

REQUEST FOR PROPOSAL

RFP NUMBER: **19-06**
RFP SUBJECT: **4TH OF JULY FIREWORKS**
PROPOSAL DUE DATE: **FEBRUARY 15, 2019 @ 11:00 AM**

PROPOSALS MUST BE SUBMITTED TO:

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

ALL INQUIRIES SHOULD EMAILED TO THE PURCHASING AGENT AT ggilpin@viennava.gov by **FEBRUARY 7, 2019 AT 1:00 PM.**

The Town of Vienna reserves the right to reject any or all proposals or to accept the proposals which, in its judgment, will be for its best interest.

Copies of solicitations are available online at www.viennava.gov and from the Purchasing Office at the above address, or by calling (703) 255-6359 during normal business hours (8:00 am - 4:30 pm), daily except Saturday, Sunday, and Holidays.

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

NAME & ADDRESS OF FIRM:

EEI/FIN NO: _____

SIGNATURE: _____ TITLE: _____
(Date)

TELEPHONE NO: _____ EMAIL: _____

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SECTION 1. ADVERTISEMENT

REQUEST FOR PROPOSAL

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

- **RFP 19-06 4TH OF JULY FIREWORKS DISPLAY**
- **Proposal Due Date: February 15, 2019 at 11:00 AM**

Copies of solicitations are available online at www.viennava.gov.

PUBLICATION:
The Washington Times

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SECTION 2. PURPOSE

The Town of Vienna is requesting proposals from qualified and licensed firms to provide an outdoor fireworks display for the Town of Vienna's Fourth of July Celebration on July 4, 2019, with a renewable option for July 4, 2020, July 4, 2021, July 4, 2022 and July 4, 2023. The rain date is July 5. Discussions may be conducted with responsible offerors, who submit proposals, for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors are expected to examine the entire Request for Proposal. Failure to do so will be at the offeror's risk. A vendor will be selected to provide fireworks and pyro-technicians in accordance with the specifications. After award of the proposal, the successful offeror enters into a contract with the Town of Vienna.

SECTION 3. BACKGROUND

The Town of Vienna, Virginia is located in Northern Virginia in close proximity to the Metropolitan Washington, DC, region. It has a population of approximately 14,000 within the Town, but routinely attracts spectators from the greater Vienna area.

The Town of Vienna Parks and Recreation Department hosts the Fourth of July Celebration and Fireworks Display on July 4, 2019, with a rain date of July 5, 2019. The location of the event is:

Southside Park, 1317 Ross Drive, Vienna, VA 22180

SECTION 4. SPECIFICATIONS AND SCOPE

Minimum specific items to be included in the proposal are:

- A) An itemized listing of the quantities of each type of shell, size of shell and description of same to be fired to include the brand, manufacturer, and the firing method to assist the Town in evaluating the variety and quality of the proposed display.
- B) Sequencing of show and how shells will be displayed
- C) Firing team - names of pyro-technicians that will shoot the show
- D) Whether the offeror plans to reload mortars during the show
- E) Past experiences and references
- F) Licenses and certifications
- G) Show fee structure and estimate as described in this Section, #5
- H) Other relevant material at the discretion of offeror

The proposal shall cover the total cost of all labor, security (except for 6pm to 10pm day of firing), insurance, permits, materials, personnel transportation, supplies, fireworks, equipment, and pyro-technicians, etc. as necessary for or incidental to properly and safely set-up, fire and dismantle an aerial display.

Based on an agreed upon scope of work, the consultant shall deliver to the Town the following items:

1. Length of show: Displays shall be 20 minutes in duration, and shall include at least a 2 minute opening barrage and a 5 minute finale. Provide exact length of show in proposal.

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2. Shells: No single shells may be smaller than 2.5” in diameter or larger than 3” in diameter. No cake boxes may be used. All fireworks materials shall be clearly marked, indicating the type of shell, and shall be delivered to the site the day of the event. No overnight storage of fireworks in the Town of Vienna or the display site prior to the firing day. **Due to the location, this show must be all aerial.** Please see Attachment “A” for pictures of the site.
3. Firing method:
 - a) The show shall be computer operated or mechanically operated in order to electronically fire all shells.
 - b) The successful offeror should plan to fire the display using above ground racks and racks and apparatus. Digging will not be allowed.
 - c) A sufficient number of racks and mortars shall be included with the display to enable the preloading of all of the opening volley shells, all of the grand finale shells and to assure that the main display shells are fired at a rate of no less than one shell every four (4) seconds.
4. Show content: The Contractor will include a detailed description of the show, including shell counts. Specifically, the number, size and type of shells to be fired, the brand, manufacturer, and the firing method as required by Fairfax County Fire Department. Firing method must be electronic. The contractor must provide a materials listing of shells and a cost per unit and materials cost per shell. Contractor must provide set-up requirements; services necessary such as power and water to be coordinated with the Town. Provide the length of time needed for site set-up and take-down. The final shows content (See NFPA 1123) must be submitted to the Fairfax County Fire Marshal’s Office and the Town at least 30 days prior to July 4th.
5. Budget: Not to exceed \$25,000.
6. Professional Memberships: List all professional memberships for your firm.
7. Safety: The Contractor will provide necessary safety equipment per Fairfax County Fire Marshal. At minimum, this includes long sleeve cotton shirts and trousers, hard hat, eye and ear protection and proper footwear (no sandals, open toed shoes, etc).
8. Meetings:
 - a) The contractor and the pyro-technicians scheduled to shoot the show will participate in a mandatory planning meeting in April with the Parks and Recreation Director, and other Town/County officials.
9. Insurance
 - Workers' Compensation -- Standard Virginia Workers' Compensation Policy
 - Broad Form Comprehensive General Liability--\$7,500,000.00.
 - 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.

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The Town of Vienna, Virginia, Vienna Little League, and Fairfax County Public Schools as well as any other event sponsors approved by the Town Council, are to be named as an additional named insured and this is to be so noted on Certificate of Insurance as well as on the Comprehensive General Liability insurance policy. Proof of such must be provided no less than ten (10) days prior to show date.

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.

Your signature on this solicitation constitutes certification that, if your firm is awarded the contract, you shall obtain the required coverage as specified herein within ten (10) days of notification of award.

10. Postponement Policy: In the event the display is postponed for any reason including rain, drought, natural disaster, wind conditions, or strike, then the display will be re-scheduled for the following day, July 5th, unless a different day is mutually agreed upon with the Vendor and the Director of Parks and Recreation. The stipulations of delivery outlined above shall be followed in case of rain cancellation. A staff contact will be arranged for any decision regarding postponement. No additional payments will be made to the contractor if rain postpones display until July 5, 2019. If the show is cancelled entirely after the July 5, 2019, rain date, the Town will reimburse the contractor the actual expenses with preparation of the program up to an amount of 50% of the contract price. The decision to postpone the show due to rain will be made by the Contractor and Town officials prior to the Contractor beginning to load shells. Once the show has been loaded, every effort will be made to proceed with the show. The Contractor must anticipate the occurrence of a brief rain storm and be prepared to protect the show materials from damage due to such weather.
11. Permits: The contractor is responsible for obtaining any necessary permits at no additional cost to the Town.
12. References: The contractor shall provide the names, addresses and telephone numbers of at least five (5) other firms or government agencies for whom a similar type of work (outside shows with comparable site conditions and electronic firing system) has been performed in the past eighteen (18) months. OFFERORS MUST INCLUDE THESE REFERENCES WITH THEIR PROPOSAL.
13. Pyro-technicians: The pyro-technicians in charge of the display shall be able bodied men or women at least twenty-one (21) years of age, trained, and competent in this type procedure. At no time shall there be less than two certified pyro-technicians present. Proof of certification as a pyro-technician from the Virginia State Fire Marshal's Office must be provided to the Fairfax County Fire Marshal 90 days prior to July 4, 2019.
14. Delivery: Delivery of the fireworks to the Town of Vienna is to be made no earlier than July 4, 2019 and no later than 9am on July 4, 2019. Displays will be completely set up and ready for inspection by 4pm on July 4. Should option year(s) be accepted, delivery of fireworks would be July 4, 2020, July 4, 2021, July 4, 2022, and July 4, 2023 for the Town of Vienna.
15. Deduction: The Town of Vienna reserves the right to deduct for any shells not provided and/or not fired.

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- 16. Security and disposal of unfired and dud shells: The Contractor will be responsible for the security, proper removal and disposal of unfired shells.
- 17. Coordination:
Town staff (Department of Parks and Recreation) will serve as the coordinating department with the pyro-technic company. The Director will serve as the department contact.
- 18. FAA, State, County and Local Approvals - The selected firm must acquire all mandatory permits for the show including the FAA, State of Virginia, Fairfax County and the Town of Vienna. These approvals must be in place at least thirty (30) days prior to July 4th. In addition the Fairfax County Fire Marshal shall have permitting jurisdiction. Therefore, all Fairfax County and NFPA regulations must be followed (see NFPA 1123).

SECTION 5. PROPOSAL EVALUATION CRITERIA

<u>Criteria</u>	<u>Weight Given</u>
1. Responsiveness: The Town will consider the materials submitted by the proposer to determine whether the proposer is in compliance with the RFP.	20%
2. Show Content: Creativity, variety, content and length of the show. Review of the detailed show description	40%
3. Responsibility: The Town will consider the materials submitted by the proposer and other evidence it may obtain to determine the company’s ability and history of successfully completing contracts of this type, meeting projected deadlines and experience with similar shows.	30%
4. References	10%

SECTION 6. QUALIFICATIONS

The Town of Vienna will consider, in determining the qualifications of an Offeror, 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 Offeror, if such record discloses that said Offeror, in the opinion of the Town, has not properly performed such contracts. The Town will specifically consider any safety violations or complaints related to the offeror’s performance of work in the past.

The Town of Vienna will make an investigation as to the ability of the Offeror to perform the work. The Town of Vienna reserves the right to reject any proposal, if the evidence submitted by, or investigation of Offeror, fails to satisfy the Town that such Offeror is properly qualified by experience and financial status to

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carry out the obligations of the contract and to complete the work contemplated therein. Conditional proposals will not be accepted.

SECTION 7. PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS

1. **RFP RESPONSE:** In order to be considered for selection, offerors must submit a complete response to this RFP. One (1) original and three (3) copies of each quotation must be submitted to the Purchasing Office. No other distribution of proposals shall be made by the Offeror.
2. **PROPOSAL PREPARATION:** Proposals must be signed by an authorized representative of the Offeror. All information requested must be submitted. Failure to submit all information requested may result in the Purchasing Agent requiring prompt submission of missing information and/or giving a lowered evaluation of the quotation. Proposals which are substantially incomplete or lack key information may be rejected by the Town at its discretion. Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of context. Each copy of the proposal should be bound in a single volume. The Town *prefers* that ring binders are not used.
3. Proposals should be as thorough and detailed as possible so that the Town may properly evaluate the Offeror's capabilities to provide the required services.

SECTION 8. AWARD OF CONTRACT

The Town may engage in individual discussions with two (2) or more of the offerors deemed fully qualified by the Evaluation Committee. Repetitive informal interviews shall be permissible. Such offerors shall be encouraged to elaborate on their qualifications and performance data or staff qualifications pertinent to the proposed project, as well as alternate concepts.

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

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

SECTION 9. CONTRACT TERM AND RENEWAL

This contract may be renewed, after one (1) year by the Town of Vienna upon written agreement of both parties for four (4) additional one-year periods under the terms and conditions of the original contract. Price increases may be negotiated only at the time of extension. Renewal shall depend upon the performance of the Offeror. The performance evaluation shall be dependent upon the ability of the Offeror to follow instruction given by the Director of Parks and Recreation or the Town's authorized representative.

SECTION 10. MANDATORY TERMS AND CONDITIONS

Requirements in this section 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.

Site Visit: Prior to submitting a proposal, prospective offerors should make an effort to visit the site to familiarize themselves with the conditions and limitations of the site. Failure to visit the site does not release the successful offeror from fulfilling any and all obligations necessary to fulfill the requirements of the request and subsequent award.

Availability of Funds: It is understood and agreed herein that the Town of Vienna shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

Progress Schedule: It is the intention of the Town, that all necessary paperwork (insurance, etc.) be completed within ten (10) working days of notice of award. The Offeror shall coordinate all details of the show with the Director of Parks and Recreation or her designee.

Modification of Contract: The Town may, upon mutual agreement with the Offeror, 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 Offeror shall not begin work on any alteration requiring a change order until the agreement, setting forth the changes/modifications, has been executed by the Town and the Offeror.

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.

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.

Hold Harmless: Bids shall provide for the Offeror holding harmless the Town of Vienna and representatives 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

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account of any act or omission by the Offeror or its employees, or from any claim or amounts arising or recovered under any law, bylaw, ordinance, regulation or decree.

Laws and Regulations: The Offeror 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.

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 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 Offeror: The Offeror shall be 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 Offeror 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 Offeror shall employ an English-speaking show producer, at the site. This person shall have full authority to act for the Offeror and in full accordance with the Director of Parks and Recreation or his designee's instructions.

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

Protection of Persons and Property: The Offeror 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 Offeror shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work.

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

The Offeror 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:

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- (a) If the Offeror should be adjudged bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency;
- (b) Substantial evidence that the progress being made by the Offeror is insufficient to complete the work within the specified time frame;
- (c) If the Offeror 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 Offeror should fail to make prompt payment to Subcontractors or for material or labor, or persistently disregards laws, ordinances or the instructions of the Town, or otherwise be in substantial violation of any provisions of the Contract;
- (e) Substantial evidence of collusion for the purpose of illegally procuring a contract or perpetrating fraud on the Town in the provision of services.

Prior to termination of the Contract, the Offeror 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 Offeror or his surety to correct the conditions, the Town may declare the contract terminated and notify the Offeror accordingly.

If the expense of contracting with an alternative vendor, including compensation for additional managerial and administrative services, shall exceed the unpaid balance of the contract price, the Offeror shall pay the difference to the Town. The expense incurred by the Town as herein provided, and the damage incurred through the Offeror's default, shall be certified by the Town.

Termination of the contract under this section is without prejudice to any other rights or remedies of the Town.

Conditions at Site, Building or Structure: Offeror shall visit the show site and shall be responsible for having ascertained pertinent local conditions such as location, accessibility and general character of the site, building or structure, and the character and extent of existing work within or adjacent to the site. Claims, as a result of failure to do so, will not be considered by Owner.

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 Offeror's expense.

Delivery and Storage: It shall be the responsibility of the Offeror to make all arrangements for delivery, unloading, receiving and storing materials. The Town of Vienna will not assume any responsibility for receiving materials.

Cancellation of Contract: The Town reserves the right to cancel and terminate any resulting contact, in part or in whole, without penalty, upon 60 days written notice to the Offeror.

Debarment Status: By submitting their proposals, all offerors certify that they are not currently debarred from submitting proposals on contracts by any agency of the Commonwealth of Virginia, nor are they an agent of any person or entity that is currently debarred from submitting proposals on contracts by any agency of the Commonwealth of Virginia.

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SECTION 11. GENERAL TERMS AND CONDITIONS

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

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

1. **CLARIFICATION OF TERMS:** If any prospective bidder/offeror has questions about the specifications or other solicitation documents, the prospective bidder/offeror should contact the Purchasing Agent or the person whose name appears on the face of solicitation NO LATER THAN SEVEN (7) WORKING DAYS BEFORE opening/closing date. Any revisions to the solicitation will be made only by addendum issued by the Purchasing Agent.
2. **PREPARATION & SUBMISSION:** In order to be considered for selection, the bidder/offeror must submit a complete response to the Invitation For Bid/Request For Proposals. One (1) original and one (1) copy of each bid/proposal must be submitted on the Town of Vienna Bid/Proposal Forms provided. The bid/proposal shall be signed by an authorized representative of the bidders'/offerors' firm and delivered to the proper location by the time and date specified on the cover page.
3. **ENVELOPE IDENTIFICATION:** The signed bids must be returned in a sealed envelope and identified as follows: "SEALED BID", show the IFB number, IFB subject, opening time, opening date, and bidder's name and address. In the case of proposals, the signed proposal cover page and proposal must be returned in a sealed envelope, marked clearly on the outside "SEALED COMPETITIVE NEGOTIATION", show the RFP number, RFP subject, closing time, closing date, and offeror's name and address.

If a bid/proposal is mailed in an envelope, not identified as specified, the bidder/offeror takes the risk that the envelope may be inadvertently opened and the information compromised which may cause the bid/proposal to be disqualified. The Town reserves the right to declare such a bid/proposal as non-responsive. Bids/proposals may be hand delivered to the designated location.
4. **LATE BIDS/PROPOSALS:** LATE bids/proposals will be returned to bidder/offeror UNOPENED, if the IFB/RFP number and return address is shown on the envelope.
5. **QUOTATIONS TO BE F.O.B. DESTINATION:** Quote F.O.B. DESTINATION for all competitive sealed bids. If otherwise, show exact cost to deliver.
6. **PRICING ERRORS:** In case of an error in price extension, the firm fixed unit price shall govern.
7. **BID/PROPOSAL ACCEPTANCE PERIOD:** Bids shall be binding upon the bidder for sixty (60) days following the bid opening date. Proposals shall be binding upon the offeror for ninety (90) days following the proposal due date. Any bid/proposal on which the bidder/offeror shortens the acceptance period may be rejected.
8. **CORRECTION OR WITHDRAWAL OF BIDS AND CANCELLATION OF AWARDS UNDER COMPETITIVE SEALED BIDDING:** Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, shall be permitted. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the Town or fair competition shall be permitted. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Purchasing Agent. No bid may be withdrawn when the result would be to award the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent (5%). If a bid is withdrawn, the lowest remaining bid shall be deemed to be the low bid. If the Purchasing Agent, the Using Department, or a designee of such, denies the withdrawal of a bid, he shall notify the bidder in writing stating his decision.
9. **TAX EXEMPTION:** The Town of Vienna is exempt from State Sales Tax and Federal Excise Tax. The Town's Federal Tax ID Number is 54-6001654. DO NOT INCLUDE TAX IN BID. Tax Exemption Certificate furnished by the Town of Vienna on request.
10. **USE OF BRAND NAME OR EQUAL:** Unless otherwise provided in the solicitation, the name of a certain brand, make or manufacturer does not restrict bidders/offerors to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the Town of Vienna, in its sole discretion, determines to be equal to that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The bidder/offeror is responsible to clearly and specifically indicate the product being offered and to provide sufficient descriptive literature, catalogs and technical details to enable the Town of Vienna to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid non-responsive. Unless the bidder/offeror clearly indicates in its bid/proposal that the product offered is an "EQUAL" product, such bid/proposal will be considered to offer the brand name product referenced in the solicitation.
11. **SAMPLES:** Samples, if required, must be furnished free of expense to the Town of Vienna on or before date specified; if not destroyed in examination, they will be returned to bidder, if requested, at his expense. Each sample must be marked with the bidder's name and address, Town's request number and opening date. DO NOT ENCLOSE IN OR ATTACH BID TO SAMPLE.

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12. **DELIVERY:** Bids must show number of days required to place material in using agency's receiving area under normal conditions. Proposal must show the number of days required to provide the services/reports as specified.

Failure to state delivery time obligates bidder/offeror to complete delivery in fourteen (14) calendar days or as specified. A five (5) day difference in delivery promise may break a tie bid. An unrealistically short or long delivery promise may cause a bid/offer to be disregarded. Consistent failure to meet delivery promise without valid reason may cause removal from bid list. Delivery shall be made during normal working hours, 8:00 am to 4:30 pm Monday through Friday, unless prior approval for another time period has been obtained from Consignee.

13. **DEFAULT:** In case of failure to deliver goods/services in accordance with the contractual terms and conditions, the Town of Vienna, Virginia, after due oral or written notice, may procure them from other sources and hold the defaulting Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Town of Vienna may have.
14. **CONDITION OF ITEMS:** All items bid/proposed shall be new and in first class condition, including containers suitable for shipments and storage, unless otherwise indicated in bid invitation/proposal request. Verbal agreements to the contrary will not be recognized.
15. **SUBSTITUTIONS:** No substitutions or cancellations permitted without prior written approval by the Purchasing Agent.
16. **RIGHTS OF THE TOWN OF VIENNA:** The Town reserves the right to accept or reject all or any part of bids/proposals, waive minor technicalities/informalities and award the contract to the lowest responsive and responsible bidder or most qualified and best suited offeror to best serve the interest of the Town.
17. **ANTI-TRUST:** By entering into a contract, the bidder/offeror conveys, sells, assigns, and transfers to the Town of Vienna all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Town of Vienna under said contract. Consistent and continued tie bidding could cause rejection of bids by the Purchasing Agent and/or investigation for Anti-Trust violations.
18. **INDEMNIFICATION:** The Contractor agrees to indemnify, defend and hold harmless the Town of Vienna, Virginia, its officers, agents, and employees from any claim, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the contractor or any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the sole negligence of the using department or to failure of the using department to use the materials, goods or equipment in the manner already and permanently described by the contractor on the materials, goods or equipment delivered. The vendor agrees to protect the Town from claims involving infringement of patent or copyrights.

19. **TIE BIDS:** If there is a tie for low bid and all other considerations are equal, and if the public interest will not permit the delay of re-advertising for bids, the award shall be determined by drawing lots in public.

20. **PROHIBITION AS SUBCONTRACTORS UNDER COMPETITIVE SEALED BIDDING:** No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

21. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the Contractor, in whole or in part, without the prior written consent of the Town of Vienna, Virginia.

22. **CONTRACT DOCUMENTS:** The contract entered into by the parties shall consist of the Invitation For Bid/Request For Proposal, the signed bid/proposal submitted by the Contractor, the Town of Vienna's standard Purchase Order, the Mandatory/Special Specifications, Terms and Conditions, and the General Terms and Conditions, all of which shall be referred to collectively as the Contract Documents.

If the contractor has a standard contract form, this form shall be submitted with the bid/proposal submittal for the Town's review of its terms and conditions.

23. **LICENSE REQUIREMENT:** All firms doing business in the Town of Vienna are required to be licensed in accordance with the Town's "Business, Professional and Occupational Licensing (BPOL) Tax" Ordinance. Wholesale and retail merchants without a business location in the Town are exempt from this requirement. Questions concerning the BPOL Tax should be directed to the Finance Department, Business License Office, Telephone number (703) 255-6321. The BPOL License number must be indicated on the submitted bid form.

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

The Town Council will award all contracts in the amount of thirty thousand dollars (\$30,000.00) or more.

The Purchasing Agent will award all contracts less than thirty thousand dollars (\$30,000.00).

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

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

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

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

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

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

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

The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

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

Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

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

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

By submitting their bids/proposals, all bidders/offerors certify that their bids/proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other bidder/offeror, supplier, manufacturer or subcontractor in connection with their bid/proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal

value, present or promised unless consideration of substantially equal or greater value was exchanged.

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