

MANDATORY GENERAL TERMS AND CONDITIONS

Terminology: Within these mandatory terms and conditions, the use of the terms “offeror/bidder” indicate a business respondent to a formal solicitation, either a Request for Proposal (RFP) or Invitation for Bids (IFB), before a contract is awarded. The term “contractor” applies to businesses who have been awarded a contract following a procurement process.

- A. PURCHASING MANUAL/ GOVERNING RULES:** This solicitation and any resulting contract is subject to the provisions of the Commonwealth of Virginia’s [Purchasing Manual for Institutions of Higher Education and their Vendors](#) and any revisions thereto, and the Governing Rules, which are hereby incorporated into this contract in their entirety. A copy of both documents are available for review at: <https://vascupp.org>. It shall be understood that William & Mary and the Virginia Institute of Marine Science are deemed to be one agency of the Commonwealth, and are referenced herein and in all terms and conditions cited throughout solicitation and contract as the University.
- B. 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 University and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (Governing Rules, §56). The contractor shall comply with all applicable federal, state and local laws, rules, regulations, and policies of the University.
- C. ANTI-DISCRIMINATION:** By submitting their proposals, Offerors certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and §10 of the *Rules Governing Procurement*. 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. (§36 of the Rules Governing Procurement)

In every contract over \$10,000, the provisions in 1. and 2. below apply:

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

2. The Contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- D. ETHICS IN PUBLIC CONTRACTING:** By submitting their proposals, Offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present, or promised, unless consideration of substantially equal or greater value was exchanged.
- E. IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By submitting their proposals and entering into a written contract with the Commonwealth of Virginia, Offerors 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.
- F. DEBARMENT STATUS:** By submitting their proposals, Offerors certify that they are not currently debarred by the Commonwealth of Virginia from submitting 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.
- G. ANTITRUST:** By entering into a contract, the Contractor conveys, sells, assigns, and transfers to the University all rights, title and interest in and to all causes of 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 University under said contract.
- H. MANDATORY USE OF UNIVERSITY FORM AND TERMS AND CONDITIONS FOR RFP'S:** Failure to submit a proposal on the official University form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the University reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.
- I. CLARIFICATION OF TERMS:** If any prospective Offeror has questions about the specifications or other solicitation documents, the prospective Offeror should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revision to the solicitation will be made only by addendum issued by the buyer.
- J. PAYMENT:**
1. To 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. This shall not affect offers of discounts for payment in less than 30 days, however.

- c. 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.
- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is to be 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 that 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 University shall promptly notify the Contractor, in writing, as to those charges that 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 that are not in dispute (*Rules Governing Procurement, § 53*).

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 University for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 - (2) To notify the agency 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 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 University, 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 shall not be construed to be an obligation of the University.

K. PRECEDENCE OF TERMS: The following General Terms and Conditions shall apply in all instances: ANTIDISCRIMINATION, ANTITRUST, APPLICABLE LAWS AND COURTS, CLARIFICATION OF TERMS, DEBARMENT STATUS, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, MANDATORY USE OF UNIVERSITY FORM AND TERMS AND CONDITIONS, PAYMENT and PURCHASING MANUAL/GOVERNING RULES. This solicitation and any resulting contract include all the required terms and conditions. The contractual terms and conditions of the contract will govern in all cases. In the absence of a two party contract University's purchase order terms and conditions will govern.

L. QUALIFICATIONS OF OFFERORS: The University may make such reasonable investigations as deemed proper and necessary, to determine the ability of the Offeror to perform the services/furnish the goods and the Offeror shall furnish to the University all such information and data for this purpose as may be requested. The University reserves the right to inspect Offeror's physical facilities prior to award to satisfy questions regarding the Offeror's

capabilities. The University further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such Offeror fails to satisfy the University that such Offeror is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

- M. TESTING AND INSPECTION:** The University reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
- N. ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the Contractor in whole or in part without the written consent of the University.
- O. CHANGES TO THE CONTRACT:** Changes can be made to the contract in any one of the following ways:
1. 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.
 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, things such as services to be performed, 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 University a credit for any savings. Said compensation shall be determined by one of the following methods:
 - a. By mutual agreement between the parties in writing; or
 - b. 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 University's right to audit the Contractor's records and/or to determine the correct number of units independently; or
 - c. By ordering the Contractor to proceed with the work and 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 University with all vouchers and records of expenses incurred and savings realized. The University 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 University within thirty (30) days from the date of receipt of the written order from the University. 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 (see General Conditions, clause X herein) or, if there is none, in accordance with the disputes provisions of the *Commonwealth of Virginia Purchasing Manual for Institutions of Higher Education and their Vendors*. Neither the existence of a claim nor 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 University or with the performance of the contract generally.
- P. DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the University, 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 University may have.

- Q. TAXES:** Sales to the Commonwealth of Virginia and the University 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 this contract shall usually be free of Federal excise and transportation taxes. The appropriate University Sales and Use Tax Certificate of Exemption number is as follows: W&M 10-546001718F/VIMS 54-6001802.
- R. INSURANCE:** By signing and submitting a proposal under this solicitation, the Offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §25 of the *Governing Rules*. The Offeror further certifies that the contractor and any subcontractors will maintain these insurance coverages during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

In instances where a resulting contract award requires the contractor's employee(s) presence on state property at any time, the contractor shall issue a Certificate of Liability Insurance prior to the beginning of the project. It shall be understood that William & Mary and the Virginia Institute of Marine Science, in the bidding and resulting contract, are deemed to be one agency of the Commonwealth.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the University of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.
 2. Employer's Liability - \$100,000.
 3. Commercial General Liability - \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The University will be named as an Additional Insured, and the proper name is: "The Commonwealth of Virginia, and the Rector and Board of Visitors of William & Mary, its officers, employees, and agents."
 4. Automobile Liability - \$1,000,000 per occurrence. (Required if a motor vehicle not owned by the Commonwealth is to be used in the contract). Contractor must assure that the required coverage is maintained by the Contractor (or third party owner of such motor vehicle.)
- S. ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract over \$100,000, as a result of this solicitation, the University will publicly post such notice on the eVA web site (www.eva.virginia.gov) for a minimum of 10 days.
- T. DRUG-FREE WORKPLACE:** During the performance of this contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; (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. (Rules Governing Procurement, § 11)

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.

- U. 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 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 is responsible to clearly and specifically 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 a bid 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)
- V. TRANSPORTATION AND PACKAGING:** By submitting their bids, all bidders certify and warrant that the price offered for FOB destination includes 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.
- W. NONDISCRIMINATION OF CONTRACTORS:** An Offeror, 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 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 his objection, access to equivalent goods, services, or disbursements from an alternative provider.
- X. ADMINISTRATIVE APPEALS PROCEDURE:** (Governing Rules §55) Although the University is authorized to establish an administrative appeals procedure, it has chosen not to develop such procedures, but rather will rely on legal action for such determinations (Governing Rules § 56). However, the University reserves the right to use Alternate Dispute Resolution (ADR) for hearing appeals from decisions on disputes arising during the performance of a contract or when it is deemed to be in the best interest of the University.

- Y. **CLAIMS PROCEDURE:** Contractual claims for payment under the Agreement shall be submitted in writing no later than sixty (60) days after the University states in a writing delivered to the Contractor that it has made its final payment to the contractor under the Agreement and that Contractor must submit any claim within 60 days thereafter. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

The University's procedure for deciding such contractual claims is:

- A. The Contractor must provide the written claim to:

AVP Supply Chain Services
William and Mary
P.O. Box 8795
Williamsburg, Virginia 23187-8795

- B. Although the Contractor may, if it chooses, attempt to resolve its claim directly with the University department using the product or services rather than the one stated in the above paragraph, the Contractor must submit any unresolved claim in writing, no later than sixty (60) days after notice of final payment is delivered to the Contractor in accordance with the opening paragraph of this section (y), to the AVP Supply Chain Services if it wishes to pursue its claim.
- C. Upon receiving the written claim, the AVP Supply Chain Services will review the written materials relating to the claim and decide whether to discuss the merits of the claim with the contractor. If such discussion is to be held, the AVP Supply Chain Services will contact the Contractor and arrange such discussion.
- D. The AVP Supply Chain Services will mail his or her decision to the Contractor within sixty- (60) days after receipt of the claim. The decision will state the reason for granting or denying the claim.
- E. The Contractor may appeal the AVP Supply Chain Services's decision to:
Associate Vice President for Business Affairs
William and Mary
P.O. Box 8795
Williamsburg, Virginia 23187-8795
- Upon receiving the written appeal, the Associate Vice President for Business Affairs will review the written materials relating to the claim and decide whether to discuss the merits of the claim with the Contractor. If such discussion is to be held, the Associate Vice President for Business Affairs will contact the Contractor and arrange such discussion.
- F. The Associate Vice President for Business Affairs will mail his or her decision to the Contractor within thirty (30) days after the receipt of the appeal. The decision will state the reasons for granting or denying the appeal.
- G. Nothing set forth in this section shall limit, delay or reduce the Contractor's ability to seek equitable relief from a court of competent jurisdiction in the Commonwealth of Virginia to the extent permitted by Virginia law. In addition, to the extent the University brings a claim against the Contractor, then the Contractor shall in no event be precluded from asserting a counterclaim for payments due under the Agreement regardless of whether such counterclaim is raised within the 60 day period specified above.

Z. eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION: The eVA Internet electronic procurement solution, website portal www.eVA.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for Contractors to conduct business with state agencies and public bodies. All Contractors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet eProcurement solution either through the eVA Basic Contractor Registration Service or eVA Premium Contractor Registration Service. If selected for award by the University, selected Offeror must register in eVA and agree to pay the Contractor Transaction Fees specified on the eVA website. Failure to register will result in cancellation of contract.

Registration is also required in [buyW&M](#), William & Mary's procure-to-pay system.

AA. AVAILABILITY OF FUNDS: It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

BB. PRICE CURRENCY: Unless stated otherwise in the solicitation, offerors shall state offer prices in US dollars.

CC. E-VERIFY REQUIREMENT OF ANY CONTRACTOR: Any contractor with more than an average of 50 employees for the previous 12 months entering into a contract in excess of \$50,000 with the University to perform work or provide services pursuant to such contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to any awarded contract.

DD. CONTROLLING VERSION OF SOLICITATION: Original version of the solicitation and any addenda issued by University's Procurement Services is the mandatory controlling version of the document. Any modification to the solicitation by the Offeror shall not modify the official version of the solicitation issued by University's Procurement Services. Such modifications or additions to the solicitation by the Offeror may be cause for rejection of proposal; however, University reserves the right to decide, on a case-by-case basis, in its sole discretion, whether to reject such a proposal.

EE. STUDENT INFORMATION: To the extent that William & Mary provides to Contractor any identifiable student information, including student address, phone number and email address, the University hereby designates the Contractor as a school official with a legitimate educational interest in using such student information, and the Contractor agrees to use such information only for the purpose of fulfilling its obligations under this Agreement and further agrees not to disclose any such student information to any individual other than the student except as required by law or authorized in writing by the University or the individual student. The Contractor acknowledges that this protection of student information is necessary for the University's compliance with the Code of Virginia section 23.1-405(C) and the federal Family Educational Rights and Privacy Act (FERPA).

FF. FEDERAL GRANTS: The following provisions apply to a contract made under a federal grant: Appendix II C.F.R. 200 §§ 200.317-200.326

GG. LIMITED WARRANTY PERIOD AND REMEDY: During the warranty period of one year, Contractor warrants Services/Deliverables shall meet or exceed the Requirements. Contractor shall correct, at no additional cost to University, all errors identified during the warranty period resulting in a failure of the Services/Products to meet said Requirements. If

Contractor is unable to conform to Service/Deliverables, in all material respects, to the Requirements within ten (10) days following written notification of the University. Contractor shall accept return of such Deliverable and other related Deliverable(s) rendered unusable, and return all monies paid by the University for the non-conforming Services and/or Deliverables.

THE OBLIGATIONS OF CONTRACTOR UNDER THIS GENERAL WARRANTY SECTION ARE MATERIAL. CONTRACTOR MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY CONCERNING MERCHANTABILITY OR FITNESS FOR ANY OTHER PARTICULAR PURPOSE.

HH. DATA BREACH IDENTIFICATION: The Contractor shall notify W&M of any data breach or other data security issues within 24 hours of the breach being identified. The Contractor will also report such incident to any required data protection authority. The Contractor will work closely with any customers affected to determine next steps such as any end-user notifications, needed patches, and how to avoid any similar event in the future.