



**RFP 09-14**

**Owner's Representative / Construction Project  
Management Services**

**Proposals Due by 3:00 P.M., Friday, April 25, 2014**

**Issued By:**

**City Of Rockville  
Purchasing Division  
111 Maryland Avenue  
Rockville, Maryland 20850-2364  
Phone: 240.314.8430  
Fax: 240.314.8439**

**Any individual that would like to receive the information in this document in another form  
may contact the Americans with Disabilities Act of 1990 (ADA) Coordinator at  
240.314.8100; TDD 240.314.8137.**

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**Request For Proposals 09-14**  
**Owner's Representative / Construction Project Management Services**  
**Due by 3:00 P.M. local time Friday, April 25, 2014.**

**I. PURPOSE / SYNOPSIS:**

The City is soliciting competitive sealed proposals (offers) to furnish Owner's Representative / Construction Project Management Services for multiple diverse construction projects. The City intends to award multiple contracts to qualified organizations based upon expertise, qualifications, and costs.

**II. BACKGROUND INFORMATION:**

- A. The City of Rockville, Maryland, is located approximated 12 miles northwest of Washington DC. Rockville is the third largest city in Maryland with a population of approximately 61,000, and, is the county seat of Montgomery County. The FY14 Operating Budget is approximately \$112 million and the Capital Improvement Program (CIP) budget is approximately \$67 million. The proposed CIP budget for FY15 is \$76.3 million.
- B. The City Of Rockville has a number of diverse construction projects scheduled for the next few years. The City has insufficient resources to effectively manage the projects and requires the assistance from experts to ensure successful, timely, and cost effective completion of these projects. The current anticipated projects range from aquatic center and swimming pool renovations, parking lot reconstruction, ADA additions and remediation, City Hall renovations, construction of a TV studio, parks and recreational fields renovations, sidewalks, and water/ wastewater/ stormwater systems construction and remediation.
- C. Further information about the City of Rockville can be found at [www.rockvillemd.gov](http://www.rockvillemd.gov).
- D. The City primarily uses the design-bid-build process to contract with a Construction Team to construct the City's projects. The City has used design-build and job order contracting for a few projects.

**III. CONSTRAINTS:**

- A. A Contractor awarded Owner's Representative / Construction Management Task Order under the basic contract from this RFP cannot be awarded a design contract for the same construction project.
- B. A Contractor awarded any City design contract cannot be awarded an Owner's

Representative / Construction Management Task Order under the basic contract from this RFP for the same construction project.

- C. For certain types of projects, the Contractor's and any subcontractors' personnel may be required to submit to a security screening which may include fingerprinting, financial and criminal background checks, and Department of Homeland Security (DHS) checks. A person on a DHS watch list, or, with a conviction of certain crimes may be precluded from accessing the site(s) or working on the project.
- D. Considering that all projects are subject to appropriation and funding constraints, and, that the City has limited resources, some currently anticipated projects may be temporarily or permanently postponed by the City.

#### **IV. MINIMUM PROPOSER REQUIREMENTS**

- A. To be considered for award, a proposer shall meet or exceed each of the following minimum requirements. Failure to meet a requirement will result in the disqualification of the proposal i.e.: the proposal will not be considered for award.
  - 1. You must demonstrate your organization's and/or key personnel's qualifications and successful experience in providing similar Owner's Representative / Construction Project Management services to a public agency in the United States for each specialty or general area(s) for which you want to be considered.
  - 2. Your organization must be properly registered to conduct business in the State of Maryland.

#### **V. PROCUREMENT RULES AND RFP DEFINITIONS:**

- A. The City has established for purposes of this Request for Proposals (RFP) that the words "shall", "must", or "will" are equivalent in this RFP and indicate a mandatory requirement or condition which will not be waived by the City. Failure to comply with any mandatory requirement will render the proposal non-responsive and therefore it will not be considered for award. To be considered for an award, the Proposer must agree to abide by each mandatory requirement included in this RFP.
- B. The City has established for purposes of this RFP that the words "should" or "may" are equivalent in this RFP and indicate very desirable conditions or requirements that are permissive in nature. Deviation from, or omission of, such a desirable condition or requirement will not cause rejection of a proposal, but will be considered in the

evaluation process.

C. RFP Definitions:

1. **ADA:** The Americans with Disabilities Act of 1990, as amended.
2. **City:** The City of Rockville, Maryland.
3. **City Manager:** The Chief Executive Officer of the City of Rockville.
4. **Construction Management Plan:** A sub-plan of the Project Management plan that encompasses all phases of construction of the project.
5. **Construction Project Manager:** The Contractor person responsible for managing the assigned construction project.
6. **Construction Team:** The General Contractor team awarded a contract to construct the project.
7. **Contractor:** A Proposer awarded a contract from this RFP to provide Owner's Representative / Project Management services to the City.
8. **Contract Administrator:** The City point of contact assigned to administer the Task Order resulting from the contract.
9. **Day(s):** Calendar days, unless otherwise specified.
10. **Design-Bid-Build:** A contracting process whereby the City (a) hires a designer to create the plans and specifications, (b) uses the designer's plans and specifications to solicit competitive bids/proposals, and (c) awards the contract to build the project to the lowest responsive bidder / best value proposer.
11. **Design-Build:** A contracting process whereby the City contracts with a single organization to design and build the project.
12. **Design Team:** The Architect / Engineering team that the City has chosen to design the construction project.
13. **Dollar, "\$"** United States of America dollars.
14. **Job Order Contracting:** A contracting process whereby an awarded contractor performs construction services priced in accordance with a unit price book which provides preset costs for specific construction tasks and the contractor's pricing coefficient.
15. **Organizational Conflict of Interest (OCI):** An OCI exists when an awarded Contractor has a recent, current, or anticipated business relationship with the Design Team and/or the Construction Team, and such relationship in reality or in appearance impacts the Contractor's ability to impartially and objectively provide the required services to the City, or, appears to give the Contractor unfair competitive advantages owing to the services it provides to the City.
16. **Owner's Representative:** A third party that is charged with protecting the interests of the owner, the City of Rockville, during the construction of a project.
17. **Procurement Officer:** the Purchasing Manager or a delegate of the Purchasing

- Manager.
18. **Project Management Plan:** The planning document, capturing the entire project end-to-end, covering all project phases, from initiation through planning, execution and close-out.
  19. **Proposal:** The offer that you, the Proposer, make to the City in response to this Request for Proposals.
  20. **Proposal Package:** The complete submittal from a Proposer.
  21. **Proposer:** The entity making an offer to the City in response to this Request for Proposals.
  22. **Purchasing Manager:** The City person that has been legally authorized and responsible to enter into, administer, terminate and otherwise manage contracts subject to any approval thresholds that may be established by the City Code.
  23. **Request For Proposals:** This competitive process whereby the City is seeking competitive offers to resolve a City need or requirement.
  24. **Risk Management Plan:** A sub-plan of the Project Management plan that documents the systematic processes of identifying, quantifying, analyzing, & responding to project risks.
  25. **RFP:** This Request for Proposals.
  26. **Specialty, Specialty Area:** The particular practice or discipline of construction and /or construction management within which a Proposer has successfully performed and completed projects.
  27. **Task Order:** The contract document that the City will use to place orders for services with the Contractor under the contract.
  28. **Technical Evaluation Team:** A team specifically chartered to review and evaluate proposals submitted in response to this RFP in accordance with the evaluation criteria listed in the RFP document and recommend a contract award to the Purchasing Manager.
  29. **Total Cost of Ownership:** The total of all costs to plan, design, construction, maintain, and potentially demolish a facility.
  30. **You, Your:** Same as Proposer.
  31. **Work:** The entire project or the various separately identifiable parts thereof required to be performed or furnished under the contract documents.
  32. All references to a time of day are references to the time in Montgomery County, Maryland, USA.



## **SECTION 1.0 – SCOPE OF WORK**

### **1.1 Scope of Work:**

- A. The following professional services may be required depending upon the specific project.
1. Assist City staff with the preparation and on-going maintenance of the Project Management Plan, including the Construction Management Plan and Risk Management Plan;
  2. Assist with selection of Design Team;
  3. Identify detailed programming requirements;
  4. Cost estimating (total project, sub-projects, and proposed change order(s));
  5. Constructability / technical review of design documents;
  6. Total cost of ownership analysis, value engineering, market availability;
  7. Serve as City's Owner's Representative as the Construction Project Manager;
  8. Coordinate and document communications with and among Design Team, Construction Team, City staff, and other stakeholders (State of Maryland, Montgomery County, Environmental Protection Agency (EPA), etc.);
  9. Project scheduling, including developing and maintaining work breakdown structure, critical paths, PERT, earned value management, and/or related schedules and tools;
  10. Assist the City with the selection of the Construction Team;
  11. Manage and document all project meetings;
  12. Construction quality control monitoring, testing, and inspection;
  13. Provide a digital photo or video log of the Construction Team progress at each stage;
  14. Document and coordinate any Construction Team request for information (RFI), and the response from the Design Team, and City;
  15. Document and coordinate any Construction Team request for changes to project, response from Design Team, and all approved / denied requests for changes;
  16. Document and coordinate any City request for changes to project, response from the Design Team, response from the Construction Team, and all approved / denied requests for changes;
  17. Document management and control including all construction and construction administration documents, correspondence, and as-builts, regardless of format (paper or electronic);
  18. Document and coordinate Construction Team payment requests;
  19. Perform forensic engineering and analysis;
  20. Perform claim analysis;
  21. Perform commissioning services;
  22. Perform project close out services;
  23. Provide expert witness services, and
  24. Provide City staff resource augmentation for professional support services.

B. The City is seeking proposals from organizations with the following Construction Project Management qualifications, expertise and experience:

1. Aquatic Center renovations, including swimming pools and pool facilities;
2. ADA compliant construction, remodeling, and renovations;
3. Remodeling and renovation of historic facilities;
4. Construction / renovation of parks, sports fields, recreation areas, and related parking areas.
5. Construction of roads, sidewalks, bridges, and drainage systems;
6. Remodeling / renovation of existing buildings and facilities, including industrial buildings;
7. New facility construction;
8. Potable water systems – installing, replacing, repairing underground piping systems, including trenchless projects;
9. Water Treatment Plant Systems, including pumping systems, disinfection systems;
10. Wastewater systems - installing, replacing, repairing underground piping systems, including trenchless projects;
11. Stormwater systems;
12. Job Order Contracting (JOC) proposal analysis and contract administration.

**1.2 Technical Requirements:**

- A. The proposer should have the organizational, human and technical resources in-house to perform the tasks listed above in an expeditious and economical manner consistent with the interests of the City Of Rockville.
- B. Subcontracting of specialty consultants may be permitted only with prior written authorization by the City's Contract Administrator for an individual Task Order. The City will reimburse the Contractor for the direct subcontractor costs as evidenced by original invoices plus the mutually agreed mark-up percentage.
- C. The Contractor awarded a Task Order shall develop and complete an end-of-project report detailing at least:
  - a. What processes went right;
  - b. What processes should be changed before the next project;
  - c. What training should be obtained by City staff; and
  - d. Recommendations to improve the solicitation, contracting, and administration of the City's design, construction, and construction management processes.

D. Conflict of Interest Disclosures:

- a. Prior to the award of a Task Order and during the phases of the work, the proposer (Contractor) will be required to complete an Organizational Conflict of Interest Disclosure Affidavit affirming that the Contractor has no organizational conflict of interest with any of the organizations or personnel of the Design or Construction Teams, and,
  - b. Each Contractor assigned person will be required to complete a Conflict of Interest Disclosure Affidavit affirming that the person has no conflict of interest with any of the organizations or personnel of the Design or Construction Teams.
  - c. The Organizational Conflict of Interest Disclosure Affidavit and Conflict of Interest Disclosure Affidavit will be provided prior to any award of a Task Order, since each projects participants are different.
- E. Prior to the Contractor gaining access to proprietary information from other companies in performing the services for the City, the Contractor must agree to protect the information from unauthorized use or disclosure for as long as it remains proprietary , and, refrain from using the information for any purpose other than for which it was furnished to the City. Prior to beginning work on a project, the Contractor and its personnel may be required to complete and abide by confidentiality and non-disclosure agreement(s) depending upon the project.

**1.3 Mandatory Legal Requirements:**

- A. The proposer shall be properly licensed and authorized to perform work in the State of Maryland. See also Section 3.25.
- B. The awarded Contractor(s) at its own cost shall furnish and maintain in good conditions all necessary personal protective safety equipment as required for the type of work in accord with latest Occupational Safety and Health Administration (OSHA), Maryland Occupational Safety and Health Act (MOSHA) and Environmental Protection Agency (EPA) rules and regulations plus those in effect by the using agency governing the work to be done.

**1.4 Task Order Award Process:**

- A. A Task Order may be awarded for a single phase or multiple phases of the construction project, or for a particular service.
- B. When the City determines that it will proceed with a construction project, the City will

make an initial determination of which services may be required for the project and invite the Contractor(s) for discussions on the scope of the proposed construction project and any Construction Contract Management services anticipated.

- C. Depending upon the outcomes of the discussions, the City may invite one or more of the awarded Contractors within the specialty area to submit a proposal for the services, and, then attempt to negotiate a scope of work for the Task Order. If the negotiations are mutually acceptable, then the City will award a Task Order. If the negotiations are unsuccessful, the City may negotiate with other awarded Contractors, or find an alternative solution.
- D. If multiple contracts are awarded within a Specialty area, the City reserves the right to negotiate with and award a Task Order to the Contractor which the City considers the best fit for the particular service, phase, or project, or negotiate and award Task Orders on a rotating basis, or solicit proposals from all of the Contractors within the Specialty area.
- E. Time is of the essence for certain projects. If an invited Contractor fails to respond in accordance with the reasonable requirements of the Contract Administrator, the Contractor may be removed from consideration for the project and for future projects.

#### **1.5 Price Redetermination Process:**

- A. The proposed prices shall remain firm for one year from the date of the award of a contract.
- B. The sub-contractor mark-up percentage shall remain firm for the entire term of the contract including any extensions.
- C. The Contractor may petition the Purchasing Manager for a price re-determination within 90 days of the expiration of each one year period of the contract. Any price re-determination will be solely based upon changes as documented by the Employment Cost Index (ECI) COMPENSATION (NOT SEASONALLY ADJUSTED): for total compensation, for private industry workers, all workers as published by the Bureau of Labor Statistics <http://www.bls.gov/ncs/ect/home.htm>. The base index number will be the base for December 2013. The change will be computed by dividing the latest index number by the base year index number.
- D. Example: December 2013 = 119.4, December 2014 = 120.5  $[120.5/119.4]$  = maximum increase 1.01% per labor category.

- E. If the change in the ECI is zero or negative, the Contractor will not be eligible for any adjustment for that time period.
- F. If the Contractor and City Of Rockville cannot agree on any price re-determination, then the contract will expire without prejudice 10 days after the impasse is reached.
- G. Any change in labor rates will not apply to any Task Order contract in place at the time of the redetermination.

**---END OF SECTION 1---**

## **SECTION 2.0 – RFP ADMINISTRATIVE REQUIREMENTS AND INSTRUCTIONS**

### **2.1 Proposed Schedule:**

The following dates are proposed by the City; however, the dates and times may be changed as the needs of the City change. It is solely your responsibility to stay informed on the dates and times.

- A. RFP release date – March 21, 2014.
- B. Pre-Proposal conference – Tuesday, April 8, 2014, at 9:00 A.M. local time.
- C. Final date to receive written questions Friday, April 4, 2014, before 8:30 A.M.
- D. Release date for answers to written questions – Friday, April 11, 2014.
- E. RFP closing date – Friday, April 25, 2014 at 3:00 P.M. local time.**
- F. Proposer interviews /presentations/ demonstrations, if requested – May 12 – 24, 2014.

### **2.2 Delivery of Proposals:**

- A. Delivery Proposal Package(s) to  
City of Rockville  
Purchasing, 2<sup>nd</sup> Floor  
111 Maryland Avenue  
Rockville, MD 20850-2364
- B. Mark each package: **RFP 09-14, Owner's Representative / Construction Project Management Services, Box # of #**. Failure to clearly mark each proposal package with this information may cause the City to inadvertently open the proposal package before the official closing date and time. If the proposal package is inadvertently opened due to lack of markings, the City staff shall be reseal the package, and the package will be opened after the official RFP closing date and time.
- C. To be considered for award, the complete proposal package must be ***Received and Accepted*** in the Purchasing Division Office prior to the official closing date and time.
- D. Allow sufficient time for transportation and inspection. If you use a third party carrier (USPS, FedEx, Airborne, UPS, etc.) ensure that the carrier is properly instructed to deliver your proposal package only to the address above.
- E. The City will not consider facsimile (fax) or electronic submission (e-mail) of a proposal.

### **2.3 Late Proposal and Proposal Handling:**

- A. The City will judge any proposal received in the Purchasing Division Office after the official closing date and time as **LATE** and the City will not open it nor consider it for award, except as specifically listed below:
  - 1. The proposal was postmarked at least 5 calendar days prior to the official closing date and sent by registered or certified United States Postal Services (USPS) mail; or
  - 2. The proposal was properly addressed and the Purchasing Manager, or designee, determines that the late receipt of the proposal was solely due to mishandling by the City employee(s).
  
- B. Upon receipt at the location specified above, the City will mark each timely received proposal package with the date and time of receipt. The City will safeguard proposals from unauthorized disclosure from the time of receipt, throughout the source selection process, and until award.
  
- C. If the City declares administrative or liberal leave, all scheduled closing dates for that day will be extended until the next business day.
  
- D. In accordance with Chapter 17 of the City's Purchasing Code, competitive sealed proposals (RFP proposals) will not be publicly opened or otherwise handled so as to permit disclosure of the identity of any Proposer or the contents of any proposal during the evaluation process. The proposals, except for information identified by the Proposer as proprietary, shall be open for public inspection after the contract award.

### **2.4 Pre-Proposal Conference:**

- A. A pre-proposal conference will be held on **Tuesday, April 8, 2014**, beginning at **9:00 A.M.** in the Mayor & Council Chambers, 3<sup>rd</sup> Floor Rockville, City Hall, 111 Maryland Ave., Rockville, MD 20850.
  
- B. This meeting is not mandatory, however all potential proposers are strongly encouraged to attend and participate. Participation of qualified proposers is highly valued by the City of Rockville and at this time you shall have an opportunity to ask questions and express your ideas. It is highly recommended that you thoroughly review the requirements prior to the pre-proposal conference. Please bring this RFP document with you.
  
- C. In order to ensure that all potential proposers receive the same information and to maximize everyone's investment of time and resources, the Purchasing Manager may

prohibit entrance into the pre-proposal conference by anyone arriving more than 15 minutes after the scheduled start of the conference. Parking is extremely limited around City Hall, please plan accordingly.

## **2.5 Questions Concerning RFP:**

- A. Questions, inquiries, suggestions, or requests concerning interpretation, clarification or additional information concerning any portion of this RFP should be made in writing – e-mail is acceptable - and sent to the below named individual who will be the official point of contact for this RFP. Questions should be submitted before the pre-proposal meeting and at least seven days before the closing date.
- B. Mark subject line or e-mail or cover page or envelope **“Questions on RFP 09-14, Owner's Representative / Construction Project Management Services.”**
- C. **RFP POINT OF CONTACT:**  
Submit questions to:  
Kenneth D. Hayslette, Purchasing Manager  
Telephone: 240.314.8432  
Fax: 240.314.8439  
E-mail: [KHayslette@RockvilleMD.gov](mailto:KHayslette@RockvilleMD.gov)
- D. Failure by a Proposer to ask questions, request changes, or submit objections by the dates indicated above shall constitute the Proposer's acceptance of all of the terms, conditions and requirements set forth in this RFP.
- E. The issuance of a written addendum by the City's Procurement Officer is the only official method by which interpretation, clarification or additional information can be given. The City will not be responsible for any oral representation given by any employee, representative or others.
- F. If the City revises (amends) this RFP, the City's Procurement Officer will post a notice on the City Internet site <http://www.rockvillemd.gov/Bids.aspx> and on the eMaryland Marketplace <https://emaryland.buyspeed.com/bsol/login.jsp>. You should acknowledge each addendum in your proposal. Failure to acknowledge each addendum may prevent your proposal from being considered for award. **It is solely your responsibility as a proposer to ensure that you have received all addenda and incorporated the changes into your proposal before submitting your proposal.**



**2.6 Proposer's Responsibility / Clarification and Addenda:**

- A. By submitting a proposal (offer), you, the Proposer, represent:
  - 1. You have read and understand this Request for Proposals, and
  - 2. Your proposal is made in accordance with the requirements of this RFP, and
  - 3. You are familiar with the local conditions under which the proposed services and products must perform.
  
- B. It is incumbent upon you to carefully examine these requirements, terms, and conditions, including all attachments, exhibits, and documents incorporated by reference. Before submitting a proposal, you are solely responsible to make all investigations and examinations necessary to ascertain conditions and requirements affecting the full performance of the contract and to verify any representations made by the City upon which you will rely.
  
- C. If the City awards you a contract because of your proposal, your failure to have made such investigations and examinations will in no way relieve you from your obligations to comply in every detail with all provisions and requirements of the contract, nor will a plea of ignorance of such conditions and requirements be accepted as a basis for any claim by you for additional consideration, compensation or relief.

**2.7 Restricted Discussions:**

- A. From the date of issuance of the RFP until final contract award, you, the Proposer, are prohibited from discussing the RFP or any part thereof with any employee, agent, or representative of City except as expressly authorized by the City's Procurement Officer identified in Section 2.5.C above. The City may **REJECT** your proposal for violation of this restriction.
  
- B. Any negotiation, decision, or action initiated or executed by you as a result of any oral or written discussions with any the City employee or agent, except the Procurement Officer is void and will not be binding upon the City. You shall only consider those communications that are in writing from the City's Procurement Officer.

**2.8 Modification or Withdrawal of Proposal:**

- A. You may modify your proposal provided the modification is received in the Purchasing Office prior to the official closing date and time.

- B. The City prefers that any modification is submitted in a sealed package. Modifications may be submitted via facsimile (fax) or e-mail provided that:
  - a. You understand that the City is not responsible for any lost or misdirected fax or email message, and,
  - b. You understand that any such fax or email message is not secure and is subject to inspection under a public records request, and,
  - c. A paper copy of the request for a modification signed by an official legally authorized to bind the Proposer is received in the City's Purchasing Office within three business days of the official closing date.
  
- C. You may withdraw your proposal at any time prior to the official closing date and time. You will be required to produce sufficient identification that satisfies the City prior to withdrawal or modification of your proposal.
  
- D. Negligence upon your part in preparing your proposal confers no right of withdrawal or modification after the official closing date and time.
  
- E. No proposer who is permitted to withdraw a proposal shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or company to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn proposal was submitted.

**2.9 Contractor Furnished Resources / Key Personnel:**

- A. The terms Key Person and Key Personnel are defined as any person or persons whose individual action or inaction can impact the timely accomplishment of the performance objective(s) of each contract requirement.
  
- B. By submitting a proposal, you are representing that each person listed or referenced in your proposal will be available to perform the services described for the City, barring illness, accident, or other unforeseeable events of a similar nature in which case you must promptly provide a qualified replacement approved by the City.
  
- C. If awarded a contract, you, the Contractor, shall furnish all resources including but not limited to personnel, management, equipment, supplies, resources, transportation, and support, to accomplish the performance objective(s) of each contract requirement.
  
- D. If awarded a contract, you shall provide sufficient personnel with the appropriate and documented knowledge, skills, training, and experience required to accomplish each contract requirement.

- E. The Procurement Officer reserves the right to review and approve or disapprove the qualifications of any key person or persons assigned to a requirement prior to the person beginning the performance of the work. If the Procurement Officer considers the qualifications of the assigned person to be inadequate, the Procurement Officer may request further documentation of the person's qualifications, or, may request that another qualified person be assigned, also pending the Procurement Officer's approval. If the Procurement Officer does not disapprove the qualifications within 10 business days of receipt of the qualifications, then you may consider the proposed person as approved.
- F. The Contractor shall notify the Procurement Officer in writing of any proposed changes in key personnel assigned to a requirement at least 10 business days prior to the change. The Contractor shall include with the notification
  - a. the reason for the change, and
  - b. the qualifications of the proposed replacement person(s), and
  - c. all steps the Contractor is taking to minimize the impacts that the personnel change will have on the success of the project / contract.
- G. In the event the requested substitute person is not satisfactory to the Procurement Officer and the matter cannot be promptly resolved to the satisfaction of the Procurement Officer, the City reserves the right to terminate the contract for cause (see Section 3.28 Termination of Contract.)

## **2.10 Minimum Proposer Responsibility:**

- A. To be considered for award, the City must determine that a Proposer is "Responsible." The Procurement Officer and/or the Technical Evaluation Team will determine responsibility based upon the following factors:
  - a) *Experience*: determined by examining internal and readily available public files, which indicate how the Proposer performed in the past;
  - b) *Integrity, Perseverance, and Reliability*: determined by conducting an in-depth evaluation of the management of the Proposer's organization, the organization's philosophies, ethics standards and policies, reputation in the industry, and the organization's quality control programs including any International Organization of Standards (ISO) certifications;
  - c) *Capacity, Facilities, and Equipment*: determined by information submitted by the Proposer and/or by plant or facility visits, if judged appropriate; and
  - d) *Financial Capacity*: determined by an investigation of the Proposer's financial

statements, readily available public files, and/or credit reports as well as bonding capabilities.

- e) Is the Proposer qualified and eligible to receive an award under applicable Federal, Maryland, and City laws and regulations?
- B. The Procurement Officer may request additional information, other than that already in the proposal, or may request additional or clarifying information to determine the Proposer's responsibility under this section. If the Proposer fails to supply the information requested within the time required, the Procurement Officer shall make the determination of responsibility or non-responsibility based solely upon available information. If the available information is insufficient to make a determination of responsibility, the Procurement Officer shall determine the Proposer to be non-responsible.
- C. If your organization is listed on the U.S. Excluded Parties List (<https://www.sam.gov/portal/public/sam/>) on the RFP official closing date or is put on the Excluded Parties List at any time prior to the award of the contract, the Purchasing Manager shall immediately determine your organization as non-responsible. An organization listed on the U.S. Excluded Parties List will not be considered for a Task Order.
- D. Appeal of Determination of Non-responsibility. A decision by the Purchasing Manager as to the non-responsibility of a proposer may be appealed to the City Manager within THREE business days after the date of the decision. The appeal shall be made in writing and contain in detail all information and documentation in support of the appeal. The City Manager shall issue a written decision as soon as practicable, which decision shall be final and binding.
- E. The City will not consider a proposal / offer from, or award a contract to, any person, company, corporation, or organization that is in arrears, or is in default to the City upon any debt or contract, or that has defaulted as surety or otherwise upon any obligation to the City.
- F. The Proposer, if requested, must present within 48 hours evidence satisfactory to the Procurement Officer of performance ability, and possession of necessary facilities, pecuniary resources, and adequate insurance to comply with the terms of these specifications and contract documents.

## **2.11 Anticipated Selection Process:**

- A. The Procurement Officer listed in Section 2.5.C is responsible for the selection

process and will be the sole point of contact for all Proposers.

**B. Initial Review – Responsiveness:**

The Procurement Officer will review each proposal to determine its responsiveness, i.e. has the Proposer provided all of the materials required in Section 5 –Submittal Requirements, including signed affidavits. If the Procurement Officer determines a proposal to be nonresponsive, that proposal will not be evaluated or considered for award.

**C. Initial Technical Evaluation Process:**

1. The Procurement Officer will provide a copy of each responsive technical proposal to the Technical Evaluation Team members for their technical evaluations.
2. The Technical Evaluation Team members will evaluate each responsive proposal in accordance with Section 2.12 Evaluation Criteria.
3. In addition to the materials provided by the Proposer, the Technical Evaluation Team may utilize site visits and/or may request and evaluate additional material, information, and/or references from other sources.
4. The Procurement Officer may request written clarifications from any Proposer to clarify any ambiguity and/or minor irregularity.
5. After the Technical Evaluation Team has evaluated all responsive proposals, including any clarifications, the Technical Evaluation Team chair will submit the team's initial consensus evaluations to the Procurement Officer.

**D. Based upon the Technical Evaluation Team initial consensus evaluations, the Procurement Officer will determine which proposals will be considered in the competitive range. The competitive range shall include all proposals that have a reasonable chance of being selected for award.**

**E. Evaluation of Competitive Range Proposals:**

1. The Procurement Officer may invite any Proposer in the competitive range to make a presentation and/or demonstration (in-person and/or via teleconference) to the Technical Evaluation Team. The Procurement Officer may require that specific individuals identified in the proposal participate in the presentation

and/or demonstration.

2. The Procurement Officer may provide a list of individual proposal specific questions to be discussed at the presentation and/or demonstration to the invited proposer(s).
3. During and after the presentation and/or demonstration, the Technical Evaluation Team may ask questions and the Proposer's team shall provide answers.
4. The Technical Evaluation Team will evaluate and weigh the presentation and/or demonstration and responses in accordance with the evaluation criteria in Section 2.12 Evaluation Criteria for each proposer that makes a presentation and/or demonstration to the Technical Evaluation Team.
5. After the presentation and/or demonstration, the Technical Evaluation Team may request that the Procurement Officer require a Proposer to cure any noted technical deficiencies/discrepancies, provide additional information, and/or perform another presentation and/or demonstration to the Technical Evaluation Team. If the Proposer does not promptly comply with the Procurement Officer's requirements, the Procurement Officer will remove the proposal from the competitive range and it will not be considered for award.
6. The Technical Evaluation Team will re-evaluate and rescore the proposals in accordance with the evaluation criteria in Section 2.12 Evaluation Criteria, and may change the technical evaluation scores based upon the information learned.
7. Based upon the revised total evaluated scores, the Procurement Officer will determine the final ranking of the Proposers.

F. Negotiations:

1. The Procurement Officer may invite the top ranked Proposer(s) for negotiations. The City reserves the right to negotiate any and all elements, except legal requirements, of any proposal received.
2. The City anticipates negotiating, at minimum, the following elements:
  - a. Price
  - b. Schedule
  - c. Work Plan
  - d. Resources

e. Qualifications

G. Best and Final Offers:

1. At any time prior to requesting best and final offers, the Procurement Officer may request additional information, samples, or other evidence of the Proposer's performance capabilities from any Proposer in the competitive range in order to better understand and evaluate the Proposer's offer.
2. At any point during the evaluation process, the Procurement Officer may request a written best and final offer from all Proposers that have a reasonable chance to be selected for award. This is the only time a Proposer will be provided with the opportunity to make revisions to its proposal, including its price proposal, to improve its offer to the City.
3. To be considered for award, a complete written and signed final offer must be received by the Procurement Officer by the time specified in the request for best and final offers.
4. The Technical Evaluation Team will re-evaluate each best and final offer in accordance with Section 2.13. Evaluation Criteria, and may change the final technical evaluation score based upon the information submitted in the best and final offer.

H. Award:

1. If the City awards a contract(s) to a Proposer(s), the contract(s) will be awarded based upon the Proposer's ranking for the Specialty Area(s).
2. When the City has a construction project that requires the expertise and skills of a selected proposer, the City will present one or more of the Contractors with a synopsis of the anticipated project and the expected services required from the Proposer. The Contractor (s) will submit a written proposal based upon the scope of work in accordance with the fee structure proposed. The City and the Contractor(s) will negotiate the final scope of work and fees. Upon a mutually agreeable conclusion to the negotiations, the City will issue the Contractor a Task Order Contract based upon the negotiations and the terms and conditions of the contract.

**2.12 Evaluation Criteria:**

- A. In addition to the materials provided in the written responses to this RFP, the City may utilize site visits and/or may request additional material, information, presentations or references from any Proposer.
- B. The Technical Evaluation Team will evaluate each responsive proposal on how well it appears to be able to provide Owner's Representative / Construction Project Management Services that are beneficial to the City based upon the following criteria.
- C. If a Proposer submits a proposal that includes more than one Specialty Area (Tab 2), each Specialty Area will be evaluated separately. The City reserves the right to award multiple contracts per Specialty Area.

Evaluation Criterion	Maximum Points per Evaluation Criterion
The applicability of the Proposer's qualifications, documented experience, innovations, and processes in providing value adding Owner's Representative / Construction Project Management Services to the City.	75
The applicability of the qualifications and documented experience of the proposed professional and field staff in providing value adding Owner's Representative / Construction Project Management Services to the City.	50
The applicability of past performance as described by direct and indirect references, as well as any performance history with the City of Rockville, in providing value adding Owner's Representative / Construction Project Management Services to the City.	35
The applicability of the proposed innovative and technical resources in providing value adding Owner's Representative / Construction Project Management Services to the City.	30
The applicability of the Proposer's qualifications, documented experience in Green / Sustainable projects in providing value adding Owner's Representative / Construction Project Management Services to the City.	20
How well did the Proposer follow the RFP directions on preparing and submitting its proposal package?	5
<b>Initial Maximum Technical Evaluation Points</b>	<b>215</b>



- D. The information provided in Tab 4 - Litigation will be evaluated by the Procurement Officer to determine if and how the litigation impacts the Proposer's ability to provide value adding Owner's Representative / Construction Project Management Services to the City. The Procurement Officer may require the Proposer to provide confidential detailed information about the litigation. If the Procurement Officer determines that the litigation impacts the Proposer's apparent ability to provide the value adding Owner's Representative / Construction Project Management Services to the City, or increases any associated risks to the City that proposal will not be given to the Technical Evaluation Team, or, if the Technical Evaluation Team already has begun evaluating the proposal prior to the determination, the Procurement Officer will instruct the Technical Evaluation Team to remove that proposal from consideration.
- E. The City will use the estimated price per technical point process to determine the ranking of the proposers for each Specialty Area. For each Specialty Area, the Proposer with the lowest price per point will be ranked #1; the next lowest will be ranked #2, etc. The same Total Estimated Project Price will be used in the price evaluations for each Specialty Area proposed.
- a. The Estimate Total Project Cost is the price listed by the proposer in Tab 7.F.3.
  - b. The sum of the consensus rating of the Technical Evaluation Team for each evaluation criterion times the criterion's weight yields the total consensus evaluation points for that proposal.

Example:      Total estimated project cost = \$50,000  
                    Total consensus evaluation points = 155  
                    Estimated price per point =  $50000/155 = \$322.58$  / point = #2 Rank

                    Total estimated project cost = \$55,000  
                    Total consensus evaluation points = 188  
                    Estimated price per point =  $55000/188 = \$292.55$  / point = #1 Rank

**2.13 Interviews/ Presentations / Demonstration Process:**

- A. The City, at its sole discretion, may ask any Proposer to make an oral presentation and/or product / service demonstration without charge to the City. The City reserves the right to require any Proposer to demonstrate to the satisfaction of the City that the Proposer has the managerial, fiscal and technical abilities to furnish the value adding Owner's Representative / Construction Project Management Services to the City. The demonstration must satisfy the City, and the City will be the sole judge of compliance.
- B. If the City invites a Proposer to make an oral presentation / demonstration, the

Proposed Construction Project Manager(s) listed in the proposal package shall participate in the presentation / demonstration.

- C. You are cautioned not to assume that you will be asked to make a presentation and should include all pertinent and required information in your original proposal package.

**2.14 Proposal Package:**

- A. See **Section 5: Submittal Requirements** for specific requirements.
- B. An official authorized to legally make a binding offer to the City shall manually sign the proposal forms.
- C. The proposal package must be complete, self-sufficient, and respond directly to the requirements of this RFP document.

**2.15 Minor Irregularities:**

The City reserves the right to waive minor irregularities in submitted proposals, providing such action is in the best interest of the City. A minor irregularity is defined as an issue that does not have an adverse effect on the City's best interests, and will not affect the outcome of the selection process by giving any Proposer an advantage or benefit not enjoyed by all other Proposers.

**2.16 Incurred Expenses:**

**This RFP does not commit the City to make an award** nor will the City be responsible for any cost or expense which may be incurred by the Proposer in preparing and submitting a proposal or offer, or any cost or expense incurred by the Proposer prior to the issuance by the City Purchasing Division of a signed Task Order Contract. By submitting a proposal, you, the Proposer, agree that the City bears no responsibility or obligation for any of your costs associated with the preparation of your proposal, preparing and delivering presentations, preparing Task Order proposal(s), and/or any administrative or judicial proceedings resulting from this RFP process.

**2.17 Minimum Performance Requirements:**

The requirements set forth as the Scope of Work (Section 1) are the minimum performance requirements for this RFP. They are not intended to limit competition nor

specify any particular Proposer. All proposals shall be considered which meet or exceed each item listed in the Scope of Work.

**2.18 Exceptions:**

- A. If you take exception to any requirements in this RFP, you shall clearly identify the item(s) that exception is taken to, succinctly state the reason for the exception, and include these item(s) in your proposal in Tab 1.I. Exceptions.
- B. You must clearly identify and explain in writing any alternate(s) included in your proposal.
- C. Any exception or alternate will be reviewed and evaluated by the City.

**2.19 Pre-Task Order Contract Deliverables:**

- A. Within 10 calendar days after the City provides written notification to enter into a Task Order contract, the awarded Contractor shall furnish the below deliverables prior to the City awarding the Task Order contract.
- B. Required Pre-Task Order Contract Deliverables
  - 1. Proposed critical path schedule
  - 2. Insurance Certificates
  - 3. License and/or Certifications if required.
- C. If the Contractor fails to furnish the required deliverables within the required time frame, the City may withdraw the award from the Contractor and may award a Task Order contract with the next best proposer without further completion or notice.

**2.20 Conflict of Interest Disclosure:**

- A. This Request For Proposals is subject to the provisions of the City Of Rockville Code Chapter 16 Public Ethics. [<http://library.municode.com/index.aspx?clientId=149171>] No employee of the City, or the spouse or any other relative, who resides in the same household as any of the foregoing, may be a Contractor or subcontractor in connection with any bid or proposal, or have a personal interest therein.
- B. Each Proposer shall complete the attached NON-COLLUSION AFFIDAVIT and include it with the Proposer's proposal.

**2.21 Term of Contract:**

- A. The term of any contract(s) awarded from this RFP shall be for five years, subject to the City's option to extend the term of the contract in accordance with subsections B and C
- B. Option Period:  
If the City determines it to be advantageous, it may extend the term of any contract(s) for two additional one year periods or a fraction of a year.
- C. Option to Extend the Term of the Contract:
  - 1. The City may extend the term of the contract by written notice to the Contractor before the expiration of the contract; provided that the City shall give the Contractor a preliminary written notice of its intent to extend at least 30 days before the contract expires. The preliminary notice does not commit the City to an extension.
  - 2. The Contractor may waive the 30 day preliminary notice requirement by providing a written waiver to the Procurement Officer prior to expiration of the contract.
- D. The total duration of the contract including the exercise the option(s) under this provision shall not exceed seven years.

**2.22 Anticipated Payment Process:**

- A. The City anticipates paying the Contractor monthly based on services performed.
- B. The Contactor must submit documented timesheets to substantiate payment for all labor hours requested.
- C. The Contactor must submit a copy of the actual invoice from any subcontractor or for any other payment request.

**2.23 Limited Confidentiality of Information:**

- A. The City is governed by the [Maryland Public Information Act](#). Only trade secrets, confidential commercial or financial information will be exempt from disclosure. If you submit trade secret information, you must segregate and label each pertinent page with the term "**trade secret.**" Do not use the word "confidential." If you submit information that you consider exempt from public disclosure, you must identify with specificity which page(s)/paragraph(s) of your proposal package is (are) exempt from the Maryland Public Information Act and identify the specific statutory exemption

section that applies to each.

- B. The City will maintain the confidentiality of such trade secrets to the extent provided by law. If you label all or most pages of your proposal as "trade secret," the City may judge your proposal as non-responsive and therefore it will not be considered for award.
- C. All material submitted becomes the property of the City and may be returned only at the City's option.
- D. By submitting a proposal (offer) in response to this RFP, you, the Proposer, expressly permit the City to use any or all ideas presented in your offer and any subsequent materials provide to the City as a result of this RFP process, provided such use does not violate a copyright or patent. Selection or rejection of your proposal does not affect this right.
- E. Notwithstanding the language provided in this Section and Section 5.3.J, the City, in its sole and absolute discretion, shall determine whether documents requested through the Maryland Public Information Act are exempt from disclosure as trade secrets, confidential commercial or financial information, or other exemption. The City shall make such determination regardless of whether the Proposer has segregated and labeled each page as required in Section 2.23.A., or redacted certain language/information on a CD/DVD submitted with the proposal.

**2.24 Nondiscrimination of Contractors:**

The City will not discriminate against any proposer or Contractor in the solicitation or award of the contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by law relating to discrimination in employment or because the Proposer employs ex-offenders unless the City has made a written determination that employing ex-offenders on the specific contract is not in the City's best interest.

**2.25 Protesting the Requirements or Award Recommendation:**

- A. In accordance with City Code Section 17-171, as amended, any potential Proposer may protest the requirements of this RFP by submitting a written protest within FIVE business days after the Proposer received the RFP; however such protest must be submitted at least five business days before the closing date.

- B. Any proposer may protest the award of, or the decision to award, a contract to any other proposer / offeror, within FIVE business days after the award decision is announced.
- C. Any protest shall be in writing and submitted to the Purchasing Manager at the address listed in Section 2.5.C.
- D. The City will not consider a protest for any claim for reason that the selected proposer or offeror is not a responsible party, nor shall any protest be considered for any matter which the Purchasing Manager determines could reasonably have been ascertained prior to the closing date of this RFP, unless such protest shall have been filed in writing not less than three business days prior to such time.
- E. Written Submission:
  - a. The protester shall present its protest in a concise and logical written format to facilitate review. Failure to substantially comply with any of the requirements of this subsection may be grounds for dismissal of the protest.
  - b. The protest shall include at least the following information:
    - 1. Name, address, email address, and fax and telephone numbers of the protester;
    - 2. RFP number;
    - 3. Detailed statement of the legal and factual grounds for the protest, including a description of resulting harm to the protester;
    - 4. Copies of supporting documents, if any;
    - 5. Statement of relief requested;
    - 6. All information establishing that the protester is an interested party for the purpose of filing a protest on an award decision;
    - 7. All information establishing the timeliness of the protest.
- F. The Purchasing Manager shall decide any protest and shall issue a written finding within five business days of receipt of the protest.
- G. The protester may appeal the Purchasing Manager's decision to the City Manager within three business days after receipt of the Purchasing Manager's decision. The City Manager's decision shall be final and binding.

**---END OF SECTION 2---**

## **SECTION 3.0 – CITY OF ROCKVILLE STANDARD CONTRACT PROVISIONS**

### **3.1 Terms and Conditions:**

The terms and conditions of this RFP document govern in event of conflict with any terms of the Proposer's proposal, and are not subject to change by reasons of written or verbal statement by the Contractor unless accepted in writing. Words and abbreviations that have well known technical or trade meanings are used in accordance with such meanings.

### **3.2 Your Proposal is a Binding Offer to the City:**

- A. The City will consider the proposal (offer) that you, the Proposer, make to the City as a binding offer for not less than 90 calendar days from the RFP closing date. The City may request an extension on the time to award a contract, and, you have the right to accept or decline such a request. The City will consider the signed proposal as an offer by you and such offer shall be judged accepted by the City only in accordance with all requirements listed in Section 3.2.I below.
- B. The City is not obligated to make any award as a result of this RFP.
- C. The City is not obligated to award any contract on the basis of lowest cost or one factor alone.
- D. If the City awards a contract, it will be awarded to the Proposer submitting the proposal that is in the best interests of the City based upon the evaluation criteria specified elsewhere in this RFP
- E. The City has the sole discretion and reserves the right to cancel this RFP, and to reject any and all proposals, to waive any and all informalities and/or minor irregularities, or to re-advertise with either the identical or revised scope of work, if it is judged to be in the City's best interests to do so.
- F. In the event of default by the awarded Proposer, the City reserves the right to negotiate and award a contract to the Proposer with the next best proposal without any further notice or competition.
- G. The City reserves the right to reject any proposal determined by the Purchasing Manager to be inadequate or unacceptable.

- H. The City may award a contract on the basis of initial offers received and without presentation, discussion, negotiation, or best and final offers. Therefore, your proposal (offer) should contain your best technical and price offer.
- I. Acceptance of Offer:
- i. A proposal / offer will be considered accepted by the City and a contract formed between the City and the Proposer only after ALL of the following actions have been completed:
  - ii. The proposed award has been properly approved by the City Manager and/or the Mayor and Council of Rockville; and
  - iii. The contract document has been formally and legally approved and signed by the Proposer's authorized agent; and
  - iv. The contract document has been formally and legally approved and signed by City's authorized agent.
- J. If there is any question about the authenticity of a task assignment, purchase order, contract, or change order promptly contact the City's Purchasing Office at 240.314.8430.

### **3.3 Acceptance of Product / Service:**

Deliverable Standards: Deliverables prepared by the Contractor in response to the requirements of this contract shall, unless otherwise provided for in the contract, be thoroughly researched for accuracy of content, be grammatically correct and not contain errors, be numerically accurate, be submitted in the format approved in advance by the Contract Administrator, and be submitted for advance review and comment by the Contract Administrator. The cost of correcting errors, correcting report data, or making other revisions required to bring the deliverable into compliance with the contract requirements shall be borne solely by the Contractor.

### **3.4 Authorized Workforce Documentation (E-Verify):**

Within 10 days from notice of award of a contract, you, the selected Proposer, may be required to submit to the Procurement Officer documentation that each employee, worker, and all subcontractor employees and workers are authorized to work within the United States. This documentation must include appropriate eligibility information from the U. S. Citizenship and Immigration Services [E-Verify](http://www.uscis.gov/e-verify) website (<http://www.uscis.gov/e-verify>)



### **3.5 Contractor Personnel Requirements:**

- A. The Contractor shall direct and supervise competent and qualified personnel and shall devote time and attention to the direction of the operation to insure performance of obligations and duties as set forth herein
- B. The City's Contract Administrator shall notify the Contractor in writing when any person employed on the work is incompetent, disobedient, disorderly, discourteous or otherwise unsatisfactory; such person shall be discharged from the work and shall not again be employed for the contract except with the prior written consent of the Contract Administrator.
- C. The City's Contract Administrator has the right to request immediate removal or replacement of any Contractor / subcontractor person if said person is rude, belligerent or offers a nuisance or threat.
- D. Language: If applicable, the Contractor shall appoint one or more crewmembers or supervisors to act as liaison with the City and emergency services personnel. All liaisons shall be fluently bilingual in American English and the Contractor's employees' language(s), and at least one liaison shall be present at each work site at all times when any of the Contractor's employees or agents are at the site. The supervisor shall be able to read, write and understand technical English.
- E. Immigration Reform And Control Act: The Contractor shall warrant that it does not and shall not hire, recruit or refer for a fee, for employment under the contract, an alien knowing the alien is an unauthorized alien and hire any individual without complying with the requirements of the Immigration Reform and Control Act of 1986 (the Act), including but not limited to any verification and record keeping requirements. The Contractor shall further assure the City that, in accordance with the Act, the Contractor does not and will not discriminate against an individual with respect to hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment because of such individual's national origin or in the case of a citizen or intending citizen, because of such individual's citizenship status.
- F. Nondiscrimination:
  - i. During the performance of the contract, the Contractor agrees that it will not discriminate against any employee or applicant because of race, color, creed, religion, sex, age, handicap, or national origin except when such condition is a

bona fide occupational qualification reasonably necessary for the normal operations of the Contractor. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex, national origin or disability. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment, layoff or termination, rates of pay or other form of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, visible to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

- ii. If the Contractor fails to comply with the nondiscrimination clause of the contract or fails to include such contract provisions in all subcontracts, the contract may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further contracts with the City of Rockville. Any employee, applicant for employment, or prospective employee with information concerning any breach of these requirements may communicate such information to the City Manager who shall commence a prompt investigation of the alleged violation. Pursuant to such investigation, the Contractor will permit access to the Contractor's books, records, and accounts. If the City Manager concludes that the Contractor has failed to comply with nondiscrimination clauses, the remedies set out above may be invoked.

G. Drug-Free Workplace: The Contractor during the performance of the contract shall:

- i. Provide a drug-free workplace for its 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;
- iv. Include the provisions of the foregoing clauses in every subcontract or purchase so that the provisions will be binding upon each subcontractor or Contractor;
- v. For the purpose of this section, "drug-free workplace" means a site for the performance of work in connection with the contract where the Contractor's employees 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.

- H. Applicable Laws. The Contractor shall be solely responsible for ensuring that its employees comply with all applicable laws and regulations and meet all Federal, state and local requirements related to their employment and position.
- I. Drivers. Each driver of a Contractor's vehicle shall always carry a valid driver's license and all other required licenses for the type of vehicle that is being operated.
- J. Quality of Work. The City's Contract Administrator shall decide any questions which may arise concerning the quality and acceptability of the work and services performed by the Contractor, the manner of performance, the rate of progress of said work, the interpretation of the provisions of the Contract and the acceptable fulfillment of Contract duties. In addition, the City's Contract Administrator shall determine the amount, quality and character of the work performed. The Contractor shall have the right to appeal any decisions or findings of the City's Contract Administrator to the Purchasing Manager, pursuant to Section 17-173 of the City Code, as amended.
- K. Designation of Agent. The Contractor shall furnish the City's Contract Administrator with every reasonable opportunity for ascertaining whether or not the duties of the Contractor are being performed according to the terms of the Contract. The Contractor shall designate in writing the person to serve as agent between its organization and the City.
- L. Personal Protective Equipment. In accordance with the Occupational Safety and Health Act of 1970, as amended, the Contractor shall furnish its employees, at no cost to the employee, with the appropriate personal protective equipment. The Contractor shall ensure that all subcontractor employees are also furnished the appropriate personal protective equipment. The City may, without any liability for financial compensation or time, stop the work of any Contractor employee or agent, or any subcontractor employee that is not using the appropriate personal protective equipment. Continued failure by the Contractor to ensure all employees and agents are properly equipped may be cause for terminating the contract for default.

### **3.6 Conveyance of Copyrights:**

- A. The Contractor shall convey to the City at no additional cost and with no reservations, perpetual and irrevocable licenses to each copyrightable deliverable provided under the contract. This requirement includes, but is not limited to, reports, presentations, briefings, templates, all forms of electronic and tangible marketing and/or educational

materials created for the City's exclusive use, drawings, plans, renderings, models, artwork, logos, or designs.

- B. The Contractor further agrees to provide such documents as the City may request to affect such license, including but not limited to registration of the license with the U.S. Copyright Office.
- C. Notwithstanding anything else in the contract, the Contractor's remedy in the event of termination of or dispute shall not include any right to rescind, terminate or otherwise revoke or invalidate in any way the rights conferred in this section.
- D. Similarly, no termination of the contract shall have the effect of rescinding, terminating, or otherwise invalidating the rights acquired pursuant to the provisions of this section.
- E. The use of a subcontractor or third party in developing or creating input into any copyrightable material produced as part of the contract is prohibited unless the City approves the use of subcontractor or third party in writing in advance and such subcontractor or third party expressly agrees to provide the license(s) in accordance with this entire section.
- F. If anything included in any deliverable limits the rights of the City to use the information, the deliverable shall be considered defective and not acceptable and the Contractor will not be eligible for any compensation.
- G. The City will not transfer, assign, set over, and convey to any other non-related party any copyright obtained from this section.
- H. This section does not apply to the procurement of software or publications.

**3.7 Disclaimer of Liability:**

The City shall not indemnify or hold harmless any proposer or contractor for any liability whatsoever in connection with the RFP, or possible future contract, or Task Order.

**3.8 Disputes and Claims:**

- A. For the purposes of this RFP, the term "dispute" means a disagreement between the Contractor and the City over the mean or interpretation of one or more sections of the contract. The term "claim" means a demand by the Contractor against the City for

financial consideration generally arising from a dispute.

- B. This section applies to controversies between the City and a Contractor which arise under, or by virtue of, a contract between them, including, without limitation, controversies which are based upon breach of contract, mistake, misrepresentation, or any other cause for contract modification or rescission.
- C. In seeking resolution to a contract dispute with the City, the Contractor must adhere to the following sequential steps. The Contractor must submit a written dispute to the appropriate decision-maker listed below that clearly defines the issue(s) of the dispute, the relevant contract section(s), and the requested resolution along with pertinent documentation.
- D. Should any decision-maker fail to make a decision within the time period specified herein, then the dispute is deemed to have been rejected by that decision-maker, and the Contractor may appeal to the next decision-maker without prejudice. If a decision-maker requests additional information and/or clarifications, the decision-maker's time is extended by the number of days between the date the request for information was submitted to the Contractor and the date the information was received by the decision-maker.
- E. The Contractor shall begin any dispute resolution with the City's designated contract administrator for the contract in dispute. If the Contractor and the City's contract administrator cannot mutually resolve the dispute, the Contractor may submit a written appeal to the Purchasing Manager for resolution of the dispute.
- F. The Purchasing Manager shall review the contract dispute and enter into discussions and/or negotiations with the Contractor to achieve a mutually agreeable resolution, or, render a decision within 15 work days from receipt of the Contractor's written dispute appeal request.
  - a. Before issuing a decision, the Purchasing Manager shall review the facts pertinent to the controversy and secure any necessary assistance from legal, fiscal, and other advisers.
  - b. If the Contractor and the Purchasing Manager cannot mutually resolve the dispute, the Contractor may appeal to the City Manager for resolution of the dispute within five work days from the date of the Purchasing Manager's decision.
  - c. If the Contractor fails to submit the written appeal of the Purchasing Manager's decision to the City Manager within the five work days from the

date of the Purchasing Manager's decision, then the dispute will be considered resolved in accordance with the Purchasing Manager's decision.

- G. If the Contractor submits a timely written appeal to the City Manager, the City Manager shall proceed as provided in City Code Section 17-173, as amended.

### **3.9 Ethics in Public Contracting:**

In accordance with the City's financial disclosure and ethical conduct policy and/or ordinances a prerequisite for payment pursuant to the terms of the contract is that the Contractor may be required to furnish explicit statements, under oath, that the City Manager, and/or any other officer, agent, and/or employee of the City, and any member of the governing body of the City of Rockville or any member or employee of a Commission, Board, or Corporation controlled or appointed by the City Council, Rockville, Maryland has not received or has not been promised directly or indirectly any financial benefit by way of fee, commission, finder's fee, or in any other manner, remuneration arising from directly or indirectly related to the contract, and that upon request by the City Manager, or other authorized agent, as a prerequisite to payment pursuant to the terms of the contract, the Contractor will furnish to the Mayor and Council of the City of Rockville, under oath, answers to any interrogatories to a possible conflict of interest has herein embodied.

### **3.10 Force Majeure:**

- A. The City and the Contractor will exercise every reasonable effort to meet their respective obligations of this agreement, however neither party shall be considered to be in default of this agreement if delays in or failure of performance shall be due to uncontrollable forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "uncontrollable forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this agreement and which is beyond the reasonable control of the non-performing party. It includes, but is not limited to fire, flood, earthquakes, storms lightning, epidemic, war, riot, civil disturbance, sabotage, terrorism and governmental actions.
- B. Neither party shall, however, be excused from performance if non-performance is due to forces that are preventable, removable, or remediable nor which the non-performing party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The non-performing party shall, within three business days of being prevented or delayed from performance by an

uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this agreement. The City shall have sole and absolute authority under the contract to determine whether an event is an uncontrollable force, as defined herein, to determine the allowable duration of the delay of performance, and to determine how the delay shall affect the continuance of performance of work required by the Contract.

**3.11 Governing Law and Choice of Forum:**

- A. Any ensuing contract shall be binding upon the assigns and successors of each party.
- B. Except to the extent Federal law is applicable, the interpretation, effect, and validity of any agreement resulting from this RFP shall be governed by the laws of the State of Maryland.
- C. Any party who wishes to bring against the other party a civil action or proceeding arising out of the contract or the relationship of the parties may bring such action or proceeding only in a State or Federal court in Montgomery County Maryland.

**3.12 Indemnification of the Mayor And Council:**

If awarded a contract as a result of this RFP, you, the Contractor, agree to protect, defend, indemnify and hold the Mayor and Council of the City of Rockville, its officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character in connection with or arising directly or indirectly out of the error, omission or negligent act of the Contractor. Without limiting the generality of the foregoing, any and all such claims, etc., relating to personal injury, infringement of any patent, trademark, copyright (or application for any thereof) or of any other tangible or intangible personal or property right, or actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, or decree of any court, shall be included in the indemnity hereunder. You further agree to investigate, handle, respond to, provide defense for and defend any such claims, etc., at your sole expense and agree to bear all other costs and expenses related thereto, even if such claim is groundless, false or fraudulent.

**3.13 Independence of Contractor:**

- A. The Contractor shall perform its duties under the terms and conditions of the contract as an independent Contractor, and it shall not be construed or interpreted by virtue of such

Agreement that the Contractor or its employees are employees, agents or representatives of the City of Rockville.

- B. Persons employed by the Contractor in the performance of services and functions pursuant to the contract shall have no claim to pension, workers' compensation, unemployment compensation, civil service or other employee rights or privileges granted to the City's officers and employees either by operation of law or by the City.

**3.14 Intellectual Property Indemnity:**

- A. The Contractor warrants that products and/or services provided to the City by the Contractor and the use thereof do not infringe or violate any patent, copyright, trademark, mask work, trade secret, or any intellectual property of a third party. The Contractor shall indemnify, defend, settle on behalf of, and hold harmless the City from and against any and all demands, claims, proceedings, actions, losses, damages, liabilities, costs, and expenses (including reasonable attorneys' fees, other expenses for investigation, handling, and litigation, and settlement or judgment amount) asserted against or incurred by the City, by reason of, resulting from, or arising in connection with any breach of this section.
- B. The City shall promptly notify the Contractor of any claim regarding indemnification and give information and assistance reasonably requested by the Contractor and the Contractor is given sole authority to defend or settle such claim. If a court or a settlement enjoins the use of such products and/or services, the Contractor shall, at its own expense and at the City's option, obtain for the City either the right to continue using such products and/or services, replace same with a non-infringing product and/or service, modify same so it becomes non-infringing, or refund the value of such products and/or services and accept return for same.

**3.15 Licenses and Certificates:**

- A. The City reserves the right to require documentation that each Proposer is an established business and is abiding by the ordinances, regulation, and laws of their community and the State of Maryland.
- B. If you are required by any regulatory agency to maintain professional license or certification to provide any product and/or service solicited under this RFP, the City reserves the right to require you to provide documentation of your current license and/or certification before considering your proposal and/or before awarding a contract.



- C. If you fail to keep your required license and/or certification current and in force for the term of the contract and any extension, the City will deem you to be in breach of contract and will take all appropriate actions.

**3.16 Material and Workmanship:**

- A. You, as the Contractor, are solely responsible for the professional quality, technical accuracy, timely completion and coordination of all the products and/or services furnished under any contract issued as a result of this RFP. You shall, without additional consideration, correct or revise any errors, omissions or other deficiencies in your services and/or products.
- B. You shall be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted by the City.

**3.17 Modifications or Changes to the Contract:**

- A. The City may at any time by written change order signed by the City Manager or the City's Purchasing Manager, or designee, make changes within the general scope of any ensuing contract(s) on any one or more of the following:
  - 1. The description of the products to be delivered and/or services to be performed.
  - 2. Time of delivery or performance (i.e., hours of the day, days of the week, etc.).
  - 3. Place of delivery or performance of services.
- B. If any such change causes an increase or decrease in the cost of performance of any part of the work under the contract, whether or not changed by the order, or otherwise affects any other terms and conditions of the contract, the City's Purchasing Manager shall make an equitable adjustment in the rates and charges of the Contractor and other affected terms and shall modify the contract accordingly. The City and Contractor agree to enter into good faith negotiations regarding modifications to the contract. When such modifications or changes are made to the contract, the City and the Contractor shall negotiate in good faith, a reasonable and appropriate compensation for any additional services or other obligations required of the Contractor directly and demonstrably due to any modification in the contract under this Section. Failure to agree to any adjustment shall be a dispute under the Dispute Section. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

- C. The Contractor must assert its right to an adjustment under this clause within 30 calendar days from the date of receipt of the written order.
- D. If the Contractor considers that the conduct, statement or direction of any City employee or agent constitutes a change hereunder or during the performance of the contract, the Contractor shall promptly notify the City's Purchasing Manager and take no action on the perceived change pending written approval of the City's Purchasing Manager. Only the City Manager and the City's Purchasing Manager has the authority to approve a change to the contract. Any change made by Contractor without such written approval shall be deemed voluntary by Contractor and not compensable in the cost of or time required for performance.
- E. The Contractor, for each change or series of related changes, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of work, both changed and not changed, allocable to the change. The Contractor shall maintain such accounts until the parties agree to an equitable adjustment for the changes ordered by the City Manager or City's Purchasing Manager or the matter is conclusively disposed of in accordance with the Dispute Section.

**3.18 Modifications to the Contract Due to Public Welfare, Change in Law or Change in Ordinances.**

- A. The City shall have the power to make changes in to any ensuing contract(s) as the result of changes in Federal, State of Maryland, Montgomery County, or City of Rockville laws or ordinance to impose new rules and regulations on the Contractor under the contract relative to the scope and methods of providing services as shall from time-to-time be necessary and desirable for the public welfare.
- B. The City shall give the Contractor notice of any proposed change and an opportunity to be heard concerning those matters. The scope and method of providing services as referenced herein shall also be liberally construed to include, but is not limited to the manner, procedures, operations and obligations, financial or otherwise, of the Contractor.
- C. In the event any future change in Federal, State of Maryland, Montgomery County, or City of Rockville law or ordinance that materially alters the obligations of the Contractor or the benefits to the City, then the contract shall be amended consistent therewith.

- D. Should those amendments materially alter the obligations of the Contractor, then the Contractor or the City shall be entitled to an adjustment in the rates and charges established under the contract. Nothing contained in the contract shall require any party to perform any act or function contrary to law. The City and the Contractor agree to enter into good faith negotiations regarding modifications to the contract which may be required in order to implement changes in the interest of the public welfare or due to change in law. When such modifications are made to the contract, the City and the Contractor shall negotiate in good faith, a reasonable and appropriate compensation for any additional services or other obligations required of the Contractor directly and demonstrably due to any modification in the contract under this Section.

**3.19 No Assignment of Contract:**

- A. The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of any award or of any of its rights, title, or interests therein, without the prior written consent of City Manager or the City's Purchasing Manager. All assignments of rights are prohibited whether they are voluntary or involuntary, by merger, consolidation, dissolution, operation of law, or any other manner. For purposes of this Section,
1. a "change of control" is deemed an assignment of rights; and
  2. "merger" refers to any merger in which a party participates, regardless of whether it is the surviving or disappearing corporation.
- B. No Delegations. No party may delegate to another entity any performance under the contract agreement.
- C. Consequences of Purported Assignment or Delegation. Any purported assignment of rights or delegation of performance in violation of this section will be void.

**3.20 No Contingent Fee:**

The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure the contract and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of the contract. In the event the Contractor violates this provision, the City shall have the right to terminate the contract for default, without liability, and at its sole discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

3.21 **No Waiver of Contract:**

Neither the acceptance by the City, nor any order, measurement, certificate or payment of money, of the whole or any part of the work, nor any extension of time nor possession taken by the City shall operate as a waiver of any portion of the contract, or any right to damage therein provided. The failure of the City to strictly enforce any provision of the contract shall not be a waiver of any subsequent breach of the same or different nature.

3.22 **Payments to Subcontractors:**

- A. In the event that the Contractor utilizes a subcontractor for any portion of the work under the contract, the Contractor shall take one of the two following actions within seven days after receipt of amounts paid to the Contractor by the City for work performed by a subcontractor under the Contractor:
1. Pay a subcontractor for the proportionate share of the total payment received from the City attributable to the work performed by that subcontractor under the Contractor; or
  2. Notify the City and any subcontractors, in writing, of its intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.
- B. The Contractor shall pay interest to a subcontractor on all monies owed by the Contractor that remain unpaid after seven days following receipt by the Contractor of payment from the City for work performed by a subcontractor under the contract, except for amounts withheld under subsection A.2 of this section. The Contractor's obligation to pay an interest charge to a subcontractor pursuant to the provisions of this section will not be construed to be an obligation by the City. A contract modification will not be made for the purpose of providing reimbursement for any such interest charge. A cost reimbursement claim will not include any amount for reimbursement for such interest charge.
- C. Unless otherwise provided under the terms of the contract, interest shall accrue at the rate of 1% per month. The Contractor shall include in each of its subcontracts a provision requiring each subcontractor to otherwise be subject to the same payment and interest requirements set forth in this section with respect to each lower-tier subcontractor.

3.23 **Payment Terms:**

- A. The City will remit full payment on all undisputed invoices in accordance with

the terms of the contract.

- B. The City will pay 1% interest per month on undisputed invoices not paid within 30 days after acceptance of the product and/or service(s), AND a properly completed invoice, whichever is later.
- C. **Getting Paid.** There are three conditions that need to be met before the City of Rockville can make a payment:
  - 1. The products and/or services must be received and accepted by the City
  - 2. The Contractor must submit a properly completed invoice
  - 3. The Contractor must file an IRS Form W-9 with the City (available at <http://www.irs.gov/pub/irs-pdf/fw9.pdf?portlet=3>)
- D. **ACH Payment:** The City of Rockville pays its contractors via an Automatic Clearing House (ACH) process in lieu of check payments delivered by the US Postal Service. The ACH process allows the Contractor to have its payment deposited directly to a designated financial institution account. A Contractor must complete and submit an ACH application (available at <http://www.rockvillemd.gov/DocumentCenter/View/429>) prior to receiving any payment from the City.
- E. Assignment of Contract Payment:
  - 1. The Contractor may assign to a bank, trust company, or other financing institution funds due or to become due as a result of the performance of a Contract, Delivery Order or Task Order.
  - 2. The assignment of payments does not relieve the Contractor of its responsibility to perform all aspects of the contract.
  - 3. Any assignment shall cover all unpaid amounts payable under the Contract, Delivery Order or Task Order, and shall not be made to more than one party.
  - 4. Notwithstanding an assignment of contract payments, the Contractor, not the assignee, is required to prepare invoices. Where such an assignment has been made, the original copy of the invoice must refer to the assignment and must show that payment of the invoice is to be made directly to the assignee as follows: "Pursuant to the instrument of assignment dated \_\_\_\_\_, make payment of this invoice to (name and address of assignee)."

### 3.24 **Prime Contractor:**

- A. If the proposal includes product, equipment, services, software or supplies

marketed by other suppliers, the Contractor shall act as the prime Contractor for all such items and services and shall assume full responsibility for the procurement and maintenance of such items or services. The Contractor shall be considered the sole point of contact with regard to all stipulations, including payment of all charges and meeting all requirements of this RFP.

- B. The Proposer shall include the full name, address, and telephone number of every company bearing an interest in the proposed equipment or services. All subcontractors will be subject to review by the City in regards to competency and security concerns. After the award of the contract no change in subcontractors will be made without the consent of the City.
- C. The Contractor shall be responsible for all insurance, permits, licenses, etc., for any and all sub-contractors. Even if the subcontractor is self-insured, the City will require the Contractor to provide the insurance certificates.
- D. Any subcontract does not relieve the Contractor from the prime responsibility of full and complete performance under this Contract. There shall be no contractual relationship between the City and the subcontractor.

**3.25 Proposer (Contractor) Must Be Authorized to Transact Business in the State of Maryland:**

- A. It is solely the Proposer's responsibility to ensure it is properly registered with the Maryland Department of Assessments and Taxation. (<http://www.dat.state.md.us/>)
- B. Each proposer shall complete the Affidavit Of Qualification To Contract With A Public Body and include with its proposal package
- C. The City may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

**3.26 Records and Right to Audit:**

The Contractor shall maintain such financial records and other records as may be prescribed by the City or by applicable Federal and State laws, rules, and regulations. The Contractor shall retain these records for a period of three years after final payment, or until they are audited by the City, whichever event occurs first. These records shall be made available during the term of the contract and the subsequent three-year period for examination, transcription, and audit by the City, its designees, or other authorized entities.

3.27 **Sensitive Information:**

- A. Sensitive information refers to non-public, privileged and/or proprietary information that only authorized City employees have access to and that is not accessible to the public. If sensitive information is compromised, lost, or used in any way other than intended, the result can be damage to the City of Rockville, its systems, citizens and customers.
- B. Some examples of sensitive information include, but are not limited to:
- Personally identifiable information, including Social Security Number and date of birth;
  - Bank account information and/or credentials;
  - Trade secrets;
  - System vulnerability reports;
  - Plans/blueprints, as-built drawings, or contract documents of City facilities.
- C. Any project participant requiring sensitive information to perform the requirements of the contract will be required to make application with, and receive approval from the City's Contract Administrator, or designee, prior to receiving this information. Permission to receive said information will pertain only to the individual approved.
- D. The Contractor shall ensure that any sensitive information (in any form – verbal, written, electronic) received from the City shall be handled consistent with the terms of non-disclosure required for application. The Contractor is responsible to restrict use of sensitive information to authorized participants only and shall take appropriate measures to prevent distribution of the sensitive information to anyone inside or outside of the Contractor's company except Contractor's authorized participants. After termination or expiration of the contract, any sensitive information or document(s) remaining in the Contractor's possession shall continue to be governed under the terms of non-disclosure and must continue to be stored in a secure manner. After the document(s) is (are) no longer needed for record purposes, the Contractor shall return the document(s) to the City.
- E. For any information to be provided to the Contractor where there is uncertainty whether it is "sensitive", the City shall have sole discretion to make such determination.
- F. Where services require the Contractor to access the City's electronic information

resources and/or its electronic data assets, the Contractor shall adhere to all requirements, terms and conditions of the City's Contractor/Vendor On-Site and Remote Access Confidentiality Agreement, which is available at:

<http://www.rockvillemd.gov/documentcenter/view/74>

- G. The Contractor shall not copy, display to other parties, or distribute City owned programs, proprietary data or information without the prior express written permission from the City's Purchasing Manager, City Attorney, or City Manager, or their designees.

3.28 **Termination of Contract**

A. Termination for Default.

1. Each term and condition of the contract is material and any breach or default by the Contractor in the performance of each such term and condition shall be considered a material breach or default of the entire Agreement for which the City shall have the right to terminate the contract immediately, without penalty or liability.
2. Cure Notice Process:
  - a. In the event that the Contractor does not perform in accordance with the terms of the contract, the Contract Administrator will issue a Request for Cure notice to the Contractor detailing the deficiency /default with recommended action(s) to be accomplished within a deadline for the Contractor to correct the deficiency / default, and, report the corrective action taken to the Purchasing Manager.
  - b. The Contractor shall:
    - i. Correct the deficiency / default within the specified time and report the corrective action taken to the Contract Administrator; or
    - ii. Submit a written request for review and decision by the Purchasing Manager within 10 days of receipt of the Request for Cure notice. The request shall include all pertinent details and documentation; or
    - iii. Take no action.
  - c. If the Contractor submits a timely written request for review and decision by the Purchasing Manager as provided in Section 3.29.A.2.b.ii., the Purchasing Manager shall review the issue and render a written decision to the Contractor and Contract Administrator within 30 days from receipt of the review request.



- d. Once the Contractor receives the Purchasing Manager's written decision, the Contractor shall then:
    - i. Comply with the decision and/or instructions in the Purchasing Manager's decision, and, report the corrective action taken to the Contract Administrator; or
    - ii. Submit a written appeal request to the City Manager within 10 days of receipt of the Purchasing Manager's decision. The appeal request shall include all pertinent details and documentation; or
    - iii. Take no action.
  - e. If the Contractor submits a timely written appeal to the City Manager, the City Manager shall proceed as provided in City Code Section 17-173, as amended."
  - f. If requests for review and/or appeal under this section are not timely submitted, such requests shall not be considered and shall be interpreted as if the Contractor has taken no action.
3. Show Cause Process:
- a. If the Contractor fails to comply with the decisions and instructions issued in the above steps, or pursuant to City Code Section 17-173, as amended, or, the Contractor chooses to take no action, the Purchasing Manager will issue a written Show Cause / Intention to Terminate Contract for Default Notice demanding that the Contractor show cause within five days as to why the contract should not be terminated for default.
  - b. The Contractor shall then ensure that a response to the Show Cause notice is received by the Purchasing Manager within the five day period. The Purchasing Manager will review the Contractor's response and take appropriate action.
  - c. If the Contractor takes no action, the City shall have the right, in its sole and absolute discretion, to terminate the contract on the expiration of the five day period.
4. Notice of Termination of Default.
- a. If the City determines that it will terminate the contract at the expiration of the five day show cause period, the Purchasing Manager shall:
    - i. officially notify the Contractor that the contract has been terminated for default;
    - ii. Instruct the Contract Administrator to begin the contract close-out process;

- iii. Assess and compile all the direct and indirect damages the City has or will sustain due to the Contractor's breach of contract, including but not limited to, administrative costs, re-procurement costs, loss of revenue, and costs of replacement services.
- b. The Purchasing Manager will coordinate with City staff to recover the City's damages from the Contractor.

**B. Termination for the City's Convenience.**

1. The Contractor agrees that the City may terminate the contract, or any work or delivery required hereunder, from time to time either in whole or in part, whenever the City Manager determines that such termination is in the best interests of the City.
2. Termination, in whole or in part, shall be effected by delivery of a Notice of Termination signed by the City Manager, or designee, mailed or delivered to the Contractor, and specifically setting forth the effective date of termination.
3. Upon receipt of such notice, the Contractor shall:
  - a. Cease any further deliveries or work due under the contract, on the date, and to the extent, which shall be specified in the notice;
  - b. Place no further orders with any subcontractor except as may be necessary to perform that portion of the contract not subject to the Notice;
  - c. Terminate all subcontracts except those made with respect to contract performance not subject to the notice;
  - d. Settle all outstanding liabilities and claims which may arise out of such termination, with the ratification of the Purchasing Manager; and
  - e. Use all reasonable efforts to mitigate any damages which may be sustained by it as a consequence of termination under this clause.
4. After complying with the foregoing provisions, the Contractor shall submit a termination claim, in no event later than 6 months after the effective date of its termination, unless an extension is granted by the Purchasing Manager.
5. The Purchasing Manager, with the approval of the City Manager, shall authorize payment all reasonable costs of termination, including a reasonable amount for profit on supplies or services delivered or completed. In no event shall this amount be greater than the original contract price, reduced by any payments made prior to Notice of Termination and further reduced by the price of the supplies not delivered, or the services not provided. This contract shall be amended accordingly, and the

Contractor shall be paid the agreed amount.

6. In the event that the parties cannot agree on the whole amount to be paid to the Contractor by reason of termination under this clause, the Purchasing Manager shall authorize payment to the Contractor the amounts determined as follows, without duplicating any amounts which may have already been paid under the preceding paragraph of this clause:
  - a. With respect to all contract performance prior to the effective date of Notice of Termination, the total of:
  - b. The total sum to be paid under (a) above shall not exceed the contract price, as reduced by the amount of payments otherwise made, and as further reduced by the contract price of work or supplies not provided.
  - c. Cost of work performed or supplies delivered;
  - d. The cost of settling and paying any reasonable subcontractor claims as provided in subparagraph (3) above;
  - e. A sum as profit on (a) determined by the Purchasing Manager to be fair and reasonable.
7. In the event that the Contractor is not satisfied with any payments which the Purchasing Manager shall determine to be due under this clause, the Contractor may appeal any claim to the City Manager in accordance with the Section 3.8 Disputes and Claims.
8. The Contractor shall include similar provisions in any subcontract, and shall specifically include a requirement that subcontractors make all reasonable efforts to mitigate damages which may be suffered. Failure to include such provisions shall bar the Contractor from any recovery from the City whatsoever of loss or damage sustained by a subcontractor as a consequence of termination for convenience.
- C. Termination by Mutual Agreement. During performance of the contract, if the City and the Contractor mutually agree that it would be in the best interests of both parties to terminate the contract, then fair and reasonable compensation shall be negotiated and the contract deemed completed.
- D. Termination for Non-Appropriation of Funds: If funds are not appropriated for any succeeding fiscal year subsequent to the one in which the contract is entered into, for the purposes of the contract, then the City may terminate the contract upon 30 days prior written notice to the Contractor. Should termination be accomplished in accordance with this section, the City shall only be responsible for payments for services performed through the date of termination.

**3.29 Waiver of Claims:**

Once the contract expires, or final payment has been requested and made, you, the Contractor, only have 30 calendar days to present or file any claim against the City concerning the contract. After that period, the City will consider that you have waived any right to claims against the City concerning the contract.

**\*\*\*END OF SECTION 3\*\*\***

**SECTION 4.0 - INSURANCE REQUIREMENTS**

4.1 Prior to the execution of the contract by the City, the Contractor must obtain at its own cost and expense and keep in force and effect during the term of the contract including all extensions, the following insurance with an insurance company/companies licensed to do business in the State of Maryland evidenced by a certificate of insurance and/or copies of the insurance policies. The Contractor's insurance shall be primary.

4.2 The Contractor must submit to the Purchasing Division, 111 Maryland Avenue, Rockville, MD 20850-2364 a certificate of insurance prior to the start of any work. In no event may the insurance coverage be less than shown below.

4.3 All insurance policies shall be issued by insurers licensed to do business in the State of Maryland and any insuring company is required to have a minimum rating of A- in the "Best Key Rating Guide" published by A.M. Best & Company, Inc.

4.4 Unless otherwise described in the contract the successful Contractor and each subcontractor will be required to maintain for the life of the contract and to furnish the City evidence of insurance as follows:

**4.5 MANDATORY REQUIREMENTS FOR INSURANCE**

Contractor's insurance coverage shall be primary insurance as respects the City, its elected and appointed officials, officers, consultants, agents and employees and any insurance or self-insurance maintained by the City, shall be excess of the Contractor's insurance and shall not be called upon to contribute with it.

<b>Type of Insurance</b>	<b>Amounts of Insurance</b>	<b>Endorsements and Provisions</b>
<p>1. <i>Workers' Compensation</i>                      2. <i>Employers' Liability</i></p>	<p>Bodily Injury by Accident:                      \$100,000 each accident</p> <p>Bodily Injury by Disease:                      \$500,000 policy limits</p> <p>Bodily Injury by Disease:                      \$100,000 each employee</p>	<p>Waiver of Subrogation:  <i>WC 00 03 13 Waiver of Our Rights to Recover From Others Endorsement – signed and dated.</i></p>
<p>3. <i>Commercial General Liability</i>                      a. Bodily Injury                      b. Property Damage                      c. Contractual Liability                      d. Premise/Operations                      e. Independent Contractors                      f. Products/Completed Operations                      g. Personal Injury</p>	<p>Each Occurrence: \$1,000,000</p>	<p>City shall be listed as additional insured and provided 30 day notice of cancellation or material change in coverage.  <i>CG 20 37 07 04 and CG 20 10 07 04 forms to be both signed and dated.</i></p>

<p><b>4. Automobile Liability</b>  a. All Owned Autos  b. Hired Autos  c. Non-Owned Autos</p>	<p>Combined Single Limit for Bodily Injury and Property Damage -  (each accident): \$1,000,000</p>	<p>City shall be listed as additional insured and provided 30 day notice of cancellation or material change in coverage.  <i>Form CA20 48 02 99 form shall be both signed and dated.</i></p>
<p><b>5. Excess/Umbrella Liability</b></p>	<p>Each Occurrence/Aggregate:  \$1,000,000</p>	<p>City shall be listed as additional insured and provided 30 day notice of cancellation or material change in coverage.</p>
<p><b>6. Professional Liability</b></p>	<p>Each Occurrence/Aggregate:  \$1,000,000</p>	

4.6 Alternative and/or additional insurance requirements, when outlined under the special provisions of this contract, shall take precedence over the above requirements in part or in full as described therein.

**4.7 POLICY CANCELLATION**

No change, cancellation or non-renewed shall be made in any insurance coverage without a 30 day written notice to the City Purchasing Division. The Contractor shall furnish a new certificate prior to any change or cancellation date. The failure of the Contractor to deliver a new and valid certificate will result in suspension of all payments and cessation of on-site work activities until a new certificate is furnished.

**4.8 ADDITIONAL INSURED**

The Mayor and Council of Rockville, which includes its elected and appointed officials, officers, consultants, agents and employees must be named as an additional insured on the Contractor’s Commercial and Excess/Umbrella Insurance for liability arising out of Contractor’s products, goods, and services provided under this contract. Additionally, The Mayor and Council of Rockville must be named as additional insured on the Contractor’s Automobile and General Liability Policies. Endorsements reflecting the Mayor and Council of Rockville as an additional insured are required to be submitted with the insurance certificate.

**4.9 SUBCONTRACTORS**

All subcontractors shall meet the requirements of this Section before commencing work. In addition, Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.10 CERTIFICATE HOLDER

The Mayor and Council of Rockville

City Hall

Contract RFP 09-14

111 Maryland Avenue

Rockville, MD 20850-2364

**---END OF SECTION 4---**

## SECTION 5.0 – SUBMITTAL REQUIREMENTS

### 5.1 Submittal Requirements:

- A. A firm, organization, joint venture, or individual (hereafter “proposer”) interested in submitting a proposal (offer) in response to this RFP should submit:
- **ONE ORIGINAL** signed proposal package, marked "ORIGINAL," and
  - **FIVE COPIES** of the proposal package, each marked "COPY" in paper format, and,
  - **ONE CD / DVD** of the complete proposal package, (See Section 5.3.I below), and
  - **ONE redacted CD / DVD** (See Section 5.3.J below), and
  - **ONE ORIGINAL** Price Proposal and **ONE CD/DVD** of Price Proposal in Separate Envelope
- B. The City will consider how well you follow these instructions during the evaluation process.

### 5.2 Economy of Presentation:

- A. You, the Proposer, should prepare your proposal simply and economically, providing a straightforward, concise description of your capabilities to satisfy the conditions and requirements of this RFP. The City does not desire fancy bindings, colored displays, or promotional material unless it specifically enhances the City's understanding of your offer. Your emphasis should be on completeness and clarity of content.
- B. The City is not liable or responsible for any costs incurred by you or any Proposer in responding to this RFP including, without limitation, costs for presentations, demonstrations, or interviews, if requested or required.

### 5.3 Proposal Guidelines:

- A. To facilitate analysis of your proposal, you should prepare your proposal in accordance with the instructions outlined in this section.
- B. The City emphasizes that you should concentrate on accuracy, completeness, and clarity of content. **Do not assume that you will have any opportunity to make a presentation or explain any item or detail.**



- C. Cross Referencing: To the greatest extent possible, you should compose each section on a stand-alone basis so that its contents may be evaluated with a minimum of cross-referencing to other sections of the proposal. Unless otherwise clearly noted in a section, the Technical Evaluation Team members will assume that information requested for proposal evaluation which is not found in its designated section has not been included in the proposal.
- D. Indexing: You should include a table of contents to delineate the topics and subsections for each Tab with more than five pages.
- E. Glossary of Definitions, Abbreviations and Acronyms:
1. You should include a glossary of all key words or phrases that if misinterpreted by the City would impact the evaluation of your proposal.
  2. You should identify and spell out any abbreviation or acronym used, with an explanation for each.
  3. Glossaries do not count against the page limitations for their respective sections.
- F. Page Size and Format:
1. A "page" is defined as all information that can be legibly printed within one piece of 8.5 x 11 inch piece of paper in accordance with the requirements #2-6 below:
  2. Text should be single-spaced;
  3. Text should be left justified;
  4. Text should be printed in a "portrait" layout;
  5. The text size should be not less than 11 point or more than 14 point;
  6. Margins should be one inch on all four sides;
  7. Pages should be numbered sequentially by Tab and Section; and
  8. Printed materials should be duplexed / double-sided printing on sustainable materials as long as it does not prevent a reader from clearly understanding the proposal.
- G. You should submit legible tables, charts, graphs, figures, and pictures wherever practical to depict organizations, systems and layouts, implementation schedules, plans, etc. These displays should be uncomplicated and should capable of being legible and understandable if printed on 8.5 x 11 inch paper.
- H. Binding and Labeling:
1. You should submit the original paper proposal in a three-ring loose leaf binder, with section tabs, which should permit the proposal to lie flat when opened.
  2. You should not staple pages together.
  3. You should include a cover sheet in each binder, clearly **marked RFP #09-14, Owner's Representative / Construction Project Management Services**, the

Proposer's name, and the volume number of the binder. You should place the same identifying on the spine of each binder.

I. Proposal Package:

1. You shall provide a single copy of the proposal package for this RFP in the required paper format described above with all the original signatures in a pen ink color other than black or white. Digital or electronic signatures are not acceptable.
2. You should submit ONE complete copy of the entire proposal on CD-R or DVD compact disc(s). Do not submit CD-RW or DVD-RW discs.
3. You should include on the CD or DVD compact disc(s), in addition to all of the required proposal submittal information, a text "INDEX" file that lists all files on the CD with the complete file name (filename plus extension) and a concise written description of what is included in the file.
  - a) You should submit all text files in the PDF format.
  - b) You should submit spreadsheets in a Microsoft Excel 2007 or Excel 2010 format.
  - c) You should submit pictures, photos, and/or drawings in JPG, BMP or GIF formats.
  - d) You should submit video clips in a .WMV format.
  - e) You should clearly print **RFP # 09-14 Owner's Representative / Construction Project Management Services** and the Proposer's name directly on the top surface of each disc with an indelible marker. Enclose each disc in a rigid plastic protective case. Cases do not need labels.

- J. Redacted CD/DVD: Submit one additional CD/DVD redacted in accordance with any requested applicable exemptions from disclosure in the Maryland Public Information Act. This CD/DVD may be used to respond to any Maryland Public Information Act (FOIA) request. You should clearly print **RFP # 09-14 Owner's Representative / Construction Project Management Services REDACTED** and the Proposer's name directly on the top surface of the disc with an indelible marker. Enclose the disc in a rigid plastic protective case. (See Section 2.23 Limited Confidentiality of Information).

- K. Electronic (e-mail) or facsimile (FAX) submission of proposals is not permitted for this RFP.

#### 5.4 Proposal Sections:

You should organize your proposal into the following major sections.

#### **Tab 1 - Proposer Profile & Required Information:**

- A. Cover Letter / Statement of Interest: (not more than one page). This should focus only on introducing your organization and your commitment to solving the City's challenge. All other marketing materials should be included in Tab 1 Section C.
- B. Understanding of Project: (not more than three pages). Describe in your own terms what value adding services you think the City desires from an awarded Contractor. Succinctly describe in your own terms what you think are the City's anticipated outcomes by using an Owner's Representative / Construction Project Management organization.
- C. Proposer Profile and History: (not more than six pages)
1. Provide a brief background of the organization.
  2. Succinctly describe the organization's mission and basic philosophies as they relate to the services under consideration.
  3. Provide the names, titles, and areas of responsibilities of the owners/partners.
  4. Describe the types of projects that the organization typically performs.
  5. Describe the organization's knowledge and familiarity with the local political, legal, and cultural situations.
- D. Owner's Representative / Construction Project Management Approach: (not more than five pages). Describe your organization's philosophical approach to Owner's Representative / Construction Project Management services. How will your organization approach a construction project with the City? Describe the factors that influence this approach.
- E. Project Risk Analysis:
1. Describe the processes that you will use to assess the risk factors associated with managing a City construction project.
  2. Describe the project risks you identified on recent Owner's Representative /Construction Project Management Services projects. Describe how you worked with the Owner, Construction Team, and any other teams to prevent and/or mitigate the risks.
- F. Incentive Contracting:
1. Describe your organization's philosophy on using contract incentives / disincentives to expedite construction projects and/or to reduce total costs of ownership.
  2. Describe any specific contract(s) that your organization has been a party where contract incentives / disincentives have been used.
  3. Describe the outcome(s) of each.

G. Innovative and Technological Resources:

1. Describe any innovative process(es) that your organization has used in managing a public construction project and the benefits that the innovation process yielded to the Owner.
2. Describe the communication and scheduling tools and how you will use them to manage and control the project (e.g.: Microsoft Project<sup>®</sup>, Primavera<sup>®</sup>, Sharepoint<sup>®</sup>, etc.). Provide samples of some of the outputs from these tools.
3. Describe any Building Information Modeling systems that you currently use in the design and management of construction projects. Describe how you will use the tool in your construction project management processes. Provide samples of some of the outputs from these tools.
4. Describe how your organization performs value-engineering analysis. Describe how you determine and communicate the costs /benefits of your value-engineering process among the Owner (City of Rockville), Design Team, and Construction Team.

H. Green Buildings / Sustainability / LEED<sup>®</sup>:

Describe your organization's experience working with design professionals and construction organizations to construct new "green" / sustainable facilities and/or remodel / renovate existing facilities with more environmentally considerate impacts. Include any projects aimed at obtaining a Leadership in Energy & Environmental Design (LEED)<sup>®</sup> certification.

- I. Exceptions: List any exception that you as the Proposer may have concerning any requirement or item set forth in the RFP document or associated addenda.

- J. Acknowledgement of Addenda (if any).

K. Forms:

1. Affidavit Of Qualification To Contract With A Public Body
2. Non—Collusion Affidavit

**Tab 2 – Specialty Areas**

- A. For each of the following specialty areas that you want to be considered for award, provide all of the required information (Sections 1, 2, and 3). Do not cross reference information from one specialty area to another since the difference specialties may be evaluated by different Technical Evaluation Teams.
- B. Label your proposal tab as follows:

Tab 2A	Aquatic Center renovations, including swimming pools and pool facilities
Tab 2B	ADA compliant construction, remodeling, and renovations
Tab 2C	Remodeling and renovation of historic facilities
Tab 2D	Construction / renovation of parks, sports fields, recreation areas, and related parking areas.
Tab 2E	Construction of roads, sidewalks, bridges, and drainage systems
Tab 2F	Remodeling / renovation of existing buildings and facilities, including industrial buildings
Tab 2G	New facility construction
Tab 2H	Potable water systems – installing, replacing, repairing underground piping systems, including trenchless projects
Tab 2J	Water Treatment Plant Systems, including pumping systems, disinfection systems
Tab 2K	Wastewater systems - installing, replacing, repairing underground piping systems, including trenchless projects
Tab 2L	Stormwater systems
Tab 2M	Job Order Contracting (JOC) proposal analysis and contract administration

1. Proposer Experience:

Describe at least two recent Owner's Representative / Construction Project Management projects completed within the last five years by the Proposer and/or its principles similar in subject and scope to the City's requirements. Include:

- a. Project description
- b. Project owner / agency
- c. Project owner's / agency's contact person with telephone number and e-mail address
- d. Initial project budget
- e. Final project cost
- f. Date project initiated
- g. Date project completed and accepted by project owner

- h. Challenges encountered and solutions provided
  - i. Proposer's Construction Project Manager with telephone number and e-mail address
2. Proposed Construction Project Manager(s): List the full name, business address, telephone, cell phone, and e-mail address of the individual(s) that may act as the Construction Project Manager for the projects. Provide a resume of the individual's background and skills in managing similar projects. List the following information:
- a. Years of experience within the area of specialty;
  - b. Length of and type of service with organization;
  - c. Education and formal training,
  - d. Include copies of any pertinent licenses / certifications. Extra evaluation consideration will be given to proposed Construction Project Manager(s) with current Certified Construction Manager (CCM) credentials.
3. Proposed Project Team:
- a. List the full names and functional titles of all key personnel that will be part of the project. (Key personnel - any person whose actions or inactions can impact the successful outcome of the project.) This includes any proposed sub-contractors' personnel.
  - b. Describe precisely what role each person will perform in this project.
  - c. Attach a resume / CV for each person.
  - d. Attach a list of similar projects in which the person has participated.

NOTE: The City reserves the right to have a background check(s) - professional, criminal, financial – conducted on any person proposed for this project.

**Tab 3 – References:**

- A. Provide at least three references not included in one of the Tab 2 subsections.
- B. Include the following minimum information for each reference:
  - 1. Agency Name
  - 2. City / State
  - 3. Agency Contact Person
  - 4. Agency Contact Person's telephone number
  - 5. Agency Contact Person's Email Address
  - 6. Project Description
  - 7. Project Start Date
  - 8. Project Close-out Date

9. Name of your Construction Project Manager
10. Description of Work Performed

**C. The City of Rockville, MD, cannot be used as a reference; however all past performance with the City will be considered during the evaluation process.**

**Tab 4 - Litigation:**

Provide information on the nature, magnitude, and outcome of all litigation and proceedings for the previous 8 years where a court or administrative agency has ruled for or against you or your organization in any matter related to you or your organization's professional activities. The City reserves the right to conduct additional research, including but not limited to LexisNexis® searches, concerning any proposer.

**Tab 5 - Subcontractors / Joint Ventures:**

- A. Provide a list of any proposed sub-contractors that the proposing organization may use on a project. Provide the same information required in Tab 1 Sections C, D, G, H, I, and K for each sub-contractor.
- B. If a partnership or joint venture is proposed, the partnership or joint venture must be properly registered with the State of Maryland prior to the submittal of the proposal. In addition to completing Tabs 1-9 for the partnership or joint venture, a complete Tab 1 Section C and Tabs 4, 5, and 6 are required for each party forming the joint venture or partnership.

**Tab 6 - Other Information:**

Provide any information that will provide insight to the City about your qualifications, fitness and abilities not otherwise provided in one of the other tabs. This information should be pertinent and succinct.

**Tab 7 - Price Proposal: Submit one paper copy and one CD/DVD in a separate envelope / package.**

- A. In addition to completing the table listed in Section F.3 below, provide the major labor categories for each type of person anticipated to work on a City project.
- B. Include the maximum fully burdened labor rate for each labor category. These rates shall be firm for at least one year after the contract is signed by the City.

- C. Provide a list of any additional expense associated with managing a project with the maximum rate per day/ week/ month. (e.g.: on-site trailer). These rates shall be firm for at least one year after the contract is signed by the City.
- D. Provide the maximum mark-up rate for sub-contractors anticipated. This mark-up rate shall include your general administrative and overhead rates and profit and shall be firm for the term of the contract (not-to-exceed ten percent).
- E. Describe your billing process to create and maintain the required documentation and provide examples.
- F. All pricing will be negotiated for each Task Order based upon the proposed pricing included in your proposal; however to evaluate each proposer's prices, the City will use the following scenario to ensure as fair as possible comparisons.
  - 1. The City wants to bring a 3 story registered historic building up to code including making ADA additions to the facility and ancillary parking areas. The project includes a revised kitchen area, ADA restroom upgrades on all three floors, interior and exterior ramps, electrical & plumbing upgrades, and modifications to a 1930's model elevator while maintaining the required historic elements of the facility. The site work includes adding ADA ramps, grades, and changing the layout of the parking area. The project estimate is \$500,500 with an estimated 5 month completion time after Notice to Proceed.
  - 2. Provide an estimate of the number of hours for the assigned Construction Project Manager and all associated specialists and their fully burdened hourly prices, and any other costs that you would associate with a project such as this. Add lines as required.



3. Please provide your estimate in the following table format.

Labor Category	Estimated hours	Fully Burdened Hourly Cost	Extended Cost (Hours X Hourly cost)
Construction Project Manager			
		Total Labor Costs	
Additional Costs	Estimated units	Fully Burdened Unit Cost	Extended Cost (Units X Unit cost)
		Total Additional Costs	
Documentation Costs	Estimated units		
		Total Estimated Project Cost	

---END OF SECTION 5---

**SAMPLE CONTRACT**

*Do not complete or return*

**PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT, made this XX day of \_\_\_\_\_, 2014 by and between the **MAYOR AND COUNCIL OF ROCKVILLE**, a municipal corporation organized under the laws of Maryland, hereinafter referred to as the "**CITY**", and <CONTRACTOR'S NAME> hereinafter referred to as "**CONTRACTOR**".

WITNESSETH

WHEREAS, the City desires the Contractor to provide Owner's Representative / Construction Project Management Services.

WHEREAS, the City desires to employ the services of the Contractor in connection with the aforementioned service under the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the covenants and promises set forth, the parties hereto agree as follows:

1. **SCOPE OF WORK.** The Contractor agrees to perform the work described and be bound by the terms and conditions set forth in RFP 09-14 Owner's Representative / Construction Project Management Services hereto attached and made a part hereof and identified as Exhibit "A" and in the CONTRACTOR'S proposal dated xxxx hereto attached a made a part hereof and identified as Exhibit "B;" < reference other attachments as necessary> In the event any terms of the attached exhibits conflict with this Agreement, this Agreement shall prevail. <if numerous exhibits list prevailing exhibit(s)>

Contractor shall perform the services described in this Agreement (a) in a timely, diligent and professional manner in accordance with recognized standards of the applicable industry or profession, and; (b) in accordance with the time periods set forth in this Agreement and in the schedule and sequencing specified by the City. Contractor shall furnish efficient business administration and superintendence and shall use its best efforts to ensure that such services being performed under this Agreement are completed in the best way and in the most expeditious and economical manner consistent with the City's best interests.

2. **REVIEW BY CITY.** The Contractor agrees that the work and records covered by this Agreement will be subject to review, at all times, by representatives of the City.

3. **OWNERSHIP RIGHTS.** All finished or unfinished documents, data, studies, surveys, drawings, CADD drawings, maps, models, photographs, letters and reports prepared by the Contractor or its subcontractors shall become the property of the City.

4. **EQUAL EMPLOYMENT OPPORTUNITY.** During the performance of this Agreement, the Contractor agrees that he will comply with all applicable federal, state and local laws relating to discrimination in employment.

5. **INDEMNIFICATION.** The Contractor agrees to indemnify and save harmless the City against any liability, claim, demand for personal injury or property damage, and other expenses or losses suffered or arising out of or caused by any negligent act or omission of the Contractor, its subcontractors, servants, agents or employees incurred in the performance of the Agreement.

6. **TIME OF ESSENCE.** The Contractor acknowledges that time is of the essence in providing the services

under this Agreement and agrees to assign adequate personnel sufficient to respond to requests for service.

7. **CONTRACT TERM.** This Agreement shall be effective upon execution of the contract and shall continue through <TERM/ OR COMPLETION DATE>

8. **TERMINATION FOR CONVENIENCE.** The City may terminate this Agreement for convenience by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. If the Agreement is terminated by the City as provided in this Section the Contractor will be paid on a pro-rata basis for work performed prior to the effective date of such termination.

9. **TERMINATION FOR CAUSE.** If through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligation under this Agreement, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. If the Agreement is terminated by the City as provided in this Section the Contractor will be paid an amount based on the number of hours actually worked at the hourly rates set forth herein, or if no hourly rate is set forth, Contractor shall be paid on a pro-rata basis for work performed. Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by the Contractor, and the City may withhold any payments due the Contractor up to the full amount of the Contractor's fee, until such a time as the exact amount of damages due the City from the Contractor is determined by any Court of competent jurisdiction.

10. **COMPLIANCE WITH LAWS.** The Contractor shall observe and comply with Federal, State, County and local laws, ordinances and regulations that affect the work to be done herein, and shall indemnify and hold the City harmless, and all of its officers, agents and servants against any claim or liability from or based on the violation of any such law, ordinance or regulation, whether by the Contractor or the Contractor's agent. Notwithstanding the foregoing, in the event that the Contractor determines that a conflict exists between any applicable law, ordinance and/or regulation, the Contractor will so advise the City and the City will decide which law, ordinance and/or regulation shall be followed.

11. **SUBCONTRACTS.** None of the services covered by this Agreement shall be subcontracted without the prior written consent of the City. The Contractor will require all subcontractors to have in effect at all times insurance coverage as required by the City in Exhibit "A" for negligent acts, errors and omissions of subcontractors and their employees and the City shall be named as an insured party.

12. **ASSIGNMENT.** The Contractor shall not assign or transfer any interest in this Agreement without the prior written approval of the City.

13. **INSURANCE.** The Contractor shall carry insurance with limits as required in Exhibit "A" by the City and shall provide to the City a certificate evidencing the same.

14. **CONFLICTS OF INTEREST.** The Contractor covenants that it has presently no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required to be performed under this Agreement. The Contractor further covenants that in the performance of this Agreement no person having any such interest shall be employed.

15. **DISPUTES.** Except as otherwise provided in this agreement, any dispute concerning a question of fact arising out of this agreement which is not disposed of by agreement, shall be decided in accordance with Section 17-

174 of the City's Purchasing Ordinance as set forth in Chapter 17 of the Rockville City Code.

16. GOVERNING LAW. This Agreement is executed in the State of Maryland and shall be governed by Maryland law. The Contractor, by execution of this Agreement, consents to the jurisdiction of the Maryland state courts with respect to any dispute arising out of this agreement and further consents to venue in Montgomery County, Maryland.

17. SUCCESSORS AND ASSIGNS: This Agreement shall be binding and inure to the benefit of all successors and assigns of the parties hereto. Notwithstanding the foregoing, this Agreement shall be considered a personal services contract and the Contractor shall not assign any right or obligation under this Agreement without the City's express written consent which may be withheld in the City's sole and absolute discretion.

18. INDEPENDENT CONTRACTOR. The Contractor shall perform this Agreement as an independent contractor and shall not be considered an agent of the City, nor shall any of the Contractor's employees or agents be subagents of the City.

19. COMPENSATION. The Contractor shall provide to the City the services described in the amount not to exceed <OR LUMP SUM \$>. In the event the labor hours and expenses exceed this amount the Contractor shall complete the task with no additional compensation.

20. INVOICING. Invoices for payment shall include a complete description of the services rendered, personnel, hourly rates, hours and date of services. All invoices shall be submitted to the City of Rockville, Attn: xxxx, 111 Maryland Avenue, Rockville, MD 20850.

21. MODIFICATION. This agreement may be modified only by written instrument signed by both parties hereto.

22. ENTIRE AGREEMENT. This agreement, including the exhibits attached hereto, constitutes the entire agreement between the City and the Contractor, and the parties shall not be bound by any prior negotiation, representations or promises, not contained herein.

IN WITNESS WHEREOF, the said (See Note A) [insert Contractor's full legal name] and COUNCIL have caused these presents to be signed and sealed.

**For Corporations.**

Corporation: \_\_\_\_\_

Signature: \_\_\_\_\_ (Seal)\*

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

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

(Either president or vice-president. If other person is authorized, authorization in form of corporate resolution must be attached.)

Witness: \_\_\_\_\_

(Should be secretary or Asst. secretary.)

**\*Corporate seal must be impressed through name of person signing for corporation.**

**For individuals or partnerships.**

Company Name: \_\_\_\_\_

Signature: \_\_\_\_\_ (Seal)  
(Either owner or partner)

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

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

Witness: \_\_\_\_\_

MAYOR AND COUNCIL OF ROCKVILLE, MARYLAND

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Barbara Matthews, City Manager

ATTEST

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Douglas Barber, City Clerk

Approved as to form and legality:

\_\_\_\_\_  
City Attorney Date: \_\_\_\_\_

\_\_\_\_\_

**NOTE (A): The CONTRACTOR shall enter the exact legal name of the business. An individual trading as a company shall enter: John Doe dba Doe Masonry Company.**

**Non—Collusion Affidavit**

**Complete, Sign and Return with your proposal.**

I hereby affirm that: I am the \_\_\_\_\_ (insert title) and the duly authorized representative of \_\_\_\_\_ (insert organization name) whose address is

---

And, that I possess the legal authority to make this affidavit on behalf of myself and the firm for which I am acting.

I affirm:

1. I am fully informed respecting the preparation and contents of the attached offer / proposal and of all pertinent circumstances respecting such offer / proposal;

2. Such offer / proposal is genuine and is not a collusive or sham offer / proposal.

3. Neither the said Proposer nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other proposer, firm or person to submit a collusive or sham offer / proposal in connection with the Contract for which the attached offer / proposal has been submitted or to refrain from offering a proposal in connection with Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other proposer, firm or person to fix the price or prices in the attached offer / proposal or of any other proposer, or to fix any overhead, profit or cost element of the offer / proposal or the offer price of any other proposer, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the Mayor and Council of Rockville, Maryland (Local Public Agency) or any person interested in the proposed Contract; and

4. The price or prices quoted in the attached offer / proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Proposer or any of its agents, representatives, owners, employees, or parties in interest, including this affiant. I do solemnly declare and affirm under the penalties of perjury that the contents of this affidavit are true and correct.

Signature

---

Printed Name

---

Title

---

Date

---

**Affidavit of Qualification to Contract with a Public Body**

**Complete, Sign and Return with your proposal.**

I hereby affirm that: I am the \_\_\_\_\_ (insert title) and the duly authorized representative of \_\_\_\_\_ (insert organization name) whose address is \_\_\_\_\_

And, that I possess the legal authority to make this affidavit on behalf of myself and the firm for which I am acting.

I affirm:

1. Except as described in Paragraph 2 below, neither I nor the above firm nor, to the best of my knowledge, any of its controlling stockholders, officers, directors, or partners, performing contracts with any public body (the State or any unit thereof, or any local governmental entity in the State, including any bi-county or multi-county entity), has:

A. been convicted under the laws of the State of Maryland, any other state, or the United States of any of the following:

- (1) bribery, attempted bribery, or conspiracy to bribe.
- (2) a criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract.
- (3) fraud, embezzlement, theft, forgery, falsification or destruction of records, or receiving stolen property.
- (4) a criminal violation of an anti-trust statute.
- (5) a violation of the Racketeer Influenced and Corrupt Organization act, or the Mail Fraud Act, for acts in connection with the submission of bids or proposals for a public or private contract.
- (6) a violation of Section 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland.
- (7) conspiracy to commit any of the foregoing.

B. pled *nolo contendere* to, or received probation before verdict for, a charge of any offense set forth in subsection A of this paragraph.

C. been found civilly liable under an anti-trust statute of the State of Maryland, another state, or the United States for acts or omissions in connection with the submission of bids or proposals for a public or private contract.

D. during the course of an official investigation or other proceeding, admitted, in writing or under oath, an act or omission that would constitute grounds for conviction or liability under any law or statute described in subsection A or C of this paragraph.

2. [State "none," or as appropriate, list any conviction, plea or admission as described in Paragraph 1 above, with the date, court, official or administrative body, the individuals involved and their position with the firm, and the sentence or disposition, if any]. \_\_\_\_\_

3. I further affirm that neither I nor the above firm shall knowingly enter into a contract with the Mayor and Council of Rockville under which a person or business debarred or suspended from contracting with a public body under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland, will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

I acknowledge that this Affidavit shall be furnished to the Mayor and Council of Rockville and, where appropriate, to the State Board of Public Works and to the Attorney General. I acknowledge that I am executing this Affidavit in compliance with the provisions of Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland which provides that persons who have engaged in certain prohibited activity may be disqualified, either by operation in law or after a hearing, from entering into contracts with the Mayor and Council of Rockville. I further acknowledge that if the representations set forth in this Affidavit are not true and correct, the Mayor and Council of Rockville may terminate any contract awarded, and take any other appropriate action.

Signature

Printed Name

Title

Date

### Proposal Checklist

Please return with the Original Proposal Package

Before submitting your proposal package, review the submittal requirements and ensure each section is included. Failure to include the required materials may preclude the Technical Evaluation Team from considering your proposal.

RFP Reference	Description	✓	By (initial)	For City Use
Sect. 5.3.I	Paper Proposal Package (1 Original + 5 Copies)			
Sect. 5.3.I	1 CD / DVD with complete proposal package			
Sect. 5.3.J	1 Redacted CD/DVD			
Sect. 5.4 Tab 1 Sec A	Cover Letter / Statement of Interest			
Sect. 5.4 Tab 1 Sec B	Understanding of Project Synopsis			
Sect. 5.4 Tab 1 Sec C	Proposer Profile			
Sect. 5.4 Tab 1 Sec D	Project Risk Analysis			
Sect. 5.4 Tab 1 Sec E	Incentive Contracting			
Sect. 5.4 Tab 1 Sec F	Technological Tools and Resources			
Sect. 5.4 Tab 1 Sec G	Green Building / LEED			
Sect. 5.4 Tab 1 Sec H	Exceptions			
Sect. 5.4 Tab 1 Sec I	Addenda			
Sect. 5.4 Tab 1 Sec J	<b>SIGNED</b> Non—Collusion Affidavit			
Sect. 5.4 Tab 1 Sec J	<b>SIGNED</b> Affidavit Of Qualification To Contract With A Public Body			
Sect. 5.4 Tab 2	Specialty Areas (Complete Sections 1, 2, 3 for each Specialty Area for consideration)			
Sect. 5.4 Tab 2.1	Proposer Experience			
Sect. 5.4 Tab 2.2	Proposed Construction Project Manager(s)			
Sect. 5.4 Tab 2.3	Proposed Project Team			
Sect. 5.4 Tab 3	References			
Sect. 5.4 Tab 4	Litigation			
Sect. 5.4 Tab 5	Subcontractors / Joint Ventures			
Sect. 5.4 Tab 6	Other Information			
Sect. 5.4 Tab 7	Price Proposal + CD of Price proposal Submit 1 original in separate envelope / package			