

Additional Terms and Conditions

This purchase order and/or contract incorporates by reference the following terms and conditions:

For All Federal Purchases:

1. **Contracts for more than** the simplified acquisition threshold currently set at **\$150,000**, which is the inflation adjusted amount determined by the civilian agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, **must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.**
2. **All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-federal entity including the manner by which it will be effected and the basis for settlement.**
 - a. **Termination for Convenience.** Contract is terminated due to reasons known to the University, i.e., program changes, changes in state-of-the art equipment or technology, insufficient funding, etc. Termination is utilized when the contractor is not in violation of the contract terms and conditions.
 - b. **Termination for Cause.** Contract is terminated due to actions by the contractor, i.e., failure to perform, financial difficulty, slipped schedules, etc. In certain instances, termination settlement may include re-procurement costs to be paid by the contractor.
 - c. **Termination due to Force Majeure-** Mason shall be excused from any and all liability for failure or delay in performance of any obligation under this Contract resulting from any cause not within the reasonable control of Mason, which includes but is not limited to acts of God, fire, flood, explosion, earthquake, or other natural forces, war, civil unrest, accident, any strike or labor disturbance, travel restrictions, acts of government, disease, pandemic, or contagion, whether such cause is similar or dissimilar to any of the foregoing. Upon written notification from Mason that such cause has occurred, Contractor agrees to directly refund all payments to Mason, for services not yet performed, including any pre-paid deposits within 14 days.
3. **Rights to Inventions Made Under a Contract or Agreement.** Any discovery or invention that arises during the course of the contract **shall be reported to the non-Federal entity**. This clause should require the contractor to disclose promptly inventions to the contracting officer (**within 2 months**) after the inventor discloses it in writing to the contractor personnel responsible for patent matters. The awarding agency shall determine how rights in the invention/discovery shall be allocated consistent with "Government Patent Policy" and Title 37 C.F.R. § 401.

If the Federal award meets the definition of "funding agreement" under 37 C.F.R. §401.2 (a) and the recipient or sub recipient wishes to enter into a contract with a small business or firm or non-profit organization regarding the substitution of parties, assignments or performance of experimental, developmental, or research work under that 'funding agreement,' the recipient or sub recipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

University award terms and conditions contained in grant or cooperative agreement award documentation also may contain provisions regarding patents and intellectual property, specifically including requirements or special instructions, that may require that non-Federal entities include specific contract provisions (if applicable) in procurement contracts entered into under University grant or cooperative agreement awards.

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4. **Debarment and Suspension** (Executive Orders 12549 and 12689). A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the **System for Award Management (SAM) Exclusion lists**, in accordance with OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and suspension. “SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties **declared ineligible under statutory or regulatory authority** other than Executive Order 12549.
5. **Byrd-Anti-Lobbying Amendment** (31 U.S.C. 1352). **Contractors that apply or bid for an award exceeding \$100,000 must file the required certification.** Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
6. See **2 C.F.R §200.322 Procurement of Recovered Materials**. A non-Federal entity that is a state agency or agency of a political subdivision of a state must include a provision requiring contractors to comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. Per Section 6002, **where the purchase price of the items exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000, these non-Federal entities and their contractors must procure only items, designated in guidelines of the EPA at 40 C.F.R. § 247**, containing the highest percentage of recovered material practicable, consistent with maintaining a satisfactory level of competition. These non-Federal entities and their contractors must procure solid waste management services so that energy and resource recovery are maximized, and they must establish an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
7. **Clean Air and Water**. Contractors (and sub recipients) exceeding \$150,000.00 must contain a provision requiring the contractor (or sub recipients) to agree to comply with all requirements of the Clean Air Act (42 U.S.C. 7401 et seq.), and the Clean Water Act [Federal Water Pollution Control Act] as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Awarding Agency and the Regional Office of the Environmental Protection Agency (EPA).
8. **If Applicable, this contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a).** These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, national origin, and for inquiring about, discussing or disclosing compensation. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.
9. **Copeland “Anti-Kickback” Act** (18 U.S.C. 874 and 40 U.S.C. 276c) - All contracts and subgrants in excess of \$2000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. § 874), as supplemented by Department of Labor regulations (29 CFR part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or

Grants from the United States”). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which one is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

10. **Davis-Bacon Act**, as amended (40 U.S.C. 276a to a-7) - When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than \$2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. § 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction”). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.
11. **Contract Work Hours and Safety Standards Act (40 U.S.C. § 327-333)** - Where applicable, all contracts awarded by recipients in excess of \$2,000 for construction contracts and in excess of \$2,500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. § 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
12. **Auditing and Records Fiscal Records:** Subcontractor shall maintain such books, records, documents and other evidence, accounting procedures and practices sufficient to reflect properly all direct and indirect costs of whatever nature it claims to have incurred for the performance of this Agreement. All such fiscal records shall be made readily available for review by Mason, the Prime Sponsor, the Comptroller General of the US and any other duly authorized representative at any time during the period identified below.
 - a **Technical Records:** Subcontractor shall keep clear and accurate records of the procedures conducted and data collected throughout the Term so that progress of the project may be readily evaluated at any time by Mason.
 - b **Audit of Books:** Financial reports, supporting documents and other records related to this Agreement shall be retained by Subcontractor for a period of five (5) years from the date of final payment except that records that relate to audits, appeals, litigation or the settlement of claims arising out of performance of this Agreement shall be retained until such audits, appeals, litigation or claims have been disposed of. All such reports, documents and other records shall be made readily available for review by Mason or Prime Sponsor at any time during this period.



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13. **Disputes-** Any claim under this provision must be asserted by written notice to Mason University within thirty (30) days from the date of receipt of the written order from Mason University. 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 provisions of the Commonwealth of Virginia Purchasing Manual for Institutions of Higher Education and Their Vendors. 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 Mason or with the performance of the contract generally.

14. **Bonds-** When the Institution requires a bid bond, it shall not exceed five percent of the amount bid. A bid bond, when specified, must accompany the bid. Performance bonds and payment bonds, if requested, must be in an amount at least equal to 100% of the accepted bid or proposal and should be filed prior to issuance of the purchase order or notice to proceed unless a written determination is made that it is in the best interests of the Institution to grant an extension. A certified check or cash escrow may be accepted in lieu of a bid, payment, or performance bond. If a performance bond requirement is not stated in the solicitation and the Institution later determines that a bond should be provided prior to the award of a contract, the contractor to whom the award will be made shall provide a performance bond, and the Institution will pay the cost of the bond.

Please contact the Purchasing Office at 3-2580 or purch1@gmu.edu for additional guidance.