GENERAL CONDITIONS FOR BIDS

The General Conditions for Bids, Special Conditions, Specifications, Addenda, and/or any other pertinent documents form a part of the Invitation to Bid, and by reference are made a part thereof.

1. **PURPOSE:** It is the purpose and intent of this invitation to secure bids for item(s) and/or services as listed herein for The School Board of Palm Beach County, Florida (hereinafter referred to as the "Board"), the corporate body politic that governs, operates, controls, and supervises the School District of Palm Beach County, Florida (hereinafter referred to as "District").

2. **ANTI-COLLUSION:** By electronically submitting a bid, the bidder certifies that it has not divulged, discussed or compared its bid with other bidders and has not colluded with any other bidder or parties to a bid whatsoever. No premiums, rebates or gratuities are permitted either with, prior to, or after any delivery of materials. Any such violation will result in the cancellation and/or return of materials (as applicable) and the removal of the bidder from all bid lists for the School Board of Palm Beach County, Florida.

3. **BIDS:** Bids will be received electronically through a secure site at Bidnet.com until the date and time as indicated in this bid document. Bids will be opened publicly at the School District of Palm Beach County, Purchasing Department, 3300 Forest Hill Boulevard, Suite A-323, West Palm Beach, FL 33406-5813, and all bidders and general public are invited to attend. It is the sole responsibility of the bidder to ensure its bid reaches Bidnet Direct on or before the closing date and hour as indicated in this bid document.

4. **CONTRACT:** The submission of your bid constitutes a firm offer by the bidder. Upon acceptance by the Board, the Purchasing Department will issue a notice of award and purchase order(s) for any supplies, equipment and/or services as a result of this bid. The Invitation to Bid and the corresponding purchase order(s) will constitute the complete agreement between the successful bidder and the Board. Unless otherwise stipulated in the bid documents or agreed to in writing by both parties, no other contract documents shall be issued or accepted.

5. **WITHDRAWAL:** When a bidder wishes to withdraw a bid, a written request shall be submitted to the Director of Purchasing and the request will be reviewed for consideration. In no case shall a bidder be granted a release from a bid more than one time in a two-year period. A bidder may not withdraw a bid after the final call for bids at a designated time of opening.

6. **DEFAULT:** In case of default by the bidder, the Board may procure the articles or services from other sources and hold the bidder responsible for any excess costs incurred thereby.

7. **FUNDING OUT/ CANCELLATION OR TERMINATION WITH OR WITHOUT CAUSE:**

   A. The School Board reserves the right to terminate this Contract for convenience, at any time and for no reason, upon giving thirty (30) days prior written notice to Bidder. If the Contract is terminated for convenience as provided herein, the School Board shall be relieved of all obligations under the Contract. The School Board will only be required to pay to the Bidder that amount of the Contract actually satisfactorily performed to the date of termination. The Bidder shall not be entitled under any theory to payment for work not actually performed or lost profits.

B. If the Bidder materially breaches its obligations under this Contract, the Superintendent will provide written notice of the deficiency by forwarding a notice citing the specific nature of the material breach. The Bidder shall have thirty (30) days to cure the breach. If the Bidder fails to cure the breach within the thirty (30) day period, the Superintendent shall issue a Notice of Termination for Default. Once the Superintendent has notified the Bidder that it has materially breached its Contract with the School Board, the Superintendent shall recommend to the School Board that it terminates the Contract for Cause. Notwithstanding the foregoing, the School Board reserves the right to terminate this Contract immediately with cause if necessary to protect the health, safety, and/or welfare of the School District's students or employees. The School Board shall review and consider the Superintendent's recommendation and determine whether the Bidder should be suspended from doing future work with the School Board, and if so, for what period of time. The School Board will consider the seriousness of the breach in making a determination as to whether a Bidder should be debarred, and if so, for what period of time. The School Board will consider the seriousness of the breach in making a determination as to whether a Bidder should be debarred, and if so, for what period of time. Should the School Board terminate for default in accordance with this provision, the School Board shall be entitled to recover reprocurement costs in addition to all other remedies under law and/or equity. For purposes of this Section, a "material breach" shall be defined as any substantial, unexcused non-performance by failing to perform an act that is an important part of the transaction or performing an act inconsistent with the terms and conditions of the Contract.

The Bidder shall have the option to terminate the Contract upon written notice to the Director of Purchasing. Such notice must be received at least sixty (60) days prior to the effective date of termination. Early termination of the Contract by the Bidder may result in removal from bidders/responder list and may result in Bidder being debarred. The debarment shall be for a period commensurate with the seriousness of the causes, generally not to exceed three (3) years. When the offense is willful or blatant, a longer term of debarment may be imposed, up to an indefinite period.

C. Funding Out: Florida School Laws prohibit the Board or its designee from creating obligations on anticipation of budgeted revenues from one fiscal year to another without year-to-year extension provisions in the contracts.

It is necessary that fiscal funding out provisions be included in all bids in which the terms are for periods of longer than one year.

Therefore, the following funding out provisions are an integral part of this Invitation to Bid and must be agreed to by all bidders:

The Board or its designee may, during the contract period, terminate or discontinue the items covered in this bid for lack of appropriated funds upon the same terms and conditions.

Such prior written notice will state:

1. That the lack of appropriated funds is the reason for termination, and
2. Board agrees not to replace the equipment or services being terminated with equipment and services with functions similar to those performed by the equipment covered in this bid from another vendor in the succeeding funding period.

"This written notification will thereafter release the School Board of Palm Beach County, Florida of all further obligations in any way related to such equipment covered herein".

When any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail/Federal Express/United Parcel Service or other traceable method, postage prepaid, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving notice:

To School Board: Director of Purchasing Department
The School District of Palm Beach County
3300 Forest Hill Blvd., Suite A323
West Palm Beach, FL 33406

With a copy to: Inspector General
The School District of Palm Beach County
3300 Forest Hill Blvd., Suite C306
West Palm Beach, FL 33406

To Contractor:

8. **BIDDERS' RESPONSIBILITY:** Before submitting its bid, each bidder is required to carefully examine the Invitation to Bid delivery schedule, bid prices and extensions, insurance requirements, licensing requirements, bid closing date and time and to completely familiarize itself with all of the terms and conditions that are contained within the Invitation to Bid. Failure to do so on the part of the bidder will in no way relieve it of any of the obligations and responsibilities which are a part of the Invitation to Bid.

The Board objects to and shall not consider any additional terms or conditions submitted by a respondent, including any appearing in documents attached as part of a respondent's response. In submitting its response, a respondent agrees that any additional terms or conditions, whether submitted intentionally or inadvertently, shall have no force or effect. Failure to comply with terms and conditions, including those specifying information that must be submitted with a response, shall be grounds for rejecting a response.

Bidder warrants by virtue of bidding that prices shall remain firm for a period of ninety (90) days from the date of award by the Board or time stated in special conditions.
:

9. **Trademarks, Logos, and Intellectual Property Authorization:**
No Unauthorized Use of Marks Proposer agrees and understands that it will not use, publish, display, or reproduce the School District's name, logos, trademarks, service marks, or other intellectual property (collectively, "District Marks") in any of proposers' advertising materials, marketing collateral, promotional documents, website content, press releases, or social media posts without the express, prior written authorization of the School District's Office of Communication & Engagement.

Process for Approval: Any request to use District Marks must be submitted in writing to the Office of Communication & Engagement for review and approval. The School District reserves the right to approve, deny, or condition such use in its sole discretion. Any approved use must strictly adhere to Florida laws and rules and School District's Policies and guidelines. The Proposer understands that it must receive written approval from the Office of Communication & Engagement prior to the intended publication date. Any unauthorized use of District Marks may constitute a material breach of this Contract and may result in termination of the Contract, injunctive relief, and any other remedies available to the School District under applicable law.

10. **AWARDS:** In the best interest of the District, the Purchasing Department reserves the right to reject any and all bids and to waive any minor irregularity in bids received; to accept any item or group of items unless qualified by bidder; to acquire additional quantities at prices quoted on the Invitation to Bid unless additional quantities are not acceptable, in which case the bid sheets must be noted "BID IS FOR SPECIFIED QUANTITY ONLY". All awards made as a result of this bid shall conform to applicable Florida Statutes.
As required by 1010.04(5), Fla. Stat., please be advised that the School District will not:

    1. Request documentation of or consider a bidder's social, political, or ideological interests when evaluating its proposal.
    2. Give preference to a bidder based on the bidder's social, political, or ideological interests

11. **THE JESSICA LUNSFORD ACT:** All awarded bidders who are permitted access on school grounds when students are present, who may have direct contact with any student of the District, or who may have access to or control of school funds must be fingerprinted and background checked. Awarded bidder agrees to undergo a background check and fingerprinting if he/she is an individual who meets any of the above conditions and to require that all individuals in the organization who meet any of the conditions to submit to a Level 2 FDLE background check and FBI screening, including fingerprinting by Fieldprint, Inc., at the sole cost of Awarded bidder. The report of the results will be immediately transmitted to the School District's Police Department, which shall be the sole determiner of clearance. Awarded bidder shall not begin providing services contemplated by the Invitation to Bid until Awarded bidder receives notice of clearance by the School District and is issued School District badges. Compliance requiring all awarded bidders to register as a visitor before entering school property and proper display of School District badges will be strictly enforced. Neither the Board, nor its members, officers, employees, or agents, shall be liable under any legal theory for any kind of claim whatsoever for the rejection of Awarded bidder (or discontinuation of Awarded bidder's services) on the basis of these compliance obligations. Awarded bidder agrees that neither the Awarded bidder, nor any employee, agent or representative of the Awarded bidder who has been convicted or who is currently under investigation for a crime delineated in section 435.04, Florida Statutes, will be employed in the performance of the contract.

12. **DISQUALIFYING CRIMES:** The bidder certifies by submission of this bid that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by the State of Florida or Federal Government. Further, the bidder certifies that it will divulge information regarding any of these actions or proposed actions with other governmental agencies. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not provide any goods or services or transact business with The School District of Palm Beach County, Florida for a period of 36 months from the date of being placed on the convicted vendor list.

13. **ADVERTISING:** In submitting a bid, bidder agrees not to use the results therefrom as a part of any commercial advertising without prior approval of the District.

14. **LOBBYING:** Bidders are hereby advised that they are not to lobby with any district personnel or board members related to or involved with this bid until the administration's recommendation for award has been posted at Bidnet.com, and at the Fulton Holland Educational Services Center, Purchasing Department area. All oral or written inquiries must be directed through the Purchasing Department.

    Lobbying is defined as any action taken by an individual, firm, association, joint venture, partnership, syndicate, corporation, and all other groups who seek to influence the governmental decision of a board member or district personnel after advertisement and prior to the posted recommendation on the award of the Contract.

    Any bidder or any individuals that lobby on behalf of bidder during the time specified will result in rejection / disqualification of said bid.

15. **GOVERNING LAW AND VENUE:** The Contract Documents shall be construed in accordance with the laws of the State of Florida, without regard to conflict of laws provisions. If any litigation shall result from the Contract Documents, the parties shall submit to the jurisdiction of the State Courts of the 15th Judicial Court and exclusive venue shall lie in Palm Beach County, Florida. BY ENTERING INTO THIS AGREEMENT, VENDOR AND SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.

16. **TAXES:** The School District of Palm Beach County, is exempt from any taxes imposed by the State and/or Federal Government. State Sales Tax Exemption Certificate No. 85-8013897253C-1 and Federal Excise Tax No. 59-600783 appears on each purchase order. This exemption does not apply to purchase of tangible personal property made by contractors who use the tangible personal property in the performance of contracts for the improvements of School District-owned real property as defined in Chapter 192, Florida Statutes.

17. **ASSIGNMENT:** The successful bidder shall not sub-contract, assign, transfer, convey, sublet, or otherwise dispose of the contract, or of any or all of its rights, title, or interest therein, or its power to execute such contract to any person, firm, or corporation without prior written consent of the Board.

18. **TERMINATION:** This Agreement may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within thirty (30) days after receipt of written notice from the aggrieved party identifying the breach. This Agreement may be terminated for cause for reasons including, but not limited to, Vendor's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to suitably perform the work; or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement. The Agreement may also be terminated for cause if the Vendor is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created to Section 215.473, Florida Statutes, or if the Vendor provides a false certification submitted pursuant to Section 287.135, Florida Statutes.

    This Agreement may also be terminated for convenience by the School District of Palm Beach County, Florida

    In the event this Agreement is terminated for convenience, Vendor shall be paid for any goods or services properly performed under the Agreement through the termination date specified in the written notice of termination. Vendor acknowledges and agrees that it has received good, valuable and sufficient consideration from The School Board of Palm Beach County, Florida, the receipt and adequacy of which are, hereby acknowledged by Vendor, for The School Board of Palm Beach County, Florida's right to terminate this agreement for convenience.

19. **SUBCONTRACTING:** If an awarded bidder intends to subcontract any portion of the Contract for any reason, the name and address of the subcontracting firm must be submitted along with the bidder's bid or prior to use for approval. No subcontracting will take place prior to bid-awarded bidder furnishing this information and receiving written approval from the District.

    The Purchasing Department reserves the right to reject a subcontractor who previously failed in the proper performance of a contract or failed to deliver on-time contracts of a similar nature, or who, the District has determined in its sole discretion, is not in the position to perform the contract due to the subcontractor's size, experience, or resources. The District reserves the right to inspect all facilities of any subcontractor in order to make determination as to the foregoing. The subcontractor will be equally responsible for meeting all requirements specified in the Invitation to Bid.

20. **DEBARMENT:** The Board shall have the authority to debar a person / corporation for cause for consideration or award of future contracts. The debarment shall be for a period commensurate with the seriousness of the causes, generally not to exceed three (3) years. When the offense is willful or blatant, a longer term of debarment may be imposed, up to an indefinite period.

21. **REQUIREMENTS FOR PERSONNEL ENTERING DISTRICT PROPERTY:** Possession of firearms will not be tolerated in or near school buildings; nor will violations of Federal and State laws and any applicable Board policy regarding Drug Free Workplace be tolerated. Violations will be subject to the immediate termination provision heretofore stated in Paragraph 16, Legal Requirements.

    "Firearm" means any weapon (including a starter gun or antique firearm) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any destructive device; or any machine gun.

    No person who has a firearm in their vehicle may park their vehicle on District property. Furthermore, no person may possess or bring a firearm on District property.

If any employee of an independent contractor or sub-contractor is found to have brought a firearm on District property, said employee must be terminated from the Board project by the independent contractor or sub-contractor. If the sub-contractor fails to terminate said employee, the sub-contractor's agreement with the independent contractor for the Board project shall be terminated. If the independent contractor fails to terminate said employee, the independent contractor's agreement with the Board shall be terminated.

Bidders are advised that they are responsible to ensure that no employee, agent or representative of their company who has been convicted or who is currently under investigation for a crime against children in accordance with section 435.04, Florida Statutes, will enter onto any school site.

22. **PRODUCT RECALL**: In the event the awarded bidder receives notice that a product delivered by the awarded bidder to the District has been recalled, seized or embargoed, and/or has been determined to be misbranded, adulterated, or found to be unfit for human consumption by a packer, processor, subcontractor, retailer, manufacturer, or by any State or Federal regulatory agency, the awarded bidder shall notify the District's Bid Purchasing Agent within two business days of receiving such notice. The District's acceptance or failure to reject the affected product as non-conforming shall not in any way impact, negate, or diminish the awarded bidder's duty to notify the District's Purchasing Agent that the affected product has been recalled, seized or embargoed, and/or has been determined to be misbranded, adulterated, or found to be unfit for human consumption. The form and content of such notice to the District shall include the name and description of the affected product; the approximate date the affected product was delivered to the District; the bid number; and relevant information relating to the proper handling of the affected product and/or proper disposition of the affected product by the District, if necessary to protect the health, welfare, and safety of District students or employees; and any health hazards known to the awarded bidder which may be caused or created by the affected product. The awarded bidder shall, at the option of the Purchasing Department and/or Purchasing Agent, either reimburse the purchase price or provide an equivalent replacement product at no additional cost to the District. Unless it was absolutely necessary for the District to dispose of the affected product, the awarded bidder shall be responsible for removal and/or replacement of the affected product within a reasonable time, as determined by the District, without causing significant inconvenience to the District.

At the option of the District, the awarded vendor may be required to reimburse storage and/or handling fees to be calculated from time of delivery and acceptance to actual removal or disposal. The awarded vendor will bear all costs associated with the removal and proper disposal of the affected product. The failure to reimburse the purchase price and storage and/or handling fees or to remove and/or replace the affected product with an equivalent replacement within a reasonable time without significant inconvenience to the District will be considered a default.

23. **USE OF OTHER CONTRACTS:** The District reserves the right to utilize any other District contract, any State of Florida Contract, any contract awarded by any other city or county governmental agencies, any other school board, any other community college/state university system cooperative bid agreement, or to directly negotiate/purchase per School Board policy and/or State Board Rule 6A-1.012(6) in lieu of any offer received or award made as a result of this bid, if it is in the best interest to do so. The District also reserves the right to separately bid any single order or to purchase any item on this bid if it is in its best interest to do so.

24. **JOINT-BIDDING, COOPERATIVE PURCHASING AGREEMENT:** All bidders submitting a response to this Invitation to Bid agree that such response also constitutes a bid to all State Agencies and Political Subdivisions of the State of Florida under the same conditions, for

the same prices and for the same effective period as this bid, should the bidder(s) deem it in the best interest of their business to do so.

This agreement in no way restricts or interferes with any state agency or political subdivision of the State of Florida to rebid any or all items.

25. **FAILURE TO DELIVER:** Failure to deliver as specified and at bid price will authorize the Board to purchase these items or services from other sources and hold the bidder responsible for any excess costs incurred thereby. Further, the Purchasing Department may recommend to the School Board that the vendor failing to deliver as specified be removed as a future bidder on all bids for a period of up to three years.

26. **ANTI-DISCRIMINATION:** The provisions of the ADA Act of 1990 pertaining to employment shall also be applicable. The Bidder shall not discriminate on the basis of race, gender, gender identity or expression, religion, national origin, ethnicity, sexual orientation, age or disability in the solicitation, selection, hiring, or treatment of sub-contractors, vendors, suppliers, or commercial customers. The Bidder shall provide equal opportunity for sub-contractors to participate in all of its public sector and private sector sub-contracting opportunities. The Bidder understands and agrees that violation of this clause may be considered a material breach of the contract and may result in contract determination, debarment, or other sanctions.

27. **COMPLAINT NOTIFICATIONS:** A list all complaints, administrative & legal, in the last ten (10) years which allege discrimination on the basis of:

a. Race;
b. Gender;
c. gender identity or expression;
d. religion;
e. national origin;
f. ethnicity;
g. sexual orientation;
h. age; or
i. disability

alleged by:

1. An independent contractor;
2. A subcontractor;
3. A vendor;
4. A supplier; or
5. A commercial customer;

If any complaints have been filed against your firm as stated above, your firm **MUST** provide the following information:

j. If any complaint(s) is pending, the firm **must** provide a statement/description of the pending complaint **AND** the firm's response to the complaint;

k. If any complaint(s) are resolved, the firm **must** provide a statement/description of the complaint **AND** the terms of the resolution of the complaint **AND** any remedial action taken by the firm as a result.

l. **INDIVIDUAL NAMES, IDENTITIES, CASE INFORMATION OR CONFIDENTIAL INFORMATION IS NOT REQUESTED.**

m. Broad, vague or ambiguous statements by your firm which do not provide the information requested will be deemed non-responsive by the Director of Purchasing.

The School District will consider a Bidder's complaint history information in its review and determination of responsibility. The failure of a Bidder to comply with the requirements in this Section will result in Bidder being deemed non-responsive by the Director of Purchasing. If no complaints have been filed within 10 years, please so state on Company Letterhead and upload with your response as proof.

28. **CONTRACT DISCLOSURE:** Upon the filing of a complaint against awarded bidder pursuant to Palm Beach County School Board Policy 6.144 - Commercial Nondiscrimination, awarded bidder agrees to provide any and all materials and documents requested by the District and to fully cooperate in any investigation conducted by the District pursuant to Policy 6.144. Bidder further understands and agrees that violation of this clause may be considered a material breach of the Contract and may result in contract termination, debarment, and other sanctions.

29. **INDEMNIFICATION AND HOLD HARMLESS**: Bidder shall, in addition to any other obligation to indemnify The School Board of Palm Beach County, Florida and to the fullest extent permitted by law, protect, defend, indemnify and hold harmless the School Board, its agents, officers, elected officials and employees from and against all claims, actions, liabilities, losses (including economic losses), costs arising out of any actual or alleged;

A. bodily injury, sickness, disease or death, or injury to or destruction of tangible property including the loss of use resulting there from, or any other damage or loss arising out of, or claimed to have resulted in whole or in part from any actual or alleged negligent act or omission of the vendor, Contractor, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable in the performance of the work; or

B. violation of law, statute, ordinance, governmental administration order, rule or regulation by Contractor in the performance of the work; or

C. liens, claims or actions made by the vendor or any subcontractor or other party performing the work; or

D. claims by third parties (including, but not limited to, Contractor's employees or subcontractors) based upon an alleged breach by Contractor of any agreement with such third party (e.g., an employment agreement or licensing agreement), or allegation that Contractor's provision of services to the School Board pursuant to the Contract infringes upon or misappropriates a patent, copyright, trademark, trade secret, or other proprietary right of the third party.

The indemnification obligations hereunder shall not be limited to any limitation on the amount, type of damages, compensation or benefits payable by or for the vendor of any

subcontractor under workers' compensation acts; disability benefit acts, other employee benefit acts or any statutory bar.

Bidder recognizes the broad nature of this indemnification and hold harmless article, and voluntarily makes this covenant for good and valuable consideration provided by the School Board in support of this indemnification in accordance with the laws of the State of Florida. This article will survive the termination of this Contract.

30. **BRAND NAMES:** Use of a brand name, trade name, make, model, manufacturer, or vendor catalog number in specifications is for the purpose of establishing a grade or quality of material only. It is not the District's intent to rule out other competition, therefore, the phrase OR ACCEPTABLE EQUAL is added. However, if a product other than that specified is bid, it is the vendor's responsibility to submit with the bid brochures, samples and/or detailed specifications on items bid. The District shall be the sole judge concerning the merits of bid submitted.

Bidder shall indicate on the bid form the manufacturer's name and number if bidding other than the specified brands, and shall indicate ANY deviation from the specifications as listed. Other than specified items offered requires complete descriptive technical literature marked to indicate detail(s) conformance with specific COPYRIGHTS OR PATENT RIGHTS: Bidder warrants that there has been no violation of copyrights or patent rights in manufacturing, producing or selling the goods shipped or ordered as a result of this bid. Seller agrees to hold the purchaser harmless from any and all liability, loss or expense occasioned by any such violation.

31. **MANUFACTURER'S CERTIFICATION:** The District reserves the right to request from bidders separate manufacturer certification of all statements made in the response to Invitation to Bid.

32. **OCCUPATIONAL HEALTH AND SAFETY:** Bidder, as a result of award of the bid, delivering any toxic substances item as defined in Code of Federal Regulation Chapter 29, shall furnish to the Purchasing Department, a Material Safety Data Sheet (MSDS). The material safety data sheet shall be provided with initial shipment and shall be revised on a timely basis as appropriate.

The MSDS must include the following information:

A. The chemical name and the common name of the toxic substance.

B. The hazards or other risks in the use of the toxic substance, including:
   (1) The potential for fire, explosion, corrosively and reactivity;
   (2) The known acute and chronic health effects of risks from exposure, including the medical conditions which are generally recognized as being aggravated by exposure to the toxic substance; and
   (3) The primary routes of entry and symptoms of overexposure.

C. The proper precautions, handling practices, necessary personal protective equipment, and other safety precautions in the use of or exposure to the toxic substances including appropriate emergency treatment in case of overexposure.

D. The emergency procedure for spills, fire, disposal and first aid.

E. A description in lay terms of the known specific potential health risks posed by the toxic substance intended to alert any person reading this information.

F. The year and month, if available, that the information was compiled and the name, address and emergency telephone number of the manufacturer responsible for preparing the information.

Any questions regarding this requirement should be directed to: Department of Labor and Employment Security, Bureau of Industrial Safety and Health, Toxic Waste Information Center, 2551 Executive Center Circle West, Tallahassee, FL 32301-5014, Telephone 1-800-367-4378.

33. **OSHA:** The bidder warrants that the product/services supplied to the School District of Palm Beach County shall conform in all respects to the standards set forth in the Occupational Safety and Health Act 1970, as amended, and the failure to comply with this condition will be considered as a breach of contract.

34. **LEGAL REQUIREMENTS:** Federal, State, County and local laws, ordinances, rules and regulations as well as School Board policies that in any manner affect the items covered by this Purchase Order herein apply and must be adhered to by the vendor. Specifically, bidder(s) is to adhere to School Board Policies 3.12 and 3.13, pursuant to the following, with respect to any criminal arrests and convictions, and is on notice thereto that any employees involved in any Chapter 435, Florida Statutes offenses are precluded from continuing to work on the project and must be replaced. Failure to comply may result in the immediate termination of the awarded bidder's contract at the sole discretion of the District. Lack of knowledge by the bidder will in no way be a cause for relief from responsibility.

In addition, if applicable, vendor compliance is required for the following: Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, as amended.

35. **FEMA SPECIAL CONDITIONS:** Funding for this Agreement and the individual POs may be provided in whole or in part by one or more U.S. Government funding agencies. CONTRACTOR may need to respond to events and losses where products and services are needed for the immediate and initial response to emergency situations such as, but not limited to, water damage, fire damage, vandalism cleanup, biohazard cleanup, sewage decontamination, deodorization, and/or wind damage during a disaster or other emergency situation. During the performance of this Contract, CONTRACTOR accepts these Special Conditions required by the Federal Emergency Management Agency (FEMA).

A. Compliance with the Davis-Bacon Act (if applicable)

1. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. CONTRACTOR shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

2. CONTRACTORS are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

3. Additionally, CONTRACTORS are required to pay wages not less than once a week.

B. Compliance with the Copeland "Anti-Kickback" Act (if applicable)

1. CONTRACTOR shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

2. Subcontracts. CONTRACTOR or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractor s to include these clauses in any lower tier subcontracts. The prime CONTRACTOR shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

3. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a CONTRACTOR and subcontractor as provided in 29 C.F.R. § 5.12.

C. Compliance with the Contract Work Hours and Safety Standards Act (if applicable)

1. *Overtime requirements.* No CONTRACTOR or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b) (1) of this section the CONTRACTOR and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such CONTRACTOR and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b) (1) of this section, in the sum of $27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b) (1) of this section.

3. *Withholding for unpaid wages and liquidated damages.* CONTRACTOR shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by CONTRACTOR or subcontractor under any such contract or any other Federal contract with the same prime CONTRACTOR, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime CONTRACTOR, such sums as may be determined to be necessary to satisfy any liabilities of

such CONTRACTOR or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

4. *Subcontracts.* CONTRACTOR or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b) (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime CONTRACTOR shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

D. Compliance with the Clean Air Act (if applicable)

1. CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

2. CONTRACTOR agrees to report each violation to SCHOOL BOARD and understands and agrees that SCHOOL BOARD will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

3. CONTRACTOR agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA.

E. Compliance with the Federal Water Pollution Control Act (if applicable)

1. CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

2. CONTRACTOR agrees to report each violation and understands and agrees that CONTRACTOR will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

3. CONTRACTOR agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA.

F. Suspension and Debarment (if applicable)

1. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, CONTRACTOR is required to verify that none of CONTRACTOR's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

2. CONTRACTOR must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

3. This certification is a material representation of fact relied upon by THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA. If it is later determined that CONTRACTOR did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

4. The bidder or proposer agrees to comply with the requirements of 2 C.F.R.pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

G. Recovered Materials (if applicable)

In the performance of this contract, CONTRACTOR shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

1. Competitively within a timeframe providing for compliance with the contract performance schedule;
2. Meeting contract performance requirements; or
3. at a reasonable price.

Information about this requirement, along with the list of EPA designated items, is available at EPA's Comprehensive Procurement Guidelines web site.

CONTRACTOR also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

H. Access to Records (if applicable)

1. CONTRACTOR agrees to provide THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of CONTRACTOR which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

2. CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

3. CONTRACTOR agrees to provide the FEMA Administrator or his authorized representatives' access to construction or other work sites pertaining to the work being completed under the contract.

4. In compliance with the Disaster Recovery Act of 2018, THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA and CONTRACTOR acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

J. DHS Seal, Logo & Flags

CONTRACTOR shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

K. Compliance with FEMA Policies, Procedures and Directives (if applicable)
CONTRACTOR will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

L. No Obligation by Federal Government
The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, CONTRACTOR, or any other party pertaining to any matter resulting from the contract.

M. Compliance with the False Claims Act (31 U.S.C. §§ 3729-3733)
CONTRACTOR acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to CONTRACTOR's actions pertaining to this contract.

N. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended) (if applicable)
CONTRACTORS who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

36. **PRICES QUOTED:** Deduct trade discounts and quote firm net prices. Give both unit price and extend total. Prices must be stated in units of quantity specified in bid specifications. In case of discrepancy in computing the amount of the bid, the UNIT PRICE quoted will govern. All prices FOB destination, freight prepaid (unless otherwise stated in special conditions). Discounts for prompt payment: Award, if made, will be in accordance with terms and conditions stated herein. Each item must be bid separately and no attempt is to be made to tie any item or items in with any other item or items. Cash or quantity discounts offered will not be a consideration in determination of award of bid(s). If a bidder offers a discount, it is understood that a minimum of 30 days will be required for payment, and the discount time will be computed from the date of satisfactory delivery at place of acceptance and receipt of correct invoice at the office specified.

37. **CONDITIONS AND PACKAGING:** It is understood and agreed that any item offered or shipped as a result of this bid shall be new (current production model at the time of the bid). All containers shall be suitable for storage or shipment, and all prices shall include standard commercial packaging.

38. **UNDERWRITERS' LABORATORIES:** Unless otherwise stipulated in the bid, all manufactured items and fabricated assemblies shall be UL listed or re-examination testing where such has been established by UL for the items offered and furnished.

39. **DELIVERY:** Unless actual date of delivery is specified, show number of days required to make delivery after receipt of purchase order in space provided. Delivery time may become a basis for making an award (See Special Conditions). Delivery shall be within the normal

working hours of the user, Monday through Friday, excluding holidays unless otherwise specified on the purchase order.

40. **QUALITY:** The items bid must be new and equal to or exceed specifications. The manufacturer's standard guarantee shall apply. During the guarantee period the successful bidder must repair and/or replace the unit without cost to the District with the understanding that all replacements shall carry the same guarantee as the original equipment. The successful bidder shall make any such repairs and/or replacements immediately upon receiving notice from the District.

41. **SAMPLES, DEMONSTRATIONS AND TESTING:**

A. Samples of items, when required, must be furnished free of expense and if not destroyed, will upon request, be returned at the bidder's expense. Request for the return of the samples must be indicated on his or her bid. Each individual sample must be labeled with bidder's name, bid number and item number. Failure of bidder to either deliver required samples or to clearly identify samples as indicated may be reason for rejection of the bid. Unless otherwise indicated, samples should be delivered to the Purchasing Department, School District of Palm Beach County.

B. When required, the District may request full demonstrations of any units bid prior to the award of any contract.

C. Items may be tested for compliance with specifications under the direction of the Florida Department of Agriculture and Consumer Services, or an independent testing laboratory. Bidders shall assume full responsibility for payment for any and all charges for testing and analysis of any materials offered or delivered that do not conform to the minimum required specifications. Bidder's disposition of all items delivered in this category must be at no expense to the District.

42. **INSPECTION AND ACCEPTANCE OF GOODS:** The awarded bidder shall be responsible for delivery of items in good condition at point destination. Bidder shall file with the carrier all claims for breakage, imperfections, and other losses, which will be deducted from invoices. The District will note, for the benefit of successful bidder, when packages are not received in good condition. In the event the material and/or services supplied to the District is found to be defective or does not conform to specifications, the District reserves the right to cancel the order upon written notice to the seller and return the product **to seller at the seller's expense**.

43. **LIABILITY, INSURANCE, LICENSES, AND PERMITS:** Where bidders are required to enter or go onto District property to deliver materials or perform work or services as a result of bid award, the bidder will assume the full duty obligation and expense of obtaining all necessary licenses, permits and insurance. Bidder shall be liable for any damage or loss to the District incurred by bidder, bidder's employees, licensees of the bidder or agent or any person the bidder has designated in completion of his or her contract as a result of the bid; further bidder shall be liable for all activities of bidder occasioned by performance of the Contract. Notwithstanding the foregoing, the liability herein shall be limited to ten million dollars ($10,000,000) and the bidder recognizes that and covenants that it has received consideration for indemnification provided herein.

44. **SPECIFICATIONS:** Any omissions of detail specifications stated herein that would render the materials/service from use as specified will not relieve the bidder from responsibility.

45. **BID BONDS AND PERFORMANCE BONDS:** Bid bonds, when required, shall be submitted with the bid in the amount specified in Special Conditions. Bid bonds will be

returned to unsuccessful bidders. After award of contract, the District will notify the successful bidder to submit a performance bond in the amount specified in Special Conditions. Upon receipt of the performance bond, the bid bond will be returned to the successful bidder.

46. **QUANTITIES:** The quantities shown are estimates of the quantity of items expected to be purchased during the term of award. Actual quantities purchased may often exceed or be less than quantities shown. Orders will be placed as needed by individual locations during the contract period. The bidder agrees that the price(s) offered shall be maintained irrespective of the quantity actually purchased.

47. **ORDERING PROCEDURE:** Specific Items: After approval of Contract award by the Board, a letter of contract acceptance will be issued to each successful bidder acknowledging which goods or services have been awarded. Separate purchase orders will be issued based on specific items at firm, fixed prices listed in the bid.

Percent Discount Catalog Bids: Separate purchase orders will be issued with pricing based on catalog and/or price lists.

No item may be shipped or service performed that is not listed on the purchase order.

48. **POSTING OF BID AND SPECIFICATIONS:** Invitation to Bid with specifications will be posted for review by interested parties at Bidnet.com on the date of bid electronic mailing and will remain posted for a period of 72 hours. Failure to file a specification protest within the time prescribed in section 120.57(3), Florida Statutes, will constitute a waiver of proceedings under Chapter 120, Florida Statutes, and applicable Board rules, regulations and policies.

49. **BID PROTEST:** If a bidder wishes to protest a bid, they must do so in strict accordance with the procedures outlined in section 120.57(3), Florida Statutes, the Invitation to Bid, and School Board Policy 6.14.

Any person who files an action protesting bid specifications, a decision or intended decision pertaining to this bid pursuant to section 120.57(3)(b), Florida Statutes shall post with the Purchasing Department, at the time of filing the formal written protest, a bond secured by an acceptable surety company in Florida payable to The School Board of Palm Beach County, Florida in an amount equal to one percent (1%) of the total estimated contract value, but not less than $500.00 nor more than $5,000.00. Bond shall be conditioned upon the payment of all costs that may be adjudged against the protester in the administrative hearing in which the action is brought and in any subsequent appellate court proceeding. In lieu of a bond, a cashier's check, certified bank check, bank certified company check or money order will be acceptable form of security. If, after completion of the administrative hearing process and any appellate court proceedings, the District prevails, it shall recover all costs and charges included in the final order of judgment, including charges by the Division of Administrative Hearings. Upon payment of such costs and charges by the protester, the protest security shall be returned.

50. **TIE BID:** According to FS 287.087, in the event of a tie, preference shall be awarded to vendors with Drug Free Work Place programs. Whenever two or more responses are equal with regard to price, quality, and service, a bid received from a business that certifies that it has implemented a Drug Free Work Place program shall be given preference in the award process. In the event both vendors have a Drug Free Work Place program, preference shall be awarded to the vendor who is certified as an SBE certified vendor with the School District. If both vendors meet all three requirements, according to standard purchasing practice, the tie will be resolved by a coin toss. The vendor whose company's name comes first in the alphabet will be assigned "heads" and the second vendor will be assigned "tails". The coin will be tossed a minimum of three times. The vendor whose side of the coin selected wins

two out of three times will be the named as the first ranked proposer and recommended for award. In the event of a 3-way (or more) tie, the vendor's company name will be chosen in a drawing.

51. **INTERPRETATIONS:** Neither Bidnet Direct nor any employee of the District is authorized to interpret any portion of the Invitation to Bid or give information as to the requirements of the bid in addition to that contained in the written bid document. Interpretations of the bid or additional information as to its requirements, where necessary, shall be communicated to bidders by written addendum.

52. **SPECIAL CONDITIONS:** To the extent that any conflict exists between the provisions of the General Conditions, the Special Conditions, and bidder's proposal, the order of precedence to resolve a conflict shall apply: 1) the Special Conditions, 2) the General Conditions, and all exhibits thereto, including any addenda, 3) Contractor's response to the ITB, including any appendix and exhibits.

53. **DISPUTE RESOLUTION:** As a condition precedent to a party bringing any suit for breach of contract related to this bid, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. The existence of a dispute shall not excuse the parties from performance pursuant to this bid. This remedy is supplemental to any other remedies available at law.

54. **WAIVER PROVISION:** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this bid and, therefore, is a material term hereof. Any party's failure to enforce any provision of this bid shall not be deemed a waiver of such provision or modification of this bid. A waiver of any breach of a provision of this bid shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this bid.

55. **Trade Secrets: Upon receipt, all submittals become Public Records and shall be subject to public disclosure consistent with Chapter 119, Florida Statutes.**

By submitting its bid, Bidder understands and waives any claim of confidentiality, including trade secrets, to its pricing and/or cost of service related submittals.

Any Bidder that intends to assert that certain materials are exempt from public disclosure under Chapter 119, Florida Statutes must submit the documents in a separate bound document or file labeled "Name of Firm, Attachment to Proposal Package. Bid# - Confidential Matter." In addition, the firm must identify the specific statute that authorizes the exemption from Chapter 119, Florida Statutes. CD or DVDs included in a submittal must also comply with this requirement and the firm must separate any CD or DVDs claimed to be confidential.

Any claim of confidentiality on materials that the Proposer asserts to be exempt and placed elsewhere in the submittal will be considered waived by the Proposer upon submission, upon opening.

The School District will provide Proposer with prompt notice by phone and/or email of any request for public records in which that Proposer has claimed an exemption information being a Trade Secret so that the Proposer may see, at its sole expense, an appropriate protective order from a court of competent jurisdiction. In the event the Proposer elects not to seek an appropriate protective order or is unable to obtain such an order within no

later than ten (10) business days following receipt of notice, the Proposer agrees and consents that the School District shall be permitted to respond to the public records request with the response not being deemed a breach by the School Board of its obligations under the Agreement or the Florida Statutes governing Trade Secret exemptions. The Proposer would then be waiving any rights relating to Trade Secrets under Florida Law. Proposer agrees to defend, indemnify, and hold harmless the School District and School Board and the School District's officers, employees, School Board members, and agents, against any loss, damages, judgements, attorneys' fees or cost incurred by School Board as a result of the School District's providing the records in response to the public records request or withholding them based on Proposer's assertion of the Trade Secret exemption.

The indemnification provisions survive the School Board's award of the contract and remain as long as the trade secret data is in the possession of the School Board.