NOTICE OF AWARD OF CONTRACT

TO: SHANNON CHEMICAL CORPORATION
P.O. BOX 376
MALVERN, PA 19355

DATE ISSUED: 05/04/2015
CURRENT CONTRACT NO: 694-15-6
CONTRACT TITLE: DES - ANNUAL WASTEWATER CHEMICALS
PRIOR CONTRACT NO: N/A

THIS IS A NOTICE OF AWARD OF CONTRACT AND NOT AN ORDER. NO WORK IS AUTHORIZED UNTIL THE VENDOR RECEIVES A VALID COUNTY PURCHASE ORDER ENCUMBERING CONTRACT FUNDS.

Your firm is awarded the above referenced contract. The contract term covered by this Notice of Award is effective immediately and expires on JANUARY 31, 2020, with optional renewals through JANUARY 31, 2020.

The contract documents consist of the terms and conditions of Agreement No. 694-15-6, including any exhibits, attachments, or amendments thereto.

ATTACHMENTS: AGREEMENT NO. 694-15-6

CONTRACT PRICING: REFER TO AGREEMENT 694-15-6

ALL PO’S COVERING WORK UNDER THIS CONTRACT MUST BE APPROVED IN ADVANCE BY A PURCHASING REPRESENTATIVE.

EMPLOYEES NOT TO BENEFIT: NO COUNTY EMPLOYEE SHALL RECEIVE ANY SHARE OR BENEFIT OF THIS CONTRACT NOT AVAILABLE TO THE GENERAL PUBLIC.

VENDOR CONTACT: DANIEL FLYNN
TELEPHONE NO.: 610-363-9090
EMAIL ADDRESS: DCFLYNN@SHANNONCHEM.COM

VENDOR PAYMENT TERMS: NET 30 DAYS

COUNTY CONTACT: LARRY SLATTERY
TELEPHONE NO.: 703-228-5877
EMAIL ADDRESS: LSLATTERY@ARLINGTONVA.US

CONTRACT AUTHORIZATION

[Signature]
Maria Meredith
Acting County Purchasing Agent

[Signature]
5/4/15
Date
ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
2100 CLARENDON BOULEVARD, SUITE 500
ARLINGTON, VA 22201

AGREEMENT NO. 694-15-6

THIS RIDER AGREEMENT (hereinafter "Agreement") is made, on the date of its execution by the County, between Shannon Chemical Corporation; P.O. Box 376, Malvern, PA 19355("Contractor"), a company authorized to transact business in the Commonwealth of Virginia, and the County Board of Arlington County, Virginia ("County"). The County and the Contractor, for the consideration and quantity(ies) specified herein or specified in a County Purchase Order referencing this Agreement, agree as follows:

1. CONTRACT DOCUMENTS
The Contract Documents consist of this Agreement and Exhibit A (Fairfax County Water Authority Pricing Schedule), Exhibit B (Fairfax County Water Authority Contract No. 14-16, incorporated herein by reference) and Exhibit C (Shannon Chemical Pricing Memo). Collectively, "Contract Documents" or "Contract."

This Agreement rides a competitive procurement process conducted by Fairfax County Water Authority. The Contractor desires to extend to the County the same pricing as the Contractor's agreement with Fairfax County Water Authority.

Where the terms and provisions of this Agreement vary from the terms and provisions of the other Contract Documents, the terms and provisions of this Agreement shall prevail over the other Contract Documents and the remaining Contract Documents shall be complementary to each other and if there are any conflicts the most stringent terms or provisions shall prevail.

The Contract Documents set forth the entire agreement between the County and the Contractor. The County and the Contractor agree that no representative or agent of either of them has made any representation or promise with respect to the parties’ agreement which is not contained in the Contract Documents.

2. CONTRACT TERM
The Contractor’s provision of goods and/or services for the County ("Work") shall commence on the date of execution of this Agreement by the County and shall be completed no later than January 31, 2016("Initial Contract Term"), subject to any modifications as provided for in the Contract Documents.
Upon satisfactory performance by the Contractor and with the concurrence of the Contractor, the County may authorize continued operations of the Contractor under the same Price and Price Adjustment Terms for not more than four additional twelve (12) month periods from FEBRUARY 1, 2016 to JANUARY 31, 2020. Each such period shall be referred to as a "Subsequent Contract Term." However, if the Fairfax County Water Authority does NOT renew their agreement, this Agreement shall automatically expire on the date of the "Initial Contract Term."

3. **CONTRACT PRICING**
The County will pay the Contractor in accordance with the terms of the Payment paragraph below, at the unit prices set forth in Exhibit A for Work provided by the Contractor, as described and required in the Contract Documents, and accepted by the County. An additional $100 delivery charge will be added on per ton ordered as outlined in Exhibit C and as allowed by the original agreement (Section 3.33).

4. **PAYMENT**
Payment will be made by the County to the Contractor within thirty (30) days after receipt by the County Project Officer of an invoice for work done which is reasonable and allocable to the Contract and which has been performed to the satisfaction of the Project Officer. Amounts on invoices shall not include amounts allocated to tasks (as shown in Exhibit A) on which no work has been done. The Project Officer will either approve the invoice or require corrections. The number of the County Purchase Order pursuant to which authority goods or services have been performed or delivered shall appear on all invoices.

5. **SCOPE OF WORK**
The Contractor agrees to provide the goods and/or services described in the Contract Documents. The primary purpose of the Work is to provide annual water and wastewater chemicals.

The Contract Documents set forth the minimum work estimated by the County and the Contractor to be necessary to complete the Work. It shall be the Contractor's responsibility, at the Contractor's sole cost, to provide the specific Work set forth in the Contract Documents sufficient to fulfill the purposes of the Work. Nothing in the Contract Documents shall be construed to limit the Contractor's responsibility to manage the details and execution of the Work.

6. **ESTIMATED QUANTITIES/NON-EXCLUSIVITY OF CONTRACTOR**
During the Contract Term, the Contractor will furnish all of the goods or services described in the Contract Documents, if so requested by the County. The County will have no obligation to the Contractor if no, or fewer, items or services are required or requested by the County. Any quantities which are included in the Contract Documents are the present expectations of those who are planning for the County for the period of the Contract. The amount is only an estimate and the Contractor understands and agrees that the County is under no obligation to the Contractor to buy that amount, or any amount as a result of having provided this estimate or of having had any normal or otherwise
measurable requirement in the past. The Contractor further understands that the County may require goods and/or services in excess of the estimated annual contract amount and that such excess shall not give rise to any claim for compensation other than at the unit prices and/or rates set forth in this Contract. Further, the items or services covered by this contract may be available or become available under other County contracts, and in analyzing its needs, the County may determine that it is in its best interest to procure the items or services through such another contract. Therefore, the County does not guarantee that the Contractor will be the exclusive provider of the goods or services covered by this contract.

7. PROJECT OFFICER
The performance of the Contractor is subject to the review and approval of the County Project Officer ("Project Officer"), who shall be appointed by the Director of the Arlington County department or agency requesting the work under the Contract Documents. However, it shall be the responsibility of the Contractor to manage the details of the execution and performance of its work pursuant to the Contract Documents.

8. PAYMENT TERMS
Payment terms will be recorded by the County as Net thirty (30) days. The County will pay the Contractor within thirty (30) calendar days after the date of receipt of a correct, as determined by the Project Officer, invoice approved by the Project Officer describing completed work which is reasonable and allocable to the Contract, or the date of receipt of the entire order, or the date of acceptance of the work which meets the Contract requirements, whichever is later. Payments will be made by the County for goods or services furnished, delivered, inspected, and accepted upon receipt of invoices submitted on the date of shipment or delivery of service, subject to applicable payment terms. The number of the County Purchase Order pursuant to which authority shipments have been made or services performed shall appear on all invoices. Invoices shall be submitted in duplicate. Unless otherwise specified herein, payment shall not be made prior to delivery and acceptance of the entire order by the County.

9. PAYMENT OF SUBCONTRACTORS
The Contractor is obligated to take one of the two following actions within seven (7) days after receipt of amounts paid to the Contractor by the County for work performed by any subcontractor under this Contract:

a. Pay the subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by the subcontractor under this Contract; or

b. Notify the County and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor to the subcontractor that remain unpaid.
after seven (7) calendar days following receipt by the Contractor of payment from the County for work performed by the subcontractor under this Contract, except for amounts withheld as allowed in subsection b., above. Unless otherwise provided under the terms of this Contract, interest shall accrue at the rate of one percent (1%) per month.

The Contractor shall include in each of its subcontracts, if any are permitted, a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements as those contained herein with respect to each lower-tier subcontractor.

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this section may not be construed to be an obligation of the County. A Contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

10. **NON-APPROPRIATION**
All funds for payments by the County to the Contractor pursuant to this Contract are subject to the availability of an annual appropriation for this purpose by the County Board of Arlington County, Virginia. In the event of non-appropriation of funds by the County Board of Arlington County, Virginia for the goods or services provided under this Contract or substitutes for such goods or services which are as advanced or more advanced in their technology, the County will terminate the Contract, without termination charge or other liability to the County, on the last day of the then-current fiscal year or when the appropriation made for the then-current year for the services covered by this Contract is spent, whichever event occurs first. If funds are not appropriated at any time for the continuation of this Contract, cancellation will be accepted by the Contractor on thirty (30) days prior written notice, but failure to give such notice shall be of no effect and the County shall not be obligated under this Contract beyond the date of termination specified in the County's written notice.

11. **COUNTY PURCHASE ORDER REQUIREMENT**
County purchases are authorized only if a County Purchase Order is issued in advance of the transaction, indicating that the ordering agency has sufficient funds available to pay for the purchase. Such a Purchase Order is to be provided to the Contractor by the ordering agency. The County will not be liable for payment for any purchases made by its employees without appropriate purchase authorization issued by the County Purchasing Agent. If the Contractor provides goods or services without a signed County Purchase Order, it does so at its own risk and sole expense.

12. **DELIVERY**
All goods are purchased F.O.B. destination in Arlington County as designated in this Contract. All costs for handling and transportation charges to the designated point of delivery shall be borne by the Contractor. Transportation, handling and all related charges are included in the unit prices or discounts submitted by the Contractor with its bid.
13. **WARRANTY**
All goods and materials provided to the County shall be fully guaranteed by the Contractor against factory defects. Any defects which may occur as the result of either faulty material or workmanship by the manufacturer within the period of the manufacturer's standard warranty shall be corrected by the Contractor at no expense to Arlington County. The Contractor shall provide evidence of all manufacturers' warranties to the Project Officer at the time of delivery. All goods and materials are also guaranteed by the Contractor against defects resulting from the use of inferior or faulty materials or workmanship for one (1) year from the date of final acceptance by the County in addition to and irrespective of any manufacturer's or supplier's warranty. No date other than the date of final acceptance shall govern the effective date of the Guaranty, unless that date is agreed upon by the County and the Contractor in advance and in a signed writing.

14. **INSPECTION, ACCEPTANCE, TITLE, AND RISK OF LOSS**
Inspection and acceptance of goods or materials by the County will be at the delivery location in Arlington County, Virginia, and within ten (10) calendar days of delivery, unless otherwise provided for in the Contract. The County will not inspect, accept, or pay for any goods or materials stored or delivered off-site by the Contractor.

Title and risk of loss or damage to all goods shall be the responsibility of the Contractor until acceptance by the County. The County's right of inspection shall not be deemed to relieve the Contractor of its obligation to ensure that all articles, materials and supplies are consistent with specifications and instructions and are fit for their intended use. The County reserves the right to conduct any tests or inspections it may deem appropriate before acceptance.

No goods or materials shall be purchased by the Contractor or any subcontractor subject to any chattel mortgage or under a conditional sale or other agreement by which an interest is retained by the seller. The Contractor warrants that it has good title to, and that it will require all subcontractors to warrant that they have good title to, all goods or materials for which the Contractor invoices for payment.

15. **EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED**
During the performance of this Contract, the Contractor agrees as follows:

a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability or any other basis prohibited by federal or Virginia law related to discrimination in employment except where there is a bona fide occupational qualification reasonably necessary or related 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 the 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 the requirements of this section.

d. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 which prohibits discrimination against individuals with disabilities in employment, and mandates their full participation in both publicly and privately-provided services and activities.

e. The Contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over $10,000.00, so that these provisions will apply to each subcontractor or vendor.

16. EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED
In accordance with § 2.2-4311.1 of the Code of Virginia, 1950, as amended, the Contractor acknowledges that it does not, and shall not during the performance of this Contract, knowingly employ an unauthorized alien as that term is defined in the federal Immigration Reform and Control Act of 1986.

17. DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR
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 marijuana or any other controlled substance 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 $10,000.00 relating to this Contract, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor by Arlington County, 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.
18. **TERMINATION FOR CAUSE, INCLUDING BREACH AND DEFAULT; CURE**

The Contract shall remain in force for the Initial Contract Term or any Subsequent Contract Term(s) and until the County determines that all the following requirements and conditions have been satisfactorily met: the County has accepted the Work, and thereafter until the Contractor has met all requirements and conditions relating to the Work under the Contract Documents, including warranty and guarantee periods. However, the County shall have the right to terminate this Contract sooner if the Contractor is in breach or default or has failed to perform satisfactorily the Work required, as determined by the County in its discretion.

If the County determines that the Contractor has failed to perform satisfactorily, then the County will give the Contractor written notice of such failure(s) and the opportunity to cure such failure(s) within at least fifteen (15) days before termination of the Contract takes effect ("Cure Period"). If the Contractor fails to cure within the Cure Period, or as otherwise specified in the notice, the Contract may be terminated for the Contractor's failure to provide satisfactory Contract performance. Upon such termination, the Contractor may apply for compensation for Contract services satisfactorily performed by the Contractor, allocable to the Contract and accepted by the County prior to such termination unless otherwise barred by the Contract ("Termination Costs"). In order to be considered, such request for Termination Costs, with all supporting documentation, must be submitted to the County Project Officer within fifteen (15) days after the expiration of the Cure Period. The County may accept or reject, in whole or in part, the application for Termination Costs and notify the Contractor of same within a reasonable time thereafter.

If the County terminates the Contract for default or breach of any Contract provision or condition, then the termination shall be immediate after notice from the County to the Contractor (unless the County in its discretion provides for an opportunity to cure) and the Contractor shall not be permitted to seek Termination Costs. Upon any termination pursuant to this section, the Contractor shall be liable to the County for all costs incurred by the County after the effective date of termination, including costs required to be expended by the County to complete the Work covered by the Contract, including costs of delay in completing the Project or the cost of repairing or correcting any unsatisfactory or non-compliant work performed or provided by the Contractor or its subcontractors. Such costs shall be either deducted from any amount due the Contractor or shall be promptly paid by the Contractor to the County upon demand by the County. Additionally, and notwithstanding any provision in this Contract to the contrary, the Contractor is liable to the County, and the County shall be entitled to recover, all damages to which the County is entitled by this Contract or by law, including and without limitation, direct damages, indirect damages, consequential damages, delay damages, replacement costs, refund of all sums paid by the County to the Contractor under the Contract and all attorney fees and costs incurred by the County to enforce any provision of this Contract.
Except as otherwise directed by the County in the notice, the Contractor shall stop work on the date of receipt of notice of the termination or other date specified in the notice, place no further orders or subcontracts for materials, services, or facilities except as are necessary for the completion of such portion of the Work not terminated, and terminate all vendors and subcontracts and settle all outstanding liabilities and claims. Any purchases after the date of termination contained in the notice shall be the sole responsibility of the Contractor.

In the event any termination for cause, default, or breach shall be found to be improper or invalid by any court of competent jurisdiction then such termination shall be deemed to have been a termination for convenience.

19. TERMINATION FOR THE CONVENIENCE OF THE COUNTY
The performance of Work under this Contract may be terminated by the County Purchasing Agent, in whole or in part, whenever the Purchasing Agent shall determine that such termination is in the County's best interest. Any such termination shall be effected by the delivery to the Contractor of a written notice of termination at least fifteen (15) days before the date of termination, specifying the extent to which performance of the work under this Contract is terminated and the date upon which such termination becomes effective. The Contractor will be entitled to receive compensation for all Contract services satisfactorily performed by the Contractor and allocable to the Contract and accepted by the County prior to such termination and any other reasonable termination costs as negotiated by the parties, but no amount shall be allowed for anticipatory profits.

After receipt of a notice of termination and except as otherwise directed, the Contractor shall stop all designated work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or subcontracts for materials, services or facilities except as are necessary for the completion of such portion of the work not terminated; immediately transfer all documentation and paperwork for terminated work to the County; and terminate all vendors and subcontracts and settle all outstanding liabilities and claims.

20. INDEMNIFICATION
The Contractor covenants for itself, its employees, and subcontractors to save, defend, hold harmless and indemnify the County, and all of its elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards, and commissions (collectively the "County" for purposes of this section) from and against any and all claims made by third parties or by the County for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, demands or exposure, however caused, resulting from, arising out of, or in any way connected with the Contractor's acts or omissions, including the acts or omissions of its employees and/or subcontractors, in performance or nonperformance of the work called for by the Contract
Documents. This duty to save, defend, hold harmless and indemnify shall survive the termination of this Contract. If, after notice by the County, the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor shall be liable for and reimburse the County for any and all expenses, including, but not limited to, reasonable attorneys fees incurred and any settlements or payments made. The Contractor shall pay such expenses upon demand by the County and failure to do so may result in such amounts being withheld from any amounts due to Contractor under this Contract.

21. CONFIDENTIAL INFORMATION
The Contractor, and its employees, agents, and subcontractors, hereby agree to hold as confidential all County information obtained as a results of its Work under this Contract. Confidential information includes, but is not limited to, nonpublic personal information, personally identifiable health information, social security numbers, addresses, dates of birth, other contact information or medical information about a person, information pertaining to products, operations, systems, customers, prospective customers, techniques, intentions, processes, plans, expertise and any information entrusted to any affiliate of the parties. The Contractor shall take reasonable measures to ensure that all of its employees, agents, and subcontractors are informed of, and abide by, this requirement.

22. ETHICS IN PUBLIC CONTRACTING
This Contract incorporates by reference Article 9 of the Arlington County Purchasing Resolution, as well as any Virginia or federal law related to ethics, conflicts of interest, or bribery, including, by way of illustration and not limitation, the Virginia State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq.), and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 et seq.). The Contractor certifies that its offer was made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other bidder, supplier, manufacturer, or subcontractor and that it has not conferred on any public employee having official responsibility for this procurement 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.

23. COUNTY EMPLOYEES
No employee of the County shall be admitted to any share in any part of this Contract or to any benefit that may arise therefrom which is not available to the general public.
24. **FORCE MAJEURE**
The Contractor shall not be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, or an act of God beyond the control of the Contractor and outside the scope of the Contractor's then-current, by industry standards, disaster plan that make performance impossible or illegal, unless otherwise specified in the Contract.

The County shall not be held responsible for failure to perform its duties and responsibilities imposed by the Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, or an act of God beyond the control of the County that make performance impossible or illegal, unless otherwise specified in the Contract.

25. **AUTHORITY TO TRANSACT BUSINESS**
The Contractor shall, pursuant to Code of Virginia § 2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the Initial Term and any Subsequent Contract Term(s) of this Contract. A contract entered into by a Contractor in violation of this requirement is voidable, without cost or expense, at the sole option of the County.

26. **RELATION TO THE COUNTY**
The Contractor is an independent contractor, and neither the Contractor nor its employees or subcontractors will, under any circumstances, be considered employees, servants or agents of the County. The County will not be legally responsible for any negligence or other wrongdoing by the Contractor, its employees, servants or agents. The County will not withhold from payments to the Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the Contractor or its employees, servants or agents. Furthermore, the County will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation, normally provided by the County for its employees.

27. **ANTITRUST**
By entering into this Contract, the Contractor conveys, sells, assigns and transfers to the County all rights, title, and interest in and to all causes of action the Contractor may now have or hereafter acquire under the antitrust laws of the United States or the Commonwealth of Virginia, relating to the goods purchased or acquired by the County under this Contract.
28. **AUDIT**
The Contractor agrees to retain all books, records and other documents related to this Contract for at least five (5) years after final payment. The County or its authorized agents shall have full access to and the right to examine any of the above documents during this period and during the Initial Contract Term and any Subsequent Contract Term. If the Contractor wishes to destroy or dispose of records (including confidential records to which the County does not have ready access) within five (5) years after final payment, the Contractor shall notify the County at least thirty (30) days prior to such disposal, and if the County objects, shall not dispose of the records.

29. **ASSIGNMENT**
The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of any award, or any or all of its rights, obligations, or interests under this Contract, without the prior written consent of the County.

30. **AMENDMENTS**
Unless otherwise specified herein, this Contract shall not be amended except by written amendment executed by persons duly authorized to bind the Contractor and the County.

31. **ARLINGTON COUNTY PURCHASING RESOLUTION AND COUNTY POLICIES**
Notwithstanding any provision to the contrary herein, no provision of the Arlington County Purchasing Resolution or any applicable County policy is waived in whole or in part.

32. **DISPUTE RESOLUTION**
All disputes arising under this Agreement, or its interpretation, whether involving law or fact, extra work or extra compensation or time, and all claims for alleged breach of Contract shall be submitted in writing to the Project Officer for decision at the time of the occurrence or beginning of the work upon which the claim is based, whichever occurs first. Any such claims shall state the facts surrounding it in sufficient detail to identify it together with its character and scope. In accordance with the Arlington County Purchasing Resolution, claims denied by the Project Officer may be submitted to the County Manager in writing no later than sixty (60) days after final payment. The time limit for final written decision by the County Manager in the event of a contractual dispute, as that term is defined in the Arlington County Purchasing Resolution, is fifteen (15) days. Procedures for considering contractual claims, disputes, administrative appeals, and protests are contained in the Purchasing Resolution, which is incorporated herein by reference. A copy of the Arlington County Purchasing Resolution is available upon request from the Office of the Purchasing Agent. The Contractor shall not cause a delay in the Work pending a decision of the Project Officer, County Manager, County Board, or a court.
33. **APPLICABLE LAW, FORUM, VENUE, AND JURISDICTION**
This Contract and the work performed hereunder shall be governed in all respects by the laws of the Commonwealth of Virginia, and the jurisdiction, forum, and venue for any litigation with respect hereto shall be in the Circuit Court for Arlington County, Virginia, and in no other court. In performing its work under this Contract, the Contractor shall comply with applicable federal, state, and local laws, ordinances and regulations.

34. **ARBITRATION**
It is expressly agreed that nothing under the Contract shall be subject to arbitration, and that any references to arbitration are expressly deleted from the Contract.

35. **NONEXCLUSIVITY OF REMEDIES**
All remedies available to the County under this Contract are cumulative, and no such remedy shall be exclusive of any other remedy available to the County at law or in equity.

36. **NO WAIVER**
The failure of either party to exercise in any respect a right provided for in this Contract shall not be deemed to be a subsequent waiver of the same right or any other right.

37. **SEVERABILITY**
The sections, paragraphs, sentences, clauses and phrases of this Contract are severable, and if any phrase, clause, sentence, paragraph or section of this Contract shall be declared invalid by a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Contract.

38. **NO WAIVER OF SOVEREIGN IMMUNITY**
Notwithstanding any other provision of this Contract, nothing in this Contract or any action taken by the County pursuant to this Contract shall constitute or be construed as a waiver of either the sovereign or governmental immunity of the County. The parties intend for this provision to be read as broadly as possible.

39. **SURVIVAL OF TERMS**
In addition to the numbered section in this Agreement which specifically state that the term or paragraph survives the expiration of termination of this Contract, the following sections if included in this Contract also survive: **INDEMNIFICATION; RELATION TO COUNTY; AUDIT; WARRANTY; AND CONFIDENTIAL INFORMATION.**

40. **HEADINGS**
The section headings in this Contract are inserted only for convenience and are not to be construed as part of this Contract or a limitation on the scope of the particular section to which the heading precedes.
41. AMBIGUITIES
Each party and its counsel have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

42. NOTICES
Unless otherwise provided herein, all notices and other communications required by this Contract shall be deemed to have been given when made in writing and either (a) delivered in person, (b) delivered to an agent, such as an overnight or similar delivery service, or (c) deposited in the United States mail, postage prepaid, certified or registered, addressed as follows:

TO THE CONTRACTOR:
Shannon Chemical Corporation
Daniel Flynn
P.O. Box 376
Malvern, PA 19355

TO THE COUNTY:
Larry Slattery, Project Officer
Arlington County, Virginia
530 31st Street South
Arlington, Virginia 22202

AND

Maria Meredith, Acting Purchasing Agent
Arlington County, Virginia
2100 Clarendon Boulevard
Suite 500
Arlington, Virginia 22201

43. NON-DISCRIMINATION NOTICE
Arlington County does not discriminate against faith-based organizations.

44. INSURANCE REQUIREMENTS
The Contractor shall provide to the County Purchasing Agent a Certificate of Insurance indicating that the Contractor has in force the coverage below prior to the start of any Work under this Contract and upon any contract extension. The Contractor agrees to maintain such insurance until the completion of this Contract or as otherwise stated in the Contract Documents. All required insurance coverages must be acquired from insurers authorized to do business in the Commonwealth of Virginia, with a rating of "A-" or better and a financial size of "Class VII" or better in the latest edition of the
A.M. Best Co. Guides, and acceptable to the County. The minimum insurance coverage shall be:

a. Workers Compensation - Virginia Statutory Workers Compensation (W/C) coverage including Virginia benefits and employers liability with limits of $100,000/100,000/500,000. The County will not accept W/C coverage issued by the Injured Worker's Insurance Fund, Towson, MD.

b. Commercial General Liability - $1,000,000 combined single limit coverage with $2,000,000 general aggregate covering all premises and operations and including Personal Injury, Completed Operations, Contractual Liability, Independent Contractors, and Products Liability. The general aggregate limit shall apply to this Contract. Evidence of Contractual Liability coverage shall be typed on the certificate.

c. Business Automobile Liability - $1,000,000 Combined Single Limit (Owned, non-owned and hired).

d. The Contractor shall carry Errors and Omissions or Professional Liability insurance which will pay for injuries arising out of errors or omissions in the rendering, or failure to render services or perform Work under the contract, in the amount of $1,000,000.

e. Additional Insured - Arlington County, and its officers, elected and appointed officials, employees, and agents shall be named as an additional insureds on all policies except Workers Compensation and Auto and Professional Liability; and evidence of the Additional Insured endorsement shall be typed on the certificate.

f. Cancellation - If there is a material change or reduction in coverage the Contractor shall notify the Purchasing Agent immediately upon Contractor's notification from the insurer. It is the Contractor's responsibility to notify the County upon receipt of a notice indicating that the policy will not be renewed or will be materially changed. Any policy on which the Contractor has received notification from an insurer that the policy has cr will be cancelled or materially changed or reduced must be replaced with another policy consistent with the terms of this Contract, and the County notified of the replacement, in such a manner that there is no lapse in coverage. Not having the required insurance throughout the Contract Term is grounds for termination of the Contract.

g. Any insurance coverage that is placed as a "claims made" policy must remain valid and in force, or the Contractor must obtain an extended reporting endorsement consistent with the terms of this Contract, until the applicable statute of limitations has expired, such date as determined to begin running from the date of the Contractor's receipt of final payment.
h. Contract Identification - The insurance certificate shall state this Contract's number and title.

The Contractor must disclose the amount of any deductible or self insurance component applicable to the General Liability, Automobile Liability, Professional Liability, Intellectual Property or any other policies required herein, if any. The County reserves the right to request additional information to determine if the Contractor has the financial capacity to meet its obligations under a deductible. Thereafter, at its option, the County may require a lower deductible, funds equal to the deductible be placed in escrow, a certificate of self-insurance, collateral, or other mechanism in the amount of the deductible to ensure protection for the County.

The Contractor shall require all subcontractors to maintain during the term of this Contract, Commercial General Liability insurance, Business Automobile Liability insurance, and Workers' Compensation insurance in the same form and manner as specified for the Contractor. The Contractor shall furnish subcontractors' certificates of insurance to the County immediately upon request by the County.

No acceptance or approval of any insurance by the County shall be construed as relieving or excusing the Contractor from any liability or obligation imposed upon the Contractor by the provisions of the Contract Documents.

The Contractor shall be responsible for the work performed under the Contract Documents and every part thereof, and for all materials, tools, equipment, appliances, and property of any description used in connection with the work. The Contractor assumes all risks for direct and indirect damage or injury to the property or persons used or employed on or in connection with the Work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Contract, or in connection in any way whatsoever with the contracted work.

The Contractor shall be as fully responsible to the County for the acts and omissions of its subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by it.
Notwithstanding any of the above, the Contractor may satisfy its obligations under this section by means of self insurance for all or any part of the insurance required, provided that the Contractor can demonstrate financial capacity and the alternative coverages are submitted to and acceptable to the County. The Contractor must also provide its most recent actuarial report and provide a copy of its self insurance resolution to determine the adequacy of the insurance funding.

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA

AUTHORIZED SIGNATURE: [Signature]
NAME AND TITLE: MARIA MEREDITH, Acting Purchasing Agent
DATE: 5/4/15

SHANNON CHEMICAL CORPORATION

AUTHORIZED SIGNATURE: [Signature]
NAME AND TITLE: Daniel E. Flynn
DATE: 5/1/15
<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>CHEMICAL</th>
<th>VENDOR</th>
<th>UNIT</th>
<th>2016-2018 UNIT PRICE</th>
<th>ESCALATION/PERIOD</th>
<th>DESIGNATION</th>
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<tr>
<td>1</td>
<td>Ammonium Hydroxide, Dry, 19%</td>
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<td>17F</td>
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<td>VPU96</td>
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</table>

**NOTE:** PLEASE SEE FILE NAMED "CONTACT INFORMATION" FOR VENDOR ADDRESSES AND CONTACT INFORMATION.
INVITATION FOR BIDS

Bid No: 14-16
Requirement: Annual Water and Wastewater Chemical Requirements
Date Issued: December 10, 2014
Pre-Bid Conference: N/A
Deadline for Questions: 2:00 p.m., Wednesday, December 17, 2014
Bid Due Date: 2:00 p.m., Tuesday, December 30, 2014
IFB Delivery Location and Place of Bid Opening: Procurement Department Fairfax Water 8570 Executive Park Avenue Fairfax, Virginia 22031
Procurement Contact: Melanie Tillotson, CPPB Buyer II Telephone: (703) 289-6264 Facsimile: (703) 289-6262 E-Mail: procmt@fairfaxwater.org
# IFB 14-16
## Annual Water and Wastewater Chemical Requirements

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1. SUMMARY INFORMATION AND SUBMISSION OF BIDS

1.1 Introduction

The Fairfax County Water Authority, doing business as Fairfax Water (FW) was created under the Virginia Water and Waste Authorities Act pursuant to resolutions adopted by Fairfax County on September 26, 1957. Fairfax Water is managed by a ten member Board of Directors appointed for three-year terms by the Fairfax County Board of Supervisors.

1.2 Objective

The objective of this Invitation to Bid (IFB) is to award annual requirements contracts (i.e., Blanket Purchase Orders) for the Chemicals specified in Appendix A. Contracts awarded as a result of this solicitation will be renewable for up to four additional one-year periods (see Terms and Termination). This solicitation is a collaborative effort conducted on behalf of itself, Loudon Water, and Fairfax County (i.e., the “Members”).

1.3 Questions and Communications

All contact between prospective Bidders and FW with respect to this solicitation will be formally held at scheduled meetings or in writing through the Issuing Office. Questions and comments regarding the meaning or interpretation of any aspect of this solicitation must be submitted in writing to the Procurement Contact identified on the cover page to this solicitation and must be received on or before the deadline for submitting questions. Only written questions will be accepted. Questions and/or comments which are submitted after the deadline set forth on the cover page to this solicitation will not be answered.

FW shall respond to all timely questions and comments that are properly submitted and are deemed to address a matter that is relevant and substantive in nature within a reasonable period of time, in the form of a written Addendum that will be transmitted to all prospective Bidders at the addresses furnished to FW for such purpose. Oral communications between FW and any Bidder regarding the interpretation or meaning of any aspect of this IFB are not authorized and may not be relied upon for any purpose.

1.4 Bid Opening and Instructions for Submitting Bids

The deadline for submitting bids and the location for opening bids is shown on the cover sheet. Bids will be opened immediately following the deadline for submitting bids. Bids will be opened in accordance with the provisions of the Virginia Public Procurement Act.

All bids must be submitted in a sealed package(s), no other form of submission will be accepted (i.e., E-mail, Facsimile, etc.). Bid packages must be identified on the outside as follows:
IFB 14-16
Annual Water and Wastewater Chemical Requirements

From: ___________________________ Name of Bidder ___________________________
                  ___________________________ Due Date ___________________________
                  ___________________________ Street ___________________________
                  ___________________________ IFB No. ___________________________
                  ___________________________ City, State, Zip Code ___________________________
                  ___________________________ IFB Title ___________________________

Attn: Melanie Tillotson, CPPB

1.5 Bid Submission Form

Attachment 2 is the Bid Submission Form. It must be completed and signed by an agent who is fully authorized to bind the individual or organization submitting the offer to sell, to the terms, conditions and specifications contained herein as well as any addenda to this solicitation. Due to the complex nature of this solicitation, all Bidders must submit their bids on the bid submission form only. Failure to use the attached Bid Submission Form may result in the rejection of your bid.

1.6 Proprietary Information

A. Except as provided herein or as otherwise set forth in §2.2-4342 of the Virginia Public Procurement Act (Va. Code Ann. §2.2-4300 et seq., the “Act”), all proceedings, records, contracts and other public records relating to procurement transactions shall be open to inspection in accordance with the Virginia Freedom of Information Act (Va. Code Ann. §2.2-3700 et seq., the “Virginia FOIA”).

B. A Bidder, Offeror or Contractor shall have the right to identify data or other materials submitted in connection with this procurement as trade secrets or proprietary information, which shall not be subject to inspection pursuant to either §2.2-4342 of the Act or the Virginia FOIA, by submitting to Fairfax Water prior to or at the time of submission of its proposal or bid a separate, written notice on its letterhead stationery setting forth the following: (i) a statement indicating that the Bidder, Offeror, or Contractor wishes to invoke the protections of this section; (ii) an identification of the data or other materials for which protection is sought; and (iii) a statement with regard to why protection is necessary.

1.7 Addenda to the IFB

A. FW reserves the right to amend this solicitation at any time prior to the deadline for submitting Bids. If it becomes necessary to revise any part of this IFB, notice of the revision will be given in the form of an Addendum that will be provided to all prospective Bidders who are on record with FW as having received this solicitation. If, in the opinion of FW, the deadline for the submission of bids does not provide sufficient time for consideration of any Addendum, then such deadline may be extended at the discretion of FW.
IFB 14-16
Annual Water and Wastewater Chemical Requirements

B. It shall be the responsibility of each Bidder to contact the Purchasing Contact identified on
the cover page to this solicitation prior to submission of a bid hereunder in order to
determine whether any Addenda have been issued in connection with this procurement.
Notwithstanding any provision to the contrary, the failure of any Bidder to receive any
Addenda shall neither constitute grounds for withdrawal of its bid, nor relieve such Bidder
from any responsibility for incorporating the provisions of any Addenda in its proposal.

1.8 Receipt of Addenda

Acknowledge receipt of each addendum by signing it and submitting it by the bid deadline.

1.9 Late Bids

Bids or unsolicited amendments to bids arriving after the bid submission deadline will not be
considered.

1.10 Contract Award

FW reserves the unilateral right to award each chemical to the lowest responsible and
responsive bidder, to make an aggregate award for a group of chemicals to the overall best
Bidder for the designated group of chemicals, or any combination of chemicals and groups of
chemicals in whatever manner best serve the needs of the Members.

1.11 Public Notice of Award

Public notice of award will be posted on the official FW web site
(http://www.fcwa.org/procurement/index.htm).

1.12 Definitions

A. Acceptance – means the point in time when FW Project Manager confirms in writing that
the contract has been completed as contracted for and the Contractor is released from any
further obligations. All remaining payments due the Contractor shall be approved for
payment at this time.
B. Award – means the decision by FW to execute a contract after all necessary approvals
have been obtained.
C. Bid – means the response by a Bidder to an Invitation for Bids issued by a procurement
agency to obtain goods or labor.
D. Bidder – means any person submitting a response to an IFB.
E. Contract – means the formal acceptance of a bid by FW.
F. Contractor – means the successful Bidder receiving a contract as a result of this
solicitation.
G. Default – means that the Contractor has failed to fulfill its contractual obligations properly
and on time.
H. FW – means Fairfax Water. The terms Owner and FW have the same meaning.
IFB 14-16
Annual Water and Wastewater Chemical Requirements

1. Notice — The term “Notice” or the requirement to notify means a written communication delivered in person, by facsimile, or by certified or registered mail to the individual or firm, or to an officer of the Contractor for whom it is intended.

J. Owner — Fairfax County Water Authority.

K. Project — The term “Project” means the same as the phrase “the Work.”

L. Project Manager — means FW employee assigned to this project for purposes of oversight of the project. The Project Manager is responsible for all aspects of the contract (excluding contract modifications) after contract award, including but not limited to approving design changes, and authorizing payment for completed work.

M. Specifications — The term “Specifications” refers to the written technical description of materials, equipment, construction systems, standards, and workmanship to be applied to the Work and certain administrative details applicable thereto.

N. Work — The word “Work” shall include all material, labor equipment and tools, appliances, machinery, transportation, and appurtenances necessary to perform and complete the Contract, and any such additional items not specifically indicated or described which can be reasonably inferred as belonging to the item described or indicated or as required by industry practice, custom or usage to complete the project as proposed by the Bidder and accepted by FW.

1.13 Term of Contract and Contract Renewal

The Contracts awarded as a result of this solicitation will be effective for one-year beginning on the date of contract award. FW reserves the unilateral option to renew any and/or all contracts annually thereafter for up to four additional one-year periods, subject to the terms and conditions specified herein.

Notification of renewal shall be by the issuance of a renewal purchase order / contract. Failure to renew by the expiration date of the then current contract year will not automatically cancel the contract. FW may retroactively renew the contract at any time prior to the last day of the following contract year providing that FW has not formally canceled the contract(s).

END SECTION 1
2. BID SPECIFICATIONS AND RELATED REQUIREMENTS

2.1 Chemical Specifications

The Calendar Year (CY) 2014 chemical specifications are contained in Appendix “A”: Chemical Requirements.

2.2 Qualified Products

The Members have developed a Qualified Products List (QPL) for Polymers (Bid Item 15A-15C; Page 22 and 23 of Appendix A) and Polyaluminum Chloride (Bid Item 14, Page 20 and 21 of Appendix A). Only bids for products listed will be considered.

2.3 Spot Testing of Chemicals at Time of Delivery

The Members reserve the right to have chemical shipments tested by an independent laboratory. Failure of a shipment to comply with the bid specification will be sufficient reason for rejection of the shipment. Should a shipment be rejected, it will be returned to the Contractor, who shall pay all handling and shipping charges in both directions. Upon notice of rejection of a shipment, the Contractor shall furnish another shipment immediately, which shall comply in all respects with the prescribed analysis. In the event the Contractor is unable to promptly furnish the chemical of acceptable quality, the jurisdiction will obtain the chemical elsewhere. Any additional cost incurred by the jurisdiction will be charged to the Contractor either as a credit against an outstanding invoice or as an invoice for immediate reimbursement.

2.4 Shipping

Contractor shall ship chemicals in accordance with standard commercial practices and all Federal, State and local laws and regulations. Contractor shall be solely responsible for the shipment until delivery at the designated facility.

2.5 Weight at Time of Delivery

The Members reserve the right to weigh the shipments on their scales before and after delivery. In order to reduce the time and money required to resolve and adjust for minor weight differences, the net weight shown on the Contractor’s weight ticket will be accepted unless it exceeds the net weight shown on the Members’ ticket by more than 200 lbs. If the net weight shown on the Contractor’s ticket exceeds the net weight on the Members ticket by more than 200lbs., the net weight shown on the Members ticket will be used.
2.6 Virginia Department of Health Requirements

The Virginia Department of Health (VDH) requires that all containers are labeled in accordance with all applicable federal regulations. The Contractor is responsible for ensuring that state and federal regulatory compliance is maintained for any chemical and related container furnished under the contract. Failure to maintain compliance as specified in this paragraph or elsewhere in this IFB will result in termination of the contract.

2.7 MSDS Reports

Provide the following MSDS related documentation:
1. A copy of the most current MSDS Report for each chemical being bid by your firm must be included with your bid submission.
2. National Sanitation Foundation certification for the quoted chemical, by the manufacturer for drinking water, and
3. Chemical certificate of analysis for all chemicals

2.8 Estimated Quantities

The quantities specified herein are estimates based upon current consumption and projected demand for the next contract year, and shall not be construed to represent an amount which FW shall be obligated to purchase. The exact amounts ordered may be more or less subject to the actual needs of the Members. Bidders agree that the Participants will only be responsible for the amounts actually ordered.

2.9 Priority Customer

By submitting a bid in response to this solicitation, Bidder understands and acknowledges that the Members provide services that are essential to the health and welfare of the public. Failure of a Contractor to provide chemicals under any Contract issued pursuant to the terms, conditions, and specifications contained in this IFB may jeopardize Members’ ability to provide timely services, which may affect the health and welfare of the public served by FW. In the event of product shortages at any level of the production to delivery chain, Bidder agrees and affirms that Members will be given the earliest possible notice and the highest priority for allocation of the item(s) listed herein. To the extent that the Contractor must prioritize and/or allocate delivery among its customers, the requirements of the Members will be honored before chemicals are provided to a customer with no obligations with regard to the public health and welfare. To the extent that chemicals are insufficient to meet the requirements of all of the clients who are responsible for the health and welfare of the public, the Chemicals will be allocated in a manner deemed to be fair and reasonable to all such clients.

2.10 Warranty

A. By submitting a bid in response to this solicitation, Bidders warrant that chemicals provided as a result of this solicitation:
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1. Conform to the most current NSF 60/61 and/or ANSI/AWWA standards for water and/or wastewater chemicals,
2. Conform in all respects to the chemical specifications contained herein,
3. Are suitable for a public drinking water supply and/or waste water treatment,
4. Are free from adulterants or impurities of any kind, and
5. In addition to any other warranties expressed or implied, the specific warranties of Merchantability and Fitness for a Particular Purpose apply to all orders placed as a result of this solicitation.

B. If at any time, any chemical supplied by the vendor fails to conform to the specifications, then the Contractor shall, at no additional cost to the Member(s), promptly replace any such chemical. If the Contractor is unable to remedy such nonconformity during a time period consistent with the requirements, The Member(s) may undertake to remedy the nonconformity and in such a case the Contractor shall reimburse the Member(s) for any costs thereby incurred.

2.11 References

Bidders who have not provided the chemical(s) specified in this solicitation to FW or the Members within the past two years must submit three references for each chemical being bid from institutions of a similar size and scope of operation in the Mid-Atlantic area for which the chemicals being bid were provided within the past 12 months. References must be able to attest without reservation that the firm provided the same chemical being bid on in this solicitation without any significant problem of any kind, and at any time during the contract period. Two Reference Sheets (Attachment 1) are provided for your convenience.

2.12 Insurance Claims against Bidder

In addition to the mandatory insurance requirements listed in Subsection 3.24 (Insurance Requirements) and at the request of FW, the apparent low bidder shall submit a list of all insurance claims exceeding $100,000 made against it within the past 12 months. Failure to provide this information within ten calendar days of request by FW may result in rejection of your bid.

2.13 Delivery

Each Member will establish its own delivery schedule based upon its own requirements and the Bidder's specified time to deliver after receipt of an order. Failure to honor delivery schedules (including partial deliveries) may result in damages to the participating Member. Members may at their own option and convenience cure late, partial, or missing deliveries in any manner that best resolves the shortage. The Contractor is liable for any and all costs incurred by a Member due to such failures by claiming Liquidated Damages as specified in Section 4 and also recovering any additional losses by deducting the outstanding amount from unpaid invoices, making a claim against a Performance Bond (if one is on file), submitting an invoice to the Contractor, or any other method that best suits the Member.
2.14 Delivery Requirements

A. Homeland Security Advisory System: If the Homeland Security Advisor System places the water waste water industry in Codes High or Severe, all deliveries shall be between the hours 7:30 a.m. and 2:00 p.m., Monday through Friday unless specially requested by the plant. As each delivery leaves the Contractor’s yard, the Plant is to be advised as to the driver’s name and trailer number and estimated arrival time. Upon arrival, the driver will be required to show photo ID and the trailer number will be checked and verified before delivery is allowed on site. Failure to follow these procedures may result in a refusal of the delivery at the Contractor’s risk and expense.

B. By submitting a bid in response to this solicitation, the Bidder guarantees delivery of chemicals within the delivery schedule. Failure to deliver within the time specified, or as amended in writing by the contracting Member, or failure to make replacements of rejected chemicals, shall constitute a breach of contract. In the event of such breach, the Member has the option to exercise its declare the Contractor in default and claim damages as provided in the Liquidated Damages section contained in Section three.

C. Contractor shall comply with all regulations for tank/truck unloading as established by the US DOT, as well as any State and local requirements for tank/truck unloading.

D. Chemical containers supplied by the Contractor shall be the sole responsibility of the Contractor at all times and in any circumstance. Members will not pay demurrage or other charges unless the Member specifically requests that the Contractor leave the container beyond the delivery date.

E. The control number shall be provided to the Treatment Plant at the same time as the other required delivery information. A broken seal prior to acceptance of the batch by the utility may be cause for refusal of the delivery.

F. All deliveries shall be accompanied by a receiving ticket under this contract that shall be supported by:

- Contractor’s Name,
- Purchase Order and Call Order Number (release number),
- Date of Delivery and Date of Order,
- Materials furnished,
- Quantity, unit price and extension of each item, and total, in accordance with the contract, and
- Name of authorized representative ordering the supplies.

G. The Contractor’s delivery ticket will be signed in duplicate by the Member’s designated representative. One copy will be given to the employee signing for the delivery and the second copy will be retained by the Contractor.

H. If required by a Member, the Contractor will call the plant prior to delivery and shall fax a copy of the driver’s license, and a Chemical Shipping Itinerary sheet, which must include the manifest number and the above referenced information.

I. Deliveries must be made by within the delivery time specified in the bid submission document. If a delay is anticipated, the Contractor must provide as much advanced notice as possible to the affected member(s). If delivery is not made on time, the jurisdiction shall have the right to procure the material on the open market. Any
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additional costs incurred by the Member as a result of the Contractors failure to provide timely delivery will be at the sole risk and expense of the Contractor.

J. The Members reserve the unilateral right to reject any late or partial delivery. Any related costs shall be borne by the Contractor.

K. Members have the right to refuse delivery if chemical packaging is damaged, appears to have been tampered with, or is deemed to be a safety hazard or potential safety hazard.

L. Contractor(s) shall comply with all regulations for tank / truck routing and unloading as established by the US DOT, as well as any State and local requirements for tank / truck unloading.

M. All chemicals shall be delivered F.O.B. delivered. All cost for shipping, handling, insurance and related delivery charges must be included in the unit price for each bid item.

N. Delivery Free period shall be 5 hours for Powdered Activated Carbon and 2 hours for all other chemicals.

O. Hours of delivery will be determined by each jurisdiction.

P. Regardless of the reason, the Contractor shall be solely responsible for spills, and or delivering chemicals to the wrong storage locations/tanks. Any and all cost associated with remediation, including, but not limited to Hazmat, site cleanup, and tank cleaning etc., shall be the responsibility of the contractor.

Q. Contractors shall provide and maintain any and all special tools required to load or dispense chemicals. If required, contractor shall provide pre-set torque wrenches; and will be solely responsible for damages, leaks, etc. caused by malfunctioning or improperly set tools.

R. Delivery vehicles must be in good working order and compliant with all Federal, State, and local transportation laws and regulations. If Contractor intends to subcontract delivery to a third party carrier, the Contractor must submit the name of the carrier and a complete list of all state and interstate violations for which the subcontractor, its drivers and or its vehicles have been cited within the past 2 years.

2.15 Inspection

The Members reserve the right to inspect and test any chemical at any time during or after delivery. No inspection, test, approval or acceptance of any Commodity shall relieve Contractor from liability for defects or other failure to satisfy the requirements set forth in the Contract Documents.

2.16 Principals Only

The use of Sub-Contractors, agents, etc. is prohibited. Fairfax Water will enter into contracts with bidders whose primary business is the sale of the chemical(s) for which the bidder is submitting a bid.

END SECTION 2
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3 STANDARD TERMS AND CONDITIONS

3.1 Authorization to do Business in Virginia

Each bidder that is organized or authorized to transact business in the Commonwealth of Virginia pursuant to Title 13.1 or Title 50 of the Virginia Code shall include with its bid the identification number issued to it by the Virginia State Corporation Commission. Any bidder that is not authorized to transact business in Virginia as a foreign entity under Title 13.1 or title 50 of the Virginia Code or as otherwise required by law shall include in its bid a statement describing why the bidder is not required to be so authorized.

3.2 Annual Economic Price Adjustment

A. In the case of annually renewable contracts, the Contractors may submit a request for contract price increases once annually for each renewal year. Economic increases shall be limited to the increase specified in the Bureau of Labor Statistics (BLS) Producer Price Index – Not Seasonally Adjusted (“PPI-NSA”) for Chemicals and Allied Products (Series id WPU06), for the 12 month period ending 90 days prior to the end of the then current contract year. Request for contract price increases must be submitted at least 30 days prior to the end of the then contract year. This PPI may be replaced by any other single PPI providing that the substitute PPI constitutes the greatest component of the contracted chemical. (e.g. Series id – WPU061302T1 – Sulfuric Acid). Multiple price indexes will not be considered for the same bid item. Bidder may specify a different index for different bid items based on the conditions identified above. Series ID WPU06 will be used for the duration of the contract if the Bidder does not specify a specific PPI on the Bid Submission Form. If the specified PPI is discontinued by BLS during the duration of the contract, bidder must submit request for change or revert to WPU06.

B. Negative BLS index: If the agreed upon index is a negative number the contractor shall immediately reduce contract rates by the same amount for the duration of the contract year.

C. By submission of a bid, Contractors agree and accept the terms of items A and B above for the duration of the contract.

3.3 Anti-Discrimination

By submitting their bids, Bidders certify to FW 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 §11-51 of the Virginia Public Procurement Act.
A. During the performance of the contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or disabilities, except where religion, sex or national origin 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.

2. 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.

3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.

B. The Contractor will include the provisions above in every subcontract or purchase order so that the provisions will be binding upon each subcontractor or vendor.

C. Fairfax Water does not discriminate against faith-based organizations on the basis of the organization’s religious character, or impose conditions that (a) restrict the religious character of the faith-based organization, except as provided by law, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.

3.4 Antitrust

By entering into a contract, the Contractor conveys, sells, assigns, and transfers to FW 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 FW.

3.5 Arrearage

By submitting a Bid in response to this solicitation, the individual or firm submitting the bid shall be deemed to represent that it is not in arrears in the payment of any obligation due and owing FW, the Commonwealth of Virginia, or any public body in the Commonwealth of Virginia, including but not limited to any obligation to pay taxes and/or employee benefits. Bidder further agrees that it shall make diligent efforts to avoid becoming in arrears during the Term of any Contract awarded hereunder.
3.6 Assignment of Interest

The Contractor shall not assign any interest in any resulting Contract and shall not transfer any interest in the same without prior written consent of FW, which FW shall be under no obligation to grant.

3.7 Availability of Funds

It is understood and agreed between the parties herein that FW shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

3.8 Brand Names

A. Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict Bidders to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article that FW, 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. Each Bidder is responsible to clearly identify the product being offered (by manufacturer’s name, model, part number, etc.) and to provide sufficient descriptive literature, catalog cuts and technical detail to enable FW to determine if the product offered meets the requirements of the solicitation. Failure to furnish adequate data for evaluation purposes may result in declaring an offer non-responsive. Unless the Bidder clearly indicates that the product offered is an “equal” product, such bid will be considered to offer the brand name product specified in this solicitation.

B. For purposes of this solicitation and any contract that may result here from, the Members designation of any one or more manufacturers and/or suppliers as “preapproved” or “acceptable” shall signify only that such manufacturers and/or suppliers previously have submitted work samples or the like to Fairfax Water or the Members which satisfied Fairfax Water’s or the Member’s requirements. Fairfax Water’s and the Members designation of any one or more manufacturers and/or suppliers as “preapproved” or “acceptable” shall in no event be deemed or construed to be a representation or warranty on the part of Fairfax Water or the Members of any such manufacturer’s or supplier’s capability or capacity (in terms of financial wherewithal, personnel and equipment availability, managerial ability or otherwise) of performing any of the requirements of this solicitation in accordance with the terms and conditions hereof. Each Bidder shall conduct such independent investigation into the qualifications, experience and abilities of its selected manufacturers and suppliers as it deems appropriate under the circumstances.

C. “Or Equal” bids will not be accepted for those chemicals on Fairfax Water’s QPL.
3.9 Cancellation

Fairfax Water may cancel this solicitation at any time and for any reason prior to contract award.

3.10 Compliance with Laws, Regulations and Codes

The Offeror hereby represents and warrants that:

A. It is qualified and properly licensed to do business in the Commonwealth of Virginia and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
B. It is not in arrears with respect to the payment of any monies due and owing FW, the Commonwealth of Virginia, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
C. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
D. It shall obtain at its expense, all licenses, permits, insurance, and governmental approval, if any, necessary to the performance of its obligations under this Contract.

3.11 Conflicting Terms and Conditions

By submitting a bid in response to this solicitation, the Bidder agrees that the Terms, Conditions and Specifications contained herein shall control any contract arising from an award of this solicitation. Any proposed terms and conditions, any/or contract form that the Bidder proposes to use, shall be submitted as part of the Bidder’s offer to sell. Terms and conditions submitted by a Bidder after the deadline for submitting offers to sell will be rejected and the Bidder will be held to the terms and conditions contained herein. Contract award is contingent on the Bidder and FW agreeing on mutually acceptable terms and conditions. Failure to do so will automatically disqualify the Bidder from contract award. To the extent that a conflict arises or is found to exist between the Bidder’s offer to sell and this solicitation, including any addenda thereto, the terms, conditions and specifications contained in this solicitation and any addenda thereto shall in all cases prevail.

3.12 Contract Changes / Change Orders

A. No verbal agreement or conversation with any officer, agent or employee of FW either before or after the execution of any Contract resulting from this solicitation or follow-on negotiations, shall affect or modify any of the terms, conditions, specifications, or obligations contained in the solicitation, or resulting Contract. No alterations to the terms and conditions of the Contract shall be valid or binding upon FW unless made in writing and signed by the purchasing contact identified on the cover page. Contract changes shall be in writing, and shall be on official FW Purchasing Department letterhead. In any event and in all circumstances, the Contractor shall be solely liable and responsible for any Contract changes, deviations, etc., made without
first receiving written authorization to deviate from the Contract by the FW Project Manager.

B. 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. FW may order changes within the general scope of the contract at any time by 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 FW a credit for any savings. Said compensation shall be determined by one of the following methods:
      a. By mutual agreement between the parties in writing; or
      b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to Fairfax Water's right to audit the Contractor's records and/or to determine the correct number of units independently; or
      c. By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present FW with all vouchers and records of expenses incurred and savings realized. FW 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 Notice to the Purchasing Department. 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 FW or with the performance of the contract generally.

3.13 Contractor's Responsibilities

A. The Contractor shall be responsible for all products and/or services as required by this IFB. The use of subcontractors is prohibited unless:
   1. A request to include a subcontractor is included in the bid and,
   2. The Bidder receives written approval to use a subcontractor prior to, or as part of the formal contract between the parties.

B. Even when properly authorized by FW, the use of a subcontractor does not relieve the Contractor of liability under the contract.
C. The Contractor, at its sole expense, shall be responsible for damage to FW and non-FW property as a result of its failure, or its subcontractor's failure to protect such facilities and utilities.

D. The Contractor, at its sole expense, shall immediately repair or replace FW property damaged by (or caused by) the Contractor or its Subcontractor(s). Replacements will be of equal or better quality than the property damaged property, and all such work must be approved by FW Project Manager.

3.14 Debarment Status

By submitting a Bid in response to this solicitation, each Bidder certifies that it is not currently debarred by the federal government, the Commonwealth of Virginia, or any agency or department thereof from submitting a bid or proposal in connection with any procurement project and that it is not an agent of any person or entity that currently is so debarred.

3.15 Delivery

In the case of solicitations that require delivery to FW:

A. By submitting a bid in response to this solicitation, the Bidder guarantees delivery of contract items within the timeframe specified herein or as indicated in the bidders bid submission form. Failure to deliver within the time specified, or as amended in writing by FW, or failure to make replacements of rejected Contract items, shall constitute a breach of contract and may be grounds for a declaration of default in addition to any other remedies FW may be entitled to.

B. Deliveries must be made by within the delivery time specified in the bid submission document. If a delay is anticipated, the Contractor must provide as much advanced notice as possible to FW. Failure to honor a delivery schedule may result in damages to FW. The Contractor is liable for any and all costs incurred by FW due to such failures.

C. Homeland Security Advisory System: If the Homeland Security Advisor System places the water/waste water industry in Codes High or Severe, all deliveries shall be between the hours 7:30 a.m. and 2:00 p.m., Monday through Friday unless specially requested by the plant. As each delivery leaves the Contractor's yard, the Plant is to be advised as to the driver's name and trailer number and estimated arrival time. Upon arrival, the driver will be required to show photo ID and the trailer number will be checked and verified before delivery is allowed on site. Failure to follow these procedures may result in a refusal of the delivery at the Contractor's risk and expense.
3.16 Duration of Bids

Bids shall be valid for a minimum of 90 days following the deadline for submitting bids. If an award is not made during that period, all bids shall be automatically extended for another 90 days. Bids will be automatically renewed until such time as either an award is made or proper notice is given to FW of Bidder's intent to withdraw its bid. Bids may only be withdrawn by submitting written notice at least seven days before the expiration of the then current 90-day period.

3.17 Ethics in Public Contracting

Contractor hereby certifies that it has familiarized itself with Article 4 of Title 11 of the Virginia Public Procurement Act, Section 11-72 through 80, Virginia Code Annotated, and that all amounts received by it, pursuant to a contract resulting from this solicitation, are proper and in accordance therewith.

3.18 Examination of Records

Bidder agrees that in any resulting contract, either FW or its duly authorized representative shall have access to and the right to examine and copy any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to any resulting contract. This obligation shall expire five years after the final payment for the final service performed as a result of any and all contract(s) awarded pursuant to this solicitation, or until audited by FW, whichever is sooner. Contractor will provide reasonable access to any and all necessary documents and upon demand provide copies of documents if so required by FW or its representative(s). FW will reimburse the Contractor for any reasonable expenses it incurs as a result of such a request.

3.19 Familiarity with Specifications

Each Bidder shall bear responsibility for thoroughly examining this solicitation in its entirety. In the event that Bidder has any questions or comments regarding the proper meaning or intent of any aspect of this solicitation, then such Bidder shall submit all such questions and comments in writing to the Procurement Contact identified on the cover sheet of this solicitation.

The submission by a Bidder of a Bid in response to this solicitation shall be deemed to constitute a representation on the part of such Bidder that it has thoroughly examined this solicitation and has submitted any and all questions and comments it may have regarding the meaning or interpretation of this solicitation to Fairfax Water in the manner prescribed herein.
3.20 Formation of Contract

A. The words “Contract” and “Purchase Order” are used interchangeably unless the context otherwise plainly requires. The documents comprising the Contract shall be accorded the following order of precedence:

1. Any Change Orders;
2. All Purchase Orders;
3. Any Addenda to the IFB;
4. This IFB (including all Appendices and Attachments hereto); and
5. The Bidder’s completed Bid Tabulation Form (including any drawings and submittals).

B. The contract to be entered into as a result of this IFB shall be by and between the Bidder as Contractor and FW. It shall include the following items, which are listed in order of precedence:

1. The fully executed contract between the parties, or FW Purchase Order,
2. The IFB and any Addenda to the IFB,
3. The Bidder’s response to the IFB (including any drawings and submittals), and
4. All correspondence between the parties regarding this IFB.

C. Anything called for by one of the contract documents and not called for by the others shall be of like effect as if required or called for by all, except that a provision clearly designed to negate or alter a provision contained in one or more of the other contract documents shall have the intended effect.

3.21 Governing Law; Venue; Waiver of Jury Trial

Notwithstanding any provision to the contrary, this solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia. Any dispute arising hereunder which is not otherwise resolved by the parties shall be resolved by a court of competent jurisdiction in the Commonwealth of Virginia. The Contractor and FW hereby waive any right such party may have to a trial by jury in connection with any such litigation.

3.22 Incorporation by Reference

This solicitation is issued in accordance with, and controlled by, the Virginia Public Procurement Act (VPPA), which is incorporated into and made part of the solicitation. By submitting a bid in response to this solicitation, all Bidders acknowledge the VPPA and agree to be bound by it. A copy of the VPPA is available for inspection at the Purchasing Department at FW. It is also available at the Virginia Department of General Services, Department of Purchases and Supply Website:

3.23 Indemnification and Responsibility for Claims and Liability

With respect to any contract that results from this solicitation, Bidder is bound by the following:

A. The Contractor shall indemnify, save harmless and defend FW, or any employee of FW, against liability for any suits, actions, or claims of any character whatsoever arising from or relating to the performance of the Contractor or its subcontractors under this contract.

B. FW has no obligation to provide legal counsel or defense, or pay attorney's fees to the Contractor or its subcontractors in the event that a suit or action of any character is brought by any person not party to the contract, against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this contract.

C. FW has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this contract.

D. The Contractor shall pay all royalties and license fees necessary for performance of the contract. The Contractor shall defend all suits or claims for infringement of any patent rights or other proprietary rights arising from or related to performance of the resulting contract and shall save FW harmless from any and all loss, including Attorneys' fees arising out of any such claim.

3.24 Insurance Requirements

A. In addition to the mandatory insurance requirements listed in this Section and, at the request of FW, any Bidder may be required to provide a list of all insurance claims made against it within the past 36 months. FW reserves the right to reject any bid if in FW's opinion the amount or number of claims is deemed to be excessive. An Bidder's failure to comply with this requirement may result in rejection of its bid. If no claims have been made, then the Bidder shall so state in its bid. Fairfax Water may require such information from the Contractor as it deems necessary to assess the Contractor's financial ability to pay any deductibles with respect to the insurance policies required hereunder.

B. Before commencing the work, the Contractor shall procure and maintain at its own expense, minimum insurance in forms and with insurance companies acceptable to FW to cover loss or liability arising out of the Work. All insurance policies must be underwritten by insurers authorized to conduct business within the Commonwealth of Virginia and must have a Best's rating of at least A- and a financial size of class VIII or better in the latest edition of Best's Insurance Reports.
C. The Contractor shall immediately notify FW of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from or related to the Contractor's obligations under the contract. If such a claim or suit is brought, the Contractor will cooperate, assist, and consult with FW in the defense or investigation of any suit or action made or filed against FW as a result of or relating to the Contractor's performance under this contract.

D. With the exception of Workers' Compensation and Employers' Liability Insurance, all additional insurance policies specified herein shall name FW as an additional insured with regard to work performed under any subsequent Contract.

E. The Contractor will provide FW with copies of certificates of insurance coverage and proof of payment of all premiums. Each certificate of insurance must include: (a) an endorsement from the insurer that certifies that the Contractor maintains the referenced policy in full force and effect; (b) where applicable, a statement indicating that FW is included as an additional insured; and (c) a provision requiring that not less than 30 days written notice will be given to FW before any policy or coverage is canceled or modified in any material respect. Without limiting the requirements set forth above, the insurance coverages will include a minimum of:

1. Workers' Compensation and Employers' Liability Insurance: Statutory requirements and benefits as required by the Commonwealth of Virginia; and
2. Required Commercial General Liability Insurance: This insurance must be written on an "occurrence" basis and shall be endorsed to include FW as an additional insured and shall provide at a minimum the following:

   ♦ General Aggregate Limit $1,000,000
   (Other than Products-Completed Operations)
   ♦ Products-Completed Operations Aggregate Limit $500,000
   ♦ Personal & Advertising Injury Limit $500,000
   ♦ Each Occurrence Limit $500,000
   For Construction Contracts:
   ♦ Directors & Officers – Errors & Omissions $2,000,000

F. Business Automobile Liability Insurance: This insurance coverage must extend to any motor vehicles or other motorized equipment regardless of whether it is owned, hired, or non-owned and must cover Bodily Injury and Property Damage with a combined single limit of at least $500,000 each accident. This insurance must be written in comprehensive form and must protect the Contractor and FW against claims for injuries to members of the public and/or damage to the property of others arising from the Contractor's use of motor vehicles or other equipment and must cover both on-site and off-site operations.

G. Nothing contained herein will be deemed to operate as a waiver of FW's sovereign immunity under the law.
IFB 14-16
Annual Water and Wastewater Chemical Requirements

3.25 No Waiver or Estoppel

Neither the inspection by FW nor any of its employees, nor any payment of money, nor payment for, nor acceptance of any Commodity by FW, nor any extension of time shall operate as a waiver of any provision of this Contract, or of any power herein reserved to the Owner or of any right to damage herein provided. No waiver of any breach of this Contract shall be held to be a waiver of any other subsequent breach. All remedies provided in this Contract to FW shall be construed as cumulative and shall be in addition to each and every other remedy herein provided. Neither FW, nor any officer, member, employee, or authorized representative of FW, will be bound, precluded, or estopped by any action, determination, decision, acceptance, return, certificate, or payment made or given under or in connection with the Contract by any officer, employee, member or authorized representative of the Owner, at any time either before or after final completion and acceptance of the Work and payment therefore from: (a) showing the true and correct classification, amount, quality, or character of the Commodities delivered, or that any determination, decision, acceptance, return certificate or payment was incorrect or was improperly made in any respect, or that the Commodities or any part thereof do not in fact conform to the requirements of the Contract; (b) demanding and recovering from the Contractor any overpayment made to the Contractor or such damages as FW may sustain by reason of the Contractor's failure to comply with the requirements of the Contract; or (c) both of the foregoing clauses (a) and (b).

3.26 Pass-through Price Increases and Decreases

For annually renewable contracts:

A. Increases: FW recognizes that the Contractor's sources of supply and transportation may pass onto the Contractor unanticipated and significant price increases. FW will consider requests by the Contractor to allow "pass-through" price increases when accompanied with sufficient proof. Only the Contractor's direct supplier's price increases will be considered. FW reserves the right to accept or reject all such requests. FW will not allow price increases that are greater than the amount passed on to the Contractor, or for a period outside of the then current contract year.

B. Decreases:

1. Pass through price increases shall cease at the end of the then current contract year and contract pricing will return to the pre-pass through rate. The contractor will be eligible for and only upon request, the annual economic price increase as defined in subsection 3.3 above.
2. Prior to the end of the then current contract year, the pass through increase shall be reduced or eliminated when and as the cause of the increase is reduced or eliminated.

C. Pass through price increases will not be a substitute for poor planning by the Contractor. Pass through increase will not be allowed for the first six months of any
contract year. Price increases will be effective upon the date such a request is received in writing; and will not be made retroactive.

3.27 Payment Clauses Required in All Contracts

Section § 2.2-4352 of the Virginia Public Procurement Act requires the following:

A. That any contract awarded by FW include the following clauses:

1. The Contractor shall take one of the two following actions within seven days after receipt of amounts paid to the contractor by FW for work performed by any subcontractor(s) under the contract:
   a. The Contractor shall pay its subcontractor(s) for the proportionate share of the total payment received from FW attributable to the work performed by the subcontractor under that contract; or
   b. Notify FW and any subcontractor(s), in writing, of his intention to withhold all or a part of the subcontractor’s payment with the reason for nonpayment.

2. Offerors shall include in their offer submissions either: (i) if an individual contractor, their social security numbers; and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification numbers.

3. The contractor shall pay interest to the subcontractor(s) on all amounts owed by the Contractor that remain unpaid after seven days following receipt by the Contractor of payment from FW for work performed by the subcontractor under the contract, except for amounts withheld as allowed in subdivision 1.

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

B. The contractor shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

C. A contractor’s obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of FW. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

3.28 Payment

A. Invoices: All invoices are to be sent directly to FW Accounts Payable department by mail, fax, or e-mail. Invoices shall include the FW Purchase Order / Contract number and the contractor’s FEIN. Invoices are not to be sent to the contract Project Manager, or other departmental reps. Failure to comply may result in late payments for which FW will not be liable.
B. Terms: All payments will be Net 30 from the date of receipt of a valid invoice at FW Finance Department. Payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.

C. Invoices: The Contractor shall submit invoices for items ordered, delivered and accepted, directly to the Finance Department, to the attention of Accounts Payable. Invoices shall show FW Purchase Order or contract number and are subject to review and approval by FW Project Manager.

D. Partial Payments: Requests for partial payments or advanced payments must be submitted as part of the Price Bid along with a justification. FW reserves the right to accept, reject or negotiate requests for partial payments. If the request is rejected, the Bidder must waive the requirement in order to remain in consideration.

E. Refunds: If the Contractor is declared to be in default, FW will be eligible for a full and immediate refund for all payments made to the Contractor. Partial Payments: Requests for partial payments or advanced payments must be submitted as part of the Price Offer along with a justification. FW reserves the right to accept, reject or negotiate requests for partial payments. If the request is rejected, the Offeror must waive the requirement in order to remain in consideration.

F. Unreasonable Charges: Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, final payment is contingent on a determination of reasonableness with respect to all invoiced charges. Charges that appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, FW shall promptly notify the Contractor, in writing, as to those charges that it considers unreasonable and the basis for the determination.

3.29 Precedence of Terms

These General Terms and Conditions shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

3.30 Price Firm Period

Bid pricing shall be firm and fixed as originally offered and accepted for the first 12 months of the contract.
3.31 Price and Title

All prices are for Commodities delivered F.O.B. the facility set forth on the Purchase Order and shall represent the entire cost to FW. Title for such Commodities shall pass to FW upon receipt and acceptance thereof at FW’s designated facility.

3.32 Purchase and Sale Transaction

Any transaction for the purchase and sale of any Commodity shall be effected by FW’s issuance to the Contractor of a Purchase Order, in which event the Contractor covenants and agrees to furnish all Commodities described therein in strict accordance with the terms and conditions of such Purchase Order and the other documents that together constitute the Contract.

3.33 Rider Clause

Subject to the mutual agreement between the parties, any contract awarded on the basis of this solicitation may be used by any public entity (to include jurisdictions comprising the Metropolitan Washington Council of Governments), to enter into a contract for the services described and defined herein. For single purchases, the contract may be used for up to 12 months from the actual date of contract award. For multi-year contracts, the contract may be used throughout the effective period of the contract. Contracts awarded as a result of this solicitation will be subject to these terms and conditions, and/or such terms and conditions as may be required by the controlling body for the public agency using the contract. Pricing shall be as offered by the successful Offeror and subsequently accepted by FW. However, to the extent that transportation cost vary, the contractor and the public entity may negotiate a markup or discount to reflect the true cost of transportation.

3.34 Taxes

FW is exempt from Federal Excise Taxes, Virginia State Sales and Use Taxes, and the District of Columbia Sales Taxes and Transportation Taxes. FW’s tax identification number is 54-6025290.

3.35 Termination of Contract

A. For Cause. In the event that the Contractor: (1) fails to deliver any Commodity or Service in accordance with the time period established therefore in the Contract; or (2) fails to furnish any Commodity or Service which conforms in all respects to the requirements of the Contract; then FW, without prejudice to any other rights or remedies it may have at law or in equity (including its right to seek damages from the Contractor), shall have the right to terminate the Contract and any outstanding Purchase Orders by issuing a written notice of termination to the Contractor. Such notice of termination shall describe in reasonable detail the grounds for the termination and shall take effect immediately upon receipt by the Contractor.
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If, after issuance of a notice of termination under this Section it is determined for any reason that cause for such termination did not exist, then the rights and obligations of the parties shall be the same as if the notice of termination had been delivered under the provisions of subsection B (termination for convenience) hereof; provided, however, that the Contractor in such event shall be deemed to have received seven days prior written notice of such termination. Any compensation due the Contractor pursuant to subsection B shall be offset by the cost to FW of remediing the default by the Contractor. The Contractor shall in no event be entitled to receive any consequential damages or any anticipated profits with respect to Commodities not yet furnished to, and accepted by, FW as of the effective date of any such termination.

B. For Convenience. FW shall have the right to terminate the Contract and/or any outstanding Purchase Orders issued hereunder at its own convenience for any reason by giving seven business days prior written notice of termination to the Contractor. In such event, the Contractor shall be paid an amount equal to the actual cost of any Commodity delivered to, and accepted by, FW and the actual cost of any equipment, goods or materials ordered by the Contractor hereunder in good faith which could not be canceled, less the salvage value thereof, provided sufficient substantiation is furnished to FW. Any subcontract entered into by the Contractor in connection with the transactions contemplated hereby shall contain a similar termination provision for the benefit of the Contractor and FW. The Contractor shall in no event be entitled to receive anticipated profits on any Commodities not yet furnished to and accepted by FW as of the effective date of any such termination.

3.36 Unit Prices Prevail

In the event that there is a mathematical error on the summary sheet, the unit price for each item shall prevail. All costs to provide the goods and/or services specified in this solicitation shall be shown on the attached bid summary sheet. If there are additional costs to provide the goods and/or services specified herein either list them on the attached bid summary sheet or attach an additional sheet to it. Line items left blank will be interpreted as at no cost to FW.

3.37 Virginia Freedom of Information Act

Except as provided herein, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, any interested person, firm, or corporation, in accordance with the Virginia Freedom of Information Act.

3.38 Warranty

A. The contractor warrants that, unless otherwise specified, all materials and equipment incorporated in the work under the contract shall be new, in first class condition, and in accordance with the contract documents. The contractor further warrants that all
workmanship shall be of the highest quality and in accordance with contract
documents and shall be performed by persons qualified at their respective trades.

B. Materials and equipment shall be fully guaranteed against defects in material and
workmanship for a period of 12 months following date of final acceptance. Should
any defect be noted by the FW, the Project Manager will notify the contractor of such
defect or non-conformance. Notification will state either (1) that the contractor shall
replace or correct, or (2) FW does not require replacement or correction, but an
equitable adjustment to the contract price will be negotiated. If the contractor is
required to correct or replace, it shall be at no cost to FW and shall be subject to all
provisions of this clause to the same extent as materials initially delivered. If the
contractor fails or refuses to replace or correct the deficiency, the office issuing the
purchase order may have the materials corrected or replaced with similar items and
charge the contractor the costs occasioned thereby or obtain an equitable adjustment
in the contract price.

C. Work not conforming to these warranties shall be considered defective.

D. This warranty of materials and workmanship is separate and independent from and in
addition to any of the contractor’s other guarantees or obligations in this contract.

NOTE: Any implied warranties, including but not limited to the warranty for
“Merchantability and Fitness for A Particular Purpose” cannot be waived and are a
mandatory part of this solicitation and any ensuing Contract.

END SECTION 3
4. SPECIAL TERMS AND CONDITIONS

4.1 Delays

A. By the Contractor: Unauthorized delays by the Contractor are prohibited. After prior written warning to the Contractor, FW may declare the Contractor in default for unacceptable delays. If such a declaration is made, FW reserves the unilateral right to cure the default by any means available to FW, including (but not limited to) liquidated damages, redeeming the Contractor’s Performance Bond (or other security as agreed to by FW prior to contract award); and to recover any additional costs, lost funds and/or related expenses. This is not a limitation of FW’s legal rights to recover damages due to Contractor default in any other way.

B. By FW: The Contractor shall not be responsible for delays caused by FW, its agents, or other Contractors. To the extent that the Contractor is unable to proceed due to the actions or inaction’s of FW, its agents, employees or other Contractors, the Contractor shall be granted an extension to the installation schedule equal to the documented amount of time the Contractor was prevented from performing work. The Contractor shall not be eligible for damages as a result of FW delays.

4.2 Force Majeure

If a delivery is delayed by Act of God, terrorism, war, embargo, fire, or explosion not caused by the negligence or intentional act of the Contractor or his subcontractors or supplier(s), a reasonable extension of time as FW or the Member deems appropriate may be granted. Upon receipt of a written request and justification for any extension from the Contractor, FW or the Member may in its sole discretion (i) extend the time for delivery of the Commodity; (ii) suspend the Contract in whole or in part and obtain one or more of the Commodities elsewhere for a time, or (iii) terminate the Contract; all without liability to Contractor on the part of FW or Member, as the case may be. Contractor’s request and justification shall be subject to such substantiation and further inquiries as FW or Member may require.

4.3 Time Is Of The Essence

Time is of the essence: All chemicals shall be delivered within the time or times specified on the Contractor’s Bid Form or otherwise set forth in the applicable Purchase Order. Notwithstanding the foregoing, the Contractor shall not be deemed to have breached the terms and conditions of the contract Documents to the extent any delay is due to circumstances beyond its reasonable control and without the fault or negligence of the Contractor provided that the Contractor first shall have provided Fairfax Water with written notice (to include facsimile or e-mail) of any such delay within five days after the occurrence of events or circumstances causing the delay. After prior written warning to the Contractor, FW may declare the Contractor in default for unacceptable delays. If such a
declaration is made, FW reserves the unilateral right to cure the default by obtaining the services of a qualified Contractor to complete the project and charge any additional or increased costs to the Contractor.

4.4 Contractor Replacement

In the event that a Contractor is declared to be in default, the next lowest responsive and responsible Bidder will be given an opportunity to accept a contract for the chemicals that were provided by the defaulting Contractor. If within 180 calendar days after contract award, the prospective Contractor must agree to provide the chemicals at its original bid price. After the first 180 calendar days, the Contractor will be allowed to adjust the original bid price by an amount equal to the annualized PPI-SA for Chemicals and Allied products or the specific series Id referenced on their original bid for the period of time between contract award and Fairfax Water’s offer to accept the contract. FW reserves unto itself, the unilateral right to either not extend an offer to the next lowest Bidder or to rebid the subject chemicals.

4.5 Contractor’s Compliance and Safety Program

A. The Contractor shall comply with all applicable Federal, State, and local safety programs, regulations, standards, and codes, to include though not limited to:

1. The Virginia Uniform Statewide Building Code,
2. Building Officials & Code Administrators (BOCA) codes (together with adopted International Codes),
3. Virginia Department of Health (VDH) regulations,
4. Virginia Department of Environmental Quality (DEQ) regulations,
5. Virginia-OSH (VOSH) regulations, and

END SECTION 4
ATTACHMENT 1

REFERENCES

BIDDER'S NAME: ________________________________

CHEMICAL BEING BID: ________________________________

1. COMPANY NAME: ____________________________________________
   ADDRESS:
   ___________________________________________________________
   ___________________________________________________________
   ___________________________________________________________

   CONTACT PERSON: ___________________________________________
   TELEPHONE: (______) - _______ - _____________________________
   FAX: (______) - _______ - ________________________________
   E-MAIL: __________________________________________________

2. COMPANY NAME: ____________________________________________
   ADDRESS:
   ___________________________________________________________
   ___________________________________________________________
   ___________________________________________________________

   CONTACT PERSON: ___________________________________________
   TELEPHONE: (______) - _______ - _____________________________
   FAX: (______) - _______ - ________________________________
   E-MAIL: __________________________________________________

3. COMPANY NAME: ____________________________________________
   ADDRESS:
   ___________________________________________________________
   ___________________________________________________________
   ___________________________________________________________

   CONTACT PERSON: ___________________________________________
   TELEPHONE: (______) - _______ - _____________________________
   FAX: (______) - _______ - ________________________________
   E-MAIL: __________________________________________________
April 28, 2015

Arlington County Virginia
Office of the Purchasing Agent
2100 Clarendon Blvd, Suite 500
Arlington, VA 22201

Attention: Larry Slattery

Subject: 36% Phosphoric Acid

Dear Larry,

This brief memo will reference the above subject matter and your earlier e-mail pertaining to a piggyback contract on the Fairfax, Virginia bid.

Unfortunately, volumes and deliveries do not add up to the quote at Fairfax. Shannon Chemical Corporation will offer you the price of $533.33/ton from the contract. We will need to add a $100.00 charge due to the freight cost and lower quantity. Pricing will be as follows:

$533.33/ton per contract
$100.00/ton volume / freight
$633.33/ton Total

Please review and let us know how you want to proceed.

Thank you for your interest in Shannon Chemical Corporation’s product and services.

Respectfully,

SHANNON CHEMICAL CORPORATION

Daniel C. Flynn
President

DCF:tea

cc: Nathaniel Kress