



Prince William County

PUBLIC SCHOOLS

Providing A World-Class Education

REQUEST FOR PROPOSAL

ISSUE DATE: February 9, 2009

RFP #: R-NM-9022

TITLE: Formative Assessment Content and Methodology

Sealed Proposals will be received until **February 27, 2009 at 2:00 p.m.** for furnishing the products and/or services described herein. Facsimile and/or electronic proposals will **not** be accepted.

Any Changes and/or Addenda to this solicitation will be posted on the PWCS Web site at www.pwcs.edu/purchasing. Vendors are responsible for checking this Web site prior to proposal submission. Failure to acknowledge all addenda may result in rejection of your proposal as non-responsive.

All inquiries for information regarding Procurement Procedures, Selection Criteria, Proposal Submission Requirements, or other Fiscal/Administrative concerns should be directed to:

Willie Frazier Jr., CPCM, Supervisor of Purchasing

Nancy Markov, CPPB, Buyer

Phone: (703) 791-8742, Fax: (703) 791-7462, E-Mail: markovne@pwcs.edu

PROPOSALS MAILED SHALL BE SENT DIRECTLY TO:

Prince William County Public Schools
Attn: Financial Services/Purchasing Rm #1500
P.O. Box 389
Manassas, VA 20108

PROPOSALS HAND DELIVERED AND/OR EXPRESS COURIER SERVICES SHALL BE DELIVERED TO:

Prince William County Public Schools
Edward L. Kelly Leadership Center
Attn: Financial Services/Purchasing Rm #1500
14715 Bristow Road
Manassas, VA 20112

PWCS does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, Section 2.2-4343.1 or against any Bidder or Offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

In Compliance With This Request for Proposals and To All The Conditions Imposed Herein, The Undersigned Offers and Agrees To Provide The Goods/Services In Accordance With The Signed Proposal Or As Mutually Agreed Upon By Subsequent Negotiation.

Name And Address Of Firm:

Date: _____

By: _____

Signature In Ink

Print/Type

Title

Telephone: _____

E-Mail Address: _____

Fax: _____

QUESTIONS: Any questions regarding this RFP must be submitted in writing directly to the Contract Administrator at the address referenced above no later than **February 17, 2009**. Questions may be sent by Facsimile or E-Mail.

TABLE OF CONTENTS

<u>Section</u>	<u>Title</u>	<u>Page No.</u>
1.	PURPOSE	1
2.	BACKGROUND	1
3.	SCOPE OF CONTRACT(S).....	1
4.	PERIOD OF CONTRACT(S).....	1
5.	CONTRACT ADMINISTRATOR/TECHNICAL POINTS OF CONTACT.....	1
6.	STATEMENT OF NEEDS	2
7.	PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS	3
8.	TIME FRAME/SCHEDULE OF EVENTS.....	4
9.	EVALUATION AND AWARD CRITERIA	5
10.	SPECIAL TERMS AND CONDITIONS.....	5
	» AUDIT	5
	» AVAILABILITY OF FUNDS	5
	» COMPLIANCE WITH PROCEDURES	5
	» EXTRA CHARGES NOT ALLOWED.....	5
	» FAILURE TO DELIVER.....	6
	» IDENTIFICATION OF PROPOSAL ENVELOPE/PACKAGE	6
	» LATE PROPOSALS	6
	» LIMITATION OF USE.....	6
	» METHOD OF PAYMENT	6
	» OBLIGATION OF OFFEROR.....	7
	» OWNERSHIP OF MATERIAL	7
	» PERFORMANCE GUARANTEE	7
	» PRIME CONTRACTOR RESPONSIBILITIES	7
	» PROPOSAL ACCEPTANCE PERIOD.....	7
	» PROPOSAL COST	7
	» PROPOSAL SOLICITATION RESULTS	7
	» RECEIPT OF PROPOSALS.....	7
	» SOURCE CODE	7
	» TERM OF SOFTWARE LICENSE.....	7
	» TITLE TO SOFTWARE	8
	» VENDOR REGISTRATION	8
	» WARRANTY AGAINST SHUTDOWN DEVICES.....	8
11.	GENERAL TERMS AND CONDITIONS	9
	CONTRACTOR DATA SHEET	ATTACHMENT A
	MWCOG RIDER CLAUSE	ATTACHMENT B

1. **PURPOSE:** The Purpose and Intent of this Request for Proposal (RFP) is to solicit sealed proposals from qualified source(s) to establish multiple “Requirements” contracts with responsible firms, through competitive negotiations, for the acquisition of **Formative Assessment Content and Methodology System(s)** that may be used in a school-based formative assessment program for Prince William County Public Schools (herein referred to as PWCS).

It is the intent of PWCS that each of the division’s 87 schools may choose to select from one or more products to meet the division’s requirement that teachers use formative assessment in the four core content areas (language arts, mathematics, science and social studies) to ensure that education objectives of the Commonwealth of Virginia are met.

2. **BACKGROUND:** Prince William County Public Schools is located 35 miles southwest of Washington, D.C. and 80 miles north of Richmond, Virginia. The county encompasses 348 square miles and stretches from the Potomac River to the Bull Run Mountains.

PWCS enrollment on September 30, 2008 was 73,657 pupils, making it the second largest of 138 school divisions in the Commonwealth of Virginia. The school division is growing at the rate of more than 1,003 students per year. There are currently 55 elementary schools, 14 middle schools, 10 high schools, four special education schools, two alternative schools and two specialty schools.

3. **SCOPE OF CONTRACT(S):** This will be a “Requirements” contract(s) to provide PWCS with a ready source for school-based formative assessment content and methodology on an as-needed basis. Individual purchase orders will be issued by schools to the Contractor(s) who best meets each school’s assessment needs in the content areas of language arts, mathematics, science and social studies. Each PWC school retains the right to choose test offerings from more than one of the awarded contracts.

4. **PERIOD OF CONTRACT(S):** The projected date of award of this contract is **March 31, 2009**. The period of this contract shall be from **April 1, 2009 through March 31, 2011**.

- 4.1. By mutual agreement of the Contractor(s) and PWCS, this contract(s) may be renewed for an additional three (3) successive one year periods. Written notice of PWCS’ intention to renew shall be given approximately ninety (90) days prior to the expiration date of each contract period.

- 4.2. If PWCS elects to exercise the option to renew the contract(s) for an additional one (1) year period, the contract price(s) for one year shall not exceed the contract price(s) of the original contract increase/decrease by more than the percentage increase/decrease of the “Education and Communication“ category of the CPI-U section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest 12 months for which statistics are available.

5. **CONTRACT ADMINISTRATOR/TECHNICAL POINTS OF CONTACT:** The following employees of PWCS are identified to use all powers under the contract(s) to enforce its faithful performance:

- 5.1. CONTRACT ADMINISTRATOR: As the Contract Administrator, the following individual, or her designee, shall serve as the interpreter of the conditions of the contract and shall use all powers under the contract to enforce its faithful performance.

Nancy Markov, CPPB, Buyer, 703.791.8742

- 5.2. TECHNICAL POINTS OF CONTACT: All technical questions shall be communicated through the Technical Points of Contact:

Holly G. Hess, Director, Office of Accountability, 703.791.7273
Pat Donahue, Supervisor, Instructional Technology, 703.791.7298

6. **STATEMENT OF NEEDS:** The Contractor(s) shall furnish all necessary supervision, labor, materials, software, documentation (user and technical), training (user and technical), technical support and supplies necessary to implement and maintain the **Formative Assessment Content and Methodology System**.

6.1. REQUIRED PRODUCTS:

- Field-tested assessments (previously developed tests) in the four core content areas (language arts, mathematics, science and social studies) that are valid and statistically reliable.
- Language Arts tests must be offered for each of grades K through 12.
- Mathematics tests must be offered for each of grades K through 8 as well as Algebra 1, Algebra 2, Pre-Algebra and Geometry.
- Science tests must be offered for each of grades K through 8 as well as Earth Science, Biology and Chemistry.
- Social Studies tests must be offered for each of grades K through 8 as well as VA History, US History, World History 1, World History 2 and World Geography.
- Items/tests must be mapped to both the SOLs as well as PWCS curriculum. PWCS Curriculum Supervisors and Subject Specialists shall determine if the submitted tests are valid and statistically reliable.
- Variety of testing methods, i.e. pre/post, quarterly, quick checks, unit tests. Tests with SOL-like formatting are preferred by PWCS.
- Test item banks are required to enable PWCS to develop its own quizzes and tests. PWCS retains ownership of any teacher-made tests.

6.2. REQUIRED PRODUCT CRITERIA:

- Item banks and tests should be matched to Virginia Standards of Learning objectives and updated each time the SOLs are revised.
- Item banks and tests should be matched to a higher order thinking skills framework.
- Tests should have multiple forms.
- Item banks should be scaffolded for difficulty level.
- Tests can be administered in a paper format and/or online.
- Tests are to be available to students only at school through paper/pencil or online format, not part of a home study program.

6.2.1. ADDITIONAL OBJECTIVES:

- Item banks should include (1) Multiple Choice; (2) Performance Items; (3) Short Response Items, and (4) Scoring Rubrics.
- Tests and individual test items should be available (1) In Electronic Media; (2) For Online Testing; (3) In a Searchable Data Base; (4) To Alter by Modifying, Adding or Deleting.

and (5) To Include Teacher-Made Items.

7. PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS:

7.1. GENERAL REQUIREMENTS:

7.1.1. RFP Response: In order to be considered for selection, Offerors must submit a complete response to this RFP and be prepared to present their product to PWCS with a minimum of one week's notice. One (1) original and four (4) copies of each proposal shall be submitted to PWCS as indicated on the cover sheet. No other distribution of the proposal shall be made by the Offeror.

7.1.2. Proposal Preparation:

7.1.2.1. Proposals shall be signed by an authorized representative of the Offeror. All information requested must be submitted. Failure to submit all information requested may result in the Central Purchasing Office requiring prompt submission of missing information and/or giving a lower evaluation of the proposal. Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation.

7.1.2.2. Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content.

7.1.2.3. Each copy of the proposal should be bound or contained in a single volume where practical. All documentation submitted with the proposal should be contained in that single volume.

7.1.2.4. Ownership of all data, materials and documentation originated and prepared for PWCS pursuant to this RFP shall belong exclusively to PWCS and be subject to inspection in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by an Offeror shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the Offeror must invoke the protection of Section 2.2-4342 of the Virginia Public Procurement Act prior to or upon submission of the data or other materials to be protected and state the reasons why protection is necessary.

7.1.3. Presentation: Offerors who submit a proposal in response to this RFP, and are ranked among the top, may be required to give a presentation of their Formative Assessment Content and Methodology to a select group of PWCS staff. This is a fact finding and explanation session only and does not include negotiation. Presentation is to include the item/test development process; mapping protocols, and qualifications of those involved in writing/mapping the tests. The Contract Administrator will schedule the time and location of these presentations. Presentations may, or may not, be conducted.

7.2. SUBMITTAL REQUIREMENTS:

7.2.1. The return of this complete Request for Proposal, signed and filled out as required.

7.2.2. Offeror's complete Technical Proposal.

7.2.3. Offeror must supply sample tests for **all** requested subjects and grade levels listed in Section 6.1., REQUIRED PRODUCTS.

7.2.4. Completed Contractor Data Sheet, **Attachment A**.

7.2.5. Completed Washington Council of Government Rider Clause, **Attachment B**.

7.3. **TECHNICAL PROPOSAL REQUIREMENTS:** Proposals should be as thorough and detailed as possible so that PWCS may properly evaluate the Offeror's capabilities to provide the required services/products. Proposals shall be submitted on 8-1/2" x 11" paper and prepared simply and concisely. Elaborate artwork, expensive paper, bindings, visual, and other presentation aids are not required. **Each Offeror's proposal shall be tabbed and organized in the sequence indicated below:**

7.3.1. Quality of Content/Samples: Offeror shall respond to the STATEMENT OF NEEDS, Section 6. The Offeror shall provide a written narrative describing the ability to meet the minimum requirements set forth herein. Sufficient detail shall be provided to demonstrate the Offeror's understanding, ability and/or willingness to satisfy all specified requirements. At the minimum, the Offeror shall address the following: Responsiveness of the proposed product to PWCS' needs and requirements including test content for required subject areas and scheduled updates; variety of testing methods; SOL-like formatting; test item banks; paper and/or online format. In addition, Offeror must supply sample tests for **all** requested subjects and grade levels listed in Section 6.1., REQUIRED PRODUCTS.

7.3.2. Methodology: Offeror shall provide verification of a variety of testing methods including pre/post, quarterly, quick checks, unit tests; that tests are available in multiple forms; that item banks are scaffolded for difficulty level; that item banks include multiple choice, performance items, short response items and scoring rubrics; that tests are available in electronic media, for online testing, in a searchable data base, and may be altered by modifying, adding or deleting; and that tests can be modified to include teacher-made items.

7.3.3. Proposed Costs: The Offeror shall submit an itemized list of all proposed costs for the products and services being offered. Costs should include content upgrades as SOLs are revised, licenses, training, and continuing costs for annual maintenance and support. In addition, Offeror shall provide several cost options for the tests, e.g., pricing per student; pricing per test; pricing per grade level. Each PWC school retains the right to choose test offerings from more than one of the awarded contracts.

7.3.4. References: The Offeror shall complete the Contractor Data Sheet (**Attachment A**), to include a minimum of three (3) school systems of the same size and scope for whom the company has provided these services/products, and two (2) other references of organizations of the same size and scope for whom the Offeror has provided these services/products within the past three (3) years. Include the date(s) when service/product was performed, the business name, address, and name and telephone number of the contract administrator.

8. TIME FRAME/SCHEDULE OF EVENTS:

8.1. SOLICITATION ISSUE DATE: **February 9, 2009**

8.2. QUESTIONS DUE: **February 17, 2009 @ 10:00 a.m.**

8.3. PROPOSALS DUE: **February 27, 2009 @ 2:00 p.m.**

8.4. PRESENTATIONS: March 18-19, 2009 -- (Tentative Dates)

8.5. PWCS AWARDS CONTRACT(S): On or prior to March 31, 2009

9. EVALUATION AND AWARD CRITERIA:

9.1. EVALUATION CRITERIA: Proposals shall be evaluated by a PWCS committee using the following criteria and points assigned:

9.1.1. Quality of Content/Samples	40 points
9.1.2. Methodology	20 points
9.1.3. Proposed Cost(s)	20 points
9.1.4. References	20 points

The Offerors who appear most capable of providing a product/service that can best satisfy the School Division's needs, based on the scoring rubric described above (1) through (4), will be selected as finalists for further evaluation. There is no specified number of finalists that may be selected. Finalists may be required to provide a presentation of their Formative Assessment Content and Methodology. This is to include the item/test development process; mapping protocols, and qualifications of those involved in writing/mapping the tests.

9.2. AWARD OF CONTRACT(S): Selection shall be made of two or more Offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors identified above. Negotiations shall be conducted with the Offeror(s) selected. Costs shall be considered, but need not be the sole determining factor. After negotiations have been conducted with the Offeror(s) selected, PWCS shall award the contract(s) to the Offeror(s). **PWCS reserves the right to make multiple awards as a result of this solicitation.** PWCS may cancel the RFP, reject proposals or any portion thereof at any time prior to an award, and is not required to furnish a statement of the reason why a particular proposal was not deemed to be the most advantageous. (Section 2.2-4359D, Code of Virginia.) Should PWCS determine in writing and in its sole discretion that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Offeror. The award document will be a contract incorporating by reference all the requirements, terms and conditions of this solicitation and the Contractor's proposal as negotiated. PWCS will not sign any vendor/contractor contract.

10. SPECIAL TERMS AND CONDITIONS:

- 10.1. AUDIT: The Contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by PWCS, whichever is sooner. PWCS and its authorized agents shall have full access to and the right to examine any of said material during said period.
- 10.2. AVAILABILITY OF FUNDS: It is understood and agreed between the parties herein that PWCS shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this contract.
- 10.3. COMPLIANCE WITH PROCEDURES: The Contractor shall comply with all procedural instructions that may be issued from time to time by PWCS. However, the terms and conditions of the contract will not change.
- 10.4. EXTRA CHARGES NOT ALLOWED: The proposed costs shall be for providing complete services; e.g., travel, hourly rates, miscellaneous support services, etc. Extra charges will not

be allowed.

- 10.5. FAILURE TO DELIVER: Failure to comply with the terms and conditions of this solicitation or to deliver goods and/or services identified in the solicitation and resulting contract at the firm-fixed prices quoted will be considered default of the contract award. Should the Contractor be found in default of the contract, any excess cost which may result from default actions shall be at the expense of the Contractor. The Contractor shall, in this instance, be responsible for any and all costs incurred by PWCS to procure such products and services elsewhere.
- 10.6. IDENTIFICATION OF PROPOSAL ENVELOPE/PACKAGE: The signed proposal should be returned in a separate envelope or package, sealed, addressed as directed on the Cover Page, and identified as follows:

From:	_____	_____	_____
	Name of Offeror	Due Date	Due Time
	_____	_____	_____
	Street or Box Number	RFP Number	RFP Title
	_____	_____	_____
	City	State, Zip Code	Name of Buyer

Proposal may be hand delivered to the designated location. No other correspondence or other proposals should be placed in the envelope. PWCS will not accept facsimile and/or electronic proposals.

- 10.7. LATE PROPOSALS: To be considered for selection, proposals must be received by the PWCS Central Purchasing Office by the designated date and hour. The official time used in the receipt of proposals is that time on the automatic time stamp machine in the Central Purchasing Office. Proposals received in the Central Purchasing Office after the date and hour designated are non-responsive, automatically disqualified and will not be considered. PWCS is not responsible for delays in the delivery of mail by the U.S. Postal Service, private couriers, or the intra-school mail system or delivery by any other means. It is the sole responsibility of the Offeror to ensure that his/her proposal reaches the Central Purchasing Office by the designated date and hour.
- 10.8. LIMITATION OF USE: PWCS' right to use computer software developed entirely at private expense may be limited by the Contractor as stipulated in this contract. Notwithstanding any provision to the contrary, however, PWCS shall have at a minimum: unlimited use of the software on the equipment for which it is purchased; use of the software on a secondary system for backup purposes should the primary system become unavailable, malfunction, or is otherwise rendered inoperable; use of the software at another PWCS site should the system be entirely transferred to that location; the right to make a backup copy for safekeeping; the right to modify or combine the software with other programs or materials at PWCS' risk; and the right to reproduce any and all documentation provided such reproduction is for the use of PWCS. These rights are perpetual and irrevocable; in the event of any actual or alleged breach by PWCS, the Contractor's sole remedy shall be to pursue a monetary claim in accordance with Chapter 2.2-4363 of the Code of VA.
- 10.9. METHOD OF PAYMENT: The Contractor shall be paid on the basis of invoices submitted, to be paid net thirty (30) days from receipt and approval by authorized PWCS official, upon satisfactory completion of delivery and/or installation. Payment shall be made after satisfactory performance of the contract in accordance with all of the provisions thereof and upon receipt of a properly completed invoice. The School Board reserves the right to withhold any or all payments or portions thereof for Contractor's failure to perform in accordance with the provisions of the contract or any modifications thereto.

- 10.10. OBLIGATION OF OFFEROR: By submitting a proposal, the Offeror covenants and agrees that they are satisfied, from their own investigation of the conditions to be met, that they fully understand their obligation and that they will not make any claim for, or have right to cancellation or relief from the contract because of any misunderstanding or lack of information.
- 10.11. OWNERSHIP OF MATERIAL: Ownership of all data, material and documentation originated and prepared by the Offeror and successful Contractor for PWCS pursuant to this solicitation and any resulting contract shall belong exclusively to PWCS and be subject to public inspection in accordance with the Virginia Freedom of Information Act.
- 10.12. PERFORMANCE GUARANTEE: The minimum performance guarantee for all services described herein shall be for one (1) year from the date of acceptance by PWCS. Should any defect be noted by PWCS, the Contract Administrator will notify the Contractor of such defect or nonconformance. Notifications will state either (1) that the Contractor shall correct or (2) that PWCS does not require correction, but an equitable adjustment to the contract price will be negotiated. If the Contractor is required to correct, it shall be at no cost to PWCS and shall be subject to all provisions of this clause to the same extent as services initially provided. If the Contractor fails or refuses to correct the deficiency, the office issuing the purchase order may have the services corrected and charge the Contractor the costs occasioned thereby or obtain equitable adjustment in the contract price.
- 10.13. PRIME CONTRACTOR RESPONSIBILITIES: The Contractor shall be responsible for completely supervising and directing the work under this contract and all subcontractors that they may utilize, using their best skill and attention. Subcontractors who perform work under this contract shall be responsible to the prime Contractor. The Contractor agrees to be fully responsible for the acts and omissions of their subcontractors and of persons employed by them as they are for the acts and omissions of their own employees.
- 10.14. PROPOSAL ACCEPTANCE PERIOD: The proposal shall be binding upon the Offeror for a minimum of 120 days following the proposal receipt and opening date. Any proposal on which the Offeror shortens the acceptance period may be rejected as determined by the Supervisor of the Central Purchasing Office.
- 10.15. PROPOSAL COST: Negotiated costs shall be firm and fixed throughout the contract period. State sales tax shall not be included in prices. No extra charges shall be allowed.
- 10.16. PROPOSAL SOLICITATION RESULTS: For information regarding the results of the Request for Proposal, a notice of award will be posted on PWCS' website (www.pwcs.edu/purchasing) and available for review in the Central Purchasing Office.
- 10.17. RECEIPT OF PROPOSALS: It is the responsibility of the Offeror to ensure that the proposal is delivered to the place designated for receipt of proposals prior to the time set for receipt of proposals. No proposal received after the time designated for receipt of proposals shall be considered.
- 10.18. SOURCE CODE: In the event the Contractor ceases to maintain experienced staff and the resources needed to provide any required software maintenance, PWCS shall be entitled to have, use, and duplicate for its own use, a copy of the source code and associated documentation for the software products covered by the contract. Until such time as a complete copy of such material is provided, PWCS shall have exclusive right to possess all physical embodiments of such Contractor-owned materials. The rights of PWCS in this respect shall survive for a period of twenty (20) years after the expiration or termination of the contract. All lease and royalty fees necessary to support this right are included in the initial license fee as contained in the submitted pricing.
- 10.19. TERM OF SOFTWARE LICENSE: Unless otherwise stated in the solicitation, the software license(s) identified in the Contractor's submittal shall be purchased on a perpetual basis and

shall continue in perpetuity. However, PWCS reserves the right to terminate the license at any time, although the mere expiration or termination of this contract shall not be construed as an intent to terminate the license. All acquired license(s) shall be used at any computing facilities, on any equipment, by any number of users, and for any purposes for which it is procured. PWCS further reserves the right to transfer all rights under the license to another Division site to which some or all of its functions are transferred.

- 10.20. TITLE TO SOFTWARE: By submitting a proposal, the Offeror represents and warrants that it is the sole owner of the software or, if it is not the owner, that it has received all legally required authorizations from the owner to license the software, has full power to grant the rights required by this solicitation, and that neither the software nor its use in accordance with the contract will violate or infringe upon any patent, copyright, trade secret, or any other property rights of another person or organization.
- 10.21. VENDOR REGISTRATION: Before submitting a response to this solicitation, an Offeror must be a registered PWCS vendor. Vendors are encouraged to register themselves at www.pwcs.edu/purchasing.
- 10.22. WARRANTY AGAINST SHUTDOWN DEVICES: The Contractor warrants that the equipment and software provided under the contract shall not contain any lock, counter, CPU reference, virus, worm, or other device capable of halting operations or erasing or altering data or programs. Contractor further warrants that neither it, nor its agents, employees, nor subcontractors shall insert any shutdown device following delivery of equipment or software.

GENERAL TERMS AND CONDITIONS
(Revised 05/20/08)

These general terms, conditions and instructions apply to all purchases and are a part of each solicitation and every contract awarded by PWCS, unless otherwise specified in such solicitation or contract. The Central Purchasing Office is responsible for the purchasing activity of Prince William County Public Schools and its governing body, the Prince William County Public School Board. The term "PWCS" as used herein refers to the contracting entity which is the signatory on the contract and may be either PWCS, or the PWCS School Board, or both. Bidder/Offeror or their authorized representatives are expected to inform themselves fully as to the conditions, requirements, and specifications before submitting bids/proposals: failure to do so will be at the bidder's/offeror's own risk.

These general terms, conditions and instructions are subject to all applicable Federal, State and local statutes, policies, resolutions, and regulations (collectively "laws"), and are to be interpreted so as to be consistent with such laws. In the case of irreducible conflict, these general terms and conditions are preempted by applicable laws.

AUTHORITY

1. The Supervisor of Purchasing has been delegated authority for issuance of invitations to bid, request for proposals, modifications, purchase orders and awards approved by and for PWCS. In the discharge of these responsibilities, the Supervisor of Purchasing may be assisted by delegating to Buyers and other Central Purchasing Office staff. Unless specifically delegated by the Supervisor of Purchasing, no other PWCS officer or employee is authorized to enter into purchase negotiations, change orders, contracts, or in any way obligate PWCS for indebtedness. Any purchase order or contract made which is contrary to these provisions and authorities shall be of no effect and void, and PWCS shall not be bound thereby.

CONDITIONS OF BIDDING/OFFERING

2. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract as a result of this solicitation, PWCS will publicly post such notice on the Purchasing Web site, www.pwcs.edu/purchasing for a minimum of 10 calendar days except in emergencies.
3. **CLARIFICATION OF TERMS:** If any prospective Bidder/Offeror has questions about the specifications or other solicitation documents, the prospective Bidder/Offeror shall contact the Buyer whose name appears on the face of the solicitation no later than five (5) working days before the due date. Any revisions to the solicitation will be made only by a written addendum issued by the Central Purchasing Office.
4. **DEBARMENT STATUS:** By submitting their bid/proposal, the Bidder/ Offeror certifies that he/she is not currently debarred by the Commonwealth of Virginia or PWCS from submitting bids/proposals on contracts for the type of goods and/or services covered by this solicitation, nor is the Bidder/Offeror an agent of any person or entity that is currently so debarred.
5. **ERRORS IN BIDS:** When an error is made in extending total prices, the unit bid price times the number of units will govern. Erasures and changes in bids must be initiated by the bidder. Carelessness in quoting prices, omitting portions of the work from the calculations, or in preparation of the bid otherwise will not relieve the bidder. Bidders are cautioned to recheck their bids for possible error. Errors discovered after public opening cannot otherwise be corrected except as provided in paragraph 15 below, and the bidder will be required to perform if his or her bid is accepted.
6. **ETHICS IN PUBLIC CONTRACTING:** By submitting their bid/proposal, Bidders/Offerors certify that their bid/proposal is made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Bidder/Offeror, supplier, manufacturer or subcontractor in connection with their bid/proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

7. **INCLEMENT WEATHER:** Due to inclement weather conditions, PWCS may elect to close schools and administration offices. The following is an explanation of the policy:

CODE GREEN: All PWCS schools are closed. Administration offices are opened.

CODE RED: All PWCS schools are closed. Administration offices are closed.
 - 7.1 In the event of a delay school opening, all times shall remain as stated in the Invitation for Bid/Request for Proposal.
 - 7.2 In the event that PWCS closes on a CODE GREEN, any optional/mandatory pre-bid/proposal conference and all bid/proposal openings will be held as scheduled.
 - 7.3 In the event that PWCS closes on a CODE RED, any optional/mandatory pre-bid proposal conference and all bid/proposal openings will be held on the next business day the PWCS experiences a normal opening, a delayed opening, or a school closing on a CODE GREEN, at the time previously scheduled. No exceptions will be made in this matter.
8. **LATE BIDS/PROPOSALS:** To be considered for selection, bids/proposals must be received by the PWCS Central Purchasing Office by the designated date and hour. The official time used in the receipt of bids/proposals is that time on the automatic time stamp machine in the Central Purchasing Office. Bids/proposals received in the Central Purchasing Office after the date and hour designated are non-responsive, automatically disqualified and will not be considered. PWCS is not responsible for delays in the delivery of mail by the U.S. Postal Service, private couriers, or the intra-school mail system or delivery by any other means. It is the sole responsibility of the Bidder/Offeror to ensure that his/her bid/proposal reaches the Central Purchasing Office by the designated date and hour.
9. **MANDATORY USE OF PWCS FORM AND TERMS AND CONDITIONS:** Failure to submit a bid/proposal on the official PWCS form provided for that purpose may be cause for rejection of the bid/proposal. Return of this complete solicitation document is required. Modification of or additions to the General and/or Special Terms and Conditions of this solicitation may be cause for rejection of the bid/proposal; however, the Supervisor of Purchasing reserves the right to decide, on a case by case basis, in his/her sole discretion, whether to reject such a bid/proposal as non-responsive. As a precondition to its acceptance, PWCS may, in its sole discretion, request that the Bidder/Offeror withdraw or modify non-responsive portions of a bid/proposal, which do not affect quality, quantity, price or delivery schedule.
10. **OFFICIAL NOT TO BENEFIT:**
 - 10.1 Each Bidder/Offeror certifies by signing a bid/proposal that to the best of his/her knowledge no PWCS official or employee having official responsibility for the procurement transaction or member of his/her immediate family has received or will receive any financial benefit of more than nominal or minimal value relating to the award of this contract. If such a benefit has been received or will be received, this fact shall be disclosed with the bid/proposal or as soon thereafter, as it appears that such a benefit will be received. Failure to

disclose the information prescribed above may result in suspension or debarment, rescission of the contract, or recovery of the cost of the financial benefit from the contractor, recipient, or both.

10.2 Whenever there is reason to believe that benefit of the sort described in the paragraph above has been or will be received in connection with the bid/proposal or contract and that the Contractor has failed to disclose such benefit or has inadequately disclosed it, PWCS, as a prerequisite to payment pursuant to the Contractor, or at any time may require the contractor to furnish, under oath, answers to any interrogatories related to such possible benefit.

10.3 In the event the Bidder/Offeree has knowledge of benefits as outlined above, this information should be submitted with the bid/proposal. If the above does not apply at time of award of contract and becomes known after inception of a contract the Bidder/Offeree shall address the disclosure of such facts to: Supervisor of Purchasing, Prince William County Public Schools, P.O. Box 389, Manassas, VA 20108. The Invitation For Bid/Request for Proposal number shall be referenced in the disclosure.

11. **PRECEDENCE OF TERMS:** PWCS intends for the Contract Documents to be consistent and they shall be interpreted to be consistent if possible. If the Contract Documents conflict, however, the controlling provision will be the one which appears highest in the following list:

- The Notice of Award or Purchase Order/Contract (highest precedence),
- Addenda,
- Specifications and drawings,
- The signed bid/proposal submitted by the Contractor,
- Invitation for Bid/Request for Proposal,
- Any Special Terms and Conditions,
- These General Terms and Conditions (lowest precedence).

12. **QUALIFICATIONS OF BIDDERS/OFFERORS:** PWCS may make such reasonable investigations as deemed proper and necessary to determine the ability of the Bidder/Offeree to perform the work/furnish the item(s) and the Bidder/Offeree shall furnish to PWCS all such information and data for this purpose as may be requested. PWCS reserves the right to inspect Bidder's/Offeree's physical facilities prior to award to satisfy questions regarding the Bidder's/Offeree's capabilities. PWCS further reserves the right to reject any bid or proposal if the evidence submitted by, or investigations of, such Bidder/Offeree fails to satisfy PWCS that such Bidder/Offeree is properly qualified to carry out the obligations of the contract and to complete the work/furnish the item(s) contemplated herein.

13. **TIE BID:** If all bids are for the same total amount or unit price (including authorized discounts and delivery times), the PWCS Purchasing Agent shall award the contract to the tie bidder providing goods produced in Virginia or goods, services or construction provided by Virginia persons, firms or corporations. If there are more than one such tie bid, then the PWCS Purchasing Agent may, in his or her sole discretion, readvertise the solicitation, divide the contract among the bidders (if the solicitation provided for multiple awards), or award a contract by lot from among the responsive and responsible Virginia bidders. If there are no responsive and responsible Virginia bidders, then the PWCS Purchasing Agent may, in his or her sole discretion, readvertise the solicitation, divide the contract among the bidders (if the solicitation provided for multiple awards), or award a contract by lot from among the responsive and responsible bidders. The decision of PWCS to make award to one or more such bidders shall be final.

14. **VENDOR REGISTRATION:** All vendors desiring to provide goods and/or services to PWCS shall register on-line at www.pwcs.edu/purchasing. Failure to register will result in the bid/proposal being non-responsive unless good cause is shown for the failure to register.

15. **WITHDRAWAL OF BIDS OR PROPOSALS:** A bid/proposal may be amended and/or withdrawn by a bidder or offeror if the request is received in writing before the due date and hour. The request must be signed by a person authorized to represent the vendor or firm that submitted the bid/proposal. Submission of a subsequent bid/proposal, unless specifically identified as an additional bid, shall constitute the withdrawal of any prior one submitted by the same bidder or offeror on the same Invitation for Bid/Request for Proposal.

Withdrawal of bids/proposals after opening is governed by Code of Virginia § 2.2-4330. The bidder/offeree shall give notice in writing of his/her claim of right to withdraw his/her bid/proposal within two business days after the conclusion of the bid opening or receipt of proposals procedure, and shall submit original work papers with such notice.

SPECIFICATIONS

16. **QUESTIONS CONCERNING SPECIFICATIONS:** Any information relative to interpretation of specifications and drawings shall be requested of PWCS in writing, in ample time before the opening of bids. No inquiries if received by PWCS on or after the fifth day before the date set for the opening of bids will be given any consideration. Any material interpretation of a specification, as determined by PWCS, will be expressed in the form of an addendum to the specification which will be sent to all prospective bidders no later than 4:30 p.m. local time on the third day before the date set for receipt of bids. Oral answers will not be authoritative.

17. **TESTING AND INSPECTION:** PWCS reserves the right to conduct any test or inspection it may deem advisable to ensure products/services conform to the specification.

18. **USE OF BRAND NAMES:** Unless otherwise provided in the solicitation, the name of a certain brand, make or manufacturer does not restrict Bidders/Offerees to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which PWCS in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, color and suitability for the purpose intended, shall be accepted. The Bidder/Offeree is responsible to clearly and specifically indicate the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable PWCS to determine if the product offered meets the requirements of the solicitation. **ONLY THE INFORMATION FURNISHED WITH THE BID/PROPOSAL WILL BE CONSIDERED IN THE EVALUATION. FAILURE TO FURNISH ADEQUATE DATA FOR EVALUATION PURPOSES MAY RESULT IN DECLARING A BID/PROPOSAL NON-RESPONSIVE.** Unless the Bidder/Offeree clearly indicates in its bid/proposal that the product offered is an "equal" product, such bid/proposal will be considered to offer the brand name product referenced in the solicitation.

CONTRACT PROVISIONS

19. **ANTI-DISCRIMINATION:** By submitting their bid/proposal, the Bidder/Offeree certifies to PWCS that he/she will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Act of 1975, as amended, where applicable, the Virginians with Disabilities Act, the Americans with Disabilities Act and Section 2.2-4311 of the Virginia Public Procurement Act (VPPA). In every contract over \$10,000 the provisions in 19.1 and 19.2 below apply:

During the performance of this contract, the Contractor agrees as follows:

19.1 The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the

normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

- 19.2 The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
- 19.3 Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section.
- 19.4 The Contractor will include the provisions of 19.1, 19.2 and 19.3 above in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
20. **ANTI-TRUST:** By entering into a contract, the Contractor conveys, sells, assigns, and transfers to PWCS all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by PWCS under said contract.
21. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia, including but not limited to the Virginia Public Procurement Act, and any litigation with respect thereto shall be brought in the courts of Prince William County, Virginia, except to the extent that Federal Court is appropriate. The Contractor shall comply with applicable federal, state and local laws and regulations, and be legally authorized to do business in the Commonwealth of Virginia.
22. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the Contractor in whole or in part without the written consent of PWCS.
23. **CHANGES TO THE CONTRACT:** PWCS may order changes within the general scope of the contract at any time by written notice to the Contractor. Changes within the scope of the contract include, but are not limited to things such as services to be performed, the method of packing or shipment and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give PWCS a credit for any resulting savings. Additionally, an increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
24. **CONTRACT DOCUMENTS/PURCHASE ORDERS:** The Contract entered into by the parties shall consist of the Invitation For Bid/Request for Proposal, the signed bid/proposal submitted by the Contractor, the Notice of Award or Purchase Order/Contract, these General Terms and Conditions and any Special Terms and Conditions, and the listed specifications and drawings, if any, including all modifications thereof, all of which shall be referred to collectively as the Contract Documents. All time limits stated in the Contract Documents are of the essence of the Contract unless stated otherwise. Orders against contracts will be placed with the Contractor on a Purchase Order or Procurement Card.
25. **COOPERATIVE PURCHASING:** PWCS may participate in, sponsor, conduct or administer a cooperative procurement agreement on behalf of or in conjunction with one or more other public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, or the District of Columbia, for the purpose of combining requirements to increase efficiency or reduce administrative expenses in any acquisition of goods and services. Except for contracts for professional services, a public body may purchase from another public body's contract even if it did not participate in the request for proposal (RFP) or Invitation for Bid (IFB), if the RFP or IFB specified that the procurement was being conducted on behalf of other public bodies.

Nothing herein shall prohibit the assessment or payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.

26. **DRUG-FREE WORKPLACE:** During the performance of this contract, the Contractor agrees as follows:
- 26.1 Provide a drug-free workplace for the Contractor's employees.
- 26.2 Post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition.
- 26.3 State in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace.
- 26.4 Include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a Contractor in accordance with this section, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.
27. **GUARANTEES & WARRANTIES:** All guarantees and warranties required shall be furnished by the Contractor and shall be delivered to PWCS before final payment on the contract is made. Unless otherwise stated, manufacturer's standard warranty applies.
28. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By submitting their bid/proposal, Bidders/Offerors certify that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.
29. **INDEMNIFICATION:** Contractor shall indemnify, keep and save harmless PWCS, its agents, officials, employees and volunteers against claims of injuries, death, damage to property, patent claims, suits, liabilities, judgments, cost and expenses which may otherwise accrue against PWCS in consequence of the granting of a contract or which may otherwise result therefrom, if the act was caused through negligence, error, omission, or reckless or intentional misconduct (or, in the case of intellectual property rights, by any act done without proper permission) of the Contractor or his or her employees, or that of the subcontractor or his or her employees, if any; and the Contractor shall, at his or her own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith; and if any judgment shall be rendered against PWCS in any such action, the Contractor shall, at his or her own expense, satisfy and discharge the same. Contractor expressly understands and agrees that any performance bond or insurance protection required by this contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend PWCS as herein provided.
30. **MODIFICATION OF CONTRACT:** PWCS may, upon mutual agreement with the Contractor, issue written modifications to the scope of work/specifications of this contract, and within the general scope thereof, except that no modifications can be made which will result in an increase of the original contract price by a cumulative amount of more than \$50,000 or 25%, whichever is greater, without the advance written approval of the Prince William County School Board. In making any modification, the resulting increase or

decrease in cost for the modification shall be determined by one of the following methods as selected by the Supervisor of Purchasing:

The written modification shall stipulate the mutually-agreed price for the specific addition to or deletion from the scope of work/specifications which shall be added to or deducted from the contract amount.

The written modification shall stipulate the number of unit quantities added to or deleted from the contract and multiplied by the unit price which shall be added to or deducted from the contract amount.

The written modification shall direct the Contractor to proceed with the work and to keep, and present in such form as PWCS may direct, a correct account of the cost of the change together with all vouchers therefore. The cost shall include an allowance for overhead and profit to be mutually agreed upon by PWCS and the Contractor.

31. **NON-DISCRIMINATION OF CONTRACTORS:** Any potential Bidder/Offeror, or Contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment. Faith-based organizations are also protected from discrimination on the basis of religious character as provided below.
- 31.1 Faith-based organizations may enter into contracts with PWCS on the same basis as any other nongovernmental source may do so without impairing the religious character of such organization and without diminishing the religious freedom of the beneficiaries of assistance provided under such contracts.
- 31.2 PWCS shall not impose conditions on contracts that restrict the religious character of the faith-based organization, except that money paid to the faith-based organization by or on behalf of PWCS will not be spent for religious worship, instruction, or proselytizing.
- 31.3 Any faith-based organization awarded a contract by PWCS shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by PWCS.
- 31.4 Faith-based organizations retain the right to employ persons of a particular religion to perform work connected with the carrying on by such organization of its activities.
- 31.5 If an award of contract is made to a faith-based organization, and an individual who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, PWCS shall offer the individual, within a reasonable period of time after the date of objection, access to equivalent goods, services, or disbursement from an alternative provider.
- 31.6 Any faith-based organization that is awarded a contract to provide goods, services, or disbursements to individuals shall also provide to such individuals a notice in bold face type that states: "Neither the public body's selection of a charitable or faith-based provider of services nor the expenditure of funds under this contract is an endorsement of the provider's charitable or religious character, practices, or expression. No provider of services may discriminate against you on the basis of religion, a religious belief, or your refusal to actively participate in a religious practice. If

you object to a particular provider because of its religious character, you may request assignment to a different provider. If you believe that your rights have been violated, please discuss the complaint with your provider.

32. **PRICE REDUCTION:** If at any time after the date of the bid/proposal the Contractor makes a general price reduction in the comparable price of any material covered by the contract to customers generally, an equivalent price reduction based on similar quantities and/or considerations shall apply to this contract for the duration of the contract period (or until the price is further reduced). Such price reduction shall be effective at the same time and in the same manner as the reduction in the price to customers generally. For purpose of this provision, a "general price reduction" shall mean any horizontal reduction in the price of an article or service offered (1) to Contractor's customers generally, or (2) in the Contractor's price schedule for the class of customers, i.e., wholesalers, jobbers, retailers, etc., which was used as the basis for bidding on this solicitation. An occasional sale at a lower price, or sale of distressed merchandise at a lower price, would not be considered a "general price reduction" under this provision. The Contractor shall submit his or her invoice at such reduced prices indicating on the invoice that the reduction is pursuant to the "Price Reduction" provision of the contract documents. The Contractor in addition will within ten days of any general price reduction notify PWCS of such reduction by letter. FAILURE TO DO SO MAY RESULT IN TERMINATION OF THE CONTRACT FOR CAUSE. Upon receipt of any such notice of a general price reduction, all ordering offices will be duly notified by PWCS.
33. **SMALL AND MINORITY BUSINESS ENTERPRISES:** It is PWCS intent to undertake every effort to increase opportunity for utilization of small and minority businesses in all aspects of procurement to the maximum extent feasible. In connection with the performance of this contract, the Contractor agrees to use their best effort to carry out this intent and ensure that Small and Minority Businesses shall have the maximum practicable opportunity to compete for subcontract work under this contract consistent with the efficient performance of this contract. Contractors may rely on oral or written representation by subcontractors regarding their status as small and/or minority business enterprises in lieu of an independent investigation.
34. **TERMINATION FOR CAUSE/DEFAULT:** In case of failure to deliver goods or provide services in accordance with the contract terms and conditions, PWCS, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which PWCS may have. Specifically:
- 34.1 If, through any cause, the Contractor fails to fulfill in a timely and proper manner their obligations under the contract, or if the Contractor violates any of the covenants, agreements, or stipulations of the contract, PWCS shall thereupon have the right to terminate, specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, and reports prepared by the Contractor under the contract shall at the option of PWCS, become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.
- 34.2 Notwithstanding the above, the Contractor shall not be relieved of liability to PWCS for damages sustained by PWCS by virtue of any breach of contract by the Contractor. PWCS may withhold any payments to the Contractor for the purpose of set off until such time as the exact amount of damages due to PWCS from the Contractor is determined.
35. **TERMINATION FOR CONVENIENCE:** PWCS reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, whenever the Supervisor of Purchasing determines that such a termination is in the best interest of PWCS. Any such termination shall be effected by delivery to the Contractor, at least

ten (10) working days prior to the termination date, a Notice of Termination specifying the extent to which performance shall be terminated and date upon which such termination becomes effective. After receipt of a notice of termination, the Contractor must stop all work or deliveries under the purchase order/contract on the date and to the extent specified; however, any contract termination notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of termination. An equitable adjustment in the contract price shall be made for completed service, but no amount shall be allowed for anticipated profit on unperformed services.

36. **VIRGINIA FREEDOM OF INFORMATION ACT:** Except as provided herein, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act. Any inspection of procurement transaction records under this provision shall be subject to reasonable restrictions to ensure the security and integrity of the records.

36.1 Cost estimates relating to a proposed transaction prepared by or for a public body shall not be open to public inspection.

36.2 Any Bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening/receipt of all bids, but prior to award, except in the event that PWCS decides not to accept any of the bids and to re-solicit. Otherwise, bid records shall be open to public inspection only after award of the contract.

36.3 Bids and proposal records shall be open to the public only after award.

36.4 Any offeror who responds to an RFP shall be afforded the opportunity to inspect proposal records upon request within a reasonable time after the evaluation and negotiation of proposals are complete but prior to award, except in the event PWCS decides not to accept any of the proposals and to resolicit.

36.5 Trade secrets or proprietary information submitted by any bidder, offeror, or Contractor in connection with a procurement transaction or prequalification application shall not be subject to public disclosure under the Virginia Freedom of Information Act if the bidder, offeror, or Contractor invokes the protection of Virginia Code section 2.2-4342 F. in writing prior to or upon submission of the data or other materials, identifies the data or other materials to be protected, and states the reasons why protection is necessary.

36.6 Nothing contained in this section shall be construed to require PWCS to furnish a statement of the reason(s) why a particular bid/offer was not deemed to be the most advantageous to PWCS.

DELIVERY/PAYMENT PROVISIONS

37. **DELIVERY CHARGES:** Unless bought F.O.B., "Shipping Point" and Contractor prepays transportation, no delivery charges shall be added to invoices except when express delivery is authorized by PWCS.

38. **INVOICES:** Invoices for goods and/or services ordered, delivered and accepted shall be submitted in duplicate by the Contractor(s) directly to the payment address shown on the purchase order/contract. **All invoices shall reference said purchase order/contract number and shall be in the same legal name of the Contractor as indicated on the Contract.**

39. **LABELING OF HAZARDOUS SUBSTANCES:** If the items or products requested by this solicitation are "Hazardous Substances" as defined by Section 1261 of Title 15 of the United States Code

(U.S.C.), then the Bidder/Offeror, by submitting his/her bid/proposal, certifies and warrants that the items or products to be delivered under this contract shall be properly labeled as required by the foregoing sections and that by delivering the items or products the Bidder/Offeror does not violate any of the prohibitions of Title 15 of the U.S.C. or Section 1263.

40. **MATERIAL SAFETY DATA SHEETS:** Material and Safety Data Sheets shall be provided in English, and if available, Spanish within two (2) business days upon request for each chemical and/or compound offered. Failure on the part of the Contractor to submit such data sheets may be cause for declaring the Contractor in default.

41. **PAYMENT TERMS:** Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. However, this shall not affect offers of discounts for payment in less than 30 days.

42. **PAYMENT TO SUBCONTRACTORS:**

42.1 A Contractor awarded a contract under this solicitation is hereby obligated to:

42.1.1 Pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from PWCS for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or

42.1.2 Notify the agency and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason for such.

42.2 Unless otherwise provided under the terms of the Contract, interest shall accrue at the rate of one percent per month on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from PWCS except for amounts withheld as stated in the paragraph above. The date of mailing of any payment by U.S. Mail is deemed to be payment to the addressee. This obligation to pay interest is not an obligation of PWCS, and no contract modification will be made for the purpose of providing reimbursement of the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

42.3 The provisions of 42.1 through 42.3 apply to each sub-tier contractor performing under the primary contract. A Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of PWCS or any participating jurisdiction.

43. **POINT OF DESTINATION:** All materials shipped to PWCS must be shipped FOB DESTINATION unless otherwise stated in the contract or purchase order. The materials must be delivered to the "Ship to" address indicated on the purchase order.

44. **TAX EXEMPTION:** PWCS is exempt from the payment of federal excise or Virginia Sales and Use Tax. The bid/proposal price must be net, exclusive of taxes. When under established trade practice, any federal excise tax is included in the list price, the Bidder/Offeror may quote the list price and shall show separately the amount of federal excise tax, either as a flat sum or as a percentage of the list price, which shall be deducted by PWCS. PWCS Federal Excise Tax Exemption number is 54-6001533. A copy of PWCS Sales and Use Tax Certificate Exemption is posted on the PWCS Web site at www.pwcs.edu/purchasing.

45. **TRANSPORTATION AND PACKAGING:** By submitting their bids/proposals, all bidders/offerors certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly

marked or labeled on the outside with purchase order number, commodity description, and quantity.

BIDDER/CONTRACTOR REMEDIES

46. **ACCEPTANCE OF BIDS/OFFERS BINDING 90 DAYS:** Unless otherwise specified in the IFB or RFP, all formal bids/offers submitted shall be binding for ninety (90) calendar days following bid opening date, unless extended by mutual consent of all parties.
47. **AWARD OR REJECTION OF BIDS/OFFERS:** The Purchasing Agent shall award the contract to the lowest responsive and responsible bidder complying with all provisions of the IFB, provided the bid price is reasonable and it is in the best interest of PWCS to accept it. Awards made in response to an RFP will be made to the highest qualified offeror whose proposal is determined in writing to be the most advantageous to PWCS taking into consideration the evaluation factors set forth in the RFP. The Purchasing Agent reserves the right to award a contract by individual items, in the aggregate, or in combination thereof, or to reject any or all bids and to waive any informality in bids received whenever such rejection or waiver is in the best interest of PWCS. Award may be made to as many bidders/ offerors as deemed necessary to fulfill the anticipated requirements of PWCS. The Purchasing Agent also reserves the right to reject the bid of a bidder deemed to be a non-responsible bidder.

In determining the responsibility of a bidder, the following criteria will be considered:

- a. The ability, capacity and skill of the bidder to perform the contract or provide the service required;
- b. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
- c. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
- d. The quality of performance of previous contracts or services;
- e. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or services;
- f. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
- g. The quality, availability and adaptability of the goods or services to the particular use required;
- h. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;
- i. The number and scope of the conditions attached to the bid;
- j. Whether the bidder is in arrears to PWCS on debt or contract or is a defaulter on surety to PWCS or whether the bidder's PWC taxes or assessments are delinquent; and
- k. Such other information as may be secured by PWCS Purchasing Agent having a bearing on the decision to award the contract. If an apparent low bidder is not awarded a contract for reasons of nonresponsibility, the PWCS Purchasing Agent shall so notify that bidder and shall have recorded the reasons in the contract file.

48. **CONTRACTUAL DISPUTES:** Any dispute concerning a question of fact including claims for money or other relief as a result of a contract with PWCS which is not disposed of by agreement shall be declared by the Supervisor of Purchasing, who shall reduce a decision to writing and mail or otherwise forward a copy thereof to the Contractor within ten (10) days. The decision of the Supervisor of Purchasing shall be final and conclusive unless the Contractor appeals within ten (10) days of receipt of the written decision. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty (60) days after final payment; however, as a condition precedent to consideration of the claim, the

Contractor must give written notice of the intention to file such a claim at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pending claims shall not delay payment of amounts agreed due in the final payment.

49. **DELIVERY/SERVICE FAILURES:** Failure of a Contractor to deliver goods or services within the time specified, or within reasonable time as interpreted by PWCS, or failure to make replacements or corrections of rejected articles or services when so requested, immediately or as directed by PWCS, shall constitute grounds for PWCS to "Cover" by purchasing in the open market articles or services of comparable grade or quality to replace the services or articles rejected or not delivered. On all such purchases, the Contractor shall reimburse PWCS, within a reasonable time specified by PWCS, for any expense incurred in excess of contract prices, or, in PWCS's sole discretion, PWCS shall deduct the cost of Cover from any amounts due to Contractor. Such purchases shall be deducted from the contract quantities if applicable. Should public necessity demand it, PWCS reserves the right to use or consume articles delivered or services performed which are substandard in quality, subject to an adjustment in price to be determined by PWCS.
50. **EXHAUSTION OF ADMINISTRATIVE REMEDIES:** No potential Bidder/Offeror or Contractor shall institute any legal action until all administrative remedies available under this solicitation and resulting contract have been exhausted and until all statutory requirements have been met.
51. **PROTEST OF AWARD OR DECISION TO AWARD:** Any Bidder may protest the award or decision to award a contract by submitting a protest in writing to the Bid Protest Officer no later than ten (10) calendar days after public notice of the award or the announcement of the decision to award, whichever occurs first. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit such protest in the same manner no later than ten (10) calendar days after posting or publication of the notice of such contract. The written protest shall include the basis for the protest and the relief sought. The Bid Protest Officer shall issue a decision in writing within ten (10) calendar days of the receipt of the protest stating the reasons for the action taken. Any offeror may protest the award or decision to award a contract by submitting a protest in writing to PWCS, or an official designated by PWCS, no later than ten (10) calendar days after the award or the announcement of the decision to award, whichever occurs first.
- 51.1 If prior to award it is determined that the decision to award is arbitrary or capricious then the sole relief shall be a finding to that effect. The Supervisor of Purchasing shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be declared void by PWCS. Where the award has been made and performance has begun, the Supervisor of Purchasing may declare the contract void upon a finding that this action is in the best interest of PWCS. Where a contract is declared void, the performing Contractor shall be compensated for the cost of performance at the rate specified in the contract up to the time of such declaration. In no event shall the performing Contractor be entitled to lost profits.
- 51.2 Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this paragraph shall not be affected by the fact that a protest or appeal has been filed.
- 51.3 An award need not be delayed for the period allowed a Bidder/Offeror to protest, but in the event of a timely protest, no further action to award the contract will be taken unless there is a written determination that proceeding

without delay is necessary to protect the public interest or unless the bid or offer would expire.

52. **RESPONSIBILITY FOR SUPPLIES TENDERED:** Unless otherwise specified in the solicitation, the Contractor shall be responsible for the materials or supplies covered by the contract until they are delivered at the designated point, but the Contractor shall bear all risk on rejected materials or supplies after notice of rejection. Rejected materials or supplies must be removed by and at the expense of the Contractor promptly after notification of rejection, unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the Contractor within ten (10) days after date of notification, PWCS may return the rejected materials or supplies to the Contractor at his or her risk and expense or dispose of them as its own property.

CONTRACTOR DATA SHEET

1. QUALIFICATION OF OFFEROR: The Offeror shall have the capability and the capacity in all respects to fully satisfy all the contractual requirements.
2. YEARS IN BUSINESS: Indicate the length of time the Offeror has been in business providing the goods/services in this solicitation: _____ Years _____ Months.
3. REFERENCES: Offerors shall provide a listing of at least five (5) references for which the company has provided specified goods/services of the same or greater scope within the last three (3) years.

1.	Customer Name:	Contact Name:	Contact Title:
Address: _____ _____			Phone No.
			Fax No.

2.	Customer Name:	Contact Name:	Contact Title:
Address: _____ _____			Phone No.
			Fax No.

3.	Customer Name:	Contact Name:	Contact Title:
Address: _____ _____			Phone No.
			Fax No.

4.	Customer Name:	Contact Name:	Contact Title:
Address: _____ _____			Phone No.
			Fax No.

5.	Customer Name:	Contact Name:	Contact Title:
Address: _____ _____			Phone No.
			Fax No.

**Metropolitan Washington Council of Governments
Rider Clause**

USE OF CONTRACT(S) BY MEMBERS COMPRISING THE METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS PURCHASING OFFICERS' COMMITTEE.

- A. If authorized by the bidder(s), resultant contract(s) will be extended to any or all of the listed members as designated by the bidder to purchase at contract prices in accordance with contract terms.
- B. Any member utilizing such contract(s) will place its own order(s) directly with the successful contractor. There shall be no obligation on the part of any participating member to utilize the contract(s).
- C. A negative reply will not adversely affect consideration of your bid/proposal.
- D. It is the awarded vendor's responsibility to notify the members shown below of the availability of the Contract(s).
- E. Each participating jurisdiction has the option of executing a separate contract with the awardee. Contracts entered into with a participating jurisdiction may contain general terms and conditions unique to that jurisdiction including, by way of illustration and not limitation, clauses covering minority participation, non-discrimination, indemnification, naming the jurisdiction as an additional insured under any required Comprehensive General Liability policies, and venue. If, when preparing such a contract, the general terms and conditions of a jurisdiction are unacceptable to the awardee, the awardee may withdraw its extension of the award to that jurisdiction.
- F. The issuing jurisdiction shall not be held liable for any costs or damages incurred by another jurisdiction as a result of any award extended to that jurisdiction by the awardee.

BIDDER'S AUTHORIZATION TO EXTEND CONTRACT:

- | <u>YES</u> | <u>NO</u> | <u>JURISDICTION</u> |
|------------|-----------|---|
| ___ | ___ | Alexandria, Virginia |
| ___ | ___ | Alexandria Public Schools |
| ___ | ___ | Alexandria Sanitation Authority |
| ___ | ___ | Arlington County, Virginia |
| ___ | ___ | Arlington County Public Schools |
| ___ | ___ | Bladensburg, Maryland |
| ___ | ___ | Bowie, Maryland |
| ___ | ___ | Charles County Public Schools |
| ___ | ___ | College Park, Maryland |
| ___ | ___ | Culpeper County, Virginia |
| ___ | ___ | District of Columbia |
| ___ | ___ | District of Columbia Courts |
| ___ | ___ | District of Columbia Public Schools |
| ___ | ___ | District of Columbia Water & Sewer Auth. |
| ___ | ___ | Fairfax, Virginia |
| ___ | ___ | Fairfax County, Virginia |
| ___ | ___ | Fairfax County Water Authority |
| ___ | ___ | Falls Church, Virginia |
| ___ | ___ | Fauquier County Schools & Government, Virginia |
| ___ | ___ | Frederick, Maryland |
| ___ | ___ | Frederick County, Maryland |
| ___ | ___ | Gaithersburg, Maryland |
| ___ | ___ | Greenbelt, Maryland |
| ___ | ___ | Herndon, Virginia |
| ___ | ___ | Leesburg, Virginia |
| ___ | ___ | Loudoun County, Virginia |
| ___ | ___ | Loudoun County Public Schools |
| ___ | ___ | Loudoun County Sanitation Authority |
| ___ | ___ | Manassas, Virginia |
| ___ | ___ | City of Manassas Public Schools |
| ___ | ___ | Manassas Park, Virginia |
| ___ | ___ | Maryland-National Capital Park & Planning Comm. |

- | <u>YES</u> | <u>NO</u> | <u>JURISDICTION</u> |
|------------|-----------|--|
| ___ | ___ | Maryland Department of Transportation |
| ___ | ___ | Metropolitan Washington Airports Authority |
| ___ | ___ | Metropolitan Washington Council of Governments |
| ___ | ___ | Montgomery College |
| ___ | ___ | Montgomery County, Maryland |
| ___ | ___ | Montgomery County Public Schools |
| ___ | ___ | Northern Virginia Community College |
| ___ | ___ | OmniRide |
| ___ | ___ | Potomac & Rappahannock Trans. Commission |
| ___ | ___ | Prince George's County, Maryland |
| ___ | ___ | Prince George's Public Schools |
| ___ | ___ | Prince William County, Virginia |
| ___ | ___ | Prince William County Public Schools |
| ___ | ___ | Prince William County Service Authority |
| ___ | ___ | Rockville, Maryland |
| ___ | ___ | Spotsylvania County Schools |
| ___ | ___ | Stafford County, Virginia |
| ___ | ___ | Takoma Park, Maryland |
| ___ | ___ | Upper Occoquan Sewage Authority |
| ___ | ___ | Vienna, Virginia |
| ___ | ___ | Virginia Railway Express |
| ___ | ___ | Washington Metropolitan Area Transit Authority |
| ___ | ___ | Washington Suburban Sanitary Commission |
| ___ | ___ | Winchester, Virginia |
| ___ | ___ | Winchester Public Schools |

Vendor Name

