

## Prince William County Public Schools (PWCS)

### Terms And Conditions for Purchase Orders and Cooperative Purchase Transactions

PWCS's public contracts, including those conducted as purchase order or cooperative purchase transactions, are subject to the Virginia Public Procurement Act ("VPPA") and shall be governed, in all aspects, by the VPPA and other laws of the Commonwealth of Virginia, notwithstanding any conflict of laws provisions. The terms and conditions set forth below are mandatory for every public contract with PWCS. Any conflicting terms or conditions (including any terms of service set forth within vendor's quote, a service order, on a vendor's website, as part of an internet "click-through" transaction, etc.) shall be of no effect.

#### Contract Legal Requirements

**Va. Code §2.2-4309.** No contract price may be increased by more than 25%, or \$250,000, whichever is greater, without the advance approval of the Prince William County School Board. In no event may the amount of any contract be increased without adequate consideration to be received by PWCS. PWCS may extend the term of a contract for services, to allow completion of any work undertaken but not completed during the original term of the contract.

**Va. Code §2.2-4311.1.** Contractor does not, and shall not during the performance of this contract, knowingly employ any unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

**Va. Code §2.2-4311.2.** 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 required by Title 13.1 or Title 50 or as otherwise required by law. PWCS may void its contract with a business entity if the business entity fails to remain in compliance with the provisions of this statute.

**Va. Code §2.2-4342 and §42.1-86.1.** All contract and procurement records will be maintained for the time period specified in applicable records retention laws or regulations. Such records in the possession of PWCS are open to public inspection in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). Contractor may protect its trade secrets or proprietary information, by following the procedures set forth in §2.2-4342(F). Contractor will retain its records relating to performance of this contract for three (3) years from completion of the contract, or a longer period specified by federal or state statute or regulation. Throughout the retention period, PWCS shall have a right to audit such records upon request.

**Va. Code §2.2-4350.1 and Va. Code §22.1-91.** Unless the Va. General Assembly or Prince William County, Va. has appropriated funds to PWCS to pay for specific goods or services, or to make payment on a debt, no PWCS department, office, nor any PWCS official, officer, employee, or agent shall (i) attempt to pay or attempt to make payment on the debt; (ii) issue any document or paper that guarantees payment, or purports to pay or guarantee payment, or purports to make payment, on the debt; (iii) furnish an "IOU" as a means to pay, or in lieu of payment, or (iv) in any other way attempt to pay, guarantee payment, or purport to pay for the same. This prohibition on payment shall not apply to any payment required by federal law, or if funds are lawfully available. Any contract terms or conditions that purport to bind PWCS to expend, or contract to expend, in any fiscal year, any sum of money in excess of the appropriated funds available for school purposes for that fiscal year shall be unenforceable against PWCS, and PWCS may terminate the contract for its convenience, without liability or penalty, after giving reasonable notice to contractor of a lack of funding available to support PWCS's continued performance.

**Va. Code §2.2-4352.** In the event that PWCS fails to promptly pay for completed goods or services by the required payment date, as defined in §2.2-4352, PWCS shall pay any finance charges assessed by the contractor that shall not exceed one percent (1%) per month.

**Va. Code §2.2-4354.** Within 7 days after receipt of a payment from PWCS for work performed by its subcontractor, a contractor shall either pay the subcontractor for its proportionate share of the total payment received from PWCS or notify PWCS and the subcontractor, in writing, of its intention to withhold all or a part of the subcontractor's payment and the reason for nonpayment. The contractor shall pay interest on all amounts owed to the subcontractor that remain unpaid after 7 days; interest shall accrue at a rate of one percent (1%) per month. No contract modification, and no cost reimbursement claim, shall include any reimbursement for the interest charge.

**Va. Code §2.2-4363, §2.2-4364, §2.2-4366.** Contract claims, whether for money or other relief, shall be submitted by a contractor in writing to PWCS no later than 60 days after final payment; provided, however, that PWCS shall not consider any claim if written notice of the contractor's intention to file a claim was not given at the time of the occurrence or beginning of the work upon which the claim is based. Consideration of contractors' claims shall be governed by the provisions of §2.2-4363. A contractor may bring an action involving a contract dispute with PWCS in the appropriate circuit court (Prince William County, Virginia) and may obtain remedies

authorized by the VPPA. PWCS is prohibited by law from entering into binding alternative dispute resolution procedures (including any binding arbitration).

**Va. Code §2.2-4367 through §2.2-4377; 2 C.F.R. §200.318(C)(1).** No PWCS employee shall receive any financial benefit as a result of this public contract. No contractor shall confer upon any PWCS employee having official responsibility for a procurement transaction of any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of equal or greater value is exchanged. No contractor or subcontractor shall demand or receive from any of its suppliers or subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services, or anything, present or promised, unless consideration of equal or greater value is exchanged. No person shall demand or receive any payment, loan, subscription, advance, deposit of money, services, or anything of value in return for an agreement not to compete on a public contract. Other provisions of law applicable to this public contract include but are not limited to the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.), the Virginia Governmental Frauds Act (§ 18.2-498.1 et seq.), and Articles 2 (§ 18.2-438 et seq.) and 3 (§ 18.2-446 et seq.) of Chapter 10 of Title 18.2.

**Va. Code §2.2-4312.** During the performance of any contract involving more than \$10,000, 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.

**Va. Code §2.2-4311.** During performance of any contract involving more than \$10,000: (a) The contractor 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 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 the 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.

**Va. Code §22.1-289.01.** Contractors providing school services shall comply with the requirements of Va. Code §22.1-289.01, subparts (B) and (C) (protection of information within education records).

**Va. Code §22.1-296.1(E) - (G).** Any contract for services requiring a contractor or its employees to have direct contact with students on school property during regular school hours or during school-sponsored activities is subject to the provisions of Va. Code §22.1-296.1(E) through (G). Contractor shall be required to provide written certification that it and its employees have never been convicted of any crimes referenced in the statute. Any individual making a materially false statement on the certification is guilty of a Class 1 misdemeanor criminal offense; upon conviction, this contract and any license required to provide the services may be revoked. No individual who has been convicted of any crime(s) referenced in the statute may participate in the performance of services.

### **PWCS Special Conditions**

**Debarment.** By submitting a quote or otherwise entering into a contract with PWCS, contractor warrants that it is not currently listed on the governmentwide exclusions in the Federal System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement federal Executive Orders 12549 and 12689 (1986 and 1989, respectively), "Debarment and Suspension", and it is not currently debarred by any state, or local public entity or agency from contracting for particular types of supplies, services, insurance, or construction. If contractor cannot truthfully make such a certification, it shall provide written notice to PWCS prior to commencement of its performance, providing information about any debarment currently in effect as to the contractor.

**Specifications for goods/services.** Goods or services delivered must be strictly in accordance with the quote, bid, or contract given to PWCS. No defect or impropriety (e.g., substitution, deviation, or other change) is permitted. Goods shall be subject to inspection and testing by PWCS upon receipt. Rejected goods shall remain

the property of the vendor, and PWCS may withhold payment. Contractor shall provide a current Material Safety Data Sheet (MSDS) on each product containing any substance defined or described by the U.S. Federal Hazard Communication Standard (29 C.F.R. 1910.1200(g)); the MSDS shall accompany either the delivery or the invoice. When sourcing goods or products to be used in fulfillment of the contract, contractor shall give preference to those designated in EPA guidelines as containing the highest percentage of recovered materials practicable, and to goods, products, or materials, produced in the United States (to the greatest extent practicable, when contractor has notice that federal funding is a source of payment). Activities performed by contractor for PWCS shall comply with standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387), to the extent applicable. Contractor will not use, nor satisfy any PWCS contract requirement(s) with, any telecommunications or video surveillance services or equipment prohibited by 2 C.F.R. §200.216.

**Pricing.** All prices, unless specified otherwise, shall be net F.O.B. Destination, with transportation or delivery charges prepaid. The original bill of lading shall accompany the contractor's invoice. PWCS will provide its state sales and use tax certificate of exemption upon request. Deliveries must be free of excise or transportation taxes; federal excise tax exemption registration may be used when required. Contractors may not bill PWCS for goods or services on a "cost-plus-percentage-of-cost" or "percentage-of-construction-cost" basis.

**Time is of the essence.** Contractor's failure to timely deliver goods or services constitutes a material breach of contract. If, after receipt of notice of breach from PWCS, contractor fails to cure the breach within a period specified in the notice, PWCS may procure the goods or services from another source and the vendor shall be liable to PWCS for any costs or expenses incurred by PWCS in excess of the amount(s) set forth in the parties' contract.

**Prompt payment by PWCS.** PWCS shall make payment to a contractor following receipt of a proper invoice. The invoice shall be submitted to the same "Bill To" contact referenced within PWCS's Purchase Order ("P.O.") The contractor must include the P.O. number on the invoice and shall include documentation demonstrating the contractor's satisfaction of contract requirements.

**Electronic signatures.** PWCS's issuance and signature of a P.O. is given by electronic signature, in accordance with PWCS internal business practices. The contractor may request an original signature copy, if desired.

**Confidentiality of Information; Recordkeeping.** The contractor, on behalf of itself, its employees, officers, and agents, agrees records or information obtained from PWCS for or in connection with this purchase transaction shall not be disclosed to any third party, except: (i) with the advance written consent of PWCS, or (ii) in response to a valid subpoena or court order. Upon request, contractor shall execute a non-disclosure agreement ("NDA") prior to commencement of its performance. NDAs proposed by contractors cannot preclude PWCS from sharing contract or procurement records with federal funding agencies. No NDA provisions shall be enforceable against PWCS, if they impose records-destruction requirements contrary to federal or state records retention requirements.

**PWCS Remedies for Default.** In the event of contractor's default, PWCS shall have all remedies available at law or in equity, including, without limitation, compensatory damages, right of termination, right of rescission, and injunction or other equitable relief.

**Student Education Records.** A contract requiring the contractor to provide student information systems, instructional improvement systems, online education programs or applications ("apps"), or assessment systems, is subject to the federal Family Educational Rights and Privacy Act ("FERPA"). Prior to commencement of performance, the contractor shall, upon request by PWCS, execute a standard form Data Privacy Agreement provided by PWCS that documents the contractor's obligations under 34 C.F.R. §99.31(a)(l)(i) and Va. Code §22.1-289.01.

**Sovereign Immunity Reserved.** No act by PWCS, its employees, or agents, and no contract terms or conditions, shall operate as a waiver of any sovereign immunity, or any other immunity from suit or liability, available to PWCS under Virginia law; PWCS reserves, and does not waive, any and all such legal protection(s). Notwithstanding any contract terms or conditions, any indemnification obligation, obligation requiring payment of contractor's or a third party's attorney's fees, or authorization of any other liability or any legal action against PWCS, shall be enforceable as to PWCS only if and to the extent expressly required by a Virginia statute.

**Insurance.** Upon request by PWCS, a contractor shall promptly provide evidence of its insurance coverage to PWCS. No contractor shall commence performance until PWCS determines that contractor has obtained and will maintain throughout its performance, general liability insurance, workers' compensation insurance (if applicable), or other insurance deemed by PWCS to be adequate for the purposes of the contract to be performed.