
COUNTY OF FREDERICK, VIRGINIA**PURCHASE ORDER TERMS, CONDITIONS AND INSTRUCTIONS TO VENDORS (PO T&C)**

(Vendor: The general rules and conditions which follow apply to all purchases and become a definite part of each award issued by the County of Frederick, VA, unless otherwise specified. Vendors are expected to inform themselves fully as to the conditions, requirements, and specifications before accepting purchase orders; failure to do so will be at the vendor's own risk and relief cannot be secured on the plea of error.)

Subject to all State and local laws, policies, resolutions, and regulations and all accepted rules, regulations and limitations imposed by legislation of the Federal Government, all purchase orders issued by the County of Frederick, VA will bind vendors to applicable conditions and requirements herein set forth unless otherwise specified.

1. AUTHORITY-The County has the sole responsibility and authority for negotiating, placing and when necessary modifying every solicitation, contract and purchase order issued by the County of Frederick, VA. The County Finance Director serves as the County Purchasing Agent. In the discharge of these responsibilities, one or more representatives of the County department or of the entity for which the purchase is being made may assist the County Purchasing Agent. Unless specifically delegated by the County, no other County officer or employee is authorized to order supplies or services, enter into purchase negotiations or contracts, or in any way obligate the government of the County of Frederick, VA for an indebtedness. Any purchase ordered or contract made which is contrary to these provisions and authorities shall be of no effect and void and the County shall not be bound thereby.

2. DEFINITIONS-

AGENCY: Any Department, Agency, Authority, Commission, Board or other unit in the Administrative Service of the County.

CONTRACTOR: Any individual, company, firm, corporation, partnership or other organization to whom an award is made by the County and/or a purchase order issued to.

COUNTY: County of Frederick, VA

GOODS: All material, equipment, supplies, printing, and automated data processing/information technology hardware and software.

INFORMALITY: A minor defect or variation of a bid or proposal from the exact requirements of the invitation to bid or the request for proposal which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.

PURCHASING CARD (P-CARD): A VISA credit card.

SERVICE PROVIDER: See contractor.

SERVICES: Any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

STATE: Commonwealth of Virginia.

VENDOR: See contractor.

CONDITIONS

3. TERMS AND CONDITIONS ACCEPTED- These terms and conditions (including promised delivery or performance completion) are deemed accepted by Vendor, Contractor or Service Provider, unless the Finance Department is notified otherwise within TEN (10) DAYS. Acknowledge this order immediately, confirming delivery time and shipping dates or performance dates. Failure to acknowledge will be deemed acceptance by Vendor, Contractor or Service Provider of this order.

4. TAX EXEMPTION-The County is exempt from the payment of any federal excise or any Virginia sales tax. The price must be net, exclusive of taxes. However, when under established trade practice any federal excise tax is included in the list price, a vendor may quote the list price and shall show separately the amount of federal tax, either as a flat sum or as a percentage of the list price, which shall be deducted by the County. Frederick County's Federal Excise Tax Exemption Number is 54-6001290. Contractors located outside the Commonwealth of Virginia are advised that when materials are picked up by the County at their place of business, they may charge and collect their own local/state sales tax. Materials used in the performance of construction contracts are subject to Virginia Sales/Use Tax as described in Section 630-10-27J of the Virginia Retail Sales and Use Tax Regulations.

5. PROMPT PAYMENT DISCOUNT-

- a. Discounts will be taken if payment is to be made within the discount period.
- b. In connection with any discount offered, time will be computed from the date of delivery of the supplies to the carrier when delivery, inspection and acceptance are at the point of origin; or, from date of delivery, inspection and acceptance at destination; or, from date correct invoice or voucher is received in the office specified by the County, if the latter is later than the date of acceptance. In the event the vendor does not indicate a prompt payment discount, it shall be construed to mean NET 30 days.
- c. For the purpose of earning the discount, payment is deemed to be made as of the date of mailing of the County check, issuance of an Electronic Funds Transfer or Purchasing Card payment.

6. INSPECTION-ACCEPTANCE-For determining acceptance of supplies in accordance with the provisions of the prompt payment discount paragraph, inspection and acceptance shall be accomplished only after examination (including testing) of supplies and services to determine whether the supplies and services conform to the contract requirements. Acceptance shall occur only after receipt and inspection provided such inspection, as appropriate, is accomplished within a reasonable time.

7. FUNDING-A contract shall be deemed binding only to the extent of appropriations available to each Agency for the purchase of goods and services.

8. DELIVERY/SERVICE FAILURES-Failure of a Vendor to deliver goods or services within the time specified, or within reasonable time as interpreted by the County, or failure to make replacements/corrections of rejected articles/services when so requested, immediately or as directed by the County, shall constitute authority for the County to purchase in the open market articles/services of comparable grade/quality to replace the services, articles rejected,

and/or not delivered. On all such purchases, the Vendor shall reimburse the County, within a reasonable time specified by the County, for any expense incurred in excess of contract prices. Such purchases shall be deducted from the contract quantities if applicable. Should public necessity demand it, the County reserves the right to use or consume articles delivered or services performed which are substandard in quality, subject to an adjustment in price to be determined by the County.

9. NON-LIABILITY-The Vendor shall not be liable in damages for delay in shipment or failure to deliver when such delay or failure is the result of fire, flood, strike, act of God, act of Government, act of an alien enemy or by any other circumstances which, in the County's opinion, are beyond the control of the Contractor. Under such circumstances, however, the County may, at its discretion, cancel the contract.

10. NEW GOODS, FRESH STOCK-All Vendors, unless otherwise specifically stated, shall provide new commodities, fresh stock, latest model, design or pack.

11. NON-DISCRIMINATION-During the performance of this contract, the Vendor agrees as follows:

- a. The Vendor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or 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. The Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- b. The Vendor, 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 the requirements of this section.
- d. The Vendor will include the provisions of the foregoing paragraphs a, b, and c above in every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.

12. UNAUTHORIZED ALIEN EMPLOYMENT-The Vendor 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.

13. GUARANTEES & WARRANTIES-All guarantees and warranties required shall be furnished by the Vendor and shall be delivered to the County before final payment on the contract is made. Unless otherwise stated, manufacturer's standard warranty applies.

14. CHANGES-Should it become proper or necessary in the execution of this contract to make any change in design, or to make any alterations which will increase the expense, the County shall determine an equitable adjustment. No payment shall be made to the Vendor for any extra material or services, or of any greater amount of money than stipulated to be paid in the contract, unless some changes in or additions to the contract requiring additional outlay by the Vendor shall first have been expressly authorized and ordered in writing by contract amendment or otherwise furnished by the County.

15. PLACING OF ORDERS-Orders against contracts will be placed with the Vendor by a Purchase Order executed and released by the County or its designee.

DELIVERY PROVISIONS

16. RESPONSIBILITY FOR SUPPLIES TENDERED-Unless otherwise specified in the solicitation, the Vendor shall be responsible for the materials or supplies until they are delivered at the designated point, but the Vendor shall bear all risk on rejected materials or supplies after notice of rejection. Rejected materials or supplies must be removed by and at the expense of the Vendor promptly after notification of rejection, unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the Vendor within ten (10) days after date of notification, the County may return the rejected materials or supplies to the Vendor at his or her risk and expense or dispose of them as its own property.

17. INSPECTIONS-Inspection and acceptance of materials or supplies will be made after delivery at destinations herein specified unless otherwise stated. If inspection is made after delivery at destination herein specified, the County will bear the expense of inspection except for the value of samples used in case of rejection. Final inspection shall be conclusive except in regard to latent defects, fraud or such gross mistakes as to amount to fraud. Final inspection and acceptance or rejection of the materials or supplies will be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the County for such materials or supplies as are not in accordance with the specifications.

18. COMPLIANCE-Delivery must be made as ordered and in accordance with the solicitation or as directed by the County when not in conflict with the bid. The decision of the County as to reasonable compliance with delivery terms shall be final. Burden of proof of delay in receipt of goods by the purchaser shall rest with the Vendor. Any request for extension of time of delivery from that specified must be approved by the County, such extension applying only to the particular item or shipment affected. Should the Vendor be delayed by the County, there shall be added to the time of completion a time equal to the period of such delay caused by the County. However, the Vendor shall not be entitled to claim damages or extra compensation for such delay or suspension. These conditions may vary for construction contracts.

19. POINT OF DESTINATION-All materials shipped to the County must be shipped F.O.B. DESTINATION unless otherwise stated in the contract or purchase order. The materials must be delivered to the "Ship to" address indicated on the purchase order.

20. ADDITIONAL CHARGES-Unless bought F.O.B. "shipping point" and Vendor prepays transportation, no delivery charges shall be added to invoices except when express delivery is authorized and substituted on orders for the method specified in the contract. In such cases, difference between freight or mail and express charges may be added to invoice.

21. REPLACEMENT-Materials or components that have been rejected by the County, in accordance with the terms of a contract, shall be replaced by the Vendor at no cost to the County.

22. PACKING SLIPS OR DELIVERY TICKETS-All shipments shall be accompanied by Packing Slips or Delivery Tickets.

Vendors are cautioned that failure to comply with these conditions shall be considered sufficient reason for refusal to accept the goods.

BILLING

23. BILLING-Billing for Frederick County, VA agency: Unless otherwise specified on the contract or purchase order (PO), invoices are to be submitted, in DUPLICATE, for each purchase order immediately upon completion of the shipment or services. If shipment is made by freight or express, the original Bill of Lading, properly receipted, must be attached to the invoice. Invoices should be mailed to the "BILL TO" address on the PO or to the appropriate address specified in the contract.

PAYMENTS

24. PAYMENT-

- a. Payment shall be made after satisfactory performance of the contract, in accordance with all of the provisions thereof, and upon receipt of a properly completed invoice. Frederick County, VA reserves the right to withhold any or all payments or portions thereof for Vendor's failure to perform in accordance with the provisions of the contract or any modifications thereto.
- b. Vendor shall indicate the payment methods that they will accept. Frederick County offers two payment methods, purchasing card (VISA credit card) or ACH (electronic deposit). The vendor's flexibility in regard to payment methods accepted will be part of the vendor selection process. Acceptance of payment by purchasing card usually means that the vendor will need to have credit card processing capability, however, the County encourages vendors to check with their financial institutions to ascertain precisely what is necessary to comply with the purchasing card requirement. Frederick County will not pay additional fees in excess of the offered price to contractor for purchasing card acceptance to include, but not limited to, convenience fees and/or surcharges.
- c. Frederick County will make all payments by purchasing card when vendor has indicated, either directly or indirectly, that credit card is an acceptable method of payment for goods and/or services.

25. PARTIAL PAYMENTS-Unless otherwise specified, partial payments will be made upon acceptance of materials or services so invoiced if in accordance with completion date. However, up to 5 percent (5%) of the value of the entire order may be retained until completion of contract.

26. PAYMENT FOR EQUIPMENT, INSTALLATION, AND TESTING-When equipment requires installation (which shall also be interpreted to mean erection and/or setting up or placing in position, service, or use) and test, and where such installation or testing is delayed, payment may be made on the basis of 50% of the contract price when such equipment is delivered on the site. A further allowance of 25% may be made when the equipment is installed and ready for test. The balance shall be paid after the equipment is tested and found to be satisfactory. If the equipment must be tested, but installation is not required to be made by the Vendor or if the equipment must be installed but testing is not required, payment may be made on the basis of 75% at the time of delivery and the balance shall be paid after satisfactory test or installation is completed.

GENERAL

27. GENERAL GUARANTY-Contractor agrees to:

- a. Save the County, its agents and employees harmless from liability of any nature or kind for the use of any copyrighted or uncopyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a contract for which the Contractor is not the patentee, assignee, licensee or owner.
- b. Protect the County against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery.
- c. Furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work or to the work of other contractors, for which his or her workers are responsible.
- d. Pay for all permits, licenses and fees and give all notices and comply with all federal, state and county laws, ordinances, rules and regulations.
- e. Protect the County from loss or damage to County owned property while it is in the custody of the Contractor.

28. SERVICE CONTRACT GUARANTY-Contractor agrees to:

- a. Furnish services described in the solicitation and resultant contract at the times and places and in the manner and subject to conditions therein set forth provided that the County may reduce the said services at any time.
- b. Enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence.
- c. All work and services rendered in strict conformance to all laws, statutes, and ordinances and the applicable rules, regulations, methods and procedures of all government boards, bureaus, offices and other agents.
- d. Allow services to be inspected or reviewed by an employee of the County at any reasonable time and place selected by the County. Frederick County shall be under no obligation to compensate Contractor for any services not rendered in strict conformity with the contract.

29. INDEMNIFICATION-Vendor shall indemnify, keep and save harmless the County, its agents, officials, employees and volunteers against claims of injuries, death, damage to property, patent claims, suits, liabilities, judgments, cost and expenses which may otherwise accrue against the County in consequence of the granting or performing of a contract or which may otherwise result therefrom, if it shall be determined that the act was caused through negligence or error, or omission of the Vendor or his or her employees, or that of the subcontractor or his or her employees, if any; and the Vendor shall, at his or her own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith; and if any judgment shall be rendered against the County in any such action, the Vendor shall, at his or her own expense, satisfy and discharge the same. Vendor expressly understands and agrees that any performance bond or insurance protection required by this contract, or otherwise provided by the Vendor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County as herein provided.

30. OFFICIALS NOT TO BENEFIT-

- a. Each vendor shall certify, upon the acceptance of the purchase order, that to the best of his or her knowledge no Frederick County official or employee having official responsibility for the procurement transaction, or member of his or her immediate family, has received or will receive any financial benefit of more than nominal or minimal value relating to the award of this contract. If such a benefit has been received or will be received, this fact shall be disclosed with the bid or proposal or as soon thereafter as it appears that such a benefit will be received. Failure to disclose the information prescribed above may result in suspension or debarment, or rescission of the contract made, or could affect payment pursuant to the terms of the contract.
- b. Whenever there is reason to believe that a financial benefit of the sort described in paragraph "a" has been or will be received in connection with a bid, proposal or contract, and that the contractor has failed to disclose such benefit or has inadequately disclosed it, the County Administrator, as a prerequisite to payment pursuant to the contract, or at any other time, may require the Vendor to furnish, under oath, answers to any interrogatories related to such possible benefit.
- c. In the event the vendor has knowledge of benefits as outlined above, this information should be disclosed. If the above does not apply at time of award of contract and becomes known after inception of a contract, the vendor shall address the disclosure of such facts to the Frederick County Finance Department, 107 North Kent Street, 3rd Floor, Winchester, Virginia 22601.

31. LICENSE REQUIREMENT-All firms doing business in Frederick County, VA shall obtain a business license.

- a. In accepting this order, the Vendor agrees to conform to local business license tax liabilities where applicable. Questions should be referred to the Commissioner of the Revenue's Office (540) 665-5680.

- b. To the extent required by the Commonwealth of Virginia (see e.g. 54.1-1100 et seq. of the Code of Virginia) or the County of Frederick, the Vendor shall be duly licensed to perform the services required to be delivered pursuant to this contract.

32. REGISTERING OF CORPORATIONS-All business entities are required to 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 or otherwise required by law. Business entities that are not already authorized will likely need to contact the State Corporation Commission, Post Office Box 1197, Richmond, Virginia 23209, telephone (804) 371-9733. The consequences, relative to public procurement, of failing to secure a certificate of authority are set forth in Virginia Code Section 2.2-4311.2.

33. COVENANT AGAINST CONTINGENT FEES-The Vendor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Vendor for the purpose of securing business. For violation of this warranty, the County shall have the right to terminate or suspend this contract without liability to the County or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

34. VIRGINIA FREEDOM OF INFORMATION ACT-All proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act except as provided below:

- a. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.
- b. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the County decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award except in the event that the County decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to the public inspection only after award of the contract. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to any prequalification process identified in the Special Provisions, shall not be subject to the Virginia Freedom of Information Act; however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.

35. CONTRACTUAL DISPUTES-

- a. Any dispute concerning a question of fact as a result of a contract with the County which is not disposed of by agreement shall be decided by the County, which shall render a decision writing and mail or otherwise forward a copy thereof to the vendor within ninety (90) days. The decision of the County shall be final and conclusive unless the contractor appeals within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. A vendor may not institute legal action, prior to receipt of the public body's decision on the claim, unless the public body fails to render such decision within the time specified.
- b. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty (60) days after final payment; however, written notice of the vendor'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. Pendency of claims shall not delay payment of amounts agreed due in the final payment.


36. LEGAL ACTION- No vendor or potential vendor shall institute any legal action until all statutory requirements have been met.

37. COOPERATIVE PURCHASING- The County may participate in, sponsor, conduct or administer a cooperative procurement agreement on behalf of or in conjunction with one or more other public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, or the District of Columbia, for the purpose of combining requirements to increase efficiency or reduce administrative expenses in any acquisition of goods and services. Except for contracts for professional services, a public body may purchase from another public body's contract even if it did not participate in the request, if the request specified that the procurement was being conducted on behalf of other public bodies. Nothing herein shall prohibit the assessment or payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.

38. DRUG FREE WORKPLACE- During the performance of a contract, the vendor agrees to (i) provide a drug-free workplace for the vendor'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 vendor'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 vendor that the vendor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract 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 conjunction with a specific contract awarded to a contractor in accordance with this section, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, possession or use of any controlled substance or marijuana during the performance of the contract.

APPROVED:

COUNTY FINANCE DIRECTOR
Cheryl B. Shiffler


COUNTY ATTORNEY
Roderick B. Williams