



Request for Proposal

City of Suffolk
RFP #18038-JS
January 8, 2018

Purchasing Division
442 West Washington Street, Room 1086
Suffolk, VA 23434-5237
Phone: (757) 514-7520 / Fax: (757) 514-7524

Legal Services

Electronic proposals will be received at the office of the Purchasing Agent listed above, until the time and date shown below (local prevailing time), for furnishing the items or services described in this solicitation. Offers should be sent by e-mail attachment to: proposals@suffolkva.us with the RFP number and title in the subject line.

SCOPE OF WORK – The City of Suffolk has issued this sealed Request for Proposal (RFP) for the sole purpose of obtaining responsive proposals from qualified firms to provide legal services through competitive negotiations for a term contract.

The Purchasing Agent, Jay Smigielski is the Contract Officer for the City of Suffolk with respect to this RFP. All questions and/or comments should be directed to him at this email address: jsmigielski@suffolkva.us The respondents to this RFP shall not contact, either directly or indirectly, any other employee or agent of the City regarding this RFP. This prohibition shall also extend to the Suffolk City Council and other elected City officials. Any such unauthorized contact may disqualify the Offeror from the procurement.

Proposals are Due: 3:00 p.m., February 9, 2018

Contract Officer:


Jay Smigielski, CPPO, Purchasing Agent, jsmigielski@suffolkva.us

OFFEROR:

Company Name: _____

Address: _____

City / State / Zip: _____

Telephone: _____

FAX No.: _____

E-mail: _____

Print Name: _____

Title: _____

Signature: _____

Date: _____

In compliance with this Request for Proposals, and subject to all the conditions thereof, the Offeror, if the offer is accepted within ninety (90) calendar days from the date of the receipt of proposals, agrees to furnish any or all of the items and/or services at the prices set, to be delivered at the time and place specified herein, based on Task Orders negotiated with the Offeror and issued by the City. The offeror's signature on the previous page certifies he has read, understands, and agrees to all terms, conditions, and requirements of this Request for Proposals, and is authorized to contract on behalf of firm named in this RFP.

SOLICITATION DOCUMENTS

Additional Request for Proposal documents are available on the Purchasing website: <http://www.suffolkva.us/bids/> or on the Commonwealth's bid board (eVA), or at Demandstar.com. An e-mail request for the complete RFP form may be sent to the Contract Officer listed on the front page.

Offers may be sent to proposals@suffolkva.us or electronic copies (CD or thumb drive) may be delivered to the Purchasing Office, 442 W. Washington Street, Room 1086, Suffolk, Virginia, 23434 prior to the closure date shown, if desired. Documents should be saved as a .pdf document and should conserve disk space to allow transfers of data. **Do not send Zip files. Zip files cannot be accepted. Hard copy printed proposals will not be accepted.**

Questions concerning this project must be in writing (email is preferred) and addressed to the Contract Officer listed on the front page of this solicitation, and, should be received no later than five (5) business days preceding the date that the proposals are to be received. E-mail is the preferred method and will get a more timely response.

IF YOU NEED ANY REASONABLE ACCOMMODATION FOR ANY TYPE OF DISABILITY IN ORDER TO PARTICIPATE IN THIS PROCUREMENT, PLEASE CONTACT THIS DIVISION AS SOON AS POSSIBLE.

REQUEST FOR PROPOSAL

Legal Services

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1.0 PURPOSE

The intent of this Request for Proposal is to obtain the services of qualified law firms to provide legal counsel services on an "as-needed" basis for the City of Suffolk under direction of the Office of the City Attorney. Services will be assigned on basis of availability, expertise and the specifics of the case.

2.0 BACKGROUND

The Office of the City Attorney is the chief legal advisor for the City Council, the City Manager, and all department directors, commissions, and agencies of the City for all matters that affect the interests of the City. The City desires to retain one or more counsel law firms to assist the City Attorney in all aspects of legal representation.

3.0 COMPETITION INTENDED

It is the City's intent that this Request for Proposal (RFP) permits competition. It shall be the offeror's responsibility to advise the Purchasing Agent in writing if any language requirement, specification, etc., or any combination thereof, inadvertently restricts or limits the requirements stated in this RFP to a single source. Such notification must be received by the Purchasing Agent not later than five (5) business days prior to the date set for acceptance of proposals.

4.0 TERM OF CONTRACT

Services shall commence upon conveyance of fully executed contract to the selected firm until January 31, 2019 with three (3) one year renewable options at the sole discretion of the City, terminating on January 31, 2022. For each service requested by the City, the Counsel shall provide a written description of the scope of services, an associated completion schedule and a fee schedule with a man-hour breakdown.

5.0 SCOPE OF SERVICES

The City anticipates the following general scope of work during the contract period:

- A. Review and provide legal advice on the multiple areas of law. This may include preparation and/or review of documents necessary or appropriate to the issue and to coordinate the authorization and execution of such documents as appropriate. Services would be performed on an "as-needed" basis.
- B. Prepare legal opinions
- C. Provide a legal perspective and advice on various legal issues.
- D. Prepare, review, comment, and/or modify City contracts, ordinances, easements, deeds, leases and other City legal documents.
- E. Attend City Council meetings, work sessions, and other meetings as needed. This may include addressing and responding questions from City Council members, citizens, City employees and other appropriate parties.
- F. Coordinate with the City Attorney and other City employees proper management of legal issues.
- G. Represent the City in legal matters, including court appearances.

H. Perform provide other legal assistance and tasks as assigned by the City Attorney.

I. Services are to be provided in the following fields of law:

Child Welfare
Civil Litigation
Civil Rights
Contracts
Construction
Economic Development
Elections
Eminent Domain
Employment
Finance
Land Use/Zoning
Local Government
Real Estate
Supreme Court of Virginia Appeals

6.0 SPECIFIC PROPOSAL REQUIREMENTS

A. Submission of Proposals

An electronic document shall be submitted by e-mail attachment to proposals@suffolkva.us with the RFP number and title in the subject line or electronic copies (CD or thumb drive) may be delivered to the Purchasing Office, 442 West Washington Street, Room 1086, Suffolk, Virginia prior to the closure date shown, if desired. Documents should be saved as a .pdf document and should conserve disk space to allow transfers of data. **ZIP files cannot be accepted**; they do not work in the City's system. To receive confirmation of receipt of proposal, send request to the contracting officer at jsmigielski@suffolkva.us Do **NOT** send proposal directly to contracting officer.

The intent of using electronic submissions is to reduce paper usage and provide economical approaches while permitting the Offeror to demonstrate their skills, education, experience, and ingenuity that would qualify them to be selected for interview.

Offerors so selected will be allowed to make a formal presentation of their qualifications and job approach, and may be selected for final negotiations of contract. Therefore, care should be given to address the issues relating to the criteria to follow.

Read the entire solicitation before submitting a proposal. Failure to read any part of this RFP shall not relieve any Offeror from his or her contractual obligations.

B. Questions and Inquiries

Questions and inquiries pertaining to the Request for Proposals will be accepted from any and all firms via e-mail or fax. Inquires must provide RFP number and title. Material questions will be answered by Addendum and will be posted on the City's website: www.suffolkva.us/bids/ provided that all questions are received five (5) business days prior to opening date.

Jay Smigielski, Purchasing Agent, is the designated authorized spokesperson for the City of Suffolk with respect to this RFP. All questions and/or comments should be directed to her attention. The respondents to this RFP shall not contact, either directly or indirectly, any other employee or agent of the City regarding this RFP. This prohibition shall also extend to the

Suffolk City Council and other elected City officials. Any such unauthorized contact may disqualify the Offeror from the procurement.

C. Addendum and Supplement to Request

If it becomes necessary to revise any part of this request or if additional data are necessary to enable an exact interpretation of provisions of this request, an addendum will be issued. It is the responsibility of the Offeror to ensure that he has received all addendums prior to submitting a proposal. All addenda can be downloaded from <http://www.suffolkva.us/bids/> .

D. Firm Pricing for City Acceptance

Offers made during negotiation must be honored for City acceptance for 180 days from the date of offer.

E. Proprietary Information

Trade secrets or proprietary information submitted by an Offeror in connection with this solicitation shall not be subject to disclosure under the Virginia Freedom of Information Act; however, the Offeror must invoke the protections of this section prior to or upon submission of the data or other materials, and must clearly identify the data or other materials to be protected and state the reasons why protection is necessary. Offerors shall not mark sections of their proposal as proprietary if they are to be part of the award of the contract and are of a "Material" nature. Any propriety information must be listed on the attached "Proprietary/confidential Information Identification" form and submitted with the proposal. An all-inclusive statement that the entire proposal is proprietary will result in rejection of the proposal.

F. Authority to Bind Firm in Contract

Proposals must give full firm name and address of Offeror. Failure to sign proposal may disqualify it. Person signing proposal should show title or authority to bind his firm in a contract.

G. Preparation and Submission of Proposals

1. All proposals shall be signed by the individual or authorized principals of the firm.
2. All attachments to the Request for Proposal requiring executing by the firm are to be returned with the proposals.
3. Proposals are to be submitted electronically; title shall indicate the RFP number, time and date of public acceptance, and the title of the proposal.
4. It is the Offeror's responsibility that the proposals are received by the Purchasing Division BEFORE the hour specified on the opening date. Requests for extensions of this time and date will not be granted. Proposals or unsolicited amendments to proposals received by the City after the acceptance date will not be considered.

H. Miscellaneous Requirements

1. The City will not be responsible for any expenses incurred by an Offeror in preparing and submitting a proposal. All proposals shall provide a straightforward, concise delineation of the Offeror's capabilities to satisfy the requirements of this request. Emphasis should be on completeness and clarity of content.

2. Offerors who submit a proposal in response to this RFP may be required to make an oral presentation of their proposal. The Purchasing Division will schedule the time and location for this presentation.
3. The contents of the proposal submitted by the successful Offeror and this RFP will become part of any contract awarded as a result of the Scope of Services contained herein. The successful Offeror will be expected to sign a contract with the City.
4. The City reserves the right to reject any and all proposals received by reason of this request, or to negotiate separately in any manner necessary to serve the best interests of the City.

Proposals should be as thorough and detailed as necessary to allow the City of Suffolk to properly evaluate the offeror's capabilities to provide the required services. Offerors are required to submit the following items in the format provided as a complete proposal.

The City reserves the right to request clarification of information submitted and to request additional information if deemed necessary.

A. Cover Letter

The Offeror will complete and submit the Signature Sheet (included in the proposal) and submit it with a brief cover letter. The cover letter should summarize key elements of the proposal. An individual authorized to bind Offeror must sign the letter and Signature Sheet, as well. Indicate the address and telephone number of the Contractor's office.

B. Background and Project Summary Section

This section should describe your understanding of the City, the work to be performed, and the objectives to be accomplished. Refer to the "Scope of Services" Section of this RFP.

C. Methodology Section

Provide a detailed description of the approach and methodology to be used to accomplish the "Scope of Services" of this RFP. The Methodology Section should include the following:

1. Detailed description of efforts your firm will undertake to achieve client satisfaction and to satisfy the requirements of the "Scope of Services" Section.
2. An plan that describes in detail (a) the methods, including controls by which your firm manages contracts of the type sought by this RFP; and (b) any other management or implementation strategies or techniques that the respondent intends to employ in carrying out the work.
3. Detailed description of specific tasks you will require from City staff. Explain what the respective roles of City staff and your staff would be to complete the tasks specified herein. Provide expectations regarding adequate notice for meetings with City staff.

D. Staffing Section

Provide a list of principal individuals who will likely be working on this contract and indicate the level/title of each member, and the function that each will perform. Include a resume for each designated individual, to include licenses, certifications, etc.

E. Qualifications

The information requested in this section should describe the qualifications of the Offeror, key staff, and subcontractors performing tasks within the past five (5) years that are similar in size and scope to that requested in the RFP. Information shall include the following:

1. Names of key staff that will participate and their specific responsibilities with respect to the "Scope of Services."
2. A summary of the Offeror's demonstrated capability, including length of time that the Offeror has provided the services being requested herein.
3. Provide at least three (3) references that received similar services from your organization. The City reserves the right to contact any the organizations or individuals listed. Local municipal agencies are preferred. Information shall include:
 - Client name
 - Experience with local government issues
 - start and end dates
 - Client manager name, email and telephone number

F. Format

Proposal should be submitted in the following format:

- Cover Letter (A)
- Proposal sequenced in accordance with Paragraphs B-E above
- Forms as follows: (All forms must be signed.)
 - *Signature Sheet (Page 20)*
 - *Propriety/Confidential Information Identification (Page 21)*
 - *Exceptions to RFP (Page 22)*
 - *Anti-collision/Nondiscrimination/Drug Free Workplace Clauses (Pg. 23)*
 - *Proof of Authority to Transact Business in Virginia (Page 24)*

7.0 EVALUATION AND AWARD CRITERIA

The City's Evaluation Committee shall review each proposal and verify the claims and credentials of each Offeror. Selection will be made for each proposal on the basis of the criteria listed below. Each proposal will be evaluated based upon the strengths and weaknesses of the submittal or subsequent information gained in the process.

- Qualifications, credentials, and related experience of the Offeror's key personnel
- Adequacy and availability of support resources
- Established working relationships as a team on similar jobs
- Quality of prior work, including efficiencies, timeliness and cost control
- Approach to the task/operational plan
- Overall quality and completeness of proposal based on the submittal requirements

Once each member of the Evaluation Committee has read and rated each proposal by use of the criteria, a consensus of the Committee shall be used established ranking the proposals. This ranking shall be used to select the firms for further consideration—the short-list. At this point, the Evaluation Committee may conduct interviews with two or more of the top ranked firms.

After interviews have been conducted with each selected Offeror, the City shall select the proposal which, in its sole opinion, is in the best interest of the City and enter into negotiations with that firm. Should negotiations fail with this Offeror, negotiations will be terminated with that Offeror and

negotiations will be opened with the next ranked firm, as required under the Virginia Public Procurement Act. Should the City determine, in its sole discretion, that only one Offeror is qualified, or that one Offeror is clearly more highly qualified than the other under consideration, a contract may be negotiated and awarded to that Offeror. The file will show the Committee's perception of the strengths and weaknesses of each proposal received as basis for selection.

The successful firms will be expected to enter into a contract with the City of Suffolk based upon their submittal and any additional negotiated terms. The successful firms shall execute and return the contract documents to the City within ten (10) business days of receipt. The City anticipates awarding to multiple firms.

8.0 CONDITIONS AND INSTRUCTIONS FOR RFP (Revised 8/11/16)

1. **Use of Form:** All proposals should be submitted in electronic (.pdf) format in accordance with this form. The Offeror may attach/scan other information as required to the electronic document that will be made a part of the proposal. Electronic submittals on CD, DVD, memory sticks, or other electronic media will be accepted if delivered prior to the closing time. The preferred method is by an attachment to an email addressed to: proposals@suffolkva.us. The City's published Conditions and Instructions shall supersede any additional writings submitted with the proposal. Such writings shall be clearly marked and noted as an exception. **ZIP files cannot be accepted.**
2. **Submittals:** Except as noted above, all proposals shall be sent as an attachment to email to: proposals@suffolkva.us. The subject line must show the proposal number and name. For confirmation of receipt of proposal, send email to contracting officer at ismigielski@suffolkva.us. Cite "RFP 18038" in the subject line. **Do not send proposal directly to the contracting officer.**
3. **Late Proposals:** Proposals, if received by Purchasing after the date and time specified, will not be considered. It will be the responsibility of the Offeror to see that their proposal is received by Purchasing as specified. There will be no exceptions. Electronic proposals show the date and time sent. This must be prior to the closing date published on the front cover.
4. **City Hall Closure:** Should the City's electronic networks connectivity prevent receipt of proposals at the time of the scheduled proposal closing, the proposals will be accepted and opened on the next business day of the City, at the original scheduled hour, or as soon as connectivity is restored during normal business hours.
5. **Offer/Acceptance:** Each proposal is received with the understanding that the acceptance in writing by the City of the offer to furnish any or all of the goods and/or services described therein, shall constitute a contract between the Offeror and the City, which shall bind the Offeror to furnish and deliver the goods and/or services quoted at the prices stated and in accordance with the conditions of the accepted proposal; and the City on its part to order from such Offeror, except for causes beyond reasonable control; and pay for, at the agreed prices, all goods and/or services specified and delivered.
6. **Withdrawal of Proposals:** Proposals may be withdrawn (cancelled) any time prior to the closing time and date. Withdrawal of proposals may be accomplished by submitting such request in writing on the issuing company's letterhead either by email, in person, or by certified mail.
7. **Addenda:** If issued, addenda to this solicitation will be posted on the Purchasing website (<http://www.suffolkva.us/bids/>). It is the Offeror's responsibility to check the website or contact the Purchasing Division prior to the submittal deadline to ensure that the Offeror has a complete, up-to-date package. Acknowledgement of all issued Addenda shall be indicated on the proposal form in the appropriate spaces.

8. **Award:** Award will be made to the offer considered by the City's sole determination after following the procedure outlined herein. The process used for this solicitation shall be Competitive Negotiation for Professional Services as outlined in the Virginia Public Procurement Act.
9. **Announcements:** Upon the award or the announcement of the decision to award a contract, the City will publicly post such notice on the electronic bulletin board located outside of the Purchasing Division and on the City's web site: www.suffolkva.us/bids/
10. **City's Rights:** The City reserves the right to reject any and all proposals, and to waive any informality if it is determined to be in the best interest of the City.
11. **Delivery:** The time of delivery of services must be stated in definite terms. If time of delivery for different goods and/or services varies, the offeror shall so state.
12. **Samples:** Samples, when requested, must be furnished free of expense, and upon request, if not destroyed, will be returned at the Offeror's risk and expense.
13. **Silence of Specifications:** The apparent silence of these specifications and any supplemental specifications as to any detail or the omission from the specifications of a detailed description concerning any point shall be regarded as meaning that only the best commercial practices are to prevail and correct type, size and design are to be used. All interpretations of these specifications shall be made on the basis of this statement.
14. **Capacity of Offeror:** All proposals must be signed by a responsible officer or employee having the authority to bind the firm in contract. The Offeror agrees that its contract performance shall be in strict conformance with the contract documents.
15. **Rights to Damages:** By signing this proposal, the offeror assigns to the City any and all rights that it may have under the antitrust laws of the United States and the Commonwealth of Virginia in any way arising from or pertaining to this proposal. This provision is remedial in nature and is to be liberally construed by any court in favor of the City.
16. **Anti-collusion:** The Offeror certifies by signing this Request for Proposals that this proposal is made without prior understanding, agreement, or accord with any other person or firm submitting a proposal for the same goods and/or services and that this proposal is in all respects bona fide, fair, and not the result of any act of fraud or collusion with another person or firm engaged in the same line of business or commerce. Any false statement hereunder may constitute a felony and can result in a fine and imprisonment, as well as civil damages. Should sub-Consultants have interest in multiple submittals, this clause does not apply except when an act of collusion or fraud.
17. **Indemnification:** The Offeror shall defend, indemnify and hold the City, and the City's employees, agents, and volunteers, harmless, from and against any and all damage claim, liability, cost, or expense (including, without limitation, attorney's fees and court costs) of every kind and nature (including, without limitation, those arising from any injury or damage to any person, property or business) incurred by or claimed against the Offeror, its employees, agents, and volunteers, or incurred by or claimed against the City, the City's employees, agents, and volunteers, arising out of, or in connection with, the performance of all services hereunder by the Offeror. This indemnification and hold harmless includes, but is not limited to, any financial or other loss including, but not limited to, any adverse regulatory, agency or administrative sanction or civil penalties, incurred by the City due to the negligent, fraudulent or criminal acts of the Offeror or any of the Offeror's officers, shareholders, employees, agents, consultants, sub-Consultants, or any other person or entity acting on behalf of the Offeror. Unless otherwise provided by law, the Offeror indemnification obligations hereunder shall not be limited in any way by the amount or type of damages, compensation, or benefits payable by or for the Contractor under worker's compensation acts, disability benefit acts,

other employee benefit acts, or benefits payable under any insurance policy. This paragraph shall survive the termination of the contract including any renewal or extension thereof.

18. **Copyright Protection:** The Offeror agrees to defend and save the City, its agents, officials, and employees, harmless from liability of any nature or kind, for use of any copyright, composition, secret process, patented or unpatented invention, articles or appliances furnished or used in the performance of the contract, or which the Offeror is not the patentee, assignee, or licensee, to the same extent as provided in the above paragraph.
19. **Laws, Regulations:** The Offeror shall keep fully informed of all federal, state, and local laws, ordinances and regulations that in any manner affect the conduct of the work. The Offeror shall at all times observe and comply with all such laws, ordinances and regulations.
20. **Alien employment:** The Offeror certifies that he does not and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ unauthorized aliens as defined in the federal Immigration Reform and Control Act of 1986, as amended.
21. **Default:** In event of default by the Offeror, the City reserves the right to procure the goods and/or services from other sources, and hold the Offeror liable for any excess cost occasioned thereby. Such actions taken by the City shall not release the contractor from additional remedies that may be allowed by law.
22. **Availability of Funds:** When a contract resulting from this solicitation involves multiple fiscal periods, such contract shall be deemed in force only to the extent of appropriations available to each department for the purchase of such goods and/or services. The City's extended obligations on those contracts that envision extended funding through successive fiscal periods shall be contingent upon actual appropriations for the following years.
23. **Appeals Procedure:** Upon your request, administrative appeals information will be provided that shall be used for hearing protests of a decision to award, or an award, appeals from refusal to allow withdrawal of proposals, appeals from disqualification, appeals for debarment or suspension, or determination of non-responsibility and appeals from decision or disputes arising during the performance of a contract. To be timely all appeals shall be made within the time periods set forth by the Virginia Public Procurement Act, §2.2-4357, et seq. Contact the buyer at once for assistance.
24. **Faith-based Organizations:** The City of Suffolk does not discriminate against faith-based organizations.
25. **Anti-Discrimination:** By submitting their proposals, Offerors certify to the City 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 shall include the following provisions:

1. During the performance of this contract, the Contractor agrees as follows:

- a. The Offeror will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, service disabled veterans 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 Offeror, 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 Offeror will include the provisions of Section a, b, and c above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
26. **Drug-Free Workplace:** During the performance of this contract, the Offeror agrees to (1) provide a drug-free workplace for the Offeror 's employees; (2) post in conspicuous place, 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 Offeror 's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (3) state in all solicitation or advertisement for employees placed by or on behalf of the Offeror that the Consultant maintains a drug-free workplace; and (4) 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 sub-consultant 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 an Offeror, 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.
27. **Assignment of Contract:** A contract shall not be assignable by the Counsel in whole or in part without the written consent of the City.
28. **Independent Consultant:** The Counsel and any employees, agents, or other persons or entities acting on behalf of the Counsel shall act in an independent capacity and not as officers, employees, or agents of the City.
29. **Scheduling and Delays:** The parties to any contract resultant of this solicitation acknowledge that all or part of the work to be performed hereunder may be delayed and extended at the option of the City. Such delays may be caused by delays, denials and modifications of the various state or federal permits, or for other reasons. The City shall not be required to pay any of the Counsel's direct or indirect costs, or claims for compensation, extended overhead, or other damage or consequential damages arising out of or related to any delays or interruptions required or ordered by the City. If the City delays a task order for any reason for a continuous period of ninety (90) days or more, the City and Counsel will negotiate a mutually agreeable adjustment to the Counsel's fee.
30. **Governing Law:** This Agreement is made, entered into, and shall be performed in the City of Suffolk, Virginia, and shall be governed by the applicable laws of the Commonwealth of

Virginia without regard to its conflict of law rules. In the event of litigation concerning this Agreement, the parties agree to the exclusive jurisdiction and venue of the Circuit Court of the City of Suffolk, Virginia; however, in the event that the federal court has jurisdiction over the matter, then the parties agree to the exclusive jurisdiction and venue of the U.S. District Court for the Eastern District of Virginia, Norfolk Division.

The Counsel shall not cause a delay in services because of the pending or during litigation proceedings, except with the express, written consent of the City or written instruction/order from the Court.

31. **Severability:** If any provision of a contract resulting from this solicitation, or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this contract, or the application of such provision to persons or circumstances other than those which it is invalid or unenforceable, shall not be affected hereby, and each provision of this contract shall be valid and enforced to the full extent permitted by law.

32. **Termination for Convenience:** The City may at any time, and for any reason, terminate this Contract by written notice to the Counsel specifying the termination date, which shall be not less than thirty (30) days from the date such notice is mailed.

Notice shall be given to Counsel by certified mail/return receipt requested at the address set forth in Counsel's Proposal or as provided in this Contract. In the event of such termination, the Counsel shall be paid such amount as shall compensate the Counsel for the work satisfactorily completed, and accepted by the City, at the time of termination. If the City terminates this Counsel, Counsel shall withdraw its personnel and equipment, cease performance of any further work under this Counsel, and turn over to the City any work completed or in process for which payment has been made.

33. **Termination for Cause:** In the event that Counsel shall for any reason or through any cause be in default of the terms of this Contract, the City may give Counsel written notice of such default by certified mail/return receipt requested at the address set forth in Counsel's Proposal/ or as provided in this Contract.

Unless otherwise provided, Counsel shall have ten (10) days from the date such notice is mailed in which to cure the default. Upon failure of Counsel to cure the default, the City may immediately cancel and terminate this Contract as of the mailing date of the default notice.

Upon termination, Counsel shall withdraw its personnel and equipment, cease performance of any further work under the Contract, and turn over to the City any work in process for which payment has been made. In the event of violations of law, safety or health standards and regulations, this Contract may be immediately cancelled and terminated by the City and provisions herein with respect to opportunity to cure default shall not be applicable.

34. **Contact Prohibition:** Direct contact with City departments other than Purchasing, on the subject of this proposal is expressly forbidden except with the foreknowledge and permission of the Contract Officer. Violation may result in a determination that your firm is ineligible for an award.

All questions shall be in writing to the Contract Officer shown on the title page of the proposal. The respondents to this RFP shall not contact, either directly or indirectly, any other employee or agent of the City regarding this RFP. This prohibition shall also extend to the Suffolk City Council and locally elected officials. Any such unauthorized contact may disqualify the Offeror from this procurement.

35. **Additional Conditions:** The Conditions and Instructions in this solicitation are intended to apply to the resulting contract and shall supersede any conflicting terms offered. Any additional conditions an Offeror intends be considered must be submitted with the proposal

and noted as an exception. Such exceptions may result in a finding that the submittal is 'non-responsive' to the proposal, negating possibility of an award to that Offeror. Contractual documents submitted by the successful firm after an award will not be accepted.

36. **Counsel's Failure to Perform:** Failure of the Counsel to perform the contract by reason of the City's non-acceptance of additional conditions submitted after the award shall result in termination of the contract by the City, and may result in debarment of the Counsel for a period of up to three (3) years. Termination and /or debarment of the Counsel shall not constitute a waiver by the City of any other rights or remedies available to the City by law or contract.
37. **Conflict:** In the event of a conflict between the contract documents, including these Conditions and Instructions, the contract documents shall control.
38. **Records and Inspection:** The Counsel shall maintain full and accurate records with respect to all matters covered under this contract, including, without limitation, accounting records, written policies, procedures, time records, telephone records, and any other supporting evidence used to memorialize, reflect, and substantiate charges or fees related to this contract. The Counsel's records shall be open to inspection and subject to audit and/or reproduction, during normal working hours, by the City and its employees, agents or authorized representatives after giving at least three (3) days' notice to the Counsel by the City. The City shall have access to such records from the effective date of this contract, for the duration of the contract, and for five (5) years after the date of final payment by the City to the Counsel pursuant to this contract or any renewal or extension of this contract. The City's employees, agents or authorized representatives shall have access to the Counsel's facilities, shall have access to all necessary records and shall be provided adequate and appropriate work space, in order to conduct audits. All records and information generated under the contract shall be property of the City, whether retained by the City or the Counsel. The Counsel shall not make any other use of this information; expect to provide service to the City under the contract, unless specifically authorized by the City in writing.
39. **Rights and Remedies Not Waived:** In no event shall the making by the City of any payment to the Counsel, or the waiver by the City of any provision under this contract including any obligation of the Counsel , constitute or be construed as a waiver by the City of any other provision, obligation, breach of covenant, or any default which may exist under this contract on the part of the Counsel , and the making of any such payment by the City while any such breach or default exists shall not impair or prejudice any right or remedies available to the City.
40. **Entire Agreement:** An resultant contract and any additional or supplementary documents incorporated herein by reference contain all the terms and conditions agreed upon by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this contract or any part thereof shall have any validity or bind any of the parties hereto. The contract shall not be modified, altered, changed or amended unless in writing and signed by the parties hereto.
41. **Conflicts of Interests:** The Counsel shall not accept or receive commissions or other payments from third parties for soliciting, negotiating, procuring, or effecting insurance on behalf of the City. The City may not procure supplies, equipment, materials or other goods from a consultant on the same project.
42. **Responsibility of Counsel:** The Counsel shall, without additional costs or fee to the City, correct or revise any errors or deficiencies in his performance. Neither the City's review, approval or acceptance of, nor payment for any of the services required under this Agreement shall be deemed a waiver of rights by the City, and the Counsel shall remain liable to the City for all costs which are incurred by the City as a result of the Counsel's negligent performance of any of the services furnished under this Agreement.

43. **Changes and Additions:** It shall be the responsibility of the Counsel to notify the City, in writing, of any necessary modifications or additions in the Scope of this Agreement. Compensation for changes or additions in the Scope of this Agreement will be negotiated and approved by the City, in writing.

It is understood and agreed to by both the City and the Counsel that such modifications or additions to this Agreement shall be made only by the full execution of the City's standard Agreement change order form. Furthermore, it is understood and agreed by both parties that any work done by the Counsel on such modification or addition to this Agreement prior to the City's execution of its standard Agreement change order form shall be at the total risk of the Counsel and said work may not be compensated by the City.

44. **Exemption from Taxes:** The City is exempt from State Sales Tax and Federal Excise Tax. Tax Exemption Certificate indicating the City's tax exempt status will be furnished by the City of Suffolk upon request.

45. **Debarment Status:** By submitting a proposal, proposers certify that they are not currently debarred by the Commonwealth of Virginia from submitting proposals or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

46. **Safety:** All Counsels and sub-consultants performing services for the City are required and shall comply with all Occupational Safety and Health Administration (OSHA), State and City Safety and Occupational Health Standards and any other applicable rules and regulations. Also all Counsels and sub-consultants shall be held responsible for the safety of their employees and any unsafe acts or conditions that may cause injury or damage to any persons or property within and around the work site area under this contract.

47. **License Requirement:** All firms doing business in the City of Suffolk are required to be licensed in accordance with the City of Suffolk business license ordinance. Wholesale and retail merchants without a business location in the City of Suffolk are exempt from this requirement. Any questions concerning business licenses should be directed to the Commissioner of the Revenue's Office, telephone (757) 514-4260 or comrev@suffolkva.us

48. **Offeror's Qualifications:** Only proposals from established Counsels for work similar in scope to work herein shall be considered; the City reserves the right to request specific reference information prior to award. Offeror shall demonstrate that they have adequate and appropriate manpower, tools and equipment to respond and perform in accordance with the provisions herein.

The City may, at its option, disqualify an Offeror and reject his proposal for cause. Reasons deemed to be sufficient for this action shall include, but not be limited to, the following:

- Evidence of collusion among Offeror.
- Receipt of more than one proposal on any project from an individual, or from a corporation. This restriction does not apply to sub-consultants
- Default on any previous contract.
- For unreasonable failure to complete a previous contract within the specified time or for being in arrears on an existing contract without reasonable cause for being in arrears.
- Inability to perform as revealed by an investigation of the Proposer's financial statement, experience and/or plant and equipment.
- Counsel does not meet project-specific requirements, as identified in the Contract Documents

49. **Pricing to be F.O.B. Destination – Freight Allowed:** Pricing shall be F.O.B. destination-

freight included for all competitive proposals. F.O.B. Destination-Freight Included shall include all shipping costs to the City location(s) at the unit cost. No additional shipping charges shall be allowed.

50. **Contract Quantities:** The quantities specified in the Request for Proposals are estimates only unless otherwise clearly noted, and are given for the information of Offeror and for the purpose of proposal evaluation. They do not indicate the actual quantity that will be required, since such volume will depend upon requirements that may develop during the contract period. Quantities shown shall not be construed to represent any amount which the City shall be obligated to purchase under the contract, or relieve the Counsel of his obligation to fill all orders placed by the City, except as clearly noted.
51. **Competition Intended:** It is the City's intent that the Request for Proposals (RFP) permits competition. It shall be the Offeror's responsibility to advise the Buyer in writing if any language requirement, specification, etc., or any combination thereof, inadvertently restricts or limits the requirements stated in this RFP to a single source. Such notification must be received by the Contract Officer prior to the date set for proposals to close.
52. **Insurance:** The successful bidder shall procure, maintain, and provide proof of, insurance coverage's for injuries to persons and/or property damage as may arise from or in conjunction with, the work performed on behalf of the City by the bidder, his agents, representatives, employees or subcontractors. Proof of coverage as contained herein shall consist of all policies, endorsements, declaration pages, and certificates of insurance and shall be submitted fifteen (15) days prior to the commencement of work, and such coverage shall be maintained by the Offeror for the duration of the contract period; for occurrence policies. Claims made policies must extend reporting period for two (2) years after expiration date.

a. **General Liability**

Coverage shall be as broad as: Comprehensive General Liability endorsed to include Broad Form, Commercial General Liability Form including Products/Completed Operations.

Minimum Limits

\$2,000,000 General Aggregate Limit
\$2,000,000 Products & Completed Operations
\$1,000,000 Personal and Advertising Injury
\$1,000,000 Each Occurrence Limit
\$ 50,000 Fire Damage Limit
\$ 5,000 Medical Expense Limit

b. **Automobile Liability**

Coverage sufficient to cover all vehicles owned, used, or hired by the offeror, his agents, representatives, employees or subcontractors.

Minimum Limits

\$1,000,000 Combined Single Limit
\$ 5,000 Medical Expense Limit

c. **Workers' Compensation**

Limits as required by the Workers' Compensation Act of Virginia. Employers Liability, \$100,000/\$500,000/\$100,000

d. Umbrella/Excess Liability

\$2,000,000 umbrella/excess liability coverage

e. Coverage Provisions

1. All deductibles or self-insured retention shall appear on the certificate(s).
2. The City of Suffolk, its' officers/ officials, employees, agents and volunteers shall be added as "additional insured" as their interests may appear. This provision does not apply to Professional Liability or Workers' Compensation/Employers' Liability.
3. The Offeror's insurance shall be primary over any applicable insurance or self-insurance maintained by the City.
4. Shall provide 30 days written notice to the City before any cancellation, suspension, or void of coverage in whole or part, where such provision is reasonable.
5. All coverage for subcontractors of the Offeror shall be subject to all of the requirements stated herein.
6. Failure to comply with any reporting provisions of the policy(s) shall not affect coverage provided the City, its' officers/officials, agents, employees and volunteers.
7. The insurer shall agree to waive all rights of subrogation against the City, its' officers/officials, agents, employees or volunteers for any act, omission or condition of premises which the parties may be held liable by reason of negligence.
8. The offeror shall furnish the City certificates of insurance including endorsements affecting coverage. The certificates are to be signed by a person authorized by the insurance company(s) to bind coverage on its behalf, if executed by a broker, notarized copy of authorization to bind, or certify coverage must be attached.
9. All insurance shall be placed with insurers maintaining an A.M. Best rating of no less than an A:VII. If A.M. Best rating is less than A:VII, approval must be received from City's Risk Officer.
10. All coverage designated herein shall be as broad as the Insurance Services Office (ISO) forms filed for use with the Commonwealth of Virginia.

f. Professional Liability

1. The successful offeror shall provide the City with an Errors and Omissions Liability Policy (E&O Policy). The policy shall cover the City for all sources of liability which would be covered by the latest edition of the standard Errors and Omissions Liability Coverage Form, as filed for use in the Commonwealth of Virginia by the Insurance Services Office, without the attachment of restrictive endorsements.
2. The minimum E&O Policy limits to be provided by the successful offeror (inclusive of any amounts provided by an umbrella or excess policy) with a

minimum coverage of \$2,000,000 per claim for each wrongful act and \$3,000,000 annual policy aggregate (effective date same as contract date with one-three year extended reporting period).

3. Notice of Cancellation and/or Restriction – The policy must be specifically endorsed to provide the City with thirty (30) days' notice cancellation, non-renewal, change in coverage's, and/or restriction.

53. **Invoicing/ Payment and Interest:** Prior to payment the Counsel shall provide their federal employer identification number. Payment to the Counsel shall be made not more than forty-five (45) days after goods or services are received; or not more the forty-five (45) days after the invoice is rendered, whichever is later.

Unless otherwise provided under the terms of this contract, interest for late payment shall not exceed one percent (1%) per month.

The Counsel shall submit invoices on a frequency to be determined, as agreed upon by the City, for each payment requested. Such statement shall also include a detailed breakdown of all charges.

All such invoices will be paid promptly unless any items thereon are questioned, in which event payment will be withheld pending verification of the amount claimed and the validity of the claim. The Counsel shall provide complete cooperation during any such investigation. All invoices shall be forwarded to the following address:

54. **Payments to Subcontractors:** Within seven (7) days after receipt of amounts paid by the City for work performed by a subcontractor under this contract, the Counsel shall either:
 - a. Pay the Subcontractor for the proportionate share of the total payment received from the City attributable to the work performed by the Subcontractor under this contract; or
 - b. Notify the City and Subcontractor, in writing, of his intention to withhold all or a part of the Subcontractor's payment and the reason for non- payment.

The Counsel shall pay interest to the Subcontractor on all amounts owed that remain unpaid beyond the seven-day period except for amounts withheld as allowed in item b. above.

Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month.

The Counsel shall include in each of its subcontracts a provision requiring each Subcontractor to include or otherwise be subject to the same payment and interest requirements as set forth above with respect to each lower-tier subcontractor.

The Contractor's obligation to pay an interest charge to a Subcontractor pursuant to this provision may not be construed to be an obligation of the City.

55. **Ownership of Documents:** Any data generated, reports, specifications, blueprints, negatives or other documents prepared by the Contractor in the performance of its obligations under the resulting contract shall be the exclusive property of City of Suffolk, and all such materials shall be returned to the owner upon completion, termination, or cancellation of this contract. The Counsel shall not use, willingly allow, or cause such materials to be used for any purpose other than performance of all Counsel's obligations under the resulting contract without the prior written consent of City of Suffolk. Documents and materials developed by the Counsel under the resulting contract shall be the property of City or Suffolk; however, the Counsel may

retain file copies, which cannot be used without prior written consent of the Owner. City of Suffolk agrees that the Counsel shall not be liable for any damage, loss, or injury resulting from the future use of the provided documents for other than the project specified, when the Counsel is not the firm of record.

56. **Submissions:** All project correspondence, design/review documents, reports, etc. prepared by the Counsel shall be distributed to the City's Project Manager for each task in the format and number of copies as directed by the task statement of work.
Within thirty (30) days of project completion, the Counsel shall prepare and submit a Project Completion Report with project closeout documents and submit to the City's Project Manager

57. **Contractual Disputes:** The Counsel shall give written notice to the Purchasing Agent of his intent to file a claim for money or other relief at the time of the occurrence or the beginning of the work upon which the claim is to be based.

The written claim shall be submitted to the Purchasing Agent no later than sixty (60) days after final payment. If the claim is not disposed of by agreement, the Purchasing Agent shall reduce his decision to writing and mail or otherwise forward a copy thereof to the Counsel within thirty (30) days of receipt of the claim.

The Purchasing Agent's decision shall be final unless the Counsel appeals within thirty (30) days by submitting a written letter of appeal to the City Administrator, or his designee. The City Manager shall render a decision within sixty (60) days of receipt of the appeal.

58. **Responsibility for Making Corrections:** The Counsel shall, without additional costs or fee to the City, correct or revise any errors or deficiencies in its performance, The City's review, approval, or acceptance of, nor payment of any of the services required under the contract shall be deemed a waiver of rights by the City as a result of the Counsel's negligent performance of any of the services furnished under the contract.

59. **Ethics in Procurement**

Bidders, Offerors, contractors or consultants must provide written disclosure with their bid or proposal if one of your officers, directors, trustees, partners, employees, or lenders is an employee or officer of the City of Suffolk or an immediate family member of the employee or officer (as defined by Section 2.2-4368 of the Virginia Procurement Act) who is involved personally or substantially participates in procurement transactions or owns or controls an interest of more than three percent (3%) of the company or receives more than \$5,000 annually from the bidder, Offeror, contractor or consultant.

SIGNATURE SHEET

(Submit with Proposal)

My signature certifies that the proposal as submitted complies with all Terms and Conditions as set forth.

My signature also certifies that the accompanying proposal is not the result of, or affected by, any unlawful act of collusion with another person or company engaged in the same line of business or commerce, or any act of fraud punishable under Title 18.2, Chapter 12, Article 1.1 of the Code of Virginia, 1950, as amended. Furthermore, I understand that fraud and unlawful collusion are crimes under the Virginia Governmental Frauds Act, the Virginia Government Bid Rigging Act, and Virginia Antitrust Act, and Federal Law, and can result in fines, prison sentences, and civil damage awards.

My signature also certifies that this firm has no business or personal relationships with any other companies or persons that could be considered as a conflict of interest or potential conflict of interest to the City of Suffolk and that there are no principals, officers, agents, employees, or representatives of this firm that have any business or personal relationships with any other companies or persons that could be considered as a conflict of interest or a potential conflict of interest to the City of Suffolk as stated in Section 9.0 Paragraph 59 of this RFP, pertaining to any and all work or services to be performed as a result of this request and any resulting contract with the City of Suffolk. I understand that failure to disclose any potential conflict of interest is basis for disqualification of proposal.

I hereby certify that I am authorized to sign as a Representative for the Firm:

Complete Legal Name of Firm: _____

Address: _____

Federal ID No.: _____ **Telephone No.** _____ **Fax No.** _____

Name (type/print): _____ **Title:** _____

Signature: _____

PROOF OF AUTHORITY TO TRANSACT BUSINESS IN VIRGINIA

THIS FORM MUST BE SUBMITTED WITH YOUR PROPOSAL/BID, FAILURE TO INCLUDE THIS FORM MAY RESULT IN REJECTION OF YOUR PROPOSAL/BID

Pursuant to Virginia Code §2.2-4311.2 an Offeror/Bidder organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 of the Code of Virginia shall include in its proposal/bid the identification number issued to it by the State Corporation Commission ("SCC"). Any Offeror/Bidder that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law shall include in its proposal/bid a statement describing why the Offeror/Bidder is not required to be so authorized. Any Offeror/Bidder described herein that fails to provide the required information shall not receive an award unless a waiver of this requirement and the administrative policies and procedures establish to implement this section is granted by the City Manager, as applicable.

If this quote for goods or services is accepted by the City of Suffolk, Virginia the undersigned agrees that the requirements of the Code of Virginia Section §2.2-4311.2 have been met.

Please complete the following by checking the appropriate line that applies and providing the requested information.

A. _____ Offeror/Bidder is a Virginia business entity organized and authorized to transact business in Virginia by the SCC and such vendor's Identification Number issued to it by the SCC is _____.

B. _____ Offeror/Bidder is an out-of-state (foreign) business entity that is authorized to transact business in Virginia by the SCC and such vendor's identification Number issued to it by the SCC is _____.

C. _____ Offeror/Bidder does not have an Identification Number issued to it by the SCC such vendor is not required to be authorized to transact business in Virginia by the SCC for the following reason(s):

Please attach additional sheets if you need to explain why such Offeror/Bidder is not required to be authorized to transact business in Virginia.

Legal Name of Company (as listed on W-9)

Legal Name of Offeror/Bidder

Date

Authorized Signature

Print or Type Name and Title