

General Terms and Conditions and Instructions to Bidders and Offerors

Application:

These General Terms and Conditions and Instructions to Bidders and Offerors (“Terms and Conditions”) apply to all Invitations for Bids (IFBs) and Requests for Proposals (RFPs) and to all contracts, agreements, purchase order, memoranda of understanding, and any change order, modification or addenda thereto (“Contract”), entered by and between the County of Accomack, Virginia (County”) and an individual or **entity for goods and/or services. These Terms and Conditions do not apply to Contracts by and between the County and any public body or public agency except to the extent that the parties agree to incorporate these Terms and Conditions, in whole or in part, into said Contract.**

Where professional services are procured, as defined in Virginia Code Section 2.2-4301, the County’s General Terms and Conditions for Professional Services shall also apply. In the event of conflict between these Terms and Conditions and those contained in the General Terms and Conditions for Professional Services, the more stringent requirement shall apply, unless otherwise required by law.

Definitions:

For purposes of these Terms and Conditions, the following terms are defined generally as follows:

“**Bidder**” shall mean any individual or entity responding to an Invitation for Bids issued by the County.

“**Offeror**” shall mean any individual or entity responding to a Request for Proposals issued by the County.

“**Contract**” shall mean any contract, agreement, purchase order, or memorandum of understanding, and any change order, modification or addendum thereto.

“**Contractor**” shall mean any individual or entity that has entered into a Contract to provide goods or services to the County of Accomack.

Tax Exemption:

The County of Accomack is exempt from and will not pay Federal Excise Tax, Transportation Tax or the Commonwealth of Virginia Sales and Use Tax. The County is also exempt from the local 911 tax. A signed certificate to document the County’s tax-exempt status is available upon request **by the Contractor to** the County finance office.

Ethics in Public Contracting (§2.2-4372 et seq., Code of Virginia):

The Contractor shall not offer or receive any kickbacks or inducements from any other offeror, supplier, manufacturer, or subcontractor in connection with this project. The A/E shall not confer on any public employee having official responsibility for this project 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. See referenced code section for further detailed remarks.

1. **Authorization to Conduct Business in the Commonwealth.** Any Contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership must be authorized to transact business in the Commonwealth 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. A business that enters into a Contract, including purchase orders, with the County shall not allow its existence to lapse or its certificate of authority or registration to transact

business in the Commonwealth to be revoked or cancelled at any time during the term of the Contract. The County may void any Contract with a business entity that fails to remain in compliance with the provisions of this paragraph.

2. Contractor's License: Bidders and Offerors (as required) must be licensed as a Contractor in the Commonwealth of Virginia and/or shall possess any professional license or certification required by state law. Bidders and Offerors are directed to Subtitle II of Title 54.1, Code of Virginia as amended. Bidder or Offeror shall include a copy of its license or certification with the completed bid form.

3. Business License: All businesses who wish to engage in business with the County of Accomack must possess a valid Accomack County Business License or must document why they are exempt from licensure. Some businesses who have obtained business licenses from other county jurisdictions are exempt from Accomack County licensure requirements; however, rules differ for building contractors and tradesmen who may be required to possess multiple business licenses. Businesses should contact the Commissioner of the Revenue for specific guidance on this issue. This office may be reached at 757-787-5747.

4. Insurance: Any Contractor doing business with the County shall maintain insurance to protect the County from claims under the Worker's Compensation Act, and from any other claim for damages for personal injury, including death, and for damage to property which may arise from operation under a contract, whether such operations by the contractor or subcontractor, or anyone directly or indirectly employed by either, such insurance to conform to the amounts as prescribed by law. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the Code of Virginia during the entire term of the contract.

Whenever work is to be performed on County-owned or -leased property or facilities, the contractor shall be required to have the insurance specified with an insurance company acceptable to the County of Accomack and licensed to do business in the state of Virginia. All insurance must be obtained before any work is commenced and kept in effect until its completion.

Minimum insurance requirements for the County of Accomack are as follows:

- A. Commercial General Liability: \$1,000,000 per occurrence /\$2,000,000 aggregate and is to include:
 - 1) Premises/Operations' Liability,
 - 2) Products and Completed Operations Coverage, and
 - 3) Independent Contractor's Liability or Owner's and Contractor's Protective Liability.
The County of Accomack, Virginia must be named and endorsed as an "additional insured" when a Contractor is required to obtain Commercial General Liability coverage.
- B. Automotive Liability: \$1,000,000 combined single limit and only if motor vehicle is to be used in the contract.
- C. Worker's Compensation Liability: Virginia statutory requirements and benefits (if the contractor has three or more employees).
- D. Employer's Liability: \$100,000 (if employees are paid a wage or salary).

- E. In addition, various Professional Liability/Errors and Omissions insurance coverages are required when providing those services as follows:

Profession/Service	Occurrence Limit	Aggregate Limit
Accounting	\$1,000,000	\$3,000,000
Architecture	\$2,000,000	\$6,000,000
Asbestos Design, Inspection, or Abatement		
Contractors	\$1,000,000	\$3,000,000
Health Care Practitioner	\$1,650,000	\$3,000,000
Insurance/Risk Management	\$1,000,000	\$3,000,000
Landscape/Architecture	\$500,000	\$1,000,000
Legal	\$1,000,000	\$5,000,000
Professional Engineer	\$2,000,000	\$6,000,000
Surveying	\$100,000	\$300,000

The minimum amount of professional liability insurance required to be carried by the A/E shall be calculated as not less than an amount equal to 5% of the estimated cost of construction of all County-owned projects designed by the A/E which are currently under construction, but in no event shall the amount of professional liability insurance be less than \$100,000 per claim. As an alternative to the calculated amount indicated above, the Architect and/or Engineer (A/E) may work with the County to procure a 'Project Insurance' package for that project which is satisfactory to the County; or the A/E may provide a Certificate of Insurance indicating coverage in the amount of \$2,000,000 per claim and \$6,000,000 in the aggregate.

5. Non Discrimination: The County of Accomack does not discriminate against faith-based organizations in accordance with the Code of Virginia, §2.2-4310 and 2.2-4343.1 or against a Bidder or Offeror because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, status as a service disabled veteran or any other basis prohibited by state law relating to discrimination in employment.

For Contracts, including purchase orders, over \$10,000, Contractor agree as follows:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, status as a service disabled veteran or 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.
- B. The Contractor shall agree to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, including the names of all contracting agencies with which the contractor has contracts of over \$10,000.
- C. The Contractor, shall in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that such contractor is an equal-opportunity employer. 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 provision.
- D. If the Contractor employs more than five employees, the Contractor shall (i) provide annual training on the Contractor's sexual harassment policy to all supervisors and employees providing services in the Commonwealth, except such supervisors or employees that are required to complete sexual harassment training provided by the Department of Human Resource Management, and (ii) post the contractor's sexual harassment policy in (a) a conspicuous public

place in each building located in the Commonwealth that the contractor owns or leases for business purposes and (b) the contractor's employee handbook.

- E. The Contractor shall include the provisions of paragraphs A – D above in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

6. Compliance with Federal Immigration Law: The Contractor does not, and shall not during the performance of the Contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

7. Drug-Free Workplace: During the performance of Contracts, including purchase orders, in excess of \$10,000, Contractors shall agree 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 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 conjunction with a specific contract awarded to a Contractor in accordance with this section, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

8. Qualifications of Bidder/Offeror: Each Bidder or Offeror shall be prepared to supply evidence of qualifications and capacity to perform work as proposed. Items which may be considered evidence are as follows:

- A. Current financial statement
- B. List of current and past similar contracts
- C. Explanation of methods to be used in fulfilling this contract
- D. Statement of current work load and/or capacity

Additional particular items may be requested as needed by the County. All qualifications shall be received within ten (10) days of request by the County.

9. Competency of Bidder/Offeror:

- A. The Bidder or Offeror if requested, shall present evidence of performance ability and possession of necessary facilities, pecuniary resources, and adequate insurance to comply with the terms of these specifications and contract documents. Such evidence shall be presented within a specified time and to the satisfaction of the County.
- B. Bidders certify that their bid is made without any previous understanding, agreement, or connection with any person, firm, or corporation making a bid for the same project; without prior knowledge of competitive prices; and is in all respects fair, without outside control, collusion, fraud, or otherwise illegal action.
- C. Bidders or their authorized agents are expected to fully inform themselves as to the conditions, requirements, and specifications before submitting bids. Failure to do so will be at the bidder's own risk.

- D. Bids and Contracts issued by the County of Accomack shall bind Bidders to applicable conditions and requirements set forth in the bid boilerplate, unless otherwise specified in the bid documents, and are subject to all federal, state, and municipal laws, rules, regulations, and limitations.

10. Completing Bid Forms:

- A. Use only the bid form(s) supplied by the County.
- B. One original signed bid shall be submitted.
- C. All blanks on the bid form(s) shall be filled in completely in ink.
- D. Any interlineation, alteration, or erasure on the bid form shall be initialed by the signer of the bid.
- E. Each bid shall be signed by the person or persons legally authorized to bind the bidder to a Contract, using the legal name of the signer.
- F. A bid submitted by an agent shall have a current Power of Attorney attached certifying the agent's authority to bind the Bidder.
- G. Bidders shall supply all information and submittals required by the bid documents to constitute a proper and responsive bid. Any ambiguity in any bid as a result of omission, error, lack of clarity or noncompliance by the bidder with specifications, instructions, and/or all conditions of bidding shall be construed in the light most favorable to the County.
- H. When an error is made in extending total prices, the unit bid price will govern.
- I. Erasures in bids must be initialed by the Bidder. Carelessness in quoting prices or in preparation of bid otherwise will not relieve the Bidder.
- J. Bidders are cautioned to recheck their bids for possible error.

11. Descriptive Literature: Bidder may be required to submit with bid complete pertinent descriptive literature and specifications fully describing the materials proposed to be furnished.

12. Specifications Exceptions: Exceptions to the specifications or general instructions must be in writing and submitted with the bid form. Exceptions to the specifications contained in bids are specifically discouraged. Bidders should attempt to submit a bid fully conforming to the specifications. Failure to clearly identify any exception may result in disqualification of the bid.

13. Use of Brand Names: The name of a certain brand, make, manufacturer, or definite specification is to set forth to convey to prospective bidders the general style, type, character, and quality of the article desired. Any article that the County in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose, shall be acceptable.

14. Eligible Vendors: Vendors responding to a request for supplies must be the manufacturer or authorized distributor of all products bid.

15. Delivery Terms: Bid prices must be net, based on delivery to the specified location(s) in Accomack County. Prices shall include all applicable freight charges; extra charges will not be allowed.

16. Comments/Questions: Any information relative to interpretation of specifications and drawings shall be requested of the Procurement Agent, in writing, in ample time before the opening of bids. No inquiries, if received by the Procurement Agent within five (5) business days of the date set for the opening of bids, will be given any consideration. Any material interpretation of a specification, as determined by the County Procurement Agent, will be expressed in the form of an addendum to the specification which will be posted to the websites indicated in the IFB no later than three (3) business days before the date set for receipt of bids. Oral answers will not be authoritative. Comments concerning specifications or other provisions of the bid documents may be directed to Margaret Lindsey, CPA Director of Finance County of Accomack, via email to mlindsey@co.accomack.va.us.

17. Bid/Proposal Delivery: Bids/proposals may be mailed or delivered as directed in the Invitation for Bids or in the Request for Proposals. Please see the specific instructions given in each individual IFB or RFP.

18. Bid/Proposal Preparation: The bid/proposal and any other documents required to be submitted with the bid shall be enclosed in a sealed, opaque envelope. **The envelope must clearly reference the project title and the project number on its face.**

19. Bid/Proposal Receipt: Bids/proposals shall be received before the due date and time stated in the Invitation for Bids or the Request for Proposals. The Bidder/Offeror shall assume full responsibility for taking whatever measures are necessary to ensure that the bid/proposal reaches the location indicated in the solicitation prior to the due date and time set forth in the solicitation. The County will not be responsible for any bid/proposal delayed in the postal service or any other delivery service nor any late bid/proposal or amendment thereto received after the due date and time set forth in the solicitation. Bids received after the due date and time set for receipt of bids will be returned to the bidder unopened.

20. Opening of Bids: Bids received on time will be opened publicly and read aloud at the time and location specified in the Invitation for Bids. The device or mechanism for establishing the opening time shall be established by the County.

21. Acceptance or Rejection of Bids:

- A. Unless otherwise specified, the contract shall be awarded to the lowest **responsible** and **responsive** bidder complying with the provisions of the bid documents, provided the bid price is reasonable, does not exceed the funds available, and is in the best interest of the County. The County reserves the right to reject the bid of any bidder who has failed to perform properly in any way or to complete on time contracts previously awarded, or a bid from any bidder who investigation shows is not in a position to perform the Contract. The County reserves the right to reject all bids.
- B. In determining a Bidder's **responsibility**, the County may consider the following in addition to price:
 - 1) The Bidder's ability, capacity, and skill to provide the goods and/or services required within the specified time.
 - 2) The Bidder's ability to provide needed maintenance and service.
 - 3) The character, integrity, reputation, experience, and efficiency of Bidder and the quality of Bidder's performance of previous and/or existing contracts.
 - 4) Whether the Bidder is in arrears to the County, in debt on a contract, or in default on any surety.
- C. In determining a Bidder's **responsiveness**, the County shall consider whether the bid conforms in all material respects to the bid documents. To be responsive, a bid must include all information required by the IFB solicitation.
- D. The County reserves the right to waive any irregularities to the extent permitted by law.
- E. The County reserves the right to reject any and all bids, to accept any bid in whole or in part, to add or delete quantities, to waive any informalities in bids received, to reject a bid not accompanied by any required bid security or other data required by bidding documents, and to accept or reject any bid which deviates from specifications when in the best interest of the County.
- F. The County cannot, by law, negotiate cost with the lowest bidder, except where the lowest responsive bid exceeds available funds.
- G. In the event that the lowest responsive bid received from a responsible Bidder exceeds available funds, the County reserves the right to negotiate with that Bidder to obtain a contract price within available funds.
- H. Such other information as may be secured by the County Procurement Agent having a bearing on the decision to award the Contract. If an apparent low bidder is not awarded a contract for reasons

of non-responsibility, the County Procurement Agent shall so notify that Bidder and shall have recorded the reasons in the procurement file.

22. Acceptance or Rejection of Proposals:

- A. Requests for Proposals shall be awarded to the Offeror whose proposal most closely meets the evaluation criteria set forth in the Request for Proposals with price as one of the determining factors, but not the sole determining factor. The County reserves the right to reject the proposal of any Contractor who has failed to perform properly in any way or to complete on time contracts previously awarded, or a proposal from any Offeror who investigation shows is unqualified to perform the Contract.
- B. The County reserves the right to reject all proposals.
- C. The County reserves the right to waive any irregularities to the extent permitted by law.

23. Pricing: Prices quoted in Proposals shall be considered, but shall not be the sole determining factor in selecting a provider for the required services.

24. Notice of Consideration: Successful offeror(s) will be notified if their proposal has received the highest score(s).

25. Binding Bids/Proposals: Bids/proposals are to be binding for sixty (60) calendar days following the opening date, unless extended by mutual consent of all parties or unless otherwise specified in the terms contained in the Invitation for Bids or Request for Proposals.

26. Bid Bond: Bidders shall be required to provide a Bid Bond in an amount equal to 5% of the bid amount.

27. Withdrawal of Bids:

- a. A Bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his or her bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as *opposed* to a judgment mistake, and was 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 a bid, which unintentional arithmetic 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. If a bid contains *both* clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor, or material made directly in the compilation of a bid which shall 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. The Bidder shall give notice in writing to the Procurement Agent of his or her claim of right to withdraw his or her bid within two (2) business days after the conclusion of the bid-opening procedure and shall submit original work papers with such notice.
- b. A Bidder for a contract other than for public construction may request withdrawal of his or her bid under the following circumstances:
 - 1) Requests for withdrawal of bids prior to opening of such bids shall be transmitted to the County Procurement Agent in writing.
 - 2) Requests for withdrawal of bids after opening of such bids but prior to award shall be transmitted to the County Procurement Agent, in writing, accompanied by full documentation supporting the request. If the request is based on a claim of error, documentation must show

the basis of the error. Such documentation may take the form of supplier quotations, vendor work sheets, and similar documents. If bid bonds were tendered with the bid, the County may exercise its right of collection.

- 3) No bid may be withdrawn under this section when the result would be the awarding of the Contract on another bid of the same Bidder or of another bidder in which the ownership of the withdrawing Bidder is more than five percent.
- 4) If a bid is withdrawn under the authority of this section, the lowest remaining bid shall be deemed to be the low bid.

28. Contract Award:

Bid (IFB) -- Award will be made on basis of information submitted with the bid and based on what is determined to be in the County's best interest, taking into consideration pricing and qualifications of bidders. A written award in the form of a purchase order, acceptance agreement, or formal contract shall result in a binding contract without further action by either party. If a contract or acceptance agreement is used, the same shall be executed by the successful Bidder within ten (10) working days of receipt of notice of award. All bids shall be approved by the County's Board of Supervisors prior to the award of same.

Proposal (RFP) – A Selection Committee will review and evaluate all proposals submitted in response to a Request for Proposals. The Committee shall conduct a preliminary evaluation of all proposals on the basis of the information provided with the proposal and the evaluation criteria listed herein. The Committee shall make recommendation to the County Board of Supervisors, and the Board of Supervisors shall make the final decision. The County shall be the sole judge as to the merits of qualifications submitted by Offerors. The decision of the County shall be final. In the event the County determines, in writing and in its sole discretion, that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that Offeror.

The following documents, which are included in the Request for Proposals, shall, unless otherwise provided, be incorporated by reference in the resulting Contract and become a part of said Contract:

- A. County of Accomack Solicitation Form/Acceptance Agreement (Cover Sheet),
- B. General Terms, Conditions and Instructions to Bidders and Offerors,
- C. General Terms and Conditions for Professional Services, if applicable,
- D. Special Provisions and Specifications,
- E. Pricing Schedule,
- F. Any addenda/amendments/Memoranda of Negotiations,
- G. Other documents which may be incorporated by reference, if applicable.

29. Tie Bids: If all bids are for the same total amount or unit price (including authorized discounts and delivery times) and if the public interest will not permit the delay of re-advertisement for bids, the County Procurement Agent is authorized to award the Contract to the resident Accomack County tie bidder whose firm has its principal place of business in the County, or if there be none, to the resident Virginia tie bidder, or if there be none, to one of the tie bidders by drawing lots in public. The decision of the County to make award to one or more such bidders shall be final.

30. Notification of Award: Successful Bidders/Offerors will be notified immediately upon acceptance of their bid/proposal.

31. Guarantees & Warranties: All guarantees and warranties required shall be furnished by the successful Bidder/Offeror and shall be delivered to the Procurement Agent before final payment on the Contract is made. Unless otherwise stated, manufacturer's standard warranty applies.

32. Permits: Any and all required permits shall be obtained by the successful Bidder/Offeror.

33. Performance Bond and Payment Bond: The successful bidder/ offeror shall be required to provide to the County a Performance Bond and Payment Bond in an amount equal to the amount of the Contract.

34. Termination for Convenience: A Contract may be terminated in whole or in part by the County in accordance with this clause whenever the County Procurement Agent shall determine that such a termination is in the best interest of the County. Any such termination shall be effected by delivery to the Contractor at least five (5) working days prior to the termination date of a Notice of Termination specifying the extent to which performance shall be terminated and the date upon which termination becomes effective. An equitable adjustment in the Contract price shall be made for completed service, but no amount shall be allowed for anticipated profit on unperformed services.

35. Termination of Contract for Cause

- A. If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner his or her obligations under the Contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of the Contract, the County shall thereupon have the right to terminate, specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, and reports prepared by the Contractor under the Contract shall, at the option of the County, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.
- B. Notwithstanding the above, the Contractor shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of contract by the Contractor for the purpose of set off until such time as the exact amount of damages due to the County from the Contractor is determined.

36. Contract Alterations: No alterations in the terms of a Contract shall be valid or binding upon the County unless made in writing and signed by the Procurement Agent or his or her authorized agent.

37. Subletting of Contract or Assignment of Contract Funds: It is mutually understood and agreed that the Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of his or her contractual duties to any other person, firm, or corporation without the previous written consent of the Procurement Agent. If the Contractor desires to assign his or her right to payment of the Contract, Contractor shall notify the Procurement Agent immediately, in writing, of such assignment of right to payment. In no case shall such assignment of Contract relieve the Contractor from his or her obligations or change the terms of the contract.

38. Funding: A Contract shall be deemed binding only to the extent of appropriations available to each Department or Office for the purchase of goods and services.

39. Delivery/Service Failures: Failure of a Contractor to deliver goods or services within the time specified, or within reasonable time as interpreted by the Procurement Agent, or failure to make replacements/corrections of rejected articles/services when so requested, immediately or as directed by the Procurement Agent, shall constitute authority for the Procurement Agent to purchase in the open market articles/services of comparable grade/quality to replace the services, articles rejected, and/or not delivered. On all such purchases, the Contractor shall reimburse the County, within a reasonable time specified by the

Procurement Agent, of any expense incurred in excess of contract prices. The County shall be entitled to withhold such reimbursement from payments due the Contractor under the Contract. Such purchases shall be deducted from the Contract quantities if applicable. Should public necessity demand it, the County reserves the right to use or consume articles delivered or services performed which are substandard in quality, subject to an adjustment in price to be determined by the Procurement Agent.

40. Non-Liability: The Contractor shall not be liable in damages for delay in shipment or failure to deliver when such delay or failure is the result of fire, flood, strike, the transportation carrier, act of God, act of Government, act of an alien enemy, or by any other circumstances which, in the Procurement Agent's opinion, are beyond the control of the Contractor. Under such circumstances, however, the Procurement Agent may, at his or her discretion, cancel the contract.

41. Responsibility for Supplies Tendered: Unless otherwise specified in the solicitation, the Contractor shall be responsible for the materials or supplies covered by the Contract until they are delivered at the designated point, but the Contractor shall bear all risk on rejected materials or supplies after notice of rejection. Rejected materials or supplies must be removed by and at the expense of the Contractor promptly after notification of rejection, unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the Contractor within ten (10) days after date of notification, the County may return the rejected materials or supplies to the Contractor at his or her risk and expense or dispose of them as its own property.

42. Replacement: Materials or components that have been rejected by the Procurement Agent, in accordance with the terms of a Contract, shall be replaced by the Contractor at no cost to the County.

43. General Guaranty:

Contractor agrees to:

- A. Save the County, its agents, and employees harmless from liability of any nature or kind for the use of any copyrighted or uncopied composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a contract for which the Contractor is not the patentee, assignee, licensee, or owner.
- B. Protect the County against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery.
- C. Furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work, or to the work of other contractors, for which his or her workers are responsible.
- D. Pay for all permits, licenses, and fees and give all notices and comply with all laws, ordinances, rules, and regulations of the County.
- E. Protect the County from loss or damage to County-owned property while it is in the custody of the Contractor.

44. Service Contract Guaranty:

Contractor agrees to:

- A. Furnish services described in the solicitation and resultant Contract at the times and places and in the manner and subject to conditions therein set forth, provided that the County may reduce the said services at any time.
- B. Meet all industry and professions standards and enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence.

- C. All work and services rendered in strict conformance to all laws, statutes, and ordinances and the applicable rules, regulations, methods, and procedures of all government boards, bureaus, offices, and other agents.
- D. Allow services and products to be inspected or reviewed by an employee of the County at any reasonable time and place selected by the County.
- E. The County of Accomack shall be under no obligation to compensate the Contractor for any services not rendered in strict conformity with the Contract.

45. Indemnification: The Contractor shall indemnify, keep and save harmless the County, its agents, officials, employees, and volunteers against claims of injuries, death, damage to property, patent claims, suits, liabilities, judgments, cost, and expenses which may otherwise accrue against the County in consequence of the granting of a contract or which may otherwise result therefrom, if it shall be determined that the act was caused through negligence or error or omission of the Contractor or his or her employees, or that of the subcontractor or his or her employees, if any; and, the Contractor shall, at his or her own expense, appear, defend, and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith; and, if any judgment shall be rendered against the County in any such action, the Contractor shall, at his or her own expense, satisfy and discharge the same.

Contractor expressly understands and agrees that any performance bond or insurance protection required by this Contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County as herein provided. **This indemnity shall be construed in accordance with Virginia law.**

46. Virginia Freedom of Information Act: All proceedings, records, contracts, and other public records relating to procurement transactions shall be open to the inspection of any citizen or any interested person, firm, or corporation in accordance with the Virginia Freedom of Information Act, except as provided below:

- A. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.
- B. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the County decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the Contract. Any competitive negotiation Offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award, except in the event that the County decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to the public inspection only after award of the Contract except as provided in paragraph "C" below. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.
- C. Trade secrets or proprietary information submitted by a Bidder, Offeror, or Contractor in connection with a procurement transaction or prequalification application submitted pursuant to the prequalification process identified in the Special Provisions, shall not be subject to the Virginia Freedom of Information Act; however, the Bidder, Offeror, or Contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary. Any Offeror shall not identify as trade secret or proprietary information their entire completed proposal.

- D. Nothing contained in this section shall be construed to require the County, when procuring by RFP to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous to the County.

47. Applicable Law and Courts: The Contract shall be governed in all respects by the laws of the Commonwealth of Virginia, and exclusive jurisdiction for the resolution of any dispute arising out of this contract shall be in the Circuit Court of Accomack County, Virginia.

48. Payment of Subcontractors: Any contract awarded in accordance with Section 2.2-4354 of the Code of Virginia shall include the following provisions:

1. Within seven days after receipt of amounts paid to a Contractor by the County for work performed by a subcontractor under the Contract, the Contractor shall take one of the two following actions:
 - a. Pay the subcontractor for the proportionate share of the total payment received from the agency attributable to the work performed by the subcontractor under that Contract; or
 - b. Notify the agency and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.
2. A payment clause that requires (i) individual contractors to provide their social security numbers and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification numbers.
3. An interest clause that obligates the Contractor to pay interest to the subcontractor on all amounts owed by the Contractor that remain unpaid after seven days following receipt by the Contractor of payment from the County for work performed by the subcontractor under the contract, except for amounts withheld as allowed in subdivision 1.
4. An interest rate clause stating, "Unless otherwise provided under the terms of the Contract, interest shall accrue at the rate of one percent per month.

Any such Contract awarded shall further require the Contractor to include in each of its subcontracts 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.

A Contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of the County. A Contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

49. General Terms and Conditions Controlling: These General Terms and Conditions are controlling, and unless expressly provided to the contrary, any variance or inconsistency with terms elsewhere in the Contract documents shall be resolved in favor of these General Terms and Conditions and if applicable, the County's General Terms and Conditions for Professional Services.

***End - Revised July 11, 2023**