

APPENDIX J – GENERAL TERMS AND CONDITIONS

Request of Proposal for Conceptual Phase Design-Build of Courthouse Expansion and Renovation Under the Virginia Public Private Education Facilities and Infrastructure Act (PPEA)

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By submitting a proposal in response to this Solicitation, Contractor agrees to the following terms and conditions that shall be included in any contract formed as a result of this solicitation unless specifically revised or deleted by provisions stated in the Special Terms and Conditions negotiated in such contract. The headings included in the General Terms and Conditions, below, are for general reference purposes only and shall have no effect on the interpretation of the Contract.

General Terms and Conditions

Payment

1. Form of payment. All invoices shall be directed to the payment address shown on the purchase order/contract. All invoices shall show the County purchase order number and the Contractor's federal employer identification number.
2. Timing of payment. Any payment terms requiring payment in less than thirty (30) days will be regarded as requiring payment thirty (30) days after the invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than thirty (30) days, however.

Tax exemptions

3. Tax exemption. The County is exempt from State sales tax. State sales and use tax certificates of exemption will be issued upon request.
4. Direct purchase. County reserves the option to enter into "direct purchase" agreements for purchase of all or a portion of tangible personal property necessary for the completion of construction projects undertaken for the benefit of the County and thereby to save the amount of sales tax thereon by virtue of the County's status as a tax-exempt political subdivision of the Commonwealth, exempt from sales and use taxation pursuant to Virginia Code §§ 58.1-609(4) and -610(B).

Contractor Qualifications & Performance

5. Contractor licensure. If Contractor provides removal, repair, improvement, renovation or construction-type services they, or a qualified individual employed by the Contractor, must possess and maintain an appropriate State of Virginia Class A, B, or C Contractor License (as required by applicable regulations and value of services to be performed) for the duration of the Contract. It is the Contractor's responsibility to comply with the rules and regulations issued by the appropriate State regulatory agencies. Contractor shall provide a copy of such license upon the County's request.
6. Independent contractor. The selected contractor is an independent contractor and shall not be deemed the agent of the County of Washington for any purpose whatsoever. No contractor's employee or sub-contractor shall hold himself out as an employee of the County of Washington and none shall have power or authority to bind or obligate the County of Washington in any manner. Contractor shall be liable for and pay all taxes required by local, state, or federal governments or any other taxes and permits required by law. Contractor shall adhere to any and all regulations and stipulations governing the operation and work of such contractor for the duration of this contract. The County of Washington shall in no manner be held liable for the Contractor's disregard for required work related regulations.



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7. No subcontract or assignment. No portion of the work to be performed pursuant to this Contract shall be subcontracted or assigned without the written consent of the County.
8. Contract performance. Contractor shall perform all work pursuant to this Contract in accordance with manufacturers' instructions, construction industry standards, and in a workmanlike manner.
9. Asbestos. Whenever and wherever during the course of performing any work under this contract, the Contractor discovers the presences of asbestos or suspects that asbestos is present, he shall stop the work immediately, secure the area, notify the County and await positive identification of the suspect material. During the downtime in such a case, the Contractor shall not disturb any surrounding surfaces but shall protect the area with suitable dust covers. In the event the Contractor is delayed due to the discovery of asbestos or suspected asbestos, then a mutually agreed extension of time to perform the work shall be allowed the Contractor but without additional compensation due to the time extension.
10. Repair of damage. Any damage to existing utilities, equipment or finished surfaces resulting from the performance of this contract shall be repaired to the County's satisfaction at the Contractor's expense.
11. Final Inspection. Upon completion of all contract requirements, Contractor shall demonstrate to the County Project Manager that the project is fully operational and in compliance with contract specifications. The County reserves the right to conduct any test/inspection it may deem advisable to assure materials and services conform to the specifications. Any deficiencies shall be promptly and permanently corrected by the Contractor at the Contractor's sole expense prior to County's final acceptance of the work. Alternatively, at the County's sole discretion, the County may direct in writing that the County does not require replacement or correction, and an equitable adjustment to the contract price may be negotiated.
12. Record retention and audit. Contractor shall retain all books, records, and other documents relative to this contract for 5 years after final payment, or until audited by the County or its authorized agent, whichever is sooner.
13. Indemnification. The Contractor shall indemnify and hold harmless the County against and from all liability, claims, damages and costs, including attorney's fees of every kind and nature and attributable to bodily injury, sickness, disease or death or to damage or destruction of property resulting from or in any manner arising out of or in connection with the project and the performance of the work under this contract.
14. Insurance requirement. Contractor shall maintain insurance to meet the minimum requirements specified below, including contractual liability as stated in these General Terms and Conditions. Contractor shall deliver to the County a Certificate of Insurance from carriers acceptable to the County specifying such limits. The Certificate shall show the County of Washington named as an additional insured for the Comprehensive General Liability. In addition, the insurer shall give the County 30 days advance notice of its decision to cancel coverage, which shall be grounds for County termination of contract. Liability Insurance Coverage requirements:



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1. Worker’s Compensation and Employer’s Liability
 Coverage A - Statutory Requirements
 Coverage B - \$100,000 Per Occurrence
 Coverage C - \$100,000/\$100,000 Accident and/or Disease
 All States Endorsement

2. Automobile Liability, including Owned, Non-Owned, and Hired Car Coverage Limits of Liability
 Combined Single Limit \$1,000,000

3. Comprehensive General Liability Limits of Liability:
 Per Occurrence \$1,000,000
 In Aggregate \$2,000,000
 Including:
 A. Completed Operations/Products
 B. Contractual Liability for Specified Agreement
 C. Personal Injury and Advertising Injury
 D. Bodily Injury and Broad Form Property Damage

4. Professional Liability/Errors and Omissions Liability:
 Per Occurrence \$1,000,000
 In Aggregate \$5,000,000

15. Insurance discretion of County. If the insurance coverage and limits stated herein cannot be provided, the County Director of Department of Budget and Finance, in such Director’s sole discretion, may approve such other insurance coverage or limits that the County Director of Department of Budget and Finance deems acceptable.

County constitutional limitation

16. Constitutional limitation. The County obligations pursuant to this Contract are moral obligations subject to the limitations of the constitution and law of the Commonwealth of Virginia, subject to annual appropriation by the Board, and non-appropriation shall not constitute grounds for recovery against the County or Authority. The covenants of the County as stated herein shall not be interpreted to establish any pledge, security interest, lien, or other encumbrance of the full faith and credit or property of the County. State law and constitution prohibit Washington County from expenditure of funds unless appropriated by the Washington County Board of Supervisors and from obligating funds beyond the current fiscal year (July 1 – June 30). Therefore, notwithstanding any provision in this contract to the contrary, if the Washington County Board of Supervisors does not appropriate funds for the continuance of this contract in any future fiscal year, this contract and all obligations hereunder shall automatically terminate upon depletion of the currently appropriated funds, without penalty to the County.



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Contract

17. Non-waiver of rights. No failure of either party to exercise any power given to it hereunder, nor a failure to insist upon strict compliance by the other party with its obligations hereunder, nor a custom or practice of the parties at variance with the terms hereof, nor any payment constitutes a waiver of either party's right to demand exact compliance with the terms hereof. Failure by the County to act on or to assert any right hereunder does not constitute a waiver of such right.
18. Binding effect. This Contract shall be binding upon all heirs, successors, and/or assigns to any of the parties to this Contract, subject to limitations of law for the County as stated herein.
19. Modification and assignment. This Contract may be modified or assigned only by written agreement signed by all parties hereto.
20. Change orders. Any change in the scope of work to be performed, materials to be used, price of project, schedule for completion, or other aspect of performance of the contract shall require a written modification of the contract, which shall be called a Change Order. Unless it is not feasible to do so, Change Orders shall be prepared using the County-provided form for Change Orders. BEFORE proceeding with any additional work or variations in specified materials, Contractor shall obtain a written Change Order signed by both parties to the contract or, at minimum, email authorization from the County. The only persons authorized to sign a Change Order on behalf of the County or to provide email authorization for a Change Order shall be the Project Manager as specified in the Contract and the County Administrator. The County shall not pay any additional expense incurred by Contractor based on an oral-only change agreement. The Change Order shall become effective only after it has been signed on behalf of both parties to the Contract by the authorized representatives, or if authorized by email, clearly transmitted by emails between such authorized representatives that address all matters that are covered by the Change Order form and that communicate both parties' agreement. Both parties to the contract agree to act in good faith and promptly when considering a Change Order requested by the other party but neither party is obligated to execute a Change Order.
21. Sovereign immunity. Nothing in this Contract shall be construed as an express or implied waiver of the County's sovereign or Eleventh Amendment immunity, as a political subdivision of the Commonwealth.
22. Governing laws. This Contract shall be governed by the laws of the Commonwealth of Virginia. In the event of dispute, the affected party shall provide written notice of dispute to all other parties. The parties shall make all reasonable efforts to resolve differences by negotiation. However, in the event that a resolution by negotiation is not reached within a reasonable time, the parties may proceed to mediation or litigation. Claims against the County for damages shall proceed as required by Title 15.2, Chapter 12, Article 4 of the Code of Virginia (1950, as amended).
23. Litigation venue. Venue for litigation shall be in the Circuit Court of the County of Washington, Virginia. All parties to this Contract have standing to enforce any covenants, terms, provisions, and contracts set forth herein.
24. Complete agreement. This Contract sets forth all of the promises, contracts, conditions, and understandings between the parties respecting the subject matter hereof and supersedes all prior and



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contemporaneous negotiations, conversations, discussions, correspondence, memoranda, and contracts between parties concerning such subject matter.

25. Severance clause. If any provision of this Contract shall be determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable to any extent, the remainder of this Contract shall not be affected and shall be enforceable to the fullest extent permitted by law.
26. Counterparts and electronic signature. This Contract may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Facsimile signatures or signed copies sent by portable document format (PDF) shall be deemed originals.

Disputes, failure to perform, termination

27. Failure to deliver. In case of failure to deliver goods or services in accordance with the contract terms and conditions, the County, after due oral or written notice, may procure them from other sources and hold Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the County may have.
28. Termination of contract:
- a. County or Contractor may terminate this Contract for convenience upon giving the other party thirty (30) calendar days prior written notice. County shall within thirty (30) calendar days after the date of termination pay Contractor for all services rendered and all costs incurred up to the date of termination in accordance with the applicable fee schedule.
 - b. County may terminate the Contract for cause subject to the following provisions. Prior to termination of the contract, the County shall give Contractor ten (10) calendar days prior written notice, during which Contractor may rectify the cause of the termination. County may postpone the effective date of the termination, at its sole discretion. If rectified to the satisfaction of the County within said ten (10) days or such other time as allowed by County, County may rescind the notice of termination. If it does not, then the County may immediately terminate the contract for cause by giving written notice to the Contractor.
 - c. Written notice of termination, whether initial or given after a period of postponement, may be served upon the contractor by U.S. mail or any other means at Contractor's last known place of business in Virginia or elsewhere, by delivery to any officer or management/supervisory employee of either wherever they may be found, or, if no such officer, employee or place of business is known or can be found by reasonable inquiry within three (3) business days, by posting the notice at the job site. Contractor's failure to accept or pick up registered or certified mail addressed to the last known address shall be deemed to be delivery.
29. Termination for cause. Without limitation, the following are bases for termination for cause, County may terminate the contract in the event Contractor fails to remain in compliance with applicable requirements for permitting, insurance, registration to do business in the Commonwealth of Virginia for the purposes required by the contract.



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30. Immediate termination. In the event of Contractor conduct that exhibits reckless disregard for the consequences of its conduct and its performance of services pursuant to this Contract, County, at its sole discretion, may immediately terminate the Contract upon delivery of written notice to Contractor. Delivery of written notice shall mean placement of notice of termination into U.S. mail for delivery to Contractor's last known address or personal delivery to Contractor, whichever occurs first. Additionally, in the event of voluntary or involuntary action that results in either the Contractor coming under the jurisdiction of federal bankruptcy court or assignment to a receivership, the County shall have sole discretion to terminate this contract immediately.

Compliance with laws

31. No illegal aliens. Contractors certify that they do not and will not during the performance of the contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

32. Drug-free workplace.

- a. Contractor acknowledges and certifies that it understands that the following acts by Contractor, its employees, and/or agents performing services on County property are prohibited: (i) The unlawful manufacture, distribution, dispensing, possession or use of alcohol or other drugs; and (ii) Any impairment or incapacitation from the use of alcohol or other drugs (except the use of drugs for legitimate medical purposes).
- b. The Contractor further acknowledges and certifies that it understands that a violation of these prohibitions constitutes a breach of contract and may result in default action being taken by the County in addition to any criminal penalties that may result from the conduct.

33. Federal laws. Contractor shall conform to the provisions of the Federal Civil Rights Act of 1964 (as amended), the Americans With Disabilities Act (as amended), the Virginia Human Rights Act, and the Virginians with Disabilities Act. In accordance with Virginia Code § 2.2-4343.1, if the Contract is made with 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.

34. In accordance with Virginia Code § 2.2-4311, in every contract over \$10,000.00, the Contractor agrees as follows:

- a. Contractor shall 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 of the contractor. Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.



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- 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 the requirements of this section.
 - d. The Contractor will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
35. The requirements of General and Special Terms and Conditions are a material part of the contract. If the Contractor violates any provision therein, the County may terminate the affected part of this contract for breach, or at its option, the whole contract. Violation may also result in debarment from future contracting regardless of whether the specific contract is terminated.

