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| Minimum Requirements Matrix for Major and High-Risk IT Procurements NOT Using VITA’s Solicitation and Contract Templates |
| *THIS TABLE BELOW MUST BE COMPLETED BY YOUR AGENCY FOR ALL MAJOR AND HIGH-RISK IT SOLICITATIONS AND CONTRACTS IF VITA’S IT SOLICITATION AND/OR CONTRACT TEMPLATES ARE NOT BEING USED. SUBMIT THE COMPLETED TABLE WITH YOUR SOLICITATION AND CONTRACT DOCUMENT PACKAGE THAT IS SENT TO VITA FOR REVIEW AND APPROVAL.*  *IN ADDITION TO ALL MINIMUM CONTRACTUAL REQUIREMENTS, ALL HIGH-RISK SOLICITATIONS AND CONTRACTS MUST MEET THE REQUIREMENTS SPECIFIED BELOW. IT IS HIGHLY ENCOURAGED THAT ALL SOLICITATIONS AND CONTRACTS FOR MAJOR IT PROJECTS INCLUDE ALL REQUIREMENTS BELOW, EVEN IF THE PROJECT DOES NOT MEET THE DEFINITION OF “HIGH-RISK”.*  *Per § 2.2-2006, a Major IT Procurement means any Commonwealth information technology project that has a total estimated cost of more than $1 million or that has been designated a major information technology project by the CIO pursuant to the Commonwealth Project Management Standard developed under § 2.2-2016.1.*  *According to §2.2-4303.0 1 of the Code, a “high-risk” IT procurement meets one or more of the following criteria:*   * *Cost > $10 million over the initial term of the contract; OR* * *Cost > $5 million over the initial term and meets one of the following:*    + *Goods/Services are being procured by two or more state bodies*   + *Anticipated initial term is greater than 5 years (excluding renewals)*   + *State public body has not procured similar goods/services within the last 5 years*   *Delegated Procurements are those IT procurements that executive branch agencies are authorized to conduct by VITA. More information on VITA’s policy on delegated IT procurements can be found here:* [*https://www.vita.virginia.gov/procurement/policies--procedures/procurement-policies/*](https://www.vita.virginia.gov/procurement/policies--procedures/procurement-policies/) |

**INSTRUCTIONS: To complete the fields in this matrix, select the arrows in the left-hand corner to expand/collapse each section.**

## **Matrix Cover Page: Enter the appropriate response(s) to the questions below.**

1. **Agency Name:**
2. **Procurement Point of Contact and Contact Information: :**
3. **Procurement Name:**
4. **Dollar Value – Initial Term:**

**4.A Dollar Value – Renewals:**

1. **Procurement Governance Request (PGR) Number:**
2. Is your IT Solicitation or Contract for a Major IT Project/Procurement as defined in § 2.2-2006? (NOTE: a Major IT Project is one that has a total estimated cost (Dollar Value of the Initial Term (Line 4 above) plus Dollar Value of Renewals (Line 4.a above)) of more than $1M)

Yes

No

1. Does your IT Solicitation or Contract meet the definition of “high-risk” as defined in § 2.2-4303.01(A)? (NOTE: a “high-risk” solicitation or contract is one that has a Dollar Value over the Initial Term (Line 4) of: a) $10M, or b) $5M and meet one or more of the criteria outlined in Section 2.2-4303.01(A))

Yes

No

1. Is your IT Solicitation or Contract for a Cloud solution? (NOTE: All procurements for Cloud solutions, regardless of amount, will need to follow the COV Ramp process. See below the applicable Solicitation and Contract Minimum Requirements related to Cloud for details)

Yes

No

1. Provide any additional information that should be considered in the review of this Procurement:

## **Solicitation Requirements:**

| *Area* | *Objective* | *Required for All IT Solicitations and Contracts* | *Required for High-Risk Solicitations and Contracts* | *Agency to Complete Prior to VITA Review*  *(Agency to enter the Page Number, Section, and Subsection from their solicitation or contract where the minimum requirement in column 1 is located)* | *VITA Comment or Direction* | *Sample Language/Examples* |
| --- | --- | --- | --- | --- | --- | --- |
|  |  |  |  | *Page Number, Section, Subsection, etc.* |  |  |
| *1. Appropriateness of the solicitation’s/*  *contract’s terms and conditions* | Contract contains terms and conditions that comply with the Virginia Public Procurement Act (VPPA), applicable Virginia law and policy, applicable VITA Policies, Standards and Guidelines, and industry best practices.  **NOTE: This does not include redlines made by your agency and the Supplier during negotiations that significantly alter the contract language, which will require a review for appropriateness prior to award.** | **x** | **x** |  |  | ***For IT contracts, use of VITA’s IT solicitation and contract templates ensures that the appropriate terms and conditions are included.***  ***NOTE: Contracts for Major IT Projects, and Solicitations and Contracts for High-Risk procurements, must be reviewed by your OAG for legal sufficiency*** |
| *2. Complies with applicable state law and policy* | This will be accomplished by including statutory terms in the solicitation and contract. This is done by incorporating VITA's Mandatory Terms and Conditions: [Mandatory Contract Terms | Virginia IT Agency](https://www.vita.virginia.gov/procurement/contracts/mandatory-contract-terms/)  The VITA Mandatory Terms link should be incorporated by reference. It is recommended that you perform a review to ensure that your contract’s full text General Provisions and Special Terms do not create conflicts or redundant terms. Special attention must be given to mandatory requirements found at the URL for IRS Publication 1075 whenever your procurement involves Federal Tax Information (FTI). The full text of Exhibit 7 of IRS Publication 1075 must be included in your solicitation and contract for any solicitation or contract where FTI will be shared with a supplier. | **x** | **x** |  |  | ***The following language incorporating VITA’s Mandatory Contract Terms must be included in your Contract:***  ***“Incorporated Contractual Provisions***  ***In addition to the terms, conditions, and obligations of this Contract, Supplier agrees to comply with VITA “Mandatory Contract Terms” which consist of the:***  ***• “Core Contractual Terms”, and***  ***• “Mandatory Internal Revenue Service (IRS) Publication 1075 (required for FTI data only)”***  ***These Mandatory Contract Terms are set forth at the following URL and incorporated into this Contract by reference:*** [***https://www.vita.virginia.gov/procurement/contracts/mandatory-contract-terms/***](https://www.vita.virginia.gov/procurement/contracts/mandatory-contract-terms/)***.***  ***Supplier agrees that non-compliance with the above-referenced Mandatory Contract Terms, including Exhibit 7 of IRS Publication 1075 which is incorporated by reference, may be deemed, solely by Agency, as a material breach of the applicable Order or SOW or of the Contract. Supplier is responsible for verifying the correct and current version of this IRS publication and related safeguarding terms language and acknowledges that Agency issuing the Order or SOW will be held harmless.***  ***The terms and conditions set forth in documents posted at the URL above, and any successor URL(s), are subject to change pursuant to action by the legislature of the Commonwealth, change in Agency policy, or change to IRS Publication 1075. If a change is made to any of the Mandatory Contract Terms documents, a new effective date will be noted in the applicable document title. Supplier is advised to check the URLs, or their successors, periodically.*** |
| *3. Supplier financial stability* | It is especially important that your solicitation include requirements for Suppliers to submit 3 years of either annual audited financial reports or Dun & Bradstreet reports to help you evaluate the Supplier's financial viability.  It is encouraged that financial subject matter experts evaluate the information provided by Suppliers as part of their proposals pertaining to financial stability and solvency. | **x** | **x** |  |  |  |
| *4. Proposal validity period* | Because of the reviews required as part of IT Oversight and Governance, include language in the RFP requiring that the proposals submitted by the prospective Suppliers are valid until an award is made. This avoids the need for a solicitation amendment. | **x** | **x** |  |  | Submitted proposals will remain valid until a contract award has been made. |
| *5. Supplier Experience* | In order to better understand the Supplier’s capabilities to perform the specifications of the Contract, consider adding the following: i) Background, experience in the relevant market; ii) Corporate Identity information (address, phone and fax numbers, FEIN, tax ID No., company web site and email); iii) Organizational Structure; iv) Lessons learned from projects of similar size and scope,, v) Any project or performance risks that should be addressed and/or mitigated to include in the contract, vi) Assumptions to avoid unknown project delays or disruptions, vii) Critical factors to discuss during each phase of the project milestones, viii) Technical, functional or operational expectations/responsibilities offeror would assign to your agency for project success, ix) Service and Support Management information including: a) an account management plan, b) proposed project team members and their estimated availability and percentage of time each member is expected to be assigned to the project; x) risk mitigation concepts for both Supplier and Commonwealth for the type of procurement being pursued; xi) Financial information including: a) total annual revenue, b) Dun and Bradstreet Reports (3 years for high-risk solicitations and contracts), and c) Annual Reports (certified audited financial statements for the most recent 3 years, including income statements, balance sheets, cash flow statements, etc.); xii) At least 3 Supplier references, including the entity name, email address, phone number for the entity’s primary POC, Project Manager, and Contract Manager, and the entity contract number | **x** | **x** |  |  | For language regarding Supplier Experience and other items addressed in this matrix, see VITA’s RFP template which can be obtained by emailing scminfo@vita.virginia.gov |
| *6. On-site Demos, Presentations (If Applicable)* | Your agency should consider requiring the Suppliers to present their solution using a script provided by the agency. Additional questions will arise during those presentations, giving your agency a more robust understanding of what the Supplier can provide. Preparing a script "levels the playing field" and allows the agency to judge presentations according to the same, finite set of criteria. | **x** | **x** |  |  |  |
| *7. Milestone Plan* | It is important that your project Requirements include a Milestone Plan with specific and granular milestones/deliverables. A milestone plan defines critical project decision points, assigns target completion dates to each, and provides a clear schedule of events wherein all deliverables crucial to project success will be met and accepted. A milestone plan also provides your agency the ability to leverage enforcement provisions in the case of consistent nonperformance against the agreed-upon milestones and Schedule. Consider including payments tied to the Supplier meeting prescribed milestones or timely, accepted deliverables. In order to incentivize the Supplier, withhold 10-20% from the milestone payments. After final acceptance, the retained amount will be paid to the Supplier. | **x** | **x** |  |  | ***Add the following language to the Invoicing section of your IT Contract, if applicable:***  ***All invoices will include a 20% withhold pending final Acceptance of the prescribed project Milestones. Supplier shall invoice the total retained amount with their final invoice.***  You can find a Milestones and Deliverables template on the VITA website at [Procurement Tools | Virginia IT Agency](https://www.vita.virginia.gov/procurement/policies--procedures/procurement-tools/) |
| *8. Performance Metrics* | It is required that distinct and measurable performance metrics are included in the solicitation and contract. Performance measures should reflect the most critical aspects of service provision, and have the ability to capture data on Supplier performance against the agreed upon service provision expectations. |  | **x** |  |  | For guidance on creating distinct and measurable performance metrics, contact [scminfo@vita.virginia.gov](mailto:scminfo@vita.virginia.gov). |
| *9. Clear enforcement provisions, Remedies and Incentives* | It is required that very clear and specific enforcement provisions are included in the solicitation and contract to describe how your agency will implement and enforce all performance requirements.  Intermediate remedies for breach or sub-standard performance should be included to give agency appropriate leverage with supplier. Structure the milestone and payment schedules on the project's governance needs and/or the possible need to sever the contract should the Supplier fail to meet prescribed milestones. If your contract is performance based, include measurable service levels, as well as distinct and measurable financial or contractual remedies, to ensure maximum Supplier performance. Remedies should be based on industry standards and best practices. Before writing your RFP, conduct preliminary market research to determine the appropriate performance remedies and incentives. |  | **x** |  |  | For further guidance on creating clear enforcement provisions, contact [scminfo@vita.virginia.gov](mailto:scminfo@vita.virginia.gov).  Examples of remedies include:  Termination: AGENCY has created language outlining, in clear terms, the grounds for Termination of the Contract or Agreement. This language is designed to provide your agency with ample leverage to terminate the Contract or Agreement, in whole or in part, in the case that the Contract does not provide maximum value to the Commonwealth. Section 3 of the VITA IT Contract terms and conditions enumerate the circumstances under which your agency can terminate the Contract or Agreement  Financial Remedies in the Case of Non-Performance/Deficient Performance of Prescribed Performance Metrics: Your agency should include financial remedies and incentives that are tied to the fulfillment of the Performance Measures outlined in the Solicitation and Contract. Financial Remedies can include a credit of X% of the monthly invoice following a period of deficient or non-performance, a charge of $X/instance that performance measures are not met, etc. |
| *10. Reporting requirements* | Your agency must include reporting as part of the project Requirements, outlining, in clear terms, how often, in what format, and what data should be included in the generated reports. Reporting requirements aid in the continuous improvement of service provision over time, and provide an opportunity to increase accountability with respect to the agreed-upon service provision expectations. | **x** | **x** |  |  |  |
| *11. Liability Provisions* | In the case of a proposal for information technology goods and services, as defined in § 2.2-2006, a public body can request an offeror to state any exception to any contractual terms and conditions, including any liability provisions contained in the Request for Proposal at the time of responding to such Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. Such exceptions shall be considered during negotiation but shall not be used as a basis for scoring or evaluating which offerors are selected for negotiations. (§2.2-4302.2)   Include the language in the far-right column in the RFP. | **x** | **x** |  |  | “Provide your comments regarding any exceptions in the form of margin notes or redline the document with your suggested language where required, including exceptions or recommended language revisions to any liability provisions. Such Supplier provided exceptions or recommended language revisions shall be considered during negotiations.” |
| *12. COV Security Policies Standards, and Guidelines Compliance* | Provided solution must comply with all current COV ITRM Policies and Standards, as applicable to the project. Ensure that RFP language in the column to the far-right includes the inserted URL as an active hyperlink. This requirement should go into the solicitation's Technical/Functional Requirements section. Please direct any questions about this to your VITA Project Management Division (PMD) representative. | **x** | **X** |  |  | Proposed solution shall comply with all current COV ITRM Policies and Standards, including those pertaining to: 1. Information Security 2. Data Standards 3. Enterprise Architecture 3. Prohibited Hardware and Software Services 4. Artificial Intelligence Policies are located at: https://www.vita.virginia.gov/policy--governance/policies-standards--guidelines/  If proposed solution does not, please provide details that specify the Standard/Policy and how Supplier's solution does not comply. |
| *13. COV IT Accessibility and 508 Compliance* | Provided solution should comply with all current COV IT Accessibility & 508 Compliance Standards. Ensure that RFP language in the far-right column includes the URL as an active hyperlink. This requirement should go into the solicitation's Technical/Functional Requirements section. Please direct any questions about this to your VITA Project Management Division (PMD) representative. | **X** | **X** |  |  | Supplier's solution, training material and communications plans shall provide effective, interactive control and use with nonvisual means and provide 508 Compliance in accordance with the following standard regarding IT Accessibility and 508 Compliance:  https://www.vita.virginia.gov/media/vitavirginiagov/it-governance/psgs/domain-amp-topic-reports/pdf/ETAITAccessibilityTopicReportGOV103.pdf  (Refer to https://www.section508.gov/ and www.access-board.gov for further information)   Describe how this functionality is achieved and include a completed Voluntary Product Accessibility Template (VPAT) with the proposal. The VPAT template can be accessed at the following URL: https://www.section508.gov/sell/vpat  If the solution provides alternate accessibility functionality, please describe. |
| *14. Compliance with COV Artificial Intelligence (AI) Standards* | Provided solution shall comply with the Commonwealth’s standards for the use of Artificial Intelligence (AI), including Executive Order 30. You will need to add our requirements for Artificial Intelligence into the appropriate tab or section of your requirements document. Insert the questions in the far righthand column to comply with our additional Artificial Intelligence requirements. | **X** | **X** |  |  | 1. In compliance with 2024 Executive Order 30~~,~~ regarding the Implementation of Standards for the Safe Use of Artificial Intelligence Across the Commonwealth (EO 30), Supplier shall indicate and describe in detail whether any aspect of the proposed Solution and/or Service contain Artificial Intelligence (AI), as defined in EO 30, the Utilization of Artificial Intelligence by COV Policy Standard and VITA's Artificial Intelligence Standards.   Additional information regarding VITA's Artificial Intelligence Standards is available at the following URL:   <https://www.vita.virginia.gov/artificial-intelligence/> 2. If any aspect of Supplier's proposed Solution or performance of the proposed Services contain AI as defined in EO 30 and VITA’s Artificial Intelligence Standards, then describe the process that Supplier will follow to ensure that Customers, as applicable, have registered the Solution/Services with VITA before a purchase order is fulfilled.  Additional information regarding VITA's Artificial Intelligence Standards is available at the following URL:   <https://www.vita.virginia.gov/artificial-intelligence/> 3. "The proposed solution shall only use Approved versions of the technologies covered within the COV Technology Roadmaps.   https://www.vita.virginia.gov/policy--governance/architecture/cov-technology-roadmaps/  If proposed solution does not only use Approved versions of COV technologies, please provide details on the technologies utilized."   1. For IT solutions and technologies that are not covered within COV Technology Roadmaps, describe if the proposed solution only uses versions or models of IT solutions and technologies that are current (N and N-1) and have vendor or equivalent support.   Example:  an IT management utility that only works with a EOL database or N-2 operating system  Note 3:  many N and N-1 versions are defined in the COV Technology Roadmaps"   1. "Do you agree to Describe if the proposed solution produces a documented lifecycle including information on currency, general availability, and support (end of service life and end of support) for all supplier provided or managed IT solutions and technologies? Note:  See COV Technology Roadmaps for more information. 2. Documenting all versions of software that their services consume or provide. This includes all software that the service providers will be used to host, develop, support, test, and deploy their IT solutions (operating systems, languages, databases, editors, etc.). Note:  This requirement does not apply to SaaS (addressed by ECOS process) 3. Producing and maintaining defined and VITA-approved baselines for all supported technologies for all IT solution and technologies provided or managed by the supplier.   The baseline documentation shall include:  Note:  Examples of baselines are Center for Internet Security (CIS) and Department of Defense (DoD) Security Technical Implementation Guides (STIGs) |
| *17. Additional Security and Cloud Requirements* | To remain in compliance with VITA’s IT Security and Cloud Hosting Policies, Standards, and Guidelines, you will need to add our requirements for security and cloud hosted solutions into the appropriate tab or section of your requirements document. Insert the questions in the far righthand column to comply with our additional security and cloud hosting requirements. | **x** | **x** |  |  | 1. Numerous solutions are offered as cloud platforms/services or have cloud options. Executive branch agency procurement of solutions with cloud elements require that the agency seek VITA cloud approval before procurement, including potential COVRamp assessment, agreed Cloud Terms and ongoing oversight. Describe the process for ensuring that VITA cloud approval has been obtained before a purchase order has been placed. 2. Describe whether the proposed cloud solution is a Software as a Service (SaaS) delivery model or a Platform as a Service (PaaS) delivery model. 3. Describe whether the proposed solution is a public, private, government, or hybrid cloud model. 4. Describe all available models and ensure pricing response in Exhibit B includes offered options. 5. Describe whether the proposed solution allows for agency hosting. Elaborate on the advantages and disadvantages of offsite and onsite hosting that the solution offers. 6. Describe whether the proposed cloud solution is FedRamp authorized. If so, describe the FedRamp level of certification (low, moderate, or high). 7. "The proposed Solution shall comply with all Customers’ individual Information Security Policies and applicable Federal standards (e.g., FedRAMP, CJIS, FISMA,PCI, ISO27001, FERPA, FTI (IRS PUB-1075), SSA, HIPAA-HITECH). 8. If proposed solution does not comply, please provide details that specify the Standard/Policy and how Supplier's solution does not comply.” 9. Describe whether the proposed cloud solution relies on third-party partners or subcontractors and elaborate on the third-party partners/subcontractors required as applicable. 10. Describe whether the proposed cloud solution allows a customer to solely manage its own encryption keys or if the function must remain with the solution provider. 11. Describe whether the proposed solution has a documented encryption key management process. 12. Describe whether the proposed solution uses standard data encryption techniques. If so, define in detail at all levels. Include, if applicable, what additional options may be added. 13. Describe how the proposed solution addresses security. Provide an attachment to detail the levels of security inherent in your application and what options can be added to support unique customer requirements to ensure confidentiality. 14. Given the desire for electronic payment, with approval from DOA, please describe in detail how this process will work and what safeguards and security measures will be employed to ensure audit compliance. 15. Describe whether the solution incorporates security and privacy recommendations and best practices from the National Institute Standards and Technology (“NIST”). 16. Supplier's solution shall have the ability to produce custom financial information and reporting as required to ensure proper accounting and financial management by VITA and Authorized Users, in compliance with the pronouncements of the Governmental Accounting Standards Board (GASB), with particular emphasis on Statements No. 87 ""Leases"" and No. 96 ""Subscription-Based Information Technology Arrangements. Examples may include but are not limited to: asset/inventory management for leased equipment, discount/interest rates for leases, inventory management for software licenses including coverage terms, etc. For more information see: <https://www.gasb.org/standards-and-guidance/pronouncements> |
| *18. Cloud/*  *Software as a Service (SaaS) requirements, as applicable* | The two links below provide policy, procedures, guidance, recommended language and the required COV RAMP Security Assessment form for a solicitation/contract that may or will be for Cloud/SaaS solutions.  <https://www.vita.virginia.gov/procurement/policies--procedures/procurement-tools/>  The COV Ramp Procedure Checklist can be found at the following: <https://www.vita.virginia.gov/procurement/policies--procedures/procurement-tools/>  If not already included in your solicitation/contract , Additional Cloud Terms and Conditions (“Cloud Terms”) must be included in your solicitation/contract and may be obtained by sending a request to [scminfo@vita.virginia.gov](mailto:scminfo@vita.virginia.gov)  Any changes to the Cloud Terms and Conditions must be reviewed and approved by the VIT. Cloud Sourcing Team and Enterprise Services**.** Your agency will need to submit a service request in the VITA service portal for a “Cloud Sourcing Specialist” for consulting services (not full COV RAMP Oversight) in order to trigger a review of the Cloud Terms. The service request should be submitted when the agency determines which suppliers are moving into the negotiation phase. The link to submit a request for Cloud Sourcing Specialist services to review the Cloud Terms can be found below:  <https://vccc.vita.virginia.gov/vita?id=sc_cat_item&sys_id=bf4c2d69dbc46f40e312748e0f961932>  After you have made the request, please copy/paste the generated RITM number and send it to: [sonja.headley@vita.virginia.gov](mailto:sonja.headley@vita.virginia.gov) and [susan.siegfried@vita.virginia.gov](mailto:susan.siegfried@vita.virginia.gov) (VITA’s Cloud Sourcing Specialists) in an email. | **x** | **x** |  |  |  |
| *19. U.S. Department of Homeland Security* | No contract award can be made to any Supplier, for any Supplier products or services provided by Supplier, that are included on the U.S. Department of Homeland Security prohibition list in accordance with §2.2-2009 of the Code. | **x** | **x** |  |  | Add this language to your solicitation, if you are not using VITA's Core Terms link. "No contract award can be made to any Supplier, for any Supplier products or services provided by Supplier, that are included on the U.S. Department of Homeland Security prohibition list in accordance with §2.2-2009 of the Code." |

## **Contract Requirements:**

| *Area* | *Objective* | *Required for All IT Solicitations and Contracts* | *Required for High-Risk Only Solicitations and Contracts* | *Agency to Complete Prior to VITA Review*  *(Agency to enter the Page Number, Section, and Subsection from their solicitation or contract where the minimum requirement in column 1 is located)* | *VITA Comment or Direction* | *Sample Language/Examples* |
| --- | --- | --- | --- | --- | --- | --- |
|  |  |  |  | *Page Number, Section, Subsection, etc.* |  |  |
| *1. Appropriateness of the solicitation’s/*  *contract’s terms and conditions* | Contract contains terms and conditions that comply with the Virginia Public Procurement Act (VPPA), applicable Virginia law and policy, applicable VITA Policies, Standards and Guidelines, and industry best practices.  **NOTE: This does not include redlines made by your agency and the Supplier during negotiations that significantly alter the contract language, which will require a review for appropriateness prior to award.** | **x** | **x** |  |  | ***For IT contracts, use of VITA’s IT solicitation and contract templates ensures that the appropriate terms and conditions are included.***  ***NOTE: Contracts for Major IT Projects, and Solicitations and Contracts for High-Risk procurements, must be reviewed by your OAG for legal sufficiency*** |
| *2. Complies with applicable state law and policy* | This will be accomplished by including statutory terms in the solicitation and contract. This is done by incorporating VITA's Mandatory Terms and Conditions: [Mandatory Contract Terms | Virginia IT Agency](https://www.vita.virginia.gov/procurement/contracts/mandatory-contract-terms/)  The VITA Mandatory Terms link should be incorporated by reference. It is recommended that you perform a review to ensure that your contract’s full text General Provisions and Special Terms do not create conflicts or redundant terms. Special attention must be given to mandatory requirements found at the URL for IRS Publication 1075 whenever your procurement involves Federal Tax Information (FTI). The full text of Exhibit 7 of IRS Publication 1075 must be included in your solicitation and contract for any solicitation or contract where FTI will be shared with a supplier. | **x** | **x** |  |  | ***The following language from our Required IT Terms and Conditions must be included in your Contract:***  ***Incorporated Contractual Provisions***  ***In addition to the terms, conditions, and obligations of this Contract, Supplier agrees to VITA “Mandatory Contract Terms” which consist of the:***  ***• “Core Contractual Terms”, and***  ***• “Mandatory Internal Revenue Service (IRS) Publication 1075 (required for FTI data only)”***  ***These Mandatory Contract Terms are set forth at the following URL and incorporated into this Contract by reference:*** [***https://www.vita.virginia.gov/procurement/contracts/mandatory-contract-terms/***](https://www.vita.virginia.gov/procurement/contracts/mandatory-contract-terms/)***.***  ***Supplier agrees that non-compliance with the above-referenced Mandatory Contract Terms, including Exhibit 7 of IRS Publication 1075 which is incorporated by reference, may be deemed, solely by Agency, as a material breach of the applicable Order or SOW or of the Contract. Supplier is responsible for verifying the correct and current version of this IRS publication and related safeguarding terms language and acknowledges that Agency issuing the Order or SOW will be held harmless.***  ***The terms and conditions set forth in documents posted at the URL above, and any successor URL(s), are subject to change pursuant to action by the legislature of the Commonwealth, change in Agency policy, or change to IRS Publication 1075. If a change is made to any of the Mandatory Contract Terms documents, a new effective date will be noted in the applicable document title. Supplier is advised to check the URLs, or their successors, periodically.*** |
| *3. Front Loading* | Your agency should avoid over allocating funds and resources for your project at the beginning of the project's lifecycle. This ensures that each key deliverable receives the necessary resources to be rendered complete and acceptable according to initial service delivery expectations. | **x** | **x** |  |  |  |
| *4. Milestone Plan* | It is important that your project Requirements include a Milestone Plan with specific and granular milestones/deliverables. A milestone plan defines critical project decision points, assigns target completion dates to each, and provides a clear schedule of events wherein all deliverables crucial to project success will be met and accepted. A milestone plan also provides your agency the ability to leverage enforcement provisions in the case of consistent nonperformance against the agreed-upon milestones and Schedule. Consider including payments tied to the Supplier meeting prescribed milestones or timely, accepted deliverables. In order to incentivize the Supplier, withhold 10-20% from the milestone payments. After final acceptance, the retained amount will be paid to the Supplier. | **x** | **x** |  |  | ***Add the following language to the Invoicing section of your IT Contract, if applicable:***  ***All invoices will include a 20% withhold pending final Acceptance of the prescribed project Milestones. Supplier shall invoice the total retained amount with their final invoice.*** |
| *5. Performance Metrics* | It is required that distinct and measurable performance metrics are included in the solicitation and contract. Performance measures should reflect the most critical aspects of service provision, and have the ability to capture data on Supplier performance against the agreed upon service provision expectations. |  | **x** |  |  | For guidance on creating distinct and measurable performance metrics, please contact [scminfo@vita.virginia.gov](mailto:scminfo@vita.virginia.gov). |
| *6. Clear enforcement provisions, Remedies and Incentives* | It is required that very clear and specific enforcement provisions are included in the solicitation and contract to describe how your agency will implement and enforce all performance requirements.  Intermediate remedies for breach or sub-standard performance should be included to give agency appropriate leverage with supplier. Structure the milestone and payment schedules on the project's governance needs and/or the possible need to sever the contract should the Supplier fail to meet prescribed milestones. If your contract is performance based, include measurable service levels, as well as distinct and measurable financial or contractual remedies, to ensure maximum Supplier performance. Remedies should be based on industry standards and best practices. Before writing your RFP, conduct preliminary market research to determine the appropriate performance remedies and incentives. |  | **x** |  |  | For further guidance on creating clear enforcement provisions, please contact [scminfo@vita.virginia.gov](mailto:scminfo@vita.virginia.gov).  Examples of remedies include:  Term and Termination: AGENCY has created language outlining, in clear terms, the grounds for Termination of the Contract or Agreement. This language is designed to provide your agency with ample leverage to terminate the Contract or Agreement, in whole or in part, in the case that the Contract does not provided maximum value to the Commonwealth. Section 3 of our IT Contract terms and conditions enumerate the circumstances under which your agency can legally terminate the Contract or Agreement  Financial Remedies in the Case of Non-Performance/Deficient Performance of Prescribed Performance Metrics: Your agency should include financial remedies and incentives that are tied to the fulfillment of the Performance Measures outlined in the Solicitation and Contract. Financial Remedies can include a credit of X% of the monthly invoice following a period of deficient or non-performance, a charge of $X/instance that performance measures are not met, etc. |
| *7. Reporting requirements* | Your agency must include reporting as part of the project Requirements, outlining, in clear terms, how often, in what format, and what data should be included in the generated reports. Reporting requirements aid in the continuous improvement of service provision over time, and provide an opportunity to increase accountability with respect to the agreed-upon service provision expectations. | **x** | **x** |  |  |  |
| *8. Intellectual property* | Supplier has right to convey title/license free of claims of infringement, conversion by third parties. | **x** | **x** |  |  |  |
| *9. Intellectual property* | Supplier will indemnify, defend and hold CoV harmless against claims of infringement by third party. Indemnification is unilateral. The Commonwealth does not indemnify suppliers. | **x** | **x** |  |  |  |
| *10. Intellectual property* | Licenses should be perpetual, worldwide and transferable. | **x** | **x** |  |  |  |
| *11. Intellectual Property* | Software licenses should allow for:   1. Use by agents/contractors; 2. Transferrable (ideally unlimited or at least among CoV agencies and to third party agents solely to serve CoV).   If using a Value-added Reseller (VAR), then use a License Agreement Addendum with the VAR’s End User License Agreement (EULA) or shrink wrap license.” The LAA may be found at the following link: <https://www.vita.virginia.gov/procurement/policies--procedures/procurement-forms/> | **x** | **x** |  |  |  |
| *12. Limitations of liability* | Supplier's liability for indemnification, confidentiality, security and data privacy and security obligations must be sufficient to protect both direct and consequential damages, in addition to commercial liability provisions. In "major IT procurements", the liability for indemnification, confidentiality, security, and data privacy and security obligations is limited to twice the aggregate value of the Contract. | **x** | **x** |  |  | ***[[NOTE: if this procurement is for more than $1M or has been designated as a “major IT project” by the CIO, then item iii below must be deleted]]*** Supplier agrees that it is fully responsible for all acts and omissions of all Supplier Personnel, including their negligence, gross negligence, or willful misconduct.  To the extent permitted by law, Supplier’s indemnification obligations and liability will not exceed, in aggregate, twice the value of the Contract. For purposes of this Contract, “value of the Contract” means the cumulative obligations under this Contract, including any orders, SOWs, or Change Orders thereto.  The limitations on liability set forth in this section will not apply to liability arising from any combination of the following:  i. any intentional or willful misconduct, fraud, or recklessness of Supplier or any Supplier Personnel; or  ii. claims for bodily injury, including death, and damage to real property or tangible property resulting from the negligence of a Supplier or any Supplier Personnel. |
| *13. Escrow* | Escrow is optional for software based on criticality of the application, but, if included, SCM will review the escrow agreement. Source code should be released if Supplier:   1. Enters bankruptcy (include reference to §365 of Bankruptcy Code to keep outside of trusteeship); 2. Becomes insolvent; 3. Abandons support for the application. 4. Is found to be in material breach of the Contract   For cloud-based/Software as a Service (SaaS) solutions, Application Escrow is not required unless supplier is developing custom work for agency, but Content Escrow is required. | **x** | **x** |  |  |  |
| *14. Warranties* | In addition to commercial warranties, the contract should include IT-specific warranties and a prescribed Warranty Period. During the Warranty Period, Supplier should provide corrections free of charge. Examples of IT warranties include:   1. Ownership of intellectual property (see above); 2. Absence of malicious code in software; 3. Non-infringement; 4. Disclosure of open source; 5. Requirements for Coverage; 6. Performance of Obligations; 7. Conformance of all Documentation and Deliverables   The IT Warranty Period should begin upon Acceptance of the final Deliverable. | **x** | **x** |  |  | See Required IT Terms and Conditions – General Warranty for the terms to be included in your Contract |
| *15. Transition of Services* | As a best practice, contracts for technology services should provide all reasonable transition assistance required to support migration to a successor service or platform after the current contract has been terminated or has expired. Typically, transition periods last up to 12 months, at the customer's discretion, but the term and scope of such a period are mission-dependent. | **x** | **x** |  |  |  |
| *16. Maintenance/*  *upgrades* | Software, hardware and occasionally service agreements that generate deliverables will require ongoing maintenance and support. Support provides trouble resolution, while maintenance typically includes product upgrades released by the vendor to its customers. Support typically includes response and resolution intervals with escalating remedies based on factors, such as repetition and severity. Support is often priced as a percentage of the purchase price; it should be calculated at the price after any discounts and typically falls in the range of 10%-20% of the purchase price. Although typically suppliers are allowed to increase support and maintenance costs, such increases should be capped on a year-to-year basis, using an absolute percentage cap (3%-5%) or inflation index. | **x** | **x** |  |  |  |
| *17. Supplier Performance Measures (contract provision)* | All “high-risk” contracts shall include the required language in the far right column. |  | **x** |  |  | ***The following language must be included in all high-risk contracts:***  “AGENCY has developed a set of performance measures relating to Supplier’s performance under this Contract and which are attached hereto and incorporated by reference as Exhibit I. Supplier agrees to be bound by and perform its obligations under this Contract pursuant to these performance measures. The remedies for Supplier’s failure to meet the performance measures are set forth in Exhibit I.  Supplier and AGENCY agree to meet within 30 calendar days of the Effective Date of this Contract to set forth the methodology and designated personnel of each Party to provide, collect, monitor, and report the performance measures data and mutually agreed-to incentives and remedies. Supplier agrees to provide to AGENCY a report of its performance against the performance measures no less than once every six (6) months throughout the Contract Term. Supplier’s report must include a comparison of its performance measures against the agreed-to targets and, in the event of any shortfall by Supplier, proposed remediation measures. Supplier will report its performance for the Contract in aggregate and for each order or SOW over $1,000,000 for applicable Authorized Users. Any instances of Supplier non-compliance will be recorded in Supplier’s Contract file and shared with Contract stakeholders. Supplier further agrees that any degradation or failure of Supplier’s performance obligations may result in failure to renew the Contract, termination for convenience of the Contract or termination for breach of the Contract. AGENCY will have all rights and remedies available at law.“ |
| *18. Cloud/*  *Software as a Service (SaaS) requirements, as applicable* | The two links below provide policy, procedures, guidance, recommended language and the required COV RAMP Security Assessment form for a solicitation/contract that may or will be for Cloud/SaaS solutions.  <https://www.vita.virginia.gov/procurement/policies--procedures/procurement-tools/>  The COV RAMP Procedure Checklist can be found at the following: <https://www.vita.virginia.gov/procurement/policies--procedures/procurement-tools/>  If not already included in your solicitation/contract , Additional Cloud Terms and Conditions (“Cloud Terms”) must be included in your solicitation/contract and may be obtained by sending a request to [scminfo@vita.virginia.gov](mailto:scminfo@vita.virginia.gov) or [enterpriseservices@vita.virginia.gov](mailto:enterpriseservices@vita.virginia.gov)  Any changes to the Cloud Terms and Conditions must be reviewed and approved by the VITA. Cloud Sourcing Team and Enterprise Services**.** Your agency will need to submit a service request in the VITA service portal for a “Cloud Sourcing Specialist” for consulting services (not full COV RAMP Oversight) in order to trigger a review of the Cloud Terms. The service request should be submitted when the agency determines which suppliers are moving into the negotiation phase. The link to submit a Cloud Terms review request can be found below:  <https://vccc.vita.virginia.gov/vita?id=sc_cat_item&sys_id=bf4c2d69dbc46f40e312748e0f961932>  After you have made the request, please copy/paste the generated RITM number and send it to: [sonja.headley@vita.virginia.gov](mailto:sonja.headley@vita.virginia.gov) and [susan.siegfried@vita.virginia.gov](mailto:susan.siegfried@vita.virginia.gov) (VITA’s Cloud Sourcing Specialists) in an email. | **x** | **x** |  |  |  |
| *19. Required Service Level Reporting in eVA* | Effective July 1, 2020, all state public bodies shall submit information on eVA for each high-risk contract, and eVA will serve as a centralized resource for all state public bodies on information related to the performance of high-risk contracts. Such information shall include, but not be limited to, the following information on each high-risk contract:   1. Scheduled contract performance dates and actual contract completion dates; 2. Contract award value and actual contract expenditures; and   Information on vendor performance, including any cure letters, formal complaints, and end-of-contract evaluations. |  | **x** |  |  |  |
| *20. Contract Management* | Per Section 2.2-4303.01 of the Code of Virginia, as enacted, all high-risk contract managers must be qualified, and possess demonstrable experience in contract management in order to be assigned to a high-risk contract. Your agency's chief procurement officer must communicate the scope of work necessary to effectively manage the high-risk contract to the designated contract manager when they assume their role. |  | **x** |  |  |  |

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| NOTES:   1. This matrix provides guidance on those areas particular to information resource management that will be the focus of VITA Supply Chain Management’s (SCM) review of RFP and final contract documents under delegated procurements. 2. Additional guidance and sample solicitation (RFP) and contract language may be provided in the form of redlines on documents submitted to SCM 3. This review is not intended to provide legal advice on general contract or RFP provisions. Questions of law or legal sufficiency should be submitted to the agency's supporting unit in the Office of the Attorney General. An OAG Legal sufficiency review is required prior to CIO approval for release of high-risk solicitations, award of high-risk contracts, and award of contracts for Major IT Procurements, so you should make every effort to ensure the quality of the solicitation with that purpose in mind. Please allow time in your procurement schedule for this. 4. Please browse the VITA SCM website at the URL below for access to additional IT procurement guidance, tools and the IT Procurement Manual: <https://www.vita.virginia.gov/procurement/buy-it-manual/> 5. If you have other procurement-related questions please email them to: [scminfo@vita.virginia.gov](mailto:scminfo@vita.virginia.gov) 6. Procurement leads should not alter any information included in this table except for when an agency response is required. All other fields should remain the same. |