

ATTACHMENT A - GENERAL TERMS AND CONDITIONS

- A. PURCHASING MANUAL for INSTITUTIONS of HIGHER EDUCATION and their VENDORS: This solicitation is subject to the provisions of the Commonwealth of Virginia *Purchasing Manual for Institutions of Higher Education and their Vendor's* and any revisions thereto, which are hereby incorporated into this contract, in their entirety. A copy of the manual is available for review at the university purchasing office and may also be viewed at <http://fiscal.gmu.edu/departments/purchasing/other.html>
- B. APPLICABLE LAWS AND COURTS: This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall comply with all applicable federal, state and local laws and regulations.
- C. ANTI-DISCRIMINATION: By submitting their bids or proposals, Bidders or Offerors certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and Section 2.2 4311 of the *Virginia Public Procurement Act* which provides:

In every contract over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the Contractor agrees as follows:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, or disabilities, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - 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.
 2. The Contractor will include the provisions of 1. above in every subcontract or purchase order over \$ 10,000, so that the provisions will be binding upon each subcontractor or vendor.
- D. ETHICS IN PUBLIC CONTRACTING: By submitting their bids or proposals, Bidders or Offerors certify that their bids or proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Bidder/Offeror, supplier, manufacturer or subcontractor in connection with their bid or proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.
- E. IMMIGRATION REFORM AND CONTROL ACT OF 1986: By submitting their bids or proposals, the Bidders or Offerors certify that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.
- F. DEBARMENT STATUS: By submitting their bids or proposals, Bidders or Offerors certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.
- G. ANTITRUST: By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or

acquired by the Commonwealth of Virginia under said contract.

H. MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS:

Invitation For Bids: Failure to submit a bid on the official state form provided for that purpose shall be cause for rejection of the bid. Modification of or additions to any portion of this Invitation For Bids may be cause for rejection of bid, however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid as nonresponsive. As a precondition to its acceptance, the Commonwealth may, in its sole discretion, request that the Bidder withdraw or modify nonresponsive portions of a bid which do not affect quality, quantity, price, or delivery. No modification of or addition to the provisions of the contract shall be effective unless reduced to writing and signed by the parties.

Request For Proposals: Failure to submit a proposal on the official state form provided for that purpose may be a cause for rejection of the proposal. Modifications of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the University reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.

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

J. PAYMENT:

1 To Prime Contractor:

- a. Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- e. Unreasonable Charges. Under certain emergency procurements and for most time and material purchases, final costs cannot be accurately determined at the time orders are placed. In such cases, contractors shall be put on notice that the final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges that are not in dispute (*Code of Virginia*, Section 2.2-4363).

2. To Subcontractors:

- a. A contractor awarded a contract under this solicitation is hereby obligated:
 - (1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor (s) under the

the contract; or

- (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.
- b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.
- K. PRECEDENCE OF TERMS: Paragraphs A – J of these General Terms and Conditions shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.
- L. QUALIFICATIONS OF BIDDERS OR OFFERORS: The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the Bidder or Offeror to perform the services/furnish the goods and the Bidder or Offeror shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect Bidder's or Offeror's physical facilities prior to award to satisfy questions regarding the Bidder's or Offeror's capabilities. The Commonwealth further reserves the right to reject any bid or proposal if the evidence submitted by, or investigations of, such Bidder or Offeror fails to satisfy the Commonwealth that such Bidder or Offeror is properly qualified to carry out the obligations of the contract and to provide the goods contemplated therein.
- M. TESTING AND INSPECTION: The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
- N. ASSIGNMENT OF CONTRACT: A contract shall not be assignable by the Contractor in whole or in part without the written consent of the Commonwealth.
- O. CHANGES TO THE CONTRACT: Changes can be made to the contract in any one of the following ways:
1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modifications shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
 2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:
 - a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the Contractors records and/or to determine the correct number of units independently; or,
 - c. By ordering the contractor to proceed with the work and to keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as a result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the Contractor as it deems necessary to determine cost or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving

disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provision of the Commonwealth of Virginia's *Purchasing Manual for Institutions of Higher Education and their Vendor's Manual*. Neither the existence of a claim or a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.

- P. **DEFAULT**: In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies, which the Commonwealth may have.
- Q. **INSURANCE**: By signing and submitting a bid or proposal under this solicitation, the Bidder or Offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers compensation insurance in accordance with Section 2.2-4332 and 65.2-800 et. Seq. of the *Code of Virginia*.

The bidder of offeror further certifies that the contractor and any subcontractors will maintain these insurance coverages during the entire term of the contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

INSURANCE COVERAGES AND LIMITS REQUIRED:

1. Worker's Compensation – Statutory requirements and benefits; require that the Commonwealth of Virginia be added as an additional named insured on contractor's policy.
 2. Employers Liability - \$100,000.
 3. Commercial General Liability - \$500,000 combined single limit. The Commonwealth of Virginia is to be named as an additional insured with respect to the services being procured. These coverages are to include Products and Completed Operations Coverage.
 4. Automobile Liability - \$500,000.
- R. **ANNOUNCEMENT OF AWARD**: Upon award or decision of intent to award a contract as a result of this solicitation, the university will publicly post such notice on the eVA website for a minimum of 10 days.
- S. **DRUG FREE WORKPLACE**: The contractor acknowledges and certifies that it understands that the following acts by the Contractor, its employees, and /or agents performing services on state property are prohibited:
1. The unlawful manufacture, distribution, dispensing, possession, or use of alcohol or other drugs; and
 2. Any impairment or incapacitation from the use of alcohol or other drugs (except the use of drugs for legitimate medical purposes.
 3. The contractor further acknowledges and certifies that it understands that a violation of these prohibitions constitutes unlawful manufacture, distribution, dispensing, possession, or use of alcohol or other drugs; and a breach of contract and may result in default action being taken by the Commonwealth in addition to any criminal penalties that may result from such conduct.
- T. **CLAIMS**: Contractual claims, whether for money or other relief, shall be submitted in writing to the Director of Purchasing No Later Than 60 days after final payment; however, written notice of the contractor's intention to file such claim shall have been given at the time of the occurrence of beginning of the work upon which the claim is based. Nothing in this section shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due to the final payment (Code of Virginia, Section, 2.2-4363). A contractor may not institute legal action prior to receipt of the decision on the claim, unless the Director of Purchasing fails to render such decision within thirty (30) days. The decision of the Director of Purchasing shall be final and conclusive unless the contract, within six (6) months of the date of the final decision on the claim, institutes legal action as provided in the Code of Virginia, Section 2.2-4364.

U. NONDISCRIMINATION OF CONTRACTORS: A bidder, offeror, or contractor, shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, or disability, or against faith-based organization. If the award of this contract is made to a faith-based organization and an individual who applies for or received goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of objection, access to equivalent goods, services, or disbursement from an alternative provider.

V. eVA BUSINESS –TO-GOVERNMENT VENDOR REGISTRATION: The eVA Internet electronic procurement solution, web site portal www.eva.state.va.us streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

Vendors desiring to provide goods and/or services to the Commonwealth are encouraged to participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service, and complete the Ariba Commerce Services Network registration.

Note Vendors are strongly encouraged to register their company prior to submitting a bid or proposal. Vendors should register in both the eVA and the Ariba Commerce Services Network Registration Systems.

