

Frederick County Public Schools General Terms and Conditions

These general terms, conditions and instructions apply to all purchases and are a part of each solicitation and every contract awarded by FCPS, unless otherwise specified in such solicitation or contract. The Purchasing function of the Finance Department is responsible for the purchasing activity of Frederick County Public Schools and its governing body, the Frederick County Public School Board, or both. Bidder/Offeror or their authorized representatives are expected to inform themselves fully as to the conditions, requirements, and specifications before submitting bids/proposals: failure to do so will be at the bidder's/offeror's own risk.

These general terms, conditions and instructions are subject to all applicable Federal, State and local statutes, policies, resolutions, and regulations (collectively "laws"), and are to be interpreted so as to be consistent with such laws. In the case of irreducible conflict, these general terms and conditions are preempted by applicable laws.

1. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia, including but not limited to the Code of Virginia, Section 2.2, Chapter 43, Virginia Public Procurement Act, and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall comply with applicable federal, state and local laws and regulations.
2. **AUTHORITY:** The Executive Director of Finance, or designee has the sole responsibility and authority for issuance of invitations to bid, request for proposals, negotiations, placing and modifying invitations, requests, purchase orders and awards issued by and for the County School Board of Frederick County. In the discharge of these responsibilities, the Executive Director of Finance may be assisted by delegating to Purchasing Supervisor and other Finance staff. No other School Board officers or employee is authorized to order supplies or services, enter into purchase negotiations or contracts, or in any way obligate the School Board for any indebtedness. 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.
3. **DEBARMENT:** By submitting a bid/proposal, the bidder/offeror is certifying that he/she is not currently debarred by the Commonwealth of Virginia or FCPS from submitting bids/proposals. On contracts for the type of goods and/or services covered by this solicitation, nor is the Bidder/Offeror an agent of any person or entity that is currently so debarred.
4. **DISCRIMINATION:** FCPS does not discriminate against faith-based organizations in accordance with the Code of Virginia, section 2.2-4343.1 or against an offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.
5. **INVOICES:** Invoices for items/services ordered, delivered and accepted shall be submitted in duplicate by the Contractor directly to the payment address shown on the purchase order/contract. **All invoices shall reference said purchase order/contract number shall be in the same legal name of the Contractor as indicated on the Contract.**
6. **SMALL AND MINORITY BUSINESS ENTERPRISES:** It is the policy of FCPS to undertake every effort to increase opportunity for utilization of small and minority businesses in all aspects of procurement to the maximum extent feasible. In connection with performance of this contract, the Contractor agrees to use best effort to carry out this policy and insure that Small 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. Contractors may rely on oral or written representation by subcontractors regarding their status as small and/or minority business enterprises in lieu of an independent investigation.
7. **VIRGINIA FREEDOM OF INFORMATION ACT:** Except as provided herein, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or coloration, in accordance with the Virginia Freedom of Information Act.
 1. Cost estimates relating to a proposed transaction prepared by or for a public body shall not be open to public inspection.
 2. Any Bidder/Offeror, upon request shall be afforded the opportunity to inspect proposal records within a reasonable time after the opening/receipt of all proposals, but prior to award, except in the event that FCPS decides not to accept any of the proposals and to re-solicit. Otherwise 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.
 3. Trade secrets or proprietary information submitted by an Bidder/Offeror or contractor in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act, however, the Bidder/Offeror or Contractor must invoke the protection of this section in writing prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected, and stating the reasons why protection is necessary.
 4. Nothing contained in this section shall be construed to require FCPS to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous to FCPS.

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CONTRACT PROVISIONS

8. **ANTI-DISCRIMINATION:** By submitting their bid/proposal, the Bidder/Offeror certifies to FCPS that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Act of 1975, as amended, where applicable, and Section 2.2-4311 of the Virginia Public Procurement Act which provides that in every contract over \$10,000 the provisions below apply:

During the performance of this contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, status as a service disabled veteran, or any other basis prohibited by state law relating to discrimination in employment.
 2. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 3. 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.
 4. 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.
 5. The Contractor will include the provisions above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
9. **ANTITRUST:** By entering into a contract, the Contractor conveys, sells, assigns, and transfers to FCPS all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by FCPS under said contract.
10. **AUDIT:** The Contractor hereby agrees to retain all books, records, and other documents relative to this contract for three (3) years after final payment, or until audited by FCPS, whichever is sooner. FCPS, its authorized agents, and/or auditors reserve the right to perform or have performed an audit of the records of the Contractor and therefore shall have full access to and the right to examine any of said materials within a reasonable period of time during said period.
11. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any one of the following ways:
1. FCPS may order changes within the general scope of the contract at any time by written notice to the Contractor. Changes within the scope of the contract include, but are not limited to things such as the method of packing or shipment, place of delivery, installation or performance of work, etc. The Contractor shall comply with the notice upon receipt. The Contract shall be compensated for any additional costs incurred as the result of such order and shall give FCPS a credit for any resulting savings. Said compensation shall be determined by one of the following methods:
 - a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to FCPS's right to audit the Contractor's records and/or to determine the correct number of units independently; or
 - c. By ordering the Contractor to proceed with the work and to keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present FCPS with all vouchers and records of the Contractor as it deems necessary to determine costs of savings. Any claim for an adjustment in price under this provision must be asserted by written notice to FCPS within thirty (30) days from the date of receipt of the written order from FCPS. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract. Neither the existence of a claim or a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by FCPS or with the performance of the contract generally.

The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.

12. **COMPLIANCE WITH PROCEDURES:** The Contractor shall comply with all procedural instructions that may be issued from time to time by FCPS. However, the terms and conditions of the contract will not change.
13. **CONTRACTUAL DISPUTES:** Any dispute concerning a question of fact including claims for money or other relief as a result of a contract with FCPS which is not disposed of by agreement shall be declared by the Executive Director of Finance, or designee, who shall reduce a decision to writing and mail or otherwise forward a copy thereof to the Contractor within ten (10) days. The decision of the Executive Director of Finance, or designee shall be final and conclusive unless the Contractor

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appeals within ten (10) days of receipt of the written decision by formal protest. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty (60) days after final payment, 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.

14. **CONTRACT DOCUMENTS/PURCHASE ORDERS:** The Contract entered into by the parties shall consist of the Invitation For Bid/Request for Proposal, the signed bid/proposal submitted by the Contractor, the Notice of Award or Purchase Order/Contract, these General Terms and Conditions and any Special Terms and Conditions, and the listed specifications and drawings, if any, including all modifications thereof, all of which shall be referred to collectively as the Contract Documents. All time limits stated in the Contract Documents are of the essence of the Contract unless stated otherwise. Orders against contracts will be placed with the Contractor on a Purchase Order.
15. **COOPERATIVE PURCHASING:** FCPS may participate in, sponsor, conduct or administer a cooperative procurement agreement on behalf of or in conjunction with one or more other public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, or the District of Columbia, for the purpose of combining requirements to increase efficiency or reduce administrative expenses in any acquisition of goods or services. Except for contracts for professional services, a public body may purchase from another public body's contract even if it did not participate in the request for proposal (RFP) or Invitation for Bid (IFB), if the RFP or IFB specified that the procurement was being conducted on behalf of other public bodies. Nothing herein shall prohibit the assessment or payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.
16. **CONTRACTOR CERTIFICATION:** To protect the safety of students and school employees, and as a condition of awarding a contract for the provision of services that require the contractor or employees of the contractor to have direct contact with students on school property during regular school hours or during school-sponsored activities, the school board shall require the contractor to provide certification of whether any individual who will provide such services have not has been convicted of any violent felony set forth in the definition of barrier crime in subsection A of Va. Code § 19.2-392.02; any offense involving the sexual molestation or physical or sexual abuse or rape of a child, or any crime of moral turpitude.

This certification shall not apply to a contractor or employees of the contractor providing services in an emergency or exceptional situation, such as when student health or safety is endangered or when repairs are needed on an urgent basis to ensure that school facilities are safe and habitable, when it is reasonably anticipated that the contractor or his employees of the contractor will have no direct contact with students.

If any employee of a Contractor who provides services in the presence of students is arrested for, charged with, or convicted of any such offense, or becomes the subject of a child abuse investigation, the Contractor shall notify the Superintendent of the arrest, charge, conviction or investigation within forty-eight (48) hours after the Contractor is made aware of the arrest, charge, conviction or investigation. The School Board reserves the right to exclude such employee from positions that may involve contact between such employee and students or school employees, or to exclude such individual from school property entirely.

Failure by Contractor or one of its subcontractors to conduct investigations or to make the certifications required by this provision may constitute a breach of this Agreement and grounds for termination or rescission of the Agreement (Code of Virginia § 22.1-296.1).

17. **DRUG-FREE WORKPLACE:** During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; (iv) include the provisions of the foregoing clauses in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "*drug free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

18. **FEES/COSTS:** Negotiated costs shall be firm and fixed throughout the contract period.
19. **FORCE MAJURE:** Neither party will be liable for any failure or delay in performing an obligation under this Agreement that is due to any of the following causes, to the extent beyond its reasonable control: acts of God, accident, riots, war, terrorist act, epidemic, pandemic, quarantine, civil commotion, breakdown of communication facilities, breakdown of web host, breakdown of internet service provider, natural catastrophes, governmental acts or omissions, changes in laws or regulations, national strikes, fire, explosion, generalized lack of availability of raw materials or energy.
20. **GUARANTEES AND WARRANTIES:** All guarantees and warranties required shall be furnished by the Contractor and shall be delivered to FCPS before final payment on the contract is made. Unless otherwise stated, manufacturer's standard warranty applies.
21. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By submitting their bid/proposal, Bidders/Offerors certify that they do

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not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986.

22. **INDEMNIFICATION:** Contractor shall indemnify, save and hold harmless the School Board of FCPS, its officers, agents, employees and volunteers against and from any and all injuries, death, loss, damage, claims, patent claims, suits, liabilities, judgments, costs of investigation, attorney fees, cost of appeals arising out of any such claims or suits, and other expenses which may or otherwise accrue against FCPS in consequence of the granting of a contract or which may or otherwise result in connection with work therefrom, if it shall be determined that the act was caused through negligence, omission or commission of the Contractor, including its agents, subcontractors, employees, and volunteers. The Contractor expressly understands and agrees that any performance bond or insurance shall in no way limit the responsibility to indemnify, keep and save harmless and defend the School Board as herein provided. Furthermore, it is understood and agreed that the Contractor is at all times herein acting as an independent contractor.
23. **INSURANCE:** Contractor shall maintain such personal injury and property damage liability insurance as necessary to protect itself from claims arising out of the performance of any resulting contract. By signing and submitting a proposal under this solicitation, the Bidder/Offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the work commences. Additionally, it will maintain these during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission. During the period of the contract FCPS reserves the right to require the Contractor to furnish certificates of insurance for the coverage required by FCPS and the Commonwealth as indicated below:

Insurance Coverage and Limits Required:

1. Worker's Compensation - Statutory requirements and benefits.
2. Employers Liability - \$100,000.
3. General Liability - \$500,000 combined single limit with FCPS named as additional insured with respect to the services being procured. This coverage is to include Premises/Operations Liability, Products, and Completed Operations Coverage, Independent Contractor's Liability, Owner's and Contractor's Protective Liability and Personal Injury Liability.
4. Automobile Liability - \$500,000.

If different or additional insurance coverage is required it will be so stated in Special Terms and Conditions.

24. **MODIFICATION OF CONTRACT:** FCPS may, upon mutual agreement with the Contractor, issue written modifications to the scope of work/specifications of this contract, and within the general scope thereof, except that no modifications can be made which will result in an increase of the original contract price by a cumulative amount of more than \$50,000 or 25%, whichever is greater, without the advance written approval of the Executive Director of Finance, or designee. In making any modification, the resulting increase or decrease in cost for the modification shall be determined by one of the following methods as selected by Executive Director of Finance, or designee:
1. The written modification shall stipulate the mutually-agreed price for the specific addition to or deletion from the scope of work/specifications which shall be added to or deducted from the contract amount.
 2. The written modification shall stipulate the number of unit quantities added to or deleted from the contract and multiplied by the unit price which shall be added to or deducted from the contract amount.
 3. The written modification shall direct the Contractor to proceed with the work and to keep, and present in such form as FCPS may direct, a correct account of the cost of the change together with all vouchers therefore. The cost shall include an allowance for overhead and profit to be mutually agreed upon by FCPS and the Contractor.
25. **NON-DISCRIMINATION OF CONTRACTORS:** Any potential Bidder/Offeror or Contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, status as a service disabled veteran, or any other basis prohibited by state law relating to discrimination in employment. Faith-based organizations are also protected from discrimination on the basis of religious character as provided below:
1. Faith-based organizations may enter into contracts with FCPS on the same basis as any other nongovernmental source may do so without impairing the religious character of such organization and without diminishing the religious freedom of the beneficiaries of assistance provided under such contracts.
 2. FCPS shall not impose conditions on contracts that restrict the religious character of the faith-based organization, except that money paid to the faith-based organization by or on behalf of FCPS will not be spent for religious worship, instruction, or proselytizing.
 3. Any faith-based organization awarded a contract by FCPS shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender, sexual orientation, gender identity, or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by FCPS.

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4. Faith-based organizations retain the right to employ persons of a particular religion to perform work connected with the carrying on by such organization of its activities.
5. If an award of contract is made to a faith-based organization, and an individual who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, FCPS shall offer the individual, within a reasonable period of time after the date of objection, access to equivalent goods, services, or disbursements from an alternative provider.
6. Any faith-based organization that is awarded a contract to provide goods, services, or disbursements to individuals shall also provide to such individuals a notice in bold face type that states: "Neither the public body's selection of a charitable or faith-based provider of services nor the expenditure of funds under this contract is an endorsement of the provider's charitable or religious character, practices, or expression. No provider of services may discriminate against you on the basis of religion, a religious belief, or your refusal to actively participate in a religious practice. If you object to a particular provider because of its religious character, you may request assignment to a different provider. If you believe that your rights have been violated, please discuss the complaint with your provider."
26. **PAYMENT TERMS:** Any payment terms requiring payment in less than 45 days will be regarded as requiring payment 45 days after invoice or delivery, whichever occurs last. However, this shall not affect offers of discounts for payment in less than 45 days.
27. **PAYMENT TO SUBCONTRACTORS:** A contractor awarded a contract under this solicitation is hereby obligated to:
 1. Pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from FCPS for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 2. Notify the agency and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason for such.

The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from FCPS except for amounts withheld as stated above. The date of mailing of any payment by U.S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of FCPS.
28. **PRICE REDUCTION:** If at any time after the date of the bid/proposal 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 this 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 reductions 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's customers generally or (2) in the contractor's price schedule for the class of customers, i.e. 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 would not be considered a "general price reduction" under this provision. Contractor shall submit his or her invoice 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 days of any general price reduction notify FCPS of such reduction by letter. Failure to do so may result in termination of the contract for cause. Upon receipt of any such notice of a general price reduction, all ordering offices will be duly notified by FCPS.
29. **PRIME CONTRACTOR RESPONSIBILITIES:** The Contractor shall be responsible for completely supervising and directing the work under this contract and all subcontractors that they may utilize, using their best skill and attention. Subcontractors who perform work under this contract shall be responsible to the prime Contractor. The Contractor agrees to be fully responsible for the acts and omissions of their subcontractors and of persons employed by them as they are for the acts and omissions of their own employees.
30. **RESPONSIBILITY FOR SUPPLIES TENDERED:** Unless otherwise specified in the solicitation, 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, FCPS may return the rejected materials or supplies to the Contractor at his or her risk and expense or dispose of them as its own property.
31. **STUDENT INFORMATION CONFIDENTIALITY:** Under no circumstances may a firm release, disclose, sell, or otherwise use student names and addresses. Firms may only use this information for purposes required by this contract. Failure to comply with this requirement will result in immediate cancellation of the contract.
32. **TERMINATION FOR CAUSE/DEFAULT:** In case of failure to deliver goods or provide services in accordance with the contract terms and conditions, FCPS, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any

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other remedies which FCPS may have. Specifically,

1. If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner their obligations under this contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this contract, the School Board shall thereupon have the right to terminate, specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, and reports prepared by the Contractor under the contract shall at the option of the School Board become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.
2. Notwithstanding the above, the Contractor shall 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 set off until such time as the exact amount of damages due to the School Board from the Contractor is determined.
33. **TERMINATION FOR CONVENIENCE:** FCPS reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, whenever the Executive Director of Finance, or designee determines that such a termination is in the best interest of FCPS. Any such termination shall be effected by delivery to the Contractor, at least thirty (30) working days prior to the termination date, a Notice of Termination specifying the extent to which performance shall be terminated and date upon which such termination becomes effective. After receipt of a notice of termination, the Contractor must stop all work or deliveries under the purchase order/contract on the date and to the extent specified; however, any contract termination notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of termination. An equitable adjustment in the contract price shall be made for completed service, but no amount shall be allowed for anticipated profit on unperformed services.

BID/ PROPOSAL TERMS & CONDITIONS

34. **ACCEPTANCE OF BIDS/OFFERS BINDING 90 DAYS:** Unless otherwise specified in the IFB or RFP, all formal bids/offers submitted shall be binding for ninety (90) calendar days following bid/proposal opening date, unless shortened/extended by mutual consent of all parties.
35. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract as a result of this solicitation, FCPS will publicly post such notice on the Purchasing portion of the FCPS website, www.frederick.k12.va.us for a minimum of 10 calendar days except in emergencies.
36. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the Contractor in whole or in part without the written consent of FCPS.
37. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that FCPS shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this contract. Furthermore, if funds are not appropriated for any succeeding fiscal year subsequent to the one in which this contract is entered into, for the purpose of this contract, then FCPS may reduce or terminate this contract upon thirty (30) days prior written notice to the Contractor. Should termination be accomplished in accordance with this Section, FCPS shall be liable only for payments due through June 30 of the calendar year.
38. **AWARD OR REJECTION OF BIDS/OFFERS:** Purchasing staff shall award the contract to the lowest responsive and responsible bidder complying with all provisions of the IFB, provided the bid price is reasonable and it is in the best interest of FCPS to accept it. Awards made in response to an RFP will be made to the highest qualified offeror whose proposal is determined in writing to be the most advantageous to FCPS taking into consideration the evaluation factors set forth in the RFP. FCPS reserves the right to award a contract by individual items, in the aggregate, or any combination thereof, or to reject any or all bids and to waive any informality in bids received whenever such rejection or waiver is in the best interest of FCPS. Award may be made to as many bidders/offerors as deemed necessary to fulfill the anticipated requirements of FCPS. FCPS also reserves the right to reject the bid of a bidder deemed to be a non-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 service required;
- b. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
- c. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
- d. The quality of performance of previous contracts or services;
- e. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or services;
- f. The sufficiency of the financial resources and ability to perform the contract or provide the service;
- g. The quality, availability and adaptability of the goods or services to the particular use required;
- h. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;
- i. The number and scope of the conditions attached to the bid;
- j. Whether the bidder is in arrears to FCPS on debt or contract or is a defaulter on surety to FCPS or whether the bidder's Frederick County taxes or assessments are delinquent; and
- k. Such other information as may be secured by FCPS having a bearing on the decision to award the contract. If an apparent low bidder is not awarded a contract for reasons of non-responsibility, the FCPS Purchasing Supervisor

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shall so notify that bidder and shall have recorded the reasons in the contract file.

39. **BRAND NAMES:** Unless otherwise provided in the solicitation, the name of a certain brand, make or manufacturer does not restrict bidders/offerors to the specific brand, make or manufacturer named; but conveys the general style, type, character, and quality of the article desired. Any article which FCPS in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the proposes intended, shall be accepted. The Bidder/Offeror is responsible to clearly and specifically indicate the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable FCPS to determine if the product offered meets the requirements of the solicitation. **ONLY THE INFORMATION FURNISHED WITH THE BID/PROPOSAL WILL BE CONSIDERED IN THE EVALUATION. FAILURE TO FURNISH ADEQUATE DATA FOR EVALUATION PURPOSES MAY RESULT IN DECLARING A BID/PROPOSAL NON-RESPONSIVE.** Unless the Bidder/Offeror clearly indicates in its bid/proposal that the product offered is an "equal" product, such bid/proposal will be considered to offer the brand name product referenced in the solicitation. (Reference Chapter 43, Paragraph 2.2-4315, Code of Virginia.)

To judge acceptability, bidders submitting alternates shall attach specifications, drawings, pictures, etc., which shall be used in determining suitability. It shall be understood that the burden of proof for a substitute or an "or equal" material shall be on the bidder.

40. **CASH DISCOUNTS:** Cash discounts will be considered in determining the award. All discounts shall be included in the unit prices.
41. **CLARIFICATION OF TERMS:** If any prospective Bidder/Offeror has questions about the specifications or other solicitation documents, the prospective Bidder/Offeror should contact the Purchasing Supervisor, in writing, whose name appears on the face of the solicitation no later than five (5) business (working) days before the due date. Any revisions to the solicitation will be made only by written addendum issued by the Purchasing Supervisor.
42. **COMMENTS CONCERNING SPECIFICATIONS:** Any vendor wishing to make comments concerning specifications or other provisions of School Board Invitations to Bid or Request for Proposals may do so by submitting such comments in writing to the Purchasing Supervisor no later than five (5) working days prior to the specific date of opening.
43. **COPYRIGHTS OR PATENT RIGHTS:** Bidder warrants that there has been no violation of copyrights or patent rights in manufacturing, producing, or selling the goods shipped or ordered as a result of this bid, and seller agrees to hold the purchaser harmless from any and all liability, loss, or expense occasioned by such violation.
44. **DELIVERY:** Time will be of the essence for any orders placed as a result of this bid. Purchaser reserves the right to cancel such orders, or any part thereof, without obligation if delivery is not made at the time(s) specified on proposal form.

Failure of a contractor to deliver goods or services within the time specified, or within reasonable time as interpreted by FCPS, or failure to make replacements or corrections of rejected articles or services when so requested, immediately or as directed by FCPS, shall constitute grounds for FPCS to "Cover" by purchasing in the open market articles or services of comparable grade or quality to replace the services or articles not delivered. On all such purchases, the contractor shall reimburse FCPS, within a reasonable time specified by FCPS, for any expense incurred in excess of contract prices, or, in FCPS's sole discretion, FCPS shall deduct the cost of Cover from any amounts due to Contractor. Such purchases shall be deducted from the contract quantities if applicable. Should public necessity demand it, FCPS reserves the right to use or consume articles delivered or services performed which are substandard in quality, subject to an adjustment in prices to be determined by FCPS.

45. **DELIVERY POINT:** All items shall be delivered F.O.B. destination, and delivery costs and charges included in the bid price. Failure to do so may be cause for rejection of bid.
46. **ETHICS IN PUBLIC CONTRACTING:** By submitting their bid/proposal, Bidders/Offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Bidder/Offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.
47. **EXHAUSTION OF ADMINISTRATIVE REMEDIES:** No potential bidder/offeror or contractor shall institute any legal action until all administrative remedies available under this solicitation and resulting contract have been exhausted and until all statutory requirements have been met.
48. **EXTRA CHARGES NOT ALLOWED:** The proposed costs/fees shall be for providing complete services; e.g., travel, hourly rates, supplies, printing, misc. support services, etc. Extra charges will not be allowed.
49. **HAZARDOUS MATERIALS:** If the items or products requested by this solicitation are "Hazardous Substances" as defined by Section 1261 of Title 15 of the United States Code (U.S.C), then the Bidder/Offeror, by submitting his/her bid/proposal, certifies and warrants that the items or products to be delivered under this contract shall be properly labeled as required by the foregoing sections and that by delivering the items or products the Bidder/Offeror does not violate any of the prohibitions of Title 14 of the U.S.C. or Section 1263.
50. **INCLEMENT WEATHER:** Due to inclement weather conditions, FCPS may elect to close schools and administration offices. If the administration office is closed the day of the pre-bid/proposal meeting then meetings will then be held the next business

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day. The same condition applies to bid/proposal openings

51. **LATE BIDS/PROPOSALS:** To be considered for selection, bids/proposals must be received by the FCPS finance department by the designated date and hour. The official time used in the receipt of bids/ proposals is that time on the automatic time stamp machine in the purchasing office. Bids/Proposals received in the finance department after the date and hour designated are automatically disqualified and will not be considered. FCPS is not responsible for delays in the delivery of mail by the U.S. Postal Service, private couriers, or the intra-school mail system, or any other method of delivery. It is the sole responsibility of the Bidders/Offerors to ensure that its bid/proposal reaches the purchasing office by the designated date and hour.
52. **LICENSE:** Any bidder not licensed as may be required by federal, state, or county law shall be determined a non-responsive bidder.
53. **LICENSES, PERMITS, AND FEES:** All bids/proposals submitted shall include in price the cost of any business and professional licenses, permits, or fees required by the County of Frederick.
54. **MANDATORY USE OF FCPS FORM AND TERMS AND CONDITIONS:** Failure to submit a bid/proposal on the official FCPS form provided for that purpose may be cause for rejection of the bid/proposal. Return of the complete document is required. Modification of or additions to the General Terms and Conditions of this solicitation may be cause for rejection of the bid/proposal; however, the Purchasing Supervisor, or designee reserves the right to decide, on a case by case basis, in his/her sole discretion, whether to reject such a bid/proposal as non-responsive. As a precondition to its acceptance, FCPS may, in its sole discretion, request that the Bidder/Offeror withdraw or modify non responsive portions of a bid/proposal, which do not affect quality, quantity, price or delivery schedule.
55. **MATERIAL SAFETY DATA SHEETS:** Material and Safety Data Sheets shall be provided in English, and if available, Spanish within two (2) business days upon request for each chemical and/or compound offered. Failure on the part of the Contractor to submit such data sheets may be cause for declaring the Contractor in default.
56. **NEGOTIATION WITH LOWEST RESPONSIBLE BIDDER:** Unless all bids are canceled or rejected, FCPS reserves the right granted by Section 2.2 -4318 of the Code of Virginia to negotiate with the lowest responsive and responsible Bidder to obtain a contract price within the funds available to FCPS whenever such low bid exceed FCPS's available funds. For the purpose of determining when such negotiations may take place, the term "available funds" shall mean those funds which were budgeted by FCPS for this contract prior to the issuance of the written Invitation for Bid. Negotiations with the low Bidder may include both modifications of the bid price and the Scope of the Work/Specifications to be performed. FCPS shall initiate such negotiations by written notice to the lowest responsive, responsible Bidder that its bid exceeds the available funds and the FCPS wishes to negotiate a lower contract price. The times, places and manner of negotiating shall be agreed to by FCPS and the lowest responsive, responsible Bidder.
57. **OFFICIAL NOT TO BENEFIT:**
 1. Bidder/Offeror shall certify upon signing a bid/proposal that to the best of their knowledge no FCPS 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/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 recession of the contract made or could affect payment pursuant to the terms of the contract.
 2. Whenever there is reason to believe that benefit of the sort described in the paragraph above has been or will be received in connection with bid, proposal or contract and that the Contractor has failed to disclose such benefit or has inadequately disclosed it, FCPS, as a prerequisite to payment pursuant to the Contractor, or at any time require the contractor to furnish, under oath, answers to any interrogatories related to such possible benefit.
 3. In the event the Bidder/Offeror has knowledge of benefits as outlined above, this information should be submitted with the proposal. If the above does not apply at time of award of contract and becomes known after inception of a contract the Bidder/Offeror shall address the disclosure of such facts to: Executive Director of Finance, Frederick County Public Schools, P.O. Box 3508, Winchester, VA 22601. The Request for Proposal Title should be referenced in the disclosure.
58. **OBLIGATION OF BIDDER/OFFEROR:** By submitting a proposal, the Bidder/Offeror covenants and agrees that they are satisfied, from their own investigation of the conditions to be met, that they fully understand their obligation and that they will not make any claim for, or have right to cancellation or relief from the contract because of any misunderstanding or lack of information.
59. **OWNERSHIP OF MATERIAL:** Ownership of all data, material and documentation originated and prepared by the Bidder/Offeror and successful Contractor for FCPS pursuant to this solicitation and any resulting contract shall belong exclusively to FCPS and be subject to public inspection in accordance with the Virginia Freedom of Information Act.
60. **PRICES TO BE FIRM:** Bidder warrants by virtue of bidding that prices, terms, and conditions quoted in his bid will be firm for acceptance for a period of ninety (90) days from the date of bid opening unless otherwise stated by the School Board or bidder.

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61. **PRICING:** Prices should be stated in units of quantity specified in the bidding specifications. In case of discrepancy in computing the amount of the bid, the unit prices quoted will govern.
62. **BID/PROPOSAL ACCEPTANCE PERIOD:** Bid/ proposal shall be binding upon the Bidder/Offeror for a minimum of 90 calendar days following the bid/proposal receipt and opening date. Any bid/proposal on which the Bidder/Offeror shortens the acceptance period may be rejected as determined by the Purchasing Supervisor.
63. **PROTEST OF AWARD OR DECISION TO AWARD:** Any Bidder/Offeror may protest the award or decision to award a contract by submitting a protest in writing to the Purchasing Supervisor, no later than ten (10) days after the Notice of Award or the Notice of Intent to Award, whichever occurs first. The written protest shall include the basis for the protest and the relief sought. The Purchasing Supervisor shall issue a decision in writing within ten (10) days of the receipt of the protest stating the reasons for the action taken.
 1. 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 Supervisor 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 by FCPS. Where the award has been made and performance has begun, the Purchasing Supervisor may declare the contract void upon a finding that this action is in the best interest of FCPS. 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.
 2. 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.
 3. An award need not be delayed for the period allowed an Bidder/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 offer would expire.
64. **QUALIFICATIONS OF BIDDERS/OFFERORS:** FCPS may make such reasonable investigations as deemed proper and necessary to determine the ability of the Bidder/Offeror to perform the work/furnish the item(s) and the Bidder/Offeror shall furnish to FCPS all such information and data for this purpose as may be requested. FCPS reserves the right to inspect the Bidder's/Offeror's physical facilities prior to award to satisfy questions regarding the Bidder's/Offeror's capabilities. FCPS further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such Bidder/Offeror fails to satisfy FCPS that such Bidder/Offeror is properly qualified to carry out the obligations of the contract and to complete the work/furnish the item(s) contemplated therein. The Bidder/Offeror shall complete and enclose with his/her proposal the CONTRACTOR DATA SHEET, attached hereto.
65. **QUALITY:** All materials used for the manufacture or construction of any supplies, materials, or equipment covered by this bid shall be new, unless otherwise specified. The items bid must be new, the latest model, and of the best quality and highest grade workmanship.
66. **REJECTION AND AWARD OF BIDS/PROPOSALS:** The Frederick County School board reserves the right to accept or reject any or all bids/proposals or parts of bids, to waive informalities, and to request rebids. The School Board also reserves the right to award the contract as it deems will best serve its interest. It further reserves the right to award the contract on a split order basis, lump sum, or individual item basis, or such combination as shall best serve the interest of the School Board unless otherwise specified.
67. **SAMPLES:** Samples, when requested, must be furnished free of expense to the School Board and if not used in testing or destroyed, will be returned upon request within thirty (30) days of bid award at the bidder's expense.
68. **SIGNATURE REQUIRED:** All quotations and proposals must be signed with the firm name and by an officer or employee having the authority to bind the company or firm by his signature.
69. **SIGNED BID CONSIDERED AN OFFER:** This signed bid shall be considered an offer on the part of the bidder or contractor whose offer shall be deemed accepted upon approval by the Frederick County School Board, and in case of default on the part of the bidder or contractor after such acceptance, the School Board may take such actions as it deems appropriate, including legal action for damage or specific performance.
70. **SUBMISSION AND RECEIPT OF BIDS/PROPOSALS:**
 1. Bids/Proposals, to receive consideration, must be received prior to the specified time of opening as designated in the invitation.
 2. Unless otherwise specified, bidders must use the bid/proposal form furnished by the School Board. Failure to do so may cause bid to be rejected. Removal of any part of the bid proposal may invalidate the bid.
 3. Bids/Proposals having any erasures or corrections must be initialed by bidder in ink. Bids/Proposals shall be signed in ink. All quotations shall be typewritten or filled in with pen and ink.
 4. When specified, each bid/proposal shall be accompanied by a bid bond with surety satisfactory to the School Board or a cashier's check or money order in an amount equal to 5 percent or the total bid price. In the event of default by the bidder, the 5 percent deposit shall represent liquidated damages (not as a penalty) to the School Board, if stated in the bid/proposal

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specifications.

71. **TAX EXEMPTION:** FCPS is exempt from the payment of federal excise or Virginia Sales and Use 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/Offeror 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 FCPS. Contractors located outside the Commonwealth of Virginia are advised that when materials are picked up by FCPS at their place of business, they may charge and collect their own local/state sales tax.
72. **TIE BIDS:** If all bids are for the same total amount or unit price (including authorized discounts and delivery times), the Purchasing Supervisor shall award the contract to the tie bidder providing goods produced in Virginia or goods, services or construction provided by Virginia persons, firms or corporations. If there are more than one such tie bid, then the FCPS Purchasing Supervisor may, in his or her sole discretion, re-advertise the solicitation, divide the contract among the bidders (if the solicitation provided for multiple awards), or award the contract by lot from among the responsive and responsible Virginia bidders. If there are no responsive and responsible Virginia bidders, then the Purchasing Supervisor may, in his or her sole discretion, re-advertise the solicitation, divide the contract among the bidders (if the solicitation provided for multiple awards), or award a contract by lot from among the responsive and responsible bidders. The decision of FCPS to make award to one or more such bidders shall be final.
73. **VARIATIONS TO SPECIFICATIONS:** For purposes of evaluation, bidder must indicate any variances from our specifications and/or conditions, no matter how slight. If variations are not stated in the proposal, it will be assumed that the product or service fully complies with our specifications.
74. **VENDOR REGISTRATION:** All vendors desiring to provide goods and/or service to FCPS are encouraged to download the vendor information form from the Frederick County Public Schools website at www.frederick.k12.va.us. Vendors may also register via the Vendor Self Service Portal linked on the Purchasing page of the FCPS website. The vendor information form can be attached in the Self Service Portal and vendors will be notified of solicitations via that database. Vendors are responsible for contacting FCPS for any changes or updates to the vendor information form, including changes to addresses and other contact information.
75. **VENDOR RESPONSIBILITIES:** Bids/Proposal must be properly identified on the return envelope and properly submitted, as specified on the first page of the Bid/Proposal. Failure to do so may result in rejection of the bid/proposal.
76. **WARRANTIES FOR USAGE AND QUANTITY:** Whenever a bid/proposal is sought seeking a source of supply for a specified time for materials or services, the quantities or usage shown are estimated only. No guarantee or warranty is given or implied by the School Board as to the total amount that may or may not be purchased from any resulting contracts. These quantities are for bidders' information only and will be used for tabulation and presentation of bid.
77. **WITHDRAWAL OF BIDS/PROPOSALS:** A bid/proposal may be amended and/or withdrawn by a bidder or offeror if the request is received in writing before the due date and hour. The request must be signed by a person authorized to represent the vendor or firm that submitted the bid/proposal. Submission of a subsequent bid/proposal unless specifically identified as an additional bid, shall constitute the withdrawal of any prior one submitted by the same bidder or offeror on the same Invitation for Bid/Request for Proposal.

Withdrawal of bids/proposals after opening is governed by the [Code of Virginia §2.2-4330](#). The bidder/ offeror shall give notice in writing of his/her claim of right to withdraw his/her bid/proposal within two business days after conclusion of the bid opening or receipt of proposals procedure, and shall submit original work papers with such notice.