

Garner negotiation results att to 031611em / returned by att to 03/1711 em

As Per Discussions held with Garner (Bobbie Risner, General Counsel, and Keith Laub, Disaster Operations, and VDEM (Jason Eaton, Peter Rigterink, Duane Sheppard) on 15 March, 2011

SUPPLEMENT OF 03/31/11

As Per Discussions held with Garner (Michael E. Attaway-Executive Vice President, Bobbie Risner-General Counsel, Keith Laub-Disaster Operations, Chris Walker-Disaster) and VDEM (Peter Rigterink and Duane Sheppard) on 31 March 2011

Garner Exceptions (setting forth only specific items addressed on 03/31/11)

4. Automobile Liability - \$1,000,000 per occurrence. (Only used if motor vehicle is to be used in the contract.)

Garner agrees to leave all General Terms and Conditions as written +/-+++

BkR note as of 03/16/11: though Commonwealth will not agree to change 'per occurrence' to 'combined single limit', GESI's coverage is combined single limit and this is how the coverage will show on GESI's certificate of insurance.

BkR note as of 03/31/11: Garner reiterated that Garner's auto policy is underwritten CSL, not per occurrence, with Commonwealth indicating this is acceptable

13) Page 22, Section 27, Strike in first sentence "sole".

RFP section in question:

INDEMNIFICATION: Contractor agrees to indemnify, defend and hold harmless the Commonwealth of Virginia, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the contractor/any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the sole negligence of the using agency or to failure of the using agency to use the materials, goods, or equipment in the manner already and permanently described by the contractor on the materials, goods or equipment delivered.

VDEM will address this with the Attorney General's Office. Garner will review with Mr. Attaway.

*BkR note as of 03/16/11: Per follow up with Mr. Attaway, GESI continues to assert this proposed revision.

BKR note as of 03/31/11: The Commonwealth's Attorney General will not agree to change the provision in any respect. As such, Garner will agree to the provision.

14) Page 22, Section 27., Insert at the end of Paragraph “Contractor will not assume the liability, fault or negligence of agency, another individual or entity in whole or part for any reason or claim.”

RFP section in question:

INDEMNIFICATION: Contractor agrees to indemnify, defend and hold harmless the Commonwealth of Virginia, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the contractor/any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the sole negligence of the using agency or to failure of the using agency to use the materials, goods, or equipment in the manner already and permanently described by the contractor on the materials, goods or equipment delivered. Contractor will not assume the liability, fault or negligence of agency, another individual or entity in whole or part for any reason or claim.”

VDEM will address this with the Attorney General’s Office. Garner will review with Mr. Attasya. *BkR note as of 03/16/11: Per follow up with Mr. Attaway, GESI continues to assert this proposed revision.

BkR note as of 03/31/11: The Commonwealth’s Attorney General will not agree to change the provision in any respect. As such, Garner will agree to the provision.

VDEM agrees to strike Page 22 section 30

16) Page 23, Section 32.A, **Limitation of Liability:** strike last sentence which states: “This limitation of liability will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or negligence on the part of the contractor; or (c) circumstances where the contract expressly provides a right to damages, indemnification or reimbursement.

Garner will address this with Mike Attaway and contact Mr. Rigerink *BkR note as of 03/16/11: Per BkR follow up with Mr. Attaway, Garner will agree to the provision is revised as follows: ‘This limitation of liability will not apply, however, to liability arising from the following when due to, and to the extent of, Garner’s negligence or willful misconduct: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or negligence on the part of the contractor; or (c) circumstances where the contract expressly provides a right to damages, indemnification or reimbursement.’

BkR note as of 03/31/11: The Commonwealth’s Attorney General will not agree to change the provision in any respect. As such, Garner will agree to the provision.

***Page 23, Section 32.B, BkR struck the same language in notes, but missed asserting in exceptions page. GESI’s position is the same for the last sentence appearing in 32.B.*

BkR note as of 03/31/11: The Commonwealth’s Attorney General will not agree to change the provision in any respect. As such, Garner will agree to the provision.

20) Page 27, Section 58., strike the third sentence which states: “Material costs shall be billed at contractor’s actual invoice costs (contractor shall furnish copies of invoices for all materials) or discount off the list price, whichever is specified in the contract.”

Garner agrees to remove exception but will provide all mark up cost with pricing quote.+++BkR note as of 03/16/11: Garner understands that the Commonwealth will accept marginalized cost proposal for approval in advance notwithstanding the amount(s) actually reflected in material invoices. Garner, however, is not agreeing to disclose or turnover information related to Garner’s proprietary processes / confidential information.

BkR note as of 03/31/11: Garner and Commonwealth discussed that for any information which could be kept confidential, it is Garner’s burden to so designate any such matter; however, the Commonwealth must comply with FOIA requests and some information, including pricing, may not be confidential. Garner additionally stated its recognition it must provide customary information in connection with audits.