

GENERAL TERMS AND CONDITIONS

This solicitation and any resulting contract are subject to the provisions of the *Commonwealth of Virginia's Purchasing Manual for Institutions of Higher Education and their Vendor's* and any revisions thereto, and the *Governing Rules*, which are hereby incorporated into this contract in their entirety. A copy of both documents is available for review at www.vascupp.org.

1. **ADMINISTRATIVE APPEALS PROCEDURE:** Although Radford

5. **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.
6. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the contractor in whole or in part without the written consent of Radford University, an agency of the Commonwealth.
7. **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** A contractor organized as a stock or non-stock corporation, limited liability company, business, trust, or limited partnership or registered as a registered limited liability partnership shall 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. Any business entity described above that enters into a contract with a public body shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required by Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business fails to remain in compliance with the provisions of this section.
8. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:
 1. The parties may agree 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.
 2. The University 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, the

COVID-19, H1N1, or similar infectious diseases), curtailment of transportation facilities, or other occurrence beyond the control of the parties, where any of those factors, circumstances, situations, or conditions or similar ones prevent, dissuade, or unreasonably delay the Event, or where any of them make it illegal, impossible, inadvisable, or commercially impracticable to hold the Event or to fully perform the terms of the contract. The contract may be cancelled by either party, without liability, damages, fees, or penalty, and any unused deposits or amounts paid shall be refunded, for any one or more of the above reasons, by written notice to the other party.

19. **IMMIGRATION REFORM AND CONTROL ACT OF 1986**: By entering into a contract with the Commonwealth of Virginia, the contractor certifies that the contractor does not, and shall not during the performance of this contract for goods and services in the Commonwealth, knowingly employ an unauthorized illegal alien as defined in the federal Immigration Reform and Control Act of 1986.
20. **INDEMNIFICATION**: Contractor agrees to indemnify, defend and hold harmless the Commonwealth of Virginia, its officers, agents, and employees from 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; or any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the sole negligence of the using agency or failure of the issuing agency to use the material, goods, or equipment in the manner already and permanently described by the contractor on the materials, goods or equipment delivered.
21. **MANDATORY USE OF FORM AND TERMS AND CONDITIONS**: Failure to submit a response on Radford University's form provided for that purpose may be a cause for rejection of the response. Modification of or additions to the General Terms and Conditions of the solicitation may be cause of rejection of the response; however, the University reserves the right, on a case by case basis, in its sole discretion, whether or not to reject such a response.
22. **NONDISCRIMINATION OF CONTRACTORS**: A bidder/offeree, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. 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 the objection, access to equivalent goods, services, or disbursements from an alternative provider.
23. **PAYMENT**:
 1. **Prime Contractor**:
 - a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number, social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
 - b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. However, this shall not affect offers of discounts for payment in less than 30 days.
 - c. All goods and services provided under this contract or purchase order, that are to be paid with public funds shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
 - d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
 - e. **Unreasonable Charges**. Under certain emergency procurements and for most time and material purchases, final 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 the University of its prompt payment obligations with respect to those charges which are not in dispute (*Governing Rule §53. Contractual disputes*).

2. To Subcontractors:

a. A contractor awarded a contract under this solicitation is hereby obligated:

- 1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Commonwealth for the proportionate share of the payment record for work performed by the subcontractor(s) under the contract; or
- 2) To notify the University and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.

b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise prohibited under the terms of the contract) on all amounts owed by contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U.S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

3. Each prime contractor who wins an award in which provision of a SWaM procurement plan as specified in the contract documents and is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only substantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the University or institution, or other appropriate penalties may be accessed in lieu of withholding such payment.

24. **PRECEDENCE OF TERMS:** The following paragraphs of these General Terms and Conditions shall apply in all instances: **Virginia Purchasing Manual for Institutions of Higher Education and Their Vendors, Applicable Laws and Courts, Anti-Discrimination, Ethics in Public Contracting, Immigration Reform and Control Act of 1986, Debarment Status, Antitrust, Mandatory**

Payment. 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.

25. **PRICING CURRENCY:** Unless otherwise stated in the solicitation, bidder/offeror shall state bid/offer in U.S. dollars.

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

27. **SUPREMACY CLAUSE:** Notwithstanding any provision in the bidder's/offeror's response to the contrary, the bidder/offeror agrees that the terms and conditions contained in Radford University's bid/offer prevail over contrary terms and conditions in the bidder's/offeror's response.

28. **TAXES:** Sales to the Commonwealth of Virginia and Radford University are normally exempt from state sales tax. State sales and use tax certificates of exemption ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The appropriate University Sales and Use Tax of Exemption number is as follows: RU 10-546001789F-001; FIN 54-6001789

29. **TESTING AND INSPECTION:** The University reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to specifications.
30. **TRANSPORTATION AND PACKAGING:** By submitting bids/offers, all bidders/offerors certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest band best rate 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. **(NOT NORMALLY REQUIRED FOR SERVICE CONTRACTS.)**
31. **USE OF BRAND NAMES:** Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict bidders/offerors to the specific brand, make or manufacturer name, but conveys the general style, type, character, and quality of the product desired. Any product which the public body, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The bidder/offeror is responsible to clearly identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the University 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 the bid as nonresponsive. 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. **(NOT NORMALLY REQUIRED FOR SERVICE CONTRACTS.)**