

## **GENERAL TERMS AND CONDITIONS**

**1. ANTI-DISCRIMINATION:** By submitting their bids, Bidders certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award, 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. 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, § 2.2-4343.1 E).

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 provision 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.

**2. ANTITRUST:** By entering into a contract, the Contractor conveys, sells, assigns, and transfers to the New River Valley Regional Commission and 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 New River Valley Regional Commission and the Commonwealth of Virginia under said contract.

**3. 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 applicable federal, state and local laws and regulations.

**4. ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the Contractor in whole or in part without the written consent of the New River Valley Regional Commission.

**5. CHANGES TO THE CONTRACT:** Changes can be made to the Contract in any of the following ways:

A. 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 modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.

B. The New River Valley Regional Commission 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 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 New River Valley Regional Commission a credit for any savings. Said compensation shall be determined by one of the following methods:

- 1) By mutual agreement between the parties in writing; or
- 2) 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 New River Valley Regional Commission's right to audit the Contractor's records and/or to determine the correct number of units independently; or
- 3) 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 the result of savings realized. The Contractor shall present the New River Valley Regional Commission with all vouchers and records of expenses incurred and savings realized. The New River Valley Regional Commission shall have the right to audit the records of the Contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the New River Valley Regional Commission within thirty (30) days from the date of receipt of the written order from the New River Valley Regional Commission. 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 Agency Procurement and Surplus Property 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 New River Valley Regional Commission or with the performance of the contract generally.

**6. CLAIMS:** Contractual claims, whether for money or other relief, shall be submitted in writing to the Director of Finance, the New River Valley Regional Commission, 6580 Valley Center Dr #124, Radford, VA 24141, no later than sixty (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. Nothing herein 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. Pending claims shall not delay payment of amounts agreed due in the final payment (Code of Virginia, Section 2.2-4363). A contractor may not institute legal action prior to receipt of the Director of Finance's decision on the claim, unless that office fails to render such decision within thirty (30) days. Failure of the New River Valley Regional Commission to render a decision within thirty (30) days shall not result in the contractor being awarded the relief claimed or in any other relief or penalty. The sole remedy for the New River Valley Regional Commission's failure to render a decision within thirty (30) shall be the contractor's right to institute immediate legal action. The decision of the Director of Finance shall be final and conclusive unless the contractor, 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.

**7. CLARIFICATION OF TERMS:** If any prospective bidder has questions about the specifications or other solicitation documents, the prospective bidder 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.

**8. DEBARMENT STATUS:** By submitting their bids, bidders 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.

**9. DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, The New River Valley Regional Commission, 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 New River Valley Regional Commission may have.

**10 DRUG-FREE WORKPLACE:** In every contract over \$10,000 the following provisions apply: 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 any controlled substance or marijuana during the performance of the contract.

**11. EO/AA STATEMENT:** The New River Valley Regional Commission, an equal opportunity, affirmative action institution covered by presidential executive order 11246 as amended, advises all contractors, subcontractors, vendors and suppliers that direct receipt of federal funds may require appropriate action on their part.

**12. ETHICS IN PUBLIC CONTRACTING:** By submitting their bids, bidders certify that their bids are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other bidder, supplier, manufacturer or subcontractor in connection with their bid, 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.

**13. ELECTRONIC SUBMISSION OF BIDS:** Bids may be submitted electronically through the Commonwealth of Virginia's electronic procurement system (eVA) at <https://eva.virginia.gov>. Electronic submissions must be received by the designated date and hour specified in the solicitation. The official time for determining timely receipt shall be the time recorded by the eVA system at the point of submission. Bids received after the designated date and hour are automatically disqualified and will not be considered.

**14. IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By submitting their bids, the bidders 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.

**15. INDEMNIFICATION:** Contractor agrees to indemnify, defend and hold harmless the New River Valley Regional Commission and its officers, agents, and employees from any claim, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the negligence of the Contractor.

**16. LATE BIDS:** To be considered for selection, bids must be received by the Director of Finance, the New River Valley Regional Commission, 6580 Valley Center Dr #124, Radford, VA 24141, by the designated date and hour. The official time used for determining timely receipt of bids shall be the time recorded by the New River Valley Regional Commission at the point of physical or electronic receipt. Bids received after the designated date and hour are automatically disqualified and will not be considered. The New River Valley Regional Commission is not responsible for delays in the delivery of mail by the U.S. Postal Service, private couriers, or another means of delivery. It is the sole responsibility of the bidder to ensure that its bid reaches the New River Valley Regional Commission by the designated date and hour.

**17. MANDATORY USE OF THE NEW RIVER VALLEY REGIONAL COMMISSION FORM AND TERMS AND CONDITIONS:** Failure to submit a bid on the official New River Valley Regional Commission form provided for that purpose shall be a cause for rejection of the bid. Modification of or additions to any portion of the invitation for bid may be cause for rejection of the bid; however, the New River Valley Regional Commission reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid as non-responsive. As a precondition to its acceptance, the New River Valley Regional Commission may, in its sole discretion, request that the bidder withdraw or modify non-responsive 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.

## **18. 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 New River Valley Regional Commission or 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).
- 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) 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.
- 4) 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.
- 5) 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 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 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 Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
  - b) To notify the New River Valley Regional Commission and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason. 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 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 Commonwealth.

**19. PRECEDENCE OF TERMS:** Paragraphs 1, 2, 3, 7, 8, 12, 14, 17, 18 and 27 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.

**20. PUBLIC NOTICE OF AWARD:** Public notice of the contract award shall be posted on the Commonwealth of Virginia's electronic procurement system (eVA). Award information may also be obtained upon request from the New River Valley Regional Commission.

**21. QUALIFICATIONS OF BIDDERS:** The New River Valley Regional Commission may make such reasonable investigations as deemed proper and necessary to determine the ability of the bidder to perform the work/furnish the item(s) and the bidder shall furnish to the New River Valley Regional Commission all such information and data for this purpose as may be requested. The New River Valley Regional Commission reserves the right to inspect bidder's physical facilities prior to award to satisfy questions regarding the bidder's capabilities. The New River Valley Regional Commission further reserves the right to reject any bid if the evidence submitted by, or investigations of, such bidder fails to satisfy the New River Valley Regional Commission that such bidder is properly qualified to carry out the obligations of the contract and to complete the work/furnish the item(s) contemplated therein.

**22. SUPREMACY CLAUSE:** Notwithstanding any provision in the bidder's response to the contrary, the bidder agrees that the terms and conditions contained in the New River Valley Regional Commission's bid prevail over contrary terms and conditions contained in the bidder's response.

**23. TAXES:** Sales to the New River Valley Regional Commission and the Commonwealth of Virginia are normally exempt from State sales tax, State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against the contract shall be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

**24. TESTING AND INSPECTION:** The New River Valley Regional Commission reserves the right to conduct any test/inspection it may deem advisable to assure supplies and services conform to the specification.

**25. TRANSPORTATION AND PACKAGING:** By submitting their bids, all bidders certify and warrant that the price(s) offered are for FOB Destination and include only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.

**26. USE OF BRAND NAMES:** Unless otherwise provided in this solicitation; the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the New River Valley Regional Commission in its sole discretion determines to be equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The bidder is responsible to clearly and specifically indicate the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the New River Valley Regional Commission to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid non-responsive. Unless the bidder clearly indicates in its bid that the product offered is an "equal" product, such bid will be considered to offer the brand name product referenced in the solicitation.

**27. VENDOR'S MANUAL:** This contract is subject to the provisions of the Commonwealth of Virginia Vendor's Manual and any revisions thereto, which are hereby incorporated into this contract in their entirety. A copy of the manual is available from the Division of Purchases and Supply in Richmond, VA [www.dgs.va.us/dps](http://www.dgs.va.us/dps)

**28. NONDISCRIMINATION OF CONTRACTORS:** A bidder or a 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 organizations. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives 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 his objection, access to equivalent goods, services, or disbursements from an alternative provider.