCE:** The Contractor shall provide the Purchasing Agent with a Certificate of Insurance PRIOR to the start of any work under the contract and agrees to maintain such insurance until the completion of the contract. The minimum limits of liability shall be:

Workers' Compensation -- Standard Virginia Workers' Compensation Policy

Broad Form Comprehensive General Liability-- \$3,000,000.00.

Combined Single Limit coverage to include:
Premises - Operations; Products/Completed Operations;
Contractual; Independent Contractors; Owners and Contractors
Protective; Personal Injury (Libel, Slander,
Defamation of Character, etc.)

Automobile Liability--\$500,000.00 Combined Single Limit.

The Town of Vienna, Virginia is to be named as an additional insured and this is to be so noted on Certificate of Insurance.

The policy shall be delivered to the Town of Vienna PRIOR to the commencement of any work.

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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.

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

49. **WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY:**

- a) The successful Bidder's/Offoror's insurance shall cover the bidder/offoror and its subcontractors of every tier of those sources of liability which would be covered by the latest edition of the standard Worker's Compensation Policy, as filed for use in the Commonwealth of Virginia by the National Council on Compensation Insurance, without restrictive endorsements, but including Broad Form All States Endorsement. In addition to coverage for the Virginia Worker's Compensation Act, where appropriate, coverage is to be included for the United States Longshore and Harbor Worker's Compensation Act, Maritime including Jones Act, Federal Liability Act and any other applicable federal or state law.
- b) Subject to the restrictions of coverage found in the standard Worker's Compensation Policy, there shall be no maximum limit on the amount of coverage for liability imposed by the Virginia Worker's Compensation Act, the United States Longshore and Harbor Worker's Compensation Act, or any other coverage customarily insured under Part One of the standard Worker's Compensation Policy. The minimum amount of coverage for those coverages customarily insured under Part Two of the standards Worker's Compensation (inclusive of any amounts provided by an umbrella or excess policy) shall be \$1,000,000 bodily injury by accident each accident, \$1,000,000 bodily injury by disease each employee, and \$1,000,000 bodily injury by disease policy limit or aggregate where such aggregate is applicable under the terms of the standard Worker's Compensation Policy.

50. **PROFESSIONAL LIABILITY:**

- a) The successful bidder/offoror shall provide the Town of Vienna with an Errors and Omissions Liability Policy (E&O Policy). The policy shall cover the Town of Vienna for all sources of liability which would be covered by the latest edition of the standard Errors and Omissions Liability Coverage Form, as filed for use in the Commonwealth of Virginia by the Insurance Services Office without the attachment of restrictive endorsements.
- b) The policy shall be endorsed to include the Town of Vienna's officials, officers, agents and employees as insured. The E&O Policy shall include the successful Offoror and the offeror's subcontractors of every tier as the designated in the declarations.
- c) The minimum E&O Policy limits to be provided by

the successful Offoror (inclusive of any amounts provided by an umbrella or excess policy) shall be \$1,000,000 per occurrence combined single limit for bodily injury liability and property damage liability. The limits afforded by the E&O Policy (or umbrella or excess policy with respect to it) shall apply only to the Town of Vienna officials, officers, agents and employees and only to claims arising out of or in connection with the work under this contract.

The insurance provided by the successful Offoror pursuant to the resulting contract shall apply on a primary basis and any other insurance or self-insurance maintained by the Town of Vienna or the Town of Vienna official, officer, agent or employee shall be excess of and not contributing with the insurance provided by or on behalf of the Offoror.

The coverages other than Worker's Compensation may be either on an occurrence or a claims-made basis. Provided, however, that claims-made coverage for other than the Products/Completed Operations shall respond to claims arising out of accidents, occurrences, incidents and offenses happening after the commencement of the resulting contract but before the end of the contract completion date provided that the claim is made within five years after the contract completion date.

Prior to commencing work under a resulting contract, the successful Offoror shall furnish the Town of Vienna with a Certificate(s) of Insurance naming the Town of Vienna, its officers, employees and agents, as additional insureds, giving a forty-five (45) day notice of cancellation, non-renewal, or change in the insurance coverage, and/or restrictions.

51. **SAFETY:** All contractors and subcontractors performing services for the Town of Vienna are required to comply with OSHA standards and accepted safety rules and regulations.
52. **OWNERSHIP OF PRODUCTS/SERVICES:** All control work, compilation of notes, work sheets, and any and all interim and final products and materials shall be the sole property of the Town of Vienna.
53. **COLLUSION:** By submitting a bid/proposal in response to this solicitation, the Bidder/Offoror represents that in the preparation and submission of this bid/proposal, said Bidder/Offoror did not, either directly or indirectly, enter into any combination or arrangement with any person, Bidder/Offoror or corporation or enter into any agreement, participate in any collusion, or otherwise take any action in the restraint of free, competitive bidding in violation of the Sherman Act (15 U.S.C. Section 1) or 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.

IFB 18-06 TREE MAINTENANCE AND REMOVAL, AS NEEDED

SECTION 11. REFERENCES

MUST BE COMPLETED AND RETURNED WITH BID

NAME OF COMPANY _____

QUALIFICATION OF BIDDER: Bidders 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) NAME: _____

ADDRESS: _____

CONTACT PERSON: _____ **TITLE** _____

PHONE NUMBER: _____ **EMAIL** _____

2) NAME: _____

ADDRESS: _____

CONTACT PERSON: _____ **TITLE** _____

PHONE NUMBER: _____ **EMAIL** _____

3)NAME: _____

ADDRESS: _____

CONTACT PERSON: _____ **TITLE** _____

PHONE NUMBER: _____ **EMAIL** _____