

**REQUEST FOR QUALIFICATIONS
ENGINEERING AND DESIGN SERVICES FOR
PAVEMENT IMPROVEMENTS AT THE
FOLLOWING SCHOOLS:**

**Francis Bradley Middle School and Phillip O'Berry
Academy of Technology
Hickory Grove Elementary School
Charlotte Bilingual Preschool
Building Services 4 Phases**

RFQ NO. 24-005



Date of Issue: October 18, 2023

Qualifications Statement Due Date:

Date: November 1, 2023

Time: 5PM PM ET

Issued for:

**Charlotte-Mecklenburg Schools
Building Services Department 3301
Stafford Drive
Charlotte, North Carolina 28208
(980) 343-6580**

Issued by:

**Facilities & Contract Administration Manager
yolandas.fergerson@cms.k12.nc.us
(980) 343-6580**

INTRODUCTION

Charlotte-Mecklenburg Board of Education (hereinafter “CMBE”) is soliciting the submittal of qualification statements from experienced Engineering Firms (hereinafter “Firm”) interested in providing construction administration and contract documentation for Pavement Improvements for Francis Bradley Middle School and Phillip O’Berry Academy of Technology, Hickory Grove Elementary School, Charlotte Bilingual Preschool and Building Services 4 Phases

The major activities that make up the scope of services include, but are not limited to, construction administration, contract documentation, and project coordination for pavement repairs.

CMBE reserves the right to reject all submittals. This submittal request is neither a contractual offer nor a commitment to purchase services. CMBE assumes no contractual obligation as a result of the issuance of this request, the preparation or submission of a qualifications statement by a Firm, the evaluation of statements or final selection.

RFO SCHEDULE

The table below shows the *intended* schedule for this RFQ. CMBE will make every effort to adhere to this schedule.

Event		Date and Time
Issue RFQ	CMBE	October 18, 2023
Submitted Written Questions	Firms	October 25, 2023 by 3PM
Provide Responses to Questions	CMBE	October 27, 2023 by 4PM
Submit Proposals	Firms	November 1, 2023 by 5PM
Contract Award	CMBE	TBA
Contract Effective Date	CMBE	Upon execution

The qualifications statement shall be submitted no later than 5PM on November 1, 2023

Once the submittals have been reviewed, CMBE reserves the right to shortlist Firm(s) and request that the Firm(s) conduct a presentation and be interviewed by the selection committee.

RFO QUESTIONS

Written questions shall be emailed to yolandas.fergerson@cms.k12.nc.us by the date and time specified above. Firms should enter “RFQ # 24-005 – Questions” as the subject for the email. Questions received prior to the submission deadline date, CMBE’s response, and any additional terms deemed necessary by CMBE will be posted in the form of an addendum to the CMS Construction website, [Operations / Building Services \(cmsk12.org\)](http://Operations/BuildingServices/cmsk12.org) and shall become an Addendum to this RFQ. No information, instruction or advice provided orally or informally by any CMBE personnel, whether made in response to a question or otherwise in connection with this RFQ, shall be considered authoritative or binding. Firms shall rely only on written material contained in an Addendum to this RFQ.

SUBMISSION OF QUALIFICATIONS

The qualifications statement must be submitted with one (1) original, and one (1) electronic copy on flash drive. When responding to this RFQ, please follow all instructions carefully. Please submit proposal contents according to the outline specified. Failure to follow these instructions may be considered a non-responsive submission and may result in immediate elimination from further consideration. The qualifications statement should be sent to the address indicated in the table below.

Mailing address for delivery of proposal via US Postal Service	Office Address of delivery by any other method (hand delivery, overnight, or any other carrier)
RFQ Number: RFQ 24-005 Charlotte-Mecklenburg Schools ATTN: Yolanda Ferguson 3301 Stafford Drive Charlotte, North Carolina 28208 FIRM License No.	RFQ Number: RFQ 24-005 Charlotte-Mecklenburg Schools ATTN: Yolanda Ferguson 3301 Stafford Drive Charlotte, North Carolina 28208 Firm License No.

IMPORTANT NOTE: All qualifications shall be physically delivered to the office address listed above on or before the submission deadline in order to be considered timely, regardless of the method of delivery. **This is an absolute requirement.** All risk of late arrival due to unanticipated delay—whether delivered by U.S. Postal Service, courier or other delivery service is entirely on the Firm(s). It is the sole responsibility of the Firm to have the qualifications physically in this Office by the specified time and date of opening.

SCOPE OF SERVICES

The selected firm may be required to conduct site visits of each school with CMS Pavementing department personnel to identify deficiencies. The engineer will produce one bid package and develop, and estimated construction cost based on scope of desired repairs and maintenance. Prepare bid documents for pavement improvement including alternatives (if required) unit prices, and bidders' compliance. Issue preliminary bidding documents for owner to review. Hold a pre-bid meeting for all bidders to resolve questions that may arise during the bid stage of the projects. At the owner's request, bids will be analyzed and a recommendation based on low bid, alternates and contractor's past performance. Issue "Notice to proceed" with date of construction commencement period.

CONSTRUCTION/CONTRACT DOCUMENTATION

Review and accept, as appropriate, shop drawings and submittals as required by the Contract Documents. Upon identifying required repairs, locate and confirm required maintenance and repairs before commencement of work. Return unacceptable submittals of required repairs to contractor as required until compliance with specifications is realized. All repairs need to be verified by the engineer and CMS Personnel. Photographs will be taken as deemed necessary for documentation. Upon notification by contractor that the job is complete, create a punch list and follow-up to final completion.

CONTENTS OF QUALIFICATIONS STATEMENT

Respondents must carefully read the information in this “Contents of Qualifications Statement” section and submit a complete Qualifications Statement responding to each request for information. Incomplete Qualifications Statements will be considered non-responsive and are subject to rejection. A combined qualification for all schools is acceptable, however, each school will be evaluated individually.

Qualifications shall be submitted on 8-1/2 x 11 paper, side bound with Table of Contents and reference tabs for key sections. The qualification statement must be submitted with one (1) original, and one (1) electronic copy on flash drive.

Qualification Statement must include all the following information:

1. Introduction – Letter of Transmittal

- Summarize in a brief and concise manner the Firm’s understanding of the scope of work and make a positive commitment to perform the work in a professional and timely manner.

2. Qualifications of Firm

Please provide:

- General work plan that demonstrates the Firm’s complete understanding of the scope of work
 - Company’s recent (last 5 years) relevant experience in providing design services for similar projects
 - Previous project success for projects of same or similar scope as this project
 - Overall qualifications of project managers and key personnel to be used on these projects
 - Provide license number on RFQ documents
-

3. Project Management and Project Completion Background

Please provide:

- Firm staff resumes that show experience with school systems or other governmental entities for staff assigned to this project.
- Statement of qualifications of the Firm and license number placed on qualification proposal
- List of personnel who will work on the project including their specific qualifications and experience on projects of similar scope.
- List any professional training and experience, especially in relation to the type and magnitude of work required for this scope of services.
- List any licenses or certifications related to the scope of work described in this Request for Qualifications.
- Describe the Firm's approach to and/or method of cost control and project scheduling.
- Firm's Project Completion Background
- Hourly billing rates charged by your Firm for each position type.

4. References – Past Performance and Existing Contracts

Please provide:

- List of previous and current clients for work similar to this scope of work within the past five (5) years. Include names and location of project, brief description and Firm's key personnel's involvement, name of project manager and telephone number, date, and value of project. In addition, please complete Attachment A: Reference Disclosure Form and submit with qualifications.
- Current workload and cost scheduling

EVALUATION METHOD - SELECTION PROCESS

CMBE will use the following selection process. This process is designed to ensure that Firms are selected in a fair and uniform manner, those selected for work are qualified and experienced in the professional services desired, and to ensure that every qualified Firm has the opportunity to be considered for providing professional services to CMBE.

A Selection Committee will evaluate responses to the Request for Qualifications and determine the most qualified applicants. Upon receipt of the packages from respondents, the Selection Committee will review using a scoring criterion that has been determined by the committee and detailed below. Past performance will be scored based on responses from the references submitted by the responder and/or the experience of CMBE staff with Firm's past performance.

The Selection Committee will use the total point scores to rank the prospective Firms. Each school will be scored separately. The Selection Committee will determine a list of the most highly qualified Firms based upon the ranking scores.

EVALUATION CRITERIA

The Content of Qualifications Statement, as referenced above, shall be evaluated as follows:

Description	Total Possible Points
Qualification of Firm: <ul style="list-style-type: none">• Success of Previous Projects (i.e., still in operation, how long in operation, etc.).• Project Understanding• Experience on similar projects• Previous/Pending Litigation	15 10 15 5
Project Management and Key Personnel: <ul style="list-style-type: none">• Experience on similar projects• Projects on time and in budget• Professional Training/Qualification• Workload and Availability• Cost Control/Scheduling• Relevant Licenses/Certifications (License No. on RFQ)	15 10 5 5 5 5
Certified Minority or Female Owned Firm	5
Certified Small Business Firm	5
References – Past Performance and Existing	5
	100

FIRM INSURANCE REQUIREMENTS

The successful Firm will be required to provide CMBE with Certificates of Insurance meeting CMBE's insurance requirements at the time of project award as specified below. Failure to provide the required insurance will result in cancellation of the selection and CMBE will have the right to enter into an agreement with the Firm with the next highest ranking. Firm shall maintain at all times during the term of this Agreement, at the Firm's sole expense:

I. Commercial General Liability Insurance

Insurance with a limit of not less than \$1,000,000 per occurrence/aggregate including coverage for bodily injury, property damage, products and completed operations, personal/advertising injury liability and contractual liability.

- II. Business Automobile Insurance
Insurance with a limit of not less than \$1,000,000 per occurrence combined single limit each occurrence for bodily injury and property damage liability covering all owned, non-owned, and hired vehicles.
- III. Workers Compensation & Employers Liability Insurance
Insurance meeting the statutory requirements of the State of North Carolina and any applicable Federal laws; and Employers' Liability - \$100,000 per accident limit, \$500,000 disease per policy limit, \$100,000 disease each employee limit.
- IV. General Requirements
- a) CMBE shall be named as an additional insured under the commercial general liability insurance for operations or services rendered under this agreement.
 - b) The Certificate Holder's Address should read: The Charlotte-Mecklenburg Board of Education P.O. Box 30035, Charlotte, NC 28230-0035
 - c) CMBE shall be a designated insured under the auto liability
 - d) The contractor shall not commence any work in connection with the resulting contract until it has obtained all of the types of insurance set forth in this section and furnished the project manager with ppavement of insurance coverage by certificates of insurance accompanying the contract. The contractor shall be responsible for notifying CMBE of any material changes (including renewals) to or cancellation of the insurance coverage required above. Notice to CMBE must be completed in writing within 48 hours of the changes.
 - e) The contractor shall not allow any subcontractor to commence work until all such subcontractors have obtained the same insurance coverage as described above.
 - f) All insurance policies shall be written by insurers qualified to do business in the State of North Carolina. If any of the coverage conditions are met by a program of self-insurance, the contractor must submit evidence of the right to self-insure as provided by the State of North Carolina.
 - g) CMBE shall be exempt from, and in no way liable for, any sums of money that may represent a deductible or self-insured retention in any insurance policy. The payment of the deductible/retention shall be the sole responsibility of the contractor and/or subcontractor.
 - h) The contractor's insurance shall be primary, of any self-funding and/or insurance otherwise carried by CMBE for all loss or damages arising from the contractor's operations under this agreement. The contractor and each of its subcontractors shall and does waive all rights of subrogation against CMBE and each of the Indemnitees.
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ATTACHMENT A
REFERENCE DISCLOSURE FORM

Firm shall provide information regarding experience in work similar this scope of work by listing FIVE (5) RECENT CLIENTS. References should be clients of a similar scale as the services requested in this RFQ. Only one reference can be provided by CMBE.

1. COMPANY NAME: _____

PERSON TO CONTACT: _____

TELEPHONE NUMBER: _____

TYPE OF SERVICE PROVIDED: _____

SIZE: _____

JOB DATES:
BEGINNING _____ END _____

2. COMPANY NAME: _____

PERSON TO CONTACT: _____

TELEPHONE NUMBER: _____

TYPE OF SERVICE PROVIDED: _____

SIZE: _____

JOB DATES:
BEGINNING _____ END _____

3. COMPANY NAME: _____

PERSON TO CONTACT: _____

TELEPHONE NUMBER: _____

TYPE OF SERVICE PROVIDED: _____

SIZE: _____

JOB DATES:
BEGINNING _____ END _____

4. COMPANY NAME: _____
PERSON TO CONTACT: _____
TELEPHONE NUMBER: _____
TYPE OF SERVICE PROVIDED: _____
SIZE: _____
JOB DATES:
BEGINNING _____ END _____

5. COMPANY NAME: _____
PERSON TO CONTACT: _____
TELEPHONE NUMBER: _____
TYPE OF SERVICE PROVIDED: _____
SIZE: _____
JOB DATES:
BEGINNING _____ END _____

EXECUTION OF CONTRACT

OFFEROR: _____

ADDRESS: _____

CITY, STATE, ZIP: _____

OFFICE PHONE NUMBER: _____

MOBILE PHONE NUMBER: _____

FEDERAL EMPLOYER IDENTIFICATION NUMBER: _____

By submitting qualifications, the firm accepts CMS Terms and Conditions and the Federal Uniform Guidance terms and conditions. Contracts funded with federal grant or loan funds must be procured in a manner that conforms with all applicable Federal laws, policies, and standards, including those under the Uniform Guidance (2 C.F.R. Part 200). Additional information can be found at: <http://bit.ly/2TtNU3T>

In compliance with this request for qualifications, and subject to all the conditions herein, the undersigned offers and agrees to furnish and deliver any or all items upon which the qualifications are based if accepted within 90 days from the date of opening. By executing this document, I certify that this qualification statement is made without prior understanding, agreement, or connection with any firm, corporation, or person submitting qualifications for the same services, and is in all respects fair and without collusion or fraud. Under penalty of perjury, the undersigned offeror certifies that this qualification statement has not been arrived at collusively or otherwise in violation of Federal or North Carolina law.

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

(Typed or printed name)

THE CHARLOTTE-MECKLENBURG BOARD OF EDUCATION

**Certification Regarding Debarment, Suspension, and Other
Responsibility Matters - Primary Covered Transactions**

- (1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
 - (b) have not within a three-year period preceding this bid been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and
 - (d) have not within a three-year period preceding this application/bid had one or more public transactions (Federal, State or Local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify any of the statements in this certification, such prospective participant shall attach an explanation to this bid.

Company Name (Please Print)

Signature of Authorized Representative

Date

RETURN THIS DOCUMENT IN YOUR QUOTATION

Instructions for Certification

1. By signing and submitting this form, the prospective lower tier participant is providing the certification set out in this document in accordance with these instructions.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this bid is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "bid," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this bid is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this form that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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 following M/W/SBE Utilization Form may render this quotation 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 & NOTARIZED 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 _____ 2022
 Notary Public _____
 My commission expires _____

THE CHARLOTTE-MECKLENBURG BOARD OF EDUCATION

STANDARD TERMS AND CONDITIONS

- 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.
- 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.
- 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.
- 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.
- FREIGHT ON BOARD:** All shipments of Goods are FOB destination unless otherwise stated in the Contract Documents.
- TAXES:** Applicable taxes shall be invoiced as a separate item.
- PAYMENT TERMS:** Payment terms are Net 30 days after receipt of correct invoice or acceptance of Goods or Services, whichever is later.
- 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.
- 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.
- 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.