



PROCUREMENT MANUAL

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NEW KENT COUNTY – PUBLIC PROCUREMENT

ALL PROCUREMENT IS SUBJECT TO FUNDING BY THE NEW KENT COUNTY BOARD OF SUPERVISORS

Please find herewith the County's procurement policy which is consistent with the Laws of the Commonwealth of Virginia. This guide is intended to provide a step-by-step process for determining which type of procurement should be used to best suit your needs. In addition, the template documents are provided for your use in compiling the appropriate procurement documents.

This policy assumes that each and every procurement will be assigned a file and that all of the documentation will be maintained in a single file in a secure location. Please note that there are forms for procurements of every amount and type.

The Virginia Public Procurement Act (Virginia Code §2.2-4300 et.seq.) allows New Kent County to establish procurement procedures if the aggregate or the sum of all phases is not expected to exceed \$50,000; if the amount of the procurement exceeds \$50,000, then the Act controls the type of competition used in the procurement. The New Kent County Board of Supervisors has determined that if the amount of the contract is greater than \$20,000 but not more than \$50,000, there must be four written quotations obtained in addition to approval by the County Administrator prior to executing the contract.

With regard to professional services contracts, the County has elected to not require competitive negotiation if the aggregate or sum of all phases is expected to be less than \$80,000. This applies to single or term contracts for professional services. The policies applying to small purchases should be followed in these instances. Professional services contracts greater than \$30,000 require approval from the Board of Supervisors.

For purchases in an amount less than \$5,000, please refer to the small purchase charge card section of this manual. For purchases of \$5,000 and up to \$20,000, at least three telephone quotations must be obtained and recorded on the form provided (see Appendix 3C). For any purchase greater than \$20,000 but not more than \$50,000, at least four written quotations should be obtained and recorded on the form provided with the written quotations attached (see Appendix 3A: New Kent County General Requisition Form) in addition to the County Administrator's approval for the purchase. For all purchases \$50,000 or more, you must determine the type of procurement: sole source, competitive negotiation or competitive sealed bid; please see the section entitled "Determining what type of procurement to use" – Chapter 3. Any sole source purchase \$5,000 or more must abide by the sole source purchasing rules as found in Chapter 8.

Any and all disciplinary procedures related to the use of the procurement manual shall be found in the New Kent County Personnel Policies Manual and can be up to and including criminal prosecution and termination of employment.

APPLICABILITY OF THE VIRGINIA FREEDOM OF INFORMATION ACT

(Virginia Code §2.2-3700, et.seq.)

Virginia has a Freedom of Information Act which is designed to allow citizens access to all governmental activity unless an exemption or exception applies.

The Virginia Public Procurement Act also allows for the inspection of records relating to procurement unless the records are cost estimates prepared by or for a public body. If the requestor of the records is a bidder on a competitive sealed bid, he may review the records after the opening of the bids, but prior to the award. Citizens of the Commonwealth may review these documents after the award of the contract. (Note: if the contract is not awarded, no one may review)

If the procurement was a competitive negotiation, the offeror may review the records after evaluation and negotiation but prior to the award, citizens of the Commonwealth may review after the contract is awarded. (Note: if the contract is not awarded, no one may review) Please refer to Virginia Code Section 2.2-4342 for further guidance.

Any trade secrets or proprietary information submitted by a bidder, offeror or contractor must take the following measures:

1. Invoke the protections of the Virginia Code prior to or upon submission
2. Identify the data or other materials to be protected AND
3. State the reasons why protection is necessary

CHAPTER 1: COMMON SENSE RULES

When departments spend County funds that are allocated to them, the funds should only be used to purchase items that are needed to fulfill their obligations to the citizens of New Kent County. There should be a direct or indirect benefit to the citizenry of the County and not a personal benefit to employees.

Example items that appropriated departmental funds **SHOULD NOT** be used to purchase include but are not limited to:

- Refrigerators
- Microwave ovens
- Coffee Pots
- Candy for P&R Halloween treats
- Christmas trees, ornaments and other decorations
- Personal items such as tissues
- Lunches, flowers or gifts for employees or family members
- Personal Postage
- Clothing/Shoes for personal use
- Cell Phone Usage – please keep personal calls to an absolute minimum

If you have an item that is questionable, it must be approved by the County Administrator **BEFORE** the item is purchased. If the purchase is deemed not to be a legitimate purchase, the costs may become the sole responsibility of the employee who made the purchase. Improper procurement with County funds is subject to disciplinary action as outlined in the County's Personnel Policies Manual.

CHAPTER 2: DEFINITIONS

(Taken verbatim from the Virginia Code §2.2-4301, et. al., “Virginia Public Procurement Act”)

Affiliate - means an individual or business that controls, is controlled by, or is under common control with another individual or business. A person controls an entity if the person owns, directly or indirectly, more than 10 percent of the voting securities of the entity. For the purposes of this definition "voting security" means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general partnership interest shall be deemed to be a voting security.

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.

Business - means any type of corporation, partnership, limited liability company, association, or sole proprietorship operated for profit.

Competitive negotiation - is the method of contractor selection set forth in § 2.2-4302.2.

A. The process for competitive negotiation shall include the following:

1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors that will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities, specifications or qualifications that will be required;
2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of proposals by posting on the Department of General Services' central electronic procurement website or other appropriate websites. Additionally, public bodies shall publish in a newspaper of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities. In addition, proposals may be solicited directly from potential contractors. Any additional solicitations shall include certified businesses selected from a list made available by the Department of Small Business and Supplier Diversity; and
3. For goods, nonprofessional services, and insurance, selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole or primary determining factor. After negotiations have been conducted with each offeror so selected, the public body shall select the offeror which, in its opinion, has made the best proposal and provides the best value, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror. Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror; or

4. For professional services, the public body shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. In addition, offerors shall be informed of any ranking criteria that will be used by the public body in addition to the review of the professional competence of the offeror. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the public body may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. In accordance with § 2.2-4342, proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the public body shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious.

Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the public body can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price.

Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the Request for Proposal, a public body may award contracts to more than one offeror.

Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

B. For multiple projects, a contract for architectural or professional engineering services relating to construction projects, or a contract for job order contracting, may be negotiated by a public body, provided (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly identified in the Request for Proposal, and (iii) the contract is limited to a one-year term or when the cumulative total project fees reach the maximum cost authorized in this subsection, whichever occurs first.

Such contracts may be renewable for four additional one-year terms at the option of the public body. The fair and reasonable prices as negotiated shall be used in determining the cost of each project performed and the sum of all projects performed in a one-year contract term shall not exceed \$500,000, except that for:

1. A state agency, as defined in § 2.2-4347, the sum of all projects performed in a one-year contract term shall not exceed \$1 million as may be determined by the Director of the Department of General Services;
2. Any locality or any authority, sanitation district, metropolitan planning organization or planning district commission with a population in excess of 80,000, or any city within Planning District 8, the sum of all projects performed in a one-year contract term shall not exceed \$5 million and those awarded for any airport as defined in § 5.1-1 and aviation transportation projects, the sum of all such projects shall not exceed \$1.5 million;

3. Architectural and engineering services for rail and public transportation projects by the Director of the Department of Rail and Public Transportation, the sum of all projects in a one-year contract term shall not exceed \$2 million. Such contract may be renewable for two additional one-year terms at the option of the Director;

4. Environmental location, design and inspection work regarding highways and bridges by the Commissioner of Highways, the initial contract term shall be limited to two years or when the cumulative total project fees reach \$5 million, whichever occurs first. Such contract may be renewable for two additional one-year terms at the option of the Commissioner, and the sum of all projects in each one-year contract term shall not exceed \$5 million; and

5. Job order contracting, the sum of all projects performed in a one-year contract term shall not exceed \$2 million.

Competitive negotiations for such contracts may result in awards to more than one offeror provided (i) the Request for Proposal so states and (ii) the public body has established procedures for distributing multiple projects among the selected contractors during the contract term.

C. For any single project, for (i) architectural or professional engineering services relating to construction projects, or (ii) job order contracting, the project fee shall not exceed \$100,000, or for architectural or engineering services for airports as defined in § 5.1-1 and aviation transportation projects, the project fee of any single project shall not exceed \$500,000, except that for:

1. A state agency as defined in § 2.2-4347, the project fee shall not exceed \$200,000, as may be determined by the Director of the Department of General Services;

2. Any locality or any authority or sanitation district with a population in excess of 80,000, or any city within Planning District 8, the project fee shall not exceed \$2 million; and

3. Job order contracting, the project fee shall not exceed \$400,000.

D. For the purposes of subsections B and C, any unused amounts from the first contract term shall not be carried forward to the additional term.

E. Multiphase professional services contracts satisfactory and advantageous to the completion of large, phased, or long term projects may be negotiated and awarded based on a fair and reasonable price for the first phase only, where the completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to the entering into any such contract, the public body shall (i) state the anticipated intended total scope of the project and (ii) determine in writing that the nature of the work is such that the best interests of the public body require awarding the contract.

Competitive sealed bidding - is the method of contractor selection set forth in § 2.2-4302.1.

1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. Unless the public body has provided for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors. When it is impractical to prepare initially a purchase description to support an award

based on prices, an Invitation to Bid may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation;

2. Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by posting on the Department of General Services' central electronic procurement website or other appropriate websites. In addition, public bodies may publish in a newspaper of general circulation. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities. In addition, bids may be solicited directly from potential contractors. Any additional solicitations shall include certified businesses selected from a list made available by the Department of Small Business and Supplier Diversity.

3. Public opening and announcement of all bids received;

4. Evaluation of bids based upon the requirements set forth in the Invitation to Bid, which may include special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability; and

5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.

Construction - means building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property.

Construction management contract - means a contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.

Design-build contract - means a contract between a public body and another party in which the party contracting with the public body agrees to both design and build the structure, roadway or other item specified in the contract.

Employment services organization - means an organization that provides employment services to individuals with disabilities that is an approved Commission on the Accreditation of Rehabilitation Facilities (CARF) accredited vendor of the Department for Aging and Rehabilitative Services.

Goods - means all material, equipment, supplies, printing, and automated data processing hardware and software.

Informality - means 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. To be determined by the County Administrator after consultation with the County Attorney.

Job order contracting - means a method of procuring construction services by establishing a book of unit prices and then obtaining a contractor to perform work as needed using the prices, quantities, and specifications in the book as the basis of its pricing. The contractor may be selected through either

competitive sealed bidding or competitive negotiation depending on the needs of the public body procuring the construction services. A minimum amount of work may be specified in the contract. The contract term and the project amount shall not exceed the limitations specified in § 2.2-4302.2 or 2.2-4303.

Multiphase professional services contract - means a contract for the providing of professional services where the total scope of work of the second or subsequent phase of the contract cannot be specified without the results of the first or prior phase of the contract.

Nonprofessional services - means any services not specifically identified as professional services in the definition of professional services.

Potential bidder or offeror - for the purposes of §§ 2.2-4360 and 2.2-4364, means a person who, at the time a public body negotiates and awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured under the contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.

Professional services - means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy or professional engineering. "Professional services" shall also include the services of an economist procured by the State Corporation Commission.

Public body - means any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in this chapter. "Public body" shall include any metropolitan planning organization or planning district commission which operates exclusively within the Commonwealth of Virginia.

Public contract - means an agreement between a public body and a nongovernmental source that is enforceable in a court of law.

Responsible bidder or "offeror" - means a person who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability that will assure good faith performance, and who has been prequalified, if required.

Responsive bidder - means a person who has submitted a bid that conforms in all material respects to the Invitation to Bid.

Reverse auctioning - means a procurement method wherein bidders are invited to bid on specified goods or nonprofessional services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for bid opening.

Services - means 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.

Additional Definitions Not Derived from the Code of Virginia

Contract- allowable term of a contract (eg. 1. Three years with two one year extensions, 2. One year, with four one year extensions). Not to exceed five years.

Contractor – firm, entity, or person under contract by the County.

County – County of New Kent Board of Supervisors

Free on Board – A shipping term which indicates that the supplier pays the shipping costs (and usually also the insurance costs) from the point of manufacture to a specified destination, at which point the buyer takes responsibility.

Must or Shall – mandatory, cannot be waived and not negotiable.

Offeror – firm or person who is to submit a response to the County.

Should or May – advisory or permissible, actions subject to negotiation.

Vendor – An entity which supplies goods or services to another entity, also called supplier.

CHAPTER 3: DETERMINING TYPE OF PROCUREMENT TO USE BASED UPON COST OF PROCUREMENT AND WHAT IS TO BE PROCURED

3.0 If you expect the total cost to be less than \$5,000.

Refer to Chapter Four, Small Purchase Charge Cards Policy. If the purchase is without a charge card, then a receipt should be submitted with an explanation that the good or service is a benefit to New Kent County.

3.1 If you expect the total cost to be between \$5,000 and \$20,000 (3 telephone quotes)

If you expect the total cost of the goods to be between \$5,000 and \$20,000 then you need to complete a General Requisition (see Appendix 3A: New Kent County General Requisition Form). For purchases falling within this price range, the County does not require the purchaser to obtain written quotations. The County does require three telephone quotations on the General Requisition Form along with the date, the department making the request, and the general ledger account to which the County should charge the purchase. The budget must have an unobligated balance that will cover the purchase. The General Requisition Form must contain the date the department needs the goods. Please provide a specific date rather than rush or ASAP. The form must also contain a description of the goods including the following: quantity, price, catalog number, vendor payable name, vendor mailing address, and shipping charges. The department head, or his/her authorized representative, must sign and date the General Requisition Form and submit the form to the purchasing officer for approval.

3.2 If you expect the total cost to be over \$5,000

If you expect the total cost of the goods to be greater than \$5,000, you must have a purchase order. This includes a credit card purchase.

3.3 If you expect the total cost to be greater than \$20,000 and not more than \$50,000 (4 Formal Written Quotations)

If you expect the total cost of the goods to be greater than \$20,000 and up to \$50,000, follow the procedures described above for completing a General Requisition. In addition, you must obtain four written price quotations, and the County Administrator must approve the purchase. These written quotations MUST be attached to the General Requisition Form.

3.4 If you expect the cost to exceed \$50,000

If you anticipate that the total cost of the purchase will exceed \$50,000 then you must use competitive sealed bidding to award the contract if practicably possible. (See Chapter 7) Any procurement exceeding \$50,000 requires pre-approval by the Board of Supervisors; pre-approval must be made timely to accommodate their meeting schedule.

3.5 If the contract is an RFP or IFB

If you have determined that the contract will be an RFP or an IFB, you should initiate the process by contacting the County Administrator. Provide the Administrator with the type of procurement and the approximate date of the contract. You will be provided a number for your procurement and advised of your ability to issue the RFP or IFB.

3.6 Change Orders

Any change orders must be sent to Financial Services from the Department Head. The change order shall then be reviewed by the County Administrator and sent to the Board of Supervisors for approval.

The Board of Supervisors has authorized the County Administrator to approve change orders that are \$50,000 or less and do not exceed 25% of the initial contract price.

3.7 Proper Licensure

In any procurement, if licensure is necessary, the documentation must include copies of such licenses either prior to the contract being awarded or prior to sending a Purchase Order to Financial Services. Work by a contractor should not begin until the contractor has obtained a New Kent County Business License – this should be verified by the County Department conducting the procurement and a copy placed in the procurement file.

3.8 Serial Numbers

Any item purchased using County funds that has an assigned serial number should be cataloged and the serial number should be provided to Financial Services for their records.

APPENDIX 3A: NEW KENT COUNTY GENERAL REQUISITION FORM
 (Appendix 3A is also available at <http://www.co.new-kent.va.us/DocumentCenter/View/589>)

APPENDIX 3A
GENERAL REQUISITION

GENERAL REQUISITION (Must Complete Prior to purchase)
NEW KENT COUNTY BOARD OF SUPERVISORS
 P. O. BOX 150
 NEW KENT, VIRGINIA 23124

Date: _____ Bill to: _____

Department: _____

Line Item Number: _____

VENDOR 1
MAKE CHECK PAYABLE TO: _____
MAIL CHECK TO THIS ADDRESS: _____

VENDOR 2
 \$2,000-\$20,000
 3 Telephone Quotes

VENDOR 3
 \$20,001-\$50,000
 4 Written Quotes-Attached

VENDOR 4
 More than \$50,000
 Requires Formal Bid

Vendor's Phone Number: _____

Vendor's Fax Number: _____

DESCRIPTION OF ITEM ORDERED	CATOLOG NUMBER	QUANTITY	UNIT OF MEASURE	UNIT PRICE	TOTAL VENDOR 1	TOTAL VENDOR 2	TOTAL VENDOR 3	TOTAL VENDOR 4
					\$0.00			
					\$0.00			
					\$0.00			
					\$0.00			
					\$0.00			
					\$0.00			
					\$0.00			
ESTIMATED SHIPPING CHARGES								
Total Cost					\$0.00	\$0.00	\$0.00	\$0.00

Specific date needed:			
Where will item (s) be used:			
Briefly Explain Use:			
Vendor#1:	Vendor#2:	Vendor#3:	Vendor#4:
Date of Quote:	Date of Quote:	Date of Quote:	Date of Quote:
Quote Expiration:	Quote Expiration:	Quote Expiration:	Quote Expiration:
Contact Name:	Contact Name:	Contact Name:	Contact Name:
Date:	Date:	Date:	Date:
Contact Phone:	Contact Phone:	Contact Phone:	Contact Phone:
New Kent County:			
Department:	Approved By:		(Constitutional Officer/Dept. Head)
Return Approved Purchase Order to:			

CHAPTER 4: SMALL PURCHASE CHARGE CARD POLICY – PURCHASES OF GOODS & SERVICES LESS THAN \$5,000

Authorized employees should use the New Kent County Purchasing Card for purchases of goods costing less than \$5,000. The following material will discuss the procedures for using the card, and the auditing guidelines for the program.

Purchasing charge cards (“Purchasing Cards”) offer the County the opportunity to streamline procedures for procuring and paying for small dollar goods and services. The purchasing card program reduces the volume of accounts payable transactions and associated administrative costs by eliminating vendor invoices and consolidating multiple vendor payments into one monthly payment. Vendors are paid directly by the County. In addition, the Vendor provides a variety of management information reports to assist the County in maintaining control over purchases and payments via vendor’s online program management system.

While the use of a Purchasing Card leads to accounting efficiencies, the County and its departments must maintain strict internal control over the use of cards and ensure that relevant procurement guidelines are observed. The purchasing card should be viewed at all times as an efficient means of payment, not a substitute for proper procurement procedures.

Please be aware that the current Issuer used by the County utilizes Social Security numbers as a method for maintaining records; this may result in an employee’s personal account and County account having the same login. If you do not want your assistant or co-worker to see your personal finances, do not share your login for your County card.

4.0 GENERAL GUIDELINES

4.1 Purchase Limits

The small purchase transaction limit can be set up to a maximum of \$1,999 per transaction and up to a maximum monthly limit of \$6,000. Any purchase greater than \$5,000 must have a purchase order. This includes credit card transactions.

The limit on each individual card shall be determined by the County Administrator after a request and justification from the Department Head.

4.1.1 Purchase Card Use

Each Department assumes the ultimate liability for its employee’s use of the card. The County may issue Purchasing Cards to full or part time employees, but not to contract or temporary workers unless otherwise authorized by the County Administrator. Employees must ONLY use the Purchasing Cards for official County purchases and must comply with the same County procurement guidelines in effect for any other means of payment. Discipline for card misuse can be up to and including full prosecution of any criminal activity in addition to the disciplinary policies outlined in the New Kent County Personnel Policies Manual.

4.1.2 Roles and Responsibilities

The Small Purchase Charge Card Program Administrator (“PA”)

The County Administrator or a designee(s) who is familiar with procurement regulations will act as the primary PA for the County of New Kent. (See Appendix 4E: Designation of Small Purchase Charge Card Program Administrator)

The PA is responsible for the following:

- Entering in Cardholder data, reviewing and approving card applications online;
- Setting appropriate transaction and credit limits on each card based on the Cardholder's buying needs as requested by the Department Head and approved by the County Administrator;
- Issuing cards;
- Ensuring that an annual analysis of each Cardholder's card usage and card limits is performed and documented;
- Promptly cancelling inactive cards.
- Training Cardholders annually in proper card usage, security and procurement guidelines;
- Ensuring the supervisors of Cardholders are trained annually in their roles;
- Monitoring on a regular basis, at least monthly, the transactional data for the purchasing cards;
- Educating Cardholders, supervisors/reviewers, fiscal staff and other people of the billing cycle and due dates for the program;
- Ensuring County and Cardholder compliance with all purchasing card policies and procedures presented in this manual;
- Communicating with the Issuer on such matters as who is to receive access to monthly billings, additional statements, and management reports;
- Ensuring that if the paper bill from the Issuer is not received by the designated staff member no more than 8 days after the cycle closes for the month that Financial Services downloads a copy of the monthly bill from the Issuer's website;
- Promptly notifying Issuer of any potential or confirmed fraudulent use of the purchasing card and the steps the County is taking to address the issue (e.g., card cancellation, communication with the Vendor and notification of law enforcement officials as appropriate);
- Managing Vendor issues pertaining to not receiving ordered goods/services or incorrect charges. If the County cannot resolve the issue at the Program Administrator level, the Vendor will be notified and provided the necessary information as referenced on the back of the monthly bill;

Backup Program Administrator:

- The Backup Program Administrator (BPA) who is also familiar with procurement regulations will be Financial Services should the PA not be available and a need arises.

4.2 Procedures for Use

4.2.1 Generally

All County employees who receive approval from their Department Head and complete the Purchasing Card training may receive a Purchasing Card after approval from the County Administrator for use in purchasing items on behalf of the County. The following section will discuss the procedures for applying for and receiving a Purchasing Card, use of the Purchasing Card, the reconciliation of statements, payment of the statements, and the procedures for returning the card to the County upon termination of employment.

4.2.2 County Contract Vendors

Employees must not use the Purchasing Card to circumvent procurement guidelines, particularly those designed to maximize the County's purchasing power. Users should make an effort to use County contract vendors who accept the Purchasing Card, where appropriate, in order to maximize administrative cost savings. Questions regarding the appropriate use of the Purchasing Card should be directed to the County's PA.

4.2.3 Applying for and receiving the Purchasing Card

The County uses a commercial credit card services Issuer to provide the Purchasing Card service to County employees for the purpose of paying for purchases made for official County business. To request a Purchasing Card for a new user, the Department Head will submit an application to the PA (see Appendix 4D: Request from Department Head for Employee's Card and Cardholder's Receipt). After

completion and approval of the application, the PA will get the County Administrator to sign the form and submit the required information to the Issuer for processing. Issuer will then issue the Purchasing Card in the preapproved amount. The Purchasing Card will contain the user's name, New Kent County, the expiration date, and, if possible, the County's tax code id number embossed on the front of the card. An employee may use a Purchasing Card without his or her name on it if authorized by the Department Head.

Prior to receiving the Purchasing Card, the user must receive a copy of the policies and procedures manual and attend a training session on the use and procedures applicable to the card. When the PA receives a Purchasing Card from the Issuer, the employee whose name appears on the card must personally take receipt of the card and record the date of receipt on the application. The PA will retain the original application, and provide copies to both the employee and Human Resources for placement in the employee's personnel file.

4.2.4 Training Requirements

Prior to receiving a Purchasing Card, employees must complete the training program. The PA will conduct orientation providing information and basic instructions on using the card. The PA will provide training updates at least once a year to all Cardholders and Department Heads.

As part of the card application, each prospective Cardholder must sign a form (See Appendix 4D: Request from Department Head for Employee's Card and Cardholder's Receipt) acknowledging completion of the training program prior to receiving their Purchasing Card. By signing the form, the Cardholder acknowledges that he/she understands the training provided, received training materials to use for future reference, and understands the consequences associated with misuse of the card. The training program will cover the following areas:

- Internal procedures for using the Purchasing Card including:
 - Budgeting for purchases
 - Documenting purchases
 - Reviewing the account statement
 - Reconciling invoices
 - Handling disputes
 - Cardholder and Department Head responsibilities
 - Contracting procedures and purchasing ethics, for example
 - Determining price reasonableness
 - The prohibition against splitting charges to avoid transaction amount limits
 - Checking for an existing warranty prior to purchasing a new one
 - Information on current term contracts and agreements the County has that should not be duplicated

4.2.5 Transaction Limits

The single transaction limit allows the County to designate the maximum dollar amount allowed for Cardholders to spend on each purchase or transaction (maximum of \$1,999). At the point of sale, the Issuer's system verifies that the purchase amount falls within the approved transaction limit. If the amount requested for authorization exceeds the limit set by the PA, the system will not authorize the purchase. The Cardholder shall not authorize a charge in excess of the per transaction limit established by the County for his card, whether by splitting the invoice, encouraging the Vendor to circumvent the Issuer's denial, or any other means.

Upon approval by the County Administrator, the PA may temporarily increase a Cardholder's limit to accommodate a one-time purchase in excess of the established limits. The PA should maintain documentation of such temporary approval for audit purposes.

Upon approval by the County Administrator, the PA may designate, in writing, Cardholders who will have higher transaction limits during declared emergencies. The PA may raise the limits of the designated Cardholders during an emergency to \$50,000. The PA will make this designation at the time of card issuance or any other time prior to an emergency.

4.2.6 Name Changes

The County must validate all name change requests by a Cardholder against a legal document before processing the name change. All requests to change names should be facilitated through Human Resources, who will then alert the PA in writing verifying receipt of documentation and requesting a change in name. The PA will retain this notification as documentation of verification. To change the name, the PA will contact the Issuer and request a new card which the Cardholder will then receive upon acknowledgment of receipt in writing. (See Appendix 4D: Request from Department Head for Employee's Card and Cardholder's Receipt) The Department Head will collect the old card and immediately forward it to the PA. The PA will destroy the card.

4.2.7 Cardholder Information Changes

Contact the PA when changes need to be made to existing Purchasing Cards. If the Issuer needs to issue a new Purchasing Card, the cardholder should receive the replacement card through U.S. Mail and will notify the PA of receipt of the new card. (See Appendix 4D: Request from Department Head for Employee's Card and Cardholder's Receipt) The Department Head should collect the old card and immediately forward it to the PA. The PA will destroy the card.

4.2.8 Card Application

Upon receiving an application for a new Cardholder, the PA will complete the Issuer's required documentation. The Issuer will send the purchase card to the PA. The PA will deliver the card to the card user along with a copy of this procurement manual. The cardholder will acknowledge receipt of both in writing. (See Appendix 4A: New Kent County Purchasing Card Cardholder Agreement)

4.2.9 Card Cancellation

Upon termination of employment, retirement, or change of job duties, the PA must cancel the Purchasing Card when it is no longer needed. The Cardholder must surrender the Purchasing Card to his/her Department Head immediately upon request by the PA. This must also be documented in the exit paperwork compiled by the Human Resources Department.

4.2.10 Card Suspension

The PA may suspend cards for a stated time. This option can be used for many reasons to include:

- History of abuse and prior suspension of the Purchasing Card
- Cardholder is on an extended period of leave (i.e. disability, medical, etc.)
- Receipts not submitted in a timely manner

4.2.11 Monthly Consolidated Bill

Financial Services will receive the monthly consolidated bill in paper form around the 21st of each month. The bill can also be viewed online on or after the 21st of each month. Billing cycles close around midnight, and the online billing statement is accessible the day following the cycle close after 12 noon EST. This applies to all Cardholder billing statements as well as corporate billing statements.

For example, if January 15th is the cycle close date, the cycle will close at 11:59 pm, and the online billing statement will be available on January 16th after 12:00 pm. This enables the County to process payment in a timely manner, and view billing information in the event the paper bill is lost or not received.

All Cardholders shall print a copy of their bill on or about the 21st of each month, attach all the receipts relevant to the bill, retain a copy and forward to Financial Services. The bill submitted to Financial Services must have the Cardholder's name at the top.

4.2.12 Purchasing Card Security

The Cardholder has a responsibility to ensure the security of the card. It is the Cardholder's responsibility to ensure that the number is only provided in the proper procurement of goods and services needed for the County and that the number is provided in a way which ensures the security of the number.

Authorized use of the purchasing card is limited to the person whose name appears on the face of the card, unless otherwise authorized by the Department Head. This restriction does not preclude a Cardholder from placing an order with a vendor electronically or by telephone and then sending a representative to claim the items ordered.

The Cardholder must not share the purchasing card or its number with another person unless he/she is conducting legitimate County business with that person.

4.2.13 Program Reviews

The PA will conduct an annual review of the Purchasing Card program. During the review, the PA should examine the program's functionality and make any procedural changes to enhance the efficiency, reliability, and accuracy of the program. The PA should also review the training program to ensure that users are knowledgeable about the program and the associated procedures.

After the annual review, recommendations, if any, should be brought to the attention of the County Administrator so that any necessary changes to this policy may be approved.

4.2.14 On-Site Review

The PA will conduct a card inventory every six months and a procedure review annually. A copy of such inventory will be forwarded to the County Administrator. The inventory should include the credit limit of each card.

The PA will take advantage of automated systems that can provide reports of denied transactions of purchases from unauthorized merchants, violations of limits, and other irregular activities. The PA will conduct a policy and procedure review with the Cardholder immediately after noting violations.

Records from the on-site reviews will remain on file for three years. The PA will forward copies of the results of the review to the Department Head and the Cardholder. If the PA finds any instances of noncompliance, then the PA will discuss the findings with the Department Head and the Cardholder in compliance with New Kent County Personnel Policies.

4.3 Using the Card

4.3.1 General Procedures

The following section will describe the basic procedure for using the Purchasing Card and will be followed by detailed information about the County's procedures for disputes, security, reconciliation, etc.

To make a purchase with your New Kent County Purchasing Card, present the Purchasing Card to the Vendor. Pay for the purchases using the Purchasing Card as you would any credit card purchase. You must retain a copy of the detailed receipt for your records. Upon returning to your office, immediately place the receipt somewhere secure so that it can be attached to your statement at the end of the month.

If calling an order in to a Vendor, provide your Purchasing Card number and expiration date, found on the front of the Purchasing Card (some Vendors may request your three digit security code on the back of the card). If the vendor requires your billing address in order to obtain an authorization, provide the County's mailing address provided on the statement. Advise the vendor that the order is tax exempt. Do not proceed with the purchase until you are certain that the tax will not be assessed. If the tax is assessed, you will be required to obtain a credit from the Vendor. If proof of exemption is required, please contact the PA to obtain a copy of the County's Tax Exemption certification. All deliveries should be made to the Cardholder at a County address so that the Cardholder can record receipt of the order and secure original supporting documentation (paid invoice, packing slip, register receipt, etc.). Orders should never be shipped to an offsite location unless special approval is granted by the Department Head and County Administrator.

At the end of the purchasing period you shall obtain your statement online. Compare the statement and the receipts that you have saved, and if there are no discrepancies, submit the statement and receipts to the Department Head for coding and approval. Maintain a copy of the statement and detailed receipts for your records. The Department Head will insert the appropriate account numbers, approve the documents and forward it to Financial Services for payment.

If you purchase any item, which has a serial number using your Purchasing Card, that number must be recorded on the detailed receipt that is provided to Financial Services.

****If you have any problems or issues with your card or billing, please see the appropriate section below****

4.3.2 Allowed and Prohibited Uses for Purchasing Cards

4.3.2.1 Examples of Allowed Uses:

- Shipping charges
- Office supplies
- Publications
- Registration fees for seminars and training
- Travel expenses when on County business, for example:
 - o Gasoline
 - o Hotel charges
 - o Airline tickets
 - o Meals
 - o Rental cars
- Operating materials and supplies
- Emergency equipment repair
- Emergency clean up (such as after storms)
- Certain services (should not be used for services unless a W-9 is on file with Financial Services per IRS guidelines):
 - o Maintenance
 - o Copying
 - o Printing
- Other services as approved on a case-by-case basis by the Department Head and PA.
- Dues and Membership Payments

4.3.2.2 Examples of Prohibited Uses:

- Alcoholic beverages
- Fixed assets
- Cash advances
- Personal use

- Any substance, material or service which violates policy, law, or County regulation
- Betting (including lottery tickets, casino gambling chips, off-track betting & wagers)
- Rental or lease of land or buildings
- Telephone calls
- Entertainment during travel
- Professional services
- Services not included on the permitted list

4.3.3 Violations

Any abuse or misuse of the Purchasing Card may result in the privilege being suspended or revoked, pursuant to New Kent County Personnel Policies. The use of the card is a privilege. The County will respond to any misuse or abuse of the card with discipline up to and including termination and criminal prosecution.

The County considers the following actions to be violations of the Purchasing Card policy:

- Attempting to make single item purchases that exceed limits
 - The Department purchasing the item must make sure to consider all additional charges (i.e. delivery, shipping, set up) prior to completing the transaction.
 - A Vendor's willingness to honor a transaction exceeding the limit does not authorize a Department to make such purchases.
- Attempting to make more transactions per day than allowed to purposely circumvent the limit
- Failure to turn in receipts in a timely manner
- Purchases from Vendors that create conflicts of interest (i.e. companies owned by a County employee)
- Multiple transactions to circumvent the pre-determined limits
- Purchase of prohibited goods or services
- Failure to consistently produce proper documentation and receipts
- Failure to properly report a lost or stolen card
- Purchase of any item that is an unlawful expenditure in accordance with County regulations and policy
- Failure to use correct purchasing policies and procedures when using the card

4.3.4 Disputes

If goods and services purchased with the Card are defective or faulty, the Cardholder has the responsibility to return the item(s) to the Vendor for replacement, receive a credit on the purchase, or request that the service provider perform at a satisfactory level. The County does not permit cash refunds unless there is no other option. If the Vendor refuses to replace or correct the faulty item, then the County will consider the purchase of this item to be in dispute. The Cardholder will notify the PA, the Issuer, and the Vendor immediately of the intent to dispute.

The cardholder must note the disputed item when submitting his/her monthly statement to the Department Head. The Cardholder must also complete a Cardholder Statement of Disputed Item Form (see Appendix 4B: Dispute Form) and attach the relevant documentation. The Cardholder will then give the form and the statement of account to his Department Head. The Department Head will forward the dispute form and account statement to the PA who will then forward the documentation to Financial Services for adjustment with the Issuer. Financial Services will notify the PA, the Cardholder, and the Department Head of action on the disputed items.

To protect their rights in the event of a dispute, Cardholders must observe the time and documentation requirements established by the Issuer. Cardholders will receive a copy of these procedures when they receive their card. The PA will also cover these procedures during training.

4.3.5 Billing Discrepancies

If an amount on a receipt differs from the monthly statement, immediately:

- Contact the Vendor and inquire about the difference.
- If the amount referenced on the receipt is incorrect, note the correction and the reason for the correction on the monthly statement.
- If the amount on the statement is incorrect, ask the Vendor to credit the card.
- Note the credit on your monthly statement to ensure receipt of the credit.

If a charge appears on the Cardholder statement, but you do not have a receipt:

- Contact the Vendor. If you determine that the item was a legitimate charge and the County received the item ask them to send a copy of the receipt.
- If you determine that the Vendor should not have posted the charge to your account, ask the Vendor to credit your card. Note the credit on your statement to ensure receipt of the credit.
- If you suspect a fraudulent charge, contact the PA immediately.

If a copy of a sales draft is required to investigate a discrepancy, send a written request to the Vendor and copy the PA. (See Appendix 4B: Dispute Form).

4.3.6 Lost or Stolen Card

Immediately after discovering the loss or theft of the card, the Cardholder shall notify:

- 1) The Issuer
- 2) The PA
- 3) The Department Head

The Cardholder will complete the Notification of Lost/Stolen Card Form (Appendix 4C: Notification of Lost or Stolen Card) and submit it and all supporting documentation to the PA. The PA will submit the form to the Issuer and retain a copy.

4.3.7 Documentation

When making a purchase with the Purchasing Card, the Cardholder should obtain a customer copy of the charge slip, which becomes an accountable document. Make sure all carbon copies are destroyed. If the vendor does not provide a detailed charge receipt with the order, the Cardholder will provide a written statement that the purchase was a telephone, fax, or internet purchase. The written statement should contain a description of the item, the date of purchase, merchant name, and total price including shipping and handling. For internet transactions, print out the order confirmation and attach it to the written explanation.

Forward all documentation (including packing slips) to the Department Head.

If the Cardholder does not have documentation of the transaction to submit with the statement and receipts, he/she must attach an explanation containing a description of the item, the date of the purchase, the merchant's name, the amount of the purchase, and the reason the cardholder cannot submit supporting documentation. Consistent abuse of this provision may result in card cancellation. (See Appendix 4F: Lost Receipt Voucher)

4.3.8 Reconciliation

Each Cardholder must maintain a complete copy of all supporting documentation for purchases made during each billing cycle. The Cardholder will use the copies to reconcile all purchases made against the monthly account statement. General rules for maintaining the receipts include:

- Start a new receipt folder ("receipts folder") at the beginning of each billing cycle

- Promptly after the transaction file all pertinent receipts and other documentation covering the purchase and place in your receipts folder. Following this process will make reconciliation easier because transactions will be in purchase date order.

At the end of each billing cycle, the Cardholder will print out the statement. The Issuer will provide a consolidated master statement to accounts payable at the end of each billing cycle. The statement of account will list all purchases processed in the previous billing cycle by card number and have the Cardholder's name listed on the top.

Upon receiving the statement from the Issuer, the Cardholder will compare the statement to the receipts folder that the Cardholder maintained to verify the accuracy of the purchases and returns listed on the statement. The Cardholder will ensure that the bill is accurate. The Cardholder then attaches the detailed receipts received at the time of purchase to the statement, and signs the bottom of the statement certifying the accuracy of the statement. The signature also certifies that they purchased the items listed exclusively for County use. The Cardholder should make a copy of the documents, send the original documents to the Department Head, and retain the copy for his/her records. Even if no purchase is made during the billing cycle, a copy of the statement must be obtained by the Cardholder and forwarded to the Department Head.

The Department Head reviews the documentation, inserts appropriate ledger codes, then approves the purchases and forwards the package to Financial Services within the required time period.

4.3.9 Termination or Transfer

If the department head is unable to collect the card, he/she will immediately notify the PA who will immediately cancel the account. The department head will also notify Human Resources to attempt to recover the card at the exit interview.

Cardholders who leave the County's employment must surrender their Purchasing Card when their resignation becomes official. The person receiving the resignation notice must immediately notify the Department Head, who is responsible for collecting the card and forwarding it to the PA. The PA will destroy the card and notify the Issuer to cancel the account.

If a Cardholder transfers departments, the Cardholder must surrender the card as described above unless their new Department Head requests in writing to the PA that the card remain in the Cardholder's possession.

4.3.10 Renewal and Expiration

Each New Kent County Purchasing Card will expire every two years. The Department Head is responsible for notifying the PA if any changes are necessary prior to expiration.

4.3.11 Changes to Procedures

The PA will propose amendments to the New Kent County Purchasing Card Procedures for approval by the County Administrator.

APPENDIX 4A: NEW KENT COUNTY PURCHASING CARD CARDHOLDER AGREEMENT

The County of New Kent has entered into an agreement with a Card Issuer (“Issuer”) that provides a Purchasing Card to procure goods and certain services costing less than \$5,000 (including shipping and handling). Cardholders must follow the Purchasing Card Policy and Procedures.

Ownership: The card remains the property of the Issuer and may not be transferred or used by anyone other than the designated Cardholder. Cardholder privileges may be suspended at any time for any reason. The Cardholder will surrender the card to the Purchasing Card Administrator upon request. Use of the card after notice of its cancellation may be fraudulent and may be cause for legal action against the Cardholder.

Spending Limits: The daily and monthly spending limits are not to be exceeded under any circumstances. No personal expenses are to be charged to the card. Your spending limit will be less than \$5,000 unless authorized by the County Administrator or if there is an emergency .

Usage: Cardholders must refer to the Purchasing Card Policy and Procedures for specific guidelines governing card use.

Receipts: It is the Cardholder’s responsibility to obtain transaction receipts from the Vendor each time the card is used. Individual receipts are to be turned in to Financial Services monthly with reconciliation documents.

Disputed Items: It is the Cardholder’s responsibility to follow-up on erroneous charges, returns or adjustments and to ensure proper credit is given on subsequent statements.

Security: The Purchasing Card must be safeguarded to prevent fraudulent use. Sign it upon receipt and keep it in a secure place. Make sure it is returned to you after each charge and verify it is your card. Copies of receipts should be obtained and provided to the Department Head, who will forward them to Financial Services. For a lost or stolen card, the Cardholder shall immediately notify the Issuer, PA, and Department Head.

The undersigned applicant and supervisor request that a New Kent County Purchasing Card be issued to the applicant. The applicant has read the above agreement and Purchasing Card Policy and Procedures and agrees to be bound by their terms and conditions. The applicant certifies he/she has attended the mandatory Purchasing Card Training.

Applicant

Date

Department Head

Date

Applicant and Supervisor keep one copy each for your records and forward the original to the PA.

APPENDIX 4B: DISPUTE FORM

CARDHOLDER NAME and
RETURN ADDRESS:

CARDHOLDER PHONE NUMBER _____
CARDHOLDER FAX NUMBER _____
CARDHOLDER ACCOUNT # _____
MERCHANT NAME _____
AMOUNT _____
TRANSACTION DATE _____
TRANSACTION REF. # _____

To assist our investigation, please indicate below the reason for your dispute. If you have any questions, please call the Purchasing Card Administrator.

I did not make nor authorize the above listed transaction. (Please indicate the location of your Purchasing Card.) _____

There is a difference in the amount I authorized and the amount I was billed. A copy of the charge is attached. The amount I authorized is \$_____.

I only transacted one charge, and I was previously billed for this sales draft. The date of the previous charge is: _____

The above transaction is mine, but I am disputing the transaction because:

Please send me a copy of the sales draft.

I have received a credit voucher for the above transaction, but it has not yet appeared on my account. A copy of the credit voucher is attached.

My account has been charged for the above transaction, but I have not received this merchandise. The date of expected delivery was: _____ The details of my attempt to resolve the dispute with the Vendor and the Vendor's response are indicated below:

Other (please explain)

Cardholder Signature: _____

Date: _____

APPENDIX 4C: NOTIFICATION OF LOST OR STOLEN CARD

Cardholder Name: _____

Account Number: _____

Date Lost/Stolen: _____

Date of Discovery: _____

Date/Time Issuer Notified: _____

Name of Issuer's Representative Spoken to: _____

Location of Loss: _____

Last Known Legitimate Purchase (include date, merchant, item, amount):

Description of Incident and/or Other Relevant
Information: _____

I certify the above information to be correct and true to the best of my knowledge.

Cardholder Signature: _____

Date: _____

APPENDIX 4D: REQUEST FROM DEPARTMENT HEAD FOR EMPLOYEE'S CARD AND CARDHOLDER'S RECEIPT

To: Purchasing Card Administrator

From: Department Head

Re: Purchasing Charge Card for Employee

Date: _____

Department Head Name and Title: _____

Cardholder Name and Title: _____

Cardholder Date of Birth: _____

Cardholder Phone Number: _____

Amount Requested for Card Limit: _____

Date Employment Began: _____

Date of Purchasing Card Training: _____

I certify that this Cardholder has been to purchasing card training and I understand that the Department is liable for the charges incurred on any card held by this Department. I request that you provide a card for this employee.

Signature and Title: _____ Date: _____

I certify that I have received my New Kent County Small Purchase Charge Card and I understand that I am liable for the charges incurred on my card.

Signature and Title: _____ Date: _____

cc: Human Resources

APPENDIX 4E: DESIGNATION OF SMALL PURCHASE CHARGE CARD PROGRAM ADMINISTRATOR

I, _____, County Administrator, do hereby designate the duties of Small Purchase Charge Card Program Administrator to _____ of the Department of Financial Services as a secondary Program Administrator.

Signature: _____ Date: _____

APPENDIX 4F: LOST RECEIPT VOUCHER

Name: _____

Department: _____

Date Submitted: _____

Date of Expense: _____

I hereby certify that expenses listed below were incurred by me on official business of the County and include only such expenses as were necessary in the conduct of this business.

Signed: _____

Description of the Item: _____

Merchant's Name: _____

Posting Date	Transaction Date	Transaction Number	Amount
_____	_____	_____	_____

Explanation of expense and the reason for the lack of documentation:

CHAPTER 5 : COOPERATIVE (“Piggybacking”) PROCUREMENT

Cooperative procurement is authorized by the Code of Virginia Section 2.2-4304; which authorizes public bodies to utilize cooperative procurement to satisfy requirements for goods and non-professional services. Governmental bodies not named specifically in the solicitation desiring to purchase from another public body’s contract may do so if the original solicitation specified that the procurement was being conducted on behalf of other public bodies (who do not have to be named) and the issuing public body modifies the contract in writing with concurrence from the contractor to add the specific public body.

Overall administration of multi-user contracts (cooperative procurements) shall remain the responsibility of the issuing governmental body. Procedures for contract administration by the issuing body include:

1. Providing authorized users a complete copy of the contract or a summary of its terms to include, at a minimum: contract period, contractor address and phone number, pricing schedule, ordering procedure, payment terms, shipping terms and any other relevant information.
2. Providing a copy of all contract changes to authorized users.
3. Maintaining a central list of all authorized users.
4. Instructing users to refer all contract complaints to the issuing body.
5. The issuing body must obtain a volume purchase report from the contractor prior to the expiration of the contract.

Participating governmental bodies should fully administer their portion of the contract without the issuing body. Procedures for contract administration by the using governmental body include:

1. Notifying the issuing agency of any changes desired in the contract or any problems with performance by the contract.
2. Appointing a contract administrator.
3. Ensuring that contract information is provided to the end user.
4. Providing accounts payable with a pricing/payment schedule.

Documentation of the Files – a complete file should be maintained for each purchase transaction containing all the information necessary to understand the transactions’ chronology.

CHAPTER 6: COMPETITIVE NEGOTIATION

Request for Proposal (RFP)

Competitive Negotiation must be used for all professional services, even those less than \$50,000. This type of procurement may be used for Goods and Non-Professional Services when it is not practicable or fiscally advantageous to use competitive sealed bidding, particularly in service contracts where price is not the most important consideration. If competitive negotiation is used for Goods and Non-professional services there must be a written determination by the County, signed by the County Administrator and retained in the purchasing file that indicates why competitive sealed bidding (Chapter 7) is not appropriate.

6.0 Procurement of Professional Services

Professional services include accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy or professional engineering. (see definition in Chapter 2)

6.1 Adoption of the Virginia Code processes

There is a process, which is hereby adopted by New Kent County pursuant to Virginia Code 2.2-4303(G) which allows for professional services to be procured without competitive negotiation for single term contracts, where the aggregate sum of all phases is not expected to exceed \$80,000. Purchases under this section expected to exceed \$30,000 shall require formal solicitation of a minimum four bidders or offerors, and shall also require approval from the Board of Supervisors. Competition should be employed whenever possible.

6.2 Professional Services that need an RFP.

Process:

- Determination of need
- Issue the RFP
 - o Choose the most qualified two or more offerors to engage in informal discussions. County shall engage in discussions with two or more offerors that are deemed qualified service providers
 - o Meetings can occur as many times as necessary
 - o Ensure that the offerors are qualified, responsible and compatible with the scope of services
 - o May discuss non-binding price estimates, but not hourly rates
 - o Proprietary information should be protected pursuant to the Virginia Freedom of Information Act. The offeror must identify the proprietary information and the County then must abide by the rules of the Commonwealth
 - o After informal discussion and the RFP:
 - Make an order of preference for the offerors
 - Begin negotiations with the first offeror
 - Determine whether a contract can be entered into that is advantageous to the County and the price is fair and reasonable
 - If needed, move to the second offeror on the prioritized list once negotiations with the first vendor has been formally terminated

- Award contract

6.3 Use of Professional Services for Multiple Projects

A Contract for Architectural or Professional Engineering Services related to construction projects may be negotiated for multiple projects provided:

- Projects require similar experience and expertise
- Nature of the projects and whether they are multiple is clear in the RFP
- Contract term is limited to one year or until the amount of money authorized is used, whichever occurs first. However:
 - o May be renewable for two one-year terms if needed
 - o Cannot carry unused amounts over from the first term

Multiphase professional services contracts satisfactory and advantageous to the local public body for environmental, location, design and inspection work regarding construction of infrastructure work may be negotiated and awarded based upon qualifications at a fair and reasonable price for the first phase only when completion of earlier phases is necessary to provide information critical to negotiation of a fair and reasonable price for succeeding phases.

Prior to a multiphase professional services contract, the local public body shall state the anticipated total scope of the project and determine in writing the nature of the work is such that interests of such public body require awarding the contract.

6.4 Preparation and Issuance of a Request for Proposal (RFP)

6.4.1 General

The written RFP is issued to describe in general terms what is needed. (See Appendix 6B: Request for Proposals)

6.4.1.1 Request RFP Approval

To initiate the RFP process, contact the County Administrator and provide the type of procurement and the approximate date of the contract. You will be provided a number for your procurement and advised of your ability to issue the RFP.

6.4.1.2 Requirements

The RFP must specify and list the specific requirements to be addressed by the offerors, the contractual terms and conditions and any unique capabilities or qualifications required of the contractor. These requirements will be used to evaluate the offerors and awards may be made to more than one offeror. (See definition of Contract)

6.4.1.3 Public Notice

Must include the manner in which the public notice of the award will be made. It must be published in a newspaper of record as well as the County website; it should also be published on eVA (See Appendix 6B: Request for Proposals).

6.4.1.4 Evaluation Criteria

The evaluation criteria should be stated specifically in the RFP and percentage “weights” should be provided. Price shall be one of the factors considered, but doesn’t have to carry the most weight.

6.4.1.5 Response Date

The RFP must have a due date and time with a minimum of ten days from the date of public notice.

6.4.1.6 Pre-Bid Meeting

All preproposal conferences or site visits must be mentioned in the RFP and all advertisements of it. If there is a mandatory pre-bid meeting, the response period must be at least ten (10) days after the meeting.

6.4.1.7 Sealed Proposals Receipt, Public Openings and Evaluation

Public openings are not required. If a public opening is held, only the names submitting proposals are read aloud and made available to the offerors and general public.

Proposals are evaluated by the evaluation team and the team may request presentations or discussions with the offerors to clarify material in the proposals. All RFP responses must be evaluated unless they are submitted after the deadline. All notes and documents showing the evaluation process must be maintained in the procurement file.

6.5 Selection

Two or more offerors determined to be fully qualified and best suited are then selected for negotiation. If one offeror is clearly more highly qualified than the others, a written determination shall be made and retained outlining the reasons why.

6.6 Negotiation and Award

6.6.1 Negotiation

Negotiations are conducted with each selected offeror. This process may allow for modification of proposals to include price and negotiation may continue until a reasonable contract is secured.

After negotiations are conducted with each offeror the County will determine who has made the best proposal and file a notice of intent to award for ten (10) days. At this time no further negotiation will be conducted.

6.6.2 Award

The evaluation team must prepare a written narrative summarizing the rationale for the ratings that are developed for each proposal received but must not compare the offerors. (See Appendix 6G: Sample County of New Kent Notice of Intent to Award)

The award documents shall incorporate, by reference, the terms and conditions of the RFP and the contractor's proposal, to include all written modifications.

The County may cancel an RFP or reject proposals at any time prior to making an award. (§2.2-4319)

6.7 Recommended Table of Contents for RFP

- I. Purpose
- II. Background
- III. Statement of Needs
- IV. Proposal, Preparation & Submission Instructions
- V. Evaluation and Award Criteria
- VI. Reporting and Delivery Instructions
- VII. Pre-proposal Conference (if necessary)
- VIII. Method of Payment
- IX. Pricing Schedule

- X. Scope of Work – Attachment “A”
- XI. General Terms and Conditions – Attachment “B”
- XII. Special Terms and Conditions – Attachment “C”
- XIII. Attachment “D”

NOTE: For Sections Not Used; Enter the Word “Omitted” in page number column.

6.8 Step-by-Step Procedures

6.8.1 Prepare Written Determination

6.8.2 Prepare the Request for Proposal

6.8.2.1 Explanation of Each Section’s Contents,

Not all Sections need to be used (if a section is not used, list the section and state “Omitted”)

6.8.2.2 Purpose – Include a brief statement of purpose, here are typical examples of language

“Goods” – The purpose of this Request for Proposal (RFP) is to solicit sealed proposals to establish a contract through competitive negotiation for the (purchase/lease/rental) of (generic commodity description) by the County of New Kent.

“Services” – The purpose of this Request for Proposal (RFP) is to solicit sealed proposals to establish a contract through competitive negotiation for the purchase of (type of consultant services/type of maintenance services/type of other nonprofessional services) by the County of New Kent.

6.8.2.3 Background – Optional

A brief narrative should describe historical facts or events leading up to the present requirement for that which is to be purchased.

6.8.2.4 Statement of Needs

6.8.2.4.1 Describe in general term, the service to be performed or the goods to be purchased; specifications and/or drawings may be referenced by attachment.

6.8.2.4.2 Specific tasks, subtasks, parameters, and limitations restricting such tasks or subtasks should be listed here.

6.8.2.4.3 Also include County furnished materials, plans, statistical reports, office space, personnel, response times, workmanship, working hours, overtime, access to work site, etc.

6.8.2.4.4 Warnings for this section:

- Do not include proposal preparation and submission information in this section
- Avoid duplication

- Use the word “contractor” to describe the firm/person under contract, “offeror” to describe who is to submit a response
- “Must” and “Shall” are both mandatory terms, cannot be waived and are not subject to negotiation.
- “Should” and “May” are advisory or permissible actions which may be subject to negotiation.

6.8.3 Proposal Preparation and Submission Instructions

6.8.3.1 General Instructions

Number of copies, how to prepare proposal, possibility of presentations.
Proposed Language: See Appendix 6B: Request for Proposals

6.8.3.2 Specific Proposal Instructions

Inform potential offerors of the information that must be submitted with their proposals.
Proposed Language: See Appendix 6B: Request for Proposals

6.8.4 Evaluation and Award Criteria

6.8.4.1 Evaluation Criteria

The basis for evaluation must be known in advance (include the matrix for evaluation with the percentages listed)
Award of Contract – See Appendix 6G: Sample County of New Kent Notice of Intent to Award

6.8.5 Reporting and Delivery Instructions

Typical Language – See Appendix 6B: Request for Proposals

6.8.6 Pre-proposal Conference

Indicate time, date, place and whether attendance is mandatory or optional

6.8.7 General Terms and Conditions

See Appendix 6B: Request for Proposals

6.8.8 Special Terms and Conditions

6.8.8.1 The following special terms and conditions must be included in all RFP's or as indicated:

- Audit – Term Contracts only
- Cancellation of Contract – Term Contracts only
- Renewal of Contract – a Term Contract normally cannot be renewed unless a clause of this type is included in the RFP
- Small business subcontracting plan and evidence of compliance – required where the prime contract is in excess of \$100K unless the solicitation has been set-aside for small businesses or no subcontracting opportunities exist

6.8.9 Method of Payment

Specify when payment will be made and when invoices are to be submitted.

6.8.10 Pricing Schedule

Provide space and specify how price is to be submitted.

6.8.11 Attachments

List attachments specifically and include their purpose.

6.9 Issuing the RFP

Prepare the RFP cover sheet, identify potential sources, prepare a vendor mailing list, publicly post and advertise the RFP.

6.9.1 Cover Sheet should include:

- RFP – assign a number and list on the cover sheet
- Title
- Issue Date – date that RFP is to be posted
- Period of Contract
- Sealed proposals will be received until (List Date and Time)

6.9.2 Public Posting

- On New Kent County website
- In the newspaper of record via the Clerk of the Board of Supervisors
- In the County Administration Building
- On eVA

6.10 Select an Evaluation Panel

Three to five County employees including the buyer or some other persons knowledgeable of County procurement.

6.11 Conduct Pre-proposal Conference and/or Site Visit

A roster of those attending shall be maintained and minutes shall be kept.

6.12 Issue Addendum

Should be used sparingly, issued to correct errors, change proposal due date, or make any other changes that have been agreed to and must be posted in same manner as the RFP.

6.13 Receive Proposals – the Bid Opening Employee is responsible for the following:

- Envelopes should be marked with the date and time received
- Receive proposals at the date and time specified at the County Administrator’s Office
- Check the mailbox and/or any other mail receiving area
- If public opening, only read the names
- Any late proposals should be stamped with the date and time received and returned unopened

6.14 Buyer Review of Proposals for Compliance with the RFP

- Review proposals for completeness
- Ensure all mandatory requirements are addressed
- Notify offeror of any deficiencies
- Provide reasonable time to “cure”

6.15 Provide Instructions to Evaluation Panel (Actions should be taken individually)

- Written guidance should be provided to the evaluation panel detailing actions to be taken

- Evaluators should identify and list areas of noncompliance and/or areas of confusion
- Conduct preliminary appraisal and prepare tentative analysis

6.16 Evaluate Proposals as a Panel

- Discuss areas identified as areas of noncompliance and/or areas of confusion
- If conference with offeror is necessary, schedule and attend
- Check references
- Same questions should be asked of all
- Written questions and answers should be maintained
- Complete evaluation by assigning points
- All evaluations should be in writing and maintained
- Committee should create a plan highlighting the areas of negotiation, concessions to be requested, etc.

6.17 Selection of Offerors and Preparation for Negotiation

Selection shall be made of two or more offerors deemed to be fully qualified and best suited based on the factors in the RFP. The selection is based upon the Evaluation Committee's score.

6.18 Schedule and Conduct Negotiations

- Schedule meeting for negotiations
- Conduct negotiations as listed above
- All changes and meetings should be well documented
- After negotiations are completed, complete contract form in Appendix 6A: Standard Contract for Competitive Negotiation

6.19 Post a Notice of Intent to Award

Post a notice of intent to award for ten days.

6.20 Notify other Offerors

Optional.

6.21 Insurance Requirements

Request that an insurance letter of endorsement be issued and in hand prior to work commencing.

6.22 Award Contract

See Appendix 6G: Sample County of New Kent Notice of Intent to Award.

6.23 Post Award Contract Administration

An individual should be assigned to maintain all of the paperwork until and after the completion of the contract.

6.24 Negotiation Do's and Don't's

6.24.1 DO'S:

- Identify each point to be negotiated
- Develop your own style
- Be prepared
- Establish parameters for discussion of each point
- Identify important issues first and consider appropriate points in time for their negotiation

- Try to settle one issue before beginning the next
- Discuss budget limitations, policy and restrictions related to the program
- Discuss alternatives (should be previously discussed with panel)
- Negotiate on an even basis (appropriate personnel available)
- Avoid arguments
- Avoid interruption
- Avoid quick compromise
- Be ethical, fair, and firm
- Control the negotiation session (you are the buyer)

6.24.2 DON'T'S:

- Underestimate the ability of the vendor
- Disclose the specific contents of other proposals
- Negotiate areas beyond the scope of the RFP
- Make a concession without obtaining a concession
- Accept the first no
- Be unreasonable or unfair
- Negotiate to the point that the price is no longer fair and reasonable

**APPENDIX 6A: COMMONWEALTH OF VIRGINIA COUNTY OF NEW KENT
STANDARD CONTRACT FOR COMPETITIVE NEGOTIATION
(for use with Competitively Negotiated contracts only)**

Contract Number: _____

This contract entered into this ____ day of _____ 20__, by _____ hereinafter called the “Contractor” and Commonwealth of Virginia, County of New Kent, called “County.”

WITNESSETH that the Contractor and the Board of Supervisors of New Kent County, in consideration of the mutual covenants, promises and agreements herein contained, agree as follows:

SCOPE OF CONTRACT: The Contractor shall provide the goods/services to the County as set forth in the Contract Documents.

PERIOD OF PERFORMANCE: From _____ through _____.

The contract documents shall consist of:

- (1) This signed form;
 - (2) The following portions of the Request for Proposal dated _____:
 - i. Statement of Needs,
 - ii. The General Terms and Conditions,
 - iii. The Special Terms and Conditions together with any negotiated modifications of those Special Conditions;
- Attachment _____, Date: _____
- (3) The Contractor’s Proposal dated _____ and the following negotiated modifications to the Proposal, all of which documents are incorporated herein.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

CONTRACTOR:

COUNTY:

By: _____

By: _____

Title: _____

Title: _____

Note: This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

APPENDIX 6B– SAMPLE FORMAT– REQUEST FOR PROPOSALS

(Includes 19 pages)

**ADVERTISEMENT
Requests for Proposals**

**“Insert Title”
New Kent County, Virginia**

The County of New Kent, Virginia (“County”) requests qualified firms (hereinafter called the “firm”) to submit proposals to enter into a contract to perform _____ . This Request for Proposal (“RFP”) is part of a competitive procurement process intended to obtain the highest quality of services at the most reasonable price. It also provides firms with a fair opportunity for their services to be considered. For this procurement, the County is using a two part bidding process as set forth in Va. Code §2.2-4301 (“Competitive Negotiation”).

A copy of the complete RFP may be obtained from:

**New Kent County Department of Administration
12007 Courthouse Circle
Post Office Box 150
New Kent, VA 23124
(804) 966-9861**

RFP responses will be received at New Kent County Administration Office, County Administration Building, 12007 Courthouse Circle, New Kent, VA 23124 until _____ p.m., local prevailing time, _____, 20__ Submittal detail, requirements, contractor qualifications and evaluation criteria are included in the RFP.

CONTRACT

Issue Date: _____ RFP # _____

Title: _____

Issuing Department: _____ County of New Kent

Using Department and/or Location _____
Where Work will be Performed _____

Initial Period of Contract: From _____ Through _____

Sealed Proposals will be received until _____ for Furnishing the Goods/Services
described herein. (time/date)

All inquiries for Information should be Directed to: _____ Phone: (____) _____

IF PROPOSALS ARE MAILED, SEND DIRECTLY TO ISSUING DEPARTMENT SHOWN ABOVE.
IF PROPOSALS ARE HAND DELIVERED, THEN DELIVER TO:

Street Address Building Department

In Compliance with this Request for Proposal and to all the Conditions Imposed therein and hereby incorporated by reference, the undersigned offers and agrees to furnish the goods/services in accordance with the Attached Signed Proposal or as Mutually Agreed upon by Subsequent Negotiation.

Virginia Contractor License No: _____
Class: _____ Specialty Codes: _____

Name and Address of Firm:

Zip code: _____
E-mail: _____
Date: _____
By: _____
Name: _____
Title: _____
Phone: _____
Fax: _____

PREPROPOSAL CONFERENCE: A (Mandatory/Optional) preproposal conference will be held on _____ at the _____. (Reference: paragraph_ herein). (If mandatory add: "NO ONE WILL BE ADMITTED AFTER _____") If special ADA accommodations are needed, please contact) _____ at _____ by _____.

*Delete if not applicable

Note: This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

ATTACHMENT A

SCOPE OF WORK

- 1.0 General.
 - 1.1 The County of New Kent, Virginia (“County”) requests from qualified firms, (hereinafter called the “Firm”) proposals to enter into a contract to perform _____
 - 1.2 This work is to be performed under the general conditions of the _____ -
- 2.0 Scope of the Work to be Performed:
- 3.0 Minimum Responsibility Requirements:
 - 3.1 Firms are required to demonstrate at least ____ years experience in _____
 - 3.2 Firms are required to demonstrate experience in _____
 - 3.3 Firms must demonstrate experience in working with _____ -
- 4.0 Schedule of Work Proposed:
 - 4.1 Work shall begin within 30 days of the award of the contract unless otherwise mutually agreed upon and should be completed within _____, unless a later date is agreed upon.
- 5.0 Payment for Services:
 - 5.1 Up to _____ monthly progress payments may be made, based upon satisfactory evidence of the portion of the work completed
 - 5.2 A final payment shall be made upon completion of the scope of work.
- 6.0 Other terms and conditions
 - 6.1 The terms and conditions contained in Attachments A, B, C and D are incorporated into this RFP. The RFP and the firm’s proposal will form the contract between the County and the successful firm.
 - 6.2 All applicants shall sign and return as part of their proposal Attachment D.
 - 6.3 All applicants must sign and return as part of their proposal written acknowledgement of any addenda issued.

SEE END FOR GENERAL TERMS and CONDITIONS and SPECIAL TERMS and CONDITIONS

ATTACHMENT D

TO THE BOARD OF SUPERVISORS:

The undersigned hereby declares that he/she (it) is the only person (firm) interested in this bid; that it is made without any connection with any person making another bid for this same contract; that the bid is in all respects fair and without collusion or fraud; and that no official of the School Board or any person in the employ of the Board of Supervisors is directly or indirectly interested in the bid or any portion of the profit thereof.

The undersigned also declares that he has carefully examined the Request for Proposal specifications, all annexed instructions, and attachments and will provide all the required services and will fulfill all the terms of the bid, if selected.

Signature: _____

Date: _____

ADDRESS OF PRINCIPAL PLACE OF BUSINESS:

Telephone: _____

Facsimile: _____

FOR ADDENDUM FORMAT - SEE APPENDIX 6F

APPENDIX 6C: RFP SOLICITATION AND FILE CHECKLIST

√	<u>RFP Solicitation Checklist</u>	√	FILE CHECKLIST
	Written Determination: There must be a written determination made in advance and placed in the solicitation file justifying the use of competitive negotiation signed by the County Administrator if for goods or non-professional services		Written Determination for use of competitive negotiation for goods or non-professional services procurement
	Approval: Required approvals should be obtained and placed in the file		Special Approval
	Approved Request: Written approval to expend funds. When considering the value of procurement, include all possible renewal periods		Purchase Requisition
	Statement of Needs: What is to be procured		
	Pre-proposal Conference / Site Visit: Date, time, place, optional or mandatory		Pre-proposal Sign-In Sheet
	General Terms and Conditions: These terms and conditions must be included in every solicitation		
	Special Terms and Conditions:		
	Evaluation Criteria: Must be in the solicitation as well as the weights assigned to each criteria		Evaluation Criteria weights
	Method of Payment		
	References: number and type should be specified in the solicitation		Results of Reference Checks Requested

√	<u>Pre-award, Receipt, Evaluation and Post Award</u>	√	
	Evaluation Committee: Proposal Evaluation Committee is identified		Names of Evaluation Committee
	Offerors List:		Name, Addresses of Offerors
	Public Notice: Required at least ten (10) days prior to due date for proposals, posted where required		Copies of Ad for newspaper and print out of the web advertisement
	Solicitation: The original RFP should be kept as a permanent record in the file		Original Solicitation
	Addenda: Any and all changes to the original solicitation must be published and placed in the file		Addenda
	Questions / Responses: Answers to questions from potential offerors should be shared with all offerors who attended the mandatory pre-proposal conference		Copy of the questions, answers and the publication thereof
	Proposal Receipt: Proposals are closed at the date and time specified in the solicitation		
	Review Proposals: Provide detailed written instructions to evaluation committee		Copy of each evaluation committee member's score sheet
	Review Member Evaluations: Schedule conferences as appropriate or necessary, conduct reference checks and inspections if necessary		Copy of each evaluation

	Oral Presentations: Schedule if necessary		
	Proposal Evaluation: Individual evaluations are prepared and proposals are evaluated based on the criteria and published weights		Copy of each
	Select Offerors and Determine Issues to Negotiate: The committee will decide who to negotiate with and what issues can be negotiated		Notes
	Schedule and Conduct Negotiation: A record is maintained of the negotiations with each selected offeror		Documentation of negotiations
	Review Requirements: request any insurance certificates etc. prior to commencement of work		Copies of Certificates of Insurance
	Notice of Award or Intent to Award: Post for ten (10) days in required places		Award documentation
	Bonds: Obtain Performance & payment bonds (if required) prior to commencement of work		Copies
	Successful proposal: A copy of the successful proposal is retained		Successful Proposal
	Contract: A standard two-party contract should include by reference all of the terms and conditions of the solicitation and any changes made		Copy of the contract
	Contract Administration: Assign any responsibilities in writing		Contract Administrator Assignment
	Licenses/References:		Licenses, References
	Unsuccessful Proposals: Must be retained		Unsuccessful proposals
	Post-Award Correspondence: All post-award correspondence should be maintained		

	<u>The Following Items Should Be Considered when Developing the Solicitation:</u>
	For BOTH Goods and Service Procurements:
	Availability of Funds: Funds to support a procurement solicitation must be available.
	Bonds: For procurement of goods or services other than construction, for any dollar amount, consider if performance or payment bonds are necessary
	Cancellation Clause: If the solicitation will result in a term contract, include this clause
	Performance Period: The performance period must include a start and end date, or the contract must be for a specified period of time after a starting point. If an option to renew is possible, it must be stated in the solicitation.
	Liquidated Damages: If time and delivery are critical, include a liquidated damages provision. It must be an amount that is supportable and reasonable, it MAT NOT be used as a penalty but rather a means to assess for damages which may be incurred by late delivery
	Ownership of Documents: If the contract will result in the production of plans or material that has been paid for by the County and is required for subsequent or future production, then add an ownership clause to ensure ownership and retention.
	Required Delivery / Completion Time: If applicable, a specific date must be stated in the solicitation
	Small Business Subcontracting and Evidence of Compliance: Use in solicitations for goods, non-professional services, or non-capital outlay construction when a small business subcontracting plan is a condition of the award.

	Reference Check Form: If the County wishes to check the offeror's references or to verify the offeror's experience, the Reference Check Form should be included as an attachment to the solicitation.
--	---

FOR GOODS PROCUREMENTS:

	Inside Delivery: If inside delivery is required, the solicitation should so state.
	Samples/Demonstration or Models: If any are required, the type, quantity, size, place and time for submission must be stated in the solicitation.
	Technical Data: If required for evaluation, the solicitation should specify when and where the data should be submitted.

FOR SERVICE PROCUREMENTS:

	Bonds: If services are being solicited where bonding is required, this requirement must be stated in the solicitation
	Facilities: If they are provided or need to be provided please state in the solicitation
	Hours of Work – Access to County Facilities: Solicitation should state any restrictions and whether or not any overtime hours are contemplated
	Insurance: This General Term and Condition should be included on service purchases when the contractor is required to work on County property. The contractor must have proper liability, workers compensation to protect the County.
	Licensing Requirements: State all requirements for licensing. Ensure that all requirements are met
	Material/Supplies: If County furnishes material, the solicitation must provide for its control, return and disposal. If contractor furnishes material, the quantity, quality and availability must be specified.
	Personnel Approval: If County desires to approve employees of contractor under the terms in the contract or to exercise some degree of control, the requirement must be included in the solicitation
	Response Time/Service Calls: If vendor must respond to a service call within a specific time frame, this time frame must be specified in the solicitation
	Sub-Contractor Approval: If sub-contractors may be involved in satisfying the requirement and there is a need to approve the sub-contractors on a project, then the solicitation should state what approvals the County will exercise

FOR CONSTRUCTION PROCUREMENTS:

	Bonds: For construction contracts in excess of \$100,000, a bid bond, performance and payment bonds are required
	Drawings, As-Built: If "as-built" drawings are required, specify the number of copies, when, and to whom they are to be delivered.
	Drawings, Shop: If shop drawings are required, specify when and to whom they are to be submitted, approvals required, and time limits for review or changes, by both the agency and the contractor.
	Materials/Supplies: If County furnishes material, the solicitation must provide for its control, return and disposal. If contractor furnishes material, the quantity, quality and availability must be specified.

APPENDIX 6D : VENDOR DATA SHEET SAMPLE

Note: The following information is required as part of your response to this solicitation. Failure to complete and provide this sheet may result in finding your bid nonresponsive. (In the case of a two-step IFB, it may cause the proposal portion to be determined to not be acceptable.)

- 1. Qualifications: The vendor must have the capability and capacity in all respects to satisfy fully all of the contractual requirements.
- 2. Vendor's Primary Contact:
Name: _____ Phone: _____
- 3. Years in Business: Indicate the length of time you have been in business providing this type of good or service:
_____ Years _____ Months
- 4. Vendor Information:
eVa Vendor ID _____
- 5. Indicate below a listing of at least four current or recent accounts, either commercial or governmental, that your company is servicing, has serviced, or has provided similar goods. Include the length of service and the name, address, and telephone number of the point of contact.
 - A. Company: _____ Contact: _____
Phone: () _____ Fax: () _____
Project: _____
Dates of Service: _____ Value: \$ _____
 - B. Company: _____ Contact: _____
Phone: () _____ Fax: () _____
Project: _____
Dates of Service: _____ Value: \$ _____
 - C. Company: _____ Contact: _____
Phone: () _____ Fax: () _____
Project: _____
Dates of Service: _____ Value: \$ _____
 - D. Company: _____ Contact: _____
Phone: () _____ Fax: () _____
Project: _____
Dates of Service: _____ Value: \$ _____

I certify the accuracy of this information.

Signed: _____ Title: _____ Date: _____

APPENDIX 6E: PRE-BID OR PRE-PROPOSAL CONFERENCE CHECKLIST

Here are some points to consider when pre-bid or pre-proposal conferences are held:

- ___ Requirement: Pre-bid or pre-proposal conferences are required for complete and/or large dollar value solicitations

Preparation:

- ___ Reserve meeting room to handle the anticipated capacity
- ___ Coordinate speaking
- ___ Extra copies of the solicitation and attachments must be available
- ___ Have the meeting recorded and/or notes taken
- ___ Sign in sheet

Conduct of Conference/Site Visit:

- ___ Note the date, time, location, and name of solicitation of meeting
- ___ Welcome and introduce key people
- ___ Require all participants to sign in and register including their title and company
- ___ Explain the purpose of the meeting, how it will be conducted, how addenda will be issued; request that prior to asking a question you state your name, title and affiliation
- ___ Solicitation serves as the agenda for the conference, review the solicitation on a page-by-page basis with emphasis on special conditions, specifications, and site conditions

After the conference:

- ___ Review the transcript or recording to determine the need for revising the solicitation by issuing an addendum
- ___ If an addendum is issued, ensure its appropriate dissemination

NOTE: The spokesperson for the County should:

- Control the conference / site visit
- Consider all vendor comments
- Encourage participation
- Repeat all questions and answers

Do NOT:

- Express Opinions
- Tell vendors how to do their job
- Discuss pros/cons of vendor questions
- Take a vote of vendors on a question relative to the solicitation
- Argue with vendors

APPENDIX 6F: IFB/RFP ADDENDUM FORMAT

Date: _____

ADDENDUM No. ____ TO ALL BIDDERS:

- Reference – Invitation for Bids: IFB #
- Commodity:
- Dated:
- For Delivery To:
- Bid Due:
- Pre-bid Conference:

The above is hereby changed to read:

1. _____
2. _____
3. _____

Note: A signed acknowledgment of this addendum must be received at the location indicated on the IFB prior to the bid due date and hour. Signature on this addendum does not substitute for your signature on the original bid document. The original bid document must be signed.

Very Truly Yours,

Contract Officer

Name of Firm

Signature/Title

Date

APPENDIX 6G: SAMPLE COUNTY OF NEW KENT NOTICE OF INTENT TO AWARD

Date:

Commodity:

In Response to IFB/RFP #

OF (issue date)

Contractor / Vendor:

Records for this procurement are now available for inspection by any (bidder/offeror) on this (IFB/RFP)

(Purchase officer/Contract officer) _____

Name typed or printed

Note: This form is used if a protest of an award is anticipated.

**COUNTY OF NEW KENT
NOTICE OF AWARD**

Contract No:

Date:

Vendor Reference No:

Name _____

Address _____

Your Bid/Offer Dated _____

In Response To _____

To Furnish _____

During the Period _____

hereby is accepted at prices and terms stated, subject to all conditions and requirements of the solicitation, purchase specifications, warranties, performance bond and other stipulations, if any. The solicitation, your bid or offer and this notice of acceptance constitute the contract.

Purchase Officer or Contract Officer _____

Note: This form is used to award a contract

CHAPTER 7: COMPETITIVE SEALED BID (IFB)

Competitive sealed bidding is the method used for acquiring goods, printing, non-capital outlay construction and nonprofessional services when the estimated cost is \$50,000 or more.

The goods or services to be procured must be described clearly so that any bidder can understand and respond to the Invitation for Bids (IFB). The IFB should contain the specifications or scope of work/purchase description and the contractual terms and conditions applicable to the procurement to include how the agency or institution will publicly post the notice of the award or make the announcement of the decision to award the contract.

Competitive Sealed Bidding includes the issuance of a written IFB containing the specifications or scope of work/purchase description and the contractual terms and conditions applicable to the procurement. Bids are opened and read publicly; they are evaluated on the requirements set forth in the IFB. The contract will be awarded to the lowest responsive and responsible bidder.

7.0 Issuance of the Invitation for Bid (3 types) IFB Step by Step Procedures (applies to both sealed and unsealed bids)

7.0.1 Determine Requirements

What is needed, how much, when, where and if the contract is renewable

7.0.2 Procurement Planning

Know the type of procurement, the approvals needed, the timeline, the scope of work, mandatory conference, etc.

7.0.2.1 Request IFB approval

To initiate the IFB process, contact the County Administrator and provide the type of procurement and the approximate date of the contract. You will be provided a number for your procurement and advised of your ability to issue the IFB.

7.0.3 Prepare the IFB

Purpose Statement or Summary should be on the first page of the document

7.0.3.1 Scope of Work / Description of Item

Describe in detail the service to be performed or what is to be purchased; specifications or drawings may be referenced and attached. See examples of language:

7.0.3.1.1 Goods (furnish only)

“The contractor shall furnish and deliver each of the following described items:”

Must be complete description(s) and specify the minimum needs of the agency. Also address purchase description, special terms and conditions (if appropriate), warranty, set up and assembly, removal of trash, etc.

7.0.3.1.2 Goods (furnish and install):

“The contractor shall provide all labor, supervision, equipment, tools, materials and incidentals necessary to furnish and install _____. All equipment, materials and installation work shall comply with this specification and all other applicable laws, rules and regulations.”

7.0.3.1.3 Services:

“The contractor shall furnish all labor, supervision, equipment, tools, parts and materials, as necessary, to maintain the (type of equipment) listed in accordance with manufacturer’s service manuals (or other).”

Ensure that the scope of work is complete and address as appropriate: repair response time, contractor certification-license requirements, workmanship, repair and maintenance records, working hours, overtime, agency-furnished materials, etc.

7.0.4 Pre-bid Conference

If desired, indicate date, time, place and whether attendance is mandatory or optional.

7.0.5 General Terms and Conditions

Include the general terms and conditions for goods, services or non-capital outlay projects as appropriate.

7.0.6 Special Terms and Conditions

Select applicable special terms and conditions. Other special terms and conditions may be developed and included, as appropriate.

7.0.6.1 Suggested Special Terms and Conditions Include:

Audit, Cancellation of Contract, Bid Acceptance Period, Bid Evaluation and Award Procedure, Renewal of Contract

7.0.7 Method of Payment

Specify when payment will be made, when and where invoices will be submitted

7.0.8 Pricing Schedule

Provide space and specify how price is to be submitted

7.0.9 Attachments

List all applicable attachments with a brief statement on their purpose

7.0.10 Issue the Invitation for Bids

Prepare the IFB Cover sheet, identify potential sources, prepare a bidder’s mailing list, advertise and publicly post the IFB and advertise in a newspaper of general circulation.

7.0.11 Conduct Pre-bid Conference and/or Site Visit

It is recommended that conferences not be mandatory unless the procurement is complex.

7.0.12 Issue Addendum/Addenda

Issued to correct errors, change the bid due date, or to make any needed changes. See Appendix 7E: IFB/RFP Addendum Format.

7.0.13 Receive Bids

Receive bids until due date and time (Make sure to check mailbox at the bid due time). Publicly opened Bids follow receipt or at the time and date specified in the IFB.

7.0.14 *Tabulate the Bids, Determine Responsiveness and Evaluate*

Tabulate Bids – Create a form to show all vendors solicited, description of item/service, bid prices, bids not returned, and the total price, see Appendix 7B: Vendor Data Sample Sheet.

7.0.15 *Determine Responsiveness and Evaluate Bids*

Review all bids to determine if the bids conform to the IFB

Things that could make a bid nonresponsive:

- a. Substitution or addition of bidder's own contractual terms
- b. Taking exception to any of the terms and conditions or specification requirements
- c. Failure to sign the bid
- d. Submission of sample goods which do not meet the specification
- e. Failure to acknowledge receipt of an addendum which affects price, quantity, quality, or delivery
- f. Providing multiple prices for performing a service where a single price was solicited
- g. Failure to provide prices for all categories of labor in the pricing schedule or a time and materials service contract

7.0.16 *Determine the Responsibility of the Low Bidder*

If references were required, prepare questions in writing that can be asked of all bidders, call references and record their responses. The questions MUST be the same for all bidders and documentation must be maintained.

7.0.17 *Post Notice of Intent to Award*

Post notice for ten (10) days before issuing the award. See Appendix 7D: Pre-bid or pre-proposal conference checklist

7.0.18 *Request Insurance Certificate if appropriate*

If the Solicitation specified insurance requirements, verify the bidder's coverage by requesting an insurance letter of endorsement.

7.0.19 *Award Contract*

7.0.20 *Post Award*

7.1 *Competitive Sealed Bids*

7.1.1 *Sealed Bids*

Receipt, Opening, Evaluation and Award

7.1.2 *Receipt*

Ensure that at the applicable date and time that all bids are received and opened. (Construction type contracts shall have their public opening 24 hours after the deadline)

7.1.3 *Opening*

Evaluate the bids to ensure that they are responsive to the IFB and then evaluate according to the criteria set out in the IFB

7.1.4 *Evaluation*

Lowest responsible, responsive bidder

7.1.5 Award

Post notice of award

7.2 TWO-STEP Competitive Sealed Bidding

To be used when it is impractical to initially prepare a definitive purchase description to support an award based on prices. The first step is to request the submission of unpriced technical proposals and the second step is to obtain pricing (limited to bidders in step 1). No negotiation in this process, but the County may request clarification.

7.2.1 Procedure for 2-step competitive sealed bidding:

Step 1

Issue an IFB for Technical Proposals, specify mandatory technical data. Attach a cover sheet explaining the process and be very clear that prices are not to be included in this portion of the process. Must be opened publicly and the names of the firms are announced. All proposals must be evaluated as is, without change. Only responsive bidders whose technical proposals are acceptable may be invited to submit a bid price.

Step 2

Prepare an IFB to include a pricing schedule, referencing the request for technical proposal title and number and set a specific deadline for the receipt of sealed bids. A public opening must be held. Bids are evaluated and the contract should be awarded to the lowest responsive and responsible bidder. Award documentation should incorporate the terms and conditions of the solicitation, the contractor's technical proposal, and bid price.

7.3 COMBINED TWO-STEP Competitive Sealed Bidding

The technical and price steps can be combined by requiring the persons responding to the solicitation to furnish an unpriced technical proposal in one sealed envelope and the bid prices in a second sealed envelope at the same time. The instructions in the IFB must be extremely clear and state that the responses must be submitted in two separate envelopes – one marked "Technical Proposal" and one marked "Bid Price." The bidders should also be instructed to clearly identify who submitted both envelopes on the outside and reference the bid number.

In this process, the technical bids are opened and evaluated and then the price envelopes for the companies whose technical bids were responsive are then opened. The award is made to the lowest responsible and responsive bidder. All award documentation must incorporate, by reference, the terms and conditions of the solicitation and include the contractor's technical and price proposals. Any bid price envelopes for proposals determined to be not acceptable must be returned unopened.

7.4 Lowest Responsible Bidder Exceeds Budget

If the bid from the lowest responsible bidder exceeds available funds, the agency may negotiate to obtain a contract price within available funds if the solicitation contains the appropriate clause. (See 2.2-4318) This clause shall not be used as a matter of routine. If the buyer decides to negotiate in such circumstances, the decision must be documented in writing in advance of negotiations. Otherwise, unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted. "Available funds" are those budgeted for the requirement and designated prior to the issuance of the IFB. The purpose of this provision is not to force a bidder to take a lower price, but rather to negotiate an acceptable change in requirements, including price, that is agreeable to both parties. Negotiations might include an extended delivery date, reduced quantity, etc. with a corresponding reduction in price.

APPENDIX 7A : SAMPLE FORMAT ADVERTISEMENT

Invitation for Bid
(List what it is)
New Kent County, Virginia
IFB# _____

New Kent County invites bids (IFB) for _____.

Bids will be received at the New Kent County Administration Office, County Administration Building, Post Office Box 150, 12007 Courthouse Circle, New Kent, Virginia 23124 until _____, local prevailing time, _____. Submittal detail, requirements, _____ qualifications and evaluation criteria are included in the IFB. Copies of the IFB are available and a copy can be obtained from the following:

A pre-bid meeting to describe the project will be held on _____ at ____ at _____ (optional/mandatory)

INVITATION FOR BIDS (IFB)

Issue Date: IFB # _____

Title:

Commodity Code:

Issuing Department: County of New Kent
Department of _____
12007 Courthouse Circle
P.O. Box 150
New Kent, Virginia 23124

Location where work will be performed: _____

Period of Contract: From: _____ Through _____ (* Renewable)

Sealed Bids will be received until: _____

For Furnishing the Goods/Services Described Herein and then Opened in Public.

All Inquiries for Information should be Directed to: _____ Phone: _____

IF BIDS ARE MAILED, SEND DIRECTLY TO ISSUING DEPARTMENT SHOWN ABOVE. IF BIDS ARE HAND DELIVERED, DELIVER TO:

_____ In compliance with this Invitation for Bids and all conditions imposed in this IFB, the undersigned firm hereby offers and agrees to furnish all goods and services required by this IFB at the prices indicated in the pricing schedule, indicated in Section VII, and the undersigned firm hereby certifies that all information provided below and in any schedule attached hereto is true, correct, and complete.

*Virginia Contractor License No. _____
Class: _____ Specialty Codes: _____
New Kent Business License No. _____ (Must be provided prior to commencement of work)

Name and Address of Firm:

Zip Code: _____

Date: _____
By: _____
(Signature in Ink)

Eva Vendor Id: _____
Fax Number: () _____
E-Mail Address: _____

Name: _____
(Please print)
Title: _____
Telephone Number: () _____

**PRE-BID CONFERENCE: A (Mandatory/Optional) pre-bid conference will be held on _____ at the _____.

** (Reference: paragraph _____ herein). (If mandatory add: "NO ONE WILL BE ADMITTED AFTER _____") If special ADA accommodations are needed, please contact _____ at _____ by _____.

*Delete if not applicable.

Note: The County of New Kent does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, §2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

1. GENERAL

- 1.1 The County of New Kent, Virginia (“County”) wishes to obtain sealed bids for _____.
- 1.2 Statement of Needs. The County (what it needs)_____. The successful bidder shall provide_____.
- 1.3 This Invitation for Bid is part of a competitive procurement process intended to obtain the highest quality of goods and services at the most reasonable price. It also provides firms with a fair opportunity for their goods and services to be considered.
- 1.4 A pre-bid meeting will be held in _____ at _____. The intent to the meeting is to_____.

2. ISSUANCE OF IFB and QUESTIONS

- 2.1 The County of New Kent, Virginia issues this IFB. Any questions concerning this IFB should be directed in writing (fax and e-mail included) to _____ . The County will determine whether it should issue any addenda because of any questions or other matters.

3. BID OR PROPOSAL CONDITIONS

- 3.1 For this procurement, the County will be using a sealed bid.
- 3.2 The County (Insert title) will use the following criteria in the development of the shortlist of Bidders to be considered for interviews and/or negotiations. Individual criteria may be assigned varying weights at the County’s discretion to reflect relative importance. Bidders are required to address each evaluation criterion in the order listed and to be specific in presenting their qualifications:
 - 3.2.1 (List the criteria – references, time in business, etc.)
- 3.3 Selection shall be made of the Bidder(s) deemed to be most fully qualified and best suited among those submitting proposals, on the basis of the Evaluation Criteria listed. Negotiations shall be conducted with the selected Bidder(s), and an award shall be made to the Bidder that has made the best proposal.
- 3.4 The Bidder has the responsibility, by careful review of the information provided to satisfy itself as to the location of the work, worksite conditions, and the quality and quantity of the materials that will be required. The Bidder shall examine carefully the proposed Contract Documents. Failure to do so shall not relieve a successful Bidder of his obligation to perform as per the provisions of the contract. The Bidder shall not at any time after the execution of the contract, make any claims whatsoever alleging insufficient data or incorrectly assumed conditions, nor shall he claim any misunderstanding with regard to the nature, conditions, or character of the work to be done under the Contract.

4. CONTENTS OF PROPOSAL

4.1 The firm's proposal must include the following and should not exceed _ pages.

4.1.1 Firms Qualifications (list qualifications desired – examples listed below)

4.1.1.1 Qualifications of firm or individual submitting the proposal including a brief background and history of the firm, biographical sketch, and qualifications of members of the firm who will be performing work and evidence to establish the technical and staffing capabilities to perform the project. The history of the firm should include the number of years in business and the size of the firm and should not exceed _ pages.

4.1.1.2 Evidence of the financial ability of the firm to execute the project in the time required

4.1.1.3 Names and Qualifications of any sub-contractors that will be used in this project.

4.1.1.4 A description of any similar projects in which the firm has participated during the past five years, giving the involvement of the firm in the project, a description of the size and value of the project, and the _____.

4.1.1.5 Timetable for completion of the key tasks within the scope of the project.

4.1.1.6 List of all clients (with contact name and telephone number) for whom the firm has provided same or similar services in the past five years.

4.1.1.7 Name, address, and telephone number of the firm's contact person.

4.1.1.8 Key personnel to be assigned to project with resumes and estimated amount of time each will devote to the project.

4.1.1.9 Ability to meet all requirements in Attachment A.

4.1.2 Price Quotation

4.1.2.1 County desires a firm, fixed-price contract.

4.1.2.2 Describe any conditions on payment for services.

4.1.2.3 List any other charges or costs.

4.1.3 Signed Statement

4.1.3.1 A signed statement from the firm, signed by a principal, officer, or agent indicating the availability to fully and satisfactorily meet the proposal specifications and completion dates that are set forth in Attachment A.

4.1.3.2 The firm must clearly state any exceptions.

5. SUBMISSION OF PROPOSALS

- 5.1 Bidders must submit three complete copies of the proposal in an envelope marked “_____” with the closing date and time clearly marked on the outside. Fax copies are not acceptable. A duly authorized agent of the firm submitting the proposal must sign all copies.
- 5.2 In addition to referencing the Request for Proposal and noting any exceptions thereto, the firm may submit any other information that it wishes the County to consider in evaluating the firm’s proposal.
- 5.3 The County will return unopened any proposals received after the previously noted deadline. Proprietary information should be clearly marked as such upon submission to the County, and the County will withhold information so marked from public disclosure to the extent permitted by law.

6. SUBMISSION DEADLINE

- 6.1 All proposals must be received by the County Administrator’s Office, 12007 Courthouse Circle, Post Office Box 150, New Kent, Virginia, 23124-0050, by _____ on _____. It is the responsibility of the Bidder to ensure that his proposal is delivered prior the deadline. Proposals received after the deadline will not be considered. Proposals sent by electronic mail or by facsimile are not responsive and will not be considered.

7. REJECTION OF PROPOSALS

- 7.1 The County expressly reserves the right to reject any or all proposals, to waive any informalities or irregularities in the proposals received, and to award a contract on a competitive negotiation basis, which the County deems to be in its best interest.
 - a. Any bid in response to this solicitation shall be valid for sixty (60) days. At the end of the sixty (60) days the bid may be withdrawn at the written request of the bidder. If the bid is not withdrawn at that time, it remains in effect until an award is made or the solicitation is canceled.
- 7.3 Provisions governing the selected firm’s performance under the contract will include all provisions of this Invitation for Bid.

8. SCHEDULE FOR SELECTION

- 8.1 Winning bid notification will be no later than thirty (30) days after bid opening.

ATTACHMENT A: SCOPE OF WORK

List the scope of work and specifications here.

See END for ATTACHMENTS B & C

ATTACHMENT D

TO THE BOARD OF SUPERVISORS:

The undersigned hereby declares that he/she (it) is the only person (firm) interested in this bid; that it is made without any connection with any person making another bid for this same contract; that the bid is in all respects fair and without collusion or fraud; and that no official or any person in the employ of the Board of Supervisors is directly or indirectly interested in the bid or any portion of the profit thereof.

The undersigned also declares that he has carefully examined the Request for Proposal specifications, all annexed instructions, addenda, and attachments and will provide all the required services and will fulfill all the terms of the bid, if selected.

Signature: _____

Date: _____

ADDRESS OF PRINCIPAL PLACE OF BUSINESS:

Telephone: _____

Facsimile: _____

APPENDIX 7B: VENDOR DATA SHEET SAMPLE

Note: The following information is required as part of your response to this solicitation. Failure to complete and provide this sheet may result in finding your bid nonresponsive. (In the case of a two-step IFB, it may cause the proposal portion to be determined to be not acceptable.)

1. Qualifications: The vendor must have the capability and capacity in all respects to satisfy fully all of the contractual requirements.
2. Vendor's Primary Contact: Name: _____ Phone: _____
3. Years in Business: Indicate the length of time you have been in business providing this type of good or service: _____Years _____Months
4. Vendor Information: eVa Vendor ID _____
5. Indicate below a listing of at least four current or recent accounts, either commercial or governmental, that your company is servicing, has services, or has provided similar goods. Include the length of service and the name, address, and telephone number of the point of contact.
 - A. Company: _____ Contact: _____
Phone: () _____ Fax: () _____
Project: _____
Dates of Service: _____ Value: \$ _____
 - B. Company: _____ Contact: _____
Phone: () _____ Fax: () _____
Project: _____
Dates of Service: _____ Value: \$ _____
 - C. Company: _____ Contact: _____
Phone: () _____ Fax: () _____
Project: _____
Dates of Service: _____ Value: \$ _____
 - D. Company: _____ Contact: _____
Phone: () _____ Fax: () _____
Project: _____
Dates of Service: _____ Value: \$ _____

I certify the accuracy of this information.

Signed: _____ Title: _____ Date: _____

APPENDIX 7C: IFB SOLICITATION AND FILE CHECKLIST

√	IFB Solicitation Checklist	√	File Checklist
	Approval: If an approval is required, obtain prior to solicitation and place in file		Special Approval
	Approved Request: Written approval to expend funds must be included in file		Purchase Requisition
	Specifications/Scope of Work: detailed description of what is to be procured		
	Pre-bid Conference / Site Visit: solicitation must state date and time, place, and optional vs. mandatory		Pre-Bid Sign In Sheet
	General Terms and Conditions: Must be included in every solicitation		
	Special Terms and Conditions: if included, should be essential to the requirement, protect the interests of the County, and assist the bidder in understanding the County's intent		
	Method of Award: must be stated in solicitation		
	Method of Payment: set forth the procedure in the solicitation		
	References: number and type should be specified and checked		Results of Reference Checks

√	Pre-Award, Receipt and Evaluation & Post-Award	√	
	Bidders List: If any solicited businesses		Name, Address of bidders solicited
	Public Notice: Public notice must be made ten days prior to the date set for receipt of bids		Posted notice
	Solicitation: Original IFB, as issued		Original Solicitation
	Addenda: Any changes to the original solicitation must be made by written addendum, sent to each bidder, and placed in the file		Addenda issued and published
	Questions/Responses: Answers to questions from bidders should be shared with all bidders		Copies of all questions / responses
	Bid Opening and Evaluating: Bids are closed at the date and time specified		Bid tabulation sheet
	Notice of Award / Intent to Award: Post notice of intent to award for ten (10) days		Award Document
	Successful Bid: Retain copy		Successful bid
	Contract Administration: assign any responsibility in writing		Contract Administrator Assignment
	Insurance/Licenses/References: if required, maintain in file		Copies
	Unsuccessful Bids: maintain copy in file		Copies

√	The following items should be considered when developing the solicitation:		
	For BOTH Goods and Service Procurements:		
	Bonds: For the procurement of goods or services other than construction, for any dollar amount, consider if bid performance or payment bonds are necessary to protect the County's interest		
	Cancellation Clause: If the solicitation will result in a term contract this clause should be included.		
	Liquidated Damages: If time and delivery are critical, it may be necessary to include a provision for liquidated damages. The basis must be supportable and reasonable, this clause MAY NOT be used as a		

	penalty but rather as a means to access damages which may be incurred by late delivery
	Ownership of Documents: If the contract results in the production of plans, art work, or other material paid for by the County and is required for future or subsequent production, then the appropriate special clause should be used in the solicitation to ensure ownership and retention by the County.
	Performance Period: The performance period in the contract must include a starting and ending date, or must specify a starting time (120 days after xx). If an option is available, must specify
	Prompt Payment Discount: If a prompt payment discount is available, it must be stated and establish a minimum number of days that the agency will consider
	Small Business Subcontracting and Evidence of Compliance: Use in solicitations for goods, nonprofessional services or non capital outlay when a small business subcontracting plan is a condition of the award. Required in some other solicitations.
	Vendor Data Sheet: Check references if required or verify experience

√	For Goods Procurements:
	Inside Delivery: Consider specifying access requirements (elevator, loading dock, etc.)
	Samples / Demonstration: If required, state type, quantity, size, place and time for submission
	Technical Data: Specify when and where the data should be submitted
	Warranty: If required, specify the type and minimum

√	For Service Procurements:
	Bonds: Requirement should be stated in solicitation
	Facilities: State whether or not you will provide facilities (storage, etc)
	Hours of Work – State access to County Facilities: If times are restricted
	Licensing Requirements: State any requirements in solicitation. File must contain documentation of such
	Personnel Approval: Any requirements must be included in the solicitation
	Response Time / Service Calls: time frame must be specified in solicitation
	Sub-Contractor Approval: Solicitation shall state what approvals the County will exercise

√	For Construction Procurements:
	Bonds: If Bid Bond, Performance and Payment bonds are required – must maintain
	Drawings, As-Built: Specify number of copies, when, and to whom they are to be delivered
	Drawings, Shop: Specify number of copies, when and to whom they are to be submitted, approvals required, time limits for review or changes
	Material/Supplies: If there is County furnished material, the solicitation must provide for its control, and return, or disposition. If the contractor is to furnish material or supplies, the quantity, quality and availability must be specified.

APPENDIX 7D: PRE-BID OR PRE-PROPOSAL CONFERENCE CHECKLIST

Here are some points to consider when pre-bid or pre-proposal conferences are held:

___ Requirement: Pre-bid or pre-proposal conferences are required for complete and/or large dollar value solicitations

Preparation:

- ___ Reserve meeting room to handle the anticipated capacity
- ___ Coordinate speaking
- ___ Extra copies of the solicitation and attachments must be available
- ___ Have the meeting recorded and/or notes taken
- ___ Sign in sheet

Conduct of Conference/Site Visit:

- ___ Note the date, time, location, and name of solicitation of meeting
- ___ Welcome and introduce key people
- ___ Require all participants to sign in and register including their title and company
- ___ Explain the purpose of the meeting, how it will be conducted, how addenda will be issued; request that prior to asking a question you state your name, title and affiliation
- ___ Solicitation serves as the agenda for the conference, review the solicitation on a page-by-page basis with emphasis on special conditions, specifications, and site conditions

After the conference:

- ___ Review the transcript or recording to determine the need for revising the solicitation by issuing an addendum
- ___ If an addendum is issued, ensure its appropriate dissemination

NOTE: The spokesperson for the County should:

- Control the conference / site visit
- Consider all vendor comments
- Encourage participation
- Repeat all questions and answers
- At the conclusion, summarize what was discussed

Do NOT:

- Express Opinions
- Tell vendors how to do their job
- Discuss pros/cons of vendor questions
- Take a vote of vendors on a question relative to the solicitation
- Argue with vendors

APPENDIX 7E: IFB/RFP Addendum Format

Date: _____

ADDENDUM No. ____ TO ALL BIDDERS:

- Reference – Invitation for Bids: IFB #
- Commodity:
- Dated:
- For Delivery To:
- Bid Due:
- Pre-bid Conference:

The above is hereby changed to read:

- 1.
- 2.
- 3.

Note: A signed acknowledgment of this addendum must be received at the location indicated on the IFB either prior to the bid due date and hour or attached to your bid. Signature on this addendum does not substitute for your signature on the original bid document. The original bid document must be signed.

Very Truly Yours,

Contract Officer

Name of Firm

Signature/Title

Date

APPENDIX 7F: SAMPLE COUNTY OF NEW KENT

NOTICE OF INTENT TO AWARD

Date: _____
Commodity: _____
In Response to IFB/RFP #: _____ OF (issue date)
Contractor / Vendor: _____

Records for this procurement are now available for inspection by any (bidder/offeror) on this (IFB/RFP)

(Purchase officer/Contract officer) _____
Name typed or printed

Note: This form is used if a protest of an award is anticipated.

COUNTY OF NEW KENT

NOTICE OF AWARD

Contract No:
Date:
Vendor Reference No:

Name _____
Address _____
Your Bid/Offer Dated _____
In Response To _____
To Furnish _____
During the Period _____

hereby is accepted at prices and terms stated, subject to all conditions and requirements of the solicitation, purchase specifications, warranties, performance bond and other stipulations, if any. The solicitation, your bid or offer and this notice of acceptance constitute the contract.

Purchase Officer or Contract Officer _____

Note: This form is used to award a contract.

CHAPTER 8: SOLE SOURCE PROCUREMENT

Definition: Sole source procurement is authorized when there is only one source practicably available for the goods or services required. Sole source justification based solely on a single Vendor's capability to deliver in the least amount of time is not appropriate.

Sole source procurements include numerous documents which are outlined in Appendix 8A: Sole Source Documentation.

All Sole Source Procurements must contain a memo as referenced in Appendix 8C: Sample Instructions for Memorandum. Without this memorandum attached, the procurement will not be processed.

8.1 Process for Approval of \$20,000 or less.

All sole source procurements for goods and services of \$20,000 or less must be approved in advance by the County Administrator. The written determination (Appendix 8B: Sole Source Procurement Approval Request Form) documenting that there is only one source practicably available for that which is to be procured must be maintained in the procurement file. The document shall include any market analysis conducted in order to ensure that the goods or service required was practicably available from only one source.

8.2 Process for Approval of Procurements over \$20,000.

All sole source procurements for non-technology goods and services over \$20,000 must be approved in advance by the Board of Supervisors. The written determination (Appendix 8B: Sole Source Procurement Approval Request form) documenting that there is only one source practicably available for that which is to be procured, must be maintained in the procurement file. The document shall include any market analysis conducted in order to ensure that the goods or service required was practicably available from only one source.

For all sole source procurements over \$5,000. A memorandum must be attached addressing the following four points:

- Explain why this is the only product or service that can meet the needs of the County
- Explain why this Vendor is the only practicably available source from which to obtain this product or service
- Explain why the price is considered reasonable
- Describe the efforts that were made to conduct a noncompetitive negotiation to get the best possible price for the citizens
- A notice of the intent to sole source and the advertisement which should be published ten (10) days prior to procuring the goods/services.

8.3 Entering into the Contract

The contract must be negotiated in the best interest of the County. Negotiations may be conducted; written documentation of the negotiations shall be included in the procurement file (See Appendix 8D: Sample Contract).

8.4 Price Reasonableness Determination

A fair and reasonable price must be determined through research by the Department conducting the procurement.

8.5 Posting Requirements

Award notices must be posted for ten (10) days in the County's designated public area and at a minimum state that only one source was determined to be practicably available and must state what is being procured, the contractor selected, and the date on which the contract was or will be awarded.

8.6 Award Document

Must issue an award document in the form of a purchase order or a contract for sole source purchases (See Appendix 8E: Sample Document).

APPENDIX 8A: SOLE SOURCE DOCUMENTATION

ALL DOCUMENTATION MUST BE ATTACHED TO THE REQUISITION FORM

- ___ 1. Written determination approved by the County Administrator and/or Board of Supervisors Chairman.
- ___ 2. Approval for sole source.
- ___ 3. Noncompetitive negotiation shall be conducted. The file shall include negotiations.
- ___ 4. Evidence that a determination of price reasonableness was conducted.
- ___ 5. Sole source notice of award posted for purchases over \$5,000.
- ___ 6. Purchase Order or Contract Issued.

Signature of the Department Head
Conducting the Procurement

Date

APPENDIX 8B: SAMPLE FORM

SOLE SOURCE PROCUREMENT APPROVAL REQUEST GOODS AND SERVICES

All requests for sole source purchases must meet the criteria established under 2.2-4303 E. The County Administrator and/or the Chairman of the Board of Supervisors must sign this form.

Department Name _____

Department Head Signature _____

I certify that I am the agency head or designee and I am authorized to approve this request.

Print Department Head Name _____

Contact Person _____ Telephone Number _____

Total Amount of Sole Source \$ _____ Facsimile Number _____

Description of Goods / Services

Board of Supervisors or County Administrator

Approved

Disapproved

More Information needed (specify and return to agency)

Signature _____ Date _____

Note: This form must be filed with the contract/purchase order. Agencies and institutions are delegated authority to make contract award after appropriate approval. (Purchase using noncompetitive negotiation.)

APPENDIX 8C : SAMPLE INSTRUCTIONS FOR MEMORANDUM

SOLE SOURCE PROCUREMENT INSTRUCTIONS

It is the policy of the County of New Kent that contracts be awarded on a competitive basis and that the use of sole source procurement must be limited to those instances where only one source is practicably available.

Sole source requests must contain a memorandum from the purchasing agency that addresses in a direct and concise manner the following four points:

1. Explain why this is the only product or service that can meet the needs of the purchasing agency.
2. Explain why this Vendor is the only practicably available source from which to obtain this product or service
3. Explain why the price is considered reasonable
4. Describe the efforts that were made to conduct a noncompetitive negotiation to get the best possible price for the Citizens.

Departments must use the Sole Source Procurement Approval Request form (Appendix 8B: Sole Source Procurement Approval Request Form) and the Checklist (Appendix 8A: Sole Source Documentation), as the cover sheet for all sole source procurements.

APPENDIX 8D : SAMPLE CONTRACT

**COUNTY OF NEW KENT
STANDARD CONTRACT FOR SOLE SOURCE PROCUREMENTS**

Contract #: _____

This contract is entered into this _____ day of _____, 20____, by the _____ hereinafter called the "Contractor" and the County of New Kent, called the "County."

WITNESSETH that the Contractor and the County, in consideration of the mutual covenants, promises and agreements herein contained, agree as follows:

SCOPE OF SERVICES: The Contractor shall provide the services to the County as set forth in the contract documents.

PERIOD OF PERFORMANCE: From: _____ through _____

The contract documents shall consist of:

- (1) This signed form;
- (2) The attached purchasing description, which consists of:
 - (a) The Scope of Work, and/or item description
 - (b) The General Terms and Conditions,
 - (c) The Special Terms and Conditions all of which documents are incorporated herein.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

CONTRACTOR:

COUNTY:

By: _____
Title: _____

By: _____
Title: _____

Note: The County of New Kent does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, §2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

APPENDIX 8E: SAMPLE DOCUMENT

COUNTY OF NEW KENT

NOTICE OF SOLE SOURCE AWARD

DATE OF AWARD: _____

COMMODITY: _____

PURCHASE ORDER OR CONTRACT NUMBER: _____

CONTRACTOR(S)/VENDOR(S): _____

IT HAS BEEN DETERMINED THAT ONLY ONE SOURCE IS PRACTICABLY AVAILABLE FOR THE COMMODITY LISTED ABOVE.

RECORDS FOR THIS PROCUREMENT ARE NOW AVAILABLE FOR INSPECTION.

(PURCHASE OFFICER/CONTRACT OFFICER) _____ (Signature) _____

CHAPTER 9: EMERGENCY PROCUREMENT

An Emergency is an occurrence of a serious and urgent nature that demands immediate action. Emergency procedures may be used to purchase only that which is necessary to cover the requirements of the emergency. The potential loss of funds at the end of a fiscal year is NOT an emergency.

9.0 Two Types of Emergency Procurement

Based upon type of emergency:

9.01 To Protect Personal Safety and/or Property

For an emergency purchase required to protect personal safety and/or property, efforts should be directed to finding a source and directing the contractor to proceed; however the procurement should be made with as much competition as is practicable under the circumstances (2.2-4303 F). The County must negotiate a fair and reasonable price and document the procurement action (this can be done after the emergency if not possible).

9.02 Any Other Type of Emergency

For any other type of emergency, competition should be sought to the maximum extent practicable. Vendor's qualifications may be checked and verification of insurance coverage, if applicable, information on warranties and any other needed information. A procurement exemption request form must be used for this purpose.

9.1 Award of Emergency Procurements

The agency must prepare a confirming contract or County purchase order, as soon as practicable, after directing the contractor to proceed. Care should be taken to include any and all agreements, including prices that were made orally with the contractor. See Appendix 9A: Sample Notice of Emergency Award.

9.2 Documentation

- Exemption Form
- Declaration of Local Emergency (if one was declared)
- Receipts / Purchase Order / Invoice
- Consult with Financial Services after Documentation

9.3 Notification of the Emergency

Prepare a written determination for signature by the Board of Supervisors and/or County Administrator indicating the nature of the emergency, the reason for selection of the contractor and include such determination in the file.

9.4 Publishing Notice of Procurement

Issue, post, and/or publish required written notice. Emergency notices shall be posted on the County website, state that an emergency has been declared, state what is being procured, the contractor selected and the date on which the contract was or will be awarded.

9.5 Emergency Planning

Plan ahead to reduce the need for emergency procedures, prepare and keep a list of local sources of goods and services that may be needed. "On Call" and "As needed" annual contracts for various services may be competitively bid to expedite action, ensure adequate support, and reduce the cost of meeting emergency requirements.

APPENDIX 9A : SAMPLE NOTICE OF EMERGENCY AWARD

COUNTY OF NEW KENT

NOTICE OF EMERGENCY AWARD

Date: _____

Commodity: _____

Purchase Order or Contract Number: _____

Contractor(s)/Vendor(s): _____

This Contractor(s)/Vendor(s) was selected because:

The Nature of the Emergency:

RECORDS FOR THIS PROCUREMENT ARE NOW AVAILABLE FOR INSPECTION.

Department Head: _____
(Signature of Agency Head or Authorized Designee)

Name Typed or Printed: _____

CHAPTER 10: NEW KENT COUNTY ETHICS IN PUBLIC CONTRACTING

The Virginia Public Procurement Act (VPPA) contains a special set of ethical rules for anyone involved in a procurement transaction, including local elected officials, if they approve the contract or are otherwise involved in the procurement or the contract process. These rules exist because one of the most important and closely watched processes in government is the process of contracting to buy goods, construction services and other services needed by local government. Often vendors not chosen view the process with skepticism, and are often quick to complain of any perceived undue influence, favoritism or other lack of fairness and honesty in the award of the contract.

The Code of Virginia has some very strict anti-corruption standards along with severe penalties to ensure ethics in public contracting. These “Ethics in Public Contracting” sections found in Article 6 of the VPPA (Va. Code 2.2-4367 - 2.2-4377) set rules for both members of local governing bodies and employees involved in the purchasing process that are more restrictive than the parallel provisions of the Conflict of Interests Act (the “COI Act”) that apply to all public officers and employees.

For example, under 2.2-4369, a public employee who exercises any responsibility in his/her agency’s procurement process (including a member of the governing body) may not participate in any procurement transaction by the agency if he/she knows that:

- 1 – He/she is also employed by a firm that will bid on the public contract; or
- 2 – A member of his/her immediate family is an officer, director, partner, or owner of 5% or more of a firm that will be bidding on the public contract; or
- 3 – His/her partner or a member of his/her immediate family is employed by a firm that will bid, and that person works in a capacity in which he/she will have personal and substantial participation in the firm’s transaction with the public agency; or
- 4 – He/she, his/her partner or a member of his/her immediate family has some other pecuniary interest in the procurement transaction; or
- 5 – He/she, his/her partner or someone in his/her immediate family is negotiating or has an arrangement for prospective employment with a firm that will bid on the public contract.

These restrictions are somewhat parallel to 2.2-3112 in the State and Local Government Conflict of Interests Act (the “COI Act”), which regulates a public official’s personal interest in transactions coming before his/her department, but the Virginia Public Procurement Act restrictions are more stringent.

The Virginia Public Procurement Act prohibits participation based on the employment or financial interests of the public official or any member of his/her immediate family (spouse, children, parents, brothers, sisters) regardless of where they live, and of any other person in his household, regardless of the relationship.

Any local government employee or official who suspects that he/she or a relative may have a connection with a potential bidder or contract with his locality that would be covered by this law should consult the local government’s attorney about the proper procedure for disqualifying himself/herself.

Officials who are involved in procurement, including members of the local government body, may not accept any gift, loan services or anything else of “more than nominal value” from a bidder or current vendor or contractor. This makes it generally illegal for local officials with purchasing responsibilities to accept anything more valuable than inexpensive promotional items like ballpoint pens, calendars or coffee mugs.

Another ethics requirement imposed by the Virginia Public Procurement Act affects former public officials who go to work for a bidder or contracting firm with whom they previously had public procurement dealings on behalf of their locality or agency. Any such person proposing to take such a job within the first year after leaving his public position must notify the former public employer before beginning the new employment. (See 2.2-4370).

Penalties include potential criminal prosecution in addition to an automatic loss of employment and may include credit card confiscation.

In addition to the penalties listed above, any violation of the procurement process shall also be subject to the New Kent County disciplinary process as outlined in the Personnel Policies manual.

UNAUTHORIZED PROCUREMENT

No County official elected or appointed, or any County employee shall purchase or contract for any goods, services, insurance, or construction within the purview of this manual or the Code of Virginia other than by and through the County Administrator.

County Not Bound by Unauthorized Procurement

Any purchase order or contract made contrary to the provisions of this manual is not approved and the County shall not be bound thereby.

Individual Personally Liable for Unauthorized Procurement

Any person responsible for an unauthorized procurement shall be personally liable for such purchase and, if already paid for out of County funds, the amount may be recovered in the name of the County in an appropriate action instituted therefore. Ratification of the procurement by the Board of Supervisors shall relieve the individual of personal liability for the unauthorized procurement.

VIOLATIONS

Here are the applicable sections of the Code of Virginia that deal with ethics in public contracting; they are taken verbatim.

§ 2.2-4371. Prohibition on solicitation or acceptance of gifts; gifts by bidders, offerors, contractor or subcontractors prohibited.

A. No public employee having official responsibility for a procurement transaction shall solicit, demand, accept, or agree to accept from a bidder, offeror, contractor or subcontractor any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value, present or promised, unless consideration of substantially equal or greater value is exchanged. The public body may recover the value of anything conveyed in violation of this subsection.

B. No bidder, offeror, contractor or subcontractor shall confer upon any public employee having official responsibility for a 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 is exchanged.

(1982, c. 647, §§ 11-75, 11-77; 2001, c. [844](#).)

§ 2.2-4372. Kickbacks.

A. No contractor or subcontractor shall demand or receive from any of his suppliers or his subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged.

B. No subcontractor or supplier shall make, or offer to make, kickbacks as described in this section.

C. No person shall demand or receive any payment, loan, subscription, advance, deposit of money, services or anything of value in return for an agreement not to compete on a public contract.

D. If a subcontractor or supplier makes a kickback or other prohibited payment as described in this section, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order and ultimately borne by the public body and shall be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

(1982, c. 647, § 11-78; 2001, c. [844](#).)

§ 2.2-4373. Participation in bid preparation; limitation on submitting bid for same procurement.

No person who, for compensation, prepares an invitation to bid or request for proposal for or on behalf of a public body shall (i) submit a bid or proposal for that procurement or any portion thereof or (ii) disclose to any bidder or offeror information concerning the procurement that is not available to the public. However, a public body may permit such person to submit a bid or proposal for that procurement or any portion thereof if the public body determines that the exclusion of the person would limit the number of potential qualified bidders or offerors in a manner contrary to the best interests of the public body.

(1997, c. [68](#), § 11-78.1; 2001, c. [844](#).)

§ 2.2-4374. Purchase of building materials, etc., from architect or engineer prohibited.

A. No building materials, supplies or equipment for any building or structure constructed by or for a public body shall be sold by or purchased from any person employed as an independent contractor by the public body to furnish architectural or engineering services, but not construction, for such building or structure or from any partnership, association or corporation in which such architect or engineer has a personal interest as defined in § [2.2-3101](#).

B. No building materials, supplies or equipment for any building or structure constructed by or for a public body shall be sold by or purchased from any person who has provided or is currently providing design services specifying a sole source for such materials, supplies or equipment to be used in the building or structure to the independent contractor employed by the public body to furnish architectural or engineering services in which such person has a personal interest as defined in § [2.2-3101](#).

C. The provisions of subsections A and B shall not apply in cases of emergency or for transportation-related projects conducted by the Department of Transportation or the Virginia Port Authority.

(1982, c. 647, § 11-79; 1993, c. 202; 1994, c. [882](#); 1996, c. [827](#); 2001, c. [844](#).)

§ 2.2-4375. Certification of compliance required; penalty for false statements.

A. Public bodies may require public employees having official responsibility for procurement transactions in which they participated to annually submit for such transactions a written certification that they complied with the provisions of this article.

B. Any public employee required to submit a certification as provided in subsection A who knowingly makes a false statement in the certification shall be punished as provided in § [2.2-4377](#). (1992, c. 761, § 11-79.1; 2001, c. [844](#).)

§ 2.2-4376. Misrepresentations prohibited.

No public employee having official responsibility for a procurement transaction shall knowingly falsify, conceal, or misrepresent a material fact; knowingly make any false, fictitious or fraudulent statements or representations; or make or use any false writing or document knowing it to contain any false, fictitious or fraudulent statement or entry.

(1992, c. 761, § 11-79.2; 2001, c. [844](#).)

§ 2.2-4377. Penalty for violation.

Any person convicted of a willful violation of any provision of this article shall be guilty of a Class 1 misdemeanor. Upon conviction, any public employee, in addition to any other fine or penalty provided by law, shall forfeit his employment.

(1982, c. 647, § 11-80; 2001, c. [844](#).)

APPENDIX B

TERMS & CONDITIONS

SECTION I GENERAL TERMS & CONDITIONS
83 to 97

SECTION II SPECIAL TERMS & CONDITIONS: GOODS & NONPROFESSIONAL
SERVICES 97 to 117

SECTION III ADDITIONAL CONDITIONS: NON-CAPITAL OUTLAY CONSTRUCTION
PROJECTS 118 to 132

APPENDIX B

SECTION I

REQUIRED GENERAL TERMS AND CONDITIONS GOODS AND NONPROFESSIONAL SERVICES

These General Terms and Conditions are required for use in written solicitations issued by the County for procurements that are subject to this manual unless changed, deleted or revised by the legal advisor to your agency. You should edit the wording to fit the type of solicitation (IFB or RFP) by either deleting or lining out the inappropriate words in all parentheses. For service contracts clauses, R, S, and T are normally not applicable and may be omitted. For goods contracts, omit clause U.

- A. WITHDRAWAL OF BID OR PROPOSAL
- B. PRICING
- C. INCORPORATION OF VIRGINIA STATE CODE
- D. OFFEROR AGREES
- E. IFB COMPETITIVE SEALED BID MINIMUM CRITERIA
- F. RFP COMPETITIVE NEGOTIATION MINIMUM CRITERIA
- G. VENDORS MANUAL
- H. APPLICABLE LAWS AND COURTS
- I. ANTI-DISCRIMINATION
- J. ETHICS IN PUBLIC CONTRACTING
- K. TRADE SECRETS OR PROPRIETARY INFORMATION (FOIA)
- L. IMMIGRATION REFORM AND CONTROL ACT OF 1986
- M. DEBARMENT STATUS
- N. ANTITRUST
- O. MANDATORY USE OF COUNTY FORM AND TERMS AND CONDITIONS
- P. CLARIFICATION OF TERMS
- Q. PAYMENT
- R. PRECEDENCE OF TERMS
- S. NO WAIVER
- T. CHOICE OF LAW
- U. FORUM SELECTION
- V. SEVERABILITY
- W. NOTICES
- X. CONTRACTUAL CLAIMS PROCEDURE
- Y. QUALIFICATIONS OF (BIDDERS/OFFERORS)
- Z. TESTING AND INSPECTION
- AA. ASSIGNMENT OF CONTRACT
- BB. CHANGES TO THE CONTRACT
- CC. DEFAULT
- DD. TAXES
- EE. USE OF BRAND NAMES
- FF. TRANSPORTATION AND PACKAGING
- GG. INSURANCE
- HH. ANNOUNCEMENT OF AWARD
- II. DRUG-FREE WORKPLACE
- JJ. NONDISCRIMINATION OF CONTRACTORS
- KK. AVAILABILITY OF FUNDS
- LL. BID PRICE CURRENCY

MM. AUTHORIZATION TO CONDUCT BUSINESS IN THE COUNTY

- A. **WITHDRAWAL OF BID OR PROPOSAL:** A bidder may withdraw or cancel a bid or proposal at any time prior to the date set for opening. After such time, the bidder may not withdraw for a period of sixty (60) calendar days. Any bidder may be required to clarify his bid or acknowledge by written confirmation that the minimum requirements of the request for proposal are included in the bidder's proposal.

The County may cancel or reject any invitation to bid, request for proposal, other solicitation, any bid, or any proposal when the County determines that it is in the best interest of the County to do so. The County shall make the reasons therefor a part of the contract file. The County may reject any bid that is incomplete, conditional, obscure, or which is not in conformance with the specifications, or the County may waive any such irregularities at its option.

- B. **PRICING:** If the County receives more than one bid or proposal for the same total amount or unit price, quality and service being equal, the County shall invite the tie bidders to resubmit written bids below the original bid and the County shall award the contract to the bidder with the lowest price.

If the lowest acceptable bid exceeds available funds, the County may negotiate with the bidder to obtain a contract price within available funds. The parties shall confine negotiations to a reduction in the contract price and shall not deal with changes in the contract requirements.

Except in the case of an emergency affecting the public health safety or welfare, no contract shall be awarded on the basis of cost plus a percentage of cost. This paragraph shall not apply to contracts of insurance. Public contracts may be awarded on any other basis.

- C. **INCORPORATION OF VIRGINIA STATE CODE:** The provisions of Sections 2.2-4305, 2.2-4315, 2.2-4311, 2.2-4312, 2.2-4330, 2.2-4333 through 2.2-4338, 2.2-4340, 2.2-4341, 2.2-4363, and 2.2-4367 through 2.2-4377 of the Code of Virginia of 1950 are incorporated into these conditions by reference as fully as if set forth herein.

- D. **OFFEROR AGREES:** That by submitting a bid or proposal, the Offeror agrees and warrants that he has examined all the contract documents and, if appropriate, the subject of the contract and where the specifications require a given result to be produced, that the specifications are adequate and the required results can be produced under the specifications in the contract. Omissions from the specifications shall not relieve the Offeror from the responsibility of complying with the general terms of the contract as indicated by the specifications. Once the award has been made, failure to have read all the conditions, instructions and specifications of the contract will not be a cause to alter the original contract or proposal or for the Offeror to request additional compensation.

The firm, corporate, or individual name of the bidder must be signed in ink in the space provided for the signature on the page following these conditions. In the case of a corporation, the officer signing must state his or her title and each officer signing must be duly authorized. In the case of a partnership, the signature of at least one of the partners must follow the firm name using the term "member of the firm".

- E. **IFB COMPETITIVE SEALED BID MINIMUM CRITERIA:** Pursuant to an invitation to bid, the project will be awarded to the lowest responsive and responsible

bidder, as those concepts are defined in Section 2.2-4301 of the Code of Virginia 1950. When the County uses competitive sealed bidding, it considers the following factors in addition to price when determining the lowest responsive and responsible bidder.

The ability, capacity, and skill of the bidder to perform the contract or provide the services required;

Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;

The character, integrity, reputation, judgment, experience, and efficiency of the bidder;

The quality of performance of previous contracts or services;

The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service;

The sufficiency of financial resources and ability of the bidder to perform the contract or provide the service;

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

The ability of the bidder to perform future maintenance and service for use of the subject of the contract;

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

Any other condition or criteria included in the request for bids or the instructions to bidders.

F. RFP COMPETITIVE NEGOTIATION MINIMUM CRITERIA: Pursuant to a request for proposal, when competitive negotiation is the method of procurement, the following factors shall be considered in a descending order of importance in determining the most qualified firm or individual:

Any special qualifications or requirements set forth in the proposal documents.

Qualifications of the project manager and project teams.

Overall qualifications and experience of firm and any subcontractor to be used.

Quality of the content of the proposal and its responsiveness to the request for proposal.

The sufficiency of financial resources and ability of the bidder to perform the contract or provide the services.

The location of the office that will have the responsibility for providing the services and the ability of the bidder to respond quickly to requests or requirements of the County.

Financial ability of the firm to perform future maintenance and service for use of the subject of the contract.

Cost estimates (which may or may not be required at the time of submission of the proposal, depending upon the circumstances.)

G. VENDORS MANUAL: This solicitation is subject to the provisions of the New Kent County Procurement Manual and New Kent County Code Sec. 48-101 et seq. and any changes or revisions

thereto, which are hereby incorporated into this contract in their entirety. A copy of the manual is normally available for review at the New Kent County Administration Office and online at www.co.new-kent.va.us.

- H. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the Circuit Court of the County of New Kent. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.
- I. **ANTI-DISCRIMINATION:** By submitting their (bids/proposals), (bidders/offerors) certify to the County that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the Virginia Public Procurement Act (VPPA). 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 recipient's 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, § 2.2-4343.1E).

In every contract over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the contractor agrees as follows:
 - (a) The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - (b) 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.
 - (c) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
 2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- J. **ETHICS IN PUBLIC CONTRACTING:** By submitting their (bids/proposals), (bidders/offerors) certify that their (bids/proposals) are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other (bidder/offeror), supplier, manufacturer or subcontractor in connection with their (bid/proposal), and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan,

subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

K. **TRADE SECRETS OR PROPRIETARY INFORMATION - FREEDOM OF INFORMATION ACT (FOIA)**: Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to subsection B of § 2.2-4317 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.); 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.

1. Except as provided in this section, 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 (§ 2.2-3700 et seq.).
2. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.
3. 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 public body 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.
4. 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 public body decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection only after award of the contract.
5. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

L. **IMMIGRATION REFORM AND CONTROL ACT OF 1986**: By entering into a written contract with the County of New Kent, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in New Kent County, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.

M. **DEBARMENT STATUS**: By participating in this procurement, the vendor certifies that they are not currently debarred by the Commonwealth of Virginia or New Kent County from submitting a response for the type of goods and/or services covered by this solicitation. Vendor further certifies that they are not debarred from filling any order or accepting any resulting order, or that they are an agent of any person or entity that is currently debarred by the Commonwealth of Virginia or New Kent County.

N. **ANTITRUST**: By entering into a contract, the contractor conveys, sells, assigns, and transfers to New Kent County all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States, the Commonwealth of Virginia, and

New Kent County, relating to the particular goods or services purchased or acquired by New Kent County under said contract.

O. **MANDATORY USE OF COUNTY FORM AND TERMS AND CONDITIONS FOR IFBs AND RFPs (Insert wording below appropriate to the solicitation type as indicated):**

1. **(For Invitation For Bids)**: Failure to submit a bid on the official county form provided for that purpose shall be a cause for rejection of the bid. Modification of or additions to any portion of the Invitation for Bids may be cause for rejection of the bid; however, New Kent County reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid as nonresponsive. As a precondition to its acceptance, New Kent County may, in its sole discretion, request that the bidder withdraw or modify nonresponsive portions of a bid which do not affect quality, quantity, price, or delivery. No modification of or addition to the provisions of the contract shall be effective unless reduced to writing, signed by the parties and submitted with the bid as an acknowledgment.
2. **(For Request For Proposals)**: Failure to submit a proposal on the official county form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, New Kent County reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.

P. **CLARIFICATION OF TERMS**: If any prospective (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 five working days before the due date. Any revisions to the solicitation will be made only by written addendum issued by the buyer and will be acknowledged in writing on the addenda form which will be submitted with the proposal.

Q. **PAYMENT**:

1. **To Prime Contractor**:
 - (a) Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the county contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
 - (b) Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
 - (c) All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price.
 - (d) The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.

- (e) **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, New Kent County shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve the County of its prompt payment obligations with respect to those charges which are not in dispute (Code of Virginia, § 2.2-4363).

2. To Subcontractors:

- (a) A contractor awarded a contract under this solicitation is hereby obligated:
 - (1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from New Kent County for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 - (2) To notify the county and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.
- (b) 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 New Kent County, except for amounts withheld as stated in (2) 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 New Kent County.

3. Each prime contractor who wins an award in which provision of a SWaM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWaM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.

R. **PRECEDENCE OF TERMS:** The following General Terms and Conditions PROCUREMENT MANUAL, APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, DEBARMENT STATUS, ANTITRUST, MANDATORY USE OF COUNTY FORM AND TERMS AND CONDITIONS, CLARIFICATION OF TERMS, PAYMENT shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions

and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

- S. **NO WAIVER**: Any failure to the County to demand rigid adherence to one or more of this Agreement's provisions in the contract, on one or more occasions, shall not be construed as a waiver nor deprive the County of the right to insist upon strict compliance with the terms of this Contract. Any waiver of a term of this Contract, in whole or in part, must be in writing and signed by the party granting the waiver to be effective.
- T. **CHOICE OF LAW**: To ensure uniformity of the enforcement of this Contract, and irrespective of the fact that either of the parties now is, or may become, a resident of a different state, this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without regard to the principles or conflicts of law.
- U. **FORUM SELECTION**: The parties hereby submit to the personal jurisdiction and venue of any state or federal court located within the Commonwealth of Virginia for resolution of any and all claims, causes of action or disputes arising out of or related to this Contract and agree that service by registered mail to the addresses set forth in the Notices section of this Attachment shall constitute sufficient service of process for any such action. The parties further agree that any claims, causes of action or disputes arising out of, relating to or concerning this Contract shall have jurisdiction and venue only in the Circuit Court of New Kent County or in the U.S. District Court, Eastern District of Virginia.
- V. **SEVERABILITY**: If any provision of this Contract is held to be illegal, invalid, or unenforceable, or is found to be against public policy for any reasons, such provision shall be fully severable and this Contract shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never been part of this Contract, and the remaining provisions of this Contract shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision, or by its severance from this Contract.
- W. **NOTICES**: All requests, notices and other communications required or permitted to be given under this Contract shall be in writing and delivery thereof shall be deemed to have been made when such notice shall have been either (a) duly mailed by first-class mail, postage prepaid, return receipt requested, or any comparable or superior postal or air courier service then in effect, or (b) transmitted by hand delivery, telegram, telex, or facsimile transmission, to the party entitled to receive the same at the address indicated below or at such other address as such party shall have specified by written notice to the other party.

Notices to the County shall be sent to:

County Administrator
New Kent County
12007 Courthouse Circle
Post Office Box 50
New Kent, VA 23124-0050
Fax: (804) 966-9370

With a copy to:

County Attorney
New Kent County
12007 Courthouse Circle
Post Office Box 50

New Kent, VA 23124-0050
Fax: (804) 966-8756

- X. **CONTRACTUAL CLAIMS PROCEDURE:** Contractual claims or disputes, whether for money or other relief, except for claims or disputes exempted by law from the procedure set forth herein, shall be submitted in writing no later than sixty (60) days after final payment; provided, however, that Bidder shall give the County written notice of its intention to file a claim or dispute within fifteen (15) days after the occurrence upon which the claim or dispute shall be based. Any written notice of Bidder's intention to file such a claim or dispute need not detail the amount of the claim, but shall state the facts and/or issues relating to the claim in sufficient detail to identify the claim, together with its character and scope. Whether or not Bidder files such written notice, Bidder shall proceed with the work as directed. If Bidder fails to make its claim or dispute, or fails to give notice of its intention to do so as provided herein, then such claim or dispute shall be deemed forfeited.

The County, upon receipt of a detailed claim, may at any time render its decision and shall render such decision within one hundred twenty (120) days of final payment. Each such decision rendered shall be forwarded to the Bidder by written notice.

If the Bidder disagrees with the decision of the County concerning any pending claim, the Bidder shall promptly notify the County by written notice that the Bidder is proceeding with the work under protest. Any claim not resolved, whether by failure of the Bidder to accept the decision of the County or under a written notice of Bidder's intention to file a claim or a detailed claim not acted upon by the governing body of the County, shall be specifically exempt by the Bidder from payment request, whether progress or final. The pendency of claims shall not delay payment of amounts agreed due in the final payment.

The decision on contractual claims by the governing body of the County shall be final and conclusive unless the Bidder appeals within six months of the date of the final decision.

- Y. **QUALIFICATIONS OF (BIDDERS/OFFERORS):** The County may make such reasonable investigations as deemed proper and necessary to determine the ability of the (bidder/offeror) to perform the services/furnish the goods and the (bidder/offeror) shall furnish to New Kent County all such information and data for this purpose as may be requested. New Kent County reserves the right to inspect (bidder's/offeror's) physical facilities prior to award to satisfy questions regarding the (bidder's/offeror's) capabilities. New Kent County further reserves the right to reject any (bid/proposal) if the evidence submitted by, or investigations of, such (bidder/offeror) fails to satisfy New Kent County that such (bidder/offeror) is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

The County may cancel or reject any invitation to bid, request for proposal, other solicitation, any bid, or any proposal when the County determines that it is in the best interest of the County to do so. They County shall make the reasons therefor a part of the contract file. The County may reject any bid that is incomplete, conditional, obscure, or which is not in conformance with the specifications, or the County may waive any such irregularities at its options.

The County reserves the right to reject all bids in whole or in part received in response to an invitation to bid or request for proposal should the bid from the lowest responsible bidder exceed available funds.

- Z. **TESTING AND INSPECTION:** New Kent County reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

AA. **ASSIGNMENT OF CONTRACT**: A contract shall not be assignable by the contractor in whole or in part without the written consent of New Kent County.

BB. **CHANGES TO THE CONTRACT**: Changes can be made to the contract in any of the following ways:

1. The parties may agree in writing to modify the terms, conditions, or scope of the contract. Any additional goods or services to be provided shall be of a sort that is ancillary to the contract goods or services, or within the same broad product or service categories as were included in the contract award. Any increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
2. New Kent County may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt, unless the contractor intends to claim an adjustment to compensation, schedule, or other contractual impact that would be caused by complying with such notice, in which case the contractor shall, in writing, promptly notify New Kent County of the adjustment to be sought, and before proceeding to comply with the notice, shall await New Kent County's written decision affirming, modifying, or revoking the prior written notice. If New Kent County decides to issue a notice that requires an adjustment to compensation, the contractor shall be compensated for any additional costs incurred as the result of such order and shall give New Kent County a credit for any savings. Said compensation shall be determined by one of the following methods:
 - (a) By mutual agreement between the parties in writing; or
 - (b) By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to New Kent County's right to audit the contractor's records and/or to determine the correct number of units independently; or
 - (c) By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present New Kent County with all vouchers and records of expenses incurred and savings realized. New Kent County shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to New Kent County within thirty (30) days from the date of receipt of the written order from New Kent County. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall

excuse the contractor from promptly complying with the changes ordered by New Kent County or with the performance of the contract generally.

- CC. **DEFAULT**: In case of failure to deliver goods or services in accordance with the contract terms and conditions, New Kent County, 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 any other remedies which New Kent County may have.
- DD. **TAXES**: Sales to New Kent County are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. New Kent County's excise tax exemption registration number is 54-600- 1445.
(NOT NORMALLY REQUIRED FOR SERVICE CONTRACTS)
- EE. **USE OF BRAND NAMES**: Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict (bidders/offerors) to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the public body, in its sole discretion, determines to be the equivalent of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The (bidder/offeror) is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the county to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the (bidder/offeror) clearly indicates in its (bid/proposal) that the product offered is an equivalent product, such (bid/proposal) will be considered to offer the brand name product referenced in the solicitation.
(NOT NORMALLY REQUIRED FOR SERVICE CONTRACTS)
- FF. **TRANSPORTATION AND PACKAGING**: By submitting their (bids/proposals), all (bidders/offerors) certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.
(NOT NORMALLY REQUIRED FOR SERVICE CONTRACTS)
- GG. **INSURANCE**: By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the Code of Virginia. The bidder or offeror further certifies that the contractor and any subcontractors will maintain these insurance coverages during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the county of increases in the number of employees that change their workers' compensation requirements under the Code of Virginia during the course of the contract shall be in noncompliance with the contract.
2. Employer's Liability - \$100,000.
3. Commercial General Liability - \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. New Kent County must be named as an additional insured and so endorsed on the policy.
4. Automobile Liability - \$1,000,000 combined single limit. (Required only if a motor vehicle not owned by New Kent County is to be used in the contract. Contractor must assure that the required coverage is maintained by the Contractor (or third party owner of such motor vehicle.)

<u>Profession/Service</u>	<u>Limits</u>
Accounting \$3,000,000 aggregate	\$1,000,000/occurrence,
Architecture \$6,000,000 aggregate	\$2,000,000/occurrence,
Asbestos Design, Inspection or Abatement Contractors \$3,000,000 aggregate	\$1,000,000/occurrence,
Health Care Practitioner (to include Dentists, Licensed Dental Hygienists, Optometrists, Registered or Licensed Practical Nurses, Pharmacists, Physicians, Podiatrists, Chiropractors, Physical Therapists, Physical Therapist Assistants, Clinical Psychologists, Clinical Social Workers, Professional Counselors, Hospitals, or Health Maintenance Organizations.) \$4,250,000 aggregate	\$2,150,000/occurrence,
(Limits increase each July 1 through fiscal year 2031 per Code of Virginia § 8.01-581.15.	
Insurance/Risk Management \$3,000,000 aggregate	\$1,000,000/occurrence,
Landscape/Architecture \$1,000,000 aggregate	\$1,000,000/occurrence,
Legal \$5,000,000 aggregate	\$1,000,000/occurrence,
Professional Engineer \$6,000,000 aggregate	\$2,000,000/occurrence,
Surveying \$1,000,000 aggregate	\$1,000,000 /occurrence,

*** When Used: FOR CONSTRUCTION, SERVICE CONTRACTS AND GOODS CONTRACTS WHEN INSTALLATION IS REQUIRED - Required in all solicitations where**

a contractor will perform work or services in or on county facilities. The limits are minimums and may be increased. The Department of Finance, Virginia Municipal League (804-648-0635) should be contacted when other types of coverage may be required or when in doubt as to the need for other limits. When soliciting one of the Professions/Services listed above include the Professional Liability/Errors and Omissions coverage and limits as shown. When not soliciting one of these Professions/Services, omit the required coverages section from the General Terms and Conditions boilerplate.

HH. **ANNOUNCEMENT OF AWARD**: Upon the award or the announcement of the decision to award a contract as a result of this solicitation, New Kent County may publicly post such notice on the New Kent County website (www.co.new-kent.va.us) and the eVA VBO website (www.eva.virginia.gov) for a minimum of 10 days.

*** When Used: Include in all IFB and RFP solicitations.**

II. **DRUG-FREE WORKPLACE**: During the performance of this contract, the contractor agrees to (i) provide a drugfree 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 or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, “drug-free workplace” means a site for the performance of work done in connection with a specific contract awarded to a contractor, 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.

*** When Used: This clause shall be included in every contract over \$10,000. If procuring by unsealed solicitation, New Kent County’s General Terms and Conditions may be incorporated by reference.**

JJ. **NONDISCRIMINATION OF CONTRACTORS**: A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faithbased organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

*** When Used: This clause shall be included in all solicitations using an Invitation for Bids or Request for Proposal (Code of Virginia, § 2.2-4343.1H).**

KK. **AVAILABILITY OF FUNDS**: It is understood and agreed between the parties herein that New Kent County shall be bound hereunder only to the extent of the funds available and appropriated by the Board of Supervisors or which may hereafter become available for the purpose of this agreement.

If the lowest acceptable bid exceeds available funds, the County may negotiate with the bidder to obtain a contract price within available funds. The parties shall confine negotiations to a reduction in the contract price and shall not deal with changes in the contract requirements.

In the alternative, and at its sole option, the County may negotiate with the lowest bidder to obtain a contract price within available funds pursuant to §2.2-4318 of the Code of Virginia, 1950, as amended. The parties shall first confine negotiations to a reduction in the contract price and shall not deal with changes in the contract requirements. The procedure for the process will be:

1. The County Administrator shall advise the lowest responsible bidder, in writing, that the proposed purchase exceeds available funds. He shall further suggest amendment of the proposed purchase price and invite the lowest responsible bidder to amend its bid or proposal based upon the proposed amendment.
2. Repetitive informal discussions with the lowest responsible Bidder for purposes of obtaining a contract within available funds shall be permissible.
3. The lowest responsible Bidder shall submit an addendum to its bid or proposal, which addendum shall include any change in the purchase price.
4. If the proposed addendum is acceptable to the Board of Supervisors, the Board may award a contract within funds available to the lowest responsible Bidder based upon the amended bid or proposal.

LL. **BID PRICE CURRENCY**: Unless stated otherwise in the solicitation, bidders/offerors shall state bid/offer prices in US dollars.

MM. **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH**: A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described above that enters into a contract with a public body pursuant to the Virginia Public Procurement Act shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

SECTION II

SPECIAL TERMS AND CONDITIONS GOODS AND NONPROFESSIONAL SERVICES

The following is an index of Special Terms and Conditions clauses. Some are mandatory whereas others may be used at the buyer's discretion in IFBs and RFPs as the individual procurement may dictate. These clauses cover a broad spectrum of goods, printing, and services and are followed by a brief explanation (indicated by an asterisk *) of when each should be used. Other special terms and conditions may be developed and included in the solicitation when appropriate.

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MANDATORY FOR MOST CONTRACTS

- 1. **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 by New Kent County, whichever is sooner. The county, its authorized agents, and/or county auditors shall have full access to and the right to examine any of said materials during said period.
- 2. **AWARD OF CONTRACT**: Any bidder submitting a proposal to the County subjects himself to the decision of the administrator or the public body as to the quality of what is offered, responsiveness of the bid, responsibility of the bidder, and the qualifications of any bidder. The administrator or the public body, as the case may be, in their sole discretion, will evaluate bids or proposals and in all cases, the decision made shall be final. Every bidder submitting a bid or proposal agrees to abide by the decisions of such officials as a condition precedent to the submission of the bid.

The County does not accept the responsibility for maintaining a bid list and will not accept the responsibility for the failure of any competitor to receive a solicitation directly from the County.

All solicitations must specify the method of award. Select appropriate clause for the type of procurement:

- A. **AWARD**: An award will be made to the lowest responsive and responsible bidder. Evaluation will be based on net prices. Unit prices, extensions and grand total must be shown. In case of arithmetic errors, the unit price will govern. If cash discount for prompt payment is offered, it must be clearly shown in the space provided. Discounts for prompt payment will not be considered in making awards. The County reserves the right to reject any and all bids in whole or in part, to waive any minor informality, and to delete items prior to making an award. The County does not accept the responsibility for maintaining a bid list and will not accept the responsibility for the failure of any competitor to receive a solicitation directly from the County.

*** When Used: For use when soliciting bids for goods or services.**

- B. **AWARD:** New Kent County will make the award(s) on _____ basis to the lowest responsive and responsible bidder. The purchasing officer reserves the right to conduct any test it may deem advisable and to make all evaluations. New Kent County also reserves the right to reject any or all bids, in whole or in part, to waive minor informalities and to delete items prior to making the award, whenever it is deemed in the sole opinion of the County to be in its best interest.

*** When Used: For goods or nonprofessional services by filling in the blank, i.e., line item, total sum, lot, etc. This clause shall not be used in a Request for Proposals.**

- C. **AWARD:** The right is reserved to make a separate award of each item, a group of items or all items, and to make an award either in whole or in part, whichever is deemed in the best interest of New Kent County. The award or awards will be made to the lowest responsive, responsible bidder or bidders as applicable.

*** When Used: For use when multiple line items are involved, provided that multiple awards may result in a savings to the County.**

- D. **AWARD TO MULTIPLE BIDDERS:**

- (1) New Kent County will make awards on a _____ basis to the lowest responsive and responsible bidders, provided that the next lowest bidders are within % of the lowest bidder and provided that different brands are offered. Due consideration will be given to price, quality as judged by tests and previous experience, and of the ability of the bidder to render required services. The County reserves the right to conduct any tests it may deem advisable and to make all evaluations. New Kent County also reserves the right to reject any or all bids, in whole or in part, to waive minor informalities and to delete items prior to making the award, whenever it is deemed in the sole opinion of the County to be in its best interest.

*** When Used: For goods term contracts only when multiple awards will be made based on different brands being offered. Specify how the award will be made, i.e., line item, total sum, lot, etc. plus the number of awards and the percentage figure. This clause shall not be used in a Request for Proposals.**

- (2) **AWARD TO MULTIPLE BIDDERS:** New Kent County reserves the right to make multiple awards as a result of this solicitation. The award(s) will be made to the lowest responsive and responsible bidder(s) meeting the requirements of the solicitation. The County reserves the right to conduct any tests it may deem advisable and to make all evaluations. New Kent County also reserves the right to reject any or all bids, in whole or in part, to waive minor informalities and to delete items prior to making the award, whenever it is deemed in the sole opinion of the County to be in its best interest.

*** When Used: For goods or nonprofessional services when multiple awards may be made in order to meet the requirements of the purchasing agency. This clause shall not be used for construction or professional services.**

- E. **AWARD:** Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in the Request for Proposals, including price, if so stated in the Request for Proposals. Negotiations shall be conducted with the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the County shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. New Kent County may cancel this Request for Proposals or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous (Code of Virginia, § 2.2-4359D). Should the County determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the contractor's proposal as negotiated.

*** When Used: For goods and nonprofessional services when competitive negotiation will be used. This clause shall not be used in an Invitation for Bids or a professional services Request for Proposals.**

- F. **AWARD TO MULTIPLE OFFERORS:** Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in the Request for Proposals, including price, if so stated in the Request for Proposals. Negotiations shall be conducted with the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the County shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. New Kent County reserves the right to make multiple awards as a result of this solicitation. The County may cancel this Request for Proposals or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous (Code of Virginia, § 2.2-4359D). Should New Kent County determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the contractor's proposal as negotiated.

*** When Used: For goods and nonprofessional services when competitive negotiation will be used and multiple awards are desired to meet the requirements of the agency/institution. This clause shall not be used in an Invitation for Bids or a professional services Request for Proposals.**

- G. **AWARD:** The County shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. Such offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. At the discussion stage the public body may discuss non-binding estimates of total project costs, including, but not limited to, life-cycle costing, and, where appropriate, non-binding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors.

At the conclusion of the informal interviews, on the basis of evaluation factors published in the Request for Proposals and all information developed in the selection process to this point, the purchasing department shall select, in the order of preference, two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the County can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on, until such a contract can be negotiated at a fair and reasonable price. The County reserves the right to make multiple awards as a result of this solicitation. Should New Kent County determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

*** When Used: Professional services only. This clause shall not be used in an Invitation for Bids or to procure non-professional services.**

3. **CANCELLATION OF CONTRACT:** The purchasing department reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

*** When Used: Include in all term contracts for goods or services. This clause is not appropriate for use in spot purchases.**

4. **RENEWAL OF CONTRACT:** (NOTE: A term contract may not be renewed unless a renewal clause is included in the solicitation. Select one of the following clauses if an option to renew the contract beyond the original period of the contract is desired. Select either “one year” or complete the blank, indicating the number of “successive one year periods” the contract may be renewed.)

- A. **RENEWAL OF CONTRACT:** This contract may be renewed by New Kent County upon written agreement of both parties for (one year)/(successive one year periods), under the terms of the current contract, and at a reasonable time (approximately 90 days) prior to the expiration.

*** When Used: Include in solicitations for term contracts for goods and services, if desired, to permit renewal of the contract for a specific period of time, i.e., one year, two successive one-year periods, etc., at the same price(s), terms and conditions as in the original contract. Renegotiation of the price(s), terms and conditions is not permitted. If market prices are not expected to remain stable for goods, the Price Escalation/De-escalation clause (No. 43) should be considered for use with this provision.**

- B. **RENEWAL OF CONTRACT:** This contract may be renewed by New Kent County for (one year)/(____ successive one year periods) under the terms and conditions of the original contract except as stated in 1. and 2. below. Price increases may be negotiated only

at the time of renewal. Written notice of the County's intention to renew shall be given approximately 90 days prior to the expiration date of each contract period.

- (1) If New Kent County elects to exercise the option to renew the contract for an additional one-year period, the contract price(s) for the additional one year shall not exceed the contract price(s) of the original contract increased/decreased by more than the percentage increase/decrease of the _____ category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.
- (2) If during any subsequent renewal periods, New Kent County elects to exercise the option to renew the contract, the contract price(s) for the subsequent renewal period shall not exceed the contract price(s) of the previous renewal period increased/decreased by more than the percentage increase/decrease of the _____ category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.

***When Used: For service contracts, use of this clause permits renewal of a contract with an increase/decrease in the labor rate portion only of the original contract. This clause should only be used when renewal of the contract may be desirable and price adjustments may be necessary. Select the most appropriate category that would apply to the contract and fill in the blank. If only a one-year renewal is desired, delete paragraph 2. of the clause. For recent Consumer Price Index statistics, contact the Bureau of Labor Statistics at their website <http://stats.bls.gov/news.release/cpi.toc.htm> or by telephone at 202-691-7000. A link to the Bureau of Labor Statistics is on the DGS/DPS website at www.dgs.state.va.us/dps. Click on the "references" tab along the top of the screen and a link to their web site is listed under "Bureau of Labor Statistics."**

AS INDIVIDUAL PROCUREMENTS MAY DICTATE

5. **ASBESTOS:** Whenever and wherever during the course of performing any work under this contract, the contractor discovers the presence of asbestos or suspects that asbestos is present, he shall stop the work immediately, secure the area, notify the building owner and await positive identification of the suspect material. During the downtime in such a case, the contractor shall not disturb any surrounding surfaces but shall protect the area with suitable dust covers. In the event the contractor is delayed due to the discovery of asbestos or suspected asbestos, then a mutually agreed extension of time to perform the work shall be allowed the contractor but without additional compensation due to the time extension.

*** When Used: For use in service contracts or furnish and install goods contracts when it is possible that the contractor may encounter asbestos during performance of the contract.**

6. **AS BUILT DRAWINGS:** The contractor shall provide New Kent County a clean set of reproducible "as built" drawings and wiring diagrams, marked to record all changes made during installation or construction. The contractor shall also provide the County with maintenance manuals, parts lists and a copy of all warranties for all equipment. All "as built" drawings and wiring diagrams, maintenance manuals, parts lists and warranties shall be delivered to and owned by New Kent County upon completion of the work and prior to final payment.

Any reports, studies, photographs, negatives or other documents prepared by Bidder in the performance of its obligations under any resulting contract shall be remitted to the County by the Bidder upon completion, termination, or cancellation of this Contract. Bidder shall not use, willingly allow or cause to have such materials used for any purpose other than performance of Bidder's obligations under this contract without the prior written consent of the County. The County shall own the intellectual property rights to all materials produced under this contract.

*** When Used: For furnish and install and construction and renovation projects; i.e., fire alarm systems, heating and air conditioning systems, refrigeration rooms, building modifications, major equipment installations, etc.**

7. **ADDITIONAL USERS:** This procurement is being conducted on behalf of local bodies who may be added or deleted at any time during the period of the contract. The addition or deletion of authorized users not specifically named in the solicitation shall be made only by written contract modification issued by this county/locality and upon mutual agreement of the contractor. Such modification shall name the specific locality added or deleted and the effective date. The contractor shall not honor an order citing the resulting contract unless the ordering entity has been added by written contract modification.

***When Used: If the value of the contract, including any renewal periods is within the delegated authority of the locality and other localities and institutions may benefit, the lead agency may issue a solicitation and include this clause on behalf of other public bodies. To obtain maximum pricing advantage, every effort should be made to identify participating agencies and their expected usage in the solicitation.**

8. **BID ACCEPTANCE PERIOD:** Any bid in response to this solicitation shall be valid for 60 days. At the end of the days the bid may be withdrawn at the written request of the bidder. If the bid is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.

*** When Used: The Vendors Manual, 6.2 states that bids must be valid for the number of days stated.**

9. **BID BOND OR GUARANTEE:** Each bid shall be accompanied by a bid bond or guarantee of five percent (5%) of the amount of the bid, which shall be a certified check, cash escrow or a bid bond payable to the Treasurer of New Kent County. The sureties of all bonds shall be of such surety company or companies as are approved by the County and are authorized to transact business in the Commonwealth of Virginia. Such bid bond or check shall be submitted with the understanding that it shall guarantee that the bidder will not withdraw such bid during the period of 60 days following the opening of bids; that if such bid is accepted, the bidder will accept and perform under the terms of the Invitation for Bids and purchase order or contract. The bid guarantee will be returned upon award of contract.

*** When Used: Must be used in all solicitations for construction type contracts over \$100,000. Insert the same number of days in the space provided as entered in the Bid Acceptance Period Clause. This clause may also be used for construction type services under \$100,000, as well as for goods or services of any dollar amount. Do not use in RFPs.**

10. **BID PRICES:** Bid shall be in the form of a firm unit price for each item during the contract period.

*** When Used: In annual goods contracts without a price escalation/de-escalation clause. A different version of this clause, specifically worded to fit the situation, should be used in solicitations for various types of services, and in solicitations for the lease or rental of equipment.**

11. **CERTIFIED TEST REPORT:** Each bidder shall provide a copy of a certified test report with their bid. The certified test report shall be from a recognized independent testing laboratory or manufacturer's quality control laboratory showing all test results and full compliance with the appropriate specifications indicated herein. However, New Kent County reserves the right to perform any tests or inspections when and as deemed necessary to verify the certified test report.

*** When Used: For solicitation of goods where a certified test report may be the only method of determining an item offered would meet specifications.**

12. **CONTRACTOR/SUBCONTRACTOR LICENSE REQUIREMENT:** By my signature on this solicitation, I certify that this firm/individual and subcontractor is properly licensed for providing the goods/services specified.

Contractor Name: _____

License # _____ Type _____

Subcontractor Name: _____

License # _____ Type _____

*** When Used: Include in all solicitations for specific types of services for which State statutes or regulatory agencies require contractors or subcontractors to be properly registered, licensed or hold a permit prior to performing such work. See 3.4.**

13. **CONTRACTOR'S TITLE TO MATERIALS:** No materials or supplies for the work shall be purchased by the contractor or by any subcontractor subject to any chattel mortgage or under a conditional sales or other agreement by which an interest is retained by the seller. The contractor warrants that he has clear title to all materials and supplies for which he invoices for payment.

*** When Used: For use in solicitations for construction and for furnish and install equipment.**

14. **DELIVERY:** Delivery of goods or performance of services shall be within the number of calendar days stated below after receipt of order (ARO) by the bidder/offeror. The County requires the (bidder/offeror) to deliver within a reasonable time after ARO. If the bidder/offeror does not insert a stated delivery time in the blank below, the (bidder/offeror) will be deemed to offer delivery in accordance with the County's desired delivery time as stated below:

County's desired delivered time: _____ calendar days ARO

BIDDER'S/OFFEROR'S STATED DELIVERY TIME: _____ CALENDAR DAYS ARO

***When Used: Include when a firm delivery date is not specified by the county. The County may not reject a bid or proposal because the bidder/offeror stated a longer delivery date as long as it is within a reasonable time after receipt of order.**

15. **DELIVERY AND STORAGE:** It shall be the responsibility of the contractor to make all arrangements for delivery, unloading, receiving and storing materials in the building during installation. The owner will not assume any responsibility for receiving these shipments. Contractor shall check with the owner and make necessary arrangements for security and storage space in the building during installation.

*** When Used: For furnish and install solicitations, if applicable.**

16. **DELIVERY NOTIFICATION:** The County shall be notified hours prior to delivery of any items so that personnel may be available to allow access to the building and verify items received. Notification shall be made to:

_____.

Name	Phone
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*** When Used: Use in solicitations for goods if the receiving facility is not staffed at all times during normal working hours.**

17. **DISCOUNTS**

- A. **PROMPT PAYMENT DISCOUNTS:** New Kent County will pay within ____ days after acceptance. A prompt payment discount offered for prompt payment of () calendar days or longer will be calculated in determining net low bid.

*** When Used: When the agency knows payments can be made within the time frame specified.**

- B. **SPECIAL EDUCATIONAL OR PROMOTIONAL DISCOUNTS:** The contractor shall extend any special educational or promotional sale prices or discounts immediately to New Kent County during the term of the contract. Such notice shall also advise the duration of the specific sale or discount price.

*** When Used: This clause should be considered for use when soliciting bids for products where it is known that vendors or manufacturers have promotional sales opportunities.**

18. **EXTRA CHARGES NOT ALLOWED:** The bid price shall be for complete installation ready for New Kent County's use, and shall include all applicable freight and installation charges; extra charges will not be allowed.

Except in the case of an emergency affecting the public health, safety or welfare, no contract shall be awarded on the basis of cost plus a percentage of cost. This paragraph shall not apply to contracts of insurance. Public contracts may be awarded on any other basis.

*** When Used: For furnish and install solicitations. Also may be used for inside delivery by changing the wording.**

19. **FINAL INSPECTION:** At the conclusion of the work, the contractor shall demonstrate to the authorized owners representative that the work is fully operational and in compliance with contract

*** When Used: Should be used in furnish and install, services and non-capital outlay construction projects.**

24. **INSTALLATION**: All items must be assembled and set in place, ready for use. All crating and other debris must be removed from the premises.

*** When Used: For inside delivery of goods which require unpacking and assembly.**

25. **INSURANCE, MONEY AND SECURITIES**: Contractor shall maintain a Broad Form Money and Securities Insurance Policy obtained from an insurance company licensed to conduct crime insurance business in the home state of the contractor and which has earned an A.M. Best Company, Inc. rating of A or better, as reflected in their most current publication, covering all money and property entrusted to the contractor by New Kent County, with limits of coverage of not less than \$_____ for Loss Inside the Premises Coverage and not less than \$_____ for Loss Outside the Premises Coverage, naming the County of New Kent as additional named insured with respect to this contract. Certificate of such protection must be presented to the purchasing agency prior to the start of the service showing name of insurance company, limits and type of coverage, term of coverage, additional insured provision and name and address of licensed insurance agent. The contractor agrees to maintain such policy until the completion of the contract and all money and property of the County is remitted to New Kent County.

*** When Used: Required for contracts covering the collection, handling, safekeeping, and/or transporting state monies or securities. The amounts to be entered by the county should be equal to the estimated maximum amount of monies or securities that would be in the contractor's possession at any one time.**

26. **LABELING OF HAZARDOUS SUBSTANCES**: If the items or products requested by this solicitation are "Hazardous Substances" as defined by § 1261 of Title 15 of the United States Code (U.S.C.) or "Pesticides" as defined in § 136 of Title 7 of the United States Code, then the bidder/offeror, by submitting his bid/proposal, certifies and warrants that the items or products to be delivered under this contract shall be properly labeled as required by the foregoing sections and that by delivering the items or products the bidder/offeror does not violate any of the prohibitions of Title 15 U.S.C. § 1263 or Title 7 U.S.C. § 136.

*** When Used: Must be included in all solicitations for the purchase of chemicals or compounds which may contain toxic or hazardous substances, i.e., cleaning, janitorial supplies, pesticides, chemicals of all types, etc. (see clause #35).**

27. **LIQUIDATED DAMAGES**: (Note: Review the guidance contained in the General Comments and Procedures below before deciding to include one of the following clauses in a solicitation.

A. **LIQUIDATED DAMAGES, GOODS AND NONPROFESSIONAL SERVICES**: Delivery is required not later than _____. It is understood and agreed by the bidder/offeror that time is of the essence in the delivery of supplies, services, materials, or equipment of the character and quality specified in the bid/proposal document. In the event these specified supplies, services, materials, or equipment are not delivered by the date specified there will be deducted, not as a penalty but as liquidated damages, the sum of \$_____ per day for each and every calendar day of delay beyond the time specified; except that if the delivery be delayed by any act, negligence, or default on the part of New Kent County, public enemy, war, embargo, fire, or explosion not caused by

the negligence or intentional act of the contractor or his supplier(s), or by riot, sabotage, or labor trouble that results from a cause or causes entirely beyond the control or fault of the contractor or his supplier(s), a reasonable extension of time as the procuring public body deems appropriate may be granted. Upon receipt of a written request and justification for any extension from the contractor, the purchasing office may extend the time for performance of the contract or delivery of goods herein specified, at the purchasing office's sole discretion, for good cause shown.

*** When Used: For critical delivery of goods or services. The required delivery date and the dollar amount must be filled in by the agency.**

B. **LIQUIDATED DAMAGES, FURNISH AND INSTALL:** Work shall begin calendar days after receipt of purchase order or contract and all work shall be completed in calendar days. It is hereby understood and agreed by the bidder that time is of the essence in the delivery of supplies, services, materials, or equipment of the character and quality specified in the bid document. In the event these specified supplies, services, materials, or equipment are not delivered by the date specified, there will be deducted, not as a penalty but as liquidated damages, the sum of \$_____ per day for each and every calendar day of delay beyond the time specified; except that if the delivery be delayed by any act, negligence, or default on the part of New Kent County, public enemy, war, embargo, fire, or explosion not caused by the negligence or intentional act of the contractor or his supplier(s), or by riot, sabotage, or labor trouble that results from a cause or causes entirely beyond the control or fault of the contractor or his supplier(s), a reasonable extension of time as the procuring public body deems appropriate may be granted. Upon receipt of a written request and justification for an extension from the contractor, the purchasing office may extend the time for performance of the contract or delivery of goods herein specified at the purchasing office's sole discretion for good cause shown.

*** When Used: For furnish and install contracts covering modifications, repair and other non-capital outlay construction-type contracts. The dollar amount must be filled in by the county. The two blanks for the number of calendar days may be filled in by the county prior to issuing the solicitation or the bidder/offeror may be required to fill in the number of days with the bid/proposal. The dollar amount must be reasonable.**

NOTE: GENERAL COMMENTS:

These clauses are not to be used as a penalty, but as a means to assess damages when both (1) the time of delivery or performance is such an important factor in the award of the contract that the County may reasonably expect to suffer damage if the delivery or performance is delinquent, and (2) the extent or amount of such damage would be difficult or impossible to ascertain or prove. In deciding whether to include a liquidated B-22 damages clause in a contract, the purchase officer should consider the probable effect on such matters as pricing, competition, and the costs and difficulties of contract administration.

When a liquidated damages clause is to be used in a contract, the applicable clause and appropriate rate(s) of liquidated damages shall be included in the solicitation. The rate of liquidated damages used must be reasonable and considered on a case-by-case basis since liquidated damages fixed without any reference to probable actual damages may be held to be a penalty, and therefore unenforceable.

When a liquidated damages clause is used in a construction, modification, or repair contract, the rate(s) of liquidated damages to be assessed against the contractor should be for each day of delay and the rate(s) should, as a minimum, cover the estimated cost of inspection and superintendence for each day of delay in completion. Whenever the County will suffer other specific losses due to the failure of the contractor to complete the work on time, the rate(s) should also include an amount for these items. Examples of specific losses are:

- (1) The cost of substitute facilities;
- (2) The rental of buildings and/or equipment.

ASSESSMENT PROCEDURES:

If a liquidated damages clause is included in a contract and the contractor is late or behind schedule and the delay is not an excusable one, the purchase officer should (1) issue a Notice of Contract Deficiency or “Cure Letter” to the contractor (see Chapter 10, Contract Administration); and (2) in addition, if there is a performance bond, send a copy of the cure letter to the bonding company. If the contractor does not comply with the cure letter, notify the bonding company that they are responsible to complete the contract and at the same time, terminate the contract for default.

If there is no performance bond with the contract, (1) send a cure letter to the contractor. If the contractor does not correct the problem, issue a termination for default letter and re-bid the requirement. Assess liquidated damages against the contractor from the date the project was to be completed, as stated in the liquidated damages clause, to the date of the termination of default letter. In addition, any excess costs encountered in the re-purchase action may also be held against the defaulted contractor.

- 28. **MAINTENANCE MANUALS:** The contractor shall provide with each piece of equipment an operations and maintenance manual with wiring diagrams, parts list, and a copy of all warranties.

*** When Used:** For solicitations to purchase or furnish and install major equipment or systems.

- 29. **MATERIAL SAFETY DATA SHEETS:** Material Safety Data Sheets and descriptive literature shall be provided with the bid/proposal for each chemical and/or compound offered. Failure on the part of the bidder/offeror to submit such data sheets may be cause for declaring the bid/proposal as nonresponsive.

*** When Used:** Must be used for the purchase of all chemicals or compounds which may contain toxic or hazardous substances, i.e., cleaning, janitorial supplies, chemicals of all types (See clause #31).

- 30. **NAME OF MANUFACTURER AND SHIPPING POINT:** Each bidder/offeror shall supply in the space below the name and address of the manufacturer of each item offered and the shipping point.

ITEM NUMBER(S): _____

MANUFACTURER: _____

ADDRESS: _____

SHIPPING POINT:

*** When Used: For spot purchases or annual contracts for goods if the agency desires this information.**

31. **NEGOTIATION WITH THE LOWEST BIDDER**: Unless all bids are cancelled or rejected, New Kent County reserves the right granted by § 2.2-4318 of the Code of Virginia to negotiate with the lowest responsive, responsible bidder to obtain a contract price within the funds available to the County whenever such low bid exceeds the county's available funds. For the purpose of determining when such negotiations may take place, the term "available funds" shall mean those funds which were budgeted by the County for this contract prior to the issuance of the written Invitation for Bids. Negotiations with the low bidder may include both modifications of the bid price and the Scope of Work/Specifications to be performed. The County shall initiate such negotiations by written notice to the lowest responsive, responsible bidder that its bid exceeds the available funds and that the County wishes to negotiate a lower contract price. The times, places, and manner of negotiating shall be agreed to by the County and the lowest responsive, responsible bidder.

*** When Used: This clause may be used in those circumstances where, due to unknown cost factors, there may be a need to negotiate to remain within available fund limitation. For use only in an Invitation for Bids, for goods or services. This clause shall not be used as a matter of routine (see 6.7).**

32. **ORDERING OPTION**: The New Kent County Board of Supervisors, may during the first sixty (60) days after this contract is awarded, with the concurrence of the contractor, place additional orders under the contract at the original unit price through the issuance of separate purchase orders. The aggregate of such additional orders shall not exceed 100% of the quantity originally stated in the contract.

*** When Used: This can be used when purchasing goods on a spot basis and the contracting officer anticipates that there might be an additional requirement for the same goods within the next sixty (60) days. When it is used in a solicitation, a statement on the face of the invitation should direct the bidder's attention to this clause. It is not to be used for term type contracts.**

33. **PERFORMANCE AND PAYMENT BONDS**: The successful bidder shall deliver to the purchasing office executed New Kent County Standard Performance and Labor and Material Payment Bonds, each in the sum of the contract amount, with New Kent County as obligee. The surety shall be a surety company or companies approved by the State Corporation Commission to transact business in the Commonwealth of Virginia. No payment shall be due and payable to the contractor, even if the contract has been performed in whole or in part, until the bonds have been delivered to and approved by the purchasing office. Standard bond forms will be provided by the purchasing office prior to or at the time of award.

*** When Used: Must be used in all solicitations for construction which exceed \$100,000, but may be for construction, goods and services for less than \$100,000.** (Forms may be downloaded from the DGS/Division of Engineering & Buildings web site, <http://deb.dgs.state.va.us/BCOM/>).

34. **PREBID/PREPROPOSAL CONFERENCE - MANDATORY/OPTIONAL**: (Note: Select one of the following two clauses if a mandatory or optional prebid or preproposal conference is desired and include it in the solicitation.)

A. **MANDATORY PREBID/PREPROPOSAL CONFERENCE**: A mandatory prebid/preproposal conference will be at (time and date) at the (place). The purpose of this conference is to allow potential bidders/offerors an opportunity to present questions and obtain clarification relative to any facet of this solicitation.

Due to the importance of all bidders/offerors having a clear understanding of the specifications/scope of work and requirements of this solicitation, attendance at this conference will be a prerequisite for submitting a bid/proposal. Bids/Proposals will only be accepted from those bidders/offerors who are represented at this prebid/preproposal conference. Attendance at the conference will be evidenced by the representative's signature on the attendance roster. No one will be admitted after (time).

Bring a copy of the solicitation with you. Any changes resulting from this conference will be issued in a written addendum to the solicitation and be acknowledged in writing to be submitted with the proposal.

*** When Used: For use in complex procurements when clarification of the contents of the solicitation to potential bidders/offerors will greatly enhance understanding of what is sought to be procured. CAUTION: Use of this clause may limit competition because only those that attend may submit a bid/proposal. Use wording appropriate to the type of solicitation, i.e., prebid, bid, bidder in an IFB and preproposal, proposal, offeror in an RFP.**

B. **OPTIONAL PREBID/PREPROPOSAL CONFERENCE**: An optional prebid/preproposal conference will be held at (time) and (date) at the (place). The purpose of this conference is to allow potential bidders/offerors an opportunity to present questions and obtain clarification relative to any facet of this solicitation. While attendance at this conference will not be a prerequisite to submitting a bid/proposal, bidders/offerors who intend to submit a bid/proposal are encouraged to attend. Bring a copy of the solicitation with you. Any changes resulting from this conference will be issued in a written addendum to the solicitation.

*** When Used: For use in less complex procurements when vendor input is desired. Bidders/Offerors that do not attend may still submit a bid/proposal. Use wording appropriate to the type of solicitation.**

35. **PREVENTIVE MAINTENANCE**: The contractor shall provide necessary preventive maintenance, required testing and inspection, calibration and/or other work necessary to maintain the equipment in complete operational condition during the warranty period.

*** When Used: For equipment purchases only in conjunction with a warranty clause which requires preventive maintenance during the warranty period.**

36. **PRICE ESCALATION/DE-ESCALATION**: Price adjustments may be permitted for changes in the contractor's cost of materials not to exceed the increase in the following index/indices: _____. No price increases will be authorized for ___ calendar days after the effective date of the contract. Price escalation may be permitted only at the end of this period and each ____

days thereafter and only where verified to the satisfaction of the purchasing office. However, “across the board” price decreases are subject to implementation at any time and shall be immediately conveyed to New Kent County.

Contractor shall give not less than 30 days advance notice of any price increase to the purchasing office. Any approved price changes will be effective only at the beginning of the calendar month following the end of the full 30 day notification period. The contractor shall document the amount and proposed effective date of any general change in the price of materials. Documentation shall be supplied with the contractor’s request for increase which will: (1) verify that the requested price increase is general in scope and not applicable just to New Kent County; and (2) verify the amount or percentage of increase which is being passed on to the contractor by the contractor’s suppliers.

The purchasing office will notify the using departments and contractor in writing of the effective date of any increase which it approves. However, the contractor shall fill all purchase orders received prior to the effective date of the price adjustment at the old contract prices. The contractor is further advised that decreases which affect the cost of materials are required to be communicated immediately to the purchasing office.

*** When Used: For annual goods contracts where, because of rapidly changing market conditions, a firm fixed price cannot be secured for one (1) year or more. Enter the appropriate number of days in the blank space, such as 30, 60, 90 or 180 days, depending on the commodity and how frequently costs change. Examples of indices to be used are the Producer Price Index (PPI) and the Consumer Price Index (CPI).**

37. **PRIME CONTRACTOR RESPONSIBILITIES:** The contractor shall be responsible for completely supervising and directing the work under this contract and all subcontractors that he may utilize, using his best skill and attention. Subcontractors who perform work under this contract shall be responsible to the prime contractor. The contractor agrees that he is as fully responsible for the acts and omissions of his subcontractors and of persons employed by them as he is for the acts and omissions of his own employees.

*** When Used: For use in solicitations to furnish and install goods or provide services when subcontracting will be permitted.**

38. **PRINTING:** (Note: Select any or all of the following clauses, as may be appropriate, and include in solicitations for printing.)

A. **OVERRUNS/UNDERRUNS:** Bids for printing will be rejected if the quoted overrun cost equals or exceeds the base lot price quoted for the equivalent incremental unit quantity. On bids for multiple part forms, envelopes, and signage, the additional overrun quoted shall not exceed the base lot price quoted for the equivalent incremental quantity. The county may at its discretion accept an underrun, provided credit is allowed the agency at the full base price per unit for the quantity of the underrun.

*** When Used: Must be included in all printing solicitations.**

39. **PRODUCT INFORMATION:** The bidder/offeror shall clearly and specifically identify the product being offered and enclose complete and detailed descriptive literature, catalog cuts and specifications with the bid/proposal to enable the County to determine if the product offered meets the requirements of the solicitation. Failure to do so may cause the bid/proposal to be considered nonresponsive.

*** When Used: For solicitations to furnish and install or deliver goods when detailed specifications are required to properly evaluate items offered.**

40. **QUANTITIES:** Quantities set forth in this solicitation are estimates only, and the contractor shall supply at bid prices actual quantities as ordered, regardless of whether such total quantities are more or less than those shown.

*** When Used: For term contract solicitations only.**

41. **REFERENCES:** Bidders shall provide a list of at least 3 references where similar goods and/or services have been provided. Each reference shall include the name of the organization, the complete mailing address, the name of the contact person and telephone number.

<u>ORGANIZATION</u>	<u>ADDRESS</u>	<u>CONTACT PERSON</u>	<u>TELEPHONE</u>
---------------------	----------------	-----------------------	------------------

- | | | | |
|----|-------|--|--|
| 1. | _____ | | |
| 2. | _____ | | |
| 3. | _____ | | |

*** When Used: For furnish and install solicitations where contractor must have knowledge of proper installation or for the procurement of complex goods or services.**

42. **SECURITY LICENSE:** In accordance with Code of Virginia § 9.1-139 the bidder/offeror or their subcontractor shall be licensed by the Department of Criminal Justice Services for solicitations which include the following work: installation, service, maintenance, or design of security equipment; security officer service; and/or private investigator service. Licenses must be obtained prior to submitting a bid/offer. The bidder/offeror shall place their license number or their subcontractor's license number in the space provided below:

Bidder/Offeror Private Security Services Business License
Number: _____

Subcontractor Private Security Services Business License
Number: _____

For assistance, bidders/offerors may contact the Department of Criminal Justice Services at 804-786-4700.

*** When used: In all solicitations for the installation, service, maintenance, or design of security equipment, security officer service, central station alarm condition monitoring service, and/or private investigator service that require the contractor to have a Private Security Services Business License issued by the Department of Criminal Justice Services under the Code of Virginia § 9.1-139.**

43. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of New Kent County. In the event that the contractor desires to subcontract some part of the work specified herein, the contractor shall furnish New Kent County the names, qualifications and experience of their proposed subcontractors. The contractor shall, however, remain fully liable and

responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.

*** When Used: In solicitations to furnish and install or specialty services when subcontracting will be permitted only upon prior approval of the purchasing agency. Use also when a contractor's or a subcontractor's license is required to perform the specialty service.**

44. **USE OF RECYCLED MATERIALS:** Notwithstanding the prohibition against used, damaged or obsolete items, vendors are encouraged to use secondary or recycled materials in the manufacture of products to the maximum extent practicable without jeopardizing the performance or intended end use of the product unless such use is precluded due to health and welfare or safety requirements or product specifications contained herein. Please provide the following information in this regard:

(1) Do any of the goods offered contain recycled materials? ____ Yes ____ No

(2) If so, please qualify the recycled material content.
_____.

*** When Used: Include in solicitations for goods that have a high probability for the use of recycled materials.**

45. **WARRANTY:** All materials and equipment shall be fully guaranteed against defects in material and workmanship for a period of _____ following date of delivery. Should any defect be noted by the owner, New Kent County will notify the contractor of such defect or non-conformance. Notification will state either (1) that the contractor shall replace or correct, or (2) the owner does not require replacement or correction, but an equitable adjustment to the contract price will be negotiated. If the contractor is required to correct or replace, it shall be at no cost to the County and shall be subject to all provisions of this clause to the same extent as materials initially delivered. If the contractor fails or refuses to replace or correct the deficiency, the office issuing the purchase order may have the materials corrected or replaced with similar items and charge the contractor the costs occasioned thereby or obtain an equitable adjustment in the contract price.

*** When Used: Include in solicitations to furnish and install or deliver goods when the procuring agency wants to specify the length of time the warranty is to run; i.e., equipment 1 year, compressor 5 years, piano 10 years, etc.**

46. **WARRANTY (COMMERCIAL):** The contractor agrees that the goods or services furnished under any award resulting from this solicitation shall be covered by the most favorable commercial warranties the contractor gives any customer for such goods or services and that the rights and remedies provided therein are in addition to and do not limit those available to New Kent County by any other clause of this solicitation. A copy of this warranty should be furnished with the bid/proposal.

*** When Used: Include in solicitations for goods, furnish and install or services when commercial warranty provisions for a particular item or service are acceptable.**

47. **WORK SITE DAMAGES:** Any damage to existing utilities, equipment or finished surfaces resulting from the performance of this contract shall be repaired to New Kent County's satisfaction at the contractor's expense.

*** When Used: Include in solicitations to furnish and install equipment. May also be used in solicitations for services such as moving, maintenance, removal of equipment, non-capital outlay construction projects, etc.**

48. **WORK ESTIMATES (TIME AND MATERIAL CONTRACTS)**: Under this time and material contract, the contractor shall furnish the County with a non-binding written estimate of the total costs to complete the work required. The estimate must include the labor category(ies), the contractor's hourly rates specified in the contract, and the total material cost. Material costs shall be billed at contractor's actual invoice costs (contractor shall furnish copies of all invoices for materials) or discount off the list price, whichever is specified in the contract. If the County determines that the estimated price is not fair and reasonable, the County has the right to ask the contractor to reevaluate the estimate. If the revised estimate is determined to be not fair and reasonable, the County reserves the right to obtain additional quotes from other vendors. A work order will be issued to the contractor, as the authority to proceed with the work, which will incorporate the contractor's estimate and the terms and conditions of the contract. The contractor and his/her personnel shall log in with the designated contract administrator each day before and after work to confirm labor hours.

*** When Used: This clause may be used for all time and material contracts where the contractor furnishes estimates prior to starting work for particular projects. Agencies should take the necessary steps to ensure that it is protected from those cases where a contractor submits a low estimate and the invoice is much higher. Use of this clause will provide that protection as long as the contractor is held to the terms of this clause.**

49. **CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION**: The contractor assures that information and data obtained as to personal facts and circumstances related to patients or clients will be collected and held confidential, during and following the term of this agreement, and unless disclosure is required pursuant to court order, subpoena or other regulatory authority, will not be divulged without the individual's and New Kent County's written consent and only in accordance with federal law or the Code of Virginia. Contractors who utilize, access, or store personally identifiable information as part of the performance of a contract are required to safeguard this information and immediately notify the County of any breach or suspected breach in the security of such information. Contractors shall allow the county to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. Contractors and their employees working on this project may be required to sign a confidentiality statement.

***When Used: Include in contracts when contractors utilize, access, or store personally identifiable information in the performance of the contract.**

50. **CONTINUITY OF SERVICES**:

- a.) The Contractor recognizes that the services under this contract are vital to New Kent County and must be continued without interruption and that, upon contract expiration, a successor, either the County or another contractor, may continue them. The Contractor agrees:
- (i) To exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor;

- (ii) To make all County owned facilities, equipment, and data available to any successor at an appropriate time prior to the expiration of the contract to facilitate transition to successor; and
 - (iii) That the County Contracting Officer shall have final authority to resolve disputes related to the transition of the contract from the Contractor to its successor.
- b.) The Contractor shall, upon written notice from the Contract Officer, furnish phase-in/phase-out services for up to ninety (90) days after this contract expires and shall negotiate in good faith a plan with the successor to execute the phase-in/phase-out services. This plan shall be subject to the Contract Officer's approval.
 - c.) The Contractor shall be reimbursed for all reasonable, pre-approved phase-in/phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract. All phase-in/phase-out work fees must be approved by the Contract Officer in writing prior to commencement of said work.

***When Used: Include in term contracts for ongoing services when an orderly and efficient transition from the contractor to its successor will be critical to continuity of operations for the vital services required.**

51. **PRODUCT AVAILABILITY/SUBSTITUTION:** Substitution of a product, brand or manufacturer after the award of contract is expressly prohibited unless approved in writing by the Contract Officer. New Kent County may, at its discretion, require the contractor to provide a substitute item of equivalent or better quality subject to the approval of the Contract Officer, for a price no greater than the contract price, if the product for which the contract was awarded becomes unavailable to the contractor.

***When Used: Include in term contracts for commercial off the shelf goods when product availability is subject to change over time.**

52. **E-VERIFY PROGRAM:** EFFECTIVE 12/1/13. Pursuant to Code of Virginia, §2.2-4308.2., any employer with more than an average of 50 employees for the previous 12 months entering into a contract in excess of \$50,000 with the County to perform work or provide services pursuant to such contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to such public contract. Any such employer who fails to comply with these provisions shall be debarred from contracting with any department of the County for a period up to one year. Such debarment shall cease upon the employer's registration and participation in the E-Verify program. If requested, the employer shall present a copy of their Maintain Company page from E-Verify to prove that they are enrolled in E-Verify.

*** When used: In all solicitations for services in excess of \$50,000.**

53. **EMERGENCY EVENT PRICING:**

- A. Subsection (b) below shall take effect if 1) the Commonwealth, the County or the federal government declares a state of emergency affecting the area where the venue is located within 5 days of the event, or 2) if state or local government offices are closed on an emergency basis in the area in which the venue is located within 5 days of the event:

- B. If an event described in subsection (a) occurs, New Kent County may cancel any number of hotel reservations, conference reservations, and any amount of food and beverage services for the event or all reservations and all food and beverage services. In that event, the County shall pay Contractor 25% of the contract price of those reservations and services as listed below;
- i. 25% of the catering revenue based on the difference between the attendees anticipated and the number of attendees fully paid for
 - ii. 25% of the difference in revenues between the lodgers anticipated and the number of lodgers fully paid for
 - iii. 25% of the venue rental fees
- C. These limits include any applicable taxes and service charges. No other cancelation policy or liability shall be effective if the County exercises this option.

*** When used: For use in solicitations where the timely need for the goods or services could be affected due to a declared emergency or emergency office closings. Such events could involve conferences, lodging, or catering. Percentages or categories could be modified according to the needs of the procurement.**

SECTION III

ADDITIONAL TERMS AND CONDITIONS FOR NON-CAPITAL OUTLAY CONSTRUCTION PROJECTS

New Kent County uses the following Additional Terms and Conditions in all solicitations for non-capital outlay projects that involve building, altering, repairing, improving or demolishing any structure, building or paving project (other than highways), and any draining, dredging, excavation, grading or similar work upon real property which do not require the use of capital outlay procedures. These Additional Terms and Conditions shall be included in the IFB in addition to those listed in Appendix B, Section I. The Virginia Public Procurement Act (VPPA) requires the use of competitive sealed bidding for construction projects unless the use of competitive negotiation can be justified under the provisions of § 2.2-4303D of the Code of Virginia.

1. DEFINITIONS
2. CONTRACT DOCUMENTS
3. LAWS AND REGULATIONS
4. PREPARATION AND SUBMISSION OF BIDS
5. WITHDRAWAL OR MODIFICATION OF BIDS
6. RECEIPT AND OPENING OF BIDS
7. ERRORS IN BIDS
8. SUBCONTRACTS
9. SEPARATE CONTRACTS
10. TAXES
11. PATENTS
12. INSPECTION

13. SUPERINTENDENCE BY CONTRACTOR
14. ACCESS TO WORK
15. AVAILABILITY OF MATERIALS
16. CONTRACTOR'S TITLE TO MATERIALS
17. WARRANTY OF MATERIALS AND WORKMANSHIP
18. USE OF PREMISES AND REMOVAL OF DEBRIS
19. PROTECTION OF PERSONS AND PROPERTY
20. CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE CONTRACT
21. OWNER'S RIGHT TO TERMINATE THE CONTRACT FOR CAUSE
22. TERMINATION BY OWNER FOR CONVENIENCE
23. GUARANTEE OF WORK
24. ASBESTOS
25. TRAINING, OPERATION, AND MAINTENANCE OF EQUIPMENT

1. **DEFINITIONS:** Whenever used in this solicitation or in the contract documents, the following terms have the meanings indicated, which are applicable to both the singular and plural and the male and female gender thereof:
 - (a) **County:** The term, county, unless otherwise indicated, shall mean the owner, New Kent County. The County's agent is the official with authority to sign contracts on the County's behalf.
 - (b) **Commonwealth:** The term "Commonwealth" shall mean the Commonwealth of Virginia.
 - (c) **Construction:** As used in these documents shall include new construction, reconstruction, renovation, restoration, major repair, demolition and all similar work upon buildings and ancillary facilities owned or to be acquired by the Commonwealth and any draining, dredging, excavation, grading, or similar work upon real property.
 - (d) **Contractor:** The person, firm or corporation with whom the owner has entered into a contractual agreement and includes the plural number and the feminine gender when such are named in the contract as the contractor.
 - (e) **Defective:** An adjective which when modifying the word work, refers to work that is unsatisfactory, faulty, or deficient, or does not conform to the contract documents, or does not meet the requirements of any inspections, standard, test, or approval referred to in the contract documents, or has been damaged prior to final payment.
 - (f) **Emergency:** Any unforeseen combination of circumstances or a resulting state that poses imminent danger to health, life, or property.
 - (g) **Final Acceptance:** The county's acceptance of the project from the contractor upon confirmation from the project inspector and the contractor that the project is totally complete in accordance with the contract requirements and that all defects have been eliminated. Final acceptance is confirmed by the making of final payment of the contract amount including any change orders or adjustment thereto.
 - (h) **Notice:** All written notices, demands, instructions, claims, approvals, and disapprovals required to obtain compliance with the contract requirements. Any written notice by either

party to the contract shall be sufficiently given if delivered to or at the last known business address of the person, firm or corporation constituting the party to the contract, or to his, their or its authorized agent, representative or officer, or when enclosed in a postage prepaid envelope addressed to such last known business address and deposited in a United States mailbox.

- (i) **Notice to Proceed:** A written notice given by the owner to the contractor fixing the date on which the contract time will commence for the contractor to begin the prosecution of the work in accordance with the requirements of the contract documents.
- (j) **Owner:** New Kent County, i.e., a county, institution, or department, with whom the contractor has entered into a contract and for whom the work or services is to be provided.
- (k) **Project Inspector:** One or more individuals employed by the owner to inspect the work and/or to act as clerk of the works to the extent required by the owner. The owner shall notify the contractor in writing of the appointment of such project inspector(s).
- (l) **Provide:** Shall mean furnish and install ready for its intended use.
- (m) **Submittal:** All drawings, diagrams, illustrations, schedules, and other data required by the contract documents which are specifically prepared by or for the contractor to illustrate some portion of the work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams, and other information prepared by a supplier and submitted by the contractor to illustrate material or equipment for some portion of the work.
- (n) **Subcontractor:** An individual, partnership or corporation having a direct contract with contractor or with any other subcontractor for the performance of the work. It includes one who provides on-site labor but does not include one who only furnishes or supplies materials for the project.
- (o) **Substantial Completion:** The work which is sufficiently complete, in accordance with the contract documents, so that the project can be utilized by the owner for the purposes for which it is intended.
- (p) **Supplier:** A manufacturer, fabricator, distributor, materialman, or vendor who provides material for the project but does not provide on-site labor.
- (q) **Underground Facilities:** All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities which are or have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone, or other communications, cable television, sewage and drainage removal, traffic, or other control systems or water.
- (r) **Work:** The entire completed construction or the various separately identifiable parts thereof required to be furnished under the contract documents. Work is the result of performing services, furnishing labor, and furnishing and incorporating materials and equipment into the construction, all as required by the contract documents.

2. **CONTRACT DOCUMENTS:**

- (a) The contract entered into by the parties shall consist of the Invitation for Bids, the bid submitted by the contractor; General Terms and Conditions, these Additional Terms and Conditions; the Special Terms and Conditions; the drawings, if any; the specifications; and all modifications and addenda to the foregoing documents, all of which shall be referred to collectively as the contract documents.
- (b) All time limits stated in the contract documents, including but not limited to the time for completion of the work, are of the essence of the contract.
- (c) Anything called for by one of the contract documents and not called for by the others shall be of like effect as if required or called for by all, except that a provision clearly designed to negate or alter a provision contained in one or more of the other contract documents shall have the intended effect.

3. **LAWS AND REGULATIONS:**

- (a) The contractor shall comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of the work and shall give all notices required thereby. The Contractor shall assure that all Subcontractors and tradesmen who perform Work on the project are properly licensed by the Department of Professional and Occupational Regulation as required by Title 54.1, Chapter 11, Articles 1 and 3 and by applicable regulations.
- (b) This contract and all other contracts and subcontracts are subject to the provisions of Articles 3 and 5, Chapter 4, Title 40.1, Code of Virginia, relating to labor unions and the “right to work.” The contractor and its subcontractors, whether residents or nonresidents of the Commonwealth, who perform any work related to the project shall comply with all of the said provisions.
- (c) The provisions of all rules and regulations governing safety as adopted by the Safety Codes Commission of the Commonwealth of Virginia and as issued by the Department of Labor and Industry under Title 40.1 of the Code of Virginia shall apply to all work under this contract. Inspectors from the Department of Labor and Industry shall be granted access to the work for inspection without first obtaining a search warrant from the court.
- (d) Building Permit: Because this is a project of New Kent County, all codes or zoning ordinances of local political subdivisions apply. Building permits where required will be obtained and paid for by the owner. Contractor is responsible for any local license fees, business fees or similar assessments which may be imposed by the appropriate political subdivision.
- (e) The contractor, if not licensed as an asbestos abatement contractor or a RFS contractor in accordance with § 54.1-514, Code of Virginia, shall have all asbestos related work performed by subcontractors who are duly licensed as asbestos contractors or RFS contractors as appropriate for the work required.
- (f) The Contractor is neither required nor prohibited from entering into or adhering to agreements with one or more labor organizations, or otherwise discriminating against subcontractors for becoming or refusing to become, or remaining signatories to or otherwise adhering to, agreements with one or more labor organizations. This section does not prohibit contractors or subcontractors from voluntarily entering into agreements with

one or more labor organizations. Both the county and contractor are entitled to injunctive relief to prevent any violation of this section.

This section does not apply to any public-private agreement for any construction in which the private body, as a condition of its investment or partnership with the county, requires that the private body have the right to control its labor relations policy and perform all work associated with such investment or partnership in compliance with all collective bargaining agreements to which the private party is a signatory and is thus legally bound with its own employees and the employees of its contractors and subcontractors in any manner permitted by the National Labor Relations Act, 29 U.S.C. § 151 et seq., or the Railway Labor Act, 45 U.S.C. § 151 et seq.

This section does not prohibit an employer or any other person covered by the National Labor Relations Act or the Railway Labor Act from entering into agreements or engaging in any other activity protected by law.

This section shall not be interpreted to interfere with the labor relations of persons covered by the National Labor Relations Act or the Railway Labor Act.

4. **PREPARATION AND SUBMISSION OF BIDS:** Bids must give the full business address of the bidder and be signed by him/her with his/her usual signature. Bids by partnerships must furnish the full name of all partners and must be signed in the partnership name by one of the members of the partnership or any authorized representative, followed by the designation of the person signing. Bids by corporations must be signed with the legal name of the corporation followed by the name of the State in which it is incorporated and by the signature and designation of the president, secretary, or other person authorized to bind it in the matter. The name of each person signing shall also be typed or printed below the signature. A bid by a person who affixes to the signature the word "President," "Secretary," "Agent" or other designation without disclosing the principal, may be held to be the bid of the individual signing. When requested by the County, satisfactory evidence of the authority of the officer signing in behalf of the corporation shall be furnished.
5. **WITHDRAWAL OR MODIFICATION OF BIDS:** Bids may be withdrawn or modified by written notice received from bidders prior to the deadline fixed for bid receipt. The withdrawal or modification may be made by the person signing the bid or by an individual(s) who is authorized by him/her on the face of the bid. Written modifications may be made on the bid form itself, on the envelope in which the bid is enclosed, or on a separate document. Written modifications, whether the original is delivered, or transmitted by facsimile, must be signed by the person making the modification or withdrawal.

A bidder may withdraw or cancel a bid or proposal at any time prior to the date set for opening. After such time, the bidder may not withdraw for a period of sixty (60) calendar days. Any bidder may be required to clarify his bid or acknowledge by written confirmation that the minimum requirements of the request for proposal are included in the bidder's proposal.

6. **RECEIPT AND OPENING OF BIDS:**
 - (a) It is the responsibility of the bidder to assure that his/her bid is delivered to the place designated for receipt of bids and prior to the time set for receipt of bids. Bids received after the time designated for receipt of bids will not be considered.

- (b) Bids will be opened at the time and place stated in the advertisement, and their contents made public for the information of bidders and others interested who may be present either in person or by representative. The officer or agent of the owner, whose duty it is to open them, will decide when the specified time has arrived. No responsibility will be attached to any officer or agent for the premature opening of a bid not properly addressed and identified.
 - (c) The provisions of § 2.2-4342 of the Code of Virginia, as amended, shall be applicable to the inspection of bids received.
7. **ERRORS IN BIDS:** Errors in bids will be handled in accordance with the New Kent County Procurement Manual and Virginia State Code.
8. **SUBCONTRACTS:**
- (a) The contractor shall as soon as practicable after the signing of the contract, notify the owner in writing of the names of subcontractors proposed for the principal parts of the work. The contractor shall not employ any subcontractor that the owner may, within a reasonable time, object to as unsuitable. The owner will not direct the contractor to contract with any particular subcontractor unless provided in the specifications or bid form.
 - (b) The owner shall, on request, furnish to any subcontractor, if practicable, the amounts of payments made to the contractor, the Schedule of Values and Requests for Payment submitted by the contractor, and any other documentation submitted by the contractor which would tend to show what amounts are due and payable by the contractor to the subcontractor.
 - (c) The contractor agrees that he is as fully responsible to the owner for the acts and omissions of his subcontractors, suppliers, and invitee upon the site of the project and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.
9. **SEPARATE CONTRACTS:**
- (a) The owner reserves the right to let other contracts in connection with the project, the work under which may proceed simultaneously with the execution of this contract. The contractor shall afford other separate contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work. The contractor shall cooperate with them and shall take all reasonable action to coordinate his work with theirs. If the owner has listed other separate contracts in the Invitation for Bids which it expects to proceed simultaneously with the work of the contractor, and has included the estimated timing of such other contracts in the Invitation for Bids, the contractor shall integrate the schedule of those separate contracts into his scheduling. The contractor shall make every reasonable effort to assist the owner in maintaining the schedule for all separate contracts. If the work performed by the separate contractor is defective or performed so as to prevent this contractor from carrying out his work according to the drawings and specifications of this contract, this contractor shall immediately notify the owner upon discovering such conditions.
 - (b) If a dispute arises between the contractor and separate contractors as to their responsibility for cleaning up as required by Sections 18(c) and 18(d) of these Additional Terms and

Conditions, the owner may clean up and charge the cost thereof to the respective contractors in proportion to their responsibility. If a contractor disputes the owner's apportionment of clean-up costs, it shall be that contractor's burden to demonstrate and prove the correct apportionment.

10. **TAXES**: The contractor shall, without additional expense to the owner, pay all applicable federal, state, and local taxes, fees, and assessments except the taxes, fees, and assessments on the real property comprising the site of the project. The local building official will inspect the work as provided by § 36-98.1 of the Code of Virginia, the owner will pay the resulting fees to the local building official.
11. **PATENTS**: The contractor shall obtain all licenses necessary to use any invention, article, appliance, process, or technique of whatever kind and shall pay all royalties and license fees. The contractor shall hold and save the owner, its officers, agents, and employees, harmless from any loss or liability for or on account of the infringement of any patent rights in connection with any invention, process, technique, article or appliance manufactured or used in the performance of the contract, including its use by the owner, unless such invention, process, technique, article, or appliance is specifically named in the specifications or drawings as acceptable for use in carrying out the work. If, before using any invention, process, technique, article, or appliance specifically named in the specifications or drawings as acceptable for use in carrying out the work, the contractor has or acquires information that the same is covered by letters of patent making it necessary to secure the permission of the patentee, or other, for the use of the same, he shall promptly advise the owner. The owner may direct that some other invention, process, technique, article, or appliance be used. Should the contractor have reason to believe that the invention, process, technique, article, or appliance so specified is an infringement of a patent, and fail to inform the owner, he shall be responsible for any loss due to the infringement.
12. **INSPECTION**:
 - (a) All material and workmanship shall be subject to inspection, examination, and test by the owner and its project inspector at any and all times during construction. The project inspector shall have authority to reject defective material and workmanship and require its correction. Rejected workmanship shall be satisfactorily corrected and rejected material shall be satisfactorily replaced with proper material without charge therefore, and the contractor shall promptly segregate and remove the rejected material from the premises. If the contractor fails to proceed at once with replacement of rejected material and/or the correction of defective workmanship, the owner may, by contract or otherwise, replace such material and/or correct such workmanship and charge the cost to the contractor, or may terminate the right of the contractor to proceed, the contractor and surety being liable for any damages.
 - (b) Job-site inspections, tests conducted on site or tests of materials gathered on site, which the contract requires to be performed by independent testing entities, shall be contracted and paid for by the owner. Examples of such tests are the testing of cast in-place concrete, foundation materials, soil compaction, pile installations, caisson bearings, and steel framing connections. Although conducted by independent testing entities, the owner will not contract and pay for tests or certifications of materials, manufactured products, or assemblies which the contract, codes, standards, etc. require to be tested and/or certified for compliance with industry standards such as Underwriters Laboratories, Factory Mutual, or ASTM. If there are any fees to be paid for such tests and certifications, they will be paid by the contractor. The contractor shall also pay for all inspections, tests, and certifications

which the contract specifically requires him to perform or pay, together with any inspections and tests which he chooses to perform for his own quality control purposes. The contractor shall promptly furnish, without additional charge, all reasonable facilities, labor, and materials necessary and convenient for making such tests. Except as provided in (c) below, whenever such examination and testing finds defective materials, equipment, or workmanship, the contractor shall reimburse the owner for the cost of re-examination and retesting.

- (c) Should it be considered necessary or advisable by the owner at any time before final acceptance of the entire work to make an examination of any part of the work already completed, by removing or tearing out portions of the work, the contractor shall on request promptly furnish all necessary facilities, labor and material to expose the work to be tested to the extent required. If such work is found to be defective in any respect, due to the fault of the contractor or his subcontractors, he shall defray all the expenses of uncovering the work, of examination and testing, and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, the actual cost of the contractor's labor and material necessarily involved in uncovering the work, the cost of examination and testing, and contractor's cost of material and labor necessary for replacement shall be paid to the contractor and he shall, in addition, if completion of the work has been delayed thereby, be granted a suitable extension of time.
- (d) The project inspector will recommend to the owner that the work be suspended when in his judgment the drawings and specifications are not being followed. Any such suspension shall be continued only until the matter in question is resolved to the satisfaction of the owner. The cost of any such work stoppage shall be borne by the contractor unless it is later determined that no fault existed in the contractor's work.
- (e) The project inspector has no authority to and shall not:
 - (1) Authorize deviations from the contract documents;
 - (2) Enter into the area of responsibility of the contractor's superintendent;
 - (3) Issue directions relative to any aspect of construction means, methods, techniques, sequences or procedures, or in regard to safety precautions and programs in connection with the work;
 - (4) Authorize or suggest that the owner occupy the project, in whole or in part;
 - (5) Issue a certificate for payment.

13. **SUPERINTENDENCE BY CONTRACTOR:**

- (a) The contractor shall have a competent foreman or superintendent, satisfactory to the owner, on the job site at all times during the progress of the work. The contractor shall be responsible for all construction means, methods, techniques, sequences, and procedures for coordinating all portions of the work under the contract except where otherwise specified in the contract documents, and for all safety and worker health programs and practices. The contractor shall notify the owner, in writing, of any proposed change in superintendent including the reason therefore prior to making such change.

- (b) The contractor shall, at all times, enforce strict discipline and good order among the workers on the project, and shall not employ on the work any unfit person, anyone not skilled in the work assigned to him, or anyone who will not work in harmony with those employed by the contractor, the subcontractors, the owner or the owner's separate contractors and their subcontractors.
 - (c) The owner may, in writing, require the contractor to remove from the work any employee the owner deems to be incompetent, careless, not working in harmony with others on the site, or otherwise objectionable.
- 14. **ACCESS TO WORK:** The owner, the owner's inspectors and other testing personnel, and inspectors from the Department of Labor and Industry shall have access to the work at all times. The contractor shall provide proper facilities for access and inspection.
- 15. **AVAILABILITY OF MATERIALS:** If material specified in the contract documents is not available on the present market, alternate materials may be proposed by the contractor for approval of the owner.
- 16. **CONTRACTOR'S TITLE TO MATERIALS:** No materials or supplies for the work shall be purchased by the contractor or by any subcontractor subject to any security interest, installment or sales contract or any other agreement or lien by which an interest is retained by the seller or is given to a secured party. The contractor warrants that he has clear title to all materials and supplies which he uses in the work or for which he accepts payment in whole or in part.
- 17. **WARRANTY OF MATERIALS AND WORKMANSHIP:**
 - (a) The contractor warrants that, unless otherwise specified, all materials and equipment incorporated in the work under the contract shall be new, in first class condition, and in accordance with the contract documents. The contractor further warrants that all workmanship shall be of the highest quality and in accordance with contract documents and shall be performed by persons qualified at their respective trades.
 - (b) Work not conforming to these warranties shall be considered defective.
 - (c) This warranty of materials and workmanship is separate and independent from and in addition to any of the contractor's other guarantees or obligations in this contract.
- 18. **USE OF PREMISES AND REMOVAL OF DEBRIS:**
 - (a) The contractor shall:
 - (1) Perform his contract in such a manner as not to interrupt or interfere with the operation of any existing activity on the premises or with the work of any contractor;
 - (2) Store his apparatus, materials, supplies, and equipment in such orderly fashion at the site of the work as will not unduly interfere with the progress of his work or the work of any other contractor; and

- (3) Place upon the work or any part thereof only such loads as are consistent with the safety of that portion of the work.
- (b) The contractor expressly undertakes, either directly or through his subcontractor(s), to effect all cutting, filling, or patching of his work required to make the same conform to the drawings and specifications, and, except with the consent of the owner, not to cut or otherwise alter the work of any other contractor. The contractor shall not damage or endanger any portion of the work or premises, including existing improvements, unless called for by the contract.
- (c) The contractor expressly undertakes, either directly or through his subcontractor(s), to clean up frequently all refuse, rubbish, scrap materials, and debris caused by his operations, to the end that at all times the site of the work shall present a neat, orderly, and workmanlike appearance. No such refuse, rubbish, scrap material, and debris shall be left within the completed work nor buried on the building site, but shall be removed from the site and properly disposed of in a licensed landfill or otherwise as required by law.
- (d) The contractor expressly undertakes, either directly or through his subcontractor(s), before final payment, to remove all surplus material, false work, temporary structures, including foundations thereof, plants of any description and debris of every nature resulting from his operations and to put the site in a neat, orderly condition; to thoroughly clean and leave reasonably dust free all finished surfaces including all equipment, piping, etc., on the interior of all buildings included in the contract; and to thoroughly clean all glass installed under the contract including the removal of all paint and mortar splatters and other defacements. If a contractor fails to clean up at the completion of the work, the owner may do so and charge for costs thereof to the contractor.
- (e) During and at completion of the work, the contractor shall prevent site soil erosion, the runoff of silt and/or debris carrying water from the site, and the blowing of debris off the site in accordance with the applicable requirements of all local, state and federal rules and standards of the Virginia Erosion and Sediment Control Handbook, latest edition, and of the contract documents.
- (f) The contractor shall not operate or disturb the setting of any valves, switches or electrical equipment on the service lines to the building except by proper previous arrangement with the owner. The contractor shall give ample advance notice of the need for cut-offs which will be scheduled at the convenience of the owner.

19. **PROTECTION OF PERSONS AND PROPERTY:**

- (a) The contractor expressly undertakes, both directly and through its subcontractor(s), to take every precaution at all times for the protection of persons and property which may come on the building site or be affected by the contractor's operation in connection with the work.
- (b) The contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work.
- (c) The provisions of all rules and regulations governing safety as adopted by the Safety Codes Commission of the Commonwealth of Virginia, issued by the Department of Labor and

Industry under Title 40.1 of the Code of Virginia, as well as the New Kent County Safety Manual shall apply to all work under this contract.

- (d) The contractor shall continuously maintain adequate protection of all his work from damage and shall protect the owner's property from injury or loss arising in connection with this contract. He shall make good any such damage, injury, or loss, except such as may be directly due to errors in the contract documents or caused by agents or employees of the owner. He shall adequately protect adjacent property to prevent any damage to it or loss of use and enjoyment by its owners. He shall provide and maintain all passageways, guard fences, lights, and other facilities for protection required by public authority, local conditions, any of the contract documents or erected for the fulfillment of his obligations for the protection of persons and property.
- (e) In an emergency affecting the safety or life of persons or of the work, or of the adjoining property, the contractor, without special instruction or authorization from the owner, shall act, at his discretion, to prevent such threatened loss or injury. Also, should he, to prevent threatened loss or injury, be instructed or authorized to act by the owner, he shall so act immediately, without appeal. Any additional compensation or extension of time claimed by the contractor on account of any emergency work shall be determined as in the General Terms and Conditions.

20. **CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE THE CONTRACT:** If the work should be stopped under any order of any court or other public authority for a period of ninety (90) days through no fault of the contractor or of anyone employed by him, or if the owner should fail to pay to the contractor within thirty (30) days when no dispute exists as to the sum, then the contractor may, upon ten (10) calendar days written notice to the owner, stop work or terminate the contract and recover from the owner payment for the cost of the work actually performed, together with overhead and profit thereon, but profit shall be recovered only to the extent that the contractor can demonstrate that he would have had profit on the entire contract if he had completed the work. The contractor may not receive profit or any other type of compensation for parts of the work not performed. The contractor may recover the cost of physically closing down the job site, but no other costs of termination. The owner may offset any claims it may have against the contractor against the amounts due to the contractor. In no event shall termination of the contract by the contractor terminate the obligations of the contractor's surety on its payment and performance bonds.

21. **OWNER'S RIGHT TO TERMINATE THE CONTRACT FOR CAUSE:**

- (a) If the contractor should be adjudged as bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, the owner may terminate the contract. If the contractor should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if he should fail to make prompt payment to subcontractors or suppliers of material or labor, or persistently disregards laws, ordinances, or the written instructions of the owner, or otherwise be guilty of a substantial violation of any provision of the contract, then the owner may terminate the contract.
- (b) Prior to termination of the contract, the owner shall give the contractor and his surety ten (10) calendar days written notice, during which the contractor and/or his surety may rectify the cause of the termination. If rectified to the satisfaction of the owner within said ten (10) days, the owner may rescind his notice of termination. If it does not, the termination for

cause shall become effective at the end of the ten-day (10) notice period. In the alternative, the owner may postpone the effective date of the termination notice, at his sole discretion, if he should receive reassurances from the contractor and/or its surety that the causes of termination will be remedied in a time and manner which the owner finds acceptable. If at any time more than ten (10) days after the notice of termination, the owner determines that contractor and/or its surety has not or is not likely to rectify the causes of termination in an acceptable manner or within the time allowed, then the owner may immediately terminate the contract for cause by giving written notice to the contractor and its surety. In no event shall termination for cause terminate the obligations of the contractor's surety on its payment and performance bonds.

- (c) Notice of terminations, whether initial or given after a period of postponement, may be served upon the contractor and the surety by mail or any other means at their last known places of business in Virginia or elsewhere, by delivery to any officer or management/supervisory employee of either wherever they may be found, or, if no such officer, employee or place of business is known or can be found by reasonable inquiry within three (3) days, by posting the notice at the job site. Failure to accept or pick up registered or certified mail addressed to the last known address shall be deemed to be delivery.
- (d) Upon termination of the contract, the owner shall take possession of the premises and of all materials, tools, and appliances thereon and finish the work by whatever method he may deem expedient. In such case the contractor shall not be entitled to receive any further payment. If the expense of finishing the work, including compensation for additional managerial and administrative services shall exceed the unpaid balance of the contract price, the contractor shall pay the difference to the owner, together with any other expenses of terminating the contract and having it completed by others.
- (e) If it should be judicially determined that the owner improperly terminated this contract for cause, then the termination shall be deemed to be a termination for the convenience of the owner.
- (f) Termination of the contract under this section is without prejudice to any other right or remedy of the owner.

22. **TERMINATION BY OWNER FOR CONVENIENCE:**

- (a) Owner may terminate this contract at any time without cause, in whole or in part, upon giving the contractor notice of such termination. Upon such termination, the contractor shall immediately cease work and remove from the project site all of its labor forces and such of its materials as owner elects not to purchase or to assume in the manner hereinafter provided. Upon such termination, the contractor shall take such steps as owner may require to assign to the owner the contractor's interest in all subcontracts and purchase orders designated by owner. After all such steps have been taken to owner's satisfaction, the contractor shall receive as full compensation for termination and assignment the following:
 - (1) All amounts then otherwise due under the terms of this contract,
 - (2) Amounts due for work performed subsequent to the latest Request for Payment through the date of termination,

- (3) Reasonable compensation for the actual cost of demobilization incurred by the contractor as a direct result of such termination. The contractor shall not be entitled to any compensation for lost profits or for any other type of contractual compensation or damage other than those provided by the preceding sentence. Upon payment of the forgoing, owner shall have no further obligations to the contractor of any nature.
- (b) In no event shall termination for the convenience of the owner terminate the obligations of the contractor's surety on its payment and performance bonds.

23. **GUARANTEE OF WORK:**

- (a) Except as otherwise specified, all work shall be guaranteed by the contractor against defects resulting from the use of inferior materials, equipment, or workmanship for one (1) year from the date of final acceptance of the entire project by the owner in writing. Equipment and facilities, which have seasonal limitations on their operation, shall be guaranteed for one (1) full year from the date of seasonally appropriate tests and acceptance, in writing, by the owner.
- (b) If, within the guarantee period, defects are noticed by the owner which require repairs or changes in connection with the guaranteed work, those repairs or changes being in the opinion of the owner rendered necessary as the result of the use of materials, equipment or workmanship, which are defective, or inferior or not in accordance with the terms of the contract, then the contractor shall, promptly upon receipt of notice from the owner, such notice being given not more than two weeks after the guarantee period expires, and without expense to the owner:
 - (1) Place in satisfactory condition in every particular all of such guaranteed work and correct all defects therein;
 - (2) Make good all damage to the structure, site, equipment, or contents thereof, which is the result of the use of materials, equipment, or workmanship which are inferior, defective, or not in accordance with the terms of the contracts; and
 - (3) Make good any work, materials, equipment, contents of structures, and/or disturbance of the site in fulfilling any such guarantee.
- (c) In any case, where in fulfilling the requirements of the contract or any guarantee embraced in or required thereby, the contractor disturbs any work guaranteed under contract, he shall restore such work to a condition satisfactory to the owner and guarantee such restored work to the same extent as it was guaranteed under such other contract.
- (d) If the contractor, after notice, fails to proceed promptly to comply with the terms of the guarantee, the owner may have the defects corrected and the contractor and his surety shall be liable for all expense incurred.
- (e) All special guarantees applicable to definite parts of the work that may be stipulated in the specifications or other papers forming a part of the contract shall be subject to the term of this section during the first year of the life of such special guarantee.

- (f) Nothing contained in this section shall be construed to establish a period of limitation with respect to any other obligation which the contractor might have under the contract documents, including liability for defective work under these additional terms and conditions. This paragraph relates only to the specific obligation of the contractor contained in this section to correct the work and does not limit the time within which his obligation to comply with the contract documents may be sought to be enforced, nor of the time within which proceedings may be commenced to establish the contractor's liability with respect to his other obligations under this contract.
- (g) In the event the work of the contractor is to be modified by another contractor, either before or after the final inspection, the first contractor shall remain responsible in all respects under the guarantee of work and under any other warranties provided in the contract or by law. However, the contractor shall not be responsible for any defects in material or workmanship introduced by the contractor modifying its work. Both the first contractor and the contractor making the modifications shall each be responsible solely for the work done by each. The contractor modifying the earlier work shall be responsible for any damage to or defect introduced into the work which he is modifying. If any contractor shall claim that another contractor has introduced defects of materials and/or workmanship into the work of the first, it shall be the burden of the contractor making the claim to clearly demonstrate the nature and extent of such introduced defects and the responsibility of the other contractor. Any contractor modifying the work of another shall have the same burden if he asserts defects to have been caused by the contractor whose work he is modifying.

24. **ASBESTOS:**

- (a) This subsection applies to projects involving existing buildings where asbestos abatement is not a part of the work. If the contractor discovers or inadvertently disturbs any material that may contain asbestos that has not been previously identified, that was overlooked during the removal, or which was deemed not to be friable or which was encapsulated, the contractor shall stop work in the area containing the asbestos, secure the area, and notify the owner immediately by telephone or in person with written notice as soon as possible. The owner will have the suspect material sampled. If the sample is positive and must be disturbed in the course of the work, the owner will have the material repaired or removed and will pay for the bulk sample analysis. If the material disturbed is not within the contractor's authorized work and/or work area or under this contract, the contractor will pay for all associated sampling and abatement costs.
- (b) If asbestos abatement is included as a part of the work, the contractor shall assure that the asbestos abatement work is accomplished by those duly licensed in accordance with the specific requirements of the contract documents.
- (c) If asbestos abatement is included as part of the work, the licensed asbestos subcontractor shall, in the insurance required, name New Kent County and the contractor as additional insured.

25. **TRAINING, OPERATION, AND MAINTENANCE OF EQUIPMENT:**

- (a) The contractor, in conjunction with his subcontractors and suppliers, shall provide the owner's operations and maintenance personnel with instruction and training in the proper operation and maintenance of the equipment and related controls provided or altered in the work.

- (b) The contractor shall provide the owner with a minimum of two (2) copies of operating, maintenance and parts manuals for all equipment provided in the project. Further specific requirements may be indicated in the specifications.

NOTE: Select from Appendix B, Section II, appropriate Special Terms and Conditions to be included in the solicitation. The following Special Terms and Conditions shall be used as applicable:

1. Inspection of the Job Site
2. Bid Bond or Guaranty (optional - required for contracts over \$100,000)
3. Performance and Payment Bonds (optional - required for contracts over \$100,000)
4. Liquidated Damages (optional)
5. Contractor Registration
6. Bid Acceptance Period
7. Award
8. Identification of Bid/Proposal Envelope
9. Drawings
10. Work Site Damage Refer to Chapter 6, "Competitive Sealed Bidding," or Chapter 7, "Competitive Negotiation," for proper sequence of contents.