TOWN OF HERNDON

P.O. BOX 427
HERNDON, VA 20172
(703) 435-6800

INVITATION FOR BID

IFB #11-05

SNOW BLOWER

BIDS MUST BE DELIVERED BY:

November 23, 2010 at 11:00 AM

All inquiries concerning this Invitation for Bid
shall be submitted in writing

No later than November 18, 2010 at 11:00 AM to:

Purchasing Agent
Diane Erway, CPPO, CPPB, VCO, VCCO
Town of Herndon
777 Lynn Street
P.O. Box 427
Herndon, VA 20172-0427

Inquiries may be faxed to:

(703) 435-8121

Inquiries may also be e-mailed to:
diane.erway@herndon-va.gov

NAME & ADDRESS OF FIRM:

_____
_____
_____

STATE CORPORATION
COMMISSION #:

_____
(required)

FIN#:_____
DATE:_____
BY:_____
TELEPHONE:_____

FAX:_____

INVITATION FOR BID

IFB # 11-05

SNOW BLOWER

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* denotes – must be returned with bid

1.0 Instructions to Bidders:

1.1 Purpose: The purpose of this Invitation for Bid (IFB) is to establish a fixed price contract with a Contractor for a Loader Mounted Snow Blower (1300 ton per hour), or approved equivalent.

1.2 Competition Intended:

It is the Town of Herndon's intent that this Invitation for Bid (IFB) permits competition. It shall be the bidder's responsibility to advise the Procurement Officer in writing if any language, requirement, specification, etc., or any combination thereof, inadvertently restricts or limits the requirements stated in this IFB to a single source. Such notification must be received by the Purchasing Agent or appointed designee not later than five (5) days prior to the date set for bids to close.

1.3 Bidder's Responsibility

Bidders shall examine the specifications, terms, conditions and mowing locations of this Invitation for Bid and shall exercise their own judgment as to the nature and total amount of all work to be done. No plea of ignorance of conditions that exist or that may hereinafter exist, or of conditions or difficulties that may be encountered in the work as a result of failure to make the necessary examination and investigation will be accepted as an excuse for any failure or omission on the part of the Bidder to fulfill, in every detail, The requirements of this Invitation for Bid, or will be accepted as a basis for any claims whatsoever for extra compensation.

1.4 Conditions for Bidding

A. Bid Forms:

In order to be considered for selection, Bidders must submit a complete response to this solicitation. A complete response will be the return of the following documents:

1. One (1) original and one (1) copy of the completed Official Town of Herndon Bid Form;

2. One (1) original and one (1) copy of the References Form;

3 One (1) original and one (1) copy of the Bid Exceptions Form, if applicable; and

4. The Official Town of Herndon Bid Form shall be signed by an authorized representative of the Bidder's firm and delivered to the proper location by the time and date as specified on the cover page.

B. Envelope Identification:

The signed bid should be returned in the self addressed bid envelope if one is provided. In the event that the bid contains bulky subject material, the mailing envelope provided must be firmly affixed to any other wrapper being used. The Town will not be responsible for premature opening or late arrival of bids improperly addressed or identified. If a bid is mailed in an envelope, not as specified, the Bidder takes the risk that the envelope may be inadvertently opened and the information compromised which may cause the bid to be disqualified. The Town reserves the right to declare such a bid as non-responsive. Sealed bids may be hand delivered to the designated location.

C. Late Bids:

Bids received after the published time and date of acceptance shall be returned to the Bidder unopened, if the IFB number and return address is shown on the envelope. In the case of late bids hand delivered, the bids shall not be accepted. The Town accepts neither liability for late nor non-receipt of bids.

D. Modification/Withdrawal of Bids:

1. A bidder for a Town contract, other than a contract for construction or maintenance of public highways, may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

   The bidder shall give notice in writing of his claim of right to modify or withdraw his bid within two (2) business days after the conclusion of the bid opening procedure.

2. No bid may be withdrawn under this paragraph when the result would be the awarding of 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%).

E. Award Criteria:

1. The Town reserves the right to accept or reject all or any part of bids, waive minor technicalities/informalities and award the contracts to the lowest responsive, responsible bidders to best serve the interest of the Town. Further, the Town reserves the right to award

multiple contracts for all of the specified item(s) or service(s) to more than a single responsive and responsible bidder. Multiple contracts may also be awarded to the lowest responsive and responsible bidder for each required good, service or equipment. The unit price for each individual item on the Official Town Bid Form will be used to ascertain if multiple contract awards are in the best interest of the Town.

2. In order for the bids to be considered for award, all requested information on the Official Town Bid Form must be provided (i.e. Delivery, Terms, Bidder Name/Address/Phone No., Extended Price, Specifications Met, Signature, Printed Name and Date). Bidders should review the Official Town Bid Forms before submission to insure there are no omissions or blanks.

3. A low bid will be determined by using the firm fixed unit price bid submitted for each job, as shown on the Official Town Bid Form, that completely satisfies the specifications, terms and conditions of this invitation for bid. This firm fixed unit price offered shall be all inclusive, no additional costs will be allowed.

4. Unless canceled or rejected, a responsive bid from the lowest responsible bidders shall be accepted as submitted, except that if the firm fixed price bids from the lowest responsive responsible bidders exceeds available funds, the Purchasing Agent or designee may negotiate with the apparent low bidders to obtain a contract price within available funds.

5. By submitting their bids, all Bidders certify that their bids are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Bidder, supplier, manufacturer or subcontractor in connection with their bid, and that they have not conferred 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.

F. Criminal Sanctions: The provisions referenced in Ethics in Public Contracting supplement, but do not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interest Act(ss 2.1-639.1 et seq.), the Virginia Governmental Frauds Act (ss 18.2-498.1 et seq.), and Articles 2 (ss 18.2-438 et seq.) and 3 (ss 18.20446 et seq.) of Chapter 10 of Title 18.2. The provisions apply notwithstanding the facts that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act.

G. Addenda: All addenda will be issued by the Town via First Class U.S. Mail, fax. or posted on the Town webpage and EVA webpage. All such addenda shall become a part of the solicitation documents, must be addressed in the bid and shall become a Contract Document. The Town accepts no liability for late bids nor non-receipt of addenda.

H. Debarment Status: By submitting a Bid and/or acceptance of a Town of Herndon Purchase Order or Contract, all firms certify that they are not currently debarred from doing business with or in the Commonwealth of Virginia, nor are they an agent of any person or entity that is currently debarred from doing business with or in the Commonwealth of Virginia.

I. Qualifications: The Bidders shall provide the names, addresses and telephone numbers of at least three (3) other firms or government agencies for whom a similar type of work has been performed in the past twelve (12) months. .

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

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

3. The Town reserves the right to inspect bidder's facility, prior to award, to satisfy questions regarding the bidder's capabilities.

2.0 Specifications:

The purpose and intent of these specifications is to establish a minimum acceptable standard for the purchase of a Commercial Grade, Self Contained Snow Blower to be front mounted on a John Deere 544 GTC rubber tired loader equipped with JRB quick coupler. The unit shall be capable of discharging 1300 tons of snow per hour with a center discharge spout for loading into a truck or casting up to 65 feet.

2.1 General:

Cutting width	96"
Overall width	96"
Cutting height	48"

Overall height	135"
Beveled and tapered snow discharge port (eliminates wedge drag of 90 degree corners)	12"x12"x23"
Depth of blower head front to rear	66"
Weight	Approximately 4750 lbs. net weight
Balance point	Approximately 22"
Engine	JD 4045T (125 H.P.) rated capacity 1300 TPH *Optional JD 6068T (170H.P. rated capacity 1800 TPH (Weight change with JD 6068T approx. 5300 lbs)

2.2 Impeller size:

Diameter	41-1/4"
Depth of fan paddles	7-3/4"
Material thickness	5/16" fan backs, 3/8" paddles
Ice chopper bars	2 per impeller
Size	¾" X 2" steel
Shaft size:	
Material	4142 HT
Input	1-3/4" X 37"
Impeller	2" X 28"
Shear Hub Assembly:	
Shear bolt size	7/16" X 2" grade 5, 2 per impeller
Bearings:	
Impeller	One (1) 2" piloted flange per impeller One (1) 1-3/4" pillow block per impeller (ductile iron housing)
Input	One (1) 1-3/4" double pillow block One (1) 1-3/4" double piloted flange
Sprockets	Draw down locking sprockets
Input	Shaft gripping wedge-lock DS801
Fan Driven	Shaft gripping wedge-lock 80-54
Drive chain:	
Drive and Input	#80H
Electrical system:	12 volt DC
Hydraulic power unit:	
Control valves	Electronic/Hydraulic
Operating pressure	1500 PSI 1-5/8 G.P.M. flow, ¾ gallon reservoir

2.3 Discharge spout

Remote operated from operator seat 270 degree rotating and 90 degree telescoping capping spout:

Beveled, radial, directional spout and capper (eliminates 90 degree corners, holds cast pattern together)

Rotation drive	D662 pintle chain with hydraulic orbit motor
Telescoping	2" X 10" hydraulic cylinder
Spout break down mechanism	1,200 lb. Shelby mechanical hand winch
Spout break down height	100"
Overall height	135"

2.4 Controls:

	Type	Location
Clutch	Electronic/Hydraulic	In-cab
Throttle	Electric	In-cab
Spout rotation	Electric/Hydraulic	In-cab
Telescoping Capper	Electric/Hydraulic	In-cab
Off, on, start switch	Electric (Murphy safety shutdown system)	In-cab

2.5 Gauges: Tachometer/Hour meter, Fuel — In-cab
Amp meter — Blower Mt.

2.6 Drive train:
Drive and driven sprockets — Gates Poly Chain

2.7 Drive belt — Gates Poly Chain GT 2 belt drive system

2.8 Clutch with PTO:

Type	Twin Disc (sealed for life bearing, no brass)
Size	As per engine manufacturer's specification

2.9 Diesel fuel system — Capacity of 45 gallons

2.10 Frame: 14" X 7" X ¼" channel and 2-1/2" X 2-1/2" X 3/8" angles, trussed and bridged in stress and load areas to minimize overall weight

2.11 Cutting edges — ¾' X 4" PaCal bolt on replaceable

Skid shoes and wear plates: Three (3) fixed 1" X 3" X 17" bolt on replaceable, high carbon material

2.12 Other

The Contractor shall stock sufficient inventory of parts on site or have readily available from an outside source to be received by the Town of Herndon within twenty four (24) hours in the event of an emergency. This shall require the Contractor and/ or outside source to have emergency plans in place to accommodate such situations since snow blowers are rarely used under normal situations and schedules.

Unit shall come with all necessary attachments, controls etc to be mounted on and operated from the seat of the John Deere 544GTC with "JRB quick coupler"

Unit shall be provided with two sets of operator manuals

Unit shall be provided with two sets of part books

Unit shall be provided with two sets of service manuals for general repairs and adjustments.

Power unit shall be equipped with a keyed ignition and shall include two sets of keys.

2.13 General Warranty

Manufacturer shall warrant the lift to be manufactured from sound materials and in a workmanlike manner and warrant the lift against failure due to defective materials and workmanship for a period of not less than one year.

TOWN OF HERNDON

HERNDON, VA 20172
(703) 435-6800

OFFICIAL TOWN BID FORM

INVITATION NO:	INVITATION SUBJECT:	OPENING: 11/23/10
11-05	SNOW BLOWER	AT 11:00 AM (EST)

DELIVERY	TERMS:	
BIDDER NAME AND ADDRESS:		NOTICE TO ALL BIDDERS: All equipment and/c services provided under this invitation for Bid sha conform to the specifications and all terms an conditions as set forth in the attached. IF NO BI WILL BE SUBMITTED, PLEASE SO INDICAT AND RETURN THIS FORM TO PURCHASIN FORM TO PURCHASING AGENT.
PHONE NUMBER: ( ) FAX NUMBER ( ) EMAIL:		OFFEROR SHOULD BID ON ALL ITEMS II ORDER TO BE CONSIDERED FOR AI AWARD****

Item #	Description	Unit Price
1.	Loader Mounted Snow Blower (1300 ton per hour), or approved equivalent. Model: _____ Number of days for delivery of snow blower from receipt of Purchase Order: _____	$_____
2.	Option: As an option please provide a bid for this unit powered by a minimum 170 HP Diesel engine capable of blowing 1800 Ton per Hour. Specifications shall increase as required to accommodate the additional 170 hp horse diesel power engine Changes shall include but shall not be limited to increased size of input	$_____

	shaft and bearings as indicated. Input shaft 2" X 37", impeller bearing a double 2" piloted flange, input bearings one (1) 2" double pillow block and one (1) 2" double piloted flange, operating weight shall increase to approximately 5300 lbs. Model: _____ Number of days for delivery of snow blower from receipt of Purchase Order: _____	

Have all Specifications included in this Invitation for Bid been met?

[ ] YES [ ] NO (If NO, please list all exceptions in detail on separate sheet.)

SIGNATURE _____

PRINTED NAME _____ DATE _____

By signing this bid, bidder certifies, acknowledges, understands and agrees to be bound by the conditions set forth in the contents of the bid including the General Terms and Conditions.

ATTACHMENT A

BUSINESS, PROFESSIONAL AND OCCUPATIONAL LICENSE

All firms located or operating in the Town of Herndon must obtain a Business, Professional and Occupational License (BPOL) as required in the Municipal Code, Article VII and local license tax authorized, Code of Virginia, § 58.1-3700 et seq.

In order for the Department of Tax Administration to determine BPOL requirement prior to contract award, it is necessary to provide the following information:

- If you currently have a Town of Herndon business license, please submit a copy with your bid/proposal.
- Do you have an office in: Virginia ☐ yes ☐ no

  Town of Herndon ☐ yes ☐ no
- Date business began/will begin work in the Town of Herndon

  _____

Provide a description of the business activity that will take place in the Town of Herndon:

_____
_____
_____
_____
_____
_____
_____
_____

_____ _____
Authorized Signature Date

Please return this form and a copy of current Town of Herndon business license in bid/proposal. Contract award may not be made if omitted.

ATTACHMENT B

REFERENCES

QUALIFICATIONS OF BIDDER: Bidder/offerer must have the capability and capacity in all respects to fully satisfy the contractual requirements.

Indicate the length of time you have been in business providing this type of service and/or product.
_____years, _____months

Provide a list of at least three (3) similar accounts, that your firm has provided similar goods and/or services to in the past twelve (12) months.

1. Company Name:_____
   Contact:_____
   Phone Number:_____
   Job Dates:_____ Beginning:_____ End:_____

2. Company Name:_____
   Contact:_____
   Phone Number:_____
   Job Dates:_____ Beginning:_____ End:_____

3. Company Name:_____
   Contact:_____
   Phone Number:_____
   Job Dates:_____ Beginning:_____ End:_____

ATTACHMENT C

TOWN OF HERNDON

Contractor Certification, Agreement, and Affidavit

As to Eligibility for Employment in the United States

Affidavit

This _____ day of _____ 20__ appeared before me, a notary public for the jurisdiction identified below, _____ the _____ of _____ (Contractor) who after being duly sworn made oath as follows:

1. This instrument supplements and is part of the contract between the Town of Herndon, Virginia (Town) and _____ Contractor (contract).

2. The consideration to support this instrument is the same consideration that supports the contract.

3. Contractor certifies that it does not and will not during the performance of this contract violate (i) the provisions of the Federal Immigration Reform and Control Act of 1986, as amended, and §40.1-11.1, Code of Virginia, which prohibit the employment of aliens not legally eligible for employment in the United States, and (ii) the provisions of Federal and State employment and wage hour laws. To carry out and support a major element of the above certification, the Contractor certifies to the Town that all Contractors' employees and all employees of each of Contractor's subcontractors working on the subject of this contract are legally eligible for employment in the United States.

4. As to each such employee the federal I-9 employment eligibility verification process, or federal Employment Eligibility Verification (E-Verify) Program, or both, has been undergone.

5. Contractor agrees to update this assurance for new employees and to be audited by the Town for compliance with the contractual provision identified as in 3(i) above. During this audit, Contractor shall provide Town access to any public documentation that relates to verifying the employees' legal eligibility for employment in the United States and that relates to employees of the Contractor or of any subcontractor working on the subject of this

contract, in cases where the Town harbors a reasonable suspicion that such employee(s) may be not legally eligible for employment in the United States. The documentation will indicate that the federal I-9 employment eligibility verification process or the federal Employment Eligibility Verification (E-Verify) Program or both as to each such employee has been undergone. The Contractor shall not produce documentation in this regard that is explicitly prohibited by federal or Virginia law from public disclosure.

6. The Contractor shall include and enforce the language in this paragraph in every subcontract issued under this contract and shall require the subcontractor to do the same.

[Contractor]

Name: _____
By: _____
Title: _____

Commonwealth of Virginia:
County of Fairfax:

Subscribed, sworn to, and acknowledged this _____ day of _____ 20__, by _____ the _____ of _____ [Contractor], a _____ [here put type of entity], on behalf of this entity.

_____
Notary Public
My commission expires: _____
Notary registration number: _____

Please return this executed form with bid or proposal. Contract award will not be considered if omitted.

Rev. 10/10

GENERAL TERMS AND CONDITIONS

(Vendor: The general rules and conditions which follow apply to all purchases and become a definite part of each formal solicitation and resulting Contract award issued by Town of Herndon, unless otherwise specified. Bidders or their authorized representatives are expected to inform themselves fully as to the conditions, requirements, and specifications before submitting bids; failure to do so will be at the Bidder's own risk and relief cannot be secured on the plea of error.)

Subject to all State and local laws, policies, resolutions, and regulations and all accepted rules, regulations and limitations imposed by legislation of the Federal Government, bids on all solicitations issued by Town of Herndon will bind Bidders to applicable conditions and requirements herein set forth unless otherwise specified in the solicitation.

1. AUTHORITY – The Procurement Official has the sole responsibility and authority for negotiating, placing and when necessary modifying every solicitation, Contract and purchase order (except for capital construction projects) issued by the Town. In the discharge of these responsibilities, the Procurement Official may be assisted by assigned buyers. Unless specifically delegated by the Procurement Official, no other Town officer or employee is authorized to order supplies or services, enter into purchase negotiations or Contracts, or in any way obligate the government of the Town for indebtedness. Any purchase ordered or Contract made which is contrary to these provisions and authorities shall be of no effect and void and the Town shall not be bound thereby.

2. DEFINITIONS –

AGENCY: Any Department, Agency, Authority, Commission, Board or other unit in the Administrative Service of the Town.

BEST VALUE: As predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to a public body's needs.

BID: The offer of a Bidder to provide specific goods or services at specified prices and/or other conditions specified in the solicitation.

BIDDER/OFFEROR: Any individual, company, firm, corporation, partnership or other organization bidding on solicitations issued by the Procurement Official and offering to enter into Contracts with the Town. The term "Bidder" will be used throughout this document and shall be construed to mean "Offeror" where appropriate.

CONTRACTOR: Any individual, company, firm, corporation, partnership or other organization to whom an award is made by the Town.

GOODS: All material, equipment, supplies, printing, and automated data processing/information technology hardware and software.

INFORMALITY: A minor defect or variation of a bid or proposal from the exact requirements of the invitation to bid or the request for proposal which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.

INVITATION FOR BID (IFB): A request which is made to prospective suppliers (Bidders) for their quotation on goods or services desired by the Town. The issuance of an IFB will contain or incorporate by reference the specifications and contractual terms and conditions applicable to the procurement.

PROFESSIONAL: Any type of professional service which is either: 1) performed by an independent Contractor within the practice of accounting, actuarial services, architecture, dentistry, land surveying, landscape architecture, law, medicine, optometry, pharmacy, or professional engineering (which shall be procured as set forth in the Code of Virginia §2.2-4301 in the definition of competitive negotiation and in conformance with the Purchasing Regulations, required but not furnished by its own employees, which is in its nature so unique that it should be

obtained by negotiation on the basis of demonstrated competence and qualification for the type of professional service required and at fair and reasonable compensation rather than by competitive sealed bidding.

PROCUREMENT OFFICIAL: The Procurement Official employed by the Town Council of the Town of Herndon.

REQUEST FOR PROPOSAL (RFP): A request for an offer from prospective Offerors that will indicate the general terms which are sought to be procured from the Offeror. The RFP will specify the evaluation factors to be used and will contain or incorporate by reference other contractual terms and conditions applicable to the procurement.

RESPONSIBLE BIDDER/OFFEROR: An individual, company, firm, corporation, partnership or other organization having the capability in all respects to perform fully the Contract requirements, and also having the moral and business integrity and reliability which will assure good faith performance, and having been prequalified, if required.

RESPONSIVE BIDDER/OFFEROR: An individual, company, firm, corporation, partnership or other organization having submitted a bid which conforms in all material respects to the invitation for bid or request for proposal.

SERVICES: Any work performed by an independent Contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

SOLICITATION: The process of notifying prospective Bidders that the Town wishes to receive bids on a set of requirements to provide goods or services. The notification of the Town requirements may consist of public advertising (newspaper, Town Web Site, or other electronic notification), the mailing of Notices of Solicitation, Invitation for Bid (IFB) or Request for Proposal (RFP) or telephone calls to prospective Bidders.

STATE: Commonwealth of Virginia.

CONDITIONS OF BIDDING

3. CLARIFICATION OF TERMS – If any Bidder/Offeror has questions about the specifications or other solicitation documents, the prospective Bidder/Offeror should contact the buyer whose name appears on the face of the solicitation no later than three (3) business days prior to the date set for the opening of bids or receipt of proposals. Any revisions to the solicitation will be made only by addendum issued by the buyer. Notifications regarding specifications may not be considered if received in less than three (3) business days of the date set for opening of bids/receipt of proposals.

4. BID FORMS – Unless otherwise specified in the solicitation, all bids shall be submitted on the forms provided, to include the bid Cover Sheet and Pricing Schedule(s), properly signed in ink in the proper spaces and submitted in a sealed envelope provided with the solicitation. The item pages of the Pricing Schedule which do not include any items for which a bid is required need not be included in the submission of a bid. Should the bid prices and/or any other submissions differ on the copy of the submitted bid, the ORIGINAL copy shall prevail.

5. LATE BIDS & MODIFICATIONS OF BIDS –

a. Any bid/modification received at the office designated in the solicitation after the exact time specified for receipt of the bid/modification is considered a late bid/modification. The time/date stamp clock located in the Purchasing Department shall serve as the official authority to determine lateness of any bid. A late bid/modification will not be considered for award except under the following conditions only:

1. It was sent by registered or certified mail not later than the fifth (5th) calendar date prior to the date specified for receipt of the bid/modification; or

2. The bid/modification was sent by mail and it is determined by the Procurement Official that the late receipt was due solely to mishandling by the Town after receipt at the address specified in the solicitation.

b. If the Town declares administrative or liberal leave, scheduled bid openings or receipt of proposals will be extended to the next business day.

c. The time of receipt of bids at the specified location is the time-date stamp of such location on the bid wrapper or other documentary evidence of receipt maintained by the specified location.

d. Bids shall be received in the Purchasing Department from the hours of 7:30 – 4:30 Monday – Friday. The Town accepts no liability for late nor non-receipt of bids.A late hand-carried bid, or any other late bid not submitted by mail, shall not be considered for award.

6. WITHDRAWAL OF BIDS –

a. A Bidder for a public construction Contract, other than a Contract for construction or maintenance of public highways, may withdraw his or her bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. If a bid contains both clerical and judgment mistakes, a Bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid which shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. The Bidder shall give notice in writing to the Procurement Official of his or her claim of right to withdraw his or her bid within two (2) business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice.

b. A Bidder for a Contract other than for public construction may request withdrawal of his or her bid under the following circumstances:

1. Requests for withdrawal of bids prior to opening of such bids shall be transmitted to the Procurement Official in writing.

2. Requests for withdrawal of bids after opening of such bids but prior to award shall be transmitted to the Procurement Official, in writing, accompanied by full documentation supporting the request. If the request is based on a claim of error, documentation must show the basis of the error. Such documentation may take the form of supplier quotations, vendor work sheets, etc. If bid bonds were tendered with the bid, the Town may exercise its right of collection.

c. No bid may be withdrawn under this paragraph when the result would be the awarding of 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.

d. If a bid is withdrawn under the Town of this paragraph, the lowest remaining bid shall be deemed to be the low bid.

e. 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.

f. If the Town denies the withdrawal of a bid under the provisions of this paragraph, it shall notify the Bidder in writing stating the reasons for its decision and award the Contract to such Bidder at the bid price, provided such Bidder is a responsible and responsive Bidder.

g. Work papers, documents, and materials submitted in support of a withdrawal of bids may be considered as trade secrets or proprietary information subject to the conditions of the Virginia Freedom of Information Act.

7. ERRORS IN BIDS – When an error is made in extending total prices, the unit bid price will govern. Erasures in bids must be initialed by the Bidder. Carelessness in quoting prices or in preparation of bid otherwise, will not relieve the Bidder. Bidders are cautioned to recheck their bids for possible error. Errors discovered after public opening cannot be corrected and the Bidder will be required to perform if his or her bid is accepted.

8. IDENTIFICATION OF BID/PROPOSAL ENVELOPE – The signed bid/proposal and requested copies should be returned in a separate envelope or package, sealed and identified with the following information:

Addressed as indicated on page 1:
IFB/RFP Number
Title
Bid/Proposal due date and time
Vendor name and complete mailing address (return address)

If a bid/proposal is not addressed with the information as shown above, 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. Bids/Proposals may be hand delivered to the designated location in the office issuing the solicitation. No other correspondence or other proposals should be placed in the envelope.

9. COMPLETENESS – To be responsive, a bid must include all information required by the solicitation.

10. ACCEPTANCE OF BIDS/PROPOSALS – Unless otherwise specified, all formal bids/proposals submitted shall be valid for a minimum period of one hundred twenty (120) calendar days following the date established for acceptance. At the end of the one hundred twenty (120) calendar days the bid/proposal may be withdrawn at the written request of the Bidder/Offeror. If the proposal is not withdrawn at that time, it remains in effect until an award is made or the solicitation is canceled.

11. CONDITIONAL BIDS – Conditional bids are subject to rejection in whole or in part.

12. BIDS FOR ALL OR PART – Unless otherwise specified by the Procurement Official or by the Bidder, the Procurement Official reserves the right to make award on all items in the aggregate or on any of the items on an individual basis, whichever is in the best interest of the Town. A Bidder may restrict his or her bid to consideration in the aggregate by so stating but shall name a single unit price on each item bid. Any bid in which the Bidder names a total price for all the articles without quoting a unit price for each and every separate item may not be considered for award.

13. PRICING – The subsequent Contract will be a firm-fixed price agreement. The fee(s) will remain firm and will include all charges that may be incurred in fulfilling the requirements of this initial Contract. If the Town elects to exercise the option to renew the Contract for an additional one year period, the Contract price(s) for the additional year shall not exceed the Contract price(s) of the original Contract increased/decreased by no more than the percentage increase/decrease of the commodities category of the CPI-U section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.

14. TIME FOR RECEIVING BID – Bids received prior to the time of opening will be securely kept, unopened. The representative of the Procurement Official assigned to open them will decide when the specified time has arrived, and no bid received thereafter will be considered. No responsibility will attach to the Procurement Official or his or her representative for the premature opening of a bid not properly addressed and identified. Unless specifically authorized in the solicitation, telegraphic, electronic, or facsimile bids/modifications will not be considered.

15. BID OPENING – All bids received in response to an Invitation for Bid (IFB) will be opened at the date, time and place specified, read publicly, and made available for inspection.

16. OMISSIONS & DISCREPANCIES – Any items or parts of any equipment listed in this solicitation which are not fully described or are omitted from such specification, and which are clearly necessary for the completion of such equipment and its appurtenances, shall be considered a part of such equipment although not directly specified or called for in the specifications. Should a Bidder find discrepancies or ambiguities in, or omissions from, the solicitation, including the drawings and/or specifications, he or she shall notify the Procurement Official at least five (5) days prior to the date set for the opening of bids. If necessary, the Procurement Official will send a written addendum for clarification to all Bidders no later than three (3) days before the date set for opening of bids. Notifications regarding specifications will not be considered if received within five (5) days of the date set for opening of bids.

17. RESPONSE TO SOLICITATIONS – In the event a vendor cannot submit a bid on a solicitation, he or she is requested to return the solicitation cover sheet with an explanation as to why he or she is unable to bid on these requirements. Because of the large number of firms listed on the Procurement Opportunities List, it may be necessary to delete from this list the names of those persons, firms or corporations who fail to respond after having been invited to bid for three (3) successive solicitations. Such deletion will be made only after formal notification of the intent to remove the firm from the Procurement Opportunities List.

18. BIDDER INTERESTED IN MORE THAN ONE BID – If more than one bid is offered by any one party, either directly or by or in the name of his or her clerk, partner, or other persons, all such bids may be rejected. A party who has quoted prices on work, materials, or supplies to a Bidder is not thereby disqualified from quoting prices to other Bidders or firms submitting a bid directly for the work, materials or supplies.

19. TAX EXEMPTION – The Town is exempt from the payment of any federal excise or any Virginia sales tax. The price bid must be net, exclusive of taxes. However, when under established trade practice any federal excise tax is included in the list price, a Bidder may quote the list price and shall show separately the amount of federal tax, either as a flat sum or as a percentage of the list price, which shall be deducted by the Federal Excise Tax Exemption Number is 54-6001349. Contractors located outside the Commonwealth of Virginia are advised that when materials are picked up by the Town at their place of business, they may charge and collect their own local/state sales tax. Materials used in the performance of construction Contracts are subject to Virginia Sales/Use Tax as described in Section 630-10-27J of the Virginia Retail Sales and Use Tax Regulations.

20. PROHIBITION AGAINST UNIFORM PRICING – The Procurement Official shall encourage open and competitive bidding by all possible means and shall endeavor to obtain the maximum degree of open competition on all purchase transactions using the competitive sealed bidding, competitive negotiation, or open market methods of procurement. In submitting a bid each Bidder shall, by virtue of submitting a bid, guarantee that he or she has not been a party with other Bidders to an agreement to bid a fixed or uniform price. Violation of this implied guarantee shall render void the bids of participating Bidders. Any disclosure to or acquisition by a competitive Bidder, in advance of the opening of the bids, of the terms or conditions of the bid submitted by another competitor may render the entire proceedings void and may require re-advertising for bids.

21. DEBARMENT STATUS – By submitting their bids/proposals, Bidders/Offerors certify that they are not currently debarred from submitting bids/proposals on Contracts by the Town, nor are they an agent of any person or entity that is currently debarred from submitting bids or proposals on Contracts by the Town or any agency, public entity/locality or authority of the Commonwealth of Virginia.

22. ETHICS IN PUBLIC CONTRACTING – The provisions contained in Sections 2.24367 through 2.2-4377 of the Virginia Public Procurement Act, as set forth in the 1950 Code of Virginia, as amended, shall be applicable to all Contracts solicited or entered into by the Town. A copy of these provisions may be obtained from the Purchasing Agent upon request. By submitting their bids/proposals, all Bidders/Offers 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.

The above-stated provisions supplement, but do not supersede, other provisions of law including, but not limited to, the Virginia 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 and 3 of Chapter 10 of Title 18.2. The provisions apply notwithstanding the fact that the conduct described may not constitute a violation of the Virginia State and Local Government Conflict of Interests Act.

23. NO CONTACT POLICY – No Bidder/Offeror shall initiate or otherwise have contact related to the solicitation with any Town representative or employee, other than the Purchasing Department, after the date and time established for receipt of bids/proposals. Any contact initiated by a Bidder/Offeror with any Town representative, other than the Purchasing Department, concerning this solicitation is prohibited and may cause the disqualification of the Bidder/Offeror from this procurement process.

24. ADDENDA – All addenda will be issued by the Town via First Class U.S. Mail/Town Procurement webpage or EVA Commonwealth of Virginia webpage. All such addenda shall become a part of the solicitation documents, must be addressed in the bid/offer and shall become a Contract Document. The Town accepts no liability for late or non-receipt of addenda.

25. CRIMINAL SANCTIONS – The provisions referenced in Ethics in Public Contracting supplement, but do not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interest Act (ss 2.1-639.1 et seq.), the Virginia Governmental Frauds Act (ss 18.2-498.1 et seq.), and Articles 2 (ss 18.2-438 et seq.) and 3 (ss 18.2-446 et seq.) of Chapter 10 of Title 18.2. The provisions apply notwithstanding the facts that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act.

26. PERFORMANCE AND PAYMENT BONDS – The Town may request in solicitations that the successful Bidder/Offeror execute Performance and/or Payment Bonds for the specific bid/offer. If such bonds are required, the Bidder/Offeror must execute the Town's Performance Bond (Form 8908R) and the Town's Payment Bond (Form 8907R). These documents shall be included in the solicitation.

27. LICENSE REQUIREMENT – All firms doing business in the Town of Herndon are required to be licensed in accordance with the Town's "Business, Professional and Occupational Licensing (BPOL) Tax" Ordinance and the BPOL license number must be indicated on the bid/proposal form. 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, Revenue Office, telephone number (703) 435-6813.

28. CONTRACTOR'S LICENSE REQUIREMENT – As required under Title 54, Code of Virginia (1950) a Contract for construction, removal, repair or improvement of a building or other real property that exceeds one thousand ($1,000.00) shall furnish the following:

Licensed Class A Virginia Contractor #_____
Specialty #_____or

Licensed Class B Virginia Contractor #_____
Specialty #_____or

Licensed Class C Virginia Contractor #
_____ Specialty #_____

29. INSURANCE – Whenever any work and/or services are provided, either in or on Town owned property, the following shall apply:

a. The Contractor shall provide the Procurement Official with a Commonwealth of Virginia Certificate of Insurance PRIOR to the commencement of any work under the Contract and agrees to maintain such insurance until the completion of the Contract. The minimum limits of liability shall be:

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

2. Broad Form Comprehensive General Liability--$1,000,000 per occurrence coverage to include:

Premises - Operations; Products/Completed Operations; Contractual; Independent Contractors; Owners and Contractors Protective; Personal Injury (Libel, Slander, Defamation of Character, etc.);

3. Automotive Liability--$1,000,000.00 per occurrence.

4. Professional Liability/Errors and Omissions

5.

Profession/Services:	Limits
Accounting	$1,000,000 per occurrence, $3,000,000 aggregate
Architecture	$2,000,000 per occurrence, $6,000,000 aggregate
Asbestos Design, Inspection or Abatement Contractor	$1,000,000 per occurrence, $3,000,000 aggregate
Health Care Practitioner	$1,750,000 per occurrence, $3,000,000 aggregate
Insurance/Risk Management	$1,000,000 per occurrence, $3,000,000 aggregate
Landscape/Architecture	$1,000,000 per occurrence, $1,000,000 aggregate
Legal	$1,000,000 per occurrence, $5,000,000 aggregate
Professional Engineer	$2,000,000 per occurrence, $6,000,000 aggregate
Surveying	$1,000,000 per occurrence, $1,000,000 aggregate

b. The Town reserves the right to require higher limits on any Contracts provided notice of such requirement is stated in the solicitation. The Town is to be named as an additional or co-insured. A thirty- (30) day written notice of cancellation or non-renewal shall be furnished by certified mail to the Procurement Official at the address indicated on the solicitation.

c. Contractor's signature of the solicitation constitutes his/her certification that, if awarded the Contract, he/she shall obtain the required coverage as specified above and proof of coverage as contained herein shall be submitted within ten (10) calendar days after notice of award. The Contractor's signature also signifies that this coverage shall be maintained for the duration of the Contract. "Claims made" policies must be in force or that coverage purchased for three (3) years after Contract completion date

SPECIFICATIONS

30. QUESTIONS CONCERNING SPECIFICATIONS – Any information relative to interpretation of specifications and drawings shall be requested of the Procurement Official, in writing, in ample time before the opening of bids. No inquiries, if received by the Procurement Official within five (5) days of the date set for the opening of bids, will be given any consideration. Any material interpretation of a specification, as determined by the Procurement Official, will be expressed in the form of an addendum to the specification which will be sent to all prospective Bidders no later than three (3) days before the date set for receipt of bids. Oral answers will not be authoritative.

31. BRAND NAME OR EQUAL ITEMS – Unless otherwise provided in the invitation for bid, the name of a certain brand, make or manufacturer does not restrict Bidders to the specific brand, make or manufacturer named; it conveys the general style, type, character, and quality of the article desired, and any article which the Town in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.

32. FORMAL SPECIFICATIONS – When a solicitation contains a specification which states no substitutes, no deviation there from will be permitted and the Bidder will be required to furnish articles in conformity with that specification. The Bidder shall abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully complete every part as the true intent and meaning of the specifications and drawings. Whenever the mention is made of any articles, material, or workmanship to be in

accordance with laws, ordinances, building codes, underwriter's codes, A.S.T.M. regulations or similar expressions, the requirements of these laws, ordinances, etc., shall be construed as to the minimum requirements of these specifications.

33. FEDERAL SPECIFICATIONS – Any Federal Specifications referred to herein may be obtained from the GSA Federal Supply Service Bureau - Specification Section, 470 East L'Enfant Plaza, S.W., Suite #8100, Washington, D.C. 20407 (Voice: 1-202-619-8925, Fax: 1-202-619-8978).

34. CONDITION OF ITEMS – Unless otherwise specified in the solicitation, all items shall be new, in first class condition.

AWARD

35. AWARD OR REJECTION OF BIDS – The Procurement Official shall award the Contract to the lowest responsive and responsible Bidder complying with all provisions of the IFB, provided the bid price is reasonable and it is in the best interest of the Town to accept it. Awards made in response to a RFP will be made to the highest qualified offeror whose proposal is determined, in writing, to be the most advantageous to the Town taking into consideration the evaluation factors set forth in the RFP. The Procurement Official reserves the right to award a Contract by individual items, in the aggregate, or in combination thereof, or to reject any or all bids and to waive any informality in bids received whenever such rejection or waiver is in the best interest of the Town. Award may be made to as many Bidders as deemed necessary to fulfill the anticipated requirements of the Town. The Procurement Official also reserves the right to reject the bid of a Bidder deemed to be a non-responsible Bidder. In determining the responsibility of a Bidder, the following criteria will be considered: shall have recorded the reasons in the Contract file.

a. The ability, capacity and skill of the Bidder to perform the Contract or provide the service required;

b. Whether the Bidder can perform the Contract or provide the service promptly, or within the time specified, without delay or interference;

c. The character, integrity, reputation, judgment, experience and efficiency of the Bidder;

d. The quality of performance of previous Contracts or services;

e. The previous and existing compliance by the Bidder with laws and ordinances relating to the Contract or services;

f. The sufficiency of the financial resources and ability of the Bidder to perform the Contract or provide the service;

g. The quality, availability and adaptability of the goods or services to the particular use required;

h. The ability of the Bidder to provide future maintenance and service for the use of the subject of the Contract;

i. The number and scope of the conditions attached to the bid;

j. Whether the Bidder is in arrears to the Town on debt or Contract or is a defaulter on surety to the Town or whether the Bidder's Town taxes or assessments are delinquent; and

k. Such other information as may be secured by the Procurement Official having a bearing on the decision to award the Contract. If an apparent low Bidder is not awarded a Contract for reasons of non responsibility, the Procurement Official shall to notify that Bidder and shall have recorded the reasons in the Contract file.

36. NOTICE OF ACCEPTANCE/CONTRACT DOCUMENTS – A written award (or Acceptance Agreement) mailed (or otherwise furnished) to the successful Bidder within the time for acceptance specified in the solicitation

shall be deemed to result in a binding Contract. The following documents which are included in the solicitation shall be incorporated by reference in the resulting Contract and become a part of said Contract:

a. Authority of Solicitation Form/Acceptance Agreement (Cover Sheet) and other documents which may be incorporated by reference, if applicable,

b. General Conditions and Instructions to Bidders,

c. Special Provisions and Specifications

d. Pricing Schedule,

e. Any addenda/amendments/Memoranda of Negotiations

37. TIE-BIDS – If all bids are for the same total amount or unit price (including authorized discounts and delivery times), and if the public interest will not permit the delay of re-advertisement for bids, the Procurement Official is authorized to award the Contract to the resident to the Town tie Bidder whose firm has its principal place of business in the Town, or if there be none, to the resident Virginia tie Bidder, or if there be none, to one of the tie Bidders by drawing lots in public; or the Procurement Official may purchase the goods or services in the open market except that the price paid shall not exceed the lowest Contract bid price submitted for the same goods or services. The decision of the Town to make award to one or more such Bidders shall be final.

CONTRACT PROVISIONS

38. PROMPT PAYMENT DISCOUNT –

a. Unless otherwise specified in the solicitation, prompt payment discounts requiring payment in less than fifteen (15) days will not be considered in evaluating a bid for award. However, even though not considered in the evaluation, such discounts will be taken if payment is to be made within the discount period.

b. In connection with any discount offered, time will be computed from the date of delivery of the supplies to the carrier when or, from date correct invoice or voucher is received in the office specified by the Town, if the latter is later than the date of acceptance. In the event the Bidder does not indicate a prompt payment discount, it shall be construed to mean NET 45 days. For the purpose of earning the discount, payment is deemed to be made as of the date of mailing of the Town check.

39. INSPECTION-ACCEPTANCE – For determining acceptance of supplies in accordance with the provisions of the prompt payment discount paragraph, inspection and acceptance shall be accomplished only after examination (including testing) of supplies and services to determine whether the supplies and services conform to the Contract requirements. Acceptance shall occur only after receipt and inspection provided such inspection, as appropriate, is accomplished within a reasonable time.

40. DEFINITE BID QUANTITIES – Where definite quantities are specifically stated, acceptance will bind the Town to order quantities specified and to pay for, at Contract prices, all such supplies or services delivered that meet specifications and conditions of the Contract. However, the Town will not be required to accept delivery of any balances unordered, as of the Contract expiration date, unless the Contractor furnished the Procurement Official with a statement of unordered balances not later than ten (10) days after the termination date of the Contract.

41. REQUIREMENT BID QUANTITIES – On "Requirement" bids, acceptance will bind the Town to pay for, at unit bid prices, only quantities ordered and delivered. Where the Town specifies estimated quantities, the Contractor shall not be required to deliver more than ten (10) percent in excess of the estimated quantity of each item, unless otherwise agreed upon.

42. TERMINATION OF CONTRACTS – Contracts will remain in force for full periods specified and/or until all articles ordered before date of termination shall have been satisfactorily delivered and accepted and thereafter until all requirements and conditions shall have been met, unless:

a. Terminated prior to expiration date by satisfactory deliveries of entire Contract requirements, or upon termination by the Town for Convenience or Cause.

b. Extended upon written authorization of the Procurement Official and accepted by Contractor, to permit ordering of unordered balances or additional quantities at Contract prices and in accordance with Contract terms.

43. TERMINATION FOR CONVENIENCE – A Contract may be terminated in whole or in part by the Town in accordance with this clause whenever the Procurement Official shall determine that such a termination is in the best interest of the Town. Any such termination shall be effected by delivery to the Contractor at least thirty (30) days prior to the termination date of a Notice of Termination specifying the extent to which performance shall be terminated and the date upon which termination becomes effective. An equitable adjustment in the Contract price shall be made for completed service, but no amount shall be allowed for anticipated profit on unperformed services.

44. TERMINATION OF CONTRACT FOR CAUSE –

a. If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner his or her obligations under this Contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Contract, the Town shall thereupon have the right to terminate, specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. In such event all finished or unfinished documents, data, studies, surveys, drawings, maps, models, and reports prepared by the Contractor under the Contract shall, at the option of the Town, become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.

b. Notwithstanding the above, the Contractor shall not be relieved of liability to the Town for damages sustained by the Town by virtue of any breach of Contract by the Contractor for the purpose of set off until such time as the exact amount of damages due to the Town from the Contractor is determined.

45. TERMINATION DUE TO UNAVAILABILITY OF FUNDS IN SUCCEEDING FISCAL YEARS

If funds are not appropriated or otherwise made available to support continuation of the performance of this Contract in a subsequent fiscal year, then the Contract shall be canceled and, to the extent permitted by law, the Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the Contract.

46. CONTRACT ALTERATIONS – No alterations in the terms of a Contract shall be valid or binding upon the Town unless made in writing and signed by the Procurement Official or his or her authorized agent.

47. APPLICABLE LAW AND COURTS – Any Contract resulting from this solicitation shall be governed in any respects by the laws of Virginia, and any litigation with respect thereto shall be brought in the Circuit Court of the Town of Herndon, Virginia. The Contractor shall comply with applicable federal, state and local laws and regulations.

48. IMMIGRATION REFORM AND CONTROL ACT OF 1986 – Contractor certifies that it does not and will not during the performance of this Contract violate (i) the provisions of the Federal Immigration Reform and Control Act of 1986, as amended and §40.1-11.1, Code of Virginia, which prohibits the employment of illegal aliens and (ii) the provisions of Federal and State employment and wage hour laws. The Contractor shall include and enforce the language in the last sentence in every subcontract issued under this Contract and shall require the subcontractor to do the same.

a. Resolution 09-G-121 adopted at a legally convened meeting of the Town Council of the Town of Herndon on December 8, 2009.

1. The Town Council requires the Town Manager as to all future contracts for construction or services awarded by the Town to include the following language (or necessary variation to accommodate wording of the appropriate contract) to assure that such Town Contractors do not hire or suffer the hiring of persons to perform work for the Town so that Town funds are not employed to benefit aliens not legally eligible for employment in the United States:

Contractor certifies that it does not and will not during the performance of this contract violate (i) the provisions of the Federal Immigration Reform and Control Act of 1986, as amended, and §40.1-11.1, Code of Virginia, which prohibit the employment of aliens not legally eligible for employment in the United States, and (ii) the provisions of Federal and State employment and wage hour laws. To carry out and support a major element of the above certification, the Contractor shall certify to the Town that all Contractor's employees and all employees of each of Contractor's subcontractors working on the subject of this contract are legally eligible for employment in the United States. This certification shall take the form of a general certificate that as to each such employee the federal I-9 employment eligibility verification process, or federal Employment Eligibility Verification (E-Verify) Program, or both has been undergone; and the Contractor's agreement to update this assurance for new employees and to be audited by the Town for compliance with the contractual provision identified as (i) above. During this audit, Contractor shall provide Town access to any public documentation that relates to verifying the employee's legal eligibility for employment in the United States and that relates to employees of the Contractor or of any subcontractor working on the subject of this contract, in cases where the Town harbors a reasonable suspicion that such employee(s) may be not legally eligible for employment in the United States. The documentation will indicate that the federal I-9 employment eligibility verification process or the federal Employment Eligibility Verification (E-Verify) Program or both as to each such employee has or has not been undergone. The Contractor shall not produce documentation in this regard that is explicitly prohibited by federal or Virginia law from public disclosure. The documentation may take the form of an affidavit of the Contractor. The purpose and tenor of such certification and documentation are to indicate that each such employee met legal eligibility requirements for employment in the United States, and is so legally eligible to work in the United States, according to this contract provision. The presence of an alien not legally eligible for employment in the United States working on the subject of this contract among other things shall constitute a breach of this contract. Since damages for such a breach would be uncertain and difficult to determine, Town's damages (among others) for such breach shall equal the amount paid by the Contractor or subcontractor as wages to each alien not legally eligible for employment in the United States. This provision shall not limit or replace any other contract damages Town may seek or be entitled to by law. The Contractor shall include and enforce the language in this paragraph in every subcontract issued under this contract and shall require the subcontractor to do the same.

1. The Town Manager shall enforce this language by appropriate administrative steps.

2. This resolution constitutes a legislative position of the Town Council and an administrative requirement upon the Town Manager. The resolution does not constitute a criminal or penal measure of the Town.

3. This resolution supersedes Resolution 06-G-116, adopted October 10, 2006.

4. This resolution shall be effective on and after the date of its adoption.

49. ANTI-TRUST – By entering into a Contract, the Contractor conveys, sells, assigns and transfers to the Town all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust

law of the United States and the Town of Herndon, relating to the particular goods or services purchased or acquired by the Town under said Contract. Consistent and continued tie bidding could cause rejection of bids by the Procurement Official and/or investigation for Anti-Trust violations.

50. PAYMENT TERMS – Unless otherwise provided in the solicitation, payment will be made forty-five (45) days after receipt of a proper invoice, or forty-five (45) days after receipt of all goods or acceptance of work, whichever is the latter.

a. Invoices for items/services ordered, delivered/performed and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/Contract. All invoices shall show the Contract number, purchase order number and any federal employer identification number.

b. Any payment terms requiring payment in less than 45 days will be regarded as requiring payment 45 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 45 days, however.

c. The date of payment shall be deemed the date of postmark in all cases where payment is made by mail.

51. PAYMENT TO SUBCONTRACTORS – A Contractor awarded a Contract under this solicitation is hereby obligated:

a. To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the Town for the proportionate share of the payment received for work performed by the subcontractor(s) under the Contract; (or)

b. To notify the Town and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.

The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the Contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the Town, except for amounts withheld as stated in b above. The date of mailing of any payment by U.S. mail is deemed to be payment to the addressee. These provisions apply to each sub-tier Contractor performing under the primary Contract. A Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Town.

52 ASSIGNMENT OF CONTRACT – A Contract shall not be assignable by the Contractor in whole or in part without the written consent of the Procurement Official.

53. DEFAULT – In case of failure to deliver goods or services in accordance with the Contract terms and conditions, the Town, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to other remedies which the Town may have.

54. NON-LIABILITY – The Contractor shall not be liable in damages for delay in shipment or failure to deliver when such delay or failure is the result of fire, flood, strike, the transportation carrier, act of God, act of Government, act of an alien enemy or by any other circumstances which, in the Procurement Official's opinion, are beyond the control of the Contractor. Under such circumstances, however, the Procurement Official may, at his or her discretion, cancel the Contract.

55. ANTI-DISCRIMINATION – By submitting their bids/proposals, Bidders/Offerors certify to the Town that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Act of 1975, as amended, where applicable, the Virginians with Disabilities Act, the Americans with Disabilities Act and Section 2.2-4311 of the Virginia Public Procurement Act. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the Contract on the basis of the recipients religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other

organizations that Contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (Code of Virginia, 2.2-4343 (E). In every Contract over $10,000 the provisions in a (a) and (b) below apply:

a. During the performance of this Contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

2. 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.

3. 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 a, b, and c above in every subcontract or purchase order of over $10,000 so that the provisions will be binding upon each subcontractor or vendor.

56. OFFICE OF SMALL BUSINESS –

a. It is the policy of the Town as declared by the Town Council's adoption of a Small and Minority Business Enterprise Program that its employees undertake every effort to increase opportunity for utilization of small or minority businesses in all aspects of procurement to the maximum extent feasible.

b. In connection with the performance of this Contract, the Contractor agrees to use his or her best effort to carry out this policy and to ensure that small and minority businesses shall have the maximum practicable opportunity to compete for subcontract work under this Contract consistent with the efficient performance of this Contract.

c. As used in this Contract the term small business means a corporation, partnership, or sole proprietorship, or other legal entity formed for the purpose of making a profit, which is independently owned and operated, has either fewer then 100 employees, or less than $1,000,000 in annual receipts.

d. As used in this Contract, the term "minority business" means a business enterprise that is at least 51 percent owned and controlled by a minority person or persons. Such persons include African Americans, Hispanic Americans, Asian Americans, American Indians, Eskimos and Aleuts; women regardless of race or ethnicity; and persons with a physical impairment that substantially limits one or more of the major life activities of such individuals, a record of such impairment, or who are regarded as having such an impairment.

e. Contractors may rely on oral or written representations by subcontractors regarding their status as small and/or minority business enterprises in lieu of independent investigation.

f. Where Federal grants or monies are involved it is the policy of the Town, through its agents and employees, to comply with the requirements set forth in the U.S. Office of Management and Budget Circular No. A-102, uniform administrative requirements for Grants and Cooperative Agreements with State and Local Governments, as they pertain to small and minority business utilization.

57. GUARANTEES & WARRANTIES – All guarantees and warranties required shall be furnished by the Contractor and shall be delivered to the Procurement Official before final payment on the Contract is made. Unless otherwise stated, manufacturer's standard warranty applies.

58. PRICE REDUCTION – If at any time after the date of the bid the Contractor makes a general price reduction in the comparable price of any material covered by the Contract to customers generally, an equivalent price reduction based on similar quantities and/or considerations shall apply to this Contract for the duration of the Contract period (or until the price is further reduced). Such price reduction shall be effective at the same time and in the same manner as the reduction in the price to customers generally. For purpose of this provision, a "general price reduction" shall mean any horizontal reduction in the price of an article or service offered (1) to Contractor's customers generally, or (2) in the Contractor's price schedule for the class of customers, i.e., wholesalers, jobbers, retailers, etc., which was used as the basis for bidding on this solicitation. An occasional sale at a lower price, or sale of distressed merchandise at a lower price, would not be considered a "general price reduction" under this provision. The Contractor shall submit his or her invoice at such reduced prices indicating on the invoice that the reduction is pursuant to the "Price Reduction" provision of the Contract documents. The Contractor in addition will within ten days of any general price reduction notify the Procurement Official of such reduction by letter. FAILURE TO DO SO MAY REQUIRE TERMINATION OF THE CONTRACT. Upon receipt of any such notice of a general price reduction, all ordering offices will be duly notified by the Procurement Official.

The Contractor, if requested, shall furnish, within ten (10) days after the end of the Contract period, a statement certifying either (1) that no general price reduction, as defined above, was made after the date of the bid, or (2) if any such general price reductions were made, that as provided above, they were reported to the Procurement Official within ten (10) days and ordering offices were billed at the reduced prices. Where one or more such general price reductions were made, the statement furnished by the Contractor shall include with respect to each price reduction (1) the date when notice of any such reduction was issued, (2) the effective date of the reduction, and (3) the date when the Procurement Official was notified of any such reduction.

59. MODIFICATION OF CONTRACT – the Procurement Official may upon agreement with the Contractor, issue a written modification to the Contract within the general scope thereof, during performance. However, no fixed-price Contract may be increased over the life of the Contract by amounts totaling more than twenty percent (20%) of the amount of the Contract or thirty thousand dollars ($30,000) whichever is LESS without the advance written approval of the Town Council. In no event may the amount of any Contract be increased for any purpose without adequate consideration. Relief of a Bidder/Offeror from the consequences of an error in its bid/Offeror is prohibited without adequate consideration. Should it become proper or necessary in the execution of this Contract to make any change in design or to make any alterations which will increase the expense, the Procurement Official shall determine an equitable adjustment. No payment shall be made to the Contractor for any extra material or services, or of any greater amount of money than stipulated to be paid in the Contract, unless some changes in or additions to the Contract requiring additional outlay by the Contractor shall first have been expressly authorized and ordered in writing by Contract amendment or otherwise furnished by the Procurement Official.

60. PLACING OF ORDERS – Orders against Contracts will be placed with the Contractor on a Purchase Order executed and released by the Procurement Official or his or her designee. The Purchase Order must bear the appropriate Contract number and date. Where Blanket Purchase Orders (BPOs) have been executed and a Blanket Purchase Order has been released by the Procurement Official, telephonic orders may be placed directly with the Contractor by authorized personnel in the Town.

61. ADDITIONS/DELETIONS – The Town reserves the right to add similar items/services or delete items/services specified in the resultant Contract as requirements change during the period of the Contract. The Town and the Contractor mutually agree to prices for items/services to be added to the Contract. Contract amendments will be issued for all additions or deletions.

DELIVERY PROVISIONS

62. SHIPPING INSTRUCTIONS - CONSIGNMENT – Unless otherwise specified in the solicitation each case, crate, barrel, package, etc., delivered under the Contract must be plainly stenciled or securely tagged, stating the Contractor's name, purchase order number, and delivery address as indicated in the order. Where shipping containers are to be used, each container must be marked with the purchase order number, name of the Contractor, the name of the item, the item number, and the quantity contained therein. Deliveries must be made within the hours of 8:30 AM - 5:00 PM (Monday - Friday). Deliveries at any other time will not be accepted unless specific

arrangements have been previously made with the storekeeper at the delivery point. No deliveries will be accepted on Saturdays, Sundays and holidays, unless previous arrangements have been made. It shall be the responsibility of the Contractor to insure compliance with these instructions for items that are drop-shipped.

63. RESPONSIBILITY FOR SUPPLIES TENDERED – Unless otherwise specified in the solicitation, the Contractor shall be responsible for the materials or supplies covered by the Contract until they are delivered at the designated point, but the Contractor shall bear all risk on rejected materials or supplies after notice of rejection. Rejected materials or supplies must be removed by and at the expense of the Contractor promptly after notification of rejection, unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the Contractor within ten (10) days after date of notification, the Town may return the rejected materials or supplies to the Contractor at his or her risk and expense or dispose of them as its own property.

64. INSPECTIONS – Inspection and acceptance of materials or supplies will be made after delivery at destinations herein specified unless otherwise stated. If inspection is made after delivery at destination herein specified, the Town will bear the expense of inspection except for the value of samples used in case of rejection. Final inspection shall be conclusive except in regard to latent defects, fraud or such gross mistakes as to amount to fraud. Final inspection and acceptance or rejection of the materials or supplies will be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the Town for such materials or supplies as are not in accordance with the specifications.

65. COMPLIANCE – Delivery must be made as ordered and in accordance with the solicitation or as directed by the Procurement Official when not in conflict with the bid. The decision of the Procurement Official as to reasonable compliance with delivery terms shall be final. Burden of proof of delay in receipt of goods by the purchaser shall rest with the Contractor. Any request for extension of time of delivery from that specified must be approved by the Procurement Official, such extension applying only to the particular item or shipment affected. Should the Contractor be delayed by the Town, there shall be added to the time of completion a time equal to the period of such delay caused by the Town. However, the Contractor shall not be entitled to claim damages or extra compensation for such delay or suspension. These conditions may vary for construction Contracts. See Special Provisions for the individual solicitation.

66. POINT OF DESTINATION – All materials shipped to the Town must be shipped F.O.B. DESTINATION unless otherwise stated in the Contract or purchase order. The materials must be delivered to the "Ship to" address indicated on the purchase order.

67. ADDITIONAL CHARGES – Unless bought F.O.B. "shipping point" and Contractor prepays transportation, no delivery charges shall be added to invoices except when express delivery is authorized and substituted on orders for the method specified in the Contract. In such cases, difference between freight or mail and express charges may be added to invoice.

68. METHOD AND CONTAINERS – Unless otherwise specified, goods shall be delivered in commercial packages in standard commercial containers, so constructed as to ensure acceptance by common or other carrier for safe transportation to the point of delivery. Containers become the property of the Town unless otherwise specified by Bidder.

69. WEIGHT CHECKING – Deliveries shall be subject to re-weighing over official sealed scales designated by the Town. Payments shall be made on the basis of net weight of materials delivered. Normal shrinkage may be allowed in such instances where shrinkage is possible. Net weights only, exclusive of containers or wrapping, shall be paid for by the Town.

70. DEMURRAGE AND RE-SPOTTING – The Town will be responsible for demurrage charges only when such charges accrue because of the Town's negligence in unloading the materials. The Town will pay railroad charges due to the re-spotting of cars, only when such re-spotting is ordered by the Town.

71. REPLACEMENT – Materials or components that have been rejected by the Procurement Official, in accordance with the terms of a Contract, shall be replaced by the Contractor at no cost to the Town.

72. PACKING SLIPS OR DELIVERY TICKETS – All shipments shall be accompanied by Packing Slips or Delivery Tickets and shall contain the following information for each item delivered:

1. The Purchase Order Number,
2. The Name of the Article and Stock Number (Supplier's),
3. The Quantity Ordered,
4. The Quantity Shipped,
5. The Quantity Back Ordered,
6. The Name of the Contractor.

Contractors are cautioned that failure to comply with these conditions shall be considered sufficient reason for refusal to accept the goods.

BILLING

73. BILLING – Billing for the agencies: Unless otherwise specified on the Contract or purchase order, invoices are to be submitted, in DUPLICATE, for each purchase order immediately upon completion of the shipment or services. If shipment is made by freight or express, the original Bill of Lading, properly receipted, must be attached to the invoice. Invoices should be mailed to the "BILL TO" address on the P.O. or to the appropriate address specified below:

Town of Herndon
Attn: Accounts Payable
PO Box 427
Herndon, VA 20172-0427

PAYMENTS

74. PAYMENT – Payment shall be made after satisfactory performance of the Contract, in accordance with all of the provisions thereof, and upon receipt of a properly completed invoice. The Town reserves the right to withhold any or all payments or portions thereof for Contractor's failure to perform in accordance with the provision of the Contract or any modifications thereto.

75 PARTIAL PAYMENTS – Unless otherwise specified, partial payments will be made upon acceptance of materials or services so invoiced if in accordance with completion date. However, up to 5 percent (5%) of the value of the entire order may be retained until completion of Contract.

76. PAYMENT FOR EQUIPMENT, INSTALLATION, AND TESTING – When equipment requires installation (which shall also be interpreted to mean erection and/or setting up or placing in position, service, or use) and test, and where such installation or testing is delayed, payment may be made on the basis of 50% of the Contract price when such equipment is delivered on the site. A further allowance of 25% may be made when the equipment is installed and ready for test. The balance shall be paid after the equipment is tested and found to be satisfactory. If the equipment must be tested, but installation is not required to be made by the Contractor or if the equipment must be installed but testing is not required, payment may be made on the basis of 75% at the time of delivery and the balance shall be paid after satisfactory test or installation is completed.

BIDDER/CONTRACTOR REMEDIES

77. GENERAL GUARANTY – Contractor agrees to:

a. Save the Town, its agents and employees harmless from liability of any nature or kind for the use of any copyrighted or uncopyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a Contract for which the Contractor is not the patentee, assignee, licensee or owner.

b. Protect the Town against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery.

c. Furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work or to the work of other Contractors, for which his or her workers are responsible.

d. Pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules and regulations of the Town.

e. Protect the Town from loss or damage to Town owned property while it is in the custody of the Contractor.

78. SERVICE CONTRACT GUARANTY – Contractor agrees to:

a. Save the Town, its agents and employees harmless from liability of any nature or kind for the use of any copyrighted or uncopyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a Contract for which the Contractor is not the patentee, assignee, licensee or owner.

b. Protect the Town against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery.

c. Furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work or to the work of other Contractors, for which his or her workers are responsible.

d. Pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules and regulations of the Town.

e. Protect the Town from loss or damage to the Town owned property while it is in the custody of the Contractor

79. INDEMNIFICATION – Contractor shall indemnify, keep and save harmless the Town, its agents, officials, employees and volunteers against claims of injuries, death, damage to property, patent claims, suits, liabilities, judgments, cost and expenses which may otherwise accrue against the Town in consequence of the granting of a Contract or which may otherwise result there from, if it shall be determined that the act was caused through negligence or error, or omission of the Contractor or his or her employees, or that of the subcontractor or his or her employees, if any; and the Contractor shall, at his or her own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising there from or incurred in connection therewith; and if any judgment shall be rendered against the Town in any such action, the Contractor shall, at his or her own expense, satisfy and discharge the same. Contractor expressly understands and agrees that any performance bond or insurance protection required by this Contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Town as herein provided.

80. OFFICIALS NOT TO BENEFIT –

a. Each Bidder shall certify, upon signing a bid or proposal, that to the best of his or her knowledge, no Town official or employee having official responsibility for the procurement transaction, or member of his or her immediate family, has received or will receive any financial benefit of more than nominal or minimal value relating to the award of this Contract. If such a benefit has been received or will be received, this fact shall be disclosed with the bid or proposal or as soon thereafter as it appears that such a benefit will be received. Failure to disclose the information prescribed above may result in suspension or debarment, or rescission of the Contract made, or could affect payment pursuant to the terms of the Contract.

b. Whenever there is reason to believe that a financial benefit of the sort described in paragraph a has been or will be received in connection with a bid, proposal or Contract, and that the Contractor has failed to disclose such benefit or has inadequately disclosed it, the Town Executive, as a prerequisite to payment pursuant to the Contract, or at any other time, may require the Contractor to furnish, under oath, answers to any interrogatories related to such possible benefit.

c. In the event the Bidder or Offeror has knowledge of benefits as outlined above, this information should be submitted with the bid or proposal. If the above does not apply at time of award of Contract and becomes known after inception of a Contract, the Bidder or Offeror shall address the disclosure of such facts to the Town.

81. COVENANT AGAINST CONTINGENT FEES – The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For violation of this warranty, the Town shall have the right to terminate or suspend this Contract without liability to the Town or in its discretion to deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

82. VIRGINIA FREEDOM OF INFORMATION ACT – All proceedings, records, Contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act except as provided below:

a. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.

b. Any competitive sealed bidding Bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the Town decides not to accept any of the bids and to reopen the Contract. Otherwise, bid records shall be open to public inspection only after award of the Contract. Any competitive negotiation Offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award except in the event that the Town decides not to accept any of the proposals and to reopen the Contract. Otherwise, proposal records shall be open to the public inspection only after award of the Contract except as provided in paragraph "c" below. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

c. Trade secrets or proprietary information submitted by a Bidder, Offeror or Contractor in connection with a procurement transaction or prequalification application submitted pursuant to the prequalification process identified in the Special Provisions, shall not be subject to the Virginia Freedom of Information Act; however, the Bidder, Offeror or Contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary. Bidders shall not mark sections of their bid as proprietary if they are to be part of the award of the Contract and are of a "Material" nature.

d. Nothing contained in this section shall be construed to require the Town, when procuring by "competitive negotiation" (Request for Proposal), to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous to the Town.

83. INELIGIBILITY –

a. Any person or firm suspended or debarred from participation in Town procurement shall be notified in writing by the Procurement Official.

1. The Notice of Suspension shall state the reasons for the actions taken and such decision shall be final unless the person or firm appeals within thirty (30) days of receipt of the Notice by instituting legal action as provided in the Code of Virginia.

2. The Notice of Debarment shall state the reasons for the actions taken and the decision shall be final unless the person or firm appeals within thirty (30) days of receipt of the notice by instituting legal action as provided in the Code of Virginia.

b. The Procurement Official shall have the authority to suspend or debar a person or firm from bidding on any Contract for the causes stated below:

1. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private Contract or subcontract, or in the performance of such Contract or subcontract;

2. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a Town Contractor;

3. Conviction under the state or federal antitrust statutes arising out of the submission of bids or proposals;

c. Violation of Contract provisions, as set forth below, of a character which is regarded by the Procurement Official to be so serious as to justify suspension or debarment action:

1. failure without good cause to perform in accordance with the specifications or within the time limit provided in the Contract; or

2. a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more Contracts; provided, that failure to perform or unsatisfactory performance caused by acts beyond the control of the Contractor shall not be considered to be a basis for suspension or debarment;

d. Any other cause the Procurement Official determines to be so serious and compelling as to affect responsibility as a Contractor, such as debarment by another governmental entity for any cause listed herein, or because of prior reprimands;

e. The Contractor has abandoned performance or been terminated for default on any other the Town project.

84. APPEAL OF DENIAL OF WITHDRAWAL OF BID –

a. A decision denying withdrawal of a bid submitted by a Bidder or Offeror shall be final and conclusive unless the Bidder appeals the decision within the (10) days after receipt of the decision by instituting legal action as provided in the Code of Virginia. The Bidder or Offeror may not institute legal action until all statutory requirements have been met.

b. If no bid bond was posted, a Bidder refused withdrawal of bid under the provisions of, of the Purchasing Regulations, prior to appealing, shall deliver to the Town a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the Bidder was entitled to withdraw the bid.

c. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was arbitrary or capricious, the sole relief shall be withdrawal of the bid.

85. APPEAL OF DETERMINATION OF NONRESPONSIBILITY –

a. Any Bidder who, despite being the apparent low Bidder, is determined not to be a responsible Bidder for a particular Town Contract shall be notified in writing by the Procurement Official. Such notice shall state the basis for the determination, which shall be final unless the Bidder appeals the decision within ten (10) days of

receipt of the notice by instituting legal action as provided in the Code of Virginia. The Bidder may not institute legal action until all statutory requirements have been met.

b. If, upon appeal, it is determined that the decision of the Procurement Official was arbitrary or capricious and the award for the particular Town Contract in question has not been made, the sole relief available to the Bidder shall be a finding that the Bidders a responsible Bidder for the Town Contract in question. Where the award has been made and performance has begun, the Town may declare the Contract void upon a finding that this action is in the best interest of the public. Where a Contract is declared void, the performing Contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing Contractor be entitled to lost profits.

86. PROTEST OF AWARD OR DECISION TO AWARD –

a. Any Bidder or Offeror may protest the award or decision to award a Contract by submitting a protest in writing to the Procurement Official, or an official designated by the Town, no later than ten (10) days after the award or the announcement of the decision to award, whichever occurs first. Any potential Bidder or Offeror on a Contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such Contract shall submit such protest in the same manner no later than ten (10) days after posting or publication of the notice of such Contract. However, if the protest of any actual or potential Bidder or Offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction which are subject to inspection, then the time within which the protest must be submitted shall expire ten days after those records are available for inspection by such Bidder or Offeror or at such later time. No protest shall lie for a claim that the selected Bidder or Offeror is not a responsible Bidder or Offeror. The written protest shall include the basis for the protest and the relief sought. The Procurement Official shall issue a decision in writing within ten (10) days of the receipt of the protest stating the reasons for the action taken. This decision shall be final unless the Bidder or Offeror appeals within ten (10) days of receipt of the written decision by instituting legal action as provided in the Code of Virginia.

b. If prior to award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The Procurement Official shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a Contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the Contract may be declared void by the Town. Where the award has been made and performance has begun, the Procurement Official may declare the Contract void upon a finding that this action is in the best interest of the Town. Where a Contract is declared void, the performing Contractor shall be compensated for the cost of performance at the rate specified in the Contract up to the time of such declaration. In no event shall the performing Contractor be entitled to lost profits.

c. Pending final determination of a protest or appeal, the validity of a Contract awarded and accepted in good faith in accordance with this article shall not be affected by the fact that a protest or appeal has been filed.

d. An award need not be delayed for the period allowed a Bidder or Offeror to protest, but in the event of a timely protest, no further action to award the Contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

87. CONTRACTUAL DISPUTES –

a. Any dispute concerning a question of fact as a result of a Contract with the Town which is not disposed of by agreement shall be decided by the Procurement Official, who shall reduce his decision to writing and mail or otherwise forward a copy thereof to the Contractor within thirty (30) days. The decision of the Procurement Official shall be final and conclusive unless the Contractor appeals within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. A Contractor may not institute legal action, prior to receipt of the public body's decision on the claim, unless the public body fails to render such decision within the time specified.

b. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a Contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

88. LEGAL ACTION – No Bidder, Offeror, potential Bidder or Offeror, or Contractor shall institute any legal action until all statutory requirements have been met.

89. USE OF CONTRACT BY OTHER POLITICAL JURISDICTIONS – Bidders are advised that all resultant Contracts will be extended, with the authorization of the Bidder, to Metropolitan Washington Council of Governments jurisdictions and other jurisdictions and political subdivisions of the Commonwealth of Virginia to permit their ordering of supplies and/or services at the prices and terms of the resulting Contract. If any other jurisdiction decides to use the final Contract, the Contractor must deal directly with that jurisdiction or political subdivision concerning the placement of orders, issuance of the purchase order, contractual disputes, invoicing and payment. The Town acts only as the "Contracting Agent" for these jurisdictions and political subdivision. Failure to extend a Contract to any jurisdiction will have no effect on consideration of Contractors bid/proposal.

It is the awarded vendor's responsibility to notify the jurisdictions and political subdivision of the availability of the Contract.

Each participating jurisdiction and political subdivision has the option of executing a separate Contract with the awardee. Contracts entered into with them may contain general terms and conditions unique to those jurisdictions and political subdivisions covering minority participation, non-discrimination. If, when preparing such a Contract, the general terms and conditions of a jurisdiction are unacceptable to the awardee, the awardee may withdraw its extension of the award to that jurisdiction.

The Town shall not be held liable for any costs or damage incurred by another jurisdiction as a result of any award extended to that jurisdiction or political subdivision to the awardee.

90. PROFESSIONAL AFFILIATION – The Town of Herndon holds membership in the National Institute of Governmental Purchasing, Inc., a non-profit, educational and technical organization that includes among its goals and objectives the study, discussion, and recommendation of improvements in governmental purchasing and the interchange of ideas and experiences on local state, and national governmental purchasing problems.

91. DRUG FREE WORKPLACE – During the performance of a Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract of over $10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in conjunction with a specific Contract awarded to a Contractor in accordance with this section, 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.

92. AUDIT – The Contractor shall retain all books, records and other documents relative to this Contract for five (5) years after final payment, or until audited of Town, whichever is sooner. The Town, shall have full access to and the right to examine any of said materials during said period.

93. BIDDER INTERESTED IN MORE THAN ONE BID – If more than one bid is offered by any one party, either directly or in the name of his or her clerk, partner, or other persons, all such bids may be rejected. A party

who has quoted prices on work, materials, or supplies to a Bidder is not thereby disqualified from quoting prices to other Bidders or firms submitting a bid directly for the work, materials or supplies.

94. CONFIDENTIALITY: The Contractor acknowledges and understands that its employees may have access to proprietary, business information, or other confidential information belonging to the Town. Therefore, except as required by law, the Contractor agrees that its employees will not:

a. Access or attempt to access data that is unrelated to their job duties or authorizations as related to this Contract.

b. Access or attempt to access information beyond their stated authorization.

c. Disclose to any other person or allow any other person access to any information related to the Town or any of its facilities or any other user of this Contract that is proprietary or confidential. Disclosure of information includes, but is not limited to, verbal discussions, FAX transmissions, electronic mail messages, voice mail communication, written documentation, "loaning" computer access codes and/or another transmission or sharing of data.

The Contractor understands that the Town, or others may suffer irreparable harm by disclosure of proprietary or confidential information and that the Town may seek legal remedies available to it should such disclosure occur. Further, the Contractor understands that violations of this provision may result in Contract termination.

The Contractor further understands that information and data obtained during the performance of this agreement shall be considered confidential, during and following the term of this Contract, and will not be divulged without the Procurement Official's written consent and then only in strict accordance with prevailing laws. The Contractor shall hold all information provided by the Town as proprietary and confidential, and shall make no unauthorized reproduction or distribution of such material.

95. NEGOTIATION WITH LOWEST BIDDER: Unless canceled or rejected, a responsive bid from the lowest responsible Bidder shall be accepted as submitted, except that if the bid from the lowest responsible Bidder exceeds available funds, the public body may negotiate with the apparent low Bidder to obtain a Contract price within available funds. However, the negotiation may be undertaken only under conditions and procedures described in writing and approved by the public body prior to issuance of the Invitation to Bid and summarized therein.

96. COPYRIGHT: No vendor may copyright any work produced by/for the Town without the Town's written consent.

97. CONTRACT TERM: Unless otherwise noted in the bid or proposal, the contract shall be for one year effective after date of award. The contract shall be subject to renewal for up to four (1) additional one-year periods. Contract shall be subject to cancellation for cause or convenience with written notice 30 days prior to the effective date of the cancellation.. If the Town elects to exercise the option to extend the contract for an additional one-year period, the contract price for the additional one year shall not exceed the contract price of the original contract by more than the percentage annual increase/decrease of the other services category of the CPI-U section of the Consumer Price Index of the United States Bureau of Labor Statistics for the last twelve months for which statistics are available. Subsequent contract renewals, if applicable, shall be subject to the same criteria with the previous year contract forming the basis for the percentage annual increase/decease.