

PURCHASING DEPARTMENT
701 East Martin Luther King Jr. Blvd.
Charlotte, NC 28202

December 8, 2008

RFP#: 163-1113
REQUEST FOR PROPOSALS
FOR
THE PROVISION OF INDIVIDUAL NURSING AND HEALTH CARE
SERVICES FOR STUDENTS WITH DISABILITIES WITHIN
CHARLOTTE-MECKLENBURG SCHOOLS

Sealed Proposals subject to the conditions made a part hereof will be received until **3:00 p.m. Friday, January 30, 2009** for furnishing services described herein.

SEND ALL PROPOSALS DIRECTLY TO THE ISSUERS ADDRESS NOTED ON PAGE 6.

IMPORTANT NOTE: Indicate firm name 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 inquires concerning this RFP to: Gifford Cordova, C.P.M.
701 E. Martin Luther King Jr. Blvd.
Charlotte, NC 28202
980-343-6615
g.cordova@cms.k12.nc.us

NOTE: All offerors are encouraged to attend a PREPROPOSAL CONFERENCE/SITE VISIT on Monday January 5, 2009 at 10:00 A.M. Board of Education 701 E. Martin Luther King Jr. Blvd. 4th floor Board Room, Charlotte, NC 28202.
A summary of all questions and answers will be posted on the internet <http://www.ips.state.nc.us/ips/pubmain.asp> 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 required, signed and returned.

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A. REQUEST FOR PROPOSAL SCHEDULE

Monday December 8, 2008	Request For Proposals (RFP) advertised and posted at The State of North Carolina Interactive Purchasing System (I.P.S.) http://www.ips.state.nc.us/ips/pubmain.asp .
Monday January 5, 2009	RFP Bidders Conference will be held to answer questions from those planning to submit proposals at: 10:00 A.M. 701 E. Martin Luther King Jr. Blvd. 4 th floor Board Room Charlotte, NC 28202
Monday January 12, 2009	Deadline for submitting questions to: Gifford Cordova, C.P.M. g.cordova@cms.k12.nc.us
Friday, January 30, 2009	Deadline for submitting proposals to: Charlotte-Mecklenburg Schools Attn: Gifford Cordova, C.P.M. 701 East Martin Luther King Jr. Blvd. Room 310 Purchasing Department Charlotte, NC 28202 <i>Proposals submitted after 3:00 p.m. will not be accepted.</i>
Monday, February 13, 2009	Disqualified applicants notified.
Friday, February 20, 2009	Award notification sent to recipient and posted at: The State of North Carolina Interactive Purchasing System (I.P.S.) http://www.ips.state.nc.us/ips/pubmain.asp
Friday February 27, 2009	Meeting with grant recipients and review of contract requirements.

Note: Any changes to this schedule will be posted at The State of North Carolina Interactive Purchasing System (I.P.S.) Web site <http://www.ips.state.nc.us/ips/pubmain.asp>

B. OVERVIEW (INCLUDING PROVIDER REQUIREMENTS)

1. Introduction

Charlotte Mecklenburg Schools Board of Education, a county school system in State of North Carolina, hereafter referred to as CMBE, is required as part of Individual with Disabilities Education Act (IDEA) to provide services to students with physical and mental disabilities. Nursing is one of the related services required to be provided. Per ***Policies Governing Services for Children with Disabilities*** the following defines required related services.

NC 1500-2.28 Related services

(a) General. Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education. Related services include, but are not limited to, speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools and parent counseling and training.

2. Statement of Purpose

CMBE is required to provide such nursing and health related services which allow students with medical and health related conditions to attend school. This requirement may result in the necessity of a full time health care professional (RN, LPN, or CNA) to attend the student during the school day to assure the safety of the student. The health care professional may also be required to ride transportation with the student to and from school. **Care givers may not transport students.** The contract will be awarded to a sole nursing agency which can provide between 8 and 20 full time health care providers to meet this need. Service requirements may sometimes be intermittent, depending on the student's ability to attend school.

3. Organizations/Agencies Eligible to Apply

Organizations/Agencies meeting the following criteria are eligible to apply for funding under this RFP. There is not a requirement that the agency or company be either a non-profit or for-profit agencies.

4. Target population to be served

Students who are identified as a student with a Disability as defined in ***Policies Governing Services for Children with Disabilities*** and who also are deemed as requiring professional health care services beyond what is available in the school, based on nursing assessments by a Mecklenburg County Health Department School Health nurse.

Information on students with disabilities can be found at the following link

<http://www.dpi.state.nc.us/docs/ec/policy/policies/2007policies.pdf>

5. Provider Requirements

The service provider, hereafter referred to as PROVIDER recommended for contract award under this RFP shall be required to comply with terms and conditions of the contract between the CMBE and the PROVIDER. At a minimum, the PROVIDER will be required to comply with the following contract terms:

- a. To provide an RN (Registered Nurse), or LPN (Licensed Practical Nurse), who will perform required health care interventions, based on their medical needs assessment, as required to support individual students and allow him/her to access his/her education.
- b. To provide a CNA (Certified Nursing Assistant) who will perform required health care interventions, based on their medical needs assessment, as required to support individual students and allow him/her to access his/her education based on their medical needs assessment.
- c. Have staff available to ride a bus or van with the assigned student to and from school each day.
- d. Have adequate staff to assure that each student has a qualified nurse or CNA as required to cover and perform the required medical intervention in the event of the absence of the regularly assigned agency care giver.
- e. Make staff available for in-service on work expectations and appropriate communication with school staff, parents.
- f. The Contractor agrees to perform the Services in a timely, complete, and professional manner and in accordance with the terms and conditions of this Contract. Furthermore, the Contractor represents and warrants that (i) it is duly qualified to provide the Services, (ii) it will provide the Services in a manner consistent with the level of care and skill ordinarily exercised by others practicing under similar conditions, (iii) it possesses sufficient experience, personnel, and resources to complete the Services, (iv) it shall perform the Services in compliance with applicable laws, statutes, ordinances, codes, orders, rules and regulations (v.) the contracted medical provider is bound by confidentiality and shall not share information pertaining to students other than the one served with anyone outside the school environment, (vi) the Contractor and school nursing staff will consult on the IHP (Individual Health Plan) prior to delivery of services and as needed thereafter and (vii.)
- g. Provide any information required should Charlotte Mecklenburg schools request it for the purposes of Medicaid billing.

6. Funding

Funds for this project are made available through state, local and federal funds administered through the CMBE. There will be no advance payments.

7. Evaluation

There will be an annual service review conducted by a committee of CMS administrators and county health care administrator. The review will consist of reviewing Nursing supervisor survey, consumer satisfaction, days of service (no lapse of services) as well as responsiveness to request from CMBE.

C. THE PROCUREMENT PROCESS

1. Request for Proposals (RFP) is issued to prospective contractors.
2. CMBE will conduct one bidder's conference concerning this RFP at the following place and time:
Monday January 5, 2009 at 10:00 A.M. at the Charlotte-Mecklenburg Board of Education 701 E. Martin Luther King Jr. Blvd., 4th floor Board Room, Charlotte, NC 28202.
3. Proposals in one (1) original and three (7) copies (8 printed and 1 CD) will be received from each offeror in a sealed envelope or package.
Each original shall be signed and dated by an official authorized to bind the firm. Unsigned proposals will not be considered.
 - a. One (1) copy marked *Original*.
 - b. Seven (7) 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.
4. All proposals must be received by The Charlotte-Mecklenburg Board of Education not later than 3:00 p.m., Friday, January 30, 2009. Proposals received after the deadline will not be accepted. Providers may not withdraw or modify a response after the deadline.
5. At that date and time the package containing the proposals from each responding firm will be opened publicly and the name of the offeror and cost(s) offered will be announced. 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.
6. 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.
7. 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 deemed most advantageous to The Charlotte-Mecklenburg Board of Education.
8. Offeror's 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.
9. Proposals must include all items listed on the RFP Checklist and be typed written on the forms provided.
10. The Provider agrees to execute a contract with CMBE if the Provider is awarded a contract.
11. Due to funding, CMBE may at its sole discretion negotiate with the PROVIDER regarding the funding, services, units of services and any other requirements deemed necessary by the CMBE. However, all other terms included in this RFP are not subject to negotiations. The CMBE may at its sole discretion add additional terms and requirements to the terms in this RFP based on new or additional requirements.
12. Failure to negotiate in good faith or to perform after the contract is awarded may result in debarment from future contracts with CMBE.

13. **Proposal questions** may be submitted **until 2:00 pm, January 12, 2009** by e-mailing Gifford Cordova, C.P.M. (g.cordova@cms.k12.nc.us), CMS Senior Purchasing Agent. Questions will not be accepted after this date and time. When appropriate, responses will be posted at <http://www.ips.state.nc.us/ips/pubmain.asp>.

14. No successful PROVIDER may make any assignment of duties, in whole or in part, to any third party under the resulting contractual agreement between the parties without the prior written authorization of the DEPARTMENT.

15. The cost of preparing a response to this RFP shall be borne entirely by the PROVIDER.

16. The award of this proposal and continuation of resulting contract will be contingent upon the availability of funds to CMBE.

17. CMBE reserves the right to reject any or all proposals; to re-advertise this RFP, in whole or in part; to postpone or cancel this process; to waive irregularities in the RFP process; and to change or modify the proposal schedule at any time.

18. Where proposals have erasures or corrections, the PROVIDER must initial each erasure or correction in ink. In case of unit price contracts, if an error is committed in the extension of an item, the unit price as shown in the Pricing Schedule will govern.

19. **Agencies cannot subcontract for services with other providers.**

D. Proposal Evaluation

Evaluation of the proposals accepted in response to this RFP will be conducted by an RFP Evaluation Team designated by the CMBE that will include personnel with expertise in health, social services, cost accounting/budgeting, and other individuals deemed appropriate by CMBE. The RFP Evaluation Team reserves the sole right to request additional information and clarification of any information submitted. Additional persons may be asked to participate in the RFP Evaluation Team process on an advisory basis. The RFP Evaluation Team will make recommendations of the PROVIDER selected to deliver services, and recommend special conditions under which funding will be granted, if appropriate.

CMBE reserves the right to:

- Conduct pre-award discussions with any PROVIDERS who submit proposals determined to be reasonably acceptable to receive an award.
- Investigate the qualifications of PROVIDERS as it deems appropriate.

E. Disqualification Criteria

Proposals that are found to be non-responsive will be automatically disqualified from funding and will not be rated by the RFP Evaluation Team. Proposals will be considered non-responsive if:

- Failure to submit a signed original PROPOSAL by the deadline of 3:00 p.m. on Friday January 30, 2009.

F. PROPOSAL REQUIREMENTS

The response to this RFP shall consist of the following sections:

- Corporate Background / Agency Overview
- Experience
- Patient Base
- Language Groups
- Financial Statement
- Project Staffing and Organization
- Pricing schedule for Proposed Services

1. Corporate Background / Agency Overview – Submittal # 1

This section shall include background information on the organization's current size and scope of services. Be specific as to RN's, LPN's and CNA staff as well as supervision staff.

2. Experience – Submittal # 2

Provide detailed information that directly relates to experience with similar projects your agency has had working with school systems or county health agencies. A list of references (including contact persons and telephone numbers) for which similar work has been performed shall be included.

3. Patient Base – Submittal # 3

Describe the patient base your agency typically works with and the environment where most of the work occurs. Identify your target population by age, sex, race/ethnic group, income levels, and geographic area being served.

4. Language Groups – Submittal # 4

Describe how you will communicate with non-English speaking patients. List the languages you are able to provide services.

5. Financial Statement – Submittal # 5

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

6. Project Organization – Submittal # 6

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.

7. Pricing Schedule for Proposed Services – Submittal # 7

Provide detailed pricing and rate structure for proposed services. Include all cost associated for providing Individual Nursing and Health Care Services for Students with Disabilities within Charlotte-Mecklenburg Schools. List hourly charge for RN's, LPN's and CNA's. List transportation, administrative charges if applicable.

By submitting 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 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.
4. All labor costs, direct and indirect, have been determined and included in the proposed cost.
5. The offeror has attended the conference/site visit and is aware of prevailing conditions associated with performing these services.
6. The potential contractor has read and understands the conditions set forth in this RFP and agrees to them with no exceptions.
7. That the applicant has contractual capacity and that no other person, firm or corporation has any interest in this PROPOSAL or in any subsequent potential Agreement.
8. That all information presented in this application is true and correct to best of the applicant's knowledge and belief.
9. That this PROPOSAL is made without any understanding, agreement, or connection with any other person, firm or corporation making an application for the same purpose, and is in all respects fair and without collusion or fraud.
10. That the applicant is not in arrears to Charlotte-Mecklenburg Board of Education upon debt or contract and is not a defaulter, as surety or otherwise, upon any obligation to CMBE.
11. That no officer or employee or person whose salary is payable in whole or in part from the CMBE is, shall be or become interested, directly or indirectly, as surety or otherwise in this RFP, in the performance of any subsequent Agreement for the services contained in the RFP or in any portion of the profits derived therefore.
12. That staff possess all required North Carolina, or South Carolina licenses, where applicable, as well as appropriate County licenses, and will comply with all laws, ordinances, and regulations applicable to the services for which it is contracting. (A nurse may practice in NC with either NC or SC license, but it must be from the state in which that nurse resides)

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 the Pricing Schedule for Proposed Services.

AGENCY INFORMATION

Agency Name: _____
Physical Address: _____
Mailing Address: _____
Contact Person: _____
Telephone: _____ Alternate Telephone: _____
FAX Number: _____ Email Address: _____
Agency Type: ☐ Government ☐ Not-For Profit ☐ For Profit
Federal Tax ID _____

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.

CORPORATE BACKGROUND/AGENCY OVERVIEW

Submittal # 1

Provide narrative response to the items below. Limit your responses to the space provided.

1. Describe your agency's current size and scope of services. Be specific as to RNs, LPNs and CNA staff as well as supervision staff.

2. Give any information that directly relates to experiences your agency has had working with school systems or county health agencies.

3. Describe the patient base your agency typically works with and the environment where most of the work occurs. Identify your target population by age, sex, race/ethnic group, income levels, and geographic area being served.

4. Describe how you will communicate with non-English speaking patients. List the languages you are able to provide services.

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

Project Organization

Submittal # 6

6. 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.

Pricing Schedule for Proposed Services

Submittal # 7

7. Provide detailed pricing and rate structure for proposed services. Include all cost associated for providing Individual Nursing and Health Care Services for Students with Disabilities within Charlotte-Mecklenburg Schools. List your hourly rate for RN's, LPN's and CNA's and any transportation and administrative fees if applicable.

FINAL CHECKLIST

1. Proposal information should be for submitted to:

Purchasing Department

Charlotte-Mecklenburg Board of Education
Education Center
Attn – Gifford Cordova
701 East Martin Luther King Jr. Blvd., Room 310
Charlotte, NC 28202

2. Proposals should be submitted **no later than 3:00 pm, January 30, 2009.**
3. The proposal package should be labeled as follows:

Bid # 163-1113

Proposal for: The Provision of Individual Nursing and Health Care Services for Students with Disabilities.

**Opening Date: January 30, 2009
3:00 PM**

4. Each applicant must submit **8 complete** copies and **1 CD** of the bid proposal:
 - a. One (1) copy marked *Original*.
 - b. Seven (7) 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.
5. Each bid proposal must include the following completed proposal submittals:

Proposal Submittal #	Item Description
1	Corporate Background / Agency Overview
2	Experience and References
3	Patient Base
4	Language Groups
5	Financial Statement
6	Project Organization
7	Pricing Schedule for Proposed Services
8	Execution of Proposal
9	Copy of Signed Addenda (when applicable)

ADDENDA RECEIPT

**RFP #163-1113
Charlotte-Mecklenburg BOE
Individual Nursing and Health Care Services**

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

Service Provider Name

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 cost 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 extent permitted by NCAC T01:05B.1501 and G.S. 132-1.3 if identified as follows: Each page shall be identified in boldface at the top and bottom as "CONFIDENTIAL". Any section of the 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 Purchasing 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

GENERAL CONTRACT 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. **PRICE ADJUSTEMENTS (term contracts only):** Any price changes, downward or upward, which might be permitted during the contract period must be general, either by reason of market change or on the part of the Seller to other customers.
 - a. **Notification:** Must be given to CMBE in writing concerning any proposed price adjustments. Such notification shall be accompanied by a copy of manufacturer's official notice or other acceptable evidence that the change is general in nature.
 - b. **Decreases:** CMBE shall receive full proportionate benefit immediately at any time during the contract period.
 - c. **Increases:** All prices shall be firm against any increase for 180 days from the effective date of the Contract. After this period, a request for increase may be submitted with CMBE reserving the right to accept or reject the increase, or cancel the Contract. Such action by CMBE shall occur not later than 15 days after the receipt by CMBE of a properly documented request for price increase. Any increases accepted shall become effective not later than 30 days after the expiration of the original 15 days reserved to evaluate the request for increase.
5. **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 will 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.
6. **FREIGHT ON BOARD:** All shipments of Goods are freight on board destination unless otherwise stated in the Contract Documents.
7. **TAXES:** Any applicable taxes shall be invoiced as a separate item.
8. **PAYMENT TERMS:** Payment terms are Net 30 days after receipt of correct invoice or acceptance of Goods or Services, whichever is later.
9. **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.
10. **DELAYS 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.
11. **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.
12. **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 an

appropriate reduction in price. CMBE may require Seller to promptly replace or correct any rejected Goods or Services and, if Seller fails to promptly replace or correct such Goods or Services, CMBE may contract with a third party to replace such Goods and Services and charge Seller the additional cost.

13. **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.
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 at 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. Seller 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 assigned to the performance of the Contract without prior written approval from CMBE Project Coordinator. "Key personnel" are defined as those individuals identified by name or title in the Contract Documents or in written communication from Seller. "CMBE Project Coordinator" is 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: ACCEPTANCE:** 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. **NON-DISCRIMINATION:** 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 has a personal or financial interest or will benefit from the performance of the Contract or has any interest in any Contract, subcontract or other agreement related to the Contract. Seller shall not permit any member of CMBE or any of its employees or officers to obtain a personal or financial interest or benefit from the performance of the Contract or to have any interest in any Contract, subcontract or other agreement related to the Contract, during the term of 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 unfulfilled 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. **CONFIDENTIALITY 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 to be disclosed, directly or indirectly, to any person or entity any such student information. 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, Prohibition on the Disclosure of Information about Students, 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 to be disclosed, directly or indirectly, to any person or entity any such personnel information. **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: ACCEPTANCE:** 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 first 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.

