

## GENERAL TERMS AND CONDITIONS: (Revised 06/01/18)

These General Terms and Conditions shall apply to all purchases and be a part of every contract awarded by SBCS unless otherwise specified in writing. Bidders/Offerors, or their authorized representatives, are expected to inform themselves fully as to the conditions, requirements and specifications before submitting bids/proposals.

These General Terms are subject to all Federal, State, and local laws, SBCS policies, regulations and rules. Bids/Proposals submitted by Contractors to SBCS and all contract awards made by SBCS will bind Bidders/Offerors to applicable conditions and requirements herein set forth unless otherwise specified in the solicitation.

- 
1. **SCHOOL DIVISION LEGAL STATUS:** The school board is a corporate body whose official title is "The School Board of the County of Spotsylvania" herein referred to as SBCS.
  2. **ADDENDA:** Any changes or supplemental instructions to a solicitation, shall be in the form of written addenda. Most addenda are included with each solicitation. Each bidder/offeror is responsible for obtaining all addenda posted on the Purchasing Department website, or by calling 540-834-2500. Acknowledgement of receipt of all addenda shall be in the space provided within the solicitation or by returning a copy of each addendum, signed by the bidder/offeror. Failure to do so, may result in rejection of the solicitation. All addenda issued shall become part of the solicitation and all resulting contract documents.
  3. **ANTI-DISCRIMINATION:** By submitting their bid/proposal, the Bidder/Offeror certifies to SBCS that it will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, the Virginians with Disabilities Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act and all other federal or state anti-discrimination laws, including Section 2.2-4311 of the Virginia Public Procurement Act (VPPA). **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 or notify the appropriate person as indicated in this form.** If the award is made to a faith-based organization, the organization 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 SBCS (Code of Virginia, Section 2.2-4343.1E.).

In every contract over \$10,000, the provisions in 2.1. - 2.3 below apply:

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

- a. 2.1 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 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.
  - b. 2.2 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. 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;
  - c. 2.3 The Contractor will include the provisions of 2.2 above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
4. **ANTITRUST:** By entering into a contract, the Contractor conveys, sells, assigns, and transfers to SBCS all rights, title and interest in and to all causes of the 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 SBCS under said contract.

5. 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 Code of Virginia, Virginia Public Procurement Act (VPPA), and any litigation with respect thereto shall be brought in the state courts of the Commonwealth of Virginia. 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.
6. ASSIGNMENT OF CONTRACT: A contract shall not be assignable by the Contractor in whole or in part without the written consent of SBCS and other participating jurisdictions.
7. AUTHORITY: The Superintendent, or his designee, has the responsibility and authority for issuance of Invitations to Bid, Requests for Proposals, negotiations, placing and modifying invitations, requests, purchase orders and awards issued by and for SBCS. In the discharge of these responsibilities, the Superintendent may be assisted by delegating to the Purchasing Agent or other staff member(s). No other School Board officer or employee is authorized to enter into purchase negotiations, change orders, contracts, or in any way obligate the School Board for any indebtedness. Any purchase order or contract made which is contrary to these provisions and authorities shall be of no effect and void, and the School Board shall not be bound thereby.
8. AVAILABILITY OF FUNDS: The continuation of the terms, conditions, and provisions of a resulting contract or renewal beyond June 30 of any year, the end of SBCS fiscal year, are subject to approval and ratification by the Spotsylvania County School Board of Supervisors and appropriation by them of the necessary money to fund said contract for each succeeding year. In the event of non-appropriation of funds, the contract will be terminated for convenience and without penalty.
9. BID/PROPOSAL ACCEPTANCE PERIOD / RESULTS: Unless otherwise specified, all formal bids/proposals submitted shall be valid for a minimum period of one hundred twenty (120) calendar days following the date established for acceptance. At the end of the one hundred twenty (120) calendar days the bid/proposal may be withdrawn at the written request of the Bidder/Offeror. If the bid/proposal is not withdrawn at that time, it remains in effect until an award is made or the solicitation is canceled. Bid/proposal results are posted on the Purchasing Department website or available upon request.
10. CHANGES TO THE CONTRACT: Changes can be made to the contract in any of the following ways:

The parties may agree to modify the scope of the contract. 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.

SBCS 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 SBCS a credit for any savings. Said compensation shall be determined by one of the following methods:

By mutual agreement between the parties in writing; or

By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to SBCS' right to audit the Contractor's records and/or determine the correct number of units independently; or

By ordering the Contractor to proceed with the work and keeping a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present SBCS with all vouchers and records of expenses incurred and savings realized. SBCS shall have the right to audit the records of the Contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Department within thirty (30) days from the date of receipt of the written order from SBCS to proceed. If the parties fail to agree on an amount of adjustment, the questions of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for relieving disputes provided by the Disputes Clause of this contract. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from

promptly complying with the changes ordered, in writing, by SBCS or with the performance of the contract generally.

No modification for a fixed price contract may be increased by more than 25% or \$50,000, whichever is greater, without the advanced written approval of the School Board, as applicable.

11. **CLARIFICATION OF TERMS:** If any prospective Bidder/Offeror has questions about the specifications or other solicitation documents, the prospective Bidder /Offeror shall contact the Purchasing Official whose name appears on the face of the solicitation no later than the date/time stated in the in solicitation for the receipt of questions. Any revisions to the solicitation will be made only by a written addendum issued by the Purchasing Official.
12. **CONDITION OF ITEMS:** All items shall be new, and in first class condition, including containers suitable for shipment and storage, unless otherwise indicated herein. Verbal agreements to the contrary will not be recognized.
13. **CONDITIONAL BIDS:** Conditional bids are subject to rejection in whole or in part unless the solicitation specifically permits conditional bids.
14. **CONFLICT OF INTEREST:** The Bidder/Offeror certifies by signing the bid/proposal submitted in response to this solicitation that no conflict of interest exists between the Bidder/Offeror and SBCS that interferes with fair competition and no conflict exists between the Bidder/Offeror and any other person or organization that constitutes a conflict of interest with respect to the contract and SBCS.
15. **CONTRACT AWARD:** The award(s) made in response to an IFB will be made to the lowest responsive and responsible Bidder(s) for each item, or group of related items indicated in the Pricing Schedule. If the bid from the lowest responsible bidder exceeds available funds, SCPS may negotiate with the apparent low bidder to obtain a contract price within available funds as permitted by Section 2.2-4318 of the Code of Virginia. For the purpose of determining when such negotiations may take place, the term "available funds" shall mean those funds which were budgeted by SBCS for this contract prior to the issuance of the written Invitation for Bid. Negotiations with the low bidder may include both modifications of the bid price and the Scope of the Work/Specifications to be performed, using the procedures set forth in SBCS Regulation DJ-R1. The award(s) 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 SBCS taking into consideration the evaluation factors set forth in the RFP. Delivery time lines shall be a factor in making an award. SBCS reserves the right to make a separate award for each item, a group of items or all items, and to make awards either in whole or in part, whichever is deemed by SBCS to be in its best interest. SBCS reserves the right to reject any or all bids/proposals, in whole or in part, to waive any informality and to delete items prior to making the award(s), whenever it is deemed in the sole opinion of SBCS to be in its best interest. SBCS reserves the right to make the sole determination of whether the model and/or options offered meet the minimum specifications and is acceptable in accordance with the specifications attached. SBCS's decision shall be final.
16. **CONTRACT DOCUMENTS:** The Contract entered into by the parties shall include this Invitation For Bid/Request for Proposal, the signed bid/proposal submitted by the Contractor, the Notice of Award or Purchase Order/Contract, the General and Special Terms and Conditions, the Certificate of Compliance Involving Crimes Against Children, the listed Specifications and drawings, if any, including all modifications thereof, all of which shall be referred to collectively as the Contract Documents.
17. **CONTRACTOR'S AUTHORIZATION TO TRANSACT BUSINESS:** Contractor agrees, by its provision of goods or services to SBCS in accordance with the purchase order/contract, that if it is a corporation, limited liability company, business trust or limited partnership, or registered as a registered limited liability partnership, it is authorized to transact business in the Commonwealth as required by Section 2.2-4311.2 of the Code of Virginia. It further agrees that it shall not allow its existence to lapse or its certificate or authority or registration to transact business in Virginia to be revoked or cancelled during the term of the contract.
18. **CONTRACTUAL DISPUTES:** Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty (60) days after final payment. However, written notice of the Contractor's intention to file such a claim shall have been given 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. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

A claim to SBCS must be initiated by the filing of a Notice of Claim to the attention of the Purchasing Department within the time limits prescribed. It is not sufficient that Notices of Claim be postmarked within the time limits. The Notice must actually be delivered within the time limits. The party noticing the claim assumes whatever risks are inherent in the selected method of delivery.

The Notice must be in writing and state:

- a. That a claim is being filed;
- b. The decision related to which the claim is being made;
- c. The contract number and other identification of the contract;
- d. The basis for the claim; and
- e. The relief sought.

SBCS shall render a decision in writing within sixty (60) days. A Contractor may not invoke administrative procedures, or institute legal action prior to receipt of the SBCS decision on the claim, unless SBCS fails to render such decision within the specified time.

The decision of SBCS shall be final and conclusive unless the Contractor appeals within six (6) months of the date of the final decision on the claim by SBCS by invoking administrative procedures meeting the standards of VPPA §2.2-4365, or in the alternative by instituting legal action as provided in VPPA §2.2-4364.

19. **COPYRIGHTS OR PATENT RIGHTS:** The bidder/offeror certifies by submission of a bid/proposal, that there has been no violation of copyrights or patent rights in manufacturing, producing, or selling the product or services ordered or shipped as result of any solicitation. The Contractor shall, at his/her own expense, (1) pay all royalties and license fees necessary for performance of the contract; and (2) defend any and all actions or suits charging such infringement of any patent rights or any other proprietary rights arising from, or related to, performance of the resulting contract and shall defend and hold SBCS and its officers, employees, and agents harmless from any and all liability, loss or expense, including attorneys' fees, incurred by any violation, or alleged violation.
20. **DEBARMENT STATUS:** By submitting their bid/proposal, the Bidder/Offeror certifies that it is not currently debarred by the Commonwealth of Virginia or SBCS 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.
21. **DEFINITIONS:**
  - a. **INFORMALITY:** A minor defect or variation of a bid or proposal from the exact requirements of the solicitation, which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured
  - b. **PROFESSIONAL SERVICES:** Work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy, professional engineering or any other profession which the Virginia General Assembly has so classified.
  - c. **PUBLIC BODY:** Any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty and empowered by law.
  - d. **RESPONSIBLE BIDDER/OFFEROR:** A person who has the capability, in all respects, to perform fully the contract requirements and moral business integrity and reliability which will assure good faith performance, and who has been pre-qualified, if required.
  - e. **RESPONSIVE BIDDER:** means a person who has submitted a bid that conforms in all material respects to the solicitation.
22. **DRUG-FREE WORKPLACE:** By submitting their bid/proposal, the Bidder /Offeror shall in accordance with Section 2.2-4312 of the VPPA agree to maintain a drug-free workplace.

In every contract over \$10,000 provisions 20.1 – 20.4 below shall apply. During the performance of this contract, the Contractor agrees to:

- a. 22.1 Provide a drug-free workplace for the Contractor's employees.
- b. 22.2 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.
- c. 22.3 State in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace.
- d. 22.4 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 the VPPA, 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.

23. ERRORS IN BIDS/PROPOSALS: When an error is made in extending total prices, the unit bid/proposed price will govern. Erasures in bids/proposals must be initialed by the Bidder/Offeree. Carelessness in quoting prices, or in preparation of bids/proposals will not relieve the Bidder/Offeree. Bidders/Offerees are cautioned to recheck their bids/proposals for possible errors. Errors discovered after public opening cannot be corrected and the Bidder/Offeree will be required to perform if his/her bid/proposal is accepted.
24. ETHICS IN PUBLIC CONTRACTING: By submitting their bid/proposal, Bidders/Offerees 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/Offeree, 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.
25. EXHAUSTION OF ADMINISTRATIVE REMEDIES: No potential Bidder/Offeree 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.
26. EXAMINATION OF RECORDS: The Contractor agrees that in any contract resulting from this solicitation, SBCS or any duly authorized representative shall, until the expiration of three (3) years after final contract payment, have access to and the right to examine and copy any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to the contract.  

The period of access provided in the paragraph above for records, books, documents, and papers which may be related to any arbitration, litigation, or the settlement of claims arising out of the performance of any resulting contract or any contracts with vendors shall continue until any appeals, arbitration, litigation, or claims shall have been finally disposed of.
27. EXTRA CHARGES NOT ALLOWED: The bid/proposal prices shall be for the complete delivery ready for SBCS use, and shall include all applicable freight charges; extra charges will not be allowed for shipment to multiple locations.
28. 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 fail to deliver an order at the time specified, or within a reasonable period of time thereafter, as determined by the Purchasing Official, or should the contractor fail to make timely replacement of rejected items when so requested, SBCS may purchase items of comparable quality in the open market to replace the rejected or undelivered items. The contractor shall reimburse SBCS for all costs above the contract price when purchases are made in the open market. This remedy shall be in addition to any other remedies which SBCS may have.

29. FINANCE/INTEREST CHARGES: Finance and/or interest charges imposed by the Contractor on any invoice shall not be paid by SBCS.
30. FELONY CONVICTIONS OR SEXUAL ABUSE: Contractor acknowledges and certifies that all employees of Contractor and sub-contractors performing work on school division property or property being used by the school division, are not convicted of a felony or any offense involving the sexual molestation, physical or sexual abuse or rape of a child. The contractor further acknowledges and certifies that it understands that allowing any person subject to the direct or indirect control of Contractor to perform work or enter on school division property if such person has been convicted of such a crime, constitutes a breach of contract and may result in default action being taken by SBCS in addition to any criminal penalties that may result from such breach or conduct.
31. GOVERNING LAW: This contract shall be governed by the law of the Commonwealth of Virginia. Any legal action relating to this contract shall be brought in the state courts of the Commonwealth of Virginia without exception.
32. 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 any unauthorized alien or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986.
33. INCLEMENT WEATHER: Due to inclement weather conditions, SBCS may elect to close or delay the opening of schools and administration offices.

In the event of a delayed school opening, all times shall remain as stated in the solicitation.

In the event that Spotsylvania County Public Schools close on a CODE ZERO or CODE ONE, any Optional/Mandatory Pre-bid/proposal Conference and all Bid Openings/Proposal Receipts will be held on the next business day the Spotsylvania County Public Schools experience a normal opening or a delayed opening at the time previously scheduled. No exceptions will be made in this matter.

34. INDEMNIFICATION: The Contractor shall defend, indemnify, save and hold harmless SBCS, its officers, agents, employees, volunteers and participating jurisdictions against and from any and all injuries, death, loss, damage, claims, patent claims, suits, liabilities, judgments, costs of investigation, attorneys' fees, cost of appeals arising out of any such claims or suits, and other expenses which may otherwise accrue against SBCS in consequence of the granting of a contract or which may or otherwise result in connection with work therefrom, if it shall be determined that the act was caused through negligence, omission or commission of the Contractor, including its agents, subcontractors, employees, and volunteers. The Contractor expressly understands and agrees that any performance bond or insurance shall in no way limit the responsibility to defend, indemnify, keep and save harmless SBCS as herein provided. Furthermore, it is understood and agreed that the Contractor is at all times herein acting as an independent contractor.
35. INSURANCE: By signing and submitting a bid/proposal under this solicitation, the Bidder/Offeror certifies that if awarded the contract, it will have Workers' Compensation insurance and Commercial General Liability Insurance in effect with the below-stated limits. Limits of the Workers' Compensation insurance shall be established as required by the Workers' Compensation Act of Virginia. Additionally, it will maintain this during the entire term of the contract and certifies that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission. During the period of the contract, SBCS reserves the right to require the Contractor to furnish certificates of insurance for the coverage required by SBCS and the Commonwealth. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The School Board of the County of Spotsylvania must be named as an additional insured and so endorsed on the policy.

Automobile Liability - \$1,000,000 per occurrence.

36. INVOICES: Invoices for goods and/or services ordered, delivered and accepted shall be submitted in duplicate by the Contractor 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.**
37. 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 their 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.
38. RECEIPT OF BIDS/PROPOSALS: To be considered for selection, bids/proposals must be received by the SBCS Administrative Office by the designated date and hour. The official time used in the receipt of bids/proposals is **local prevailing eastern standard Verizon time**. Bids/Proposals received in the SBCS Administrative Office after the date and hour designated are non-responsive, automatically disqualified, and will not be considered. SBCS 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 its bid/proposal reaches the SBCS Administrative Office by the designated date and hour. Please Note: Fed-Ex and other overnight services do not guarantee A.M. delivery to Spotsylvania County
39. MANDATORY USE OF SBCS FORM AND TERMS AND CONDITIONS: Failure to submit a bid/proposal on the official SBCS form provided for that purpose may be cause for rejection of the bid/proposal. Unauthorized 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 Purchasing Official 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, SBCS 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.
40. MATERIAL SAFETY DATA SHEETS: Material and Safety Data Sheets shall be provided 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. METHOD OF PAYMENT: The Contractor shall be paid on the basis of invoices submitted for completed work. Payment will be net forty-five (45) days from receipt, and approval, by an authorized SBCS official, upon satisfactory completion of delivery. Payment shall be made after satisfactory performance of the contract in accordance with all the provisions thereof and upon receipt of a properly completed invoice. SBCS 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.
42. NO AGENCY RELATIONSHIP: Contractor is not the agent, subagent or representative of SBCS; and this contract shall not make SBCS liable to any person, firm, corporation or other who contracts with or provides goods or services to Contractor in connection with the goods or services it has agreed to perform hereunder or otherwise for debts or claims accruing to such parties against Contractor and any other person, firm, corporation or other supplying any work, labor, services, goods or materials to Contractor as a result of its services to SBCS hereunder or otherwise.
43. NO CONTACT POLICY: No Bidder/Offeror shall initiate or otherwise have contact related to the solicitation with any SBCS representative or employee, other than the Purchasing Official, prior to the date/time set for bid/proposal receipt. Any contact initiated by a Bidder/Offeror with any SBCS representative, other than the Purchasing Official, concerning this solicitation is prohibited and may cause the disqualification of the Bidder/Offeror from this procurement process.
44. NONDISCRIMINATION 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 or disability or against faith-based organizations. If the award of this 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, SBCS shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursement from an alternative provider.

45. OFFICIAL NOT TO BENEFIT:

Each Bidder/Offeror shall certify upon signing a bid/proposal that to the best of his/her knowledge no SBCS 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 or recession of the contract made or could affect payment pursuant to the terms of the contract.

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, SBCS, 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.

In the event the Bidder/Offeror 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/Offeror shall address the disclosure of such facts to: Purchasing Agent, Spotsylvania County Public Schools, 8020 River Stone Dr., Fredericksburg, VA 22407. The solicitation's number shall be referenced in the disclosure.

46. OWNERSHIP OF MATERIAL: Ownership of all data, material and documentation originated and prepared by the Bidder/Offeror and successful Contractor for SBCS pursuant to this solicitation and any resulting contract shall belong exclusively to SBCS and be subject to public inspection in accordance with the Virginia Freedom of Information Act.

47. PAYMENT TERMS: Any payment terms requiring payment in less than 45 days will be regarded as requiring payment 45 days after invoice or delivery, whichever occurs last. However, this shall not affect offers of discounts for payment in less than 45 days.

48. PAYMENT TO SUBCONTRACTORS: A contractor awarded a contract under this solicitation is hereby obligated to:  
Pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from SBCS for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or;  
Notify the agency and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.

The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent (1%) per month (unless otherwise provided under the terms of the contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from SBCS 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. These provisions 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 SBCS or any participating jurisdiction.

49. PRECEDENCE OF TERMS: All of these General Terms and Conditions shall apply in all instances. In the event there is a conflict between any of the General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

50. PRICE ESCALATION/DE-ESCALATION: For contracts that permit price changes for material costs, price adjustments may be permitted for changes, subject to approval by the Purchasing Agent, in Contractor's cost of materials not to exceed the increase in the following index indices: CPI:W: U.S. city average, by expenditure category and commodity and service group – Information Technology, hardware and services (1) (5). No price increases will be authorized for three hundred and sixty-five (365) calendar days after the effective date of this contract. Price escalation may be permitted only at the end of this period and each 365 days hereafter and only where verified to the satisfaction of the Purchasing Agent. However, across the board price decreases are subject to implementation at any time and shall be immediately conveyed to SBCS. Contractor shall give no less than thirty (30) days advance notice of any price increase to the Purchasing Agent. Any approved price changes by the Purchasing Agent, will be effective only at the beginning of the calendar month following the end of the full thirty (30) day notification period. Contractor shall document the amount and proposed effective date of any general change in the price of materials. Documentation shall be supplied with the Contractor's request for



increase which will: (1) verify that the requested price increase is general in scope and not applicable to just SBCS; and (2) verify the amount or percentage of increase which is being passed on to SBCS by the contractors' suppliers. The Purchasing Agent will notify the using agencies and Contractor in writing of the effective date of any increase which it approves, however, Contractor shall fill all purchase orders received prior to the effective date of the price adjustment at the old contract prices. The Contractor is further advised that decreases which affect the cost of goods or services are required to be communicated immediately to the Purchasing Agent.

51. PRIME CONTRACTOR RESPONSIBILITIES: The Contractor shall be responsible for complete supervision and direction of the work under this contract, and all subcontractors that it may utilize, using its best skill and attention. Subcontractors who perform work under this contract shall be responsible to the prime Contractor. The Contractor agrees that it is as fully responsible for the acts and omissions of its subcontractors, and of persons employed by it, as it is for the acts and omissions of its own employees.
52. PRODUCT SELECTIONS: SBCS has the sole discretion, and reserves the right, to determine and select products which meet specific individual facility color and style requirements.
53. PROTECTION OF PERSONS AND PROPERTY: Contractor expressly agrees, both directly and through its subcontractors, to take every precaution at all times for the protection of persons and property, including SBCS's employees, students, guests and property and its own. Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. Contractor shall continuously maintain adequate protection of all work from damage and shall protect SBCS's property from injury or loss arising in connection with this contract. Contractor shall make good on any damage, injury or loss, except such as may be directly due to errors in the contract documents or caused by employees of SBCS. Contractor shall adequately protect adjacent property as provided by law and the contract documents, and shall provide and maintain all passageways, guard fences, lights and other facilities for protection required by SBCS, local conditions, or any of the contract documents. In an emergency affecting the safety or life of individuals, or of the work or of adjoining property, Contractor, without special instruction or authorization from SBCS, is hereby permitted to act, at its discretion, to prevent such threatened loss or injury. Any additional compensation or extension of time claimed by Contractor on account of any emergency work, shall be determined as provided in this contract.
54. PROTEST OF AWARD OR DECISION TO AWARD: Any Bidder/Offeror may protest the award or decision to award a contract by submitting a protest in writing to the Superintendent no later than ten (10) days after public notice of the award or the announcement of the decision to award, whichever occurs first. The written protest shall include the basis for the protest and the relief sought. The Superintendent shall issue a decision in writing within ten (10) days of the receipt of the protest stating the reasons for the action taken.

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 Purchasing Agent 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 halted SBCS. Where the award has been made and performance has begun, SBPC may declare the contract void upon a finding that this action is in the best interest of SBCS. Where a contract is declared void, the performing Contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing Contractor be entitled to lost profits.

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.

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 offer would expire.

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

56. QUALITY EXPECTATION STATEMENT: SBCS, through its initiative, is a recognized leader in providing quality goods and services at the most effective cost possible. Therefore, SBCS fully expects, requires and shall hold all Contractors, and all agents, staff, representatives, and subcontractors of the Contractor, responsible for, and accountable to, the highest quality standards of professional workmanship, and goods and services. In the spirit of SBCS's total quality improvement initiative, the Contractor shall be expected to become a member of the team and perform or provide goods and services with a target of "zero defects – zero rework".
57. QUANTITIES: The quantities specified in the Pricing Schedule, are those intended to be purchased by SBCS. The exact amount ordered will be governed by the actual needs as determined at the time of award. SBCS will only be obligated, under this contract, to the extent of purchase orders issued and products received.
58. RECEIPT OF GOODS: Bidders/Offerors shall be aware that the materials being contracted for shall be delivered FOB Destination, and shall be the sole property of the Contractor prior to acceptance by SBCS.

The Contractor shall be responsible for all materials or supplies covered by the contract until they are delivered at the designated point. The Contractor shall bear all risk on rejected materials/supplies after the notice of rejection is issued. Rejected materials/supplies must be removed by, and at the expense of, the contractor within 14 calendar days after the notice of rejection has been issued.

Replacement materials or components that have been rejected by SBCS, in accordance with the terms of the contract, shall be replaced by the Contractor at no cost to SBCS.

59. REFERENCES: If requested, the bidder/offeror shall provide references which substantiate past work performance and experience in the type of work required for the contract. SBCS may contact all references furnished by bidders/offerors. The right is further reserved by SBCS to contact references other than, and/or in addition to, those furnished by the bidder/offeror.

60. SAFETY:

1. The Contractor, its employees and subcontractors shall comply with all current applicable local, state and federal policies, regulations and standards relating to occupational health and safety, including, by way of illustration and not limitation, the standards of the Virginia Occupational Safety and Health (VOSH) Compliance Program administered by the Virginia Department of Labor and Industry. The provisions of all rules and regulations governing safety as adopted by the Safety Codes Commission of the Commonwealth of Virginia and issued by the Department of Labor and Industry under Title 40.1 of the Code of Virginia shall apply to all work under the contract. The Contractor shall provide, or cause to be provided, all technical expertise, qualified personnel, equipment, tools and material to safely accomplish the work specified and performed by the Contractor.

2. The Contractor shall provide a supervisor at each job site who is competent, qualified, and authorized on the worksite, and who is familiar with policies, regulations and standards applicable to the work being performed. The supervisor shall be capable of identifying existing and predictable hazards in the surroundings or working conditions which are hazardous or dangerous to employees or the public, and shall be capable of ensuring compliance with all applicable safety and health regulations, and shall have the authority and responsibility to take prompt corrective measures, which may include removal of the Contractor's employees from the work site.

3. Any activities of the Contractor determined to be hazardous by SBCS, shall be immediately discontinued by the Contractor upon receipt of either a written or verbal notice from SBCS to discontinue such activities.

4. If requested by the School Project Manager, the Contractor shall provide a written health and safety plan for the project prior to proceeding with any work. All contractors and subcontractors shall be held responsible for the safety of their employees and any unsafe acts or conditions that may cause injury or damage to any person or property within and around the work site area under this contract.

61. SMALL, WOMAN, MINORITY, AND SERVICE DISABLED VETERAN-OWNED BUSINESS ENTERPRISES:

SBCS promotes fair and equal opportunity to all vendors interested in participating in the procurement process. It is the policy of SBCS to undertake every effort to increase opportunity for utilization of small, woman, minority and service disabled veteran-owned 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 policy and ensure that small, woman, minority and service disabled veteran-owned 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 written representation by subcontractors regarding their status as small, woman, minority and/or service disabled veteran-owned business enterprises in lieu of an independent investigation.

62. SUBCONTRACTORS: No portion of the work shall be subcontracted without prior written consent of the Purchasing Agent. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish the Purchasing Agent the names, qualifications and experience of their proposed subcontractors. The Contractor shall, however, remain fully liable and responsible for the work to be done by his/her subcontractor(s) and shall assure compliance with all requirements of the contract.
63. TAX EXEMPTION: SBCS, as a public body politic and corporate of the Commonwealth of Virginia, is exempt from any Federal excise tax and Virginia sales and use tax. SBCS' employer identification number is 54-6001624.
64. TESTING AND INSPECTION: SBCS reserves the right to conduct any test or inspection it may deem advisable to ensure products/services conform to the specification.
65. TERMINATION: Subject to the provisions below, the contract may be terminated by SBCS upon thirty (30) days advance written notice to the other party. Any contract cancellation 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 cancellation

Termination for Convenience: This contract may be terminated by the Purchasing Agent in whole or in part, whenever the Purchasing Agent shall determine that such termination is in SBCS's best interest. Any such termination shall be effected by delivery to the Contractor of a written notice of termination at least fifteen (15) days before the date of termination, specifying the date upon which such termination becomes effective. After receipt of termination and except as otherwise directed, Contractor shall stop all performance, cancel orders for parts and terminate any subcontractors as of the date specified in the notice and accept no further orders from SBCS. SBCS shall be responsible for payment of approved services rendered up to the termination date.

Termination for Cause: Termination by SBCS for cause, default or negligence on the part of the Contractor shall be excluded from the foregoing provision; termination costs, if any, shall not apply. SBCS may hold the Contractor responsible for any resulting additional purchase and administrative costs, expenses and attorney's fees incurred as a result of the reasons resulting in the termination for cause. The fifteen (15) days advance notice requirement is waived in the event of Termination for Cause.

Termination Due to Unavailability of Funds: When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year, the contract shall be canceled by SBCS.

66. USE OF BRAND NAMES: Unless otherwise provided in this 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 SBCS 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/Offeror is responsible to clearly and specifically indicate the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable SBCS 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/Offeror clearly indicates in his/her 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.

SBCS reserves the right to determine the suitability of substituted items for those specified and to accept or reject in whole or in part any and all bids/proposals received.

67. USE OF CONTRACT BY OTHER POLITICAL ENTITIES: Bidders/Offerors are advised that all resultant contracts will be extended with the authorization of the Bidder/Offeror to the Metropolitan Washington Council of Governments jurisdictions, and all other jurisdictions and Political Subdivisions of the Commonwealth of Virginia, to permit their ordering of supplies and/or services at the prices and terms of the resulting contract. If any other jurisdiction decides to use the final contract, the Contractor must deal directly with that jurisdiction or political subdivision concerning the placement of orders, issuance of the purchase order, contractual disputes, invoicing and payment. SBCS acts only as the "Contracting Agent" for these jurisdictions and political subdivisions. Failure to extend a contract to any jurisdictions will have no effect on the consideration of your bid/proposal.
68. 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.
- a. Bid/Proposal records shall be made available, upon request, within a reasonable amount of time after receipt but prior to award only for those Bidders/Offerors who submitted a Bid/Proposal in response to this solicitation.
  - b. Cost estimates relating to a proposed transaction prepared by or for a public body shall not be open to public inspection.
  - c. In the event that SBCS decides not to accept any of the bids/proposals and to re-solicit, the procurement file will be closed and not open to public inspection. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.
  - d. Trade secrets or proprietary information submitted by any Bidder/Offeror or Contractor in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act, **however, the Bidder/Offeror or Contractor must invoke the protection of this section in writing prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected, and state the reasons why protection is necessary.**
69. WARRANTY: The Contractor agrees that the equipment and services furnished under any award resulting from this solicitation shall be covered by the most favorable commercial warranties the Contractor gives any customer for such equipment and that the rights and remedies provided therein are in addition to and do not limit those available to SBCS by any other clause of this solicitation. Should any defect be noted by SBCS, the Purchasing Official will notify the Contractor of such defect or non-conformance. Notification will state either (1) that the Contractor shall replace or correct, or (2) SBCS does not require replacement or correction, but an equitable adjustment to the contract price will be negotiated. If the Contractor is required to correct or replace, it shall be at no cost to SBCS and shall be subject to all provisions of this clause to the same extent as materials initially delivered. If the Contractor fails or refuses to replace or correct the deficiency, the office issuing the purchase order may have the materials corrected or replaced with similar items and charge the Contractor the cost occasioned thereby or obtain an equitable adjustment in the contract price. A copy of this warranty must be furnished with the executed contract.
70. WORK SITE DAMAGE: Any damage, including damage to finished surfaces, resulting from the performance of this contract, shall be repaired to SBCS's satisfaction at Contractor's expense.