

UNION COUNTY PUBLIC SCHOOLS - CONTRACT CONTROL SHEET

Routing Order: (1) Department, (2) Finance, (3) Attorney, (4) Information Systems, (5) Risk Management, (6) BOE, (7) Superintendent

DEPARTMENT

Party/Vendor Name: Weathergard, Inc.

Party/Vendor Contact Person: Larry Parker Contact Phone: 704-289-6404

Party/Vendor Address to mail contract to (be sure this is accurate or it could delay the processing of this contract):

Address 2806 Bravo Place Box 1085 City: Monroe State: NC Zip: 28111

Department: Facilities Department Amount: \$105,300.00

Purpose: Marshville Elementary School's Roof Renovation

Budget Code(s) (put comma between multiple codes): 4, 9014, 712, 578, 332

TYPE OF CONTRACT: (Please Check One) New Renewal Amendment Effective Date: _____

This document has been reviewed and approved by the Department Head as to technical content.

Project Manager [Signature] Date: 10.10.2012

Assistant Director [Signature] Date: 10.10.12

Director of Facilities [Signature] Date: 10.10.2012

Division Assistant Superintendent Signature [Signature] Date: 10-10-12

CENTRAL PURCHASING

Type of Contract: Award Bid Sole Source Piggyback Emergency Amendment As To Form Other: _____

Attached Documentation: Bid Tabulation Certificate of Insurance Sole Source Documentation Emergency Documentation

This document has been reviewed and approved by the Central Purchasing Director:

Central Purchasing Director Signature: [Signature] Date: 10/11/2012

RISK MANAGEMENT

Date Received 10-12-12

Include the following coverage: CGL Auto WC Professional Property Pollution Non-Profit Not Required

Hold Contract pending receipt of Certificate of Insurance

Notes: Penny will get updated COI in NOV

Risk Manager's Signature [Signature] Date: 10-11-12

INFORMATION TECHNOLOGY DIRECTOR (IF APPLICABLE)

Date Received _____

(Applicable only for hardware/software purchase or related Information Technology services) Non-Applicable

This document has been reviewed and approved by the Information Systems Director as to technical content.

IT Director's Signature _____ Date: _____

BUDGET AND FINANCE

Date Received _____

Yes No Sufficient funds are available in the proper category to pay for this expenditure. \$ 105,300.00

This contract is conditioned upon appropriation by the Union County Board of Commissioners of sufficient funds for each request for services/goods.

Notes: _____

Finance Director's Signature [Signature] Date: 10/15/12

ATTORNEY

Date Received 10/14/12

Date department needs contract back from attorney:

This document has been reviewed as to form and approved by the Attorney and stamp affixed thereto: Yes No

Attorney's Signature: [Signature] Date: 10/14/12

UCPS SUPERINTENDENT

Date Received 10-30-12

This document has been reviewed and approved by the UCPS Superintendent.

Yes No

Superintendent's Signature [Signature] Date: 11-1-12

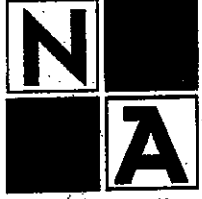
BOARD OF EDUCATION

Agenda Date: 11-1-12

Date Received 11-1-12

Yes No N/A Approved by Board of Education at meeting of 11-1-12

Board Of Education Chairman Signature [Signature] Date: 11-1-12



Roof Consulting Services

October 2, 2012

Mr. Rick Benton
Union County Schools System
201 Venus Street
Monroe, NC 28112

RE: BID OPENING - 2012 UNION COUNTY SCHOOLS REROOF PROJECT - MARSHVILLE ELEMENTARY SCHOOL

On October 2, 2012 at 2:00 pm, bids were accepted for the reroof project at Union County Schools at the maintenance office.

Present at the meeting were as follows:

Rick Benton	Union County Public Schools	704-296-3163
Penny Helms	Union County Public Schools	704-283-2371
Jerel Burriss	Nelson Hall & Associates, Inc.	704-289-6956
Nelson Hall	Nelson Hall & Associates, Inc.	704-289-6956
Keith Cappelluti	Interstate Roofing	704-527-3704
Ken Fisher	Johnson's Roofing	803-802-6627
Jerry Morrison	Nations Roof	704-398-2663
David Sneed	Radco Construction	704-392-1044
Laurie Thweatt	Weathergard, Inc.	704-283-8723

Not present at the meeting but submitted bids were:

Oglesby Contracting	704-596-6913
Piedmont Commercial Roofing	704-624-5979

The Bid Tabulation Sheet is attached.

On the basis of low bid, I would recommend that be awarded the contract to Weathergard for Marshville Elementary School for the amount of \$105,300.

If I can be of further service in this matter, please advise.

Regards,

W. Nelson Hall, FRCI, RCC, RRO
President

**UNION COUNTY SCHOOLS
2012 REROOF PROJECT**

MARSHVILLE ELEMENTARY SCHOOL

OCTOBER 2, 2012

BID OPENING:

Contractor	Lic. No.	MWBE Forms	Prebid Min	Add #1	Bid Bond	Base Bid - Roof Area 001.02 - Rigid Board	Base Bid - Roof Area 001.02 - LWC	Base Bid - Roof Area 001.08 - Rigid Board	Base Bid - Roof Area 001.08 - LWC	Roof Area 001.02 SF	Roof Area 001.02 Calen Days	Roof Area 001.08 - SF	Roof Area 001.08 Calen Days
Interstate Roofing	10143	X	X	X	X	\$131,650	\$142,220	\$28,500	\$36,000	8,400	60	2,000	30
Johnson's Roofing	19663	X	X	X	X	\$142,400	\$155,900	\$32,000	\$34,000	8,400	35	2,000	7
Nations Roof	65424	X	X	X	X	\$160,700	\$167,300	\$42,800	\$44,600	8,664	45	2,340	15
Oglesby Contracting	29724					NO BID	NO BID	NO BID	NO BID				
Piedmont Comm. Roofing	31603	X	X	X	X	\$109,250	\$124,780	\$25,000	\$17,200	8,600	60	1,200	20
Radco Construction	24468	X	X	X	X	\$141,730	\$137,980	\$30,870	\$29,520	8,528	60	1,950	15
Weathergard	8249	X	X	X	X	\$105,300	\$119,700	\$25,400	\$34,100	8,650	60	1,950	10

Nelson Hall & Associates, Inc.
1001 Lancaster Ave., Monroe, NC 28112

ACORD™

Client#: 1620 WEATHINC
CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
10/09/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement.

PRODUCER: Davis-Garvin Agency, Inc. - SC
INSURED: Weathergard, Inc.
CONTACT NAME: Ellen Bennett
PHONE: 800 845-3163
INSURER(S) AFFORDING COVERAGE: Pennsylvania National Security, Pennsylvania National Mutual In, CRSMC - SIF

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES.

Table with columns: INSR LTR, TYPE OF INSURANCE, POLICY NUMBER, POLICY EFF, POLICY EXP, LIMITS. Rows include General Liability, Automobile Liability, Umbrella Liab, Workers Compensation, and Leased or Rented Equipment.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
JOB: Roof Renovations 2012, Bid #3-9733221. Marshville Elementary School, 515 North Elm Street, Marshville, NC. Union County Schools System is included as Additional Insured for General Liability with respect to insured's work on this job. Coverage is primary and non-contributory.

CERTIFICATE HOLDER: Union County School System
CANCELLATION: SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR

AGREEMENT made this 1st day of November 2012,

BETWEEN the Owner: Union County Public Schools
 400 North Church Street
 Monroe, NC 28112

and the Contractor: Weathergard, Inc.
 2806 Bravo Place
 Box 1085
 Monroe, NC 28111

For Roof Renovations to: Marshville Elementary School, Marshville, NC

the Consultant/Project Manager being Nelson Hall & Associates, Inc., Monroe, NC.

THE OWNER AND THE CONTRACTOR AGREE AS FOLLOWS:

ARTICLE 1
The Work

1.1 To the extent required by the Specification documents dated September 2012 the Contractor shall be responsible for furnishing all apparatus and materials and causing the Work to be performed as stated in the Bid Documents, Prebid Minutes and Preconstruction Minutes.

1.2 Union County Board of Education Standard Terms and Conditions and North Carolina General Contract Terms and Conditions attached hereto.

1.3 Union County Public Schools is now Tobacco Free.

1.4 All workers shall be dressed appropriately for a school environment and maintain a standard of decency.

ARTICLE 2 - Time of Commencement and Completion

2.1 The Work to be performed under this Agreement shall be commenced on or about November 2012 and shall be pursued continuously until completed. Both parties shall endeavor to accomplish its substantial completion by 60 days from start date. The date of substantial completion of the Work or designated portion thereof shall be that date when the Work is sufficiently complete that the Owner can utilize the Work or any designated portion thereof for the use for which it is intended. The guarantee period shall begin on the date of final acceptance of the roofing assemblies by the Owner.

2.2 The Contract time shall be extended by Change Order for such amount of time as shall be reasonably required if the progress of the Work is delayed by:

2.2.1 any act or failure to act of the Owner, any agent of the owner, any separate contractor employed by the Owner or any employee of such Owner, agent or separate contractor,

2.2.2 changes ordered in the Work or made necessary by unforeseen or concealed conditions or errors in the drawings or specifications;

2.2.3 labor disputes, fire, unusual delays in transportation, adverse weather conditions not reasonably predictable, unavoidable casualties, catastrophes, war, civil disturbances, Acts of God, or other causes beyond the Contractor's reasonable control.

2.3 Appropriate adjustments in the Contract Price and profit thereon shall also be made by Change Order to compensate the Contractor for his additional costs and overhead occasioned by such delays and extensions of time.

2.4 Extensions in the contract time for other reasons must be mutually agreed upon.

2.5 The Owner and Contractor recognize that time is of the essence to this Agreement and that the Owner will suffer financial loss if the work is not completed within the times specified. Both parties also recognize the delays, difficulties and expenses involved in proving in a legal or arbitration proceeding, the actual cost suffered by the Owner if the work is not completed on time. Accordingly, in lieu of requiring such proof, the Owner and Contractor agree that as liquidated damages for delay (not as a penalty), the Contract will be deducted by \$500 for each calendar day exceeding the mutual agreed upon completion date. If the Contractor does not complete the work in time to arrange for the final inspection and submit final invoice by March 31, 2013, an additional \$200 per calendar day will be deducted from the contract.

ARTICLE 3 - Contract Sum

3.1 The Owner shall pay the Contractor, in current funds, the following contract sum for the performance of the Work, subject to additions or deductions for changes as provided in Article II and in accordance with Unit Prices provided by the Contractor in the Form of Proposal included with the Bid Documents:

Contract Amount	\$105,300.00
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ARTICLE 4 - Progress Payments

4.1 Unless the Work is substantially completed within a period of thirty (30) days after commencement, the Owner shall make progress payments to the Contractor monthly in the following manner:

4.2 At least ten days before the date for each progress payment, the Contractor shall submit an application for payment based on the value of the Work completed for this Contract and of materials stored on the site as of the twenty-fifth (25th) day of the calendar month immediately preceding the month in which the payment is due.

4.3 The Contractor shall submit Waivers of Lien commencing with the second request for payment.

4.4 Not later than the thirtieth (30th) day of each month, the Owner shall make full payment to the Contractor of the amount set forth in the Contractor's application for payment, subject only to reduction for retainage as provided for in the General Conditions of the Contract as set forth in the Bid Documents. In the event that the Owner disputes the value of the Work claimed in the application as satisfactorily completed or the value of stored materials, the Owner shall promptly pay on the basis of his estimate of value and shall notify the Contractor in writing of the dispute.

4.5 The amount retained from progress payments shall be 5%. Retainage will be released within 30 days from acceptance of payment application showing 50% project completion. The final pay application will be released for payment upon acceptance of 100% project completion to include the submittal of required documents as set forth in the Bid Documents.

4.6 Payments and acceptance shall be in accordance with the General Conditions of Contract set forth in the Bid Documents.

4.7 Final payment by the Owner will indicate acceptance of the Contractor's performance subject to architectural approval, but shall in no way limit the Owner from making claims for defects subsequently discovered. Any claims for negligent construction, supervision and workmanship shall be subject only to the Statute of Limitations of the State of North Carolina, and any litigation thereabout shall be held in the County of Union, Court of Common Pleas, regardless of any claims of arbitration contracts; and the Contractor waives any defenses as to jurisdiction, venue, or the right to arbitration.

4.8 Contractor shall fulfill all requirements as listed on the Union County Certification Form. Contractor shall sign the Union County Certification Form and submit with final application for payment.

4.9 Contractor shall complete the NC Sales Tax Certification Form and submit with final application for payment. Failure to submit required documents will cause to delay payment by owner.

ARTICLE 5 - Insurance


5.1 The Contractor shall provide Certificates of Insurance prior to commencing work. Insurance requirements shall be as set forth in the General Conditions of the Contract of the Bid Documents.

This agreement entered into as of the day and year first written above.

CONTRACTOR
Weathergard, Inc.

OWNER
Union County Public Schools

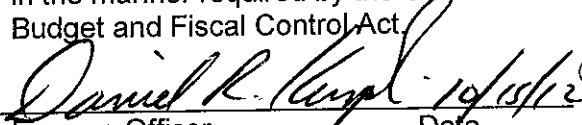
Date _____



Date 11-1-12

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

REVIEWED BY:




Finance Officer Date



Division of Insurance Date
& Risk Management

REVISED AND APPROVED AS TO
FORM:



School Board Attorney Date

STANDARD TERMS AND CONDITIONS

1. Termination for Default.

If Contractor fails to perform its obligations timely and in conformance with the requirements of this contract, UCBOE shall give Contractor written notice of the default and intent to terminate if the default is not cured within 15 calendar days to the satisfaction of UCBOE.

All finished or unfinished deliverable items under this contract prepared by the Contractor shall become the property of UCBOE, and the Contractor shall be entitled to receive payment for any satisfactory work completed on such materials. Notwithstanding, the Contractor shall not be relieved of liability to UCBOE for damages sustained by UCBOE by virtue of any breach of the agreement, and UCBOE may withhold any payment due the Contractor for the purpose of setoff until such time as the breach is cured or the exact amount of damages due UCBOE from such breach can be determined.

In case of default by the Contractor, UCBOE may procure the services from other sources and hold the Contractor responsible for any excess cost incurred.

Upon the entering of a judgment of bankruptcy of insolvency by or against the Contractor, UCBOE may terminate this contract for cause.

2. Contract Funding. It is understood and agreed between the Contractor and the UCBOE that the UCBOE's obligation under this Contract is contingent upon the availability of appropriated funds from which payment for Contract purposes can be made. The execution of this contract by UCBOE is assurance that sufficient funds have been appropriated for the current fiscal year budget. Should such funds not be appropriated or allocated, this Contract may be immediately terminated by either party.

UCBOE shall give prompt written notice to the Contractor if funds are not available. The UCBOE shall not be liable to the Contractor for damages of any kind (general, special, consequential or exemplary) as a result of such termination.

3. Accounting Procedures. The Contractor shall comply with accounting and fiscal management procedures prescribed by the UCBOE to apply to this Contract. The Contractor shall assure such fiscal control and accounting procedures as may be necessary for proper disbursement of and accounting for all project funds. The Contractor shall assure that all funds received by it pursuant to this Contract will be used only to support the cost of those activities described in this Contract.

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

5. Contract Transfer. The Contractor shall not assign, subcontract or otherwise transfer any interest in this Contract without the prior written approval of the UCBOE.

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

7. Key Personnel. The Contractor shall not substitute for key personnel assigned to the performance of this Contract without prior written approval from the UCBOE Project Coordinator. "Key personnel" are defined as those individuals identified by name or title in this Contract or in written communication from the Contractor.

8. Contract Modifications. This Contract may be amended only by written amendment duly executed by both the UCBOE and the Contractor.

9. Relationship of Parties. The Contractor is an independent contractor and not an employee of the UCBOE. The conduct and control of the work will lie solely with the Contractor. This Contract shall not be construed as establishing a joint venture, partnership or any principal-agent relationship for any purpose between the Contractor and the UCBOE. Employees of the Contractor shall remain subject to the exclusive control and supervision of the Contractor, which is solely responsible for their compensation.
10. Advertisement. The Contract will not be used in connection with any advertising by the Contractor without prior written approval by the UCBOE.
11. Nondiscrimination. During the performance of this Contract, the Contractor shall not discriminate against or deny the Contract's benefits to any person on the basis of sexual orientation, national origin, race, ethnic background, color, religion, gender, age or disability.
12. Conflict of Interest. The Contractor represents and warrants that no member of the UCBOE or any of its employees or officers has a personal or financial interest or will benefit from the performance of this Contract or has any interest in any Contract, subcontract or other agreement related to this Contract. Contractor shall not permit any member of the UCBOE or any of its employees or officers to obtain a personal or financial interest or benefit from the performance of this Contract or to have any interest in any Contract, subcontract or other agreement related to this Contract, during the term of this Contract. The Contractor shall cause this paragraph to be included in all Contracts, subcontracts and other agreements related to this Contract.
13. Gratuities to UCBOE. The right of the Contractor to proceed may be terminated by written notice if the UCBOE determines that the Contractor, its agent or another representative offered or gave a gratuity to an official or employee of the UCBOE in violation of policies of the UCBOE.
14. Kickbacks to Contractor. The Contractor shall not permit any kickbacks or gratuities to be provided, directly or indirectly, to itself, its employees, subcontractors or subcontractor employees for the purpose of improperly obtaining or rewarding favorable treatment in connection with a UCBOE Contract or in connection with a subcontract relating to a UCBOE Contract. When the Contractor has grounds to believe that a violation of this clause may have occurred, the Contractor shall promptly report to the UCBOE in writing the possible violation.
15. Monitoring and Evaluation. The Contractor shall cooperate with the UCBOE, or with any other person or agency as directed by the UCBOE, in monitoring, inspecting, auditing or investigating activities related to this Contract. The Contractor shall permit the UCBOE to evaluate all activities conducted under this Contract. UCBOE has the right at its sole discretion to require that Contractor remove any employee of Contractor from UCBOE property and from performing services under this Contract following provision of notice to Contractor of the reasons for UCBOE's dissatisfaction with the services of Contractor's employee.
16. Financial Responsibility. The Contractor is financially solvent and able to perform under this Contract. If requested by the UCBOE, the Contractor agrees to provide a copy of its latest audited annual financial statements or other financial statements as deemed acceptable by the UCBOE's Finance Officer.
17. Dispute Resolution. At the option of the parties, disputes may be resolved by any method of ADR to which the parties agree in writing, including, but not limited to:
 - (a) Mediation, pursuant to NCGS 7A-38.1 or the American Arbitration Association Mediation, or by written agreement of the parties.
 - (b) Arbitration: pursuant to The Uniform Arbitration Act (NCGS 1-567.1 et seq.)
 - (c) The award rendered by the arbitrator or arbitrators shall be final unless a party thereto gives written notice of its objection to the final award by arbitration within twenty (20) days from receipt of said decision. Upon giving of said notice the party objecting thereto may file suit concerning the dispute as if arbitration had never occurred. Unless legally required to do otherwise, the parties agree not to refer to the arbitration in the filing of any lawsuit or during its subsequent litigation, or to submit to the court any record of information concerning the arbitration.

18. No Third Party Benefits. This Contract shall not be considered by the Contractor to create any benefits on behalf of any third party. The Contractor shall include in all contracts, subcontracts or other agreements relating to this Contract an acknowledgment by the contracting parties that this Contract creates no third party benefits.
19. Confidentiality of Student Information. If, during the course of the Contractor's performance of this Contract, the Contractor should obtain any information pertaining to the students' official records, the Contractor agrees to keep any such information confidential and to not disclose or permit to be disclosed, directly or indirectly, to any person or entity any such student information. This Contract shall not be construed by either party to constitute a waiver of or to in any manner diminish the provisions for confidentiality of students' records. Additionally, pursuant to N.C.G.S. 115C-401.1, Prohibition on the Disclosure of Information about Students, it is unlawful for a person who enters into a contract with a local board of education to sell personally identifiable information that is obtained from a student as a result of that person's performance under the contract.
20. Background Checks. At the request of UCBOE's Project Coordinator, the Contractor (if an individual) or any individual employees of the Contractor shall submit to UCBOE criminal background check and drug testing procedures.
21. Force Majeure. If UCBOE is unable to perform its obligations or to accept the services or goods because of Force Majeure (as hereinafter defined), the time for such performance by UCBOE or acceptance of services will be equitably adjusted by allowing additional time for performance or acceptance of services equal to any periods of Force Majeure. "Force Majeure" shall mean any delays caused by acts of God, riot, war, terrorism. Inclement weather, labor strikes, material shortages and other causes beyond the reasonable control of UCBOE.
22. Jessica Lundsford Act. "Contractors, subcontractors, consultants, sub-consultants, and vendors shall annually conduct a review of the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry for all employees who will provide services under this contract. Any employee of the contractor, subcontractor, consultant, sub-consultant, or vendor found to be registered on any of the lists identified herein shall not perform any work under this contract and shall not be permitted to enter property owned by Union County Public Schools or Union County on behalf of Union County Public Schools. Failure to comply may result in legal action and termination of the contract for default."
23. Ownership of Documents. All rights in the work created pursuant to this Contract are owned by the UCBOE including, but not limited to, copyright, trade or service mark and licensing rights. Upon the termination or expiration of this Contract, any and all finished or unfinished documents and other materials produced by the Contractor pursuant to this Contract shall, at the request of the UCBOE, be turned over to UCBOE. Any technical knowledge or information of Contractor which Contractor shall have disclosed or may hereafter disclose to UCBOE shall not, unless otherwise specifically agreed upon in writing by UCBOE, be deemed to be confidential or proprietary information and shall be acquired by UCBOE as part of the consideration of this Contract free from any restrictions.
24. Contract Situs. All matters, whether sounding in contract or tort relating to the validity, construction, interpretation and enforcement of this Contract, will be determined in Union County, North Carolina. North Carolina law will govern the interpretation and construction of this Contract.
25. Entire Agreement. This Contract constitutes and expresses the entire agreement and understanding between the parties concerning the subject matter of this Contract. This document (including exhibits, if any), any purchase order used in connection with this Contract and any other document expressly incorporated in this Contract by reference supersede all prior and contemporaneous discussions, promises, representations, agreements and understandings relative to the subject matter of this Contract.
26. Union County Public Schools are now tobacco Free. All Contractors must agree to refrain from tobacco use while on school property.

NORTH CAROLINA GENERAL CONTRACT TERMS AND CONDITIONS (Contractual and Consultant Services)

1. **GOVERNING LAW:** This contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina.
2. **SITUS:** The place of this contract, its situs and forum, shall be North Carolina, where all matters, whether sounding in contract or tort, relating to its validity, construction, interpretation and enforcement shall be determined.
3. **INDEPENDENT CONTRACTOR:** The Contractor shall be considered to be an independent contractor and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. The Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this agreement. Such employees shall not be employees of, or have any individual contractual relationship with the Agency.
4. **KEY PERSONNEL:** The Contractor shall not substitute key personnel assigned to the performance of this contract without prior written approval by the Agency's Contract Administrator. The individuals designated as key personnel for purposes of this contract are those specified in the Contractor's proposal.
5. **PERFORMANCE AND DEFAULT:** If, through any cause, the Contractor shall fail to fulfill in timely and proper manner the obligations under this agreement, the Agency shall thereupon have the right to terminate this contract by giving written notice to the Contractor and specifying the effective date thereof. In that event, all finished or unfinished deliverable items under this contract prepared by the Contractor shall, at the option of the Agency, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such materials. Notwithstanding, the Contractor shall not be relieved of liability to the Agency for damages sustained by the Agency by virtue of any breach of this agreement, and the Agency may withhold any payment due the Contractor for the purpose of setoff until such time as the exact amount of damages due the Agency from such breach can be determined.

In case of default by the Contractor, the State may procure the services from other sources and hold the Contractor responsible for any excess cost occasioned thereby. The State reserves the right to require performance bond or other acceptable alternative guarantees from successful offeror without expense to the State.

In addition, in the event of default by the Contractor under this contract, the State may immediately cease doing business with the Contractor, immediately terminate for cause all existing contracts the State has with the Contractor, and de-bar the Contractor from doing future business with the State.

Upon the Contractor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Contractor, the State may immediately terminate, for cause, this contract and all other existing contracts the Contractor has with the State, and de-bar the Contractor from doing future business.

Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

6. **TERMINATION:** The Agency may terminate this agreement at any time by 15 day notice in writing from the Agency to the Contractor. In that event, all finished or unfinished deliverable items prepared by the Contractor under this contract shall, at the option of the Agency, become its property. If the contract is terminated by the Agency as provided herein, the Contractor shall be paid for services satisfactorily completed, less payment or compensation previously made.
7. **PAYMENT TERMS:** Payment terms are Net not later than 30 days after receipt of correct invoice(s) or acceptance of services, whichever is later, or in accordance with any special payment schedule identified in this RFP. The using agency is responsible for all payments to the contractor under the contract. Payment by some agencies may be made by procurement card and it shall be accepted by the contractor for payment if the contractor accepts that card (Visa, Mastercard, etc.) from other customers. If payment is made by procurement card, then payment may be processed immediately by the contractor.

8. **AVAILABILITY OF FUNDS:** Any and all payments to the Contractor are dependent upon and subject to the availability of funds to the Agency for the purpose set forth in this agreement.
9. **CONFIDENTIALITY:** Any information, data, instruments, documents, studies or reports given to or prepared or assembled by the Contractor under this agreement shall be kept as confidential and not divulged or made available to any individual or organization without the prior written approval of the Agency.
10. **CARE OF PROPERTY:** The Contractor agrees that it shall be responsible for the proper custody and care of any property furnished it for use in connection with the performance of this contract or purchased by it for this contract and will reimburse the State for loss of damage of such property.
11. **COPYRIGHT:** No deliverable items produced in whole or in part under this agreement shall be the subject of an application for copyright by or on behalf of the Contractor.
12. **ACCESS TO PERSONS AND RECORDS:** The State Auditor shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions in accordance with General Statute 147-64.7.
The Contractor shall retain all records for a period of three years following completion of the contract.
13. **ASSIGNMENT:** No assignment of the Contractor's obligations nor the Contractor's right to receive payment hereunder shall be permitted. However, upon written request approved by the issuing purchasing authority, the State may:
 - a. Forward the contractor's payment check(s) directly to any person or entity designated by the Contractor, or
 - b. Include any person or entity designated by Contractor as a joint payee on the Contractor's payment check(s).
 In no event shall such approval and action obligate the State to anyone other than the Contractor and the Contractor shall remain responsible for fulfillment of all contract obligations.
14. **COMPLIANCE WITH LAWS:** The Contractor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.
15. **AFFIRMATIVE ACTION:** The Contractor shall take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin, or disability.
16. **INSURANCE:** During the term of the contract, the contractor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the contract. As a minimum, the contractor shall provide and maintain the following coverage and limits:
 - a. Worker's Compensation - The contractor shall provide and maintain Worker's Compensation insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$150,000.00, covering all of Contractor's employees who are engaged in any work under the contract. If any work is subcontracted, the contractor shall require the subcontractor to provide the same coverage for any of its employees engaged in any work under the contract.
 - b. Commercial General Liability - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$500,000.00 Combined Single Limit. (Defense cost shall be in excess of the limit of liability).
 - c. Automobile - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the contract. The minimum combined single limit shall be \$150,000.00 bodily injury and property damage; \$150,000.00 uninsured/under insured motorist; and \$1,000.00 medical payment.

Providing and maintaining adequate insurance coverage is a material obligation of the contractor and is of the essence of this contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The contractor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this contract. The limits of coverage under each insurance policy maintained by the contractor shall not be interpreted as limiting the contractor's liability and obligations under the contract.

17. **ADVERTISING:** The offeror shall not use the award of a contract as part of any news release or commercial advertising.

18. **ENTIRE AGREEMENT:** This contract and any documents incorporated specifically by reference represent the entire agreement between the parties and supersede all prior oral or written statements or agreements. This Request for Proposals, any addenda thereto, and the offeror's proposal are incorporated herein by reference as though set forth verbatim.

All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.

19. **AMENDMENTS:** This contract may be amended only by written amendments duly executed by the Agency and the Contractor. The NC Division of Purchase and Contract shall give prior approval to any amendment to a contract awarded through that office.

20. **TAXES:** G.S. 143-59.1 bars the Secretary of Administration from entering into contracts with vendors if the vendor or its affiliates meet one of the conditions of G. S. 105-164.8(b) and refuse to collect use tax on sales of tangible personal property to purchasers in North Carolina. Conditions under G. S. 105-164.8(b) include: (1) Maintenance of a retail establishment or office, (2) Presence of representatives in the State that solicit sales or transact business on behalf of the vendor and (3) Systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. By execution of the bid document the vendor certifies that it and all of its affiliates, (if it has affiliates), collect(s) the appropriate taxes.

21. **YEAR 2000 COMPLIANCE/WARRANTY:** Vendor shall ensure the product(s) and service(s) furnished pursuant to this agreement ("product" shall include, without limitation, any piece of equipment, hardware, firmware, middleware, custom or commercial software, or internal components, subroutines, and interfaces therein) which perform any date and/or time data recognition function, calculation, or sequencing, will support a four digit year format, and will provide accurate date/time data and leap year calculations on and after December 31, 1999, at the same level of functionality for which originally acquired without additional cost to the user. This warranty shall survive termination or expiration of the agreement.

22. **GENERAL INDEMNITY:** The contractor shall hold and save the State, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the contractor in the performance of this contract and that are attributable to the negligence or intentionally tortious acts of the contractor provided that the contractor is notified in writing within 30 days that the State has knowledge of such claims. The contractor represents and warrants that it shall make no claim of any kind or nature against the State's agents who are involved in the delivery or processing of contractor goods to the State. The representation and warranty in the preceding sentence shall survive the termination or expiration of this contract.

23. **OUTSOURCING:** Any vendor or subcontractor providing call or contact center services to the State of North Carolina shall disclose to inbound callers the location from which the call or contact center services are being provided.

If, after award of a contract, the contractor wishes to outsource any portion of the work to a location outside the United States, prior written approval must be obtained from the State agency responsible for the contract.

Vendor must give notice to the using agency of any relocation of the vendor, employees of the vendor, subcontractors of the vendor, or other persons performing services under a state contract outside of the United States.