

## **STANDARD TERMS AND CONDITIONS**

*By accepting the PO and/or starting performance, shipping any goods, or furnishing any services (or providing any deliverable arising therefrom) in connection with the PO, the Contractor acknowledges that the Contractor has read, understands, and agrees to be bound by the terms and conditions set forth in the attachment. If the Contractor provides additional "click through" terms and condition from its website, a copy of those terms and conditions are printed and attached to this Attachment A, along with a Cover Sheet (Attachment C) requiring the Contractor's signature. If there is a conflict between any terms of the County's Attachment and the Contractor's "click through" terms and conditions, then the County's Attachment shall control.*

### **CONFLICT**

The County terms and conditions referenced on the face of this Purchase Order (including references to the Request for Bids, Request for Proposals, Plans, or Specifications) shall govern if they are in conflict with these terms and conditions.

All terms and conditions as stated in this Purchase Order govern in the event of a conflict with any terms of Contractor's bid or proposal, and are not subject to change because of any written or verbal statements by Contractor, unless accepted in writing by the Purchasing Agent. The County expressly rejects any additional terms and conditions proposed by Contractor unless otherwise agreed in writing by the Purchasing Agent.

### **COMPLIANCE**

The County may at any time insist upon strict compliance with these terms and conditions, notwithstanding any previous custom, practice, or course of dealing to the contrary. Prior non-enforcement of any term or condition shall not constitute a waiver of same by the County.

### **PURCHASING AGENT'S AUTHORITY**

The County will not recognize any purchase that is not made in accord with applicable law through the Office of the Purchasing Agent. Any unauthorized purchase is expressly deemed void at its inception.

### **PRICING**

Prices as agreed to by the County and documented on the Purchase Order are firm as stated and can be changed only on written consent of the County.

### **QUALITY**

All items delivered under this Order shall be of the quality specified, or if no quality is specified must be of the best quality.

### **ACKNOWLEDGMENT**

When requested, the Contractor will promptly acknowledge an Order, and state when delivery will be made.

### **TIME OF THE ESSENCE**

Time is of the essence on this Order. The County reserves the right to cancel the whole or any part of this Order, without obligation, if delivery is not made at the time specified.

### **FREIGHT CHARGES**

The County will not pay any freight or delivery charges unless specifically so provided in the Order.

### **BACK ORDERS**

The Contractor may not backorder any item(s) without written permission of the County.

### **ACCEPTANCE & INSPECTION**

Acceptance of goods and services shall only be determined after the goods and/or services have been successfully provided to the County and are free from any defect. All goods delivered to and services performed for the County shall be subject to final inspection by the County and, if appropriate, tests by the testing facilities of the County and other independent testing laboratories as may be designated by the Purchasing Agent. Goods or services may be rejected that are defective, non-conforming or that do not meet the requirements of this Purchase Order. If items are rejected, the County shall so notify the Contractor in writing, and the County, at its option and at the expense and risk of the Contractor, may either return such rejected items to the Contractor or hold them for such disposal as Contractor may indicate, or may require specific performance to ensure goods or services are delivered in accord with this Purchase Order.

### **INVOICE AND PAYMENT**

Anne Arundel County is accepting electronic invoices. All invoices should be emailed to: [invoices@aacounty.org](mailto:invoices@aacounty.org)

Please use the following format on the email subject line: Vendor Name\_PO Number\_Invoice Number

Invoices shall be submitted per PO number. Multiple invoices for different Purchase Order numbers sent in one email will not be accepted.

Invoice(s) shall contain the following information: Purchase Order Number, Item Number, description of goods or services, quantities, unit prices, and extended totals. Payment terms, unless otherwise noted, shall be net thirty (30) days. The County is not subject to retail sales, income, real estate, sales, use, transportation, or special taxes. The final payment shall be based upon acceptance of goods or services from the Successful Bidder and a final invoice submitted by the Successful Bidder and approved by the County.

Optional method of payment: Payment can be made electronically via ACH Transfer. The County reserves the right to deduct the total amount of any debts owed to the County from any payments issued pursuant to any resulting agreement for this IFB. To enroll for ACH payments, please enroll at [www.paymode.com/annearundelcounty](http://www.paymode.com/annearundelcounty).

## **TAXES**

Contractor is responsible for and shall pay all retail sales taxes, income, real estate sales and use, transportation, and special taxes applicable to and assessable against any materials, equipment, processes, and operation incident to or related to this Order.

## **INDEMNITY**

Contractor shall indemnify, defend, and hold the County, its agents, servants and employees harmless from all claims, liability, loss, cost, or expense by reason of injuries or damages to persons or property resulting from or arising out of (a) the use of any item sold or delivered under this Contract, (b) the performance of work or services under this Contract, and (c) any act or omission of Contractor, its subcontractors, suppliers, or any of their agents.

## **INSURANCE**

The Contractor shall purchase and maintain during the life of the Contract Commercial General Liability Insurance, Business Automobile Liability Insurance, and Workers' Compensation Insurance with limits of not less than set forth below:

- a) **COMMERCIAL GENERAL LIABILITY INSURANCE:** At least \$1,000,000 combined single limit coverage on an occurrence basis covering all premises and operations and including Personal Injury, Independent Contractor, Contractual Liability and Products and Completed Operations. **The general aggregate limit is to apply per project.**
- b) **BUSINESS AUTOMOBILE LIABILITY INSURANCE:** At least \$1,000,000 Combined Single Limit to include owned, non-owned, and hired vehicles.
- c) **WORKERS' COMPENSATION INSURANCE:** Statutory benefits as required by Maryland law and, when required, the U. S. Longshoremen's and Harbor Workers' Compensation Act, including standard Other States coverage; Employers' Liability coverage with limits of at least \$1,000,000 each accident/\$1,000,000 each employee disease/\$1,000,000 disease policy limit.
- d) On all Commercial General Liability and Business Automobile Liability Insurance policies, Anne Arundel County, Maryland, its agents, servants, and employees shall be named as an additional insureds, which shall be shown on the insurance certificates furnished to the County.
- e) Contractor shall provide the County with Certificates of Insurance evidencing the coverage required above. Contractor shall provide certificates of insurance before commencing work in connection with the Contract.
- f) Providing any insurance required herein does not relieve Contractor of any of the responsibilities or obligations assumed by the Contractor for which the Contractor may be liable by law or otherwise.
- g) Failure to provide and continue in force insurance as required herein shall be deemed a material breach of this contract and shall operate as an immediate termination thereof.
- h) Contractor shall advise the County at fax # 410-222-7624 and by first-class, certified mail within two (2) business days of any cancellation, non-renewal, or other termination of, or any substantive change to any insurance policy providing or represented as providing the coverages mandated herein. Failure to do so shall be construed as a material breach of this contract.

## **WORK ON COUNTY-OWNED PROPERTY (For Services Only)**

If this Order calls for work to be performed upon property owned or controlled by the County:

- a) The Contractor shall indemnify, defend, and hold the County harmless from any and all claims or liens for labor, services, or materials furnished to the Contractor in connection with the performance of the Contractor's obligation under the Contract.
- b) All items supplied or work performed by the Contractor will remain at Contractor's risk prior to written acceptance by the County, and Contractor will replace at Contractor's own expense all work damaged or destroyed by fire, force, violence, or the elements, or any other cause whatsoever.
- c) Contractor shall indemnify, hold harmless, and defend the County from any and all claims, demands, or suits made or brought against the County pursuant to the Maryland Workers' Compensation Act.
- d) All work performed will comply with the provisions of Maryland's Occupational Safety and Health Act.

## **COPYRIGHTS; PATENTS**

Contractor warrants that there has been no violation of copyright or patent rights in the manufacture, production, or sale of the goods that are the subject of this Order. Contractor agrees to hold the County harmless from any and all liability, loss, or expense occasioned by any such violation.

#### **LAW AND REGULATIONS**

Contractor warrants that all items supplied under this Order shall be manufactured, produced, and sold in compliance with the laws, regulations, codes, standards, and requirements of all federal, state, and local authorities, and any and all other authorities having jurisdiction.

Contractor agrees that performance under this Order shall be in accordance with these laws, regulations, codes, standards, and requirements, and agrees upon request to provide to the County a certificate of compliance therewith in such form, as the County may desire. Contractor assumes all liability for any non-compliance, and shall indemnify and hold harmless the County and its agents or employees against any claim or liability arising from or based on the violation of any laws, ordinances, or regulations by the Contractor and by any subcontractors, agents, or employees.

#### **BANKRUPTCY**

In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against Contractor, including any proceeding under the Chandler Act, or in the event of the appointment, with or without Contractor's consent, of an assignee for the benefit of creditors or a receiver, then the purchaser shall be entitled to cancel any unfilled part of this Purchase Order without any liability whatsoever.

#### **ASSIGNMENT**

This contract is not assignable except with prior written approval of the County Purchasing Agent. Any assignment in violation of this provision is void and shall not be recognized by the County.

#### **MATERIAL SAFETY DATA SHEETS**

If goods provided to the County contain any ingredients that could be hazardous or injurious to a person's health, a Material Safety Data Sheet ("MSDS") shall be provided to the Purchasing Agent by the Contractor. This requirement also applies to any goods used by the Contractor when providing a service to the County.

#### **DISPUTES**

In the event of a dispute regarding the goods or services quoted or delivered, both parties agree that the decision made by the County's Purchasing Agent shall be final and binding.

#### **EQUAL OPPORTUNITY AND NON-DISCRIMINATION**

- a) It is the policy of Anne Arundel County, Maryland, to ensure Equal Employment Opportunity for all persons, and to ensure that Minority and Women-Owned Business Enterprises have the maximum opportunity to participate in the performance of all County contracts for supplies and services.
- b) Contractor agrees not to discriminate in any manner against any employee or applicant for employment because of race, age, creed, color, national origin, or gender, and shall be obligated to include a similar requirement in any and all subcontracts. Contractor agrees to comply with all Federal, State, and local laws and Executive Orders and Regulations relating to Equal Employment Opportunity and Minority Business Enterprises.

#### **OPTIONAL USE OF CONTRACT**

- a) The Contractor may extend all of the terms, conditions, specifications, and unit or other prices of this contract to any and all public bodies, subdivisions, school districts, community colleges, colleges, and universities, including non-public schools. This is conditioned upon mutual agreement of all parties pursuant to special requirements, which may be appended thereto. The Contractor agrees to notify the issuing body of those entities that wish to use this contract and shall also provide usage information, which may be requested.
- b) The County assumes no authority, liability, or obligation on behalf of any other public or non-public entity that may use this contract. All purchases and payment transactions shall be made directly between the Contractor and the requesting entity.

#### **CORPORATION REGISTRATION**

- a) Whenever required by law, business entities not organized under the laws of the State of Maryland shall be registered with the State Department of Assessments and Taxation, 301 W. Preston Street, Baltimore, Maryland, 21201 ("SDAT") before doing any business in this State.
- b) All Contractors that are business entities shall be and present evidence that they are in good standing with SDAT.

#### **INDEPENDENT CONTRACTOR**

In the performance of this Contract, the Contractor, including its employees, agents, and subcontractors, shall act solely as an independent contractor, and nothing contained in or implied by this Contract shall be construed at any time to create any other relationship between the County and the Contractor, including employer and employee, partnership, principal and agent, or joint venturer.

#### **AVAILABILITY OF FUNDS**

The obligations of the County under this Contract are subject to the availability of funds appropriated by the Anne Arundel County Council, and to receipt and availability of appropriated funds.

#### **FAIR LABOR STANDARDS**

The Contractor shall comply with all applicable provisions of the Federal Labor Standard Act (FLSA) and shall indemnify, defend, and hold harmless the County, its officers, employees, and agents from any and all liability, including but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorney's fees arising under any wage and hours law, including but not limited to, FLSA for work performed by the Contractor's employees for which the County may be found jointly or solely liable.

#### **CHANGES**

The County reserves the right to add items to this Contract at the County's sole discretion if the items meet the following criteria:

- a) The items added are, in the County's sole opinion, within the general scope of work established for this Contract and/or are ancillary to the successful completion of Work under the resulting Contract.
- b) The price for each item as offered by the Contractor is, in the County's sole opinion, fair and reasonable and consistent with the pricing for the balance of the resulting Contract.
- c) The items added are relatively insignificant to the overall value and services under the agreement as determined by the Purchasing Agent.

#### **MOST FAVORED PUBLIC ENTITY**

The Contractor agrees that the prices charged the County under this Contract do not exceed existing selling prices to its other customers for the same or substantially similar items or services for comparable quantities under similar terms and conditions.

#### **DAMAGE TO COUNTY FACILITIES, BUILDINGS, OR GROUNDS**

The Contractor shall repair, or cause to be repaired, at its own cost any and all damage to County facilities, buildings, grounds, equipment, vehicles, or property caused by the Contractor or employees, subcontractors, or agents of the Contractor. Such repairs shall be made immediately after awareness of damage, or notice by County, but in no event more than thirty (30) days after the occurrence.

#### **CONDITIONS FOR PURCHASING ELSEWHERE**

- a) Time is of the essence. Should the Contractor fail to perform as specified, in accordance with the terms and conditions specified herein, the Purchasing Agent shall then have the right to procure goods and services in the open market or by contract, in which event the additional costs of such goods or services above the Contract price shall be charged against the Contractor, and may be deducted from any funds payable or which may become payable to the Contractor.
- b) The Purchasing Agent may reject, at his or her sole discretion, any goods or services ordered from the Contractor if they are delivered or performed subsequent to the placement of orders elsewhere.

#### **PROCUREMENT CARD**

The County retains the option to use the County procurement card to pay for the purchase of supplies or services listed in the Contract. No procurement card transaction shall take place without the authorization of the cardholder and shall not exceed the limit placed on the cardholder's procurement card. The Contractor may receive orders by phone, facsimile, or other forms of notification from authorized County employees. The Contractor may process a payment in the credit card network ONLY upon shipment of supplies or performance of the services ordered by the County agency. For partial shipments or performance, the Contractor may process a payment only for the amount shipped or completed and NOT for the entire amount ordered. Upon shipment or completion of the remaining order, the Contractor may process a payment request to the credit card network for the remainder of the order. The Contractor may not charge the County for any fees related to the use of a procurement card.

For all transactions, the Contractor shall have a valid W-9 form on file with the Anne Arundel County, Maryland, Office of Finance.

#### **RETURN GOODS POLICY**

The County shall apply the following policy to returned goods throughout the term of the Contract. By its signature on the contract, the Contractor acknowledges it has read, understood, and agreed with the following policy.

Returns generated by the Contractor's error, over shipment, defective merchandise, unacceptable substitution, or otherwise through no fault of the County shall be returned to the Contractor with no restocking charge to the County. At the option of the County, replacement merchandise shall be shipped within fourteen (14) days of notification. The Contractor shall bear all freight and delivery charges.

Returns of catalog stock merchandise generated by ordering error, over purchase, discontinued use, inventory reduction, or other fault of the County shall be accepted by the Contractor. All catalog stock merchandise shall be unused, in the original container, and in suitable condition for resale. The Contractor may assess a restocking charge of not more than twenty-five (25%) percent of the purchase price or the restocking charge noted in the Contractor's published restocking charge, whichever is less. The County shall reimburse the Contractor for original freight charges, if applicable, and shall bear the freight cost of returned goods.

Return of catalog stock merchandise more than six (6) months after receipt by the County shall be at the option of the Contractor. Restocking charges cannot exceed the Contractor's published catalog restocking fee for such returns. The County shall reimburse the Contractor for original freight charges, if applicable, and shall bear the freight cost for return of the goods.

#### **TERMINATION**

The County may terminate this Purchase Order at any time with or without cause.

- a) Should the County elect to terminate this Purchase Order without cause, the County shall provide 30 days written notice.
- b) The Contractor shall be provided 7 days' notice of any termination for cause, which shall include the Contractor's failure to substantially perform in accordance with the terms of this Purchase Order through no fault of the County. During the 7 day period, the Contractor shall only continue to perform such Work as authorized in writing by the County's Purchasing Division.
- c) This Purchase Order may be terminated by the County upon at least 7 days' notice to the Contractor in the event that: (1) the Work is permanently abandoned by the County; (2) continued Work is deemed by the County, in its sole discretion, not to be in the best interests of the County; or (3) monies are no longer available or are not appropriated to fund the Work being performed or to be performed under this Contract. In the event that this Contract is terminated as detailed above, the Contractor shall be compensated for all services properly performed to the termination date, together with reimbursable expenses then due. If the Contract is terminated for cause, the County shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice or termination less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor shall remain liable after termination, and the County may take all steps necessary to collect damages.

#### **HIPAA**

If a Business Associate Agreement under the Health Insurance Portability and Accountability Act of 1996, and regulations enacted pursuant thereto (collectively "HIPAA"), is deemed necessary by the County based on the Work to be performed hereunder, the Contractor agrees to enter into a Business Associate Agreement as an Addendum to this Purchase Order.

#### **DELIVERY/INSTALLATION OF GOODS**

- a) Contractor shall guarantee delivery of goods to the County as proposed, between the hours of 8:30 a.m. and 3:00 p.m., local time, Monday through Friday, excluding County holidays.
- b) Contractor shall state the number of calendar days required to deliver each item to the County following notification of an award.
- c) Contractor shall provide a delivery ticket for each item delivered, marked clearly with the purchase order number issued by the County for the goods purchases, and if applicable, the name, model, and serial number.
- d) All items shall be delivered F.O.B. destination and delivery costs and charges shall be included in the Proposal. Unit prices quoted shall include delivery, all charges prepaid, and shall be exclusive of all taxes. No transportation, shipping, or handling charges shall be added to the invoice.
- e) The County Purchasing Agent reserves the right to charge the Contractor fifty dollars (\$50) per working day for each day the goods or services are not delivered in accordance with the delivery date specified in the Purchase Order. The per-diem charge may be invoked at the discretion of the Purchasing Agent, shall be considered liquidated damages, and shall be deducted from the final payment.