

Hanover County General Terms & Conditions

- 1 eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION: The eVA Internet electronic procurement solution, web site portal www.eva.virginia.gov streamlines and automates government purchasing activities. All vendors desiring to provide goods and/or services to the County shall participate in the eVA Internet e-procurement solution by completing the free eVA Vendor Registration. All Offerors must register in eVA, failure to register may result in the proposal being rejected. The County advertises all competitive solicitations on eVA but does not issue purchase orders through eVA unless required to by the terms and conditions of a state issued contract.

- 2 ACCEPTANCE OF GOODS/SERVICES: Goods/services delivered shall remain the property of the Contractor until a physical inspection or actual usage of the goods/services is made and thereafter accepted to the satisfaction of the County. The goods/services must comply with the specifications and terms and conditions of this solicitation and be of the highest quality. In the event the goods/services supplied to the County are found to be defective or not to conform to specifications, the County reserves the right to cancel the contract upon written notice to the Contractor and return products to Contractor at the Contractor's expense.

- 3 ANNOUNCEMENT OF AWARD: Upon the award or the announcement of the decision to award a contract as a result of this solicitation, the County will publicly post such notice on the DGS/DPS eVA VBO website (www.eva.virginia.gov) for a minimum of 10 days.

- 4 ANTI-DISCRIMINATION: By submitting their proposals, Offerors certify to the County 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 § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body (*Code of Virginia*, § 2.2-4343.1E).

In every contract over \$10,000 the provisions in A and B below apply:

- A. During the performance of this contract, the Contractor agrees as follows:
 1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 2. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
 3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

B. The Contractor will include the provisions of (A) above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

- 5 APPLICABLE LAWS AND COURTS: This solicitation is governed by the laws of the Commonwealth of Virginia. Any dispute or controversy arising out of or relating to this solicitation or otherwise shall be brought in the Hanover County Circuit Court or in the United States District Court for the Eastern District of Virginia, Richmond Division; provided, however, that prior to the instigation of any such action (other than an action for equitable relief) a meeting shall be held at a mutually agreed upon location, attended by individuals with decision-making authority to attempt in good faith to negotiate a resolution of the dispute.
- 6 ASSIGNMENT OF CONTRACT: A contract shall not be assignable by the Contractor in whole or in part without the written consent of the County.
- 7 AUDIT: The Contractor shall retain all books, records and other documents relative to this contract for five (5) years after final payment, or until audited by the County, whichever is sooner. The County or its authorized representative shall have full access to and the right to examine any of said materials during said period. The Contractor shall include the provisions above in every subcontract or purchase order, so that the provisions will be binding upon each subcontractor or vendor.
- 8 AVAILABILITY OF FUNDS: It is understood and agreed between the parties herein that the County shall be bound hereunder only to the extent of lawfully appropriated funds.
- 9 BID PRICE CURRENCY: Unless stated otherwise in this solicitation, Offerors shall state offer prices in US dollars.
- 10 BIDDER, OFFEROR AND CONTRACTOR COMPLIANCE: All Bidders, Offerors and Contractors shall comply with the *Virginia Public Procurement Act*, (*Code of Virginia* § 2.2-4300, et seq.), and all applicable County policies, regulations and procedures adopted pursuant thereto.
- 11 CONTRACT CHANGES: Any changes to the contract must be approved through issuance of a written contract addendum or change order. The County will not assume responsibility for the cost of any changes made without issuance of a written contract addendum or change order.
- 12 CONTRACTOR'S PERFORMANCE:
- A. The Contractor agrees and covenants that its agents and employees shall comply with all County, State and Federal laws, rules and regulations applicable to the business to be conducted under the Contract.
 - B. During the performance of this contract, the Contractor shall ensure that its employees shall observe and exercise all necessary caution and discretion so as to avoid injury to person or damage to property of any and all kinds.
 - C. The Contractor shall cooperate with County officials in performing the Contract work so that interference with normal operations will be held to a minimum.
- 13 CONTRACTUAL CLAIMS: Contractual claims, whether for money or other relief, shall be submitted in writing 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 or beginning of the work upon which the claim is based. Any notice or claim shall be delivered to: Director, Finance and Management Services Department, 7507 Library Drive, Hanover, VA 23069-0470 and shall include a description of the factual basis for the claim and a statement of the amounts claimed or other relief requested. The County Administrator will render a decision on the claim

and will notify the Contractor within 30 days of receipt of the claim. The Contractor may appeal the decision of the County Administrator to the Board of Supervisors by providing written notice to the County Administrator, within 15 days of the date of the decision. The Board of Supervisors shall render a decision on the claim within 60 days of the date of receipt of the appeal notice and such decision shall be final unless the Contractor appeals the decision in accordance with the Virginia Public Procurement Act. Invoices for all services or goods provided by the Contractor shall be delivered to the County no later than 30 days following the conclusion of the work or delivery of the goods.

- 14 **DEBARMENT STATUS:** By submitting their proposals, Offerors certify that they are not currently debarred by the County 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.
- 15 **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the County, after due written notice as required by the NOTIFICATION clause, 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 County may have.
- 16 **DEFINITION OF COUNTY:** The Purchasing Division of the Finance and Management Services Department provides purchasing support for Hanover County Government, Hanover County School Board, Pamunkey Regional Jail and Pamunkey Regional Library, hereinafter referred to as County. Any contract issued as a result of this solicitation shall be available for the use of any or all of these entities unless otherwise stated in the solicitation.
- 17 **DRUG-FREE WORKPLACE:** 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, 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, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of the contract.
- 18 **ETHICS IN PUBLIC CONTRACTING:** By submitting their proposals, Offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Offeror, supplier, manufacturer or subcontractor in connection with their 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.
- 19 **FINANCIAL STATEMENTS:** All Offerors, by submission of a response to this solicitation, agree to provide the County, within 10 calendar days of the County's request, a copy of its most recent audited financial statement(s), and those of any of its parent companies and/or subsidiaries having material influence on the goods/services provided, or to be provided, under the resultant contract with the County. The financial statement(s) shall be accompanied by a letter signed by, as applicable to the type of business, a corporate officer, partner, or owner, stating that the accompanying financial statement(s) is/are complete and is/are the most recent audited financial statement(s) available. The financial statement(s) shall be provided at no charge to the County, and the County

shall be under no obligation to return the financial statement(s). The Contractor chosen as a result of this solicitation shall include this same provision in the contracts of all subcontractors and any other entity providing goods or services related to the County contract, so as to guarantee the County's rights to obtain financial statements. Should the Contractor fail to ensure the County's rights under this section, the Contractor shall be liable to the County for all reasonable costs and expenses the County may incur in obtaining financial statements which would have otherwise been available under the provisions of this section.

- 20 FORCE MAJEURE: If either party shall be wholly or partially prevented from the performance of any contractual obligation or duty by reason of or through strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, accident, order of any court, act of God , or specific cause reasonably beyond the party's control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty shall be suspended until such disability to perform is removed. Determination of Force Majeure shall rest solely with the County.
- 21 IMMIGRATION REFORM AND CONTROL ACT OF 1986: The Contractor certifies that they do not, and shall not during the performance of the contract, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.
- 22 INDEMNIFICATION: Contractor agrees to indemnify the County, its officers, agents, and employees for any loss, liability, cost (including attorney's fees), or reasonable settlement cost incurred as a result of any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the Contractor/any services of any kind or nature furnished by the Contractor, provided that such liability is not attributable to the sole negligence of the County or to failure of the County to use the materials, goods, or equipment in the manner already and permanently described by the Contractor on the materials, goods or equipment delivered. The County will not agree to indemnify the Contractor.
- 23 INDEPENDENT CONTRACTOR: The Contractor is an independent Contractor and nothing contained in the contract shall constitute or designate the Contractor or any of its agents or employees as employees of the County.
- 24 LICENSES AND PERMITS: The Contractor shall secure and pay for all permits, governmental fees and licenses necessary for the proper execution and completion of the Contractor's work which are legally required prior to and during the work, including software licenses or other intellectual property permissions, unless otherwise specified by the County.
- 25 MANDATORY USE OF COUNTY FORM AND TERMS AND CONDITIONS: Failure to submit a proposal on the official County form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the County reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.
- 26 NOTIFICATION: Any notice required by the contract shall be effective if given by registered mail, return receipt requested, to the Contractor in the name and at the address given in their proposal; provided that change of address shall be effective if given in accordance with this paragraph. Unless otherwise specified, any notice to the County shall be given to: County of Hanover, Director, Finance and Management Services Department, P. O. Box 470, Hanover, VA 23069-0470. The Contractor agrees to notify the County immediately of any change of legal status or of address.
- 27 PAYMENT:
 - A. To Prime Contractor:

1. 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 contract number and/or purchase order number; social security number (for individual Contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
2. 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.
3. In those cases where payment is made by mail, the date of postmark shall be deemed to be the date payment is made (*Code of Virginia*, § 2.2-4353).
4. Unreasonable Charges. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, Contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. 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 County 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 the County of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia*, § 2.2-4363).

B. To Subcontractors:

1. A Contractor awarded a contract under this solicitation is hereby obligated:
 - a. To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the County for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 - b. To notify the County and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.
2. The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent (1%) 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 County, except for amounts withheld as stated in (b) 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 County.

C. The County encourages Contractors to accept electronic and credit card payments.

28 **PRECEDENCE OF TERMS:** The following General Terms and Conditions; ANTI-DISCRIMINATION, APPLICABLE LAWS AND COURTS, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, DEBARMENT STATUS, MANDATORY USE OF COUNTY FORM AND TERMS AND CONDITIONS, PAYMENT 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.

29 **QUALIFICATIONS OF OFFERORS:** The County may make such reasonable investigations as deemed proper and necessary to determine the ability of the Offeror to perform the services/furnish the goods and the Offeror

shall furnish to the County all such information and data for this purpose as may be requested. The County reserves the right to inspect Offeror's physical facilities prior to award to satisfy questions regarding the Offeror's capabilities. The County further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such Offeror fails to satisfy the County that such Offeror is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

- 30 **ROYALTY AND LICENSE FEES AND COPYRIGHT, TRADEMARK AND PATENT PROTECTION:**
- A. By submitting their proposal, Offerors certify that there will be no violation of copyrights or patent rights in manufacturing, producing, or selling the commodities or services to be ordered as a result of this solicitation.
 - B. Unless specified otherwise in the contract, the Contractor shall pay all royalty and license fees relating to the items covered by the contract.
 - C. In the event any third party shall claim that the manufacture, use and sales of these goods offered hereby constitutes an infringement of any copyright, trademark, or patent, the Contractor shall indemnify and hold harmless the County from any cost, expense, damage or loss incurred in any manner by the County on account of such alleged infringement.
- 31 **SEVERABILITY:** Each paragraph and provision of the resultant contract will be severable from the entire agreement and if any provision is declared invalid, the remaining provisions shall remain in effect.
- 32 **STATE CORPORATION COMMISSION IDENTIFICATION NUMBER:** In accordance with *Code of Virginia* § 2.2-4311.2 subsection B, a Offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its proposal the identification number issued to it by the State Corporation Commission (SCC). Any Offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law shall include in its proposal a statement describing why the Offeror is not required to be so authorized. Indicate the above information on the SCC Form provided (Attachment B). Contractor agrees that the process by which compliance with Titles 13.1 and 50 is checked during the solicitation stage (including without limitation the SCC Form provided) is streamlined and not definitive, and the County's use and acceptance of such form, or its acceptance of Contractor's statement describing why the Offeror was not legally required to be authorized to transact business in the Commonwealth, shall not be conclusive of the issue and shall not be relied upon by the Contractor as demonstrating compliance.
- 33 **TAXES:** The County is exempt from Federal Excise and State Sales and Use Tax on all tangible personal property purchased or leased by it for its use or consumption. The Contractor shall pay all County, City, State and Federal taxes required by law enacted at the time proposals are received and resulting from the work or traceable thereto, under whatever name levied. Said taxes shall not be added to the contract price between the County and the Contractor, as the taxes shall be an obligation of the Contractor and not of the County, and the County shall be held harmless for same by the Contractor. Exemption certification will be supplied upon request.
- 34 **TERMINATION FOR CONVENIENCE:** Unless otherwise stated, any resultant contract may be terminated, in whole or in part, whenever the County determines that such a termination is in its best interests. Any such termination shall become effective on the date stated in a written notice of termination to the Contractor sent at least five days prior to the stated termination date. The notice of termination shall state the extent to which performance shall be terminated. The Contractor shall be paid for all goods delivered or services successfully completed prior to the termination date.
- 35 **TESTING AND INSPECTION:** The County reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.