



**Newport News Public Schools**  
**PURCHASING DEPARTMENT**

# MEMO

To: All Prospective Bidders

From: Bill Huskey – Buyer

Date: February 04, 2019

Ref: Cancellation of IFB # 002-0-2019H

---

The bid for the above referenced solicitation is being cancelled, effective 02/04/2019. The IFB will be re-solicited in the near future with revised specifications.



**INVITATION FOR BIDS**

**Newport News Public Schools**  
ISSUING OFFICE:

**DATE: September 10, 2018**

PURCHASING DEPARTMENT  
12465 WARWICK BOULEVARD  
NEWPORT NEWS, VA 23606-3041  
TELEPHONE: (757) 591-4560  
FAX: (757) 591-4634

Attention of Bidder is Directed To Section  
2.2-4367 to 2.2-4377 Code of Virginia  
(Ethics In Public Contracting)

<b>BID ITEM NO.</b> IFB # 002-0-2019BH
<b>PROCUREMENT OFFICER</b>  <b>Bill Huskey</b>
<b>OPENING DATE</b>  September 25, 2018
<b>OPENING TIME</b>  2:01 P.M. EST
<b>PREBID CONFERENCE</b> <b>NON-MANDATORY</b> DATE: N/A TIME: N/A

**SEALED BIDS** will be received in the issuing office above until Opening Date and Opening Time as specified in this solicitation to include any addendums issued by this office. Newport News Public Schools is not responsible for late delivery by U. S. Postal mail or other couriers.

All inquiries for information regarding this Invitation for Bid should be directed to Bill Huskey at [bill.huskey@nn.k12.va.us](mailto:bill.huskey@nn.k12.va.us)

**COMMODITY: Fresh Fruits & Vegetables**

**NIGP CODE: 390-28/390-84**

**PLEASE FILL IN BIDDER'S NAME & ADDRESS IN THE SPACES PROVIDED BELOW:**

**THIS IS NOT AN ORDER**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

THE SCHOOL BOARD OF THE CITY OF NEWPORT NEWS, HEREAFTER REFERRED TO AS NEWPORT NEWS PUBLIC SCHOOLS (NNPS), RESERVES THE RIGHT TO ACCEPT OR REJECT ANY OR ALL BIDS IN WHOLE OR IN PART AND TO WAIVE ANY INFORMALITIES IN THE BID PROCESS AND RESERVES THE RIGHT TO ENTER INTO ANY CONTRACT DEEMED TO BE IN ITS BEST INTEREST. THE SPECIFICATIONS IN THIS BID ARE INTENDED AS A QUALITY INDICATOR AND GUIDE FOR BIDDING AND UNLESS OTHERWISE STATED, NNPS WILL CONSIDER ALTERNATE BIDS OF EQUAL OR BETTER QUALITY, WHICH WILL BE ACCOMPANIED BY DESCRIPTIVE LITERATURE. THE ENTIRE CONTENTS OF THIS INVITATION FOR BID, ANY ADDENDA, AND BIDDER'S RESPONSE SHALL BE INCORPORATED INTO ANY RESULTING CONTRACT.

NNPS DOES NOT DISCRIMINATE AGAINST FAITH-BASED ORGANIZATIONS.

Fresh Fruits & Vegetables	BID TOTAL:	\$ _____	USD
---------------------------	------------	----------	-----

**ACKNOWLEDGE RECEIPT OF ADDENDUM: #1 \_\_\_ #2 \_\_\_ #3 \_\_\_ #4 \_\_\_ (Please Initial)**

IN COMPLIANCE WITH THIS BID, AND TO ALL THE CONDITIONS IMPOSED HEREIN, THE UNDERSIGNED AGREES TO EXECUTE ANY CONTRACT AS A RESULT OF THIS BID. THE UNDERSIGNED OFFERS AND AGREES TO FURNISH THE GOODS/SERVICES AT THE PRICE(S) INDICATED ON THE PRICING SCHEDULE. THE FOLLOWING SECTION SHALL BE SIGNED BY AN AGENT AUTHORIZED TO BIND THE BIDDER/COMPANY. FAILURE TO MAKE THIS COMMITMENT MAY RESULT IN BID REJECTION.

**DELIVERY:** State your earliest firm delivery or performance date: \_\_\_\_\_20\_\_\_\_. This date may be a factor in making the award.

PAYMENT TERMS: \_\_\_\_\_ DELIVERY TIME: \_\_\_\_\_

**SHIPPING TERMS: ALL PRICES QUOTED F.O.B. NEWPORT NEWS, VIRGINIA**

SHIPPING CHARGES SHALL BE PREPAID AND ALLOWED WITH \_\_\_\_\_ DELIVERY.

**Authorized Agent**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Email Address

**Company FEI/FIN#**

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
FAX Number

**SPECIFIC LEGAL REQUIREMENTS**

**ANTI-COLLUSION:**

In the preparation and submission of this bid/proposal, said bidder/offeror did not either directly or indirectly enter into any combination or arrangement with any person, firm or corporation, or enter into any agreement, participate in any collusion, or otherwise take any action in violation of the Sherman Act (15 U.S.C. Section 1), Sections 59.1-9.1 through 59.1-9.17 or Sections 59.1-68.6 through 59.1-68.8 of the Code of Virginia. The undersigned bidder/offeror hereby certifies that this agreement, or any claims resulting therefrom, is not the result of, or affected by, any act of collusion with, or any act of, another person or persons, firm or corporation engaged in the same line of business or commerce; and, that no person acting for, or employed by, NNPS has an interest in, or is concerned with, this bid/proposal; and, that no person or persons, firm or corporation other than the undersigned, have, or are, interested in this bid/proposal.

**DRUG-FREE WORKPLACE:**

During the performance of this contract, the successful bidder/offeror agrees to (i) provide a drug-free workplace for the successful bidder's/offeror's employees; (ii) 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 successful bidder's/offeror's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the successful bidder/offeror that the successful bidder/offeror maintains a drug-free workplace; and (iv) 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 successful bidder/offeror or vendor. For the purpose of this section, "drug-free workplace" means a site for the performance or work done in connection with a specific contract awarded to a successful bidder/offeror in accordance with federal law, 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.

**EMPLOYMENT DISCRIMINATION BY THE SUCCESSFUL BIDDER/OFFEROR SHALL BE PROHIBITED:**

1. During the performance of this contract, the successful bidder/offeror agrees as follows:
  - a. Bidder/offeror shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the successful bidder/offeror. The successful bidder/offeror agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  - b. Successful bidder/offeror, in all solicitations or advertisements for employees placed by or on behalf of the successful bidder/offeror, shall state that such successful bidder/offeror is an equal opportunity employer.
  - c. 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.
2. Successful bidder/offeror shall include the provisions of the foregoing Subsections a, b, and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

**COMPLIANCE WITH STATE LAW; FOREIGN AND DOMESTIC BUSINESSES AUTHORIZED TO TRANSACT BUSINESS IN THE COMMONWEALTH:**

1. A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.
2. A bidder/offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 will include in its bid or proposal the identification number issued to it by the State Corporation Commission in the space provided below. Any bidder/offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law shall include in its bid or proposal a statement why the bidder/offeror is not required to be so authorized. Bidder/offeror is to include the VA Code reference authorizing the exemption in said statement.
3. Any bidder/offeror described in the foregoing Subsection 2. that fails to provide the required information shall not receive an award unless a waiver of this requirement is granted by the Superintendent or designee.
4. Any business entity described in the foregoing Subsection 1. that enters into a contract with NNPS shall not allow its existence to lapse or its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract.

**Name and Address of BIDDER/OFFEROR:** \_\_\_\_\_ Date: \_\_\_\_\_ Authorized Signature: \_\_\_\_\_  
 Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_  
 Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_  
 Email Address: \_\_\_\_\_

**Federal Tax Identification Number/Social Security Number:** \_\_\_\_\_

**State Corporation Commission Identification Number:** \_\_\_\_\_

Is bidder/offeror a "minority" business?  Yes  No If yes, please indicate the "minority" classification below:  
 African American  Hispanic American  Native American  Asian American  Other; Please Explain:

Service Disabled Veteran?  Yes  No Service Disabled Veteran Business?  Yes  No  
 Woman Owned?  Yes  No Small Business?  Yes  No  
 Faith-Based Organization?  Yes  No

SCOPE OF WORK .....	5
A. GENERAL REQUIREMENTS .....	5
SPECIAL INSTRUCTIONS TO THE BIDDER: .....	6
A. Definitions: .....	6
B. Contact with NNPS Staff, Representatives, and/or Agents: .....	6
C. Pre-Bid Conference: .....	6
D. Bidders of Record: .....	6
E. Questions: .....	6
F. Changes or Modifications: .....	6
G. <b>Bid Submittal Requirements:</b> .....	6
H. Proprietary Information/Disclosure: .....	7
I. Notice of Award: .....	7
J. Award: .....	7
K. IFB Opening: .....	8
L. Withdrawal of Bids: .....	8
M. Disposition of Bids: .....	8
N. Cost of Responding: .....	8
GENERAL TERMS AND CONDITIONS .....	8
A. Contract Document: .....	8
B. Contract Modification(s): .....	9
C. Bidder Obligation: .....	9
D. Conditions of Work: .....	9
E. Bid Binding For One-Hundred Twenty (120) Days: .....	9
F. Prime Contractor: .....	9
G. Subcontractors: .....	9
H. Non-Assignment: .....	9
I. Antitrust: .....	10
J. Anticollusion/Nondiscrimination Requirements Form: .....	10
K. Compliance with Federal, State, and Local Laws and Federal Immigration Law: .....	10
L. Compliance with state law; foreign and domestic businesses authorized to transact business in the Commonwealth: .....	10
M. Hold Harmless/Indemnification: .....	10
N. Notices: .....	10
O. Non-Responsive Performance: .....	10
P. Termination Without Cause: .....	11
Q. Termination With Cause/Breach: .....	11
R. Breach of Contract: .....	11
S. Applicable Law: .....	12
T. Compliance With All Laws: .....	12
U. Venue: .....	12
V. Severability: .....	12
W. Non-Appropriation of Funds: .....	12
X. Tax Exemption: .....	12
Y. Vendor's Invoices: .....	12
Z. Contractual Disputes: .....	12
AA. Warranty/Guarantee: .....	13
BB. Payment Terms: .....	13
CC. Prompt Payment: .....	13
DD. Payment by Electronic Funds Transfer .....	14
EE. Audits: .....	15
FF. Non-Exclusivity: .....	16
SPECIAL TERMS AND CONDITIONS .....	16
A. Contract Term: .....	16
B. Contract Extension: .....	16
C. Time is of the Essence .....	16
D. Insurance: .....	16
E. Unauthorized Disclosure of Information: .....	17
F. Copyright/Patent Indemnity: .....	17
G. Title to Equipment: .....	17

H. Escalation/De-escalation: ..... 17  
I. Requirements Contract: ..... 17  
J. Certification Regarding Debarment..... 18  
K. Equipment Condition: ..... 18  
L. Cooperative Procurement: ..... 18

## SCOPE OF WORK

### A. GENERAL REQUIREMENTS

This contract is for the delivery of fresh produce to the 43 NNPS school sites on a scheduled basis throughout the year. Award of this contract shall be made to the lowest responsible, responsive bidder on an "All or None" basis for fresh fruit and an "All or None" basis for fresh salad. Award may be separate or whole, whichever is in the best interest of NNPS.

During the contract term and any and all extensions, the contractor shall provide the goods/services described in the contract. The contractor understands and agrees that this is a requirements contract and that NNPS shall have no obligation to the contractor if no goods/services are required. Any quantities that are included in the scope of work reflect the current expectations of NNPS. The quantities indicated are an estimate only and NNPS is under no obligation to the contractor to buy any amount of the goods/services as a result of having provided this estimate or of having any typical or measurable requirement in the past. The contractor understands and agrees that NNPS may require goods/services in an amount less than or in excess of the estimated quantities and that the quantity actually used, whether in excess of the estimate or less than the estimate, shall not give rise to any claim for compensation other than the total of the unit prices in the contract for the quantity actually required by NNPS.

### SPECIFIC REQUIREMENTS

1. All products delivered shall be fresh, secured, undamaged, and unused product.
2. Prices for produce shall be charged to NNPS at the contract distributor's cost. Additionally, Contractor's invoices shall state the origin of delivery for the produce provided.
3. Prices shall be based on a "delivered to distributors' warehouse" basis and shall include cooling, refrigeration and other freight related charges. Freight rates shall be in truckload quantities of straight or mixed items. Prices shall be based on the "latest invoice," either prior to merchandise being delivered to the purchaser, or in stock, as the case may be, in accordance with the seven (7) day firm price requirement.
4. Contractor's prices for produce may be audited at any time during the contract term to ensure prices charged are reasonable, as compared to prices listed by the USDA.
5. Contractor shall provide a fixed fee delivery charge, only, for items in Lot 1 of Attachment "A" - Fresh Fruit to be shipped to NNPS. This fee will be in addition to the distributor's cost of produce to be charged under each invoice. Due to economic conditions, the distributor's cost of produce may change daily; therefore, these prices are not requested as part of the bidder's offer. Lot 1 will be awarded as ALL or NONE.
6. In Lot 2 of Attachment "A" - Fresh Salads, prices shall include the price of the item and the cost of delivery as a lump sum. Lot 2 shall be awarded ALL or NONE.
7. Deliveries shall be made on a weekly basis as needed to each of the 43 school cafeterias, except school holidays and closing days (due to inclement weather). Deliveries shall be made in a refrigerated truck during school operating hours. Contract distributor shall also provide produce during the summer months to cover all summer programs. A list of schools locations can be viewed at <http://sbo.nn.k12.va.us/schools>. A school calendar will be provided.
8. Orders for deliveries of produce to each school will be placed by each school cafeteria manager on preprinted forms, one form for each school. Order forms may show a distributor's item codes, if furnished by the contractor before the forms are printed. Orders can be picked up from the Child Nutrition Services Department at 700 Hogan Drive, Newport News, Virginia – one week in advance of delivery.
9. All quantities listed in Attachment "A" are estimates and may be realized, exceeded, or not fully reached.
10. Unless otherwise indicated, all fruits and vegetables shall have less than 2% decay at point of acceptance. All produce shall be fully mature and in good commercial condition with regard to texture, juiciness, firmness and temperature, in accordance with its type and variety.
11. Billing shall be the last business day of each month.
12. Contractor will submit its invoice(s) by the 5th business day of the following month to NNPS' Child Nutrition Services Department, 700 Hogan Drive, Newport News, VA 23606.

## SPECIAL INSTRUCTIONS TO THE BIDDER:

### A. Definitions:

#### Issuing Office:

Wherever used in this Invitation for Bid, Issuing Office will be:

Bill Huskey, VCO, Buyer  
Newport News Public Schools Purchasing Department  
12465 Warwick Boulevard  
Newport News, VA 23606-3041  
Phone: (757) 591-4523  
Fax: (757) 591-4593  
Email: [bill.huskey@nn.k12.va.us](mailto:bill.huskey@nn.k12.va.us)

#### NNPS Contract Administrator:

Wherever used in this Invitation for Bid and for purposes of any notices under this contract, the NNPS Contract Administrator will be:

Cathy Alexander, Executive Director  
Child Nutrition Services  
700 Hogan Drive, Newport News, VA 23606.  
Phone: (757) 881-5030 x 16113  
Fax: (757) 249-1349  
Email: [cathy.alexander@nn.k12.va.us](mailto:cathy.alexander@nn.k12.va.us)

### B. Contact with NNPS Staff, Representatives, and/or Agents:

Direct contact with NNPS staff, representatives, and/or agents other than Purchasing Department staff on the subject of this IFB or any subject related to this IFB is expressly prohibited except with the prior knowledge and permission of the Purchasing Supervisor

### C. Pre-Bid Conference:

N/A

### D. Bidders of Record:

Offerors receiving a copy of this IFB from a source other than the Issuing Office via [www.eva.virginia.gov](http://www.eva.virginia.gov) must contact the Issuing Office and provide Offeror's name, address, contact person, telephone and fax numbers, and the IFB Item Number. Offeror will be added to the eVA Planholders' list and will receive notifications of any addenda to the IFB.

### E. Questions:

Submit questions regarding the Invitation for Bid in writing to the Issuing Office at [bill.huskey@nn.k12.va.us](mailto:bill.huskey@nn.k12.va.us) **no later than 11:00 a.m., September 13, 2018** prior to the opening date of this IFB. Necessary replies will be issued to all Bidders of record as addenda that shall become part of the contract documents. Oral instructions do not form a part of the bid documents. Bidder is responsible for obtaining any addenda affecting this IFB prior to bid opening.

### F. Changes or Modifications:

Changes or modifications to this Invitation for Bids made prior to the date and time of closing will be addressed by addenda from the Issuing Office. Acknowledge receipt of addenda in the space provided on the cover page of this Invitation for Bid. Oral modifications shall not form a part of the Bid documents. This IFB and any addenda shall be incorporated, by reference, into any resulting contract.

### G. ***Bid Submittal Requirements:***

***1. Each Bid submission shall be submitted to the Issuing Office and will include the following documents:***

***a. The cover page of this Invitation to Bid, which will contain:***  
***(1) Total Bid price;***

- (2) **Original signature of an agent authorized to bind the company;**
  - (3) **Delivery time;**
  - (4) **Payment terms; and**
  - (5) **Acknowledgment of any addenda on page one (1);**
  - b. **Attachment A: Pricing Schedule**
  - c. **Completed and signed anticollusion/nondiscrimination clauses on page 2 of this IFB**
  - d. **Completed and signed Certification of Debarment on page 19 of this IFB**
  - e. **Certificate of Liability Insurance and Additional insured endorsement to the policy**
2. **Bidder shall submit one (1) copy of its Bid. At least one copy of the Bid shall contain the original signature of the contracting authority.**
  3. **A completed copy of Bidder's bid submission including all Schedule A to be completed electronically in Microsoft Excel Format is to be submitted on a new and unused CD or Flash Drive compatible with Microsoft Windows environment. The CD or Disk shall be identified with the companies name clearly stated. Submit Bids in a sealed envelope or package. Clearly label the shipping/mailling packaging as well as the outside of your sealed envelope or package with the Bid Item No., Closing Date and Time, and your firm's name and address. Bids received by telephone, telegraph, facsimile, or any other means of electronic transfer shall not be accepted.**
  4. **Bidders are encouraged to submit their bids on recycled paper and to use double-sided copying**

H. Proprietary Information/Disclosure:

Bidder is advised that the Virginia Public Procurement Act (Section 2.2-4342, Code of Virginia, 1950 as amended) shall govern public inspection of all records submitted by Bidder. Specifically, if Bidder seeks to protect any proprietary data or materials, pursuant to Section 2.2-4342.

Bidder shall:

- (i) invoke the protections of this section prior to or upon submission of the data or other materials,
- (ii) identify the data or other materials to be protected,
- (iii) state the reasons why protection is needed.

Furthermore, the Bidder shall submit proprietary information under separate cover, and NNPS reserves the right to submit such information to the NNPS attorney for concurrence of the Bidder's claim that it is in fact proprietary. References may be made within the body of the bid to proprietary information; however, all information contained within the body of the bid not labeled proprietary or otherwise not meeting all three of the requirements of Section 2.2-4342 shall be public information in accordance with State statutes. Trade secrets or proprietary information submitted by an Bidder in conjunction with this IFB are not subject to public disclosure under the Virginia Freedom of Information Act (VFOIA). However, Bidder must invoke the protection of the VFOIA prior to or upon submission of the data or other materials. Information submitted that does not meet the above requirements will be considered public information in accordance with the VFOIA.

An all-inclusive statement that the entire bid is proprietary is unacceptable. A statement that Bidder's costs and/or bid pricing are to be protected is unacceptable. Bidder will be requested to remove any such statement(s) in order to be eligible for further evaluation and award.

I. Notice of Award:

Any contract resulting from this IFB will be publicly posted for inspection in the NNPS Purchasing Department, 12465 Warwick Boulevard, Newport News, Virginia.

J. Award:

NNPS may elect to award a contract to more than one vendor.

The award of contracts shall be at the sole discretion of NNPS. Unless cancelled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest responsible bidder exceeds available funds, NNPS may negotiate with the apparent low bidder to obtain a contract price within available



funds. NNPS reserves the right to accept or reject any or all bids in whole or in part and to waive any informalities in the process. Further, NNPS reserves the right to enter into any contract deemed to be in NNPS' best interest.

**K. IFB Opening:**

Bidder shall ensure their bid is time stamped by the Issuing Office no later than the Opening Date and Time shown on the cover page of this Invitation for Bid. Bids received after the specified date and time (time stamped 2:01 P.M. or later) shall not be considered and will be returned unopened to Bidder.

**L. Withdrawal of Bids:**

A bidder for a contract may request withdrawal of his or her bid under the following circumstances: A bidder may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake in the bid, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid that shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

Requests for withdrawal of bids prior to opening of such bids shall be transmitted to the NNPS Purchasing Agent in writing.

Requests for withdrawal of bids after opening of such bids but prior to award shall be transmitted to the NNPS Purchasing Agent, in writing, accompanied by full documentation supporting the request. The bidder shall give notice in writing of his claim of right to withdraw his bid within two (2) business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice. If bid bonds were tendered with the bid, NNPS reserves its right to exercise collection.

No bid may be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent. If a bid is withdrawn under the authority of this paragraph, the lowest remaining bid shall be deemed to be the low bid. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted."

**M. Disposition of Bids:**

All materials submitted in response to this IFB shall become the property of NNPS. One (1) copy of each bid will be retained for official files. Said copy will become public record after award of the contract and will be open to public inspection subject to the Proprietary Information/Disclosure section of this IFB.

**N. Cost of Responding:**

This solicitation does not commit NNPS to pay any costs incurred by the Bidder or any other party in the preparation and/or submission of bids or in making necessary studies or designs for the preparation thereof, nor is NNPS obligated to procure or contract for such services.

**GENERAL TERMS AND CONDITIONS**

**A. Contract Document:**

This document, its addenda, any additional information requested, and negotiated changes will constitute the final contract, hereafter referred to as "this contract". These documents will be incorporated by reference into the NNPS purchase order awarding this contract. All time limits stated in the contract documents, including but not limited to the

time for completion of the work, are of the essence of the contract. This contract shall be governed by the contract documents in the following order of precedence:

- 1) This document and any negotiated changes to the foregoing documents.
- 2) Bidder's Bid document with signed Attachment A Pricing Schedule
- 3) Electronic copy of Bid and Attachment A Pricing Schedule on new and unused CD or Flash Drive in Microsoft Format.

**B. Contract Modification(s):**

After award, any and all modifications to this contract shall be mutually agreed to by both parties, in writing, and authorized by the NNPS Purchasing Agent or his designee. NNPS' standard method to modify contracts is issuance of a change order (purchase order).

**C. Bidder Obligation:**

Bidder shall carefully examine the contents of this Invitation for Bid and any subsequent addenda. Failure to do so shall not relieve the Successful Bidder of its obligation to note any exceptions (see Exceptions/Alternatives section) and to fulfill the requirements of this contract

**D. Conditions of Work:**

Bidders shall inform themselves fully of the conditions relating to services required herein. Failure to do so will not relieve a Successful Bidder of the obligation to furnish all goods and/or services necessary to carry out the provisions of this contract

**E. Bid Binding For One-Hundred Twenty (120) Days:**

Bidder agrees that this bid shall be binding and may not be withdrawn for a period of one-hundred twenty (120) calendar days after the scheduled closing date of this Invitation for Bid

**F. Prime Contractor:**

If in its performance of this contract, Successful Bidder supplies goods or services by or through another party or subcontractor, Successful Bidder agrees that:

- 1) Successful Bidder shall act as the prime contractor for the goods and services to be provided under contract and shall be the sole point of contact with regard to all obligations under this contract.
- 2) Successful Bidder represents and warrants that Successful Bidder has made third parties or subcontractors aware of the proposed use and disposition of the other party's products or services, and that such other party has agreed in writing that it has no objection and that NNPS is not liable to such third parties or subcontractors for any work performed under this contract.

The use of subcontractors and the work they perform must receive the prior written approval of NNPS. NNPS will designate a Contract Administrator to approve such work. Successful Bidder shall be solely responsible for all work performed and materials provided by subcontractors. Successful Bidder shall be responsible for the liability of subcontractors for the types and limits required of the Successful Bidder under this contract.

**G. Subcontractors:**

Successful Bidder's use of subcontractors and the work they are to perform must receive written approval from the NNPS Contract Administrator at least ten (10) calendar days prior to the work being performed. Successful Bidder shall be solely responsible for all work performed and materials provided by subcontractors. Successful Bidder shall be responsible for the liability of subcontractors for the types and limits required of the Successful Bidder.

**H. Non-Assignment:**

Successful Bidder shall not assign its rights and duties under this Agreement without the prior written consent of the NNPS Contract Administrator.

I. Antitrust:

Any perceived anti-trust violation shall be reported to the State Attorney General for possible enforcement of anti-trust laws.

J. Anticollusion/Nondiscrimination Requirements Form:

The attached "Anticollusion/Nondiscrimination Requirements" form, on page 2 of this IFB, shall be executed by Bidder and is to be submitted with Bidder's bid. The requirements set forth on said form shall be considered to be binding terms and conditions in any contract resulting from this IFB. A contract will not be awarded to a Bidder who has not signed the anticollusion/nondiscrimination statement.

K. Compliance with Federal, State, and Local Laws and Federal Immigration Law:

Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

L. Compliance with state law; foreign and domestic businesses authorized to transact business in the Commonwealth:

Contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law. Contractor shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. NNPS may void any contract with the Contractor if the Contractor fails to remain in compliance with the provisions of this section.

M. Hold Harmless/Indemnification:

It is understood and agreed that Successful Bidder hereby assumes the entire responsibility and liability for any and all material damages to persons or property caused by or resulting from or arising out of any act or omission on the part of Successful Bidder, its subcontractors, agents or employees under or in connection with this Contract or the performance or failure to perform any work required by this Contract. Successful Bidder agrees to indemnify and hold harmless NNPS and its agents, volunteers, servants, employees and officials from and against any and all claims, losses, or expenses, including reasonable attorney's fees and litigation expenses suffered by any indemnified party or entity as the result of claims or suits due to, arising out of or in connection with (a) any and all such damages, real or alleged, (b) the violation of any law applicable to this Contract, and (c) the performance of the work by Successful Bidder or those for whom Successful Bidder is legally liable. Upon written demand by NNPS, Successful Bidder shall assume and defend at Successful Bidder's sole expense any and all such suits or defense of claims made against NNPS, its agents, volunteers, servants, employees or officials.

N. Notices:

All notices, requests, demands, and elections under this contract, other than routine operational communications, shall be in writing and shall be deemed to have been duly given on the date when hand-delivered, or on the date of the confirmed facsimile transmission, or on the date received when delivered by courier that has a reliable system for tracking delivery, or six (6) NNPS business days after the date of mailing when mailed by United States mail, registered or certified mail, return receipt requested, postage prepaid. All notices shall be addressed to the following individuals:

To NNPS: NNPS Contract Administrator as designated in this IFB.

To Successful Bidder: Successful Bidder's Contract Administrator as defined in Successful Bidder's bid.

Either party may from time to time change the individual(s) to receive notices and/or its address for notification purposes by giving the other party written notice as provided above.

O. Non-Responsive Performance:

Delivery Delays: NNPS reserves the right to procure goods and/or services to be provided under this contract from other sources in the event Successful Bidder fails to deliver such goods and/or service deliverables in accordance with delivery dates and time frames set forth in this contract.

Unacceptable Deliveries (Rejections): Upon notification by NNPS that goods and/or service deliverables provided by the Successful Bidder under this contract are damaged and/or not of the quality specified by NNPS, such goods and/or service deliverables will be rejected. Successful Bidder shall replace such rejected goods and/or service deliverables immediately or within a reasonable time as determined by NNPS.

Successful Bidder shall remove all rejected materials, equipment or supplies from the premises of NNPS within ten (10) days of notification. Rejected goods and/or service deliverables not removed from NNPS' premises within ten (10) days will be regarded as abandoned, shall become the property of NNPS, and NNPS shall have the right to dispose of such items.

NNPS Purchase From Alternate Sources: NNPS reserves the right to authorize immediate purchase from other sources against delayed deliveries and/or rejections. The Successful Bidder shall reimburse NNPS promptly for excess costs incurred by NNPS for such purchases. Any such purchases will be deducted from the contract amount. In the event NNPS' cost of obtaining goods and/or service deliverables from other sources is less, Successful Bidder shall have no claim to the difference.

Liability: Successful Bidder shall be liable to NNPS for all costs incurred by NNPS as a result of Successful Bidder's failure to perform in accordance with the contract. Successful Bidder's liability shall include, but not be limited to:

Damages and other delay costs, to include costs to procure goods/services from alternate suppliers.

Increased costs of performance, such as extended overhead and increased performance costs resulting from performance delays caused by Successful Bidder and/or rejections of Successful Bidder's goods and/or service deliverables. Warranty and rework costs, liability to third party, excess costs, attorney's fees and related costs incurred by NNPS due to non-responsive performance of Successful Bidder.

**P. Termination Without Cause:**

NNPS may at any time, and for any reason, terminate this Contract by written notice to Successful Bidder specifying the termination date, which shall be not less than thirty (30) days from the date such notice is mailed. Notice shall be given to Successful Bidder by certified mail/return receipt requested, addressed to the Successful Bidder's Contract Administrator. In the event of such termination, Successful Bidder shall be paid such amount as shall compensate Successful Bidder for the work satisfactorily completed, and accepted by NNPS, at the time of termination. In the event NNPS terminates this Contract, Successful Bidder shall withdraw its personnel and equipment, cease performance of any further work under this Contract, and turn over to NNPS any work completed or in process for which payment has been made.

**Q. Termination With Cause/Breach:**

In the event that Successful Bidder shall for any reason or through any cause be in default of the terms of this Contract, NNPS may give Successful Bidder written notice of such default by certified mail/return receipt requested, addressed to the Successful Bidder's Contract Administrator. Unless otherwise provided, Successful Bidder shall have ten (10) days from the date such notice is mailed in which to cure the default. Upon failure of the Successful Bidder to cure the default, NNPS may immediately cancel and terminate this Contract as of the mailing date of the default notice. Upon termination, Successful Bidder shall withdraw its personnel and equipment, cease performance of any further work under the Contract, and turn over to NNPS any work in process for which payment has been made. In the event of violations of law, safety or health standards and regulations, this Contract may be immediately cancelled and terminated by NNPS and provisions herein with respect to opportunity to cure default shall not be applicable.

**R. Breach of Contract:**

Successful Bidder shall be deemed in breach of this contract if the Successful Bidder: Fails to comply with any terms of this contract; Fails to cure such noncompliance within ten (10) calendar days from the date of the NNPS written notice or such other time frame, greater than ten (10) calendar days, specified by the NNPS Contract Administrator in the notice. Fails to submit a written response to the NNPS notification of noncompliance within ten (10) calendar days after the date of the NNPS notice. All notices under this contract shall be submitted, either by fax or certified mail, return-receipt requested, to the respective contract administrator. Successful Bidder shall not be in breach of this contract as long as its default was due to causes beyond the reasonable control of and occurred without any fault or negligence on the part of both the Successful Bidder and its subcontractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of NNPS in its sovereign capacity, fires, floods, epidemics, strikes, freight embargoes, and unusually severe catastrophic weather such as hurricanes.

S. Applicable Law:

This Contract shall be deemed to be a Virginia contract and shall be governed as to all matters whether of validity, interpretations, obligations, performance or otherwise exclusively by the laws of the Commonwealth of Virginia, and all questions arising with respect thereto shall be determined in accordance with such laws. Regardless of where actually delivered and accepted, this Contract shall be deemed to have been delivered and accepted by the parties in the Commonwealth of Virginia.

T. Compliance With All Laws:

Successful Bidder shall comply with all federal, state and local statutes, ordinances, and regulations now in effect or hereafter adopted, in the performance of this contract. Successful Bidder represents that it possesses all necessary licenses and permits required to conduct its business and/or will acquire any additional licenses and permits necessary for performance of this contract prior to the initiation of work. If the Successful Bidder is a corporation, Successful Bidder further expressly represents that it is a corporation of good standing in the Commonwealth of Virginia and will remain in good standing throughout the term of the contract and any extensions. All City of Newport News business license, personal property, real estate and other applicable tax requirements shall be met by Successful Bidder.

U. Venue:

Venue shall be in the Circuit Court of the City of Newport News, Virginia, and the United States District Court for the Eastern District of Virginia, Norfolk Division, compliant with applicable laws and regulations, as deemed appropriate by NNPS.

V. Severability:

If any provision of this contract is found by any court of competent jurisdiction to be invalid or unenforceable, the invalidity of such provision shall not affect the other provisions of this contract, and all other provisions of this contract shall remain in full force and effect.

W. Non-Appropriation of Funds:

It is understood and agreed between the parties herein that NNPS shall be bound hereunder only to the extent that the funds shall have been appropriated. In the event no funds or insufficient funds are appropriated, NNPS shall immediately notify the Successful Bidder of such occurrence and this Contract shall terminate on the last day funds are available without penalty or expense to NNPS of any kind whatsoever.

X. Tax Exemption:

NNPS is exempt from federal excise tax and from all State and local taxes. Successful Bidder shall not include such taxes in any invoices under this agreement. Upon request, NNPS will furnish the Successful Bidder with tax exemption certificates or the NNPS tax exempt number.

Y. Vendor's Invoices:

Successful Bidder shall submit to NNPS all invoices promptly upon completion of the requirements for installation, delivery, and acceptance of the Products and Services required under this contract. Invoices shall not include any costs other than those identified in the executed NNPS purchase order awarding this contract or any subsequent change orders issued by the NNPS Purchasing Division. All shipping costs are the Successful Bidder's responsibility, except to the extent such charges are identified in the executed NNPS purchase order or change orders. Successful Bidder's invoices shall provide at a minimum:

Type and description of the Product or Service installed, delivered and accepted;

Serial numbers, if any;

Quantity delivered;

Charge for each item;

Extended total (unit costs x quantity);

This IFB number and the NNPS Purchase Order Number.

Z. Contractual Disputes:

Any dispute concerning a question of fact as a result of a contract with NNPS which is not disposed of by agreement shall be decided by the NNPS Purchasing Agent, who shall reduce his decision to writing and mail or otherwise forward a copy thereof to the contractor within thirty (30) days. The decision of the NNPS Purchasing Agent shall be final and conclusive.

unless the contractor appeals within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. A contractor may not institute legal action, prior to receipt of the public body's decision on the claim, unless the public body fails to render such decision within the time specified. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty days after final payment; however, written notice of the contractor's intention to file such 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.

**AA. Warranty/Guarantee:**

The Successful Bidder guarantees against defective or faulty material or workmanship for at least one (1) year or for the manufacturer's standard warranty period, whichever is greater, from date of acceptance by NNPS. To furnish adequate protection from damage for all work and to repair damages of any kind for which Successful Bidder or Successful Bidder's workmen are responsible, to the building or equipment, to Successful Bidder's own work, or to the work of others. Any merchandise or service provided under the contract which is or becomes defective during the warranty period shall be replaced by the Successful Bidder free of charge with the specific understanding that all replacements shall carry the same guarantee as the original equipment or service (one year or manufacturer's standard warranty period, whichever is greater, from the date of acceptance of the replacement). The Successful Bidder shall make any such replacement immediately upon receiving notice from NNPS.

**BB. Payment Terms:**

To be eligible for payment, all labor, equipment and materials covered under Successful Bidder's invoice must be completed and accepted by NNPS. NNPS agrees to make payments under this contract within thirty (30) days after receipt of a correct invoice for such payment. Where payment is made by mail, the date of postmark shall be deemed to be the date of payment. Any amounts due NNPS under the terms of this or any other agreement may be applied against Successful Bidder's invoices with documentation for the basis of the adjustment attached. In no event shall any interest penalty or late fee accrue when payment is delayed because of disagreement between NNPS and Successful Bidder regarding the quantity, quality, time of delivery, or other noncompliance with the contract requirements for any Product or Service or the accuracy or correctness of any invoice. Payment terms offering a "prompt payment discount" of 20 days or greater will be considered in the evaluation of bids. All other payment terms shall be net thirty (30) calendar days or greater. Payment terms not specified by Bidder shall be Net 45 days.

**Special Educational or Promotional Discounts:**

The contractor shall extend any special educational or promotional sale prices or discounts immediately to Newport News Public Schools during the term of the contract. Such notice shall also advise the duration of the specific sale or discount price.

**CC. Prompt Payment**

NNPS will promptly pay for completed, delivered goods or services accepted under this Contract by the payment date established. The required payment date will be either: (i) the date on which payment is due under the terms of this Contract for the provision of the goods or services; or (ii) if a date is not established by this Contract, not more than forty-five (45) days after goods or services are received or not more than forty-five (45) days after the invoice is rendered, whichever is later.

Within twenty (20) days after the receipt of the invoice or goods or services, NNPS shall notify the supplier of any defect or impropriety that would prevent payment by the payment date. Should NNPS fail to pay the Contractor by the pay date, finance charges may be assessed by the Contractor. Unless otherwise provided under the terms of this Contract, interest will accrue at the rate of one percent (1%) per month. This will not apply to late payment provisions in any public utility tariffs or public utility negotiated Contracts. Contractor shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

In cases where payment to Contractor is made by mail, the date of postmark shall be deemed to be the date payment is made for purposes of this Contract.

Individual Contractors shall provide to NNPS their social security numbers and proprietorships, partnerships, and corporations to provide their federal employer identification numbers.

Within seven (7) days after Contractor receives payment from NNPS, Contractor shall take one or more of the following actions:

1. Pay all subcontractors for the proportionate share of the total payment received from NNPS attributable to the work performed by the subcontractors under this Contract;
2. Notify NNPS and all affected subcontractors, in writing, of Contractor's intention to withhold all or a part of each affected subcontractor's payment including the reason for nonpayment.
3. Pay interest to the subcontractor on all amounts owed by the Contractor that remain unpaid after (7) seven days following receipt by the Contractor of payment from NNPS for work performed by the subcontractor under that Contract, except for amounts withheld, as allowed in #2 above.

A Contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of NNPS. A Contract modification will not be made for the purpose of providing reimbursement by NNPS for interest charges owed by Contractor. A cost reimbursement claim to NNPS shall not include any amounts for reimbursement of interest charges owed by Contractor.

#### DD. Payment by Electronic Funds Transfer

##### (a) Method of payment.

(1) All payments by Newport News Public Schools (NNPS) under this contract shall be made by electronic funds transfer (EFT) except as provided in paragraph (a)(2) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.

(2) In the event NNPS is unable to release one or more payments by EFT, the Contractor agrees to either—

- (i) Accept payment by check or some other mutually agreeable method of payment; or
- (ii) Request NNPS to extend payment due dates until such time NNPS makes payment by EFT (but see paragraph (d) of this clause).

##### (b) Mandatory submission of Contractor's EFT information.

(1) The Contractor is required to provide NNPS with the information required to make payment by EFT (see paragraph (j) of this clause). The Contractor shall provide this information directly to the NNPS Accounting Department (hereafter referred to as "Accounting") no later than 15 days prior to submission of the first request for payment. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the Accounting.

(2) If the Contractor provides EFT information applicable to multiple contracts, the Contractor shall specifically state the applicability of this EFT information in terms acceptable to Accounting.

(c) Mechanisms for EFT payment. NNPS may make payment by EFT through the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association

##### (d) Suspension of payment.

(1) The NNPS is not required to make any payment under this contract until after receipt, by Accounting, of the correct EFT payment information from the Contractor. Until receipt of the correct EFT information, any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract.

(2) If the EFT information changes after submission of correct EFT information, NNPS shall begin using the changed EFT information no later than 30 days after its receipt by Accounting to the extent payment is made by EFT. However, the Contractor may request that no further payments be made until the updated EFT information is implemented by Accounting. If such suspension would result in a late payment under the prompt payment terms of this contract, the Contractor's request for suspension shall extend the due date for payment by the number of days of the suspension.

##### (e) Liability for uncompleted or erroneous transfers.

(1) If an uncompleted or erroneous transfer occurs because NNPS used the Contractor's EFT information incorrectly, NNPS remains responsible for—

- (i) Making a correct payment;
- (ii) Paying any prompt payment penalty due; and
- (iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of NNPS' release of the EFT payment transaction, and—

- (i) If the funds are no longer under the control of Accounting, NNPS is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or
- (ii) If the funds remain under the control of Accounting, NNPS shall not make payment and the provisions of paragraph (d) shall apply.

(f) EFT and prompt payment. A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(g) EFT and assignment of claims. If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall provide the EFT information required by paragraph (j) of this clause to Accounting, and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to NNPS, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(h) Liability for change of EFT information by financial agent. NNPS is not liable for errors resulting from changes to EFT information provided by the Contractor's financial agent.

(i) Payment information. Accounting shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. NNPS may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods Accounting is capable of executing. However, NNPS does not guarantee that any particular format or method of delivery is available and retains the latitude to use the format and delivery method most convenient to NNPS. If NNPS makes payment by check in accordance with paragraph (a) of this clause, NNPS shall mail the payment information to the remittance address in the contract.

(j) EFT information. The Contractor shall provide the following information to Accounting. The Contractor may supply this data for this or multiple contracts (see paragraph (b) of this clause). The Contractor shall designate a single financial agent per contract capable of receiving and processing the EFT information using the EFT methods described in paragraph (c) of this clause.

(1) The contract number (or other procurement identification number).

(2) The Contractor's name and remittance address, as stated in the contract(s).

(3) The signature (manual or electronic, as appropriate), title, and telephone number of the Contractor official authorized to provide this information.

(4) The name, address, and 9-digit Routing Transit Number of the Contractor's financial agent.

(5) The Contractor's account number and the type of account (checking, saving, or lockbox).

(6) If applicable, the Fedwire Transfer System telegraphic abbreviation of the Contractor's financial agent.

(7) If applicable, the Contractor shall also provide the name, address, telegraphic abbreviation, and 9-digit Routing Transit Number of the correspondent financial institution receiving the wire transfer payment if the Contractor's financial agent is not directly on-line to the Fedwire Transfer System; and, therefore, not the receiver of the wire transfer payment.

NNPS Accounting Department Designated Contact:

Accounting Department  
NNPS Administration Building  
12465 Warwick Blvd.  
Newport News, Virginia 23606  
Tel: (757)591- 4513  
Steven Kanehl, Accounting Supervisor  
Steve.Kanehl@nn.k12.va.us

#### EE. Audits:

NNPS shall have the right to audit all books and records (in whatever form they may be kept, whether written, electronic or other) relating or pertaining to this Contract (including any and all documents and other materials, in whatever form they may be kept, which support or underlie those books and records), kept by or under the control of Successful Bidder, including, but not limited to those kept by Successful Bidder, its employees, agents, assigns, successors and subcontractors. Successful Bidder shall maintain such books and records, together with such supporting or underlying documents and materials, for the duration of this Contract and for at least three years following the completion of this Contract, including any and all renewals thereof. The books and records, together with the supporting or underlying documents and materials shall be made available, upon request, to NNPS, through its employees, agents, representatives, contractors or other designees, during normal business hours at Successful Bidder's office or place of business in Newport News, Virginia. In the event that no such location is available, then the books and records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location in



Newport News, Virginia, which is convenient for NNPS. This paragraph shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which NNPS may have by state, city, or federal statute, ordinance, regulation, or agreement, whether those rights, powers, or obligations are express or implied.

FF. Non-Exclusivity:

NNPS reserves the right to procure goods or services covered under this contract from a third party when, in NNPS' sole discretion, it is deemed to be in NNPS' best interest.

**SPECIAL TERMS AND CONDITIONS**

A. Contract Term:

The initial contract will be for Two (2) years, commencing on or about October 03, 2018 and expiring October 31, 2020.

B. Contract Extension:

This contract may be extended upon mutual agreement of both parties for Six (6) additional, one (1) year renewal terms, upon the same prices, terms, and conditions set forth in the negotiated contract resulting from this IFB.

C. Time is of the Essence

Time is of the essence in this Contract. Successful Bidder expressly acknowledges that in the performance of its obligations, NNPS is relying on timely performance and will schedule operations and incur obligations to third parties in reliance upon timely performance by Successful Bidder and may sustain substantial losses by reason of untimely performance.

D. Insurance:

1. Contractor shall submit to the NNPS Contract Administrator certificates of insurance, prior to beginning work under the contract and no later than ten (10) days after award of the contract.
2. All policies of insurance required herein shall be written by insurance companies licensed to conduct the business of insurance in Virginia, and acceptable to Owner, and shall carry the provision that the insurance will not be cancelled or materially modified without thirty days (30) prior written notice to the Owner or to the extent permitted by Virginia law.
3. The certificates of insurance shall list NNPS, 12465 Warwick Boulevard, Newport News, Virginia, 23606-0130, as the additional insured for the specified project as outlined in this IFB. Copies of actual endorsements to the policy shall be required to confirm any special request, such as, additional insured status. A COI shall not be issued or delivered that gives the impression there are coverage terms the referenced policy does not specifically provide.

IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO IMMEDIATELY NOTIFY THE OWNER SHOULD ANY POLICY BE CANCELLED. FAILURE TO NOTIFY THE OWNER SHALL CONSTITUTE A MATERIAL BREACH OF THE CONTRACT.

4. Insurance shall be maintained during the entire term of the contract and shall be of the following forms and limits:

<u>Forms</u>	<u>Limits</u>
Workers' Compensation	Statutory
Automobile Liability	\$1,000,000 Combined Single Limit
Commercial General Liability, including Contractual Liability and Products and Completed Operations Coverage	\$1,000,000 Combined Single Limit
Miscellaneous Errors and Omissions with Intellectual Property Rights Coverage, Including Copyright Infringement	\$1,000,000
Umbrella/Excess Liability	\$5,000,000

The establishment of minimum limits of insurance by Owner does not reduce or limit the liability or responsibilities of the Contractor.

**E. Unauthorized Disclosure of Information:**

The Successful Bidder shall assume the entire responsibility and liability for any and all damages caused by or resulting from or arising out of the negligent or willful unauthorized disclosure of confidential information on the part of the Successful Bidder, its subcontractors, agents or employees under or in connection with this contract. The Successful Bidder shall save harmless and indemnify NNPS and its agents, volunteers, servants, employees and officers from and against any and all claims, losses or expenses, including but not limited to attorney's fees, which either or both of them may suffer, pay or incur as the result of claims or suits due to, arising out of or in connection with, any and all such unauthorized disclosures, real or alleged. The Successful Bidder shall, upon written demand by NNPS, assume and defend, at the Successful Bidder's sole expense, any and all such suits or defense of claims alleging unauthorized disclosures of confidential information.

Any negligent or willful unauthorized disclosure of confidential information on the part of the Successful Bidder, its subcontractors, agents or employees under or in connection with this contract shall constitute a breach of the terms of this contract. NNPS may proceed by appropriate court action, including seeking injunctive relief, to prevent continuing unauthorized disclosures, and Successful Bidder shall save harmless and indemnify NNPS for court costs, litigation expenses and attorney's fees that it may pay or incur as the result of seeking to prevent or stop any and all unauthorized disclosures of confidential information.

**F. Copyright/Patent Indemnity:**

The Successful Bidder shall pay all royalty and license fees relating to the items covered by this contract. In the event any third party shall claim that the manufacture, use and sales of the goods supplied under this contract constitute an infringement of any copyright, trademark, or patent, the Successful Bidder shall indemnify NNPS and hold NNPS harmless from any cost, expense, damage or loss incurred in any manner by NNPS on account of any such alleged or actual infringement.

**G. Title to Equipment:**

Successful Bidder shall pass to NNPS clear and unrestricted title to all equipment purchased under this contract upon payment of the purchase price.

**H. Escalation/De-escalation:**

NNPS may consider price adjustments, after the initial contract term, based solely upon manufacturer price increases/decreases. Successful Bidder shall provide NNPS a written request for any such manufacturer increases. Such requests shall be addressed to the Issuing Office and shall be accompanied by written verifications of said price increases issued by the manufacturer. A minimum thirty (30) day advance notice period shall be required for such requests. Requests for price increase adjustments are subject to the review and approval of the NNPS Purchasing Agent. Successful Bidder shall apply and implement, immediately upon notification from manufacturer, any and all price decreases for items included under any contract resulting from this Invitation to Bid.

Any increase in cost shall not increase by a greater percentage than the percentage change in the Consumer Price Index – All Urban Consumers (CPI – U) for the applicable schedule of the Consumer Price Index published by the United States Department of Labor during the previous twelve months or Three (3%) whichever is lower.

**I. Requirements Contract:**

During the contract term and any and all extensions, the contractor shall provide the goods/services described in the contract. The contractor understands and agrees that this is a requirements contract and that NNPS shall have no obligation to the contractor if no goods/services are required. Any quantities that are included in the scope of work reflect the current expectations of NNPS. The quantities indicated are an estimate only and NNPS is under no obligation to the contractor to buy any amount of the goods/services as a result of having provided this estimate or of having any typical or measurable requirement in the past. The contractor understands and agrees that NNPS may require goods/services in an amount less than or in excess of the estimated quantities and that the quantity actually used, whether in excess of the estimate or less than the estimate, shall not give rise to any claim for compensation other than the total of the unit prices in the contract for the quantity actually required by NNPS.

J. Certification Regarding Debarment

This is to certify that this person/firm/corporation is not now debarred by the Federal Government or by the Commonwealth of Virginia or by any other state, or by any town, city, or county, from submitting Bids on contracts for construction covered by this solicitation, nor are they an agent of any person or entity that is now so debarred.

\_\_\_\_\_  
Name of Official

\_\_\_\_\_  
Title

\_\_\_\_\_  
Firm or Corporation

\_\_\_\_\_  
Date

K. Equipment Condition:

All equipment to be supplied shall be new equipment, and currently manufactured. All new equipment must have been approved by Underwriters Laboratories or a recognized equivalent certification agency.

L. Cooperative Procurement:

Section 2.2-4304 Code of Virginia (VPPA) will apply to this solicitation. Other Public Bodies may utilize any contract(s) issued pursuant to this solicitation by placing its own order(s) directly with the successful contractor(s). Newport News Public Schools acts only as the issuing agent and is not responsible for placement of orders, payment or discrepancies of other participating Public Bodies. In the event these entities opt to participate under any contract awarded as a result of this solicitation, each will enter into a separate contract directly with the Successful Bidder or Bidders, incorporating all terms and conditions set forth in this contract, including incorporated best and final offers. Each entity will be responsible for the contract administration of its contract directly with the Contractor.

## **Attachment "A"**

### **FRESH PRODUCE NEWPORT NEWS SCHOOLS – CHILD NUTRITION SERVICES**

#### **CONTRACT SECTION I - SPECIAL BID AND CONTRACT REQUIREMENTS**

##### **A. TYPE OF CONTRACT**

ANNUAL FIXED FEES FOR SERVICES PLUS REIMBURSABLE COSTS.

##### **B. INSTRUCTIONS FOR FILLING IN SECTION II**

Bidders enter in Lot 1, your fixed fees for services per unit. Broken cases are listed separately. Multiply the fixed fee per unit times the number of units indicated and enter under total fixed fee cost. Add all of the extended totals and put in the space for cumulative total.

Fees shall be based on the largest wholesale unit normally distributed by the contractor. Fees for broken cartons shall be based on wholesale units. That is, if \$2.00 is the service fee for breaking wholesale units, the fee shall be prorated over the broken carton quantity. For example, if a wholesale unit has 48 cello packs of radishes, the charge per cello pack would be \$0.042.

##### **C. COST PRICES**

###### **1. REIMBURSABLE COSTS**

All produce will be invoiced at the contract distributor's cost, delivered to his warehouse, with the fixed fee for service added in for the duration of the contract. Prices shall be firm for 7 days.

###### **2. DEFINITION OF COST PRICES**

Cost prices shall be based on "delivered to distributors' warehouse" and shall include cooling, refrigeration and other freight related charges. Freight rates shall normally be in truckload quantities of straight or mixed items. Costs shall be based on the "latest invoice," either prior to merchandise being delivered to the purchaser, or in stock, as the case may be, in accord with the seven (7) day firm price requirement.

###### **3. PRICE CHANGE AUDITS**

Audits may be made of the suppliers' cost price records as follows:

- (a) Audits are required at the end of the contract period.
- (b) Audits may also be made mid-term of the contract.
- (c) Audits may be made at the discretion of school district officials at any time monthly price reviews indicate that a problem might exist.
- (d) Audits shall be made of the following:
  - (1) Questionable price increases.
  - (2) Selected items showing price increases.
  - (3) Selected items showing no price changes.
  - (4) Substitution of cheaper brands or grades.
  - (5) Full review will be undertaken when circumstances are questionable.

##### **D. INSTRUCTIONS FOR FILLING IN SECTION III**

Lot 2, items A811 through A874 will not be bid fees for service plus reimbursable costs. Bidders bid the items with cost and delivery included.

##### **H. SPECIAL CONDITIONS**

Lot 1 fresh produce and Lot 2 fresh salads will be awarded ALL or NONE, separately or whole, whichever is in the best interest of NNPS.

**LOT 1****FRESH PRODUCE**

<b>APPROX QTY.</b>	<b>ID#</b>	<b>IDENTIFICATION</b>	<b>FIXED FEE</b>	<b>TOTAL FIXED FEE COST</b>
2500cs	F105	<b>APPLES</b> , delicious, red or golden U.S. fancy, Approx 135ct, 40lb avg/cs. ct.per case _____ lbs/case _____ Origin _____	\$ _____ case	\$ _____
500 cs	F106	<b>APPLES</b> , Individual Bags, meets ½ cup fruit ct.per case _____ lbs/case _____ Origin _____	\$ _____ case	\$ _____
case				
500 cs	F120	<b>BANANAS</b> , grade #1, min.length 5", firm 99% FFD, approx.40lb avg/cs. Origin _____	\$ _____ case	\$ _____
300 cs	F120A	<b>BANANAS</b> , grade #1, single, petite, firm 99% FFD, approx. 150 count Origin _____	\$ _____ case	\$ _____
100 ea	F130	<b>CANTALOUPE</b> S, U.S. #1 Origin _____	\$ _____ ea.	\$ _____
25 cs	F150	<b>GRAPEFRUITS</b> , pink, U.S. #1 ct/case _____ lbs/case _____ cost/each \$ _____ Origin _____	\$ _____ case	\$ _____
25 cs	F150A	<b>GRAPEFRUITS</b> , white, U.S. #1 ct/case _____ lbs/case _____ cost/each \$ _____ Origin _____	\$ _____ case	\$ _____
3000lb	F155B	<b>GRAPES SEEDLESS</b> , red, U.S. fancy lbs/case _____ case \$ _____ Origin _____	\$ _____ lb	\$ _____
2000lb	F155C	<b>GRAPES SEEDLESS</b> , red, U.S. fancy, “lunch Bunch” type, individually cut in bunches lbs/case _____ case \$ _____ Origin _____	\$ _____ lb	\$ _____
600 cs	F160	<b>KIWI</b> , U.S. #1 approx. 36ct/cs ct./case _____ lbs/case _____ Origin _____	\$ _____ case	\$ _____

<b>APPOX. QTY.</b>	<b>ID#</b>	<b>IDENTIFICATION</b>	<b>TOTAL FIXED FEE</b>	<b>FIXED FEE COST</b>
100 dz	F165A	<b>LEMONS</b> , U.S. #2, lb Origin_____	\$_____ dozen	\$_____
20 dz	F170	<b>LIMES</b> , US #1, dozen Origin_____	\$_____ dozen	\$_____
100 ea	F180	<b>MELONS, HONEYDEW</b> , U.S. #1. Origin_____	\$_____ each	\$_____
1500cs	F193	<b>ORANGES</b> , U.S. #1, approx.113ct ct./case_____ lbs/case_____ Origin_____	\$_____ case	\$_____
1000 cs	F203	<b>PEARS</b> , U.S. #1 approx. 120ct/cs ct./case_____ lbs/case_____ Origin_____	\$_____ case	\$_____
50 ea	F205	<b>PINEAPPLES</b> , U.S. #1, each Origin_____	\$_____ each	\$_____
300 cs	F215	<b>STRAWBERRIES</b> , U.S. #1, 12 pints/case Origin_____	\$_____ case	\$_____
100 cs	F225	<b>TANGERINES</b> , U.S. #1, approx.180ct ct./case_____ lbs/case_____ Origin_____	\$_____ case	\$_____
600 cs	F230	<b>TOMATOES</b> , U.S. #1, 6x6 size 25lb case	\$_____ case	\$_____
1000lb	F230A	<b>TOMATOES</b> , U.S. #1, 6x6 size, lb	\$_____ lb.	\$_____
1000 cs	F233	<b>TOMATOES, CHERRY</b> , U.S. #1, 6pints/case	\$_____ case	\$_____
1000lb	F234	<b>TOMATOES, ROMA</b> , U.S. #1, approx. 25lb case	\$_____ case	\$_____
100 ea	F235	<b>WATERMELON</b> , U.S. #1, comm. 17#avg. Origin_____	\$_____ each	\$_____
3000 cs	F250	<b>SALAD MIX</b> , fresh lettuce, carrots, red cabbage. 4-5lb bags	\$_____ case	\$_____

<b>APPROX. QTY.</b>	<b>ID#</b>	<b>IDENTIFICATION</b>	<b>FIXED FEE</b>	<b>TOTAL FIXED FEE COST</b>
50 lb	F515	<b>BEANS, GREEN</b> , U.S. fancy	\$_____ lb.	\$_____
1000 bu	F525	<b>BROCCOLI</b> , U.S. #1, bunch	\$_____ bunch	\$_____
1000 bg	F525A	<b>BROCCOLI FLORETS</b> , U.S. #1, 3lb bags	\$_____ bag	\$_____
500 bg	F535	<b>CABBGE GREEN</b> , U.S. #1, 50#bag	\$_____ bag	\$_____
2000lb	F535A	<b>CABBAGE, GREEN</b> , U.S. #1, lb	\$_____ lb.	\$_____
800 lb	F540A	<b>CABBAGE, RED</b> , U.S. #1, lb	\$_____ lb.	\$_____
1500lb	F545	<b>CARROTS</b> , topped, U.S. #1 max. 2" diam.	\$_____ lb.	\$_____
100 bg	F547	<b>CARROT STICKS</b> , approx. 3"-4" length lbs/bag_____ ct/bag_____	\$_____ bag	\$_____
200 cs	F548	<b>CARROTS, BABY PEELED</b> , U.S. #1 approx. 4-5lb bags/case	\$_____ case	\$_____
2000cs	F549	<b>CARROTS, BABY PEELED</b> , U.S. #1 individually bagged, 100 bags/case, each bag meets 1/2 cup vegetable	\$_____ case	\$_____
25 hd	F550	<b>CAULIFLOWER</b> , U.S. #1, head	\$_____ head	\$_____
100 bg	F550A	<b>CAULIFLOWER FLORETS</b> , U.S. #1, 3lb bags	\$_____ bag	\$_____
900 stk	F555	<b>CELERY</b> , Pascal, U.S. #1, stalk	\$_____ stalk	\$_____
500 bg	F555B	<b>CELERY STICKS</b> , Pascal, U.S. #1, 3"-4"length lbs/bag_____ ct/bag_____	\$_____ bag	\$_____
4000lb	F570A	<b>CUCUMBERS</b> , U.S. #1, lb	\$_____ lb.	\$_____

<b>APPOX. QTY.</b>	<b>ID#</b>	<b>IDENTIFICATION</b>	<b>FIXED FEE</b>	<b>TOTAL FIXED FEE COST</b>
25 hd	F580A	<b>ENDIVE</b> , U.S. #1, head	\$_____	\$_____
		head		
25 hd	F585	<b>ESCAROLE</b> , U.S. #1, head	\$_____	\$_____
		head		
700 cs	F595	<b>LETTUCE</b> , iceberg, crisphead U.S. fancy, 24 ct/case	\$_____	\$_____
		case		
700 hd	F598	<b>LETTUCE, GREEN LEAF</b> , U.S. fancy, head	\$_____	\$_____
		head		
50 lb	F602	<b>MUSHROOMS</b> , fresh, snow white, U.S. #1 medium to large size, lb	\$_____	\$_____
		lb.		
50 bg	F617	<b>ONIONS</b> , yellow, U.S. #1, medium, 25# bag, ct/bag_____	\$_____	\$_____
		bag		
500 lb	F617A	<b>ONIONS</b> , yellow, U.S. #1, lb medium size, pound	\$_____	\$_____
		lb.		
300 lb	F618A	<b>ONIONS JUMBO</b> , yellow, U.S. #1, lb 3" max., pound	\$_____	\$_____
		lb.		
100 lb	F618R	<b>ONIONS</b> , red, U.S. grade #1, lb medium size, pound	\$_____	\$_____
		lb.		
50 bu	F620A	<b>PARSLEY</b> , U.S. #1, bunch	\$_____	\$_____
		bunch		
1000lb	F635	<b>PEPPERS SWEET GREEN</b> , U.S. #1 2-1/2" min., lb	\$_____	\$_____
		lb.		
50 bg	F640	<b>POTATOES</b> , all-purpose, US grade #1, Irish 50# bag	\$_____	\$_____
		bag		
200 lb	F640A	<b>POTATOES</b> , all-purpose, US grade #1, Irish, lb	\$_____	\$_____
		lb.		
				<b>TOTAL</b>



APPOX. QTY.	ID#	IDENTIFICATION	FIXED FEE	FIXED FEE COST
200 bg	F641	POTATOES, BAKING, russet, size 120 ct. US #1, 50#bag	\$ _____ bag	\$ _____
200 lb	F641A	POTATOES, BAKING, russet size 120 ct. US #1, lb	\$ _____ lb.	\$ _____
800 pak	F648	RADISHES, red, U.S. #1 6 oz.cello package	\$ _____ pak	\$ _____
150 bg	F665	SPINACH, U.S. #1, 10oz bags	\$ _____ bag	\$ _____
500 cs	F531	EGGS, FRESH, large USDA grade A 30 dz. per case	\$ _____ case	\$ _____

CUMULATIVE TOTAL FOR ALL ITEMS QUOTED IN THE TOTAL FIXED FEE COST COLUMN

\$ \_\_\_\_\_

**LOT 2**

**FRESH SALADS**

APPOX. QTY.	ID#	IDENTIFICATION	UNIT PRICE	EXTENDED TOTAL
1000tub	A811	COLE SLAW, fresh 5#tub, expiration date must be stated. Approved brands: Mrs. Giles or Jacks list brand _____	\$ _____ tub	\$ _____
200tub	A840	MACARONI SALAD, fresh 5#tub, expiration date must be stated. Approved brands: Mrs. Giles or Jacks list brand _____	\$ _____ tub	\$ _____
500tub	A874	POTATO SALAD, fresh 5#tub expiration date must be stated. Approved brand: Mrs. Giles or Jacks list brand _____	\$ _____ tub	\$ _____

CUMULATIVE EXTENDED TOTAL FOR ITEMS A811 THROUGH A874 \$ \_\_\_\_\_

During the contract term and any and all extensions, the contractor shall provide the goods/services described in the contract. The contractor understands and agrees that this is a requirements contract and that NNPS shall have no obligation to the contractor if no goods/services are required. Any quantities that are included in the scope of work reflect the current expectation of NNPS. The quantities indicated are an estimate only and NNPS is under no obligation to the contractor to buy any amount of the goods/services as a result of having provided this estimate or of having any typical or measurable requirement in the past. The contractor understands and agrees that NNPS may require goods/services in an amount less than or in excess of the estimated quantities and that the quantity actually used, whether in excess of the estimate or less than the estimate, shall not give rise to any claim for compensation other than the total of the unit prices in the contract for the quantity actually required by NNPS.