

County of Mathews, Virginia
INVITATION FOR BID #IFB-FY23-HITW

ISSUE DATE: March 24, 2023
DUE DATE: April 14, 2023
TIME: 4:00 P.M. EST
IFB #: #IFB-FY23-HITW
TITLE: Monitoring and reporting pursuant to Biological Opinion for Hole in the Wall Channel Dredging Project at Haven Beach

ISSUING AGENCY: Mathews County, Virginia (the “County”) – **All bids should be delivered only to the contact at MPPDC shown below.**

CONTACT: Curtis Smith
Deputy Director
Middle Peninsula Planning District Commission
125 Bowden Street
P.O. Box 286
Saluda, VA 23149
804-758-2311
csmith@mppdc.com

The County invites qualified firms to submit sealed bids to monitor and report on the impact of the incidental take of the federally listed threatened northeastern beach tiger beetle (NBTB) during the course of shoreline protection work at Haven Beach in Mathews County.

All responses to this Invitation for Bids and any resulting contract shall be consistent with and governed by the Virginia Public Procurement Act.

All bids shall be turned in no later than 4:00 P.M. EST on April 14, 2023 to the Middle Peninsula Planning District Commission located at 125 Bowden Street, Saluda, VA 23149. If bids are sent via a mailing service or hand delivered, please address the bids to the CONTACT listed above. Any bids that are submitted by e-mail, phone, or facsimile shall not be considered. Any bids received after the deadline shall be deemed non-responsive and returned unopened. *It is the Bidder’s sole responsibility to insure all information; including addendums are complete and delivered on time.* The County reserves the right to reject any and all bids and to waive informalities. If the MPPDC closes its offices due to inclement weather scheduled receipt of bids will be extended to the next business day, same time.

Note: This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, sexual orientation, gender identity, political affiliation, or veteran status or any other basis prohibited by state law relating to discrimination in employment.

I. Introduction

A. Background

Milford Haven is known for its significant working waterfront facilities and infrastructure, including the United States Coast Guard (Coast Guard) Station. Though it is possible to access the Chesapeake Bay through the Milford Haven federal channel, it is the long way around to the Bay. The proposed Hole in the Wall dredge channel (Channel) is the only viable location to exit directly to Chesapeake Bay. It is not a federally-authorized channel, but it is marked with aids to navigation (ATONs). The County temporarily assumed maintenance of the federal ATONs in October 2017 in an attempt to cover the public responsibility for maritime transit at Hole in the Wall. This temporary solution provided by the County has ensured safe maritime travel over the short-term, but dredging the channel and retuning ATON maintenance responsibilities to the Coast Guard will provide the most sustainable long-term solution for maritime transit through the Channel.

Accordingly, the County applied for and was awarded a grant of funds from the Port of Virginia Waterway Maintenance Fund Grant Program to address the dredging needs of the Channel. The Virginia Marine Resources Commission (VMRC) issued Permit # 2021-1533 authorizing the County to dredge the Channel and related activities. *See* Commonwealth of Virginia Marine Resources Commission Permit, VMRC #21-V1533, December 21, 2021(VMRC Permit). [may be viewed at www.mppdc.com/index.php/pdcinfo/bids].

Following issuance of the VMRC permit, the County applied for and was issued a permit from the U.S. Army Corps of Engineers (USACE and USACE permit, respectively) for the Channel dredging and related activities. *See* Department of Army Permit Number NAO-2021-01953 / VMRC # 21-V1533 [may be viewed at www.mppdc.com/index.php/pdcinfo/bids].

In order to perform the permitting dredging and related activities, the County requires one or more qualified contractors to monitor and report on the impact of the incidental take of the federally listed threatened northeastern beach tiger beetle (NBTB) pursuant to the requirements of the August 3, 2022 Biological Opinion of the Fish and Wildlife Service of the United State Department of the Interior (B.O.) as incorporated into the USACE [may be viewed at www.mppdc.com/index.php/pdcinfo/bids] and the requirements of the Monitoring Plan, Mathews County – Haven Beach Renourishment Project, JPA File NAO-2021-01953/ VMRC-20211533, Mathews, Virginia, Accepted March 15, 2023 (Monitoring Plan) [may be viewed at www.mppdc.com/index.php/pdcinfo/bids] excerpted below as follows:

B. Competitive Sealed Bidding.

This procurement shall utilize competitive sealed bidding, pursuant to §§ 2.2-4302.1 and 2.2-4303.

C. Communications Prior to the Response Deadline.

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

Curtis Smith
Deputy Director

**Middle Peninsula Planning District Commission
P.O. Box 286
Saluda, VA 23149
Email: csmith@mppdc.com**

II. Scope of Work

A. Overview of the Project

There are three phases of work to be completed on the “Hole in the Wall” project: the first phase requires the dredging of a channel and placement of dredged sand onto Haven Beach, in Mathews County, Virginia; the second phase consists of breakwater design and construction; and the third phase includes the planting of dune grasses and installation of sand fencing. All of the work must be completed by December 31, 2024 pursuant to the VMRC Permit # 2021-1533.

To ensure compliance with the Department of the Army authorization and the Endangered Species Act, the County must implement and comply with all of the terms and conditions of the B.O. issued by the U.S. Fish and Wildlife Service regarding the Northeastern Beach Tiger Beetle. Mathews County must satisfy “the terms and conditions of the B.O. include the ‘REASONABLE AND PRUDENT MEASURES’ (1-2), ‘TERMS AND CONDITIONS’ (1-5) and the ‘MONITORING AND REPORTING REQUIREMENTS’” (1-4). The USACE must be copied when reports and notifications are submitted to the U.S. Fish and Wildlife Service pursuant to the “TERMS AND CONDITIONS” of the B.O.

The Contractor hired pursuant to this solicitation must implement and conduct the Monitoring Plan as excerpted below as follows:

The B.O. requires that the monitoring is to occur in the action area depicted in the highlighted areas in “Figure 5” below. This includes the beach renourishment, beach grass planting and breakwater construction area; the breakwaters and extension area; the staging and project access area; and the indirect impact area. The indirect impact area is the stretch of shoreline 300 meters to the south of the southernmost breakwater location. It is important to note that the northernmost portion of the indirect impact area consists of property owned by Mathews County and southern portion of the area is located on privately owned property. Mathews County and the [Contractor] cannot legally enter onto the privately owned property within the indirect impact area without the consent and permission of the private property owner. Mathews County will contact the private property owner to request consent and permission to conduct project monitoring activities but should the private property owner decline to grant access, then monitoring activities will be conducted solely on the County owned Haven Beach property. USFWS staff will be notified on the access status of the private property once the owner has been contacted.

[The Contractor] will conduct the following activities and report to USFWS staff accordingly (per p. 29 #3 of the USFWS B.O.):

- 1- Aerial imagery of the action area will be conducted:
 - a. Once prior to the initiation of work on Haven Beach,
 - b. Once immediately after construction, and
 - c. Twice at regular annual intervals post-construction (once in Year 1 and once in Year 3).

Aerial imagery will be conducted by a USFWS approved individual or agency (federal, state, academic, etc.). The proposed source's qualifications will be sent to USFWS staff for review and approval at least 30 days prior to the initiation of surveys. To the greatest extent practical, the same individual will perform the surveys to ensure consistency in methods, techniques, data gathering, etc. Surveys will be conducted near end of September or early October during the same time during each year and will not be conducted during a King Tide or significant flooding event.

- 2- Beach profiles of the indirect impact area delineated in red in Figure 5 and 50 m downdrift of this area will be conducted:
 - a. Once prior to the initiation of work on Haven Beach,
 - b. Once immediately after construction, and
 - c. Twice at regular annual intervals post-construction (once in Year 1 and once in Year 3).

Beach profiling will be conducted by a USFWS approved individual. The proposed individual's qualifications will be sent to USFWS staff for review and approval at least 30 days prior to the initiation of surveys. To the greatest extent practical, the same individual will perform the surveys to ensure consistency in methods, techniques, data gathering, etc. Surveys will be conducted near end of September or early October during the same time during each year and will not be conducted during a King Tide or significant flooding event.

As noted previously, the shorelines south of the County-owned Haven Beach property are privately owned and monitoring is only permissible should the owners grant consent and permission. Should Mathews County or the [Contractor] not be granted access to privately-owned property, beach profiles will only occur on the portion of the indirect impact area owned by Mathews County.

- 3- Adult and larval NBTB surveys in the action area in Figure 5 will be conducted as follows.
 - a. Phase 2 pre-construction construction path staking –
Before the start of phase 2 construction, in coordination with the applicant, a USFWS-approved NBTB surveyor will stake out a construction path on the beach that minimizes impacts on NBTB larval areas. During phase 2 construction all equipment will utilize that construction path.

- b. Adult Surveys:
 - i. Once after construction on warm, sunny days between July 1 and July 25, and
 - ii. Twice at regular annual intervals post-construction on warm, sunny days between July 1 and July 25 (Year 1 and Year 3).
- c. Larval Surveys:
 - i. Once after construction between October 10 and 30 during low tide on cool and/or cloudy days, and
 - ii. Twice at regular annual intervals post-construction between October 10 and 30 during low tide on cool and/or cloudy days (Year 1 and Year 3).

Surveys will be conducted by a USFWS-approved NBTB surveyor. If a non-approved surveyor is selected, the proposed surveyor's qualifications will be sent to USFWS staff for review and approval at least 60 days prior to the survey. The total number of adults observed will be recorded for each adult survey. The total number of larval burrows will be recorded for each larval survey. An attempt to identify instar stage of larvae will be made during surveys. A report will be provided to USFWS staff documenting/including the following for both adult and larval surveys: surveyor and dates, methods, results, photographic monitoring, and any habitat/population observations of significance within 30 days following the completion of the larval survey.

As noted previously, the shorelines south of the County-owned Haven Beach property are privately owned and monitoring is only permissible should the owners grant consent and permission. Should Mathews County or the [Contractor] not be granted access to privately-owned property, NBTB surveys will only occur on the portion of the action area owned by Mathews County.

[The Contractor] will conduct the following activities and report to USFWS staff accordingly (per p. 29-30 #1, 2, and 4 of the USFWS B.O.):

- 1- Any spills of motor oil, hydraulic fluid, coolant, or similar fluids, not contained before entry into the action area, will be reported to USFWS staff and National Response Center (800-424-8802) immediately.
- 2- USFWS staff will be notified by the [Contractor] regarding the projected and actual start dates, progress, and completion of the project. The [Contractor] will verify that the disturbance of 357,060 ft² between latitude: 37.4386, longitude: -76.254 and latitude: 37.4319, longitude: -76.2531 was not exceeded by beach renourishment, the proposed breakwaters and their construction, and beach grass planting; and that all

conservation measures were followed. A report will be provided to USFWS staff by the [Contractor] containing this information by December 31 of each year until the year after construction is complete.

- 3- Care will be taken in handling any dead specimens of proposed or listed species to preserve biological material in the best possible state. In conjunction with the preservation of any dead specimens, the finder has the responsibility to ensure that evidence intrinsic to determining the cause of death of the specimen is not unnecessarily disturbed. The finding of dead specimens does not imply enforcement proceedings pursuant to the ESA. The reporting of dead specimens is required to enable the USFWS to determine if take is reached or exceeded and to ensure that the terms and conditions are appropriate and effective. Upon locating a dead specimen, the USFWS Virginia Law Enforcement Office and the Virginia Field Office will be contacted.

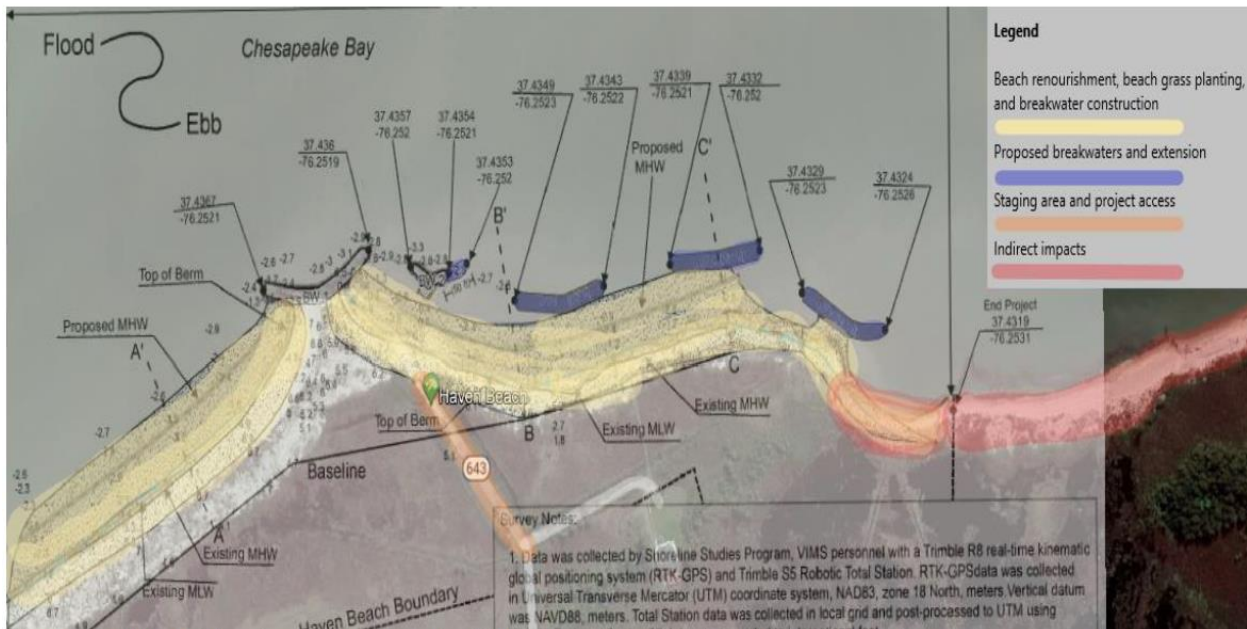


Figure 5. Aerial image of the action area at Haven Beach with an overlay of the project plans. The 22,200 ft² of subaqueous bottom covered by the proposed breakwaters and breakwater extension are shown in purple; the 10,000 ft² of uplands for the staging area and project access are shown in orange; the 334,860 ft² of area for beach renourishment, breakwater construction, and beach grass planting shown in yellow; and the 300 m of shoreline associated with indirect effects shown in red.

B. Project Timeline.

The VMRC Permit authorizing the dredging and related work expires on December 31, 2024. The monitoring and reporting shall continue until such time as provided by the B.O. and the Monitoring Plan.

Seasonal restrictions on dredging operations (see DOA Permit # NOA-2021-01953 Special Condition 14, page 4) prohibit dredging activities in the water from June 1 and September. A

Request for Bid has been published for dredging and beneficial reuse, breakwater construction, and dune grass planting activities at Haven Beach (RFP may be accessed at www.mppdc.com/index.php/pdcinfo/bids). The RFP is requesting that Offerors make notice whether they are able to conduct the dredging activities prior to the seasonal restriction commencement on June 1. Bidders should indicate whether they are able to conduct the required pre-dredging monitoring at Haven Beach by the end of May 2023.

III. Bid Format

The bids are to be submitted in a format that allows uniform review and easy access to information by the evaluation committee. A table of contents shall be provided, and pages and exhibits numbered in an organized manner. All bids shall provide a delineation of capabilities to satisfy the requirements of this invitation. Emphasis should be on completeness and clarity of content.

The items to be addressed in the bid in the order listed are:

1. Cover Sheet
2. Bid Form
3. Description of Services to be Provided and Project Approach
4. Statement of Qualifications
5. Response Capability
6. Insurance
7. References
8. Other Supporting Data
9. Submission of Proprietary Information

Section 1 – Cover Sheet

Included on the cover sheet shall be:

- a. The name of the firm and the location of the office that will have the responsibility for the services to be provided.
- b. The name, address, and phone number of a key representative who is knowledgeable about the bid.
- c. The signature, in ink, of an officer or employee having the authority to bind the company by their signature. Signatures by anyone other than the president, vice president, or general partner should have accompanying documentation that the individual is empowered to bind the company or partnership.

Section 2 – Bid Form

Bid shall include the Bid Form (**Appendix C**) with the required information supplied.

Section 3 – Description of Services to be Provided and Project Approach

The Bidder should describe its understanding of the scope of services and how the firm proposes to conduct its work.

As discussed in Section II above, the existence of seasonal dredging work restrictions requires that the bid provide notice as to whether the required pre-dredging monitoring can be completed during May 2023.

Section 4 – Qualifications and Experience of the Firm and Project Team

1. Include the organizational chart, functional discipline, and responsibilities of the project team members.
2. The Bidder must have qualifications that will permit it to be approved by the USFWS for aerial imagery, beach profiling, and NBTB surveying as more fully described in the B.O. and the Monitoring Plan.
3. Provide concise resumes of each team member's education, relevant professional experience, length of time employed by the Bidder and/or subcontractor, and professional licensure. Describe professional staffing available for development, training, implementation, and support services. Additionally, the Bidder shall clearly state whether it is proposing to subcontract any of the work herein. The names of all proposed subcontractors shall be provided. By proposing such firms or individuals, the Bidder assumes full liability for the subcontractor's performance. The Bidder shall state the amount of previous work experience with the subcontractor.
4. Include a list of projects, which contain work similar or related to that called for in this solicitation and, at a minimum, include for each project listed the following: project name, brief project description, location of the office responsible for the project, budgeted cost, completed cost, year completed and actual completion date relative to scheduled completion date.

Section 5 – Response Capability

Give an overview of the workload priority to be assigned to this project and staffing available relative to the Bidder's ability to respond to County.

Section 6 – Insurance

Insurance of the types and in the amounts set forth in the terms and conditions shall be purchased and maintained by the Bidder during the life of the Contract.

Section 7 – References

Give name, address, and telephone number of references for whom similar work has been performed. The County may, at its discretion, contact these and other known references to discuss the past performance of the firm and project team.

Section 8 – Other Supporting Data

Other information you feel to be relevant to the selection of your firm for this Contract.

Section 9 – Submission of Proprietary Information (Submit Under Separate Cover)

Trade secrets or proprietary information submitted in a bid shall not be subject to disclosure under the Virginia Freedom of Information Act. However, in order for this information to be protected from disclosure, the Bidder must specifically invoke the protections of Virginia Code § 2.2-4342 or other applicable statute, prior to or upon submission of the trade secrets or proprietary information. The Bidder must clearly identify any part of its bid considered to be protected as trade secret or as proprietary information and must state the reasons why protection is necessary. Bidders shall submit under separate cover any information considered proprietary and any copyrighted material. Separate cover means that proprietary information must be placed in a separate area of the bid and be clearly identified as containing proprietary and/or copyrighted information.

- a. Any Bidder shall identify a trade secret or proprietary information by clearly stating “Trade Secret” or “Proprietary Information” adjacent to the particular information, and by clearly identifying the information to be subject to the protection, such as by encircling, highlighting, underlining or other similar means. The Bidder shall state the reasons why protection is necessary on a separate page of the bid.
- b. Any Bidder shall not identify as a trade secret or proprietary information those sections of the bid that are material to the County’s ultimate award of the contract.
- c. The County reserves the right to contact a Bidder and to request that the Bidder explain or clarify why the Bidder identified certain information as a trade secret or as proprietary information.
- d. Any Bidder shall not identify as trade secret or proprietary information their complete bid.

All information contained within the body of the bid not under separate cover and labeled proprietary shall be public information in accordance with state statutes.

IV. Submittal Instructions

- A. Each Bidder shall submit one (1) original and five (5) copies of their bid. Each bid shall be printed in English and received in hard copy by the deadline. Oral bids, bids received by telephone, fax, telegraph, or e-mail shall be rejected.
- B. An authorized representative of the Bidder shall sign bids.
- C. Bids should clearly respond to the Scope of Work. All information requested in this solicitation should be submitted. Failure to submit all information requested may result in the bid being deemed non-responsive. Bids which are deemed non-responsive, incomplete, or lack key information may be rejected in full by the County.
- D. Bids should be organized in the order delineated above in Section III.
- E. All pages of the bid should be numbered.
- F. Except as otherwise provided, and in accordance with Virginia Code § 2.2-4342, all proceedings, records, contracts, and other public records relating to the County’s procurement transactions shall be open to the inspection of any citizen, or any interested person, firm, or corporation, in accordance with the Virginia Freedom of Information Act (Virginia Code § 2.2-

3700 et seq.). After award, all bids become a matter of public record and are available for inspection by the public, except those portions of the bids that were properly and timely identified as proprietary and/or copyrighted, and thus not subject to the Virginia Freedom of Information Act.

G. Any contact with any County or MPPDC representative, other than that outlined above, concerning this IFB is *prohibited*. Such unauthorized contact may disqualify a Bidder from this procurement.

H. The County and MPPDC will assume no responsibility for oral instruction or interpretation. Any question regarding the procurement solicitation shall be in writing.

I. Each bidder shall be prepared, if so requested by the County, to present evidence of their experience, qualifications and financial ability to carry out the terms of the Contract.

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

V. Contract Award

A. Award

County intends to enter a contract for the services solicited under this IFB with a competent, responsive, responsible firm(s) after using the competitive sealed bid process as authorized by the Virginia Public Procurement Act, specifically including Virginia Code §§ 2.2-4301, 2.2-4302.1 and 2.2-4303.

Upon the award or announcement of the decision to award a contract as a result of this solicitation, the County will publicly post such notice at the County Administration office, and also on the County website (www.mathewscountyva.gov).

B. Term

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

C. Payment Terms:

Draws upon completion of milestones for activities within the Monitoring Plan at 25%, 50%, and 75% completion with balance upon final acceptance and issuance of completion statement by County.

APPENDIX A: General Conditions and Instructions to Bidders

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

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

3. WITHDRAWAL:

- a. Requests for withdrawal of bids after opening of such bids but prior to award shall be transmitted to the contact listed on the first page of this IFB, in writing, accompanied by full documentation supporting the request. If the request is based on a claim of error, documentation must show the basis of the error. Such documentation may take the form of supplier quotations, Bidder work sheets, etc. If bid bonds were tendered with the bid, the County may exercise its right of collection.
- b. No Bid may be withdrawn under this paragraph when the result would be the awarding of the contract on another Bid of the same Bidder or of another Bidder/Offeror in which the ownership of the withdrawing Bidder is more than five percent. In the case of Invitation for Bid's, if a bid is withdrawn under the authority of this paragraph, the lowest remaining bid shall be deemed to be the low bid. No Bidder who, is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid/bid was submitted.

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

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

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

7. ETHICS IN PUBLIC CONTRACTING: The provisions contained in the Virginia Public Procurement Act as set forth in the 1950 Code of Virginia, as amended, shall be applicable to all contracts solicited or entered into by the County. By submitting their bids, all Bidders certify that their bids are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Bidder, supplier, manufacturer or subcontractor in connection with their bid, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

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

APPENDIX B: Standard Terms & Conditions

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

Definitions

“Contract Documents” means all documents that constitute any legal and binding agreement between the Contractor/Offeror and the County, including these Standard Terms and Conditions.

“Contract Period” means the time period from the time that Contractor first becomes legally bound to provide goods or services to the County in response to a Solicitation until all of Contractor’s contractual obligations to the County, arising out of the Solicitation, cease.

“Obligations” means any and all legal obligations of Contractor under any Contract Documents.

“Solicitation” means the vehicle by which the County solicited pricing, and if applicable other terms, by which it could acquire goods or services from Contractor, regardless of whether the vehicle was an Invitation for Bids, Request for Bids, Request for Quotes, County policy, or Virginia law.

1. **Assignment of Contract.** This Contract may not be assigned in whole or in part without the written consent of County.

2. **Attorneys’ Fees.** Should the County employ an attorney to either (i) institute and maintain a suit against Contractor arising out of the Contract or Contractor’s Obligations (ii) assist in enforcing or defending any of the County’s rights under the Contract, (iii) protect the County’s interest in any matter arising under a contract with Contractor, (iv) collect damages for the breach of a contract or any other amounts owed to the County; or (v) recover on a surety bond given by the Contractor, then the County shall be entitled to recover its attorneys’ fees, costs, charges, and expenses expended or incurred therein from the Contractor if the County prevails in court.

3. **Audit.** The Contractor hereby agrees to retain all books, records, and other documents relative to Contractor’s Obligations and the Contract Documents for five (5) years after final payment or after all other pending matters are closed, whichever is longer. The County and its authorized agents, state auditors, the grantor of the funds to the County, the Comptroller of Virginia or of the United States, or any of their duly authorized representatives shall have access to any such books, documents, papers and records of the Contractor for the purpose of making audits, examinations, excerpts or transcriptions.

4. **Authority to Transact Business in Virginia.** A Contractor organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 of the Code of Virginia shall include in its bid or bid the identification number issued to it by the State Corporation Commission. Any Contractor that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law shall include in its bid a statement describing why Contractor is not required to be so authorized. Any Contractor described herein that fails to provide the required information shall not receive an award unless a waiver of this requirement and the

administrative policies and procedures established to implement this section is granted by the County.

5. Certifications:

- a. The Contractor certifies that Contractor's response to any Solicitation:
 - i. Has been prepared without prior participation, understanding, agreement, or connection with any corporation, firm or other person that is also submitting a bid in response to the same solicitation;
 - ii. Is in all respects fair, without misrepresentations of fact, and free from collusion or fraud;
 - iii. Is in full compliance with the Virginia Conflicts of Interest Act;
 - iv. Is or is intended to be competitive and free from any collusion with any person, firm or corporation; and,
 - v. Has been prepared without the benefit of being provided information not available to the general public, or other potential Bidders, such as insider information known to County employees or other sources which may have gained such information from interaction with County employees;
- b. The Contractor has not offered or received any kickback from any other Bidder or contractor, supplier, manufacturer, or subcontractor in connection with the bid on this Solicitation. A kickback is defined as an inducement for the award of a contract, subcontract, or order, in the form of any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged. Further, no person shall demand or receive any payment, loan, subscription, advance, and deposit of money, services or anything of value in return for an agreement not to compete on a public contract;
- c. The Contractor is not a party to nor has he participated in nor is obligated or otherwise bound by agreement, arrangement or other understanding with any person, firm or corporation relating to the exchange of information concerning bids, prices, terms or conditions upon which the contract resulting from the acceptance of his bid is to be performed;
- d. The Contractor understands that collusive bidding is a violation of the Virginia Governmental Frauds Act and federal Law, and can result in fines, prison sentences, and civil damage awards and agrees to abide by all conditions of this Invitation For Bids; and
- e. Neither Contractor, Contractor's subcontractors, nor any person acting on Contractor's behalf, have conferred, or will confer, on any public employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

6. **Correction of Defective Work.** Contractor shall promptly replace or correct any work or materials which County rejects as failing to conform to the requirements of the Contract Documents. If Contractor does not do so within a reasonable time, County shall have the right to replace or correct the defective work or materials and Contractor shall be liable to the County for the cost thereof. If, in the opinion of County, it is not expedient to correct or replace all or any part of rejected work or materials, then County, at its option, may deduct from the payment due, or to become due, to Contractor such amounts as, in County's judgment, will represent the higher of: (i) the difference between the fair value of the rejected work and materials and the value thereof, if the work had complied with the Contract Documents; or (ii) the cost of correction.

7. **Contractual Claims Procedure**

- a. Contractual claims or disputes by Contractor against the County, whether for money or other relief, except for claims or disputes exempted by law from the procedure set forth herein, shall be submitted in writing no later than sixty (60) days after final payment; provided, however, that Contractor shall give the Commission written notice of its intention to file a claim or dispute within fifteen (15) days after the occurrence upon which the claim or dispute shall be based. Any written notice of Contractor's intention to file such a claim or dispute need not detail the amount of the claim, but shall state the facts and/or issues relating to the claim in sufficient detail to identify the claim, together with its character and scope. Whether or not Contractor files such written notice, Contractor shall proceed with the work as directed. If Contractor fails to make its claim or dispute, or fails to give notice of its intention to do so as provided herein, then such claim or dispute shall be deemed forfeited.
- b. The County, upon receipt of a detailed claim, may at any time render its decision and shall render such decision within one hundred twenty (120) days of final payment. Each such decision rendered shall be forwarded to the Contractor by written notice.
- c. If the Contractor disagrees with the decision of the County concerning any pending claim, the Contractor shall promptly notify the County by written notice that the Contractor is proceeding with the work under protest. Any claim not resolved, whether by failure of the Contractor to accept the decision of the County or under a written notice of Contractor's intention to file a claim or a detailed claim not acted upon by the County, shall be specifically exempt by the Contractor from payment request, whether progress or final. Pendency of claims shall not delay payment of amounts agreed due in the final payment.
- d. The County's decision on contractual claims shall be final and conclusive unless the Contractor appeals within six months of the date of the final decision on the claim by instituting legal action in the appropriate court.

8. **Counterparts and Electronic Signatures.** This Contract may be executed in two or more counterparts, each of which shall be deemed an original, but both of such counterparts together shall be deemed to be one and the same instrument. It shall not be necessary in making proof of this Contract or any counterpart hereof to produce or account for the other counterpart. The parties acknowledge and agree that this Contract may be executed by electronic signature,

which shall be considered as an original signature. Without limitation, “electronic signature” shall include faxed version of an original signature or electronically scanned and transmitted versions (e.g., via pdf) of an original signature.

9. **Debarment.** By submitting a bid, Contractor is certifying that it is not currently debarred by the Commonwealth of Virginia or the County.

10. **Drug-free Workplace.** During the performance of this Agreement, Contractor agrees to (i) provide a drug-free workplace for Contractor’s employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in 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 Contractor that Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

“Drug-free workplace” means a site for the performance of Work done in connection with a specific contract awarded to Contractor, 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 Agreement.

Contractor shall post a copy of the policy in a conspicuous place at the jobsite and assure that all Contractor, subcontractor, and supplier personnel entering the jobsite are informed of the policy.

11. **Employment Discrimination Prohibited.** During the performance of this Contract, Contractor agrees as follows:

1. Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age or disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of Contractor. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
2. Contractor, in all solicitations or advertisements for employees placed by or on behalf of Contractor, shall 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 to meet this requirement. The Contractor will include the provisions of the foregoing paragraphs, a, b, and c in every subcontract or purchase order of over ten thousand dollars (\$10,000), so that the provisions will be binding upon each subcontractor.

Contractor will include the provisions of the foregoing subsections a.(1), (2), and (3) in every subcontract or purchase order of over \$10,000, including but not limited to any agreement with Contractor, so that the provisions will be binding upon each subcontractor or vendor.

12. **Entire Agreement.** This Contract contains the entire agreement of the Parties, and all prior communications, oral or written, are without any force and effect as it is the specific intent of the Parties that this Contract alone sets forth the terms on which the Parties have mutually agreed.

13. **Ethics in Public Contracting.** The provisions contained in Virginia Code §§ 2.2-4367 through 2.2-4377, shall be applicable to all contracts solicited or entered into by the County. A copy of these provisions may be obtained from Mathews County upon request. The provisions of this article supplement, but do not supersede, other provisions of law including, but not limited to, the Virginia Conflict of Interests Act (§ 2.1-348 et. seq.), the Virginia Governmental Frauds Act (§ 18.2-498.1 et. seq.) and Articles 2 and 3 of Chapter 10 of Title 18.2. The provisions apply notwithstanding the fact that the conduct described may not constitute a violation of the Virginia Conflict of Interests Act.

14. **Exemption from Taxes.** The County is exempt from state sales tax and federal excise tax. Tax Exemption Certificates indicating the County's tax-exempt status will be furnished by the County upon request.

15. **Governing Law and Forum Selection.** This Contract shall be governed by, and construed in accordance with, the laws of Virginia without regard for Virginia's conflicts of laws rules. Venue for any litigation arising from this Contract shall only be proper in the Circuit Court of Mathews County, Virginia or in the General District Court of Mathews County, Virginia if the amount in controversy is within the jurisdictional limit of each court, regardless of the actual location of such parties. The provisions of this Contract shall not be construed in favor of or against either party but shall be construed according to their fair meaning as if both parties jointly prepared this Contract.

16. **Headings.** The headings used in this Contract, or any other Contract, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

17. **Immigration Reform and Control Act of 1986.** By accepting a contract award, Contractor certifies that it does not and will not during the performance of this Contract violate the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits the employment of illegal aliens.

18. **Indemnification.** Contractor shall indemnify, keep and save harmless the County, its agents, officials, employees and volunteers against claims of injuries, death, damage to property, patent claims, suits, liabilities, judgments, cost and expenses which may otherwise accrue against the County in consequence of the granting of a contract or which may otherwise result there from, if it shall be determined that the act was caused through negligence or error, or omission of Contractor or his or her employees, or that of the subcontractor or his or her employees, if any; and Contractor shall, at his or her own expense, appear, defend and pay all charges of attorneys

and all costs and other expenses arising therefrom or incurred in connection therewith; and if any judgment shall be rendered against the County in any such action, Contractor shall, at his or her own expenses, satisfy and discharge the same. Contractor expressly understands and agrees that any performance bond or insurance protection required by this Contract, or otherwise provided by Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County as herein provided.

19. **Insurance.** The Contractor shall maintain the following insurance to protect it from claims that could arise from performance of the Obligations, including claims (i) under the Workmen's Compensation Act (ii) for personal injury, including death, and (iii) for damage to property, regardless of whether such claims arise out of Contractor's actions or inactions, or those of Contractor's subcontractor or other persons directly or indirectly employed by either of them:

a. **Worker's Compensation and Employer's Liability.** Contractor shall procure and maintain Worker's Compensation and Employer's Liability Insurance covering all of its employees in conformance with the laws of any state, district or territory of the United States of America in which work towards meeting Contractor's Obligations are to be performed. Such insurance shall not have a limit of liability less than the following:

1. Bodily Injury by accident, \$500,000 for each accident;
2. Bodily Injury by disease, \$500,000 policy limit;
3. Bodily Injury by disease, \$500,000 for each employee.

b. **Commercial General Liability Insurance.** This coverage shall include contractual liability, underground hazard, explosion and collapse, hazard, property damage, independent Contractor, and personal injury insurance in support of section 10 of this Agreement entitled "Indemnification". This policy shall be endorsed to include the County as an additional insured during the Contract Period and shall state that this insurance is primary insurance as regards any other insurance carried by the County. Contractor shall procure and maintain Public Liability Insurance in an amount not less than:

1. \$1,000,000 for each occurrence involving bodily injury;
2. \$1,000,000 for each occurrence involving property damage;
3. \$2,000,000 aggregate limits.

c. **Comprehensive Automobile Liability.** Contractor shall procure and maintain Comprehensive Automobile Liability Insurance covering all automobiles, trucks, tractors, trailers, or other automobile equipment, whether owned, not owned, or hired by the Contractor, with the following limits:

1. \$1,000,000 for each occurrence involving personal injury;

2. \$1,000,000 for each occurrence involving property damage;
3. \$2,000,000 aggregate limits.

d. The Contractor shall purchase and maintain insurance coverage in a sufficient amount to cover all potential claims on his tools, equipment and machinery.

The County reserves the right to require insurance of any Contractor in greater amounts provided notice of such requirements is stated in the Solicitation.

All insurance policies required under this paragraph, or otherwise required by the Solicitation or Contract Documents, shall include a clause waiving any and all subrogation rights against the County.

Insurance policies shall provide for notification to the County of non-payment of any premium and shall give the County the right to make the premium payment thereunder within a reasonable time, if the insurance policy is in danger of lapsing during the Contract Period. Any premium payments made by the County shall be deducted from amounts due Contractor under the Contract.

20. **Liability Coverage:** Unless otherwise expressly excepted in the Solicitation documents prepared by the County, the Contractor shall take out and maintain during the Contract Period such bodily injury, liability and property damage liability insurance as shall protect it and the County from claims for damages for personal injury, including death, as well as from claims for property damage, which could arise from Contractor's performance of its Obligations. Such insurance shall at least have the coverages and be in the amounts set forth in section 19 "Insurance" set forth below and shall name the "Mathews County Board of Supervisors" as an additional insured. Such insurance must be issued by a company admitted to do business within the Commonwealth of Virginia and with at least an AM Best rating of A-. Within 10 days after Contractor is awarded a contract in response to a Solicitation, and in no event later than the first day on which Contractor provides goods or services to the County, the Contractor shall provide the County with a certificate of insurance showing such insurance to be in force and providing that the insurer shall give the County at least 30 days' notice prior to cancellation or other termination of such insurance.

21. **Minority and Women-Owned Business Enterprise and Small Business Certification.** Contractor shall use reasonable efforts to use minority and women-owned business enterprises and small businesses for Work on the Project. Contractor shall complete and submit the "Minority and Women-Owned Business and Small Business Certification" form from time to time, as requested by Mathews County, Virginia. Failure to complete and sign this statement is considered a material violation of this Contract.

22. **Modification.** Any amendment or modification of this Contract or additional obligation assumed by either Party in connection with this Contract will only be binding if evidenced in writing signed by each Party or an authorized representative of each Party.

23. **Non-Appropriation of Funds.** It is understood and agreed between the parties herein that the County shall be bound hereunder only to the extent of the funds available and duly

appropriated or which may hereafter become available and duly appropriated for the purpose of fulfilling the County's Obligations with respect to the Contract Documents. If such appropriation is not made for any fiscal year, the Contract shall terminate effective at the end of the fiscal year for which funds were appropriated and the County shall not be obligated to make any payments under the Contract beyond the amount appropriated for payment obligations under the Contract. The County will provide Contractor with written notice of non-appropriation of funds 30 days after action is completed by the County, but failure to give such notice shall be of no effect and the County shall not be obligated under the Contract beyond the date of termination specified in the County's written notice.

24. **Non-Discrimination pursuant to Virginia Code § 2.2-4343.1.** Be advised that the County does not discriminate against faith-based organizations. Contractor shall not discriminate against faith-based organizations during the performance of this Contract.

25. **Notices.** All requests, notices and other communications required or permitted to be given under the Contract Documents shall be in writing. Delivery of a notice shall be deemed to have been made when such notice is either: (a) duly mailed by first-class mail, postage prepaid, return receipt requested, or any comparable or superior postal or air courier service then in effect; or (b) transmitted by hand delivery, telegram, telex, telecopy or facsimile transmission, to the party entitled to receive the same at the address indicated below or at such other address as such party shall have specified by written notice to the other party.

Notices to the County shall be sent to:

Ramona Wilson
Mathews County Administrator
P.O. Box 839
Mathews, VA 23109

With a copy to:

Andrea Erard, Esq.
Mathews County Attorney
P.O. Box 839
Mathews, VA 23109

26. **Notice of Required Disability Legislation Compliance.** The County is required to comply with state and federal disability legislation: The Rehabilitation Act of 1993 Section 504, The Americans with Disabilities Act (ADA) for 1990 Title II and The Virginians with Disabilities Act 1990.

Specifically, the County, may not, through its contractual and/or financial arrangements, directly or indirectly avoid compliance with Title II of the American with Disabilities Act, Public Law 101-336, which prohibits discrimination by public entities on the basis of disability. Subtitle A protects qualified individuals with disability from discrimination on the basis of disability in the services, programs, or activities of all state and local governments. It extends the prohibition of discrimination in federally assisted programs established by the

Rehabilitation Act of 1973 Section 504 to all activities of State and Local governments, including those that do not receive federal financial assistance, and incorporates specific prohibitions of discrimination on the basis of disability in Titles I, III, and V of the Americans with Disabilities Act. The Virginians with Disabilities Act of 1990 follows Section 504 of the Rehabilitation Act of 1973.

27. Payment to Subcontractors Under Virginia Code § 2.2-4354.

- a. Contractor is obligated to take one of the two following actions within seven days after receipt of amounts paid to Contractor by the County for work performed by any subcontractor under this Contract:
 - 1) Pay the subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by the subcontractor under the Contract;
or
 - 2) Notify the County and the subcontractor, in writing, of Contractor's intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.
- b. Contractor shall provide its federal employer identification number to the County.
- c. Contractor shall pay interest to the subcontractor on all amounts owed by Contractor that remain unpaid after seven (7) days following receipt by Contractor of payment from the County for work performed by the subcontractor under this Contract, except for amounts withheld as allowed in subdivision a(2), above.
- d. Unless otherwise provided under the terms of this Contract, such interest shall accrue at the rate of one percent (1%) per month.
- e. 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 to each lower-tier subcontractor.
- f. Contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause above may not be construed to be an obligation of the County.

28. Safety.

- a. All Contractors and subcontractors performing services for the County are required to and shall comply with all Occupational Safety and Health Administration (OSHA), state and county safety and occupational health standards and any other applicable rules and regulations. Also, all Contractors and subcontractors shall be held responsible for the safety of their employees and any unsafe acts or conditions that may cause injury or damage to any persons or property within and around the work site area under this Contract.
- b. Contractor expressly undertakes both directly and through its subcontractor(s), to take every precaution at all times for the protection of persons and property which may be affected by Contractor's operation in connection with the work.

- c. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work.
- d. The provisions of all rules and regulations governing safety as adopted by the Virginia Safety and Health Codes Board and issued by the Department of Labor and Industry under Title 40.1 of the Code of Virginia shall apply to all work under this Contract.

29. **Severability.** If any provision or any part of a provision of the Contract shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable legal requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

30. **Substitutions.** No substitutions, including key personnel, or cancellations are permitted after award without written approval by the County Administrator or their designee.

31. **Termination and Cancellation**

The County shall have the unilateral right to terminate any contract with Contractor for default on the terms of that contract, or any other contract between the Contractor and the County.

The County has the unilateral right to cancel and terminate any contract with Contractor, in whole or in part, without penalty, merely out of convenience, and shall require no breach of contract by Contractor as a condition of termination. This right of termination for convenience may be exercised at the sole unconditional discretion of the County. If a contract is terminated in whole or in part for the convenience of the County, the Contractor shall be paid the contracted price for the service or goods actually provided or rendered up to the date of the termination of the respective contract, but shall not be paid any other fees or lost profits.

Any contract cancellation notice shall not relieve the Contractor of the obligation to perform on all outstanding orders issued prior to the effective date of cancellation.

32. **W-9 Form.** Contractor will submit a completed W-9 form, if it has not already submitted one with its bid. This information is required in order to issue purchase orders and payments to Contractor.

33. **Waiver.** The failure of the County or Contractor to insist upon the strict performance of any provisions of the Contract, the failure of the County or Contractor to exercise any right, option or remedy hereby reserved, or the existence of any course of performance hereunder shall not be construed as a waiver of any provision hereof or of any such right, option or remedy or as a waiver for the future of any such provision, right, option or remedy or as a waiver of a subsequent breach thereof. The consent or approval by the County of any act by Contractor requiring the County's consent or approval shall not be construed to waive or render unnecessary the requirement for the County's consent or approval of any subsequent similar act by Contractor. No provision of the Contract shall be deemed to have been waived unless such waiver shall be in writing signed by the Party to be charged.

34. **Warranties.** If applicable, Contractor warrants to the County that all materials and equipment furnished shall be new, unless otherwise specified, and that Contractor's Work shall be of good quality, free from faults and defects and in strict conformance with the Contract Documents. All materials and work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. This warranty shall be in addition to, and not in limitation of, any other warranty or remedy required by law or by the Contract Documents. If the Contract does not state a specific warranty period, the Contractor warrants Contractor's Work for a period of one (1) year from the date of Substantial Completion of the entire Project. In no event shall Contractor's warranty period be less than or terminate earlier than any warranty provision specified in the Contract.

The Contractor agrees that if warranties set forth in the Contract Documents are in any respect breached, the Contractor will pay to the County the full contract price agreed to by the County to be paid for the supplies, materials, equipment or services furnished under the bid or proposal. These rights and remedies are in addition to and do not limit those rights and remedies otherwise available to the County.

35. **Work Site Damages.** Any damages, including damage to finished surfaces, resulting from Contractor's performance of its Obligations shall be repaired to the satisfaction of the County at the Contractor's expense.

Appendix C: BID FORM

IN COMPLIANCE WITH THIS INVITATION FOR BID (IFB) AND ALL THE CONDITIONS IMPOSED IN THIS IFB, THE UNDERSIGNED FIRM HEREBY OFFERS AND AGREES TO FURNISH, THE SERVICES DESCRIBED AT THE PRICES INDICATED, AND THE UNDERSIGNED FIRM HEREBY CERTIFIES THAT ALL INFORMATION IS TRUE, CORRECT AND COMPLETE.

Total for monitoring and reporting during the construction of the breakwater and the Beach Grass Planting as part of the “Hole in the Wall” channel dredging project in Mathew County, Virginia pursuant to the August 3, 2022 Biological Opinion of the Fish and Wildlife Service of the United State Department of the Interior (Service) as incorporated into the Department of Army Permit Number NAO-2021-01953 / VMRC # 21-V1533 and the Monitoring Plan, Mathews County – Haven Beach Renourishment Project, JPA File NAO-2021-01953/ VMRC-20211533, Mathews, Virginia:

Lump Sum Price of: _____ And _____/100 Dollars

CONTRACT AWARD: The Contract will be awarded to the lowest responsive and responsible bidder.

TIME FOR COMPLETION: The undersigned understands and agrees that the time for Completion of the entire project shall be _____.

CONTRACT EXECUTION: The County reserves the right to accept or reject any or all bids or and waive any informalities it determines are in its best interest. The County reserves the right to award a bid in a split order, lump sum or per item basis, any combination that will best serve the needs of Mathews County.

State Corporation Commission ID Number: _____

NAME AND ADDRESS OF FIRM:

DATE: _____

BY: _____
(Signature in Ink)

NAME: _____

TITLE: _____

EVA Vendor ID or DUNS#:

PHONE: _____

E-MAIL: _____

FAX: _____

Acknowledgment of Addenda:

No. 1, Date _____ Signature _____

No. 2, Date _____ Signature _____

No. 3, Date _____ Signature _____

RETURN BID FORM TO MPPDC. SIGN CERTIFICATION ABOVE.