

February 13, 2023

RFP 23-009
Engineering Services
Electrical, Mechanical, Plumbing and
Structural

Offerors:

Fairfax County Public Schools is seeking qualified electrical, mechanical, plumbing and structural engineering firms to submit proposals in accordance with terms and conditions of this solicitation.

Technical Proposals must be received and time stamped at the receptionist desk in the Office of Design and Construction Services, 8115 Gatehouse Road, Suite 3400, Falls Church, Virginia 22042-1203 on or before **2:00 p.m., March 8, 2023**. Technical Proposals received after the date and time stated will not be accepted.

Questions concerning contractual matters pertaining to this RFP may be directed to the Senior Buyer, Roger Wimmer, at 571-423-2279, or via email at rlwimmer@fcps.edu. Questions concerning technical matters may be directed to the Director, Heather Diez, Office of Design and Construction, at 571-423-2200 or via email at hdiez@fcps.edu.

Roger Wimmer
Senior Buyer

Attachments:

Request for Proposal - Special Provisions
Appendix A – RFP Checklist and RFP Proposal Cover Sheet
Appendix B - Sample Agreement Between Owner and Engineer

SPECIAL PROVISIONS**1. PROCUREMENT OBJECTIVE:**

The purpose of this Request for Proposal (RFP) is for the Fairfax County School Board, the public body that operates Fairfax County Public Schools (FCPS), to enter into contracts with one or more properly licensed and qualified firms (each referred to as "Offeror" and/or "Engineer") to perform electrical, mechanical, plumbing and structural engineering services on an as-needed basis during the contract term described below at the direction of FCPS's Department of Facilities and Transportation Services, Office of Design and Construction Services.

2. BACKGROUND:

The Department of Facilities and Transportation Services (DFTS) is responsible for the design and construction of Capital Improvement and Facility Improvement projects for the FCPS. DFTS's mission is to ensure that all FCPS facilities are appropriately planned, designed, constructed, and maintained. The Office of Design and Construction Services (D&C), located at Gatehouse Administrative Center (GAC), 8115 Gatehouse Road, Suite 3400, Falls Church, VA 22042-1203, provides for the acquisition of new school properties and for the administration of design and construction of new schools, additions to existing buildings, renovations, improvements of existing school facilities, and turf field installations and replacements in accordance with approved educational specifications and building codes.

3. CONTRACT PERIOD AND RENEWALS:

- A. The term of any contract awarded under this RFP will be a period of one year or when the cumulative total project fees reach \$10,000,000 (the "Annual Cap"), whichever occurs first. FCPS reserves the right to renew this contract for up to three additional, successive terms of one year each, subject in each instance to the Annual Cap. Any unused amounts from one contract term may not be carried forward to a renewal term. Any such renewal will be exercised by FCPS, if at all, by issuance of written notice to the Engineer on or before the date that is 30 days prior to the expiration of the then-current contract period. Fees and charges applicable to any renewal period will be determined in accordance with Section 9 of these Special Conditions, as detailed in the Contract.
- B. Any contract awarded pursuant to this RFP is conditioned upon an annual appropriation of funds to the Fairfax County School Board (FCSB) sufficient to pay compensation due the Engineer firm under the contract. The contract will provide that if such an appropriation is not made in any fiscal year, and FCSB lacks funds from another source to pay the compensation due under the contract, FCSB will be entitled, at the beginning of or during such fiscal year, to terminate the contract. In that event, FCSB will not be obligated to make any payments under the contract beyond the amount properly appropriated for contract payments in the then-current fiscal year. FCSB will provide the Engineer firm with written notice of contract termination due to the non-appropriation of funds of least 30 calendar days before the effective date of the termination. However, failure by FCSB to provide such notice will not extend the contract into a fiscal year in which funds for contract payment have not been appropriated.

4. LICENSE REQUIREMENT/AUTHORIZATION TO DO BUSINESS IN VIRGINIA:

All firms doing business in Fairfax County shall obtain a license as required by Chapter 4, Article 7, of The Code of the County of Fairfax, Virginia, as amended, entitled "Business, Professional and Occupational Licensing (BPOL) Tax." Questions concerning the BPOL tax should be directed to the Office of Assessments, telephone (703) 222-8234.

As set forth in Va. Code § 2.2-4311.2, each Offeror that is organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a

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registered limited liability partnership must 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. Every Offeror will be required to include in its proposal the identification number issued to it by the Virginia State Corporation Commission (the SCC). Any 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 on the RFP Proposal Cover Page a statement describing why it is not required to be so authorized. To obtain an identification number, Offerors may contact the SCC at 804-371-9967 or 1-800-552-7945, or <http://www.scc.virginia.gov/index.aspx>, email: sccinfo@scc.virginia.gov.

5. **ISSUANCE OF TASK ORDERS/TASKS TO BE PERFORMED:**

Any work performed hereunder will be assigned by means of written Task Orders issued by FCPS from time to time during the Contract term. In the event that more than one Engineer is awarded a contract hereunder, Task Orders will be distributed among them on a rotating basis in accordance with FCPS's established procedures. Each Task Order will set forth a clearly-defined scope of work for a specific project or undertaking, a schedule for completion, an estimate of hours for all staff positions involved in the work, a list of deliverables (if any), and compensation, which will be negotiated based upon the hourly rates and fees negotiated prior to Contract award and incorporated into the Contract (such rates and fees to be subject to annual adjustment as provided in the Contract). FCPS reserves the right: (a) to issue any number of Task Orders under a contract or none at all, (b) to perform work using in-house resources or other design professionals, and/or (c) to assign work as it deems appropriate in accordance with its established procedures, all as determined to be in the best interests of FCPS.

FCPS's need for electrical, mechanical, plumbing and structural engineering services will include projects ranging in size, scope, and type, though similar qualifications in terms of project experience and technical expertise will be required of successful Offerors. The service-level requirement for each Task Order will be based upon the complexity of the scope of work for each, as determined by the coordinator or construction manager. Examples of Task Orders that may be issued pursuant to a contract awarded hereunder include the following:

- A. Provision of consulting services, including construction cost estimates, life cycle costing, and/or cost benefit analysis of proposed projects;
- B. Evaluation of Americans with Disabilities Act (ADA) compliance mandates with respect to FCPS facilities;
- C. Preparation of permit-able and constructible engineering plans and specifications for new designs, alterations, modifications, and improvements to existing areas;
- D. Review and provide responsive comments to shop drawings and technical submittal reviews;
- E. Performance of construction administration (CA) services, including, but not limited to field observations with corresponding reports, responses to informal requests for information, and job site consultations, as needed for field contractor assistance and construction manager; and
- F. Preparation of relevant drawings of a designated work area, prior to modifications and in the absence of existing facility drawings.

In their Technical Proposals, Offerors will, among other requirements, detail their approach to a project consisting of performance of the tasks outlined in items A through F above in connection with a reconfiguration of office space in an occupied FCPS administrative building (the "Sample Project").

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Offerors are advised that, as appropriate to the nature of the work or project assigned by Task Order, the successful Offeror may be required to perform the following related services, among others:

- A. Engineering firm shall conduct site visits with D&C staff to obtain general overview of project and scope of services required.
- B. Deliver four printed sets of engineering drawings, as built and/or construction to FCPS. All drawings shall also be delivered in pdf, tif, and CD in AutoCAD version 2017 or later if accepted by the coordinator or construction manager. Drawings must be named and saved to compact disk using AIA (American Institute of Architecture) standard nomenclature.
- C. Provide an on-site employee for the project for a designated period.
- D. Meet with Fairfax County Department of Public Works and Environmental Services (DPWES) to review overall design approach with regard to life safety and other requirements, if any. Prepare a letter for signature of the DPWES reviewer outlining the minutes of preliminary code review meeting, which will be incorporated into the associated contract documents.
- E. Submit permit drawings to D&C for submission to DPWES and monitor plan review progress. Respond to review comments immediately when notified that plans are ready for revisions.
- F. Follow Fairfax County Public Schools' Master Specifications guidelines. FCPS Master Specifications can be located at www.fcps.edu, search for Master Specifications.
- G. Participate in pre-bid meetings and assist with construction project bidding.
- H. Participate in meetings required by Fairfax County such as critical structures and preconstruction meetings.

6. INSTRUCTIONS FOR SUBMISSION OF TECHNICAL PROPOSALS:

- A. Qualified Offerors are encouraged to submit a technical proposal in response to this RFP setting forth a comprehensive demonstration of how they will perform services in the event they receive award of a contract hereunder.
- B. Offerors must submit one (1) original (duly marked) and four (4) copies (duly marked) of the Technical Proposal in a sealed package to the following address on or before **2:00 p.m. on March 8, 2023:**

Department of Facilities and Transportation Services
 Design and Construction Services
 8115 Gatehouse Road, Suite 3400
 Falls Church, VA 22042-1203

**Attn: Roger Wimmer, senior buyer – Sealed Proposal for RFP 23-009
 Electrical, Mechanical, Plumbing and Structural Engineering Services**

The sealed package must be clearly marked on the outside as follows:

Technical Proposal for RFP 23-009—Term Engineering Services

Submitted by: _____
 (Name of Offeror)

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 (Street Address)

 (City, State, Zip Code)

Technical Proposals may not be submitted by means of electronic delivery (i.e. e-mail or fax). Technical Proposals received by FCPS after the specified due date and time will not be accepted and will not be eligible for consideration hereunder.

- C. The Technical Proposal must be separate from the Business Proposal, which should not be submitted at this stage in the process. Information relating to Business Proposals is set forth in Section 8 of these Special Provisions.
- D. FCPS reserves the right to reject Technical Proposals that are not submitted in the manner specified herein. Technical Proposals will be opened in accordance with the provisions of the Virginia Public Procurement Act. There will be no public proposal opening. The list of prospective Offerors will be available for public inspection only after Contract award or following cancellation of this RFP.
- E. Offerors are reminded that changes, in the form of addenda, are often issued during the period after issuance an RFP and the date that is at least three (3) days before the due date for submission of proposals. Any addenda will be posted on the website: www.fcps.edu, search for Design and Construction Current Solicitations. It is the responsibility of the Offerors to monitor this website for the most current addenda.

7. CONTENT AND FORMAT OF TECHNICAL PROPOSALS

- A. Technical Proposals will address the following general topics, with emphasis upon the Offeror's qualifications to perform the services. Proposals will be evaluated on the basis of the information presented by the Offeror and the evaluation criteria set forth in this RFP.
- B. It is the Offeror's responsibility to clearly identify and to describe the services being offered in response to the RFP. Offerors are cautioned that the organization of their response, as well as thoroughness, is critical to the evaluation process. The RFP Proposal Cover Sheet (Appendix A) must be completed legibly and in its entirety, and all required supplemental information must be furnished and presented in an organized, comprehensive manner and be arranged in the same order and identified with each heading as presented in Special Provisions, Paragraph 7D, *Content and Format of Technical Proposal*.
- C. Unnecessarily elaborate brochures and/or presentations beyond what is sufficient for a complete and effective proposal are not desired. Elaborate artwork, expensive paper/binding, visual and other presentation aids are not required. FCPS encourages Offerors to use recycled paper whenever possible.
- D. The following topics will be considered minimum contents of the technical proposal. Technical proposals contents shall be arranged in the same order and identified with each heading as presented below:
 1. Proposal Cover Sheet: The Offeror must provide the RFP Proposal Cover Sheet (Appendix A), which Cover Sheet shall have been signed by a representative of the Offeror who is duly-authorized to bind the Offeror to the matters addressed in its Technical Proposal and the terms of this RFP.

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2. Statement of Qualifications: The Offeror must provide a statement of qualifications that includes the following:
 - a. Size and Capability of Offeror - The Offeror shall provide a list of staffing categories and services offered/performed by each.
 - b. Organizational and Staff Experience - The Offeror shall provide a description of qualifications, background, experience, and any professional certifications relevant to performing the work described in Section 5 of this RFP. Information about experience should include direct experience with the work described therein.
 - c. Timeline and Staffing Plan - The Offeror shall provide samples of ability to establish timelines and ability to meet deadlines. Provide a staffing plan which describes the Offeror's proposed staff distribution to accomplish the Sample Project described in Special Provisions, Section 5, *Issuance of Task Orders/Tasks to be Performed*. The staffing plan should include a chart that partitions the time commitment of each professional staff member across the proposed tasks for the Sample Project.
 - d. Location of Offeror - Due to the nature of specialized engineering services required, the Offeror shall be located within a 100-mile radius of the Department of Facilities and Transportation Services, Gatehouse Administration Center, 8115 Gatehouse Road, Falls Church, Virginia 22042-1203
 - e. Workload – The Offeror shall describe recent, current projects to include the square footage, cost, and project timelines.

3. Detail of Approach to Tasks to be Performed: The Offeror shall demonstrate the ability to perform tasks described in Special Provisions, Section 5, *Issuance of Task Orders/Tasks to be Performed*. In particular, the Offeror should provide a detailed approach to performance of the Sample Project identified in Section 5.
 - a. Provide examples of preliminary layouts, sketches, diagrams, other graphic representations, calculations, and other data that may be necessary for presentation, substantiation, justification, or understanding of the proposed approaches and programs in response to the Sample Project.
 - b. Offeror should demonstrate an awareness of all difficulties in the completion of the Sample Project, along with plans for surmounting them.
 - c. Explain how the Offeror will explore various service provision alternatives and provide the most cost-effective project proposals that will cause minimum disruption at the project site.
 - d. Describe your firm's quality control and quality assurance programs with your implementation plan.
 - e. The Offeror may also comment and offer any unique or alternative approaches, if deemed appropriate, on any aspect of your response, including suggestions on possible alternatives to coverage, definition,

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development and organization of the issues presented in Special Provisions, Section 5, *Issuance of Task Orders/Tasks to be Performed*.

4. **Resumes of Proposed Project Team and Authorized Principals:** The Offeror shall provide resumes of proposed staff to include qualifications, experience, and any professional certifications relevant to performing the work described in this RFP. The personnel named shall remain responsible throughout the period of this contract. No reassignment or replacement may be made without submission of a resume of the proposed replacement with final approval being granted by the Director of Design and Construction Services or designee. List all names, e-mail address, and telephone numbers of the principals authorized to conduct negotiations on behalf of the Offeror.
5. **Project References:** The Offeror must provide information regarding at least three projects performed by the Offeror that are similar to the Sample Project. Multiple references from Fairfax County Public Schools and/or the County of Fairfax, Virginia will be counted as one reference. Each of the project references in this Section should include the title of the project, contact name, telephone number, email address, and mailing address of an individual employed by the project owner. This contact should be a person having direct knowledge of the scope of work and the Offeror's performance. The Offeror is responsible for providing current and accurate contact information regarding each of its listed references. FCPS reserves the right to require additional references from the Offeror and to obtain additional references from sources not provided by the Offeror.

8. BUSINESS PROPOSAL INSTRUCTIONS:

Fairfax County Public Schools is **NOT** requesting Business Proposals at the present time. FCPS may request a Business Proposal under separate cover from one or more top ranked Offeror(s) at a later time. The specific business proposal format will be provided to the top ranked Offeror(s) at the time the request is made. FCPS reserves the right to require that Business Proposals be submitted by a specific deadline. FCPS will reject any Business Proposals that are submitted after the designed date and time.

9. PRICING:

Contract pricing will be based on a written proposal for an assigned project and the hourly rates and fees that will be established by reference to an Offeror's Business Proposal, Special Provisions, *Section 8, Business Proposal Instructions*. The Offeror's rates and fees will remain firm and will include all charges that may be incurred in fulfilling the requirements of the contract throughout the initial one-year term. As set forth in the attached form of Agreement, the Engineer may submit a request for an adjustment to its fee schedule no more than once for each renewal term, if applicable. Changes in cost for any renewal terms will be based on the Consumer Price Index (CPI-U), Table 10, Selected Local Area, Washington, DC-MD-VA, or other similar indices acceptable to FCPS.

10. SELECTION AND AWARD PROCESS:

- A. This RFP is being utilized for competitive negotiation. Under the competitive negotiation process, a contract or contracts may be awarded to the responsive and responsible Offeror(s) whose proposal is determined to be the most advantageous to FCPS. Consideration will be given by FCPS to all the evaluation factors set forth in this RFP. FCPS reserves the right to make multiple awards as a result of this solicitation.

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- B. The selection process hereunder shall be in accordance with School Board Policy 8220.4 and the Virginia Public Procurement Act. Selected staff members from the Office of Design and Construction Services and other selected staff members from the Department of Facilities and Transportation Services shall conduct a preliminary evaluation of all Technical Proposals submitted in response to this RFP.
- C. The selected staff members will evaluate the Offeror's Technical Proposal in accordance with the criteria established in Special Provisions, *Section 11, Evaluation Criteria, Section 7, Content of Technical Proposal, Section 6, Technical Proposal Instructions and Section 5, Issuance of Task Orders/Tasks to Be Performed*. Once the technical proposals have been reviewed and evaluated, the selected staff members from the Office of Design and Construction Services shall prepare a list nominating firms for negotiation of contracts for engineering services hereunder. This list shall be submitted to the Selection Advisory Committee (SAC) consisting of the assistant superintendent for the Department of Facilities and Transportation Services, the director of the Office of Design and Construction Services, and others selected by the assistant superintendent for the Department of Facilities and Transportation Services. The SAC may request to review proposals submitted by Offerors who were not included in the list initially provided by staff. The SAC shall further evaluate each such Offeror's Technical Proposal in accordance with the criteria outlined herein with the objective of effecting an efficient distribution of contracts among qualified firms and otherwise in accordance with the Virginia Public Procurement Act.
- D. Offerors are advised that, in the event of receipt of an adequate number of Technical Proposals, which, in the opinion of the SAC, requires no clarification or supplemental information, such proposals may be evaluated without further individual presentations/interviews. If no individual presentations/interviews are required, the SAC shall select in order of preference, the Offeror (s) whose professional qualifications and proposed services are deemed most meritorious to FCPS.
- E. Offeror(s) are cautioned not to contact members of the SAC. Members will only consider information provided by the Offeror in the technical proposal, presentation/interview, and negotiations. If a SAC member is approached by anyone outside the SAC who may have a material interest in this RFP, the contact will be reported to the senior buyer.
- F. The SAC will recommend approval from the School Board to negotiate contracts with the top-ranked engineering firms. Once the recommendation is approved, FCPS will request business proposals from the top-ranked Offerors, as set forth in Special Provisions, *Section 8, Business Proposals Instructions*. Upon agreement on negotiated business proposals between FCPS and one or more Offerors, a Notice of Award Letter with an Annual Contract Number will be issued to the selected Offerors. An Owner-Engineer Agreement in substantially the form included with this RFP will be issued to the selected Offeror(s), with negotiated pricing attached by exhibit. Projects will be distributed to the selected Offerors by Task Order in accordance with FCPS's established assignment procedures.
- G. FCPS may cancel this RFP or reject proposals at any time prior to an award and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.
- H. The notice of intent to award a contract, as well as the award of a contract, will be posted on the website of Fairfax County Public Schools. While the school division staff may communicate procurement results to Offeror(s), each Offeror has the responsibility to monitor the website for its own purposes. (www.fcps.edu, search for Design and Construction).

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11. EVALUATION CRITERIA:

- A. Offerors are encouraged to submit written Technical Proposals which demonstrate the Offeror’s qualifications and understanding of the types of work to be performed under any contract issued hereunder. Offerors shall address each of the evaluation criteria and are encouraged to be specific in presenting their qualifications. Proposals should be as thorough and detailed as possible so that the SAC may properly evaluate the Offerors’ capabilities to provide the required services.
- B. Technical Proposal Evaluation Criteria: Each Technical Proposal will be evaluated in accordance with the following criteria:

<u>Evaluation Criteria</u>	<u>Points</u>
1. Statement of Qualification	50
a. Size and Capability of Offeror (10)	
b. Organizational and Staff Experience (10)	
c. Timeline and Staffing Plan (10)	
d. Location of Offeror (10)	
e. Workload (10)	
2. Detailed Approach to Task to be Performed	20
3. Resumes of Proposed Project Team/ Authorized Principals	10
4. References	15
5. Overall Evaluation of Technical Proposal	05
6. Oral Presentation (Short-List Firms Only, If Necessary)	30
Total:	130

12. TRADE SECRETS/PROPRIETARY INFORMATION:

- A. Except as provided herein or as otherwise set forth in § 2.2-4342 of the Virginia Public Procurement Act (Va. Code Ann. §2.2-4300 *et seq.*, the “VPPA”), all proceedings, records, contracts and other public records relating to procurement transactions will be open to inspection in accordance with the Virginia Freedom of Information Act (Va. Code Ann. § 2.2-3700 *et seq.*, “VFOIA”).
- B. Each Offeror has the right to identify data or other materials submitted in connection with this procurement as trade secrets or proprietary information, which will not be subject to inspection pursuant to either § 2.2-4342 of the VPPA or VFOIA provided that the Offeror invokes the protections of this section prior to or upon submission of the data or other materials, and clearly specifies the items of information claimed as trade secrets or proprietary information, and in each instance states the reasons why such protection is necessary. The RFP Proposal Cover Sheet contains a section in which Offerors may invoke the protection from public disclosure described herein.

13. CONTACT FOR TECHNICAL AND CONTRACTUAL MATTERS:

The person to contact concerning technical matters pertaining to this RFP is:

Heather Diez, director
 Design and Construction Services
 Department of Facilities and Transportation Services
hdiez@fcps.edu
 Telephone: 571-423-2200

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The person to contact concerning contractual matters pertaining to this RFP is:

Roger Wimmer, senior buyer
 Design and Construction Services
 Department of Facilities and Transportation Services
rlwimmer@fcps.edu
 Telephone: 571-423-2279

14. REQUIRED SUBMITTALS:

Each Offeror responding to this RFP must supply all the documentation required hereunder. An Offeror's failure to provide the documentation with the Offeror's response to the RFP will affect the evaluation outcome of the proposal and may result in rejection of the Offeror's proposal.

15. LATE PROPOSALS:

Proposals received by FCPS after the date and time prescribed shall not be considered for contract award and shall be returned unopened to the Offeror.

16. PERIOD THAT PROPOSALS REMAIN VALID:

Each Offeror agrees that proposals submitted hereunder will remain firm for a period of one hundred and eighty (180) calendar days after the date specified for receipt of proposals.

17. ELECTRONIC PAYMENT OPTION:

The Vendor ACH Payment Program of Fairfax County allows payments to be deposited directly to a designated financial institution account. Funds will be deposited into the account of your choice automatically and on time. Payment information (confirmation of payments) is provided via email and all transactions are conducted in a secure environment. The program is totally free as part of the Department of Finance's efforts to improve customer service. For more information or to obtain a Vendor Agreement (ACH credits), please contact the Department of Financial Services at 571-423-3730 or via email at ACHpayments@fcps.edu.

20. CONSTRUCTION SAFETY

The Engineer shall comply with the construction safety standards promulgated by the U.S. Department of Labor and by the Virginia Department of Labor and Industry in the performance of any work under a contract issued hereunder.

18. ACCESS TO AND INSPECTON OF WORK:

The FCPS Department of Facilities and Transportation will, at all times, have access to the work being performed under this contract wherever it may be in progress or preparation.

19. DATA SOURCES:

FCPS will provide the Engineer access to all available data possessed by FCPS that relates to this contract. However, the Engineer is responsible for all costs for acquiring other data and for processing, analyzing, and evaluating data.

20. SAFEGUARD OF INFORMATION:

SPECIAL PROVISIONS

Unless approved in writing by the FCPS Director of Design and Construction Services or designee, the Engineer may not sell or give to any individual or organization any information, reports, or other materials given to, prepared or assembled by the Engineer under a resulting contract.

21. SUBCONTRACTING:

- A. If one or more subcontractors/subconsultants are required, the Engineer is encouraged to utilize small, minority-owned, and women-owned business enterprises. For assistance in finding subcontractors/subconsultants, contact the Virginia Department of Business Assistance <http://www.dba.state.va.us>; the Virginia Department of Minority Business Enterprise <http://www.dmb.e.state.va.us/>, local chambers of commerce and other business organizations.
- B. As part of the contract award, the Engineer agrees to provide the names and addresses of each subcontractor/subconsultant, that subcontractor's/subconsultant's status as defined by Fairfax County, as a small, minority-owned and/or woman-owned business, and the type and dollar value of the subcontracted goods/services provided.

22. NEWS RELEASED BY VENDORS:

As a matter of policy, FCPS does not endorse the products or services of an Engineer. News releases concerning any resultant contract from this solicitation will not be made by an Engineer without the prior written approval of FCPS. All proposed news releases will be routed to FCPS for review and approval.

23. AMERICANS WITH DISABILITIES ACT REQUIREMENTS:

FCPS is fully committed to the Americans with Disabilities Act (the ADA), which guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and all FCPS programs, activities and services. Your acceptance of a contract hereunder will serve as acknowledgement of your commitment to compliance with the ADA.

24. CONFLICT OF INTEREST:

By signing this RFP Proposal Cover Sheet, the Offeror certifies that it has complied with the Ethics in Public Contracting articles of the Virginia Code §§ 2.2-4367-2.2-4377 and has no knowledge of a violation on the part of any employee or agent of FCPS.

RFP CHECKLIST

Technical Proposals submitted hereunder will include the following sections:

- A. RFP Proposal Cover Sheet (Appendix A)
- B. Statement of Qualifications
 - 1. Size and Capability of Offeror
 - 2. Organizational and Staff Experience
 - 3. Timeline and Staffing Plan
 - 4. Location of Offeror
 - 5. Workload
- C. Detail of Approach to Tasks to be Performed
- D. Resumes of Proposed Project Team/Authorized Principle
- E. Project References

PROPOSAL COVER SHEET FOR RFP 23-009

**Electrical, Mechanical, Plumbing and Structural Engineering Services for Various FCPS
Projects
Office of Design and Construction**

By submitting this RFP Proposal Cover Sheet in response to the above-referenced RFP, the Offeror hereby acknowledges and agrees that: (a) FCPS has the right to conduct such research and verification with regard to the information set forth in the Offeror's technical proposal and attachments as it deems reasonably necessary and appropriate under the circumstances, including contacting project owners and other involved parties for references with respect to the Offeror's prior performance; and (b) in the event that the Offeror is awarded a contract hereunder, the Offeror agrees to execute a contract with FCPS in substantially the form included with the RFP.

Engineering Service (Electrical, Mechanical, Plumbing or Structural)

Offeror's Full Legal Name

Type of Entity and State of Organization or Incorporation

Offeror's Principal Address

Offeror's Mailing Address (if different)

Telephone Number

Fax Number

Offeror's Principal Contact who can respond authoritatively to any questions about this proposal:

Name and Title

Phone

Fax

Email Address

Virginia Corporation Commission Number

BPOL No.

Federal ID Number

Small Business **Minority Business** **Woman-Owned Business**

Trade Secrets and Proprietary Information: Under the Virginia Public Procurement Act, an Offeror may elect to designate portions of its proposal as trade secrets or proprietary information. In order to obtain protection from mandatory public disclosure laws, an Offeror must complete the chart below by identifying with specificity each item of information for which protection is sought and providing an explanation as to why protection from public disclosure is necessary. In order to be effective, an Offeror must identify any trade secrets or proprietary information set forth herein at or prior to submission of its proposal.*

SECTION:	DESCRIPTION:	JUSTIFICATION:
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Submitted this ____ day of _____, 2023 by the undersigned duly-authorized representative of the Offeror.

Name of Offeror

By: _____
Signature of Authorized Representative

Name of Representative

Title

* If this information is left blank, the Offeror's Technical Proposal will be deemed *not* to contain any trade secrets or proprietary information and will be subject to public inspection. Requests for protection after the deadline for submission of proposals will not be eligible for consideration.

[FORM OF TERM AGREEMENT FOR ENGINEERING SERVICES]

**FAIRFAX COUNTY PUBLIC SCHOOLS
AGREEMENT BETWEEN OWNER AND ENGINEER**

CONTRACT NO. _____

THIS AGREEMENT, made and entered into effective as of the ____ day of _____, 2023 (the "Effective Date"), by and between the **FAIRFAX COUNTY SCHOOL BOARD**, the Virginia public body that operates Fairfax County Public Schools ("FCPS"), and _____, a _____ (the "Consultant"), covers professional engineering and related services to be provided by the Consultant and the fees to be paid by FCPS in return for the performance of such services (the "Contract").

1. CONTRACT DOCUMENTS

- A. The Contract will consist of the following items, which are listed in order of precedence and which together will be referred to as the "Contract Documents:"
- i. Any Contract Changes or Amendments as discussed in Section 14;
 - ii. Any Task Orders, and all exhibits thereto, including Scopes of Work, Schedules, and Not-to-Exceed Fee estimates, as applicable;
 - iii. This fully-executed Contract, and all exhibits hereto;
 - iv. Any Addenda to RFP 23-009 (the "RFP");
 - v. The RFP; and
 - vi. The successful Consultant's Business Proposal and Technical Proposal submitted in response to the RFP.

In resolving any conflict, error, ambiguity, or discrepancy between or among any of the Contract Documents, the Contract Documents will be accorded the order of precedence set forth above.

- B. Anything called for by one of the Contract Documents and not called for by the others will be of like effect as if required or called for by all, except that a provision clearly designed to negate or alter a provision contained in one or more of the other Contract Documents will have the intended effect.
- C. All time limits stated in the Contract Documents, including but not limited to the time for completion of the Work set forth in a Task Order, are of the essence.
- D. The Consultant shall commence the Work upon the Consultant's receipt of an executed Task Order.

2. SERVICES TO BE PROVIDED

The Work to be performed by the Consultant hereunder (the "Work") generally consists of electrical, mechanical, plumbing and structural engineering consulting and engineering services

as generally described in Section 5 of the Special Provisions to the RFP. The Work will be detailed in any Task Order(s) issued by FCPS hereunder. The Consultant hereby agrees to perform all Work during the Contract Term in accordance with the Contract Documents. The Work will be assigned pursuant to one or more written Task Orders that will be authorized and issued by FCPS's Director of Design and Construction, or designee. The scope of services for each Task Order issued hereunder will be set forth in writing and incorporated therein. Each Task Order will include a detailed description of the Work to be performed, an estimate of hours for all staff positions involved, a schedule for performance of the Work, and a listing of associated deliverables, if any.

3. TIME FOR COMPLETION

- A. Time is of the essence with respect to the Consultant's performance of the Work. The Work included in the Contract will be completed to the satisfaction of FCPS within the negotiated schedule for each Task Order.
- B. Neither FCPS nor the Consultant will be liable for any fault or delay caused by any acts of God, war, strikes, walkouts, fires or natural calamities.

4. CONTRACT TERM

This Contract shall commence on the Effective Date and will continue for a term of one year or when the cumulative total project fees incurred hereunder reach \$10,000,000 (the "Annual Cap"), whichever occurs first (the "Initial Term"). FCPS may, in its discretion, elect to renew the Contract for up to three additional one-year terms, subject in each such instance to the Annual Cap (each such additional term to be referred to herein as a "Renewal Term"). Any such renewal will be exercised by FCPS, if at all, by issuance of written notice to the Consultant on or before the date that is 30 days prior to the expiration of the then-current contract period. Professional services fees and charges applicable with respect to any Renewal Period will be determined in accordance with Section 6 of this Contract. The Initial Term and any Renewal Terms will be collectively referred to herein as the "Contract Term."

5. PROFESSIONAL SERVICES FEES

- A. During the Contract Term, the Consultant will perform the Work described in Section 1 above for a fee based on the negotiated scope of work, schedule and applicable hours for each Task Order multiplied by hourly rates set forth on Exhibit A, "Rates and Fees" (subject to adjustment in the manner prescribed in Section 6).
- B. Hourly pricing shall be firm and fixed during the Initial Term, and subject to annual adjustments for each Renewal Term, if any.
- C. The maximum billing for Work performed during any contract year during which this Contract is in effect will be \$10,000,000. No unused amounts may be carried forward from one contract year to another. Individual Task Orders will not exceed \$2,500,000.
- D. Billings for the Work, including any Reimbursable Expenses, as defined in Section 26, will not exceed the maximum estimated amount set forth in the Task Order without the prior written approval of FCPS. The parties to this Contract must agree to any changes in the maximum estimated amounts, which will then be incorporated into the corresponding Task Order by written amendment.

6. ANNUAL ECONOMIC PRICE ADJUSTMENT

- A. The Consultant may submit a request for an economic price adjustment no more than once annually for each Renewal Term. Economic price adjustments will be limited to the increase specified in the Consumer Price Index–Urban for the 12-month period ending 90 days prior to the end of the then current contract year. As employed herein, the term “Consumer Price Index” will mean the Consumer Price Index for all Urban Users for the Metropolitan Washington, D.C. area as published by the Bureau of Labor Statistics, U.S. Department of Labor. No other economic price adjustments will be allowed.
- B. The request for an economic price adjustment will be in writing and will include at a minimum the cause for the adjustment and the amount of the change request with documentation to support the requested adjustment (i.e. appropriate BLS, Consumer Price Index (CPI-U)).

7. PROJECT AUDITS; ACCESS TO DOCUMENTS

- A. The Consultant shall maintain adequate financial records pertaining to the Work in such a manner that they may be audited at any time during the term of this Contract and until the expiration of three (3) years after the date of final payment hereunder. A simple ledger sheet showing disbursement by line item is preferred. Within ten (10) days after the date of FCPS’s written notice, the Consultant shall provide access to the following documents during this audit: (a) all paid vouchers including those for out-of-pocket expenses, and other reimbursements supported by invoices, including the Consultant’s copies of periodic estimates for partial payment; (b) ledgers; canceled checks; deposit slips; bank statements; journals, if any; (c) copies of all contracts and copies of any contract amendments/change orders; (d) insurance documents; and (e) payrolls and time sheets.
- B. In addition to the right of audit described above, FCPS and its duly authorized representatives (each, an “Auditing Party”) will, at any time and from time to time during the term of the Contract and until the date that is three years after the date on which final payment has been made thereunder and all other pending matters have been resolved, have access to all Project Documents in the possession, custody, control or ownership of the Consultant for purposes of performing an audit, examination, excerpt and/or transcription. The Project Documents (as defined in Section 25 below) will include, but will not be limited to: job diaries, bid proposal worksheets, subcontracts, purchase orders, daily reports, invoices, scheduling materials, financial and accounting records, internal memoranda, notes and other documents, records and materials relating in any way to the Project; provided, however, that the term “Project Documents” will in no event be construed to include documents, records or other materials protected by the attorney-client privilege. The Consultant hereby covenants and agrees that, within 10 days after the Consultant receives written notice from an Auditing Party, it will:
 - C. Make the Project Documents available for inspection and copying during the Consultant’s regular business hours by such Auditing Party, with copies being provided at a reasonable cost payable by the Auditing Party; and
 - D. Any failure on the part of the Consultant to comply with the provisions of this Section will constitute a breach of the Contract and, regardless of whether such failure occurs during the term of the Contract, or within the three year period commencing on the date of final payment hereunder, will constitute sufficient grounds for debarment of the Consultant. The

Consultant hereby agrees that it will pay and be responsible for all costs and expenses (including court costs and attorney's fees) incurred by an Auditing Party in enforcing this provision.

8. INTELLECTUAL PROPERTY RIGHTS

The Consultant represents and warrants that neither the Work performed by the Consultant and/or any subcontractor or subconsultant hereunder, nor any part or aspect thereof (including any deliverable), will infringe or constitute a misappropriation of any right of any third party, including any copyrights, patent rights, trademark rights, trade secret rights or confidentiality rights.

9. ASSIGNMENT OF INTEREST

The Consultant will not assign any rights, obligations or interests arising under or in connection with this Contract without prior written consent of FCPS, which FCPS will be under no obligation to grant.

10. AUTHORIZATION TO TRANSACT BUSINESS IN VIRGINIA

Each Consultant that is organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership, or registered as a registered limited liability partnership, hereby makes the following representations, warranties and covenants: (a) it is authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Virginia Code, or as otherwise required by law; (b) it will not allow its existence to lapse or its certificate of authority or registration to transact business in Virginia, if so required under Title 13.1 or Title 50 of the Virginia Code, to be revoked or cancelled at any time during the Contract Term; and (c) it will require each Subcontractor and Sub-Consultant who is organized as set forth in the first clause of this paragraph to make the representations and warranties set forth in clauses (a) and (b) above.

11. AVAILABILITY OF FUNDS

In the event sufficient funds shall not be appropriated which may lawfully be applied to the payment of FCPS's obligations under this Contract, FCPS's rights and obligations hereunder shall terminate on the last day of the last fiscal year for which an appropriation is available, or on such earlier date on which a payment is due for which sufficient funds for payment have not been lawfully appropriated, and FCPS shall not be obligated to make payments under this Contract beyond the last date for which such an appropriation is available. Not later than thirty (30) days after FCPS has knowledge that an appropriation will not be available, FCPS shall deliver notice to the Consultant of such termination, but the failure to give such notice shall not operate to continue or keep in effect this Contract beyond the termination date set forth in the preceding sentence or the obligations to make payments under this Contract beyond the fiscal year for which an appropriation is available.

12. COMPLIANCE WITH LAWS

The Consultant hereby represents, warrants, covenants, and agrees as follows:

- A. It will comply with all federal, state and local laws, regulations, and ordinances applicable to the Work and/or to its activities and obligations under this Contract; and

- B. It will obtain at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary for the lawful performance of its obligations under this Contract.
- C. The Consultant hereby covenants and agrees to comply with all federal, state and local laws, rules, regulations, guidelines, and orders applicable to the Work to be performed hereunder.

13. CONSULTANT'S REPRESENTATIONS

- A. The Consultant represents and warrants to FCPS that it is a duly organized and licensed entity that employs qualified and experienced personnel who specialize in performing the type of engineering and consulting services required hereunder. The Consultant covenants and agrees to provide a sufficient number of personnel (hereinafter referred to as the "Project Team") who are suitably qualified and experienced and who are in all respects acceptable to FCPS to perform the Work in an efficient and timely manner. Individual members of the Project Team and their normal work location will be identified by the Consultant in its Proposal and incorporated by reference in the Contract. The Project Team may not be replaced, substituted or relocated for so long as they remain in the employ of the Consultant, without the prior written consent of FCPS. The Consultant covenants and agrees that, for so long as they are in the employ of the Consultant, members of the Project Team will be readily available to perform the Work as required by FCPS.
- B. The Consultant covenants and agrees to provide engineering services in accordance with generally accepted and currently recognized engineering practices, procedures and principles, and to exercise the same professional standard of care and of quality as is customarily exercised under similar circumstances by professional engineers providing services in the Washington, D.C., metropolitan area. The Consultant additionally covenants and agrees to diligently and conscientiously devote its resources to the performance of the Work during the Contract Term.
- C. The representations and warranties of the Consultant contained in the Contract Documents will survive the execution of this Contract.
- D. No third party is entitled to rely on any of the representations, warranties and agreements of FCPS and the Consultant contained in the Contract Documents. FCPS and the Consultant assume no liability to any third party because of any reliance on the representations, warranties and agreements of FCPS and the Consultant contained in the Contract Documents.

14. ENTIRE AGREEMENT; CONTRACT CHANGES OR AMENDMENTS

This Contract sets forth the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements, arrangements and understandings with respect thereto between FCPS and the Consultant. No modification, amendment, addition to or termination of this Contract or any Task Order, nor any waiver of any of any provisions thereof, will be valid or binding upon FCPS unless made in writing and signed by duly-authorized representatives of both the Consultant and FCPS.

15. CONTRACTUAL DISPUTES

- A. In the event that the Consultant wishes to dispute any Work required, necessitated, or ordered by FCPS, or claim that: (i) any action required or ordered by FCPS to be taken or not taken; or (ii) any decision on the part of FCPS hereunder, violates the terms and provisions of this Contract, then he shall, within five days after the event, action, or occurrence that gave rise to the dispute or claim, notify FCPS, in writing, of his dispute or claim with respect thereto and request a final determination thereof. In all circumstances in which all or any portion of the Work constitutes the subject of any claim or dispute, the Consultant shall in all events proceed with Work that is the subject of any dispute or claim without delay. In order to invoke the procedures of this Section, the Consultant's request must: (a) refer specifically to this Section by number; in the case of FCPS, be hand-delivered to the offices of both the Director, Office of Design and Construction as well as the Chief Operating Officer, Department of Facilities and Transportation Services; (b) contain a full explanation of the basis of the Consultant's position and the rationale for its request; (c) detail the quantum of any relief requested by the Consultant and provide verified substantiation of all such amounts; (d) describe in detail any other relief requested; (e) describe in detail all efforts the Consultant has made to mitigate any alleged loss or otherwise avoid the claim; and (f) be signed by an authorized representative of the Consultant under oath.
- B. FCPS shall issue a written determination with regard to any such dispute or claim on or before the date that is ten (10) business days after the date of its receipt of the Consultant's written request; provided, however, that in the event that FCPS determines, based upon the size or complexity of the dispute or claim at issue, that additional time is required for the issuance of a response, FCPS shall issue written notice of such finding to the Consultant within ten (10) business days following the date of its receipt of the Consultant's written request and shall issue a written determination with regard to such dispute or claim on or before the date that is thirty (30) days after the date of FCPS's receipt of the Consultant's written request or the Consultant's submission of all supplemental information where such has been requested by FCPS. The Consultant's failure to submit promptly any supplemental information requested by FCPS shall result in the waiver of the dispute or claim. In order to reserve his right to claim compensation for such Work, or damages resulting from such compliance, the Consultant shall, within five days after receiving notice of FCPS's determination and direction, notify FCPS, in writing, that the Work is being performed or that the determination and direction is being complied with under protest.
- C. Failure of the Consultant to strictly comply with the notice and claims procedures set forth in this Section 15 shall effect a waiver and release of the claim.
- D. No claim of any nature will be made against FCPS by or on behalf of a subcontractor or subconsultant unless the Consultant has first evaluated such claim thoroughly and determined it to be meritorious. In presenting such a claim, the Consultant will provide FCPS with a written explanation of its finding that the claim is meritorious, together with its recommendation regarding any additional time or compensation to which the subcontractor or subconsultant may be entitled based upon its claim.

16. DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONSULTANT

During the performance of this Contract, the Consultant agrees to:

- A. Provide a drug-free workplace for the Consultant's employees;
- B. Post in conspicuous places, available to the Consultant's employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
- C. State in all solicitations or advertisements for employees placed by or on behalf of the Consultant that the Consultant maintains a drug-free workplace; and
- D. Include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

17. NONDISCRIMINATION; CRIMINAL BACKGROUND CERTIFICATION

- A. During the performance of this Contract, the Consultant agrees as follows:
 - i. The Consultant will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or 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 Consultant. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - ii. The Consultant, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, will state that such Consultant is an equal opportunity employer.
 - iii. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation will be deemed sufficient for the purpose of meeting the requirements of this Section.
- B. The Consultant will include the provisions of the foregoing paragraphs (A)(i), (ii) and (iii) in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor, subconsultant or vendor.
- C. In accordance with Virginia Code § 22.1-296.1(E), the Consultant certifies that no employee of the Consultant who, in the performance of services hereunder, will have direct contact with students on school property during regular school hours or during school-sponsored activities shall have been convicted of any violent felony set forth in the definition of barrier crime in Virginia Code § 19.2-392.02(A); any offense involving the sexual molestation, physical or sexual abuse, or rape of a child; or any crime of moral turpitude.

18. ETHICS IN PUBLIC CONTRACTING

The Consultant hereby certifies that it has familiarized itself with Sections 2.2-4367 through 4377 of the Act ("Ethics in Public Contracting"), and that all amounts received by it and all actions by or

on behalf of the Consultant, pursuant to a contract resulting from this solicitation, will be proper and in accordance therewith.

19. GOVERNING LAW; VENUE; WAIVER OF JURY TRIAL

Notwithstanding any provision to the contrary, the Contract Documents will be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without reference to conflict of law principles. Any dispute arising hereunder that is not otherwise resolved by the parties will be resolved by a court of competent jurisdiction in the Commonwealth of Virginia. The Consultant and FCPS hereby waive any right such party may have to a trial by jury in connection with any such litigation.

20. INDEMNIFICATION

The Consultant will indemnify and hold harmless FCPS and FCPS's members, officers, authorized representatives and employees from and against any and all claims, losses, liabilities, damages and expenses (including reasonable attorneys' fees and costs) arising out of or in connection with: (a) any material breach of the representations, warranties, agreements and covenants of the Consultant contained in the Contract Documents; (b) any injuries to persons or property caused by any negligent or wrongful act or omission of the Consultant or its subcontractors, employees, or other authorized representatives; (c) any claims filed by the Consultant that are adjudicated in favor of FCPS; or (d) claims for payment filed against FCPS by a subcontractor, subconsultant, or employee of the Consultant.

21. INSURANCE

A. The Consultant will procure and maintain at its own expense, at all times throughout the Contract Term, insurance of such type and in such amounts as may be necessary to protect its interests and the interests of FCPS against hazards or risks of loss as hereinafter specified.

All such insurance will be underwritten by responsible and solvent companies, acceptable to FCPS, and authorized to do business in the Commonwealth of Virginia. All insurance policies must be from insurers authorized to conduct business within the Commonwealth of Virginia and must have a Best's rating of at least A- and a financial size of class VIII or better in the latest edition of Best's Insurance Reports. Each liability insurance policy listed below shall contain a provision requiring that not less than 30 days written notice will be given to FCPS before the cancellation, non-renewal or material modification of such policy or coverage. Notwithstanding the foregoing, if Consultant receives a notice of cancellation of its Worker's Compensation or Professional liability policy, Consultant shall notify FCPS within ten days. Without limiting the requirements set forth herein, the insurance coverages will include a minimum of:

- i. Worker's Compensation and Employer's Liability insurance as required by the Commonwealth of Virginia.
- ii. Business Automobile and Vehicle Liability Insurance. This insurance will be written in comprehensive form and will protect the Consultant and FCPS against claims for injuries to members of the public and/or damages to the property of others arising from the Consultant's use of motor vehicles or any other equipment and will cover operation with respect to on-site and off-site operations. Such insurance

coverage will extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned, or hired. The limit of liability will not be less than a \$1,000,000 combined single limit, each accident.

- iii. Commercial General Liability. This insurance will be written in comprehensive form and will protect the Consultant and FCPS against claims arising from injuries to members of the public or damage to property of others arising out of any negligent act or omission to act of the Consultant or of any of its agents, employees, or subcontractors. The limit of liability will not be less than \$2,000,000 combined single limit.
 - iv. Professional Liability Insurance. Unless otherwise expressly agreed in writing by the Consultant and FCPS, the Consultant will furnish professional liability insurance coverage, including errors and omissions, in an amount not less than \$1,000,000. Professional subcontractors will provide limits commensurate with the responsibilities of their portions of the Work.
- B. The insurance coverage specified above will constitute minimum requirements and FCPS will be included as an additional insured in insurance coverages identified in Sections 21(A)(ii) and (iii).
 - C. The Consultant shall file with FCPS evidence demonstrating its compliance with the foregoing insurance requirements not later than three (3) business days following the Effective Date of this Contract and within fifteen (15) days after renewal, material modification or replacement thereof. Such evidence shall be in the form of one or more certificates of insurance. Upon request by FCPS, the Consultant promptly shall cause copies of any or all insurance policies to be delivered to FCPS.
 - D. FCPS may require such information from the Consultant as it deems necessary to assess the Consultant's financial ability to pay any deductibles under the foregoing policies of insurance.
 - E. The maintenance in full force and effect of all insurance coverages required hereunder shall be a condition precedent to the Consultant's exercise or enforcement of any of its rights under this Contract.
 - F. Nothing herein will be deemed to operate as a waiver of FCPS's sovereign immunity under the law.

22. NO EMPLOYMENT OF UNAUTHORIZED ALIENS

The Consultant hereby covenants and agrees that it does not, and will not during the Contract Term, knowingly employ an unauthorized alien (as such term is defined in the federal Immigration Reform and Control Act of 1986).

23. FAITH-BASED ORGANIZATIONS

FCPS does not discriminate against faith-based organizations.

24. NO WAIVER OR ESTOPPEL

- A. Failure by either party in any instance to insist upon observance or performance by the other party of any of the terms, conditions or provisions set forth in the Contract will not be deemed a waiver of any such terms, conditions or provisions. No waiver will be binding upon either party unless in writing and signed by that party, and any such waiver will be limited to the particular instance referred to in the written document memorializing the waiver. Neither any payment for, nor acceptance of, the whole or any part of the services by FCPS, nor any extension of time, will operate as a waiver of any provision of this Contract, nor of any power herein reserved to FCPS, or any right to damages herein provided, nor will any waiver of any breach of this Contract be held to be a waiver of any other or subsequent breach.
- B. Neither FCPS, nor any officer, member or employee thereof, will be bound, precluded, or estopped by any action, determination, decision, acceptance, return, certificate, or payment made or given under or in connection with the Contract, at any time either before or after final completion and acceptance of the Work and payment therefor.

25. OWNERSHIP OF PROJECT DOCUMENTS

All designs, drawings, specifications and other instruments of service created by or on behalf of the Consultant hereunder, and any and all copyrights and other intellectual property rights therein (together referred to herein as the "Instruments of Service") will be deemed for all purposes to be the property of FCPS. All other work products of the Consultant in connection with the Work and all documents and records in the possession, custody or control of the Consultant relating to the Work (together referred to herein as the "Project Documents") will be and will remain the property of the Consultant. Consultant shall retain sole ownership to its preexisting information including but not limited to computer programs, software, standard details, figures, templates and specifications. Consultant grants FCPS a non-exclusive, perpetual license to use Consultant's preexisting information incorporated into the work product. Any reuse of the documents prepared by Consultant under this Contract for other than their specific intended purpose will be at the sole risk of the user. Notwithstanding the foregoing, at any time during the term of the Contract and until the expiration of three years from the date of final payment hereunder, FCPS and its duly authorized representatives will have access to and will have the right to examine and copy the Project Documents as set forth in Section 7 above. Except as expressly set forth herein, this provision is not intended to and will not be construed to confer upon any person or entity that is not a party to this Contract any right of access to the Project Documents under statute or otherwise.

26. PAYMENT

- A. During the performance of the Work, the Consultant will prepare and submit to FCPS each month an invoice in an acceptable form (the "Invoice") describing the Work performed in the preceding month, the hours expended by each specific employee, employee position, employee billing rate, billable costs, and the itemized Direct Expenses incurred (as such term is defined below). All Invoices will be transmitted in writing to FCPS's assigned project manager, with a copy to FCPS's Director of Design and Construction. The Invoice will be divided into parts consistent with the Scope of Work for the Task Order to which it relates and will, where applicable, indicate a total part value, total invoice value and total billed-to-date value for each part. The Invoice will include the Consultant's federal employer

identification number. FCPS will pay an approved Invoice within 30 days after its receipt. Any amounts not paid when due will accrue interest at the rate of 1% per month.

- B. Reimbursable Expenses are those incurred by virtue of the Work and do not include those incidental to the regular conduct of Consultant's business. Reimbursable Expenses consist of the following, if approved in advance by FCPS: FCPS-requested reproductions, specifications and other documents, courier services required for FCPS deliveries, and other similar project-related expenses, laboratory fees, and special supplies. Reports, drawings and specifications prepared by the Consultant will be furnished to FCPS at the cost of reproduction.

27. PAYMENT CLAUSES REQUIRED IN ALL CONTRACTS

- A. Within seven calendar days after receipt of each payment from FCPS, the Consultant will:
 - i. Pay each Subcontractor an amount equal to the percentage of the Work attributable to such Subcontractor; or
 - ii. Notify FCPS and the Subcontractor in writing of the intention to withhold all or part of the amounts due the Subcontractor, and state the reason for such withholding.
- B. In the event the Consultant fails to submit a timely invoice, and that failure is due exclusively to the actions of the Consultant, each Subcontractor will have the right to be paid by the Consultant upon demand, the amounts due.
- C. The Consultant will pay interest on amounts owed to any Subcontractor which remain unpaid seven days after the Consultant's receipt of payment from FCPS, provided, however, that amounts owed any Subcontractor which have been withheld properly, pursuant to this Section, will not accrue interest. Interest on amounts due any Subcontractor and unpaid will accrue at the rate of 1% per month; provided, however that the Consultant's obligation to pay interest hereunder will in no event be construed to be an obligation of FCPS. No contract modification will be made, and no cost reimbursement claim will be submitted, for purposes of reimbursement for the interest charge.
- D. The Consultant will include in each of its subcontracts agreements a provision requiring each of its subcontractors to include or otherwise be subject to the same payment and interest requirements with respect to each lower tier subcontractor.
- E. Upon completion of the Work, a final payment affidavit and release of claims form will be executed by the Consultant. FCPS will not process final payment until such documentation has been received.

28. PROHIBITION AGAINST CONTINGENT FEES

The Consultant warrants that he has not employed any company or person other than a bona fide employee working for the Consultant to solicit or secure this Contract and that he has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Consultant any favor, commission, percentage, gift, or any other compensation contingent upon or resulting from the award or making of this or any other agreement. In the event of breach of this provision, FCPS will have the right to terminate this or any other agreement with the Consultant without liability, and, in its discretion, to deduct from

amounts due under this Contract, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration, as well as the cost of such recovery including, without limitation, reasonable attorney's fees.

29. SUBCONSULTANT AND/OR SUBCONTRACTOR SERVICES

- A. In the event that services of subcontractors or subconsultants are authorized in advance by FCPS for portions of the Work, the Consultant will be responsible for contracting for those services. In such event the Consultant will so notify FCPS in writing and identify such subcontractors that may be required. FCPS in its sole and absolute discretion, will have the right to determine whether subcontractors or subconsultants are to be used and must agree with the rates to be paid to such subcontractors. FCPS reserves the right to reject any subcontractors or subconsultants proposed by the Consultant. In the event these subcontracted services are utilized and unless otherwise directed by FCPS, the Consultant will obtain at least three proposals and furnish these proposals, with the Consultant's recommendation, to FCPS for its approval prior to engaging any subcontractor.
- B. The Consultant shall require each Subconsultant, to the extent that the Work is to be performed by such Subconsultant, to be bound to the Consultant by the terms and conditions of this Contract, and to undertake and perform on behalf of the Consultant all of the obligations and responsibilities with respect to such Work, including the grant of a license in favor of the Owner pursuant to Section 25 and the timely delivery of all required submittals in the specified formats, which the Consultant shall have undertaken to perform on behalf of FCPS and/or the General Contractor hereunder. Each Subconsultant agreement shall preserve and protect the rights of FCPS under this Contract with respect to the Work to be performed by the Subconsultant and shall provide to the Consultant the same power to terminate any Subconsultant agreement that FCPS may exercise to terminate the Consultant hereunder. Whenever applicable, the Consultant shall require each Subconsultant to enter into similar agreements with Sub-subconsultants. Prior to execution of the subconsultant agreement, the Consultant shall make available to each proposed Subconsultant a copy of this Contract, redacted, if desired, to omit compensation or other financial terms and conditions not applicable to the Subconsultant.

Similarly, Subconsultants shall make copies of applicable portions of such documents available to their respective proposed Sub-subconsultants. Each Subconsultant and Sub-subconsultant shall be obligated to perform in accordance with the provisions of this Section regardless of whether it requested or actually received a copy of this Contract. Nothing contained herein shall be deemed to establish a contractual relationship between any Subconsultant and FCPS.

30. TAX EXEMPTION

FCPS is exempt from Federal Excise Taxes, Virginia State Sales and Use Taxes, and the District of Columbia Sales Taxes and Transportation Taxes. The Consultant's obligation to pay any such taxes is not impacted in any way by its contractual relationship with FCPS.

31. TERMINATION OF CONTRACT

- A. **Termination for Cause.** In the event that the Consultant:

- i. fails to perform the Work in accordance with the terms and conditions set forth in the Contract and does not cure such failure within three business days after receipt of written notice from FCPS specifying such failure;
- ii. otherwise fails to perform any material obligation set forth therein; or
- iii. becomes insolvent, is adjudicated bankrupt, makes an assignment for the benefit of creditors or enters into bankruptcy or dissolution proceedings,

then FCPS, without prejudice to any other rights or remedies it may have at law or in equity, will have the right to terminate this Contract by issuing a written notice of termination to the Consultant. Such notice of termination will describe in reasonable detail the grounds for the termination and will take effect on the later of:

- a. the date specified as the effective date of termination in the notice; or
- b. if no such date is specified, the date of Consultant's receipt of such notice of termination, as determined in accordance with these Contract Documents.

If, after issuance of a notice of termination under this Section 31(A), it is determined for any reason that cause for such termination did not exist, then the rights and obligations of the parties will be the same as if the notice of termination had been delivered under the provisions of Section 31(B) hereof; provided, however, that the Consultant in such event will be deemed to have received seven days prior written notice of such termination. The Consultant will in no event be entitled to receive any consequential damages or any anticipated profits with respect to Work not yet furnished to, and accepted by, FCPS as of the effective date of any such termination.

- B. **Termination for Convenience.** FCPS will have the right to terminate the services of the Consultant at its own convenience for any reason or no reason upon seven days prior written notice to the Consultant. In the event of termination under this Section, the Consultant will receive compensation for all Work completed through the date of such termination; provided, however, that upon receipt of notice of termination the Consultant will, as soon as practicable, suspend all Work within its control (including Work performed by subcontractors or special contractors, if any) and will not incur any additional expense for which it seeks compensation. Furthermore, daily compensation for Work performed during the period between notice of termination and termination will in no event exceed: (i) the average daily compensation paid to the Consultant for Work performed during the three months immediately preceding the date of the notice of termination, or (ii) in the event the Contract is terminated prior to the date three months after the date of execution hereof, the average daily compensation paid to the Consultant for Work performed during the period beginning on the date hereof and ending on the date immediately preceding the date of the notice of termination.

32. SUCCESSORS AND ASSIGNS; BINDING AGREEMENT

The Contract will not be assigned, sublet or transferred, in whole or in part, by operation of law or otherwise, by either of the parties hereto except with the prior written consent of the other. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will operate to release or discharge the assignor from any duty or responsibility under the Contract.

Nothing contained in this Section will prevent the Consultant, with the consent of FCPS, from employing (in accordance with the terms of the Contract Documents) such independent contractors and subcontractors as the Consultant may deem appropriate to assist in the performance of his responsibilities hereunder. Subject to the provisions of this Section, the Contract Documents will be binding upon and inure to the benefit of each of the parties thereto, and their respective successors and assigns.

33. VIRGINIA FREEDOM OF INFORMATION ACT

Except as provided herein, all proceedings, records, contracts and other public records relating to procurement transactions will be open to the inspection of any citizen, any interested person, firm, or corporation, in accordance with the Virginia Freedom of Information Act.

34. REMEDIES NOT EXCLUSIVE

Unless otherwise expressly provided herein, all remedies provided for in this Contract will be in addition to all other remedies available to FCPS, at law or in equity.

35. NATURE OF RELATIONSHIP

The relationship of the Consultant to FCPS will be that of an independent contractor and not that of an employee. FCPS will not possess the right to control or direct the Consultant with regard to the means and methods by which the Consultant performs the Work. The Consultant will not have the authority to enter into any contract, agreement, obligation or representation on behalf of FCPS.

36. NOTICES

All notices and other communications hereunder shall be in writing and shall be hand delivered, sent by fax or email (with a duplicate copy transmitted by another method of delivery authorized hereunder), sent by first class mail, postage prepaid, or sent by nationally recognized overnight delivery service. Such notices and other communications shall be effective upon receipt if hand delivered or sent by fax or email (with a duplicate copy transmitted by another method of delivery authorized hereunder), three (3) days after mailing if sent by mail, and one (1) day after dispatch if sent by overnight delivery service, to the addresses and/or emails set forth below:

If to the Consultant:

Consultant Name
Address

ATTN:
Title:
Phone:
Fax No:
Email:

If to FCPS:

Fairfax County School Board
8115 Gatehouse Road, Suite 3400
Falls Church, Virginia 22042
ATTN: Heather Diez
Director, Design and Construction Services
Phone: 571-423-2200

Fax No: 571-423-2287
Email: hdiez@fcps.edu

Either party may designate, by written notice given to the other in the manner prescribed herein, any further or different addresses and/or email addresses to which subsequent notices shall be sent.

37. PREVAILING PARTY

In the event that either party institutes any legal suit, action, or proceeding against the other party to enforce the covenants contained in this Contract or obtain any other remedy in respect of any breach of this Contract, the prevailing party in the suit, action or proceeding shall be entitled to receive, in addition to all other damages to which it may be entitled, the costs incurred by such party in conducting the suit, action, or proceeding, including reasonable attorneys' fees and expenses and court costs.

38. MISCELLANEOUS

- A. This Contract may be executed in any number of counterparts, each of which will be deemed an original and all of which together will constitute one document.
- B. All provisions required by law to be included in this Contract are hereby deemed incorporated by reference herein, to the same extent as if set forth expressly.
- C. The headings used in this Contract are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed by their duly-authorized representatives effective as of the day and year first above written.

OWNER:

CONSULTANT:

FAIRFAX COUNTY SCHOOLBOARD

Signature

Signature

Charles W. Fanshaw, PE
Interim Assistant Superintendent
Facilities and Transportation Services

[Name]
[Title]