

ARLINGTON COUNTY, VIRGINIA  
OFFICE OF THE PURCHASING AGENT  
2100 CLARENDON BOULEVARD, SUITE 500  
ARLINGTON, VIRGINIA 22201

NOTICE OF AWARD OF CONTRACT

TO: Vulcan Materials Company 13880 Dulles Corner Lane Suite 450 Herndon, VA 20171	DATE ISSUED: January 30, 2018
	CURRENT CONTRACT NO: 18-113-ITB
	CONTRACT TITLE: Provision of Aggregates (Stone, Gravel, Sand)

**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 in accordance with the response submitted by you on **December 19, 2017**. The contract term covered by this Notice of Award is effective **immediately** and expires on **November 30, 2022**.

The contract documents consist of the terms, conditions, and specifications of Invitation to Bid No. **18-113-ITB** and the bid of the Contractor, incorporated herein by reference.

ATTACHMENTS:

1. Arlington County Invitation to Bid 18-113-ITB
2. Vulcan Materials Bid Response

EMPLOYEES NOT TO BENEFIT:

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

VENDOR CONTACT: <u>Emily Lewis</u>	TELEPHONE NO.: <u>202-309-6425</u>
VENDOR PAYMENT TERMS: NET 30 DAYS	EMAIL ADDRESS: <u><a href="mailto:lewise@vmcmail.com">lewise@vmcmail.com</a></u>
COUNTY CONTACT: <u>Carla Alayon</u>	TELEPHONE NO.: <u>703-228-5020</u>
	EMAIL ADDRESS: <u><a href="mailto:calayon@arlingtonva.us">calayon@arlingtonva.us</a></u>

CONTRACT AUTHORIZATION

DISTRIBUTION

VENDOR:	1
BID FOLDER:	1
COUNTY CONTACT	1

Igor Scherbakov  
Procurement Officer

Arlington County Invitation to Bid 18-113-ITB  
Purchase of Aggregate  
Attachment A "Pricing Sheet"

	Unit price per ton (delivered by the Contractor)	Estimated quantity for delivery (tons)	Extended price of material delivered by the Contractor	Unit price per ton (picked-up by the County)	Estimated quantity for pickup (tons)	Extended price for material picked up by the County	Unit price for emergency delivery	Estimated quantity for emergency delivery (tons)	Extended price for Emergency Delivery
<b>1. Trap Rock</b>									
Class I	59.05	240	\$14,172-00	50.05	60	\$3,003-00	59.05	1	\$ 59-05
Class II	63.45	240	\$15,228-00	54.45	60	\$3,267-00	63.45	1	\$ 63-45
Gabion	59.05	240	\$14,172-00	50.05	60	\$3,003-00	59.05	1	\$ 59-05
<b>2. Crusher Run Dust</b>									
VDOT #21-A	32.85	400	\$13,140-00	28.85	100	\$2,885-00	32.85	250	\$ 8,212-50
<b>3. Crusher Run Dust</b>									
VDOT #10	37.00	240	\$8,880-00	33.00	60	\$1,980-00	37.00	1	\$ ~ 37-00
<b>4. Surge Rock</b>									
#1 (4" diameter)	NO BID	240	\$ —	NO BID	60	\$ —	NO BID	1	\$ —
#2 (3" diameter)	40.20	240	\$9,648-00	33.20	60	\$1,992-00	40.20	1	\$ 40-20
#3 (2½" diameter)	40.75	240	\$9,780-00	36.75	60	\$2,205-00	40.75	1	\$ 40-75
<b>5. Washed Gravel</b>									
VDOT #57	40.75	400	\$16,300-00	36.75	100	\$3,675-00	40.75	250	\$10,187-50
<b>6. Pea Gravel</b>									
VDOT #8	43.90	160	\$7,024-00	39.90	40	\$1,596-00	43.90	1	\$ 43-90
<b>7. Stone</b>									
VDOT #25	32.85	240	\$7,884-00	28.85	60	\$1,731-00	32.85	1	\$ 32-85
<b>8. Sand</b>									
Grade A (Concrete Sand)	54.60	400	\$21,840-00	50.60	100	\$5,060-00	54.60	1	\$ 54-60
Grade B (Building Sand)	54.60	400	\$21,840-00	50.60	100	\$5,060-00	54.60	1	\$ 54-60
Grade C (Roadway treatment)	NO BID	400	\$ —	NO BID	100	\$ —	NO BID	500	\$ —
<b>9. Backfill material</b>									
CBR - 30	32.85	80	\$2,628-00	28.85	20	\$1,731-00	32.85	1	\$ 32-85
SELECT (TYPE I)	32.85	80	\$2,628-00	28.85	20	\$1,731-00	32.85	1	\$ 32-85

Extended subtotal

**\$165,114-00**

**\$38,919-00**

**\$18,951-15**

Bid Grand Total

**\$223,034-15**

## II. SPECIFICATIONS

Contractor shall provide aggregates (sand, gravel, rock and stone) on an as-needed basis for a period of up to five years.

### MATERIAL SPECIFICATIONS

All material shall conform to VDOT specifications per the Materials Division of VDOT (<http://www.virginiadot.org/business/materials-download-docs.asp>). All rock must be sound and free from deleterious material. Crushed stone is acceptable if it is dust free and meets VDOT specification for washed and pea gravel. Testing of aggregate shall be in conformance of ASTM and AASHTO methodology based on VDOT specifications and requirements ([http://www.virginiadot.org/VDOT/Business/asset\\_upload\\_file369\\_118183.pdf](http://www.virginiadot.org/VDOT/Business/asset_upload_file369_118183.pdf)).

### MATERIAL COVERED

Types of material that will be primarily purchased is listed on the Pricing Sheet. Other type of aggregates may be required during the contract term in limited quantities, not to exceed 200 tons per year. Prices for those materials shall be either bid separately or negotiated with the contractor and added to the contract.

### NON-EMERGENCY DELIVERY AND PICKUP BY THE COUNTY:

As course of general business, Material shall be delivered to various sites within Arlington County, or picked up by the County, as determined in case-by-case basis by the Project Officer.

The anticipated minimum of delivered or picked up material is 10 tons per order. Pricing Sheet indicates separate unit pricing depending on whether material is delivered by the contractor, or picked up by the County. Maximum driving distance to the site will be no greater than 60 miles in one direction from 4200 S 28<sup>th</sup> St, Arlington, VA 22206.

Upon receiving a written or telephone emergency delivery order from Project Officer or Designee, the Contractor shall deliver the material no later than 24 hours unless specified by the Project Officer. When material is delivered by the Contractor, unit prices shall include all labor and delivery charges. No fuel or other escalation surcharges will be allowed.

For orders to be picked up by the County vehicles, Project Officer or Designee will notify the Contractor in writing or by telephone no later than one hour prior to the truck arrival to Contractor's yard. Contractor shall be ready to load the County trucks within one (1)hour of the order unless specified by Arlington County.

### EMERGENCY DELIVERIES

During the winter months the water-sewer-streets division may need large quantities of Class C sand for road treatment during snow events. Determination of an emergency condition will be made by the Project Officer placing the order.

Outside of the snow seasons, emergency deliveries may be required for emergency sewer repair and other emergency excavation jobs.

The Contractor shall provide to the County, prior to start of any work under this contract, a name and telephone number of a contact person in the case of an emergency 24 hours a day, 7 days a week.

If the Contractor uses voicemail or an answering service, the contact person must respond within fifteen (15) minutes of any message left by the County.

Contractors must have the capability to deliver sand at the rate of 200 tons to each of two locations in Arlington within a 24-hour period after receiving the order.

**BILLING**

The following County agencies will also be ordering off this contract:

1. DES Transportation
2. Department of Parks
3. Facilities Management and Construction
4. Water Pollution Control Bureau

The Project Officer will indicate the authorized Designee for each agency/department after the contract award.

Each using County agency shall be billed separately to the address provided by the Project Officer Designee.

### III. CONTRACT TERMS AND CONDITIONS

#### 1. CONTRACT DOCUMENTS

The "Contract Documents" consist of the bid of the successful bidder (hereinafter "Contractor") and Arlington County (hereinafter "County") Invitation to Bid No. 18-113-ITB.

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. The Contract Documents may be referred to herein as the "Contract" or the "Agreement".

#### 2. SCOPE OF WORK

The Contractor agrees to provide goods described in the Contract Documents (hereinafter "the Work"), more particularly described in the Specifications included with the Invitation to Bid. The primary purpose of the Work is to supply sand, gravel, rock and stone. 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 goods set forth in the Contract Documents and sufficient goods 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.

#### 3. CONTRACT TERM

The Work shall commence on the date of the execution of the Agreement by the County, and shall be completed no later than November 30, 2022 ("Contract Term"), subject to any modifications as provided for in the Contract Documents.

#### 4. CONTRACT PRICING

Unless otherwise provided in the Contract Documents, the Contractor shall provide the goods covered in the County's Invitation to Bid No. 18-113-ITB at the unit prices provided in the bid of the Contractor.

#### 5. 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 this Contract. 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.

#### 6. 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 furnished, delivered, inspected, and accepted upon receipt of invoices submitted on the date of delivery of service, subject to applicable payment terms. The number of the County Purchase Order pursuant to which authority services have been 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.

#### **7. PAYMENT OF SUBCONTRACTORS**

The Contractor is obligated to take one of the two following actions within seven (7) calendar 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 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.

#### **8. 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.

#### **9. 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.

**10. 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 expense.

**11. 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 except for line items marked as "pickup by the County". Transportation, handling and all related charges are included in the unit prices or discounts submitted by the Contractor with its bid.

**12. 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 all manufacturers' warranties available to the Project Officer at the time of delivery. All goods and materials are 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 Warranty, unless that date is agreed upon by the County and the Contractor in advance and in a signed writing.

**13. 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.

#### **14. DISPOSAL OF PACKING MATERIALS, TRASH, AND DEBRIS**

The Contractor shall be responsible for all costs associated with the immediate removal of all packing materials, trash, and debris ("Waste"), and legal disposal of said Waste off-site. No County building or waste containers shall be used for such Waste. If the Contractor fails to adhere to this requirement the County will contract a third party for removal and disposal of the Waste left by the Contractor. By accepting this award, the Contractor agrees that all costs incurred by the County for removal and disposal of Waste left by the Contractor will be deducted from the final payment due to the Contractor. Similarly, any damage to walls, floors, carpeting or any other County-owned or County-controlled property caused by the Contractor or the Contractor's agents during service provision, delivery, setup or equipment installation shall be repaired or caused to be repaired by the County at the Contractor's sole expense with all costs of the repair deducted from the Contractor's final payment unless the County agrees that such repairs will be made by the Contractor. Any such Contractor repairs shall be made within ten (10) days of the date of damage to the satisfaction of the County.

#### **15. OSHA REQUIREMENTS**

The Contractor certifies that all material supplied or used under this Contract meets all Occupational Safety and Health Administration ("OSHA") requirements, both Federal and those of the Commonwealth of Virginia; and further certifies that, if the material delivered or used in the performance of the work is found to be deficient in any of the applicable state or federal occupational safety and health requirements, all costs necessary to bring the material into compliance with the requirements shall be borne by the Contractor.

#### **16. PROHIBITION AGAINST ASBESTOS-CONTAINING MATERIALS**

No goods or equipment provided to the County or construction material installed shall contain asbestos. If a Contractor or supplier provides or installs any goods, equipment, supplies, or materials that contain asbestos in violation of this prohibition, the Contractor shall be responsible for all costs related to worker protection, the immediate removal and legal disposal of the goods, equipment or materials containing asbestos. The Contractor shall be responsible for all goods, equipment, supplies or materials installed or provided by any of its employees, agents or subcontractors in connection with the work under this contract. The Contractor also shall reimburse to the County all expenses related to and the costs of such goods, equipment, supplies or materials installed. If the Contractor fails to remove and legally dispose of the asbestos-containing goods, equipment or construction materials within ninety (90) days from the date of notice by the County, the County shall remove and dispose of the asbestos-containing goods, equipment or construction materials at the Contractor's expense. The County shall be entitled to offset such expenses against any sums owed by the County to the Contractor under this Contract.

#### **17. EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED**

During the performance of its Work pursuant to 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 state law related to discrimination in employment except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.



- b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an Equal Opportunity Employer.
- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting 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 the provisions will be binding upon each subcontractor or vendor.

**18. EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED**

In accordance with § 2.2-4311.1 of the Code of Virginia, 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.

**19. 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 a controlled substance or marijuana is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000.00 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 in accordance with the Arlington County Purchasing Resolution, the employees of which Contractor 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.

**20. FAILURE TO DELIVER**

In case of failure by the Contractor to deliver goods or services in accordance with the Contract Documents, the County, after written notice, may procure the same or similar goods or services from other sources and the Contractor shall be liable for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the County may have pursuant to this Contract or under law. At its discretion, the County shall be entitled to offset such costs against any sums owed by the County to the Contractor.

**21. 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 of 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 and 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 Work 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.

## **22. 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.

## **23. 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.

## **24. INTELLECTUAL PROPERTY INDEMNIFICATION**

The Contractor warrants and guarantees that no intellectual property rights (including, but not limited to, copyright, patent, mask rights and trademark) of third parties are infringed or in any manner involved in or related to the goods provided hereunder.

The Contractor further covenants for itself, its employees, and subcontractors to save, defend, hold harmless, and indemnify the County, and all of its officers, officials, departments, agencies, agents, and employees from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, or exposure, however caused, for or on account of any trademark, copyright, patented or unpatented invention, process, or article manufactured or used in the performance of this Contract, including its use by the County. If the Contractor, or any of its employees or subcontractors, uses any design, device, work, or materials covered by letters patent or copyright, it is mutually agreed and understood, without exception, that the Contract Amount includes all royalties,

licensing fees, and any other costs arising from the use of such design, device, work, or materials in any way involved with the Work. 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.

**25. ETHICS IN PUBLIC CONTRACTING**

This Contract incorporates by reference Article 9 of the Arlington County Purchasing Resolution, as well as any state or federal law related to ethics, conflicts of interest, or bribery, including, by way of illustration and not limitation, the 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.

**26. COUNTY EMPLOYEES**

No employee of Arlington County, Virginia, 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.

**27. 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, acts of terrorism, or an act of God beyond the control of the Contractor and outside and beyond 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, acts of terrorism, or an act of God beyond control of the County that make performance impossible or illegal, unless otherwise specified in the Contract.

**28. 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 any cost or expense, at the sole option of the County.

**29. 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 payments to the Contractor for any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any

other amounts for benefits to the Contractor. 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.

### **30. 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.

### **31. AUDIT**

The Contractor must retain all books, records and other documents related to this Contract for at least five years after the final payment and must allow the County or its authorized agents to examine the documents during this period and during the Contract Term. The Contractor must provide any requested documents to the County for examination within 15 days of the request, at the Contractor's expense. Should the County's examination reveal any overcharging by the Contractor, the Contractor must, within 30 days of County's request, reimburse the County for the overcharges and for the reasonable costs of the County's examination, including, but not limited to, the services of external audit firm and attorney's fees; or the County may deduct the overcharges and examination costs from any amount that the County owes to the Contractor. If the Contractor wishes to destroy or dispose of any records related to this Contract (including confidential records to which the County does not have ready access) within five years after the final payment, the Contractor must give the County at least 30 days' notice and must not dispose of the documents if the County objects.

### **32. 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.

### **33. AMENDMENTS**

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

### **34. 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.

### **35. 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 of law.

**36. 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 the Work under this Contract, the Contractor shall comply with applicable federal, state, and local laws, ordinances and regulations.

**37. 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.

**38. 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.

**39. 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.

**40. 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.

**41. 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.

**42. SURVIVAL OF TERMS**

In addition to any numbered section in this Agreement which specifically state that the term or paragraph survives the expiration or termination of this Contract, the following sections if included in this Contract also survive: INDEMNIFICATION; RELATION TO COUNTY; OWNERSHIP AND RETURN OF RECORDS; AUDIT; INTELLECTUAL PROPERTY INDEMNIFICATION; WARRANTY.

**43. 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.

**44. 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.

**45. NOTICES**

Unless otherwise provided herein, all legal 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 by 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:

Emily Lewis - Vulcan Materials Company  
13880 Dulles Corner Lane, Suite 450 Herndon, VA  
20171

TO THE COUNTY:

\_\_\_\_\_, Project Officer  
\_\_\_\_\_  
\_\_\_\_\_

AND

Michael E. Bevis, Purchasing Agent  
Arlington County, Virginia  
2100 Clarendon Boulevard, Suite 500  
Arlington, Virginia 22201

**46. NON-DISCRIMINATION NOTICE**

Arlington County does not discriminate against faith-based organizations.

IV. ATTACHMENTS AND FORMS



ARLINGTON COUNTY, VIRGINIA  
OFFICE OF THE PURCHASING AGENT

INVITATION TO BID NO. 18-113-ITB

BID FORM

SUBMIT TWO (2) FULLY-COMPLETED AND SIGNED BID FORMS TO THE OFFICE OF THE BID CLERK, SUITE 511, 2100 CLARENDON BLVD., ARLINGTON, VIRGINIA, 22201 (ONE FORM SHALL CONTAIN AN ORIGINAL LONGHAND SIGNATURE; THE OTHER SHALL BE A PHOTOCOPY OF THE SIGNED ORIGINAL)

BIDS WILL BE OPENED AT 1:00 P.M., ON WEDNESDAY, DECEMBER 19, 2017

FOR PROVIDING VARIOUS AGGREGATES PER THE TERMS, CONDITIONS AND SPECIFICATIONS OF THIS SOLICITATION:

MINIMUM ORDER QUANTITY FOR DELIVERED ORDERS: 10 TONS

DELIVERY TIME FOR NON-MERGENCY ORDERS: 2 BUSINESS DAYS AFTER RECEIPT OF ORDER

DELIVERY TIME FOR EMERGENCY ORDERS: 24 HOURS AFTER RECEIPT OF ORDER

BIDDERS'S FACILITY ADDRESS FOR ORDERS PICKED UP BY THE COUNTY:

Vulcan Materials Edsall Road Sales Yard  
5650 Industrial Drive Springfield, VA 22151  
\_\_\_\_\_  
\_\_\_\_\_

PLEASE COMPLETE THE PRICING SHEET PROVIDED WITH THE BID DOCUMENTS AS ATTACHMENT A TO ITB NO. 18-113-ITB AND SUBMIT IT WITH YOUR BID.

FAILURE TO SUBMIT THE PRICING SHEET WITH THE BID WILL DEEM THE BIDDER NONRESPONSIVE.

EMERGENCY CONTACT

PROVIDE 24 HOUR EMERGENCY SERVICE CONTACT:

Keith Grohe  
NAME

1-800-888-8852  
TELEPHONE #

All accompanying material specifications provided, the Contractor shall provide a Gradation Chart, based on the weight percentage passed through screens.

The Contractor must supply documentation showing that one or more employees are VDOT Materials Technician Certified (<http://www.virginiadot.org/business/matschools.asp>). Documentation shall include the date of expiration of the certification, and if individuals are required to be recertified during the contract period, documentation shall be provided to Arlington County. Loss of the VDOT Materials Technician Certification may in turn be grounds for the cancelation of the contract.

The undersigned understands and acknowledges the following:

The official, true, and complete copy of the solicitation documents, WHICH SHALL INCLUDE ALL ADDENDUMS THERETO, is the electronic copy of the solicitation documents provided at the County Purchasing Agent's website (<http://www.arlingtonva.us/purchasing>).

Each bidder is responsible for determining the accuracy and completeness of ALL solicitation documents they receive, including documents obtained from the County, and documents obtained from all other sources.

BIDDER NAME: Emily Lewis, Vulcan Materials Company

[continued on the next page]

TRADE SECRETS OR PROPRIETARY INFORMATION:

Trade secrets or proprietary information submitted by a bidder in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act. However, Section 4-111 of the Arlington County Purchasing Resolution states that the bidder must invoke the protection of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary.

Please mark one:

- No, the bid I have submitted does not contain any trade secrets and/or proprietary information.
- Yes, the bid I have submitted does contain trade secrets and/or proprietary information.

If Yes, you must clearly identify below the exact data or other materials to be protected and list all applicable page numbers of the bid containing such data or materials:

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State the specific reason(s) why protection is necessary:

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If you fail to identify the data or other materials to be protected and state the reasons why protection is necessary in the space provided above, you will not have invoked the protection of Section 4-111 of the Purchasing Resolution. Accordingly, effective upon the award of contract, the bid will be open for public inspection consistent with applicable law.

CERTIFICATION OF NON-COLLUSION: The undersigned certifies that this bid is not the result of, or affected by, any act of collusion with another person (as defined in the Code of Virginia § 59.1-68.6 et seq.), engaged in the same line of business or commerce; or any act of fraud punishable under the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq.).

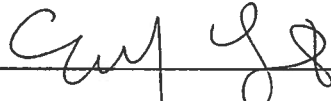
BIDDER NAME: Emily Lewis, Vulcan Materials Company

CONTACT PERSON AND MAILING ADDRESS FOR DELIVERY OF NOTICES

Provide the name and address of the person designated by the Bidder to receive notices and other communications (Refer to section headed Notices in the Contract Terms and Conditions of this solicitation for further details):

Emily Lewis, Vulcan Materials Company - Market Manager  
13880 Dulles Corner Lane, Suite 450  
Herndon, VA 20171

THE PROPER LEGAL NAME OF THE FIRM OR ENTITY SUBMITTING THIS BID MUST BE WRITTEN IN THE SPACE PROVIDED BELOW. THIS BID FORM, AND ALL OTHER DOCUMENTS REQUIRED BY THE INVITATION TO BID TO BE SUBMITTED WITH THIS BID FORM, INCLUDING, BUT NOT LIMITED TO ALL ISSUED ADDENDUMS, MUST BE FULLY AND ACCURATELY COMPLETED AND SIGNED BELOW BY A PERSON AUTHORIZED TO LEGALLY BIND THE BIDDER, OR THE BID MAY BE REJECTED:

AUTHORIZED SIGNATURE:   
PRINT NAME AND TITLE: Emily Lewis, Market Manager

INDICATE THE NAME AND CONTACT INFORMATION OF THE PERSON WHO CAN RESPOND AUTHORITATIVELY TO ANY QUESTIONS REGARDING THIS BID AND THE CONTRACT, IF AWARDED (I.E. PROJECT MANAGER):

NAME (PRINTED): Emily Lewis TITLE: Market Manager  
E-MAIL ADDRESS: lewise@vmcmail.com TEL. NO.: (202) 309-6425

SUBMITTED BY: (LEGAL NAME OF ENTITY) Vulcan Materials Company					
ADDRESS: 13880 Dulles Corner Lane, Suite 450					
CITY/STATE/ZIP: Herndon / Virginia / 20171					
TELEPHONE NO.: (202) 309-6425			FACSIMILE NO.: (703) 793-2326		
THIS FIRM IS A: • INSERT NAME OF STATE <u>Virginia</u> <input checked="" type="checkbox"/> CORPORATION, <input type="checkbox"/> GENERAL PARTNERSHIP, <input type="checkbox"/> LIMITED PARTNERSHIP, <input type="checkbox"/> UNINCORPORATED ASSOCIATION, <input type="checkbox"/> LIMITED LIABILITY COMPANY, <input type="checkbox"/> SOLE PROPRIETORSHIP					
IS FIRM AUTHORIZED TO TRANSACT BUSINESS IN THE COMMONWEALTH OF VA?					yes
IDENTIFICATION NO. ISSUED TO THE FIRM BY THE SCC:				T062029-6	
ANY BIDDER EXEMPT FROM SCC AUTHORIZATION REQUIREMENT SHALL INCLUDE A STATEMENT WITH ITS BID WHY THEY ARE NOT REQUIRED TO BE SO AUTHORIZED					
IS YOUR FIRM OR ANY OF ITS PRINCIPALS CURRENTLY DEBARRED FROM SUBMITTING BIDS TO ARLINGTON COUNTY, VIRGINIA, OR ANY OTHER STATE OR POLITICAL SUBDIVISION?					no
ENTITY'S DUN & BRADSTREET D-U-N-S NUMBER: (if available)			046676941		
BIDDER STATUS:	MINORITY OWNED:		WOMAN OWNED:		NEITHER: <input checked="" type="checkbox"/>

ARLINGTON COUNTY, VIRGINIA  
OFFICE OF THE PURCHASING AGENT  
2100 CLARENDON BOULEVARD, SUITE 500  
ARLINGTON, VA 22201  
(703) 228-3410

INVITATION TO BID NO. 18-113-ITB

SEALED BIDS WILL BE RECEIVED IN HAND IN THE OFFICE OF THE BID CLERK, SUITE 511, 2100 CLARENDON BOULEVARD, ARLINGTON, VIRGINIA, 22201, UNTIL 1:00 P.M. ON THE 19<sup>TH</sup> DAY OF DECEMBER 2017 FOR:

PROVISION OF AGGREGATES (SAND, GRAVEL, ROCK AND STONE) ON AN AS-NEEDED BASIS FOR A PERIOD OF UP TO FIVE YEARS.

At the time, date and place stated above, bids will be publicly opened.

NOTICE: ANY BIDDER ORGANIZED AS A STOCK OR NONSTOCK CORPORATION, LIMITED LIABILITY COMPANY, BUSINESS TRUST, OR LIMITED PARTNERSHIP OR REGISTERED AS A LIMITED LIABILITY PARTNERSHIP MUST BE AUTHORIZED TO TRANSACT BUSINESS IN THE COMMONWEALTH OF VIRGINIA PRIOR TO SUBMITTING A BID (REFER TO AUTHORITY TO TRANSACT BUSINESS SECTION IN THE SOLICITATION FOR FURTHER INFORMATION).

Arlington County reserves the right to reject any and all bids, cancel this solicitation, and to waive any informalities or irregularities in procedure. A bidder's submission of a bid indicates acceptance of these terms.

Arlington County, Virginia  
Office of the Purchasing Agent

Igor Scherbakov  
Procurement Officer  
[ischerbakov@arlingtonva.us](mailto:ischerbakov@arlingtonva.us)

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ATTACHMENT A - PRICING SHEET

## I. INSTRUCTIONS TO BIDDERS

### 1. ADDITIONAL INFORMATION

All communications relating to this solicitation shall be submitted via e-mail to Igor Scherbakov in the Office of the Purchasing Agent, at ischerbakov@arlingtonva.us. For a question to be considered, the subject line of the e-mail must state the following: ITB No. 18-113-ITB Questions. Questions should be succinct and must include the submitter's name, title, company name, company address, and telephone number. Prior to the award of a contract resulting from this solicitation, bidders are prohibited from contacting any County staff other than those assigned to the Office of the Purchasing Agent.

**NO QUESTIONS WILL BE CONSIDERED IF THEY ARE SUBMITTED AFTER DECEMBER 11, 2017 AT 5:00 PM.**

If any questions or responses require revisions to this solicitation as it was originally published, such revisions will be by formal Addendum only. Bidders are cautioned that any written, electronic, or oral representations made by any County representative or other person that appear to change materially any portion of the solicitation shall not be relied upon unless subsequently ratified by a written Addendum to this solicitation issued by the Office of the Purchasing Agent.

### 2. COMPETITION INTENDED

It is the County's intent that this solicitation promotes competition. It shall be the bidder's responsibility to advise Arlington County if any language, requirements or specifications restrict or limit the purchase to a single source. Such notification must be received by the Arlington County Purchasing Agent not later than fifteen (15) calendar days prior to the date and time set for bid opening. A review of such notifications will be made and the bidder notified of the results of the review.

### 3. BID FORM SUBMISSION

The required Bid Form is provided in the solicitation. One (1) fully-completed Bid Form with an original longhand signature, and a photocopy of the signed original (two (2) copies total), shall be submitted by hand, in a sealed envelope or package, to the Office of the Bid Clerk, Suite 511, 2100 Clarendon Boulevard, Arlington, Virginia, 22201, no later than the date and time deadline specified in the Invitation to Bid above. Timely submission is solely the responsibility of the bidder. Bid Forms received after the specified date and time will be rejected. The exterior of the envelope or package shall indicate the name of the bidder, the scheduled bid opening date and time, and the number of the Invitation to Bid. Bids submitted by facsimile or electronically will not be accepted.

A bidder's failure to submit a bid with a fully-completed Bid Form, using the Bid Form provided in this solicitation, shall be cause for rejection of that bidder's bid. A bid will be rejected if its corresponding Bid Form is not signed in the designated space by a person authorized to legally bind the bidder.

Modification of or additions to the Bid Form may be cause for rejection of the bid; however, Arlington County reserves the right to decide, on a case by case basis, in its sole discretion, whether or not to reject such a bid as nonresponsive. As a precondition to bid acceptance, Arlington County may, in its sole discretion, request that the bidder withdraw or modify any such modifications or additions which do not affect quality, quantity, price, or delivery.

Bids and all documents related to this solicitation submitted to Arlington County by a bidder or a prospective bidder shall, upon receipt by Arlington County, become the property of the County.



#### **4. BIDDER CERTIFICATION**

Submission of a signed Bid Form is certification by the respective bidder that it is registered with the Virginia State Corporation Commission, if applicable, it is the legal entity authorized to enter into an agreement with the County, and that it will accept any award made to it as a result of the submission.

#### **5. EXCEPTIONS**

Bidders taking exception to any part or section or term of this solicitation, including, by way of illustration and not limitation, the Specifications, the Special Conditions, and any attachments or references hereto or thereto, shall indicate such exceptions on the Bid Form. Failure to indicate any exceptions shall be interpreted as the bidder's intent to fully comply with the solicitation as written. However, conditional or qualified bids with such exceptions, unless specifically allowed in this solicitation, are subject to rejection in whole or in part as nonresponsive.

#### **6. NONCONFORMING TERMS AND CONDITIONS**

If a bidder submits with its bid alternate terms and conditions that do not conform to the terms and conditions in this solicitation, the bid will be subject to rejection for unresponsiveness. Arlington County reserves the right to permit the bidder to withdraw nonconforming terms and conditions from its bid prior to a determination by the County of unresponsiveness as a result of the submission of nonconforming terms and conditions.

#### **7. ERRORS IN EXTENSION**

Where the unit price and the extension price are at variance, the unit price will prevail.

#### **8. USE OF BRAND NAMES**

Unless identified as a "No Substitute" item in the solicitation, the name of a certain brand, make or manufacturer does not restrict bidders to that specific brand, make or manufacturer. The use of the brand, make or manufacturer's identification is intended to convey the general type, style, character, and quality of the article described. Any article which the County in its sole discretion determines to be the equivalent of the article specified, considering quality, workmanship, economy of operation, and/or suitability for the intended use, may be accepted and considered for award. It is the bidder's sole responsibility to only use substitutes that meet the above criteria. bid, and pertinent performance factors.

#### **9. DISCOUNTS**

Discounts contingent on payment of invoices by Arlington County within a stipulated period of time will be accepted as a component of a bid, but will not be considered by Arlington County when evaluating bid prices or when making an award.

#### **10. EXPENSES INCURRED IN PREPARING BID**

Arlington County accepts no responsibility for any expense incurred by any bidder in the preparation and presentation of a bid. All expenses related to a bid are the sole responsibility of the bidder.

#### **11. SAMPLES**

Bidders shall submit any samples required in this solicitation in accordance with instructions. Samples will not be returned. However, if a bidder requires that a sample(s) be returned the bidder must submit a request in writing within fourteen (14) calendar days after bid opening. The bidder shall arrange to retrieve the samples at their sole expense at a location and in a manner identified by Arlington County.

Samples not retrieved in accordance with these terms will be disposed of at the discretion of Arlington County not sooner than thirty (30) calendar days after Arlington County staff notify the bidder of the availability of samples for return. Testing of samples may include disassembly or destruction. Arlington County shall not be responsible for any loss or damage or diminution of value in the samples while in the possession of the County.

**12. BIDDER INVESTIGATIONS**

Before submitting a bid, each bidder must make all investigations and examinations necessary to ascertain all conditions and requirements affecting the full performance of the contract and to verify any representations made by the County that the bidder will rely upon. No pleas of ignorance of such conditions and requirements resulting from failure to make such investigations and examinations will relieve the successful bidder from its obligation to comply in every detail with all provisions and requirements of the contract documents or will be accepted as a basis for any claim whatsoever for any monetary consideration on the part of the successful bidder.

**13. INCOMPLETE DOCUMENTS**

Each bidder is responsible for having determined the accuracy and/or completeness of the solicitation documents upon which it relied in making its bid, and has an affirmative obligation to notify the Arlington County Purchasing Agent immediately upon discovery of an apparent or suspected inaccuracy, error in, or omission of any pages, drawings, sections, or addenda whose omission from the documents was apparent from a reference or page numbering or other indication in the solicitation documents.

If a potential bidder downloaded an electronic version of the solicitation documents, that potential bidder is responsible for determining the accuracy and/or completeness of the electronic documents.

If the successful bidder proceeds with any activity that may be affected by an inaccuracy, error in, or omission in the solicitation documents of which it is aware but has not notified the Arlington County Purchasing Agent, the bidder hereby agrees to perform any activity described in the missing or incomplete documents at bidder's sole expense and at no additional cost to Arlington County.

**14. QUALIFICATION OF BIDDERS**

Each bidder may be required, before the award of any contract, to show to the complete satisfaction of the Purchasing Agent that it has the necessary facilities, ability, and financial resources to comply with the contract and furnish the service, material or goods specified herein in a satisfactory manner. Each bidder may also be required to provide past history and references which will enable the Purchasing Agent to be satisfied as to the bidder's qualifications. Failure to qualify according to the foregoing requirements will result in bid rejection by Arlington County.

**15. DEBARMENT STATUS**

The bidder shall indicate, in the space provided on the Bid Form, whether or not it, or any of its principals, is/are currently debarred from submitting bids to Arlington County, Virginia, or any other state or political subdivision, and whether or not it is an agent of any person or entity that is currently debarred from submitting bids to Arlington County, Virginia, or any other state or political subdivision. An affirmative response may be considered grounds for rejection of the bid.

**16. ALTERNATE BID**

Bidders who have other items they wish to offer in lieu of or in addition to what is required by this solicitation shall submit a separate bid clearly marked "ALTERNATE BID". Alternate bids will be

automatically deemed nonresponsive and will not be considered for award. Such bids will, however, be examined prior to awarding the contract contemplated herein and may result in either cancellation of all bids in order to permit rewriting of the solicitation to include the alternate item in a rebid or the alternate item may be considered for future requirements.

#### **17. NEW MATERIAL**

Unless otherwise provided for in this solicitation, the bidder represents and warrants that the goods, materials, supplies, or components offered to Arlington County under this solicitation and any resulting contract are new, not used or reconditioned, and are not of such age or deterioration as to impair their usefulness or safety, and that the goods, materials, supplies, or components offered are current production models of the respective manufacturer. If the bidder believes that furnishing used or reconditioned goods, materials, supplies or components will be in Arlington County's interest, the bidder shall notify the Purchasing Agent in writing no later than ten (10) business days prior to the date set for opening of bids. The notice shall include the reasons for the request and any benefits which may accrue to Arlington County if the Purchasing Agent authorizes the bidding of used or reconditioned goods, materials, supplies or components.

#### **18. INFORMALITIES**

Arlington County reserves the right to waive minor defects or variations from the exact requirements of the solicitation in a bid insofar as those defects or variations do not affect the price, quality, quantity, or delivery schedule of the goods being procured. If insufficient information is submitted for Arlington County to properly evaluate the bid by a bidder, Arlington County reserves the right to require such additional information as it may deem necessary after the bid opening time and date, provided that the information requested does not change the price, quality, quantity, or delivery schedule for the goods being procured.

#### **19. ARLINGTON COUNTY BUSINESS LICENSES**

The successful bidder must comply with the provisions of Chapter 11 ("Licenses") of the Arlington County Code, if applicable. For information on the provisions of that Chapter and its applicability to this solicitation, contact the Arlington County Business License Division, Office of the Commissioner of the Revenue, 2100 Clarendon Blvd., Suite 200, Arlington, Virginia, 22201, telephone number (703) 228-3060.

#### **20. AUTHORITY TO TRANSACT BUSINESS**

Any bidder organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia, or as otherwise required by law. The proper and full legal name of the firm or entity and the identification number issued to the bidder by the Virginia State Corporation Commission must be written in the space provided on the Bid Form. Any bidder that is not required to be authorized to transact business in Virginia shall include in its bid a statement describing why the bidder is not required to be so authorized. The County may require a firm to provide documentation prior to award which: 1) clearly identifies the complete name and legal form of the firm or entity (i.e. corporation, limited partnership, etc.), and 2) establishes that the firm or entity is authorized by the State Corporation Commission to transact business in the Commonwealth of Virginia. Failure of a prospective and/or successful bidder to provide such documentation shall be grounds for rejection of the bid or cancellation of the award. For further information refer to the Commonwealth of Virginia State Corporation Commission website at: [www.scc.virginia.gov](http://www.scc.virginia.gov).

**21. BID WITHDRAWAL PRIOR TO BID OPENING**

No bid can be withdrawn after it is filed with the Bid Clerk unless the bidder makes a request in writing to the Purchasing Agent prior to the time set for the opening of bids.

**22. WITHDRAWAL OF BID FROM CONSIDERATION AFTER BID OPENING**

After the opening of a bid, a bidder may withdraw its bid from consideration if the price of the bid is substantially lower than other bids due solely to a mistake therein, provided the bid is submitted in good faith, the mistake is a clerical mistake as opposed to a judgment mistake, and is actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of the bid, which unintentional error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. No partial withdrawals of bids will be permitted after the time and date set for the bid opening. The bidder must give notice in writing to the Arlington County Purchasing Agent of a claim of right to withdraw a bid and provide all original work papers, documents and other materials used in the preparation of the bid sought to be withdrawn, within two (2) business days after the date of bid opening. A bid may also be withdrawn if the County fails to award or issue a notice of intent to award the bid within ninety (90) days after the date fixed for opening bids.

**23. PARKING**

At most County government facilities, parking for contractors' vehicles is not provided by the County. A contractor is responsible for the payment of any parking charges or fines resulting from illegal parking at any worksite(s).

**24. ESTIMATED QUANTITIES/NON-EXCLUSIVITY OF CONTRACTOR ACKNOWLEDGEMENT**

Bidders acknowledge that the contract that will be entered into as a result of this solicitation will not obligate the County to purchase a specific quantity of items or services during the Contract Term. 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. Bidders further understand 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 the resulting Contract. Further, bidders acknowledge that the items or services covered by this contract may be available or become available under other County contract(s), and that in analyzing its needs, the County may determine that it is in its best interest to procure the items or services through such other contract(s). Therefore, the County does not guarantee that the Contractor will be the exclusive provider of the goods or services covered by the resulting contract.

**25. TRADE SECRETS OR PROPRIETARY INFORMATION**

Trade secrets or proprietary information that is submitted by a bidder or contractor in connection with a procurement transaction or prequalification application submitted pursuant to subsection 4-101(2) of the Arlington County Purchasing Resolution may be exempted from public disclosure under the Virginia Freedom of Information Act ("VFOIA"). However, the bidder or contractor must invoke the protection of this subsection prior to or upon submission of the data or other materials, and must identify clearly and in writing on the Bid Form, the data or other materials sought to be protected and state the reasons why

protection is necessary and falls within the exceptions to the VFOIA. It is the bidder's sole responsibility to defend such exemptions if challenged in a court of competent jurisdiction.

#### **26. INTEREST IN MORE THAN ONE BID AND COLLUSION**

Multiple bids received in response to this solicitation from an individual, firm, partnership, corporation, affiliate, or association under the same or different names will be rejected. Reasonable grounds for believing that a bidder is interested in more than one (1) bid for a solicitation both as a bidder and as a subcontractor for another bidder will result in rejection of all bids in which the bidder is interested. However, a firm acting only as a subcontractor may be included as a subcontractor for two (2) or more bidders submitting a bid for the work. Any or all bids may be rejected if reasonable grounds exist for believing that collusion exists among any bidders. Bidders rejected under the above provisions shall be disqualified if they respond to a re-solicitation for the same work.

#### **27. METHOD OF AWARD**

Arlington County will award this solicitation to the three lowest responsive and responsible bidders. The lowest bidder will be the primary supplier of the material for the County. The second and third lowest bidders will be used only when the primary bidder is not able to supply the material within the required timeframe listed in the Scope of Work, or in case of emergency as detailed in the Scope of Work. Lowest bidder will be determined by the Grand Total indicated on the Pricing Sheet.

#### **28. OPTIONAL RIDER CLAUSE**

##### **A. Extension to Other Jurisdictions**

The County extends the resultant contract(s), including pricing, terms and conditions, to all public entities under the jurisdiction of the United States of America and its territories.

##### **B. Inclusion of Governmental & Nonprofit Participants**

Eligible entities include but are not limited to private schools, parochial schools, non-public schools such as charter schools, special districts, intermediate units, non-profit agencies providing services on behalf of government, and/or state, community and/or private colleges/universities.

##### **C. Notification and Reporting**

The contractor must notify the issuing jurisdiction of entities that use any contract resulting from this solicitation and to provide usage information as requested. The contractor will provide a copy of the solicitation and resultant contract documents to any requesting jurisdiction or entity.

##### **D. Contract Agreement**

The contractor may be required by a using jurisdiction to enter into a separate contract containing general terms and conditions unique to that jurisdiction.

#### **29. NOTICE OF DECISION TO AWARD**

When the County has made a decision to award a contract(s), an e-mail with a Notice of Decision to Award will be sent to all bidders, using the email address provided in the Bid Form.

#### **30 . MINIMUM BIDDER QUALIFICATION REQUIREMENTS:**

- Bidder shall have on their staff at least one VDOT Certified Materials Technician (<http://www.virginiadot.org/business/matschools.asp> ).

- Bidder shall have a loading yard within 60 mile driving distance from 4200 S 28th St, Arlington, VA 22206
- Bidders must have the capability to deliver, at time of snow emergency, sand at the rate of 200 tons to each of two locations in Arlington within a 24-hour period after receiving receipt of a fax or email

## II. SPECIFICATIONS

Contractor shall provide aggregates (sand, gravel, rock and stone) on an as-needed basis for a period of up to five years.

### MATERIAL SPECIFICATIONS

All material shall conform to VDOT specifications per the Materials Division of VDOT (<http://www.virginiadot.org/business/materials-download-docs.asp>). All rock must be sound and free from deleterious material. Crushed stone is acceptable if it is dust free and meets VDOT specification for washed and pea gravel. Testing of aggregate shall be in conformance of ASTM and AASHTO methodology based on VDOT specifications and requirements ([http://www.virginiadot.org/VDOT/Business/asset\\_upload\\_file369\\_118183.pdf](http://www.virginiadot.org/VDOT/Business/asset_upload_file369_118183.pdf)).

### MATERIAL COVERED

Types of material that will be primarily purchased is listed on the Pricing Sheet. Other type of aggregates may be required during the contract term in limited quantities, not to exceed 200 tons per year. Prices for those materials shall be either bid separately or negotiated with the contractor and added to the contract.

### NON-EMERGENCY DELIVERY AND PICKUP BY THE COUNTY:

As course of general business, Material shall be delivered to various sites within Arlington County, or picked up by the County, as determined in case-by-case basis by the Project Officer.

The anticipated minimum of delivered or picked up material is 10 tons per order. Pricing Sheet indicates separate unit pricing depending on whether material is delivered by the contractor, or picked up by the County. Maximum driving distance to the site will be no greater than 60 miles in one direction from 4200 S 28<sup>th</sup> St, Arlington, VA 22206.

Upon receiving a written or telephone emergency delivery order from Project Officer or Designee, the Contractor shall deliver the material no later than 24 hours unless specified by the Project Officer. When material is delivered by the Contractor, unit prices shall include all labor and delivery charges. No fuel or other escalation surcharges will be allowed.

For orders to be picked up by the County vehicles, Project Officer or Designee will notify the Contractor in writing or by telephone no later than one hour prior to the truck arrival to Contractor's yard. Contractor shall be ready to load the County trucks within one (1)hour of the order unless specified by Arlington County.

### EMERGENCY DELIVERIES

During the winter months the water-sewer-streets division may need large quantities of Class C sand for road treatment during snow events. Determination of an emergency condition will be made by the Project Officer placing the order.

Outside of the snow seasons, emergency deliveries may be required for emergency sewer repair and other emergency excavation jobs.

The Contractor shall provide to the County, prior to start of any work under this contract, a name and telephone number of a contact person in the case of an emergency 24 hours a day, 7 days a week.

If the Contractor uses voicemail or an answering service, the contact person must respond within fifteen (15) minutes of any message left by the County.

Contractors must have the capability to deliver sand at the rate of 200 tons to each of two locations in Arlington within a 24-hour period after receiving the order.

**BILLING**

The following County agencies will also be ordering off this contract:

1. DES Transportation
2. Department of Parks
3. Facilities Management and Construction
4. Water Pollution Control Bureau

The Project Officer will indicate the authorized Designee for each agency/department after the contract award.

Each using County agency shall be billed separately to the address provided by the Project Officer Designee.