Middle Peninsula Chesapeake Bay Public Access Authority

**REQUEST FOR PROPOSAL #\_1\_\_\_\_\_\_\_\_\_\_\_\_**

ISSUE DATE: 10/15/21

DUE DATE: 11/4/21

TIME: 4:PM EST

RFP #:

ISSUING AGENCY: Middle Peninsula Chesapeake Bay Public Access

Authority ("PAA")

PO Box 286

Saluda, Virginia 23149

CONTACT: Lewis L. Lawrence

Executive Director

Phone: (804) 758-2311

Email: llawrence@mppdc.com

The PAA invites qualified firms to submit sealed proposals to demolish and remove a dock and replace it with a fishing pier with a 400-foot-long open pile public fishing pier with a 25-foot by 35-foot deck header and a 16-foot by 30-foot open sided gazebo along the Severn River at 9425 Whitaker Road in Gloucester County. As a cost savings, the existing dock material may be disposed of on site in a designated area. All responses to this Request for Proposal and any resulting contract shall be consistent with and governed by the Virginia Public Procurement Act. The budget for this project is $80,000. PAA does not intend to award a contract over the amount of $80,000.

**All proposals shall be turned in no later than 4:00 P.M. EST on \_\_11/4/21\_\_\_\_\_\_\_\_\_\_, 2021 to the MPPDC office building for the PAA Office located at 125 Bowden St., Saluda, Virginia 23149 or by mailing to PO Box 286, Saluda, Virginia 23149. If proposals are sent via a mailing service or hand delivered, please address the proposals to the issuing department listed above. Any proposals that are submitted by e-mail, phone, or facsimile shall not be considered. Any proposals received after the deadline shall be deemed non-responsive and returned unopened. *It is the Offeror’s sole responsibility to insure all information; including addendums are complete and delivered on time.* The PAA reserves the right to reject any and all proposals, to waive informalities, and to negotiate with the successful Offeror(s). If the PAA closes its offices due to inclement weather scheduled receipt of proposals will be extended to the next business day, same time.**

**I. Introduction**

A. The PAA will be replacing a fishing pier with a 400-foot-long open pile public fishing pier with a 25-foot by 35-foot deck header and a 16-foot by 30-foot open sided gazebo along the Severn River at 9425 Whitaker Road in Gloucester County. The total funds available for the project, once completed and accepted, is $80,000.

B. This procurement shall utilize competitive negotiation.

C. Any communications pertaining to the scope of work, the preparation or submittal of a proposal, and all other communications referred to this solicitation must be made in **writing** to:

Lewis Lawrence

Executive Director

Phone: (804) 758-2311

Email: llawrence@mppdc.com

**II. Proposal Format**

This project is to replace the current fishing pier located in the Severn River at 9425 Whitaker Rd. in Gloucester County with a 400-foot-long open pile public fishing pier with a 25-foot by 35-foot deck header and a 16-foot by 30-foot open sided gazebo.

All Offerors will need to include the following information in their response: a conceptual sketch of the proposed pier; size of the pilings proposed (preference will be given to contractors using larger dock poles in the design and oversized or rough-cut marine lumber); an available and anticipated start date and completion date; photos of recently completed projects; a plan to provide the least possible angle for a gangway slope, where possible, to give independent access to persons with disabilities (including ease of transition from ramp to the dock); finally, a plan to provide anglers with disabilities fishing opportunities, such as an accessible 34-inch maximum railing in a variety of places, with bump out on the pier or platform from which to offer a variety of locations to fish.

Additionally, all proposals must indicate office location of the Offeror, qualifications and abilities of the Offeror’s firm, and for the Offeror to demonstrate the specific qualifications of the staff the Offeror will assign to the project if selected.

At a **minimum** the qualifications should:

1. Include the organizational chart, functional discipline, and responsibilities of the project team members
2. Provide concise resumes of each team member’s education, relevant professional experience, length of time employed by the Offeror and/or sub-consultant, and professional licensure. Describe professional staffing available for development, training, implementation, and support services. Additionally, the Offeror shall clearly state whether it is proposing to subcontract any of the work herein. The names of all proposed sub-consultants shall be provided. By proposing such firms or individuals, the Offeror assumes full liability for the sub-consultant’s performance. The Offeror shall state the amount of previous work experience with the sub-consultant.

All proposals must be delivered to the PAA offices on \_\_**11/4/21**\_\_\_\_\_\_\_\_ by 4:00 pm.

**III**. **Project Timeline**.

Project should be within twelve (12) months of contract execution.

**IV. Pricing**

A. The budget for this project is $80,000. PAA intends to award a contract in an amount under $80,000. PAA reserves the right to cancel this RFP in the event no acceptable proposal is received and negotiated to final acceptance.

**V. Submittal Instructions**

A. Each Offeror shall submit one (1) original and five (5) copies of their proposal.

1. An authorized representative of the Offeror shall sign proposals. All information requested in this solicitation should be submitted. Failure to submit all information requested may result in the proposal being deemed non-responsive. Proposals which are deemed non-responsive, incomplete, or lack key information may be rejected in full by the PAA.
2. Proposals should clearly respond to the Suggested Scope/Specifications. All pages of the proposal should be numbered.
3. Proposals should be organized and include all required information as required in this solicitation.
4. Each proposal shall be printed in English and received in hard copy by the deadline. Oral proposals, proposals received by telephone, fax, telegraph, or e-mail shall be rejected.

B. Except as otherwise provided, and in accordance with Va. Code § 2.2-4342, all proceedings, records, contracts and other public records relating to the PAA’s procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act (Va. Code §2.2-3700 et seq). Proposals shall not be available for inspection by Offerors until interviews, if scheduled, are completed. After award, all proposals become a matter of public record and are available for inspection by the public. Trade secrets or proprietary information submitted by an offeror in connection with this procurement transaction shall not be subject to the Virginia Freedom of Information Act, but only if the Offeror:

1. Invokes the protections of Virginia Code §2.2-4342 prior to or upon submission of the data or other materials;
2. Identifies the specific data or other materials to be protected, and
3. States the reasons why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. The classification of an entire proposal document, line item prices, and/or total proposal prices as proprietary or trade secrets is not acceptable and will result in rejection of the proposal. Redacted copies, clearly marked for proposals containing proprietary or confidential information shall be submitted with proposals.

C. The PAA will assume *no responsibility for oral instruction or interpretation*. Any question regarding the procurement solicitation shall be in ***writing.***

D. Any contact with any PAA representative, other than that outlined above, concerning this RFP is ***prohibited***. Such unauthorized contact may disqualify an Offeror from this procurement.

E. Each Offeror shall be prepared, if so requested by the PAA, to present evidence of their experience, qualifications and financial ability to carry out the terms of the contract.

F. **ALL PROPOSALS RECEIVED AFTER THE DUE DATE/TIME WILL NOT BE CONSIDERED AND SHALL BE RETURNED TO THE OFFEROR, UNOPENED. FAILURE TO COMPLETE FORMS AS REQUIRED MAY RESULT IN THE OFFEROR BEING DETERMINED “NON – RESPONSIVE.”**

**VI. Evaluation & Selection Criteria**

A. All proposals received shall be evaluated based upon the evaluation criteria listed below.

|  |  |
| --- | --- |
| 1. Understanding of the project, familiarity with the content of the proposal, quality of the response. | 10% |
| 1. The offeror’s ability to meet the stated requirements in the RFP. | 50% |
| 1. The overall stability, ability, capacity, and skill of the firm to perform the contract as scheduled, including: specific plans and procedures to meet the deadline. | 40% |
|  | |

B. The PAA may arrange for discussions with Offerors submitting proposals for the purpose of obtaining additional information or clarification if needed.

C. The PAA may make such reasonable investigations as it deems proper and necessary to determine the ability of the Offeror to perform the work.

D. Based on the consensus rankings, the highest ranked Offeror(s) will be invited to engage in discussions with the PAA.

**VII. Contract Award**

A. The PAA shall engage in individual discussions with two (2) or more Offerors deemed fully qualified, responsible and suitable on the basis of initial response and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The Offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. In addition, Offerors shall be informed of any ranking criteria that will be used by the PAA in addition to the review of the professional competence of the offeror. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, on the basis of evaluation factors published in the request for proposal and all information developed in the selection process to this point, the PAA shall select in the order of preference two (2) or more offerors whose professional qualifications and proposed services are deemed the most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the PAA can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Should the PAA determine in writing and in its sole discretion that only one (1) Offeror is fully qualified, or that one (1) Offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that Offeror.

B. The contract shall be for the length of the project plus one (1) year from the date of final payment for all work related to the project.

C. Payment Terms:

Initial Draw: $15,000.00

Upon Pilling Installation: $15,000.00

Balance Upon final acceptance and issuance of completion statement by PAA

**APPENDIX A: General Conditions and Instructions to Offerors**

1. **COMPETITION INTENDED:** It is the PAA’s intent that this solicitation permit competition. It shall be the Offeror’s responsibility to advise the Purchasing Agent in writing if any language, requirement, specification, etc., or any combination thereof, stifles competition or inadvertently restricts or limits the requirements stated in this solicitation to a single source. The Purchasing Agent must receive such notification not later than five (5) business days prior to the deadline set for acceptance of the proposals.

2. **CLARIFICATION OF TERMS:** If any Offeror has questions about the specifications or other solicitation documents, the prospective Offeror should contact the Procurement Coordinator whose name appears on the face of the solicitation no later than seven (7) business days prior to the date set for the receipt of proposals. Any revisions to the solicitation will be made only by addendum issued by the Procurement Technician. Questions regarding specifications may not be considered if received in less than seven (7) business days of the date set for receipt of proposals.

3. **IDENTIFICATION OF PROPRIETARY INFORMATION:** Trade secrets or proprietary information submitted in a proposal shall not be subject to disclosure under the Virginia Freedom of Information Act. However, in order for this information to be protected from disclosure, the Offeror must specifically invoke the protections of Sec. 2.2-4342, Code of Virginia, 1950, as amended, or other applicable statute, prior to or upon submission of the trade secrets or proprietary information. The Offeror must clearly identify any part of its proposal considered to be protected as trade secret or as proprietary information, and must state the reasons why protection is necessary.

1. Any Offeror shall identify a trade secret or proprietary information by clearly stating “Trade Secret” or “Proprietary Information” adjacent to the particular information, and by clearly identifying the information to be subject to the protection, such as by encircling, highlighting, underlining or other similar means. The Offeror shall state the reasons why protection is necessary on a separate page of the proposal.
2. Any Offeror shall not identify as a trade secret or proprietary information those sections of the proposal that are material to the PAA's ultimate award of the contract.
3. The PAA reserves the right to contact an Offeror and to request that the Offeror explain or clarify why the Offeror identified certain information as a trade secret or as proprietary information.
4. Any Offeror shall not identify as trade secret or proprietary information their complete proposal.

4. **WITHDRAWAL OF PROPOSALS:**

1. Offeror for a contract other than for public construction may request withdrawal of his or her proposal under the following circumstances:
2. Proposals may be withdrawn on written request from the Offeror received at the address shown in the solicitation prior to the time of acceptance.
3. Requests for withdrawal of proposals after opening of such proposals but prior to award shall be transmitted to the Procurement Technician, in writing, accompanied by full documentation supporting the request. If the request is based on a claim of error, documentation must show the basis of the error. Such documentation may take the form of supplier quotations, Offeror work sheets, etc.
4. No Proposal may be withdrawn under this paragraph when the result would be the awarding of the contract on another Proposal of the same Offeror or of another Offeror in which the ownership of the withdrawing Offeror is more than five percent. No Offeror 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 firm 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.

5. **ERRORS IN PROPOSALS:** When an error is made in extending total prices, the unit price will govern. Erasures in proposals must be initialed by the Offeror. Carelessness in quoting prices, or in preparation of proposal otherwise, will not relieve the Offeror. Offerors are cautioned to recheck their proposals for possible error. Errors discovered after public opening cannot be corrected and the offeror will be required to perform if his or her proposal is accepted.

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

7. **CONDITIONAL PROPOSALS:** Conditional proposals are subject to rejection in whole or in part.

8. **DEBARMENT STATUS:** By submitting their proposals, Offerors certify that they are not currently debarred from submitting proposals on contracts by the PAA, nor are they an agent of any person or entity that is currently debarred from submitting proposals on contracts by the PAA or any agency, public entity/locality or authority of the Commonwealth of Virginia.

9. **ETHICS IN PUBLIC CONTRACTING:** The provisions contained in the Virginia Public Procurement Act as set forth in the 1950 Code of Virginia, as amended, shall be applicable to all contracts solicited or entered into by the PAA. By submitting their proposals, all 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 Bidder, 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.

10. **NO CONTACT POLICY:** No Offeror shall initiate or otherwise have contact related to the solicitation with any PAA representative or employee, other than Procurement, after the date and time established for receipt of proposals. Any contact initiated by a Offeror with any PAA representative, other than the Procurement Division, concerning this solicitation is prohibited and may cause the disqualification of the Offeror from this procurement process.

**The following provisions shall be incorporated by reference into any contract awarded under this RFP:**

1. **APPLICABLE LAW AND COURTS:** Any contract resulting from this solicitation shall be governed in any respects by the laws of Virginia, and any litigation with respect thereto shall be brought in the Circuit Court of Middlesex, Virginia. The Contractor shall comply with applicable federal, state and local laws and regulations.

2. **VIRGINIA STATE CORPORATION COMMISSION:** If required by law, the Contractor shall maintain a valid certificate of authority or registration to transact business in Virginia with the Virginia State Corporation Commission as required by Section 13.1 or Title 50 of the Code of Virginia, during the term of the Contract or any Contract renewal. The Contractor shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth to be revoked or cancelled at any time during the terms of the contract. If the Contractor fails to remain in compliance with the provisions of this section, the contract may become void.

3. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By submitting their proposal, 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.

4. **ANTI-TRUST:** By entering into a contract, the Contractor conveys, sells, assigns, and transfers to the PAA all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust law of the United States relating to the particular goods or services purchased or acquired by the PAA under said contract.

5. **PAYMENT TERMS:** Unless otherwise provided in the solicitation payment will be made thirty (30) days after receipt of a proper invoice, or thirty (30) days after receipt of all goods or acceptance of work, whichever is the latter.

1. Invoices for items/services ordered, delivered/performed and accepted shall be submitted by the Contractor directly to the department responsible for initiating the purchase order/contract. All invoices shall show the contract number, purchase order number, and any federal employer identification number.
2. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
3. The date of payment shall be deemed the date of postmark in all cases where payment is made by mail.

6. **PAYMENT TO SUBCONTRACTORS:** 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 the PAA for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
2. To notify the PAA and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the PAA, except for amounts withheld as stated in 2 above. The date of mailing of any payment by U.S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the PAA.

7. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the Contractor in whole or in part without the written consent of the Purchasing Agent.

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

9. **ANTI-DISCRIMINATION:** By submitting their proposals, Offerors certify to the PAA that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and those applicable Sections of the *Virginia Public Procurement Act*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient’s religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body.

In every contract over $10,000 the provisions in (a) and (b) below shall apply:

1. During the performance of this contract, the Contractor agrees as follows:
2. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
3. 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.
4. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section.

b. The Contractor will include the provisions of A above in every subcontract or purchase order over $10,000, so that the provisions will be binding upon each subcontractor or Offeror.

10. **INVOICES:** Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the department address requesting the purchase order/contract. All invoices shall show the IFB/RFP number and/or purchase order number and must have the department heads approval.

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

1. The parties may agree 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 PAA 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 the PAA a credit for any savings. Said compensation shall be determined by one of the following methods.
3. By mutual agreement between the parties in writing; or
4. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the PAA’s right to audit the Contractor’s records and/or determine the correct number of units independently; or
5. By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present the PAA with all vouchers and records of expenses incurred and savings realized. The PAA shall have the right to audit the records of the Contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to Procurement within thirty (30) days from the date of receipt of the written order from Procurement. If the parties fail to agree on an amount of adjustment, the questions of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for relieving disputes provided by the Disputes clause of this contract. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by the PAA or with the performance of the contract generally.
6. No modification for a fixed price contract may be increased by more than 25% or $25,000, whichever is greater without the advanced written approval of the PAA as applicable.

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

13. **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 Offeror. For the purposes of this section, “*drug-free workplace”* means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

14. **TERMINATION:** Subject to the provisions below, the contract may be terminated by the PAA upon thirty (30) days advance written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

1. Termination for Convenience: In the event that the contract is terminated upon request and for the convenience of the PAA, without the required thirty (30) days advance notice, then the PAA shall be responsible for payment of services up to the termination date.
2. Termination for Cause: Termination by the PAA for cause, default or negligence on the part of the contractor shall be excluded from the foregoing provision; termination costs, if any shall not apply. However, pursuant to paragraph 32 of these General Conditions, the PAA may hold the contractor responsible for any resulting additional purchase and administrative costs. No advance notice is required in the event of Termination for Cause.
3. Termination Due to Unavailability of Funds in Succeeding Fiscal Years: When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year, the contract shall be canceled as of the first day of that subsequent fiscal year.

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

1. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.
2. Any competitive sealed offering offeror, upon request, shall be afforded the opportunity to inspect proposals records within a reasonable time after the opening of proposals but prior to award, except in the event that the PAA decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection only after award of the contract. Any competitive negotiation Offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award except in the event that the PAA decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to the public inspection only after award of the contract except as provided in paragraph “c” below. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.
3. Trade secrets or proprietary information submitted by a Bidder, Offeror or Contractor in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the Bidder, Offeror or Contractor must invoke the protections of that section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary.
4. Nothing contained in this section shall be construed to require the PAA, when procuring by “competitive negotiation” (Request for Proposal), to furnish a statement of reasons why a particular proposal was not deemed to be the most advantageous to the PAA.

16. **AUDIT:** The Contractor hereby agrees to retain all books, records, and other documents relative to this contract for five years after final payment, or until audited by the PAA, whichever is sooner. The agency, its authorized agents, and/or PAA auditors shall have full access to and the right to examine any of said materials during said period.

17. **LABELING OF HAZARDOUS SUBSTANCES:** If the items or products requested by this solicitation are “Hazardous Substances” as defined by Article 3.1-250 of the Code of Virginia (1950), as amended, or Article 1261 of Title 15 of the United States Code, then the Offeror, by submitting his proposal, certifies and warrants that the items or products to be delivered under this contract shall be properly labeled as required by the forgoing sections and that by delivering the items or products the Offeror does not violate any of the prohibitions of Article 3.1-252 of the Code of Virginia or Title 15 USC, Article 1263.

18. **MATERIAL SAFETY DATA SHEETS:** Material Safety Data Sheets and descriptive literature shall be provided with the proposal for each chemical and/or contract offered. Failure on the part of the Offeror to submit such data sheet may be cause for declaring the proposal as non-responsive.

19. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of the Purchasing Agent. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish the Purchasing Agent the names, qualifications and experience of their proposed subcontractors. Notwithstanding any approval by the PAA permitting subcontracting the Contractor shall, however, remain fully liable and responsible for the work to be done by his subcontractor(s) and shall assure compliance with all requirements of the contract.

20. **PROTECTION OF PERSON AND PROPERTY:** The Contractor expressly undertakes both directly and through its subcontractor(s), to take every precaution at all times for the protection of persons and property which may come on the building site or be affected by the contractor’s operation in connection with the work.

1. The Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work.
2. The provisions of all rules and regulations governing safety as adopted by the Safety Codes Commission of the Commonwealth of Virginia, issued by the Department of Labor and Industry under Title 40.1 of the Code of Virginia shall apply to all work under this contract.
3. The Contractor shall continuously maintain adequate protection of all his work from damage and shall protect the PAA’s property from injury or loss arising in connection with this contract. He shall make good any such damage, injury, or loss, except such as may be directly due to errors in the contract documents or caused by agents or employees of the PAA. The Offeror shall adequately protect adjacent property to prevent any damage to it or loss of use and enjoyment by its owners. They shall provide and maintain all passageways, guard fences, lights and other facilities for the protection required by public authority, local conditions, any of the contract documents or erected for the fulfillment of his obligations for the protection of person and property.
4. In an emergency affecting the safety or life of persons or of the work, or of the adjoining property, the contractor, without special instruction or authorization from the PAA, shall act, at their discretion, to prevent such threatened loss or injury. Also, should they, to prevent threatened loss or injury, be instructed or authorized to act by the PAA, they shall so act immediately, without appeal. Any additional compensation or extension of time claimed by the Contractor on account of any emergency work shall be determined as provided by paragraph 35, of the General Terms and Conditions.

21. **WORK SITE DAMAGES:** Any damage, including damage to finished surfaces, resulting from the performance of this contract shall be repaired to the PAA’s satisfaction at the Contractor’s expense.

22. **PROTEST OF AWARD OR DECISION TO AWARD:** Any Offeror who desires to protest the award or decision to award a contract, by the PAA, shall submit such protest in writing to the PAA no later than ten (10) days after public notice of the award or announcement of the decision to award, whichever comes first. No protest shall lie for a claim that the selected Offeror is not a responsible Offeror. The written protest shall include the basis for the protest and the relief sought. The PAA shall issue a decision in writing within ten (10) days stating the reasons for the action taken. This decision shall be final unless the Offeror appeals within ten (10) days of the written decision by instituting legal action as provided in Section 7.8 C of the Procurement Policy. Nothing in this paragraph shall be construed to permit an Offeror to challenge the validity of the terms or conditions of the solicitation.

23. **DISPUTES:** Contractual claims, whether for money or other relief, shall be submitted in writing to the PAA no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the Work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amount agreed due in the final payment. A written decision upon any such claims will be made within sixty (60) days after submittal of the claim. The Contractor may not institute legal action prior to receipt of the PAA's decision on the claim unless the applicable party fails to render such decision within sixty (60) days. The decision of the PAA shall be final and conclusive unless the Contractor within six (6) months of the date of the final decision on a claim, initiates legal action as provided in Section 2.2-4364 of the Code of Virginia. Failure of the PAA to render a decision within sixty (60) days shall not result in the Contractor being awarded the relief claimed nor shall it result in any other relief or penalty. Should the PAA fail to render a decision within sixty (60) days after submittal of the claim, the Contractor may institute legal action within six (6) months after such 60-day period shall have expired, or the claim shall be deemed finally resolved. No administrative appeals procedure pursuant to Section 2.2-4365 of the Code of Virginia has been established for contractual claims under this contract.