

REQUEST FOR PROPOSALS FOR JOB ORDER CONTRACTING SERVICES  
At

INFORMATION FOR OFFERORS:

1. (*Client*) intends to procure a Job Order Contract (JOC) to provide indefinite delivery, indefinite quantity construction services for minor construction, renovation, repair and alteration projects for schools, administrative, sports and other facilities located in (*location*) as defined in these Contract Documents. These services will be priced based upon a coefficient (multiplier, e.g. .95 or 1.10) applied to pre-described and pre-priced tasks contained in the Unit Price Book (UPB)
2. The Unit Price Book (UPB) for this contract is the current edition of the RS Means Facilities Construction Cost Data. The (*applicable city, state*) Weighted Average City Cost Index and the prices in the "Total, incl. O &P" column will be used. The total value of the applicable line items and their quantities will be multiplied by the City Cost Index and the designated coefficient to determine the lump sum cost of job orders. The then current version of RS Means Facilities Construction Cost Data will apply upon execution of any options.
3. The base term is (#) year(s). At its sole discretion, the (*client*) may award up to (#) optional terms of (#) year each. (*Note 1*)
4. The minimum guaranteed annual value of the base term, and each option, if exercised, is \$100,000 per contract term. The maximum annual volume is estimated not to exceed ( \$ ) per contract year or ( \$ ) over the total period of performance of (#) years. Should (*client*) commit the base year(s) full amount earlier than end of base period (*client*) may opt to move direct to the first option year. This is an estimate only and assumes the contractor's performance meets the highest possible standards of quality, responsiveness, customer satisfaction and cost reasonableness. The (*client*) reserves the right the use other methods as desired and necessary to accomplish similar work. **NO VALUE ABOVE THE MINIMUM VALUE IS GUARANTEED.** (*Note 2*)
5. The Contractor will not be required to accept any task orders below \$2,000 or above \$1M. (*Note 3*)
6. Items that cannot be found in the UPB are considered "non pre-priced". If an item basically the same in "form, fit and function" can be found in the price book, it can be used to price the line item, if appropriate rational and documentation is provided in the final line item proposal. If a like item cannot be found, the contractor will

*Note 1:* Although most JOC contract terms are 1 base-year plus 4 1-year options, there are advantages & precedent for longer base years.  
(1) Attracts higher quality bidders.  
(2) Costs can be amortized over longer period.  
(3) Better quality people willing to relocate for guaranteed longer period

*Note 2:* JOC related work amounting to \$5M per year appeal to the larger, better resourced, more experienced firms like KBR. The "maximum annual volume" is not binding to that amount.

*Note 3:* Client can set the maximum per-year based on \$ available, work required & applicable procurement regs. However, KBR can perform any size task. Client can also set the maximum task order dollar value.

obtain three quotes, provide them to the (*client*) representative who will negotiate an equitable price with the contractor. Once negotiated, this price can be added to the UPB and will no longer be non pre-priced. The contractor's coefficient for pre-priced items does not apply to non-pre-priced items.

7. The AIA MASTERSPEC Specifications and all current national local codes will apply to the work done under this contract.
8. **A MANDATORY PRE-PROPOSAL CONFERENCE WILL BE HELD ON (*date*) AT (*time*) AT (*place*).**
9. Proposals will consist of a Past Performance Volume, a Technical Volume, and a Cost Volume. The Past Performance Volume will provide information on the Contractor's past performance and relevant experience. The Technical Volume will provide information on the bidders plan to manage the (*client*) JOC. The Cost Volume will provide the Contractor's coefficients for normal hours (M-F, 7am to 5pm) non-standard hours (any times other than the normal hours when the (*client*) directs the Contractor to work), and non-pre-priced coefficient. **INFORMATION OBTAINED FROM ANY VOLUME OF THE PROPOSAL, OR ANY OTHER RELEVANT SOURCE, MAY BE USED IN THE EVALUATION.**
10. Local License requirements.
11. **PROPOSAL SECURITY IN THE AMOUNT OF \$25,000 IS REQUIRED FOR SUBMISSION WITH THE PROPOSAL.** If an offeror, (a) withdraws his bid within 60 days after the date and time fixed for the opening of proposals in the Request for Proposals, or, (b) fails or refuses to execute the Agreement, or other required forms within ten (10) days after the same are presented for signature, or (c) fails or refuses to furnish properly executed Performance and payment Bonds, and certification of required insurance upon the execution of the Agreement, (*client*) may award the work to another offeror or may issue a new Request for Proposal. The Security Bond, when required is forfeited, if the proposal is withdrawn after the opening, or Contract documents are not executed in accordance with the above requirements.
12. **THE CONTRACTOR WILL FURNISH AND PAY FOR BONDS AS FOLLOWS:**
  - a. Bonds are to be supplied for each Job Order in accordance with b and c below:
  - b. Job Orders exceeding \$25,000 require a Payment bond only
  - c. Job Orders exceeding \$100,000 require Payment and Performance Bonds. (*Note 4*)
  - d. Single payment and performance bond for 100% of the maximum annual contact value.

*Note 4:* Bonds are very expensive now. To keep client costs down recommend minimizing bonding requirements. Recommend bond only about 20% of the yearly max to cover the work underway at any one time. The JOC contractor realizes additional work if you're satisfied with the previous, so the bonding stick is rarely necessary, and almost never used.

## PROPOSAL INSTRUCTIONS:

1. Proposals will consist of a Past Performance Volume, Technical volume, and a Cost Volume. The Past Performance Volume will provide information on the Contractor's past performance and relevant expertise. The Technical Volume will provide information on the Bidder's plan to manage the (*client*) JOC. The Cost Volume will provide the Contractor's coefficients for normal hours (M-F, 7AM to 5PM), non-standard hours (any times other than the normal hours when the (*client*) directs the Contractor to work), non-prepriced item coefficient. INFORMATION OBTAINED FROM ANY VOLUME OF THE PROPOSAL, OR ANY OTHER RELEVANT SOURCE, MAY BE USED IN THE EVALUATION.
2. Each volume should be placed in loose-leaf binders, securely wrapped and marked Job Order Contract, RFP #, Past Performance Volume, Technical Volume or Cost Volume, as appropriate.
3. The Past Performance Volume should contain the following:
  - a. List of contracts completed within the last five years, or currently in progress, involving the use of multiple subcontractors on multiple projects. The following information should be provided on each contract:
    - (1) Customer name and location of contract
    - (2) Type of Project (JOC, hard dollar bid, etc.)
    - (3) Start date and completion date
    - (4) Name, Phone Number, address, Fax Number, E-mail address, and position of primary point of contact (You may provide a secondary point-of-contact, if desired.)
  - b. Provide a matrix showing each contract completed within the last five years, or currently in progress, along the vertical axis; and across the horizontal axis list indicate those contracts involving the following functions by checking, "x"ing, or filling in the applicable blocks:
    - (1) JOC, SABER, DOC, and other delivery order, task order, or job order, type construction services.
    - (2) Work on school or other educational facilities
    - (3) Work on multiple projects simultaneously
    - (4) Working with multiple subcontractors simultaneously
    - (5) Partnering as a member of a team consisting of the client, its customers, the contractor, and his employees and subcontractors

Do not leave out any relevant projects! The (*client*) reserves the right to check references other than those submitted.

4. The Technical Volume should briefly explain how you plan to staff and operate the project. Present your project management and subcontracting procedures and staffing in the same order as the applicable evaluation criteria in paragraph 6.

*If scores are very close the (client) reserves the right to request written clarifications and/or oral presentations of the top rated proposers. If used, instructions will be provided to those selected for further consideration. These presentations will be evaluated and scores adjusted accordingly.*

5. The Cost Volume

- a. The bid coefficients should include all costs other than those contained in the pre-priced unit prices, including, but not limited to: direct cost of doing the work; labor burden overhead, G&A; profit; project office expenses; mobilization and close-out costs of contract; bonding costs; insurance compliance with environmental laws; protective clothing and equipment; computer equipment and software vehicles, maintenance, and fuel; and all contingencies in connection with performing the work. **NO ADDITIONAL PAYMENT WILL BE ALLOWED FOR ANY OF THESE ITEMS.**
  - b. Line Items in Division 1 of the UPB may not be used for the pricing of Job Orders, as these items are to be included in the bidder's coefficients. Specific exceptions may be authorized if there are project specific requirements, for example scaffolding man lifts, equipment rental, temporary construction.
  - c. (*Client*) will obtain all zoning and variances. The Contract is responsible for obtaining all required permits. (*Client*) will reimburse the Contactor in each task order for the actual costs of permits; therefore do not include the cost of permits in your coefficient.
  - d. Fill out the Bid Schedule signed by an officer of your company and include in your cost volume.
6. The (*client*) has delegated the evaluation of offers received for this solicitation to an evaluation committee. This committee will determine the overall best value to the (*client*) using the factors and weighting shown below, and make an appropriate recommendation to the (*client*).

Selection of the successful offer or will be based upon the evaluation and scoring of the following factors to determine the proposal which offers overall best value, price and other factors being considered, to the (*client*). (*Note 5*)

- a. PAST PERFORMANCE (the reputation of the vendor and the vendor's goods and services; the quality of the vendor's goods and services; the vendor's past relationship with the (*client*); and any other relevant factor that a private entity would

Note 5: This is the singular most important qualifying criteria. Recommendations with at least 5 years experience who can operate within the unique JOC environment and can understand the importance of the contractor/client partnership.

consider in selecting a vendor. (25 points)

- (1) The overall reputation of the offer or and his business operations
  - (2) The quality of the offeror's construction and other relevant services ability to meet schedules, operate with a minimum of disruption, and adhere to a budget.
  - (3) The past relationship of the offeror with (*client*) and other customers with particular emphasis on partnering, teamwork, communication, and cooperation.
  - (4) The offeror's ability to work with multiple small business subcontractors and provide mentoring and technical assistance as needed.
  - (5) The offeror's performance in meeting agreed upon goals for use of small businesses and businesses disadvantaged by social, economic, or physical factors.
  - (6) The offeror's performance in managing multiple projects with multiple subcontractors simultaneously.
  - (7) The offeror's safety record.
- b. RELEVANT EXPERIENCE (the extent to which the offer or is experienced in providing goods or services that can meet the (*client's*) needs) (20 points)
- (1) The offeror's experience in managing and delivery of JOC, SABER, DOC, and other Job order type construction services.
  - (2) The offeror's experience in working on school or other educational facilities
  - (3) The offeror's experience in working on multiple projects simultaneously
  - (4) The offeror's experience in working with multiple subcontractors
  - (5) The offeror's experience in partnering as a member of a team consisting of the client, its customers, the contractor, and his employees and subcontractors.
- c. PROJECT MANAGEMENT ABILITY (proposed personnel and methodology) (20 points)
- (1) Project Organization Chart and staffing approach
  - (2) Position Descriptions and resumes of proposed project organization
  - (3) Interface of Contractor's staff with the (*client*)
  - (4) Corporate Organization, their interface and support with this JOC project
  - (5) Job Order management to include: response to project request for proposals; planning and preparation of Job Order documentation, plans, scope of work, trades packages, construction details,

estimating, site supervision, turn-over packages and closeout.

- (6) Communication procedures with the (client)
- (7) Quality Control Program
- (8) Safety Program

d. SUBCONTRACTOR MANAGEMENT ABILITY (10 POINTS)

- (1) Plan for identifying, selecting, managing and assisting subcontractors
- (2) List of proposed contractors
- (3) Contingency planning for unsatisfactory subcontract work

(4) PROJECT PRICE AND TOTAL COST TO THE (CLIENT) (25 POINTS) (Note 6)

Note 6: Beware of choosing your contractor based strictly on low coefficient. RS Means or any other pricebook is elastic.

The cost estimate reflects the coefficient multiplied by the contractor's assembly of line items from the pricebook. Thus, the line items can actually drive a lower coefficient to a higher job costs.

- 7. The (client) reserves the right to reject any or all proposals in whole or in part, to waive technical defects, irregularities, and omissions if in its judgment the best interest of (client) will be served.
- 8. The original contract term is (#) year(s) from date of award. The (client) may exercise up to (#) additional (#) option years.
- 9. Written notice of intent to exercise options will be provided to the Contractor at least sixty (60) days before the expiration of each term.
- 10. The contractor will maintain, at own expense, adequate insurance coverage for protection from claims arising under the Workers Compensation Act, from claims for damages resulting from bodily injuries and damage to the property of others, and from claims for damages resulting from motor vehicle operation.

Minimum Insurance Requirements are as follows:

- Workers' Compensation – statutory benefits
- Employer's Liability - \$100,000 each accident, each employee
- Commercial General Liability - \$300,000 per occurrence and in aggregate annually
- Business Auto Liability Insurance - \$300,000 per occurrence

- 11. In signing the contract documents, the offerors are certifying the proposal is being made without any previous understanding, agreement, or connection with any person, firm, or corporation making a proposal for the same materials, supplies, equipment, and/or services, and is in all respects fair and without collusion and fraud.

- 13. Requests for additional information or clarification of specifications should be directed in writing to (name, address)

14. If you are an individual with a disability and require reasonable accommodation for participating in this proposal, please notify (name, phone number) by (date).

## SCOPE OF SERVICES TO BE PROVIDED

### **GENERAL INFORMATION:**

This is a fixed price, indefinite quantity type contract for the performance of a broad range of construction services to include minor construction, repair, renovations, alterations, and maintenance projects on an as-needed basis as may be required by (*client*). The specific work requirements will be identified in Work Orders to be issued by (*client*).

### DOCUMENTS:

The following documents shall be used in the execution of work under this Contract:

1. The Unit Price Book, the current edition of the RS MEANS Facility Construction Cost Data, contains pricing information for the description of work to be accomplished in the unit of measure specified.
2. AIA MASTERSPEC Specifications, August 2000 edition.
3. (*Client*) General Conditions
4. All relevant national, state, and Local laws, codes, and regulations

### WORK AUTHORIZATION ORDERING

With the exceptions of emergencies, and work required under this Contract shall be ordered by issuance of formal written Work Authorizations containing the approved Job Order Proposal and the (*client*) Purchase Order. The process will occur as follows:

1. As the need exists for performance under the terms of this Contract, the (*client*) Project Manager will notify the Contractor of an existing requirement.
2. Upon the receipt of this notification, the Contractor shall respond within two (2) working days, or as otherwise instruction by (*client*), (two hours in emergencies) by:
  - a. Visiting the proposed site in the company of the (*client*) Project Manager; or,
  - b. Establishing contact with the (*client*) Project Manager to further define the scope of the requirement.
3. Upon establishment of the scope of the individual requirement (*client*) shall issue a Request for Job Order Proposal. The Contractor shall then prepare a Job Order Proposal further defining and restating the scope a providing a line item proposal of the individual task, quantities and costs.
4. The Unit Price Book will serve as the basis for establishing the value of the work to be performed
5. The Contractor's proposal shall be submitted within five (5) working days unless otherwise specified by the (*client*)



6. Upon receipt of the Contractor's proposal, (client) JOC Project Manager will review the proposal for completeness and will reach agreement with the Contractor on pricing, schedule and all other terms, prior to issuance of a Work Authorization and Purchase Order.
7. The (client) will issue a formal Work Authorization that will contain the Job Order Proposal and the Purchase Order; establish the Statement of Work, Start Date, Price, and Schedule and will be the Contractor's Notice to Proceed
13. In the event (client) does not issue a Purchase Order after receipt of Contractor's proposal, (client) is not obligated to reimburse the Contractor for any costs incurred in the preparation of the proposal.
14. In the event of emergency requirements for service, the procedures above will be expedited upon receipt of a verbal Work Authorization by (*the Contracting Officer*), or designated representative. Work will commence as required and documentation will be provided as soon as possible.

#### SCHEDULING OF WORK:

1. The first day of performance will be the effective date specified in the Work Authorization. Any preliminary work started or materials ordered or purchased before the receipt of the Work Authorization will be at the risk and expect of the Contractor. The Contractor will diligently prosecute the Work to completion within the time set forth in the Work Authorization. The period of performance includes allowance for mobilization, holidays, weekend days, inclement weather, and cleanup, therefore claims for delay based on these elements will not be allowed. When the Contractor considers the work complete and ready for its intended use, the Contractor shall request (client) to inspect the Work to determine status of completion. When (client) determines the Work to be substantially complete, (client) will issue a Certificate of Substantial Completion with a list of items to be completed or corrected prior to final payment for the Purchase order. The Contractor shall proceed promptly to complete and correct items on the list.
2. Purchase of materials and equipment shall be made without interference with (client) operations and personnel
3. Furniture and portable office equipment in the immediate work area will be moved by the Contractor and replaced to its original location. If the furniture and portable office equipment cannot be replaced to its original location, (client) will designate new locations.
4. The Contractor shall take all precautions to ensure no damage will result from its operations to private or public property. All damages will be repaired or replaced by the contractor at no cost to (client)
5. The Contractor shall be responsible for providing all necessary traffic control, such as street blockages, traffic cones, flagman, etc., as required for each Purchase Order at no additional cost to (client). Proposed traffic control methods will be submitted to (client) for final approval.
6. The Contractor shall be responsible for obtaining all required permits. The Contractor will include the actual cost in the monthly invoices.

## QUALITY ASSURANCE/QUALITY CONTROL PROGRAM

The Contractor will submit, for (*client*) approval, a Quality Assurance/Quality Control Plan within fifteen (15) calendar days after Contract Award. This plan should address all aspects of quality control including responsibility for surveillance of work, documentation, trend analysis, corrective action and interface with (*client*) Inspectors.

## CONTRACTOR'S PROJECT GENERAL MANAGER:

The Contractor's Project General Manager will be knowledgeable in multiple disciplines including electrical, mechanical, HVAC, paving, landscaping, painting, roofing and plumbing. The Project General Manager's background and credentials must be acceptable to (*client*).

## JOC PROJECT SUPPORT REQUIREMENTS

1. Computer: The Contractor is to provide and maintain in an operational condition at least one computer system for Contractor JOC staff use. The Contractor will provide all installation, removal, repair, maintenance, and updates. Computer system repair, maintenance, update, or replacement action will be promptly initiated by the Contractor as needed; all such actions shall be completed and the affected computer system shall be fully operational within twenty-four (24) hours. The contractor will provide a communication link for connection of his computer to the (*client's*) Computer System.
2. Computer Software: The Contractor shall provide the following software for the field office and the (*client*) Project Office
  - a. The contractor will provide computer software that will provide the user with an automated version of the Unit Price Book items and price information, allow the user to select the desired Unit Price Book items and quantities from the automated listings, and based on these selections will extend and total the Unit Price Book costs for project proposals. At least one copy of this software will be provided to (*client*) after Contract Award.
  - b. The supplier of the JOC software may from time to time issue updates to, or replacements for the software. All changes and updates will be made by the contractor and a new copy of the software will be furnished to the (*client*) The Contractor shall promptly install the new software, at no additional cost to the (*client*), and shall provide (*client*) with computer printouts that adequately verify the incorporation of these changes.
  - c. The Contractor shall not alter, append, delete or otherwise modify the programming, Unit Price Book items, or prices contained in the JOC software, unless otherwise directed by the (*client*)
  - d. Each project proposal submitted by the Contractor shall contain a computer-generated printout of all proposed Unit Price Book items, quantities, extended prices, and total proposed cost.

## CONTRACTOR FIELD OFFICE:

1. The Contractor shall be required to furnish and maintain a field office within the boundaries of *(School District)*
2. Provision and payment of all utilities for the Field Office shall be the responsibility of the Contractor.
3. The Contractor shall be responsible for furnishing a copier, FAX machine, office furnishings and supplies and all other items necessary for the operation of the field office.

### *(CLIENT)* FURNISHED UTILITIES

*(Client)* shall provide, free of charge to the Contractor, utilities and toilet facilities that are available at each site for work performed under this Contract as follows:

#### 1. Water for Project Sites:

a. *(Client)* shall furnish to the Contractor from existing *(client)* facilities and without cost to the Contractor, a supply of water necessary for the performance of work under this Contract. The Contractor is responsible for determining the extent to which existing *(client)* water supply source is adequate for the needs of this contract.

b. All taps, connections, and accessory equipment required in making the water supply source available will be accomplished by and at the expense of the Contractor. All work in connection therewith shall be coordinated, scheduled, and performed as directed and approved by *(client)*. Said taps, connections, and accessory equipment shall be maintained by the Contractor in a workmanlike manner in accordance with the rules and regulations of the applicable jurisdictions. Upon completion of the Contract the removal of all taps, connections and accessories will be accomplished by and at the expense of the Contractor so as to leave the water supply source and facility in its original condition. Such removal shall also be subject to the approval of the *(client)*\_

#### 2. Electricity for Project Sites:

a. *(Client)* shall furnish to the Contractor from existing *(client)* facilities and without cost to the Contractor, electricity necessary for the performance of work under this Contract. Loudoun county Public Schools will in no case furnish or install any electrical facility or accessory for the purpose of this Contract. The Contractor is responsible to determine the extent to which existing *(client)* electrical facilities are adequate for the needs of this Contract.

b. All taps, connections, and necessary equipment required in making the electrical power available will be accomplished by and at the expense of the contractor. All work in connection therewith shall be coordinated, scheduled and performed as directed and approve by the *(client)*. Said taps, connections and accessory equipment shall be maintained by the Contractor in a workmanlike manner in accordance with the rules and regulations of the applicable jurisdictions. Upon completion of the Contract the removal of all taps, connections and accessories will be accomplished by and at the expense of the Contractor so as to level the electrical power source and facility in its original condition. Such removal shall also be subject to the approval of the *(client)*.

## 8.0 WORK BY *(CLIENT)*

(*Client*) reserves the right to undertake or award contracts for the performance of the same or similar type work as contemplated herein, and to do so will not breach or otherwise violate this Contract.

THE SCHOOL BOARD OF (CLIENT)  
(LOCATION)

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

(Vendor: The general rules and conditions which follow apply to all purchases and become a definite part of each formal solicitation, purchase order or other award issued by the Department of Purchasing, unless otherwise specified. Bidders or their authorized representatives are expected to fully inform themselves as to the conditions, requirements and specifications before submitting bids; failure to do so will be at the bidder's own risk and cannot secure relief on the plea of error.)

Subject to all state and local laws, policies, resolutions, regulations and all accepted rules, regulations and limitations imposed by legislation of the Federal Government, bids on all solicitations issued by the Department of Purchasing will bind bidders to applicable conditions and requirements herein set forth unless otherwise specified in the solicitation.

1. AUTHORITY\_-The Purchasing Agent has the responsibility and authority for issuance of invitations for bid, requests for proposal, negotiations, placing and modifying invitations, proposals, purchase orders and awards issued for the *client*. In the discharge of these responsibilities, the Purchasing Agent may be assisted by other staff. Any purchase order or contract made which is contrary to these provisions and authorities shall be of no effect and void and the School Board shall not be bound thereby.

All contact between offerors or prospective offerors shall be only with the Purchasing Agent or other designated employee of the (client). No offeror or potential offeror shall initiate or engage in any discussions with any other employee of the School Board or any member of the School Board while a solicitation is outstanding concerning the contents of such solicitation or with the intent to influence or interfere with the contract award authorized by and described in such solicitation. A violation hereof may result in the disqualification of such offeror.

DEFINITIONS

2. BID: The written offer of a bidder to provide specific goods or services at specified prices and/or other conditions specified in the solicitation.
3. COMPETITIVE NEGOTIATION: A method of contractor selection for professional and non-professional services.
4. COMPETITIVE SEALED BIDDING: A method of contractor selection which includes the following: issuance of a written Invitation for Bid detailing all requirements, conditions, and terms applicable to the procurement, public notice of the Invitation, public opening, evaluation, and award to lowest responsive and responsible bidder.
5. CONSTRUCTION: The building, altering, repairing, improving, or demolishing of any structure, building or highway and any drainage or dredging, excavation, grading or similar work upon real property.
6. CONTRACTOR: Any company, individual, firm, corporation, partnership or other organization to whom any award is made by the School Board.
7. COUNTY:
8. GOODS: All materials, printing, equipment, supplies and automated data processing hardware and software.

9. INFORMALITY: A minor defect or variation of a bid or proposal from the exact requirements of the Invitation to Bid or the Request for Proposal, which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.
10. INVITATION FOR Bid: The request which is made to prospective suppliers (bidders) for their bid on goods or services desired by the School Board. The issuance of an Invitation to Bid will contain or incorporate by reference the specifications and contractual terms and conditions applicable to the procurement.
11. NON-PROFESSIONAL SERVICES: Any services not specifically identified as professional services in the definition of professional services.
12. POTENTIAL BIDDER/OFFEROR: A person who, at the time a body negotiates and awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured under such contract, and who at such time is eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiations.
13. PROFESSIONAL SERVICES: Work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy, professional engineering or any other profession which the Legislature has so classified.
14. PUBLIC BODY: Any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty and empowered by law
15. PURCHASING AGENT: Purchasing Agent employed by the School Board
16. REQUEST FOR PROPOSAL: A method of competitive negotiation which will state the general terms for the goods or services which are sought to be procured. The RFP will specify the evaluation factors to be used and contain or incorporate by reference other applicable contractual terms and conditions.
17. RESPONSIBLE BIDDER/OFFEROR: A person who has the capability, in all respects, to perform fully the contract requirements and moral business integrity and reliability which will assure good faith performance, and who has been pre-qualified, if required
18. RESPONSIVE BIDDER: A person who has submitted a bid which conforms in all material respects to the Invitation to Bid.
19. SCHOOL BOARD:
20. SERVICES: Any work or labor by an independent contractor wherein the service rendered does not consist primarily of acquisitions of equipment or materials, or the rental of equipment, materials and supplies.
21. SOLICITATION: The process of notifying prospective bidders or offerors that the School Board wishes to receive bids or proposals on goods or services.
22. STATE:

## SPECIFICATIONS

23. QUESTIONS OR COMMENTS: Any information relative to interpretation of specifications and drawings shall be requested of the Purchasing Agent, in writing at least five (5) days before the opening of bids. Requests not received within five (5) days of the bid opening date, need not be considered unless the Purchasing Agent, in his or her sole discretion, deems it in the School Board's interest to do so. Any material interpretation made to prospective bidders will be expressed in the form of an addendum to the specifications which, if issued, will be sent to all prospective bidders no later than three (3) days before the date set for receipt of bids. Oral answers will not be authoritative. Bidders shall acknowledge receipt of any addenda in their bids. Failure to do so may cause the bid to be rejected as non-responsive.
24. BRAND NAME OR EQUIPMENT ITEMS: Unless otherwise provided in the Invitation to Bid, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named; it conveys the general style, type, character and quality of the article desired, and any article which the School Board in its sole discretion determines to be the equal of the specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended shall be accepted.
25. FORMAL SPECIFICATIONS: When an invitation to bid or solicitation indicates it is a "formal specification" (no substitute) or otherwise states that the article specified, and no other, shall be provided, then the bidder shall furnish the article in strict conformity with the specification and may not offer a purported equal or substitute. The bidder shall abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but will fully complete every part as the true intent and meaning of the specifications and drawings. Whenever a specification requires articles, materials, or workmanship to conform to laws, ordinances, regulations, building codes, underwriter laboratory standards, ASTM standards, or similar law or standards, the specification shall be construed to require the minimum acceptable standard allowed by the cited law or standard under the circumstances unless otherwise indicated.

## BID PROCESS

26. TIME FOR RECEIVING BIDS: Bids received prior to the time of opening will be securely kept unopened. The Purchasing Agent or a representative whose duty it is to open them, will decide when the specified time has arrived, and no bid received thereafter will be considered, unless the Purchasing Agent determines, in his or her sole discretion, that delay in receipt of the bid until after the specified time was the fault of the Public Schools, the bidder could not have obtained any undue advantage because of the delay, and consideration of the bid would not compromise the integrity of the bid system. No responsibility will be attached to the Purchasing Agent or representative for the premature opening of a bid not properly addressed, received, and identified.
27. BIDDERS PRESENT: At the time fixed for the opening of sealed bids their contents will be made public for the information of bidders and other interested parties, who may be present either in person or by representative. All bids will be opened at the time and place specified and read publicly and remain available for inspection in the Office of the Purchasing Agent during regular School Board business hours by bidders prior to award (unless a determination is made not to make an award) and by the general public after an award is made. The School System will provide each bidder a notification of award.

28. REQUESTS FOR PROPOSALS: Requests for Proposal are not opened publicly, although the Purchasing Office will release the names of those submitting proposals after the time for the receipt of the proposals has passed.
29. OMISSIONS AND DISCREPANCIES: Unless otherwise indicated, any specification for an item of equipment shall be interpreted to include not only the item of equipment specified, but also those parts, items, appurtenances and accessories reasonably necessary to make the equipment complete and working.
30. RESPONSE TO SOLICITATIONS: In the event you cannot submit a bid on a solicitation, return the solicitation cover sheet with an explanation as to why you are unable to bid on these requirements. Because of the large number of firms listed on the School Board's bidder list, those persons, firms or corporations who fail to respond after having been invited to bid three (3) successive solicitations may be deleted from the bidders' list for those items or commodities.
31. WITHDRAWAL OF BIDS: A bidder for all public bids for a contract may withdraw his/her bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid as submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which can be clearly shown by objective evidence drawn from inspection or original working papers, documents and materials used in the preparation of the bid sought to be withdrawn. The following procedure shall be used to request withdrawal of a bid, other than for a public construction contract:
- (a) Requests shall be submitted and delivered to the Purchasing Agent or his/her representative in writing.
  - (b) A bidder shall give notice in writing of his/her claim of right to withdraw his/her bid within ten business days after notification of award.
  - (c) Requests shall include all objective evidence as to why the bidder contends his/her bid meets the above criteria for withdrawal due to mistake.

The Superintendent shall decide whether the bid may be withdrawn on contracts of less than \$. On contracts of \$ or more the School Board will make the determination. A decision denying withdrawal of bid shall be final and conclusive unless the bidder appeals the decision within ten days after receipt of the decision by instituting legal action as provided in *applicable legislation*.

If a bid is withdrawn under the authority of this section, the lowest responsive and responsible remaining bid shall be deemed to be the low bid. No bidder who is permitted to withdraw a bid shall, for compensation, supply any materials of labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

32. ERROR IN BID: When an error is made in extending the total prices the unit bid price will govern. Erasures in bids must be initialed by the bidder. Carelessness in quoting prices or in preparation of the bid otherwise, will not relieve the bidder. Bidders are cautioned to recheck their bids for possible errors. Errors discovered after public opening cannot be corrected and the bidder will be required to perform if his bid is accepted.



33. BIDDERS INTEREST IN MORE THAN ONE BID: If more than one bid is offered by anyone party, by or in the name of their clerk, partner, firm, corporation, all such bids may be rejected. A party who has quoted prices on work, or supplies to a bidder is not thereby disqualified from quoting prices to other bidders of firms submitting a bid directly for the work, material or supplies.
34. TAX EXEMPTION: The School Board is exempt from the payment of any federal excise or (state) sales tax. The price bid must be net, exclusive of taxes. When under established trade practice, any federal excise tax is included in the list price, bidder may quote the list price and shall show separately the amount of federal excise tax, either as a flat sum or as a percentage of the list price, which shall be deducted by the School Board.

### AWARD

35. RESPONSIBLE BIDDER: In determining the responsibility of a bidder, the following criteria will be considered:
- (a) The ability, capacity and skill of the bidder to perform the contract or provide the services required: whether they can perform the contract or provide the service promptly, or within the time specified, without delay or interference.
  - (b) The character, integrity, reliability, reputation, judgment, experience and efficiency of the bidder.
  - (c) The quality of performance of previous contracts or services.
  - (d) The previous and existing compliance by the bidder with laws and ordinances relating to the contract or services.
  - (e) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service.
  - (f) The quality, availability, and adaptability of the goods or services to the particular use required.
  - (g) The ability of the bidder to provide future maintenance and service for the use of the subject of the contract.
  - (h) The number and scope of the conditions attached to the bid.
  - (i) Whether the bidder is in arrears on a debt of contract or is in default on a security to the School Board or whether the bidder's county taxes or assessments are delinquent.
  - (j) Such other information as may be secured by the Purchasing Agent having a bearing on the decision to award the contract.

If the bid from the lowest responsible bidder exceeds available funding, negotiations may be conducted with the apparent low bidder to obtain a contract price within available funds.

36. NOTICE OF ACCEPTANCE/CONTRACT DOCUMENTS: A written award (or acceptance agreement) mailed (or otherwise furnished) to the successful bidder within the time for acceptance specified in the solicitation shall be deemed to result in a binding contract. To the

extent they are included in or incorporated by solicitation, the following documents are hereby incorporated in and shall form a part of the resulting contract:

- (a) School Board Solicitation Form/Acceptance Agreement (Cover Sheet) and other documents which may be incorporated by reference, if applicable, to include the Contractors Proposals.
  - (b) General Conditions and Instructions to Bidders.
  - (c) Request for Proposal.
  - (d) Bid Schedule.
  - (e) Rider Clause.
  - (t) Any Addenda/amendments.
37. TIE BIDS: If two or more bidders submit identically priced bids, preference will be given to County and State bidders in that order. If no such choice is available, the tie shall be decided by lot unless a preference can be given to the bidder whose goods contain the greatest amount of recycled content.
38. PROMPT PAYMENT DISCOUNT: For purposes of entitlement to any prompt payment discount offered by a bidder:
- (a) The date from which the School Board has to pay will be the later of (1) delivery of the goods to the carrier, if FOB origin, or delivery to the School Board, inspection and acceptance by the School Board, if FOB destination, or (2) receipt of a correct invoice by the office specified by the School Board.
  - (b) If the bidder does not specify a time within which payment is to be made for its prompt payment discount to apply, then the time shall be thirty (30) days.
  - (c) Payment shall be deemed made as of the date of mailing of the School Board's check to the vendor.
39. INSPECTION, ACCEPTANCE: For determining acceptance of supplies in accordance with the provisions of payment discount paragraph, inspection and acceptance shall be accomplished only after examination (including testing) of supplies and services to determine whether the supplies and services conform to the contract requirements.
40. DEFINITE BID QUANTITIES: Subject to the School Board's right to termination for convenience, where quantities are specifically stated, acceptance will bind the School Board to order quantities specified and to pay for, at contract prices, all such supplies or services delivered that meet specifications and conditions of the contract. However, the School Board will not be required to accept delivery of any balances unordered, as of the contract expiration date, unless the contractor furnished the Purchasing Agent with a statement of unordered balances not later than ten (10) days after the termination date of the contract.
41. REQUIREMENTS BID QUANTITIES: On "Requirement" bids, acceptance will bind the School Board to pay for, at unit bid prices, only quantities ordered and delivered.
42. ESTIMATED BID QUANTITIES: On "Estimated Quantities", the School Board may purchase more or less than the estimates.

#### CONTRACT PROVISIONS

43. TERMINATION OF CONTRACTS: Contracts will remain in force for full periods specified and/or until all articles ordered before date of termination shall have been satisfactorily delivered and accepted and thereafter until all requirements and conditions shall have been met unless:
- (a) Terminated prior to expiration date by satisfactory deliveries of entire contract requirements, or upon termination by the School Board for convenience or cause.
  - (b) Extended upon written authorization of the Purchasing Agent and accepted by Contractor, to permit ordering of unordered balances or additional quantities at contract prices and in accordance with contract terms.
44. TERMINATION FOR CONVENIENCE: A contract may be terminated by the School Board in accordance with this clause in whole or in part whenever the Purchasing Agent shall determine that such a termination is in the best interest of the School Board. Any such termination shall be effected by delivery to the Contractor at least (5) working days prior to the termination date of a Notice of Termination specifying the extent to which performance shall be terminated and date upon which such termination becomes effective. An adjustment in the contract price shall be made to compensate the contractor for his/her actual costs incurred in performance prior to termination that, as determined in the School Board's discretion, are reasonable, allocable, and allowable, plus a reasonable amount of profit on such costs. In no event shall the School Board be liable to the contractor for anticipated profits for unperformed work or undelivered goods or for any consequential, special, incidental, or punitive damages of any kind. In no event shall the School Board be liable for any amount over the contract price.
45. TERMINATION OF CONTRACT FOR CAUSE -
- (a) The School Board may, by written notice of termination to the Contractor specifying a termination date at least five days thereafter, terminate this contract for cause in whole or in part if the Contractor (1) fails to deliver the goods or perform the services this contract requires within the time this contract specifies, or (2) fails to perform any of its other obligations under this contract or violates any provision of this contract.
  - (b) If this contract is terminated for cause, the Purchasing Agent may require the Contractor to transfer title and deliver to the School Board, as directed by the Purchasing Agent, any completed or partially completed goods and documents, data, studies, surveys, drawing, maps, models and reports ("deliverables") prepared by the Contractor under the contract. The School Board shall pay the contract price for such completed goods and deliverables. The Contractor and purchasing Agent shall agree on the amount of payment for partially completed goods and deliverables the School Board requires the Contractor to transfer and deliver to it. If the parties fail to agree, then the Contractor may present a claim to the School Board for its reasonable costs for the partially completed goods and deliverables. Costs recoverable shall be limited to those that, as determined in the School Board's discretion, are reasonable, allocable, and allowable. Such costs in no event shall exceed the contract price for the goods and deliverables if completed.
  - (c) Notwithstanding the above, the Contractor shall not be relieved of liability to the School Board for damages sustained by the School Board by virtue of any breach of contract by the Contractor for the purpose of setoff until such time as the exact amount of damages due to the School Board from the Contractor is determined.

- (d) If the School Board terminates this contract for cause, when cause, in fact, does not exist, then the termination shall for all purposes be deemed a termination for convenience under this contract, and the termination for convenience clause shall apply for all purposes.
46. CONTRACT MODIFICATIONS: No modifications in the terms of a contract shall be valid or binding upon the School Board unless made in writing and signed by the Purchasing Agent or his/her authorized agent.
47. FUNDING: A contract shall be deemed binding only to the extent of appropriations available to the School Board for the purchase of such articles.
48. NEW GOODS-FRESH STOCK: Unless otherwise specifically stated, the Contractor shall provide new rather than used goods, fresh stock, and the latest model, version, design or pack of any item specified.
49. NON-DISCRJMINATION: During the performance of this contract the Contractor agrees as follows:
- (a) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, handicap, or national origin, except where religion, sex or national origin 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 non-discrimination clause.
  - (b) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an Equal Opportunity Employer.
  - (c) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
  - (d) The Contractor will include the provisions of the foregoing paragraphs a, b, and c above in every subcontract or purchase order of over ten thousand dollars so that the provisions will be binding upon each subcontractor or vendor.
50. SMALL BUSINESS AND MINORITY BUSINESS ENTERPRISES-
- (a) It is the policy of the School Board to undertake every effort to increase opportunity for utilization of small businesses and minority businesses in all aspects of procurement to the maximum extent feasible.
  - (b) In connection with the performance of this contract, the Contractor agrees to use his/her best effort to carry out this policy and ensure that Small Businesses and Minority Businesses shall have the maximum practicable opportunity to compete for subcontract work under this contract consistent with the efficient performance of this contract.
  - (c) As used in this contract, the term "Small Business" means a business concern which, regardless of ownership or control, (1) does not exceed fifty (50) employees, (2) gross annual income does not exceed two (2) million dollars, (3) is independently owned and operated (not subsidiary of another firm), and (4) is not dominant in its field of operation.
  - (d) As used in this contract, the term "Minority Business" means a business concern which is operated and controlled by a minority. The term "operated and controlled" shall mean that the managerial staff of the business concern is comprised of minority persons, sufficient in ratio and gross earnings to demonstrate that the business transactions are, in fact,

controlled by minority persons; and that the primary power, directly or indirectly, to influence the management of this business concern shall rest with minority persons or a corporation, partnership or sole proprietorship in which minority persons collectively own, operate, control and share in earnings of fifty one (51) percent or more of such an enterprise.

- (e) As used in this contract, the term "Minority person" means Black, Hispanic, Asian or Pacific Islanders; American Indians or Alaskan Natives; and women, regardless of race or ethnicity.
- (f) Contractors may rely on oral or written representation by subcontractors regarding their status as small and/or minority business enterprises in lieu of independent investigation.
- (g) Where federal grants or monies are involved, it is the policy of the School Board through its agents and employees to comply with the requirements set forth - Standards Governing State and Local Grantee procurement - of the U.S. Office of Management and Budget Circular N. A-102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments, as they pertain to small and minority business utilization.

51. GUARANTEES & WARRANTIES: Unless otherwise specifically indicated in the solicitation, by entering into the contract, the contractor itself warrants and guarantees all goods and services furnished (1) in accordance with the General Guaranty and Service Contract guaranty herein, and (2) in accordance with the provisions of the Uniform Commercial Code. In addition, the contractor shall provide the School Board with all standard warranties given by the manufacturer(s) of any goods furnished. The Contractor shall deliver all manufacturers' warranties to the Purchasing Agent before final payment on the contract.

52. PRICE REDUCTION: If any time after the date of the bid the Contractor makes a general price reduction in the comparable price of any material covered by the contract to customers generally, an equivalent price reduction based on similar quantities and/or considerations shall apply to the contract for the duration of the contract period (or until the price is further reduced). Such price reduction shall be effective at the same time and in the same manner as the reduction in the price to customers generally. For purpose of this provision, a "general price reduction" shall mean any horizontal reduction in the price of an article or service offered (1) to contractor" wholesalers, jobbers, retailers, etc., which was used as the basis for bidding on this solicitation. An occasional sale at a lower price, or sale of distressed merchandise at a lower price, would not be considered a "general price reduction" under this provision. The Contractor shall submit invoices at such reduced prices indicating on the invoice that the reduction is pursuant to the "Price Reduction" provision of the contract documents. The Contractor in addition will within ten (10) days of any general price reduction notify the Purchasing Agent of such reduction by letter. FAILURE TO DO SO MAY REQUIRE TERMINATION OF THE CONTRACT. Upon receipt of any such notice of a general price reduction, all ordering offices will be duly notified by the Purchasing Agent.

53. CHANGES -

- (a) The Purchasing Agent may, at any time, without notice to any sureties, by written order indicated to be a change order, and signed by him or her, make changes within the general scope of the contract, including without limitations, changes in (1) specifications (including drawings and designs), (2) method of packing and shipment, (3) method or manner of performance, (4) place of delivery, and (5) time for performance and completion.
- (b) Within fifteen (15) days of receipt of a change order, the Contractor shall submit a written proposal to the Purchasing Agent for any equitable adjustment to the contract price, delivery schedule, or both, that should in fairness be made due to the change order. The

- parties shall then agree to and sign a modification to the contract that makes an equitable adjustment to the contract price, delivery schedule, or both.
- (c) If the parties cannot agree to a modification to the contract, then the Purchasing Agent may either (1) cancel the change order at no expense to the School Board, or (2) order in writing that the Contractor proceed with the change order.
  - (d) If the Purchasing Agent orders in writing that the Contractor proceed with the change order and no adjustment is agreed upon, then the Contractor or Purchasing Agent may submit a claim to the School Board for an equitable adjustment to the contract price, delivery schedule, or both, due to the change order. Any equitable adjustment as to contract price shall be limited to the increase or decrease in cost reasonably attributable to the change order that, as determined in the School Board's discretion, are reasonable, allocable, and allowable. Any equitable adjustment as to delivery schedule shall be limited to an increase or decrease in schedule reasonably attributable to the change order.
  - (e) Nothing shall excuse the contractor from proceeding with the contract as changed by written change order.
  - (f) No payment shall be made to the Contractor for any extra material or services or for any greater amount of money than the written contract stipulates unless the procedures of this clause have been strictly followed.
54. PLACING OF ORDERS: Orders against contracts will be placed with the Contractors on a Purchase Order executed and released by the Purchasing Agent. The Purchase Order must bear the appropriate contract number and date. Where Blanket Purchase Agreements (BPA's) have been executed and a Purchase Order has been released by the Purchasing Agent, telephonic orders may be placed directly with the contractor by the ordering office. Such agreements (BP A) are normally reserved for the purchase of highly repetitive items on a day-to-day basis.

#### DELIVERY PROVISIONS

55. SHIPPING INSTRUCTIONS - CONSIGNMENT: Unless otherwise specified in the solicitation, each case, crate, barrel, package, etc., delivered under the contract must be plainly stenciled or securely tagged, stating the Contractor's name, purchase order number, and delivery address as indicated in the order. Where shipping containers are to be used, each container must be marked with the purchase order number, contract number, name of the Contractor, the name of the item, the item number, and quantity contained therein. In case of carload lots, the Contractor shall tag the car, stating Contractor's name and purchase order number. Any failure to mark items as required by the instructions will cause the Contractor to bear the risk of any resulting loss of or damage to material, or late delivery or misdelivery of material and any damage resulting therefrom. Deliveries must be made during the Loudoun County Public Schools' normal business day (Monday to Friday, except holidays, from 8:30 A.M. to 3:30 P.M.) and sufficiently before closing time to permit unloading, inspection, and storage, unless specific arrangements have previously been agreed upon with the School Board's storekeeper at the delivery point. The Contractor shall ensure compliance with these instructions for items that are drop-shipped.
56. RESPONSIBILITY FOR SUPPLIES TENDERED: The Contractor shall be responsible for the materials or supplies covered by the contract until they are delivered at the designated point, but the Contractor shall bear all risk on rejected materials or supplies after notice of rejection. Rejected materials or supplies must be removed by and at the expense of the Contractor promptly after notification of rejection, unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the contractor within ten (10) days after date of notification, the School Board

may return the rejected materials or supplies to the Contractor at his/her risk and expense or dispose of them as its own property.

57. INSPECTIONS: Inspections and acceptance of materials or supplies will be made after deliver}' at destination herein specified unless otherwise stated. If inspection is made after delivery at destination herein specified, the School Board will bear the expense of inspection except for the value of samples used in case of rejection. Final inspection shall be conclusive except in regards to latent defects, fraud, or such gross mistakes as amount to fraud. Final inspection and acceptance or rejection of the materials or supplies will be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the School Board for such materials or supplies as are not in accordance with the specifications.
58. COMPLIANCE: Delivery must be made as ordered and in accordance with the solicitation or as directed by the Purchasing Agent when not in conflict with the bid. The decision of the Purchasing Agent as to reasonable compliance with delivery terms shall be final. Burden of proof of delivery in receipt of goods by the purchaser shall rest with the Contractor. Any request for extension of time of delivery from that specified must be approved by the Purchasing Agent, such extension applying only to the particular item or shipment affected.
59. DELAY: Should the Contractor be delayed by the School Board, there shall be added to the time of completion a time equal to the period of such delay caused by the School Board. However, the Contractor shall not be entitled to claim damages or extra compensation for such delay or suspension. This provision does not apply to public construction contracts.
60. METHOD AND CONTAINERS: Unless otherwise specified, goods shall be delivered in commercial packages in standard commercial containers, so constructed as to ensure acceptance by common or other carrier for safe transportation to the point of delivery. Containers become property of the School Board unless otherwise specified by bidder.
61. REPLACEMENT: Materials or components that have been rejected by the Purchasing Agent, in accordance with the terms of this contract, shall be replaced by the Contractor at no cost to the School Board.
62. PACKING SLIPS OR DELIVERY TICKETS: All shipments shall be accompanied by Packing Slips or Delivery Tickets, and shall contain the following information for each item delivered:
  - (1) The Purchase Order Number
  - (2) The Name of the Article and Supplier's Stock Number
  - (3) The Quantity Ordered
  - (4) The Quantity Shipped
  - (5) The Quantity Back Ordered
  - (6) The Name of the Contractor

Bidders are cautioned that failure to comply with these conditions shall be considered sufficient reason for refusal to accept the goods.

### PAYMENTS

63. PAYMENT: Payment shall be made after satisfactory performance of the contract, in accordance with all of the provisions thereof, and upon receipt of a properly completed invoice. The School Board reserves the right to withhold any or all payments or portions

thereof for Contractor's failure to perform in accordance with the provisions of the contract or any modifications thereto. In order to receive payment individual contractors must provide their social security numbers; and proprietorships, partnerships, and corporations must provide their federal employer identification numbers.

64. PARTIAL PAYMENTS: Unless otherwise specified, partial payments will be made upon acceptance of materials or services so invoiced in accordance with completion date. However, 10 percent (10%) of the value of the entire order may be retained until completion of contract.
65. PAYMENTS FOR EQUIPMENT, INSTALLATION, AND TESTING: When equipment involves installation (which shall also be interpreted to mean erection and/or setting upon or placing in position, service or use) and test, and where such installation or testing is delayed, payment may be made on the basis of fifty percent (50%) of the contract price when such equipment is delivered on the site. A further allowance of twenty five percent (25%) may be made when the equipment is installed and ready for test. The balance shall be paid after the equipment is tested and found to be satisfactory. If the equipment must be tested, but installation is not required to be made by the Contractor or if the equipment must be installed but testing is not required, payment may be made on the basis of seventy five percent (75%) at the time of delivery and the balance shall be paid after satisfactory test or installation is completed.
66. PAYMENTS TO SUBCONTRACTORS: Within seven (7) days after receipt of amounts paid to the contractor by the School Board for work performed by the subcontractor under the contract, the contractor shall either (a) pay the subcontractor for the proportionate share of the total payment received from the School Board attributable to the work performed by the subcontractor under that contract; or (b) notify the School Board and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment. The contractor must pay interest at the rate of one percent per month unless provided otherwise to the subcontractor on all amounts owed by the contractor that remain unpaid after seven days following receipt by the contractor of payment from the School Board for work performed by the subcontractor under that contract, except for amounts withheld as allowed in (b) above. The contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the School Board.

#### GENERAL

67. GENERAL GUARANTY: Contractor agrees to:
  - (a) Save the School Board, its agents and employees harmless from liability of any nature or kind for use of any copyrighted or un-copyrighted compositions, secret process, patented or unpatented, invention, article or appliance furnished or used in the performance of the contract which the Contractor is not the patentee, assignee, licensee or owner.
  - (b) Protect the School Board against latent defective materials or workmanship and to repair or replace any damages or marring occasioned in transit or delivery.
  - (c) Furnish adequate protection against damage to all work and to repair damages of any kind, to the building or equipment, to his/her own work or to the work of other contractors, for which his/her workmen are responsible.
  - (d) Pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules and regulations of the County.



- (e) Protect the School Board from loss or damage to School Board owned property while it is in the custody of the Contractor.

68. SERVICE CONTRACT GUARANTY: Contractor agrees to:

- (a) Furnish services described in the solicitation at the times and places and in the manner and subject to conditions therein set forth provided that the School Board may reduce the said service at any time.
- (b) Enter upon the performance of services with all due diligence and dispatch; shall assiduously press to its complete performance and shall exercise therein the highest degree of skill and competence.
- (c) All work performed and services rendered shall strictly conform to all laws, statutes, and ordinances and the applicable rules, regulations, methods and procedures of all government boards, bureaus, offices, and other agents.
- (d) Said services may be inspected by an employee of the School Board at any reasonable time and place selected by the School Board. The School Board shall be under no obligation to compensate Contractor for any services not rendered in strict conformity with the contract.
- (e) The presence of a School Board/County Inspector shall not lessen the obligation of the Contractor for performance in accordance with the contract requirements, or be deemed a defense on the part of the Contractor for infraction thereof. The Inspector is not authorized to revoke, alter, enlarge, relax, or release any of the requirements of the contract documents. Any omission or failure on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material.

69. INDEMNIFICATION: Contractor shall indemnify, keep and save harmless the School Board, its agents, officials, employees, and volunteers against all injuries, death, loss, damage, claims, patent claims, suits, liabilities, judgments, costs and expenses, which may otherwise accrue against the School Board in consequence of the granting of a contract or which may otherwise result there from, if it shall be determined that the act was caused through negligence or omission of the Contractor or his employees, of the subcontractor or his employees, if any, and the Contractor shall, at his own expense, appear, defend and therewith. If any judgment shall be rendered against the School Board in any such action, the Contractor shall at his own expense, satisfy and discharge the same. Contractor expressly understands and agrees that any performance bond or insurance protection required by this contract, or otherwise provided by Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the School Board as herein provided.

70. OFFICIALS NOT TO BENEFIT -

- (a) Each bidder or offeror shall certify, upon signing a bid or proposal, that to the best of his or her knowledge no School Board official or employee having official responsibility for the procurement transaction, or member of his or her immediate family, has received or will receive any financial benefit of more than nominal or minimal value relating to the award of this contract. If such a benefit has been received or will be received, this fact shall be disclosed with the bid or proposal or as soon thereafter as it appears that such a benefit will be received. Failure to disclose the information prescribed above may result in suspension or debarment, or rescission of the contract made, or could affect payment pursuant to the terms of the contract.

- (b) Whenever there is reason to believe that benefit of the sort described in paragraph "a" has been or will be received in connection with a bid, proposal or contract, and that the Contractor has failed to disclose such benefit or has inadequately disclosed it, the School Board, as a prerequisite to payment pursuant to the Contractor, or at any time may require the Contractor to furnish, under oath, answers to any interrogatories related to such possible benefit.
- (c) In the event the bidder or offeror has knowledge of benefits as outlined above, this information should be submitted with bid or proposal. If the above does not apply at time of award of contract and becomes known after inception of a contract, the bidder or offeror shall address the disclosure of such facts to:.... Relevant Invitation/Request for Proposal Number (see cover sheet) should be referenced in the disclosure.

71. COUNTY LICENSE: *as applicable by law.*

72. REGISTERING OF CORPORATIONS: *as applicable by law*

73. COVENANT AGAINST CONTINGENT FEES: The Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. For violation of this warranty, the School Board shall have the right to terminate or suspend this contract without liability to the School Board or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission percentage, brokerage, or contingent fee.

74. State FREEDOM OF INFORMATION ACT: All proceedings, records, contacts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the *state* Freedom of Information Act, except as provided below:

- (a) Cost estimates relating to a proposed transaction prepared by or for a public body shall not be open to public inspection.
- (b) Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids prior to award, except in the event that the School Board decides not to accept any of the bids and to reopen the contract. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiation of proposals are completed but prior to award, except in the event that the School Board decides not to accept any of the proposals and to reopen the contract. Otherwise, bid and proposal records shall be open to public inspection only after award of the contract. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.
- (c) Trade secrets or proprietary information submitted by a bidder, offeror, or Contractor in connection with a procurement transaction shall not be subject to public disclosure under the *state* Freedom of Information Act; however, the bidder, offeror or contractor must invoke the protection of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary.
- (d) Nothing contained in this section shall be construed to require the School Board, when procuring by "competitive negotiation" (Request for Proposal), to furnish a statement of

the reasons why a particular proposal was not deemed to be the most advantageous to the School Board.

### BIDDER/CONTRACTOR REMEDIES

75. APPEAL OF DETERMINATION OF NONRESPONSIBILITY: Any bidder who, despite being the apparent Low bidder, is determined not to be a responsible bidder for a contract which is less than \$100,000 shall be notified in writing by the Superintendent. If the contract is \$100,000 or more, the School Board shall make the determination of nonresponsibility. In any case such notice shall state the basis for the determination, which shall be final unless the bidder within ten (10) days institutes legal action *as provided in applicable regulations*. If, upon appeal, it is determined that the decision to award the contract was arbitrary or capricious and the award for the particular School Board contract in question has not been made, the sole relief available to the bidder shall be a finding that the bidder is a responsible bidder for the School Board contract in question. Where the award has been made and performance has begun, the School Board may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing Contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing Contractor be entitled to lost profits.
76. PROTEST OF AWARD OR DECISION TO AWARD: Any bidder or offeror may protest the award or decision to award a contract by submitting a protest in writing to the Superintendent no later than ten (10) days after the award or the announcement of the decision to award, whichever occurs first. The written protest shall include the basis for the protest and the relief sought. The Superintendent shall issue a decision in writing within ten (10) days of the receipt of the protest stating the reasons for the action taken. This decision shall be final unless within ten days the bidder or offeror institutes legal action as provided in *applicable regulations*.
- (a) If prior to award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The Purchasing Agent shall cancel the proposed award or revise it to comply with the law. If after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be declared void. Where the award has been made and performance has begun, the Purchasing Agent may declare the contract void upon a finding that this action is in the best interest of the School Board. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance at the rate specified in the contract up to the time of such declaration. In no event shall the performing Contractor be entitled to lost profits.
  - (b) Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this paragraph shall not be affected by the fact that a protest or appeal has been filed.
  - (c) An award need not be delayed for the period allowed a bidder or offeror to protest. but in the event of a timely protest, no further action to award the contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid offer would expire.
77. CONTRACTUAL DISPUTES: Any dispute concerning a question of fact including claims for money or other relief as the result of a contract with the School Board which is not disposed of by agreement shall be declared by the Superintendent, who shall reduce his decision to writing and forward a copy thereof to the Contractor within ten (10) days. The

decision of the Superintendent shall be final and conclusive unless within ten days of receipt of the written decision the Contractor institutes legal action as provided in applicable regulations. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty (60) days after final payment or as specified by the contract, whichever comes first; however, written notice of the Contractor's intention to file such a claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

78. EXHAUSTION OF ADMINISTRATIVE REMEDIES: No bidder, offeror, potential bidder of offeror, or contractor shall institute any legal action until all administrative remedies available under the above paragraphs have been exhausted and until statutory requirements have been met.

AUDIT OF RECORDS: The School Board reserves the right to perform or have performed an audit of the records of the contractor for any service contract. The contractor shall make all records available for audit within a reasonable time.

