

ATTACHMENT #1

GENERAL TERMS AND CONDITIONS

1. ANTI-DISCRIMINATION

By submitting their proposals, OFFERORS certify to the Town of Vinton 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 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 the Town of Vinton 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 Town of Vinton 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 County of Roanoke. 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 Town of Vinton.

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 Town of Vinton 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 Town of Vinton 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 Town of Vinton's right to audit

the CONTRACTORS 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 Town of Vinton with all vouchers and records of expenses incurred and savings realized. The Town of Vinton 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 Town of Vinton within thirty (30) days from the date of receipt of the written order from the Town of Vinton. 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, by arbitration. 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 Town of Vinton 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 Town Manager, Town of Vinton, 311 South Pollard Street, Vinton, Virginia 24179-2531, 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 Town Manager's decision on the claim, unless that office fails to render such decision within thirty (30) days. The decision of the Town Manager 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 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 revisions to the solicitation will be made only by addendum issued by the Town.

8. DEBARMENT STATUS:

By submitting their proposals, OFFERORS 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 Town of Vinton, 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 that the Town of Vinton 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 Town of Vinton, 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 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 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. FACSIMILE PROPOSALS

Facsimile proposals received in the Town of Vinton prior to the time and date designated for bid submission will not be accepted. For **sealed** proposal programs, an OFFEROR may fax a proposal to a *non-Town of Vinton* third party, who in turn must deliver it to the Town Manager's office in a sealed envelope before the proposal due date and time.

14. IMMIGRATION REFORM AND CONTROL ACT OF 1986

By submitting their proposals, the 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.

15. INDEMNIFICATION

CONTRACTOR agrees to indemnify, defend and hold harmless the Town of Vinton 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 furnished by the CONTRACTOR, provided that such liability is not attributable to the sole negligence of the Town of Vinton or failure of the Town of Vinton to use the materials, goods, or equipment in the manner already and permanently described by the CONTRACTOR on the materials, goods or equipment delivered.

16. LATE PROPOSALS

To be considered for selection, proposals must be received by the Town of Vinton, Planning and Zoning Office, 311 South Pollard Street, Vinton, Virginia 24179-2531, by the designated date and hour. Proposals received in the Town of Vinton Planning and Zoning office after the date and hour designated are automatically disqualified and will not be considered. The Town of Vinton 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 OFFEROR to insure that its proposal reaches the Town of Vinton Planning and Zoning Office by the designated date and hour

17. 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 Town of Vinton 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 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 Town of Vinton 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 that 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 Town of Vinton for the proportionate share of the payment received for work performed by the SUBCONTRACTOR(S) under the contract; or b) To notify the Town of Vinton 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 Town of Vinton, 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 Town of Vinton.

18. 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.

19. PUBLIC NOTICE OF AWARD

Public notice of the purchase order/contract award will be posted on the Information Board located in the lobby of the Town of Vinton Municipal Building, 311 South Pollard Street, Vinton, Virginia. Award information may also be obtained by contacting the Town.

20. QUALIFICATIONS OF OFFERORS

The Town of Vinton may make such reasonable investigations as deemed proper and necessary to determine the ability of the OFFEROR to perform the work/furnish the item(s) and the OFFEROR shall furnish to the Town of Vinton all such information and data for this purpose as may be requested. The Town of Vinton reserves the right to inspect OFFERORS physical facilities prior to award to satisfy questions regarding the OFFERORS capabilities.

The Town of Vinton further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such OFFEROR fails to satisfy the Town of Vinton that such OFFEROR is properly qualified to carry out the obligations of the contract and to complete the work/furnish the item(s) contemplated therein.

21. SUPREMACY CLAUSE

Notwithstanding any provision in the OFFERORS response to the contrary, the OFFEROR agrees that the terms and conditions contained in Town of Vinton's proposal prevail over contrary terms and conditions contained in the OFFERORS response.

22. TAXES

Sales to the Town of Vinton 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.

23. TESTING AND INSPECTION

The Town of Vinton reserves the right to conduct any test/inspection it may deem advisable to assure supplies and services conform to the specification.

24. TRANSPORTATION AND PACKAGING

By submitting their proposals, all OFFERORS 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.

25. USE OF BRAND NAMES

Unless otherwise provided in this solicitation; the name of a certain brand, make or manufacturer does not restrict OFFERORS 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 Town of Vinton 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 OFFEROR 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 Town of Vinton 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 a sealed proposal only the information furnished with the proposal will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a proposal nonresponsive. Unless the OFFEROR clearly indicates in its proposal that the product offered is an "equal" product, such proposal will be considered to offer the brand name product referenced in the solicitation.

26. NONDISCRIMINATION OF CONTRACTORS

An OFFEROR 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.