



**THE CHARLOTTE-MECKLENBURG BOARD OF EDUCATION
PURCHASING DEPARTMENT
701 E. Martin Luther King Jr., Blvd.
Charlotte, NC 28202**

December 4, 2009

**REQUEST FOR PROPOSALS
RFP #163-1157
On-Line Assessment Tool for Local Assessment**

Sealed Proposals subject to the conditions made a part hereof will be received until **February 5, 2010 @ 2:30 p.m., EST (Prevailing Local Time)** for furnishing services described herein.

SEND ALL PROPOSALS DIRECTLY TO THE ISSUERS ADDRESS SHOWN ABOVE.

IMPORTANT NOTE: Indicate firm name ("Technical Proposal" or "Cost Proposal") (*if applicable*), and RFP number on the front of each sealed proposal envelope or package, along with the date for receipt of proposals specified above.

Direct all inquiries concerning this RFP to: Gifford Cordova, Jr., C.P.M.
Senior Purchasing Agent
701 E. Martin Luther King Jr. Blvd
Room 310
Charlotte, NC 28075
980 -343 – 6615
g.cordova@cms.k12.nc.us

NOTE: A MANDATORY PREPROPOSAL CONFERENCE/SITE VISIT for all prospective offerors is scheduled for January 5, 2010 at 8:30 a.m. in the Charlotte-Mecklenburg Board of Education 4th Floor Board Room. Attendance at this conference is a prerequisite for consideration of an offeror's proposal. Prospective offerors are encouraged to submit written questions in advance. A summary of all questions and answers will be posted on the internet at <https://www.ips.state.nc.us/ips/> as an addendum, located under the RFP # being modified.
It is the offeror's responsibility to assure that all addenda have been reviewed and, if need be, signed and returned.

NOTE: Questions concerning the specifications in this Request for Proposals will be received until January 13, 2010. General non-technical questions will be accepted until the close of posted RFP timeline. A summary of all questions and answers will be posted on the internet at <https://www.ips.state.nc.us/ips/> as an addendum, located under the RFP # being modified.
It is the offeror's responsibility to assure that all addenda have been reviewed and, if need be, signed and returned.

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Section 1

OVERVIEW AND GENERAL INFORMATION

A. Introduction

The Charlotte-Mecklenburg Board of Education (CMBE) is seeking a state-of-the-art local assessment on-line platform that features an item bank aligned to the North Carolina Standard Course of Study (NCSCOS) and the teaching and learning philosophies of the district. Additionally, the platform should allow for a variety of data input functionalities, sophisticated psychometric calculations and compatible interfacing with the established Charlotte-Mecklenburg Schools (CMS) data reporting systems.

B. Background

Currently, CMS administers local assessments two to three times during the school year depending on the grade and subject. Administration of the assessments is via paper/pencil and recorded using scanning software. While the current system focuses on benchmarking assessments, feedback from all our stakeholders indicates that those at the school level are interested in having a platform from which they can pull items at any time (not just during the mandated testing times) for common assessments, diagnostic purposes, and/or progress monitoring.

Ultimately, there are two goals for the CMS local assessment program. The first goal is to have a benchmarking system for grades Pre-Kindergarten through 12. The second goal is to provide schools with information to use in designing instructional improvements and providing flexibility to schools in selecting formative assessment designs – whether they are testing minimum or high levels of knowledge. Thus, school level staff would have the ability to use differentiated forms of assessments to focus at a more granular level on those objectives that are problematic to students or determine when students have shown enough in-depth evidence for mastery.

Given the goals, it is important for the platform to have the ability to contain a plethora of items, not only from a supplied bank but also have the ability for CMS to add items, which are targeted to varying levels of student abilities for each NCSCOS objective. This will require incorporation of programming that will calculate student level and item level estimates using both Classical Test and Item Response Theories. The resulting information will: 1) indicate where students are in terms of learning and mastery, 2) provide Central Office stakeholders with information at the school level and district, and 3) give all stakeholders a sense of confidence in the items being used and the yielded results.

CMS Currently employs 8,796 full-time teachers located at 170 schools across Mecklenburg County. Current student population is 137,167 students enrolled in grades Pre-Kindergarten through grade 12.

C. Objectives of This RFP

The objective of this RFP is to gather detailed information in four areas: Platform Infrastructure, Item Needs, Special Needs, and Support:

- 1) Platform Infrastructure information should cover the scanning and uploading of data capabilities, downloading of data according to CMS specifications (see technology requirements in General Business Requirements – Section 4A2, Assessment Data Feed Requirements), data back-ups, and pre-population features.
- 2) Item Needs information should cover the item bank, scoring, item rigor, item-level information, use of open-ended items, psychometric information, alignment of items to the NCSCOS, and vendor ability to revise alignment of items when NCSCOS or essential standards change.
- 3) Special Needs information refers to adaptable components for Special Needs students.
- 4) Support information includes professional development, technical support, and customer service.

Each of the four areas is detailed in Section 4A.1 General System Requirements –, General Business Requirements. We also request background information on work experience in districts similar to CMS and letters

of reference. This request for information will result in an award. The plan is to cover the majority of costs upfront for the first 3 years. Afterwards, the cost should represent 10% of the total cost in the form of a yearly maintenance fee.

Section 2

Schedule and Process

The following chart shows the schedule of events to prepare your organization's Proposal. The key events and deadlines for this process are as follows, some of which are set forth in more detail in the Sections that follow:

Due Date	Event
12-4-09	RFP advertised and posted at The State of North Carolina Interactive Purchasing System (IPS)
12-14-09	Deadline for vendor to submit questions to Charlotte-Mecklenburg Schools for Bidders Conference
1-5-10	Bidders Conference held to answer questions from interested vendors
1-13-10	Deadline for vendors to submit technical questions to ensure a timely answer from Charlotte-Mecklenburg Schools General non-technical questions accepted until close of posted RFP timeline
2-5-10	Deadline for submitting proposals to: Charlotte-Mecklenburg Schools Attn: Gifford Cordova 701 East Martin Luther King Jr. Blvd. Charlotte, NC 28202
3-10-10	Disqualified applicants notified
3-24-10	Award notification sent to recipient and posted at The State of North Carolina Interactive Purchasing System
3-29-10	Meeting with grant recipients and review of contract requirements

Section 3

EVALUATION CRITERIA

The right is reserved by the-Charlotte Mecklenburg Board of Education to reject any or all quotes/bids. All bids/quotes submitted should be as closely sized, equipped, etc. to the desired specifications. Any exceptions to the specifications will be evaluated based on the best interest of the Charlotte-Mecklenburg Board of Education.

A team of CMBE staff will evaluate the proposals based on each Proposer's ability to meet the performance requirements of this RFP. This section provides a description of the criteria that will be used by the team for evaluation.

To be deemed responsive, it is important for the Proposer to provide appropriate detail to demonstrate satisfaction of each criterion and compliance with the performance provisions outlined in this RFP.

Proposals must contain information specifically related to the proposed Services and specifically requested herein. **Failure of any Contractor to submit requested information may result in the elimination of the Proposal from further evaluation.**

All required features in the Specification Matrix in the "Scope of Work" section must be addressed and any criterion that "does not meet" or has no response will cause the proposal to be disqualified and removed from further consideration. The ability to deliver desired features will be rated and ranked appropriately.

As part of the evaluation process, the Evaluation Committee may engage in discussions with any Proposer. The CMBE may hold discussions with individual Proposers to determine in greater detail a Proposer's qualifications, to explore with the Proposer the scope and nature of the required contractual services, to learn the Proposer's proposed method of performance and the relative utility of alternative methods, and to facilitate arriving at a Contract that will be satisfactory to the CMBE.

The CMBE may request representatives from selected firms, which fall within the competitive range, to formally present the proposed service plan and to answer questions from the evaluation committee. Presentations should not exceed one (1) hour.

As soon as practical, after opening the Proposals, the committee will recommend one firm for contract award to the CMBE Purchasing Department. This will be a cost and technical response evaluation. The technical proposal will account for fifty percent (50%) of the total evaluation. The cost proposal will account for thirty percent (30%) of the total evaluation and prior successful Lawson Integration, Corporate Background and Experience will count for ten percent (10%), and References will count ten percent (10%), together comprising the remaining twenty percent (20%) of the total evaluation weight. The CMBE is not obligated to accept the lowest cost proposal submitted by the firm with an acceptable Technical Proposal.

While price is the major consideration, CMS will consider other criteria in evaluating these proposals. The point values associated with the award criteria are:

Factor	Weight	Score	Notes
Cost Proposal	30		
Technical Proposal	50		
Corporate Background and Experience	10		
References	10		
Total	100		

DEMONSTRATION: The Charlotte-Mecklenburg Board of Education reserves the right to require a demonstration of the exact model of equipment or software offered. Such demonstration would be performed at CMS' facility, by bidder or his authorized representative, before award of contract, upon request by The Charlotte-Mecklenburg Board of Education, free of charge to The Charlotte-Mecklenburg Board of Education, and for the purpose of assessing suitability of the offered equipment or software for the intended use. Failure of the bidder or his authorized representative to perform demonstration (if requested) in accordance with the above may be grounds for nullification of the bid. The results of such demonstration would be considered in the award of contract

INFORMATION AND DESCRIPTIVE LITERATURE: Bidders must furnish with their bid detailed descriptive literature, general specifications and other pertinent data necessary for their evaluation as required by Par.10 of the attached "Instructions to Bidders." In addition, bidders must complete the attached questionnaire sections of the bid. Bids which do not comply with these requirements may be subject to rejection. **Submittal #11**

Section 4

SCOPE OF WORK (To be detailed after Pre-Bid Conference)

A. GENERAL SYSTEM REQUIREMENTS

On-Line Assessment Tool Specification Matrix

The following section details the functional specifications desired in an On-Line Assessment Platform. They capture the intended behavior of the system. This behavior may be expressed as services, tasks or functions the platform is expected to perform.

The following lists functional specifications of the intended platform as they have been discovered throughout the requirements elicitation process. Evolutionary revisions to these requirements are foreseen and expected.

Additionally, the priority of the needed specifications will be listed. The specifications will be ranked based on priority: **1) R – Required 2) HD – Highly Desirable 3) D – Desirable.**

Please respond Yes, No or Other (**Y, N, O**) to each item in the matrix. If other, please attach information as to how the criteria will be met. **A blank response to any 'required' criteria will cause the proposal to be disqualified and removed from further consideration.**

1. Business Requirements

Specification Matrix (Submittal #1)				
REQ	General Requirements	Priority (R,D,HD)	Comply (Y,N,O)	Comments
1.0	Platform Infrastructure			
1.1	CMS is seeking an application that can be hosted and supported by the vendor as Software as a Service that will support a district with about 9,000 teachers and over 137,000 students	R		
1.2	Application must not negatively impact CMS' wide and local area networks; provide information documenting network bandwidth impact at load levels of 1,000 simultaneous students through 20,000 simultaneous students	R		
1.3	When Internet input option for students is not available, the system allows alternate scoring input using a wide variety of scanners for paper/pencil assessments and plain paper or inexpensive scan sheets	R		
1.4	The application will accept CMS data feeds as necessary to set up and maintain users and passwords (Exchange 2007), load student information and other key data as necessary	R		
1.5	The application security and business continuity plans must be made available to CMS Technology Services for review and	R		

	approval			
1.6	The ability to store secure and non-secure items separately	R		
1.7	Nightly data downloads to CMS; CMS is the exclusive owner of all data collected and will be provided appropriate tools and/or file formats to download all data at will	R		
1.8	Document all keyboard alternative data input devices currently in use with your application	R		
1.9	All users have continuous access to the tool (24 hours a day, 365 days a year)	R		
1.10	Ability to produce reports in a variety of reports (e.g., student level, classroom level, school level, etc.) in a variety of formats (e.g., charts, graphs, tables, etc.)	HD		
1.11	Scoring, reporting measurement descriptions (e.g, IRT, 3 Parameter Model, etc.)	HD		
1.12	Exportable to Excel at the raw data level	HD		
2.0	Item Needs			
2.1	Item bank with items aligned to NCSCOS objectives, with at least 20 items per objective, and scoring features for every subject (Reading, Math, Science, Social Studies) and grade level (Pre-Kindergarten – 12)	R		
2.2	Item banks for Life Skills, World Languages, and Healthful Living	D		
2.3	The ability to add items to the system and have the calculations and scoring features accommodate the additions while CMS retains copyright to items loaded	R		
2.4	Provides data on rigor level of items (e.g. Bloom's Revised Taxonomy, etc)	R		
2.5	Item level information (i.e. easy, medium, hard) and estimates using Classical Test Theory and 3 parameter Item Response Theory models	R		
2.6	Open-ended items whereby teachers are able to grade with item-specific rubrics, upload scores into system, and use available exemplars to aid teachers with scoring for Reading, Math, Science, Social Studies at all grade levels	R		
2.7	Student level estimates using the 3 parameter Item Response Theory model	R		
2.8	The ability to download items by NCSCOS and item estimates at any time by school level and Central Office staff	R		
2.9	Provides performance against a standard scale lexile levels for reading items and possible Quintile levels for math items	R		
2.10	Provides lexile levels for reading passages	R		
2.11	Ability for the <u>vendor</u> to revise alignment of content as NCSCOS and essential standards change	R		
2.12	Vendor provides continuous development of new items for program's item banks to reflect changes (e.g., new objectives) in the	R		

	NCSCOS			
2.13	Adaptive software: pulls questions on student's level at present time; has ability to adjust rigor of next question up or down	HD		
2.14	Vendor provides CMS with item specifications for all items currently in program's item banks as well as for any items the vendor develops	R		
2.15	Vendor provides distracter rationales for each item currently in program's item banks as well as for any items the vendor develops	R		
3.0	Special Needs			
3.1	Ability to have adaptable components for Special Needs students (e.g., large print, one item per page, electronic read-alouds, etc.); ability for students to record their spoken responses to assessment items (e.g., World Languages require spoken performance, etc.)	R		
3.2	Alternate assessment item banks for Special Needs Students (e.g., fewer distracters, simplified language, etc.) aligned to state standards and having all other characteristics as listed	R		
3.3	Sub-set of items that can be used by visually impaired learners	R		
4.0	Support			
4.1	On-going professional development in a variety of modes, including printed materials, for all levels of users	R		
4.2	Technical support using a variety of communication mechanisms (e.g., phone, email, inter/intra net)	R		
4.3	Customer friendly, timely responses to CMS questions and problems (e.g., 24 hour response time)	R		

2. Assessment Data Feed Requirements

On a nightly basis, the contractor will provide a tab delimited incremental set of text files to CMS via FTP to the designated CMS FTP site. These files will contain the data in the attached spreadsheet for items, tests and student results. The contractor will also on a nightly basis draw down from CMS an incremental tab delimited text file containing the students' id numbers, school, grade, and teacher assignments for the students in CMS to be made available in the system the following morning. The file type submission will be a tab delimited file with incremental data feeds daily to CMS SFTP Site. Actual times to be arranged upon awarding of the contract.

<u>Student Results:</u>	<u>ITEM DATA:</u>		<u>TEST DATA:</u>
Date	Date (creation)		Date (creation)
Result_ID	Grade		Test_ID
Student_ID	Description		Test_Desc
Test_ID	Difficulty_parameter		Subject (4digit course)
School_ID	Discrimination_parameter		Grade
			security level (class, school, LC, district, open to others)
Response_1	Guessing-parameter		# of Items
Response_2	Objective		School_ID (of creator)
Response_3	Goal		Lawson ID of Teacher (creator)
Response_4	Subject(4 digit course)		Field Test Items
Response_5	Thinking skill		Item_1
Response_6	Easy/Med/Hard		Item_2
Response_..7-100..	Correct answer		Item_3
	Skill		Item_4
	Lexile		Item_..5-100..
	Foil a goal	nullable	
	Foil a objective	nullable	
	Foil a skill	nullable	
	Foil b goal	nullable	
	Foil b objective	nullable	
	Foil b skill	nullable	
	Foil c goal	nullable	
	Foil c objective	nullable	
	Foil c skill	nullable	
	Foil d goal	nullable	
	Foil d objective	nullable	
	Foil d skill	nullable	

Section 5

THE TWO STEP PROCUREMENT PROCESS

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

1. Request for Proposals (RFP) is issued to prospective contractors.
2. A pre-proposal conference and/or deadline for written questions is set. (See cover sheet of this RFP for details)
3. CMBE is using a two (2) step bidding process. Proposals in one original and three copies (2 printed, 1 CD) will be received from each offeror **in two separate, sealed packages** -the **Technical Proposal** and the **Cost Proposal**. Each original shall be signed and dated by an official authorized to bind the firm. Unsigned proposals will not be considered.

Technical Proposal

- a. One (1) copy marked *Original*.
- b. Two (2) copies marked *Copy*.
- c. One (1) copy (Microsoft Word format) on a CD, labeled with the Company Name, RFP #, RFP Description, and Date of RFP.

Cost Proposal

- a. One (1) copy marked *Original*.
- b. Two (2) copies marked *Copy*.
- c. One (1) copy (Microsoft Word format) on a CD, labeled with the Company Name, RFP #, RFP Description, and Date of RFP

NOTE: No technical information shall be contained in the cost proposal. No cost information shall be contained in the technical proposal. If any cost information is included in the technical proposal and/or if any technical information is included in the cost proposal, the Offeror's entire proposal shall be rejected.

4. All proposals must be received by The Charlotte-Mecklenburg Board of Education not later than the date and time specified on the cover sheet of this RFP.
5. At that date and time the package containing the proposals from each responding firm will be publicly opened and the name of each offeror announced publicly. A notation will also be made whether a separate sealed cost proposal has been received. Cost proposals will be placed in safekeeping until opened at a later date.
6. Technical proposals will be evaluated first.
7. Upon completion of the technical evaluation, the cost proposals of those firms whose technical proposals have been deemed acceptable will be publicly opened. The total cost offered by each firm will be tabulated and become a matter of public record. Interested parties are cautioned that these costs and their components are subject to further evaluation for completeness and correctness and therefore may not be an exact indicator of an offeror's pricing position.
8. At their option, the evaluators may request oral presentations or discussion with any or all offerors for the purpose of clarification or to amplify the materials presented in any part of the proposal. However, offerors are cautioned that the evaluators are not required to request clarification; therefore, all proposals should be complete and reflect the most favorable terms available from the offeror.
9. Proposals will be evaluated according to completeness, content and experience with similar projects, ability of the offeror and its staff, and cost. Award of a contract to one offeror does not mean that the other proposals lacked merit, but that, all factors considered, the selected proposal was most advantageous to the district .
10. Offerors are cautioned that this is a request for offers, not a request to contract, and The Charlotte-Mecklenburg Board of Education reserves the unqualified right to reject any and all offers when such rejection is deemed to be in the best interest of The Charlotte-Mecklenburg Board of Education.

Section 6

Proposal Requirements

The response to this RFP shall consist of the following:

- Corporate Background and Experience
- Executive Summary
- Financial Statement
- Project Plan
- Project Staffing and Organization
- Project Management
- Technical Requirements
- System Test Procedure
- Cost Proposal
- Vendor Qualifications
- Installation, Warranty, and Maintenance
- Technical Proposal
- System Quality Assurance, Documentation and Training

1. **Corporate Background and Experience** – Submittal #2

This section shall include background information on the organization and should give details of experience with similar projects. A list of 3 references (including contact persons and telephone numbers) for which similar work has been performed shall be included.

2. **Financial Statement** – Submittal #3

The Offeror's most recent audited financial statement or similar evidence of financial stability shall be provided.

3. **Project Organization** – Submittal #4

This section must include the proposed staffing, deployment and organization of personnel to be assigned to this project.

The Offeror shall provide information as to the qualifications and experience of all executive, managerial, legal, and professional personnel to be assigned to this project, including resumes citing experience with similar projects and the responsibilities to be assigned to each person.

4. **Technical Proposal** – Submittal #5

The Proposer shall include the following technical information formatted in accordance with the outline listed below.

4.1 **Executive Summary**

- a. Describe in detail how the proposed integrated system components will satisfy the CMBE critical needs to gather detailed information in the following areas: Platform Infrastructure, Item Needs, Special Needs and Support.
- b. Explain how your company can provide CMBE with the ability to provide schools with information to use in designing instructional improvements and providing flexibility to schools in selecting formative assessment designs – whether they are testing minimum or high levels of knowledge. Thus, school level staff would have the ability to use differentiated forms of assessments in order to focus at a more granular level on those objectives that are problematic to students or determine when students have shown enough in-depth evidence for mastery.

Section 6
Proposal Requirements
Submittal #5

4.2 Technical Requirements

- a. Complete response to the Specification Matrix in the “Scope of Work” section.
- b. Describe in detail the proposed On-Line Assessment Tool.

4.3 Project Plan

Include a detailed description of the proposed Project Plan.

4.4 Project Management

Describe the company’s project management methodology. Identify the major cost operators, risks and product customization associated with implementing the proposed solution.

4.5 System Test Procedure

Describe the test program that will be followed by the Proposer to ensure the System requirements have been satisfied.

4.6 System Quality Assurance, Documentation and Training

Describe the deliverables to include: software licensing, interface control documents and application program interfaces, documentation and training required. Include any and all technical support necessary for the proposed system.

4.7 Installation, Warranty, and Maintenance

Include complete warranty and maintenance program as part of this proposal response.

4.8 Vendor Qualifications

- a. Provide detailed description of similar projects with which the company has been involved in the past 3 years, including contact names and phone numbers.
- b. Provide resumes for key personnel who will be assigned to this project.
- c. Describe the ability of the company to meet the terms and conditions of the RFP, and the quality and relevance of similar assignments completed by key personnel.
- d. Clearly identify past projects where the company has successfully worked with and managed contracts implementing the proposed assessment tool with other large school districts.
- e. Provide chronology of company history. Include any mergers, acquisitions or divestitures in the last 10 years. Provide an explanation of any similar projects that were cancelled or not completed.

Section 7

Execution of Technical Proposal

Submittal # 6

Note: CMBE is using a two (2) step bidding process. Proposals in one original and three copies (2 printed, 1 CD) will be received from each offeror **in two separate, sealed packages** -the **Technical Proposal** and the **Cost Proposal**. Each original shall be signed and dated by an official authorized to bind the firm. Unsigned proposals will not be considered.

No technical information shall be contained in the cost proposal. No cost information shall be contained in the technical proposal. If any cost information is included in the technical proposal and/or if any technical information is included in the cost proposal, the Offeror's entire proposal shall be rejected.

By signing this proposal, the potential contractor certifies the following:

1. This proposal is signed by an authorized representative of the firm.
2. It can obtain insurance certificates as required within 10 calendar days after notice of award.
3. The availability of all equipment, materials, and supplies associated with performing the services described herein have been determined and included in the Technical Proposal.
4. The offeror has attended the pre-proposal conference and is aware of prevailing conditions associated with performing these services.
5. The potential contractor has read and understands the conditions set forth in this RFP and agrees to them with no exceptions.
6. Offeror will be responsible for all warranty issues related to goods and services provided during the factory warranty period if applicable.

Therefore, in compliance with this Request for Proposals, and subject to all conditions herein, the undersigned offers and agrees, if this proposal is accepted within 120 days from the date of the opening, to furnish the subject goods and services as outlined in their Technical response.

OFFEROR: _____

ADDRESS:

CITY, STATE, ZIP:

TELEPHONE NUMBER: _____

FEDERAL EMPLOYER IDENTIFICATION NUMBER: _____

BY: _____ TITLE: _____ DATE: _____
(Signature)

(Typed or printed name)

ACCEPTANCE OF PROPOSAL

(Charlotte-Mecklenburg Board of Education)

BY: _____ TITLE: _____ DATE: _____

THIS PAGE MUST BE SIGNED AND INCLUDED IN YOUR PROPOSAL.

Unsigned proposals will not be considered.

Section 8
Cost Proposal Requirements
Submittal #7

5. Cost Proposal – Submittal #5

The Cost Proposal shall be submitted in a separate, sealed package and contain:

TOTAL COST: An itemized total cost upfront for the first 3 years.

Afterwards, the cost should represent 10% of the total cost in the form of a yearly maintenance fee.

A total not to exceed cost representing the maximum amount for all work to be performed must be clearly indicated under this heading.

Provide a Detailed Breakdown of ALL Associated Costs for Complete System

This includes but is not limited to:

- The software package with appropriate licensing and continued support (i.e. product upgrades and service releases)
- Any framework applications that may be needed to support the product.
- Any resources needed for data integration points
- Vendor consulting services to assist during project implementation (If applicable)
- Warranty, Service, and Maintenance Service
- Training of supervisors, system users, and the technical support team

Section 9

Summary of Cost Sheet

RFP #163-1158

Submittal # 8

Item	Description	Cost
Software Cost: for all components necessary to meet requirements	List cost per License and qty.	
Software: maximum # of concurrent users		
Software cost to expand # of users	Needs to be zero up to 150,000 users	
Software cost of future upgrades/releases	Needs to be zero during contract period and covered by maintenance fees	
Other		
Other		
Services		
Implementation (project management and installation)		
Set up		
Training		
Conversion Cost (if applicable)		
Other services		
Maintenance		
Software maintenance and support first year after contract		
SubTotal		
2 nd Year Sftw/Maint after contract		
3 rd Year:		
4 th Year:		
5 th Year:		
Total Cost		

Section 10
Execution of Cost Proposal
Submittal #9

EXECUTION OF COST PROPOSAL

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

This proposal is signed by an authorized representative of the firm.

It can obtain insurance certificates as required within 10 calendar days after notice of award.

The cost and availability of all equipment, materials, and supplies associated with performing the services described herein have been determined and included in the proposed cost.

All labor costs, direct and indirect, have been determined and included in the proposed cost.

The offeror has attended the *mandatory* conference/site visit and is aware of prevailing conditions associated with performing these services.

The offeror can and will provide the specified performance bond or alternate performance guarantee (*if applicable*).

The potential contractor has read and understands the conditions set forth in this RFP and agrees to them with **no exceptions**.

Therefore, in compliance with this Request for Proposals, and subject to all conditions herein, the undersigned offers and agrees, if this proposal is accepted within 120 days from the date of the opening, to furnish the subject services for a cost not to exceed \$ _____.

OFFEROR: _____

ADDRESS: _____

CITY, STATE, ZIP: _____

TELEPHONE NUMBER: _____

FEDERAL EMPLOYER IDENTIFICATION NUMBER: _____

BY: _____ TITLE: _____ DATE: _____
(Signature)

(Typed or printed name)

ACCEPTANCE OF PROPOSAL

(Charlotte-Mecklenburg Board of Education)

BY: _____ TITLE: _____ DATE: _____

THIS PAGE MUST BE SIGNED AND INCLUDED IN YOUR PROPOSAL.

Unsigned proposals will not be considered.

**ADDENDA RECEIPT
(Submittal #9)
RFP #163-1158
Charlotte-Mecklenburg BOE
Applicant Tracking System**

ADDENDUM #:

DATE:

I certify that this Proposal complies with the General and Specific Specifications and Conditions issued by the CMBE except as clearly marked in the attached copy.

(Please Print Name)

Date

Authorized Signature

Title

Contractor Name

Section 12

FINAL CHECKLIST

1. Proposal information should be submitted to:

Purchasing Department

Charlotte-Mecklenburg Board of Education

Attn – Gifford Cordova, C.P.M.

701 East Martin Luther King Jr. Blvd., Room 310

Charlotte, NC 28202

2. Proposals should be submitted **no later than 2:30 pm, February 5, 2010.**

3. The proposal package should be labeled as follows:

Bid # 163-1157

Proposal for: On-Line Assessment Tool for Local Assessment

**Opening Date: February 5, 2010
2:30 PM**

4. Each applicant must submit **3 complete** copies each of the Technical and Cost proposal:
Technical Proposal

a. One (1) copy marked *Original*.

b. One (1) copy marked *Copy*.

c. One (1) copy (Microsoft Word format) on a CD, labeled with the Company Name, RFP #, RFP Description, and Date of RFP.

Cost Proposal

a. One (1) copy marked *Original*.

b. One (1) copy marked *Copy*.

c. One (1) copy (Microsoft Word format) on a CD, labeled with the Company Name, RFP #, RFP Description and Date of RFP.

5. Each bid proposal must include the following completed proposal submittals:

Proposal Submittal #	Item Description
1	Specification Matrix – pages 7-8
2	Corporate Background and Experience - page 12
3	Financial Statement – page 12
4	Project Staffing and Organization – page 12
5	Technical Approach – pages 12-13
6	Execution of Technical Proposal – page 14
7	Cost Proposal – Submit in a separate, sealed package – page 15
8	Summary of Cost Sheet – page 16
9	Execution of Cost Proposal – Submit with Cost Proposal – page 17
10	Copy of Signed Addenda (when applicable) – page 18
11	Descriptive Literature – page 6

Minority, Women, Small Business Enterprise Information

Charlotte-Mecklenburg Board of Education (CMBE) promotes full and equal access to business opportunities with Charlotte-Mecklenburg Schools (CMS). Minority-owned, women-owned, and small business enterprises (collectively "M/W/SBE") as well as other responsible vendors shall have a fair and reasonable opportunity to participate in CMS business opportunities.

Prime suppliers (i.e., those who deal directly with CMS) should support Charlotte-Mecklenburg School's M/W/SBE Program by making an effort to engage minority, women, and/or small businesses as subcontractors for goods and services for CMS to the extent available. Prime supplier's spending with M/W/SBE subcontractors constitutes Second Tier supplier diversity spending by CMS and the results of Second Tier spending is tracked within our program.

Each bidder or respondent to the solicitation shall submit with their bid the M/W/SBE Utilization Form. A listing of M/W/SBE firms and the CMS M/W/SBE guidelines may be obtained by contacting the M/W/SBE Administrator at 980-343-8638.

Failure to complete and submit the M/W/SBE Utilization Form may render bid or proposal response invalid

MINORITY, WOMEN, SMALL BUSINESS ENTERPRISE (M/W/SBE)
Utilization Form
For: Purchases of Goods and Services

We, _____ do certify that on the _____
(Bidder)

(Bid Description)
\$ _____
(Bid Number) (Dollar Amount of Bid)

This form must be completed regardless of the amount or lack of M/W/SBE participation attained.

I will expend a minimum of _____ % of the total dollar amount of the contract with minority, women, or small business enterprises. M/W/SBEs will be employed as vendors, suppliers, or providers of professional services. Such work will be subcontracted to the following firms listed below.

Attach additional sheets if required

Name and Address	*M/W/SBE Category	Work description	Dollar Value

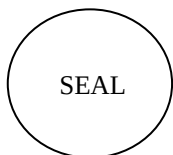
*M/W/SBE categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**) Native American Indian (**N**), Female (**F**), Small (**S**), or Socially and Economically Disadvantaged (**D**)

The undersigned will enter into a formal agreement with Minority/Women/ Small Business Firms for work listed in this schedule conditional upon execution of a contract with the Charlotte-Mecklenburg Board of Education.

Failure to fulfill this commitment may constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of this commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: _____ Name of Authorized Officer: _____



Signature: _____

Title: _____

State of _____, County of _____

Subscribed and sworn to before me this _____ day of _____ 20____

Notary Public _____

My commission expires _____

THE CHARLOTTE-MECKLENBURG BOARD OF EDUCATION

REQUEST FOR PROPOSAL INSTRUCTIONS

1. **EXCEPTIONS:** All proposals are subject to the terms and conditions outlined herein. All responses shall be controlled by such terms and conditions and the submission of other terms and conditions, price lists, catalogs, and/or other documents as part of an offeror's response will be waived and have no effect either on this Request for Proposals or on any contract that may be awarded resulting from this solicitation. Offeror specifically agrees to the conditions set forth in the above paragraph by signature to the proposal.
2. **COMPETITIVE OFFER:** Pursuant to the provision of G.S. 143-54, and under penalty of perjury, the signer of any proposal submitted in response to this RFP thereby certifies that this proposal has not been arrived at collusively or otherwise in violation of either Federal or North Carolina antitrust laws.
3. **ORAL EXPLANATIONS:** The Charlotte-Mecklenburg Board of Education shall not be bound by oral explanations or instructions given at any time during the competitive process or after award.
4. **REFERENCE TO OTHER DATA:** Only information which is received in response to this RFP will be evaluated; reference to information previously submitted shall not be evaluated.
5. **ELABORATE PROPOSALS:** Elaborate proposals in the form of brochures or other presentations beyond that necessary to present a complete and effective proposal are not desired.
6. **COST FOR PROPOSAL PREPARATION:** Any costs incurred by offerors in preparing or submitting offers are the offerors' sole responsibility; The Charlotte Mecklenburg Board of Education will not reimburse any offeror for any costs incurred prior to award.
7. **TIME FOR ACCEPTANCE:** Each proposal shall state that it is a firm offer which may be accepted within a period of 60 days. Although the contract is expected to be awarded prior to that time, the 60 day period is requested to allow for unforeseen delays.
8. **TITLES:** Titles and headings in this RFP and any subsequent contract are for convenience only and shall have no binding force or effect.
9. **CONFIDENTIALITY OF PROPOSALS** In submitting its proposal the offeror agrees not to discuss or otherwise reveal the contents of the proposal to any source outside of the the Charlotte-Mecklenburg Board of Education, until after the award of the contract. Offerors not in compliance with this provision may be disqualified, at the option of The Charlotte-Mecklenburg Board of Education, from contract award. Only discussions authorized by The Charlotte-Mecklenburg Board of Education are exempt from this provision.
10. **RIGHT TO SUBMITTED MATERIAL:** All responses, inquiries, or correspondence relating to or in reference to the RFP, and all other reports, charts, displays, schedules, exhibits, and other documentation submitted by the offerors shall become the property of The Charlotte-Mecklenburg Board of Education when received.
11. **OFFEROR'S REPRESENTATIVE:** Each offeror shall submit with its proposal the name, address, and telephone number of the person(s) with authority to bind the firm and answer questions or provide clarification concerning the firm's proposal.
12. **SUBCONTRACTING:** Offerors may propose to subcontract portions of the work provided that their proposals clearly indicate what work they plan to subcontract and to whom and that all information required about the prime contractor is also included for each proposed subcontractor.
13. **PROPRIETARY INFORMATION:** Trade secrets or similar proprietary data which the offeror does not wish disclosed to other than personnel involved in the evaluation or contract administration will be kept confidential to the extend permitted by NCAC T01:05B.1501 and G.S. 132-1.3 if identified as follows: Each page shall be identified in boldface at the top and bottom as "CONFIDENTIAL". Any section of the proposal which is to remain confidential shall also be so marked in boldface on the title page of that section. Cost information may not be deemed confidential. In spite of what is labeled as confidential, the determination as to whether or not it

is shall be determined by North Carolina Law.

14. **HISTORICALLY UNDERUTILIZED BUSINESSES:** Pursuant to General Statute 143-48 and Executive Order #150 The Charlotte-Mecklenburg Board of Education invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled.
15. **DECLINE TO OFFER:** Any firm which receives a copy of the RFP but which declines to make an offer is requested to send a written "Decline to Offer" to the issuing office. Failure to respond as requested may subject the firm to removal from consideration on future requirements.
16. **PROTEST PROCEDURES:** When an offeror wants to protest a contract award pursuant to this solicitation, they must submit a written request to the Chief Finance Officer of The Charlotte-Mecklenburg Board of Education. This request must be received within (30) thirty consecutive calendar days from the date of the contract award, and must contain specific sound reasons and any supporting documentation for the protest. Note: Contract award notices are sent only to those actually awarded contracts, and not to every person or firm responding to this solicitation. Offerors may call the Procurement Official listed on the first page of this document to obtain a verbal status of contract award. If the Chief Finance Officer can render a decision based on the facts without a meeting, a written response with a decision will be rendered within 10 consecutive calendar days of the receipt of the protest letter. If not, The Chief Finance Officer will schedule a meeting with the protesting party to hear their complaint. This meeting will be held within 30 consecutive calendar days after receipt of the written protest. The Chief Finance Officer will respond to the protesting party in writing with a decision within 30 consecutive calendar days from the date of the protest meeting. All decisions of the Chief Finance Officer shall be the final administrative review.

THE CHARLOTTE-MECKLENBURG BOARD OF EDUCATION

STANDARD TERMS AND CONDITIONS

1. **ACCEPTANCE:** Seller's acknowledgment of the terms of this purchase order (this "Order"), without timely express written objection, or Seller's shipment or performance of any part of this Order, constitutes an agreement to (i) all terms and conditions set forth or referenced herein and on the face of this Order, (ii) on any attachments hereto, (iii) any applicable solicitation documentation related to this Order (including without limitation any request for proposals or invitation for bids or Seller's response thereto) that deal with the same subject matter as this Order, and (iv) any other terms and conditions of a written agreement signed by Seller and The Charlotte-Mecklenburg Board of Education ("CMBE") that deals with the same subject matter as this Order (collectively, the "Contract Documents"). The terms and provisions set forth in the Contract Documents shall constitute the entire agreement between Seller and CMBE with respect to the purchase by CMBE of the (i) goods ("Goods") and/or (ii) services provided or work performed ("Services") as described in the Contract Documents. The agreements set forth in the Contract Documents are sometimes referred to herein as the "Contract." In the event of any conflict between any terms and conditions of the Contract Documents, the terms and conditions most favorable to CMBE shall control. This Order constitutes an offer by CMBE and expressly limits acceptance to the terms and conditions stated herein. No additional or supplemental provision or provisions in variance herewith that may appear in Seller's quotation, acknowledgment, invoice, or in any other communication from Seller to CMBE shall be deemed accepted by or binding on CMBE. CMBE hereby expressly rejects all such provisions which supplement, modify or otherwise vary from the terms of the Contract Documents, and such provisions are superseded by the terms and conditions stated in the Contract Documents, unless and until CMBE's authorized representatives expressly assent, in writing, to such provisions. Stenographic and clerical errors and omissions by CMBE are subject to correction.
2. **QUANTITIES:** Shipments must equal exact amounts ordered unless otherwise agreed in writing by CMBE. The award of a term contract neither implies nor guarantees any minimum or maximum purchases.
3. **PRICES:** If Seller's price or the regular market price of any of the Goods or Services covered hereunder is lower than the price stated in the Contract Documents on the date of shipment of such Goods or Services, Seller agrees to give CMBE the benefit of such lower price on any such Goods or Services. In no event shall Seller's price be higher than the price last quoted or last charged to CMBE unless otherwise agreed in writing. No charges for transportation, boxing, crating, etc. are allowable unless such charges are included in the Contract Documents.
4. **INVOICES:** It is understood and agreed that orders will be shipped at the established Contract prices in effect on dates orders are placed. Invoicing at variance with this provision may subject the Contract to cancellation. Applicable North Carolina sales tax shall be invoiced as a separate item. Invoices shall be sent to CMBE's accounts payable department with a copy to the CMBE Project Coordinator.
5. **FREIGHT ON BOARD:** All shipments of Goods are FOB destination unless otherwise stated in the Contract Documents.
6. **TAXES:** Applicable taxes shall be invoiced as a separate item.
7. **PAYMENT TERMS:** Payment terms are Net 30 days after receipt of correct invoice or acceptance of Goods or Services, whichever is later.
8. **CONDITION AND PACKAGING:** Unless otherwise provided by special terms and conditions or specifications, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment.
9. **DELAY IN SHIPMENT:** Time and date of delivery are of the essence, except when delay is due to causes beyond Seller's reasonable control and without Seller's fault or negligence.
10. **RISK OF LOSS:** Seller shall have the risk of loss of and damage to the Goods subject to the Contract Documents until such Goods are delivered to the destination and accepted by CMBE or its nominee.
11. **REJECTION:** All Goods and Services shall be received subject to CMBE's inspection. Goods or Services that are defective in workmanship or material or otherwise not in conformity with the requirements of the Contract Documents may be rejected and returned at Seller's expense or may be accepted at a reduced price. CMBE may require Seller to promptly replace or correct any rejected Goods or Services and, if Seller fails to do so, CMBE may contract with a third party to replace such Goods and Services and charge Seller the additional cost.

12. **COMPLIANCE WITH ALL LAWS:** Seller warrants that all performance hereunder shall be in accordance with all applicable federal, state and local laws, regulations and orders.
13. **REGISTERED SEX OFFENDERS:** Contractor acknowledges that CMBE Policy ADDA, "Registered Sex Offenders," prohibits anyone registered or required to register as a sex offender from being present on any CMBE Property for any reason, whether before, during or after school hours, or on or off of CMS property. Contractor expressly agrees that it, and any of its employees, will comply with this policy and acknowledges that any individuals that violate this policy are subject to removal from CMS Property by CMS and/or law enforcement officials and may also be subject to criminal prosecution. If Contractor, any of Contractor's employees, or any of Contractor's subcontractors or employees of subcontractors will have any direct interaction with students, then Contractor or the subcontractor must (i) on an annual basis conduct a check of the N.C. Sex Offender and Public Protection Registration Program, the N.C. Sexually Violent Predator Registration Program and the National Sex Offender Registry for all such employees; and (ii) prohibit individuals listed on such registries from being on CMS Property.
14. **WARRANTIES:** Seller warrants that all Goods and Services delivered hereunder will be free from defects in materials and workmanship and will conform strictly to the specifications, drawings, or samples specified or furnished. This warranty shall survive any inspection, delivery, acceptance or payment by CMBE of the Goods and Services and shall run to CMBE and any user of the Goods or Services. This express warranty is in addition to Seller's implied warranties of merchantability and fitness for a particular purpose which shall not be disclaimed. In addition to any other rights available at law or equity, CMBE shall be entitled to all rights and remedies provided by the Uniform Commercial Code, Chapter 25 of the North Carolina General Statutes, for breach of express warranties and implied warranties of merchantability or fitness for a particular purpose, including but not limited to consequential and incidental damages.
15. **INDEMNIFICATION:** Seller shall indemnify and hold harmless CMBE, its officers, agents, employees and assigns from and against all claims, losses, costs, damages, expenses, attorneys' fees and liability that any of them may sustain (a) arising out of Seller's failure to comply with any applicable law, ordinance, regulation, or industry standard or (b) arising directly or indirectly out of Seller's performance or lack of performance of the terms and conditions of the Contract. In the event that any Goods or Services sold and delivered or sold and performed under the Contract Documents shall be defective in any respect whatsoever, Seller shall indemnify and save harmless CMBE, its officers, agents, employees and assigns from all loss or the payment of all sums of money by reason of all accidents, injuries or damages to persons or property that shall happen or occur in connection with the use or sale of such Goods or Services and are contributed to by said condition. In the event Seller, its employees, agents, subcontractors and or lower-tier subcontractors enter premises occupied by or under the control of CMBE in the performance of the Contract Documents, Seller agrees that it will indemnify and hold harmless CMBE, its officers, agents, employees and assigns, from any loss, costs, damage, expense or liability by reason of property damage or personal injury of whatsoever nature or kind arising out of, as a result of, or in connection with such entry.
16. **INSURANCE:** Unless such insurance requirements are waived or modified by CMBE or the Charlotte-Mecklenburg Department of Insurance and Risk Management ("DIRM"), Seller certifies that it currently has and agrees to purchase and maintain during its performance under the Contract the following insurance from one or more insurance companies acceptable to CMBE and authorized to do business in the State of North Carolina: Automobile - Seller shall maintain bodily injury and property damage liability insurance covering all owned, non-owned and hired automobiles. The policy limits of such insurance shall not be less than \$1,000,000 combined single limit each person/each occurrence. Commercial General Liability - Seller shall maintain commercial general liability insurance that shall protect Seller from claims of bodily injury or property damage which arise from performance under the Contract. This insurance shall include coverage for contractual liability. The policy limits of such insurance shall not be less than \$1,000,000 combined single limit each occurrence/annual aggregate. Worker's Compensation and Employers' Liability Insurance - If applicable to Seller, Seller shall meet the statutory requirements of the State of North Carolina for worker's compensation coverage and employers' liability insurance. Seller shall also provide any other insurance or bonding specifically recommended in writing by the DIRM or required by applicable law. Certificates of such insurance shall be furnished by Seller to CMBE and shall contain the provision that CMBE be given 30 days' written notice of any intent to amend or terminate by either Seller or the insuring company. Failure to furnish insurance certificates or to maintain such insurance shall be a default under the Contract and shall be grounds for immediate termination of the Contract.
17. **TERMINATION FOR CONVENIENCE:** In addition to all of the other rights which CMBE may have to cancel this Order, CMBE shall have the further right, without assigning any reason therefore, to terminate any work under the Contract Documents, in whole or in part, at any time at its complete discretion by providing 10 days notice in writing from CMBE to Seller. If the Contract is terminated by CMBE in accordance with this paragraph, Seller will be paid in an amount which bears the same ratio to the total compensation as does the Goods or Services actually delivered or performed to the total originally contemplated in the Contract. CMBE will not be liable to Seller for any costs for completed Goods, Goods in process or materials acquired or contracted for, if such costs were incurred prior to the date of this Order.
18. **TERMINATION FOR DEFAULT:** CMBE may terminate the Contract, in whole or in part, immediately and without prior notice upon breach of the Contract by Seller. In addition to any other remedies available to CMBE law or equity, CMBE may procure upon such terms as CMBE shall deem appropriate, Goods or Services substantially similar to those so terminated, in which case Seller shall be liable to CMBE for any excess costs for such similar supplies or services and any expenses incurred in connection therewith.
19. **CONTRACT FUNDING:** It is understood and agreed between Seller and CMBE that CMBE's obligation under the Contract is contingent upon the availability of appropriated funds from which payment for Contract purposes can be made. No legal liability on the part of CMBE for

any payment may arise until funds are made available to CMBE's Finance Officer and until Seller receives notice of such availability. Should such funds not be appropriated or allocated, the Contract shall immediately be terminated. CMBE shall not be liable to Seller for damages of any kind (general, special, consequential or exemplary) as a result of such termination.

20. **ACCOUNTING PROCEDURES:** Seller shall comply with any accounting and fiscal management procedures prescribed by CMBE to apply to the Contract and shall assure such fiscal control and accounting procedures as may be necessary for proper disbursement of and accounting for all project funds.
21. **IMPROPER PAYMENTS:** Seller shall assume all risks attendant to any improper expenditure of funds under the Contract. Seller shall refund to CMBE any payment made pursuant to the Contract if it is subsequently determined by audit that such payment was improper under any applicable law, regulation or procedure. Seller shall make such refunds within 30 days after CMBE notifies Seller in writing that a payment has been determined to be improper.
22. **CONTRACT TRANSFER:** Seller shall not assign, subcontract or otherwise transfer any interest in the Contract without the prior written approval of CMBE.
23. **CONTRACT PERSONNEL:** Seller agrees that it has, or will secure at its own expense, all personnel required to perform the services set forth in the Contract.
24. **KEY PERSONNEL :** Seller shall not substitute for key personnel (defined as those individuals identified by name or title in the Contract Documents or in written communication from Seller) assigned to the performance of the Contract without prior written approval from CMBE Project Coordinator (the individual at CMBE responsible for administering the Contract).
25. **CONTRACT MODIFICATIONS:** The Contract may be amended only by written amendment duly executed by both CMBE and Seller. However, minor modifications may be made by CMBE Project Coordinator to take advantage of unforeseen opportunities that: (a) do not change the intent of the Contract or the scope of Seller's performance; (b) do not increase Seller's total compensation or method of payment; and (c) either improve the overall quality of the product or service to CMBE without increasing the cost, or reduce the total cost of the product or service without reducing the quantity or quality. All such minor modifications to the Contract must be recorded in writing and signed by both the Project Coordinator and Seller, and placed on file with the Contract. No price adjustments will be made unless the procedure has been included in the Contract and a maximum allowable amount stipulated.
26. **RELATIONSHIP OF PARTIES:** Seller is an independent contractor and not an employee of CMBE. The conduct and control of the work will lie solely with Seller. The Contract shall not be construed as establishing a joint venture, partnership or any principal-agent relationship for any purpose between Seller and CMBE. Employees of Seller shall remain subject to the exclusive control and supervision of Seller, which is solely responsible for their compensation.
27. **ADVERTISEMENT:** The Contract will not be used in connection with any advertising by Seller without prior written approval by CMBE.
28. **NONDISCRIMINATION:** During the performance of the Contract, Seller shall not discriminate against or deny the Contract's benefits to any person on the basis of sexual orientation, national origin, race, ethnic background, color, religion, gender, age or disability.
29. **CONFLICT OF INTEREST:** Seller represents and warrants that no member of CMBE or any of its employees or officers who may obtain a direct benefit, personal gain or advantage for themselves or a relative or associate as a result of the Contract, subcontract or other agreement related to the Contract is in a position to influence or has attempted to influence the making of the Contract, has been involved in making the Contract, or will be involved in administering the Contract. Seller shall cause this paragraph to be included in all Contracts, subcontracts and other agreements related to the Contract.
30. **GRATUITIES TO CMBE:** The right of Seller to proceed may be terminated by written notice if CMBE determines that Seller, its agent or another representative offered or gave a gratuity to an official or employee of CMBE in violation of policies of CMBE.
31. **KICKBACKS TO SELLER:** Seller shall not permit any kickbacks or gratuities to be provided, directly or indirectly, to itself, its employees, subcontractors or subcontractor employees for the purpose of improperly obtaining or rewarding favorable treatment in connection with a CMBE Contract or in connection with a subcontract relating to a CMBE Contract. When Seller has grounds to believe that a violation of this clause may have occurred, Seller shall promptly report to CMBE in writing the possible violation.
32. **MONITORING AND EVALUATION:** Seller shall cooperate with CMBE, or with any other person or agency as directed by CMBE, in monitoring, inspecting, auditing or investigating activities related to the Contract. Seller shall permit CMBE to evaluate all activities conducted under the Contract. CMBE has the right at its sole discretion to require that Seller remove any employee of Seller from CMBE property and from performing services under the Contract following provision of notice to Seller of the reasons for CMBE's dissatisfaction with the services of Seller's employee.
33. **FINANCIAL RESPONSIBILITY:** Seller is financially solvent and able to perform under the Contract. If requested by CMBE, Seller agrees to provide a copy of its latest audited annual financial statements or other financial statements as deemed acceptable by CMBE's Finance Officer. In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against Seller, the inability of Seller

to meet its debts as they become due or in the event of the appointment, with or without Seller's consent, of an assignee for the benefit of creditors or of a receiver, then CMBE shall be entitled, at its sole option, to cancel any unfilled part of the Contract without any liability whatsoever.

34. **GOVERNMENTAL RESTRICTIONS:** In the event any governmental restrictions are imposed which necessitate alteration of the material, quality, workmanship or performance of the items offered prior to their delivery, it shall be the responsibility of the Seller to notify, in writing, the issuing purchasing office at once, indicating the specific regulation which required such alterations. CMBE reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract.
35. **INSPECTION AT SELLER'S SITE:** CMBE reserves the right to inspect, at a reasonable time, the equipment/item, plant or other facilities of a prospective contractor prior to Contract award, and during the Contract term as necessary for CMBE determination that such equipment/item, plant or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the Contract.
36. **CONFIDENTIAL INFORMATION:** Student Information: If, during the course of Seller's performance of the Contract, Seller should obtain any information pertaining to the students' official records, Seller agrees to keep any such information confidential and to not disclose or permit it to be disclosed, directly or indirectly, to any person or entity. The Contract shall not be construed by either party to constitute a waiver of or to in any manner diminish the provisions for confidentiality of students' records. Additionally, pursuant to N.C.G.S. 115C-401.1, it is unlawful for a person who enters into a contract with a local board of education to sell personally identifiable information that is obtained from a student as a result of that person's performance under the Contract. Employee Personnel Information: If, during the course of Seller's performance of the Contract, Seller should obtain any information pertaining to employees of CMBE's personnel records, Seller agrees to keep any such information confidential and to not disclose or permit it to be disclosed, directly or indirectly, to any person or entity. Other Confidential Information: (a) Seller agrees that it will at all times hold in confidence for CMBE all designs, know-how, techniques, devices, drawings, specifications, patterns, technical information, documents, business plans, item requirements, forecasts and similar data, oral, written or otherwise, conveyed by CMBE to Seller in connection herewith or procured, developed, produced, manufactured or fabricated by Seller in connection herewith or procured, developed, produced, manufactured or fabricated by Seller in connection with Seller's performance hereunder (collectively, "Information"). Seller shall exercise the same degree of care to prevent disclosure of any Information to others as it takes to preserve and safeguard its own proprietary information, but in any event, no less than a reasonable degree of care. Seller shall not, without the prior written consent of CMBE, reproduce any Information; nor disclose Information to any party; nor use any Information for any purpose other than performance for the benefit of Seller hereunder. (b) Any technical knowledge or information of Seller which Seller shall have disclosed or may hereafter disclose to CMBE in connection with the Goods or other performance covered by the Contract shall not, unless otherwise specifically agreed upon in writing by CMBE, be deemed to be confidential or proprietary information and shall be acquired by CMBE free from any restrictions as part of the consideration of the Contract.
37. **INTELLECTUAL PROPERTY:** Seller agrees, at its own expense, to indemnify, defend and save CMBE harmless from all liability, loss or expense, including costs of settlement and attorney's fees, resulting from any claim that CMBE's use, possession or sale of the Goods or Services infringes any copyright, patent or trademark or is a misappropriation of any trade secret.
38. **NO PRE-JUDGMENT OR POST-JUDGMENT INTEREST:** In the event of any action by Seller for breach of contract in connection with the Contract, any amount awarded shall not bear interest either before or after any judgment, and Seller specifically waives any claim for interest.
39. **BACKGROUND CHECKS:** At the request of CMBE's Project Coordinator, Seller (if an individual) or any individual employees of Seller shall submit to CMBE criminal background check and drug testing procedures.
40. **MEDIATION:** If a dispute arises out of or relates to the Contract, or the breach of the Contract, and if the dispute cannot be settled through negotiation, the parties agree to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules before resorting to litigation.
41. **NO THIRD PARTY BENEFITS:** The Contract shall not be considered by Seller to create any benefits on behalf of any third party. Seller shall include in all contracts, subcontracts or other agreements relating to the Contract an acknowledgment by the contracting parties that the Contract creates no third party benefits.
42. **FORCE MAJEURE:** If CMBE is unable to perform its obligations or to accept the services or goods because of Force Majeure (as hereinafter defined), the time for such performance by CMBE or acceptance of services will be equitably adjusted by allowing additional time for performance or acceptance of services equal to any periods of Force Majeure. "Force Majeure" shall mean any delays caused by acts of God, riot, war, terrorism, inclement weather, labor strikes, material shortages and other causes beyond the reasonable control of CMBE.
43. **OWNERSHIP OF DOCUMENTS:** All documents created pursuant to the Contract shall, unless expressly provided otherwise in writing, be owned by CMBE. Upon the termination or expiration of the Contract, any and all finished or unfinished documents and other materials produced by Seller pursuant to the Contract shall, at the request of CMBE, be turned over to CMBE. Any technical knowledge or information of Seller which Seller shall have disclosed or may hereafter disclose to CMBE shall not, unless otherwise specifically agreed upon in writing by CMBE, be deemed to be confidential or proprietary information and shall be acquired by CMBE free from any restrictions as part of the consideration of the Contract.

44. **STRICT COMPLIANCE:** CMBE may at any time insist upon strict compliance with these terms and conditions notwithstanding any previous course of dealing or course of performance between the parties to the contrary.
45. **GENERAL PROVISIONS:** CMBE's remedies as set forth herein are not exclusive. Any delay or omission in exercising any right hereunder, or any waiver of any single breach or default hereunder, shall not be deemed to be a waiver of such right or of any other right, breach, or default. If action be instituted by Seller hereunder, CMBE shall be entitled to recover costs and reasonable attorney's fees. Seller may not assign, pledge, or in any manner encumber Seller's rights under this Order, or delegate the performance of any of its obligations hereunder, without CMBE's prior, express written consent.
46. **CONTRACT SITUS:** All matters, whether sounding in contract or tort relating to the validity, construction, interpretation and enforcement of the Contract, will be determined in Mecklenburg County, North Carolina. North Carolina law will govern the interpretation and construction of the Contract.