

PURCHASING DEPARTMENT

Newport News Public Schools

757-591-4525/ FAX 757-591-4634

12465 WARWICK BOULEVARD • NEWPORT NEWS, VIRGINIA 23606-3041

May 30, 2019

**NOTICE OF INTENT TO AWARD  
RFP #004-0-2019/HM**

To All Offerors:

Please be advised that NNPS has completed its evaluation of proposals for Elementary Math textbooks under Request for Proposal (RFP) #004-0-2019/HM. Based on the evaluation factors in the RFP, **Great Minds, LLC DBA Eureka Math** is determined to have provided the best proposal for **Elementary Math textbooks**. Accordingly, it is the intention of NNPS to award the contract to **Great Minds, LLC**, effective May 30, 2019.

Should you have any questions, please feel free to contact me at (757) 591-4533 or [heather.medina@nn.k12.va.us](mailto:heather.medina@nn.k12.va.us).

Sincerely,

A handwritten signature in blue ink, appearing to read 'Heather Medina', with a long horizontal flourish extending to the right.

Heather Medina, VCO

Buyer

Newport News Public Schools



**REQUEST FOR PROPOSALS**

**Newport News Public Schools**  
ISSUING OFFICE:

**DATE: October 19, 2018**

PURCHASING DEPARTMENT  
12465 WARWICK BOULEVARD  
NEWPORT NEWS, VA 23606-3041  
TELEPHONE: (757) 591-4525  
FAX: (757) 591-4593

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

<b>RFP ITEM NO.</b> 004-0-2019/HM
<b>PROCUREMENT OFFICER</b> <b>Heather Medina, VCO</b>
<b>CLOSING DATE</b> November 27, 2018
<b>CLOSING TIME</b> 2:00pm EST
<b>PREPROPOSAL CONFERENCE</b> N/A

**SEALED PROPOSALS** 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 Request for Proposals should be directed to the Issuing Office as defined.

**COMMODITY: Math Textbooks, Elementary NIGP CODE: 71500**

PLEASE FILL IN OFFEROR'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 PROPOSALS IN WHOLE OR IN PART AND TO WAIVE ANY INFORMALITIES IN THE COMPETITIVE NEGOTIATION PROCESS AND RESERVES THE RIGHT TO ENTER INTO ANY CONTRACT DEEMED TO BE IN ITS BEST INTEREST. THE ENTIRE CONTENTS OF THIS REQUEST FOR PROPOSAL, ANY ADDENDA, AND NEGOTIATED CHANGES SHALL BE INCORPORATED BY REFERENCE INTO ANY RESULTING CONTRACT.

NNPS DOES NOT DISCRIMINATE AGAINST FAITH-BASED ORGANIZATIONS.

\_\_\_\_\_  
ELEMENTARY MATH TEXTBOOKS, LEVELS K - 5 FOR THE NEWPORT NEWS PUBLIC SCHOOL SYSTEM  
\_\_\_\_\_

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

IN COMPLIANCE WITH THIS SOLICITATION, AND TO ALL THE CONDITIONS IMPOSED HEREIN, THE UNDERSIGNED AGREES TO PERFORM ANY CONTRACT AWARDED AS A RESULT OF THIS SOLICITATION. THE FOLLOWING SECTION SHALL BE SIGNED BY AN AGENT AUTHORIZED TO BIND THE COMPANY. FAILURE TO MAKE THIS COMMITMENT MAY RESULT IN PROPOSAL REJECTION.

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:**

- During the performance of this contract, the successful bidder/offeror agrees as follows:  
 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.  
 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.  
 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.
- 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:**

- 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.
- 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.
- 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.
- 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

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## I. PURPOSE

Newport News Public Schools (hereinafter referred to as NNPS) requests proposals from prospective Offerors (hereinafter referred to as Offeror, Successful Offeror or Contractor) to enter contract with qualified vendors to provide print atlases for the Elementary Math curriculum.

This RFP may result in an award to multiple Offerors, if it is determined to be in the best interest of the school division.

The offeror(s) selected to provide these materials agree to provide them to NNPS starting July 1, 2019. If the textbooks, printed and digital materials are available after these dates please include this information in the RFP response.

NNPS invites any qualified Offeror to submit a proposal. Offerors responding to this request must be responsible, regularly and practically engaged in providing the services requested in this RFP and possess ample resources for doing this work.

## A. BACKGROUND

NNPS is the ninth largest school district in the Commonwealth. NNPS is an urban school system educating approximately 29,400 children in 5 early childhood centers, 24 elementary schools, 7 middle schools, 5 high schools, 1 middle/high combination school, and 9 program sites. A listing of NNPS and its locations may be accessed via NNPS official website at <http://sbo.nn.k12.va.us/schools>.

Newport News Public Schools curriculum is aligned to the new SOL content, but NNPS educators go beyond teaching the minimum state standards. The NNPS curriculum combines the SOLs with the district's college, career and citizen-ready skills (information literacy, communication, critical thinking, problem-solving, creativity and innovation, initiative and self-direction, social responsibility and collaboration) to better prepare students for success as learners, future employee and contributing citizens.

## B. STATEMENT OF NEEDS

### Specific Requirements/Scope of Work

Classroom sets of Elementary Math textbooks that support the content and instruction in the following courses and that are grade level appropriate. One set of teacher/instructor materials to include but not be limited to the Instructor's Edition text shall be provided for each teacher of each level of math courses.

- a. Kindergarten level Math
- b. First (1<sup>st</sup>) grade level Math
- c. Second (2<sup>nd</sup>) grade level Math
- d. Third (3<sup>rd</sup>) grade level Math
- e. Fourth (4<sup>th</sup>) grade level Math
- f. Fifth (5<sup>th</sup>) grade level Math

Ebook versions of all the purchased books:

- a. 7 year, whole school licenses for all current students and teachers of each course to access the eBook version of the books purchased for Math, Grade Levels K through 5.
- b. Free tech support for performance and technical issues
- c. Fast performance throughout the school day that is not degraded by heavy usage
- d. Ability to batch upload usernames and passwords at the district level
- e. Ability to manage accounts at the district level
- f. Easy to use, student and teacher interface

Free professional development at start of contract and throughout the contract as necessary

## II. SPECIAL INSTRUCTIONS TO THE BIDDER:

### A. Definitions:

#### 1. Issuing Office:

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

Heather Medina, VCO, Buyer

Newport News Public Schools Purchasing Department

12465 Warwick Boulevard

Newport News, VA 23606-3041

Phone: (757) 591-4533

Fax: (757) 591-4593

Email: [heather.medina@nn.k12.va.us](mailto:heather.medina@nn.k12.va.us)

#### 2. 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:

Integrated Curriculum Grades K - 5/Curriculum and Development Department

Carmen Kurek, K-1

Lori Wall, 2-3

Kelly Kent-Johnson, 4-5

Instructional Supervisor

12465 Warwick Boulevard

Phone: (757) 283-7850

Fax: (757) 595-7522

Emails: [carmen.kurek@nn.k12.va.us](mailto:carmen.kurek@nn.k12.va.us), [lori.wall@nn.k12.va.us](mailto:lori.wall@nn.k12.va.us), [kelly.kent@nn.k12.va.us](mailto:kelly.kent@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 RFP or any subject related to this RFP is expressly prohibited except with the prior knowledge and permission of the Purchasing Supervisor

### C. Offerors of Record:

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

### D. Questions:

Submit questions regarding this Request for Proposals in writing or by telephone to the Issuing Office at [heather.medina@nn.k12.va.us](mailto:heather.medina@nn.k12.va.us) no later than **10:00AM on October 31, 2018**. Necessary replies will be issued to all Offerors of record as addenda that shall become part of the contract documents. Oral instructions do not form a part of the bid documents.

Offeror is responsible for checking the [www.eva.virginia.gov](http://www.eva.virginia.gov) web site or contacting the Issuing Office within 48 hours prior to proposal deadline to secure any addenda affecting this RFP.

### E. Changes or Modifications:

Changes or modifications to this Request for Proposals 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 Request for Proposals. Oral modifications shall not form a part of the Proposal documents. This RFP and any addenda shall be incorporated, by reference, into any resulting contract.

### F. RFP Closing

Offeror shall ensure its Proposal is time stamped by the Issuing Office no later than the closing date and time shown on the cover page of this document. Proposals received after the specified date and time (time stamped 2:01 pm or later) will not be considered and will be returned to the Offeror unopened.

## G. Proposal Submittal Requirements:

1. Each Proposal submission shall be submitted to the Issuing Office and will include the following documents:
  - a. The cover page of this Request for Proposals, which will contain:
    - (1) Original signature of an agent authorized to bind the company;
    - (2) Requested contact information;
    - (3) Company FEI/TIN; and
    - (4) Acknowledgment of any addenda on page one (1); and
    - (5) Attachment A
  - b. Completed and signed anticollusion/nondiscrimination clauses on page 2;
2. Offerors are encouraged to submit their proposals on recycled paper and to use double side copying.
3. Proposals must be submitted utilizing the following requirements:

Submit proposals 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 Proposal Item No., Closing Date and Time, and your firm's name and address. **Proposals received by telephone, telegraph, facsimile, or any other means of electronic transfer shall not be accepted.**
4. Submit the original and 5 copies of the proposal along with one electronic copy on compact disk or flash drive.
5. One (1) complete set of printed textbook samples to include: ONE (1) Student Edition, One (1) Student Workbook, and ONE (1) Teacher's Edition to be shipped with proposal submittals.
6. A minimum of thirty (30) online access codes good for at least 90 days for NNPS to review and evaluate all materials, both printed and online resources.

## H. Evaluation of Proposals:

1. After the proposal opening, NNPS will select for further consideration two or more Offerors deemed to be fully qualified and best suited among those submitting proposals based on the Offerors responses to the information requested in this RFP.
2. The following criteria will be used in the evaluation process:

- Overall proposal rating:
    - Exceptional: The submission exceeds expectations, excellent probability of success, and in achieving all objectives. Very innovative
    - Good: Very good probability of success. Achieves all objectives in reasonable fashion.
    - Acceptable: Has reasonable probability of success. Some objectives may not be met.
    - Poor: Falls short of expectations and has a low probability of success.
    - Unacceptable: Submission fails to meet requirements and the approach has no probability of success.
  - Each proposal will be evaluated on the following criteria:
    - Experience and qualifications of the company, including the number of years of experience providing comparable services. (maximum 25 points)
    - Capabilities, skills, services to be provided and organizational structure of customer support services. Breadth and depth of administrative and billing services. (maximum 45 points)
    - Cost to NNPS. (maximum 30 points)
3. Exceptions/Alternatives will also be considered.
  4. Based on the initial evaluation, NNPS may request the selected Offerors to make oral presentations. Thereafter, NNPS will conduct negotiations with each of the selected short-listed Offerors. Individuals representing the Offeror during negotiations shall have the authority to negotiate and contractually bind the company to a contract.
  5. After negotiations are completed, NNPS will select the Offeror who, in NNPS's opinion, has made the best proposal and shall award the contract to that Offeror (referred to in this RFP as the Successful Offeror). Should NNPS determine in writing and in its sole discretion that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Offeror.
  6. NNPS is not required to furnish a statement of the reason(s) why a proposal was not deemed to be the most advantageous.

## I. Presentation/Demonstration:

If in NNPS's opinion, vendor presentations or demonstrations of the Offeror's proposed system's features and capabilities are warranted, NNPS will notify the appropriate vendors. Such presentation or demonstration will be at an NNPS site at a date and time mutually agreed to between NNPS and Offeror and will be at the Offeror's expense.

#### J. Preparation of Proposals:

In presenting their proposals, Offerors are encouraged to be thorough in addressing the Statement of Needs, the Preparation of Proposal Guidelines, and the Proposal Submittal Requirements as outlined in this RFP.

To facilitate the NNPS's evaluation of Offeror's proposal, Offeror is to number all pages of its proposal and provide tabs listing the evaluation criteria indicated above. Offerors should be completely responsive to this RFP, be able to conform to the terms and conditions provided, herein, and provide responses to the evaluation criteria outlined, below. Offeror should not incorporate its standard contract document into its proposal, by reference or in full text, without listing each exception it represents to the terms and conditions of this RFP, as described in the Exceptions/Alternatives section of this paragraph.

Offerors are encouraged to provide thorough and detailed information regarding the product and services being offered, based on the details provided, below.

Give a brief description of your organization to include:

1. Experience – Provide a concise description of all work experience as they relate to the scope of work outlined herein. Description should include, but not be limited to:
  - Offeror's established experience record in providing comparable services to organizations similar to NNPS.
  - Number and types of customers the Offeror has served with comparable services.
  - Number of years Offeror has been providing these types of services.
  - A minimum of five (5) references for which Offeror has completed services comparable to those described in this RFP. Include references for work performed in an environment comparable to NNPS's. For each reference detail:
    - Name of firm
    - Address of firm
    - Name, title, address, email address, and phone and fax number of a contact for the firm
    - Number of years Offeror has served the firm and
    - Brief summary of scope of services provided.
    - Information detailing project of similar scope Offeror is currently engaged in, including:
      - Name of firm
      - Address of firm
      - Name, title, address, email address and phone and fax number of contact for the firm
      - Brief summary of scope of services being provided.
  - Other available documentation to verify Offeror's experience.
  - A statement detailing why the Offeror is the best candidate to provide the NNPS with the services requested in this RFP.
2. Capability and skill – Describe the qualifications and skill of the organization to provide the services. Said description should provide, but not be limited to the following information:
  - a. Background information about the organization, e.g., philosophy, ownership, size, facilities and locations, etc.
  - b. Offeror's management structure of the firm –e.g. organization chart of the firm, project team, etc.
  - c. Size and location of the office that will serve the NNPS.
  - d. Offeror's qualifications to perform the services, including all resources available to Offeror for the performance of the contract.
  - e. Qualification and resumed of personnel providing services for the performance of the contact.
  - f. Name, title, address, email address, phone and fax number, and work hours of the Offeror's Contract representative for the following functions; Contact for prompt contract administration upon award of the contract, Contract during the period of evaluation, and Authorized agent to accept any notices provide for in this contract.
  - g. Indicate the type of organization you represent, i.e. individual, partnership or corporation. If the Offeror is a corporation, list the names of the President, Vice-President, Secretary, Treasurer and all principals. If the Offeror is a partnership, include the names of all principals or partners.
  - h. A detailed history of all mergers or acquisitions.
  - i. A copy of the certificate verifying the firm is registered to do business in the Commonwealth of Virginia.
  - j. A detailed list of contractor licenses held, including license class and number.
  - k. Offeror's current financial condition. Provide supporting documentation and audited annual reports



for the past three (3) years. If company is privately held, supply sufficient information to document the company financial status and capability to perform under this contract. Include any financial ratings held by the firm.

1. If Offeror intends to subcontract any part of the work under this contract, indicate services to be subcontracted and subcontractor(s) to provide said services.

3. Services to be Provided – Provide a detailed description of the services to be provided under this contract. Description is to address, at a minimum:

- a. An introduction– An overview of Offeror’s understanding of the scope of work and services to be provided.
- b. Best practice approaches to providing services to the NNPS that enhance efficiency and effectiveness. Innovative solutions will be considered by the NNPS.
- c. EACH of the Specific Requirements set forth under the Scope of Work specified in the RFP.
- d. A detail of any assistance, equipment or other items the Offeror will require the NNPS to furnish under this contract.
- e. A statement explain why the Offeror’s proposed solutions would be the most advantageous to the NNPS.
- f. Describe the one attribute the places the Offeror ahead of the competitions.

4. Cost

- a. Complete and submit with the proposal the attached pricing sheet (Attachment A)
- b. Offeror is to provide as an attachment to Appendix A any additional pricing information or alternative pricing structures offered.
- c. Offeror’s prices will be subject to negotiations.
- d. After negotiations and award of this contract, Successful Offeror’s pricing for the services provided under this contract shall be a firm fixed-price during the term of the contract and any extensions.
- e. Offeror is to identify any NNPS resources required.

5. Exceptions/Alternatives

Detail any exceptions taken to the Scope of Work and Terms and Conditions section of the RFP. For each exception, specify the RFP page number, section number, and the exception taken. Offeror should not incorporate its standard contract document into its proposal, by reference or in full text, without listing each exception it represents to the terms and conditions of this RFP, as described in the Exceptions/Alternatives section of this RFP.

Offerors may present alternative methods to the Statement of Needs outlined in the RFP. However, unsolicited optional and/or alternative offers should first present a response to NNPS’s objectives detailed in the Statement of Needs section of the solicitation. Offerors must address all evaluation criteria, with respect to any alternate solutions proposed. Exceptions and/or alternatives will be subject to negotiations.

6. Contractor shall describe their fulfillment rates and their proposed timeline for filling hardback books and prebound orders, including backorders.

7. Contractor shall provide contact information of a specific company representative to assist with adjustments or coordination of transactions. Contact information shall include: Name, Toll-free phone number and extension, and Email address.

K. Cost of Responding:

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

**THIS SECTION LEFT INTENTIONALLY BLANK**

### III. GENERAL TERMS AND CONDITIONS

#### A. Contract Document:

This RFP, its addenda, Successful Offeror's proposal, any additional information requested, and negotiated changes and 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. This contract shall be governed by the contract documents in the following order of precedence:

- 1) This RFP document;
- 2) Any negotiated changes to the foregoing documents; and
- 3) Offeror's proposal

#### B. Proposal Binding For One-hundred Twenty (120) Days:

Offeror agrees that its Proposal shall be binding and may not be withdrawn for a period of one-hundred (120) calendar days after the scheduled closing date of this Request For Proposals.

#### C. Proprietary Information/Non-Disclosure:

Offeror 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 Offeror. Specifically, if Offeror seeks to protect any proprietary data or materials, pursuant to Section 2.2-4342, Offeror shall:

1. Invoke the protections of this section prior to or upon submission of the data or other materials,
2. Provide a statement that identifies the data or other materials to be protected and that states the reasons why protection is necessary.
3. Submit trade secrets or other proprietary information under separate cover in a sealed envelope clearly marked "PROPRIETARY".
4. Information submitted that does not meet the above requirements will be considered public information in accordance with State statutes.
5. NNPS reserves the right to submit such information to the NNPS attorney for concurrence of the Offeror's claim that it is in fact proprietary.
6. References to the proprietary information may be made within the body of the Proposal; however, all information contained within the body of the Proposal shall be public information in accordance with State statutes.
7. Trade secrets or proprietary information submitted by an Offeror in conjunction with this RFP is not subject to public disclosure under the Virginia Freedom of Information Act (VFOIA).
8. Information submitted that does not meet the above requirements will be considered public information in accordance with the VFOIA.
9. An all-inclusive statement that the entire Proposal is proprietary is unacceptable. A statement that Offeror's costs and/or Proposal pricing are to be protected is unacceptable. Offeror will be requested to remove any such statement(s) in order to be eligible for further consideration.

#### D. 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 via issuance of a change order (purchase order).

#### E. Offeror Obligation:

Offeror shall carefully examine the contents of this Request for Proposals and any subsequent addenda. Failure to do so shall not relieve the Successful Offeror of its obligation to fulfill the requirements of any contract awarded as a result of this RFP.

#### F. Conditions of Work:

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

#### G. Prime Contractor:

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

1. Successful Offeror 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 Offeror represents and warrants that Successful Offeror 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.
3. 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.
4. Successful Offeror shall be solely responsible for all work performed and materials provided by subcontractors.
5. Successful Offeror shall be responsible for the liability of subcontractors for the types and limits required of the Successful Offeror under this contract.

**H. Subcontractors:**

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

**I. Non-Assignment:**

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

**J. Antitrust:**

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

**K. Anticollusion/Nondiscrimination Requirements Form:**

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

**L. Hold Harmless/Indemnification:**

It is understood and agreed that Successful Offeror 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 Offeror, 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 Offeror 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 Offeror or those for whom Successful Offeror is legally liable. Upon written demand by NNPS, Successful Offeror shall assume and defend at Successful Offeror's sole expense any and all such suits or defense of claims made against NNPS, its agents, volunteers, servants, employees or officials.

**THIS SECTION LEFT INTENTIONALLY BLANK**

#### M. 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 RFP.

To Successful Offeror: Successful Offeror's Contract Administrator as defined in Successful Offeror's Proposal. 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.

#### N. Non-Performance:

1. 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 Offeror fails to deliver such goods and/or service deliverables in accordance with delivery dates and time frames set forth in this contract.
2. Unacceptable Deliveries (Rejections): Upon notification by NNPS that goods and/or service deliverables provided by the Successful Offeror under this contract are damaged and/or not of the quality specified by NNPS, such goods and/or service deliverables will be rejected. Successful Offeror shall replace such rejected goods and/or service deliverables immediately or within a reasonable time as determined by NNPS.
3. Successful Offeror 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.
4. NNPS reserves the right to authorize immediate purchase from other sources against rejections.
5. Liability: Successful Offeror shall be liable to NNPS for all costs incurred by NNPS as a result of Successful Offeror's failure to perform in accordance with the contract. Successful Offeror's liability shall include, but not be limited to:
  - a. Damages and other delay costs, to include costs to procure goods/services from alternate suppliers.
  - b. Increased costs of performance, such as extended overhead and increased performance costs resulting from performance delays caused by Successful Offeror and/or rejections of Successful Offeror's goods and/or service deliverables.
  - c. Warranty and rework costs, liability to third party, excess costs, attorney's fees and related costs incurred by NNPS due to nonresponsive performance of Successful Offeror.

#### O. Termination Without Cause:

NNPS may at any time, and for any reason, terminate this Contract by written notice to Successful Offeror 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 Offeror by certified mail/return receipt requested, addressed to the Successful Offeror's Contract Administrator. In the event of such termination, Successful Offeror shall be paid such amount as shall compensate Successful Offeror for the work satisfactorily completed, and accepted by NNPS, at the time of termination. If the event NNPS terminates this Contract, Successful Offeror 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.

#### P. Termination With Cause/Breach:

In the event that Successful Offeror shall for any reason or through any cause be in default of the terms of this Contract, NNPS may give Successful Offeror written notice of such default by certified mail/return receipt requested, addressed to the Successful Offeror's Contract Administrator. Unless otherwise provided, Successful Offeror shall have ten (10) days from the date such notice is mailed in which to cure the default. Upon failure of the Successful Offeror to cure the default, NNPS may immediately cancel and terminate this Contract as of the mailing date of the default notice. Upon termination, Successful Offeror 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.

#### Q. Breach of Contract:

Successful Offeror shall be deemed in breach of this contract if the Successful Offeror:

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 NNPS's 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 Offeror 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 Offeror 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.

#### R. 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.

#### S. Compliance With All Laws:

Successful Offeror 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 Offeror 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 Offeror is a corporation, Successful Offeror 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 Offeror.

#### T. 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.

#### U. 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.

#### V. 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 Offeror 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.

#### W. Tax Exemption:

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

#### X. Vendor's Invoices:

Successful Offeror 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 Offeror's responsibility, except to the extent such charges are identified in the executed NNPS purchase order or change orders. Successful Offeror'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 RFP number and the NNPS Purchase Order Number.

#### Y. 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.

#### Z. Warranty/Guarantee:

Successful Offeror 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 Offeror or Successful Offeror's workmen are responsible, to the building or equipment, to Successful Offeror'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 Offeror 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). Successful Offeror shall make any such replacement immediately upon receiving notice from NNPS.

#### AA. Payment Terms:

To be eligible for payment, all labor, equipment and materials covered under Successful Offeror'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 Offeror'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 Offeror 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 Proposals. All other payment terms shall be net thirty

(30) calendar days or greater. Payment terms not specified by Offeror shall be Net 45 days.

#### Special Educational or Promotional Discounts

Successful Offeror shall extend any special educational or promotional sale prices or discounts immediately to NNPS during the term of the contract. Such notice shall also advise the duration of the specific sale or discount price.

#### BB. 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.

#### CC. Payment by Electronic Funds Transfer (EFT)

(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") by no later than 15 days prior to submitting 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

#### DD. 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 Offeror, including, but not limited to those kept by Successful Offeror, its employees, agents, assigns, successors and subcontractors. Successful Offeror 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 Offeror'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.

#### EE. Notice of Award:

Any contract resulting from this RFP will be publicly posted for inspection in the NNPS Purchasing Department, 12465 Warwick Boulevard, Newport News, Virginia as well as [www.eVa.virginia.gov](http://www.eVa.virginia.gov).



**FF. Award:**

NNPS intends to award a contract to a fully qualified Offeror submitting the best proposal based on the criteria set forth herein and as determined by NNPS in its sole discretion. At NNPS' sole discretion, NNPS may reject any or all proposals in whole or in part if such action is determined to be in NNPS' best interest. NNPS reserves the right to enter into any contract deemed to be in its best interest, including the award of this contract to more than one contractor.

**GG. Disposition of Proposals:**

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

**HH. 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.

**IV. SPECIAL TERMS AND CONDITIONS**

**A. Contract Term:**

This contract term shall be for seven (7) years, commencing on the date of award.

**B. Contract Extension:**

This contract may be extended upon mutual agreement of both parties for two (2) additional, one-year periods, upon the same prices, terms, and conditions set forth in the negotiated contract resulting from this RFP.

**C. Time is of the Essence:**

Time is of the essence in this Contract. Successful Offeror 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 Offeror 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

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:**

Successful Offeror 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 Offeror, its subcontractors, agents or employees under or in connection with this contract. The Successful Offeror 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 Offeror shall, upon written demand by NNPS, assume and defend, at the Successful Offeror’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 Offeror, 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 Offeror 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. Using Entities/Regional /Cooperative Contracts**

This solicitation was issued in accordance with Code of Virginia §2.2-4304 on behalf of the members of the Southeastern Virginia Governmental Purchasing Cooperative (SVGPC), as well as other public bodies, governmental jurisdictions and school divisions. 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 Offeror or Offerors, 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. NNPS assumes no authority, liability or obligation, on behalf of any other public or non-public entity that may use any contract resulting from this solicitation. All purchases and payment transactions will be made directly between the Contractor and the requesting entity. Any exceptions to this requirement must be specifically noted in the solicitation response.

**G. 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

## H. Copyright/Patent Indemnity:

Successful Offeror 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 Offeror 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.

## I. Data Security Clauses

1. Network Security. Vendor agrees at all times to maintain network security that at a minimum includes: network firewall provisioning, intrusion detection, and regular (three or more annually) third party vulnerability assessments. Likewise, Vendor agrees to maintain network security that conforms to generally recognized industry standards (see "11. Industry Standards") and best practices that Vendor then applies to its own network.

2. Application Security. Vendor agrees at all times to provide, maintain and support its Software and subsequent updates, upgrades, and bug fixes such that the Software is, and remains secure from those vulnerabilities as described in:

- a) The Open Web Application Security Project's (OWASP) "Top Ten Project" -see <http://www.owasp.org>; or
- b) The CWE/SANS Top 25 Programming Errors -see <http://cwe.mitre.org/top25/> or <http://www.sans.org/top25-programming-errors/>; or
- c) Other generally recognized and comparable industry practices or standards.

3. Data Security. Vendor agrees to preserve the confidentiality, integrity and accessibility of NNPS data with administrative, technical and physical measures that conform to generally recognized industry standards (see "11. Industry Standards") and best practices that Vendor then applies to its own processing environment. Maintenance of a secure processing environment includes but is not limited to the timely application of patches, fixes and updates to operating systems and applications as provided by vendor or open source support.

4. Data Storage. Vendor agrees that any and all NNPS data will be stored, processed, and maintained solely on designated target servers and that no NNPS data at any time will be processed on or transferred to any portable or laptop computing device or any portable storage medium, unless that device or storage medium is in use as part of the Vendor's designated backup and recovery processes and encrypted in accordance with "6. Data Encryption".

5. Data Transmission. Vendor agrees that any and all electronic transmission or exchange of system and application data with NNPS and/or any other parties expressly designated by NNPS shall take place via secure means (using HTTPS or SFTP or equivalent) and solely in accordance with "7. Data Re-Use".

6. Data Encryption. Vendor agrees to store all NNPS backup data as part of its designated backup and recovery processes in encrypted form, using a commercially supported encryption solution. Vendor further agrees that any and all NNPS data defined as personally identifiable information under current legislation or regulations stored on any portable or laptop computing device or any portable storage medium be likewise encrypted. Encryption solutions will be deployed with no less than a 128-bit key for symmetric encryption and a 1024 (or larger) bit key length for asymmetric encryption.

7. Data Re-Use. Vendor agrees that any and all data exchanged shall be used expressly and solely for the purposes enumerated in the Current Agreement and this Addendum. Data shall not be distributed, repurposed or shared across other applications, environments, or business units of Vendor. Vendor further agrees that no NNPS data of any kind shall be transmitted, exchanged or otherwise passed to other vendors or interested parties except on a case-by-case basis as specifically agreed to in writing by Newport News Public Schools.

8. End of Agreement Data Handling. Vendor agrees that upon termination of this Agreement it shall erase, destroy, and render unrecoverable all NNPS data and certify in writing that these actions have been completed within 30 days of the termination of this Agreement or within 7 days of the request of an agent of NNPS, whichever shall come first. At a minimum, a "Clear" media sanitization is to be performed according to the standards enumerated by the National Institute of Standards, Guidelines for Media Sanitization, SP800-88, Appendix A -see <http://csrc.nist.gov/>.

9. Security Breach Notification. Vendor agrees to comply with all applicable laws that require the notification of individuals in the event of unauthorized release of personally identifiable information or other event requiring notification. In the event of a breach of any of Vendor's security obligations, or other event requiring notification under applicable law, Vendor agrees to:

- a. Notify NNPS by telephone and e-mail of such an event within 24 hours of discovery, and;
- b. Assume responsibility for informing all such individuals in accordance with applicable law, and;

c. Indemnify, hold harmless and defend NNPS and its trustees, officers, and employees from and against any claims, damages, or other harm related to such Notification Event.

10. Right to Audit. Newport News Public Schools or an appointed audit firm (Auditors) has the right to audit the Vendor and the Vendor's sub-vendors or affiliates that provide a service for the processing, transport or storage of Newport News Public Schools's data. Newport News Public Schools will announce their intent to audit the Vendor by providing at a minimum two weeks (10 business days) notice to the Vendor. This notice will go to the Vendor that this contract is executed with. A scope document along with a request for deliverables will be provided at the time of notification of an audit. If the documentation requested cannot be removed from the Vendor's premises, the Vendor will allow the Auditors access to their site. Where necessary, the Vendor will provide a personal site guide for the Auditors while on site. The Vendor will provide a private accommodation on site for data analysis and meetings; the accommodation will allow for a reasonable workspace, with appropriate lighting, electrical, a printer and Internet connectivity. The Vendor will make necessary employees or contractors available for interviews in person or on the phone during the time frame of the audit. In lieu of NNPS or its appointed audit firm performing their own audit, if the Vendor has an external audit firm that performs a certified SSAE16 SOC Type II review, NNPS has the right to review the controls tested as well as the results, and has the right to request additional controls to be added to the certified SSAE16 SOC Type II review for testing the controls that have an impact on NNPS data. Audits will be at Newport News Public Schools's sole expense, except where the audit reveals material noncompliance with contract specifications, in which case the cost will be borne by the vendor.

11. Industry Standards. Generally recognized industry standards include but are not limited to the current standards and benchmarks set forth and maintained by the:

Center for Internet Security -see <http://www.cisecurity.org>

Payment Card Industry/Data Security Standards (PCI/DSS) -see <http://www.pcisecuritystandards.org/>

National Institute for Standards and Technology -see <http://csrc.nist.gov>

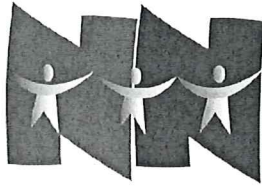
Federal Information Security Management Act (FISMA) -see <http://csrc.nist.gov>

ISO/IEC 27000-series -see <http://www.iso27001security.com/>

Organization for the Advancement of Structured Information Standards (OASIS) -see

<http://www.oasis-open.org/>

12. Vendor agrees to provide SSAE 16 (SOC 1) Standard Type II reports to NNPS Contract Administrator annually which document verification of controls tested. Annual date determined to be thirty (30) days prior to the established contract renewal date.



November 1, 2018  
**Addendum #1**

TO: ALL OFFERORS

RE: **RFP 004-0-2019/HM – Elementary Math Textbooks K-5**

The above referenced RFP is hereby amended and clarified as follows:

The following questions have been received:

1. On page 6, item G.6 mentions a minimum of 30 online access codes good for at least 90 days. We have one access code for the district for the teachers to use to sign up for their own accounts. Is this acceptable? Or did you want us to create 30 teacher accounts for you? If you want us to create the teacher accounts, we also need to know if you need us to set up any classes (and how many you want), which books you want associated to those classes, and if you need students in the classes (and how many)?

Response: General online access for all grade levels, K through 5, is all that is being requested for demo and review purposes only. E-book or PDF textbook versions that are easily accessible are also acceptable.

2. When do you anticipate posting the Attachment A for the pricing requirement?

Response: There is no Attachment A to be posted. This is being used as a reference so NNPS will know which part of the proposal submitted is the offeror's pricing structure/cost proposal.

3. Would the district accept an online-only curriculum in response to this bid?

Response: This is a Request for Proposals for Elementary Math textbooks for grade levels K through 5. NNPS has its own Curriculum and Instruction Department fully capable of writing curriculum for the district.

4. How many text books and teacher books do you need also is there specific brand you would like?

Response: This is a Request for Proposals. Please refer to Section B, Statement of Needs listed on page 4 for details.

5. Should a vendor be chosen to present their products to NNPS via an oral presentation, would additional samples be required? If so, can you please provide the amount of samples that are anticipated for this presentation?

Response: NNPS only requests for one set of samples. Please refer to Special Instructions, Section G on page 6 for details.

6. Can you provide the district's timeline for implementation? Is this for a Fall 2019 implementation?

Response: The district is seeking elementary math textbooks for grade levels K through 5 to be purchased for the upcoming school year adoption.

7. Is the district only considering core math programs at this time, or are you also looking at supplemental programs?

Response: This is a Request for Proposals for elementary math textbooks grade levels K through 5. Please refer to Section B, Statement of Needs listed on page 4 for details.

8. On page 6, letter G number 6 states that you would like 30 online access codes to review online materials. Would one account suffice if multiple people could access it simultaneously?

Response: One account access code will suffice provided it is accessible by multiple users and the response time is not slowed down or lagging behind.

9. On page 6, letter G number 6 states that you would like 30 online access codes to review online materials. Would one account suffice if multiple people could access it simultaneously?

Response: The vendor shall submit recommendations for a suitable replacement title for NNPS review and approval.

10. On pages 7-8, number 2 letter k asks offerors to provide annual reports for the past three years. Our annual reports are quite lengthy (in excess of 200 pages each); would a summary of our financial condition and a link to the annual reports online be acceptable?

Response: A summary will suffice and the link must be provided.

11. Would the district consider altering the due date for the proposal due to the Thanksgiving holiday? Our offices are closed Thursday and Friday the 22-23, and so we would end up having to ship the proposal prior to the holiday to avoid overnight shipping?

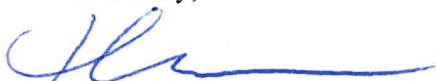
Response: The due date for the proposal submission shall not change. The due date is Tuesday, November 27, 2018 no later than 2:00 PM.

All other provisions of the RFP shall remain unchanged.

Name: \_\_\_\_\_  
(Offeror)

Signature: \_\_\_\_\_

Sincerely,

  
Heather Medina, VCO  
Buyer