Charlotte-Mecklenburg Schools
Capital Program Services

Request for Qualifications
Geotechnical & Construction Material Testing Services

February 10, 2020
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Section 1 - ADVERTISEMENT

Charlotte-Mecklenburg Schools (CMS) is requesting qualifications (RFQ) from Geotechnical firms interested in providing Geotechnical, Environmental, and Construction Material Evaluation, Inspection and Testing services for upcoming CMS projects.

Documents may be downloaded beginning Monday, February 10, 2020 from the CMS website at: http://www.cms.k12.nc.us/cmsdepartments/construction/Pages/documents.aspx

For further information email Tom O’Dell at tom.odell@cms.k12.nc.us

Section 2 - INTRODUCTION, OVERVIEW AND SCOPE OF SERVICES

CMS is requesting qualifications from Geotechnical firms interested in providing services for upcoming CMS projects. The scope of work for this RFQ includes Geotechnical, Environmental, and Construction Material Evaluation, Inspection and Testing services related to the construction of new schools and renovations/additions to existing school facilities. The selected testing firm(s) may be requested to provide some or all of the following services on an as needed basis: Site Selection Assistance, Design Phase Assistance, and Construction Phase Special Inspections, Testing & Observations

Section 3 - GENERAL INFORMATION

The selection of Geotechnical firms will be based on responder’s qualifications and response to the RFQ.

Addenda and Supplements to RFQ

If a responder is in doubt as to the true meaning of any part of this RFQ or other requirements, questions may be submitted to CMS’s representative (at the address below) no later than (10) days prior to the RFQ due date. Clarifications or revisions to the RFQ will be made by addendum and will be posted on the CMS website no later than seven (7) days from the due date. It is the responder’s obligation to monitor the website for addenda.


The responder is required to acknowledge receipt of any/all addendum. Oral explanations will not be binding.

Request for Explanation and Information

Email questions regarding the RFQ to:

   Mr. Tom O’Dell Tom.odell@cms.k12.nc.us
   Deputy Director of Capital Program Services
   Charlotte-Mecklenburg Schools
   3301 Stafford Drive
   Charlotte, NC 28208

CMS has sole discretion and reserves the right to reject any and all RFQ responses received and to cancel the RFQ process at any time prior to entering into a formal agreement. CMS reserves the right to request additional information or clarification of information provided.
Section 4 - SUBMISSION REQUIREMENTS

Responses should be prepared and submitted as described in this section.

Responders bear the responsibility of examining all parts of this RFQ and furnishing the information required by this RFQ. The responder shall prepare their response and provide three (3) hard copies and one (1) electronic copy on a labeled USB flash drive. All costs incurred in the preparation and submission of the response to this RFQ shall be covered by the responder. All blank spaces on the Acknowledgement Form and all requirements outlined in this RFQ must be completed.

Submittals shall be made on 8.5” x 11” paper, side bound with Table of Contents and reference tabs for key sections. Response is limited to 25 pages single sided. All pages are to be consecutively numbered. Responders shall submit their RFQ Response in a sealed envelope no later than 3:00 PM Tuesday March 10, 2020 to CMS Auxiliary Services, 3301 Stafford Drive, Charlotte, NC, and Attention Tom O’Dell. The sealed envelope shall carry the following information on the face of the envelope: Responder’s name, address, and Geotechnical RFQ Response.

Each responder must answer all questions and provide all requested information, where applicable. If the answer to any questions is “none” or if the question is not applicable, please state in writing. Any responder failing to do so may be deemed to be non-responsive with respect to this qualification at the sole discretion of CMS.

A selection committee will make reasonable investigations as deemed proper to determine the ability of each responder to perform the work. The responder shall be responsible to furnish all information and data requested by the RFQ.

Where qualifications are sent by mail, the responder is responsible for their delivery before the time specified. Submittals received after the specified time will not be considered and will be returned unopened. Submittals must include, at a minimum, the following:

1. Executive Summary limited to one (1) page including the name of the responder, location of responder’s principal place of business, a brief narrative description including the age of the business, type of business organization and services offered.

2. Insurance Requirements – Proposers must show proof of insurance coverage meeting the requirements identified in Section 5 (submit a copy of insurance certificate)

3. Completed response to Section 6 - Qualifications/responder Information

4. Completed Section 7 - Acknowledgement Form

5. Complete Section 8 – Proposers will complete and submit required MWSBE documents (Identification form and Affidavit ‘A’ or ‘B’) with MWSBE Information
Section 5 - INSURANCE REQUIREMENTS

Minimum limits for the following types of insurance are required:

Worker’s Compensation:
1. N.C. Statutory Requirements
2. Employers Liability
   - $500,000 – Each Accident
   - $500,000 – Disease Policy Limits (Aggregate)
   - $500,000 – Disease Each Employee

Comprehensive General Liability:

Limits of coverage shall not be less than:
1. Bodily Injury Liability including contractual liability coverage assumed under the indemnity agreement of the contract, products/completed operations and underground property damage XCU where applicable.
   - $1,000,000 each occurrence
   - $2,000,000 annual aggregate

2. Property Damage Liability including contractual liability assumed under the indemnity agreement of the contract, products/completed operations and undergoing property damage XCU where applicable.
   - $1,000,000 each occurrence
   - $2,000,000 annual aggregate

Comprehensive Automobile Liability:

Comprehensive Automobile Liability Insurance shall be maintained by the Construction Manager as to the ownership, maintenance and use of all owned, non-owned, leased or hire vehicles with limits of not less than:

1. Automobile Liability – All owned, non-owned and hired vehicles
   - $1,000,000 each person
   - $2,000,000 each occurrence

2. Automobile Property Damage Liability – all owned, non-owned and hired vehicles
   - $1,000,000 each occurrence
   - $2,000,000 aggregate

3. Umbrella liability limits shall not be less than
   - $2,000,000 each occurrence

4. Professional Liability Insurance
   - $1,000,000
Section 6 - QUALIFICATIONS/RESPONDER INFORMATION

Please organize your responses to questions below in the same order and numbering given, restating the question first, then your response.

1. Company history, size and background
   a. Provide name of firm, date of company formation, organizational structure and number of years providing geotechnical services. Indicate number of years under the current company name as well as previous names of the firm.
   b. Indicate the location of the firm's principal office and the location of the office that will directly participate in this CMS work if different.

2. Provide the names, positions, professional backgrounds and years with the organization for individuals intended to be used on the proposed CMS work. This should include the Principals, Administrators, Professional Engineers and Technicians to be assigned. Provide an organizational chart that represents this staffing.

3. Provide a Contact representative including name, title, email, and phone number.

4. Financial Information - CMS reserves the right to request financial data. If requested provide a copy of audited financial statements for the three (3) previous fiscal years and the last quarterly report. Statements must include auditor’s letter of opinion, auditor’s noted balance sheet, statement of income/loss.

5. Client References
   a. Provide five (5) client references to substantiate relevant project experience. Information should include contact name, address, phone number, email and a description of services provided.

6. Legal Information
   a. Identify any judgments, claims, and suits pending or outstanding against your firm or its officers.
   b. Describe previous litigation, mediation or arbitration which your firm has been involved in during the past five (5) years pertaining to the services provided by your firm.
   c. Indicate any project(s) where your firm has been terminated and the reasons for termination.
   d. Has your firm or any of its owners, officers or partners ever been found liable in a civil suit, found guilty in a criminal action for making any false claim or material misrepresentation to any public agency or entity, or been convicted of a crime involving any federal, state or local law?

   If YES, explain on a separate signed page, including identifying who was involved, the name of the public agency, the date of the investigation and the grounds for the finding.

7. Provide a list of no less than ten (10) relevant projects in North or South Carolina where your firm has provided services and the scope of the services provided.

8. Indicate the range of Geotechnical services your firm is capable of providing with “In-house” personnel including but not limited to:
   a. Environment surveys
   b. Wetland delineation
   c. Wetland permitting
   d. Soil borings and sampling
   e. Soil proctor and analysis
   f. Soil compaction/density
g. Atterburg limits testing  
h. CBR testing  
i. DMT Testing  
j. PMT Testing  
k. Test Pit Excavation & testing  
l. Soil Percolation Testing  
m. Concrete design mix formulations  
n. Shear wave velocity testing  
o. Ground penetrating radar  
p. Water table Evaluation  

9. Indicate the range of Construction Material Testing and Inspection services your firm is capable of providing with “In-house” personnel including but not limited to:  
   a. Concrete design mix formulations  
   b. Concrete compressive strength testing  
   c. Concrete cover sampling and testing  
   d. Structural Steel observation and inspection  
   e. Bolt testing  
   f. Welding testing  
   g. Masonry observation and inspection  
   h. Pavement system observation and inspection  
   i. Sprayed fire resistant material observation and inspection  
   j. Modular retaining wall observation, inspection & testing including tri-axial shear testing  
   k. Floor flatness evaluation  

10. Indicate the number of employees or crews in each category below that are directly employed by the proposing firm and available to work on Charlotte-Mecklenburg Schools projects.  
   a. Drilling Crews  
   b. Staff Engineer/Geologist  
   c. Project Engineer/Geologist  
   d. Senior Engineer PE/Geologist  
   e. Chief Engineer PE/Principal Engineer  
   f. Engineering Technician for Soil and Concrete  
   g. ASNT, ACI, NICET, ICBO Certified, Inspector and Technician  
   h. ICBO Certified reinforced masonry inspectors.  

11. The work schedule that will be followed for these projects may require the testing firm to simultaneously provide services at a number of the school projects. In the space provided below, indicate the number of projects your firm has the capability to man simultaneously in each of the categories of work listed. Your response should be based on the number of personnel or crews that can be dispatched simultaneously to difference locations.  

<table>
<thead>
<tr>
<th>WORK CATEGORY</th>
<th>NUMBER OF PROJECTS AT THE SAME TIME</th>
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<tbody>
<tr>
<td>Soil Boring Rig Crew Truck</td>
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</tr>
<tr>
<td>Soil Boring Rig Crew (ATV)</td>
<td></td>
</tr>
<tr>
<td>Concrete Sampling</td>
<td></td>
</tr>
<tr>
<td>Compaction</td>
<td></td>
</tr>
</tbody>
</table>
* Requires a minimum of two certified inspectors on staff to meet local code enforcement official’s requirements. If more than one project is awarded to the proposing firm and the projects occur simultaneously additional inspectors must be provided to assure staff is available to provide required project coverage.

12. Explain your firm’s approach to review of & coordination with a specific project’s Earthwork Specifications

13. Describe how your firm determines the adequacy of available onsite soil material for use as segmental wall backfill meeting the wall designer’s specifications.

14. Respondents shall comply with CMS’s MWSBE Program by making a good faith effort to utilize MWSBE firms as part of the professional service contract. CMS requests the following information:
   a. Is your firm by definition a certified MBE or WBE? (i.e.: 51% minority or women owned)
   b. Describe how your firm will address the MWSBE objectives. This includes completing the forms listed in section 8 (identification form and Affidavit ‘A or ‘B’)

Section 7 - ACKNOWLEDGEMENT FORM

The undersigned warrants that they are duly authorized to bind the Proposer.

The undersigned acknowledges receipt of addenda: ________________________________

The undersigned agrees to be bound by and comply with the provisions of CMS’s Minority, Women and Small Business Enterprise Program.

I, the undersigned, certify and declare that I have read all the foregoing RFQ responses and know their contents. I declare under penalty of perjury under the laws of the State of North Carolina, that the foregoing is correct.

All signatures to be sworn to before a Notary Public

Signed ___________________________    Firm Name ________________________________

Title _______________________________    Address ________________________________

Telephone ___________________________    City ________________________________

State _______________    Zip __________

Corporate Seal – (requested, not required)    SUBSCRIBED AND SWORN to before me this

_____________    Day of __________ 19

______________________________

Notary Public Signature

STATE OF ________________________________    COUNTY OF ________________________________
Section 8 – CMS MINORITY, WOMEN AND SMALL BUSINESS ENTERPRISE PROGRAM

Request for Qualifications M/W/SBE Participation Guidelines

For Professional Services

(Including Surveying, Commissioning, & Geo Technical)

In accordance with G.S. 143-64.31, it shall be the policy of the Charlotte-Mecklenburg Board of Education to promote full and equal access to business opportunities with Charlotte-Mecklenburg Schools. Minority-owned, women-owned, and small business enterprises (collectively “M/W/SBE”) as well as other responsible vendors shall have a fair and reasonable opportunity to participate in CMS business opportunities.

The Superintendent shall implement an M/W/SBE Program which includes aspirational goals for M/W/SBE utilization in proportion to the availability of qualified vendors in particular areas of procurement. An annual report shall be made to the Board of Education regarding M/W/SBE utilization in comparison to the aspirational goals.

Policy Adopted: 01/12/93
Policy Amended: 07/09/96
Policy Amended: 02/22/05

Requirements

The fundamental requirement of the policy is that all contractors, vendors and consultants, who contact with the Board of Education, will: (i) not discriminate against any person in regard to race, color, religion, age, national origin, sex, or disability; and (ii) provide a full and fair opportunity for participation of M/W/SBEs in contracts. Participation shall be measured in terms of the actual dollars received by M/W/SBEs.

“Minority” as used in this policy means African American (all persons having origins in any of the African racial groups); Hispanic/Latino American (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin); Asian American (all subcontinent, or the Pacific Islands); and Native American (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

“Woman” as used in this policy means a non-minority woman who has 51% ownership, interest, holds the professional or contractor license necessary for operation as well as management, control, and have technical expertise directly related to the primary product or service of the business.

“Small” as used in this policy means a business enterprise owned, operated, and controlled by one (1) or more eligible owners who have 51% ownership, interest, holds the professional or contractor license necessary for operation as well as management, control, and have technical expertise directly related to the primary product or service of the business, and is 25% or less of the applicable size standards established by the Small Business Administration.

“Socially and Economically Disadvantaged” as used in this policy means a minority, woman, or small business enterprise owned, operated, and controlled by one (1) or more eligible owners who have 51% ownership, interest, holds the professional or contractor license necessary for operation as well as management, control, and have technical expertise directly related to the primary product or service of the business, and is 25% or less of the applicable size standards established by the Small Business Administration.
Responders responding to this solicitation shall comply with the M/W/SBE Program by making a Good Faith Efforts to utilize the following aspirational goals for M/W/SBE participation under this contract for professional service and construction contracts:

<table>
<thead>
<tr>
<th>Category</th>
<th>MBE Goal</th>
<th>WBE Goal</th>
<th>SBE Goal</th>
<th>Total M/W/SBE Goal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction</td>
<td>10%</td>
<td>6%</td>
<td>5%</td>
<td>21%</td>
</tr>
<tr>
<td>Architecture &amp; Engineering</td>
<td>4%</td>
<td>7%</td>
<td>5%</td>
<td>16%</td>
</tr>
<tr>
<td>Professional Services</td>
<td>9%</td>
<td>9%</td>
<td>5%</td>
<td>23%</td>
</tr>
<tr>
<td>Contracted Services (other than Architecture, Engineering, and other Professional Services)</td>
<td>5%</td>
<td>4%</td>
<td>5%</td>
<td>14%</td>
</tr>
<tr>
<td></td>
<td>3%</td>
<td>3%</td>
<td>5%</td>
<td>11%</td>
</tr>
</tbody>
</table>

Responders will describe how your firm will address the M/W/SBE Objectives. This may include the forms listed below and a commitment to obtain a certain overall percentage.

Responders shall include in their proposals, the following documentation:

- Minority, Women, and Small Business Enterprise Identification Form (including suppliers)
- Affidavit A (if subcontracting)

OR

- Minority, Women, and Small Business Enterprise Identification Form
- Affidavit B (if self-performing all work with own workforce AND will not purchase any materials or supplies in the performance of the contract. Upon request, provide sufficient information for Charlotte-Mecklenburg Schools to determine that the Bidder does not customarily subcontract work on this type of project)

The forms ask for the scope of work and the dollar amount. Respondents may not be able to give specific dollar amounts until you know the project scope assigned. However, you may list an overall percentage based on the scopes of work intended to be performed by M/W/SBE consultants and subcontractors.

The overall participation committed for the school is based upon all activities associated with the project including design sub-consultants, lower tier subcontractors, printing, courier services, suppliers and other services.

Upon receipt of notice of award, the low responder who is subcontracting anything must provide the following information:

- Appendix I, II and/or III

With each pay request the prime contractors will submit Appendix IV listing payments made to all subcontractors. Failure to submit these and all documents as requested is grounds for rejection of the bid.
Compliance Documentation

All written statements, affidavits or intentions made by Respondents shall become a part of the agreement between the Consultant and Charlotte-Mecklenburg Schools for performance on this contract. Failure to comply with any of these statements, affidavits or intentions or with the M/W/SBE Program Guidelines shall constitute a breach of contract. A finding by Charlotte-Mecklenburg Schools that any information submitted either prior to award of the contract or during the performance of the contract is inaccurate, false, or incomplete, shall also constitute a breach of the contract. Any such breach may result in termination of the contract in accordance with the termination provisions contained in the contract. It shall be solely at the option Charlotte-Mecklenburg Schools whether to terminate the contract for breach.

In determining whether a contractor has made Good Faith Efforts, Charlotte-Mecklenburg Schools will evaluate all efforts made by the Contractor and will determine compliance in regard to quantity, intensity, and results of these efforts.

Good Faith Effort Documentation – The bidder’s documentation to meet the goals set forth in these provisions shall include the following evidence:

1. Copies of solicitations for quotes to at least three (3) M/W/SBE firms for each subcontract to be let under this contract. Each solicitation shall contain a specific description of the work to be subcontracted, location where the bid documents can be reviewed, representative of the Prime Bidder to contact, and location, date and time when quotes must be received.
2. Copies of quotes or responses received from each firm responding to the solicitation.
3. A telephone log of follow-up calls to each firm sent a solicitation.
4. For subcontracts where an M/W/SBE firm is not considered to be the lowest responsible sub-bidder, copies of quotes received from all firms submitting quotes for that particular subcontract.
5. Documentation of any contacts, correspondence or conversation with M/W/SBE firms made in an attempt to meet the aspirational goals.
6. The successful bidder shall maintain records relating to all commitments for a period of at least one year following acceptance of final payment.

Note: Additional Good Faith Efforts are identified in Affidavit A.

After review of the Respondent’s Good Faith Efforts, the Respondent may request and be granted a Waiver of the M/W/SBE aspirational goals that have not been met for that particular project. A Waiver may be granted upon review of the Respondent’s documentation and determination that, in fact, a Good Faith Effort has been put forth. The Respondent’s M/W/SBE Utilization Commitment shall be incorporated into the contract.

Charlotte-Mecklenburg Schools is authorized to establish specifications requiring bidders to subcontract a certain designated percentage of the construction and repair work amount, provided that nothing contained in these requirements shall be construed to require that the award of subcontracts be made to subcontractors who do not submit the lowest responsive bid.

NOTE: Charlotte-Mecklenburg Schools reserves the right to waive any irregularities in M/W/SBE documentation if they can be resolved prior to award of the contract, and Charlotte-Mecklenburg Schools finds it to be in its best interest to do so and award the contract.

Dispute Resolution Procedures

Under G.S. 143-128, Senate Bill 914 states that a public entity shall use the dispute resolution process adopted by the State Building Commission pursuant to G.S. 143-135.26(11), or shall adopt another dispute resolution process, which shall include mediation, to be used an alternative to the dispute resolution process adopted by the State Building Commission. This dispute resolution process shall be available to all the parties involved in the public entity’s construction project including the public entity, the architect, the construction manager, the contractor, and the first-tier and lower-tier subcontractors and shall be available for any issues arising out of the contract or construction process.
The public entity may set a reasonable threshold, not to exceed fifteen thousand dollars ($15,000), concerning the amount in controversy that must be at issue before a party may require other parties to participate in the dispute resolution process. The public entity may require that the cost of the process be divided between the parties to the dispute with at least one-third of the cost to be paid by the public entity, if the public entity is a party to the dispute. The public entity may require in its contract that a party participate in mediation concerning a dispute as a precondition to initiating litigation concerning the dispute.
# Charlotte- Mecklenburg Schools

## M/W/SBE Documentation Overview

<table>
<thead>
<tr>
<th>Subcontractor / Supplier Identification Form</th>
<th>Submission Requirements</th>
<th>Required Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lists the total dollar amount of such participation by MBEs, WBEs, and SBE subcontractors and suppliers the Bidder <strong>will use</strong> on the project.</td>
<td>Due with bid/proposal</td>
<td>Minority, Women, and Small Business Enterprise Identification Form</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Listing of Good Faith Efforts (GFE)</th>
<th>Submission Requirements</th>
<th>Required Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indicates the actions you undertook to recruit and solicit minority vendors, subcontractors, vendors, or suppliers for this project.</td>
<td>Due with bid/proposal (if subcontracting)</td>
<td>Affidavit A</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Intent to Perform Contract with Own Workforce</th>
<th>Submission Requirements</th>
<th>Required Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indicates that the Bidder does not customarily subcontract elements of this type project, normally performs all elements of work on this project with his/her own current work force AND will not purchase any materials or supplies in the performance of the contract.</td>
<td>Due with bid/proposal (self-performing)</td>
<td>Affidavit B</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Portion of Work to be Performed by M/WBE Firms</th>
<th>Submission Requirements</th>
<th>Required Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>Identifies minority participation that is equal to or greater than the M/W/SBE total goal for construction 21%, Other Services 14%, and/or Goods 11% of the bidders total contract price. <strong>Appendix I is signed by the M/W/SBE.</strong></td>
<td>Within three (3) business days after notification of being the apparent low bidder</td>
<td>Affidavit C and Appendix I</td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th>Documentation of Good Faith Efforts (GFE)</th>
<th>Submission Requirements</th>
<th>Required Form</th>
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<tbody>
<tr>
<td>Indicates GFEs of bidders who do not achieve the overall M/WBE goal for construction 21%, Other Services 14%, and/or Goods 11% participation by M/W/SBEs. Documentation provided should correspond with the items checked on Affidavit A. <strong>Appendix I is signed by the M/W/SBE.</strong></td>
<td>Within three (3) business days after notification of being the apparent low bidder</td>
<td>Affidavit D and Appendix I</td>
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<tr>
<th>Professional Services</th>
<th>Submission Requirements</th>
<th>Required Form</th>
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<tbody>
<tr>
<td>Indicates the minimum percent of the total dollar amount of the contract with M/W/SBEs. <strong>Appendix I is signed by the M/W/SBE.</strong></td>
<td>Within three (3) business days after receiving Letter of Commitment</td>
<td>Appendix I, II and/or III</td>
</tr>
</tbody>
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<tr>
<th>Documentation for All Contract Payments</th>
<th>Submission Requirements</th>
<th>Required Form</th>
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</thead>
<tbody>
<tr>
<td>Contractor shall provide with each pay request to CMS all payments to contractors, subcontractors, supplies and service providers.</td>
<td>Must submit with each pay request and final payment</td>
<td>Appendix IV</td>
</tr>
</tbody>
</table>
Minority, Women, and Small Business Enterprise Identification Form

I, __________________________________________________________________________________________

(Name of Bidder)

do hereby certify that on this project, we will use the following minority, women, or small business enterprises as construction subcontractors, vendors, suppliers or providers of professional services.

<table>
<thead>
<tr>
<th>Firm Name, Address and Phone #</th>
<th>Work type</th>
<th>*M/W/SBE Category</th>
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<tbody>
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*M/W/SBE categories: Black, African American (B), Hispanic (H), Asian American (A) American Indian (I), Female (F), Small (S), or Socially and Economically Disadvantaged (D)

The total value of M/W/SBE contracting will be ($) _________________.

**Attach this form and AFFIDAVIT A or this form and AFFIDAVIT B to the Bid**
Affidavit of ____________________________

(Name of Bidder) I have made a good faith effort to comply under the following areas checked:

Bidder must earn at least 50 points from the Good Faith Efforts list for their bid to be considered responsive.

- **1 – (10 Points)** Contacted minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor or available on State or local government maintained lists, at least 10 days before the bid date and notified them of the nature and scope of the work to be performed.
- **2 – (10 Points)** Made the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bids are due.
- **3 – (15 Points)** Broken down or combined elements of work into economically feasible units to facilitate minority participation.
- **4 – (10 Points)** Worked with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses.
- **5 – (10 Points)** Attended pre-bid meetings scheduled by the public owner.
- **6 – (20 Points)** Provided assistance in getting required bonding or insurance or provided alternatives to bonding or insurance for subcontractors.
- **7 – (15 Points)** Negotiated in good faith with interested minority businesses and did not reject them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing.
- **8 – (25 Points)** Provided assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisted minority businesses in obtaining the same unit pricing with the bidder’s suppliers in order to help minority businesses in establishing credit.
- **9 – (20 Points)** Negotiated joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.
- **10 – (20 Points)** Provided quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.
In accordance with GS143-128.2(d) and Board of Education Policy the undersigned will enter into a formal agreement with the firms listed in the Identification of Minority, Women, and Small Business Participation schedule conditional upon execution of a contract with the Owner. Failure to abide by this statutory provision will constitute a breach of the contract. The undersigned hereby certifies that he or she has read the terms of the Minority, Women, and Small Business Enterprise commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: ___________   Name of Authorized Officer: ________________________________

Signature: ________________________________

Title: ________________________________

State of ___________________________, County of ___________________________

Subscribed and sworn to before me this ________________ day of _______ 20___

Notary Public  ___________________________

My commission expires ___________________________
Attach AFFIDAVIT A or AFFIDAVIT B to the Bid

State of North Carolina  --AFFIDAVIT B-- Intent to Perform Contract with Own Workforce.

County of ________________________________________________________________

Affidavit of ________________________________________________________________

(Name of Bidder)

I hereby certify that it is our intent to perform 100% of the work required for the ________________________________ contract.

(Name of Project)

In making this certification, the Bidder states that the Bidder does not customarily subcontract elements of this type project, and normally performs and has the capability to perform and will perform all elements of the work on this project with his/her own current work forces; AND the bidder will not purchase any materials or supplies in the performance of the contract.

The Bidder agrees to provide any additional information or documentation requested by the owner in support of the above statement.

The undersigned hereby certifies that he or she has read this certification and is authorized to bind the Bidder to the commitments herein contained.

Date:____________________    Name of Authorized Officer:____________________________

Signature:________________________________________

Title:____________________________________________

State of ____________________________, County of __________________

Subscribed and sworn to before me this ______________________ day of ______ 20__

Notary Public __________________________

My commission expires ______________________
APPENDIX I

LETTER OF INTENT TO PERFORM AS A SUBCONTRACTOR OR SUBCONSULTANT

(PROVIDE MATERIALS OR/&_ SERVICES)

PROJECT: _____________________________________________________________

(Project Name)

TO: ________________________________________________________________

(Name of Prime Bidder/Architect)

The undersigned intends to perform work in connection with the above project as

_____ Minority Business Enterprise       _____ Women's Business Enterprise

_____ Small Business Enterprise

The M/W/SBE status of the undersigned is/is not certified by the City of Charlotte or the Carolinas Minority Suppliers Development Council or other governmental entities. Our M/W/SBE certification number is __________.

The undersigned is prepared to perform the following described work or provide materials or services in connection with the above project (specify in detail particular work items, materials or services to be performed or provided) at the following price: ______________________.

You have projected the following commencement date for such work, and the undersigned is projecting completion of such work as follows:

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<th>Items</th>
<th>Projected Commencement Date</th>
<th>Projected Completion Date</th>
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Subcontracting at any tier must be reported and is subject to all M/W/SBE compliance requirements. This form shall be used for M/W/SBE subcontracting at any level.

Date: ____________________

(Name & Phone No. of M/W/SBE Company)

(Name & Title of Authorized Office)

(Signature)

THE PRIME CONTRACTOR OR ARCHITECT MUST GET THIS FORM COMPLETED BY THE SUBCONTRACTORS/SUPPLIERS
APPENDIX II
M/W/SBE UTILIZATION COMMITMENT FORM FOR PROFESSIONAL SERVICES

We, _________________________________________________, do certify that on the

(Architect)

_____________________________________________________________________________

(Project Name)

______________________________________, _____________________________________

(Project Number) (Dollar Amount of Bid)

If the bidder intends to subcontract, this form must be completed regardless of the amount or lack of M/W/SBE participation attained.

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

Attach additional sheets if required

<table>
<thead>
<tr>
<th>Name and Address</th>
<th>*M/W/SBE Category</th>
<th>Work description</th>
<th>Dollar Value</th>
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*M/W/SBE categories: Black, African American (B), Hispanic (H), Asian American (A) Native American Indian (N), Female (F), Small (S), or Socially and Economically Disadvantaged (D)
The undersigned will enter into a formal agreement with Minority/Women/Small Business Firms for work listed in this schedule conditional upon execution of a contract with the Charlotte-Mecklenburg Board of Education. Failure to fulfill this commitment may constitute a breach of the contract.

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

Date: ________________  Name of Authorized Officer: __________________________________________________

                                          Signature: ____________________________________________________

                                          Title: ______________________________________________________

State of __________________________, County of __________________________

Subscribed and sworn to before me this ________________ day of _______20__

Notary Public  ______________________

My commission expires ____________________
APPENDIX III

M/W/SBE UTILIZATION COMMITMENT FORM FOR PURCHASES OF GOODS & OTHER SERVICES

We, _________________________________________________, do certify that on the

(Bidder)

__________________________________________________________

(Project Name)

__________________________________________

(Project Number)

__________________________________________

(Dollar Amount of Bid)

If the bidder intends to subcontract, this form must be completed regardless of the amount or lack of M/W/SBE participation attained.

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

Attach additional sheets if required

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*M/W/SBE categories: Black, African American (B), Hispanic (H), Asian American (A) Native American Indian (N), Female (F), Small (S), or Socially and Economically Disadvantaged (D)
The undersigned will enter into a formal agreement with Minority/Women/ Small Business Firms for work listed in this schedule conditional upon execution of a contract with the Charlotte-Mecklenburg Board of Education. Failure to fulfill this commitment may constitute a breach of the contract.

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

Date: _______________  Name of Authorized Officer: ____________________________________________

Signature: ____________________________________________

Title: ____________________________________________

State of ___________________________, County of ___________________________

Subscribed and sworn to before me this _________________ day of _______ 20___

Notary Public ___________________________

My commission expires____________________
APPENDIX IV

DOCUMENTATION FOR ALL PAYMENTS TO CONTRACTORS, SUBCONTRACTORS, SUPPLIERS, AND SERVICE PROVIDERS

Prime Contractor/Architect: ________________________________________________________
Address & Phone: ________________________________________________________________
Project Name: ___________________________________________________________________
Pay Application #: _________________ Period: ________________________________
Current Requested Payment Amount ________________________________________________

The following is a list of payments to be made to all contractors/suppliers & other providers on this project for the above-mentioned period.

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<th>Name and Address</th>
<th>*M/W/SBE Category</th>
<th>Amount to be Paid form this pay Request</th>
<th>Payments to date</th>
<th>Total Amount Committed</th>
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*M/W/SBE categories: Black, African American (B), Hispanic (H), Asian American (A) Native American Indian (N), Female (F), Small (S), or Socially and Economically Disadvantaged (D)

Date: ________________ Approved/Certified By: ______________________________________

________________________________
Name

________________________________
Title

________________________________
Signature

**THIS DOCUMENT MUST BE SUBMITTED WITH EACH PAY REQUEST & FINAL PAYMENT**
APPENDIX V
WAIVER REQUEST FOR GOOD FAITH EFFORTS

PROJECT: _______________________________________________________________________

COMPANY: _____________________________________________________________________

ADDRESS: _____________________________________________________________________

CITY: ___________________ STATE: ___________ ZIP: __________

CONTACT PERSON: __________________ PHONE NO: __________________

TITLE: _______________________________________________________________________

The said company request a Full ( ) or Partial ( ) waiver for the M/W/SBE aspirational goals for this particular project for the following reasons:

Signature: ____________________________________ Date: _______________________

CMS USE ONLY

Good Faith Efforts Verified: ___________________________________________________

____________________________________________________________________________

____________________________________________________________________________

____________________________________________________________________________

____________________________________________________________________________

Request of Waiver Granted: YES (______) NO (____)

Comments: ___________________________________________________________________

____________________________________________________________________________

____________________________________________________________________________

____________________________________________________________________________

____________________________________________________________________________

M/WBE Administrator: ___________________________ Date: _______
Section 9 – SAMPLE SERVICES CONTRACT

Contract Number:
Lawson Requisition Number:

THE CHARLOTTE-MECKLENBURG BOARD OF EDUCATION
CONTRACT FOR SERVICES MASTER

This Contract for Services (“Contract”) is made and entered into this [Contracts.ContractDate] between The Charlotte-Mecklenburg Board of Education (“CMBE”), located in Charlotte, North Carolina and {Company.Name} (“Contractor”, also referred to as “Seller” in Standard Terms and Conditions).

For and in consideration of the mutual promises set forth in this Contract, the parties do mutually agree as follows:

1. Obligations of Contractor - The Contractor agrees to provide services (the “Services”) to fully, timely and properly complete {Projects.Name} as more particularly described in the Scope of Work document attached hereto and incorporated herein by reference as Exhibit 1.

   Individual tasks will be assigned in writing on a project by project basis by an authorized representative of the CMBE. Such writing shall be in the form of a standard CMBE purchase order (“Purchase Order”), such Purchase Order to specify the specific Services desired by the CMBE; the dates, times and locations that the Contractor shall provide the requested Services; and the compensation that the Contractor will be paid for providing the requested Services. The Contractor will be deemed to have accepted a Purchase Order and be obligated to provide the services outlined in the Purchase Order in accordance with the price and other terms of the Purchase Order, and the terms and conditions hereof, unless within 24 hours after the Contractor’s receipt of a Purchase Order, the Contractor notifies the Project Coordinator (as hereinafter defined) in writing that it does not accept the Purchase Order and will not provide the requested Services.

   The term of this contract shall be [Term of Contract].

   This contract does not grant the Contractor the right or the exclusive right to provide specified services to CMBE. Similar services may be obtained from sources other than the Contractor (or not at all) at the discretion of the CMBE.

   The Contractor shall begin work immediately upon issuance of a written notice to proceed. The Contractor agrees to perform the Services in a timely, complete, and professional manner and in accordance with the terms and conditions of this Contract. Furthermore, the Contractor represents and warrants that (i) it is duly qualified and licensed to provide the Services, (ii) it will provide the Services in a manner consistent with the level of care and skill ordinarily exercised by contractors providing similar services under similar conditions, (iii) it possesses sufficient experience, personnel, and resources to complete the Services, (iv) it shall perform the Services in compliance with applicable laws, statutes, ordinances, codes, orders, rules and regulations, and (v) its reports, if any, shall be complete, accurate, and unambiguous.

2. Obligations of CMBE - CMBE agrees to pay the Contractor for services as follows:

   A separate purchase order shall be issued for each assignment and the total amount due to the Contractor for a particular work assignment shall not exceed the amount shown in the purchase order for that assignment.

3. Project Coordinator - {Projects.ProjectExecutive} is designated as the Project Coordinator for the CMBE. The Project Coordinator shall be the CMBE’s representative in connection with the Contractor’s performance under this Contract. The CMBE has complete discretion in replacing the Project Coordinator with another person of its choosing.

4. Contractor Supervisor - {Contacts.DisplayName} is designated as the Contractor Supervisor for the Contractor. The Contractor Supervisor is fully authorized to act on behalf of the Contractor in connection with this Contract.
5. **Terms and Methods of Payment** - CMBE will make payment after invoices are approved on a net 30 day basis. CMBE will not pay for services or materials in advance without the prior approval of the Finance Officer. Contractor to submit invoices on the following schedule: [Invoice Schedule]

6. **Additional Provisions**
   
   b. **Iran Divestment Act**: Contractor certifies that, as of the date listed below, it is not on the Final Divestment List, as created by the State Treasurer pursuant to N.C.G.S. § 143-6A-4, in violation of the Iran Divestment Act. In compliance with the requirements of the Iran Divestment Act and N.C.G.S. § 143C-6A-5(b), Contractor shall not utilize in the performance of the contract any subcontractor that is identified on the Final Divestment List. The Final Divestment List can be found on the State Treasurer’s website at the address www.nctreasurer.com/Iran and should be updated every 180 days.

   c. **E-Verification**: Contractor shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.

7. **Counterpart Execution** - This Contract may be executed and recorded in two or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument. Each party shall be entitled to rely upon executed copies of this Contract transmitted by facsimile or electronic “PDF” to the same and full extent as the originals.

   [THE REST OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY]
   [SIGNATURES ON NEXT PAGE]
IN WITNESS WHEREOF, the CMBE and the Contractor have executed this Contract on the day and year first written above.

{Company.Name}
Contractor Name

________________________
Signature of Authorized Representative Date

________________________
Contractor's Federal Identification # [if Contract is with Organization or Social Security Number if individual]

________________________
Originator/Fund Owner Date

This instrument has been preaudited in the manner required by the School Budget and Fiscal Control Act.

________________________
Executive Director of Building Services Date

Finance Officer Date

APPROVED AS TO FORM:

________________________
Procurement Lead

School Board Attorney Date

REVIEWED BY:

________________________
Division of Insurance and Risk Management

THE CHARLOTTE-MECKLENBURG BOARD OF EDUCATION

________________________
Chief Operating Officer Date

________________________
Superintendent (if applicable) Date
Attachment A

Charlotte-Mecklenburg Board of Education Standard Terms and Conditions

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

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

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

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

5. Freight on Board. All shipments of Goods are FOB destination unless otherwise stated in the Contract Documents.

6. Taxes. Applicable taxes shall be invoiced as a separate item.

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

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

9. Delays in Shipment. Time and date of delivery are of the essence, except when delay is due to causes beyond Seller's reasonable control and without Seller's fault or negligence.

10. Risk of Loss. Seller shall have the risk of loss of and damage to the Goods subject to the Contract Documents until such Goods are delivered to the destination and accepted by CMBE or its nominee.

11. Rejection. All Goods and Services shall be received subject to CMBE's inspection. Goods or Services that are defective in workmanship or material or otherwise not in conformity with the requirements of the Contract Documents may be rejected and returned at Seller's expense or may be accepted at a reduced price. CMBE may require Seller to promptly replace or correct any rejected Goods or Services and, if Seller fails to do so, CMBE may contract with a third party to replace such Goods and Services and charge Seller the additional cost.
12. Compliance with All Laws. Seller warrants that all performance hereunder shall be in accordance with all applicable federal, state and local laws, regulations and orders.

13. Registered Sex Offenders. Contractor acknowledges that CMBE Policy ADDA, “Registered Sex Offenders,” prohibits anyone registered or required to register as a sex offender from being present on any CMBE Property for any reason, whether before, during or after school hours, or on or off of CMBE Property. Contractor expressly agrees that it, and any of its employees, will comply with this policy and acknowledges that any individuals that violate this policy are subject to removal from CMBE Property by CMS and/or law enforcement officials and may also be subject to criminal prosecution. “CMBE Property” includes all property owned or operated by the Charlotte-Mecklenburg Board of Education, including school campuses and buildings, athletic fields, playgrounds, parking lots, bus stops, vehicles, school buses, activity buses and any other properties owned or controlled by CMS.

If Contractor, any of Contractor’s employees, or any of Contractor’s subcontractors or employees of subcontractors will have any direct interaction with students, then Contractor or the subcontractor must (i) on an annual basis conduct a check of the N.C. Sex Offender and Public Protection Registration Program, the N.C. Sexually Violent Predator Registration Program and the National Sex Offender Registry for all such employees; and (ii) prohibit individuals listed on such registries from being on CMBE Property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35. Inspection at Seller’s Site. CMBE reserves the right to inspect, at a reasonable time, the equipment/item, plant or other facilities of a prospective contractor prior to Contract award, and during the Contract term as necessary for CMBE determination that such equipment/item, plant or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the Contract.

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

38. No Pre-Judgment or Post-Judgment Interest. In the event of any action by Seller for breach of contract in connection with the Contract, any amount awarded shall not bear interest either before or after any judgment, and Seller specifically waives any claim for interest.

39. Background Checks. At the request of CMBE’s Project Coordinator, Seller (if an individual) or any individual employees of Seller shall submit to CMBE criminal background check and drug testing procedures.

40. Mediation. If a dispute arises out of or relates to the Contract, or the breach of the Contract, and if the dispute cannot be settled through negotiation, the parties agree to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules before resorting to litigation.

41. No Third Party Benefits. The Contract shall not be considered by Seller to create any benefits on behalf of any third party. Seller shall include in all contracts, subcontracts or other agreements relating to the Contract an acknowledgment by the contracting parties that the Contract creates no third party benefits.

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

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

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

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

46. Contract Situs. All matters, whether sounding in contract or tort relating to the validity, construction, interpretation and enforcement of the Contract, will be determined in Mecklenburg County, North Carolina. North Carolina law will govern the interpretation and construction of the Contract.
Exhibit 1

Scope of Work