

# HAMPTON VA

## INVITATION TO BID – GOODS AND SERVICES

ISSUE DATE: April 13, 2021	ITB #: 21-57/AP	NGIP CODE: 88578
DATE/TIME OF CLOSING: May 11, 2021 at 10:00 AM ET	BUYER NAME: Antonio Palmer	COMMODITY: Hydrated Lime
THE CITY OF HAMPTON IS SEEKING BIDS FROM QUALIFIED BIDDERS TO FURNISH AND DELIVER BULK HYDRATED LIME TO THE HAMPTON/NASA STEAM PLANT ON AN AS NEEDED BASIS.		
ACKNOWLEDGE RECEIPT OF ATTACHMENTS: A _____ B _____ C _____ D _____ (Please initial)		
ACKNOWLEDGE RECEIPT OF ADDENDUM: 1 _____ 2 _____ 3 _____ 4 _____ (Please initial)		
Pre-Bid Conference -N/A		
<b>BIDDER NAME:</b>		

**COMPETITIVE SEALED BIDDING.** This Invitation to Bid (“ITB”) is subject to the competitive sealed bidding provisions outlined in Virginia Code §2.2-4302.1. **Sealed bids** will be received in the Issuing Office until Closing Date and Closing Time as specified in this solicitation including any addenda issued by this office. **Bids received by telephone, email, facsimile, or any other means of electronic transfer will not be accepted.** The City of Hampton is not responsible for late delivery by the United States Postal Service or any other courier. All inquiries for information regarding this ITB are to be directed to the Issuing Office as defined herein.

### A. Special Bid Delivery Instructions due to COVID-19

- Customer and vendor visits to City offices are currently restricted to appointments only. If you wish to hand deliver your bid response, please contact me at [antonio.palmer@hampton.gov](mailto:antonio.palmer@hampton.gov) to schedule an appointment to deliver your bid response. You may be turned away if you do not have an appointment.
- It is recommended that you use a trackable delivery service such as FedEx or UPS to deliver your bid response. Please email me at [antonio.palmer@hampton.gov](mailto:antonio.palmer@hampton.gov) with your tracking number and scheduled delivery date. I will respond upon receipt of the package. All bids must be received by Consolidated Procurement prior to the due date listed on this bid document the delivery address is:

City of Hampton  
Consolidated Procurement  
Antonio Palmer- ITB: 21-57/AP  
1 Franklin Street Suite 345  
Hampton, VA 23669

**THIS IS NOT AN ORDER.** The City of Hampton, hereafter referred to as “the City”, reserves the right to accept or reject any and all bids in whole or in part and waives any informality in the competitive sealed bidding process. Further, the City reserves the right to enter into any one or more contracts deemed to be in its best interest. The entire contents of the ITB, addenda, and Bidder’s bid shall be incorporated by reference into any resulting contract.

**Bidder Information:**

Name of Bidder: \_\_\_\_\_ Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Email Address: \_\_\_\_\_ State Corporation Commission ID: \_\_\_\_\_

City of Hampton Business Prof. License Tax No.: \_\_\_\_\_

Federal Tax Identification Number: \_\_\_\_\_; **OR** Social Security Number (Sole Proprietor): \_\_\_\_\_

**NOTE: Numbers identified as social security numbers will be redacted in public documents.**

**Business Classification:**

Is Bidder a "minority" business?  Yes  No

African American  Hispanic American  Native American  Asian American

Other; Please Explain: \_\_\_\_\_

Is Bidder Woman Owned?  Yes  No

Is Bidder a Small Business?  Yes  No

Is Bidder Faith-Based Organization?  Yes  No

Is Bidder a Disabled Veteran Business? (for informational purposes only)  Yes  No

**Check One:**  INDIVIDUAL  PARTNERSHIP  CORPORATION  LLC

**State in which Registered or Incorporated** \_\_\_\_\_

**By signing this bid, Bidder certifies, acknowledges, understands, and agrees to be bound by the conditions set forth above and in the Instructions to Bidders and General Conditions as described in Attachment A.**

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

Issuing Office: Wherever used in this ITB, the Issuing Office Will Be:

Antonio Palmer, MBA, VCA, Buyer  
Consolidated Procurement Division  
1 Franklin Street, Suite 345  
Hampton, Virginia 23669

Phone: 757-727-2197  
Fax: 757-727-2207  
Email: antonio.palmer@hampton.gov

Wherever used in this ITB, the City Contract Administrator will be:

John MacDonald  
Hampton/NASA Steam Plant  
50 Wythe Creek Road  
Hampton, Virginia 23666

Phone: 757-865-1914  
Fax: 757-865-1317  
Email: jmacdonald@hampton.gov

## I. BACKGROUND

### Hampton, Virginia

Hampton is an independent city located in Virginia. It is on the southern end of the Virginia Peninsula, bordering the Chesapeake Bay. The City has a total area of 136.2 miles; 51.8 miles of it is land and 84.4 miles of it is water, with a total population of 137,436.

The City boasts a strong military and technology presence. Langley Air Force Base is home of the First Fighter Wing. NASA Langley Research Center, where America's first astronauts were trained, is now a major center for aviation research. Large employers include companies such as Alcoa Howmet, Craft Machine Works, Measurement Specialists, Inc., Sprint, and Verizon Communications. The City is also home to multiple medical facilities including Riverside Regional Medical Center, Sentara Healthcare, and the Hampton Veteran's Administration Medical Center. Hampton offers multiple higher education opportunities including Hampton University, Thomas Nelson Community College, Old Dominion University's Peninsula Higher Education Center, and the National Institute of Aerospace. More information about business opportunities and growth in Hampton can be found in the Hampton Community Profile, which may be accessed via the following link:

<http://www.hampton.gov/498/Community-Profile>

The City is served by two airports. The primary airport for the Hampton Roads area is Norfolk International Airport, on the opposite side of Hampton Roads in Norfolk. The region's secondary airport, Newport News/Williamsburg International Airport, is located on the Virginia Peninsula in Newport News.

Hampton is part of a dynamic metropolitan region. Besides Hampton, the region contains four other cities with populations greater than 100,000. Hampton Roads now has a population of more than 1.7 million and is the 37th largest MSA in the nation. Its effective buying power (EBI) according to Sales, Marketing and Management is more than \$20.8 billion.

Demographically, Hampton is in many ways typical of metropolitan America. Within its boundaries it contains an urban core, a ring of older, settled neighborhoods and newer suburban development. Its citizens' age, educational, occupational and socio-economic characteristics by and large reflect the typical American demographic profile. The City's demographic data may be accessed by the hyperlink: <http://hampton.gov/90/Demographics>.

## II. BID TERMS AND CONDITIONS

**A. Contract Documents.** This ITB and its addenda(s), Bidder's Bid, any additional information requested, and the final awarded contract will constitute the final contract hereafter referred to as the "Contract". These documents will be incorporated by reference into the City Purchase Order(s) that award the Contract. The Contract shall be governed by the contract documents in the following order of precedence:

1. The final negotiated Contract
2. The ITB, its attachments, and its addenda
3. Bidder's Bid

In the event that there is a Conflict between this ITB, its attachments and addenda, Bidder's Bid, or any related documents and the final negotiated Contract, the final negotiated Contract shall supersede and control.

**B. Copies of Contract Documents.** If Bidder is awarded the Contract, Bidder will receive electronic copies of all documents. All original documents will be maintained at the Issuing Office. If Bidder requires a certified copy of any document to which Bidder is entitled, the Issuing Office will accommodate that request.

**C. Bid Binding for Ninety (90) Days.** Bidder agrees that its Bid shall be binding and may not be withdrawn for a period of ninety (90) calendar days after the scheduled closing date of this ITB.

- D. Proprietary Information/Non-Disclosure.** Bidder is advised that the Virginia Public Procurement Act (Section 2.2-4342, Code of Virginia, 1950 as amended) shall govern public inspection of all records submitted by Bidder.
1. Bidder may invoke the protections of §2.2-4342 of the Code of Virginia to protect trade secrets, proprietary information, and other confidential information provided by the Bidder:
    - i. Invoke the protections of this Section *prior to, or upon submission* of, the data or other materials.
    - ii. Provide a statement that identifies the data or other materials to be protected and that states the reasons why protection is necessary.
    - iii. Submit trade secrets or other proprietary information under separate cover in a sealed envelope clearly marked “**PROPRIETARY**”.
    - iv. References to the proprietary information may be made within the body of the Bid; however, all information contained within the body of the bid shall be public information in accordance with State statutes.
    - v. An all-inclusive statement that the entire bid is proprietary is unacceptable. A statement that Bidder’s costs and/or bid pricing are to be protected is unacceptable. Bidder will be requested to remove any such statement(s) in order to be eligible for further consideration.
  2. The City reserves the right to submit such information to the City Attorney for concurrence of the Bidder’s claim that it is in fact proprietary. Information submitted that does not meet the above requirements will be considered public information in accordance with the VFOIA.
- D. Bidder Obligation.** Bidder shall carefully examine the contents of this ITB and any subsequent addenda(s). Failure to do so shall not relieve the Bidder of its obligation to fulfill the requirements of any contract awarded as a result of this ITB.
- E. Conditions of Work.** Bidder shall inform itself fully of the conditions related to services required herein. Failure to do so will not relieve a Bidder of the obligation to furnish all goods and/or services necessary to carry out the provisions of the Contract.
- F. Withdrawal of Bid Due to Error.** Withdrawal of a Bid due to error shall be in accordance with §2.2-4330(B)(1) of the Code of Virginia. The Bidder shall give notice in writing of its claim of right to withdraw its Bid within two (2) business days after conclusion of the Bid opening date and shall submit original work papers with such notice.
- G. Cooperative Procurement.** Section 2.2-4304 Code of Virginia (VPPA) will apply to this solicitation. Other Public Bodies may utilize any contract(s) issued pursuant to this solicitation by placing its own order(s) directly with the Contractor(s) awarded the Contract(s). The City of Hampton acts only as the issuing agent and is not responsible for placement of orders, payment or discrepancies of other participating Public Bodies.
- H. Bidder Representations and Acknowledgements.** The attached “Bidder Representations and Acknowledgements” at Attachment C to this ITB, shall be executed by Bidder and is to be submitted with the Bid. The requirements set forth on said form shall be considered to be binding terms and conditions in any contract resulting from this ITB. A contract will not be awarded to a Bidder who has not initialed and signed the Bidder Representations and Acknowledgements.
- I. Mathematical Errors.** Discrepancies between multiplication of units of work and unit prices will be resolved in favor of unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum will be resolved in favor of the correct sum. Discrepancies between words and figures will be resolved in favor of words.

### III. SCOPE OF CONTRACT.

#### A. General Requirements

1. The City of Hampton is seeking bids from responsible and responsive bidders to furnish and deliver bulk hydrated lime for acid gas scrubbing to the Hampton NASA Steam Plant as specified herein on an as needed basis. **The Hampton NASA Steam Plant is located at 50 Wythe Creek Road, Hampton, Virginia 23666.**
2. The Contractor shall establish and maintain throughout the contract period a minimum on-site stock of ten (10) tons of hydrated lime available.
3. **The estimated annual usage is five hundred (500) tons per year or 25 (20) ton loads, and that will be used on a fairly consistent basis.**

**B. Hydrated Lime Specifications**

1. The specs below were provided by the air pollution control supplier. The Contractor shall provide a product that closely meets the following specifications below:

<b>PRODUCT IDENTITY</b>	<b>HYDRATED LIME</b>
<b>Total CaO</b>	<b>73.5%</b>
<b>Available CaO</b>	<b>72.0%</b>
<b>MgO</b>	<b>0.9%</b>
<b>SiO<sub>2</sub></b>	<b>0.7%</b>
<b>Free H<sub>2</sub>O</b>	<b>0.5% Maximum</b>
<b>Ca (OH)<sub>2</sub></b>	<b>96% Minimum</b>
<b>Minus 325 Mesh</b>	<b>90% Minimum</b>
<b>Mean Particle Size Range</b>	<b>5 -10 micron</b>
<b>Density</b>	<b>20 to 40 lb/ft<sup>3</sup></b>

2. The Contractor must provide a detailed specification for the product and certify that the hydrated lime provided will remain consistent to those specifications throughout the entirety of the contract.

**C. Delivery Service**

1. The Contractor must provide directly, or through a third party, delivery and off-loading of the to the bulk hydrated lime, **FOB Destination** to the **Hampton/NASA Steam Plant, 50 Wythe Creek Road, Hampton Virginia 23666**.
2. Delivery must be made within seven (7) days from placement of order. The delivery person will contact Operations Manager or his staff to get directions on where the consignment will be unloaded.
3. Bulk Hydrated lime is to be delivered on an as needed basis to maintain a minimum ten (10) ton stock of product on site.
4. When the Contractor’s service person arrives on-site, they are to check in with the on-duty Operating Engineer for specific customer requests. The vendor will off load pneumatically through a four (4) inch fill pipe into a one thousand two hundred (1200) cubic feet silo, with an integral vent and filter system. The delivery vehicle can get within forty feet of the fill pipe for product offload.
5. The Contractor must provide, separate from the invoice, a delivery ticket to be signed by the on-duty Operating Engineer to acknowledge receipt of the product. The delivery ticket shall reference the product specification, batch or lot, and quantity delivered.
6. The Steam Plant is a 24-hour location. The Contractor shall work with the Operations Manager to establish a delivery schedule and a means to dispatch hydrated lime quickly in the event of a stock shortage. Such schedules and procedures will ensure the facility never experiences process downtime due to a lack of chemical on site.
7. Upon award of the contract, the successful bidder will maintain the quality of the product during deliveries at the site. The City reserves the right to deem the product sub-standard (not performing to expected results) for any reason. If this occurs, then samples of lime from the order(s) to follow will be taken from offloading delivery vehicles for testing and verification of its quality at the request of the City.

#### **D. Bid Submission Requirements**

1. Provide the following: a one (1) pound product sample with the current material safety data sheet, testing results, and other quality assurance information (additional quality assurance information is optional) to help evaluate the hydrated lime quality. **The one (1) pound product sample with material safety data sheet, and the testing results are required to be delivered with the bid or before the bid due date to 1 Franklin Street, Suite 345, Hampton, VA 23669. If they are not received, that will result in the bidder being deemed non-responsive.** These samples will be used for independent evaluation and testing to verify compliance with the vendor specifications provided. If desired by the vendor, split samples will be taken and one provided to the vendor.
2. The Contractor must submit the completed bid submittal form with the bid to include the following: hydrated lime unit price per twenty (20) ton load, freight/delivery FOB Destination and product specifications.
3. The Contractor shall describe on the Bid Submittal Form any fuel or environmental surcharges that will be billed for this contract and these charges must be included with the quoted per twenty (20) ton load of hydrated lime costs. Charges that may vary must be fully explained as to price index or costs that will cause variation. Fuel surcharge that applies must be based on actual costs, and such charges must increase and decrease along with the stated index or costs.

#### **IV. INSTRUCTIONS TO BIDDERS**

- A. Contact with City/City Staff, Representatives, and/or Agents.** Direct contact with City staff, representatives, and/or agents other than the Consolidated Procurement Division staff on the subject of this ITB or any subject related to this ITB is expressly prohibited except with the prior knowledge and permission of the Purchasing Agent or designated representative.
- B. Pre-Bid Conference.** N/A.
- C. Site Visit.** N/A.
- D. Questions.** Bidders must submit questions regarding the ITB in writing to the Issuing Office via fax (757) 727-2207 or email questions to [antonio.palmer@hampton.gov](mailto:antonio.palmer@hampton.gov) **no later than 4:00 PM EST on April 27, 2021.** Necessary replies will be issued to all Bidders of Record as addenda that shall become part of the contract documents. Oral instructions do not form a part of the bid documents. Bidder is responsible for checking website <http://www.Hampton.gov/bids-contracts> or contacting the Issuing Office within 48 hours prior to bid closing to secure any addenda issued for this ITB.
- E. Changes or Modifications.** Changes or modifications to this ITB made prior to the date and time of closing will be addressed by addenda from the Issuing Office. Bidders are to acknowledge receipt of addenda in the space provided on the cover page of this ITB. Oral communications are not a part of the bid documents. This ITB and any addenda shall be incorporated, by reference, into any resulting contract.
- F. ITB Closing.** Bidder shall ensure its sealed bid is time stamped by the Issuing Office no later than the Closing Date and Time shown on the cover page of the ITB. Bids received after the specified date and time (time stamped 10:01 AM or later) will not be considered and will be returned to the Bidder unopened.
- G. COVID-19 Special Circumstances**
  1. Customer and vendor visits to the City offices are currently restricted to appointments only. If you wish to deliver your bid response, please contact me at [antonio.palmer@hampton.gov](mailto:antonio.palmer@hampton.gov) to schedule an appointment to deliver your bid response. You may be turned away if you do not have an appointment.

2. It is recommended that you use a trackable delivery service such as FedEx or UPS to deliver your bid response. Please email me at [antonio.palmer@hampton.gov](mailto:antonio.palmer@hampton.gov) with your tracking number and scheduled delivery date. I will respond upon receipt of the package. All bids must be received by Consolidated Procurement prior to the due date listed on this bid document. Please refer to page 1, bullet A for the delivery address.

#### **H. Bid Submittal Requirements:**

1. Each Bid submission shall be submitted to the Issuing Office and shall include the following:
  - i. Pages 1-2 of this ITB and it will contain:
    - a. Original signature of an agent authorized to bind the company
    - b. Requested contact information
    - c. Company Federal Employer Identification Number
    - d. Acknowledgement of any addenda received
  - ii. All Bid pages must be numbered
  - iii. All Bids must include a completed pricing sheet
  - iv. A definite time for delivery of goods or for performance of services, unless otherwise specified in the ITB. Time, if stated, as a number of days, will be interpreted to include Saturdays, Sundays, and holidays.
  - v. Attachments:
    - a. Attachment A-General Terms and Conditions
    - b. Attachment B –Insurance Requirements
    - c. Attachment C- Bidder Representation and Acknowledgements
    - d. Attachment D-Pricing Sheet
2. Bids must be submitted utilizing the following requirements:
  - i. Bidders shall submit sealed bids in a labeled envelope or package with the ITB’s Item Number and the name and address of the Bidder. Bids received by telephone, email, facsimile, or any other means of electronic transfer will not be accepted.
  - ii. Submit the original and One (1) copy of the Bid.
  - iii. All bids must be received and time stamped in the Issuing Office no later than the Closing Date and Time shown on the cover page of this ITB. Any Bid received after the specified date and time (10:01 AM EST or later) will not be considered and will be returned to the Bidder unopened.
  - iv. Include a statement setting forth the basis for protection of proprietary information, if any, as detailed in the “Proprietary Information/Disclosure” section.
3. Submit all Descriptive Literature as requested under the ITB in the Scope of Services. Descriptive Literature, as used here, shall include, but not be limited to, design, materials, components, performance characteristics, methods of manufacture, assembly, construction, or operation of the goods and/or services requested under the ITB.
4. Bidders are encouraged to submit bids on recycled paper and to use double sided printing.
5. Bidders should be thorough in addressing the Specific Requirements and the Bid Submittal Requirements as outlined in this ITB.

#### **I. Procedure for Award of Bid**

1. At the time and place designated on this ITB, the City shall publicly open and announce all Bids received under this ITB.
2. After the Bid opening, the City will award the Contract to the lowest responsive and responsible Bidder or Bidders. A determination of the lowest responsive and responsive bidder may include consideration of the special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria, including but not limited to inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose which are helpful in determining acceptability.

3. In evaluating bids, if a math error has been made and the total amount to be charged for any goods and services is incorrect, the City reserves the right to consider individual unit prices.
  4. In the event that the Bid from the lowest responsible Bidder exceeds the funds available for the project, the City may negotiate with the apparent low Bidder to obtain a contract price within available funds. The City will initiate the negotiations by notifying the low Bidder in writing that its Bid exceeded the available funds for the project and state that the City wishes to negotiate a lower contract price. These negotiations may include, in the sole discretion of the City:
    - i. Modification of the bid price and/or
    - ii. Modification of the Scope of Work/Specifications.
  5. Any contract resulting from this ITB will be publicly posted for inspection in the Consolidated Procurement Division, 1 Franklin Street, Suite 345, Hampton, Virginia 23669.
  6. The vendor(s) awarded this contract must be registered with eVA before the contract can be fully executed.
- J. Disposition of Bids.** All materials submitted in response to this ITB will become the property of the City. One (1) copy of each Bid will be retained for official files, will become a matter of public record after award of the Contract, and will be open to public inspection subject to the Proprietary Information/Disclosure section of this ITB.



## Attachment A – General Terms and Conditions

*These General Terms and Conditions are a sample of what may be included in the final contract awarded to Bidder and are subject to change.*

- I. **Term and Renewals.** This Contract shall continue in force for the term of one (1) year. This Contract may be extended upon the mutual agreement of both parties for up to four (4) optional, one (1) year periods upon the same prices, terms, and conditions as set forth in this Contract and the ITB. Price increases/decreases may be considered for optional years based on most current Bureau of Labor Statics CPI-U Wage Rate of the South Region, and shall not exceed 3% annually. Notice of any price increases must be submitted sixty days prior to those increases becoming effective and approval by the City is required.
  
- II. **Contractor Representations and Obligations**
  - A. **Performance by Contractor.** Contractor shall act as the prime contractor for the goods and services to be provided under the Contract and shall be the sole point of contact with regard to all obligations due under the Contract. To the extent Contractor employs subcontractors to perform obligations under the Contract, Contractor agrees that it will:
    1. Inform subcontractor of the proposed use and disposition of the subcontractor’s products or services, and obtain a written statement from subcontractor that it has no objection and that the City is not liable to the subcontractor for any work performed under the Contract.
    2. Obtain prior written approval from the Contract Administrator at least ten (10) calendar days prior to the work subcontractor work being performed.
    3. Be solely responsible for all work performed and materials provided by subcontractors and for the liability of subcontractors for the types and limits required of the Contractor under the Contract.
  - B. **Authority to Transact Business.**
    1. At the commencement of the Contract, Contractor shall be authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity if so required under Title 13.1 or Title 50 of the Virginia code or as otherwise required by law.
    2. Contractor shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth to be revoked or cancelled at any time during the term of the Contract.
  - C. **Compliance with Law**
    1. Contractor shall comply with all federal, state and local statutes, ordinances, and regulations now in effect or hereafter adopted, in the performance of the scope work set forth herein. Contractor represents that it possesses all necessary licenses and permits required to conduct its business and will acquire any additional licenses and permits necessary for performance of the Contract prior to the initiation of work. Contractor shall maintain all such licenses and permits throughout the term of this Contract. Failure to maintain such licenses and permits and to provide copies to the City shall constitute a material breach of this Contract.
    2. Contractor does not, and shall not during the performance of the Contract, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.
  - D. **Nondiscrimination**
    1. During the performance of the Contract, Contractor shall:

- i. Not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification/consideration reasonably necessary to the normal operation of Contractor. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and
  - ii. State that Contractor is an equal opportunity employer in all solicitations or advertisements for employees placed by or on behalf of Contractor. Notices, advertisements, and solicitations placed in accordance with Federal law, rule, or regulation are sufficient to meet the requirements of this section.
2. Contractor shall include the provisions of paragraph D.1 in every subcontract or purchase order over \$10,000.

#### **E. Drug-Free Workplace**

1. For purposes of this section, “drug-free workplace” means a site for the performance of work done in connection with the Contract with Contractor, 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.
2. During the performance of the Contract, Contractor shall:
  - i. Provide a drug-free workplace for Contractor's employees;
  - ii. Post a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition. This statement must be posted in a conspicuous location available to all employees and applicants for employment.
  - iii. State that Contractor maintains a drug-free workplace in all solicitations or advertisements for employees placed by or on behalf of Contractor.
3. Contractor will include the provisions of Section E.2 in every subcontract or purchase order of over \$10,000.

**F. Payments to Subcontractors.** Contractor shall make payment to all subcontractors, as defined in the code, within seven (7) days after receipt of payment from the City; or shall notify the City and subcontractors in writing of the intention to withhold all or a part of the amount due along with the reason for nonpayment. In the event payment is not made as noted, Contractor shall pay interest at the rate of one (1) percent per month, unless otherwise provided, to the subcontractors on all amounts that remain unpaid after seven (7) days except for the amounts withheld as provided herein. Contractor’s obligation to pay an interest charge to a subcontractor pursuant to this section shall not be construed to be an obligation of the City. A contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

#### **G. Insurance**

1. If applicable, Contractor shall submit to the City Contract Administrator certificates of insurance with applicable endorsements to the policy attached, prior to beginning work under the Contract or no later than ten (10) days after the intent award is issued, whichever occurs first.
2. All policies of insurance required herein shall be written by insurance companies licensed to conduct the business of insurance in Virginia, and acceptable to the City, and shall carry the provision that the insurance will not be cancelled or materially modified by the Contractor without thirty (30) days prior written notice to the City.

3. The certificate of insurance shall list the City of Hampton, 22 Lincoln Street, Hampton, Virginia 23669 and its elected and appointed officials, agents, employees and volunteers as additional insureds for the specified Project. The Endorsement to the policy would be that which is attached to the Contractor's liability policy that acknowledges the Purchaser(s) as additional insureds on all policies the Purchaser(s) are made additional insured(s). This shall be either a direct Endorsement that actually names the Purchaser(s) or a blanket Endorsement within the insurance policy that states that under a contractual agreement the Purchaser(s) will be named as additional insureds on the required insurance policy. Such insurance shall also contain an endorsement stating that the insurance is primary with respect to any self-insurance or insurance maintained by the City of Hampton.
4. Insurance shall be maintained during the entire term of the Contract and any extensions and shall be of the following forms and limits:

<b>Forms</b>	<b>Limits</b>
<b>Workers' Compensation</b>	<b>Statutory under Virginia Code Title 65.2 *</b>
<b>Automobile Liability</b>	<b>\$1,000,000 combined single limit</b>
<b>Commercial General Liability</b>	<b>\$1,000,000 combined single limit including contractual liability and products and completed operations coverage</b>
<b>Umbrella/Excess Liability</b>	<b>\$2,000,000</b>
<b>Fidelity Coverage</b>	<b>\$100,000 (if services are provided on City Property)</b>

\* *Please note that single person contractors are not required to carry this insurance but must complete a Request for Waiver of Worker's Compensation with the City's Risk Management Department. If the Contractor has employees at any time during the Contract period, the Contractor must provide the minimum necessary coverage or a copy of the State's consent to self-insure.*

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

5. IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO IMMEDIATELY NOTIFY THE CITY SHOULD ANY POLICY BE CANCELLED. FAILURE TO NOTIFY THE CITY SHALL CONSTITUTE A MATERIAL BREACH OF THE CONTRACT.

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

expense any and all such suits or defense of claims made against the City, its agents, volunteers, servants, employees or officials.

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

**J. Unauthorized Disclosure of Information.**

1. Contractor shall assume the entire responsibility and liability for any and all damages caused by or resulting from or arising out of the negligent or willful unauthorized disclosure of confidential information on the part of the Contractor, its subcontractors, agents or employees under or in connection with the Contract. The Contractor shall save harmless and indemnify the City of Hampton and its agents, volunteers, servants, employees and officers from and against any and all claims, losses or expenses, including but not limited to attorney’s fees, which either or both of them may suffer, pay or incur as the result of claims or suits due to, arising out of or in connection with, any and all such unauthorized disclosures, real or alleged. The Contractor shall, upon written demand by the City of Hampton, assume and defend, at the Contractor’s sole expense, any and all such suits or defense of claims alleging unauthorized disclosures of confidential information.
2. Any negligent or willful unauthorized disclosure of confidential information on the part of the Contractor, its subcontractors, agents or employees under or in connection with the Contract shall constitute a breach of the terms of the Contract. The City may proceed by appropriate court action, including seeking injunctive relief, to prevent continuing unauthorized disclosures, and Contractor shall save harmless and indemnify the City for court costs, litigation expenses and attorney’s fees that it may pay or incur as the result of seeking to prevent or stop and any and all unauthorized disclosures of confidential information.

**III. Payment to Contractor**

**A. City Payment to Contractor**

1. City agrees to make payments under the Contract within thirty (30) days after receipt of a correct invoice, pursuant to Section III.B below, for such payment. Where payment is made by mail, the day of postmark shall be deemed the date of payment. Any amounts due to the City by Contractor under the terms of this or any other Contract may be applied against Contractor’s invoices with documentation for the basis of the adjustment attached.
2. In no event shall any interest penalty or late fee accrue when payment is delayed because of disagreement between the City and Contractor regarding the quantity, quality, time of delivery, or other noncompliance with these Contract requirements for any product or service or the accuracy or correctness of any invoice. Payment terms offering a “prompt payment discount” of twenty (20) days or greater will be considered in the evaluation of Bids. All other payment terms shall be net thirty (30) calendar days or greater. Payment terms not specified by Contractor shall be net forty-five (45) days.

Contractor acknowledges and agrees that it is not entitled to any compensation in excess of the value of the work performed that has been approved by the City. Contractors and subcontractors are not entitled to

anticipatory or unearned profits, unabsorbed overhead, opportunity costs, or consequential or other damages as a result of amendment or termination of the Contract.

**B. Contractor Invoices.** Contractor shall submit to the City all invoices promptly upon completion of the requirements for installation, delivery, and acceptance of the products and services required under the Contract. Invoices shall not include any costs other than those identified in the executed City Purchase Order awarding the Contract or any subsequent Change Orders issued by the Consolidated Procurement Division. All shipping costs are the Contractor's responsibility, except to the extent such charges are identified in the executed City Purchase Order or Change Orders. Contractor's invoices shall provide at a minimum:

1. Type and description of the product or service installed, delivered and accepted
2. Serial numbers, if any
3. Quantity delivered
4. Charge for each item
5. Extended total (unit cost x quantity)
6. This ITB number and the City Purchase Order number

**C. Reimbursable Expenses and Accounting Records**

1. Reimbursable expenses shall not include incidental expenses such as supplies, utilities, licensing fees, bond fees, and other fees which are normally included in overhead costs.
2. Expenses that are not normally part of III.C.1 and that directly relate to the scope of this Project may be reimbursed upon prior approval by the City. Examples of such expenses include, but are not limited to, reasonable travel, lodging, specifications and drawing reproduction beyond first two sets, and overtime that is authorized by the City.
3. Records of reimbursable expenses and expenses accrued as a result of additional services on the Project on the basis of a Multiple of Direct Personnel Expense shall be kept on a generally recognized accounting basis and shall be available to the City or his authorized representative at mutually convenient times.
4. Payment for reimbursable expenses shall be at cost, due monthly upon presentation of an invoice to the City. The City reserves the right to request proof of the expense before payment and reserves the right to refuse to pay any expense that was not previously approved by the City.

**D. Claims for Extra Compensation.**

1. If Contractor encounters work and services not included in the Contract or any supplement, but which, in the opinion of Contractor, is necessary for the successful completion of the Contract and requires extra compensation, Contractor shall, before it begins the work on which it bases its claim, promptly notify the City in writing of its intention to perform the work and to make a claim for extra compensation. Notification by Contractor under the terms of this paragraph shall not be construed as proving the validity of the claim or City's approval of the claim. **No claim for extra compensation will be filed or considered unless notification is given as herein set forth.**
  - i. The amounts claimed as extra compensation by Contractor shall be separately itemized, become a part of the claim, and serve as documentation of the claim.
  - ii. Itemized amounts shall be described in sufficient detail to enable the City to analyze the need for the extra work and the costs claimed for the work.
  - iii. Contractor shall not itemize any overhead costs in its claim for extra compensation if those overhead costs were not itemized in Contractor's original bid for the work to be completed under the Contract.
  - iv. If Contractor intends to claim the costs (other than attorney's fees) of preparing a claim for extra compensation, Contractor shall maintain these costs in a separate account, clearly coded and identified, in preparing the claim and these costs shall be subject to audit by the City.

2. Upon notification the City will promptly review any claim for extra compensation. If a claim is accepted by the city, it will be paid as extra work in accordance with the terms of a supplemental agreement executed by the parties before such work is begun.
3. **NOTE: Pursuant to the provisions of Virginia Code §2.2-4309, a public contract may include provisions for modification during performance, but no fixed-price contract may be increased by more than twenty-five percent (25%) of the amount of the contract or \$50,000, whichever is greater, without the advance written approval of the Hampton City Council.**

#### **IV. Dispute Resolution**

##### **A. Procedure for Consideration of Contractual Claims**

1. Prompt knowledge by the City of an existing or impending claim for damages or other relief may alter the plans, scheduling, or other action of City and /or result in mitigation or elimination of the effects of the claim. Therefore, Contractor shall provide City with written notice of Contractor's intention to file a claim which:
  - i. Describes the act or omission by City or its agents that contractor contends caused the damages or entitles it to other relief; and
  - ii. Provides a description of the nature and amount of the claim.
2. Contractor's written statement providing notice of the claim shall be submitted to city within twenty (20) days of the time of the occurrence or beginning of the work upon which the claim is based; provided, however, if such damage is deemed certain in the opinion of Contractor to result from its acting on an order from City, it shall immediately take written exception to the order. For purposes of this section, "claim" shall include, without limitation, any request for an increase in the Contract price or time and any request for equitable adjustment.
3. Submission of a notice of claim in compliance with the requirements described above shall be mandatory, and failure to submit a claim notice that complies with the requirements above shall be a conclusive waiver to such claim for damages or other relief by Contractor. Oral notice and untimely notice will be insufficient to satisfy the requirements stated in this section.
4. The City will review the claim and provide Contractor with a written decision thirty (30) days after its receipt of the claim. Contractor may not institute legal action prior to receiving the final decision of the City.

**B. Final Decision.** The final decision of the City shall be considered final and conclusive unless Contractor appeals the decision within three (3) months of the final decision or the due date of the final decision by instituting legal action.

**C. No Cessation of Performance.** Nothing in this section shall be construed to authorize or permit the Contractor to cease performance of the Contract while utilizing the dispute resolution procedures outlined in this section or any other dispute resolution procedures available to Contractor. Pendency of claims shall not delay payment of amounts agreed due in final payment.

##### **V. Breach of Contract.** Contractor shall be deemed in breach of the Contract if the Contractor:

- A. Fails to Comply with any terms or conditions of the Contract;
- B. Fails to cure such noncompliance within ten (10) calendar days from the date of the City's written notice or such other time frame specified by the City Contract Administrator in the notice; or
- C. Fails to submit a written response to the City's notification of noncompliance within ten (10) calendar days after the date of the City notice.

**VI. Notice of Defect.** In the event of a defect or impropriety in an invoice or in the goods or services provided to City by Contractor or a subcontractor, City shall notify the Contractor of the defect or impropriety if the defect or impropriety would prevent payment by the payment date. The notice shall be sent by the City fifteen (15) days after receipt of the improper invoice or defective goods or services.

**VII. Non-Performance**

- A. Failure to Deliver.** The City reserves the right to procure goods and/or services to be provided under the Contract from other sources in the event Contractor fails to deliver such goods and/or service deliverables in accordance with delivery dates and time frames set forth in the Contract.
- B. Unacceptable Deliveries or Performance (Rejections).** Upon notification by the City that goods and/or service deliverables provided by the Contractor under the Contract are damaged and/or not of the quality specified by the City, such goods and/or service deliverables will be rejected. Upon such notification, Contractor shall:
  - 1. Replace such rejected goods and/or service deliverables immediately or within a reasonable time as determined by the City.
  - 2. Remove all rejected materials, equipment or supplies from the premises of the City within ten (10) days of notification. Rejected goods and/or service deliverables not removed from the City's premises within ten (10) days will be regarded as abandoned, shall become the property of the City, and the City shall have the right to dispose of such items.
- C. Alternative Goods and Services.** In the case of default by Contractor for failure to deliver or perform in accordance with the Contract specification or terms and conditions, the City may procure goods or services from other sources and hold Contractor liable for reasonable costs of completion directly attributable to Contractor's failure to perform. Contractor's liability shall include, but not be limited to:
  - 1. Damages and other delay costs, to include costs to procure goods/services from alternate suppliers.
  - 2. Increased cost of performance, such as extended overhead and increased performance costs resulting from performance delays caused by Contractor and/or rejections of Contractor's goods and/or service deliverables.
  - 3. Warranty and rework costs, liability to third party, excess costs, attorney's fees and related costs incurred by the City due to non-responsive performance of Contractor.

**VIII. Termination of Contract**

**A. Without Cause**

- 1. The City may at any time, and for any reason, terminate the Contract by written notice to Contractor specifying the termination date, which shall be not less than fifteen (15) days from the date such notice is mailed. Notice shall be given to Contractor by certified mail/return receipt requested at the address set forth in Article I of the Contract.
- 2. In the event of such termination, Contractor shall be paid the work satisfactorily completed or partially completed, and accepted by the City, at the time of termination.
- 3. Upon receiving the notice of termination, Contractor shall withdraw its personnel and equipment, if any, cease performance of any further work under the Contract, and turn over to the City any work completed or in process for which City has paid.

**B. With Cause**

- 1. In the event that Contractor breaches any term of the Contract, the City may provide written notice of such breach to Contractor by certified mail/return receipt requested at the address set forth in Contractor's Bid or in Section 1 of the Contract.

2. Unless otherwise provided, Contractor shall have ten (10) days from the date such notice is mailed to cure the breach. Upon failure of Contractor to cure the breach, the City may immediately terminate the Contract as of the mailing date of the breach notice.
3. Upon termination, Contractor shall withdraw its personnel and equipment, if any, cease performance of any further work under the Contract, and turn over to the City any completed or partially completed work for which the City has paid.
4. In the event of violations of law, safety, or health standards and regulations, the Contract may be immediately cancelled and terminated by the City and provisions herein with respect to opportunity to cure default shall not be applicable.

**C. Non-Appropriation**

1. It is understood and agreed between the Parties hereto that the City shall be bound and obligated hereunder only to the extent that the funds shall have been appropriated and budgeted for the purpose of the Contract.
2. In the event funds are not appropriated and budgeted in any fiscal year for payments due under the Contract, the City shall notify Contractor of such occurrence in writing within thirty (30) days of non-appropriation, and the Contract shall terminate on the last day of the fiscal year for which (an) appropriation(s) (was) were received without penalty or expense to the City of any kind whatsoever.

**IX. Audit/Ownership of Documents/Freedom of Information Act**

- A. Audit.** The City shall have the right to audit all books and records (in whatever form they may be kept, whether written, electronic or other) relating or pertaining to the Contract (including any and all documents and other materials, in whatever form they may be kept, which support or underlie those books and records), kept by or under the control of Contractor, including, but not limited to those kept by Contractor, its employees, agents, assigns, successors and subcontractors. Contractor shall maintain such books and records, together with such supporting or underlying documents and materials, for the duration of the Contract and for at least three (3) years following the completion of the Contract, including any and all renewals thereof. The books and records, together with the supporting or underlying documents and materials shall be made available, upon request, to the City's employees, agents, representatives, Contractors or other designees, during normal business hours at Contractor's office or place of business in Hampton Virginia. In the event that no such location is available, then the books and records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location in Hampton chosen by the City.
- B. Ownership by City.** Ownership of all materials and documentation including the original drawings and the Plans and Specifications and copies of any calculations and analysis prepared pursuant to the Contract, shall belong exclusively to the City. Such materials and documentation, whether completed or not, shall be the property of the City whether the Work for which they are made is executed or not. The Contractor shall not use these materials on any other work or release any information about these materials without the express written consent of the City.
- C. Proprietary Information/Non-Disclosure.** Contractor is advised that the Virginia Public Procurement Act (Section 2.2-4342, Code of Virginia, 1950 as amended) shall govern public inspection of all documents submitted by Contractor. Contractor may invoke the protections of §2.2-4342 of the Code of Virginia to protect trade secrets, proprietary information, and other confidential information provided by the Contractor:
  1. Invoke the protections of this Section *prior to, or upon submission of*, the data or other materials.
  2. Provide a statement that identifies the data or other materials to be protected and that states the reasons why protection is necessary.



3. Submit proprietary or security information under separate cover in a sealed envelope clearly marked "PROPRIETARY".
  4. An all-inclusive statement that the entire bid is proprietary is unacceptable. A statement that Contractor's costs and/or bid pricing are to be protected is unacceptable. Contractor will be requested to remove any such statement(s) in order to be eligible for further consideration.
- D. The City reserves the right to submit such information to the City Attorney for concurrence of the Contractor's claim that it is in fact proprietary. Information submitted that does not meet the above requirements will be considered public information in accordance with the VFOIA.

**X. Modification.** The Contract may only be modified in a writing executed by authorized representatives of the City and the Contractor.

**XI. Tax Exemption.** The City is exempt from federal excise tax and from all State and local taxes. Contractor shall not include such taxes in any invoices under the Contract. Upon request, the City will furnish the Contractor with tax exemption certificates or the City tax exempt number. The City's exemption from taxation does not transfer to Contractor for Contractor's purchases for supplies or services required to complete the Contract.

**XII. Miscellaneous.**

- A. Non-Assignment.** Contractor shall not assign its rights and duties under the Contract without the prior written consent of the City.
- B. Applicable Law.** The Contract shall be deemed to be a Virginia contract and shall be governed as to all matters, whether of validity, interpretations, obligations, performance, or otherwise, exclusively by the laws of the Commonwealth of Virginia. Regardless of where actually delivered and accepted, the Contract shall be deemed to have been delivered and accepted by the parties in the Commonwealth of Virginia.
- C. Venue.** Any and all suits for any claims or for any and every breach or dispute arising out of the Contract shall be maintained in the appropriate court of competent jurisdiction in the City of Hampton, or, if applicable, in the United States District Court for the Eastern District of Virginia, Newport News Division.
- D. Extent of Contract.** The Contract represents the entire Contract between the City and the Contractor and supersedes all prior negotiations, representations, or contracts, either written or oral.
- E. Severability.** If any part, term, or provision of the Contract, shall be found by a court of competent jurisdiction to be legally invalid or unenforceable, then such provision or portion thereof, shall be performed in accordance with applicable laws. The invalidity or unenforceability of any provision or portion of any contract document shall not affect the validity or any other provision or portion of the Contract.
- F. Non-Exclusivity.** The City reserve the right to procure goods or services covered under the Contract from a third party when, in the City's sole discretion, it is deemed to be in the City's best interest.

## Attachment B – Insurance Requirements

### CITY OF HAMPTON, VIRGINIA INSTRUCTIONS AND INFORMATION FOR COMPLYING WITH CITY INSURANCE REQUIREMENTS

This information is to assist the Contractor with understanding the insurance requirements of the City of Hampton (City). Contractors are encouraged to share this information with insurance agents and brokers. **In all cases the ITB requirements override statements in this document section.**

1. **Agreement/Reference.** All evidence of insurance must identify the nature of your business with the City. Clearly show any assigned number of a bid, contract, lease, permit etc. or give the project name and the job site or street address to ensure that your insurance is properly assigned to the correct project. **It is important that you provide the types of coverage and minimum dollar amounts specified in the ITB document.** Failure to provide the requested amounts may lead to disqualification and increase processing time.
2. **When to Submit.** Normally no work may begin until the certificate of insurance (COI) with proper endorsement has been received. It is important that the certificate and endorsement be provided as early as practicable. For “As-needed” contracts, insurance need not be submitted until a specific job has been awarded. Design Professionals coverage for new construction work may be submitted simultaneously with final plans and drawings, but before construction commences.
3. **Acceptable Evidence and Approval.** Proof of insurance is normally provided on an industry form known as the ACORD Certificate of Insurance. Insurance industry certificates other than the ACORD may be accepted after review. In addition to the ACORD form, an Insured Endorsement naming the City as an additional insured that has been completed by your insurance company or its designee must be attached to the COI. If the policy includes an automatic or blanket additional insured endorsement, the Certificate must state the City is an automatic or blanket additional insured and the substantiating endorsement must be attached. Attaching the section of the insurance policy covering contractual additional insureds may be used until the actual endorsement is received.

All evidence of insurance must be authorized for the insurance provider by a person with authority to bind coverage, whether that is the authorized agent/broker or insurance underwriter.

#### Acceptable alternatives to **ACORD Certificates and other Insurance Certificates:**

- A. A copy of the **full insurance policy**
- B. **Binders and Cover Notes** are also acceptable as interim evidence for up to 90 days from date of approval
- C. **Self-Insured** contractors or vendors must submit for review to the Risk Manager documentation of its financial ability to self-insure for each coverage required. (see paragraph 6 below)

Additional Insured Endorsements **DO NOT** apply to the following:

- A. Indication of compliance with statute, such as Workers’ Compensation Law
- B. Professional Liability insurance

4. **Renewal.** Upon renewal of any insurance policy, it is the responsibility of the contractor to provide the updated ACORD Certificate of Insurance or other acceptable documentation to the City. If your policy number changes you must also submit a new Additional Insured Endorsement with an Insurance Industry Certificate.

5. **Cancellation.** The contractor/vendor must inform the City thirty (30) days before insurance is cancelled or not renewed. The requirement for the insurance company to inform the additional insureds is not enforceable. Failure to inform must be considered a substantive violation of the contract and could result in the contract being cancelled.
6. **Alternative Programs/Self-Insurance.** Risk financing mechanisms such as Risk Retention Groups, Risk Purchasing Groups, off-shore carriers, captive insurance programs and self-insurance programs are subject to separate approval after the City Risk Manager has reviewed the relevant documents. Any contractor or vendor that wishes to satisfy insurance requirements as a self-insured party must receive permission from the Risk Manager by submitting a request to the Risk Management Department.
7. **General Liability.** General liability insurance covering your operations (and products, where applicable) is required whenever the City is at risk of:
  - A. **Third party claims** which may arise out of your work or your presence or special event on City premises.
  - B. **Sexual misconduct claims coverage** is a required coverage when the work performed involves minors.
  - C. **Fire legal liability** insurance is required for persons occupying a portion of City premises.
8. **Automobile Liability** insurance is required only when vehicles are used in performing the work of your contract or when they are driven off-road on City premises. It is not required for simple commuting unless the City is paying mileage. However, compliance with Virginia law requiring automobile liability insurance is a contractual requirement.
9. **Errors and Omissions** coverage will be specified on a project-by-project basis if you are working as a licensed or other professional. The length of the claims discovery period required will vary with the circumstances of the individual job.
10. **Workers' Compensation and Employer's Liability** insurance are not required for single-person contractors. However, under state law the minimum coverages (or a copy of the state's Consent to Self-Insure) must be provided if you have any employees at any time during the period of the contract. Contractors with no employees must complete a Request for Waiver of Workers' Compensation Insurance Requirement that can be obtained from Risk Management.
 

A **Waiver of Subrogation** on the coverage is required only for jobs where your employees are working on City premises under hazardous conditions, e.g., uneven terrain, scaffolding, caustic chemicals, toxic materials, power tools, etc. The Waiver of Subrogation waives the insurer's right to recover (from the City) any workers' compensation paid to an injured employee of the contractor.
11. **Property Insurance** is required for persons having exclusive use of premises or equipment owned or controlled by the City.
12. **Surety or Bond** coverage may be required to guarantee performance of work and payment to vendors and suppliers. A Fidelity Bond may be required to handle City funds or securities, and under certain other conditions. Specialty coverage may be needed for certain operations as outlined in the ITB.

## Attachment C

### Bidder Representations and Acknowledgements

\_\_\_\_\_ (initial) **NO CITY INDEMNIFICATION.** The City of Hampton cannot legally agree to any clause indemnifying the Bidder from any damages arising out of the contract or hold the Bidder harmless. The submission of a bid constitutes an agreement by the Bidder not to request such language in a resulting contract. In compliance with this solicitation and to all the conditions imposed herein, the undersigned agrees to perform any contract awarded as a result of this solicitation. The following section shall be signed by an agent authorized to bind the company. Failure to execute this portion may result in proposal rejection.

\_\_\_\_\_ (initial) **ANTI-COLLUSION CLAUSE:**

IN THE PREPARATION AND SUBMISSION OF THIS BID, SAID BIDDER DID NOT EITHER DIRECTLY OR INDIRECTLY ENTER INTO ANY COMBINATION OR ARRANGEMENT WITH ANY PERSON, FIRM OR CORPORATION, OR ENTER INTO ANY CONTRACT, PARTICIPATE IN ANY COLLUSION, OR OTHERWISE TAKE ANY ACTION IN VIOLATION OF THE SHERMAN ACT (15 U.S.C. SECTION 1), SECTIONS 59.1-9.1. THROUGH 59.1-9.17 OR SECTIONS 58.1-68.6 THROUGH 59.1-68.8 OF THE CODE OF VIRGINIA.

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

\_\_\_\_\_ (initial) **DEBARMENT STATUS:** By submitting this proposal, Bidder certifies that it is not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor is it an agent of any person or entity that is currently so debarred.

\_\_\_\_\_ (initial) **MANDATORY USE OF CITY FORM AND TERMS AND CONDITIONS FOR ITBs:** By submitting a proposal, Bidder agrees that if awarded a Contract under this ITB, that Bidder, and any subcontractors Bidder uses for goods or services, will be required to utilize the City's Contract. If Bidder submits its own agreement for use, the City reserves the right to change any terms of the Bidder's agreement required for the City to meet its obligations under Virginia, local, and Federal law or regulations.

**By signing this bid, Bidder certifies, acknowledges, understands, and agrees to be bound by the conditions set forth above, in the Bid Terms and Conditions, and General Terms and Conditions as described in Attachment A.**

Authorized Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

## Attachment D – ITB 21-57/AP Pricing Sheet

Bidder: \_\_\_\_\_

ITEM #	DESCRIPTION	EST. QTY.	UNIT PRICE	EXTENDED COST
1	HYDRATED LIME 25 DELIVERIES @20 TON PER LOAD	500 TONS		
2	Freight, Delivery, & Surcharges per 20-ton load			
Total	Sum of items 1 and 2			

Upon award of the contract, the successful bidder will maintain the quality of the product during deliveries at the site. The City reserves the right to deem the product sub-standard (not performing to expected results) for any reason. If this occurs, then samples of lime from the order(s) to follow will be taken from offloading delivery vehicles for testing and verification of its quality at the request of the City.

Complete the Product Specifications below for your product. Contractors **must** provide a product specification sheet, and testing results for further evaluation of the quality of the hydrated lime. Product shall closely match the product specifications provided on page 5.

PRODUCT IDENTITY	HYDRATED LIME
Total CaO	
Available CaO	
MgO	
SiO <sub>2</sub>	
Free H <sub>2</sub> O	
Ca (OH) <sub>2</sub>	
Minus 325 Mesh	
Mean Particle Size Range	
Density	

- 1) Please describe any fuel surcharges or environmental charges that are included with the costs quoted above to be billed with this contract. Any charge that may vary must be fully explained as to price index or costs that will cause variation.
- 2) Contractors must provide a one (1)-pound product sample with the current Material Safety Data Sheets, and product testing results to the Procurement Office at 1 Franklin Street, Hampton, VA 23669. **The one-pound sample, the current material safety data sheets, and the product testing results are required to be delivered with the bid or before the bid due date and if not received shall result in the Contractor being deemed non-responsive. The sample needs to be properly packaged and separate due to the hazardous nature of the chemical to maintain safety**
- 3) Bid prices: Shall be in the form of a FIRM FIXED price for the first year with cost escalation/de-escalation for the duration of the contract.

- 4) Quantities are estimates only and in no way offers a guarantee usage to the successful contractor. Quote on all items listed or your bid may not be considered for an award.
- 5) \*This contract is anticipated to begin July of 2021 and will be awarded based on total cost (cost of product, delivery, freight and surcharges)
- 6) FOB Destination to Hampton NASA Steam Plant, 50 Wythe Creek Road, Hampton, Virginia 23666. This is a 24 hr. location. The Contractor shall work with the Operations Manager to establish a delivery schedule and a means to dispatch hydrated lime quickly in the event of a stock shortage.