

ATTACHMENT 5
Twin County 9-1-1 Regional Commission
Public Safety Voice Radio Communications System

GENERAL TERMS AND CONDITIONS

For purposes of these General Terms and Conditions, "Jurisdiction" shall mean the County of Carroll, Virginia; City of Galax, Virginia; County of Grayson, Virginia; "Commission" shall mean the Twin County 911 Regional Commission; and "Contractor" shall mean the successful proposer with whom the Commission or Jurisdiction has entered into a contract.

1. General Provisions

- A. The work of the Contractor hereunder is performed as an independent contractor. The Contractor is not an employee of the Jurisdiction or Commission, and the Jurisdiction or Commission will not control the means, methods, techniques or procedures of the Contractor performing the work, and the Contractor is expected to use its own judgment in providing the results called for under this contract. Nothing in any resulting contract shall be construed as authority for either party to make commitments which will bind the other party beyond the scope of service contained herein.
- B. This contract is subject to appropriations by the Jurisdiction or Commission.
- C. All procurements by the Jurisdiction or Commission will adhere to the provisions of the Virginia Public Procurement Act, §§ 2.2-4300 *et seq.*, of the Code of Virginia, 1950, as amended.

2. Laws of the Commonwealth

- A. Any purchase order or contract resulting from this solicitation shall be governed in all respects whether as to validity, construction, performance, or otherwise by the laws of the Commonwealth of Virginia. The Contractor represents to the Jurisdiction or Commission that it will:
 - 1. Conform to the provisions of the Civil Rights Act of 1964, as amended, the Virginia Fair Employment Contracting Act of 1975, as amended, and the Virginia Human Rights Act, as amended, where applicable;
 - 2. Not employ illegal alien workers or otherwise violate the provisions of the Immigration Reform and Control Act of 1986;
 - 3. Comply with federal, state and local laws and regulations applicable to



the performance of the services procured; and

4. Has submitted the bid or proposal in full compliance with the Virginia Conflict of Interest Act.
- B. In every contract of over \$10,000, the Contractor agrees during the performance of this contract that:
1. The Contractor (1) will not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, gender identity, disability, status as a service-disabled veteran, national origin or other status prohibited by state law, (2) will post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, and (3) will state that the Contractor is an equal opportunity employer in all solicitations or advertisements for employees placed by or on behalf of the Contractor under this contract. All 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; and
 2. The Contractor will include the provisions of the foregoing subparagraph 2.(B)(1) in every subcontract or purchase order under this Contract of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

- C. In every contract of over \$10,000, the Contractor agrees during the performance of this contract that:

The Contractor shall A) provide a drug-free workplace for its employees; B) 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 its workplace and specify the actions which will be taken against any employee for a violation; C) state in all of its solicitations or advertisements for employees that it maintains a drug-free workplace; and D) include the provisions of this subparagraph in every subcontract or purchase order of over \$10,000, so that said provisions shall be binding upon each subcontractor or vendor.

For purposes of this sub-paragraph, "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 the provisions of the Virginia



Public Procurement Act, 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.

- D. In addition to the provisions contained in sub-paragraph C. pertaining to drug-free workplace, Contractor shall comply with the federal Drug Free Workplace Act.
- E. Pursuant to Section 2.2-4343.1 of the Code of Virginia of 1950, in all invitations to bid, requests for proposals, contracts, and purchase orders, the Jurisdiction or Commission 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. If Contractor is a faith-based organization, then Contractor shall give to each individual who applies for or receives goods, services, or disbursements provided pursuant to this Agreement the following notice:

NOTICE

Pursuant to Section 2.2-4343.1 of the Code of Virginia of 1950, as an applicant for or recipient of goods, services, or disbursements provided pursuant to a contract between the Jurisdiction or Commission and a faith-based organization, you are hereby notified as follows:

Neither the Jurisdiction nor Commission's selection of a charitable or faith-based provider of services nor the expenditure of funds under this contract is an endorsement of the provider's charitable or religious character, practices, or expression. No provider of services may discriminate against you on the basis of religion, a religious belief, or your refusal to actively participate in a religious practice. If you object to a particular provider because of its religious character, you may request assignment to a different provider. If you believe that your rights have been violated, please discuss the complaint with your provider or notify the Jurisdiction or Commission Contract Manager.



3. **Certifications**

The Contractor certifies that:

- A. The bid or offer (1) is made without prior participation, understanding, agreement, or connection with any corporation, firm or person submitting a bid/offer for the same materials, supplies, equipment, or services with respect to the allocation of the business afforded by or resulting from the acceptance of the bid or proposal, (2) is in all respects fair and without collusion or fraud, and (3) is or is intended to be competitive and free from any collusion with any person, firm or corporation;
- B. The Contractor has not offered or received any kickback from any other bidder or Contractor, supplier, manufacturer, or subcontractor in connection with the bid/offer on this solicitation. A kickback is defined as an inducement for the award of a contract, subcontracts or order, in the form of any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged. Further, no person shall demand or receive any payment, loan, subscription, advance, and deposit of money, services or anything of value in return for an agreement not to compete on a public contract;
- C. The Contractor is not a party to nor has he participated in nor is obligated or otherwise bound by agreement, arrangement or other understanding with any person, firm or corporation relating to the exchange of information concerning bids, prices, terms or condition upon which the contract resulting from the acceptance of his bid proposal is to be performed;
- D. The Contractor understands that collusive bidding is a violation of the Virginia Governmental Frauds Act and federal Law, and can result in fines, prison sentences, and civil damage awards and agrees to abide by all conditions of this proposal; and
- E. The Contractor or subcontractor has not and will not confer on any public employee having official responsibility for a 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 is exchanged.
- F. The Contractor certifies that the bid or proposal has been submitted, to the best of Contractor's knowledge, in full accordance with the requirements of Virginia Law governing ethics in public contracting, including without limitation the Virginia State and Local Government Conflicts of Interests Act, § 2.2-3100 *et seq.*, of the Code of Virginia, and the Virginia Public Procurement Act § 2.2-4300 *et seq.*, of the Code of Virginia.



4. Modifications, Additions or Changes

Modifications, additions or changes to these terms and conditions may not be made except in writing and agreed to by the Jurisdiction or Commission; however, no fixed priced contract may be increased by more than twenty-five (25) percent of the amount of the contract or \$50,000 whichever is greater without the approval of the Jurisdiction or Commission. The amount of any contract may not be increased for any purpose without adequate consideration provided to the Jurisdiction or Commission.

5. Assignment

The contract may not be assigned, sublet, or transferred without the written consent of the Jurisdiction or Commission.

6. Audit

The Contractor's records shall be open to inspection and subject to audit and/or reproduction, during normal working hours, by the Jurisdiction or Commission to the extent necessary to adequately permit evaluation and verification of any invoices, payments or claims submitted by Contractor or any of its payees pursuant to execution of the contract. Such records subject to examination shall also include, but not be limited to, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this contract.

For the purpose of such audits, inspections, examinations and evaluations, the Jurisdiction or Commission shall have access to said records from the effective date of this contract, for the duration of the work, and until five (5) years after the date of final payment by the Jurisdiction or Commission to Contractor pursuant to this contract.

The Jurisdiction or Commission shall have access to Contractor's facilities, shall have access to all necessary records, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article. The Jurisdiction or Commission shall give Contractor reasonable advance notice of intended audits.

Contractor shall require all subcontractors, insurance agents, and materials suppliers (payees) to comply with the provisions of this article by insertion of the requirements hereof in a written contract agreement between Contractor and payee. Failure to obtain such written contracts which include such provisions shall be reason to exclude some or all of the related payees' costs from amount payable to Contractor pursuant to this contract.

If an audit inspection or examination in accordance with the article, discloses overcharges (of any nature) by Contractor to the Jurisdiction or Commission in excess of five percent (5%) of the total contract billings, the actual cost of the Jurisdiction or Commission's audit shall be paid by Contractor. In addition, the Jurisdiction or Commission shall not be responsible for any overages not approved by change order and will deduct such amounts from the final contract payment.



7. Ownership of Documents

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

All data submitted to the Jurisdiction or Commission deemed to be confidential or proprietary by Contractor, whether as part of Contractor's proposal or as part of Contractor's work product under a contract with Jurisdiction or Commission shall be appropriately marked for protection in accordance with the Virginia Freedom of Information Act and the Virginia Public Procurement Act.

8. Required Payment

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

- A. within seven (7) days after receipt of any amounts paid to the Contractor under the Contract, (i) pay any subcontractor for its proportionate share of the total payment received from the Jurisdiction or Commission attributable to the work under the Contract performed by such subcontractor, or (ii) notify the Jurisdiction or Commission and the subcontractor, in writing, of its intention to withhold all or a part of the subcontractor's payment and the reason therefor;
- B. provide its federal employer identification number or social security number, as applicable, before any payment is made to the Contractor under the Contract; and
- C. 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 Jurisdiction or Commission for work performed by the subcontractor under the Contract, except for amounts withheld pursuant to subparagraph 12a. above.
- D. include in its contracts with any and all subcontractors the requirements of a, b, and, c above.



9. Environmental Management

The Contractor will be responsible for complying with all federal, state and local environmental regulations relating to transportation, handling, storage, spillage and any other aspect of providing the services specified herein, as applicable. If the Jurisdiction or Commission should

have to defend any enforcement action against it relating to the services provided by the Contractor under the Agreement, the Contractor shall indemnify and hold harmless the Jurisdiction or Commission for any such actions, including reimbursing the Jurisdiction or Commission for all costs associated with defending such actions, attorneys fees and costs, and shall correct without cost to the Jurisdiction or Commission any defects or deficiencies found that are directly attributable to the Contractor.

10. No Waiver

Any failure of the Jurisdiction or Commission to demand rigid adherence to one or more of this Agreement's provisions in the contract, on one or more occasions, shall not be construed as a waiver nor deprive the Jurisdiction or Commission of the right to insist upon strict compliance with the terms of this Contract. Any waiver of a term of this Contract, in whole or in part, must be in writing and signed by the party granting the waiver to be effective.

11. Loss or Damage in Transit

Delivery by the Contractor to a common carrier does not constitute delivery to Jurisdiction or Commission. Any claim for loss or damage incurred during delivery shall be between the Contractor and the carrier. The Jurisdiction or Commission accepts title only when goods are received regardless of the F.O.B. point. The Jurisdiction or Commission 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 Jurisdiction or Commission 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 the 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 Jurisdiction or Commission, the Contractor may deduct the amount of damage or loss from his or her invoice to the Jurisdiction or Commission in lieu of replacement.

12. Choice of Law

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



13. Forum Selection

The parties hereby agree that any claims, causes of action or disputes arising out of, relating to or concerning this Contract shall have jurisdiction and venue only in the Circuit Court of Carroll or Grayson County, Virginia or if appropriate jurisdiction exists, in the United States District Court for the Western District of Virginia.

14. Severability

If any provision of this 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 this Contract shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never been part of this Contract, and the remaining provisions of this 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 this Contract.

15. Limitation of Liability

The Contract is subject to annual appropriation by the Jurisdiction Board or Council or by the Commission. 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 Jurisdiction or Commission. Neither the Commonwealth of Virginia nor any political subdivision thereof, including the Jurisdiction, shall be obligated to pay any amount due or to become due under this Contract except from funds annually appropriated by the Board or Council of Jurisdiction or Commission for such purpose.

16. Notices

All requests, notices and other communications required or permitted to be given under this Contract shall be in writing and delivery thereof shall be deemed to have been made when such notice shall have been either (a) duly mailed by first-class mail, postage prepaid, return receipt requested, or any comparable or superior postal or air courier service then in effect, or (b) transmitted by hand delivery or telegram to the party entitled to receive the same at the address indicated below or at such other address as such party shall have specified by written notice to the other party. Notices to the Jurisdiction or Commission shall be sent to the designated Contract Manager and Stephen V. Durbin, Esq. Jurisdiction and Commission Attorney at 150 Peppers Ferry Rd, NE, P.O. Box 2009, Christiansburg, VA 24068-2009.

17. Contractual Claims Procedure

- A. Contractual claims or disputes by 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



the event giving rise to such claim; provided, however, that Contractor shall give the Jurisdiction or Commission 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 Contractor's 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 Contractor files such written notice, Contractor shall proceed with the work as directed. If 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.

- B. The Jurisdiction or Commission, 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.
- C. If the Contractor disagrees with the decision of the Jurisdiction or Commission concerning any pending claim, the Contractor shall promptly notify the Jurisdiction or Commission by written notice that the Contractor is proceeding with the work under protest. Any claim not resolved, whether by failure of the Contractor to accept the decision of the Jurisdiction or Commission or under a written notice of Contractor's intention to file a claim or a detailed claim not acted upon by the governing body of the Jurisdiction or Commission, 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.
- D. The decision on contractual claims by the governing body of the Jurisdiction or Commission 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.

