

# BALTIMORE COUNTY PUBLIC SCHOOLS

## PART I: GENERAL TERMS AND CONDITIONS

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**BALTIMORE COUNTY PUBLIC SCHOOLS  
PART I: GENERAL TERMS AND CONDITIONS**

**1.0 DEFINITIONS**

- 1.1 Bidding Documents include the Bidding Requirements and the proposed Contract Documents. The Bidding Requirements consist of the Advertisement or Invitation to Bid, Instructions to Bidders, Supplementary Instructions to Bidders, the bid form, and other sample bidding and contract forms. The proposed Contract Documents consist of the form of Agreement between BCPS and Award Bidder, Conditions of the Contract (General Supplementary and other Conditions), Drawings, Specifications, and all Addenda issued prior to execution of the Contract.
- 1.2 Definitions set forth in the General Conditions of the Contract for Construction, AIA Document A201 Edition, or in other Contract Documents are applicable to the Solicitation/Bidding Documents.
- 1.3 Addenda are written or graphic instruments issued by BCPS or its representative prior to the execution of the Contract which modify or interpret the Solicitation by additions deletions clarifications or corrections.
- 1.4 A Bid is a complete and properly signed proposal to do the Work and/or provide the Goods for the sums stipulated therein submitted in accordance with the Solicitation.
- 1.5 The Base Bid is the sum stated in the Solicitation for which the Bidder offers to perform the Work described in the Solicitation as the base to which Work may be added or from which Work may be deleted for sums stated in Alternate Bids.
- 1.6 An Alternate is an amount stated in the Proposal/Bid that may be added to or deducted from the amount of the Base Bid if the corresponding change in the Work as described in the Solicitation is accepted.
- 1.7 A Unit Price is an amount stated in the Solicitation as a price per unit of measurement for materials equipment or services or a portion of the Work as described in the Solicitation.
- 1.8 A Bidder is any reliable and interested person, broker, vendor, contractor and/or manufacturer who responded to the solicitation /submits a Bid/Proposal.
- 1.9 An Award Bidder is a person or entity who submits a Proposal/Bid and has been approved by the Board of Education for award.
- 1.10 A Sub-contractor is a person or entity who submits a proposal or bid to an Award Bidder for materials, equipment, or labor for a portion of the Work.
- 1.11 For the purpose and clarity of this document only, "BCPS" will mean the Baltimore County Public Schools and the Baltimore County Board of Education and its officials and employees.

## 2.0 AN INVITATION TO BID

- 2.1 Baltimore County Public Schools invites all interested and qualified Contractors to submit a proposal/bid. These specifications are intended to cover the purchase of services and/or commodities requested and include, but are not limited to, providing labor, materials, equipment and supervision of labor and subcontractors to complete requirements as identified [by BCPS].
- 2.2 In accordance with State law and BCPS policies, notices and announcements shall be published a minimum of 14 calendar days in advance of due date for any proposal/bid having a potential award value of \$25,000 or more.
- 2.3 Unless otherwise indicated, BCPS shall receive sealed proposals/bids until date and time indicated on bid or as modified by addenda. Proposals/Bids must be delivered to the BCPS Office of Purchasing located at 1940 Greenspring Drive, Suite G, Timonium, MD. 21093. Proposals/Bids must be delivered in sealed opaque envelopes and clearly marked on the outside: Name of Bidder, Due Date and Time, Solicitation/Bid Number and Solicitation Title.
- 2.4 Brand name and model numbers are offered as a reference for bidders as to the style, size, weight, and other characteristics of the item(s) in the specifications. The use of such brand names should not be interpreted as the exclusive brand desired unless so stated. The determination of the acceptability and/or the criteria for acceptability of an alternate is solely the responsibility of BCPS. (Refer to Part II: Specifications--General Requirements and/or Part III: Technical Specifications).
- 2.5 The Bidder or their authorized representatives are expected to fully inform themselves as to the conditions, requirements, circumstances, prerequisites, qualifications and/or specifications before submitting their proposal/bid. A Bidder's failure to become fully informed is at the Bidder's sole and complete risk of loss. The Bidder shall have no right to any damages, cost and/or any other remedy at law or equity against BCPS for any miscalculation, misunderstanding, error (either omissions or commissions), mistake, misinterpretation, and/or the failure by the Bidder to obtain an award of bid, award of contract and/or profits, fees or money from BCPS when the Bidder failed to fully inform themselves. In the case of error in extension of prices in the bid, the unit price shall govern or the entire proposal/bid may be declared non-responsive.
- 2.6 Upon evaluation of all responses, a recommendation for the award of contract will be presented to the Board of Education of Baltimore County for approval. Upon approval of the award of contract, the bidder(s) shall be notified either by mail, telephone or purchase order of their award(s). When applicable, a BCPS contract document shall also be issued.
- 2.7 The Bidder will not be allowed to offer more than one price on each item even though he may feel that he has two or more types or styles that will meet specifications. Bidder must determine which to offer. **IF SAID BIDDER SHOULD SUBMIT MORE THAN ONE PRICE ON ANY ITEM, ALL PRICES FOR THAT ITEM WILL BE REJECTED AND THE PROPOSAL/BID WILL BE DECLARED NON-RESPONSIVE.**

- 2.8 Where provision is made on the proposal form for bidding items on an individual, group or aggregate basis, the award will be made on whichever basis is in the best interest of the BCPS. When an aggregate bid is requested, the unit prices for each item shall be identified on the proposal sheet for accounting purposes. The unit prices in an aggregate bid should be consistent with the total quoted price for an aggregate bid. A "NO BID" on a combination of items will be permitted except as otherwise provided for on the proposal sheet and/or in PART II: SPECIFICATIONS-GENERAL REQUIREMENTS AND PART III: TECHNICAL SPECIFICATIONS.
- 2.9 The product offered by the bidder shall be new, not used, and the latest version. Should a product be discontinued and/or upgraded during the course of the contract, the Award Bidder shall offer to BCPS a new alternate product meeting and/or exceeding the established specifications, under the same terms, conditions and prices as the originally offered item.
- 2.10 The Award Bidder, after award and before manufacture and/or shipment, may be required to submit working drawings or detailed descriptive data identified as acceptable to BCPS, which provide sufficient data to enable BCPS to judge the bidder's compliance with specifications.

### **3.0 BID PREPARATION, PROPOSAL SHEET, AND BID OPENING**

- 3.1 Bidder must submit one (1) original with original signatures of the proposal using BCPS proposal forms. The bidder should make and retain one (1) copy of the bid for their files. Bids must be signed and submitted by an authorized representative of the bidder. Each bidder may attach a letter of explanation to the bid, if so desired, to provide an explanation of any detail(s) in the bid.
- 3.2 Signed proposals/bids should be returned in a sealed envelope. If the Bid is sent by mail, the sealed envelope shall be enclosed in a separate sealed opaque mailing envelope with the notation "SEALED BID ENCLOSED" on the face thereof. BCPS shall not accept any facsimile transmission to agents, representatives or employees as meeting the requirement of the sealed bid. A facsimile document shall not be considered a valid response to the bid specification.
- 3.3 Each bid must show the full business address, telephone number, and fax number of the bidder and be signed by the person or persons legally authorized to sign contracts. All correspondence concerning the bid and contract, including Notice of Award, copy of Contract, and Purchase Order, will be mailed or delivered to the address shown on the bid in the absence of written instructions from the bidder to the contrary.
- 3.4 All bidders shall be required to complete the certificates and/or affidavits, and/or acknowledgements that are incorporated into the proposal pages of this specification. Such documents are required by local, state or federal funding agencies of BCPS as part of the bidding process. The documents may include: Anti-Bribery Affidavit, Debarment Certificate, Sales Tax Certification, Minority Bidder Status, and when applicable, Asbestos Free Certification.

### 3.5 Bid Opening

- 3.5.1 At the public opening of the bid, the bidder's names and their prices will be read and posted.
- 3.5.2 Complete evaluations of the proposals/bids will not take place at the bid opening and no indication of award will be made. BCPS reserves the right to review all responses and analyze the results of the procurement process.
- 3.5.3 A final recommendation(s) shall be prepared for review and approval by the Board of Education of Baltimore County.
- 3.5.4 The recommended award will be available in the Office of Purchasing after the completed evaluation.
- 3.5.5 Proposals will be available for review by the public after Award of Contract by the Board of Education of Baltimore County. Upon acceptance and approval of the proposal(s)/bid(s) by the Board of Education, a binding contract shall be established between BCPS and the Award Bidder(s). Bidder(s) may contact the Office of Purchasing to arrange a date and time to review bid documents.

3.6 At the time of the bid opening each bidder will be presumed to have read and to be thoroughly familiar with the specifications and related documents (including all Addenda). The failure or omission of any bidder to receive or examine any form, instrument, or document, shall in no way relieve them from any obligation in respect of his bid.

3.7 Any omissions, errors, conflicts, or discrepancies in this document shall be called to the attention of BCPS IN WRITING within seven (7) days of submission of the bid.

## 4.0 **MULTI-AGENCY PROCUREMENT**

4.1 BCPS reserves the right to extend the terms and conditions of this solicitation to any and all other agencies within the state of Maryland as well as any other federal, state, municipal, county, or local governmental agency under the jurisdiction of the United States and its territories. This shall include but not be limited to private schools, parochial schools, non-public schools such as charter schools, special districts, intermediate units, non-profit agencies providing services on behalf of government, and/or state, community and/or private colleges/universities that require these goods, commodities and/or services. This is conditioned upon mutual agreement of all parties pursuant to special requirements, which may be appended thereto. The supplier/contractor agrees to notify the issuing body of those entities that wish to use any contract resulting from this bid and will also provide usage information, which may be requested. A copy of the contract pricing and the bid requirements incorporated in this contract will be supplied to requesting agencies.

- 4.2 Each participating jurisdiction or agency shall enter into its own contract with the Award Bidder(s) and this contract shall be binding only upon the principals signing such an agreement. Invoices shall be submitted in duplicate "directly" to the ordering jurisdiction for each unit purchased. Disputes over the execution of any contract shall be the responsibility of the participating jurisdiction or agency that entered into that contract. Disputes must be resolved solely between the participating agency and the Award Bidder. BCPS does not assume any responsibility other than to obtain pricing for the specifications provided.

## **5.0 BID SECURITY**

- 5.1 If so stipulated in the Advertisement, Invitation to Bid, or supplementary instructions to bidders, each Proposal/Bid shall be accompanied by a Bid Bond in the dollar amount of five percent (5%) of the Base Bid. This Bid Bond pledges that the Bidder will enter into a Contract with BCPS on the terms stated in the Solicitation and will, if required, furnish bonds covering the faithful performance of the Contract and payment of all obligations arising hereunder. Should the Bidder refuse to enter into such Contract or fail to furnish such bonds, where required, the amount of the Bid Security/Bid Bond/Surety Bond shall be forfeited to BCPS as liquidated damages not as a penalty. This bond must be provided with the proposal/bid submission and failure to do so may be cause for rejection of the bid as being non-responsive. The cost of the bid bond will be borne by the bidder(s) in all instances.
- 5.2 If a surety bond is required it shall be written on AIA Document A310, Bid Bond, unless otherwise provided in the Bidding Documents and the attorney-in-fact who executes the bond on behalf of the surety shall affix to the bond a certified and current copy of the power of attorney.
- 5.3 BCPS will have the right to retain the bid security of Bidders to whom an award is being considered until either (a) the Contract has been executed and bonds, if required, have been furnished or (b) the specified time has elapsed so that bids may be withdrawn or (c) all proposals/bids have been rejected.
- 5.4 All bonds must be approved by surety companies which are in the most current Circular 570 "Surety Companies Acceptable on Federal Bonds" as issued by the U.S. Treasury, Bureau of Government Finance Operations, Division of Banking and Cash Management, Washington, D.C. 20011. If a bonding company is used that is not on this list, the contract will be *Terminated for Default* or if the required bond is a bid bond, this is just cause for rejection of the bid as being non-responsive.
- 5.5 Performance Bonds and/or payment bonds are required for proposals/bids meeting the following conditions. The Award Bidder(s) of this contract may be required to submit either one or both of these bonds within ten (10) days of receipt of the Notice of Intent to Award and in accordance with the terms stated below. The cost of the performance bond and/or payment bond will be borne by the bidder(s) in all instances.
- 5.5.1 Performance Bond shall be required for contracts and/or awards of construction contracts in excess of \$30,000.00 for the amount of 100%

of the contract price to cover faithful performance of the contract. Simultaneously with his delivery of the executed contract, the Award Bidder must deliver to BCPS an executed bond in the amount of one hundred percent (100%) of the accepted bid as security for the faithful performance of his contract and for the payment of all persons performing labor or furnishing materials in connection therewith, prepared on the standard bond form A-311 as approved and issued by the American Institute of Architects and having as surety thereon such surety company or companies as are acceptable on bonds given to the United States Government and approved by the Board of Education of Baltimore County and are authorized to transact business in this State. Performance Bond, shall be made out in the name of the "**Board of Education of Baltimore County**". They shall be provided to the **Office of Purchasing, Contracting Assistant, 1940 Greenspring Drive, Suite G, Timonium, MD 21093.**

5.5.2 Payment Bond shall be required for contracts and/or awards of construction contracts in excess of \$30,000.00 for the amount of 100% of the contract price as security for the payment of all persons performing labor and furnishing materials in connection therewith when required by BCPS. Payment Bonds shall be made out in the name of the "**Board of Education of Baltimore County**". They shall be provided to the **Office of Purchasing, Contracting Assistant, 1940 Greenspring Drive, Suite G, Timonium, MD 21093.**

5.6 Certified checks in the amount(s) stated above will be accepted in lieu of the performance bond and payment bond only upon prior approval of the Supervisor of Purchasing. If checks are approved for acceptance in lieu of either bond, they should be in the same amount as these bonds; be separate checks; and should clearly designate the purpose - i.e., performance of payment.

5.6.1 Certified checks, if submitted, will be deposited in the BCPS bank account(s). Upon successful completion of the contract, check(s) will be drawn upon the Board's bank account(s) for the full amounts of both certified checks.

5.6.2 Certified checks shall be made out in the name of the "**Board of Education of Baltimore County**". They shall be provided to the **Office of Purchasing, Contracting Assistant, 1940 G Greenspring Drive, Timonium, MD 21093.**

5.7 A letter of credit drawn on a bank with a local branch may be used in place of bonds. Letters of credit should list the beneficiary as Board of Education of Baltimore County. Letters of credit drawn on a bank shall be made out in the name of the "**Board of Education of Baltimore County**". They shall be provided to the **Office of Purchasing, Contracting Assistant, 1940 G Greenspring Drive, Timonium, MD 21093.**

## **6.0 TIE BIDS**

- 6.1 In the event of tie bids, where all other factors such as past performance on purchases or bidder's service or delivery record are considered comparable, the award(s) shall be made to one of the tie bidders in the following order of preference: Baltimore County minority and/or small business enterprise vendor; the Baltimore County based bidders; out-of -county but Maryland based minority and/or small business enterprise vendor; the out-of-county but Maryland based bidder; out-of-state minority and/or small business enterprise vendor and the out-of-state based bidder.
- 6.2 In the event a tie bid still exists, the Manager, Office of Purchasing or their designee, shall conduct a coin toss for selection of the potential Award Bidder(s) or seek a geographical, proportional or divided award of contract, whichever is in the best interest of BCPS.

## **7.0 BID PRICES**

- 7.1 Any bidder may withdraw his bid submission prior to the bid opening date and time specified. After this, BCPS has a period of 120 days to issue a Purchase Order or have award of contract approved by the Board of Education. The bidder agrees to retain all prices and requirements of the bid until the completion of the contract period
- 7.2 Unit Prices must be rounded off to no more than two (2) decimal places, unless otherwise specified.
- 7.3 Cash discounts will not be taken into consideration in determining a contract award. All discounts, other than prompt payment, are to be included in bid price.
- 7.4 BCPS reserves the right to accept price reductions from the award bidder during the term of this contract.
- 7.5 BCPS will not accept any proposals with bidder escalator clauses, unbalanced figures or irregular features.

## **8.0 TAXES AND PERMITS**

- 8.1 Materials, which are incorporated into work under formal or informal contracts, are not exempt from the Maryland State Sales or Use Tax. Award Bidders shall be responsible for paying such taxes when purchasing materials.
- 8.2 Award Bidders shall obtain and pay for any permits required.

## **9.0 BILLING AND PAYMENTS**

- 9.1 All invoices are to be submitted in duplicate and mailed as specified and directed to either:

Baltimore County Public Schools  
Engineering & Construction  
9610 Pulaski Park Drive, Suite 204

Baltimore, Maryland 21220

OR

Baltimore County Public Schools  
Accounts Payable  
1940 Greenspring Drive, Suite G  
Timonium, MD 21093

- 9.2 To expedite payments you must follow these guidelines:
- 9.2.1 All invoices must contain a valid Baltimore County Public Schools' purchase order number.
  - 9.2.2 An itemized packing slip including the purchase order number and dollar amounts must accompany all supplies and materials delivered.
- 9.3 Payment in full will only be made upon completion of contract.

## **10.0 GOVERNING LAW AND VENUE**

The bid shall be construed in accordance with, and interpreted under, the laws of the State of Maryland. Any lawsuits arising out of such bid shall be filed in the appropriate State Court located in Baltimore County, Maryland.

## **11.0 ADDENDA**

- 11.1 All changes to the bid specifications will be made through appropriate addenda issued from the Office of Purchasing.
- 11.2 Addenda will be available to all who are known by the Office of Purchasing to have received a completed set of Bid Documents.
- 11.3 Copies of Addenda will be made available for inspection wherever Bid Documents are on file.
- 11.4 No Addenda will be issued later than four (4) days prior to the date for receipt of Bids except an Addendum withdrawing the request for Bids or one, which postpones the date for receipt of Bids.
- 11.5 Each Bidder shall ascertain prior to submitting a Bid that they have received all Addendum issued and the Bidder shall acknowledge their receipt on the Addenda Affidavit Form. The Addenda Affidavit Form shall be completed and returned in duplicate with the bid proposal response. Failure to return the Addenda Affidavit Form may be reason for rejection of the bid.

## **12.0 INSURANCE**

- 12.1 Award Bidder's LIABILITY INSURANCE

12.1.1 The Award Bidder shall purchase and maintain in a Company or Companies acceptable to the BCPS such insurance as will protect him from claims set forth below which may arise out of or result from the Award Bidder's operations under the Contract, whether such operations be by himself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of his employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees;
- .4 claims for damages insured by usual personal injury liability coverage, which are sustained (1) by any person as results of an offense directly or indirectly related to the employment of such person by the Award Bidder, or (2) by any other person;
- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting there from;
- .6 claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle; and
- .7 claims for damages because of employee dishonesty by any of the Award Bidder's employees.

12.1.2 The insurance required by Subparagraph 12.1.1 shall be written for not less than the following, or greater if required by law:

- .1 Comprehensive General Liability

Bodily Injury: \$1,000,000 each occurrence--\$1,000,000 aggregate  
Property Damage: \$500,000 each occurrence--\$500,000 aggregate  
or if such insurance is written with a combined single limit, not less than \$1,500,000 each occurrence, \$1,500,000 aggregate. Such insurance shall include:

- .1 Premises/Operations;
- .2 Independent Contractor's;
- .3 Products/Completed Operations to be maintained for two years after final payment;
- .4 Contractual Liability including protection for the Award Bidder from claims arising out of liability in connection with this contract;

- .5 Personal Injury Liability including coverage for offenses related to employment;
- .6 Explosion, Collapse and Underground hazards as applicable
- .2 Comprehensive Automobile Liability
  - Liability - \$1,000,000
  - Personal Injury Protection - Statutory
  - Uninsured Motorists - Statutory
- .3 Workers' Compensation--Maryland Benefits - Statutory  
Employer's Liability - \$100,000
- .4 Blanket Fidelity - Requirement canceled 12/11/84
- .5 **Prime Contractor** Pollution Liability:
  - Each Occurrence Limit: \$1,000,000
  - General Aggregate Limit: \$1,000,000

Claims Made or Occurrence Forms are acceptable

12.1.3 Certificates of Insurance acceptable to the BCPS shall be filed with the BCPS prior to commencement of the Work. The Certificates of Insurance will state that such insurance is in force and cannot be cancelled or released except upon thirty (30) days prior written notice to the Board of Education of Baltimore County. **The Certificate of insurance must name the Board of Education of Baltimore County as an additional insured.**

12.2 BCPS'S LIABILITY INSURANCE--BCPS shall be responsible for purchasing and maintaining its own liability insurance and, at its option, may purchase and maintain such insurance as will protect him against claims which may arise from operations under the Contract. Baltimore County Board of Education is a member of the Board of Education Group Insurance Pool (the Pool), which provides property self-insurance. Coverage is effective July 1 through June 30 annually. The Pool is a self-insurance mechanism, authorized under Maryland law, by which boards of education pool together to provide property self-insurance coverage.

The Board of Education of Baltimore County is subject to the provisions of Md. Code Ann., Educ. '4-105 and Md. Code Ann., Cts. & Jud. Proc. '5-518 limiting liability to \$100,000.00. Pursuant to the provisions of the aforementioned statute, the Board of Education of Baltimore County is a member of the Maryland Association of Board of Education Group Insurance Pool for comprehensive liability coverage to \$100,000.00.

### 12.3 PROPERTY INSURANCE

12.3.1 Unless otherwise provided, the BCPS shall purchase and maintain property insurance, subject to a deductible of \$10,000 to be assumed by the BCPS, upon the entire Work at the site to the full insurable value

thereof. This insurance shall include the interests of the BCPS, the Award Bidder, Subcontractors and Sub-subcontractors in the Work and shall insure against the perils of fire and extended coverage and shall include "all risk" insurance for physical loss or damage including, vandalism and malicious mischief. If the BCPS does not intend to purchase such insurance for the full insurable value of the entire Work, he shall inform the Award Bidder in writing prior to commencement of the Work. The Award Bidder may then effect insurance, which will protect the interests of him, his Subcontractors and the Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the BCPS. If the Award Bidder is damaged by failure of the BCPS to purchase or maintain such insurance and to so notify the Award Bidder, then the BCPS shall bear all reasonable costs properly attributable thereto. The BCPS does not maintain insurance of any kind on tools, equipment, temporary offices, sheds, shacks and other property of the Award Bidder or of his employees, nor materials or supplies stored away from the job site. It shall be the complete responsibility of the Award Bidder to provide for his own protection and that of his employees against any losses of such tools, equipment and other property, and materials and supplies stored away from the job site.

- 12.3.2 The Award Bidder shall purchase and maintain boiler and machinery insurance if this contract includes installation, modification or repair of such equipment. This insurance shall be at limits of not less than \$500,000, covering all boilers and other equipment not covered for explosion by standard property insurance policies. This insurance shall include the interests of the BCPS, the Award Bidder, Subcontractors and Sub-subcontractors in the Work.
- 12.3.3 Any loss insured under Subparagraph 12.3.1 is to be adjusted with the BCPS and made payable to the BCPS as trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Subparagraph 12.3.8. The Award Bidder shall pay each Subcontractor a just share of any insurance moneys received by the Award Bidder, and by appropriate agreement, written where legally required for validity, shall require each Subcontractor to make payments to his Sub-subcontractors in similar manner.
- 12.3.4 BCPS maintains a copy of all policies, which are available to the Award Bidder for inspection before an exposure to loss may occur.
- 12.3.5 If the Award Bidder requests in writing that insurance for risks other than those described in Subparagraph 12.3.1 or other special hazards are included in the property insurance policy, the BCPS shall, if possible, include such insurance, and the cost thereof shall be charged to the Award Bidder by appropriate Change Order.
- 12.3.6 If required in writing by any party in interest, the BCPS as trustee shall, upon the occurrence of an insured loss, give bond for the proper performance of his duties. He shall deposit in a separate account any money so received, and he shall distribute it in accordance with such

agreement as the parties in interest may reach, or in accordance with an award by arbitration in which case the procedure shall be as provided. If after such loss no other special agreement is made, replacement of damaged work shall be covered by an appropriate Change Order.

12.3.7 BCPS as trustee shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within five days after the occurrence of loss to the BCPS's exercise of this power, and if such objection be made, arbitrators shall be chosen. The BCPS or trustee shall, in that case, make settlement with the insurers in accordance with the directions of such arbitrators. If distribution of the insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

12.3.8 BCPS and Award Bidder waive all rights against (1) each other and the Subcontractors, Sub-subcontractors, agents and employees each of the other, and (2) the Architect and separate contractors, if any, and their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other perils to the extent covered by insurance obtained pursuant to this Paragraph 12.3 or any other property insurance applicable to the Work, except such rights as they may have to the proceeds of such insurance held by the BCPS as trustee. The foregoing waiver afforded the Architect, his agents and employees shall not extend to the liability of the Architect, his agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Architect, his agents or employees providing such giving or failure to give is the primary cause of the injury or damage. The BCPS or the Award Bidder, as appropriate, shall require of the Architect, separate Contractors, Subcontractors and Sub-subcontractors by appropriate agreements, written where legally required for validity, similar waivers of each in favor of all other parties enumerated in this Subparagraph 12.3.6.

12.3.9 If BCPS finds it necessary to occupy or use a portion or portions of the facility where work is being done prior to Substantial Completion thereof, such occupancy shall not commence prior to a time mutually agreed to by the BCPS and Award Bidder and to which the insurance company or companies providing the property insurance have consented by endorsement of the policy or policies. This insurance shall not be cancelled or lapsed on account of such partial occupancy. Consent of the Award Bidder and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.

#### 12.4 Loss of Use Insurance

The BCPS, at its option, may purchase and maintain such insurance as will insure him against loss of use of his property due to fire or other hazards, however caused.

#### 12.5 Evidence of Insurance

- 12.5.1 Prior to the award of contract, the Award Bidder is required to submit a certificate of insurance evidencing Worker's Compensation and Employer Liability Insurance in the amounts required above, and in addition, this certificate will indicate the amounts of insurance carried by the Bidder of the following types: Comprehensive General Liability Insurance, Comprehensive Automobile Insurance, Excess Liability Insurance, and any other insurance coverage maintained by the Award Bidder. The Certificates of Insurance will state that such insurance is in force and cannot be cancelled or released except upon thirty (30) days prior written notice to the Board of Education of Baltimore County. **The Certificate of insurance must name the Board of Education of Baltimore County as an additional insured.**
- 12.5.2 All Required Insurance Coverage must be underwritten by insurers allowed to do business in the State of Maryland and acceptable to the Board. The insurers must also have a policyholder's rating of "B" or better, and a financial size of "Class VII" or better in the latest evaluation by A. M. Best Company. The board hereby grants specific approval for the acquisition of worker's compensation and employer's liability insurance from the Injured Worker's Insurance Fund of Maryland.

### **13.0 DIRECT DAMAGES**

In the event the Award Bidder fails to deliver the goods or services of the contract in accordance with the specifications, BCPS reserves the right to purchase the goods/services on the open market. All expenses incurred by BCPS as a result of such purchases will be deducted from the monies owed or monies which may become due.

### **14.0 TERMINATIONS/SUSPENSIONS FROM CONTRACT**

#### 14.1 Termination by BCPS for Cause

##### 14.1.1 BCPS may terminate the Contract if the Award Bidder:

- .1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Award Bidder and the Subcontractors;
- .3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- .4 otherwise is guilty of substantial breach of a provision Of the Contract Documents such, but not limited to: (1) Maintain progress in accordance with Project schedule; (2) Prevents other contractors from meeting their scheduled progress; (3) has unsatisfactorily performed the contract.

- 14.1.2 When any of the above reasons exist, BCPS, after consultation with the Construction Manager, and after determining that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of BCPS and after giving the Award Bidder and the Award Bidder's surety, if any, seven days written notice, terminate employment of the Award Bidder and may, subject to any prior rights of the surety take the following actions:
- .1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Award Bidder
  - .2 accept assignment of subcontracts and
  - .3 finish the Work by whatever reasonable method BCPS may deem expedient.
- 14.1.3 When BCPS terminates the Award Bidder for one of the reasons stated above, the surety shall not, without the written consent of BCPS, retain the Award Bidder for the Work and the Award Bidder shall not, without written consent of BCPS, perform any of the Work.
- 14.1.4 When BCPS terminates the Contract for one of the reasons stated above, the Award Bidder shall not be entitled to receive further payment until the Work is finished.
- 14.1.5 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Construction Manager's and Architect's services and expenses made necessary thereby, such excess shall be paid to the Award Bidder. If such costs exceed the unpaid balance, the Award Bidder shall pay the difference to BCPS. The amount to be paid to the Award Bidder or BCPS, as the case may be, shall, upon application, be certified by the Architect after consultation with the Construction Manager and this obligation for payment shall survive termination of the Contract.
- 14.2 Termination for Convenience: In the event that BCPS determines to terminate this contract for convenience, then BCPS will provide the Contractor with written notice of that termination for convenience. The parties agree that the provisions of this contract, which would be their nature survive final acceptance of the work or service described and required by the contract and bid documents, shall remain in full force and effect after any termination for convenience in order to implement the following provisions.
- 14.2.1 In the event of such a termination for convenience, the Contractor agrees to waive any claims for damages including, but not limited to anticipated profits, mark-ups or payroll reimbursements. The Contractor agrees that upon such termination for convenience the sole right and/or remedy available to the Contractor will be the right of the Contractor to be paid the actual cost of all work properly performed by the Contractor

prior to the date of the termination. The Contractor further agrees that it will only be entitled to payment for work not previously paid for in other sums of money already received by the Contractor under any of the terms and conditions of this agreement. If at the date of such termination that Contractor has properly purchased, prepared or fabricated, off the site, any goods for subsequent incorporation in the work, and if the Contractor delivers such goods to the site or to such other place as BCPS shall reasonably direct, then the Contractor shall be paid for such goods or materials.

14.2.2 Upon receipt of such notice the Contractor shall, unless notice directs otherwise, immediately discontinue the work on that date and, to the extent specified in the notice, place no further order or subcontracts for materials, equipment, services or facilities except as may be necessary for completion of such portion of the work, as is not discontinued: promptly make every reasonable effort to procure cancellation upon terms satisfactory to BCPS of all orders and subcontracts to the extent that related to the performance of the discontinued portion of the work, and shall thereafter do only such work as may be necessary to preserve and protect work already in progress and to protect materials, plants and equipment on the site or in transit thereto.

14.2.3 Upon such termination, the obligations of the contract shall continue as to portions of the work already performed and as to bona fide obligations assumed by the Contractor prior to the date of termination.

14.2.4 The Contractor agrees that the Contractor does not have a right to termination for convenience.

14.3 BCPS reserves the right to terminate this contract, in whole or in part, because of non-appropriation of funds by the fiscal authorities. In the event of a termination for non-appropriation of funds, the provisions of Paragraphs 14.2.1, 14.2.2 and 14.2.3 above shall be controlling.

## **15.0 DRUG, TOBACCO, AND ALCOHOL**

15.1 All BCPS properties are "drug, tobacco, and alcohol free zones" as designated by local and state laws. Neither the Award Bidder nor any of his employees (or subcontractors) are permitted to have any drugs, tobacco, or alcohol product on school property. Use or possession of such items on school properties will result in immediate termination of the contract. Upon termination of the contract, the Award Bidder will be paid for all services performed to date but will not be paid for any lost profit or anticipated profits due to termination of the contract. The Award Bidder will also be removed from all bids with BCPS for a period of time not to exceed two years and BCPS will provide an "unsatisfactory" reference when inquiries are made.

## **16.0 APPEAL PROCESS**

16.1 BCPS intends the appeal process to resolve contract disputes in a manner consistent with the effort to promote fair and open competition. Any bidder

objecting to the recommendation for award or the award of contract may appeal the action to the Office of Purchasing by formally notifying the designated Purchasing Agent in writing no later than seven calendar days after the basis for appeal is known. The bidder shall have an opportunity to meet and/or talk with the Purchasing Agent to present the issues. A formal written response to the appeal shall be issued in a timely manner.

16.1.1 For an appeal of recommendation of award of contract, the decision of the Purchasing Agent shall be reviewed by the Manager, Office of Purchasing. The Manager, Office of Purchasing may approve, modify or disapprove the decision of the Purchasing Agent. In disapproving, the decision, the appeal will be remanded to the Purchasing Agent for resolution. In all other cases, the decision of the Manager, Office of Purchasing is the final action by BCPS. The decision shall include a statement of the decision, with supporting material. Bidders receiving a decision on an appeal of recommendation of award shall forfeit the right to continue the appeal process of the award of contract.

16.1.2 In the event a bidder determines cause to appeal an award of contract, which has been approved by the Board of Education of Baltimore County, said action must be filed in writing to the Executive Director, Division of Physical Facilities. This action shall occur not later than seven days from the date of award of contract. The Executive Director, Division of Physical Facilities reserves the right to meet with the protesting Bidder as a part of the appeal investigation. A formal written decision will be issued by the Executive Director, Division of Physical Facilities in a timely manner.

16.1.3 Should the Bidder wish to pursue the appeal of award of contract further, administrative procedures have been established for such action, which will be outlined at the time the appeal is made.

## 16.2 Appeal of Suspension or Termination.

16.2.1 Any Award Bidder objecting to their Suspension or Termination may protest the action to the Department of Physical Facilities by formally notifying the Executive Director, Department of Physical Facilities in writing within fourteen (14) calendar days from the date of the notification. The Award Bidder shall have an opportunity to meet with the Executive Director, Department of Physical Facilities, or his designee, to present his issues.

16.2.2 If the Award Bidder is unsatisfied with the outcome of this meeting, then the Award Bidder may utilize the administrative process to further the appeal.

16.3 BCPS reserves the right to proceed with the work under the contract during the appeal process if BCPS determines that this is in the best interest of BCPS, in the opinion of BCPS.

- 16.4 Appeal of Termination for Non-Appropriation of Funds or for loss of Appropriated funds: NONE
- 16.5 Any costs incurred in the appeal process will be borne by the bidder(s) in all instances.

## 17.0 **LITIGATION PROCEDURES**

- 17.1 All questions involving interpretation of the Contract Documents and of a value of less than \$10,000, which cannot be settled by agreement between the BCPS Project Manager and the Award Bidder shall be referred to the next highest department level manager for a decision. If the Award Bidder is not satisfied with the decision rendered, the matter shall, within thirty (30) days from that decision, the matter shall be referred to the Baltimore County Attorney or their designee sitting as Arbitrator with all of those rights, responsibilities, and duties mandated pursuant to Section 3-201, et seq., Court and Judicial Proceedings Article, Annotated Code of Maryland. Said decision rendered shall be final, subject only to Section 3-223 and 3-224, Court and Judicial Proceedings Article, Annotated Code of Maryland.
- 17.2 All questions involving interpretation of the Contract Documents which involve a value of \$10,000 or more, and can not be resolved between the Award Bidder and BCPS Manager shall be referred to the Departmental Administrator for a review. If the Award Bidder is not satisfied with the decision rendered, the matter may be appealed to the BCPS, Department's Executive Director.
- 17.3 If the Award Bidder is unsatisfied with the decision of the Executive Director, then the Award Bidder may utilize administrative procedures established by the Board of Education for such action.
- 17.4 Waiver of Jury Trial
  - 17.4.1 The Vendor and board hereby waive trial by jury in any action or proceeding to which the board and/or the Vendor are parties arising out of or in any way pertaining to this agreement. It is agreed and understood that this waiver constitutes a waiver of trial by jury of all claims against all parties to such actions or proceedings, including claims against parties who are not parties to this agreement. This waiver is knowingly, willingly and voluntarily made by the board and the Vendor and the board and the Vendor hereby represent and warrant that no representations of fact or opinion have been made by an individual to induce this waiver of trial by jury or to in any way modify or nullify its effect. The board and the Vendor further represent and warrant that they have been represented or have had the opportunity to be represented, in the signing of this agreement and in the making of this waiver by legal counsel, selected of their own free will, and that they have had the opportunity to discuss this waiver with counsel.

## **18.0 DISCRIMINATION**

- 18.1 The Award Bidder will not discriminate against any employee or applicant for employment because of race, creed, color or national origin. The Award Bidder will take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, creed, color or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Award Bidder agrees to post in conspicuous places, available to employees and applicants, notices provided by the BCPS setting forth the provisions of this nondiscrimination clause.
- 18.2 The Award Bidder will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice to be provided by the BCPS advising the said labor union or workers' representative of the Award Bidder's commitments under this section, and the Award Bidder shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 18.3 The Award Bidder shall furnish, if requested by BCPS, a compliance report concerning their employment practices and policies in order for BCPS to ascertain compliance with the special provisions of this contract concerning discrimination in employment.
- 18.4 In the event the Award Bidder is deemed noncompliant with the nondiscrimination clause of this contract, this contract may be canceled, terminated or suspended in whole or in part and the Award Bidder may be declared ineligible for further/future BCPS' work.
- 18.5 The Award Bidder shall include the special provisions outlined herein, pertaining to nondiscrimination in employment in every subcontract or purchase order utilized by him in order to carry out the terms and conditions of this contract, so that such nondiscrimination in employment provisions shall be binding on each Subcontractor.

## **19.0 GENERAL CONTRACT CONDITIONS**

The standard printed form A-201, General Conditions of the American Institute of Architects, current edition, will form the General Conditions of the contract.

## **20.0 BUY AMERICAN STEEL ACT**

Bidders shall comply in every respect with Article 21, Section 17 – 301 to Section 17 – 306, Annotated Code of Maryland.

## **21.0 AMERICAN DISABILITIES ACT**

The Department of Facilities routinely opens all sealed bids in a public setting identified within the language of each specification. If a prospective bidder has special needs, the

bidder shall contact the Department of Facilities at least seventy-two (72) hours in advance of the published bid opening date and time to arrange for such services.

## **22.0 NON-HIRING OF EMPLOYEES BY AWARD BIDDER OR BCPS**

22.1 No employee of the BCPS or any unit thereof, whose duties as such employee include matters relating to or affecting the subject matter of this contract, shall, while so employed, become or be an employee of the party or parties hereby contracting with the BCPS or any unit thereof.

22.2 No employee of the Award Bidder or any unit thereof, whose duties as such employee include matters relating to or affecting the subject matter of this contract, shall, while so employed, become or be an employee of the party or parties hereby contracting with the Award Bidder or any unit thereof.

## **23.0 FINANCIAL DISCLOSURE**

The Award Bidder shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article, Annotated Code of Maryland, which requires that every business that enters into contracts, leases or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more, shall within 30 days of the time when the aggregate value of these contracts, leases or other agreements reached \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

## **24.0 POLITICAL CONTRIBUTION DISCLOSURE**

The Award Bidder shall comply with the provisions of Article 33, Section 30-1 through 30-4 of the Annotated Code of Maryland, which require that every person that enters into contracts, leases, or other agreements with the State of Maryland, including its agencies or a political subdivision of the State, during a calendar year under which the person receives in the aggregate \$10,000 or more, shall, on or before February 1 of the following year, file with the Secretary of State of Maryland certain specified information to include disclosure of political contributions in excess of \$100 to a candidate for elective office in any primary or general election.

## **25.0 RETENTION OF RECORDS**

The Award Bidder shall retain and maintain all records and documents relating to this contract for three (3) years after final payment by BCPS hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of BCPS or designed, at all reasonable times.

## **26.0 ANNULMENTS AND RESERVATIONS**

26.1 BCPS reserves the right to reject any or all proposals and re-advertise for other bids.

26.2 BCPS reserves the right to waive technical defects within submittals.

- 26.3 BCPS reserves the right to order the said equipment, materials, supplies or services as described within the specifications, and also reserves the right not to order any.
- 26.4 BCPS may conduct any necessary investigation to determine the ability of the bidder to perform the work, and the bidder shall furnish to the BCPS all such information and data requested. BCPS reserves the right to reject any proposal if the evidence submitted by the bidder or investigation of such bidder fails to satisfy BCPS that such bidder is properly qualified to carry out the obligations of the Contract and to complete all stipulated requirements. Conditional proposals will not be accepted.
- 26.5 BCPS reserves the right to annul any contract, if in its opinion there shall be a failure, at any time, to perform faithfully any of its stipulations, or in case of any willful attempt to impose upon BCPS, materials, products and/or workmanship inferior to that required by the Award Bidder, and any action taken in pursuance of this latter stipulation shall not affect or impair any rights or claims of BCPS to damages for the breach of any covenant of the contract by the Award Bidder.
- 26.5.1 Should the Award Bidder fail to comply with the conditions of this contract or fail to complete the required work within the time stipulated in the contract, except for circumstances beyond their control, including but not limited to Act of GOD, war, flood, governmental restrictions or the inability to obtain transportation, BCPS reserve the right to purchase these in the open market, or to complete the required work and receive liquidated damages as specified in this document.
- 26.5.2 Should the Award Bidder be prevented from furnishing any item or items, or from completing the required work included in the contract, by reason of such failures caused by circumstances beyond their control, including but not limited to Act of GOD, war, flood, governmental action or the inability to obtain transportation, BCPS reserve the right to withdraw these from the operation of this contract without incurring further liabilities.
- 26.6 BCPS reserves the right to issue Blanket Purchase Orders to encumber, i.e. make available without obligating to spend, certain monies for Award Bidder's services. The Blanket Purchase Order dollar value does not in any way represent a guarantee of potential contracts, jobs, work assignments or monies during the course of the contract. The allocation of funds is at the discretion of BCPS.
- 26.7 BCPS reserves the right to discussions resulting in best and final offers.
- 26.7.1 Based on the Evaluation Committee's initial review of the proposals, the issuing office may invite, without cost to BCPS, ranking finalists to make a presentation of their proposal and their capabilities as further consideration in the selection process. BCPS reserves the right to recommend a Bidder for contract award on the basis of initial proposals without discussions or negotiations. However, Bidders should not rely on having an opportunity, during any negotiation, to change their offer. Discussions or negotiations may be conducted with all responsible

Bidders whose proposals are initially classified as reasonably acceptable for award.

26.7.2 Should BCPS determine that further discussions would be in the best interests of the BCPS, the Purchasing Agent shall establish procedures and schedules for conducting discussions and will notify qualified Bidders.

26.7.3 When in its best interest, BCPS may permit all responsible offers whose proposals are classified as reasonably susceptible for award to revise their initial proposal by submitting Best and Final Offers.

26.8 Licenses for boilers, equipment or buildings are the responsibility of BCPS and shall not be part of this Agreement.

26.9 BCPS shall have the right to reject any or all Bids, reject a Bid not accompanied by a required bid security or by other data required by the Bidding Documents, or reject a Bid which is in any way incomplete or irregular.

## **27.0 DELIVERY REQUIREMENTS**

27.1 All deliveries must be scheduled, received and will be the responsibility of the Award Bidder and deliveries by "Drop Shipment" from other sources will not be accepted by BCPS.

27.2 All supplies and/or materials must be held by the Award Bidder until needed at the site, unless they can be stored in the area in which the work is to be done and that area has been closed to occupant usage. The Award Bidder shall obtain the permission of the using institution's representative regarding any needed storage of materials and equipment. Such storage shall be done in such a manner as not to interfere with the building schedule. The Award Bidder shall be responsible for any and all accidents caused by negligence from this source. BCPS does not accept responsibility for losses of material or equipment, regardless of approval to store, in any institution's facilities or grounds.

## **28.0 INSPECTIONS**

28.1 BCPS reserves the right to have inspectors on the premises of the manufacturer during the process of manufacture of any products being furnished under this contract for as long as may be considered necessary by BCPS. All expenses of the inspectors shall be borne by BCPS.

28.2 The presence of the inspectors at the site of manufacture of the products shall not relieve the Award Bidders of responsibility for faulty workmanship of materials which may be discovered at any time after delivery and prior to final acceptance in accordance with the specifications. In case of factory inspection of items being manufactured for BCPS, every facility shall be afforded inspectors by the manufacturers for the prosecution of their work.

## **29.0 COMPLIANCE WITH SPECIFICATIONS**

- 29.1 The bidder shall abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully complete every part as the true intent and meaning of the drawings and specifications as described.
- 29.2 The Award Bidder, after award and prior to starting work may be required to submit working drawings or detailed descriptive data identified as acceptable to BCPS, which provide sufficient data to enable BCPS to judge the Award Bidder's compliance with the specifications.
- 29.3 Where the requirements of the specifications call for higher grade and are not in conflict with the laws, ordinances, etc., the specifications shall govern.
- 29.4 Where the requirements of the laws, ordinances, etc., are mandatory, they shall govern.
- 29.5 In case of any apparent conflict between the specifications and such laws, ordinances, etc., the Award Bidder shall call the attention of the applicable BCPS designee(s) to such conflict for a decision before proceeding with any work.

## **30.0 GUARANTEE AND WARRANTY**

- 30.1 The Contractor shall unconditionally guarantee the materials and workmanship of all equipment and materials furnished by the Contractor, its subcontractors or suppliers for a period of at least TWO (2) YEAR from the date of acceptance and/or substantial completion of the installation by BCPS. If the manufacturer warrants equipment for a period longer than two years the Contractor shall pass through this time frame to BCPS. All warranty work shall be accomplished to the satisfaction of the owner within SEVENTY TWO (72) HOURS of notification of the work to be done.
- 30.2 In the event the Award Bidder fails to repair, replace, adjust, rectify, remedy, correct or complete the items, defects, deterioration, faulty design or installation and/or un-workmanlike performance, then BCPS may have the right to secure the services of another contractor to correct the work or complete the performance required by the award of this bid. The Award Bidder shall be solely responsible for any and all cost, expenses and monies due the new contractor plus ten percent (10%) for BCPS to reimburse the Board for the expenses of obtaining a new contractor.
- 30.3 The Award Bidder must act as the manufacturer's agent for all warranty claims.

## **31.0 SUBCONTRACTORS**

- 31.1 All subcontractors, prior to their use by the Award Bidder in any BCPS facility, must be approved by BCPS. Award Bidder shall submit with their bid a list of subcontractors that they will employ and utilize for BCPS work. The responsibility for updating this list is the Award Bidders and utilization of a BCPS non-approved subcontractor is grounds for suspension or termination.

- 31.2 The Award Bidder shall give their constant personal attention to the faithful execution of this contract, shall keep the same under their own control, and shall not assign by power of attorney or otherwise, the work or any part thereof without the previous written consent of Coordinator of Purchasing. The Award Bidder shall provide the name of the subcontractor(s) he intends employing, the portion of the materials/labor to be furnished, their place of business, and such other information as requested by the bid specifications and/or BCPS. The information may be used in considering the potential performance capabilities of the subcontractor(s).
- 31.3 The Award Bidder shall not, without prior written consent of BCPS, assign any of the moneys payable under the contract.

### **32.0 AWARD BIDDER'S RESPONSIBILITY**

- 32.1 Award Bidders shall be required under Article 56, Section 270(4), of the Annotated Code of Maryland, to provide proof of Certificate of Registry.
- 32.2 Award Bidders are responsible to protect all existing and newly installed work, materials, equipment and landscaping. Any BCPS property damaged shall be replaced or repaired to the satisfaction of BCPS.
- 32.3 Award Bidders are responsible for having all employees sign-in and sign-out at the work site. Use the appropriate form provided by the school office.
- 32.4 Award Bidders are responsible for daily removal of all debris from the work site and to keep the work site tidy as work progresses. Under no circumstance shall Award Bidders use BCPS garbage and/or recycling dumpsters to dispose of debris.
- 32.5 At no cost to the Award Bidder, BCPS shall provide and pay for water, heat, telephone and utilities used or consumed by the Award Bidder during the performance of the work or services hereunder if they are currently available at the work site. However, the Award Bidder shall install and pay for the costs of any temporary facilities not already in existence which will be required during construction for accessing such water, heat and utilities.
- 32.6 Award Bidders are responsible for coordinating planned interruptions of utility service with BCPS.
- 32.7 Award Bidders are responsible to notify BCPS of any occurrence of pre-existing condition that would prevent the completion of work as Specified. Any changes in the scope of work and any resulting changes in cost shall be agreed to in writing by BCPS. BCPS assumes no responsibility for verbal changes in the scope of work or cost.
- 32.8 Award Bidders may be responsible at the discretion of BCPS to complete the American Institute of Architects (AIA) Abbreviated form of Agreement Between BCPS and Award Bidder.

- 32.9 Award Bidders are responsible to provide their own materials, tools and equipment. BCPS assumes no responsibility for vandalism or theft of Award Bidder s property.
- 32.10 At the time of the opening of bids each bidder will be presumed to have inspected the site and to have read and to be thoroughly familiar with the Solicitation, Specification, Plans and Contract Documents (including all Addenda). The failure or omission of any bidder to receive or examine any form, instrument, or document, shall in no way relieve any bidder from any obligation in respect of his bid.
- 32.11 Award Bidder shall be responsible for ensuring that employees assigned to BCPS sites, either employed by Award Bidder or their Sub-contractor(s), have successfully passed a criminal background check. The Award Bidder shall advise the BCPS of the intention to use any employees, including sub-contractor employees that are hired or obtained from any penal pre-release or work-release programs. In the event such employees are used, notification to BCPS shall include name and violation for each individual. The contractor shall take reasonable precautions when selecting such individuals and provide whatever safeguards are necessary for effective supervision. Such employees are not permitted inside school buildings when the nature of the contract is for outside work.
- 32.12 BCPS uses an internet and email based system to collect evaluations from key participants (vendors, contractors, subcontractors, designers, etc.) on its projects. This system is designed to facilitate open, detailed communication about any technical, communications, administrative or management issues that arise during the course of the contract, as well as to insure that potential problems are specifically identified and addressed as early in the contract period as possible. BCPS estimates that participation in the survey process may require up to one hour of supervisory-level time per interval, and intervals may occur as frequently as every 60 days. The successful contractor and major subcontractors will be furnished with written and verbal instructions about how to participate in this evaluation process, and will be expected to participate fully in the evaluation process for the duration of the contract period. Online access to completed evaluations is not guaranteed and will be at the discretion of BCPS.

### **33.0 SAFETY AND CODE REQUIREMENTS**

All materials and labor shall comply with the following requirements:

- 33.1 Award Bidder shall comply with all Federal, State, and Local laws, ordinances and regulations pertaining to work under their charge and these shall be construed as the minimum requirements of these specifications.
- 33.2 Award Bidder certifies that their firm adheres to or follows non-discriminatory practices with respect to the employment of promotion of personnel without regard to color, creed, race, sex, or national origin.
- 33.3 Award Bidder shall provide all equipment and machinery furnished and delivered to BCPS complying with the Safety regulations as required by OSHA and the

Maryland State Safety Health Act known as MOSHA meeting the CFR-1910 MOSH Standard.

33.4 Award Bidder shall submit Material Safety Data Sheets (MSDS) for all supplies, materials, equipment or any other substances furnished and/or installed under this proposal in accordance with OSHA Hazardous Communication Standard 29 CFR 1910.101, 29 CFR 1910.1200 and 29 CFR 1926.58 or any other applicable state, federal, or local regulation. The Award Bidder must submit MSDS sheets to each school or facility that receives any such supplies, materials, equipment or any other substances furnished and/or installed by the Award Bidder. Failure on the part of the Award Bidder to furnish the necessary MSDS sheets will result in the withholding of final payment.

33.5 Standards are as defined in the latest issue from the following:

AABC	Associated Air Balance Council
ADC	Air Diffusion Council
AGA	American Gas Association
ADA	American's With Disabilities Act
AMCA	Air Moving and Conditioning Association
ANSI	American National Standards Institute
ARI	Air Conditioning and Refrigeration
ASHRAE	American Society of Heating, Refrigerating and Air Conditioning Engineers
ASME	American Society of Mechanical Engineers
ASTM	American Society of Testing and Materials
AWS	American Welding Society
AWWA	American Water Works Association
BOCA	Building Officials and Code Administrators
COBA	Council of American Building Officials
CPSC	Consumer Product Safety Commission
CS	Commercial Standard
FM	Factory Mutual
IBR	Institute of Boiler and Radiator Manufacturers
IEEE	Institute of Electrical and Electronics Engineers
MSSP	Manufacturers Standards Society of the Valve and Fittings Industry
NEC	National Electrical Code
NEMA	National Electrical Manufacturers Association
NFPA	National Fire Protection Association
SMACNA	Sheet Metal and Air Conditioning Contractors National Association
TEMA	Tubular Exchanger Manufacturers Association
TIMA	Thermal Insulation Manufacturers Association
UL	Underwriters Laboratories

33.6 No new, replacement or restoration materials shall contain asbestos or asbestiform minerals in an amount greater than 0.0% as determined by polarized light microscopy (PLM) as prescribed in Federal Regulation 40 CFR 763.87. For materials that are tightly bound (e.g. floor tile, roofing asphalt and felts, adhesive/mastic, caulk, glaze, etc.) and for which PLM analysis is not conclusive,

transmission electron microscopy must be used for analysis. If no commercially available material meets this criterion, written authorization for use of the material shall be obtained from the BCPS Project Manager. All materials delivered to or used on BCPS property must be accompanied by a manufacturer's certification to be asbestos free, based upon criterion above. The Material Safety Data Sheet may not be used for this purpose.

- 33.7 No new, replacement or restoration materials shall contain lead in an amount greater than 0.00 milligrams per liter or 0.00 milligrams per kilogram. If no commercially available material meets either criterion, written authorization for use of the material shall be obtained from the BCPS Project Manager.
- 33.8 All Baltimore County codes and regulations including the latest edition of the International Building Code are relevant.
- 33.9 Public Law 91-596 dated December 29, 1970, entitled Occupational and Health Act of 1970.
- 33.10 Award Bidder shall insure that all modifications address the provisions of the ADA.

#### **34.0 CONCEALED OR UNKNOWN CONDITIONS**

In the performance of any work or services, if the Award Bidder encounters conditions at the Facilities that are (1) subsurface if otherwise concealed physical conditions that differ materially from those indicated on the drawings furnished by BCPS or (2) unknown physical conditions of an unusual nature that differ materially from those conditions normally found to exist and generally recognized as inherent in the construction activities if the type and character as that which is described, then the Award Bidder shall notify BCPS of such conditions promptly, prior to significantly disturbing the same, and in no event later than 2 days after the first observation the conditions. If such conditions differ materially and cause an increase or decrease in the Award Bidder's cost of, or time required for, performance of any part of the work or services, the Award Bidder shall be entitled to, and BCPS shall consent in writing to, an equitable adjustment in the amounts paid to the Award Bidder pursuant to this Agreement, the times for performance or both.

#### **35.0 INDEMNIFICATION**

- 35.1 To the fullest extent permitted by law, the Award Bidder shall indemnify and hold harmless the Baltimore County Public Schools and the Baltimore County Board of Education and its officials and employees, Construction Manager, Architect, Construction Manager's and Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses including, but not limited to, attorneys' fees, arising out of or resulting from performance of the Work but only to the extent caused in whole or in part by negligent acts or omissions of the Award Bidder, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be constructed to negate, abridge or reduce other rights or obligations of indemnity

which would otherwise exist as to a party or person described within this indemnification.

- 35.2 In claims against any person or entity indemnified within this indemnification by an employee of the Award Bidder, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Award Bidder or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- 35.3 The obligations of the Award Bidder within this indemnification shall not extend to the liability of the Construction Manager, Architect, their consultants and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs, or specifications, or (2) the giving of or the failure to give directions or instructions by the Construction Manager, Architect, their consultants, and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.
- 35.4 Baltimore County Public Schools shall not be responsible for errors or omissions made by the printer or advertising house which prepared the Bid Documents, addenda, or advertising services. If bidders or advertising houses suspect that their set of bidding documents is incomplete or defective, they should contact the Office of Purchasing, immediately.

### **36.0 EXCLUSIONS FROM WORK**

BCPS acknowledges and agrees that the Award Bidder's obligation to furnish equipment and perform construction work or otherwise modify the Facilities, is limited to the work as defined on an individual site basis as determined by BCPS.

### **37.0 ACCESS TO FACILITIES FOR PERFORMANCE**

From the date hereof and throughout the term of this agreement, the Award Bidder shall have reasonable access to the Facilities and relevant personnel of BCPS to perform its obligations and to investigate performance of the equipment, systems and operations of the Facilities.

### **38.0 LIABILITY FOR LOSS OF DATA**

In the event or any data or record necessary for the performance of this Agreement where such loss is due to gross negligence of the Award Bidder, the Award Bidder shall be responsible, irrespective of the cost to the Award Bidder, for the recreation of such lost data or records. BCPS shall be the sole judge as to whether the lost records have been recreated accurately and completely.

### **39.0 SUSPENSION OF WORK**

- 39.1 BCPS may unilaterally order the Award Bidder in writing to suspend, delay, or interrupt all or any part of the work for such period of time as may be appropriate

for the convenience of the BCPS. Such suspensions, delays or interruptions should be for less than sixty (60) days unless there are extenuating circumstances.

- 39.2 The times required and the completion of work shall be equitably adjusted to take into account the period of such suspensions, delay or interruption.
- 39.3 BCPS will compensate the Award Bidder only for the cost(s) to re-mobilize to the Facilities any equipment that had to be leased or rented for the suspension period that was critical to the operation of the Facility and any offsite storage cost(s) besides the Award Bidder's facility that had to be used to store materials related to the work. The Award Bidder shall, at the suspension of work, notify the BCPS of any such charges stating the monetary damages that will incur and shall document weekly in writing to the BCPS the cumulative costs during the delay period. In no way will any approved delay effect the warranty period regarding any accepted completion by the BCPS relating to equipment installed by the Award Bidder, its subcontractors and suppliers.

#### **40.0 DELAYS, EXTENSIONS OF TIME**

- 40.1 The Bidder agrees to perform all work and provide all supplies or materials, in accordance with all the sections of this bid in a timely, continuous and diligent manner in order to comply with the time requirements set forth in this bid and/or the contract. The Bidder acknowledges and agrees that the only party that may grant a legally binding time extension or agree to a substitution of products, materials, equipment and/or supplies is BCPS. Any and all time extensions and/or changes/substitutions of products, materials, equipment and/or supplies must be requested in writing by the Bidder before the extension and/or change takes place and approved in writing by BCPS.
- 40.2 Delays by the Award Bidder causing the completion of Projects to extend past the Commencement Date will not change the Commencement Date for Performance guarantee purposes.

#### **41.0 HAZARDOUS MATERIALS**

- 41.1 The Award Bidder's work and other services pursuant to or in connection with this Agreement includes work connected and associated with asbestos, lead, polychlorinated biphenyl ("PCB"), fluorescent light bulbs, or other hazardous materials (hereinafter, collectively, "Hazardous Materials"). The Award Bidder shall be required to perform identification, abatement, cleanup, control, and removal of Hazardous Materials. BCPS warrants and represents that, except as set forth in the Technical Proposal, there are no Hazardous Materials on the Facilities that will in any way affect the Award Bidder's work or any other services and BCPS has disclosed to the Award Bidder the existence and location of any Hazardous Materials in all areas within which the Award Bidder will be performing any part of the work or other services. The existence or location of any Hazardous Materials that have been disclosed by BCPS to the Award Bidder prior to the execution hereof, or that were otherwise identified in the Technical Specifications, shall be the exclusive responsibility of the Award Bidder.

- 41.2 Should the Award Bidder become aware of or suspect the presence of Hazardous Materials, other than already disclosed by BCPS within the Technical Specifications, the Award Bidder shall immediately stop work in the affected area and notify BCPS. BCPS will be responsible for taking any and all actions necessary to correct the condition in accordance with all applicable laws and regulations. The Award Bidder shall be required to resume performance of the work or any BCPS requested work in the affected areas only in the absence of Hazardous Materials or when the affected area has been rendered harmless. Except as set forth in the Technical Specifications, the Award Bidder shall not be obligated to transport or handle Hazardous Material, to provide any notices to any governmental authority or agency, or to inspect or examine the Facilities for the presence of Hazardous Material.

## **42.0 BIDDER SUBMITTALS**

### **42.1 BIDDERS MUST SUBMIT THE FOLLOWING:**

- 42.1.1 Award Bidders providing skilled labor that requires certification from a local, state, or federal agency, shall provide proof of certification indicating the date of expiration and retain certification for the duration of this contract **within 10 days of being notified of being the apparent award bidder.** The Insurance Certificate must name the "**Board of Education of Baltimore County**" as the "additional insured".
- 42.1.2 Award Bidder's must provide a certificate of insurance evidencing Worker's Compensation and Employer Liability Insurance in the amounts required above, and in addition, this certificate will indicate the amounts of insurance carried by the Award Bidder of the following types **within 10 days of being notified of being the apparent award bidder:**
- Comprehensive General Liability Insurance
  - Comprehensive Automobile Insurance
  - Excess Liability Insurance
- and any other insurance coverage maintained by the Award Bidder

The Certificates of Insurance will state that such insurance is in force and cannot be cancelled or released except upon thirty (30) days prior written notice to the Board of Education of Baltimore County.

- 42.1.3 Award Bidders shall be required under Article 56, Section 270(4), Annotated Code of Maryland, to provide proof of Certificate of Registry and must be licensed to do business in the State of Maryland and provide a tax certification number **within 10 days of being notified of being the apparent award bidder.** Visit the following website to ensure compliance: <http://www.dat.state.md.us/sdatweb/charter.html>
- 42.1.4 Award Bidders who can not provide evidence of having the personnel and equipment to satisfactorily provide the required services in a safe and timely fashion, as determined using criteria developed by BCPS and not necessarily industry standards, will be found to be non-responsive and have their bid rejected. Additionally, BCPS will consider the Award Bidder's equipment for size, suitability to do the work, condition of

equipment, attachments required to do the work. Safety is a primary concern and safety related attachments are required by BCPS. It is the Award Bidders responsibility to supply this information to BCPS with their submittal.

- 42.2 Prior to the award of the Contract the Bidder will be notified in writing if either BCPS or Architect, after due investigation, has reasonable objection to a person or entity proposed by the Bidder. If BCPS or Architect has reasonable objection to a proposed person or entity, the Bidder may, at the Bidder's option, (1) withdraw the Bid, or (2) submit an acceptable substitute person or entity with an adjustment in the Base Bid or Alternate Bid to cover the difference in cost occasioned by such substitution. BCPS may accept the adjusted bid price or disqualify the Bidder. In the event of either withdrawal or disqualification, bid security will not be forfeited.

### **43.0 SUBSTITUTIONS**

Bids shall be based upon the materials, systems, and equipment required by the bidding documents without exception. Where a specific manufacturer or trade name is designated, it is to establish a standard of material, design function, finish and quality. Only products of the named acceptable manufacturers and "or equal" (in quality, accessories, and attachments) are to be used in the Bid. Other products which will perform equally will be considered providing Bidder makes a submittal for substitution in strict accord with, Division 1 of the Technical Specifications - "Substitutions." The Contract award will be made solely on the basis of the Base Bid and Alternate Bids without regard to proposed substitutions and deducts when requested. Proposed substitution may be accepted with the award of the Contract or later by BCPS. After the Contract Award, substitutions will be considered and reviewed by the Consultant who will make acceptance or rejection recommendation to BCPS. The burden of proof of equivalency rests with the Award Bidder and evidence of such equivalency shall be submitted to the Consultant. If the bidder wishes to offer a substitute, the bidder should do so in accordance with subparagraph 43.2.

Proposed substitute products or manufacturers shall be submitted in accordance with the following provisions:

- 43.1 Substitutions will be considered prior to the initial advertisement for bids and after receipt of bids.
- 43.2 Bidders must submit a substitutions statement for the materials, systems and equipment specified with their bid and specification sheets showing and telling exactly where and how the bid does deviate from said specifications, and if in fact it does deviate in any respect, along with any stipulated cost adjustment (add, deduct, or no change) in the space provided on the Form of Proposal.

### **44.0 EMERGENCIES AND NOTIFICATION**

In any case of an emergency the Award Bidder shall immediately notify the Architects, Construction Manager and BCPS by the most expeditious means available. Follow by telegram or written notice, explaining the situation and actions taken. Additional

compensation or extension of time will not be considered or permitted for emergencies arising from delay, damage, or loss.

#### **45.0 OWNER'S RIGHT TO STOP THE WORK**

- 45.1 If the Award Bidder fails to correct Work which is not in accordance with the requirements of the Contract Documents or persistently fails to carry out Work in accordance with the Contract Documents, BCPS, by written order signed personally or by an agent specifically so empowered by BCPS in writing, may order the Award Bidder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however the right of BCPS to stop the Work; shall not give rise to a duty on the part of BCPS to exercise this right for the benefit of the Award Bidder or any other person or entity. This right shall be in addition to and not in restriction or derogation of the Owner's rights under the General Conditions.
- 45.2 If unforeseen conditions occur or are encountered which may substantially impair the quality of the Work unless the Work is suspended, BCPS may, with the written concurrence of the Architect, suspend the Work by notice in writing to the Award Bidder, the Contract Management, and Architect. In the event of such a suspension, the Award Bidder shall be entitled to only adjustments in the Contract Time and an adjustment in the Contract Sum for costs actually incurred at the Project site by reason of such suspension. In any event where the Award Bidder reasonably determines that a suspension is required in such circumstances, the Award Bidder shall promptly notify in writing BCPS and Architect of such determination.

#### **46.0 OWNER'S RIGHT TO CARRY OUT THE WORK**

- 46.1 If the Award Bidder defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven day period after receipt of written notice from BCPS to commence and continue correction of such default or neglect with diligence and promptness, BCPS may after such seven day period give the Award Bidder a second written notice to correct such deficiencies within a second seven day period. If the Award Bidder within such second seven day period after receipt of such second notice fails to commence and continue to correct any deficiencies, BCPS may, without prejudice to other remedies BCPS may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Award Bidder the cost of correcting such deficiencies, including compensation for the Construction Manager's and Architect's and their respective consultants' additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due the Award Bidder are not sufficient to cover such amounts, the Award Bidder shall pay the difference to BCPS.

#### **47.0 ROYALTIES AND PATENTS**

The Award Bidder shall pay all royalties and license fees. The Award Bidder shall defend suits or claims for infringement of patent rights and shall hold BCPS, Construction Manager, and/or the Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design process or

product of a particular manufacturer or manufacturers is required by the Contract Documents. However, if the Award Bidder has reason to believe that the required design process or product is an infringement of a patent, the Award Bidder shall be responsible for such loss unless such information is promptly furnished to BCPS and/or the Architect.

#### **48.0 CONFLICT OF INTEREST, LOBBYING, AND ETHICS REVIEW PANEL**

- 48.1 In accordance with paragraph 15-811 through 15-815 of the State Government Article of the Annotated Code of Maryland, the Board of Education of Baltimore County has promulgated Ethics Policies which cover conflict of interest, financial disclosure and lobbying. All bidders are expected to comply with any and all Board Ethics Policies that may apply to them individually or as a business entity.
- 48.2 All bidders should review carefully the conflict of interest policies. Specific attention should be accorded to the Board Ethics Policies (Board Policy 8363) prohibiting Baltimore County Public Schools employees from benefiting from business with the school system.
- 48.3 All bidders are placed on notice that all questions/interpretations concerning the Board Ethics Policies may be submitted to the Ethics Review Panel in accordance with Board Policy 8366.

#### **49.0 INCLEMENT WEATHER**

- 49.1 **PRE-BID:** If Baltimore County Schools are **closed** (either the "schools" and/or "offices") on the day a pre-bid is scheduled, "**THE PRE-BID IS CANCELLED**" and **will not be rescheduled unless an addendum is issued.** Bidders are advised that they are to email or FAX questions to the purchasing agent by the date and time required within this solicitation.
- 49.2 **BID OPENING:** If Baltimore County Schools are closed (either the "schools" and/or "offices") on the day a bid is "DUE", that **bid will be due at the same time the next day that the Baltimore County Schools are open.**
- 49.3 If Baltimore County Schools open late, due to inclement weather, the Bid Due Date and Time of Opening will be conducted AS SCHEDULED. If Baltimore County Schools close early, due to inclement weather, the Bid Due Date and Time of Opening will be conducted AS SCHEDULED.

#### **50.0 ILLEGAL IMMIGRANT LABOR**

The use of illegal immigrant labor to fulfill contracts solicited by BCPS is in violation of the law and is strictly prohibited. Contractors and subcontractors must verify employment eligibility of workers in order to assure that they are not violating Federal/State/Local laws regarding illegal immigration. A compliance audit may be conducted.

## **51.0 FOREIGN LANGUAGE TRANSLATOR REQUIREMENT**

- 51.1 BCPS requires an Award Bidder that has an employee on site that does not speak English to have on site, full time, an interpreter that is fluent in speaking and understanding that employee's native language.
- 51.2 Failure of an Award Bidder to have on site, full time, an interpreter that is fluent in speaking and understanding an employees native language for those employees that do not speak English is reason for immediate termination of the contract for cause.

## **52.0 EMPLOYMENT OF CHILD SEX OFFENDERS**

Maryland Law requires certain child sex offenders to register with the State and with the local law enforcement agency in the county in which they will reside, work and/or attend school. Section 11-722(c) of the Criminal Procedure Article of the Annotated code of Maryland states, "A person who enters into a contract with a County Board of Education or a non-public school may not knowingly employ an individual to work at a school if the individual is a registrant. A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding five years or a fine not exceeding \$5,000 or both." If a child sex offender, as determined by the definitions contained in the Criminal Law Article of the Annotated Code of Maryland, is employed by the Award Bidder, the Award Bidder is prohibited from assigning that employee to perform management, delivery, installation, repair, construction or any other type of services on any BCPS property, including the project property. Violation of this provision may result in Termination for Cause.

## **53.0 FORCE MAJEURE**

Force Majeure is defined as an occurrence beyond the control of the affected party and not avoidable by reason of diligence. It includes the acts of nature, war, riots, strikes, fire, floods, epidemics, or other similar occurrences. If either party is delayed by force majeure, said party shall provide written notification to the other within 48 hours. Delays shall cease as soon as practicable and written notification of same provided. The time of contract completion may be extended by contract modification, for a period of time equal to that delay caused under this condition. BCPS may also consider requests for price increase for raw materials that are directly attributable to the cause of delay. BCPS reserves the right to cancel the contract and/or purchase materials, equipment or services from the best available source during the time of force majeure, and Contractor shall have no recourse against BCPS. Further, except for payment of sums due, neither party shall be liable to the other or deemed in default under this contract, if and to the extent that such party's performance of this contract is prevented by reason of force majeure as defined herein.

## **END OF PART I: GENERAL TERMS AND CONDITIONS**