

STATE OF NORTH CAROLINA/ASHEVILLE CITY SCHOOLS

REQUEST FOR INFORMAL BIDS

#148-RFIB-004

PROJECT: Substitute Staffing and Management Services PROJECT

USING AGENCY: Asheville City Schools

ISSUE DATE: June 30, 2021

Bids subject to the conditions made a part hereof will be received until **2:00 p.m., Thursday, July 15, 2021**, for furnishing all labor, materials, equipment, and services incidental and implied, for completion of the project described herein.

All Bids must be sent to the Purchasing Clerk at the address or email address provided below:

Asheville City Schools

Attn: Chris Pohlman, Purchasing

85 Mountain Street

Asheville, NC 28801

Phone: 828-350-6101

Fax: 828-251-4915

Email: chris.pohlman@acsgmail.net

Direct inquiries concerning this RFIB to:

Bidding and Document questions: Chris Pohlman, Purchasing Clerk

Office: 828-350-6101

Specifications or Technical questions: Dr. Mark Dickerson, Assistant Superintendent for Human Resources

Office: 828-350-6123

THE PROCUREMENT PROCESS

The following is a general description of the process by which a firm will be selected to provide services.

1. Request for Informal Bids (RFIB), which refers to projects less than \$300,000, is issued to prospective contractors.
2. The deadline for written questions is three days prior to the due date.
3. Bids shall be signed and dated by an official authorized to bind the firm. Unsigned bids will not be considered.
4. All bids must be received by the issuing agency not later than the date and time specified on the cover sheet of this RFIB.
5. Bids will be evaluated according to completeness, content, experience with similar projects, ability of the offeror and its staff, and cost. Award of a contract to one offeror does not mean that the other bids lacked merit, but that, all factors considered, the selected bid was deemed most advantageous to the State.
6. Offerors are cautioned that this is a request for bids, not a request to contract, and the State/Asheville City Schools reserves the right to reject any and all unqualified offers when such rejection is deemed to be in the best interest of the State.

(NOTE: THE BID FORM MUST BE FULLY EXECUTED AND RETURNED FOR CONSIDERATION)

BID FORM

#148-RFIB-004

Substitute Staffing and Management Services PROJECT

DUE DATE: 7/15/2021 by 2:00PM

By submitting this bid, the potential contractor certifies the following:

- This bid is signed by an authorized representative of the firm.
- It can obtain and submit to the Owner insurance certificates as required within 5 calendar days after notice of award.
- The cost and availability of all equipment, materials, and supplies associated with performing the services described herein have been determined and included in the bid cost.
- All labor costs, direct and indirect, have been determined and included in the bid cost.
- All taxes have been determined and included in the bid cost.
- The potential contractor has read and understands the conditions set forth in this RFIB and agrees to them with no exceptions.

Therefore, in compliance with this Request for Informal Bids, and subject to all conditions herein, the undersigned offers and agrees, if this bid is accepted, to furnish the subject services for the costs outlined within this Bid Form.

Bidder: _____

Address: _____

City/State/Zip: _____ Phone: _____

Fed ID No: _____ MBE Status: _____ Fax: _____

Email: _____

By: (Signature) _____ Date: _____

Printed Name _____ Title: _____

**BID FORM PAGE 1 of 5
CONTINUED ON NEXT PAGE**

For any of the following questions, please attach additional sheets if additional space is needed:

1. Describe your ability to provide services in a timely fashion, including your experience with providing substitute services in a public-school setting and your familiarity with the services required by the Asheville City Schools. Any experience or knowledge of matters directly affecting the Asheville City Schools should be addressed, including, but not limited to knowledge of North Carolina education laws.

2. Description of Company background. Bidder must have at least five (5) years of experience providing full-service substitute teacher and substitute paraprofessional services to public school districts.

3. Description of Bidder's substitute pool. How many substitutes do you place? How many substitutes do you employ?

4. Bidder should demonstrate experience with school districts of similar size as the Asheville City Schools in terms of student enrollment and number of teaching staff members. Bidder should have at least five (5) references from North Carolina Public School District clients who are currently being provided full-service substitute teacher and substitute paraprofessional services by Bidder.

**BID FORM PAGE 2 of 5
CONTINUED ON NEXT PAGE**

5. Describe the project manager, project personnel, and any other parties that will provide services for the project.

6. Description of recruiting, hiring, credentialing, training, and retention process.

- Describe the recruiting, hiring, and credentialing process;
- Give a detailed explanation of your training program for all newly hired and transitioning substitute teachers and substitute paraprofessionals;
- Describe the disciplinary process should a staff member no longer be a fit for the Asheville City Schools
- Describe how you retain your substitute staff.

7. Confirm whether your Company will hire substitutes currently employed by the District.

8. Information detailing successful placement/fill rates to include the processes/strategies, systems and best practices to accomplish these actions.

**BID FORM PAGE 3 of 5
CONTINUED ON NEXT PAGE**

9. Describe the web-based personnel management software, Absence Management or similar program, which will facilitate the services to be provided. Please describe in detail the system your organization utilizes. Any additional costs associated with implementation should be outlined as well.

10. Description of transition process from the District to your Company's program. Include:

- a. Transition of the District's substitute employees
- b. Software integration, timeline, and training District teachers, building personnel, and substitutes

11. Describe your automated reporting/billing system.

12. Describe your management reports focused on staffing performance.

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CONTINUED ON NEXT PAGE**

13. Provide information detailing any additional services that your Company can offer, including services for a live online instructional model for an easy-to-use virtual classroom.

14. Describe your proposed fee proposal/structure, based on the District’s pay rates. For a Bidder to be considered responsive and responsible, they must use the staffing wages provided in developing their bid. Alternative fee structures based on rates that you recommend may be provided if different from below.

Substitute Position	Daily Pay Rate	Price per Substitute Per Day
Daily Substitute Teacher	\$_____ per full day	\$_____ per full day
Daily Substitute Paraprofessional	\$_____ per full day	\$_____ per full day

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END OF BID FORM

A. PURPOSE

The purpose and intent of this Request for Informal Bids (“RFIB”) is to seek bids from interested, available, and qualified firms to provide substitute staffing services for teachers and paraprofessionals. Our intent is to contract out these services which shall include recruiting, training, fingerprinting, and background checks in accordance with NC state statutes and ACS district policy for employment. An agreement will then be entered with the selected firm (“Bidder”) to provide the described services for Asheville City Schools.

B. GENERAL INFORMATION

The District serves approximately 4,300 students (the student population changes annually) with approximately 690 full time staff (including approximately 295 teachers) at 5 elementary schools, 2 middle schools, 2 high schools, and additional administrative facilities. Asheville City Schools currently utilizes an average of 15 substitute teachers and 5 substitute paraprofessionals on a daily basis.

C. SCOPE OF SERVICES

The District is currently seeking bids from qualified Bidders that provide the service of recruiting, managing, operating, and employing substitute teacher and substitute paraprofessional staff. The Bidder will be required to employ and to provide all management, personnel, and employment services to the District including, but not limited to, training, employment, financial, tax withholding, workers’ compensation, insurance, social security, management and oversight for the staffing of substitute staff.

The Bidder acknowledges that the needs of the District may increase or decrease during the school year(s) and agrees to meet the ongoing District staffing needs.

Upon written notice, the District or its authorized representative has the right to refuse services of any Bidder employee. The District may request that an employee not be assigned to the District for any reason at any time upon written notification to the Bidder, so long as that reason is not illegal or discriminatory.

With regards to the Bidder’s employees, the Bidder will comply with and do the following:

1. Provide Full-Service Substitute Staffing Services. “Full-Service” is defined here meaning Bidder will staff and manage all substitute assignments for designated employee types.
2. Comply with all applicable Federal and State laws, rules and regulations, including, but not limited to, wages and hours of employment requirements.
3. Offer employment to the District’s substitute employees in good standing.
4. All Bidder employees must complete a background checks pursuant to State law prior to beginning employment.
5. Each substitute employee must be in possession of any and all valid licenses and certifications required by State law pertaining to public school employment and must be qualified as stipulated in the specifications.
6. Bidder staff will comply with all rules, regulations and policies of the District and will perform their tasks in accordance with the District policy.
7. The awarded Bidder will have the sole responsibility to compensate its employees, including all applicable employer taxes and workers’ compensation.

8. Employees of the Bidder must be thoroughly trained and qualified, and capable of performing the work assigned to them. Employees must be able to effectively communicate with the staff and students in the English language.
9. All personnel will report to work in appropriate professional dress and demeanor.

D. INSURANCE REQUIREMENTS

During the term of the contract, the contractor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the contract. If awarded a contract, the Bidder will provide a Certificate of Liability Insurance naming the District as additional insured. The issuing insurer must provide 30 days written notice to the District of the expiration of the insurance. As a minimum, the contractor shall provide and maintain the following coverage and limits:

- Workers' Compensation Insurance: Statutory Workers' Compensation Insurance, including Employer's Liability with limits of \$250,000 each accident. The Aggregate Limit will not be less than \$2,000,000.
- Commercial General Liability: A per occurrence limit of \$1,000,000 is required. The Aggregate Limit will not be less than \$2,000,000
- Excess Liability Coverage: \$2,000,000 per occurrence; and
- A minimum of \$1,000,000 in Professional Liability Insurance.

Providing and maintaining adequate insurance coverage is a material obligation of the contractor and is of the essence of this contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The contractor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this contract. The limits of coverage under each insurance policy maintained by the contractor shall not be interpreted as limiting the contractor's liability and obligations under the contract.

The Contractor shall furnish a Certificate of Insurance as proof of the above coverages. Certificate will contain provision that the insurance coverages cannot be canceled, reduced in amount or coverage eliminated without 30 days written notice to Asheville City Schools. Owner's approval of Certificate of Insurance does not decrease or relieve the contractor's responsibility for maintaining insurance coverage as required in this Request for Informal Bid.

Such insurance or renewals or replacements thereof shall remain in force during the term of the contract and any extensions.

E. FIRM BID

All bids shall remain firm for a period of sixty (60) days after the date for the specified receipt of bids.

F. INTERPRETATIONS AND ADDENDA

No interpretation of the meaning of the specifications will be made to any Bidder orally. Every request for such interpretation should be made in writing and must be received no later than [Time] p.m. on [Month Day, Year] to be given consideration. Any and all interpretations and any supplemental instructions will be distributed in the form of a written Addendum to the specifications. All Addenda so issued shall become part of the bid document.

G. SELECTION CRITERIA

The District will be assessing, as key evaluative criterion, the Bidder's management team; program elements; experience; and ability to provide services that meet the District's objectives. Asheville City Schools reserves the right to schedule an in-person interview with the Bidder. The Asheville City Schools will evaluate bids using the following criteria:

CRITERIA	Weighting Factor
1 – Company Details and References: Considers the Bidder's financial viability, stability, performance, and experience. The Bidder provided a reference list of five (5) substitute staffing contracts with [State] school districts currently providing substitute teacher and paraprofessional staffing services.	20%
2 – Management Services: Considers Bidder's ability to provide services, operational efficiency, and program management capabilities.	30%
3 – Technical Elements: Considers the Bidder's program overview, resources, systems, procedures, processes, recruiting, hiring practices, compliance, retention, human resources, training, and technology.	20%
4 – Start Up/Transition Plan: Is the plan customized and detailed from pre-planning, through the start of the contract, and continued through engagement? Did the Bidder detail the additional management and resources they will be providing as well as the startup tasks?	10%
5 – Financial Bid: What is the cost of the program proposed and its impact upon the district's operating budget? How do they compare among Bidders?	20%

H. RIGHT OF REJECTION

Failure to meet/provide all the requirements of this RFIB will cause the Bidder's bid to be non-responsive, non-responsible and cause for rejection of the bid. The Asheville City Schools reserves the right to reject any and all bids or to waive any non-statutory informality. The District further reserves the right to make the contract award to be in the best interest of the District. The District's decision to accept or reject the contract shall be final.

I. AWARD OF CONTRACT

It is the intention of the Asheville City Schools to award the contract to the Bidder based upon relative experience, qualifications, and who will provide the highest quality of service at fair and competitive prices in accordance with the selection criteria set forth.

J. TERM OF CONTRACT

The contract term will be a period of two (2) years, with an option for three (3) one-year extensions at the District's discretions, not to exceed five (5) years total. Extensions are subject to the availability and appropriation annually of sufficient funds by Asheville City Schools and in accordance with applicable law.

GENERAL INFORMATION ON SUBMITTING BIDS

1. **EXCEPTIONS:** All bids are subject to the terms and conditions outlined herein. All responses shall be controlled by such terms and conditions and the submission of other terms and conditions, price lists, catalogs, and/or other documents as part of an offeror's response will be waived and have no effect either on this Request for Informal Bids or on any contract that may be awarded resulting from this solicitation. Offeror specifically agrees to the conditions set forth in the above paragraph by signature to the bid.
2. **CERTIFICATION:** By executing the bid, the signer certifies that this bid is submitted competitively and without collusion (G.S. 143-54), that none of our officers, directors, or owners of an unincorporated business entity has been convicted of any violations of Chapter 78A of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934 (G.S. 14359.2), and that we are not an ineligible vendor as set forth in G.S. 143-59.1. False certification is a Class I felony.
3. **ORAL EXPLANATIONS:** The State/Asheville City Schools shall not be bound by oral explanations or instructions given at any time during the competitive process or after award.
4. **REFERENCE TO OTHER DATA:** Only information which is received in response to this RFIB will be evaluated; reference to information previously submitted shall not be evaluated.
5. **ELABORATE BIDS:** Elaborate bids in the form of brochures or other presentations beyond that necessary to present a complete and effective bid are not desired.
6. **COST FOR BID PREPARATION:** Any costs incurred by bidders in preparing or submitting offers are the bidders' sole responsibility; the State of North Carolina/Asheville City Schools will not reimburse any bidder for any costs incurred.
7. **TIME FOR ACCEPTANCE:** Each bid shall state that it is a firm offer which may be accepted within a period of 45 days. Although the contract is expected to be awarded prior to that time, the 45 day period is requested to allow for unforeseen delays.
8. **TITLES:** Titles and headings in this RFIB and any subsequent contract are for convenience only and shall have no binding force or effect.
9. **CONFIDENTIALITY OF BIDS:** In submitting its bid the bidder agrees not to discuss or otherwise reveal the contents of the bid to any source outside of the using or issuing agency, government or private, until after the award of the contract. Bidders not in compliance with this provision may be disqualified, at the option of the State/Asheville City Schools, from contract award. Only discussions authorized by the issuing agency are exempt from this provision.
10. **RIGHT TO SUBMITTED MATERIAL:** All responses, inquiries, or correspondence relating to or in reference to the RFIB, and all other reports, charts, displays, schedules, exhibits, and other documentation submitted by the bidders shall become the property of the State/Asheville City Schools when received.
11. **BIDDER'S REPRESENTATIVE:** Each bidder shall submit with its bid the name, address, and telephone number of the person(s) with authority to bind the firm and answer questions or provide clarification concerning the firm's bid.
12. **SUBCONTRACTING:** Bidders may propose to subcontract portions of the work provided that their bids clearly indicate what work they plan to subcontract and to whom and that all information required about the prime contractor is also included for each proposed subcontractor.

13. **PROPRIETARY INFORMATION:** Trade secrets or similar proprietary data which the bidder does not wish disclosed to other than personnel involved in the evaluation or contract administration will be kept confidential to the extent permitted by NCAC T01:05B.1501 and G.S. 132-1.3 if identified as follows: Each page shall be identified in boldface at the top and bottom as "CONFIDENTIAL". Any section of the bid which is to remain confidential shall also be so marked in boldface on the title page of that section. Cost information may not be deemed confidential. In spite of what is labeled as confidential, the determination as to whether or not it is shall be determined by North Carolina law.

14. **HISTORICALLY UNDERUTILIZED BUSINESSES:** Pursuant to General Statute 143-48 and Executive Order #150, Asheville City Schools invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled.

The Contractor agrees in particular to maintain open hiring and employment practices and to receive applications for employment in compliance with all requirements of applicable federal, state and local laws and regulations issued pursuant thereto relating to nondiscriminatory hiring and employment practices. Each Prime Contractor shall undertake an affirmative action program to ensure that no person shall be excluded from participation in any employment activities because of age, sex, race, religion, color, national origin or handicap.

15. **PROTEST PROCEDURES:** If an bidder wants to protest a contract awarded pursuant to this solicitation, they must submit a written request to the Purchasing Officer, Asheville City Schools, 85 Mountain St, Asheville, NC 28801. This request must be received by the Purchasing Division within thirty (30) consecutive calendar days from the date of the contract award, and must contain specific sound reasons and any supporting documentation for the protest. NOTE: Contract award notices are sent only to those actually awarded contracts, and not to every person or firm responding to this solicitation. Contract status and award notices are available through the purchasing division or the project designer with contact information as shown on the first page of this solicitation. Bidder's may call to obtain a verbal status of contract award. All protests will be handled pursuant to the North Carolina Administrative Code, Title 1, Department of Administration, Chapter 5, Purchase and Contract, Section 5B.1519.

16. **TABULATIONS:** Bidders may call the purchasing division to obtain a verbal status of contract award.

17. **VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM:** Vendor Link NC allows vendors to electronically register free with the State to receive electronic notification of current procurement opportunities for goods and services available on the Interactive Purchasing System. Online registration and other purchasing information are available on the Internet web site: <http://www.state.nc.us/pandc/>.

18. **RECIPROCAL PREFERENCE:** G.S. 143-59 establishes a reciprocal preference law to discourage other states from applying instate preferences against North Carolina's resident bidders. The "Principal Place of Business" is defined as the principal place from which the trade or business of the bidder is directed or managed.

NORTH CAROLINA GENERAL CONTRACT TERMS AND CONDITIONS

(Contractual and Consultant Services)

1. **GOVERNING LAW:** This contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina.
2. **SITUS:** The place of this contract, its situs and forum, shall be North Carolina , where all matters, whether sounding in contract or tort, relating to its validity, construction, interpretation and enforcement shall be determined
3. **INDEPENDENT CONTRACTOR:** The Contractor shall be considered to be an independent contractor and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. The Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this agreement. Such employees shall not be employees of, or have any individual contractual relationship with the Agency.
4. **KEY PERSONNEL:** The Contractor shall not substitute key personnel assigned to the performance of this contract without prior written approval by the Agency's Contract Administrator. The individuals designated as key personnel for purposes of this contract are those specified in the Contractor's bid.
5. **SUBCONTRACTING:** Work proposed to be performed under this contract by the Contractor or its employees shall not be subcontracted without prior written approval of the Agency's Contract Administrator/Project Designer. Acceptance of a bidder's bid shall include any subcontractor(s) specified therein.
6. **PERFORMANCE AND DEFAULT:** If, through any cause, the Contractor shall fail to fulfill in timely and proper manner the obligations under this agreement, the Agency shall thereupon have the right to terminate this contract by giving written notice to the Contractor and specifying the effective date thereof. In that event, all finished or unfinished deliverable items under this contract prepared by the Contractor shall, at the option of the Agency, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such materials. Notwithstanding, the Contractor shall not be relieved of liability to the Agency for damages sustained by the Agency by virtue of any breach of this agreement, and the Agency may withhold any payment due the Contractor for the purpose of setoff until such time as the exact amount of damages due the Agency from such breach can be determined.
In case of default by the Contractor, the State may procure the services from other sources and hold the Contractor responsible for any excess cost occasioned thereby. The State reserves the right to require performance bond or other acceptable alternative guarantees from successful bidder without expense to the State.

Upon the entering of a judgment of bankruptcy of insolvency by or against the Contractor, the Agency may terminate this contract for cause. Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.
7. **TERMINATION:** The Agency may terminate this agreement at any time by 15 days notice in writing from the Agency to the Contractor. In that event, all finished or unfinished deliverable items prepared by the Contractor under this contract shall, at the option of the Agency, become its property. If the contract is terminated by the Agency as provided herein, the Contractor shall be paid for services satisfactorily completed, less payment or compensation previously made.
8. **AVAILABILITY OF FUNDS:** Any and all payments to the Contractor are dependent upon and subject to the availability of funds to the Agency for the purpose set forth in this agreement.
9. **CONFIDENTIALITY:** Any information, data, instruments, documents, studies or reports given to or prepared or assembled by the Contractor under this agreement shall be kept as confidential and not divulged or made available to any individual or organization without the prior written approval of the Agency.
10. **CARE OF PROPERTY:** The Contractor agrees that it shall be responsible for the proper custody and care of any property furnished it for use in connection with the performance of this contract or purchased by it for this contract and will reimburse the State for loss of damage of such property.

11. **COPYRIGHT:** No deliverable items produced in whole or in part under this agreement shall be the subject of an application for copyright by or on behalf of the Contractor.
12. **ACCESS TO PERSONS AND RECORDS:** The State Auditor shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions in accordance with General Statute 147-64.7. The Contractor shall retain all records for a period of three years following completion of the contract.
13. **ASSIGNMENT:** No assignment of the Contractor's obligations nor the Contractor's right to receive payment hereunder shall be permitted. However, upon written request approved by the issuing purchasing authority, the State may:
 - a. Forward the contractor's payment check(s) directly to any person or entity designated by the Contractor, or
 - b. Include any person or entity designated by Contractor as a joint payee on the Contractor's payment check(s). In no event shall such approval and action obligate the State to anyone other than the Contractor and the Contractor shall remain responsible for fulfillment of all contract obligations.
14. **COMPLIANCE WITH LAWS:** The Contractor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements (permits) that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.
15. **AFFIRMATIVE ACTION:** The Contractor shall take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin, or disability.
16. **ADVERTISING:** Contractor agrees not to use the existence of this contract, the name of the agency, or the name of the State of North Carolina as part of any commercial advertising.
17. **ENTIRE AGREEMENT:** This contract and any documents incorporated specifically by reference represent the entire agreement between the parties and supersede all prior oral or written statements or agreements. This Request for Informal Bids, any addenda thereto, and the bidder's bid are incorporated herein by reference as though set forth verbatim. All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.
18. **AMENDMENTS:** This contract may be amended only by written amendments duly executed by the Agency and the Contractor.
19. **TAXES:** G.S. 143-59.1 bars the Secretary of Administration from entering into contracts with vendors if the vendor or its affiliates meet one of the conditions of G. S. 105-164.8(b) and refuse to collect use tax on sales of tangible personal property to purchasers in North Carolina. Conditions under G. S. 105-164.8(b) include: (1) Maintenance of a retail establishment or office, (2) Presence of representatives in the State that solicit sales or transact business on behalf of the vendor and (3) Systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. By execution of the bid document the vendor certifies that it and all of its affiliates, (if it has affiliates), collect(s) the appropriate taxes.
20. **GENERAL INDEMNITY:** The contractor shall hold and save the State/Asheville City Schools, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses, with the exception of consequential damages, accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the contractor in the performance of this contract and that are attributable to the negligence or intentionally tortious acts of the contractor provided that the contractor is notified in writing within 30 days that the State/Asheville City Schools has knowledge of such claims. The contractor represents and warrants that it shall make no claim of any kind or nature against the State's agents who are involved in the delivery or processing of contractor goods to the State. The representation and warranty in the preceding sentence shall survive the termination or expiration of this contract.

The North Carolina General Assembly has amended the Statute to provide refunds of sales and use tax to local school units in accordance with the provisions of G.S. 105-164. 14(c) effective with tax paid on or after July 1, 1998.

These refunds are to include the "sales and use taxes paid by contractors on building materials, supplies, fixtures and equipment that become a part of or annexed to a building or structure that is owned or leased by the governmental entity and is being erected, altered or repaired for use by the governmental entity (G.S. 105-164.14)."

Sales and Use Tax Technical Bulletin Section 18-2F specifies: "To substantiate a refund claim for sales or use taxes paid on purchases of building materials, supplies, fixtures and equipment by its contractor, the claimant must secure from such contractor certified statements setting forth all of the following information:

- a. the date the property was purchased;
- b. the type of property purchased :
- c. the project for which the property was used:
- d. if the property was purchased in this State, the county in which it was purchased;
- e. if the property was not purchased in this State, the county in which the property was used; and
- f. the amount of sales and use taxes paid.

In the event the contractor makes several purchases from the same vendor, such certified statement must indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices and the State and local sales and use taxes paid thereon. Such statement must also include the cost of any tangible personal property withdrawn from the contractor's warehouse stock and the amount of sales and use tax paid thereon by the contractor. Similar certified statements by his subcontractors must be obtained by the general contractor and furnished to the claimant. Any local sales or use taxes must be shown separately from the State sales or use taxes. The contractor's statements must not contain sales or use taxes paid on purchases of tangible personal property purchased by such contractors for use in performing the contract which does not annex to, affix to or in some manner become a part of the building or structure that is owned or leased by a governmental agency and is being erected, altered or repaired for use by a governmental entity as defined by G.S. 105-164.14(c). Examples of property on which sales or use tax has been paid by the contractor and which shall not be included in the contractor's statement are scaffolding, forms for concrete, fuel for the operation of machinery and equipment, tools, repair parts and equipment rentals.