


<p>The Charlotte-Mecklenburg BOE</p>  <p>4421 Stuart Andrew Blvd. Charlotte NC 28217</p>	<p>INVITATION FOR BIDS NO. 163-06262025KidCushions-AS</p> <p>Bids will be electronically opened: Thursday, June 26, 2025 @2:00pm EST (Prevailing Local Time)</p>
	<p>Contract Type: Agency Specific</p>
	<p>Commodity: Kid Cushions (Playground Mulch)</p>
<p>Refer <u>ALL</u> Inquiries to: Amy Shire 980-343-6615</p>	<p>Using Agency Name: CMBE</p>
<p>E-Mail: amym.shire@cms.k12.nc.us</p>	<p>CMBOE Requisition No. N/A</p>
<p>(See page 2 for mailing instructions.)</p>	
<p>Website: www.cms.k12.nc.us</p>	

NOTICE TO BIDDERS

ONLY Electronic responses will be accepted for this solicitation. You must register to submit a bid. Register as soon as possible! It may take 3 to 5 days for your account to become active. NO MAILED, COURIERED, FAXED, OR EMAIL SUBMISSIONS WILL BE ACCEPTED. Bids are subject to rejection unless submitted on this form. Failure to submit a bid in strict accordance with these instructions shall constitute sufficient cause to reject a Vendor's bid(s). See BID SUBMITTING INSTRUCTIONS: on page 2.

EXECUTION

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

In compliance with this Invitation for Bids, and subject to all the conditions herein, the undersigned offers and agrees to furnish and deliver any or all items upon which prices are bid, at the prices set opposite each item within the time specified herein. By executing this bid, I certify that this bid is made without prior understanding, agreement, or connection with any firm, corporation, or person submitting a bid for the same commodity, and is in all respects fair and without collusion or fraud. Under penalty of perjury, the undersigned offeror certifies that this bid has not been arrived at collusively or otherwise in violation of Federal or North Carolina law.

Failure to execute/sign bid prior to submittal shall render bid invalid. Late bids are not acceptable.

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

***Vendor has two "signing" options in submitting an electronic bid submission: 1. You may apply a wet signature, scan, and then upload this page as an attachment for submission through NC Bids, or 2. You may apply a digital/electronic signature in the designated box, scan and then upload as an attachment along with its bid.**

- **Initial Term:** One (1) year from date of contract award.
- **Renewal Options:** Up to two (2) additional one-year renewals.
- **Total Potential Term:** Three (3) years.
- All renewals are contingent on satisfactory performance, mutual agreement, and annual appropriations by the North Carolina General Assembly.
- Offer valid for 365 days from date of opening unless otherwise stated here:days (See Instruction to Bidders, Item 5). Prompt Payment Discount: _____ % _____ days (See Instructions to Bidders, Item 6).

ACCEPTANCE OF BID

If any or all parts of this bid are accepted, an authorized representative of The Charlotte-Mecklenburg Board of Education shall affix their signature hereto and this document and the provisions of the Instructions to Bidders, special terms and conditions specific to this Invitation for Bids, the specifications, and The Charlotte-Mecklenburg Board of Education Standard Terms and Conditions shall then constitute the written agreement between the parties. A copy of this acceptance will be forwarded to the successful bidder(s).

FOR The Charlotte Mecklenburg Board of Education USE ONLY

Offer accepted and contract awarded this ____ day of _____, 20____, as indicated on attached certification,

By _____ (Authorized representative of CMBE).

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In an effort to support the sustainability efforts of the State of North Carolina we solicit your cooperation in this effort.

It is desirable that all responses meet the following requirements:

- All copies are printed **single sided**.
- All submittals and copies are printed on **recycled paper with a minimum post-consumer content of 30%** and indicate this information accordingly on the response.
- Unless absolutely necessary, all bids and copies should **minimize or eliminate use of non-recyclable or non reusable materials** such as plastic report covers, plastic dividers, vinyl sleeves, and GBC binding. Three-ringed binders, glued materials, paper clips, and staples are acceptable.
- Materials should be submitted in a format which allows for **easy removal and recycling** of paper materials.

BID SUBMITTING INSTRUCTIONS: All bid responses shall be submitted electronically via the North Carolina Business Invitation Delivery System (NC BIDS). **NO MAILED OR EMAIL SUBMISSIONS WILL BE ACCEPTED. You must be registered with NC's eVP to submit a bid. Register as soon as possible! It may take 3 to 5 days for your account to become active.** Please go to this page to register <https://eprocurement.nc.gov/training/vendor-training>. For additional information, please view the following link: NC BIDS FAQs for Vendors <https://ncadmin.nc.gov/nc-bids-faqs-vendors> or email vendor@nc.gov. Once you have registered and have your login and password set up, go to <https://www.ips.state.nc.us/ips/BidNumberSearch.aspx>, key in **163-06262025KidCushions-AS**, click Search, click eBid, key in your login and password. Follow the instructions in the site to upload your bid. Failure to submit a bid in strict accordance with these instructions shall constitute sufficient cause to reject a Vendor's bid(s).

PUBLIC BID OPENING: Since bid submissions will be opened electronically when they are released to the buyer by the State of North Carolina's software, the public bid opening (reading of the names of the companies submitting bids) will be facilitated either by a conference call or by online meeting software. Should you wish to join the public bid opening, contact the buyer at the email listed on the first page of the bid no later than 9 am the day of the bid opening. If you do not receive a confirmation within the hour, please phone the buyer.

TABULATIONS: Tabulations are posted on the Interactive Purchasing System (IPS) and can be accessed online at www.ips.state.nc.us. If the tabulations are not available on the IPS system, or additional award information is needed that is not accessible on the IPS system, you may contact the purchaser listed on the first page of this document to obtain bid award details.

TRANSPORTATION CHARGES: FOB destination, Mecklenburg County NC, with all transportation charges prepaid and included in the quoted price.

AWARD CRITERIA: The right is reserved to award this contract to a single overall bidder on all items, or to make awards on the basis of individual items or groups of items, whichever shall be considered by The Charlotte-Mecklenburg Board of Education to be most advantageous or to constitute its best interest. Bidders should show unit prices, but are requested also to offer a lump sum price. The right is reserved by The-Charlotte Mecklenburg Board of Education to reject any or all quotes/bids.

BID EVALUATION: Bids are requested on the items and/or equipment as hereinafter specified or like items similar in design, function and performance. The Charlotte-Mecklenburg Board of Education reserves the right to reject any bid on the basis of function, compatibility with user requirements of utility as well as costs. Bidder(s) are cautioned that any/all information furnished or not furnished on this bid may be used as a factor in determining the award of this contract.

DELIVERY: The successful bidder will complete delivery beginning July 01,2025 thru June 30,2026 however may go as late as Spring 2023. (an average of 4-6 truckloads per week) after receipt of purchase order, unless otherwise stated here: _____: Delivery will be made from _____ (City & State). The Charlotte-Mecklenburg Board of Education reserves the right to consider the delivery time offered as a factor in the award of contract.

E-PROCUREMENT

ATTENTION: This contract is not included in e-procurement. Paragraphs #18 and #19 of the attached Charlotte-Mecklenburg Board of Education General Contract Terms and Conditions do NOT apply.

FIRM BID: Prices and any other entry made hereon by the bidder shall be considered firm and not subject to change or withdrawal.

INDEFINITE ORDER QUANTITY: Bidders are informed that this quote/bid is for an estimated quantity of goods. No guarantees in order quantities exist until bidder receives a purchase order from The Charlotte-Mecklenburg Board of Education. The quantities listed in this bid/quote are for estimation and planning purposes only. The listed quantities are subject to change, with no guaranteed minimum order implied by this request for quote/bid. The pricing reflected in quotes/bids are considered valid for the period shown under "execution" section of this quote/bid. The Charlotte-Mecklenburg Board of Education will

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procure certain goods through the term (term contract period) of this bid/quote only upon actual award. The Charlotte Mecklenburg Board of Education conveys to bidders that purchases will be made as a matter of convenience (convenience contract) to The Charlotte-Mecklenburg Board of Education. Award of items to certain vendors pertaining to this bid/quote do not guarantee purchase of stated quantities.

PAYMENT TERMS: Payment terms are Net not later than 30 days after receipt of correct invoice or acceptance of goods, whichever is later. The Charlotte-Mecklenburg Board of Education is responsible for all payments to the contractor under the contract. Payment by Charlotte-Mecklenburg Board of Education may be made by procurement card and it shall be accepted by the contractor for payment if the contractor accepts that card (American Express, MasterCard, Visa, etc.) from other customers. If payment is made by procurement card, then payment may be processed immediately by the contractor.

SUITABILITY FOR INTENDED USE: Bidders are requested to offer only comparable equipment which will provide the equivalent capabilities, features and diversity called for herein. The Charlotte-Mecklenburg Board of Education reserves the right to evaluate all proposals for suitability for the required use and to award the one best meeting requirements and thought to be in The Charlotte-Mecklenburg Board of Education's best interest.

WARRANTY: Bidder guarantees proposed product to be free from any and all defects in material and workmanship and warrants same for a period of one year from date of installation. Such warranty to cover the cost of all defective parts replacement, labor freight, and technicians travel at no additional cost to The Charlotte-Mecklenburg Board of Education.

ALL BID/QUOTES: submitted should be as closely sized, equipped, etc. to the desired specifications. Any exceptions to the specifications will be evaluated based on the best interest of The Charlotte-Mecklenburg Board of Education.

BIDDER shall furnish parts which are either permanently labeled or are traceable.

Specifications are based on Original Equipment Manufacturer (OEM specifications-catalog numbers) to establish acceptable standards of quality, performance features, and design required, and are in no way intended to prohibit the bidding of other manufacturers' items of equal material. All furnished parts must meet OEM specifications.

DELIVERY: CMBE will receive deliveries at Building Services 3301 Stafford Drive Charlotte, NC 28208 between the hours of 5:00am-2:30pm. Must coordinate deliveries with CMS Supply Crew Chief.

THE CHARLOTTE-MECKLENBURG BOARD OF EDUCATION

Procurement Statement of Non-Preference

It is the intent of The Charlotte-Mecklenburg Board of Education to procure a product and/or service in the size, quality, and parameters of the following specifications. Sometimes, for facilitation of bidding/quoting procedures only, a certain manufacturer, product, or vendor will be utilized to help streamline this process. However, The Charlotte-Mecklenburg Board of Education invites and encourages all other qualified bidders to submit equivalent bids/quotes. The primary purpose is to ensure that no interested party is excluded or limited from the bidding/quoting process. All bids/quotes are evaluated equally, based on the following criteria:

- Prices offered
- The quality of the articles offered
- The general reputation and performance capabilities of the bidders
- The substantial conformity with the specifications and other conditions set forth in the request for bids/quotes
- The suitability of the articles for the intended use
- The personal or related services needed
- Transportation charges
- The dates of delivery and performance
- Such other factor(s) deemed pertinent or peculiar to the purchase in question which, if controlling, shall be made a matter of record.

2025-2026 Playground Engineered Wood Fiber Specifications

Quantity: 10,000 yards delivered of Engineered Wood Fiber

- Delivery shall be to a CMS site within Mecklenburg County North Carolina
- Delivery anticipated between the months of July 1 2025- June 30, 2026
- Coordination with David Caldwell
- All invoices sent to both: davids.caldwell@cms.k12.nc.us
cms.apinvs@cms.k12.nc.us

David Caldwell

Supply Supervisor
Charlotte Mecklenburg Schools
3301 Stafford Dr.
Charlotte, NC 28208
Tel: 980-343-8618
Cell: 704-622-6992
Fax: 980-343-7046

Sample Bags required for each load

Engineered Wood Fiber must meet specifications below

ASTM F1951-99 for wheelchair and stroller accessibility, and ADA requirement

ASTM F1292-04 for shock absorbency for protection from head injury-also IPEMA Certified

ASTM F2075-04-section 6.5 a purity test for the absence of any metals- also IPEMA Certified

References

List below three (3) references for contracts (past or present) of a similar nature and scope as the project you are quoting:

Name of Firm Agency	Contact Person	Telephone #	Number of Truck loads Purchased	Contract Amount

Pricing

Item	Quantity	Year 1 Price	Year 2 Price	Year 3 Price
Kid Cushions	10,000 yards	\$	\$	\$
Total per Year		\$	\$	\$

All proposed prices must be all-inclusive, covering all associated costs including, but not limited to, materials, delivery, and installation.

No additional charges will be accepted beyond the quoted price."

Pricing for Years 2 and 3 is **optional**, subject to mutual agreement and funding.

Any proposed price increases must be approved in advance.

ACCEPTANCE OF BID

(Charlotte-Mecklenburg Board of Education)

BY: _____ TITLE: _____ DATE: _____

THIS PAGE MUST BE SIGNED AND INCLUDED IN YOUR BID.

Minority, Women, Small Business Enterprise Information

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

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

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

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

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

We, _____ do certify that on the
 _____ (Bidder)
 _____ (Bid Description)
 _____ \$ _____
 (Bid Number) (Dollar Amount of Bid)

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

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

Attach additional sheets if required

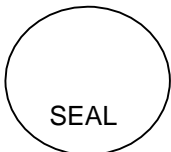
Name and Address	*M/W/SBE Category	Work description	Dollar Value

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

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

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

Date: _____ Name of Authorized Officer: _____



Signature: _____

Title: _____

State of _____, County of _____
 Subscribed and sworn to before me this ___ day of ___ 20____ Notary
 Public _____
 My commission expires _____

THE CHARLOTTE-MECKLENBURG BOARD OF EDUCATION

INSTRUCTIONS TO BIDDERS

1. **READ, REVIEW AND COMPLY:** It shall be the bidder's responsibility to read this entire document, review all enclosures and attachments, and comply with all requirements specified herein.
2. **NOTICE TO BIDDERS:** All bids are subject to the provisions of the Instructions to Bidders, special terms and conditions specific to this Invitation for Bids, the specifications, and The Charlotte-Mecklenburg Board of Education Standard Contract Terms and Conditions. The Charlotte-Mecklenburg Board of Education objects to and will not evaluate or consider any additional terms and conditions submitted with a bidder response. This applies to any language appearing in or attached to the document as part of the offeror's response. **DO NOT ATTACH ANY ADDITIONAL TERMS AND CONDITIONS.** By execution and delivery of this document, the offeror agrees that any additional terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect.
3. **DEFINITIONS:**
BIDDER: Company, firm, corporation, partnership, individual, etc., submitting a response to an Invitation for Bid.
4. **EXECUTION:** Failure to sign under EXECUTION section will render bid invalid.
5. **TIME FOR CONSIDERATION:** Unless otherwise indicated on the first page of this document, the offer shall be valid for 45 days from the date of bid opening. Preference may be given to bids allowing not less than 45 days for consideration and acceptance.
6. **PROMPT PAYMENT DISCOUNTS:** Bidders are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it will not be considered in the award of the contract except as a factor to aid in resolving cases of identical prices.
7. **SPECIFICATIONS:** Any deviation from specifications indicated herein must be clearly pointed out; otherwise, it will be considered that items offered are in strict compliance with these specifications, and bidder will be held responsible therefore. Deviations shall be explained in detail. **The bidder shall not construe this paragraph as inviting deviation or implying that any deviation will be acceptable**
8. **ORDER OF PRECEDENCE:** In cases of conflict between specific provisions in this bid, the order of precedence shall be (1) special terms and conditions specific to this bid, (2) specifications, (3) Charlotte-Mecklenburg Standard Contract Terms and Conditions, and (4) Instructions to Bidders.
9. **INFORMATION AND DESCRIPTIVE LITERATURE:** Bidder is to furnish all information requested and in the spaces provided in this document. Further, if required elsewhere in this bid, each bidder must submit with their bid sketches, descriptive literature and/or complete specifications covering the products offered. Reference to literature submitted with a previous offer will not satisfy this provision. Bids which do not comply with these requirements will be subject to rejection.
10. **RECYCLING AND SOURCE REDUCTION:** It is considered sound purchasing practice to encourage and promote the purchase of products with recycled content to the extent economically practicable, and to purchase items which are reusable, refillable, repairable, more durable, and less toxic to the extent that the purchase or use is practicable and cost-effective. We also encourage and promote using minimal packaging and the use of recycled/recyclable products in the packaging of commodities purchased. However, no sacrifice in quality of packaging will be acceptable. The company remains responsible for providing packaging that will protect the commodity and contain it for its intended use. Companies are strongly urged to bring to the attention of the purchasers at The Charlotte-Mecklenburg Board of Education Procurement Services Office those products or packaging they offer which have recycled content and that are recyclable.
11. **CLARIFICATIONS/INTERPRETATIONS:** Any and all questions regarding this document must be addressed to the purchaser named on the cover sheet of this document. Do not contact the user directly. Any and all revisions to this document shall be made only by written addendum from The Charlotte-Mecklenburg Board of Education. The offeror is cautioned that the requirements of this bid can be altered only by written addendum and that verbal communications from whatever source are of no effect.
12. **ACCEPTANCE AND REJECTION:** The Charlotte-Mecklenburg Board of Education reserves the right to reject any and all bids, to waive any informality in bids and, unless otherwise specified by the bidder, to accept any item in the bid. If either a unit price or extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded.
13. **REFERENCES:** The Charlotte-Mecklenburg Board of Education reserves the right to require a list of users of the exact item offered. The Charlotte-Mecklenburg Board of Education may contact these users to determine acceptability of the bid. Such information may be considered in the evaluation of the bid.

14. **HISTORICALLY UNDERUTILIZED BUSINESSES:** Pursuant to General Statute 143-48 and Executive Order #150, The Charlotte-Mecklenburg Board of Education invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled.
15. **AWARD OF CONTRACT:** As directed by statute, qualified bids will be evaluated and acceptance may be made of the lowest and best bid most advantageous to The Charlotte-Mecklenburg Board of Education as determined upon consideration of such factors as: prices offered; the quality of the articles offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the bid; the suitability of the articles for the intended use; the related services needed; the date or dates of delivery and performance; and such other factors deemed by The Charlotte-Mecklenburg Board of Education to be pertinent or peculiar to the purchase in question. Unless otherwise specified by The Charlotte-Mecklenburg Board of Education or the bidder, The Charlotte-Mecklenburg Board of Education reserves the right to accept any item or group of items on a multi-item bid. In addition, on TERM CONTRACTS, The Charlotte-Mecklenburg Board of Education reserves the right to make partial, progressive or multiple awards: where it is advantageous to award separately by items; or where more than one supplier is needed to provide the contemplated requirements as to quantity, quality, delivery, service, geographical areas; other factors deemed by The Charlotte-Mecklenburg Board of Education to be pertinent or peculiar to the purchase in question.
16. **CONFIDENTIAL INFORMATION:** As provided by statute and rule, The Charlotte-Mecklenburg Board of Education will consider keeping trade secrets which the bidder does not wish disclosed confidential. Each page shall be identified in boldface at the top and bottom as "CONFIDENTIAL" by the bidder. Cost information shall not be deemed confidential. In spite of what is labeled as a trade secret, the determination whether it is or not will be determined by North Carolina law.
17. **TAXES:**
 - **FEDERAL:** All agencies participating in this contract are exempt from Federal Taxes, such as excise and transportation. Exemption forms submitted by the contractor will be executed and returned by the using agency.
 - **OTHER:** Prices offered are not to include any personal property taxes, nor any sales or use tax (or fees) unless required by the North Carolina Department of Revenue.
18. **SAMPLES:** Sample of items, when required, must be furnished as stipulated herein, free of expense, and if not destroyed will, upon request be returned at the bidder's expense. Request for the return of samples must be made within 10 days following date of bid opening. Otherwise the samples will become the property of the Charlotte-Mecklenburg Board of Education. Each individual sample must be labeled with the bidder's name, bid number, and item number. A sample on which an award is made, will be retained until the contract is completed, and then returned, if requested, as specified above.
19. **PROTEST PROCEDURES:** When an Offeror wants to protest a contract award pursuant to this solicitation, they must submit a written request to the Chief Finance Officer of The Charlotte-Mecklenburg Board of Education. This request must be received within ten (10) consecutive calendar days from the date of the contract award, and must contain specific sound reasons and any supporting documentation for the protest. Note: Contract award notices are sent only to those actually awarded contracts, and not to every person or firm responding to this solicitation. Bidders may call the procurement official listed on the first page of this document to obtain a verbal status of contract award. If the Chief Finance Officer can render a decision based on the facts without a meeting, a written response with a decision will be rendered within 10 consecutive calendar days of the receipt of the protest letter. If not, the Chief Finance Officer will schedule a meeting with the protesting party to hear their complaint. This meeting will be held within 10 consecutive calendar days after receipt of the written protest. The Chief Finance Officer will respond to the protesting party in writing with a decision within 10 consecutive calendar days from the date of the protest meeting. All decisions of the Chief Finance Officer shall be the final administrative review.
20. **MISCELLANEOUS:** Masculine pronouns shall be read to include feminine pronouns, and the singular of any word or phrase shall be read to include the plural and vice versa.
21. **ELECTRONIC PROCUREMENT (APPLIES TO ALL CONTRACTS THAT INCLUDE E-PROCUREMENT AND ARE IDENTIFIED AS SUCH IN THE BODY OF THE SOLICITATION DOCUMENT):** Purchasing shall be conducted through the Statewide E-Procurement Service. The State's third party agent shall serve as the Supplier Manager for this E-Procurement Service. The contractor shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of this contract.
22. **THE SUCCESSFUL BIDDER(S) SHALL PAY A TRANSACTION FEE OF 1.75% (.0175) ON THE TOTAL DOLLAR AMOUNT (EXCLUDING SALES TAXES) OF EACH PURCHASE ORDER ISSUED THROUGH THE STATEWIDE E-PROCUREMENT SERVICE** This applies to all purchase orders, regardless of the quantity or dollar amount of the purchase order. The transaction fee shall not be stated or included as a separate item in the proposed contract or invoice. There are no additional fees or charges to the contractor for the services rendered by the Supplier Manager under this contract. Contractor will receive a credit for transaction fees they paid for the purchase of any item(s) if an item(s) is returned through no fault of the contractor. Transaction fees are non-refundable when an item is rejected and returned, or declined, due to the contractor's failure to perform or comply with specifications or requirements of the contract.

23. **READ, REVIEW AND COMPLY:** It shall be the bidder's responsibility to read this entire document, review all enclosures and attachments, and comply with all requirements specified herein.
24. **NOTICE TO BIDDERS:** All bids are subject to the provisions of the Instructions to Bidders, special terms and conditions specific to this Invitation for Bids, the specifications, and The Charlotte-Mecklenburg Board of Education Standard Contract Terms and Conditions. The Charlotte-Mecklenburg Board of Education objects to and will not evaluate or consider any additional terms and conditions submitted with a bidder response. This applies to any language appearing in or attached to the document as part of the offeror's response. **DO NOT ATTACH ANY ADDITIONAL TERMS AND CONDITIONS.** By execution and delivery of this document, the offeror agrees that any additional terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect.
25. **DEFINITIONS:**
BIDDER: Company, firm, corporation, partnership, individual, etc., submitting a response to an Invitation for Bid.
26. **EXECUTION:** Failure to sign under EXECUTION section will render bid invalid.
27. **TIME FOR CONSIDERATION:** Unless otherwise indicated on the first page of this document, the offer shall be valid for 45 days from the date of bid opening. Preference may be given to bids allowing not less than 45 days for consideration and acceptance.
28. **PROMPT PAYMENT DISCOUNTS:** Bidders are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it will not be considered in the award of the contract except as a factor to aid in resolving cases of identical prices.
29. **SPECIFICATIONS:** Any deviation from specifications indicated herein must be clearly pointed out; otherwise, it will be considered that items offered are in strict compliance with these specifications, and bidder will be held responsible therefore. Deviations shall be explained in detail. **The bidder shall not construe this paragraph as inviting deviation or implying that any deviation will be acceptable**
30. **ORDER OF PRECEDENCE:** In cases of conflict between specific provisions in this bid, the order of precedence shall be (1) special terms and conditions specific to this bid, (2) specifications, (3) Charlotte-Mecklenburg Standard Contract Terms and Conditions, and (4) Instructions to Bidders.
31. **INFORMATION AND DESCRIPTIVE LITERATURE:** Bidder is to furnish all information requested and in the spaces provided in this document. Further, if required elsewhere in this bid, each bidder must submit with their bid sketches, descriptive literature and/or complete specifications covering the products offered. Reference to literature submitted with a previous offer will not satisfy this provision. Bids which do not comply with these requirements will be subject to rejection.
32. **RECYCLING AND SOURCE REDUCTION:** It is considered sound purchasing practice to encourage and promote the purchase of products with recycled content to the extent economically practicable, and to purchase items which are reusable, refillable, repairable, more durable, and less toxic to the extent that the purchase or use is practicable and cost-effective. We also encourage and promote using minimal packaging and the use of recycled/recyclable products in the packaging of commodities purchased. However, no sacrifice in quality of packaging will be acceptable. The company remains responsible for providing packaging that will protect the commodity and contain it for its intended use. Companies are strongly urged to bring to the attention of the purchasers at The Charlotte-Mecklenburg Board of Education Procurement Services Office those products or packaging they offer which have recycled content and that are recyclable.
33. **CLARIFICATIONS/INTERPRETATIONS:** Any and all questions regarding this document must be addressed to the purchaser named on the cover sheet of this document. Do not contact the user directly. Any and all revisions to this document shall be made only by written addendum from The Charlotte-Mecklenburg Board of Education. The offeror is cautioned that the requirements of this bid can be altered only by written addendum and that verbal communications from whatever source are of no effect.
34. **ACCEPTANCE AND REJECTION:** The Charlotte-Mecklenburg Board of Education reserves the right to reject any and all bids, to waive any informality in bids and, unless otherwise specified by the bidder, to accept any item in the bid. If either a unit price or extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded.
35. **REFERENCES:** The Charlotte-Mecklenburg Board of Education reserves the right to require a list of users of the exact item offered. The Charlotte-Mecklenburg Board of Education may contact these users to determine acceptability of the bid. Such information may be considered in the evaluation of the bid.

36. **HISTORICALLY UNDERUTILIZED BUSINESSES:** Pursuant to General Statute 143-48 and Executive Order #150, The Charlotte-Mecklenburg Board of Education invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled.
37. **AWARD OF CONTRACT:** As directed by statute, qualified bids will be evaluated and acceptance may be made of the lowest and best bid most advantageous to The Charlotte-Mecklenburg Board of Education as determined upon consideration of such factors as: prices offered; the quality of the articles offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the bid; the suitability of the articles for the intended use; the related services needed; the date or dates of delivery and performance; and such other factors deemed by The Charlotte-Mecklenburg Board of Education to be pertinent or peculiar to the purchase in question. Unless otherwise specified by The Charlotte-Mecklenburg Board of Education or the bidder, The Charlotte-Mecklenburg Board of Education reserves the right to accept any item or group of items on a multi-item bid. In addition, on TERM CONTRACTS, The Charlotte-Mecklenburg Board of Education reserves the right to make partial, progressive or multiple awards: where it is advantageous to award separately by items; or where more than one supplier is needed to provide the contemplated requirements as to quantity, quality, delivery, service, geographical areas; other factors deemed by The Charlotte-Mecklenburg Board of Education to be pertinent or peculiar to the purchase in question.
38. **CONFIDENTIAL INFORMATION:** As provided by statute and rule, The Charlotte-Mecklenburg Board of Education will consider keeping trade secrets which the bidder does not wish disclosed confidential. Each page shall be identified in boldface at the top and bottom as "CONFIDENTIAL" by the bidder. Cost information shall not be deemed confidential. In spite of what is labeled as a trade secret, the determination whether it is or not will be determined by North Carolina law.
39. **TAXES:**
- **FEDERAL:** All agencies participating in this contract are exempt from Federal Taxes, such as excise and transportation. Exemption forms submitted by the contractor will be executed and returned by the using agency.
 - **OTHER:** Prices offered are not to include any personal property taxes, nor any sales or use tax (or fees) unless required by the North Carolina Department of Revenue.
40. **SAMPLES:** Sample of items, when required, must be furnished as stipulated herein, free of expense, and if not destroyed will, upon request be returned at the bidder's expense. Request for the return of samples must be made within 10 days following date of bid opening. Otherwise the samples will become the property of the Charlotte-Mecklenburg Board of Education. Each individual sample must be labeled with the bidder's name, bid number, and item number. A sample on which an award is made, will be retained until the contract is completed, and then returned, if requested, as specified above.
41. **PROTEST PROCEDURES:** When an Offeror wants to protest a contract award pursuant to this solicitation, they must submit a written request to the Chief Finance Officer of The Charlotte-Mecklenburg Board of Education. This request must be received within ten (10) consecutive calendar days from the date of the contract award, and must contain specific sound reasons and any supporting documentation for the protest. Note: Contract award notices are sent only to those actually awarded contracts, and not to every person or firm responding to this solicitation. Bidders may call the procurement official listed on the first page of this document to obtain a verbal status of contract award. If the Chief Finance Officer can render a decision based on the facts without a meeting, a written response with a decision will be rendered within 10 consecutive calendar days of the receipt of the protest letter. If not, the Chief Finance Officer will schedule a meeting with the protesting party to hear their complaint. This meeting will be held within 10 consecutive calendar days after receipt of the written protest. The Chief Finance Officer will respond to the protesting party in writing with a decision within 10 consecutive calendar days from the date of the protest meeting. All decisions of the Chief Finance Officer shall be the final administrative review.
42. **MISCELLANEOUS:** Masculine pronouns shall be read to include feminine pronouns, and the singular of any word or phrase shall be read to include the plural and vice versa.

Contractor or its Authorized Reseller, as applicable, will be invoiced monthly for the State's transaction fee by the Supplier Manager. The transaction fee shall be based on purchase orders issued for the prior month. Unless Supplier Manager receives written notice from the Contractor identifying with specificity any errors in an invoice within thirty (30) days of the receipt of invoice, such invoice shall be deemed to be correct and Contractor shall have waived its right to later dispute the accuracy and completeness of the invoice. Payment of the transaction fee by the Contractor is due to the account designated by the State within thirty (30) days after receipt of the correct invoice for the transaction fee, which includes payment of all portions of an invoice not in dispute. Within thirty (30) days of the receipt of invoice, contractor may request in writing an extension of the invoice payment due date for that portion of the transaction fee invoice for which payment of the related goods by the governmental purchasing entity has not been received by the Contractor. If payment of the transaction fee is not received by the State within this payment period, it shall be considered a material breach of contract. The Supplier Manager shall provide, whenever reasonably requested by the contractor in writing (including electronic documents), supporting documentation from the E-Procurement Service that accounts for the amount of the invoice.

The Supplier Manager will capture the order from the State approved user, including the shipping and payment information, and submit the order in accordance with the E-Procurement Service. Subsequently, the Supplier Manager will send those orders to the appropriate contractor on State Contract. The Charlotte-Mecklenburg Board of Education, not the Supplier Manager, shall be responsible for the solicitation, bids received, evaluation of bids received, award of contract, and the payment for goods delivered.

Contractor agrees at all times to maintain the confidentiality of its user name and password for the Statewide E-Procurement Services.

If a contractor is a corporation, partnership or other legal entity, then the contractor may authorize its employees to use its password.

43. **ELECTRONIC PROCUREMENT (APPLIES TO ALL CONTRACTS THAT INCLUDE E-PROCUREMENT AND ARE IDENTIFIED AS SUCH IN THE BODY OF THE SOLICITATION DOCUMENT):** Purchasing shall be conducted through the Statewide E-Procurement Service. The State's third party agent shall serve as the Supplier Manager for this E-Procurement Service. The contractor shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of this contract.
44. **THE SUCCESSFUL BIDDER(S) SHALL PAY A TRANSACTION FEE OF 1.75% (.0175) ON THE TOTAL DOLLAR AMOUNT (EXCLUDING SALES TAXES) OF EACH PURCHASE ORDER ISSUED THROUGH THE STATEWIDE E-PROCUREMENT SERVICE.** This applies to all purchase orders, regardless of the quantity or dollar amount of the purchase order. The transaction fee shall not be stated or included as a separate item in the proposed contract or invoice. There are no additional fees or charges to the contractor for the services rendered by the Supplier Manager under this contract. Contractor will receive a credit for transaction fees they paid for the purchase of any item(s) if an item(s) is returned through no fault of the contractor. Transaction fees are non-refundable when an item is rejected and returned, or declined, due to the contractor's failure to perform or comply with specifications or requirements of the contract.

Contractor or its Authorized Reseller, as applicable, will be invoiced monthly for the State's transaction fee by the Supplier Manager. The transaction fee shall be based on purchase orders issued for the prior month. Unless Supplier Manager receives written notice from the Contractor identifying with specificity any errors in an invoice within thirty (30) days of the receipt of invoice, such invoice shall be deemed to be correct and Contractor shall have waived its right to later dispute the accuracy and completeness of the invoice. Payment of the transaction fee by the Contractor is due to the account designated by the State within thirty (30) days after receipt of the correct invoice for the transaction fee, which includes payment of all portions of an invoice not in dispute. Within thirty (30) days of the receipt of invoice, contractor may request in writing an extension of the invoice payment due date for that portion of the transaction fee invoice for which payment of the related goods by the governmental purchasing entity has not been received by the Contractor. If payment of the transaction fee is not received by the State within this payment period, it shall be considered a material breach of contract. The Supplier Manager shall provide, whenever reasonably requested by the contractor in writing (including electronic documents), supporting documentation from the E-Procurement Service that accounts for the amount of the invoice.

The Supplier Manager will capture the order from the State approved user, including the shipping and payment information, and submit the order in accordance with the E-Procurement Service. Subsequently, the Supplier Manager will send those orders to the appropriate contractor on State Contract. The Charlotte-Mecklenburg Board of Education, not the Supplier Manager, shall be responsible for the solicitation, bids received, evaluation of bids received, award of contract, and the payment for goods delivered.

Contractor agrees at all times to maintain the confidentiality of its user name and password for the Statewide E-Procurement Services. If a contractor is a corporation, partnership or other legal entity, then the contractor may authorize its employees to use its password. Contractor shall be responsible for all activity and all charges by such employees. Contractor agrees not to permit a third party to use the Statewide E-Procurement Services through its account. If there is a breach of security through the contractor's account, contractor shall immediately change its password and notify the Supplier Manager of the security breach by e-mail. Contractor shall cooperate with the State and the Supplier Manager to mitigate and correct any security breach.

CONTRACTOR IS AND SHALL REMAIN RESPONSIBLE FOR PAYING THE TRANSACTION FEE ON BEHALF OF ITS AUTHORIZED RESELLERS IN THE EVENT THAT THE AUTHORIZED RESELLER(S) DEFAULTS.

THE CHARLOTTE-MECKLENBURG BOARD OF EDUCATION STANDARD TERMS AND CONDITIONS

ACCEPTANCE: Seller's acknowledgment of the terms of this purchase order (this "Order"), without timely express written objection, or Seller's shipment or performance of any part of this Order, constitutes an agreement to (i) all terms and conditions set forth or referenced herein and on the face of this Order, (ii) on any attachments hereto, (iii) any applicable solicitation documentation related to this Order (including without limitation any request for proposals or invitation for bids or Seller's response thereto) that deal with the same subject matter as this Order, and (iv) any other terms and conditions of a written agreement signed by Seller and The Charlotte-Mecklenburg Board of Education ("CMBE") that deals with the same subject matter as this Order (collectively, the "Contract Documents"). The terms and provisions set forth in the Contract Documents shall constitute the entire agreement between Seller and CMBE with respect to the purchase by CMBE of the (i) goods ("Goods") and/or (ii) services provided or work performed ("Services") as described in the Contract Documents. The agreements set forth in the Contract Documents are sometimes referred to herein as the "Contract." In the event of any conflict between any terms and conditions of the Contract Documents, the terms and conditions most favorable to CMBE shall control. This Order constitutes an offer by CMBE and expressly limits acceptance to the terms and conditions stated herein. No additional or supplemental provision or provisions in variance herewith that may appear in Seller's quotation, acknowledgment, invoice, or in any other communication from Seller to CMBE shall be deemed accepted by or binding on CMBE. CMBE hereby expressly rejects all such provisions which supplement, modify or otherwise vary from the terms of the Contract Documents, and such provisions are superseded by the terms and conditions stated in the Contract Documents, unless and until CMBE's authorized representatives expressly assent, in writing, to such provisions. Stenographic and clerical errors and omissions by CMBE are subject to correction.

UNIFORM GUIDANCE: Procurement policy compliance statement: Contracts funded with federal grant or loan funds must be procured in a manner that conforms with all applicable Federal laws, policies, and standards, including those under the Uniform Guidance (2 C.F.R. Part 200).

https://www.ecfr.gov/cgi-bin/text-idx?SID=956b5e913f2dd41cc9ec031c4cfab670&mc=true&node=ap2.1.200_1521.ii&rgn=div9

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

In compliance with this Invitation for Bids, and subject to all the conditions herein, the undersigned offers and agrees to furnish and deliver any or all items upon which prices are bid, at the prices set opposite each item within the time specified herein. By executing this bid, I certify that this bid is made without prior understanding, agreement, or connection with any firm, corporation, or person submitting a bid for the same commodity, and is in all respects fair and without collusion or fraud. Under penalty of perjury, the undersigned offeror certifies that this bid has not been arrived at collusively or otherwise in violation of Federal or North Carolina law.

QUANTITIES: Shipments must equal exact amounts ordered unless otherwise agreed in writing by CMBE. The award of a term contract neither implies nor guarantees any minimum or maximum purchases.

PRICES: If Seller's price or the regular market price of any of the Goods or Services covered hereunder is lower than the price stated in the Contract Documents on the date of shipment of such Goods or Services, Seller agrees to give CMBE the benefit of such lower price on any such Goods or Services. In no event shall Seller's price be higher than the price last quoted or last charged to CMBE unless otherwise agreed in writing. No charges for transportation, boxing, crating, etc. are allowable unless such charges are included in the Contract Documents.

INVOICES: It is understood and agreed that orders will be shipped at the established Contract prices in effect on dates orders are placed. Invoicing at variance with this provision may subject the Contract to cancellation. Applicable North Carolina sales tax shall be invoiced as a separate item. Invoices shall be sent to CMBE's accounts payable department with a copy to the CMBE Project Coordinator.

FREIGHT ON BOARD: All shipments of Goods are FOB destination unless otherwise stated in the Contract Documents.

TAXES: Applicable taxes shall be invoiced as a separate item.

PAYMENT TERMS: Payment terms are Net 30 days after receipt of correct invoice or acceptance of Goods or Services, whichever is later.

CONDITION AND PACKAGING: Unless otherwise provided by special terms and conditions or specifications, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment.

DELAYS IN SHIPMENT: Time and date of delivery are of the essence, except when delay is due to causes beyond Seller's reasonable control and without Seller's fault or negligence.

RISK OF LOSS: Seller shall have the risk of loss of and damage to the Goods subject to the Contract Documents until such Goods are delivered to the destination and accepted by CMBE or its nominee.

REJECTION: All Goods and Services shall be received subject to CMBE's inspection. Goods or Services that are defective in workmanship or material or otherwise not in conformity with the requirements of the Contract Documents may be rejected and returned at Seller's expense or may be accepted at a reduced price. CMBE may require Seller to promptly replace or correct any rejected Goods or Services and, if Seller fails to do so, CMBE may contract with a third party to replace such Goods and Services and charge Seller the additional cost.

COMPLIANCE WITH ALL LAWS: Seller warrants that all performance hereunder shall be in accordance with all applicable federal, state and local laws, regulations and orders.

REGISTERED SEX OFFENDERS: Contractor acknowledges that CMBE Policy ADDA, "Registered Sex Offenders," prohibits anyone registered or required to register as a sex offender from being present on any CMBE Property for any reason, whether before, during or after school hours, or on or off of CMS property. Contractor expressly agrees that it, and any of its employees, will comply with this policy and acknowledges that any individuals that violate this policy are subject to removal from CMS Property by CMS and/or law enforcement officials and may also be subject to criminal prosecution. If Contractor, any of Contractor's employees, or any of Contractor's subcontractors or employees of subcontractors will have any direct interaction with students, then Contractor or the subcontractor must (i) on an annual basis conduct a check of the N.C. Sex Offender and Public Protection Registration Program, the N.C. Sexually Violent Predator Registration Program and the National Sex Offender Registry for all such employees; and (ii) prohibit individuals listed on such registries from being on CMS Property.

WARRANTIES: Seller warrants that all Goods and Services delivered hereunder will be free from defects in materials and workmanship and will conform strictly to the specifications, drawings, or samples specified or furnished. This warranty shall survive any inspection, delivery, acceptance or payment by CMBE of the Goods and Services and shall run to CMBE and any user of the Goods or Services. This express warranty is in addition to Seller's implied warranties of merchantability and fitness for a particular purpose which shall not be disclaimed. In addition to any other rights available at law or equity, CMBE shall be entitled to all rights and remedies provided by the Uniform Commercial Code, Chapter 25 of the North Carolina General Statutes, for breach of express warranties and implied warranties of merchantability or fitness for a particular purpose, including but not limited to consequential and incidental damages.

NDEMNIFICATION: Seller shall indemnify and hold harmless CMBE, its officers, agents, employees and assigns from and against all claims, losses, costs, damages, expenses, attorneys' fees and liability that any of them may sustain (a) arising out of Seller's failure to comply with any applicable law, ordinance, regulation, or industry standard or (b) arising directly or indirectly out of Seller's performance or lack of performance of the terms and conditions of the Contract. In the event that any Goods or Services sold and delivered or sold and performed under the Contract Documents shall be defective in any respect whatsoever, Seller shall indemnify and save harmless CMBE, its officers, agents, employees and assigns from all loss or the payment of all sums of money by reason of all accidents, injuries or damages to persons or property that shall happen or occur in connection with the use or sale of such Goods or Services and are contributed to by said condition. In the event Seller, its employees, agents, subcontractors and or lower-tier subcontractors enter premises occupied by or under the control of CMBE in the performance of the Contract Documents, Seller agrees that it will indemnify and hold harmless CMBE, its officers, agents, employees and assigns, from any loss, costs, damage, expense or liability by reason of

property damage or personal injury of whatsoever nature or kind arising out of, as a result of, or in connection with such entry.

INSURANCE: Unless such insurance requirements are waived or modified by CMBE or the Charlotte-Mecklenburg Department of Insurance and Risk Management (“DIRM”), Seller certifies that it currently has and agrees to purchase and maintain during its performance under the Contract the following insurance from one or more insurance companies acceptable to CMBE and authorized to do business in the State of North Carolina: Automobile - Seller shall maintain bodily injury and property damage liability insurance covering all owned, non-owned and hired a automobiles. The policy limits of such insurance shall not be less than \$1,000,000 combined single limit each person/each occurrence. Commercial General Liability - Seller shall maintain commercial general liability insurance that shall protect Seller from claims of bodily injury or property damage which arise from performance under the Contract. This insurance shall include coverage for contractual liability. The policy limits of such insurance shall not be less than \$1,000,000 combined single limit each occurrence/annual aggregate. Worker's Compensation and Employers' Liability Insurance - If applicable to Seller, Seller shall meet the statutory requirements of the State of North Carolina for worker's compensation coverage and employers' liability insurance. Seller shall also provide any other insurance or bonding specifically recommended in writing by the DIRM or required by applicable law. Certificates of such insurance shall be furnished by Seller to CMBE and shall contain the provision that CMBE be given 30 days' written notice of any intent to amend or terminate by either Seller or the insuring company. Failure to furnish insurance certificates or to maintain such insurance shall be a default under the Contract and shall be grounds for immediate termination of the Contract.

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

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

CONTRACT FUNDING: It is understood and agreed between Seller and CMBE that CMBE's obligation under the Contract is contingent upon the availability of appropriated funds from which payment for Contract purposes can be made. No legal liability on the part of CMBE for any payment may arise until funds are made available to CMBE's Finance Officer and until Seller receives notice of such availability. Should such funds not be appropriated or allocated, the Contract shall immediately be terminated. CMBE shall not be liable to Seller for damages of any kind (general, special, consequential or exemplary) as a result of such termination.

ACCOUNTING PROCEDURES: Seller shall comply with any accounting and fiscal management procedures prescribed by CMBE to apply to the Contract and shall assure such fiscal control and accounting procedures as may be necessary for proper disbursement of and accounting for all project funds.

IMPROPER PAYMENTS: Seller shall assume all risks attendant to any improper expenditure of funds under the Contract. Seller shall refund to CMBE any payment made pursuant to the Contract if it is subsequently determined by audit that such payment was improper under any applicable law, regulation or procedure. Seller shall make such refunds within 30 days after CMBE notifies Seller in writing that a payment has been determined to be improper.

CONTRACT TRANSFER: Seller shall not assign, subcontract or otherwise transfer any interest in the Contract without the prior written approval of CMBE.

CONTRACT PERSONNEL: Seller agrees that it has, or will secure at its own expense, all personnel required to perform the services set forth in the Contract.

KEY PERSONNEL: Seller shall not substitute for key personnel (defined as those individuals identified by name or title in the Contract Documents or in written communication from Seller) assigned to the performance of the Contract without prior written approval from CMBE Project Coordinator (the individual at CMBE responsible for administering the Contract).

CONTRACT MODIFICATIONS: The Contract may be amended only by written amendment duly executed by both CMBE and

Seller. However, minor modifications may be made by CMBE Project Coordinator to take advantage of unforeseen opportunities that: (a) do not change the intent of the Contract or the scope of Seller's performance; (b) do not increase Seller's total compensation or method of payment; and (c) either improve the overall quality of the product or service to CMBE without increasing the cost, or reduce the total cost of the product or service without reducing the quantity or quality. All such minor modifications to the Contract must be recorded in writing and signed by both the Project Coordinator and Seller, and placed on file with the Contract. No price adjustments will be made unless the procedure has been included in the Contract and a maximum allowable amount stipulated.

RELATIONSHIP OF PARTIES: Seller is an independent contractor and not an employee of CMBE. The conduct and control of the work will lie solely with Seller. The Contract shall not be construed as establishing a joint venture, partnership or any principal-agent relationship for any purpose between Seller and CMBE. Employees of Seller shall remain subject to the exclusive control and supervision of Seller, which is solely responsible for their compensation.

ADVERTISEMENT: The Contract will not be used in connection with any advertising by Seller without prior written approval by CMBE.

NONDISCRIMINATION: During the performance of the Contract, Seller shall not discriminate against or deny the Contract's benefits to any person on the basis of sexual orientation, national origin, race, ethnic background, color, religion, gender, age or disability.

CONFLICT OF INTEREST: Seller represents and warrants that no member of CMBE or any of its employees or officers who may obtain a direct benefit, personal gain or advantage for themselves or a relative or associate as a result of the Contract, subcontract or other agreement related to the Contract is in a position to influence or has attempted to influence the making of the Contract, has been involved in making the Contract, or will be involved in administering the Contract. Seller shall cause this paragraph to be included in all Contracts, subcontracts and other agreements related to the Contract.

GRATUITIES TO CMBE: The right of Seller to proceed may be terminated by written notice if CMBE determines that Seller, its agent or another representative offered or gave a gratuity to an official or employee of CMBE in violation of policies of CMBE.

KICKBACKS TO SELLER: Seller shall not permit any kickbacks or gratuities to be provided, directly or indirectly, to itself, its employees, subcontractors or subcontractor employees for the purpose of improperly obtaining or rewarding favorable treatment in connection with a CMBE Contract or in connection with a subcontract relating to a CMBE Contract. When Seller has grounds to believe that a violation of this clause may have occurred, Seller shall promptly report to CMBE in writing the possible violation.

MONITORING AND EVALUATION: Seller shall cooperate with CMBE, or with any other person or agency as directed by CMBE, in monitoring, inspecting, auditing or investigating activities related to the Contract. Seller shall permit CMBE to evaluate all activities conducted under the Contract. CMBE has the right at its sole discretion to require that Seller remove any employee of Seller from CMBE property and from performing services under the Contract following provision of notice to Seller of the reasons for CMBE's dissatisfaction with the services of Seller's employee.

FINANCIAL RESPONSIBILITY: Seller is financially solvent and able to perform under the Contract. If requested by CMBE, Seller agrees to provide a copy of its latest audited annual financial statements or other financial statements as deemed acceptable by CMBE's Finance Officer. In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against Seller, the inability of Seller to meet its debts as they become due or in the event of the appointment, with or without Seller's consent, of an assignee for the benefit of creditors or of a receiver, then CMBE shall be entitled, at its sole option, to cancel any unfulfilled part of the Contract without any liability whatsoever.

GOVERNMENTAL RESTRICTIONS: In the event any governmental restrictions are imposed which necessitate alteration of the material, quality, workmanship or performance of the items offered prior to their delivery, it shall be the responsibility of the Seller to notify, in writing, the issuing procurement office at once, indicating the specific regulation which required such alterations. CMBE reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract.

INSPECTION AT SELLER'S SITE: CMBE reserves the right to inspect, at a reasonable time, the equipment/item, plant or other facilities of a prospective contractor prior to Contract award, and during the Contract term as necessary for CMBE determination

that such equipment/item, plant or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the Contract.

CONFIDENTIAL INFORMATION: Student Information: If, during the course of Seller's performance of the Contract, Seller should obtain any information pertaining to the students' official records, Seller agrees to keep any such information confidential and to not disclose or permit it to be disclosed, directly or indirectly, to any person or entity. The Contract shall not be construed by either party to constitute a waiver of or to in any manner diminish the provisions for confidentiality of students' records. Additionally, pursuant to N.C.G.S. 115C-401.1, it is unlawful for a person who enters into a contract with a local board of education to sell personally identifiable information that is obtained from a student as a result of that person's performance under the Contract. Employee Personnel Information: If, during the course of Seller's performance of the Contract, Seller should obtain any information pertaining to employees of CMBE's personnel records, Seller agrees to keep any such information confidential and to not disclose or permit it to be disclosed, directly or indirectly, to any person or entity. Other Confidential Information: (a) Seller agrees that it will at all times hold in confidence for CMBE all designs, know-how, techniques, devices, drawings, specifications, patterns, technical information, documents, business plans, item requirements, forecasts and similar data, oral, written or otherwise, conveyed by CMBE to Seller in connection herewith or procured, developed, produced, manufactured or fabricated by Seller in connection herewith or procured, developed, produced, manufactured or fabricated by Seller in connection with Seller's performance hereunder (collectively, "Information"). Seller shall exercise the same degree of care to prevent disclosure of any Information to others as it takes to preserve and safeguard its own proprietary information, but in any event, no less than a reasonable degree of care. Seller shall not, without the prior written consent of CMBE, reproduce any Information; nor disclose Information to any party; nor use any Information for any purpose other than performance for the benefit of Seller hereunder. (b) Any technical knowledge or information of Seller which Seller shall have disclosed or may hereafter disclose to CMBE in connection with the Goods or other performance covered by the Contract shall not, unless otherwise specifically agreed upon in writing by CMBE, be deemed to be confidential or proprietary information and shall be acquired by CMBE free from any restrictions as part of the consideration of the Contract.

INTELLECTUAL PROPERTY: Seller agrees, at its own expense, to indemnify, defend and save CMBE harmless from all liability, loss or expense, including costs of settlement and attorney's fees, resulting from any claim that CMBE's use, possession or sale of the Goods or Services infringes any copyright, patent or trademark or is a misappropriation of any trade secret.

NO PRE-JUDGMENT OR POST-JUDGMENT INTEREST: In the event of any action by Seller for breach of contract in connection with the Contract, any amount awarded shall not bear interest either before or after any judgment, and Seller specifically waives any claim for interest.

BACKGROUND CHECKS: At the request of CMBE's Project Coordinator, Seller (if an individual) or any individual employees of Seller shall submit to CMBE criminal background check and drug testing procedures.

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.

NO THIRD PARTY BENEFITS: The Contract shall not be considered by Seller to create any benefits on behalf of any third party. Seller shall include in all contracts, subcontracts or other agreements relating to the Contract an acknowledgment by the contracting parties that the Contract creates no third party benefits.

FORCE MAJEURE: If CMBE is unable to perform its obligations or to accept the services or goods because of Force Majeure (as hereinafter defined), the time for such performance by CMBE or acceptance of services will be equitably adjusted by allowing additional time for performance or acceptance of services equal to any periods of Force Majeure. "Force Majeure" shall mean any delays caused by acts of God, riot, war, terrorism, inclement weather, labor strikes, material shortages and other causes beyond the reasonable control of CMBE.

OWNERSHIP OF DOCUMENTS: All documents created pursuant to the Contract shall, unless expressly provided otherwise in writing, be owned by CMBE. Upon the termination or expiration of the Contract, any and all finished or unfinished documents and other materials produced by Seller pursuant to the Contract shall, at the request of CMBE, be turned over to CMBE. Any technical knowledge or information of Seller which Seller shall have disclosed or may hereafter disclose to CMBE shall not, unless otherwise specifically agreed upon in writing by CMBE, be deemed to be confidential or proprietary information and shall be acquired by CMBE free from any restrictions as part of the consideration of the Contract.

STRICT COMPLIANCE: CMBE may at any time insist upon strict compliance with these terms and conditions notwithstanding any previous course of dealing or course of performance between the parties to the contrary.

GENERAL PROVISIONS: CMBE's remedies as set forth herein are not exclusive. Any delay or omission in exercising any right hereunder, or any waiver of any single breach or default hereunder, shall not be deemed to be a waiver of such right or of any other right, breach, or default. If action be instituted by Seller hereunder, CMBE shall be entitled to recover costs and reasonable attorney's fees. Seller may not assign, pledge, or in any manner encumber Seller's rights under this Order, or delegate the performance of any of its obligations hereunder, without CMBE's prior, express written consent.

CONTRACT SITUS: All matters, whether sounding in contract or tort relating to the validity, construction, interpretation and enforcement of the Contract, will be determined in Mecklenburg County, North Carolina. North Carolina law will govern the interpretation and construction of the Contract.

