

**NOTE:** Fairfax County Public Schools conducts all procurement activities in accordance with delegated authority from the Purchasing Agent of Fairfax County Government. Bids and proposals in response to FCPS solicitations must be submitted electronically through Bonfire on or before the date and time stipulated in the solicitation.

RFP 2000003265

**Title PreK-12 Library Databases and eBook Collections**

**IMPORTANT NOTICE**

**THIS IS AN ELECTRONIC PROCUREMENT (eBID)**  
**SUBMISSIONS WILL ONLY BE ACCEPTED ELECTRONICALLY VIA THE BONFIRE**  
**PORTAL (<https://fcps.bonfirehub.com>)**

Fairfax County Public Schools (FCPS) uses a procurement portal powered by Bonfire Interactive for accepting and evaluating proposals. To register, visit <https://fcps.bonfirehub.com>. Additional assistance is also available at [Support@GoBonfire.com](mailto:Support@GoBonfire.com). Submitting proposals via the Bonfire portal is **mandatory**. FCPS will not accept proposals submitted by paper, telephone, facsimile ("FAX") transmission, or electronic mail (e-mail) in response to this RFP. Reference Special Provisions, Section 15 for additional information.

FCPS strongly encourages offerors to submit proposals well in advance of the proposal submission deadline. A proposal submission is not considered successful unless all necessary files have been uploaded and the 'Submit & Finalize' step has been completed. Offerors are responsible for the consequences of any failure to plan ahead in the submission of its Proposal.

|                                              |                                                   |                                                                                                        |
|----------------------------------------------|---------------------------------------------------|--------------------------------------------------------------------------------------------------------|
| <b>ISSUE DATE:</b><br>12/16/2020             | <b>REQUEST FOR PROPOSAL NUMBER:</b><br>2000003265 | <b>TITLE:</b> PreK-12 Library Databases and eBook Collections                                          |
| <b>DEPARTMENT:</b><br>Instructional Services | <b>DUE DATE/TIME:</b><br>January 26, 2021 2:30 PM | <b>CONTRACT ADMINISTRATOR:</b><br>571-423-3580 or <a href="mailto:trfick@fcps.edu">trfick@fcps.edu</a> |

**Proposals** - In accordance with the following and in compliance with all terms and conditions, unless otherwise noted, the undersigned offers and agrees, if the proposal is accepted, to furnish items or services for which prices are quoted, delivered or furnished to designated points within the time specified. It is understood and agreed that with respect to all terms and conditions accepted by Fairfax County the items or services offered and accompanying attachments shall constitute a contract.

**Note:** Fairfax County does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment in the performance of its procurement activity.

**NAME AND ADDRESS OF FIRM:**

Telephone/Fax No.:

E-Mail Address:

Federal Employer Identification No:

**OR**

Federal Social Security No.  
(Sole Proprietor)

Prompt Payment Discount:

\_\_\_% for payment within  
\_\_\_ days/net \_\_\_ days

State Corporation Commission  
(SCC) Identification No.

By signing this proposal, Offeror certifies, acknowledges, understands, and agrees to be bound by the conditions set forth in the General Conditions and Instructions to Bidders as described in Appendix A, the Certification Regarding Ethics in Public Contracting set forth in Appendix B, and by any other relevant certification set forth in Appendix B.

**BUSINESS CLASSIFICATION – Described in Appendix B - CHECK ONE:** ☐ LARGE (Y) ☐ SMALL (B)

☐ MINORITY-OWNED SMALL (X)

☐ MINORITY OWNED LARGE (V)

☐ WOMEN-OWNED SMALL (C)

☐ WOMEN OWNED LARGE (A)

☐ NON PROFIT (9)

CHECK ONE:

☐ INDIVIDUAL

☐ PARTNERSHIP

☐ CORPORATION

Vendor Legally Authorized Signature

Date

Print Name and Title

Sealed proposals subject to terms and conditions of this Request for Proposal shall be submitted through Bonfire at <http://fcps.bonfirehub.com>

AN EQUAL OPPORTUNITY PURCHASING ORGANIZATION

(DPMM32) rev FCPS 12/16



## SPECIAL PROVISIONS

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### **1. SCOPE OF SERVICES:**

- 1.1. The purpose of this Request for Proposal is to solicit sealed proposals to establish a contract or contracts through competitive negotiation for the provision of PreK-12 Library Databases and eBook Collections by Fairfax County Public Schools and County of Fairfax, Virginia.
- 1.2. Offerors shall ensure that a representative who can bind the firm is available for both the finalist interviews and negotiations.

### **2. MINIMUM QUALIFICATIONS**

- 2.1. The following are the minimum qualifications an Offeror must meet or exceed, at the time of submission, in order for FCPS to accept a proposal as responsive. If an Offeror fails to respond to each qualification, or if FCPS determines from the response that an Offeror does not meet any one of the minimum qualifications, its proposal may be deemed non-responsive and disqualified from further consideration.
- 2.2. The Offeror must have been in business for at least five (5) years, and is required to have, at least three (3) years continuous successful experience in providing PreK-12 library databases or eBook collections.
- 2.3. Proposals must include access to online trial to products for 60 days.
- 2.4. Proposals including databases must include full-text title list for eBooks, journals, and other periodicals including dates of full-text coverage.
- 2.5. Proposals including eBook collections must include full-text title list for eBooks including dates of full-text coverage.
- 2.6. Proposals including self-produced content must provide an equivalent means of evaluating breadth of resources.

### **3. PRE-PROPOSAL CONFERENCE:**

- 3.1. An optional pre-proposal conference will be held on January 7 at 11:00 a.m. via Microsoft Teams Video Conference. Those interested in attending the pre-proposal conference must contact the Contract Administrator at [trfick@fcps.edu](mailto:trfick@fcps.edu) to obtain the MS Teams link. Attendees requiring special services are asked to provide their requirements to the Office of Equity and Employee Relations at 571-423-3070, [HRequity&empolyeerelations@fcps.edu](mailto:HRequity&empolyeerelations@fcps.edu) or TRS at 711. Please allow seven (7) working days in advance of the event to make the necessary arrangements.
- 3.2. The purpose of the pre-proposal conference is to give potential offerors an opportunity to ask questions and to obtain clarification about any aspect of this Request for Proposal. Offerors may submit any questions pertaining to the RFP, in writing, prior to the pre-proposal conference to name [trfick@fcps.edu](mailto:trfick@fcps.edu).

### **4. CONTRACT PERIOD AND RENEWAL:**

- 4.1. This contract will begin on July 1, 2021 or date of award, whichever is later, and terminate on June 30, 2026.
- 4.2. Automatic contract renewals are prohibited. This contract may be renewed at the expiration of its term by agreement of both parties. Contract renewals must be authorized by and coordinated through the Office of Procurement Services. FCPS reserves the right to renew the contract for three (3) additional one-year periods.

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- 4.3. Notice of intent to renew will be given to the Contractor in writing by the Office of Procurement Services, normally 60 days before the expiration date of the current contract. (This notice shall not be deemed to commit the County to a contract renewal.)
- 4.4. The obligation of the County to pay compensation due the contractor under the contract or any other payment obligations under any contract awarded pursuant to this Request for Proposal is subject to appropriations by the Fairfax County Board of Supervisors to satisfy payment of such obligations. The County's obligations to make payments during subsequent fiscal years are dependent upon the same action. If such an appropriation is not made for any fiscal year, the contract shall terminate effective at the end of the fiscal year for which funds were appropriated and the County will not be obligated to make any payments under the contract beyond the amount appropriated for payment obligations under the contract. The County will provide the contractor with written notice of non-appropriation of funds within thirty (30) calendar days after action is completed by the Board of Supervisors. However, the County's failure to provide such notice shall not extend the contract into a fiscal year in which sufficient funds have not been appropriated.

### 5. **BACKGROUND:**

- 5.1. FCPS is the largest school system in the Commonwealth of Virginia and the 10<sup>th</sup> largest in the United States. The school system consists of approximately 198 schools and centers serving almost 190,000 students from kindergarten through 12<sup>th</sup> grade. There are approximately 24,000 full-time employees. FCPS students represent over 200 countries and speak over 160 different languages.
- 5.2. FCPS has 196 library programs, of which 28 are high schools, 24 are middle schools, 143 are elementary schools and 1 is an interagency school. There are approximately 15,000 instructional school-based and central office staff.
- 5.3. PreK-12 library databases and eBook collections may be selected for purchase by individual school library programs or centrally providing district-wide access to all schools and school-based staff across the division, and central office staff. These research databases and eBook collections may be used by students in all FCPS school sites as well as central office and school-based staff across the division.

### 6. **LANGUAGE CONVENTIONS**

- 6.1. An attempt has been made to standardize the language used in this RFP. The words "must", "shall", "mandatory" and the phrase "it is required" are used in connection with a mandatory specification that FCPS expects will be present in the proposed Solution. The words "should" and "may" are used in connection with a specification that is desirable.

### 7. **FUNCTIONAL REQUIREMENTS:**

- 7.1. The list of Functional requirements can be found in Appendix C.

### 8. **PROPOSAL SUBMITTAL INSTRUCTIONS TECHNICAL PROPOSAL INSTRUCTIONS:**

- 8.1. Qualified offerors are encouraged to submit a proposal for a digital platform providing comprehensive coverage and primarily full-text selection of articles and/or e-book collections intended for PreK-12 level research or use. Content coverage can be within one discipline, i.e. science, or broad to cover multiple disciplines and could cover a subset of the PreK-12 audience. Collections of eBooks contain books of interest to students primarily for leisure or informational reading, not collections of reference books.

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8.2. The offeror must submit the Technical Proposal for databases and eBook collections each in a separate file containing the following information. This information will be considered the minimum content of the proposal. Proposal contents shall be arranged in the same order and identified with headings as presented herein.

- a. Name of firm submitting proposal; main office address; when organized; if a corporation, when and where incorporated; appropriate Federal, State, and County registration numbers.
- b. Name, intended grade level, and subject area for each proposed database or eBook collection.
- c. Understanding of the problem and technical approach.
  1. Statement and discussion of the requirements as they are analyzed by the offeror.
  2. Offeror's proposed definitive Scope of Work with explanation of technical approaches and a detailed outline of the proposed program for executing the requirements of the technical scope and achieving project objectives.
  3. Offeror should demonstrate an awareness of difficulties in the completion of this undertaking, and a plan for surmounting them. Special attention should be given to methodological issues that will be encountered in such a project.

8.3. Treatment of the Issues:

In this section, the offeror may also comment if deemed appropriate, on any aspect of the Request for Proposal, including suggestions on possible alternative approaches to the coverage, definition, development, and organization of the issues presented in the "Functional Requirements" section, and may propose alternative approaches.

8.4. Statement of Qualifications:

The statement of Qualifications must include a description of organizational and staff experience, and resumes of proposed staff.

- a. Organizational and Staff Experience: Offerors must describe their qualifications and experience to perform the work described in this Request for Proposal. Information about experience should include direct experience with the specific subject matter.
- b. References: Special notation must be made of similar or related programs performed and must include organization names, addresses, names of contact persons, and telephone numbers for such reference.
- c. Personnel: Full-time and part-time staff, proposed consultants and subcontractors who may be assigned direct work on this project should be identified. Information is required which will show the composition of the task or work group, its specific qualifications, and recent relevant experience. Special mention shall be made of direct technical supervisors and key technical personnel, and approximate percentage of the total time each will be available for this project. The technical areas, character and extent of participation by any subcontractor or consultant activity must be indicated and the anticipated sources will be identified.
- d. Financial Statements: The offeror shall provide an income statement and balance sheet from the most recent reporting period.

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### 8.5. Narrative response to requirements listed in Appendix C

Each requirement with a required narrative listed in Appendix C should be answered within the technical proposal. For preferred requirements with required narratives, a vendor must only provide a narrative if they meet the requirement.

### 9. CONSULTATION SERVICES:

- 9.1. The contractor's staff must be available for consultation with County staff on an as-needed basis between 8:00 AM and 5:00 PM, Eastern Time, Monday through Friday.

### 10. COST PROPOSAL INSTRUCTIONS:

- 10.1. The offeror must submit a cost proposal in a separate file in Bonfire fully supported by cost and pricing data adequate to establish the reasonableness of the proposed fee (see Price Summary Sheet – appendix B). The following information, as applicable, should be submitted as part of the cost proposal:

The cost of each task or segment of the task shall be itemized.

- a. Offerors must provide a price breakdown for each service separately as well as totals for services provided together if price differs.
- b. Breakdown of direct labor and labor overhead costs including number of man-hours and applicable actual or average hourly rates, overhead rate and supporting schedule.
- c. Travel and per diem or subsistence costs, if any supported by breakdown including destination, duration, and purpose.
- d. Breakdown of other expenses such as clerical support, other overhead costs, supplies, etc.
- e. Proposals shall include pricing options for individual school purchase as well as a division-wide price for central purchase.

**Caution: Failure to break down cost elements may render the Cost proposal non-responsive.**

### 11. PRICING:

- 11.1. The subsequent contract will be a firm-fixed price agreement. The fee(s) will remain firm and will include all charges that may be incurred in fulfilling the requirements of the contract during the first 365 days. Changes in cost for any subsequent contract years may be based on the Consumer Price Index (CPI-U), Table 10, U.S. City Averages, or other relevant indices.
- 11.2. The request for a change in the unit price shall include as a minimum, (1) the cause for the adjustment; (2) proposed effective date; and, (3) the amount of the change requested with documentation to support the requested adjustment (i.e., appropriate Bureau of Labor Statistics, Consumer Price Index (CPI-U), change in manufacturer's price, etc.).
- 11.3. Price decreases shall be made in accordance with paragraph 39 of the General Conditions & Instructions to Offerors. (Appendix A)

### 12. TRADE SECRETS/PROPRIETARY INFORMATION:

- 12.1. Trade secrets or proprietary information submitted by an offeror in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of

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Information Act; however, offerors must invoke the protections of this section prior to or upon submission of the data or other materials. (Reference Appendix B)

- 12.2. The offeror must identify the data or other materials to be protected and state the reasons why protection is necessary. Disposition of material after award(s) should be stated by the offeror.

### **13. CONTACT FOR CONTRACTUAL MATTERS:**

- 13.1. All communications and requests for information and clarifications shall be directed to the following procurement official:

Thomas Fick  
Fairfax County Public Schools  
Office of Procurement Services  
8115 Gatehouse Road, Suite 4400  
Falls Church, Virginia 22042-1203  
Telephone: 571-423-3580  
Email: [trfick@fcps.edu](mailto:trfick@fcps.edu)

- 13.2. No attempt shall be made by any offeror to contact members of the Selection Advisory Committee (SAC) about this procurement (see paragraph 18.3).

### **14. REQUIRED SUBMITTALS:**

- 14.1. Each Offeror responding to this Request for Proposal must supply all the documentation required in the RFP. Failure to provide documentation with the Offeror's response to the RFP will result in the disqualification of the Offeror's proposal.

### **15. SUBMISSION OF PROPOSAL:**

- 15.1. Proposals must be received electronically through FCPS' online Procurement portal at: <http://fcps.bonfirehub.com>, on or before the Submittal Deadline. Submissions will only be accepted through the portal. FCPS will not accept proposals submitted by paper, telephone, facsimile ("Fax) transmission, or electronic mail (i.e., e-mail) in response to this RFP. Proposal submissions and registration are free of charge. Offerors can register for a free account at : <http://fcps.bonfirehub.com>, which will be required when preparing a submission. Documents may be uploaded at any time during the open period. The official time used for receipt of proposals/modifications is the time stamp within the Bonfire portal. No other clocks, calendars or timepieces are recognized. For technical question related to a submission, contact Bonfire at [Support@GoBonfire.com](mailto:Support@GoBonfire.com).
- 15.2. If, at the time of the scheduled proposal closing FCPS is closed due to inclement weather or another unforeseeable event, the proposal closing will still proceed electronically through the Bonfire System.
- 15.3. Technical Information: Uploading large documents may take time, depending on the size of the file(s) and your Internet connection speed. You will receive an email confirmation receipt with a unique confirmation number once the submission is finalized. Minimum system requirements for the Bonfire portal- Internet Explorer 11, Microsoft Edge, Good Chrome, or Mozilla Firefox. Javascript must be enabled. Browser cookies must be enabled.
- 15.4. Unnecessarily elaborate brochures of other presentations beyond that sufficient to present a complete and effective proposal is not desired.
- 15.5. It is the Offeror's responsibility to clearly identify and to describe the services being offered in response to the Request for Proposal. Offerors are cautioned that organization of their

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response, as well as thoroughness is critical to the County's evaluation process. The RFP forms must be completed legibly and in their entirety; and all required supplemental information must be furnished and presented in an organized, comprehensive and easy to follow manner.

15.6. The proposal submission shall consist of:

- a. Cover sheet (DPMM32)
- b. Technical proposal as required in the Special Provisions, paragraph 8, **TECHNICAL PROPOSAL INSTRUCTIONS**.
- c. Cost proposal as required in the Special Provisions paragraph 10, **COST PROPOSAL INSTRUCTIONS**. Additionally, cost must be submitted via Bonfire provided cost proposal forms.
- d. Response to Appendix C – Functional Requirements
- e. Executed Appendix D – Confidentiality Provisions
- f. One (1) electronic copy of the Technical and Cost proposals with redactions consistent with the requirements of the RFP, Paragraph 12 Trade secrets/Proprietary Information through FCPS' online Procurement Portal at: <http://fcps.bonfirehub.com>.
- g. All required attachments and forms must be included with the submission.
- h. By executing the cover sheet (DPMM32), Offeror acknowledges that they have read this Request for Proposal, understand it, and agree to be bound by its terms and conditions.

16. **ADDENDA:**

- 16.1. Offerors are reminded that changes to the bid, in the form of addenda, are often issued between the issue date and within three (3) days before the due date. All addenda shall be signed and submitted before the due date/time or must accompany the bid.
- 16.2. Notice of addenda will be posted on eVA and the DPMM current solicitation webpage. It is the Offeror's responsibility to monitor the web page for the most current addenda at [www.fairfaxcounty.gov/solicitation](http://www.fairfaxcounty.gov/solicitation) and <https://fcps.bonfirehub.com>.

17. **VIRGINIA FREEDOM OF INFORMATION ACT**

- 17.1. Except as provided, once an award is announced, all proposals/bids submitted to this RFP will be open to inspection by any citizen, or interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by a firm prior to or as part of its proposal will not be subject to public disclosure under the Virginia Freedom of Information Act only under the following circumstances: (1) the appropriate information is clearly identified by some distinct method such as highlighting or underlining; (2) only the specific words, figures, or paragraphs that constitute trade secrets or proprietary information are identified; and (3) a completed summary page is supplied (Appendix B) that includes (a) the information to be protected, (b) the section(s)/page number(s) where this information is found in the proposal, and (c) a statement why protection is necessary for each section listed. The firm must also provide a separate electronic copy of the proposal (USB) with the trade secrets and/or proprietary information redacted. If all of these requirements are not met, then the firm's entire proposal will be available for public inspection.

18. **PERIOD THAT PROPOSALS REMAIN VALID:**

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- 18.1. Any proposal submitted in response to this solicitation shall be valid for 365 days. At the end of the days the proposal may be withdrawn at the written request of the offeror. If the proposal is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.

### **19. BASIS FOR AWARD:**

- 19.1. This Request for Proposal is being utilized for competitive negotiation. Under the competitive negotiation process, a contract may be awarded to the responsible offeror whose proposal is determined to be the most advantageous to the County, taking into consideration price and the evaluation factors set forth in the Request for Proposal. The County reserves the right to make multiple awards as a result of this solicitation.
- 19.2. A Selection Advisory Committee has been established to review and evaluate all proposals submitted in response to this Request for Proposal. The Committee shall conduct a preliminary evaluation of all proposals on the basis of the information provided with the proposal, and the evaluation criteria listed below. Based upon this review, the cost proposals of the highest rated offeror(s) will then be reviewed.
- 19.3. No Offeror, including any of their representatives, subcontractors, affiliates and interested parties, shall contact any member of the Selection Advisory Committee or any person involved in the evaluation of the proposals. Selection Advisory Committee members will refer any and all calls related to this procurement to the procurement official named in 13.1 above. Failure to comply with this directive may, at the sole discretion of the County result in the disqualification of an offeror from the procurement process.
- 19.4. Based on the results of the preliminary evaluation, the highest rated offeror(s) may be invited by the County Purchasing Agent to make oral presentations to the Selection Advisory Committee. This committee will then conduct a final evaluation of the proposals. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. After negotiations have been conducted with each offeror so selected, the County shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror.
- 19.5. Should the County determine in writing and at its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror. The Committee will make appropriate recommendations to the County Executive and School Board, if appropriate, prior to actual award of contract.
- 19.6. Proposal Evaluation Criteria

The following factors will be considered in the award of this contract:

| <b>Databases</b>     |                    | <b>eBook Collections</b> |                    |
|----------------------|--------------------|--------------------------|--------------------|
| <b>Criteria</b>      | <b>Point Value</b> | <b>Criteria</b>          | <b>Point Value</b> |
| Qualifications       | 40                 | Qualifications           | 40                 |
| Content, Appendix C  | 46                 | Content, Appendix C      | 46                 |
| Features, Appendix C | 46                 | Features, Appendix C     | 46                 |
| Access, Appendix C   | 34                 | Access, Appendix C       | 36                 |
| Services, Appendix C | 34                 | Services, Appendix C     | 36                 |
| Cost Proposal        | 80                 | Cost Proposal            | 80                 |
| <b>Total</b>         | <b>280</b>         | <b>Total</b>             | <b>284</b>         |

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- 19.7. Fairfax County reserves the right to make on-site visitations to assess the capabilities of individual offerors and to contact references provided with the proposal.
- 19.8. The County Purchasing Agent may arrange for discussions with firms submitting proposals, if required, for the purpose of obtaining additional information or clarification.
- 19.9. Offerors are advised that, in the event of receipt of an adequate number of proposals, which, in the opinion of the County Purchasing Agent, require no clarifications and/or supplementary information, such proposals may be evaluated without further discussion. Consequently, offerors should provide complete, thorough proposals with the offerors most favorable terms. Should proposals require additional clarification and/or supplementary information, offerors should submit such additional material in a timely manner.
- 19.10. Proposals which, after discussion and submission of additional clarification and/or supplementary information, are determined to meet the specifications of this Request for Proposal will be classified as "acceptable". Proposals found not to be acceptable will be classified as "unacceptable" and no further discussion concerning same will be conducted.
- 19.11. The County may cancel this Request for Proposal or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.

## **20. CONTRACT INSURANCE PROVISIONS:**

- 20.1. The Contractor shall be responsible for its work and every part thereof, and for all materials, tools, equipment, appliances, and property of any and all description used in connection therewith. The Contractor assumes all risk of direct and indirect damage or injury to the property or persons used or employed on or in connection with the work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the contract.
- 20.2. The Contractor shall, during the continuance of all work under the contract maintain the following insurance:
  - a. Workers' Compensation and Employer's Liability insurance limits of not less than \$100,000 to protect the contractor from any liability or damages for any injuries (including death and disability) to any and all of its employees, including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia.
  - b. Commercial General Liability insurance in the amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate including contractual liability, personal and advertising injury, and products and completed operations coverage. Completed operations liability endorsement shall continue in force for three years following completion of the contract.
  - c. Owned, non-owned, and hired Automobile Liability insurance, in the amount of \$1,000,000 per occurrence/aggregate, include property damage, covering all owned, non-owned borrowed, leased, or rented vehicles operated by the Contractor. In addition, all mobile equipment used by the Contractor in connection with the contracted work will be insured under a standard Automobile Liability policy, or a Comprehensive General Liability policy. The Garage Keeper's Liability coverage shall also be maintained where appropriate.
  - d. Professional Liability/Errors and Omissions coverage responding to Contractor's errors, acts or omissions in the amount of \$1,000,000 per claim and in the aggregate.
  - e. Cyber/Information Technology insurance in the amount of \$1,000,000 per claim, including coverage for costs of 3<sup>rd</sup> party notification, credit monitoring, and fraud protection.

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- 20.3. Fairfax County Public Schools, the Fairfax County School Board, its officers and employees shall be named as an "additional insured" in the Automobile and General Liability policies and it shall be stated on the Insurance Certificate that this coverage "is primary to all other coverage the County may possess"
- 20.4. Indemnification: Article 57 of the General Conditions and Instruction to Bidders (Appendix A) shall apply.
- 20.5. Additional Requirements
- a. The Contractor agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A:VI.
  - b. European markets including those based in London, and the domestic surplus lines markets that operate on a non-admitted basis are exempt from the requirement provided that the contractor's broker can provide financial data to establish that a market is equal to or exceeds the financial strengths associated with the A.M. Best's rating of A:VI or better.
  - c. Liability insurance may be arranged by General Liability and Automobile Liability policies for the full limits required, or by a combination of underlying Liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.
  - d. The contractor will provide an original, signed Certificate of Insurance citing the contract number and such endorsements as prescribed herein.
  - e. The contractor will secure and maintain all insurance certificates of its subcontractors, which shall be made available to FCPS on demand.
  - f. The contractor will provide on demand certified copies of all insurance policies related to the contract within ten business days of demand by the FCPS. These certified copies will be sent to the FCPS from the contractor's insurance agent or representative.
    1. No change, cancellation, or non-renewal shall be made in any insurance coverage without a 45 day written notice to the FCPS. The contractor shall furnish a new certificate prior to any change or cancellation date. The failure of the contractor to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished.
    2. Compliance by the contractor and all subcontractors with the foregoing requirements as to carrying insurance shall not relieve the contractor and all subcontractors of their liabilities provisions of the contract.
    3. Contractual and other liability insurance provided under this contract shall not contain a supervision, inspection or engineering services exclusion that would preclude the County from supervising and/or inspecting the project as to the end result. The contractor shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of the subcontractors.
    4. Nothing contained in the specifications shall be construed as creating any contractual relationship between any subcontractor and the FCPS. The Contractor shall be as fully responsible to the FCPS for the acts and omissions of the subcontractors and of persons employed by them as it is for acts and omissions of person directly employed by it.
    5. Precaution shall be exercised at all times for the protection of persons (including employees) and property.

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6. The Contractor and all subcontractors are to comply with the Occupational Safety and Health Act of 1970, Public Law 91-596, as it may apply to this Contract.
7. If the Contractor delivers services from a County leased facility, the Contractor is required to carry property insurance on all equipment, to include County owned installed and maintained equipment used by the Contractor while in their care, custody and control for use under this contract.

g. Liability Insurance "Claims Made" basis:

If the liability insurance purchased by the contractor has been issued on a "claims made" basis, the contractor must comply with the following additional conditions. The limit of liability and the extensions to be included as described previously in these provisions, remain the same. The Contractor must either:

1. Agree to provide certificates of insurance evidencing the above coverage for a period of two years after final payment for the contract. This certificate shall evidence a "retroactive date" no later than the beginning of the Contractor's or sub-contractor's work under this contract, or
2. Purchase the extended reporting period endorsement for the policy or policies in force during the term of this contract and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself.

### **21. METHOD OF ORDERING:**

- 21.1. The County may use two (2) different methods of placing orders from the final contract: Purchase Orders (PO's) and approved County procurement cards. The method of payment is at the discretion of the County at no additional surcharges will be accepted for the use of the procurement card.
- 21.2. A Purchase Order (PO) may be issued to the contractor on behalf of the County agency ordering the items/services covered under this contract. An issued PO will become part of the resulting contract. The purchase order indicates that sufficient funds have been obligated as required by Title 15.2-1238 of the Code of the Commonwealth of Virginia.
- 21.3. Procurement Card orders and payments may also be made by the use of a Fairfax County or Fairfax County Public Schools "Procurement" Card. The Procurement Card is currently a Master Card. Contractors are encouraged to accept this method of receiving orders.
- 21.4. Regardless of the method of ordering used, solely the contract and any modification determine performance time and dates.
- 21.5. Performance under this contract is not to begin until receipt of the purchase order, Procurement Card order, or other notification to proceed by the County Purchasing Agent and/or County agency to proceed. Purchase requisitions shall not be used for placing orders.

### **22. REPORTS AND INVOICING:**

- 22.1. Contractor must maintain all records in compliance with federal and state regulations. The Contractor(s) must submit to each program administrator, monthly statistical reports and an annual tabulated report.

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22.2. The Contractor must invoice each County department using the final contract separately. Invoices for all users of the contract must meet County requirements, unless otherwise indicated. The Contractor must send each department an itemized monthly invoice (or as agreed to between the parties), which must include the information listed below:

- a. Employee name;
- b. The name of the County department;
- c. Date of services
- d. The type of services; and,
- e. The itemized cost for each item/service.

22.3. County departments must receive monthly invoices by the 10th of each month following the month the Contractor provided the service. In addition, the Contractor will provide each County department a monthly and year-to-date utilization report which lists all information shown above in paragraph 20.2, a-e. The Contractor will mail the invoices and the utilization reports to the individuals identified in the final contract.

### **23. PAYMENTS:**

23.1. The County will pay the Contractor based upon completion, acceptance, and approval by the County of each task outlined in the Special Provisions, paragraph 7, **FUNCTIONAL REQUIREMENTS**.

### **24. CHANGES:**

24.1. Fairfax County may, at any time, by written order, require changes in the services to be performed by the Contractor. If such changes cause an increase or decrease in the Contractor's cost of, or time required for, performance of any services under this contract, an equitable adjustment shall be made and the contract shall be modified in writing accordingly. The County Purchasing Agent must approve all work that is beyond the scope of this Request for Proposal.

24.2. No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written authorization of the Fairfax County Purchasing Agent.

### **25. DELAYS AND SUSPENSIONS:**

25.1. The County may direct the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time deemed appropriate for the convenience of the County. The County will extend the Contractor's time of completion by a period of time that in the discretion of the Purchasing Agent is reasonably suited for completion of work. The County may further amend the contract by mutual agreement for any increase in the cost of performance of the contract (excluding profit) resulting solely from the delay or suspension of the contract. No adjustment shall be made under this clause for any delay or interruption resulting from any other cause, including the fault or negligence of the Contractor.

25.2. If the County does not direct the Contractor, in writing, to suspend, delay, or interrupt the contract, the Contractor must give the County Purchasing Agent written notice if Fairfax County fails to provide data or services that are required for contract completion by the Contractor. The County may extend the Contractor's time of completion by a period of time that in the discretion of the Purchasing Agent is reasonably suited for completion of work. The County may further amend the contract by mutual agreement for any increase in the cost of performance of the contract (excluding profit) resulting solely from the delay or suspension of the contract. No adjustment shall be made under this clause for any delay or interruption resulting from any other cause, including the fault or negligence of the Contractor.

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- 25.3. The Contractor shall continue its work on other phases of the project or contract, if in the sole discretion of the Purchasing Agent such work is not impacted by the County's delay, suspension, or interruption. All changes to the work plan or project milestones shall be reflected in writing as a contract amendment.

### **26. ACCESS TO AND INSPECTION OF WORK:**

- 26.1. The Fairfax County Purchasing Agent and using agencies will, at all times, have access to the work being performed under this contract wherever it may be in progress or preparation.

### **27. PROJECT AUDITS:**

- 27.1. The Contractor shall maintain books, records and documents of all costs and data in support of the services provided. Fairfax County or its authorized representative shall have the right to audit the books, records and documents of the contractor under the following conditions:
- a. If the contract is terminated for any reason in accordance with the provisions of these contract documents in order to arrive at equitable termination costs;
  - b. In the event of a disagreement between the contractor and the County on the amount due the Contractor under the terms of this contract;
  - c. To check or substantiate any amounts invoiced or paid which are required to reflect the costs of services, or the Contractor's efficiency or effectiveness under this contract; and,
  - d. If it becomes necessary to determine the County's rights and the contractor's obligations under the contract or to ascertain facts relative to any claim against the Contractor that may result in a charge against the County.
- 27.2. These provisions for an audit shall give Fairfax County unlimited access during normal working hours to the Contractor's books and records under the conditions stated above.
- 27.3. Unless otherwise provided by applicable statute, the contractor, from the effective date of final payment or termination hereunder, shall preserve and make available to Fairfax County for a period of three (3) years thereafter, at all reasonable times at the office of the Contractor but without direct charge to the County, all its books, records documents and other evidence bearing on the costs and expenses of the services relating to the work hereunder.
- 27.4. Fairfax County's right to audit and the preservation of records shall terminate at the end of three (3) years as stated herein. The Contractor shall include this "Right of Audit and Preservation of Records" clause in all subcontracts issued by it and they shall require same to be inserted by all lower tier subcontractors in their subcontracts, for any portion of the work.
- 27.5. Should the Contractor fail to include this clause in any such contract or lower tier contract, or otherwise fail to insure Fairfax County's rights hereunder, the Contractor shall be liable to Fairfax County for all reasonable costs, expenses and attorney's fees which Fairfax County may have to incur in order to obtain an audit or inspection of or the restoration of records which would have otherwise been available to Fairfax County from said persons under this clause. Such audit may be conducted by Fairfax County or its authorized representative.

### **28. DATA SOURCES:**

- 28.1. The County will provide the Contractor all available data possessed by the County that relates to this contract. However, the Contractor is responsible for all costs for acquiring other data or processing, analyzing or evaluating County data.

### **29. SAFEGUARDS OF INFORMATION:**

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- 29.1. Unless approved in writing by the County Purchasing Agent, the Contractor may not sell or give to any individual or organization any information, reports, or other materials given to, prepared or assembled by the Contractor under the final contract.

### **30. ORDER OF PRECEDENCE:**

- 30.1. In the event of conflict, the Acceptance Agreement (provided at contract award) and the Special Provisions of this contract shall take precedence over the General Conditions and Instructions to Bidders, (Appendix A).

### **31. SUBCONTRACTING:**

- 31.1. If one or more subcontractors are required, the contractor is encouraged to utilize small, minority-owned, and women-owned business enterprises. For assistance in finding subcontractors, contact the Virginia Department of Business Assistance <http://www.dba.state.va.us>; the Virginia Department of Minority Business Enterprise <http://www.dmb.e.state.va.us>; local chambers of commerce and other business organizations.
- 31.2. As part of the contract award, the prime contractor agrees to provide the names and addresses of each subcontractor, that subcontractor's status as defined by Fairfax County, as a small, minority-owned and/or woman-owned business, and the type and dollar value of the subcontracted goods/services provided. Reference Appendix B to this solicitation.

### **32. USE OF CONTRACT BY OTHER PUBLIC BODIES:**

- 32.1. Reference Paragraph 70, General Conditions and Instructions to Bidders, Cooperative Purchasing. Offerors are advised that the resultant contract(s) may be extended, with the authorization of the Offeror, to other public bodies, or public agencies or institutions of the United States to permit their use of the contract at the same prices and/or discounts and terms of the resulting contract. If any other public body decides to use the final contract, the Contractor(s) must deal directly with that public body concerning the placement of orders, issuance of purchase orders, contractual disputes, invoicing and payment. The County of Fairfax acts only as the "Contracting Agent" for these public bodies. Failure to extend a contract to another public body will have no effect on consideration of your offer. (See Appendix B for sample listing).
- 32.2. It is the Contractors responsibility to notify the public body(s) of the availability of the contract(s).
- 32.3. Other public bodies desiring to use this contract will need to make their own legal determinations as to whether the use of this contract is consistent with their laws, regulations, and other policies.
- 32.4. Each public body shall execute a separate contract with the Contractor(s). Public bodies may add terms and conditions required by statute, ordinances, and regulations, to the extent that they do not conflict with the contracts terms and conditions. If, when preparing such a contract, the general terms and conditions of a public body are unacceptable to the Contractor, the Contractor may withdraw its extension of the award to that public body.
- 32.5. Fairfax County **shall not** be held liable for any costs or damages incurred by another public body as a result of any award extended to that public body by the Contractor.

### **33. NEWS RELEASE BY VENDORS:**

- 33.1. As a matter of policy, the County does not endorse the products or services of a contractor. News releases concerning any resultant contract from this solicitation will not be made by a

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contractor without the prior written approval of the County. All proposed news releases will be routed to the Purchasing Agent for review and approval.

### **34. AMERICANS WITH DISABILITIES ACT REQUIREMENTS:**

- 34.1. Fairfax County Government is fully committed to the Americans with Disabilities Act (ADA) which guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and all County programs, activities and services. Fairfax County government contractors, subcontractors, vendors, and/or suppliers are subject to this ADA policy. All individuals having any County contractual agreement must make the same commitment. Your acceptance of this contract acknowledges your commitment and compliance with ADA.
- 34.2. Fairfax County is committed to a policy of nondiscrimination in all County programs, services, and activities and will provide reasonable accommodations upon request. Bidders requesting special accommodations should call the Office of Equity and Employee Relations at 571-423-3070, [HRequity&empolyeerelations@fcps.edu](mailto:HRequity&empolyeerelations@fcps.edu) or TRS at 711. Please allow seven (7) working days in advance of the event to make the necessary arrangements.

### **35. HIPAA COMPLIANCE:**

- 35.1. Fairfax County Government has designated certain health care components as covered by the Health Insurance Portability and Accountability Act of 1996. The successful vendor may be designated a business associate pursuant to 45 CFR part 164.504(e) of those agencies identified as health care components of the County, including the Fairfax-Falls Church Community Services Board, upon award of contract. The successful vendor shall be required to execute a Fairfax County Business Associate Agreement and must adhere to all relevant federal, state, and local confidentiality and privacy laws, regulations, and contractual provisions of that agreement. These laws and regulations include, but are not limited to: (1) HIPAA – 42 USC 201, et seq., and 45 CFR Parts 160 and 164; and (2) Va Code – Title 32.1, Health, § 32.1-1 et seq. The vendor shall have in place appropriate administrative, technical, and physical safeguards to ensure the privacy and confidentiality of protected health information.
- 35.2. Further information regarding HIPAA Compliance is available on the County's website at <http://www.fairfaxcounty.gov/HIPAA>.

### **36. STATE CORPORATION COMMISSION IDENTIFICATION NUMBER:**

- 36.1. Pursuant to *Code of Virginia*, §2.2-4311.2 subsection B, a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its bid or proposal the identification number issued to it by the State Corporation Commission (SCC). Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law is required to include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized. Any bidder or offeror that fails to provide the required information may not receive an award.

### **37. BACKGROUND CRIMINAL INVESTIGATION/IDENTIFICATION:**

- 37.1. By the signature of its authorized official on the response to this solicitation, the Contractor certifies that neither the contracting official nor any of the Contractor's employees, agents or subcontractors who will have direct contact with students has been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child. The Contractor agrees to remove from the contract any employee, agent or subcontractor who has

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been determined by the School Board to be disqualified from service due to such convictions or the failure to truthfully report such convictions.

- 37.2. The Contractor shall immediately notify the FCPS contract administrator if any Contractor or employee of said Contractor providing services under the contract is arrested or indicted as a defendant in Virginia or any other jurisdiction. FCPS reserves the right to require that the employee be suspended from working on the contract until the charge(s) is adjudicated. This requirement does not apply to minor traffic violations, not requiring the appearance of the employee in court, unless the charge includes the illegal possession, distribution, use or influence of drugs or alcohol.
- 37.3. Due to enhanced security measures, Contractor employees/representatives are required to have photo identification and be able to present same upon request. Contractor employees/representatives shall report to the appropriate administrative and/or main office each time a site is visited. **All Contractor employees will be required to wear a company picture ID badge, or temporary name tag, issued by the County, clearly visible above the waist.** Contractor employees/representatives who arrive at the County/School facility without appropriate identification badges will immediately be dismissed from the job site.
- 37.4. Failure to comply with the above requirements may result in termination of the contract.

# COUNTY OF FAIRFAX

## COMMONWEALTH OF VIRGINIA

### GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

BIDS ON SOLICITATIONS ISSUED BY THE COUNTY WILL BIND BIDDERS TO THE APPLICABLE CONDITIONS AND REQUIREMENTS IN THE GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS (GCIB) UNLESS OTHERWISE SPECIFIED IN THE SOLICITATION AND SUBJECT TO APPLICABLE STATE, LOCAL, AND FEDERAL LAWS.

BIDDERS OR THEIR AUTHORIZED REPRESENTATIVES SHOULD INFORM THEMSELVES FULLY AS TO THE CONDITIONS, REQUIREMENTS, AND SPECIFICATIONS OF EACH COUNTY PROCUREMENT BEFORE SUBMITTING BIDS. FAILURE TO DO SO WILL BE AT THE BIDDER'S OWN RISK AND RELIEF CANNOT BE SECURED ON THE PLEA OF ERROR.

1. **AUTHORITY:** The Purchasing Agent has the sole responsibility and authority for purchasing supplies, materials, equipment, and services, except as excluded in the Fairfax County Purchasing Resolution. The Purchasing Agent's responsibility and authority includes, but is not limited to, issuing and modifying solicitations, negotiating and executing contracts, and placing purchase orders. In discharging these responsibilities, the Purchasing Agent may be assisted by contract specialists. Unless specifically delegated by the Purchasing Agent, no other County officer or employee is authorized to order supplies or services, enter into purchase negotiations or contracts, or in any way obligate the government of the County of Fairfax for an indebtedness. Any purchase ordered or contract made that is contrary to these provisions and authorities shall be of no effect, void, and does not bind the County.
2. **DEFINITIONS:** Unless otherwise defined in the GCIB, capitalized terms shall have the meanings defined by the Fairfax County Purchasing Resolution.

AGENCY: Any Department, Agency, Authority, Commission, Board or other unit in the Administrative Service of the County.

BID: The offer of a bidder to provide specific goods or services at specified prices and/or other conditions specified in the solicitation.

BIDDER/OFFEROR: Any individual, company, firm, corporation, partnership or other organization bidding on solicitations issued by the Purchasing Agent and offering to enter into contracts with the County. The term "bidder" will be used throughout this document and shall be construed to mean "offeror" where appropriate.

CONTRACTOR: Any individual, company, firm, corporation, partnership or other organization to whom an award is made by the County.

INVITATION FOR BID (IFB): A request which is made to prospective suppliers (bidders) for their quotation on goods or services desired by the County. The issuance of an IFB will contain or incorporate by reference the specifications and contractual terms and conditions applicable to the procurement.

PURCHASING AGENT: The Purchasing Agent employed by the Board of Supervisors of Fairfax County, Virginia.

REQUEST FOR PROPOSAL (RFP): A request for an offer from prospective offerors which will indicate the general terms which are sought to be procured from the offeror. The RFP will specify the evaluation factors to be used and will contain or incorporate by reference other contractual terms and conditions applicable to the procurement.

SOLICITATION: The process of notifying prospective bidders that the County wishes to receive bids on a set of requirements to provide goods or services. The notification of County requirements may consist of public advertising (newspaper, County Web Site, or other electronic notification), the mailing of Notices of Solicitation, Invitation for Bid (IFB) or Request for Proposal (RFP), the public posting of notices, issuance of an informal solicitation to include telephone calls to prospective bidders.

### CONDITIONS OF BIDDING

3. **BID FORMS:** Unless otherwise specified in the solicitation, all bids must be (i) submitted on the forms provided by the County, including the bid Cover Sheet and Pricing Schedule(s); (ii) properly signed in ink in the identified spaces; and (iii) submitted in a sealed envelope or package.

If the bid prices or any other submissions differ on the copy of the submitted bid, the ORIGINAL copy shall prevail.

4. **LATE BIDS & MODIFICATIONS OF BIDS:**
  - a. Bids or proposals received after the date and time specified for receipt in the solicitation will not be considered.
  - b. **If an emergency, unanticipated event, or closing of County offices interrupts or suspends normal County business operations so that bids cannot be received at the County office designated for receipt of bids by the exact time**

**specified in the solicitation, then bids will be due at the same time of day specified in the solicitation on the first work day that normal County business operations resume.**

- c. The official time used for receipt of bids/modifications is the time and date stamp clock located in the Department of Procurement & Material Management. No other clocks, calendars or timepieces are recognized. All bidders must ensure all bids/modifications are received prior to the scheduled due date/time.
5. **WITHDRAWAL OF BIDS:** Bids shall be withdrawn only as set forth in the Fairfax County Purchasing Resolution.
6. **ERRORS IN BIDS:** When an error is made in extending total prices, the unit bid price will govern. Erasures in bids must be initiated by the bidder. Bidders are cautioned to recheck their bids for possible error. Errors discovered after public opening cannot be corrected and the bidder will be required to perform if its bid is accepted.
7. **LABELING OF BIDS:** All bids and proposals submitted in response to a County solicitation must be submitted in a sealed envelope or package identified with the solicitation number, title, and bidder's name and address clearly marked on the outside of the envelope or package.
8. **ACCEPTANCE OF BIDS/BINDING 90 DAYS:** Unless otherwise specified, all formal bids submitted shall be binding for ninety (90) calendar days following bid opening date, unless extended by mutual consent of all parties.
9. **CONDITIONAL BIDS:** Conditional bids may be rejected in whole or in part.
10. **BIDS FOR ALL OR PART:** The Purchasing Agent reserves the right to make award on all items in the aggregate or on any of the items on an individual basis, whichever is in the best interest of the County. A bidder may restrict its bid to consideration in the group aggregate by so stating, but must name a single unit price on each item bid. Any bid in which the bidder names a total price for all the articles without quoting a unit price for each and every separate item may not be considered for award.
11. **AREA BIDS:** For the purchase and delivery of certain goods and services the County may be divided into Areas (e.g., Areas I, II, III, and IV). When such goods and services are included in the Pricing Schedule, bidders may bid on all areas or an individual area. A map showing the areas of the County will be furnished with the solicitation when required.
12. **RECEIPT OF BIDS:** Bids received prior to the time of opening will be securely kept, unopened by the County. No responsibility will attach to the Purchasing Agent or her representative for the premature opening of a bid not properly addressed and identified. Unless specifically authorized in the solicitation, telegraphic, electronic, or facsimile bids/modifications will not be considered by the County.
13. **BID OPENING:** All bids received in response to an Invitation for Bid (IFB) will be opened at the date, time and place specified, read publicly, and made available for inspection as provided in paragraph 63, General Conditions and Instructions to Bidders. The Purchasing Agent's representative assigned to open the bids will decide when the specified time for bid opening has arrived. Tabulations of bids received are posted on the County's website at: <http://www.fairfaxcounty.gov/procurement/bid-tab>  
  
Proposals received in response to a Request for Proposal (RFP) will be made available as provided in Paragraph 63, General Conditions and Instructions to Bidders.
14. **OMISSIONS & DISCREPANCIES:** Any items or parts of any equipment listed in this solicitation that clearly necessary for the operation and completion of such equipment, but are: (i) not fully described by the County; or (ii) are omitted by the County from such specification, shall be considered a part of such equipment even if not directly specified or called for in the specifications.  
  
If a bidder finds discrepancies or ambiguities in, or omissions from, the solicitation, including the drawings and/or specifications, it shall notify the Purchasing Agent at least five (5) days prior to the date set for the opening of bids. If necessary, the Purchasing Agent will send a written addendum for clarification to all bidders no later than three (3) days before the date set for opening of bids. Notifications regarding specifications will not be considered if received within five days of the date set for opening of bids.
15. **BIDDER INTERESTED IN MORE THAN ONE BID:** If more than one bid is offered by a bidder, directly or indirectly, all such bids may be rejected. A bidder who has quoted prices on work, materials, or supplies to a bidder is not disqualified from quoting prices to other bidders or firms submitting a bid directly for the work, materials or supplies.
16. **TAX EXEMPTION:** The County is exempt from the payment of any federal excise or any Virginia sales tax. Fairfax County's Federal Excise Tax Exemption Number is 54-74-0127K.
17. **PROHIBITION AGAINST UNIFORM PRICING:** The Purchasing Agent encourages open and competitive bidding by all possible means and endeavors to obtain the maximum degree of open competition on all purchase transactions using the methods of procurement authorized by the Fairfax County Purchasing Resolution. Each bidder, by virtue of submitting a bid, guarantees that it has not been a party with other bidders to an agreement to bid a fixed or uniform price. Violation of this implied guarantee shall render void the bids of participating bidders. Any disclosure to or acquisition by a competitive bidder, in advance of the opening of the bids, of the terms or conditions of the bid submitted by another competitor may render the entire proceedings void and may require re-advertising for bids.

#### **SPECIFICATIONS**

18. **CLARIFICATION OF TERMS:** If any prospective bidder has questions about the specifications or other solicitation documents, the prospective bidder should contact the contract specialist whose name appears on the face of the solicitation no later than five working dates before the due date. Any revisions to the solicitation will be made only by addendum issued by the contract specialist.
19. **BRAND NAME OR EQUAL ITEMS:** Unless otherwise provided in the Invitation for Bid, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named; it conveys the general style, type, character, and quality of the article desired. Any article that the County in its sole discretion determines to be the equivalent of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The bidder is responsible for clearly and specifically identifying the product being offered and providing sufficient descriptive literature, catalog cuts and technical detail to enable the County to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make, or manufacturer specified. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the bidder clearly indicates in its bid that the product is an equivalent product, such bid will be considered to offer the brand name product referenced in the solicitation.
20. **SPECIFICATIONS:** When a solicitation contains a specification that states no substitutes, no deviation therefrom will be permitted and the bidder will be required to furnish articles in conformity with that specification.

The bidder must abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully complete every part as the true intent and meaning of the specifications and drawings. Whenever the mention is made of any articles, material, or workmanship to be in accordance with laws, ordinances, building codes, underwriter's codes, A.S.T.M. regulations or similar expressions, the requirements of these laws, ordinances, etc., shall be construed as to the minimum requirements of these specifications.

#### **AWARD**

21. **AWARD OR REJECTION OF BIDS:** The Purchasing Agent 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 the County to accept it. Awards made in response to a RFP will be made to the highest qualified offeror whose proposal is determined, in writing, to be the most advantageous to the County taking into consideration the evaluation factors set forth in the RFP. The Purchasing Agent reserves the right to award a contract by individual items, in the aggregate, or in 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 the County. Award may be made to as many bidders as deemed necessary to fulfill the anticipated requirements of Fairfax County. The Purchasing Agent 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 of the bidder 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. Whether the bidder is in arrears to the County on debt or contract or is a defaulter on surety to the County or whether the bidder's County taxes or assessments are delinquent; and
  - j. Such other information as may be secured by the Purchasing Agent 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 Purchasing Agent shall so notify that bidder and shall have recorded the reasons in the contract file.
  - k.
22. **NOTICE OF ACCEPTANCE/CONTRACT DOCUMENTS:** A written award (or Acceptance Agreement) mailed or otherwise furnished to the successful bidder within the time for acceptance specified in the solicitation shall result in a binding contract. The following documents, which are included in the solicitation, are incorporated by reference in and made part of the resulting contract:
- a. County of Fairfax Solicitation Form (Cover Sheet) and other documents which may be incorporated by reference, if applicable
  - b. Acceptance Agreement
  - c. General Conditions and Instructions to Bidders
  - d. Special Provisions and Specifications
  - e. Pricing Schedule
  - f. Any Addenda/Amendments/Memoranda of Negotiations
23. **TIE-BIDS:** If all bids are for the same total amount or unit price (including authorized discounts and delivery times), and if the public interest will not permit the delay of re-advertisement for bids, the Purchasing Agent is authorized to award the contract to the tie bidder that has its principal place of business in the County, or if there be none, to the resident Virginia tie bidder, or if there be none, to one of the tie bidders by drawing lots in public; or the Purchasing Agent may purchase the goods or services

in the open market except that the price paid shall not exceed the lowest contract bid price submitted for the same goods or services. The decision of the County to make award to one or more such bidders shall be final.

**24. PROMPT PAYMENT DISCOUNT:**

- a. Unless otherwise specified in the solicitation, prompt payment discounts requiring payment in less than fifteen (15) days will not be considered in evaluating a bid for award. However, even though not considered in the evaluation, such discounts will be taken if payment is to be made within the discount period.
- b. If a discount for prompt payment is allowed, the discount period will begin on the date of receipt of a properly completed invoice or acceptance of materials or services, whichever is later.
- c. For determining acceptance of supplies in accordance with the provisions of the prompt payment discount paragraph, inspection and acceptance shall be accomplished only after examination (including testing) of supplies and services to determine whether the supplies and services conform to the contract requirements.

For the purpose of earning the discount, payment is deemed to be made as of the date of mailing of the County check or issuance of an Electronic Funds Transfer, or completion of a credit card transaction.

- 25. INSPECTION-ACCEPTANCE:** Acceptance shall occur only after receipt and inspection provided such inspection, as appropriate, is accomplished within a reasonable time. The County reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
- 26. DEFINITE BID QUANTITIES:** Where definite quantities are specifically stated, acceptance will bind the County to order quantities specified and to pay for, at contract prices, all such supplies or services delivered that meet specifications and conditions of the contract. However, the County will not be required to accept delivery of any balances unordered, as of the contract expiration date, unless the Contractor furnished the Purchasing Agent with a statement of unordered balances not later than ten (10) days after the termination date of the contract.
- 27. REQUIREMENT BID QUANTITIES:** On "Requirement" bids, acceptance will bind the County to pay for, at unit bid prices, only quantities ordered and delivered. Where the County specifies estimated quantities, the Contractor shall not be required to deliver more than ten (10) percent in excess of the estimated quantity of each item, unless otherwise agreed upon.

**CONTRACT PROVISIONS**

- 28. TERMINATION OF CONTRACTS:** Contracts will remain in force for full periods specified and/or until all articles ordered before date of termination shall have been satisfactorily delivered and accepted and thereafter until all requirements and conditions shall have been met, unless:
- a. Terminated prior to expiration date by satisfactory deliveries of entire contract requirements, or upon termination by the County for Convenience or Cause.
  - b. Extended upon written authorization of the Purchasing Agent and accepted by Contractor, to permit ordering of unordered balances or additional quantities at contract prices and in accordance with contract terms.
- 29. TERMINATION FOR CONVENIENCE:** A contract may be terminated in whole or in part by the County in accordance with this clause whenever the Purchasing Agent determines that such a termination is in the best interest of the County. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance shall be terminated and the date upon which termination becomes effective. 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.
- 30. TERMINATION OF CONTRACT FOR CAUSE:**
- a. If, through any cause, the Contractor fails to fulfill in a timely and proper manner its obligations under this contract, or if the Contractor violates any of the covenants, agreements, or stipulations of this contract, the County shall have the right to terminate the contract. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance shall be terminated and the date upon which termination becomes effective. 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 County, become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.
  - b. Termination of the Contract for Cause does not relieve the Contractor of liability to the County for damages sustained by the County 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 County from the Contractor is determined.
- 31. CONTRACT ALTERATIONS:** No alterations in the terms of a contract shall be valid or binding upon the County unless made in writing and signed by the Purchasing Agent or her authorized agent.
- 32. SUBLETTING OF CONTRACT OR ASSIGNMENT OF CONTRACT FUNDS:** It is mutually understood and agreed that the Contractor shall not assign, transfer, convey, sublet or otherwise dispose of his or her contractual duties to any other person, firm or corporation, without the previous written consent of the Purchasing Agent. If the Contractor desires to assign its right to payment of the contract, Contractor shall notify the Purchasing Agent immediately, in writing, of such assignment of right to payment. In no case shall such assignment of contract relieve the Contractor from its obligations or change the terms of the contract.

33. **FUNDING:** The obligation of the County to pay compensation due the Contractor under the contract or any other payment obligations under any contract awarded pursuant to this contract is subject to appropriations by the Fairfax County Board of Supervisors to satisfy payment of such obligations. The County's obligations to make payments during subsequent fiscal years are dependent upon the same action. If such an appropriation is not made for any fiscal year, the contract shall terminate effective at the end of the fiscal year for which funds were appropriated and the County will not be obligated to make any payments under the contract beyond the amount appropriated for payment obligations under the contract. The County will provide the

Contractor with written notice of non-appropriation of funds within thirty (30) calendar days after action is completed by the Board of Supervisors. However, the County's failure to provide such notice will not extend the contract into a fiscal year in which sufficient funds have not been appropriated.

34. **DELIVERY/SERVICE FAILURES:** If a Contractor (i) fails to deliver goods or services within the time specified or within a reasonable time as interpreted by the Purchasing Agent; or (ii) fails to make replacements or corrections of rejected articles or services when so requested, immediately or as directed by the Purchasing Agent, then the Purchasing Agent shall have the authority to purchase in the open market goods or services of comparable grade or quality to replace goods or services not delivered or rejected. On all such purchases, the Contractor shall reimburse the County, within a reasonable time specified by the Purchasing Agent, for any expense incurred in excess of contract prices. Such purchases shall be deducted from the contract quantities if applicable. Should public necessity demand it, the County reserves the right to use or consume articles delivered or services performed which are substandard in quality, subject to an adjustment in price to be determined by the Purchasing Agent.

35. **NON-LIABILITY:** The Contractor shall not be liable in damages for delay in shipment or failure to deliver when such delay or failure is the result of fire, flood, strike, the transportation carrier, act of God, act of Government, act of an alien enemy or by any other circumstances which, in the Purchasing Agent's opinion, are beyond the reasonable control of the Contractor. Under such circumstances, however, the Purchasing Agent may, at her discretion terminate the contract.

36. **NON-DISCRIMINATION:** During the performance of this contract, the Contractor agrees as follows:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- d. The Contractor will include the provisions of the foregoing paragraphs a, b, and c above in every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.
- e. Contractor shall, throughout the term of this contract, comply with the Human Rights Ordinance, Chapter 11 of the Code of the County of Fairfax, Virginia, as reenacted or amended. Contractor shall further require that all of its subcontractors will

comply with the Human Rights Ordinance, Chapter 11 of the Code of the County of Fairfax, Virginia, as reenacted or amended.

37. **SMALL, WOMEN-OWNED, AND MINORITY-OWNED BUSINESS USE:**

- a. It is the declared policy of the County of Fairfax, through its Small and Minority Business Enterprise Program, that Fairfax County and its employees undertake every effort to increase opportunity for use of small or minority businesses in all aspects of procurement to the maximum extent feasible.
- b. Where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such subcontracting opportunities to small, women and minority businesses.
- c. Where Federal grants or monies are involved, it is the policy of Fairfax County, through its agents and employees, to comply with the requirements set forth in the 2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, as they pertain to small and minority business use.

38. **GUARANTEES & WARRANTIES:** All guarantees and warranties required shall be furnished by the Contractor and shall be delivered to the Purchasing Agent before contract execution. Unless otherwise stated, manufacturer's standard warranty applies.

39. **PRICE REDUCTION:** If the Contractor makes a general price reduction for any material covered by the solicitation to customers generally, an equivalent price reduction 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 reduction in the price to customers generally. For purpose of this provision, a "general price reduction" shall mean any horizontal reduction in the price of an article or service offered (1) to Contractor's customers generally, or (2) in the Contractor's price schedule for the class of customers (i.e., wholesalers, jobbers, or retailers), which was used as the basis for bidding on this solicitation. An occasional sale at a lower price, or sale of distressed merchandise at a lower price is not a "general price reduction" under this provision. The Contractor shall submit its 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 will also within ten days of any general price reduction notify the Purchasing Agent of such reduction by letter. FAILURE TO DO SO MAY RESULT IN TERMINATION OF THE CONTRACT.

40. **CHANGES:** If in the Purchasing Agent's opinion, it becomes proper or necessary in the execution of this contract to make any change in design, or to make any alterations that will increase the expense, the Purchasing Agent shall determine an equitable adjustment to the Contractor's compensation.

No payment shall be made to the Contractor for any extra material or services, or of any greater amount of money than stipulated to be paid in the contract, unless some changes in or additions to the contract requiring additional outlay by the Contractor are first expressly authorized and ordered in writing by contract amendment or otherwise furnished by the Purchasing Agent.

41. **PLACING OF ORDERS:** Orders against contracts will be placed with the Contractor by Purchase Order or Procurement Card (P-Card) executed and released by the Purchasing Agent or their designee. When a Blanket Purchase Order has been released by the Purchasing Agent, telephonic orders may be placed directly with the Contractor by authorized personnel in the ordering Agency.

#### DELIVERY PROVISIONS

42. **SHIPPING INSTRUCTIONS - CONSIGNMENT:** Unless otherwise specified in the solicitation each case, container, package, etc., delivered under the contract must be plainly marked, stating the Contractor's name, purchase order number, and delivery address as indicated in the order. Deliveries must be made within the hours of 8:00 AM - 3:00 PM. Deliveries at any other time will not be accepted unless specific arrangements have been previously made with the receiver at the delivery point. No deliveries will be accepted on Saturdays, Sundays and holidays, unless previous arrangements have been made. It shall be the responsibility of the Contractor to insure compliance with these instructions for items that are drop-shipped.
43. **RESPONSIBILITY FOR MATERIALS OR GOODS TENDERED:** Unless otherwise specified in the solicitation, the Contractor is responsible for the materials or supplies covered by the contract until they are delivered at the delivery point designated by the County. The Contractor bears all risk of loss on rejected materials or supplies after notice of rejection. Rejected materials or supplies must be removed by and at the expense of the Contractor promptly after notification of rejection, unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the Contractor within ten (10) days after date of notification, the County may return the rejected materials or supplies to the Contractor at its risk and expense or dispose of them as the County's own property.
44. **INSPECTIONS:** Inspection and acceptance of materials or supplies will be made after delivery at the designated destinations unless otherwise stated. If inspection is made after delivery at the designated destination, the County will bear the expense of inspection except for the value of samples used in case of rejection. Final inspection is conclusive except in regard to latent defects, fraud or such gross mistakes as to amount to fraud. Final inspection and acceptance or rejection of the materials or

supplies will be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the County for such materials or supplies as are not in accordance with the specifications.

45. **COMPLIANCE:** Delivery must be made as ordered and in accordance with the contract or as directed by the Purchasing Agent when not in conflict with the contract. The decision of the Purchasing Agent as to reasonable compliance with delivery terms shall be final. If the Contractor claims the delay in receipt of goods was caused by the County, the Contractor must provide evidence satisfactory to the Purchasing Agent supporting the Contractor's claim. Any request for extension of delivery time from that specified in the contract must be approved by the Purchasing Agent, such extension applying only to the particular item or shipment affected. If the Contractor is delayed by the County, there shall be added to the time of completion a time equal to the period of such delay caused by the County. However, the Contractor shall not be entitled to claim damages or extra compensation for such delay or suspension. These conditions may vary for construction contracts. See contract for the individual instructions.
46. **POINT OF DESTINATION:** All materials shipped to the County must be shipped F.O.B. DESTINATION unless otherwise stated in the contract or purchase order. The materials must be delivered to the "Ship to" address indicated on the purchase order.
47. **ADDITIONAL CHARGES:** Unless bought F.O.B. "shipping point" and Contractor prepays transportation, no delivery charges shall be added to invoices except when express delivery is authorized and substituted on orders for the method specified in the contract. In such cases, difference between freight or mail and express charges may be added to invoice.
48. **METHOD AND CONTAINERS:** Unless otherwise specified, goods shall be delivered in commercial packages in standard commercial containers that are constructed to ensure acceptance by common or other carrier for safe transportation to the point of delivery. Containers become the property of the County unless otherwise specified by bidder.
49. **REPLACEMENT:** Materials or components that have been rejected by the Purchasing Agent, in accordance with the terms of a contract, shall be replaced by the Contractor at no cost to the County.
50. **PACKING SLIPS OR DELIVERY TICKETS:** All shipments must be accompanied by Packing Slips or Delivery Tickets and must contain the following information for each item delivered:
- The Purchase Order Number,
  - The Name of the Article and Stock Number (Supplier's),
  - The Quantity Ordered,

- d. The Quantity Shipped,
- e. The Quantity Back Ordered,
- f. The Name of the Contractor.

Contractors are cautioned that failure to comply with these conditions is sufficient reason for the County's refusal to accept the goods.

#### **BILLING**

51. **BILLING:** Billing for the Fairfax County Public Schools and for County agencies: Unless otherwise specified on the contract or purchase order (PO), invoices are to be submitted for each purchase order immediately upon completion of the shipment or services. Invoices should be mailed to the "BILL TO" address on the PO or to the appropriate address specified in the contract.

#### **PAYMENTS**

52. **PAYMENT:** Payment shall be made after satisfactory performance that is in accordance with all provisions of the contract, and upon receipt of a properly completed invoice. The County reserves the right to withhold any or all payments or portions thereof for Contractor's failure to perform in accordance with the provision of the contract or any subsequent modifications.
53. **PARTIAL PAYMENTS:** Unless otherwise specified, partial payments will be made upon acceptance of materials or services so invoiced if in accordance with completion date. However, up to 5 percent (5%) of the value of the entire order may be retained until completion of contract.
54. **PAYMENT FOR EQUIPMENT, INSTALLATION, AND TESTING:** When equipment requires installation (which includes erection, setting up or placing in position, service, or use) and testing, and the installation or testing is delayed, payment may be made based on 50% of the contract price when such equipment is delivered on the site. A further allowance of 25% may be made when the equipment is installed and ready for test. The balance shall be paid after the equipment is tested and found to be satisfactory. If the equipment must be tested, but installation is not required to be made by the Contractor or if the equipment

must be installed but testing is not required, payment may be made based on 75% at the time of delivery and the balance shall be paid after satisfactory test or installation is completed.

#### **GENERAL**

55. **GENERAL GUARANTY:** Contractor agrees to:
- a. Save the County, its agents and employees harmless from liability of any nature or kind for the use of any copyrighted or uncopyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a contract for which the Contractor is not the patentee, assignee, licensee or owner.
  - b. Warrant that when the contract includes a software license, or use of licensed software, the Contractor is the owner of the Software or otherwise has the right to grant to the County the license to use the Software granted through the Contract without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party.
  - c. Protect the County against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery.
  - d. Furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work or to the work of other contractors, for which his or her workers are responsible.
  - e. Pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules, regulations, and policies of the County.
  - f. Protect the County from loss or damage to County owned property while it is in the custody of the Contractor.
56. **SERVICE CONTRACT GUARANTY:** Contractor agrees to:
- a. Furnish services described in the solicitation and resultant contract at the times and places and in the manner and subject to conditions of those documents provided that the County may reduce the said services at any time.
  - b. Enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence.
  - c. All work and services rendered in strict conformance to all laws, statutes, and ordinances and the applicable government rules, regulations, methods, and procedures.
  - d. Allow services to be inspected or reviewed by an employee of the County at any reasonable time and place selected by the County. The County is under no obligation to compensate Contractor for any services not rendered in strict conformity with the contract.
  - e. Stipulate that the presence of a County Inspector shall not lessen the obligation of the Contractor for performance in accordance with the contract requirements, or be deemed a defense on the part of the Contractor for infraction thereof. The Inspector is not authorized to revoke, alter, enlarge, relax, or release any of the requirements of the contract documents. Any omission or failure on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material. Notification of an omission or failure will be documented by the Purchasing Agent.

57. **INDEMNIFICATION:**

- a. General Indemnification: Contractor must indemnify, keep and save harmless, and defend the County, its agents, officials, employees and volunteers against Claims that may accrue or arise against the County as a result of the granting a contract, if the Claim was caused by the negligence or error, or omission of the Contractor, its employees, its subcontractor, or its subcontractor's employees. As used in this Section, a Claim includes: injuries, death, damage to property, breach of data security, suits, liabilities, judgments, or costs and expenses. Upon request by the County, the Contractor must at its own expense: appear, defend, and pay all attorney's fees and all costs and other expenses related to the Claim. If, related to a Claim, any judgment is rendered against the County or a settlement reached that requires the County to pay money, the Contractor must at its own expense satisfy and discharge the same. Contractor expressly understands and agrees that any performance bond or insurance protection required by this Contract, or otherwise provided by the Contractor, does not limit the Contractor's responsibility to indemnify, keep and save harmless, and defend the County as provided in this Contract.
- b. Intellectual Property Indemnification: In addition to the General Indemnification, Contractor will indemnify the County for and defend the County against third-party claims for infringement of any valid United States patent, trademark or copyright by the Contractor's products, software, services, or deliverables. Contractor must indemnify the County for any loss, damage, expense or liability, including costs and reasonable attorney's fees that may result by reason of any such claim.

In the event of a claim covered by this subparagraph, and in addition to all other obligations of Contractor in this Paragraph 58, Contractor must at its expense and within a reasonable time: (a) obtain a right for the County to continue using such products and software, or allow Contractor to continue performing the Services; (b) modify such products, software, services or deliverables to make them non-infringing; or (c) replace such products or software with a non-infringing equivalent. If, in the Contractor's reasonable opinion, none of the foregoing options is feasible Contractor must immediately notify the County

and accept the return of the products, software, services, or deliverables, along with any other components rendered unusable as a result of the infringement or claimed infringement, and refund to the County the price paid to Contractor for such components as well as any pre-paid fees for the allegedly infringing services, including license, subscription fees, or both. Nothing in Paragraph 58, however, relieves the Contractor of liability to the County for damages sustained by the County by virtue of any breach of contract related to a third-party infringement claim.

- c. Right to Participate in Defense. The County may, at its sole expense, participate in the defense or resolution of a Claim. Contractor will have primary control of the defense and resolution of the Claim, except when such defense or resolution requires the County to (i) admit liability or wrongdoing; or (ii) to pay money. In either of these cases Contractor must obtain the County's prior written consent before entering into such settlement or resolution.
- d. No Indemnification by the County. The parties agree that under applicable law the County cannot indemnify or defend the Contractor. To the extent any promise or term contained in this Contract, including any exhibits, attachments, or other documents incorporated by reference therein, includes an indemnification or obligation to defend by the County, that promise or term is stricken from this Contract and of no effect.

58. **OFFICIALS NOT TO BENEFIT:**

- a. Each bidder or offeror shall certify, upon signing a bid or proposal, that to the best of their knowledge no Fairfax County official or employee having official responsibility for the procurement transaction, or member of their immediate family, has received or will receive any financial benefit of more than nominal or minimal value relating to the award of this contract. If such a benefit has been received or will be received, this fact shall be disclosed with the bid or proposal or as soon thereafter as it appears that such a benefit will be received. Failure to disclose the information prescribed above may result in suspension or debarment, or rescission of the contract made, or could affect payment pursuant to the terms of the contract.
- b. Whenever there is reason to believe that a financial benefit of the sort described in paragraph "a" has been or will be received in connection with a bid, proposal or contract, and that the Contractor has failed to disclose such benefit or has inadequately disclosed it, the County Executive, as a prerequisite to payment pursuant to the contract, or at any other time, may require the Contractor to furnish, under oath, answers to any interrogatories related to such possible benefit.
- c. In the event the bidder or offeror has knowledge of benefits as outlined above, this information should be submitted with the bid or proposal. If the above does not apply at time of award of contract and becomes known after inception of a contract, the bidder or offeror shall address the disclosure of such facts to the Fairfax County Purchasing Agent, 12000 Government Center Parkway, Suite 427, Fairfax, Virginia 22035-0013. Relevant Invitation/Request for Proposal Number (see cover sheet) should be referenced in the disclosure.

59. **LICENSE REQUIREMENT:** All firms doing business in Fairfax County, shall obtain a license as required by Chapter 4, Article 7, of The Code of the County of Fairfax, Virginia, as amended, entitled "Business, Professional and Occupational Licensing (BPOL) Tax." Questions concerning the BPOL Tax should be directed to the Department of Tax Administration, telephone (703) 222-8234 or visit: <https://www.fairfaxcounty.gov/taxes/business/understanding-bpol-tax>. The BPOL Tax number must be indicated in the space provided on the Cover Sheet, "Fairfax License Tax No." when appropriate.

60. **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with a Fairfax County pursuant to the Fairfax County Purchasing Resolution shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. Fairfax County may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

61. **COVENANT AGAINST CONTINGENT FEES:** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For violation of this warranty, the County shall have the right to terminate or suspend this contract without liability to the County or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
62. **VIRGINIA FREEDOM OF INFORMATION ACT:** 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 corporation, in accordance with the Virginia Freedom of Information Act except as provided below:
- a. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.
  - b. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the County decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award except in the event that the County decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to the public inspection only after award of the contract except as provided in paragraph "c" below. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.
  - c. Trade secrets or proprietary information submitted by a bidder, offeror or Contractor in connection with a procurement transaction or prequalification application submitted pursuant to the prequalification process identified in the Special Provisions, shall not be subject to the Virginia Freedom of Information Act; however, the bidder, offeror or Contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.
  - d. Nothing contained in this section shall be construed to require the County, when procuring by "competitive negotiation" (Request for Proposal), to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous to the County.
  - e. The County cannot maintain as confidential any information, data, or records obtainable through the Virginia Freedom of Information or similar law. This includes records or information that have not been properly designated as trade secret or proprietary information pursuant to Va. Code Ann. § 2.2-4342(F).

#### **BIDDER/CONTRACTOR REMEDIES**

**63. INELIGIBILITY:**

- a. Any person or firm suspended or debarred from participation in County procurement shall be notified in writing by the Purchasing Agent.
  - 1. The Notice of Suspension shall state the reasons for the actions taken and such decision shall be final unless the person or firm appeals within ten (10) days of receipt of the Notice by instituting legal action as provided in the Code of Virginia.
  - 2. The Notice of Debarment shall state the reasons for the actions taken and the decision shall be final unless the person or firm appeals within ten (10) days of receipt of the Notice by instituting legal action as provided in the Code of Virginia.
- b. The Purchasing Agent shall have the authority to suspend or debar a person or firm from bidding on any contract for the causes stated below:
  - 1. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
  - 2. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a County Contractor;
  - 3. Conviction under the state or federal antitrust statutes arising out of the submission of bids or proposals;
  - 4. Violation of contract provisions, as set forth below, of a character which is regarded by the Purchasing Agent to be so serious as to justify suspension or debarment action:
    - a. failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
    - b. a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided, that failure to perform or unsatisfactory performance caused by acts beyond the control of the Contractor shall not be considered to be a basis for suspension or debarment;
  - 5. Any other cause the Purchasing Agent determines to be so serious and compelling as to affect responsibility as a Contractor, such as debarment by another governmental entity for any cause listed herein, or because of prior reprimands;
  - 6. The contractor has abandoned performance, been terminated for default on a Fairfax County project, or has taken any actions that inure to the detriment of Fairfax County or a Fairfax County project;
  - 7. The Contractor is in default on any surety bond or written guarantee on which Fairfax County is an obligee.
- c. If, upon appeal, it is determined that the action taken by the Purchasing Agent was arbitrary or capricious, or not in accordance with the Constitution of Virginia, statutes or regulations, the sole relief available to the person or firm shall be restoration of eligibility. The person or firm may not institute legal action until all statutory requirements have been met.

**64. APPEAL OF DENIAL OF WITHDRAWAL OF BID:**

- a. A decision denying withdrawal of a bid submitted by a bidder or offeror shall be final and conclusive unless the bidder appeals the decision within ten (10) days after receipt of the decision by instituting legal action as provided in the Code of Virginia. The bidder or offeror may not institute legal action until all statutory requirements have been met.
- b. If no bid bond was posted, a bidder refused withdrawal of bid under the provisions of Article 2, Section 4.A.8, of the Fairfax County Purchasing Resolution, prior to appealing, shall deliver to the County a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.
- c. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, the sole relief shall be withdrawal of the bid.

**65. APPEAL OF DETERMINATION OF NONRESPONSIBILITY:**

- a. Any bidder who, despite being the apparent low bidder, is determined not to be a responsible bidder for a particular County contract shall be notified in writing by the Purchasing Agent. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten (10) days of receipt of the notice by instituting legal action as provided in the Code of Virginia. The bidder may not institute legal action until all statutory requirements have been met.
- b. If, upon appeal, it is determined that the decision of the Purchasing Agent was arbitrary or capricious and the award for the particular County contract in question has not been made, the sole relief available to the bidder shall be a finding that the bidder is a responsible bidder for the County contract in question. Where the award has been made and performance has

begun, the County may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing Contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing Contractor be entitled to lost profits.

**66. PROTEST OF AWARD OR DECISION TO AWARD:**

- a. Any bidder or offeror may protest the award or decision to award a contract by submitting a protest in writing to the Purchasing Agent, or an official designated by the County of Fairfax, no later than ten (10) days after the award or the announcement of the decision to award, whichever occurs first. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit such protest in the same manner no later than ten days after posting or publication of the notice of such contract as provided in Article 2, Section 2, of the Fairfax County Purchasing Resolution. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction which are subject to inspection under Article 2, Section 4.D of the Fairfax County Purchasing Resolution, then the time within which the protest must be submitted shall expire ten days after those records are available for inspection by such bidder or offeror under Article 2, Section 4.D, or at such later time as provided herein. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The Purchasing Agent shall issue a decision in writing within ten (10) days of the receipt of the protest stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten (10) days of receipt of the written decision by instituting legal action as provided in the Code of Virginia. Nothing in this section shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation for Bid or Request for Proposal.
- b. If prior to award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The Purchasing Agent shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be declared void by the County. Where the award has been made and performance has begun, the Purchasing Agent may declare the contract void upon a finding that this action is in the best interest of the County. 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.
- c. Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this article shall not be affected by the fact that a protest or appeal has been filed.
- d. An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest, no further action to award the contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

**67. CONTRACTUAL DISPUTES:**

- a. Any dispute concerning a question of fact as a result of a contract with the County which is not disposed of by agreement shall be decided by the Purchasing Agent, who shall reduce her decision to writing and mail or otherwise forward a copy to the Contractor within ninety (90) days. The decision of the Purchasing Agent shall be final and conclusive unless the Contractor appeals within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. A Contractor may not institute legal action, prior to receipt of the Purchasing Agent's decision on the claim, unless the Purchasing Agent fails to render such decision within the time specified.
- b. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty days after final payment; however, written notice of the Contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods.

Pendency of claims shall not delay payment of amounts agreed due in the final payment.

68. **LEGAL ACTION:** No bidder, offeror, potential bidder or offeror, or Contractor shall institute any legal action until all statutory requirements have been met.
69. **VENUE:** This contract and its terms, including but not limited to, the parties' obligations, the performance due, and the remedies available to each party, are governed, construed, and interpreted in accordance with the laws of the Commonwealth of Virginia. Any jurisdiction's choice of law, conflicts of laws, rules, or provisions that would cause the application of any laws other than those of the Commonwealth of Virginia do not apply. Any and all disputes, claims, and causes of action arising out of or in any way connected with this contract or its performance must be brought in the applicable court of Fairfax County, or in the United States District Court for the Eastern District of Virginia, Alexandria Division.
70. **COOPERATIVE PURCHASING:** The County or any entity identified in the Fairfax County Purchasing Resolution, Article 1, Section 3 may participate in, sponsor, conduct or administer a cooperative procurement agreement as set forth in the Fairfax County Purchasing Resolution.
71. **DRUG FREE WORKPLACE:** During the performance of a 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; and (iv) include the provisions of the foregoing clauses in every subcontract of 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 conjunction with a specific contract awarded to a Contractor in accordance with this section, 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.
72. **IMMIGRATION REFORM AND CONTROL ACT:** Contractor agrees that it does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.
73. **AUDIT OF RECORDS:** The parties agree that County or its agent must have access to and the right to examine any books, documents, papers, and records of the Contractor involving transactions related to the Contract or compliance with any clauses thereunder, for a period of three (3) years after final payment. The contractor must include this requirement in all subcontracts related to this Contract.
74. **NONVISUAL ACCESS:** All information technology, which is purchased or upgraded by the County under this contract, must comply with the following access standards from the date of purchase or upgrade until the expiration of the Contract:
- Effective, interactive control and use of the technology (including the operating system), applications programs, and format of the data presented, shall be readily achievable by nonvisual means;
  - the technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom the blind or visually impaired individual interacts;
  - Nonvisual access technology shall be integrated into networks used to share communications among employees, program participants, and the public; and
  - The technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired. A covered entity may stipulate additional specifications in any procurement.
  - Compliance with the nonvisual access standards set out this Section is not required if the Board of Supervisors determines that (i) the information technology is not available with nonvisual access because the essential elements of the information technology are visual and (ii) nonvisual equivalence is not available.

**APPROVED:**

/S/ Elizabeth D. Teare  
COUNTY ATTORNEY

/S/ Cathy A. Muse  
COUNTY PURCHASING AGENT

**OFFEROR DATA SHEET**

NAME OF OFFEROR: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

E-MAIL ADDRESS: \_\_\_\_\_

Name and e-mail addresses of both service and fiscal representatives (Key Personnel) who would handle this account.

Service Representative: \_\_\_\_\_

Telephone Number: (    ) \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Fiscal Representative: \_\_\_\_\_

Telephone Number: (    ) \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Payment Address, if different from above:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**PRICE SUMMARY**

Offeror shall provide prices for the services outlined in this RFP as follows:

1. Pricing shall be fixed firm and inclusive of all costs.
2. Pricing for access to the offerors service should be given with two options:
  - a. Pricing for individual school access
  - b. Pricing for district-wide access

**BUSINESS CLASSIFICATION****DEFINITIONS**

***Small Business*** – means a business, independently owned or operated by one or more individuals who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years. One or more of the individual owners shall control both the management and daily business operations of the small business.

***Minority-Owned Business*** - means a business concern that is at least 51% owned by one or more minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more minority individuals.

***Woman-Owned Business*** – means a business that is at least 51% owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more women.

**YOU MUST CLASSIFY YOUR BUSINESS/ORGANIZATION BY MARKING THE APPROPRIATE BOXES ON THE COVER SHEET (DPMM32).** This designation is required of all business/organizations including publicly traded corporations, non-profits, sheltered workshops, government organizations, partnerships, sole proprietorships, etc.

**VIRGINIA STATE CORPORATION COMMISSION (SCC)**  
**REGISTRATION INFORMATION**

The bidder:

☐ is a corporation or other business entity with the following SCC identification number:  
\_\_\_\_\_ **-OR-**

☐ is not a corporation, limited liability company, limited partnership, registered limited liability partnership, or business trust **-OR-**

☐ is an out-of-state business entity that does not regularly and continuously maintain as part of its ordinary and customary business any employees, agents, offices, facilities, or inventories in Virginia (not counting any employees or agents in Virginia who merely solicit orders that require acceptance outside Virginia before they become contracts, and not counting any incidental presence of the bidder in Virginia that is needed in order to assemble, maintain, and repair goods in accordance with the contracts by which such goods were sold and shipped into Virginia from bidder's out-of-state location) **-OR-**

☐ is an out-of-state business entity that is including with this bid/proposal an opinion of legal counsel which accurately and completely discloses the undersigned bidder's current contacts with Virginia and describes why those contacts do not constitute the transaction of business in Virginia within the meaning of § 13.1-757 or other similar provisions in Titles 13.1 or 50 of the Code of Virginia.

Please check the following box if you have not checked any of the foregoing options but currently have pending before the SCC an application for authority to transact business in the Commonwealth of Virginia and wish to be considered for a waiver to allow you to submit the SCC identification number after the due date for bids:

**PROPRIETARY INFORMATION:**

Ownership of all data, materials, and documentation originated and prepared for the Owner pursuant to the REQUEST FOR PROPOSAL shall belong exclusively to the Owner and be subject to public inspection in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by an Offeror shall not be subject to public disclosure under the Virginia Freedom of Information Act, however, the Offeror must invoke the protections of Section 2.2-4342F of the Code of Virginia, in writing, either before or at the time the data or other material is submitted. The written notice must specifically identify the data or materials to be protected and state the reasons why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information.

**NOTICE OF PROPRIETARY INFORMATION**  
**Confidentiality References Protection in Accordance with the Code of Virginia,**  
**Section 2.2-4342F**

| Section Title | Page Number | Reason(s) for Withholding from Disclosure |
|---------------|-------------|-------------------------------------------|
|               |             |                                           |
|               |             |                                           |
|               |             |                                           |
|               |             |                                           |

**INSTRUCTIONS:** Identify the data or other materials to be protected and state the reasons by using the codes listed below. Indicate the specific words, figures, or paragraphs that constitute trade secrets or proprietary materials.

- A. This page contains information relating to "trade secrets", and "proprietary information" including processes. Operations, style of work, or apparatus, identify confidential statistical data, amount or source of any income... of any person (or) partnership. "Reference the Virginia Public Procurement Act, Section 2.2-4342F. Unauthorized disclosure of such information would violate the Trade Secrets Act 18 U.S.C. 1905.
- B. This page contains proprietary information including confidential, commercial or financial information which was provided to the Government on a voluntary basis and is of the type that would not customarily be released to the public. See Virginia Public Procurement Act, Section 2.2-4342F; 5 U.S.C. 552 (b)(4); 12 C.F.R. 309.5(c)(4).
- C. This page contains proprietary information including confidential, commercial or financial information. This disclosure of such information would cause substantial harm to competitive position and impair the Government's ability to obtain necessary information from contractors in the future. 5 U.S.C. See Virginia Public Procurement Act. Section 2.2-4342F; 552 (b)(4); 12 C. F. R 309.5(c)(4).

**PLEASE MARK "NOT APPLICABLE" IF NO EXCEPTIONS ARE TAKEN**

**BUSINESS, PROFESSIONAL AND OCCUPATIONAL LICENSE**

All firms located or operating in Fairfax County must obtain a Business, Professional and Occupational License (BPOL) as required by Chapter 4, Article 7, of the Code of the County of Fairfax, Virginia. In order for the Department of Tax Administration to determine your BPOL requirement prior to contract award, it is necessary for you to provide the following information:

- If you currently have a Fairfax County business license, please submit a copy with your proposal.
- Do you have an office in:
 

|                |                              |                             |
|----------------|------------------------------|-----------------------------|
| Virginia       | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Fairfax County | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
- Date business began/will begin work in Fairfax County

A detailed description of the business activity that will take place in Fairfax County. If business is located outside of Fairfax County, give the percentage of work actually to be done in the County

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\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Complete and return this form or a copy of your current Fairfax County Business License with your proposal.**

**CERTIFICATION REGARDING DEBARMENT OR SUSPENSION**

In compliance with contracts and grants agreements applicable under the U.S. Federal Awards Program, the following certification is required by all offerors submitting a proposal in response to this Request for Proposal:

1. The Offeror certifies, to the best of its knowledge and belief, that neither the Offeror nor its Principals are suspended, debarred, proposed for debarment, or declared ineligible for the award of contracts from the United States federal government procurement or nonprocurement programs, or are listed in the *List of Parties Excluded from Federal Procurement and Nonprocurement Programs* issued by the General Services Administration.
2. "Principals," for the purposes of this certification, means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager, plant manager, head of a subsidiary, division, or business segment, and similar positions).
3. The Offeror shall provide immediate written notice to the Fairfax County Purchasing Agent if, at any time prior to award, the Offeror learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. This certification is a material representation of fact upon which reliance will be placed when making the award. If it is later determined that the Offeror rendered an erroneous certification, in addition to other remedies available to Fairfax County government, the Fairfax County Purchasing Agent may terminate the contract resulting from this solicitation for default.

**Printed Name of  
Representative:**

\_\_\_\_\_

**Signature/Date:**

\_\_\_\_\_/\_\_\_\_\_

**Company Name:**

\_\_\_\_\_

**Address:**

\_\_\_\_\_

**City/State/Zip:**

\_\_\_\_\_

**SSN or TIN No:**

\_\_\_\_\_

**Certification Regarding Ethics in Public Contracting**

In submitting this proposal and signing below, Offeror certifies the following in connection with a bid, proposal, or contract:

Check one:

☐

1. I have not given any payment, loan, subscription, advance, monetary deposit, services or anything of more than nominal value to any public employee or official who has official responsibility and authority for procurement transactions.

☐

2. I have given a payment, loan, subscription, advance, monetary deposit, services or anything of more than nominal value to a public employee or official who has official responsibility and authority for procurement transactions, and in exchange I received consideration of substantially equal or greater value.

☐

3. I have given a payment, loan, subscription, advance, monetary deposit, services or anything of more than nominal value to a public employee or official who has official responsibility and authority for procurement transactions, but in exchange I have not received consideration of substantially equal or greater value.

If #2 above is selected, please complete the following:

Recipient: \_\_\_\_\_

Date of Gift: \_\_\_\_\_

Description of the gift and its value: \_\_\_\_\_

\_\_\_\_\_

Description of the consideration received in exchange and its value: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Printed Name of Bidder/Offeror Representative: \_\_\_\_\_

Signature/Date: \_\_\_\_\_ / \_\_\_\_\_

Company Name: \_\_\_\_\_

Company Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

***This certification supplements but does not replace the requirements set forth in paragraph 58 (OFFICIALS NOT TO BENEFIT) of the General Conditions and Instructions to Bidders included in this solicitation.***

**Sample Listing of Local Public Bodies**

REFERENCE, SPECIAL PROVISIONS, PARAGRAPH TITLED "USE OF CONTRACTS BY OTHER PUBLIC BODIES." You may select those public bodies that this contract may be extended to; a "blank" will signify a "NO" response:

|  |                                                  |  |                                                      |
|--|--------------------------------------------------|--|------------------------------------------------------|
|  | Alexandria Public Schools, VA                    |  | Manassas Park, Virginia                              |
|  | Alexandria Sanitation Authority                  |  | Maryland-National Capital Park & Planning Commission |
|  | Alexandria, Virginia                             |  | Maryland Transit Administration                      |
|  | Arlington County, Virginia                       |  | Metropolitan Washington Airports Authority           |
|  | Arlington Public Schools, Virginia               |  | Metropolitan Washington Council of Governments       |
|  | Bladensburg, Maryland                            |  | Montgomery College                                   |
|  | Bowie, Maryland                                  |  | Montgomery County, Maryland                          |
|  | Charles County Public Schools, MD                |  | Montgomery County Public Schools                     |
|  | College Park, Maryland                           |  | Northern Virginia Community College                  |
|  | Culpeper County, Virginia                        |  | Omni Ride                                            |
|  | District of Columbia                             |  | Potomac & Rappahannock Trans. Commission             |
|  | District of Columbia Courts                      |  | Prince George's County, Maryland                     |
|  | District of Columbia Public Schools              |  | Prince George's County Public Schools                |
|  | DC Water and Sewer Authority                     |  | Prince William County, Virginia                      |
|  | Fairfax County Water Authority                   |  | Prince William County Public Schools, VA             |
|  | Fairfax, Virginia (City)                         |  | Prince William County Service Authority              |
|  | Falls Church, Virginia                           |  | Rockville, Maryland                                  |
|  | Fauquier County Government and Schools, Virginia |  | Spotsylvania County Schools, Virginia                |
|  | Frederick, Maryland                              |  | Stafford County, Virginia                            |
|  | Frederick County Maryland                        |  | Takoma Park, Maryland                                |
|  | Gaithersburg, Maryland                           |  | Upper Occoquan Sewage Authority                      |
|  | Greenbelt, Maryland                              |  | Vienna, Virginia                                     |
|  | Herndon, Virginia                                |  | Virginia Railway Express                             |
|  | Leesburg, Virginia                               |  | Washington Metropolitan Area Transit Authority       |
|  | Loudoun County, Virginia                         |  | Washington Suburban Sanitary Commission              |
|  | Loudoun County Public Schools                    |  | Winchester, Virginia                                 |
|  | Loudoun County Sanitation Authority              |  | Winchester Public Schools                            |
|  | Manassas, Virginia                               |  |                                                      |
|  | Manassas City Public Schools, Virginia           |  |                                                      |
|  |                                                  |  |                                                      |
|  |                                                  |  |                                                      |

**Complete and return this form with your proposal.**

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Vendor Name

**UBCONTRACTOR (S) NOTIFICATION FORM**

Contract Number/Title: \_\_\_\_\_

Prime Contractors Name: \_\_\_\_\_

Prime Contractor's Classification: \_\_\_\_\_

You are required to provide the County with names, addresses, anticipated dollar amount and small/minority classification of each first-tier subcontractor (ref. Special Provisions, titled "Subcontracting"). Please complete this form and return it with your submission.

**Please check here if you are not using a subcontractor:** \_\_\_\_\_

| SUBCONTRACTOR(S)<br>NAME | STREET ADDRESS | CITY | STATE | ZIP CODE | ANTICIPATED DOLLAR<br>AMOUNT | VENDOR<br>CLASSIFICATION |
|--------------------------|----------------|------|-------|----------|------------------------------|--------------------------|
|                          |                |      |       |          |                              |                          |
|                          |                |      |       |          |                              |                          |
|                          |                |      |       |          |                              |                          |
|                          |                |      |       |          |                              |                          |
|                          |                |      |       |          |                              |                          |

**Complete and submit this form with your proposal.**

### **RFP 2000003265, Appendix C Instructions**

**Overview:** Fairfax County Public Schools is searching for research databases and eBook collections on independent platforms that serve students PreK-12. On the next page are requirements for these resources. Also listed are some preferred content and features that FCPS would like to have integrated in the resources but are not required.

1. Responses to requirements for databases are required if the proposal includes databases or self produced content.
2. Responses to requirements for eBooks collections are required if the proposal includes eBooks collections.
3. Please respond with Yes or No in the Response to Requirement column to indicate if your firm fulfills the requirement.
4. Please provide a narrative response in the Narrative Response to Requirement column.
5. Use the Narrative Response to Requirement column to indicate the page number where the response is located in the Technical Proposal.
6. Narrative Response to Requirement column for preferred requirements are only required if the vendor responds affirmatively to that requirement.

| Requirement Section                                                                                                                            | Level Required/Preferred | Requirement                                                                                                                                                                                                                                                                                 | Narrative Required | Response to Requirement (Y/N) | Narrative response page number within the Technical Proposal |
|------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|-------------------------------|--------------------------------------------------------------|
| <b>Online research databases for PreK-12 students. Databases may serve any subgroup within this range.</b>                                     |                          |                                                                                                                                                                                                                                                                                             |                    |                               |                                                              |
| Content                                                                                                                                        | R                        | Digital platform primarily providing comprehensive full-text selection of articles and other resources intended for student research supporting the curricula and interests of PreK-12 audiences                                                                                            | Y                  |                               |                                                              |
| Content                                                                                                                                        | R                        | General full-text or other media coverage of academic topics in one or all of the following disciplines: English Language Arts, Science, Mathematics, Social Studies, Fine Arts, Health, Physical Education, and elective courses (high school) and general reference for PreK-12 audiences | Y                  |                               |                                                              |
| Content                                                                                                                                        | R                        | Contains culturally responsive content and reflects the diversity found in a global society                                                                                                                                                                                                 | Y                  |                               |                                                              |
| Content                                                                                                                                        | P                        | Includes images, graphics, maps, video, audio, and other multimedia features                                                                                                                                                                                                                | Y                  |                               |                                                              |
| Content                                                                                                                                        | P                        | Includes content or resources for classroom teachers or school librarians to facilitate use of the product with students                                                                                                                                                                    | Y                  |                               |                                                              |
| Features                                                                                                                                       | R                        | Email, downloadable pdf, html link, and/or printing capabilities (DRM free content)                                                                                                                                                                                                         | Y                  |                               |                                                              |
| Features                                                                                                                                       | R                        | Citation formatting                                                                                                                                                                                                                                                                         | Y                  |                               |                                                              |
| Features                                                                                                                                       | R                        | Usage reporting on the site and enterprise level                                                                                                                                                                                                                                            | Y                  |                               |                                                              |
| Features                                                                                                                                       | R                        | Training or on-demand tutorials for using the resource and/or the research process                                                                                                                                                                                                          | Y                  |                               |                                                              |
| Features                                                                                                                                       | P                        | Enable persistent/permanent links to resources                                                                                                                                                                                                                                              | Y                  |                               |                                                              |
| Features                                                                                                                                       | P                        | Advanced search with multiple field searches                                                                                                                                                                                                                                                | Y                  |                               |                                                              |
| Features                                                                                                                                       | P                        | Searching by Lexile or other reading level measure                                                                                                                                                                                                                                          | Y                  |                               |                                                              |
| Features                                                                                                                                       | P                        | Searching by curriculum standard                                                                                                                                                                                                                                                            | Y                  |                               |                                                              |
| Features                                                                                                                                       | P                        | Browsing search feature/topic guidance                                                                                                                                                                                                                                                      | Y                  |                               |                                                              |
| Features                                                                                                                                       | P                        | Share or save results list                                                                                                                                                                                                                                                                  | Y                  |                               |                                                              |
| Features                                                                                                                                       | P                        | Google Suite integration                                                                                                                                                                                                                                                                    | Y                  |                               |                                                              |
| Features                                                                                                                                       | P                        | In-product highlighting and note-taking tools                                                                                                                                                                                                                                               | Y                  |                               |                                                              |
| Features                                                                                                                                       | P                        | Audio read aloud or text-to-speech available within the product                                                                                                                                                                                                                             | Y                  |                               |                                                              |
| Features                                                                                                                                       | P                        | On-demand translation of text available                                                                                                                                                                                                                                                     | N                  |                               |                                                              |
| Features                                                                                                                                       | P                        | Multilingual resources                                                                                                                                                                                                                                                                      | Y                  |                               |                                                              |
| Features                                                                                                                                       | P                        | Ability to customize user view (text size, letter spacing, margins, choice in colors for font, background, and highlighting)                                                                                                                                                                | Y                  |                               |                                                              |
| Features                                                                                                                                       | P                        | Export citations to NoodleTools citation manager                                                                                                                                                                                                                                            | N                  |                               |                                                              |
| Access                                                                                                                                         | R                        | IP authentication within network                                                                                                                                                                                                                                                            | N                  |                               |                                                              |
| Access                                                                                                                                         | R                        | Remote login capabilities at the enterprise level or with single sign-on/SAML                                                                                                                                                                                                               | Y                  |                               |                                                              |
| Access                                                                                                                                         | R                        | Complies with ADA and COPPA requirements                                                                                                                                                                                                                                                    | Y                  |                               |                                                              |
| Access                                                                                                                                         | R                        | Compatible with Windows 7 and Windows 10 operating systems                                                                                                                                                                                                                                  | N                  |                               |                                                              |
| Access                                                                                                                                         | R                        | Compatible with modern web browsers i.e., Chrome, Microsoft IE/Edge, Safari, Firefox                                                                                                                                                                                                        | Y                  |                               |                                                              |
| Access                                                                                                                                         | P                        | Integration with Follett Destiny One Search                                                                                                                                                                                                                                                 | N                  |                               |                                                              |
| Access                                                                                                                                         | P                        | Integration with Schoology                                                                                                                                                                                                                                                                  | N                  |                               |                                                              |
| Access                                                                                                                                         | P                        | Integration with MacInVIA                                                                                                                                                                                                                                                                   | N                  |                               |                                                              |
| Access                                                                                                                                         | P                        | Mobile-friendly display when accessed from a smartphone or tablet                                                                                                                                                                                                                           | N                  |                               |                                                              |
| Access                                                                                                                                         | P                        | iOS and Android mobile app available                                                                                                                                                                                                                                                        | N                  |                               |                                                              |
| Access                                                                                                                                         | P                        | Accessible with screen reader software                                                                                                                                                                                                                                                      | N                  |                               |                                                              |
| Services                                                                                                                                       | R                        | Explain rights of usage for content                                                                                                                                                                                                                                                         | Y                  |                               |                                                              |
| Services                                                                                                                                       | R                        | On call technical support and billing contact available during Eastern Standard Time business hours                                                                                                                                                                                         | Y                  |                               |                                                              |
| Services                                                                                                                                       | P                        | Escalation contact available for enterprise technical support                                                                                                                                                                                                                               | Y                  |                               |                                                              |
| Services                                                                                                                                       | P                        | Web compatible icons provided                                                                                                                                                                                                                                                               | Y                  |                               |                                                              |
| Services                                                                                                                                       | P                        | Marketing/promotional materials available, i.e. posters, bookmarks                                                                                                                                                                                                                          | Y                  |                               |                                                              |
| Services                                                                                                                                       | P                        | Virtual or in-person training opportunities available                                                                                                                                                                                                                                       | Y                  |                               |                                                              |
| <b>Online ebook/audiobook collection on an independent platform for PreK-12 students. Collection may serve any subgroup within this range.</b> |                          |                                                                                                                                                                                                                                                                                             |                    |                               |                                                              |
| Content                                                                                                                                        | R                        | Provides a substantial and curated collection of appealing full-text nonfiction and/or fiction ebooks or audiobooks primarily intended for recreational reading for PreK-12 audiences                                                                                                       | Y                  |                               |                                                              |
| Content                                                                                                                                        | R                        | Contains culturally responsive text and images and reflects the diversity found in a global society                                                                                                                                                                                         | Y                  |                               |                                                              |
| Content                                                                                                                                        | R                        | Collection provides a range of reading levels                                                                                                                                                                                                                                               | Y                  |                               |                                                              |
| Content                                                                                                                                        | R                        | Provides selection policy/criteria for content                                                                                                                                                                                                                                              | Y                  |                               |                                                              |
| Content                                                                                                                                        | P                        | Describe ability for FCPS to customize title offerings                                                                                                                                                                                                                                      | Y                  |                               |                                                              |
| Features                                                                                                                                       | R                        | Usage reporting on the site and enterprise level                                                                                                                                                                                                                                            | Y                  |                               |                                                              |
| Features                                                                                                                                       | R                        | Training or on-demand tutorials for using the resource                                                                                                                                                                                                                                      | Y                  |                               |                                                              |
| Features                                                                                                                                       | R                        | Browsing search feature/topic guidance                                                                                                                                                                                                                                                      | Y                  |                               |                                                              |
| Features                                                                                                                                       | R                        | Ability to favorite titles or share/save results list                                                                                                                                                                                                                                       | Y                  |                               |                                                              |
| Features                                                                                                                                       | P                        | Enable persistent/permanent links to resources                                                                                                                                                                                                                                              | Y                  |                               |                                                              |
| Features                                                                                                                                       | P                        | Citation formatting                                                                                                                                                                                                                                                                         | Y                  |                               |                                                              |
| Features                                                                                                                                       | P                        | Advanced search with multiple field searches                                                                                                                                                                                                                                                | Y                  |                               |                                                              |
| Features                                                                                                                                       | P                        | Searching by curriculum standard                                                                                                                                                                                                                                                            | Y                  |                               |                                                              |
| Features                                                                                                                                       | P                        | Searching by Lexile or other reading level measure                                                                                                                                                                                                                                          | Y                  |                               |                                                              |
| Features                                                                                                                                       | P                        | In-product highlighting, note-taking tools, and bookmarks                                                                                                                                                                                                                                   | Y                  |                               |                                                              |

## Appendix C

|          |   |                                                                                                                             |   |  |  |
|----------|---|-----------------------------------------------------------------------------------------------------------------------------|---|--|--|
| Features | P | Ability to customize user view (text size, letter spacing, margins, choice in colors for font, background and highlighting) | Y |  |  |
| Features | P | Audio read aloud or text-to-speech available within the product                                                             | Y |  |  |
| Features | P | Read aloud feature that highlights text in synch with audio                                                                 | Y |  |  |
| Features | P | Graphics, audio, video, and other multimedia features                                                                       | Y |  |  |
| Features | P | Multilingual resources                                                                                                      | Y |  |  |
|          |   |                                                                                                                             |   |  |  |
| Access   | R | <b>All content provides unlimited multi-user, simultaneous access</b>                                                       | Y |  |  |
| Access   | R | <b>IP authentication within network</b>                                                                                     | N |  |  |
| Access   | R | <b>Remote login capabilities at the enterprise level or with single sign-on/SAML</b>                                        | Y |  |  |
| Access   | R | <b>Complies with ADA and COPPA requirements</b>                                                                             | Y |  |  |
| Access   | R | <b>Compatible with Windows 7 and Windows 10 operating systems</b>                                                           | N |  |  |
| Access   | R | <b>Compatible with modern web browsers i.e., Chrome, Microsoft IE/Edge, Safari, Firefox</b>                                 | Y |  |  |
| Access   | P | Integration with Follett Destiny One Search                                                                                 | N |  |  |
| Access   | P | Integration with Schoology                                                                                                  | N |  |  |
| Access   | P | Integration with MackinVIA                                                                                                  | N |  |  |
| Access   | P | Mobile-friendly display when accessed from a smartphone or tablet                                                           | N |  |  |
| Access   | P | iOS and Android mobile app available                                                                                        | N |  |  |
| Access   | P | Accessible with screen reader software                                                                                      | N |  |  |
|          |   |                                                                                                                             |   |  |  |
| Services | R | <b>Explain rights of usage for content</b>                                                                                  | Y |  |  |
| Services | R | <b>On call technical support and billing contact available during Eastern Standard Time business hours</b>                  | Y |  |  |
| Services | R | <b>Escalation contact available for enterprise technical support</b>                                                        | Y |  |  |
| Services | P | Marketing/promotional materials, i.e. posters, bookmarks                                                                    | Y |  |  |
| Services | P | Virtual or in-person training opportunities                                                                                 | Y |  |  |
| Services | P | Web compatible icons                                                                                                        | Y |  |  |

## **CONFIDENTIALITY PROVISIONS STUDENT AND EMPLOYEE RECORDS**

**THIS ADDENDUM**, executed and effective as of the \_\_\_\_ day of \_\_\_\_\_, 202\_\_, by and between \_\_\_\_\_, a corporation organized and existing under the laws of \_\_\_\_\_ (the “Company”), and the **FAIRFAX COUNTY SCHOOL BOARD**, a public body corporate and politic organized and existing under the laws of the Commonwealth of Virginia (the “School Board”), recites and provides as follows.

### **Recitals**

The Company and the School Board are parties to a certain agreement entitled \_\_\_\_\_ of even date herewith (the “Agreement”). In connection with the execution and delivery of the Agreement, the parties wish to enter into this Addendum in order to clarify and make certain modifications to the terms and conditions set forth therein.

The Company and the School Board agree that the purpose of such terms and conditions is (i) the identification of Company as an entity acting for the School Board in its performance of functions that a School Board employee otherwise would perform; (ii) the establishment of procedures for the protection of personally identifiable information contained in employee and student records, including procedures regarding security and security breaches; and (iii) to ensure compliance with the Family Educational Rights and Privacy Act (“FERPA”).

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is acknowledged hereby, the parties agree as follows.

### **Agreement**

The Agreement is amended hereby as follows:

1. The following provisions shall be deemed to be included in the Agreement and, in the event of a conflict or ambiguity between the Agreement and this Addendum, the terms of this Addendum will in all events govern and control:

**Confidentiality Obligations Applicable to Certain FCPS Records.** The Company hereby covenants and agrees that it shall maintain, in strict confidence and trust, all FCPS employee records, as well as student records containing either (1) non-directory information of any kind, whether provided by or created for FCPS pursuant to this contract, or (2) directory information as to which the eligible student or his family has opted out of disclosure (collectively, “FCPS Confidential Records”).

The Company shall cause each officer, director, employee and other representative who shall have access to FCPS Confidential Records during the term of the Agreement (collectively, the “Authorized Representatives”) to maintain in strict confidence and trust all FCPS Confidential Records. The Company shall take all reasonable steps to insure that no FCPS Confidential Records are disclosed to any person or entity except those who (i) are Authorized Representatives of the Company performing functions for FCPS under the

Agreement and have agreed to be bound by the terms of this Addendum; (ii) are authorized representatives of FCPS, or (iii) are entitled to access such FCPS Confidential Records from the Company pursuant to federal and/or Virginia law. The Company shall use FCPS Confidential Records and shall take all reasonable steps necessary to ensure that its Authorized Representatives shall use such records, solely for purposes related to and in fulfillment of the performance by the Company of its obligations pursuant to the Agreement.

The Company shall: (i) designate one of its Authorized Representatives to be responsible for ensuring that the Company and its Authorized Representatives maintain the FCPS Confidential Records as confidential; (ii) train the other Authorized Representatives with regard to their confidentiality responsibilities hereunder and pursuant to federal and Virginia law; and (iii) maintain at all times a list of Authorized Representatives with access to FCPS Confidential Records.

**Other Security Requirements.** The Company shall maintain all technologies, policies, procedures and practices necessary to secure and protect the confidentiality and integrity of FCPS Confidential Records, including procedures to (i) restrict access to such records in accordance with the Agreement and this Addendum; (ii) establish user IDs and passwords as necessary to protect such records; (iii) protect all such user passwords from detection and unauthorized use; (iv) prevent hostile or unauthorized intrusion that could compromise confidentiality, result in data corruption, or deny service; (v) prevent and detect computer viruses from spreading to disks, attachments to e-mail, downloaded files, and documents generated by word processing and spreadsheet programs; (vi) minimize system downtime; (vii) notify FCPS of planned system changes that may impact the security of FCPS Confidential Records; (viii) return or destroy FCPS Confidential Records that exceed specified retention schedules; (ix) permit periodic security audits by FCPS or designated third party using applicable regulations and industry best practice standards as benchmarks, and make commercially reasonable efforts to remediate the vulnerabilities discovered; and (x) in the event of system failure, enable immediate recovery of FCPS records to the previous business day.

In the event of a security breach, the Company shall (i) immediately take action to close the breach; (ii) notify FCPS within 2 business days after Company's first knowledge of the breach, the reasons for or cause of the breach, actions taken to close the breach, and identify the FCPS Confidential Records compromised by the breach; (iii) return compromised FCPS Confidential Records for review; (iv) provide communications on the breach to be shared with affected parties and cooperate with FCPS efforts to communicate to affected parties by providing FCPS with prior review of press releases and any communications to be sent to affected parties; (v) take all legally required, reasonable, and customary measures in working with FCPS to remediate the breach which may include toll free telephone support with informed customer services staff to address questions by affected parties and/or provide monitoring services if necessary given the nature and scope of the disclosure; (vi) cooperate with FCPS by providing information, records and witnesses needed to respond to any government investigation into the disclosure of such records or litigation concerning the breach; and (vii) provide FCPS with notice within 2 business days after notice or service on Company,

whichever occurs first, of any lawsuits resulting from, or government investigations of, the Company's handling of FCPS records of any kind, failure to follow security requirements and/or failure to safeguard confidential information. The Company shall provide satisfactory documentation of its compliance with the security requirements of this provision prior to performing services under the Agreement. The Company's compliance with the requirements of this provision is subject to verification by FCPS personnel or its agent at any time during the term of the Agreement.

#### **Applicability of Confidentiality and Security Provisions to Non-Confidential Records**

To the extent that FCPS provides non-confidential information to Company under this Agreement, such as student records containing only directory information as to which no opt-out has been filed, de-identified information, and FCPS records not pertaining to employees or students, the Confidentiality and Security paragraphs set forth in this Addendum shall not apply, *provided that* the notice obligation under subsection (vii) of the preceding paragraph shall apply to lawsuits and investigations involving FCPS records of any kind.

#### **Disposition of FCPS Confidential Records Upon Termination of Agreement**

Upon expiration of the term of the Agreement, or upon the earlier termination of the Agreement for any reason, the Company covenants and agrees that it promptly shall deliver to the School Board, and shall take all reasonable steps necessary to cause each of its Authorized Representatives promptly to deliver to the School Board, all FCPS Confidential Records. The Company hereby acknowledges and agrees that, solely for purposes of receiving access to FCPS Confidential Records and of fulfilling its obligations pursuant to this provision and for no other purpose (including without limitation, entitlement to compensation and other employee benefits), the Company and its Authorized Representatives shall be deemed to be school officials of the School Board, and shall maintain FCPS Confidential Records in accordance with all federal state and local laws, rules and regulations regarding the confidentiality of such records. The non-disclosure obligations of the Company and its Authorized Representatives regarding the information contained in FCPS Confidential Records shall survive termination of the Agreement. The Company shall indemnify and hold harmless the School Board from and against any loss, claim, cost (including attorneys' fees) or damage of any nature arising from or in connection with the breach by the Company or any of its officers, directors, employees, agents or representatives (including the Authorized Representatives) of any provision of this Addendum.

**Certain Representations and Warranties.** The Company hereby represents and warrants as follows: (i) the Company has full power and authority to execute the Agreement and this Addendum and to perform its obligations hereunder and thereunder; (ii) the Agreement and this Addendum constitute the valid and binding obligations of the Company, enforceable in accordance with their respective terms, except as such enforceability may be limited by bankruptcy or similar laws affecting the rights of creditors and general principles of equity; and (iii) the Company's execution and delivery of the Agreement and this Addendum,

and compliance with their respective terms, will not violate or constitute a default under, or require the consent of any third party to, any agreement or court order to which the Company is a party or by which it may be bound.

**Governing Law; Venue.** Notwithstanding any provision contained in the Agreement to the contrary, (i) the Agreement, as amended hereby, shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without reference to conflict of laws principles; and (ii) any dispute arising under or in connection with the Agreement, as amended hereby, which is not otherwise resolved by the parties hereto shall be decided by a court of competent jurisdiction located in the Commonwealth of Virginia.

**Termination.** This Addendum shall remain in force until notification to terminate is issued by FCPS. At time of termination, vendor is to follow regulations for Disposition of FCPS Confidential Records Upon Termination of Agreement as stated above.

**IN WITNESS WHEREOF**, the parties hereto have caused this Addendum to be executed by their duly authorized officers effective as of the date first written above.

**COMPANY NAME:**

By: \_\_\_\_\_  
**Name:**  
**Title:**

**FAIRFAX COUNTY SCHOOL BOARD**

By: \_\_\_\_\_  
Michelle Pratt  
Director, Office of Procurement Services