

## **GENERAL TERMS AND CONDITIONS**

The procurement documents, including these “General Terms and Conditions,” any Invitation for Bid, any Request for Proposal and any response of the bidder thereto (**the “Contractor”**) will be incorporated into a resulting contract as fully and completely as if set forth in such contract in its entirety unless specifically excluded, changed or modified by the express terms of the contract.

Unless specifically excluded, changed, or modified by the express terms of the contract, the following general terms and conditions will become part of any contract between the New River Valley Regional Jail Authority (**the “Authority”**) and a Contractor of goods and services.

### **1. General Provisions**

Nothing in any resulting contract shall be construed as authority for either party to make commitments which will bind the other party beyond the scope of service contained herein. This contract is subject to appropriations by the Authority.

### **2. Laws of the Commonwealth**

- A. Any purchase order or contract resulting from this solicitation shall be governed in all respects whether as to validity, construction, performance, or otherwise by the laws of the Commonwealth of Virginia. The Contractor providing goods or services to the Authority under this contract assures the Authority that it is:
  - 1. Conforming to the provisions of the Civil Rights Act of 1964, as amended, the Virginia Fair Employment Contracting Act of 1975, as amended, and the Virginia Human Rights Act, as amended, where applicable;
  - 2. Not employing illegal alien workers or otherwise violating the provisions of the Immigration Reform and Control Act of 1986;
  - 3. Complying with federal, state and local laws and regulations applicable to the performance of the services procured; and
  - 4. Submitting the bid or proposal in full compliance with the State and Local Government Conflict of Interest Act.
- B. In every contract of over \$10,000, the Contractor agrees during the performance of this contract that:

1. The Contractor (1) will not discriminate against any employee or applicant for employment because of race, religion, color, sex, disability, or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor, (2) will post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, and (3) will state that the Contractor is an equal opportunity employer in all solicitations or advertisements for employees placed by or on behalf of the Contractor under this contract. All 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;
  2. The Contractor will include the provisions of the foregoing subparagraph 2.(B)(1) in every subcontract or purchase order under this Contract of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor; and
- C. In every contract of over \$10,000, the Contractor agrees during the performance of this contract that:

The Contractor shall A) provide a drug-free workplace for its employees; B) 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 its workplace and specify the actions which will be taken against any employee for a violation; C) state in all of its solicitations or advertisements for employees placed by or on behalf of the contractor that it maintains a drug-free workplace; and D) include the provisions of this subparagraph in every subcontract or purchase order of over \$10,000, so that said provisions shall be binding upon each subcontractor or vendor.

For purposes of this sub-paragraph, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with the provisions of the Virginia Public Procurement Act, 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.

- D. In addition to the provisions contained in sub-paragraph C. pertaining to drug-free place, Contractor shall comply with the federal Drug Free Workplace Act.
- E. Pursuant to Section 2.2-4343.1 of the Code of Virginia of 1950, in all invitations to bid, requests for proposals, contracts, and purchase orders, the Authority does not discriminate against faith-based organizations.

"Faith-based Organization" means a religious organization that is or applies to be a contractor to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193.

If Contractor is a faith-based organization, then Contractor shall give to each individual who applies for or receives goods, services, or disbursements provided pursuant to this Agreement the following notice:

### NOTICE

Pursuant to Section 2.2-4343.1 of the Code of Virginia of 1950, as an applicant for or recipient of goods, services, or disbursements provided pursuant to a contract between the Authority and a faith-based organization, you are hereby notified as follows:

**Neither the Authority's selection of a charitable or faith-based provider of services nor the expenditure of funds under this contract is an endorsement of the provider's charitable or religious character, practices, or expression. No provider of services may discriminate against you on the basis of religion, a religious belief, or your refusal to actively participate in a religious practice. If you object to a particular provider because of its religious character, you may request assignment to a different provider. If you believe that your rights have been violated, please discuss the complaint with your provider or notify the Authority Administrator.**

### **3. Certifications**

The Contractor certifies that:

1. The bid or offer (1) is made without prior participation, understanding, agreement, or connection with any corporation, firm or person submitting a bid/offer for the same materials, supplies, equipment, or services with respect to the allocation of the business afforded by or resulting from the acceptance of the bid or proposal, (2) is in all respects fair and without collusion or fraud, and (3) is or is intended to be competitive and free from any collusion with any person, firm or corporation;
2. The Contractor has not offered or received any kickback from any other bidder or Contractor, supplier, manufacturer, or subcontractor in connection with the bid/offer on this solicitation. A kickback is defined as an inducement for the award of a contract, subcontracts or order, in the form of any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged. Further, no person shall

demand or receive any payment, loan, subscription, advance, and deposit of money, services or anything of value in return for an agreement not to compete on a public contract;

3. The Contractor is not a party to nor has he participated in nor is obligated or otherwise bound by agreement, arrangement or other understanding with any person, firm or corporation relating to the exchange of information concerning bids, prices, terms or condition upon which the contract resulting from the acceptance of his bid proposal is to be performed;
4. The Contractor understands that collusive bidding is a violation of the Virginia Governmental Frauds Act and federal Law, and can result in fines, prison sentences, and civil damage awards and agrees to abide by all conditions of this proposal; and
5. The Contractor or subcontractor has not and will not confer on any public employee having official responsibility for a 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 is exchanged.

#### **4. Warranties**

Any goods or services furnished by the Contractor under the contract shall be covered by the most favorable warranties provided by the Contractor to any customer; the rights and remedies hereby provided are in addition to any and do not limit those otherwise available to the Authority. The Contractor agrees that if such warranties are in any respect breached, the Contractor will pay to the Authority the full contract price agreed to by the Authority to be paid for the supplies, materials, equipment or services furnished under the bid or proposal.

#### **5. Modifications, Additions or Changes**

Modifications, additions or changes to these terms and conditions may not be made except in writing and agreed to by the Authority; however, no fixed priced contract may be increased by more than twenty-five (25) percent of the amount of the contract or \$50,000 whichever is greater without the approval of the Authority. The amount of any contract may not be increased for any purpose without adequate consideration provided to the Authority.

#### **6. Hold Harmless**

The Contractor agrees to indemnify, defend and hold harmless the Authority and 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/any services of any kind or nature provided by the Contractor, provided that such liability is not attributable to the sole negligence

of the Authority or to failure of the Authority to use the materials, goods, or equipment in the manner outlined by the Contractor and descriptive literature or specifications submitted with the Contractor's bid.

**7. Assignment**

The contract may not be assigned, sublet, or transferred without the written consent of the Authority.

**8. Default**

In the case of default or breach by the Contractor or the failure of the Contractor to deliver the services in conformance with the specifications in the contract the Authority shall give written notice to the Contractor specifying the manner in which the contract has been breached. If the Authority gives such notice of breach and the Contractor has not corrected the breach within fifteen (15) days of receipt of the written notice, the Authority shall have the right to immediately rescind, revoke or terminate the contract and in addition to any other remedies available at law to procure such services from other sources and hold the Contractor responsible for any and all excess cost occasioned thereby.

**9. Audit**

The Contractor hereby agrees to retain all books, records, and other documents relative to this contract for five (5) years after final payment or after all other pending matters are closed, whichever is longer. The Authority and its authorized agents, state auditors, the grantor of the funds to the Authority, the Comptroller of Virginia or of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audits, examinations, excerpts or transcriptions.

**10. Ownership of Documents**

Any reports, studies, photographs, negatives, or other documents prepared by Contractor in the performance of its obligations under any resulting contract shall be remitted to the Authority by the Contractor upon completion, termination or cancellation of this Contract. Contractor shall not use, willingly allow or cause to have such materials used for any purpose other than performance of Contractor's obligations under this contract without the prior written consent of the Authority. The Authority shall own the intellectual property rights to all materials produced under this contract.

**11. Payment and Performance Bond**

For any Contract for construction, the amount of which exceeds \$100,000, the Contractor shall furnish to the Authority the bonds required under Sections 2.2-4336 and 2.2-4337 of the Code and shall otherwise fully comply with the requirements of such sections of the Code. The

Authority reserves the right to require payment and/or performance bonds in the amount of the Contract for any other Contracts, whether or not required by such sections of the Code.

## **12. Required Payment**

Pursuant to Section 2.2-4354 of the Code, the Contractor covenants and agrees to:

- a. within seven (7) days after receipt of any amounts paid to the Contractor under the Contract, (i) pay any subcontractor for its proportionate share of the total payment received from the Authority attributable to the work under the Contract performed by such subcontractor, or (ii) notify the Authority and the subcontractor, in writing, of its intention to withhold all or a part of the subcontractor's payment and the reason therefor;
- b. provide its federal employer identification number or social security number, as applicable, before any payment is made to the Contractor under the Contract; and
- c. pay interest at the legal rate or such other rate as may be agreed to in writing by the subcontractor and the Contractor on all amounts owed by the Contractor that remain unpaid after seven (7) days following receipt by the Contractor of payment from the Authority for work performed by the subcontractor under the Contract, except for amounts withheld pursuant to subparagraph 12a. above.
- d. include in its contracts with any and all subcontractors the requirements of a, b, and, c above.

## **13. Liability Coverage**

Unless otherwise expressly excepted in the procurement announcement documents prepared by the Authority, the Contractor shall take out and maintain during the life of the Contract such bodily injury, liability and property damage liability insurance as shall protect it and the Authority from claims for damages for personal injury, including death, as well as from claims for property damage, which may arise from its activities under this agreement. Such insurance shall at least have the coverages and be in the amounts set forth in section 15 "Insurance and Bond Requirements" set forth below and shall name the Authority as an Additional Insureds. Such insurance must be issued by a company admitted within the Commonwealth of Virginia and with at least a Best's Key Rating of A:V1. The Contractor shall provide the Authority with a certificate of insurance showing such insurance to be in force and providing that the insurer shall give the Authority at least 30 days' notice prior to cancellation or other termination of such insurance.

## **14. Insurance and Bond Requirements**

The Contractor shall maintain the following insurance to protect it from claims under the Workmen’s Compensation Act, and from any other claims for personal injury, including death, and for damage to property that may arise from operations under the Contract, whether such operations be by itself or by any subcontractor, or anyone directly or indirectly employed by either of them.

**TYPE OF COVERAGE**

**LIMITS**

Workers’ Compensation and Employer’s Liability including coverage under United States Longshoremen’s and Harbor Worker’s Act where applicable	Statutory, including Employer’s Liability of \$100,000.00 Each Accident \$500,000.00 Disease-Policy Limit \$100,000.00 Disease-Each Employee
Comprehensive General Liability endorsement coverages.	Including the Broad Form C.G.L.
Premises – Operations Bodily Injury Liability and Property Damage Liability Combined	\$500,000 Each Occurrence \$1,000,000 Aggregate
Including: Underground Hazard (U) Explosion and Collapse Hazard (XC)	
Independent Contractors – Owner’s Protective Bodily Injury Liability and Property Damage Liability Combined	\$500,000 Each Occurrence \$1,000,000 Aggregate
Completed Operations - Products Liability Bodily Injury Liability and Property Damage Liability Combined for five (5) years after payment	\$500,000 Each Occurrence \$1,000,000 Aggregate

Contractual Bodily Injury Liability and Property Damage Liability Combined in accordance with Agreement between Owner and Contractor	\$500,000 Each Occurrence \$1,000,000 Aggregate
Personal Injury with Employee's Exclusion C deleted	\$1,000,000 Aggregate
Automobile Bodily Injury Liability and Property Damage Liability Combined covering all automobiles, trucks, tractors, trailers, or other automobile equipment, whether owned, non-owned, or hired by the Contractor	\$500,000 Per Accident
Umbrella/Excess Liability	\$1,000,000 Each Occurrence \$1,000,000 Aggregate
Professional Liability Insurance	\$1,000,000 Limit of Liability

1. The Contractor shall purchase and maintain insurance coverage on his tools, equipment and machinery and shall waive subrogation to the Authority for damage thereto.

2. The Authority reserves the right to require insurance of any Contractor in greater amounts provided notice of such requirements is stated in the Solicitation.

**15. No Waiver**

Any failure of the Authority to demand rigid adherence to one or more of this Agreement's provisions in the contract, on one or more occasions, shall not be construed as a waiver nor deprive the Authority of the right to insist upon strict compliance with the terms of this Contract. Any waiver of a term of this Contract, in whole or in part, must be in writing and signed by the party granting the waiver to be effective.

**16. Termination**

The Authority may terminate the resulting contract for its convenience upon thirty (30) days written notice to the Contractor. The Contractor shall not be paid for any service rendered or expense incurred after receipt of such notice except such fees and expenses incurred prior to the effective date of termination that are necessary for curtailment of the Contractor's work under this contract.

**17. Choice of Law**

To ensure uniformity of the enforcement of this Contract, and irrespective of the fact that either of the parties now is, or may become, a resident of a different state, this Agreement shall

be governed by and construed in accordance with the laws of the Commonwealth of Virginia without regard to her principles of conflicts of law.

**18. Forum Selection**

The parties hereby submit to the personal jurisdiction and venue of any state or federal court located within the Commonwealth of Virginia for resolution of any and all claims, causes of action or disputes arising out of or related to this Contract and agree that service by registered mail to the addresses set forth in Paragraph 20 of this Appendix shall constitute sufficient service of process for any such action. The parties further agree that any claims, causes of action or disputes arising out of, relating to or concerning this Contract shall have jurisdiction and venue only in the Circuit Court of Pulaski County, Virginia or in the U.S. District Court, Western District of Virginia.

**19. Severability**

If any provision of this Contract is held to be illegal, invalid, or unenforceable, or is found to be against public policy for any reasons, such provision shall be fully severable and this Contract shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never been part of this Contract, and the remaining provisions of this Contract shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision, or by its severance from this Contract.

**20. Notices**

All requests, notices and other communications required or permitted to be given under this Contract shall be in writing and delivery thereof shall be deemed to have been made when such notice shall have been either (a) duly mailed by first-class mail, postage prepaid, return receipt requested, or any comparable or superior postal or air courier service then in effect, or (b) transmitted by hand delivery, telegram, telex, telecopier or facsimile transmission, to the party entitled to receive the same at the address indicated below or at such other address as such party shall have specified by written notice to the other party.

A. Notices to the Authority shall be sent to:

Gerald A. McPeak  
Superintendent  
New River Valley Regional Jail  
P.O. Box 1067  
Dublin, VA 24084

And

James E. Cornwell, Jr., Esquire  
Authority Attorney  
Sands Anderson Marks & Miller

250 South Main Street  
Suite 226  
Blacksburg, VA 24060-4860

B. Notices to the Contractor should be sent to

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**21. Contractual Claims Procedure**

A. Contractual claims or disputes, whether for money or other relief, except for claims or disputes exempted by law from the procedure set forth herein, shall be submitted in writing no later than sixty (60) days after final payment; provided, however, that Contractor shall give the Authority written notice of its intention to file a claim or dispute at the time of the occurrence or beginning of the work upon which the claim is based.

Any written notice of Contractor's intention to file such a claim or dispute need not detail the amount of the claim, but shall state the facts and/or issues relating to the claim in sufficient detail to identify the claim, together with its character and scope. Whether or not Contractor files such written notice, Contractor shall proceed with the work as directed. If Contractor fails to make its claim or dispute, or fails to give notice of its intention to do so as provided herein, then such claim or dispute shall be deemed forfeited.

B. The Authority, upon receipt of a detailed claim, may at any time render its decision and shall render such decision within one hundred twenty (120) days of final payment. Each such decision rendered shall be forwarded to the Contractor by written notice.

C. If the Contractor disagrees with the decision of the Authority concerning any pending claim, the Contractor shall promptly notify the Authority by written notice that the Contractor is proceeding with the work under protest. Any claim not resolved, whether by failure of the Contractor to accept the decision of the Authority or under a written notice of Contractor's intention to file a claim or a detailed claim not acted upon by the governing body of the Authority, shall be specifically exempt by the Contractor from payment request, whether progress or final. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

- D. The decision on contractual claims by the governing body of the Authority shall be final and conclusive unless the Contractor appeals within six months of the date of the final decision on the claim by instituting legal action in the appropriate circuit court.

**22. Interest Rate**

Unless otherwise provided under the terms of the contract, interest shall accrue at the rate of one percent per month.