

# **REQUEST FOR QUALIFICATION (RFQ) FACILITY CONDITION ASSESSMENT AND DEFERRED MAINTENANCE PLANNING**

Your firm is invited to participate in this Request for Qualifications (RFQ) Process. Please review thoroughly all materials contained herein. Proposals will be received by Pender County Schools (PCS), until 12:00 PM (EST), November 7, 2025.

EMAIL RFQ's TO: [william\\_nelson@pender.k12.nc.us](mailto:william_nelson@pender.k12.nc.us) subject line must reference **RFQ for Facility Condition Assessment** by 12:00 pm on November 7, 2025

**Bidder Questions:** All questions concerning this RFQ, or any request for additional data or information must be submitted in writing via email to William Nelson, [william\\_nelson@pender.k12.nc.us](mailto:william_nelson@pender.k12.nc.us) subject line must reference **RFQ** by October 27, 2025.

**Responses to these questions:** Will be provided no later than October 31, 2025 via [email](#). PCS will make every effort to provide answers to questions within 24 hours of receiving the question via email. Questions received after the timeframe provided to submit questions are not guaranteed to be answered. PCS will make every effort to answer any and all questions submitted.

It is critical that each respondent carefully review all background information, relevant attachments and RFQ terms and conditions, as they contain the primary components of the resultant Contract, if amended.

It is suggested that you immediately review Section 2, the Schedule of Critical Dates.

## **TABLE OF CONTENTS**

- Section 1 Document Purpose
- Section 2 Schedule of Critical Dates
- Section 3 General Information
- Section 4 Scope of Services
- Section 5 Firm Qualifications
- Section 6 Instructions for Submission
- Section 7 Conditions of the Request for Qualifications
- Section 8 Conditions of Agreement
- Exhibit A Building Inventory

## **SECTION 1: Document Purpose**

1.1 In order to improve the quality and efficiency of operational services, Pender County

Public Schools (PCS) is issuing a Request for Qualifications (RFQ) for: (1) a Comprehensive Facility Condition Assessment (FCA), (2) Deferred Maintenance Planning from qualified consultant teams and (3) Tagging and Identify all Assets.

- 1.2 The desired outcome will be to document the present condition of educational and administrative facilities; to provide an annual, 5, and 10-year facilities maintenance schedule and plan necessary to repair, restore, and maintain PCS facilities in support of academic instruction.
- 1.3 Issuing Office  
This RFQ is issued by the Pender County Schools Operations Department, which is responsible for the requirements specified in this RFQ and for evaluation of all proposals.
- 1.4 Background Information  
Pender County Schools is seeking a full assessment of (6) campuses. (see Exhibit A).

**SECTION 2: Schedule of Critical Dates**

- 2.1 The following is a proposed schedule of critical dates as expected by PCS. This schedule is subject to change at the sole option of PCS:

**Task Date**

Issuance of RFQ : October 17, 2025

Questions Due from Firms by : October 27, 2025  
PCS's Q&A Released [via email](#): October 31, 2025  
RFQ Due : November 7, 2025 by 12:00 PM

Firm Selection (tentative): January 13, 2026

Contract Signed : Following Board of Education Approval

PCS will make every effort to adhere to the schedule for Firm selection and contract execution. It is subject to adjustments at PCS's sole discretion. Adjustments may be made if further clarification of responses or terms of the contract resulting from this RFQ ("Contract" or "Agreement") is deemed by PCS to be in the best interest of PCS or in the event PCS requires more time to assure the selection of the Firm is in accordance with its policies, rules, and regulations, actual timing needs or other reasons as determined by PCS.

## **SECTION 3: General Information**

### 3.1 Project Overview

#### 3.1.1 Comprehensive Facility Condition Assessment

- a. Complete a comprehensive assessment of educational and administrative facilities owned and operated by PCS, including, but not limited to, those listed on Exhibit A.
- b. Calculate Facility Condition Index (FCI) scores for buildings including FCI score for individual systems.

#### 3.1.2 Deferred Maintenance Planning

- a. Prioritize building systems based on need, observed deficiencies, remaining useful life, and classify each system based on a recommended timeframe for system replacements.
- b. Determine PCS's overall outstanding capital needs and a recommended annual investment plan to address deferred maintenance.
- c. Develop a multi-year capital improvement plan beginning July 1, 2026.
- d. Provide data on critical building systems, life expectancy, and capital investments on PDF and tabled formats on MS Excel spreadsheets.

#### 3.1.3 Assets Inventory

- a. All Assets labeled with QR code and entered into District's Inventory system (TBD)
- b. Information for each asset should be documented (Tag, Type, Building, Location, Expected Life, Expected Replacement, Installed Date, Born Date, Manufacture, Model Number, Serial Number, Voltage, HP, Year Installed, Expected Replacement Cost, other information as needed.) in the inventory system.

### 3.2 General Statement of Responsibility: The Firm is responsible for all supervision, labor, materials, supplies, and equipment to execute all services discussed in this RFQ. Work shall be performed in a professional and timely manner.

### 3.3 Time Frame

3.3.1 The start date shall be no more than 30 days after contract award.

3.3.2 Hours of operation: Monday through Friday 8:00am - 4:30pm. This project may not be conducted outside these hours of operation unless the parties agree otherwise in writing.

### 3.4 Continuous and Diligent Effort: The Firm shall state in writing that the staff and equipment designated for the project shall not be assigned to any other client or project until the project is completed.

3.5 Involvement of PCS's Staff: The primary lead contact person for this project will be [william\\_nelson@pender.k12.nc.us](mailto:william_nelson@pender.k12.nc.us)

### 3.6 Firm Staff:

- 3.6.1 The Firm shall name the Firm's Project Manager to have overall responsibility for the project and communication with PCS through the Facilities Coordinator. The Firm's Project Manager shall be onsite for the entire duration of the project and shall direct all work by the Firm. If the Firm's Project Manager needs to leave the site for any period of time, another competent Manager or Supervisor shall be appointed (with PCS notified in advance).
- 3.6.2 The Firm shall designate the staff that will be involved in the project, including the number of personnel expected for the duration of the project. The Firm shall disclose whether regular staff will be used for the project, or if individuals will be hired locally. The Firm shall describe in detail their screening and training procedures so that PCS may determine the skill level of the individuals being hired and/or being used for the project.
- 3.6.3 The Firm staff must wear identification or some other means that immediately identifies the individual as working for the Firm.
- 3.6.4 No smoking, alcoholic beverages, or loud radios are allowed at the project site.
- 3.6.5 While at any PCS location, Firm's personnel, agents, and subconsultants shall comply with all reasonable requests, standard rules, and regulations of PCS regarding personal and professional conduct, including without limitation any security or privacy requirements, and shall otherwise conduct themselves in a businesslike manner.
- 3.6.6 PCS reserves the right to require the immediate removal or dismissal of any of the Firm's staff if, in PCS's sole judgment and discretion, their presence is not in the best interest of PCS or the project.
- 3.6.7 By executing a Contract pursuant to this RFQ, Firm affirms that it has conducted or will conduct a criminal background check on each employee or Firm that it intends to deploy to perform services under this Agreement and that such individuals have no history that would warrant exclusion from personnel assigned to perform services under this Agreement. Firm agrees to provide PCS copies of background reports for any individuals whose reports reflect any

crimes other than minor traffic offenses prior to deployment of those individuals, and to conduct new background checks and provide reports to PCS upon request, all at Firm's sole expense. In the alternative, Firm may provide PCS signed consents from all Firm employees that allow PCS to obtain background reports. If the alternative is chosen, PCS will issue invoices to the Firm for all costs incurred by PCS to obtain the reports. Firm will reimburse PCS within thirty (30) days after receipt of each invoice. If Firm learns at any time during the term of this Agreement that any of its employees or Firms performing services contemplated by the Parties has been charged with or convicted of a crime other than a minor traffic offense, Firm shall report the same to PCS within two (2) calendar days.

- 3.6.8 Firm agrees to remove any Firm employee or Firm from service under this Agreement upon request of PCS that includes a statement that PCS has a reasonable basis to believe the individual has failed to meet the standards of one or more of PCS's policies or violated any State or federal laws (exclusive of minor traffic violations). Firm agrees, upon PCS's request, to remove from service under this Agreement any employee or Firm if PCS states in such request that the employee's background report or observed or reported conduct on or near PCS's campus gives PCS a reasonable basis to believe that such employee poses a risk of harm to any person or damage to or loss of property.
- 3.7 Coordination of Work with Others: The Firm shall cooperate in coordinating with PCS staff and other Firms to ensure that all are able to perform their assigned tasks.
- 3.8 Access at PCS: PCS shall provide guidance and access to all areas needed to complete the study as required during normal business hours.
- 3.9 Pre-Performance Conference: The successful Firm shall review with PCS the detailed plans for the project far enough in advance of the planned start date so that any potential problems may be corrected early.
- 3.10 Site Cleanliness: The Firm will be responsible for the prompt removal of trash generated by the project at the end of each workday. The Firm is responsible for final site cleanup at the end of the project. If the Firm does not maintain cleanliness to PCS's satisfaction, PCS will arrange to have the site cleaned and will deduct the charges from the amount owed to the Firm.

#### **SECTION 4: Scope of Services**

- 4.1 Facilities Condition Assessment: This contract will require inspections of all

facilities as specified herein by qualified consultant teams. It will produce an accurate analysis and report that identifies visible and discernable (by ways of non-destructive means) components and elements requiring maintenance or other planned action.

The facility conditions survey must focus on the following property elements:

- Exterior Systems – doors, roofs, window systems
- Interior Construction – doors, flooring, walls, visible structural components
- Interior finishes – ceiling, flooring, wall finishes
- Emergency Power
- Fencing
- Fire/Life/Health Safety Systems
- Accessibility – ADA
- Heating, Ventilation and Air Conditioning
- Plumbing
- Electrical and Service Distribution
- Fire Suppression
- Special Construction -athletic fields, courts, gyms, labs, and other site surface structures
- Site Utilities
- Vertical Transportation (Elevators, lifts, etc.)
- Stormwater management and stormwater devices (BMPs)

- 4.2 Corrections – For significant deficiencies, the Firm shall recommend a corrective action with project cost estimate. A significant deficiency is one that violates code, is a life safety threat, or affects building functionality and reliability.

Where appropriate, multiple correction methodologies indicating the range of possible corrective measures and associated costs will be developed by the Firm.

- 4.3 Categorization/Classification/Prioritization of Audit Data

4.3.1 Deficiency Priorities

Each deficiency identified in the field audit shall be prioritized in the following manner:

Priority 1 Currently Critical

Conditions in this category require immediate action to:

- a. Correct a cited safety hazard
- b. Return a facility to operation
- c. Stop accelerated deterioration

#### Priority 2 Potentially Critical

Conditions in this category, if not corrected expeditiously, will become critical within 1-3 years. Situations within this category include:

- a. Intermittent operations
- b. Potential life safety hazards
- c. Rapid deterioration

#### Priority 3 Necessary – Not yet critical

Conditions in this category require attention in 3-5 years to preclude predictable deterioration or potential downtime and the associated damage or higher costs if deferred further.

#### Priority 4 Recommended

Conditions in this category include items that represent a sensible improvement to existing conditions. These are not required for the most basic function of the facility; however, Priority 4 projects will improve overall usability and/or reduce long-term maintenance costs and should be addressed within 5-10 years.

#### Priority 5 Does Not Meet Current Codes/Standards, plant adaptation – “Exempted”

Conditions in this category include items that do not conform to existing codes but are “exempted” in their current condition. No action is required at this time, but should substantial work be undertaken in contiguous areas, certain existing conditions may require correction.

#### Applicable Energy Conservation.

To all levels Deficiencies that, if corrected, would result in significant energy savings or operational cost savings should be identified. Recommended corrective actions should also consider energy and operational cost savings in all priority categories.

#### 4.3.2 Deficiency Categories

Each correction project shall be assigned one of the following categories:

- a. Life-Safety Code Compliance
- b. Building Code Compliance
- c. Accessibility Code Compliance (ADA & Local Standards)
- d. Building Integrity
- e. Functionality
- f. Educational Adequacy
- g. Appearance
- h. Energy
- i. Environmental:
- j. ACBM (asbestos containing building materials)

- k. PCBs (Polychlorinated Biphenyls)
- l. Lead-based paints
- m. CFCs (Chlorofluorocarbons) and HCFCs hydrochlorofluorocarbons
- n. IAQ (indoor air quality)
- o. Water Quality

The above categories represent sample definitions and may be revised to meet requirements of PCS through the initial stages of the assessment process.

#### 4.3.3 Classification

Each deficiency shall be classified by the major property components identified for survey in the field. For example, Site, Exterior Systems, Interior Systems, Interior Finishes, Fire/Life/Health Systems, Accessibility, Heating, Ventilation and Air Conditioning, Plumbing, Special Electrical Systems, Electrical and Service Distribution, Fire Suppression, Special Construction, or Vertical Transportation.

#### 4.4 Targeting and Benchmarking

The consultant shall provide targeting and benchmarking of facilities and building condition and performance. Benchmarking of the facilities condition index should follow standard industry practices.

#### 4.5 Facility Reinvestment Calculations

Identifying the rate of reinvestment required to maintain components of facilities as they degrade and become unusable is critical to long-range planning and funding. The consultant shall analyze and model the rates of degradation of each facility, and report on the required reinvestment rate on an annual basis to replace components as such components become dysfunctional. Elements of the analysis will include:

- a. Identification of the approximate replacement cost of each building and building component.
- b. Rates of standard degradation of each component and the cost to replace/refurbish that component.
- c. Current condition of each building component.
- d. The ability to analyze multi-year outlooks and various combinations of building type reinvestment rates.

The consultant shall generate a 10-year capital investment plan based on the deferred maintenance backlog, capital replacement and plant adaptation. The consultant shall provide analyses and project estimates.

#### 4.6 Deliverables

The consultant shall provide the following deliverables:

1. Copies of Draft Report (for review/comment by PCS) to include:
2. Executive Summary mail
3. Methodology description
4. Summary Reports, with different sorts and queries on data
5. Detailed Building and Deficiency Data
6. Appendices of JCPS data used
7. Copies of Final Report (contents similar to Draft Report)
8. Database of deficiencies. Deficiencies should be able to be sorted by building or asset category (HVAC, Plumbing, Electrical, etc.)
9. Software Media with installation/setup instructions as needed by staff.
10. User Manuals or Help Documentation
11. Proposed project Schedule
12. All Assets labeled with QR code and entered into District's Inventory system (FMX)
13. Schedule of Values for Partial Progress Payments
14. Meeting Minutes

Firm and PCS shall agree before reporting on organization and categorization of deficiencies.

#### **SECTION 5: Firm Qualifications**

- 5.1 The Firm is required to be qualified to provide architectural and/or engineering services in North Carolina consistent with the scope of the project outlined above.
- 5.2 References: The Firm is required to submit a list of Facility Condition Assessment and Deferred Maintenance Planning projects of similar scope and complexity completed within the past five years. The Firm must submit the name, telephone number, and email of at least three (3) qualified contacts to comment on the performance of the Firm.
- 5.3 The Firm shall provide (1) sample of prior deliverables completed for a project of similar scope and complexity completed within the past five years.

#### **SECTION 6: Instructions for Submission**

- 6.1 Proposal: Pender County Schools (PCS) asks that the Firm include the following in its response to this request for qualifications:
  - 6.1.1 The Firm shall detail its approach to the project according to the Scope of Services outlined in this RFQ.
  - 6.1.2 The Firm shall detail its approach to completing deliverables and

if they are able to provide all of the deliverables requested noted under section 4.6

- 6.1.3 The Firm is required to submit a list of Facility Condition Assessment and Deferred Maintenance Planning projects of similar scope and complexity completed within the past five years. The Firm must submit the name, telephone number, and email of at least three (3) qualified contacts to comment on the performance of the Firm.
- 6.1.4 The Firm shall provide (1) sample of prior deliverables completed for a project of similar scope and complexity completed within the past five years.
- 6.1.5 The Firm shall respond to every requirement contained within this RFQ.
- 6.1.6 The Firm shall finish this request for qualifications completely without reference to other documents.
- 6.1.7 The Firm shall have the proposal signed by an authorized corporate officer.
- 6.1.8 The Firm shall provide a list of applicable hourly rates. **Please submit a comprehensive price for these services.**
- 6.1.9 The proposal shall be submitted electronically via email to William Nelson, [william\\_nelson@pender.k12.nc.us](mailto:william_nelson@pender.k12.nc.us) subject line must reference **RFQ**
- 6.1.10 The proposal shall be submitted by 12:00 PM on November 7, 2025.
- 6.2 Costs of Developing Document: The Firm is responsible for all costs associated with developing the proposal, including costs associated with arranging a tour of the facilities.
- 6.3 Billing: The Firm shall detail in its response its proposed billing schedule.
- 6.4 Responses to the Agreement Conditions: The Firm shall include a positive statement affirming that the terms of the agreement detailed in the RFQ are understood and that any subsequent agreement will incorporate the RFQ by reference.
- 6.5 Inquiries about the RFQ: Firms may request clarifications of the RFQ from William Nelson. For clarification purposes, the Firm shall specify the exact paragraph numbers and sections in their inquiry. From the issue

date of this RFQ until a Firm is selected and a contract awarded, Firms are not allowed to communicate about the subject matter of this RFQ with any Pender County Schools staff, faculty or members of the Board of Education other than the individual indicated herein.

## **SECTION 7: Conditions of the Request for Qualifications**

- 7.1 Firm's Responsibility for Assessment of the Extent and Difficulty of the Work. All and any maps and plans provided are the best available, but may not necessarily reflect current conditions in the designated spaces, and are subject to change. Collection calculations provided are PCS's best estimates. The Firm has full responsibility for properly estimating the difficulties and the cost of performing services required by the RFQ and will not be excused from that responsibility, nor will PCS pay any extra charges associated with the Firm's failure to become acquainted with all information concerning the services to be performed.
- 7.2 Compliance: By submitting a request for qualifications, the Firm acknowledges complete understanding of and willingness to comply with all of the specifications and conditions contained within the RFQ and its attachments.
- 7.3 Right to Reject Proposals: PCS reserves the right to reject any or all proposals. PCS reserves the right to check references provided and make other investigations into the qualifications of Firms. PCS reserves the right to accept the entire proposal, the proposal for the main body of the work, or the proposal(s) for any additional or optional services, and to waive any formalities.

## **SECTION 8: Conditions of Agreement**

- 8.1 Subsequent Agreement: The conditions set forth in this section along with the proposal shall be the basis for a subsequent agreement between the parties.
- 8.2 Protection of PCS Property: The Firm shall be responsible for maintaining a reasonable level of care and protection to ensure that PCS's premises and property shall be protected from theft, vandalism, accident, damage, or otherwise, while the Firm is using such property or on such premises.
  - 8.2.1 The Firm shall make every effort to protect carpets, floors, walls, and elevator doors.
  - 8.2.2 The Firm shall not permanently disengage or dismantle anything permanently attached to PCS property without prior written permission.
  - 8.2.3 The Firm shall not disconnect any utilities without prior written permission.

- 8.3 Firm's Insurance: Firm shall maintain, at a minimum, insurance in the amounts and coverage described below and shall otherwise comply with the requirements described below. Firm shall provide evidence of such insurance prior to the delivery of any goods or services to PCS.

The Firm will have on file in the Purchasing Department current certificates of insurance (COI) issued by companies authorized to do business in North Carolina and acceptable to PCS before performing any work at PCS. Certificates must identify PCS as additional insured under all liability coverages.”

- COMMERCIAL GENERAL LIABILITY – Standard 1986 ISO (Insurance Services Office) Occurrence Form
  - o Bodily Injury/Property Damage:
    - \$1,000,000 Each Occurrence/\$2,000,000 Aggregate
    - \$1,000,000 Products/Completed Operations Aggregate
    - \$1,000,000 Sexual Molestation Each Occurrence
  - o Personal and Advertising Injury:
    - \$1,000,000 per Occurrence
  - o Waiver of Subrogation: To the extent permitted by law, all policies will include provisions or endorsements waiving subrogation in favor of JCPS.
  - o The policies will have neither a sublimit nor an exclusion for sexual abuse and molestation.
  
- COMPREHENSIVE AUTOMOBILE LIABILITY – Including Owned, Non Owned and Hired Vehicles
  - o BODILY INJURY/PROPERTY DAMAGE:
    - \$1,000,000 CSL (Combined Single Limit) per Accident
  
- WORKER'S COMPENSATION:
  - o North Carolina Statutory Coverage
  
  - o Employer's Liability:
    - \$500,000 Each Accident
    - \$500,000 Disease Policy Limit
    - \$500,000 Disease Each Employee
  
- UMBRELLA/EXCESS – (if appropriate) - \$3,000,000 limit of liability each occurrence and aggregate
  
- PROFESSIONAL LIABILITY ((if appropriate) - \$1,000,000 per person

- PCS must be shown as Additional Insured as respects liability.
  - All insurance carriers must be rated A-, VII or better in the **Best Guide**.
  - Thirty (30) days' **Notice of Cancellation** on all policies is required.
  - Please provide a brief description of the service you provide and anticipated dates on campus.
  - Exclusions other than those found on the ISO Policy Form must be indicated.
  - Certificate must be signed by Agent/Broker.
- 8.4 Failure to Perform: If the Firm does not perform the work contractually agreed to, the Firm will be in breach of contract. As a result, monies will be withheld and/or the contract with the Firm may be canceled by PCS.
- 8.5 Limitation of Liability: Each Party may be excused for failure to perform obligations if such failure is caused by any reason beyond that Party's reasonable control, or by reason of any of the following circumstances: acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), epidemics, pandemics, governmental order, embargo, labor dispute, strike, lockout or interruption or failure of electricity or telephone service. Firm shall take reasonable steps to minimize delay or damages caused by foreseeable events and will notify PCS of the likelihood or actual occurrence of such an event.
- 8.6 Firm Liability: Damage may occur to PCS property because the Firm or its employees acted with neglect. Without limiting PCS's rights and remedies at law or in equity, Pender County Schools reserves the right to charge Firm for any loss, expense (including reasonable attorneys' fees) or damage sustained as a result of Firm's failure to deliver conforming goods or services or other breach of contract, including without limitation expenses incurred in connection with PCS's purchase of substitute goods or services, incidental damages and consequential damages resulting from Firm's failure or breach.
- 8.7 Indemnification: Firm (an "Indemnitor") shall, to the extent permitted by law, indemnify, defend and save harmless PCS staff and its officers, agents and employees ("Indemnitees") from any and all losses, damages, claims, actions and suits that arise out of Firm's negligence or intentional acts or omissions in any way connected with activities under this Agreement,

including all costs, expenses, and attorney's fees incurred by an Indemnitee.

- 8.8 Accident Reports: Firm will provide copies of any accident reports related to the performance of the project to the Pender County Schools Director of Safety.
- 8.9 Independent Firm: Each party shall be considered an independent Firm in relation to the other and shall not be construed to be an agent or representative of the other party; therefore, neither party shall have any liability for the acts or omissions of the other party. In addition, neither party, nor any of its employees, agents, or Firms, shall be deemed to be employees or agents of the other party. Neither party, nor any of each party's employees, agents or Firms, shall be entitled to compensation for services, workers compensation, or employee benefits from the other party by virtue of this Agreement.
- 8.10 Compliance with Laws: Firm represents and warrants that, in the services to be delivered pursuant hereto, Firm has complied and will comply with all applicable federal, state, and municipal laws and regulations, including, without limitation, (a) all such laws and regulations pertaining to health, safety and environmental standards, (b) all such laws and regulations pertaining to design, manufacture, testing, labeling, and transportation of goods, and (c) all such laws and regulations pertaining to labor, affirmative action, nondiscrimination, and equal opportunity, including without limitation the requirements of the Fair Labor Standards Act of 1938, and the rules and regulations of the Secretary of Labor issued pursuant to Executive Order Number 11246 of September 24, 1965, the Civil Rights Act of 1964, as amended, the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990, the Genetic Information Nondiscrimination Act of 2008, all as amended.
- 8.11 Labor Agreements: The Firm is responsible for negotiating all labor agreements relating to the project. No strike or other labor dispute or shortage shall mitigate Firm's obligations hereunder.
- 8.12 Compliance with Applicable Rules and Regulations: The Firm should keep itself informed of, comply with, and be familiar with all relevant laws and ordinances, and be responsible for any damages arising from failure to comply with the same.
- 8.13 Non-Assignability: This Agreement may not be assigned in whole or in part by the Firm without prior written consent of JCPS. The Firm may only enter into subcontracts with JCPS's prior written permission, and the existence of any subcontracts shall not release or reduce the Firm's liability for any breach of contract.
- 8.14 Severability: In case any one or more of the provisions contained in this agreement shall for any reason be held to be invalid, illegal, or

unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

- 8.15 Waiver: No waiver by PCS of any provision of the contract or any breach hereunder shall be deemed a waiver of any other provision or subsequent breach, nor shall any such waiver constitute a continuing waiver. Delay or failure of PCS to insist on strict performance of any provision of the contract or to exercise any rights or remedies hereunder shall not be deemed a waiver.
- 8.16 Fees, Permits, Licenses. The Firm is responsible for acquiring any permits or licenses, as necessary.
- 8.17 Governing Law and Forum. All matters arising under or related to the contract shall be construed and enforced in accordance with the laws of the State of North Carolina, without regard to conflicts of law rules. Any claim or cause of action based on this Agreement or a breach thereof shall be brought and maintained in a state court in Pender County, North Carolina or a federal court in North Carolina, which shall have exclusive jurisdiction thereof. Firm consents to the exclusive personal jurisdiction and venue of the courts described above.
- 8.18 Entire Agreement. The agreement and incorporated documents comprise the entire understanding between PCS and the Firm, and that this understanding can only be changed in a document signed by both parties.
- 8.19 Survival. Each provision of this Agreement which, by its terms or nature can be fully performed only after expiration or termination of this Agreement will survive such expiration or termination.
- 8.20 Records. Firm shall maintain accounts, records, documents, and other evidence relating to the incurrence of costs associated with this Agreement. The system of accounts employed by Firm shall be kept in accordance with generally accepted accounting principles. All supporting documentation shall be preserved for a period of four years following the termination or expiration of this Agreement.
- 8.21 Audit. PCS may monitor operations under this Agreement, including conducting site visits to observe program operations and review program finances. Firm shall permit PCS's auditors and independent auditors' access to its records and financial statements as necessary to conduct audits, including on-site audits, at any time during the term of this Agreement, and within four years after termination or expiration.
- 8.22 Publications, Ownership, and Copyright. Any tangible work product and tangible expression ("Work") created by

Firm pursuant to this Agreement, at whatever state of completion, shall be a "work for hire" as defined in 17 USC 101, and owned by PCS. By execution of this Agreement, Firm assigns all of Firm's right, title and interest [including copyright(s)] in and to the Work to PCS. Firm agrees to execute any other documents deemed necessary by PCS to evidence its ownership of the copyright(s) and all other proprietary rights in and to the Work, including, but not limited to, a specific assignment of all of Firm's interests in the Work. The physical Work is and shall be owned by PCS, and it may use the Work in any manner. Firm waives all future rights in and to the Work, including the rights of attribution and integrity. Notwithstanding the foregoing, PCS hereby grants to Firm a non exclusive, non-royalty bearing license to use the Work in its business; provided, however, Firm may neither sublicense nor assign any of its rights hereunder.

8.23 (a) Data Management and Confidentiality. If PCS provides the Firm with "personal information" as that term is defined in N.C.G.S. 75-61 and N.C.G.S. 14-113.20(b) or any other confidential or sensitive information, including, but not limited to, "personally identifiable information" from student education records as defined by the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g) and applicable regulations (34 CFR 99.3), Firm hereby certifies that collection of this information from Pender County Schools is necessary for the performance of Firm's duties and responsibilities on behalf of PCS under this Agreement. Firm further certifies that it shall maintain the confidential status of any social security number information, and that it shall not re-disclose personally identifiable information as directed by FERPA or by other State and federal laws. Failure to abide by commercially reasonable security measures and legal disclosure restrictions may result in the interruption, suspension and/or immediate termination (all at PCS's sole discretion) of this Agreement and any contractual relationship with Firm for a period of at least five (5) years from date of violation. If Firm experiences a security breach, as defined in N.C.G.S. 75-61(14), relating to this information, in addition to the Firm's responsibilities under the NC Identity Theft Protection Act, Firm shall immediately notify PCS with the information listed in N.C.G.S. 75-65(d) (1-4) and shall fully cooperate with Pender County Schools. Firm shall indemnify PCS for any costs or expenses related to Firm's breach of confidentiality or other failure of its responsibilities to protect confidential information, including, but not limited to, the cost of notification of affected persons as required by law. To the extent that performance of this Agreement requires or allows Firm to obtain, store, utilize, process and transmit certain personal information about PCS's students, guests, faculty and/or staff or other information about PCS's operations within and beyond PCS's firewall, if at all, Firm shall do so in accordance with (i) all applicable laws, (ii) the current Payment Card Industry Data Security Standards ("PCI Standards"), and PCS's policies, including, but not limited to, PCS's policy on information classification and handling.

(b) Confidentiality. Each of the parties hereto shall treat and keep any and all of the "Confidential Information" as confidential, with at least the same degree of care as it accords to its own confidential information, but in no event less than a reasonable degree of care. Each party shall disclose the Confidential Information only to its employees, partners, agents or its legal or other advisors, provided that they have: (A) each been informed of the confidential, proprietary and secret nature of the Confidential Information, or are subject to a binding, preexisting obligation of confidentiality no less stringent than the requirements of this Agreement and (B) a demonstrable need to review such Confidential Information. "Confidential Information" means all non-public information that is marked as "confidential" or "proprietary" or that otherwise should be understood by a reasonable person to be confidential in nature that is obtained by one party (the "Receiving Party") from the other party (the "Disclosing Party"). All terms of this Agreement and all information provided pursuant to this Agreement are considered Confidential Information. Notwithstanding the foregoing, Confidential Information shall not include any information that was or is: (a) known to the Receiving Party prior to disclosure by the Disclosing Party; (b) as of the time of its disclosure, or thereafter becomes, part of the public domain through a source other than the Receiving Party; (c) made known to the Receiving Party by a third person who is not subject to any confidentiality obligation known to Receiving Party and such third party does not impose any confidentiality obligation on the Receiving Party with respect to such information; (d) required to be disclosed pursuant to governmental authority, professional obligation, law, decree, regulation, subpoena or court order; or (e) independently developed by the Receiving Party. If disclosure is required pursuant to subsection (d) above, the Receiving Party shall (other than in connection with routine supervisory examinations by regulatory authorities with jurisdiction and without breaching any legal or regulatory requirement) provide prior written notice thereof to allow the Disclosing Party to seek a protective order or other appropriate relief. Upon the request of the Disclosing Party, the Receiving Party shall return or destroy any and all of the Confidential Information except for (a) copies retained in work paper files retained to comply with a party's professional or legal obligations and (b) such Confidential Information retained in accordance with the Receiving Party's normal data back-up procedures.

- 8.24 Interpretation. In this RFQ and the resulting Agreement, unless otherwise specified, (a) singular words include the plural and plural words include the singular; (b) words which import a number of constituent parts, things or elements, shall be construed as referring separately to each constituent part, thing or element thereof, as well as to all of such constituent parts, things or elements as a whole; (c) words importing any gender include the other genders; (d) references to any person or entity include such person's or entity's successors and assigns to the extent permitted herein; (e) the word "successors," when it refers to an individual, includes the heirs, devisees, legatees, executors, administrators and personal representatives

of such individual; (f) references to any statute or other law include all rules, regulations and orders adopted or made thereunder and all statutes or other laws amending, consolidating or replacing the statute or law to which reference is made; (g) references to any agreement or other document include all subsequent amendments or other modifications thereof entered into in accordance with the provisions thereof; (h) the words "approve," "consent," or "agree," and any derivations thereof or words of similar import, mean the prior written approval, consent or agreement of the Party holding the right to approve, consent or agree in such Party's sole discretion; (i) the words "include" and "including," and words of similar import, shall be deemed to be followed by the words "without limitation;" (j) the words "hereto," "herein" and "hereunder," and words of similar import, refer to this Agreement in its entirety; (k) the Attachments, Addenda, Schedules and Exhibits hereto, if any, are part of this Agreement and are incorporated herein by reference; (l) the words "article," "paragraph," "section," "attachment," "addendum," "schedule" or "exhibit" refer to the indicated articles, paragraphs, sections, attachments, addenda, schedules and exhibits of and to this RFQ and any resulting Agreement; (m) headings of articles, paragraphs, sections, attachments, addenda, schedules, and exhibits are inserted as a matter of convenience and shall not affect the construction of this RFQ or the resulting Agreement; (n) references to sections or paragraphs shall, as applicable, include all subsections and subparagraphs thereof; (o) no inference in favor of or against any Party shall be drawn from the fact that such Party or its attorneys drafted any portion hereof; and (p) in the event of any conflict between the provisions of this RFQ, the resulting Agreement and any Attachments, Addenda, Schedules or Exhibits to either of them, the provisions of the resulting Agreement shall govern over this RFQ, and both the resulting Agreement and this RFQ shall govern over any Attachments, Addenda, Schedules or Exhibits to either of them.

### **PCS Purchasing Department Ethics Policy and Standards of Conduct**

All purchasing department employees conducting business transactions on the behalf of the Pender County Schools hold positions of public trust which dictates that their actions be governed by the highest standards of personal and business conduct. Each employee must exhibit the highest standards of honesty, integrity, and fairness when engaging in any activity concerning the school system, particularly in relationships with vendors, suppliers, the public and other employees.

Employees shall perform their jobs in a competent and ethical manner without violating the public trust or applicable law, policies, and regulations.

#### **Conflict of Interest:**

The following acts are deemed by state law and/or the Board of Education to be in conflict with the interests of the Pender County Schools.

1. An employee shall not, for personal financial gain, solicit or sell or have any pecuniary (financial) interest in the supplying of any goods, wares, merchandise materials, supplies, services, or equipment to the Pender County Schools System. Approved extended employment shall not be a violation of this.
2. An employee shall not, for personal financial gain, solicit or sell or have any pecuniary (financial) interest in the sale of any goods, wares, merchandise, materials, supplies, equipment, or services to students or employees of this school system at school, on school premises, or any Pender County Schools facility.
3. An employee shall not act as an agent for any manufacturer, merchant, dealer, publisher, or author seeking to sell any goods, wares, merchandise, materials, supplies, services, or equipment to Pender County Schools.
4. An employee shall not receive or accept any gift, reward, gratuity, or other compensation from any manufacturer, merchant, dealer, publisher, or author for influencing or recommending to the school system or any school that it use a seller's goods, wares, merchandise, materials, supplies, services, or equipment.

An employee shall not use for personal financial gain, any school facilities, supplies, equipment, or student labor (student labor during regular school hours), in the manufacture, creation, or repair of any goods, wares, or merchandise for sale, or for the providing of services to the general public. However, this provision shall not prohibit the renting of school facilities to school employees in accordance with Community Schools' policies and regulations. 6. Except as allowed by state law (N.C.G.S. §§14-234, 143-58.1), no employee shall use the powers, policies, and procedures of the State's Division of Purchase and Contract or the school system's Purchasing Division to purchase or procure any property or service for private use or benefit.

**Nepotism:**

No employee shall approve any contract with or purchase any goods or services from any immediate family member without disclosure to and approval of the Chief Finance Officer. In addition, no employee shall recommend the employment of or directly supervise or evaluate any immediate family member without disclosure to and approval of the Assistant Superintendent of Human Resources. Immediate family includes employee's spouse, parents, children, stepchildren, brothers, sisters, mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law, and sisters-in-law. In addition, for the purpose of this regulation, anyone living in the same household with the employee is considered a member of the immediate family. , internal auditors, external audit firm (contracted to perform the annual audit), or any persons authorized by the Superintendent or the Finance Officer to receive it.

**Gifts to Employees:**

School system employees shall not accept any gifts except token gifts of insubstantial value. School system employees shall not accept any gift, reward, gratuity, or other compensation from any manufacturer, merchant, dealer, publisher, or author for the purpose of influencing or recommending to the school system or any school the use of a seller's goods, wares, merchandise, materials, supplies, services, or equipment.

## **PENDER COUNTY SCHOOLS BID PROTEST PROCEDURE**

### **PURPOSE**

To insure fairness and to promote open competition, Pender County Schools shall be consistent in responding to an offeror's protest over contract awards..

### **PROCEDURE**

Any party which is a prospective bidder, offeror, or Firm that may be aggrieved by the solicitation must submit a written protest within five (5) calendar days prior to the opening of the Request for Bid, Request for Proposal.

Any party which is an actual bidder, offeror, or Firm that may be aggrieved by the award of a contract, must submit a written protest within five (5) days of Pender County Schools transmitting via fax or email the announcement of intent to award.

The protest must be addressed to the Director of Purchasing and must include all the following information:

1. Name, address, telephone number, facsimile number and e-mail of the protester.
2. Signature of the protester or authorized agent.
3. The bid name and number.
4. A detailed statement of the legal and factual grounds of protest including copies of relevant documents.
5. Any supporting exhibits, evidence, or documents to substantiate any claims.
6. All information establishing that the protester is an interested party for the purpose of filing a protest.
7. The form of relief requested

After careful consideration of all relevant information the Director of Purchasing shall make a written decision.

Any and all costs incurred by a protesting party in connection with a protest shall be the sole responsibility of the protesting party.

