

PRINCE WILLIAM COUNTY SCHOOLS
GENERAL TERMS AND CONDITIONS
(Revised 8/29/2023)

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 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 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.

2. DEFINITIONS

BID: The offeror or a bidder to provide specific goods or services at specified prices and/or other conditions specified in the solicitation.

BIDDER: Any individual, company, firm, corporation, partnership or other organization bidding on solicitations issued by the Supervisor of Purchasing and offering into contracts with PWCS. The term "bidder" will be used throughout this document and shall be construed to mean "offeror" where appropriate.

CONTRACTOR: Any individual, company, firm, corporation, partnership or other organization to whom an award is made by PWCS.

INVITATION FOR BID (IFB) A request which is made to prospective suppliers (bidders) for their quotation on goods and services desired by PWCS. The issuance of an IFB will contain or incorporate by referencing the specifications and contractual terms and conditions applicable to the procurement.

SUPERVISOR OF PURCHASING: The Supervisor of Purchasing is delegated authority by PWCS School Board to carry out all procurement functions on behalf of the school division.

REQUEST FOR PROPOSAL (RFP): A request for an offer prospective offers which will indicate the general

terms which are sought to be procured from the offeror. The RFP will specify the evaluation factors to be used and will contain or incorporate by reference other contractual terms and conditions applicable to the procurement.

SOLICITATION: The process of notifying prospective bidders that PWCS wishes to receive bids on a set of requirements to provide goods or services. The notification of PWCS requirements may consist of public advertising (PWCS website or other electronic notifications), of notices of solicitations, Invitations for Bid (IFB) or Request for Proposal (RFP), the public posting of notices, issuance of an informal solicitation to include telephone call to prospective bidders.

CONDITIONS OF BIDDING

3. **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. Additionally, PWCS may purchase additional quantities at the original firm fixed delivered unit prices for (90) ninety days after date of award.
4. **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 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.
5. **RECEIPT OF BIDS:** Bids received prior to the time of opening will be securely kept, unopened by PWCS. No responsibility will attach to the Supervisor of Purchasing or his/her representative(s) for the premature opening of a bid not properly addressed and identified. Unless specifically authorized in the

solicitation, telegraphic, electronic, or facsimile bids/modifications will not be considered by the PWCS.

6. **BID OPENING:** All bids received in response to an Invitation for Bid (IFB) will be opened at the date, time and place specified, read publicly, and made available for inspection. The Supervisor of Purchasing representative(s) assigned to open the bids will decide when the specified time for bid opening has arrived. Tabulations of bids received are posted on the PWCS website at: www.pwcs.edu/departments/purchasing/bid_tabulations.
7. **OPEN PRICING RECORDS:** The classification of line item prices and/or bid prices as proprietary information or trade secrets is not acceptable. All bid prices will be read aloud at the public bid opening and posted on the PWCS Purchasing website. Any bidder who designates bid prices as proprietary information or trade secrets will be given 48 hours to withdraw this designation. If it is not withdrawn, their bid will be rejected. See [§ 2.2-4343](#) of the Code of Virginia.
8. **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 initialed 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 14 below, and the bidder will be required to perform if their bid is accepted.
9. **LATE BIDS/PROPOSALS:** To be considered for selection, bids/proposals must be received by the PWCS Purchasing Office by the designated date and hour, unless otherwise stated in the solicitation. The official time used in the receipt of bids/proposals is that time on the automatic time stamp machine in the Purchasing Office. Bids/proposals received in the 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 to ensure that his/her bid/proposal reaches the Purchasing Office by the designated date and hour.
10. **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 withdraw or modify non-responsive portions of a bid/proposal, which do not affect quality, quantity, price or delivery schedule.

11. **VENDOR REGISTRATION:** All vendors desiring to provide goods and/or services to PWCS are strongly encouraged to register on-line at https://www.pwcs.edu/departments/purchasing/vendor_resources.

12. **OMISSIONS & DISCREPANCIES:** Any items or parts of any equipment listed in this solicitation that are clearly necessary for the operation and completion of such equipment, but are: (i) not fully described by PWCS; or (ii) are omitted by PWCS from such specification, shall be considered a part of such equipment even if not directly specified or called for in the specifications.

If a bidder finds discrepancies or ambiguities in, or omissions from, the solicitation, including the drawings and/or specifications, it shall notify the Supervisor of Purchasing or his/her representative(s) at least five (5) days prior to the date set for the opening of bids. If necessary, the Supervisor of Purchasing or his/her representative(s) will send a written addendum for clarification to all bidders no later than three (3) days before the date set for opening of bids, unless otherwise stated in the solicitation. Notifications regarding specifications will not be considered if received within five days of the date set for opening of bids.

13. **PROHIBITION AGAINST UNIFORM PRICING:** The Supervisor of Purchasing encourages open and competitive bidding by all possible means and endeavors to obtain the maximum degree of open competition on all purchase transactions using the methods of procurement prescribed by the Virginia Public Procurement Act and PWCS policies and regulations. Each bidder, by virtue of submitting a bid, guarantees that it has not been a party with other bidders to an agreement to bid a fixed or uniform price. Violation of this implied guarantee shall render void the bids of participating bidders. Any disclosure to or acquisition by a competitive bidder, in advance of the opening of the bids, of the terms or conditions of the bid submitted by another competitor may render the entire proceedings void and may require re-advertising for bids.

14. **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 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.

15. **DEBARMENT STATUS:** By submitting their bid/proposal, the Bidder 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 an agent of any person or entity that is currently so debarred.
16. **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, 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.

SPECIFICATIONS

17. **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 posted to the Commonwealth of VA eVA web-site, and/or as identified herein and it is the sole responsibility of the bidder/offeror to acknowledge addendum. Oral answers will not be authoritative.
18. **CLARIFICATION OF TERMS:** If any prospective Bidder has questions about the specifications or other solicitation documents, the prospective Bidder 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 Purchasing Office
19. **USE OF BRAND NAMES:** Unless otherwise provided in the solicitation, the name of a certain brand, make or manufacturer does not restrict Bidders/Offerors 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 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 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.

20. **NO SUBSTITUTES:** When a solicitation contains a specification that states no substitutes, no deviation therefrom will be permitted and the bidder will be required to furnish articles in conformity with that specification.

The bidder must abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully complete every part as the true intent and meaning of the specifications and drawings. Whenever the mention is made of any articles, material, or workmanship to be in accordance with laws, ordinances, building codes, underwriter's codes, A.S.T.M. regulations or similar expressions, the requirements of these laws, ordinances, etc., shall be construed as to the minimum requirements of these specifications.

21. **QUALIFICATIONS OF BIDDERS/OFFERORS:** PWCS may make such reasonable investigations as deemed proper and necessary to determine the ability of the Bidder to perform the work/furnish the item(s) and the Bidder shall furnish to PWCS all such information and data for this purpose as may be requested. PWCS reserves the right to inspect Bidder's/Offeror's physical facilities prior to award to satisfy questions regarding the Bidder's/Offeror's capabilities. PWCS further reserves the right to reject any bid or proposal if the evidence submitted by, or investigations of, such Bidder fails to satisfy PWCS that such Bidder is properly qualified to carry out the obligations of the contract and to complete the work/furnish the item(s) contemplated herein.
22. **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.

AWARD

23. **DEFINITE BID QUANTITIES:** Where definite quantities are specifically stated, acceptance will bind PWCS to order quantities specified and to pay for, at contract prices, all such supplies or services delivered that meet specifications and conditions of the contract. However, PWCS will not be required to accept delivery of any balances unordered, as of the contract expiration date, unless the Contractor furnished the Supervisor of Purchasing with a statement of unordered balances not later than ten (10) days after the termination date of the contract.
24. **REQUIREMENT BID QUANTITIES:** On "Requirement" bids, acceptance will bind PWCS to pay for, at unit bid prices, only quantities ordered and delivered. Where PWCS specifies estimated quantities, the Contractor shall not be required to deliver more than ten (10) percent in excess of the estimated quantity of each item, unless otherwise agreed upon.

25. **AWARD OR REJECTION OF BIDS/OFFERS:** The Supervisor of Purchasing 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 Supervisor of Purchasing 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 Supervisor of Purchasing 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 Supervisor of Purchasing 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 Supervisor of Purchasing shall so notify that bidder and shall have recorded the reasons in the contract file.

26. **TIE BID:** If all bids are for the same total amount or unit price (including authorized discounts and delivery times), the PWCS Supervisor of Purchasing 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 Supervisor of Purchasing 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 Supervisor of Purchasing 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.

27. **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).

28. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract as a result of a solicitation, PWCS will publicly post such notice on the [Purchasing Web site](#) for a minimum of 10 calendar days.

29. **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.

30. **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.

CONTRACT PROVISIONS

31. **ANTI-DISCRIMINATION:** By submitting their bid/proposal, the Bidder 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 the Code of Virginia [§2.2-4311](#). In every contract over \$10,000 the provisions in 31.1 and 31.2 below apply:

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

31.1 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.

31.2 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.

31.3 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.

31.4 The Contractor will include the provisions of 31.1, 31.2 and 31.3 above in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

32. **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.

33. **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.

34. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the Contractor in whole or in part without the written consent of PWCS.

35. **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 to include, but 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.

36. **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.

37. **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.

38. **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.

39. **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.
40. **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:
- 40.1 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.
- 40.2 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.

41. **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 affected 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.
42. **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.
- The contract may be extended, with the authorization of the Contractor, to other public bodies, public agencies, or institutions of the United States to permit their use of the contract at the same prices and/or discounts and terms and conditions of the contract.
- 42.1 It is the Contractors responsibility to notify the public body(s) of the availability of the contract.
- 42.2 Each public body has the option of executing a separate contract with the awardee. Contracts entered into with them may contain general terms and conditions unique to those jurisdictions and political subdivisions covering minority participation, non-discrimination. 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.
- 42.3 PWCS shall not be held liable for any costs or damage incurred by another jurisdiction as a

result of any award extended to that jurisdiction or political subdivision by the awardee.

43. **DRUG-FREE WORKPLACE:** During the performance of this contract, the Contractor agrees as follows:
- 43.1 Provide a drug-free workplace for the Contractor's employees.
 - 43.2 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.
 - 43.3 State in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace.
 - 43.4 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.

44. **PLACING OF ORDERS:** Orders against contracts will be placed with the Contractor by Purchase Order or Procurement Card (P-Card) executed and released by the Supervisor of Purchasing or their designee.

DELIVERY/PAYMENT PROVISIONS

45. **FUNDING:** The obligation of PWCS to pay compensation due the Contractor under the contract or any other payment obligations under any contract awarded pursuant to this contract is subject to appropriations by the PWCS School Board to satisfy payment of such obligations. The County's obligations to make payments during subsequent fiscal years are dependent upon the same action. If such an appropriation is not made for any fiscal year, the contract shall terminate effective at the end of the fiscal year for which funds were appropriated and PWCS will not be obligated to make any payments under the contract beyond the amount appropriated for payment obligations under the contract. PWCS will provide the Contractor with written notice of non-appropriation of funds within thirty (30) calendar days after action is completed by the PWCS School Board. However, PWCS's failure to provide such notice will not extend the contract into a fiscal year in which sufficient funds have not been appropriated.

46. **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.
47. **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.**
48. **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, 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 does not violate any of the prohibitions of Title 15 of the U.S.C. or Section 1263.
49. **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.
50. **RESPONSIBILITY FOR MATERIALS OR GOODS TENDERED:** Unless otherwise specified in the solicitation, the Contractor is responsible for the materials or supplies covered by the contract until they are delivered at the delivery point designated by PWCS. The Contractor bears all risk of loss 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 its risk and expense or dispose of them as the PWCS's own property.
51. **PAYMENT:** Payment shall be made after satisfactory performance that is in accordance with all provisions of the contract, and upon receipt of a properly completed invoice. PWCS reserves the right to withhold any or all payments or portions thereof for Contractor's failure to perform in accordance with the provision of the contract or any subsequent modifications.
52. **PARTIAL PAYMENTS:** Unless otherwise specified, partial payments will be made upon acceptance of materials or services so invoiced if in accordance with completion date. However, up to 5 percent (5%) of the value of the entire order may be retained until completion of contract.

53. **PAYMENT FOR EQUIPMENT, INSTALLATION, AND TESTING:** When equipment requires installation (which includes erection, setting up or placing in position, service, or use) and testing, and the installation or testing is delayed, payment may be made based on 50% of the contract price when such equipment is delivered on the site. A further allowance of 25% may be made when the equipment is installed and ready for test. The balance shall be paid after the equipment is tested and found to be satisfactory. If the equipment must be tested, but installation is not required to be made by the Contractor or if the equipment must be installed but testing is not required, payment may be made based on 75% at the time of delivery and the balance shall be paid after satisfactory test or installation is completed.
54. **PAYMENT TO SUBCONTRACTORS:**
- 54.1 A Contractor awarded a contract under this solicitation is hereby obligated to:
- 54.1.1 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
- 54.1.2 Notify the agency and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason for such.
- 54.2 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.
- 54.3 The provisions of 54.1 through 54.3 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.
55. **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 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.

GENERAL

56. **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.
57. **GENERAL GUARANTY:** Contractor agrees to:
- 57.1. Save PWCS, its agents and employees harmless from liability of any nature or kind for the use of any copyrighted or uncopyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a contract for which the Contractor is not the patentee, assignee, licensee or owner.
- 57.2 Warrant that when the contract includes a software license, or use of licensed software, the Contractor is the owner of the Software or otherwise has the right to grant to the County the license to use the Software granted through the Contract without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party.
- 57.3 Protect PWCS against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery.
- 57.4 Furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work or to the work of other contractors, for which his or her workers are responsible.
- 57.5 Pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules, regulations, and policies of PWCS.
- 57.6 Protect PWCS from loss or damage to PWCS owned property while it is in the custody of the Contractor.
58. **SERVICE CONTRACT GUARANTY:** Contractor agrees to:
- 58.1 Furnish services described in the solicitation and resultant contract at the times and places and in the manner and subject to conditions of those documents provided that PWCS may reduce the said services at any time.
- 58.2 Enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence.
- 58.3 All work and services rendered in strict conformance to all laws, statues, and ordinances and the applicable government rules, regulations, methods, and procedures.

- 58.4 Allow services to be inspected or reviewed by an employee of PWCS at any reasonable time and place selected by PWCS. PWCS is under no obligation to compensate Contractor for any services not rendered in strict conformity with the contract.
- 58.5 Stipulate that the presence of a PWCS Inspector shall not lessen the obligation of the Contractor for performance in accordance with the contract requirements, or be deemed a defense on the part of the Contractor for infraction thereof. The Inspector is not authorized to revoke, alter, enlarge, relax, or release any of the requirements of the contract documents. Any omission or failure on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material. Notification of an omission or failure will be documented by the Supervisor of Purchasing.
59. **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.
60. **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.
61. **NON-LIABILITY:** The Contractor shall not be liable in damages for delay in shipment or failure to deliver when such delay or failure is the result of fire, flood, strike, the transportation carrier, act of God, act of Government, act of an alien enemy or by any other circumstances which, in the Purchasing Agent's opinion, are beyond the reasonable control of the Contractor. Under such circumstances, however, the Purchasing Agent may, at her discretion terminate the contract.
62. **OFFICIAL NOT TO BENEFIT:**
- 62.1 Each Bidder 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, recession of the contract, or recovery of the cost of the financial benefit from the contractor, recipient, or both.
- 62.2 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.
- 62.3 In the event the Bidder/Offeror has knowledge of benefits as outline 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/Offeror 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.
63. **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.
- 63.1 Cost estimates relating to a proposed transaction prepared by or for a public body shall not be open to public inspection.
- 63.2 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.
- 63.3 Bids and proposal records shall be open to the public only after award.

- 63.4 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.
- 63.5 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 Code of Virginia 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.
- 63.6 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.
64. **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 open.
- CODE RED:** All PWCS schools are closed. Administration offices are closed.
- CODE ORANGE:** PWCS schools closed or delayed. Employees work remotely.
- 64.1 In the event of a delay school opening, all times shall remain as stated in the Invitation for Bid/Request for Proposal.
- 64.2 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.
- 64.3 In the event that PWCS closes on a CODE RED or CODE ORANGE, 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.

BIDDER/CONTRACTOR REMEDIES

65. **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.

66. **CONTRACTUAL DISPUTES:** Any dispute concerning a question of act 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.
67. **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 Supervisor of Purchasing 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 Supervisor of Purchasing 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.
- 67.1 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.

- 67.2 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.
- 67.3 An award need not be delayed for the period allowed a Bidder 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.

- 68. **EXHAUSTION OF ADMINISTRATIVE REMEDIES:** No potential Bidder 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.
- 69. **FORCE MAJEURE EVENT:** If an event that is beyond the reasonable control of a Party and cannot be prevented with reasonable care of the affected Party, including but not limited to natural disasters, war and riot, provided that, any shortage of credit, capital or finance shall not be regarded as an event beyond the reasonable control of a Party. In the event that the occurrence of a Force Majeure Event delays or prevents the performance of this Agreement, the affected Party shall not be liable for any obligations hereunder only for such delayed or prevented performance. The affected Party who seeks to be exempt from the performance obligation under this Agreement or any provision hereof shall inform the other Party, without delay, of the exemption of obligation and the approaches that shall be taken to complete performance.