



Request for Proposal #: 4-27700044

Athletic Apparel

Date of Issue: 03/22/2024

Proposal Opening Date: 04/16/2024

By 2:00PM ET

Direct all inquiries concerning this RFP to:

Brandt Fitzgerald

Director of Purchasing

Email: brandt.fitzgerald@ucps.k12.nc.us

No site visit is required.

DATE: 03/22/2024

TO: All Offerors

FROM: Brandt Fitzgerald
Director of Purchasing

RE: Request for Proposals 4-27700044, District Wide Athletic Apparel

The Union County Board of Education (UCBOE) invites all qualified providers to submit proposals to provide Athletic Apparel for Union County Public Schools.

Union County Public Schools seeks to identify a vendor(s) that can meet the evolving needs of our athletic programs at our 9 middle schools and 10 high schools. With this RFP we hope to partner with a company that can help us best meet the needs of our 6000 plus student athletes regardless of which school they attend.

Our district priorities are to receive the best possible pricing on uniforms, apparel and athletic equipment while receiving best in class customer service for each of our schools. With our school system now overseeing 12 middle school sports to go along with our existing high school sports, we believe we possess the spending power to incentivize aggressive pricing offers on the above items. While we still value upfront product credit from the manufacturers and/or the dealer, we hope to leverage our spending potential to receive cash rebates which offer the best opportunities for schools to utilize their rebate where it is needed most.

Each interested vendor will be asked to complete an excel worksheet that highlights our district priorities. Each section of the worksheet has corresponding notes that explain what the objectives are of each section. While we are looking for the most lucrative offers, no section is required for consideration. All interested vendors are welcome to provide additional attachments to explain their offers. Please feel free to reach out if you have any questions about the worksheet.

Sealed proposals will be received subject to the attached terms specified in the attached Instructions and Terms and Conditions. The proposals shall be hand delivered or mailed and must be received no later than **2:00 p.m. (as per the Purchasing Department time clock) on 04/16/2024**. Submittals received after this date and time shall not be considered.

Proposals must be in a sealed envelope clearly addressed as follows:

**Union County Public Schools
Attention: Brandt Fitzgerald, Purchasing Department
RFP No. 4-27700044 Athletic Apparel
400 North Church Street
Monroe, North Carolina 28112**

The Union County Board of Education will not be responsible for submittals that are opened or misplaced due to improper marking. For identification purposes, the offeror's corporate or individual name and complete address must be clearly printed or typed on the outside of the envelope. **FAXED AND EMAILED SUBMITTALS WILL NOT BE ACCEPTED.**

All questions should be directed in writing to Mr. Brandt Fitzgerald at brandt.fitzgerald@ucps.k12.nc.us. Only questions received prior to **04/08/2024 by 2:00pm (as per Purchasing Department time clock)** will be considered. Offerors should enter "RFP **4-27700044**" as the subject for the email. Answers to all inquiries will be posted as an addendum to the Interactive Purchasing System (IPS) website, the UCBOE website, and emailed directly back to the offeror.

We appreciate your time in the preparation of your proposals and for your interest in doing business with the Union County Board of Education.

VISIT US AT OUR WEBSITE <https://www.ucps.k12.nc.us>

EXECUTION

In compliance with this Request for Proposal (RFP), and subject to all the conditions herein, the undersigned Offeror offers and agrees to furnish and deliver any or all services proposed, at the budget proposed and within the time specified herein. By executing this proposal, the Offeror confirms it has read, understands, and will comply with all specifications and requirements in the RFP and any addendums in the event of contract award. By executing this proposal, the undersigned Offeror certifies that this proposal is submitted competitively and without collusion (N.C. Gen. Stat. § 143-54), that none of its officers, directors, or owners of an unincorporated business entity has been convicted of any violations of Chapter 78A of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934 (N.C. Gen. Stat. § 143-59.2), and that it is not an ineligible Contractor as set forth in N.C. Gen. Stat. § 143-59.1. False certification is a Class I felony. Furthermore, by executing this proposal, the undersigned certifies to the best of Offeror's knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal or State department or agency. As required by N.C. Gen. Stat. § 143-48.5, the undersigned Offeror certifies that it, and each of its subcontractors for any Contract awarded as a result of this RFP, complies with the requirements of Article 2 of Chapter 64 of the NC General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the Federal E-Verify system. N.C. Gen. Stat. § 133-32 and Executive Order 24 (2009) prohibit the offer to, or acceptance by, any State Employee associated with the preparing plans, specifications, estimates for public Contract; or awarding or administering public Contracts; or inspecting or supervising delivery of the public Contract of any gift from anyone with a Contract with the State, or from any person seeking to do business with the State. By executing this proposal, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

By executing this proposal, I certify that this proposal is submitted competitively and without collusion.

Failure to execute/sign this proposal prior to submittal may render the bid invalid. Original signature required. Digital signatures are unacceptable. Late proposals are not acceptable.

VENDOR:		FEDERAL ID OR SOCIAL SECURITY NO.	
STREET ADDRESS:		P.O. BOX:	ZIP:
CITY & STATE & ZIP:		TELEPHONE NUMBER:	TOLL FREE TEL. NO (800)
PRINCIPAL PLACE OF BUSINESS ADDRESS IF DIFFERENT FROM ABOVE			
TYPE OR PRINT NAME & TITLE OF PERSON SIGNING:		FAX NUMBER:	
AUTHORIZED SIGNATURE:	DATE:	E-MAIL:	

Offer valid for 60 days from date of proposal opening unless otherwise stated here: ____ days.

CRITICAL PARAGRAPHS—*Initials Required:*

The following provisions *must* be initialed by the vendor in the space provided in front of each critical paragraph and sign below. Initials signify that the information has been read and the vendor agrees to comply with the requirement, terms, and conditions.

- 1) _____ UCBOE reserves the right to reject any and all proposals for any reason, including but not limited to false information contained in the proposal and discovered by UCBOE.
- 2) _____ Any cost incurred by an organization in preparing or submitting a proposal is the bidder's sole responsibility. UCBOE will not reimburse any bidder for any pre-award costs incurred. All materials submitted to UCBOE will become the property of UCBOE and will not be returned.
- 3) _____ All proposals are subject to the terms and conditions, as well as the conditions in the Attachments, outlined herein. All responses will be controlled by such terms and conditions. The attachment of other terms and conditions by any bidding provider may be grounds for rejection of that organization's proposal.
- 4) _____ In submitting its proposal, providers agree not to use the results thereof or as part of any news release or commercial advertising without the prior written approval of UCBOE.
- 5) _____ 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 provider will become the property of UCBOE when received.
- 6) _____ The signer of any proposal submitted in response to this RFP certifies that this proposal has not been arrived at collusively or otherwise in violation of either Federal or North Carolina antitrust laws.

Official Signature of Supplier

SECTION I—PREPARATION AND SUBMISSION OF SUBMITTAL

1. INTRODUCTION

- a. To be entitled for consideration, sealed submittals shall be presented in accordance with the instructions of this solicitation and within the time constraints stated.
- b. Only one fully executed proposal per package may be submitted: each proposal package shall contain one signed original (paper), and one copy. Faxes will not be accepted. The package shall be placed in an envelope and hand delivered or mailed to the Central Purchasing Department, 400 N. Church Street, Monroe, NC 28112. **Address envelope and include proposal number as shown below.**

DELIVER TO: Brandt Fitzgerald
PROPOSAL 4-27700044 Union County Public Schools Purchasing Department 400 N. Church Street Monroe, NC 28112

- c. **RFP SCHEDULE:** The table below shows the *intended* schedule for this RFP. UCBOE will make every effort to adhere to this schedule.

Event	Responsibility	Date and Time
Issue RFP	UCBOE	03/22/2024
Submit Written Questions Deadline	Vendor	04/08/2024
Provide Responses to Questions	UCBOE	04/09/2024
Submit Proposals	Vendor	04/16/2024

To accommodate the Bid Question process, vendors shall submit written questions in an email to brandt.fitzgerald@ucps.k12.nc.us by the date and time specified above. Vendors should enter **"4-27700044 Questions"** as the subject for the email.

- d. Responses to all questions timely received will be posted as an addendum to the Interactive Purchasing System (IPS) website, and emailed directly back to the vendors.
- e. Vendors are expected to fully inform themselves of the terms, conditions, requirements, and specifications of this RFP before submitting proposals. Failure to do so shall be at the vendor's own risk. Vendors cannot secure relief on the plea of error or ignorance concerning any requirement included in the RFP. **Proposal submittals received after the date and time specified by the time clock in the UCPS Central Purchasing Department will not be considered.**

- f. The Board of Education reserves the right to accept or reject any or all submittals and to waive minor irregularities and technicalities. The judgment of the Union County Board of Education on such matters shall be final.
- g. Successful providers will be expected to enter into a Service Agreement with UCBOE outlining the terms and conditions under which UCBOE will allow the provider/agency to provide services to UCBOE students. Service providers will be compensated via federal funds, which will require service providers to adhere to those additional terms and conditions specific to federal funds recipients.

2. PURPOSE AND SCOPE OF SERVICES.

- Purpose. UCBOE is issuing this RFP to Union County Public Schools seeks to identify a vendor that can meet the evolving needs of our athletic programs at our 9 middle schools and 10 high schools. With this RFP we hope to partner with a company that can help us best meet the needs of our 6000 plus student athletes regardless of which school they attend.
- General Requirements. Each interested vendor will be asked to complete an excel worksheet that highlights our district priorities. Each section of the worksheet has corresponding notes that explain what the objectives are of each section. While we are looking for the most lucrative offers, no section is required for consideration. All interested vendors are welcome to provide additional attachments to explain their offers. Please feel free to reach out if you have any questions about the worksheet.
- Specific Requirement:
 - **Supplier must fill out the Excel Spreadsheet.**
 - **A flash drive with a copy of Bid and associated catalogue links.**
- Project Objectives
 - **Pricing:** Provide NET prices for all items on the uniform Pricing Table; Standard discount(s) for all catalogs/programs), if different discounts exist for different programs, please provide detail in notes; Maximum price increase percentage per year (Note: language will be added to final contract that allows for additional price increases to be implemented in the case of unforeseen circumstances or events out of the manufacturer's control; Special Offers is an open ended section to describe any offers that are over and above what is covered by discounts.
 - **Promo Items/Rebates:** Each middle and high school to receive amount designated in promo budget at the beginning of each school year. By completing the RFP, you agree to this amount; Obtaining CASH rebates in exchange for the total annual spend is critical to fund athletic activities across the District, please provide the maximum rebate amount against the forecasted sales amount. If a different rebate will be provided from dealer and manufacturer, please detail the structure from each. Please indicate the discount levels applied to merchandise when purchased with rebate dollars: Retail or Discount Price. If you need to escalate the rebate based on achieving sales thresholds, please include details in notes. While we still value upfront product credit from the manufacturers and/or the dealer, we hope to leverage our spending potential to receive cash rebates which offer the best opportunities for schools to utilize their rebate where it is needed most.

- **District Marketing Payment:** Provide annual marketing payment which will be used to promote your position as the UCPS Official Apparel Partner (can be for Manufacturer or Dealer or both). Marketing assets include: Logo included on District website vendor page (clickable), Logo included on school partner carousel (clickable), Logo on Partner Section of monthly District E-newsletter (clickable) as well as opportunity to contribute articles seasonally (can be used to promote specials, new products, manufacturer's content etc.), Seasonal access to AD meetings to present program updates.

3. REQUEST FOR PROPOSALS PROCESS

This Solicitation is a Request for Proposals (RFP). In using this method for solicitation, we are asking the marketplace for its best effort in seeking the best qualified provider. The offeror will provide submittal(s) to be evaluated by a committee. **Offeror(s) should make their best effort to describe their capabilities and expertise because a contract may be awarded based on the initial evaluation.**

- a. By submitting a proposal, the individual/agency warrants that any service provided to UCPS meets or exceeds specifications set forth in this solicitation except as may be otherwise noted.
- b. Bidders or their authorized representatives are expected to fully inform themselves as to the terms, conditions, requirements, and specifications of this RFP before submitting bids. Failure to do so will be at the bidder's own risk. The law makes no allowance for errors or omission or commission on the part of the bidders; furthermore, the bidder cannot secure relief on the plea of error or ignorance concerning any requirement included in the RFP.
- c. Bidder presence is not required at the bid opening, and no weight or other consideration toward any award decision will be given to any bidder's attendance or absence at the bid opening. Recaps of the details of the bids received will be available to any interested party upon WRITTEN request. The form and content of the bid recaps will be at the sole discretion of UCBOE. They may be in electronic form.

4. ADDITIONAL TERMS/OBJECTIONS TO TERMS OR CONDITIONS

The UCBOE shall not be bound by any terms and conditions included in any provider's documents that attempt to impose any conditions at variance with, or in addition to, the terms and conditions contained in this solicitation or the Service Agreement. If the provider objects to any term or condition that shall result in a contract from this solicitation, the objection shall be clearly stated on a separate page entitled, "Objection to Terms or Conditions" and shall be listed as a question before the 04/08/2024 deadline.

5. WITHDRAWAL OF SUBMITTALS

At any time prior to the solicitation deadline, an offeror may withdraw the submittal by submitting a written request signed by a duly authorized representative. If the offeror withdraws the offer electronically by email to brandt.fitzgerald@ucps.k12.nc.us, the request to withdraw must be in the form of a letter attached to the email that includes either an image of the duly authorized representative's signature or an electronic signature from a verifiable source, such as Adobe Sign, DocuSign, or a similar verifiable software program.

SECTION II—PROPOSAL FORMAT AND CONTENT

1. SUBMISSION INSTRUCTIONS:

- Indicate the Vendor name and RFP number on the front of your proposal envelope or package.
- Include the RFP # and page # on the bottom of each page of your proposal.
- Proposals must address the questions and items set out on the following pages and must be typewritten and signed in ink by the official authorized to bind the applicant to the provisions contained within the proposal.
- Trade secrets or similar proprietary data that the organization does not wish disclosed to personnel other than those involved in the evaluation will be kept confidential to the extent permitted by state law if identified as follows: Each page shall be identified in boldface at the top and bottom as "CONFIDENTIAL." Any section of the proposal that is to remain confidential shall also be so marked in boldface on the title page of that section.
- **Provide live links in flash drive to all catalogues referenced in Bid.**
- Vendors shall submit one original, signed copy of the proposal plus one copy on a flash drive. Proposals and copies should not be placed in binders and covers. Proposals must be provided in a sealed envelope no later than the date and time specified herein.
- UCBOE will not be held responsible for the failure of any mail or delivery service to deliver a proposal response by the stated proposal due date and time.
- No fax or emailed responses will be accepted or considered.
- ❖ **RETURN ATTACHMENTS C, D, E AND EXECUTION OF BID.**

2. PROPOSAL FORMAT:

Section A. Introduction (3 pages max)

1. Describe why you believe that your organization, from a business, professional, administrative, financial, and technical perspective, should be awarded an agreement for the services requested. Describe any distinguishing features UCBOE should know about your services and company as well as an overview of your proposal. In this section, include a detailed description of your overall areas of expertise and organizational capabilities, particularly regarding staff and resources capacity to respond to critical time and complex situations on short notice.
2. Describe generally what you are proposing to do in response to the scope of services and goods described herein.

Section C. Price

In this section (**Pricing Table TAB**), the Supplier shall supply all pricing elements discussed in the proposal to accomplish UCBOE requirements a line item fee structure for the provision of goods and or services. Provider shall indicate all expenses/costs to UCPS.

SECTION III—PROPOSAL EVALUATION

Proposal Evaluation

All proposals will be evaluated by representatives of UCBOE. UCBOE may, at its sole discretion, ask for additional information and/or elect to conduct interviews with finalists to clarify information provided in the proposals.

This RFP is not required to be bid under North Carolina law, and none of the statutory requirements regarding public bidding apply to this RFP. This document, and not those statutes, will govern the selection process.

UCBOE shall not be required to award the contract to the lowest proposed compensation; nor shall UCBOE have any obligation to explain its decision to recommend or not to recommend any particular vendor or to invite or exclude any particular vendor from consideration at any stage of the process. Instead of recommending that contracts be awarded to one or more vendors who presented proposals, UCBOE may, at its sole discretion, reject the proposals and repeat the process, enter into direct contract negotiations with one or more vendors (possibly including vendors who have not previously submitted proposals) or take any other action UCBOE deems advisable under all the circumstances.

The contract shall begin on July 1, 2024 and end on June 30th, 2025, with four additional one-year option to renew based upon funding and additional needs. Prices shall remain static unless there is a written request to the UCPS representative 30 days before the end of each contract period.

UCBOE reserves the right to award to multiple vendors if it is deemed in the best interest of the District.

RFP proposals will be evaluated using a standardized evaluation sheet for the elements from the RFP outline. Proposals will be pre-screened to ensure the organization (i) meets the minimum qualifications, (ii) has completed all material sections of the RFP, and (iii) is responsive to the questions.

An interview process may be utilized to gain additional information and pose questions of providers. The evaluation will include the extent to which the proposal meets the stated requirements as set out in this RFP as well as the applicants' stability, experience, and record of past performance in delivering such services.

UCBOE is expected to make any final selection(s) based upon any factors or considerations UCBOE deems relevant. Factors often considered include qualifications, relevant experience, fee, and ability to perform work in a timely manner. UCBOE retains sole discretion to award the contract to the vendor(s) it believes will best serve the interests of UCBOE and may consider any factors, documents, or information it deems relevant in making that determination. UCBOE shall not have any obligation to explain its decision to select or not select any individual vendors or to invite or exclude any individual vendors from consideration at any stage of the process. The decision of UCBOE to accept or reject any proposals and to award contract(s) to any one or more vendor(s) shall be final and not subject to further review.

Vendors are subject to *immediate disqualification* at any stage of the selection process for any of the following:

- The submission of false or misleading information in the vendor's proposal.
- Any efforts to dissuade or discourage other vendors from submitting proposals.
- Any efforts to influence, dictate, or change the terms of another vendor's proposal.
- Any form of bid collusion or bid rigging.

SECTION IV—CONTRACT AWARD

1. CONTRACT FORM

The contract form used upon agreement with a provider shall be UCBOE's service agreement.

2. CONTRACT AWARD

A contract may be awarded to the provider whose submittal is determined to best provide the services outlined herein and is of the best value to Union County Public Schools. Submittals will be evaluated on a combination of factors.

The initial term of any agreement awarded hereunder will be for one calendar year, the contract shall begin on July 1, 2023 and end on June 30th, 2024, with four additional one-year options to renew based upon funding and additional needs. Prices shall remain static unless there is a written request to the UCPS representative 30 days before the end of each contract period. Any renewal shall be based on satisfactory performance by the Provider during the previous years for the services provided and funding availability.

Cancellation of agreement:

Termination for Convenience. In addition to all of the other rights which UCBOE may have to cancel this Contract or an applicable Purchase Order, UCBOE shall have the further right, without assigning any reason therefore, to terminate the Contract (or applicable Purchase Order), in whole or in part, at any time at its complete discretion by providing 10 days' notice in writing from UCBOE to Vendor. If the Contract is terminated by UCBOE in accordance with this paragraph, Vendor will be paid in an amount which bears the same ratio to the total compensation as does the Services and/or Goods actually delivered or performed to the total originally contemplated in the Contract. UCBOE will not be liable to Vendor for any costs for completed services, services in process, or materials acquired or contracted for if such costs were incurred prior to the date of this Contract or an applicable Purchase Order.

3. CONFLICTS IN TERMS AND CONDITIONS

In a conflict between terms and conditions in any document that will be part of the contract, UCBOE terms and conditions, as well as the provisions in the Attachments to this RFP, shall govern.

4. JESSICA LUNSFORD SEX OFFENDER BACKGROUND CHECK DOCUMENTATION

This paragraph is pursuant to Attachment B to this RFP, Terms and Conditions, paragraph 18: when the selected provider has been identified, that provider *shall submit documentation* of the required sex offender background checks inherent in the North Carolina Jessica Lunsford Act and itemized in paragraph 18 of the Terms and Conditions. These background checks must be completed for the key personnel who will provide the services to students in this RFP. *Documentation must be provided before any of the service providers start working with students.* Failure to provide the required documentation will result, at minimum, a delay in the start of services, and may result in termination of the Agreement with provider.

5. FEDERAL FUNDS

The Contractor is notified that this project may be financed with **Federal Funds**. The Contractor shall ensure that all subcontracts and other contracts for goods and services for a federally funded project have the mandated provisions of this directive in their contracts. By submission of a proposal, Contractor agrees to comply with the provisions set forth in Attachment F. Failure to comply with any and all provisions herein may be cause for the contracting agency to issue a cancellation notice to a contractor.

6. INSURANCE

When the selected provider has been identified, that provider will be notified to provide required insurance. Proof of insurance shall be provided within five days of the date of written notification to the provider.

A. The following general requirements apply to any and all work under this contract by all providers.

- 1) Any and all insurance required by this contract shall be maintained during the entire length of the contract, including any extensions thereto, and until all work has been completed to the satisfaction of Union County Public Schools.

No provider shall commence any work of any kind under a contract with UCBOE until all insurance requirements have been complied with and until evidence is provided of all insurance requirements in each and every contract with each and every subcontractor.

- 2) Union County Public Schools shall be covered as an Additional Insured under any and all insurance required by the contract. Confirmation of this provision shall appear on all certificates of insurance.
- 3) The Union County Board of Education shall be given no less than thirty (30) days' notice of provider's cancellation of insurance. The UCBOE shall be given not less than thirty (30) days' written notice of material changes of any insurance required under this contract BEFORE the changes take effect.

B. Worker's Compensation and Employer's Liability Insurance

The provider shall procure and maintain Worker's Compensation (if applicable) and General Liability Insurance in the following limits.

Worker's Compensation	Statutory
Employer's Liability	\$1,000,000 each occurrence/annual aggregate

ATTACHMENT A: RFP Evaluation

SERVICES EVALUATION CRITERIA

Evaluation Criteria are listed below in order of relative importance. Your response to these criteria must be organized in a clear and explicit manner so as to facilitate the evaluation process. Evaluation of proposals will be by a committee that may be comprised of School District personnel

All proposals shall be evaluated on the following criteria. Upon conclusion of a successful evaluation, a recommendation will be made to the Union County Public Schools Board of Education for award of proposal.

Criteria/Description

The District will select the most cost-effective means that the price should be the primary factor, but not the sole factor.

The following weighting of the factors listed below will be used in evaluating proposal responses:

<u>FACTOR</u>	<u>WEIGHT</u>
Price	40%
Rebate Program	25%
Service Level Agreements	15%
Format and completeness of proposal	10%
Technical evaluation of proposed services	5%
References	5%
Total	100%

Award will be made as determined to be in the best interest of UCBOE, and the School District's decision shall be final.

Union County Public Schools Sites

MIDDLE	ADDRESS			
Cuthbertson Middle	1520 Cuthbertson Road	Waxhaw	NC	28173
East Union	60101 West Marshville Rd	Marshville	NC	28103
Marvin Ridge	2831 Crane Road	Waxhaw	NC	28173
Monroe Middle	601 East Sunset Drive	Monroe	NC	28112
Parkwood Middle	3219 Parkwood School Road	Monroe	NC	28112
Piedmont Middle	2816 Sikes Mill Road	Monroe	NC	28110
Porter Ridge Middle	2827 Ridge Road	Indian Trail	NC	28079
Sun Valley Middle	1409 Wesley Chapel Road	Indian Trail	NC	28079
Weddington Middle	5903 Deal Road	Matthews	NC	28104
HIGH	ADDRESS			
Central Academy	600 Brewer Drive	Monroe	NC	28112
Cuthbertson High	1400 Cuthbertson Road	Waxhaw	NC	28173
Forest Hills	100 Forest Hills School Rd South	Marshville	NC	28103
Marvin Ridge High	2825 Crane Road	Waxhaw	NC	28173
Monroe High	1 High School Drive	Monroe	NC	28112
Parkwood High	3220 Parkwood School Road	Monroe	NC	28112
Piedmont High	3006 Sikes Mill Road	Monroe	NC	28110
Porter Ridge High	2839 Ridge Road	Indian Trail	NC	28079
Sun Valley High	5211 Old Charlotte Highway	Monroe	NC	28110
Weddington High	4901 Monroe Weddington Road	Matthews	NC	28104

ATTACHMENT B: Standard Terms and Conditions

Attachment B

Standard Terms and Conditions

I. Standard Terms and Conditions for All Contracts

1. Defined Terms, "Contract" means the agreement between UCBOE and Vendor which consists of the applicable Contract Documents. "Contract Documents" means: (i) any applicable purchase order between Vendor and UCBOE specifically including all terms and conditions set forth or referenced herein and on the face of a Purchase Order, (ii) any attachments hereto, (iii) any applicable solicitation documentation related to hereto (including without limitation any request for proposals or invitation for bids and Vendor's response thereto), and (iv) any other terms and conditions of a written agreement signed by Vendor and UCBOE that deals with the same subject matter. "Goods" means any supplies, materials, products or other tangible personal property provided by Vendor to UCBOE. "Purchase Order" mean any applicable purchase order issued by UCBOE. "Services" means services, specifically including without limitation construction services, design services, professional or consulting services and software as a service. "UCBOE" means the Union County Board of Education. "Vendor" means the party contracting with UCBOE and includes individual and entities that may be referred to in Contract Documents as "vendor", "seller", "service provider", or "contractor".
2. Written Agreement Signed by Both Parties; Acceptance of Purchase Order Terms and Conditions when there is not a Separate Written Agreement Signed by Both Parties. When a Contract is signed by both UCBOE and Vendor then the Purchase Order issued by UCBOE is for administrative convenience and is not part of the Contract Documents. When there is not a separate Contract signed by both UCBOE and Vendor, then Vendor's acknowledgment of the terms of any Purchase Order, without timely objection, or Vendor's shipment or performance of any part of a Purchase Order, constitutes an agreement to all terms and conditions set forth or referenced herein and on the face of the Purchase Order, together with the terms and conditions of any other applicable Contract Documents. The terms and provisions set forth in the Contract Documents shall constitute the entire agreement between Vendor and UCBOE with respect to the purchase by UCBOE of the Services and/or Goods work performed as described in the Contract Documents. In the event of any conflict between any terms and conditions of the Contract Documents, the terms and conditions most favorable to UCBOE shall control. A Purchase Order constitutes an offer by UCBOE and expressly limits acceptance to the terms and conditions stated therein. No additional or supplemental provision or provisions in variance herewith that may appear in Vendor's quotation, acknowledgment, invoice, or in any other communication from Vendor to UCBOE shall be deemed accepted by or binding on UCBOE. UCBOE 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 UCBOE's authorized representatives expressly assent, in writing, to such provisions. Stenographic and clerical errors and omissions by UCBOE are subject to correction.
3. Cancellation of Purchase Order. UCPS may cancel any Purchase Order or portion thereof without liability, if: (a) Vendor fails upon request to give reasonable assurance of timely performance or UCPS otherwise determines that it has reasonable grounds for insecurity regarding Vendor's performance; (b) conforming Goods or Services (including the quantities specified for delivery) are not delivered within the time specified or, if no time is specified, within a commercially reasonable time; (c) Vendor otherwise breaches the Contract and such breach is not corrected within thirty (30) days following written notice of breach; or (d) cancellation is otherwise required or allowed by law.
4. Quantities. Shipments must equal exact amounts ordered unless otherwise agreed in writing by UCBOE. The award of a term contract neither implies nor guarantees any minimum or maximum purchases. Materials received in excess of quantity specified on the purchase order, at UCBOE's option, may be returned at the Vendor's expense.
5. Prices. If Vendor's price or the regular market price of any of the Goods covered hereunder is lower than the price stated in the Contract Documents on the date of shipment of such Goods, Vendor agrees to give UCBOE the benefit of such lower price on any such Goods. In no event shall Vendor's price be higher than the price last quoted or last charged to UCBOE unless otherwise agreed in writing. No charges for transportation, boxing, crating, etc. are allowable unless such charges are included in the Contract Documents.
6. 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 UCBOE's accounts payable department with a copy to UCBOE Project Coordinator.
7. Freight on Board. All shipments of Goods are FOB destination unless otherwise stated in the Contract Documents. Any freight charges prepaid by Vendor are to be itemized on the invoice unless stated otherwise in writing by form of quote, bid, contract. In instances where Goods are shipped against this order by parties other than those specified on the Purchase Order, the third-party shipper must be instructed to list the UCBOE purchase order number on all packages, bills of lading, etc. to insure prompt identification of order.

8. Taxes. Taxes are included in the Contract Price. Applicable taxes shall be invoiced as a separate item for UCBOE's records.
9. Payment Terms. Payment terms are Net 30 days after receipt of correct invoice or acceptance of Goods, whichever is later.
10. 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.
11. Safety Data Sheets. Safety Data Sheets must be provided with shipment of all chemicals."
12. Delays in Shipment. Time and date of delivery are of the essence, except when delay is due to causes beyond Vendor's reasonable control and without Vendor's fault or negligence.
13. Risk of Loss. Vendor 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 UCBOE or its nominee.
14. Rejection. All Goods shall be received subject to UCBOE's inspection. Goods 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 Vendor's expense or may be accepted at a reduced price. UCBOE may require Vendor to promptly replace or correct any rejected Goods Services and, if Vendor fails to do so, UCBOE may contract with a third party to replace such Goods Services and charge Vendor the additional cost.
15. Warranties. Vendor warrants that all Goods 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 UCBOE of the Goods and shall run to UCBOE and any user of the Goods. This express warranty is in addition to Vendor'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, UCBOE 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.
16. Compliance with All Laws. Vendor warrants that all performance hereunder shall be in accordance with all applicable federal, state and local laws, regulations and orders. The right of Vendor to proceed may be terminated immediately by written notice if UCBOE determines that Vendor, its agent or another representative, has violated any provision of law.
17. Use of Federal Funds. If the source of funds for this Contract is federal funds, the following federal provisions apply pursuant to 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II (as applicable): Equal Employment Opportunity (41 C.F.R. Part 60); Davis-Bacon Act (40 U.S.C. 3141-3148); Copeland "Anti-Kickback" Act (40 U.S.C. 3145); Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708); Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387); Debarment and Suspension (Executive Orders 12549 and 12689); Byrd Anti-Lobbying Amendment (31 U.S.C. 1352); Procurement of Recovered Materials (2 C.F.R. § 200.322); and Record Retention Requirements (2 CFR § 200.324).
18. Registered Sex Offenders; Jessica Lunsford Act. Under North Carolina law, certain sex offenders are prohibited from coming onto school campuses. Vendor agrees to conduct an annual 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 of its employees whose job involves direct interaction with students as part of the job. UCBOE prohibits any personnel listed on such registries from being on any property owned or operated by UCBOE and from having any direct interaction with students. As a term of the Agreement, said checks must be performed by the Vendor and reported to UCBOE's Superintendent or designee, if Vendor's employees will be working directly with students. Under provisions set forth in the Jessica Lunsford Act under North Carolina law, the signature below certifies that neither Vendor nor any employee or agent of Vendor is listed as a sex offender on the N.C. Sex Offender and Public Protection Registration Program, the N.C. Sexually Violent Predator Registration Program, and/or the National Sex Offender Registry.
19. Nondiscrimination. During the performance of the Contract, Vendor 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.
20. FERPA Electronically Stored Data Compliance: Vendor is expressly prohibited from selling or trading any education records or personally identifiable information acquired under the Agreement. Furthermore, Vendor agrees not to attempt to re-identify students from aggregated data. Further, Vendor will not use any personally identifiable information or education records to advertise or market to students of UCBOE or their parents. Any personally identifiable information and education records held by Vendor pursuant to the Agreement will be made available to UCBOE upon request. Vendor will store and process all data using appropriate administrative, physical, and technical safeguards to secure personally identifiable information and education records from unauthorized access, disclosure, and use. Vendor will conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner. Vendor will also have a written incident response plan, to include prompt notification to UCBOE in the event of a security or privacy incident, as well as procedures for responding to a breach of data. Vendor agrees to share its incident

response plan upon request. Vendor shall, for all personally identifiable data and education records in its possession and in the possession of any subcontractors, or agents to which it has transferred data as permitted herein, destroy or de-identify such data when such data is no longer needed to perform the Agreement. Vendor hereby agrees to abide by all Board of Education policies and procedures governing the confidentiality of student records and the responsible use of technology and internet safety. If Vendor experiences a security breach concerning any information covered by the Agreement, and such breach is covered by N.C.G.S. §75.61(14), then Vendor will (a) fully comply with Vendor's obligations under the N.C. Identity Theft Protection Act, (b) immediately notify UCBOE with the information listed in N.C.G.S. §75-65(d)(1-4), and (c) fully cooperate with UCBOE in carrying out its obligations under said Identity Theft Protection Act. Vendor will indemnify UCBOE for any breach of confidentiality or failure of its responsibilities to protect confidential information, and for cost of notification of affected persons as a result of its accidental or negligent release of personally identifiable information or education records provided to Vendor pursuant to the Agreement.

21. North Carolina Public Records Law: Vendor acknowledges that UCBOE is subject to the requirements of North Carolina's Public Records Law ("NCPRL"), N.C.G.S. § 132-1, et. seq. The Agreement and any related documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received by UCBOE in connection with the transaction of the Agreement may be considered a "public record," subject to disclosure under the NCPRL. UCBOE is under no obligation to notify Vendor prior to its compliance of its duties under NCPRL.
22. Conflict of Interest. Vendor represents and warrants that no member of UCBOE 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. Vendor also represents and warrants that, if the Contract is funded by any amount of federal funds, no violation of 2 C.F.R. § 200.318(c) or any other applicable federal conflict of interest law has occurred or will occur. Vendor shall cause this paragraph to be included in all Contracts, subcontracts and other agreements related to the Contract.
23. Gratuities. Vendor represents and warrants that no member of UCBOE or any of its employees has been or will be offered or given a gratuity to an official or employee of UCBOE in violation of applicable law or policy.
24. Kickbacks to Vendor. Vendor 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 UCBOE Contract or in connection with a subcontract relating to a UCBOE Contract. When Vendor has grounds to believe that a violation of this clause may have occurred, Vendor shall promptly report to UCBOE in writing the possible violation.
25. Iran Divestment Act. Vendor certifies that, as of the date listed below, it is not on the Final Divestment List, as created by the State Treasurer pursuant to N.C.G.S. § 143-6A-4, in violation of the Iran Divestment Act. In compliance with the requirements of the Iran Divestment Act and N.C.G.S. § 143C-6A-5(b), Vendor shall not utilize in the performance of the contract any subcontractor that is identified on the Final Divestment List. The Final Divestment List can be found on the State Treasurer's website at the address www.nctreasurer.com/Iran and should be updated every 180 days.
26. *Divestment from Companies that Boycott Israel*. The Vendor certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. 147-86.81. It is the responsibility of each vendor or contractor to monitor compliance with this restriction. Contracts valued at less than \$1,000.00 are exempt from this restriction.
27. E-Verification. Vendor shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes
28. Indemnification. To the fullest extent permitted by law, Vendor shall indemnify and hold harmless UCBOE, 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 Vendor's failure to comply with any applicable law, ordinance, regulation, or industry standard or (b) arising directly or indirectly out of Vendor's performance or lack of performance of the terms and conditions of the Contract. In the event that any Services and/or Goods sold and delivered or sold and performed under the Contract Documents shall be defective in any respect whatsoever, Vendor shall indemnify and save harmless UCBOE, 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 Services and/or Goods and are contributed to by said condition. In the event Vendor, its employees, agents, subcontractors and or lower-tier subcontractors enter premises occupied by or under the control of UCBOE in the performance of the Contract Documents, Vendor agrees that it will indemnify and hold harmless UCBOE, 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.
29. Insurance. Unless such insurance requirements are waived or modified by UCBOE or risk management ("DIRM"), Vendor 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 UCBOE

and authorized to do business in the State of North Carolina: Automobile - Vendor 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 - Vendor shall maintain commercial general liability insurance that shall protect Vendor 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 Vendor, Vendor shall meet the statutory requirements of the State of North Carolina for worker's compensation coverage and employers' liability insurance. Vendor 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 Vendor to UCBOE and shall contain the provision that UCBOE be given 30 days' written notice of any intent to amend or terminate by either Vendor 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.

30. Termination for Convenience. In addition to all of the other rights which UCBOE may have to cancel this Contract or an applicable Purchase Order, UCBOE shall have the further right, without assigning any reason therefore, to terminate the Contract (or applicable Purchase Order), in whole or in part, at any time at its complete discretion by providing 10 days' notice in writing from UCBOE to Vendor. If the Contract is terminated by UCBOE in accordance with this paragraph, Vendor will be paid in an amount which bears the same ratio to the total compensation as does the Services and/or Goods actually delivered or performed to the total originally contemplated in the Contract. UCBOE will not be liable to Vendor 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 Contract or an applicable Purchase Order.
31. Termination for Default. UCBOE may terminate the Contract, in whole or in part, immediately and without prior notice upon breach of the Contract by Vendor. In addition to any other remedies available to UCBOE law or equity, UCBOE may procure upon such terms as UCBOE shall deem appropriate, Services and/or Goods substantially similar to those so terminated, in which case Vendor shall be liable to UCBOE for any excess costs for such similar goods, supplies, or services and any expenses incurred in connection therewith.
32. Contract Funding. It is understood and agreed between Vendor and UCBOE that UCBOE'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 UCBOE for any payment may arise until funds are made available to UCBOE's Finance Officer and until Vendor receives notice of such availability. Should such funds not be appropriated or allocated, the Contract shall immediately be terminated. UCBOE shall not be liable to Vendor for damages of any kind (general, special, consequential or exemplary) as a result of such termination.
33. Accounting Procedures. Vendor shall comply with any accounting and fiscal management procedures prescribed by UCBOE 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.
34. Improper Payments. Vendor shall assume all risks attendant to any improper expenditure of funds under the Contract. Vendor shall refund to UCBOE 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. Vendor shall make such refunds within thirty (30) days after UCBOE notifies Vendor in writing that a payment has been determined to be improper.
35. Contract Transfer. Vendor shall not assign, subcontract or otherwise transfer any interest in the Contract without the prior written approval of UCBOE.
36. Contract Personnel. Vendor agrees that it has, or will secure at its own expense, all personnel required to provide the Services and/or Goods set forth in the Contract.
37. Key Personnel. Vendor shall not substitute for key personnel (defined as those individuals identified by name or title in the Contract Documents or in written communication from Vendor) assigned to the performance of the Contract without prior written approval from UCBOE Project Coordinator (the individual at UCBOE responsible for administering the Contract).
38. Contract Modifications. The Contract may be amended only by written amendment duly executed by both UCBOE and Vendor.
39. Relationship of Parties. Vendor is an independent contractor and not an employee of UCBOE. The conduct and control of the work will lie solely with Vendor. The Contract shall not be construed as establishing a joint venture, partnership or any principal-agent relationship for any purpose between Vendor and UCBOE. Employees of Vendor shall remain subject to the exclusive control and supervision of Vendor, which is solely responsible for their compensation.
40. Advertisement. The Contract will not be used in connection with any advertising by Vendor without prior written approval by UCBOE.
41. Monitoring and Evaluation. Vendor shall cooperate with UCBOE, or with any other person or agency as directed by UCBOE, in monitoring, inspecting, auditing or investigating activities related to the Contract. Vendor shall permit UCBOE to evaluate all activities conducted under the Contract. UCBOE has the right at its sole discretion to require that Vendor remove any employee of Vendor from UCBOE Property and from

providing Services and/or Goods under the Contract following provision of notice to Vendor of the reasons for UCBOE's dissatisfaction with the Services and/or Goods of Vendor's employee.

42. **Financial Responsibility.** Vendor is financially solvent and able to perform under the Contract. If requested by UCBOE, Vendor agrees to provide a copy of its latest audited annual financial statements or other financial statements as deemed acceptable by UCBOE's Finance Officer. In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against Vendor, the inability of Vendor to meet its debts as they become due or in the event of the appointment, with or without Vendor's consent, of an assignee for the benefit of creditors or of a receiver, then UCBOE shall be entitled, at its sole option, to cancel any unfilled part of the Contract without any liability whatsoever.
43. **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 Vendor to notify, in writing, the issuing purchasing office at once, indicating the specific regulation which required such alterations. UCBOE reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract.
44. **Inspection at Vendor's Site.** UCBOE 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 UCBOE 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.
45. **Confidential Information.** All information about UCBOE provided to the Vendor or its officers, employees, agents, representatives and advisors (the "Vendor Representatives"), and all copies or other full or partial reproductions thereof and notes, memoranda or other writings related thereto created by Vendor or any Vendor Representative, regardless of whether provided before or after the date of the Contract and regardless of the manner or medium in which it is furnished, is referred to as "Confidential Information". Confidential Information does not include any information that (a) is or becomes generally available to the public other than as a result of an impermissible disclosure by Vendor, (b) was known by or available on a nonconfidential basis to Vendor before it was disclosed by UCBOE or (c) becomes available to Vendor on a nonconfidential basis from a third party whom Vendor does not know to be bound by a confidentiality agreement with, or have an obligation of secrecy to, UCBOE. Except as and to the extent required by law or order or demand of any governmental or regulatory authority, Vendor and Vendor Representatives will (x) keep all Confidential Information confidential and (y) will only disclose or reveal any Confidential Information to Vendor Representatives who must have the information to fulfill Vendor's obligations under the Contract and who agree to observe the terms of this Section. Vendor and Vendor Representatives will not use the Confidential Information for any purpose other than fulfilling Vendor's obligations under the Contract. By way of example and not limitation, Vendor shall not sell, market, or commercialize Confidential Information, create derivative products or applications based on Confidential Information. If Vendor is requested or required, pursuant to applicable law or regulation or by legal process, to disclose any Confidential Information, Vendor will provide UCBOE with prompt and timely notice of the requests or requirements so that UCBOE can seek an appropriate protective order or other remedy and will not be prejudiced by delay. If UCBOE does not obtain a protective order or other remedy, Vendor will only disclose that portion of the Confidential Information which Vendor's legal counsel determines Vendor is required to disclose. Upon termination of the Contract or otherwise upon UCBOE's request, Vendor will promptly deliver to UCBOE all Confidential Information in the possession of Vendor or the Vendor Representatives.

Student Information: If, during the course of Vendor's performance of the Contract, Vendor should obtain any information pertaining to students or students' official records, Vendor 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 Vendor's performance of the Contract, Vendor should obtain any information pertaining to employees of UCBOE's personnel records, Vendor 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. This section will survive the termination of this Contract.
46. **Intellectual Property.** Vendor agrees, at its own expense, to indemnify, defend and save UCBOE harmless from all liability, loss or expense, including costs of settlement and attorney's fees, resulting from any claim that UCBOE's use, possession or sale of the Services and/or Goods infringes any copyright, patent or trademark or is a misappropriation of any trade secret.
47. **No Pre-Judgment or Post-Judgment Interest.** In the event of any action by Vendor for breach of contract in connection with the Contract, any amount awarded shall not bear interest either before or after any judgment, and Vendor specifically waives any claim for interest.
48. **Background Checks.** At the request of UCBOE's Project Coordinator, Vendor (if an individual) or any individual employees of Vendor shall submit to UCBOE criminal background check and drug testing procedures.

49. 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.
50. No Third-Party Benefits. The Contract shall not be considered by Vendor to create any benefits on behalf of any third party. Vendor 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.
51. Force Majeure. Neither party shall be responsible to the other for any losses resulting from the failure to perform any terms or provisions of the Agreement if the party's failure to perform is attributable to war, riot or other disorder, strike or other work stoppage; fire; flood; storm; illness; pandemic, communicable disease, or any other act not within the control of the party whose performance is interfered with, and which, by reasonable diligence, such party is unable to prevent. However, UCBOE will be entitled to a refund for fees paid on account of services not rendered by Vendor including any and all deposits.
52. Ownership of Documents; Work Product. All documents created pursuant to the Contract shall, unless expressly provided otherwise in writing, be owned by UCBOE. Upon the termination or expiration of the Contract, any and all finished or unfinished documents and other materials produced by Vendor pursuant to the Contract shall, at the request of UCBOE, be turned over to UCBOE. Any technical knowledge or information of Vendor which Vendor shall have disclosed or may hereafter disclose to UCBOE shall not, unless otherwise specifically agreed upon in writing by UCBOE, be deemed to be confidential or proprietary information and shall be acquired by UCBOE free from any restrictions as part of the consideration of the Contract.
53. Strict Compliance. UCBOE 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.
54. General Provisions. UCBOE'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 Vendor hereunder, UCBOE shall be entitled to recover costs and reasonable attorney's fees. Vendor may not assign, pledge, or in any manner encumber Vendor's rights under this Contract or applicable Purchase Order or delegate the performance of any of its obligations hereunder, without UCBOE's prior, express written consent.
55. 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 Union County, North Carolina. North Carolina law will govern the interpretation and construction of the Contract.
56. Severability. Any provision of this Contract that is determined by any court of competent jurisdiction to be invalid or unenforceable will not affect the validity or enforceability of any other provision. Any provision of the Contract held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

II. Additional Standard Terms and Conditions for Construction Contracts

1. Supervision and Provision for Labor and Supplies. The Vendor will supervise and direct the construction work (the "Work") and shall furnish, provide, and pay for all labor, materials, equipment, machinery, utilities, and services reasonably necessary for the execution and completion of the Work.
2. Coordination of Work and Notification of Progress. The Vendor agrees to coordinate its Work with the work of any other separate contractors or with the work of UCBOE's own forces to avoid delaying or interfering with their work. Vendor shall enforce good order and discipline among his employees and subcontractors on the Project. The Vendor further agrees to inform UCBOE on a regular basis or at UCBOE's request of the progress of the Work.
3. Provision for all Permits, Licenses, and Inspections. Unless otherwise provided, the Vendor shall secure and pay for all permits, licenses, and inspections necessary for the proper execution and completion of the Work.
4. Cleanliness. Vendor shall keep the Project reasonably free from waste materials or rubbish resulting from the Vendor's operations.
5. Additional Warranties. The Vendor warrants that the Vendor has visited the location of the Project and is familiar with all field conditions bearing upon the Vendor's performance of the Work; that the materials and equipment furnished under the Contract are of good quality and new (unless otherwise permitted); that the Work is non-negligent and meets or exceeds the standards ordinarily observed in the industry; and that the Work conforms to the requirements of the Contract and to all applicable codes, ordinances, laws, or regulations. The Vendor further warrants and promises that the Work shall be free from defects and nonconformities in materials and workmanship for a period of one year from the later of the Date of Completion, which is the date UCBOE accepts the Work or such date as the Vendor actually completes all the Work (the "Date of Completion"). During such period, the Vendor will remedy at Vendor's expense nonconformities or defects in the Work within a reasonable time after receiving notice thereof from UCBOE.

6. Indemnity for Subcontractor Payment. In addition to the indemnification obligations contained in the attached terms and conditions to this Contract, the Vendor further agrees to defend and indemnify UCBOE from and against all claims, damages, losses, and expenses, including reasonable attorneys' fees, arising out of the Vendor's failure to pay subcontractors or materials suppliers.
7. Change Orders. The Vendor agrees that UCBOE may order changes in the general scope of the Work, including additions, deletions, and similar revisions. The parties agree to adjust the Contract Price and Date of Completion to reflect the effects of such changes, which adjustments shall be authorized only upon execution of a written change order (a "Change Order"). In case of emergency or extenuating circumstances or if a construction contingency is provided as stated below, approval of changes may be obtained verbally by telephone or field orders approved by UCBOE Project Coordinator and promptly thereafter substantiated in writing as outlined under normal procedures. The amount of any increase or decrease in the Contract Price shall be by mutual acceptance of a total amount supported by sufficient data and information to substantiate the change. Any decrease in Contract Price for a decrease in the Work will be the reasonable costs of the Work deleted, including a reasonable amount for the decrease in the Vendor's overhead.
8. Performance/Payment Bond. If required by law and/or the bidding documentation, the Vendor agrees to provide a Performance Bond and Labor and Material Payment Bond for its faithful performance in a form reasonably satisfying to UCBOE.
9. Payments Withheld. The UCBOE may withhold payment for the following reasons to the extent permitted under N.C. Gen. Stat. § 143-134.1(e): (1) defective Work not remedied; (2) third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to UCBOE is provided by the Vendor; (3) failure of the Vendor to make payments properly to subcontractors or for labor, materials or equipment; (4) reasonable evidence that the Work will not be completed with the time specified, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; (5) failure to carry out the Work in accordance with the Contract Documents; (6) failure to provide sales tax documentation in accordance with subparagraph 9.3.5; (7) failure or refusal of the Vendor to submit the required information on minority business enterprises; and (8) failure of the Vendor to comply with (a) the provisions of the Sedimentation and Pollution Control Act (N.C. Gen. Stat. § 113A-50 *et seq.*), and/or (b) any Notice of Violation issued by the North Carolina Department of Natural Resources.
10. Retainage. For public construction contracts costing an amount equal to or greater than \$100,000, the UCBOE will retain five percent of the amount of each progress payment on the project for as long as is authorized by N.C. Gen. Stat. § 143-134.1. At all times during the Project, the UCBOE may retain the maximum funds allowed by N.C. Gen. Stat. § 143-134.1. The UCBOE specifically reserves the right to withhold additional funds as authorized by this Contract and N.C. Gen. Stat. § 143-134.1. The Vendor may pay each subcontractor no later than seven days after receipt of payment from the UCBOE and in accordance with N.C. Gen. Stat. § 143-134.1 the amount to which the subcontractor is entitled, reflecting percentages actually retained from payments to the Vendor on account of the subcontractor's portion of the Work. The Vendor shall, by appropriate agreement with each subcontractor, require each subcontractor to make payments to sub-subcontractors in a similar manner and in accordance with N.C. Gen. Stat. § 143-134.1.
11. The Vendor shall use and submit applications for payment using a form reasonably satisfactory to UCBOE ("Application for Payment"). The Contractor shall submit with each Application for Payment a completed "Statement of Sales Tax Paid" and "Minority Business Enterprise" documentation in a form acceptable to UCBOE.

III. Additional Standard Term and Condition for Designer Contracts (which include Architectural, Engineering, Surveying, and Technical Services)

Additional Insurance. In addition to the insurance required pursuant to Section 29 of the Standard Terms and Conditions for All Contracts, the Vendor 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 UCBOE and authorized to do business in the State of North Carolina: Professional liability insurance in commercially reasonable amounts as reasonably determined by UCBOE.

IV. Additional Standard Terms and Conditions for Information Technology Contracts

1. Definitions.

"Hardware" means the hardware the Vendor utilizes in the Hosted Environment for delivery and maintenance of the Hosted Software Services.

"Hosted Environment" means the Hardware, system software, hosting support software, network connectivity, and facility used by Vendor to support the Hosted Software Services.

"Hosted Software Services" means the application, including the Hosted Software and any applicable Third-Party Software, as run on the Hosted Environment.

"Hosted Software" means the software owned and controlled by Vendor or Vendor's third-party contractor that supports the Hosted Software Services.

"Support Services" means application and technical support required to maintain the performance, uptime

and connectivity of the Hosted Software Services for UCBOE access and use, including without limitation, telephone support, error correction, maintenance, and installation of Updates and Upgrades to the Hosted Software.

“Updates” means (i) modifications to or releases of the Hosted Software that (a) add new features, functionality, and/or improved performance, (b) operate on new or other databases, operating systems, or server platforms or (c) extend the Hosted Software functionality to take advantage of advances in coding language, hardware, network or wireless infrastructures; and (ii) deviation corrections, bug or error fixes, patches, workarounds, and maintenance releases.

“Upgrades” means any new version or new release of the Hosted Software typically provided on an annual or bi-annual basis by the Vendor that includes new features, functions, support or service that were not in place with the immediately prior version.

2. Grant of License. Vendor grants to UCBOE for the term of this Contract a non-exclusive, non-transferable license to access and use over the internet the Hosted Software (the “License”).
3. Updates and Upgrades. Vendor will make certain limited and applicable Hosted Software Updates and Upgrades available to UCBOE at no additional cost. All such Updates and Upgrades shall automatically become subject to the benefits and terms of this Contract and shall automatically be considered part of the License granted under this Contract.
4. Security. Vendor’s Hosted Environment shall maintain security measures in place to help protect against the loss, misuse, and alteration of the Hosted Software Services, and specifically the Confidential Information provided to Vendor by UCBOE.
5. Warranties. Vendor warrants the following: (a) Vendor has the full authority to grant the License; (b) the Hosted Software is free from material defects or viruses; (c) the Hosted Software contains no disabling devices; and (d) the Hosted Software conforms to all material specifications set forth in the documentation and any other written material provided to UCBOE for any purpose. Without limiting any other remedies available to UCBOE under this Contract, at law or in equity, in the event that any Hosted Software does not conform to the warranties set forth for the Hosted Software herein, Vendor shall, at UCBOE’s option, promptly correct or replace such Hosted Software and, in either case, Vendor shall perform any Support Services or other work required to restore the Hosted Software to the state that existed prior to any such breach, all at Vendor’s expense. UCBOE reserves the right to reject the Hosted Software and to hold Vendor responsible for any loss, direct or indirect, caused by any such breach of warranty. In the event Vendor is or becomes aware of a problem with any item of Hosted Software, Vendor shall notify UCBOE upon such determination. Acceptance or use of the Hosted Software shall not constitute a waiver of any claim under any warranty.
6. Effect of Termination and Orderly Transition. Upon termination or expiration of this Contract for any reason, Vendor will cooperate in good faith with UCBOE to provide for an orderly transfer of the Goods and Services and Confidential Information to UCBOE or UCBOE’s successor vendor (“Orderly Transition”) and according to the terms of this section.
 - a. Scope of Work for Orderly Transition. Within thirty (30) days of notification by UCBOE that it will transfer Goods and Services to itself or a successor vendor, the parties will create and execute a scope of work document detailing tasks, the responsible parties for individual tasks, and timeframes for completion of tasks necessary to complete an Orderly Transition. The final, executed Orderly Transition scope of work shall be incorporated into this Contract and become subject to its terms. Vendor’s failure to (a) cooperate in developing the Orderly Transition scope of work, (b) execute an Orderly Transition scope of work, or (c) abide by the executed Orderly Transition scope of work shall be deemed a material breach of this Contract.
 - b. Time Frame. Unless otherwise mutually agreed in an executed Orderly Transition scope of work, Vendor shall continue to provide Goods and Services while UCBOE migrates its Confidential Information from Vendor’s Hosted Software Services in the Orderly Transition process. Vendor agrees that, as part of the Orderly Transition process and within the specified time frame, it will transfer to UCBOE all of the Confidential Information provided to Vendor by UCBOE pursuant to this Contract. Vendor will provide the Confidential Information in commercially reasonable electronic format as agreed in the Orderly Transition scope of work at no additional cost.
 - c. Time and Material Costs Only. UCBOE will be obligated to pay for time and materials at a reasonable hourly rate of no more than \$75/hour for the Orderly Transition. No other fees will be assessed for the Orderly Transition. Fees shall be agreed upon in advance as part of developing the scope of work referenced in subsection (a) above.
 - d. Destruction of Confidential Information after Orderly Transition. Unless otherwise mutually agreed in an executed Orderly Transition scope of work, Vendor agrees that after returning all Confidential Information to UCBOE pursuant to subsection (b) above it will destroy all remaining copies of Confidential Information and back-up Confidential Information in its possession, contained in or on any medium (such as a storage area network or “SAN”) or as may be stored offsite, within thirty (30) days of completion of Orderly Transition. Vendor shall provide UCBOE with a detailed summary of the destruction process and standards to be utilized by Vendor with respect to the Confidential Information, and UCBOE shall approve such process and standards prior to Vendor commencing such destruction.

7. Intellectual Property Warranty. In addition to the warranties set forth elsewhere in this Contract with respect to the Goods and Services, Vendor expressly represents, warrants and covenants that neither the furnishing of Hosted Services to UCBOE hereunder, nor does the Hosted Software, violate, in whole or in part, any provision of any law, common law or regulation concerning copyrights, trade secrets, trademarks, tradenames, service marks, patents or other provisions regulating or concerning intellectual property rights.
8. Additional Indemnification. To the fullest extent permitted by law, Vendor shall indemnify, defend and hold harmless UCBOE, its and directors, officers, managers, employees and agents, from all suits, claims, costs, damages and other liabilities, including reasonable attorneys' fees as incurred by counsel of UCBOE's choice, relating to or arising from (a) Vendor's failure to maintain the security and integrity of Confidential Information, the Hosted Software Services and the Hosted Environment; (b) any claim for infringement of any copyright, trade secret, trademark, tradename, service mark, patent, or other law or regulation concerning intellectual and/or proprietary property rights; and (c) any claims by third party interests in the Hosted Software.
9. Data Use. Notwithstanding the foregoing, Vendor acknowledges and agrees that all Confidential Information is proprietary to and owned exclusively by UCBOE, whether provided in tangible or electronic form and whether entered into any software or Hosted Software Services owned or licensed by Vendor (including without limitation the Hosted Software and Hosted Software Services) or otherwise provided in connection with any products provided and services performed by Vendor (including without limitation the Goods and Services) and whether to, by or through a Vendor-affiliated ASP or other Hosted Software Services. Furthermore, Vendor shall not sell, market, or commercialize Confidential Information, create derivative products or applications based on Confidential Information or otherwise use Confidential Information in any manner unrelated to the performance of Vendor's obligations under the Contract. Vendor shall not share Confidential Information with any parent or subsidiary company of Vendor or any other Vendor-affiliated entity without the express prior written consent of UCBOE detailing the scope of allowable disclosure. Vendor agrees that if it breaches this section, UCBOE may, at its option, pursue any or all of the following remedies: (a) immediately terminate this Contract without liability to Vendor; (b) seek an injunction without posting a bond; and (c) pursue whatever other remedies may be available to it at law, in equity or pursuant to this Contract.

ATTACHMENT C: Vendor Information Form

VENDOR INFORMATION FORM (Required)

Company Name (include dba): _____

Phone number: _____ Fax: _____ E-mail: _____

Contact: _____

Corporate Office Address:

Union County Office Address (if different from Corporate):

Web Address:

Length of time in business: _____ Number of permanent employees:

DOT #: _____ (if applicable) Motor Carrier License #: _____ (if applicable)

Insurance Contact:

_____ Phone: _____

The Union County Public Schools reserves the right to reject or disqualify any and all vendors, waive informalities and irregularities in the bid process, and to accept vendors, which are considered to be in the best interest of the School System.

ATTACHMENT D: MBE Information

MBE INFORMATION

HISTORICALLY UNDERUTILIZED BUSINESSES: Pursuant to General Statute 143-48 and Executive Order #150, UCBOE 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. (<https://ncadmin.nc.gov/businesses/hub>)

MBE INFORMATION: (Required)

Please provide the following data in order for UCBOE to provide it to the Office for Historically Underutilized Businesses, NC Department of Administration.

I certify the status as a minority business (at least 51% of business is owned by) as recognized by the State of NC: (<https://ncadmin.nc.gov/businesses/hub>)

(Check all that apply)

- Black, African American (B)
- Hispanic (H)
- Asian American (AA)
- American Indian (IA)
- Socially and Economically Disadvantaged (SE)
- Female (F)
- Not Applicable

Vendor Signature: _____

Date: _____

Print Name: _____

ATTACHMENT E:
Identification of Historically Underutilized
Business Participation

IDENTIFICATION OF HISTORICALLY UNDERUTILIZED BUSINESS PARTICIPATION

Solicitation Number: _____

Bid / Solicitation Description: _____

I, _____,
(Name of Bidder)

do hereby accept that on this project, we will use the following certified Historically Underutilized Businesses (HUBs) as vendors, suppliers, subcontractors, or providers of professional services.

Self-Performing: ____ Check here if bidder will be doing all work with no subcontractors or suppliers:

Bidder's HUB Certification Status: HUB Certified? (Circle one) **Yes** **No**

Sub-Contract HUB Firm Name,

Address and Phone #

Category	Type of Work	\$ Amount

* HUB Certification with the NC HUB Office required to be counted toward state participation goals.

*Minority categories: Black / African American (**B**), Hispanic (**H**), Asian American (**A**) American Indian (**I**), Female (**F**), Socially and Economically Disadvantaged (**D**), Disabled Business Enterprise (**DBE**), Nonprofit Work Center for the Blind and Severely Disabled (**NPWC**)

Total value of Certified HUB sub-contracting will be (\$)_____.

Total Bid Amount (\$): _____

HUB Participation Percentage: **Total value of Certified HUB sub-contracting** **=**

_____ %

ATTACHMENT F: Uniform Guidance

UNIFORM GUIDANCE

The Contractor is notified that this project may be financed with **Federal Funds**. The Contractor shall ensure that all subcontracts and other contracts for goods and services for a federally funded project have the mandated provisions of this directive in their contracts. By submission of a proposal, Contractor agrees to comply with the following provisions. Failure to comply with any and all provisions herein may be cause for the contracting agency to issue a cancellation notice to a contractor.

Remedies for Breach

When federal funds are expended by **Union County Public Schools**, the School System reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

Termination for Default. UCBOE may terminate the Contract, in whole or in part, immediately and without prior notice upon breach of the Contract by Vendor. In addition to any other remedies available to UCBOE law or equity, UCBOE may procure upon such terms as UCBOE shall deem appropriate, Services and/or Goods substantially similar to those so terminated, in which case Vendor shall be liable to UCBOE for any excess costs for such similar goods, supplies, or services and any expenses incurred in connection therewith.

Equal Employment Opportunity

Except as otherwise provided under 41 CFR Part 60, when funds will be expended by the School System on a contract that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3, Contractor certifies it will comply with the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

Debarment and Suspension

Contractor certifies that during the term of an award for all contracts by the School System resulting from this procurement process, the Contractor certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

Domestic Preference

As detailed in 2 CFR § 200.322, as appropriate and to the extent consistent with law, Contractor certifies that, to the greatest extent practicable, the goods, products, or materials furnished through this award will be produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

Records Retention Requirements

The Contractor certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.334. The Contractor further certifies that Contractor will retain all records as required by 2 CFR § 200.334 for a period of three years after grantees or sub-grantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

Certification of Non-Collusion Statement

Contractor certifies under penalty of perjury that its response to this procurement solicitation is in all respects bona fide, fair, and made without collusion or fraud with any person, joint venture, partnership, corporation or other business or legal entity.

Prohibition on Gifts

Contractor certifies that it will comply with the prohibition against giving gifts, gratuities, favors or anything of monetary value to an officer, employee, or agent of the School System. Contractor understands and agrees that violation of these standards will result in termination of the contract and may result in ineligibility for future contract awards.