

HARRISONBURG-ROCKINGHAM REGIONAL SEWER AUTHORITY
SUPPLEMENTAL TERMS AND CONDITIONS

APPLICABLE LAWS AND COURTS: This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth serving Rockingham County. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.

ANTI-DISCRIMINATION: By submitting their proposals, offerors certify to the Harrisonburg-Rockingham Regional Sewer Authority that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Code*.

In every contract over \$10,000 the provisions below apply:

1. During the performance of this contract, the contractor agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, status as a service disabled veteran, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.

The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

2. **HRRSA does not discriminate against small and minority businesses or faith based organizations.**

ETHICS IN PUBLIC CONTRACTING: By submitting their proposals, offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

IMMIGRATION REFORM AND CONTROL ACT OF 1986: By submitting their proposals, offerors certify that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

DEBARMENT STATUS: By submitting their proposals, offerors certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

ANTITRUST: By entering into a contract, the contractor conveys, sells, assigns, and transfers to HRRSA all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by HRRSA under said contract.

MANDATORY USE OF FORMS AND TERMS AND CONDITIONS: Failure to submit a proposal on the form provided, (if provided) shall be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, HRRSA reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.

REVISIONS TO THE OFFICIAL RFP: No offeror shall modify, revise, edit or make any unauthorized change(s) to the original Official Request for Proposal (RFP). The Official solicitation document and the Addenda are the documents posted on the HRRSA and eVA web sites and/or authorized by HRRSA. Any such violation as stated above may result in rejection of the RFP response. In addition, violations may result in the debarment of the offeror by HRRSA.

VIRGINIA CLEAN WATER REVOLVING LOAN FUND (VCWRLF) CONTRACT REQUIREMENTS

The Contractor is hereby obligated to comply with all provisions including all recordkeeping and reporting requirements of the 2014 VCWRLF Contract Inserts during the performance of this Contract. The 2014 VCWRLF Contract Inserts are attached to this solicitation as part of the Project Manual Attachment B.

CLARIFICATION OF TERMS: If any prospective offeror has questions about the specifications or other solicitation documents, the prospective offeror should contact the person whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by HRRSA.

PAYMENT:

1. To Prime Contractor: Refer to “Form of Agreement Between Owner and Contractor for Construction Contract (Stipulated Price)” and ‘Modified Standard General Conditions of the Construction Contract”.
2. To Subcontractors:
 - a. A contractor awarded a contract under this solicitation is hereby obligated:
 - (1) To pay the subcontractor(s) within seven (7) days of the contractor’s receipt of payment

from HRRSA for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or

(2) To notify HRRSA and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.

b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from HRRSA, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee.

c. Any such contract awarded shall further require the contractor to include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower- tier subcontractor. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of HRRSA.

PRECEDENCE OF TERMS: HRRSA's Supplemental Terms and Conditions shall apply in all instances. In the event there is a conflict in this solicitation between HRRSA's Supplemental Terms and Conditions and any other Special, Standard or Supplementary Terms and Conditions, including VCWRLF Contract Inserts if applicable, the more stringent of the Special, Standard or Supplementary Terms and Conditions shall apply.

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

TESTING AND INSPECTION: HRRSA reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

ASSIGNMENT OF CONTRACT: A contract shall not be assignable by the contractor in whole or in part without the written consent of HRRSA.

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

1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.

2. The HRRSA Executive Director may order changes within the general scope of the contract at any

time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give HRRSA a credit for any savings.

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

CANCELLATION OF THE CONTRACT: HRRSA may terminate any agreement resulting from this solicitation at any time, for any reason or for no reason, upon thirty days advance written notice to the Contractor. In the event of such termination the Contractor shall be compensated for services and work performed prior to termination.

TAXES: Sales to HRRSA are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request.

USE OF BRAND NAMES: Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict offerors to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the public body, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The offeror is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable HRRSA to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the offeror clearly indicates in its proposal that the product offered is an "equal" product, such proposal will be considered to offer the brand name product referenced in the solicitation.

INSURANCE: The Contractor shall obtain insurance coverage per the Modified Standard General Conditions. Workers' compensation coverage shall be required pursuant to the provisions of §2.2-4332 and §65.2-800 et seq. of the *Code of Virginia* and shall provide to the Harrisonburg-Rockingham Regional Sewer Authority, a certificate of insurance showing evidence of such coverage prior to the award of the contract. If any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §2.2-4332 and §65.2-800 et seq. of the *Code of Virginia*. The Contractor and any subcontractors shall maintain these insurance coverages during the entire term of the contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

PERFORMANCE AND PAYMENT BONDS: The Contractor shall furnish the following bonds:

1. A performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract.

2. A payment bond in the sum of the contract amount. The bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any Subcontractors in the furtherance of the work provided for in the Contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied or performed in the furtherance of the work.
3. Each of the bonds shall be executed by one or more surety companies selected by the Contractor that are authorized to do business in Virginia.

Nothing in this section shall preclude the Contractor from requiring each Subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon payment to all persons who have and fulfill contracts that are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the Subcontract.

SELECTION PROCESS/AWARD: Upon the award or the announcement of the decision to award a contract as a result of this solicitation, HRRSA will notify all responsive offerors.

PROPOSAL ACCEPTANCE PERIOD: A proposal may not be withdrawn after the time and date proposals must be received and for sixty (60) days thereafter; except that a proposal may be withdrawn due to error as otherwise provided per §2.2-4330 of *Virginia Code*.

EXCUSABLE DELAY: HRRSA shall not be in default of any failure in performance of this agreement in accordance with its terms if such failure arises out of causes beyond its reasonable control and without the fault of or negligence of HRRSA. Such causes may include, but are not restricted to acts of God or the public enemy, fires, flood, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the failure to perform must be beyond the reasonable control and without the fault or negligence of HRRSA.

DRUG-FREE WORKPLACE: During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

SAFETY and OSHA STANDARDS: All parties performing services for HRRSA shall comply with all Occupational Safety and Health Administration (OSHA), State Occupational Health Standards, and any other applicable rules and regulations. All parties shall be held responsible for the training, supervision, and safety of their employees. Any unsafe acts or hazardous conditions that may cause injury or damage to any persons or property within and around the work site areas under this contract shall be remedied per the regulatory agency's guidelines.

PERMITS AND FEES: All proposals submitted shall have included in price the cost of any business or professional licenses, permits or fees required by HRRSA or the Commonwealth of Virginia. The offeror must have all necessary licenses to perform the services in Virginia and, if practicing as a corporation, be authorized to do business in the Commonwealth of VA.

COOPERATIVE PROCUREMENT: This procurement is being conducted on behalf of other public bodies, in accordance with §2.2-4304 (A) of the *Code of Virginia*. The successful offeror has the option to provide these same services, **except architectural and engineering services**, at the same prices, awarded as a result of this solicitation to any public body within the Commonwealth of Virginia. If any other Public body decides to use the final contract, the contractor(s) must deal directly with that public body concerning the placement of orders, issuance of the purchase orders, contractual disputes, invoicing and payment. Failure to extend a contract to any public body will have no effect on consideration of your proposal.

LIABILITY AND LITIGATION: Notwithstanding any provision to the contrary, HRRSA shall not indemnify or hold harmless any Contractor or other third party. HRRSA does not waive any right or release any party from liability, whether on its own behalf or on behalf of any boards, employees or agents. HRRSA does not waive the right to trial by jury for any cause of action arising from the Contract and shall not be required to submit any Contract claim to binding arbitration or mediation. HRRSA shall not be liable to Contractor for any special, punitive or exemplary damages arising from the performance of the contract, including, but not limited to, incidental damages, and lost profit or lost wages, even if such special damages are reasonably foreseeable.

STATE CORPORATION COMMISSION IDENTIFICATION NUMBER: Pursuant to Code of VA 2.2-4311.2 subsection B, a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its bid or proposal the identification number issued to it by the State Corporation Commission (SCC). Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law is required to include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized. Link to the SCC site is <http://www.scc.virginia.gov>.

END OF SECTION