

**RESOLUTION #27-21, Adopts the Standard Terms and Conditions**

**WHEREAS**, it is recommended for the Town Council to adopt and approve the Standard Terms and Conditions attached and give authorization to post on the website

**NOW, THEREFORE BE IT RESOLVED**, that Town Council hereby adopts the Standard Terms and Conditions and authorizes the Town Manager to post the contract on the town’s website.

*Upon motion made by Mr. Duggan and seconded by Dr. Self Sullivan, Resolution #27-21, as amended, passed with a unanimous vote of council members present.*

	<u>Aye</u>	<u>Nay</u>		<u>Aye</u>	<u>Nay</u>
<i>Schick</i>	<i>X</i>		<i>Moncure</i>	<i>X</i>	
<i>Cabrey</i>	<i>X</i>		<i>Roberson</i>	<i>X</i>	
<i>Duggan</i>	<i>X</i>		<i>Self Sullivan</i>	<i>X</i>	
<i>Allison</i>	<i>X</i>				

**THIS IS TO CERTIFY THIS IS A TRUE COPY OF AN ORIGINAL RESOLUTION**, adopted by the Town Council at a Meeting of Council held Wednesday, July 21, 2021 at the Colonial Beach Town Center, with a quorum of Council being present.

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Heather Oliver, Town Clerk

**TOWN OF COLONIAL BEACH  
GENERAL TERMS AND CONDITIONS  
GOODS AND NON-PROFESSIONAL SERVICES  
Effective July 2021**

These General Terms and Conditions are attached to and made a part of the contract to which they are attached or referenced. In the event of any conflict between any provision of these General Terms and Conditions and the contract to which they are attached, these General Terms and Conditions shall control, unless the provisions in these General Terms and Conditions are contrary to Virginia law. Nothing in the contract or the attached documents shall be construed as granting authority for either party to make commitments which will bind either party beyond the scope of the services or goods contained herein.

A. Anti-Discrimination:

By submitting bids or proposals, bidders, offerors or contractors certify to Town of Colonial Beach (the "Town") that they will conform to the provisions of the federal Civil Rights Act of 1964, as amended, the Virginia Fair Employment Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and Section 2.2-4311 of the Virginia Public Procurement Act, which provides:

1. During the performance of this contract, the contractor agrees as follows:
  - a. The contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, political affiliation, veteran status, 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. 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, shall 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.
2. The contractor shall 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.
3. Pursuant to Section 2.2-4343.1 of the *Code of Virginia* of 1950, as amended, in all invitations to bid, requests for proposals, contracts, and purchase orders, Town of Colonial Beach does not discriminate against faith-based organizations. "Faith-based Organization" means a religious organization that is or applies to be a contractor to provide goods or services for programs

funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193.

B. Ethics in Public Contracting:

By submitting a bid or proposal, bidders, offerors or contractors certify that their bids or proposals are made in full compliance with the Virginia Conflicts of Interest Act and without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other bidder or offeror, supplier, manufacturer or subcontractor in connection with their bid or 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.

C. Immigration Reform and Control Act of 1986:

By submitting a bid or proposal, bidders, offerors or contractors certify that they do not and will not, during the performance of this contract, employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

D. Policy on Drug and Alcohol Abuse:

Town of Colonial Beach has adopted a Policy on Drug and Alcohol Abuse. By submitting a bid or proposal, bidders, offerors or contractors certify full compliance with this policy. A copy of the policy is available upon request. Further, in every contract over \$10,000 the following provisions apply:

During the performance of this contract, contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, 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.

E. Receipt of Bids/Proposals:

To be considered, bids or proposals shall be received at the location provided and within the time period specified in the Invitation for Bids (IFB) or the Request for Proposals (RFP). Responses received after the specified date and time shall be returned unopened.

F. Acceptance/Rejection of Bids/Proposals:

Town of Colonial Beach reserves the right to accept or reject any or all bids or proposals or portion of any bid or proposal and to reissue said bid or proposal. The Town reserves the right to award a contract based on a lump sum or per item basis or a sample provided.

G. Clarification of Terms:

Prospective bidders, offerors or contractors may submit questions in writing concerning the specifications or other solicitation documents no later than seven (7) working days before the due date. Any revisions to the IFB or RFP will be issued as an addendum.

H. Firm Prices:

Prices and all associated charges offered by proposers, bidders, offerors, or contractors shall be firm for sixty (60) days after the due date of the bids or proposals unless otherwise stated by Town of Colonial Beach.

I. Taxes:

Town of Colonial Beach (federal I.D. #54-6001376) is exempt from federal, state and local taxes. Taxes included on invoices will be deducted from the payment amount. Tax-exempt forms will be completed for a vendor upon request.

J. Delivery:

All costs and other charges associated with the delivery of a good or non-professional service shall be included in the bid or proposal. The Town reserves the right to cancel all or any part of a contract without obligation if delivery is not made within the time period specified in the bid or proposal document or if the quantity or quality of products or non-professional services delivered is inadequate.

K. Required Signature:

All bids and proposals shall be signed with the firm name, federal identification number and by a representative possessing the authority to bind said firm with his/her signature. The Town may request documentation of the signer's authority.

L. Qualifications of Bidders, Offerors or Contractors:

The bidder, offeror, or contractor represents and warrants that it has the requisite experience, skills, capabilities, and manpower to perform the duties required by the contract in a good and workmanlike fashion and that it is authorized to do business in Virginia and has all necessary licenses required by law. Town of Colonial Beach may make such reasonable investigations as deemed proper and necessary to determine the ability of a bidder, offeror or contractor to perform the work or supply the goods. The bidder, offeror or contractor shall furnish to the Town all such information and data for this purpose as may be requested. The Town reserves the right to inspect the bidder's, offeror's, or contractor's physical facilities prior to award to satisfy questions regarding the bidder's or offeror's capabilities. Further, the Town reserves the right to reject any bid or proposal if the evidence submitted by, or investigations of, such bidder or offeror fails to satisfy the Town that such bidder or offeror is properly qualified to carry out the obligations of the contract and to complete the work or supply the goods.

M. Changes to the Contract:

No fixed price contract may be increased by more than twenty-five (25) percent of the amount of the contract or \$50,000, whichever is greater. Changes can be made to the contract only by mutual agreement of the parties evidenced by a signed writing

N. Payment Terms:

All approved invoices will be paid within forty-five (45) days of receipt.

O. Default:

In case of default by the contractor for failure to deliver or perform in accordance with the contract's specifications or terms and conditions, the Town may procure the articles or services from other sources and hold the defaulting the contractor responsible for any resulting additional purchase and administrative costs. The Town will normally repurchase from the next highest rated bidder or purchase competitively by resolicitation. If the repurchase results in increased costs to the Town, a letter will be sent to the defaulted contractor requiring payment for additional costs. When repayment is requested, the contractor will be removed from future bidding until the repayment has occurred. The contractor shall not be liable for any excess cost if the failure to perform arises out of any act of war, order of legal authority, strikes, act of God, or other unavoidable causes not attributed to their fault or negligence. Failure of a contractor's source to deliver is generally not considered to be an unavoidable cause. The burden of proof rests with the contractor.

P. Assignment:

The contract may not be assigned, sublet, or transferred without the written consent of Town of Colonial Beach.

Q. Hold Harmless:

The contractor and all its subcontractors shall bear all loss, expense (including reasonable attorney's fees) and damage in connection with, and shall indemnify Town of Colonial Beach, its Board of Supervisors members, officers, employees and agents against and save them harmless from all claims, demands, and judgments made or recovered against them because of bodily injuries, including death at any time resulting there from, and/or because of damage to property, from any cause whatsoever, arising out of, incidental to, or in connection with the contract. Compliance by the contractor with the insurance provisions hereof shall not relieve the contractor from liability under this provision.

R. Audit:

The Contractor hereby agrees to retain all books, records, and other documents related to this Agreement for five (5) years after final payment or after all other pending matters are closed, whichever is longer. The Town and its authorized agents, state auditors, the grantor of the funds to the Town, the Comptroller of Virginia or of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers and records of the Contractor which are directly pertinent to the Agreement for the purpose of making audits, examinations, excerpts or transcriptions.

S. Ownership of Documents:

Any reports, studies, photographs, negatives, or other documents prepared by the contractor in the performance of its obligations under this contract shall be remitted to the Town upon completion, termination or cancellation of the contract. The Contractor shall not use, willingly allow or cause to have such materials used for any purpose other than performance of the contractor' obligations under this Agreement without the prior written consent of the Town. The Town shall own the intellectual property rights to all materials produced under this Agreement.

T. Payment and Performance Bond:

If required by law, the contractor shall furnish to the Town performance and payment bonds in the amount of the Contract Sum, regardless of its amount, pursuant to Sections 2.2-4336 and 2.2-4337 of the *Code of Virginia*, 1950, as amended (the ("Code")) and shall otherwise fully comply with the requirements of such sections of the Code.

U. Required Payment to Subcontractors:

Pursuant to Section 2.2-4354 of the Code, the contractor covenants and agrees to:

1. within seven (7) days after receipt of any amounts paid to the contractor under the Agreement, (i) pay any subcontractor for its proportionate share of the total payment received from the Town attributable to the Services under the contract performed by such subcontractor, or (ii) notify the Town and the subcontractor, in writing, of its intention to withhold all or a part of the subcontractor's payment and the reason therefor;

2. provide its federal employer identification number or social security number, as applicable, before any payment is made to the Contractor under the contract; and

3. pay interest at the legal rate or such other rate as may be agreed to in writing by the subcontractor and the contractor on all amounts owed by the contractor that remain unpaid after seven (7) days following receipt by the contractor of payment from the Town for services performed by the subcontractor under the contract, except for amounts withheld pursuant to subparagraph 12, a above.

4. include in its contracts with any and all subcontractors the requirements of a, b, and, c above.

V. Liability Coverage:

The contractor shall take out and maintain during the life of the Agreement such bodily injury, liability and property damage liability insurance as shall protect it and the Town from claims for damages for personal injury, including death, as well as from claims for property damage, which may arise from its activities under this contract.

W. Loss or Damage in Transit:

Delivery by the contractor to a common carrier does not constitute delivery to Town. Any claim for loss or damage incurred during delivery shall be between the contractor and the carrier. The Town accepts title only when goods are received regardless of the F.O.B. point. The Town will note all apparent damages in transit on the freight bill and notify the contractor. Discovery of concealed damages or loss will be reported by the Town to the carrier and the contractor within seven days of receipt and prior to removal from the point of delivery if possible. The contractor shall make immediate replacement of the damaged or lost merchandise or be in default of this contract. It shall be the contractor's responsibility to file a claim against the carrier. If damage is to a small quantity, with the approval of the Town, the contractor may deduct the amount of damage or loss from his or her invoice to the Town in lieu of replacement.

X. No Waiver:

Any failure of the Town to demand rigid adherence to one or more of the terms and provisions of the contract, including these General Terms and Conditions, on one or more occasions, shall not be construed as a waiver nor deprive the Town of the right to insist upon strict compliance with the terms of the contract. Any waiver of a term of the contract, in whole or in part, must be in writing and signed by the party granting the waiver to be effective.

Y. Termination:

The Town may terminate the contract for its convenience and any or no cause at any time upon written notice to the contractor. The contractor shall not be paid for any service rendered or expense incurred after receipt of such notice except such fees and expenses incurred prior to the effective date of termination that are necessary for curtailment of the contractor's services under the contract.

Z. Choice of Law:

To ensure uniformity of the enforcement of the contract, and irrespective of the fact that either of the parties now is, or may become, a resident of a different state, this contract is made and is intended to be performed in the Commonwealth of Virginia, and shall be governed by and construed in accordance with the laws of that state without regard to principles of conflicts of law.

AA. Severability:

If any provision of the contract is held to be illegal, invalid, or unenforceable, or is found to be against public policy for any reasons, such provision shall be fully severable and the contract shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never been part of the contract, and the remaining provisions of the contract shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision, or by its severance from the contract.

BB. Contractual Claims Procedure:

1. Contractual claims or disputes by the contractor, whether for money or other relief, except for claims or disputes exempted by law from the procedure set forth herein, shall be submitted in writing no later than sixty (60) days after final payment; provided, however, that the contractor shall give the Town written notice of its intention to file a claim or dispute within fifteen

(15) days after the occurrence upon which the claim or dispute shall be based. Any written notice of the contractor' intention to file such a claim or dispute need not detail the amount of the claim, but shall state the facts and/or issues relating to the claim in sufficient detail to identify the claim, together with its character and scope. Whether or not the contractor files such written notice, the contractor shall proceed with the services as directed. If the contractor fails to make its claim or dispute, or fails to give notice of its intention to do so as provided herein, then such claim or dispute shall be deemed forfeited.

2. The Town, upon receipt of a detailed claim, may at any time render its decision and shall render such decision within one hundred twenty (120) days of final payment. Each such decision rendered shall be forwarded to the contractor by written notice.

3. If the contractor disagrees with the decision of the Town concerning any pending claim, the contractor shall promptly notify the Town by written notice that the contractor is proceeding with the services under protest. Any claim not resolved, whether by failure of the contractor to accept the decision of the Town or under a written notice of the contractor' intention to file a claim or a detailed claim not acted upon by the governing body of the Town, shall be specifically exempt by the contractor from payment request, whether progress or final. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

4. The decision on contractual claims by the governing body of the Town shall be final and conclusive unless the contractor appeals within six months of the date of the final decision on the claim by instituting legal action in the appropriate circuit court.

CC. Subject to Annual Appropriation:

The contract is subject to annual appropriation by the Town Council of the Town of Colonial Beach Board of Supervisors. Neither the contract nor any amount due or to become due under the contract shall be deemed to constitute a debt or pledge of the faith and credit of the Commonwealth of Virginia or any political subdivision thereof, including the Town. Neither the Commonwealth of Virginia nor any political subdivision thereof, including the Town, shall be obligated to pay any amount due or to become due under this contract except from funds annually appropriated by the Town Council of Town of Colonial Beach for such purpose.

In the event of non-appropriation of funds for the items under this contract, the Town may terminate this contract as to the services for which funds have not been appropriated. Written notice will be provided to the contractor as soon as possible after such action is taken.

DD. Forum Selection

The parties hereby submit to the personal jurisdiction and venue of the Circuit Court of Westmoreland County, Virginia, and the General District Court of Westmoreland County, Virginia, for resolution of any and all claims, causes of action, or disputes arising out of or related to this Contract. The parties further agree that any claims, causes of action, or disputes arising out of, relating to or concerning this Contract shall have jurisdiction and venue in the Circuit Court of Westmoreland County, Virginia, and/or the General District Court of Westmoreland County, Virginia, and shall be brought only in such courts.