

# PORTSMOUTH PUBLIC SCHOOLS GENERAL TERMS & CONDITIONS

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## 1. ANNOUNCEMENT OF AWARD

Upon the award or the announcement of the decision to award a contract as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA VBO ([www.eva.virginia.gov](http://www.eva.virginia.gov)) for a minimum of 10 days.

## 2. ANTI-DISCRIMINATION

By submitting their bids or proposals, contractors certify to Portsmouth Public Schools 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 § 2.2-4311 of the Virginia Public Procurement Act (VPPA). 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 Portsmouth Public Schools. (Code of Virginia, § 2.2-4343.1E).

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, 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.

## 3. ANTITRUST

By entering into a contract, the contractor conveys, sells, assigns, and transfers to Portsmouth Public Schools 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 Portsmouth Public Schools under said contract.

## 4. 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. Portsmouth Public Schools 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 (Code of Virginia, § 2.2-4366 and PPS Vendors Manual). The contractor shall comply with all applicable federal, state and local laws, rules and regulations.

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## 5. ASSIGNMENT OF CONTRACT

A contract shall not be assignable by the contractor in whole or in part without the written consent of Portsmouth Public Schools.

## 6. AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH

A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described above that enters into a contract with a public body pursuant to the Virginia Public Procurement Act shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

## 7. AVAILABILITY OF FUNDS

It is understood and agreed between the parties herein that the Portsmouth Public Schools shall be bound hereunder only to the extent that the funds are available or which may hereafter become available for the purpose of this agreement.

## 8. BID PRICE CURRENCY

Unless stated otherwise in the solicitation, bidders/offerors shall state bid/offer prices in US dollars.

## 9. CHANGES TO THE CONTRACT

Changes can be made to the contract in any 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. Portsmouth Public Schools 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 Portsmouth Public Schools 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 Portsmouth Public School'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 Portsmouth Public Schools with all vouchers and records of expenses incurred and savings realized. Portsmouth Public Schools 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 Portsmouth Public Schools within thirty (30) days from the date of receipt of the written order from Portsmouth Public Schools. 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, in accordance with the disputes the Code of Virginia. Neither the existence of a claim nor a dispute

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resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by Portsmouth Public Schools or with the performance of the contract generally.

## **10. CLARIFICATION OF TERMS**

If any prospective bidder/offeror has questions about the specifications or other solicitation documents, the prospective bidder/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 buyer.

## **11. CONTRACTOR EMPLOYEE BACKGROUND CERTIFICATION**

By signing this contract/agreement, and as a condition of award, the Contractor certifies compliance with Code of Virginia § 22.1-296.1 regarding the provision of services that require the contractor or his employees to have direct contact with students on school property during regular school hours or during school-sponsored activities.

In particular, the Contractor certifies that all persons who will provide such services under this contract/agreement have not been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child.

This requirement does not apply to a contractor or his employees providing services to a school division in an emergency or exceptional situation, such as when student health or safety is endangered or when repairs are needed on an urgent basis to ensure that school facilities are safe and habitable, when it is reasonably anticipated that the contractor or his employees will have no direct contact with students.

Note: In accordance with Virginia Code § 22.1-296.1, any person making a materially false statement regarding such offense shall be guilty of a Class 1 misdemeanor and, upon the conviction, the fact of such conviction shall be grounds for the revocation of the contract to provide such services and, when relevant, the revocation to provide such services.

## **12. DEBARMENT STATUS**

By submitting their bids/proposals, bidders/offerors certify that they are not currently debarred or otherwise declared ineligible by any public agency from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation. In addition, bidders/offerors further certify that no principal, officer, or director of the applicant firm has been employed by or associated with any firm which is currently debarred or otherwise declared ineligible by any public agency from bidding/offering on contracts for the type of goods and/or services covered by this solicitation.

## **13. DEFAULT**

In case of failure to deliver goods or services in accordance with the contract terms and conditions, Portsmouth Public Schools, 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 Portsmouth Public Schools may have.

## **14. 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; 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.

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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.

## **15. ETHICS IN PUBLIC CONTRACTING**

By submitting their bids/proposals, bidders/offerors certify that their bids/proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other bidder/offeror, supplier, manufacturer or subcontractor in connection with their bid/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.

## **16. eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION**

The eVA Internet electronic procurement solution, website portal [www.eVA.virginia.gov](http://www.eVA.virginia.gov), streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to PPS are encouraged to participate in the eVA Internet e-procurement solution through the eVA Vendor Registration Service. All bidders or offerors should register in eVA; failure to register may result in the bid/proposal being rejected. eVA registration and transaction fee information can be found on the eVA website, Billing Portal, at: <http://www.eva.virginia.gov/pages/eva-billing.htm>

## **17. IMMIGRATION REFORM AND CONTROL ACT OF 1986**

By entering into a written contract with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

## **18. INSURANCE FOR CONSTRUCTION, SERVICE CONTRACTS AND GOODS CONTRACTS WITH INSTALLATION**

By signing and submitting a bid or proposal under this solicitation, the bidder or 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 §§ 2.2-4332 and 65.2-800 et seq. of the Code of Virginia. The bidder or offeror further certifies that the contractor and any subcontractors will maintain these insurance coverage 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.

### **MINIMUM INSURANCE COVERAGES AND LIMITS REQUIREMENTS:**

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 Portsmouth Public Schools 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. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. Portsmouth Public Schools must be named as an additional insured and so endorsed on the policy and stated on the Certificate of Insurance. For Capital and non-Capital Construction contracts, the City of Portsmouth and the project architect/engineer also should be named as additional insured. Contracts with movers or truck transporters should also require motor carrier’s liability.

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4. Automobile Liability - \$1,000,000 per occurrence. (Only required if motor vehicles are used in the contract.)

Failure to maintain these coverages or to continue to include Portsmouth Public Schools as an additional insured may constitute a breach of contract which may result in the suspension or termination of the contract.

VARIOUS PROFESSIONAL LIABILITY/ERRORS AND OMISSIONS coverages are also required for the following services:

PROFESSION	SERVICE LIMITS
Accounting	\$1,000,000 per occurrence, \$3,000,000 aggregate
Architecture	\$2,000,000 per occurrence, \$6,000,000 aggregate
Asbestos Design, Inspection or Abatement Contractors	\$1,000,000 per occurrence, \$3,000,000 aggregate
Health Care Practitioner (to include Dentists, Licensed Dental Hygienists, Optometrists, Registered or Licensed Practical Nurses, Pharmacists, Physicians, Podiatrists, Chiropractors, Physical Therapists, Physical Therapist Assistants, Clinical Psychologists, Clinical Social Workers, Professional Counselors, Hospitals, or Health Maintenance Organizations.)	\$2,150,000 per occurrence, \$4,250,000 aggregate
(Limits increase each July 1 through fiscal year 2031 per <i>Code of Virginia</i> §8.01-581.15.	
Insurance/Risk Management	\$1,000,000 per occurrence, \$3,000,000 aggregate
Landscape/Architecture	\$1,000,000 per occurrence, \$1,000,000 aggregate
Legal	\$1,000,000 per occurrence, \$5,000,000 aggregate
Professional Engineer	\$2,000,000 per occurrence, \$6,000,000 aggregate
Surveying	\$1,000,000 per occurrence, \$1,000,000 aggregate

## 19. MANDATORY USE OF PORTSMOUTH PUBLIC SCHOOLS FORM AND TERMS AND CONDITIONS FOR BIDS

Failure to submit a bid on the official Portsmouth Public Schools form provided for that purpose shall be a cause for rejection of the bid. Modification of or additions to any portion of the Invitation for Bids may be cause for rejection of the bid; however, PPS reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid as nonresponsive. As a precondition of its acceptance, PPS may, in its sole discretion, request that the bidder withdraw or modify nonresponsive portions of a bid which do not affect quality, quantity, price, or delivery. No modification of or addition to the provisions of the contract shall be effective unless reduced to writing and signed by the parties.

## 20. MANDATORY USE OF PORTSMOUTH PUBLIC SCHOOLS FORM AND TERMS AND CONDITIONS FOR PROPOSALS

Failure to submit a proposal on the official Portsmouth Public Schools 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, PPS reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.

## 21. NONDISCRIMINATION OF CONTRACTORS

A bidder, 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 bidder or offeror employs ex-offenders unless PPS 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, PPS 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.

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## 22. 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 PPS contract number and/or purchase order number.
- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. However, this shall not affect offers of discounts for payment in less than 30 days or vendors paid via the P-Card (PPS credit card or PPS Accounts Payable ghost/vendor card). The payment terms for the PPS Accounts Payable ghost/vendor card vendors are Net 10 versus Net 30 for other payment options.
- 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.
- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- e. Unreasonable Charges. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, PPS 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 PPS of its prompt payment obligations with respect to those charges which are not in dispute (Code of Virginia, § 2.2-4363).

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

3. For contractors that can accept credit cards in their normal course of business, PPS reserves the right to pay all invoices using the PPS Purchasing Card. Pricing remains the same whether paid by credit card or check.

4. For contractors that accept credit cards in their normal course of business, PPS reserves the right to pay all invoices using the PPS Purchasing Card. Pricing remains the same whether paid by credit/purchasing card or check.

## 23. PRECEDENCE OF TERMS

The following General Terms and Conditions – PPS VENDORS MANUAL, APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, DEBARMENT STATUS, ANTITRUST, MANDATORY USE OF PORTSMOUTH PUBLIC SCHOOLS FORM AND TERMS AND

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CONDITIONS, CLARIFICATION OF TERMS, PAYMENT - 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 take precedence.

## **24. QUALIFICATIONS OF BIDDERS OR OFFERORS**

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

## **25. TAX EXEMPT STATUS**

Sales of goods to Portsmouth Public Schools 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. Excise tax exemption registration number is 54-73-0076K.

## **26. TESTING AND INSPECTION**

Portsmouth Public Schools reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

## **27. TRANSPORTATION AND PACKAGING**

By submitting their bids/proposals, all bidders/offerors 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.

## **28. USE OF BRAND NAMES**

Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict bidders/offerors to the specific brand, make or manufacturer 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 equivalent of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The bidder/offeror is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable Portsmouth Public Schools 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/offeror clearly indicates in its bid/proposal that the product offered is an equivalent product, such bid/proposal will be considered to offer the brand name product referenced in the solicitation.

## **29. VENDORS MANUAL**

This solicitation is subject to the provisions of the Portsmouth Public Schools Vendors Manual and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. A copy of the manual is normally available for review at the purchasing office and is accessible on the PPS Purchasing website at: [http://pps.k12.va.us/departments/departments\\_n-z/purchasing\\_office/supplier\\_relations/](http://pps.k12.va.us/departments/departments_n-z/purchasing_office/supplier_relations/) on the "Vendor Manual" link.