

INVITATION FOR BIDS

The Board of Education of Rome City School District will receive Bids for:

INVENTORY AND APPRAISAL SERVICES IFB 2020-06-24

for the use of said district. Bids will be received until 11 AM on the 24th day of June, 2020 at the **Office of the Director of Business and Finance** at 409 Bell Road, Rome, NY 13440 at which time and place they will be opened. The Board of Education reserves the right to reject any or all Bids in whole or in part. Any Bid submitted will be binding for 45 days subsequent to date of Bid opening. Bid forms and specifications are available at the **Office of the Director of Business and Finance** of the **Rome City School District** from 9:00 am to 4:00 pm, Monday through Friday.

Complete Bid forms are also available on our website at:

www.romecsd.org

Click on: "District", "Business and Finance" and "Bid Opportunities"

Rome City School District
Office of the Director of Business and Finance
409 Bell Road
Rome, NY 13440
(315) 338-6541
FAX: (315) 334-7403
Email: ddreidel@romecsd.org

Date: June 10, 2020

Jonathon Matwijec-Walda, District Clerk

Bidder's Name: _____

Address: _____

City/State/Zip: _____

Phone: _____ Fax: _____

Contact Person: _____ eMail: _____

Rome City School District
409 Bell Road
Rome, NY 13440

INVITATION FOR BIDS

IFB Number 2020-06-24	Product/Service Requested Inventory and Appraisal Services
Contract Period July 1, 2020 – June 30, 2023	
Submission Deadline June 24, 2020	
Note: Bids are to be mailed or delivered to the above address. E-mail Bids will not be accepted.	
Designated Contact David Dreidel Director of Business and Finance Telephone: (315) 338-6541 E-mail: ddreidel@romecsd.org	IFB Opening Date: June 24, 2020 Time: 11:00 AM Place: Rome City School District Director of Business and Finance 409 Bell Road Rome, NY 13440

Your receipt of these Bid Documents does not indicate that Rome City School District has pre-determined your company's qualifications to receive a Contract award. Such determination will be made after the Bid opening and will be based on the evaluation of your submission compared to the specific requirements and qualifications contained in these Bid Documents.

This procurement will result in:	<input type="checkbox"/> a Public Works Contract (Labor Law Art. 8) PRC # _____
	<input type="checkbox"/> a Building Services Contract (Labor Law Art. 9) PRC # _____
	<input checked="" type="checkbox"/> neither.
By submitting a Bid you certify that you are familiar with a Contractor's obligations under the applicable law, and that you have factored those obligations into your Bid.	

These Bid Documents consist of the following parts:

- This Invitation, including Definitions
- Part A: Terms and Conditions of the IFB Process
- Part B: Standard Contract Terms and Conditions
- Part C: Terms and Conditions Specific to This Purchase
- Part D: Bid Form and Certifications

By submitting a Bid, you agree that the evaluation of your Bid, and your performance of any resulting Contract, will comply with the terms, conditions, requirements, and limitations set forth in Parts A, B, and C.

IMPORTANT: These provisions will constitute, or be incorporated into, the Contract between the successful Bidder and Rome City School District, and will **supersede** any conflicting language in a **Vendor's preprinted invoice or service agreement.**

If you choose to submit a Bid, keep your copies of this Invitation and Parts A, B, and C for future reference, and submit the following:

- Bid Sheet,
- Certification of Non-Collusion,
- Any documentation required by Part C, and
- Any additional documentation you choose to use to support your Bid.

Definitions

Terms used in these Bid Documents have the following meanings:

Affiliate Any individual or other legal entity, (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) that effectively controls another company in which (a) the Bidder owns more than fifty percent (50%) of the ownership; or (b) any individual or other legal entity which owns more than fifty percent (50%) of the ownership of the Bidder. In addition, if a Bidder owns less than fifty percent (50%) of the ownership of another legal entity, but directs or has the right to direct such entities daily operations, that entity will be an Affiliate.

Bid An offer submitted by a Bidder to furnish a described Product or a solution, perform services or means of achieving a practical end, at a stated price for the stated Contract term. As required by the Bid Documents, the Bid may be subject to modification through the solicitation by the District of best and final offers during the evaluation process prior to recommendation for award of the Contract.

Bid Document Writings by the District setting forth the scope, terms, conditions and technical specifications for a procurement of a Product. Such writings typically include, but are not limited to: Invitation for Bids (IFB), Request for Quotation (RFQ), Request for Proposals (RFP), addenda or amendments thereto, and terms and conditions which are incorporated by reference. "Bid Documents" refers to this IFB and its Parts A, B, and C.

Bid Specification A written description setting forth the specific terms of the intended procurement, which may include: physical or functional characteristics, the nature of a commodity or construction item, any description of the work to be performed, Products to be provided, the necessary qualifications of the Bidder, the capacity and capability of the Bidder to successfully carry out the proposed Contract, or the process for achieving specific results and/or anticipated outcomes or any other requirement necessary to perform work.

Bidder Any individual or other legal entity (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) which submits a Bid in response to an IFB. The term “Bidder” shall also include the term “Offeror” and “Vendor.”

Contract The writing(s) which contain the agreement of the District and the Bidder/Contractor setting forth the total legal obligation between the parties as determined by applicable rules of law. At a minimum, the Contract resulting from an award based on this IFB includes the terms of this Invitation, Part A – Terms and Conditions of the IFB Process, Part B – Standard Contract Terms and Conditions, and Part C – Terms and Conditions Specific to This Purchase.

Contract Award Notification An announcement to a Bidder that a Contract has been established.

Contractor Any successful Bidder to whom a Contract has been awarded, whether a Contractor, licensor, licensee, lessor, lessee or any other party.

District Rome City School District.

Documentation The complete set of manuals (e.g., user, installation, instruction or diagnostic manuals) in either hard or electronic copy, which are necessary to enable the District to properly test, install, operate and enjoy full use of the Product.

Emergency An urgent and unexpected requirement where health and public safety or the conservation of public resources is at risk.

Procurement Record Documentation by the District of the decisions made and approach taken during the procurement process and during the Contract term.

Product A deliverable under any Bid or Contract which may include commodities, services and/or technology.

Proprietary Protected by secrecy, patent, copyright or trademark against commercial competition.

Purchase Order (PO) The District’s fiscal form or format that is used when making a purchase (e.g., formal written PO or other authorized instrument).

Request for Proposals (RFP) A type of Bid Document that is used for procurements where factors in addition to cost are considered and weighted in awarding the Contract and where the method of award is “best value,” as defined by the State Finance Law.

Request For Quotation (RFQ) A type of Bid Document that can be used when a formal Bid opening is not required (e.g., discretionary, sole source, single source or emergency purchases).

Responsible Bidder A Bidder that is determined to have financial and organizational capacity, legal authority, satisfactory previous performance, skill, judgment and integrity, and that is found to be competent, reliable and experienced, as determined by the District.

Responsive Bidder A Bidder meeting the Bid Specifications or requirements prescribed in the IFB solicitation.

Single Source A procurement where two (2) or more Bidders can supply the required Product, and the District may award the Contract to one (1) Bidder over the other.

Site The location (street address) where the Product will be executed or services delivered.

Sole Source A procurement where only one (1) Bidder is capable of supplying the required Product.

State State of New York.

Subcontractor Any individual or other legal entity, (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) who has entered into a Contract, express or implied, for the performance of a portion of a Contract with a Contractor.

Superintendent Superintendent of Schools of the Rome City School District.

Part A - Terms and Conditions of the IFB Process

By submitting a Bid in response to this IFB, you agree that you have read these Terms and Conditions, are bound by these Terms and Conditions, and have complied with them to the best of your knowledge.

A Bidder who does not comply with these Terms and Conditions may be considered a non-responsive Bidder.

1. Bid Preparation

- a. Prepare your Bid on the form included as Part D of this IFB.
- b. Type or write your responses using indelible ink. No alteration, erasure or addition is to be made to the Bid Documents. Changes may be ignored by the District or may be grounds for rejection of the Bid. Changes, corrections and/or use of white-out in the Bid or Bidder's response portion of the Bid Document must be initialed by an authorized representative of the Bidder.
- c. Print the name of your company on each page of the Bid in the block provided.
- d. One (1) copy of the Bid is required, unless otherwise specified herein.
- e. All Bids must be signed by a person authorized to commit the Bidder to all of the terms and conditions set forth in these Bid Documents.
- f. If unit pricing is required by the Bid Documents, the Bidder should insert the price per unit specified and the price extensions in decimals, not to exceed four (4) places for each item unless otherwise specified, in the Bid. In the event of a discrepancy between the unit price and the extension, the unit price shall govern unless, in the sole judgment of the District, such unit pricing is obviously erroneous.
- g. All offers, information, and product or service descriptions submitted in response to this IFB shall be submitted in English. All prices shall be expressed, and all payments shall be made, in United States Dollars (\$US). Any Bids submitted which do not meet these criteria will be rejected.
- h. The Bidder shall indicate in the spaces provided on the Bid form the manufacturer's name, the address where the proposed Product or Products will be produced, the catalog references or model number of the Product or Products offered and all other information requested.
- i. Bidders are cautioned to verify their Bids before submission, as amendments to Bids or requests for withdrawal of Bids received by the District after the time specified for the Bid opening, may not be considered.

2. Including Additional Information or Materials

- a. The Bidder shall submit with its Bid detailed specifications, circulars and all necessary data on the Product to be furnished.

- b. If the Product offered differs from the Bid Specifications in these Bid Documents, such differences must be explained in detail.
- c. Failure to submit any of the above data may result in rejection of the Bid. Also, extraneous terms or material deviations (including additional, inconsistent, conflicting or alternative terms) may render the Bid non-responsive and may result in rejection of the Bid.
- d. Extraneous term(s) submitted on standard, pre-printed forms (including but not limited to: Product literature, order forms, license agreements, contracts or other documents) that are attached or referenced with submissions shall not be considered part of the Bid or resulting Contract, but shall be deemed included for informational or promotional purposes only. Furthermore, only those extraneous terms that meet all the following requirements may be considered as having been submitted as part of the Bid:
 - i. Each proposed extraneous term (addition, deletion, counter-offer, deviation, or modification) must be specifically enumerated in a writing which is not part of a pre-printed form; and
 - ii. The writing must identify the particular Bid Specification requirement (if any) that Bidder rejects or proposes to modify by inclusion of the extraneous term; and
 - iii. The Bidder shall enumerate the proposed addition, counter offer, modification or deviation from the Bid Document, and the reasons therefore.

No extraneous term(s), whether or not deemed “material,” shall be incorporated into a Contract or PO unless submitted in accordance with the above and the District expressly accepts each such term(s) in writing. Acceptance and/or processing of the Bid shall not constitute such written acceptance of extraneous term(s).

- e. The District reserves the right to request any additional information deemed necessary for the proper evaluation of Bids.

3. Conditional Bid

Unless the Bid Documents provide otherwise, a Bid is not rendered non-responsive if the Bidder specifies that the award will be accepted only on all or a specified group of items or Product included in the Bid Specifications. It is understood that nothing herein shall be deemed to change or alter the method of award contained in the Bid Documents.

4. Alternate Bids

- a. Each Bidder shall make no more than one (1) offering (i.e., a single model and stock number) per item per Bid. Bids which have more than one (1) Product offering per item may not be considered.

- b. If a Bidder wishes to make more than one (1) Product offering, such offering(s) are to be made on separate sheets and are to be listed as "alternate" Bids. "Alternate" Bids are to show complete information (pricing, brand, model, stock number, etc.), and will be evaluated as separate Bids.

5. Bid Delivery

- a. All Bids are to be packaged, sealed and submitted to:

Rome City School District
409 Bell Road
Rome, New York 13440
Attention: David Dreidel
Director of Business and Finance
Phone No.: (315) 338-6541
Fax No.: (315) 334-7403
E-Mail: ddreidel@romecsd.org

- b. A Bid shall be placed inside an opaque envelope and sealed inside. If the Bid does not fit into the envelope, the Bid envelope should be attached to the outside of the sealed box or package with the Bid inside. If using a commercial delivery company that requires use of their shipping package or envelope, Bidder's sealed Bid, labeled as detailed below, should be placed within the shipper's sealed envelope to ensure that the Bid is not prematurely opened.
- c. All Bids must have a label on the outside of the package or shipping container stating the following information:

Bid Enclosed

- Bid Name
- IFB Number
- Bid submission date and time

In the event that a Bidder fails to provide such information on the return Bid envelope or shipping material, the District reserves the right to open the shipping package or envelope to determine the proper Bid name and number, and the date and time of Bid opening. Bidder shall have no claim against the District arising from such opening and such opening shall not affect the validity of the Bid or the procurement.

Notwithstanding the District's right to open a Bid to ascertain the foregoing information, Bidder assumes all risk of late delivery associated with the Bid not being identified, packaged or labeled in accordance with the foregoing requirements.

- d. **E-mail Bids will not be accepted.**

6. Late Bids

- a. For purposes of Bid openings held and conducted by the District, a Bid must be received in such place as may be designated in the Bid Documents, at or before the date and time established in the Bid Specifications for the Bid opening.
- b. **Bidders assume all risks for timely, properly submitted deliveries.** Bidders are strongly encouraged to arrange for delivery of Bids prior to the date of the Bid opening.
- c. Any Bid received at the specified location after the time specified will be considered a late Bid. A late Bid shall not be considered for award unless: (i) no timely Bids meeting the requirements of the Bid Documents are received; and (ii) acceptance of the late Bid is in the best interests of the District.
- d. Delays in United States mail deliveries or any other means of transmittal, including couriers or agents of the District shall not excuse late Bid submissions. Similar types of delays, including but not limited to, bad weather, or security procedures for parking and building admittance shall not excuse late Bid submissions.
- e. Determinations relative to Bid timeliness shall be at the sole discretion of the District.

7. Withdrawal of Bid

A Bid may be withdrawn after submission but before the time set for the Bid opening. A Bid will be considered withdrawn if written notice (including e-mail) of the Bidder's desire to withdraw the Bid is received by the designated contact before the time set for the Bid opening. The District reserves the right to permit a Bid to be withdrawn after Bid opening at its sole discretion, and award the Contract to the next lowest Responsible Bidder.

8. Certification of Non-Collusion

As required by General Municipal Law Section 103-d, each Bidder must submit with a Bid a Certification of Non-Collusion, under penalty of perjury, that to the best of its knowledge and belief:

- a. The prices in this Bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;
- b. Unless otherwise required by law, the prices which have been quoted in this Bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and
- c. No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not submit a Bid for the purpose of restricting competition.

This Bid Document includes the required Certification form. In the event that the Bidder is unable to certify as stated above, the Bidder shall provide a signed statement which sets forth in detail the reasons why the Bidder is unable to furnish the Certification as required in accordance with General Municipal Law Section 103-d.

9. Conflict of Terms and Conditions

Conflicts between documents shall be resolved in the following order of precedence:

- a. Part C: Terms and Conditions Specific to This Purchase
- b. Part B: Standard Contract Terms and Conditions
- c. Part A: Terms and Conditions of the IFB Process
- d. Bidder's Bid and additional documents

10. Qualification as Responsible Bidder

- a. Bidder may be disqualified from receiving awards if Bidder, or anyone in Bidder's employment, has previously failed to perform satisfactorily in connection with public bidding or Contracts or is deemed non-responsible.
- b. Bids will be accepted only from established manufacturers or their authorized dealers. Any dealer submitting a Bid hereby guarantees that it is an authorized dealer of the manufacturer, that the manufacturer has agreed to supply the dealer with all quantities of Products required by the dealer in fulfillment of its obligations, and that it will provide a certificate from the manufacturer acknowledging this level of support
- c. Bidder must maintain a business establishment with adequate inventories of the Products offered, and must be capable of processing and shipping large numbers of orders to various destinations.
- d. The District may require a certificate from the Bidder showing the number of years the Bidder has been active in selling the products offered and the size and location of the inventories regularly maintained.
- e. The District reserves the right to investigate or make any inquiry into the capabilities of any Bidder to properly perform under any resultant Contract.
- f. Bidder must maintain service facilities and have trained personnel qualified to service the Product furnished at the using agency within forty eight (48) hours.
- g. Any determination of a violation of any Federal or State public works law or regulation, or labor law or regulation, or any OSHA violation deemed "serious or willful" may be grounds for a determination of vendor non-responsibility and rejection of Bid.

- h. A Bidder/Contractor must be prepared, if requested by the District, to present evidence of legal authority to do business in New York State, integrity, experience, ability, prior performance, organizational and financial capacity as well as where applicable, a statement as to supply, plant, machinery and capacity of the manufacturer or source for the production, distribution and servicing of the Product Bid. If the District determines that the conditions and terms of the Bid Documents, Bid Specifications or Contract are not complied with, or that items, services or Product proposed to be furnished do not meet the specified requirements, or that the legal authority, integrity experience, ability, prior performance, organization and financial capacity or facilities are not satisfactory, the District may reject such Bid or terminate the Contract.

11. References

Upon request, all Bidders must provide a minimum of five (5) references including references from two (2) of the Bidder's largest customers. References shall be commercial or governmental accounts, and should demonstrate the ability of the Bidder to perform jobs similar in scope to the size, nature and complexity of the outlined Bid. The references shall include the references: name, address, contact person, telephone number, fax number, number of years Bidder has serviced the referenced account, and volume of business performed within the past three (3) years for each referenced account.

12. Financial Stability

If requested, Bidder must document its ability to service a contract with dollar sales volume similar to scope of this Bid through submission of financial statements documenting past sales history. The Bidder must be financially stable and able to substantiate the financial statements of its company. In addition to sales history, current financial statements may be requested and must be provided within five (5) business days. The District reserves the right to request additional documentation from the Bidder and to request reports on financial stability from independent financial rating services. The District reserves the right to reject any Bidder who does not demonstrate financial stability sufficient for the scope of this Bid.

If Product acquisitions are financed through any third party financing, Contractor may be required as a condition of Contract award to agree to the terms and conditions of a “Consent & Acknowledgment Agreement” in a form acceptable to the District.

13. Price Terms

- a. Prices quoted are to include all applicable taxes, surcharges, and fees. No add-ons to the price(s) quoted will be allowed, except as specifically stated in these Bid Documents. **Note that the District is a tax exempt local government entity.**
- b. Prices or discounts quoted are to be firm for the entire period of the Contract. Price escalation or discount reduction will not be allowed and is specifically excluded from the terms and conditions of these Bid Documents. Price decreases or discount increases are permitted at any time.

- c. Unless otherwise specified in these Bid Documents, prices quoted shall be net, including transportation, customs, tariff, delivery and other charges fully prepaid by the Contractor to the destination(s) indicated in the Bid Documents.
- d. When Bids are requested on a number of Products as a group or lot, a Bidder desiring to bid “no charge” on a Product in the group or lot must clearly indicate such. Otherwise, such Bid may be considered incomplete and be rejected, in whole or in part, at the discretion of the District.
- e. All Products to be supplied for educational purposes that are subject to educational discounts shall be identified in the Bid and such discounts shall be made available to qualifying institutions.
- f. During the Contract term, if substantially the same or a smaller quantity of a Product is sold by the Contractor outside of this Contract upon the same or similar terms and conditions as this Contract at a lower price, the price under this Contract, at the discretion of the District, shall be immediately reduced to the lower price.
- g. Price decreases shall take effect automatically during the Contract term and apply to POs submitted on or after:
 - i. Commercial Price List Reductions: Where Net Prices are based on a discount from Contractor’s list prices, the date Contractor lowers its pricing to its customers generally or to similarly situated government customers during the Contract term; or
 - ii. Special Offers/Promotions Generally: Where Contractor generally offers more advantageous special price promotions or special discount pricing to other customers during the Contract term for a similar quantity, and the maximum price or discount associated with such offer or promotion is better than the discount or net price otherwise available under this Contract, such better price or discount shall apply for similar quantity transactions under this Contract for the life of such general offer or promotion; or
 - iii. Special Offers/Promotions to PSDs: Contractor may offer PSDs, under either this Contract or any other contracting vehicle, competitive pricing which is lower than the net price set forth herein at any time during the Contract term and such lower pricing shall not be applied as a global price reduction under the foregoing paragraph (ii).
- h. As specified in the Bid Documents and Contract, a Contractor may be solicited at the time of issuance of a PO for best and final pricing for the Product or service to be delivered to the District. Contractors are encouraged to reduce their pricing upon receipt of such request.

14. Quantity to Be Purchased

- a. All quantities listed are estimates. Best efforts have been made to list quantities that are reasonably expected to be purchased, depending upon finances at the time of award.
- b. The District reserves the right, at any time prior to the award of a specific quantity Contract, to alter in good faith the quantities listed in the Bid Documents. In the event such right is exercised, the lowest responsible Bidder meeting Bid Specifications will be advised of the revised quantities and afforded an opportunity to extend or reduce its Bid price in relation to the changed quantities. Refusal by the low Bidder to so extend or reduce its Bid price may result in the rejection of its Bid and the award of such Contract to the lowest Responsible Bidder who accepts the revised qualifications.
- c. The District reserves the right to negotiate lower pricing, or to advertise for Bids, any unanticipated excessive purchase. An "unanticipated excessive purchase" is defined as an unexpected order for a Contract Products exceeding the listed quantity.

15. Delivery and Set-Up Terms

- a. Delivery shall be expressed in number of calendar days required to make delivery after receipt of a PO.
- b. Product is required as soon as possible and guaranteed delivery may be considered in making award.
- c. Delivery shall be made in accordance with instructions on PO from the District. If there is a perceived discrepancy between the PO and the terms and conditions of the Contract resulting from this IFB, it is the Contractor's obligation to seek clarification from the District.
- d. Price shall include:
 - Unloading, moving to point of use, uncrating, assembling, adjusting and leaving ready to operate to the full extent of its design capabilities, with final connections, if any, to be made by others, or
 - Unloading, moving to point of use, uncrating, assembling, complete installation, adjusting, connecting all services and leaving ready to operate to the full extent of its design capabilities.
 - Not applicable
- e. The District is responsible for bringing all services to within six feet (6') of an installation site.

- f. Additional fees may be charged when delivery to point of use is not possible via dock, any other door, stairway or elevator. If special rigging is required, the purchaser shall pay the additional costs. Such costs shall be prepaid and added to the invoice.
- g. If the District requires inside delivery, such as to an upper floor, it will clearly indicate on PO that inside delivery is required and the specific location where inside delivery is required to be made (using terminology such as "Inside Delivery To Room _____ Located On _____ Floor," etc.) The District may be charged additional inside delivery costs when inside delivery is required; but may not be charged for delivery to building location since price is FOB destination; and, the District must be informed of the additional cost prior to delivery and agree to the additional charge. NOTE: If it is determined by the District that the Contractor is charging excessive amounts for inside delivery, the District may seek reimbursement for such amounts, may remove the Contractor from the list of eligible Bidders, and may cancel the Contract.
- h. Contractor shall furnish the District with written acknowledgement of the shipping date at least two (2) weeks prior to shipment. Failure to comply may be cause for the initiation of Contract default proceedings.
- i. If shipment will not be made within the guaranteed delivery time, the Contractor is required to notify the District in writing at least two (2) weeks prior to the latest date of the original delivery obligation. This notification must include the reasons for the delay and the latest date the material will be shipped. Should the delay be not acceptable to the District, appropriate Contract default proceedings may be initiated. Failure to supply timely written notification of delay may be cause for default proceedings.

16. Taxes

Purchases made by the District are exempt from New York State and local sales taxes and, with certain exceptions, Federal excise taxes. To satisfy the requirements of the New York State Sales tax exemption, either the PO issued by the District or the invoice forwarded to authorize payment for such purchases will be sufficient evidence that the sale by the Contractor was made to an exempt organization under Section 1116 (a) (1) of the Tax Law. The District must offer proof of exemption upon request. No person, firm or corporation is, however, exempt from paying the State Truck Mileage and Unemployment Insurance or Federal Social Security taxes, which remain the sole responsibility of the Bidder/Contractor.

17. Prevailing Wage Rates – Public Works and Building Services Contracts

- a. The IFB identifies whether this procurement is classified as a Public Works Contract or a Building Services Contract.
- b. If this procurement is classified as a Public Works Contract or a Building Services Contract, each Bidder should be sure they are familiar with the additional requirements set forth in Article 8 or Article 9 of the Labor Law and incorporated into the Contract resulting from this Bid, as set forth in Paragraph 14 of Part B – Standard Contract Terms and Conditions.

- c. If applicable, a copy of the prevailing wage rates to be paid or provided are annexed to the Bid Documents. Bidders must submit Bids which are based upon the prevailing hourly wages, and supplements in cash or equivalent benefits (i.e., fringe benefits and any cash or non-cash compensation which are not wages, as defined by law) that equal or exceed the applicable prevailing wage rate(s) for the location where the work is to be performed. Bids that fail to comply with this requirement will be disqualified.

18. Protection Of Bidder’s Confidential/Trade Secret Information

- a. Records of the District are subject to public inspection pursuant to the New York State Freedom of Information Law (FOIL). During the evaluation process, the content of each Bid will be held in confidence and details of any Bid will not be revealed except as may be required under the Freedom of Information Law or other State law.
- b. The Freedom of Information Law provides for an exemption from disclosure for trade secrets or information the disclosure of which would cause injury to the competitive position of commercial enterprises. This exception is effective both during and after the evaluation process.
 - i. If the Bid contains any such trade secret or other confidential or proprietary information, it must be accompanied in the Bid with a written request to the District to not disclose such information.
 - ii. Such request must state with particularity the reasons why the information should not be available for disclosure and must be provided at the time of submission of the Bid. Notations in the header, footer or watermark of the Bid Document will not be considered sufficient to constitute a request for non-disclosure of trade secret or other confidential or proprietary information.
 - iii. Where a Freedom of Information request is made for trademark or other confidential or proprietary information, the District reserves the right to determine upon written notice to the Bidder whether such information qualifies for the exemption for disclosure under the law. Acceptance of the claimed materials does not constitute a determination on the exemption request, which determination will be made in accordance with statutory procedures.
- c. Notwithstanding the above, where a Bid tabulation is prepared and Bids publicly opened, such Bid tabulation shall be available upon request.

19. Product References

- a. “Or Equal”: In all Bid Specifications the words “or equal” are understood to apply where a copyrighted, brand name, trade name, catalog reference, or patented Product is referenced. References to such specific Product are intended as descriptive, not restrictive, unless otherwise stated. Comparable Product will be considered if proof of compatibility is provided, including appropriate catalog excerpts, descriptive literature, specifications and test data, etc. The District’s decision as to acceptance of the Product as equal shall be final.

- b. Discrepancies in References: In the event of a discrepancy between the model number referenced in the Bid Specifications and the written description of the Products which cannot be reconciled, with respect to such discrepancy, then the written description shall prevail.

20. Site Inspection

- a. It is recommended that each Bidder prior to the Bid opening familiarize itself with facilities at the District, and in particular with the area where the Product is to be installed, as the Bidder is fully responsible for the product meeting the solicitation and installation requirements. Bidders may make an appointment to visit the site.
- b. Where a site inspection is required by the Bid Documents, Bidder shall be required to inspect the site, including environmental or other conditions for pre-existing deficiencies that may affect the installed Product, equipment, or environment or services to be provided and, which may affect Bidder's ability to properly deliver, install or otherwise provide the required Product. Particular attention should be given to structural and electrical changes required for proper installation. All inquiries regarding such conditions shall be made in writing.
- c. Bidder shall be deemed to have knowledge of any deficiencies or conditions which such inspection or inquiry might have disclosed.
- d. Bidder must provide a detailed explanation with its Bid if additional work is required under this clause in order to properly complete the delivery and installation of the required Product or provide the requested service.

21. Samples

- a. Standard Samples: Bid Documents may indicate that the Product to be purchased must be equal to a standard sample on display in a place designated by the District and such sample will be made available to the Bidder for examination prior to the opening date. Failure by the Bidder to examine such sample shall not entitle the Bidder to any relief from the conditions imposed by the Bid Documents.
- b. Bidder Supplied Samples: The District reserves the right to request from the Bidder/Contractor a representative sample(s) of the Product offered at any time prior to or after award of a Contract.
 - i. Unless otherwise instructed, samples shall be furnished within the time specified in the request. Untimely submission of a sample may constitute grounds for rejection of Bid or cancellation of the Contract.
 - ii. Samples must be submitted free of charge and be accompanied by the Bidder's name and address, any descriptive literature relating to the Product and a statement indicating how and where the sample is to be returned.

- iii. Where applicable, samples must be properly labeled with the appropriate Bid or Contract reference.
- iv. A sample may be held by the District during the entire term of the Contract and for a reasonable period thereafter for comparison with deliveries. At the conclusion of the holding period the sample, where feasible, will be returned as instructed by the Bidder, at the Bidder's expense and risk. Where the Bidder has failed to fully instruct the District as to the return of the sample (i.e., mode and place of return, etc.) or refuses to bear the cost of its return, the sample shall become the sole property of the District at the conclusion of the holding period.
- c. Enhanced samples: When an approved sample exceeds the minimum Bid Specifications, all Product delivered must be of the same enhanced quality and identity as the sample. Thereafter, in the event of a Contractor's default, the District may procure a Product substantially equal to the enhanced sample from other sources, charging the Contractor for any additional costs incurred.
- d. Conformance with sample(s): Submission of a sample (whether or not such sample is tested by, or for, the District) and approval thereof shall not relieve the Contractor from full compliance with all terms and conditions, performance related and otherwise, specified in the Bid Documents. If in the judgment of the District the sample or Product submitted is not in accordance with the Bid Specifications or testing requirements prescribed in the Bid Documents, the District may reject the Bid. If an award has been made, the District may cancel the Contract at the expense of the Contractor.
- e. Testing: All samples are subject to tests in the manner and place designated by the District, either prior to or after Contract award. Unless otherwise stated in the Bid Documents, Bidder samples consumed or rendered useless by testing will not be returned to the Bidder. Testing costs for samples that fails to meet Contract requirements may be at the expense of the Contractor.
- f. Requests for samples by PSDs: The District may request a sample from the Contractor. The Contractor may decline to supply a sample, but, in such a case, the District may, in its sole discretion, make a determination on the performance capability of the Product or on the issue in question.

22. Drawings

- a. Drawings submitted with Bid: When the Bid Documents require the Bidder to furnish drawings and/or plans, such drawings and/or plans shall conform to the mandates of the Bid Documents and shall, when approved by the District, be considered a part of the Bid and of any resulting Contract. All symbols and other representations appearing on the drawings shall be considered a part of the drawing.

- b. Drawings submitted during the Contract term: Where required to develop, maintain and deliver diagrams or other technical schematics regarding the scope of work, Contractor shall do so on an ongoing basis at no additional charge, and must, as a condition of payment, update drawings and plans during the Contract term to reflect additions, alterations, and deletions. Such drawings and diagrams shall be delivered to the District's representative.
- c. Accuracy of drawings submitted: All drawings shall be neat and professional in manner and shall be clearly labeled as to locations and type of Product, connections and components. Drawings and diagrams are to be in compliance with accepted drafting standards. Acceptance or approval of such plans shall not relieve the Contractor from responsibility for design or other errors of any sort in the drawings or plans, or from its responsibility for performing as required, furnishing Product, services or installation, or carrying out any other requirements of the intended scope of work.

23. Products Manufactured In Public Institutions

Bids offering Products that are manufactured or produced in public institutions will be rejected.

24. Remanufactured, Recycled, Recyclable or Recovered Materials

- a. Consistent with Product specifications included in these Bid Documents and in accordance with the laws of the State of New York, Contractors are encouraged to use recycled, recyclable or recovered materials in the manufacture of Products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product or packaging unless such use is precluded due to health, welfare, safety requirements or in the Bid Specifications.
- b. Refurbished or remanufactured components or Products are required to be restored to original performance and regulatory standards and functions and are required to meet all other requirements of this IFB.
- c. Items with recycled, recyclable, recovered, refurbished or remanufactured content must be identified in the Bid or Bidder will be deemed to be offering new Product.

25. User Accessibility and Accommodation

The District is required to provide necessary and reasonable accommodations to qualified workers with disabilities. Bidders are therefore required to identify and offer any software or hardware Products they manufacture or adapt which may be used or adapted for use by visually, hearing, or any other physically impaired individuals. It is not mandatory for Bidders to have this equipment in order to receive an award, unless otherwise required by the Bid Specifications in these Bid Documents, but it is necessary to identify any such equipment they have which falls into the above category.

26. EPA Energy Star Program

The Federal EPA, in cooperation with manufacturers, continues a program to foster the manufacture of energy efficient equipment. The District fully supports this effort and may require Products offered to comply with EPA Energy Star guidelines for energy efficiency. The District may discontinue use of and/or delete from Contract selected Products as mandated by any energy legislation that is enacted during the term of this Contract. The Contractor shall have no recourse with the District for such discontinuance/deletion.

27. Warranties (Also See Part B, Paragraph 49)

- a. Normal wear and tear items shall be warranted in accordance with manufacturer's standard warranty.
- b. At time of Bid opening, Product offered must meet all requirements of this IFB including full commercial/retail availability. Product literature and specifications must also be available.
- c. On Products with condensing units, the guarantee on such units shall be extended for an additional four (4) years.
- d. Where accessories are to be supplied, they must be compatible with the rest of the Product.

28. Internet Websites

The District prefers and recommends that successful Bidders maintain a website for the District to access directly to view offered Products. This website will be listed under the Contractor information. The website will be the responsibility of the Contractor to maintain and keep updated. Changes in Product line or pricing must be approved by the District in accordance with any terms included in the Contract resulting from this Bid prior to addition to the website. Hard copy catalog and price lists, either in paper format or electronic format, must be available to all end users who either do not have web access or prefer the optional format.

29. Price Sheets and Catalogs

- a. After award, Contractor shall be required to furnish, without charge, catalog and price lists identical to those accepted with their Bid, including any changes (additions, deletions, etc.) pursuant to the Contract, to the District upon request. Catalogs and price lists provided must reflect all Products excluded from the resultant Contract either through the omission of those portions or by obvious indications within the catalogs and price lists.
- b. Catalogs and price lists may be furnished in either hard-copy or electronic format. If available in both formats, they shall be furnished in the format preferred by the requesting authorized user. Upon request the Contractor shall assist authorized users in the use of catalogs and price lists.

30. Instruction of Personnel

Within five (5) business days of delivery of Product, the Contractor shall provide instruction by qualified personnel sufficient to ensure that the Product is operated and operator maintained so as to perform to the full extent of its design capabilities. The District shall designate its personnel who are to receive instruction.

31. Instruction Manuals

Simultaneous with delivery, the Contractor(s) shall furnish to the District a complete instruction manual for the Product and for each component supplied. The manual shall include complete instructions for unpacking, inspecting, installing, adjusting, aligning, and operating the Product, together with layout and interconnection diagrams, schematic and wiring diagrams, preventive and corrective maintenance procedures, and complete parts lists, manufacturer's catalog numbers, and ordering information, if applicable.

32. Toll-Free Number

Contractors must provide a toll-free telephone number for the District's procurement usage. If Contractor does not currently maintain a toll-free number, it must be willing to establish one prior to award of Contract.

33. Option to Procure From Centralized Contracting

The District reserves the right to purchase from available BOCES, State or County Contracts, provided that the same or similar item(s) can be purchased at the same or similar terms, and at a lower price. District personnel will be advised to select the most cost effective procurement alternative that meets their program requirements, and to maintain a procurement record documenting the basis for this selection.

34. Emergency Purchasing

- a. The District reserves the right to obtain the Products or services subject to this IFB from any source, including but not limited to this Contract, as the District determines will meet the needs of an emergency situation requiring the prompt and immediate delivery of Products or services, as declared by the District.
- b. Contractor shall not be entitled to any claim or lost profits for Products or services procured from other sources pursuant to this paragraph.

35. Preferred Source Procurement

- a. Section 162 of the State Finance Law requires that the District afford first priority to the Products/services of preferred source suppliers such as Correctional Industries (Corcraft), Industries for the Blind of NYS, and NYS Industries for the Disabled, when such Products/services meet the form, function and utility required by these Bid Documents. Therefore, one (1) or more of these suppliers may be designated as a "Preferred Source" and as a result, we may issue no award for the Products/services affected. In the Contract Award Notification, District personnel will be reminded to comply with the statutory requirements and resulting guidelines with respect to affording first priority to the preferred sources.
- b. The Contractor awarded this Bid will be required to prominently display the following language on all price lists and contract updates supplied to the District pursuant to this Contract:

“**Note:** Some Products/services in this Contract may be available from one (1) or more preferred sources. District personnel are reminded to comply with the statutory requirements under Section 162 of the State Finance Law and the guidelines issued by the State Procurement Council to afford first priority to Products/services available from preferred sources that satisfy the required form, function, and utility.”

36. Bid Opening

Bids may, as applicable, be opened publicly. The District reserves the right at any time to postpone or cancel a scheduled Bid opening.

37. Method of Award (General Commodities)

- a. Award shall be made to the lowest Responsive and Responsible Bidder.
- b. The award shall be made on a line-by-line, category, or entire Bid basis, whichever is in the best interest of the District.
- c. Bids with minor incompletions will be given consideration subject to subsequent and final determination by the District as to acceptability. A Bid which is five percent (5%) or less incomplete, will be considered as having "minor" incompletions.
- d. The District reserves the right to reject an obviously unbalanced Bid or to make "no award" on individual listings or sub-items if individual Bid prices are deemed to be unbalanced or excessive or if an error in the IFB becomes evident. In such case, ranking and evaluation of Bids, and award(s) may be made on remaining items. The exercise of all options reserved in this paragraph shall be at the District's sole discretion.

38. Method of Award (Cafeteria Commodities)

Award is intended to be made on the specific Products identified. The District may (but is not required to) award on a different/alternate Product than what was originally specified (e.g., two percent (2%) milk offered instead of homogenized milk specified, etc.) if the total for item with such different/alternate Product is seven percent (7%) less than an otherwise complying Bid which offered all the specific products identified for the item or no compliant Bids have been received, or for another reason, and such offering is agreeable to the District.

39. Bid Evaluation

- a. The District reserves the right to accept or reject any and all Bids, or separable portions of offers, and waive technicalities, irregularities, and omissions if the District determines the best interests of the District will be served.
- b. The District, in its sole discretion, may accept or reject illegible, incomplete or vague Bids and this decision shall be final.

40. Bidder Non-Responsible or Non-Compliant

Where the apparent low Bidder is determined to be a non-responsible Bidder, or the District permits the apparent low Bidder to withdraw after the opening of the Bids, the District reserves the right to make an award to the next lowest Bidder without rebidding.

41. Clarifications/Revisions

The District reserves the right to seek clarifications, request Bid revisions, or to request any information deemed necessary for proper evaluation of Bids from all Bidders deemed to be eligible for Contract award, before making an award. Failure to provide requested information may result in rejection of the Bid.

42. Prompt Payment Discounts

While prompt payment discounts will not be considered in determining the low Bid, the District may consider any prompt payment discount in resolving Bids which are otherwise tied. However, any notation indicating that the price is net, (e.g., net 30 days), shall be understood to mean only that no prompt payment discount is offered by the Bidder. The imposition of service, interest, or other charges may render the Bid non-responsive and may be cause for its rejection.

43. Equivalent or Identical Bids

In the event two (2) Bids are found to be substantially equivalent, price shall be the basis for determining the award recipient. If two (2) or more Bidders submit substantially equivalent Bids as to pricing or other factors, the decision of the District to award a Contract to one (1) or more of such Bidders shall be final.

44. Offers Firm for Designated Period

- a. The District reserves the right to make awards within sixty (60) days after the date of the Bid opening or such other period of time as set forth in the Bid Documents, during which period, Bids must remain firm and cannot be withdrawn.
- b. Where an award is not made within the sixty (60) day period or other time specified in the Bid Documents, and subject to Section 2-205 of the Uniform Commercial Code where applicable, the Bids shall remain firm until such later time as either a Contract is awarded or the Bidder delivers to the District written notice of the withdrawal of its Bid. Any Bid which expressly states therein that acceptance must be made within a shorter specified time, may at the sole discretion of the District, be accepted or rejected.

45. Electronic Bid Opening Results

After Bids are awarded, the District may post Bid prices on the District web page (www.romecsd.org). The web page may make available Bid tabulations (i.e., photocopies of price pages or spreadsheets) received by the District for scheduled Bid openings. It is anticipated that this information will be available online within five (5) business days after the Bid award.

46. Release of Bid Evaluation Materials

Requests concerning the evaluation of Bids may be submitted under the Freedom of Information Law. Information, other than statistical or factual tabulations or data such as the Bid tabulation, shall only be released as required by law after Contract award. Bid tabulations are not maintained for all procurements. Names of Bidders may be disclosed after Bid opening upon request. Written requests should be directed to the District.

47. Advertising Results

The prior written approval of the District is required in order for results of the Bid to be used by the Contractor as part of any commercial advertising. The Contractor shall also obtain the prior written approval of the District relative to the Bid or Contract for press or other media releases.

48. Expenses Prior To Contract Execution

The District is not liable for any costs incurred by a Vendor, Bidder or Contractor in the preparation and production of a Bid or for any work performed prior to Contract execution.

49. Surety Bond

- a. Upon the request of the District, a Bidder/Contractor shall, within fifteen (15) days of the request and at its own cost and expense, obtain and maintain in full force sixty (60) days after Contract expiration:
 - i. An irrevocable documentary letter of credit with a sound and reputable bank authorized to do business in the State of New York, or

- ii. A performance bond signed by a surety company authorized to do business in the State of New York, or
- iii. A payment bond signed by a surety company authorized to do business in the State of New York,

in the amount of five percent (5%) of the Contract award for the faithful performance of the Contract.

- b. The letter of credit, performance bond, payment bond, etc., shall name as beneficiary the District and may be invoked to the benefit of the District, upon delivery of a certified statement to the issuing bank or Surety Company that the Contractor has failed to perform pursuant to the terms and conditions of this Contract.
- c. If required by Part C – Terms and Conditions Specific to This Purchase, or requested by the District, the Bidder shall submit with its Bid a letter from its bank or surety company stating that the letter of credit or bond will be provided if being considered for a Contract or in the event of a Contract. The letter of credit or bond shall be provided on a yearly basis for each year, or portion, of the Contract.

50. Diesel Emission Reduction Act Of 2006

Pursuant to §19-0323 of the N.Y. Environmental Conservation Law (“NYECL”) it is a requirement that heavy duty diesel vehicles in excess of eight thousand five hundred (8,500) pounds use the best available retrofit technology (“BART”) and operate exclusively on ultra low sulfur diesel fuel (“ULSD”). The requirement of the law applies to all vehicles owned, operated by or on behalf of, or leased by the District.

By submitting a Bid, you certify and warrant that all heavy duty vehicles, as defined in NYECL §19-0323, to be used under this Contract, will comply with the Bid Specifications and provisions of NYECL §19-0323, and any regulations promulgated pursuant thereto, which requires the use of BART and ULSD, unless specifically waived by NYSDEC. Qualification and application for a waiver under this law will be the responsibility of the Bidder.

51. Dispute Resolution

It is the policy of the District to provide Vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to the District Bid solicitations or Contract awards. The District encourages Vendors to seek resolution of disputes through consultation with District staff. All such matters will be accorded impartial and timely consideration. Interested parties may also file formal written disputes.

52. Inquiries about the Bid Process or Specifications

- a. All inquiries concerning this IFB will be addressed to the following District designated contact:

Rome City School District
409 Bell Road
Rome, New York 13440
Attention: David Dreidel
Director of Business and Finance
Phone No.: (315) 338-6541
Fax No.: (315) 334-7403
E-mail: ddreidel@romecsd.org

- b. All questions should be submitted in writing no later than ten (10) days prior to the Bid opening date on the IFB, citing the particular Bid Document section and paragraph number.
- c. The prospective Bidder should notify the designated contact of any term, condition, etc., that precludes the Vendor from submitting a compliant, responsive Bid.
- d. Prospective Bidders should note that all clarifications and exceptions including those relating to the terms and conditions of the Contract are to be resolved prior to the submission of a Bid.
- e. Answers to all questions of a substantive nature will be given to all prospective Bidders in the form of a formal addendum which will become part of the ensuing Contract.

Part B - Standard Contract Terms and Conditions

1. Applicability

These terms and conditions are expressly incorporated in and applicable to the resulting procurement Contracts let by the District. Captions are intended as descriptive and are not intended to limit or otherwise restrict the terms and conditions set forth herein.

2. Governing Law

This procurement, the resulting Contract, and any POs issued hereunder shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise, and actions or proceedings arising from the Contract shall be heard in a court of competent jurisdiction in the State of New York.

3. Executory Clause

This Contract shall be deemed executory only to the extent of monies appropriated and available to the District for the purpose of this Contract, and no liability shall be incurred by the District beyond the amount of such monies. The Contract is not a general obligation of the District. Neither the full faith and credit nor the taxing power of the District is pledged to the payment of any amount due or to become due under this Contract. It is understood that neither this Contract nor any representation by any public employee or officer creates any legal or moral obligation to appropriate or to make monies available for the purpose of this Contract. In the event that the District fails to appropriate and make monies available for the purpose of this Contract, the terms of this Contract shall continue in full force and effect with respect to the District.

4. Non-Assignment Clause

This Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the the District and any attempts to assign the Contract without the the District's written consent are null and void. The Contractor may, however, assign its right to receive payment without the District's prior written consent unless this Contract concerns Certificates of Participation issued pursuant to Section 109-b of the General Municipal Law.

5. Workers' Compensation Benefits

The Contractor warrants that for the duration of the Contract it shall maintain coverage for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law, and failure to do so shall render this Contract void and of no force and effect.

6. Non-Discrimination Requirements

To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a Contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Contract shall be performed within the State of New York, Contractor agrees that neither it nor its Subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. If this is a Building Service Contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its Subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. Contractor is subject to fines of fifty dollars (\$50.00) per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

7. International Boycott Prohibition

If this is a Public Work Contract covered by Article 8 of the Labor Law and exceeds five thousand dollars (\$5,000) in value, the Contractor agrees, as a material condition of the Contract, that neither the Contractor nor any substantially owned or Affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid Affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the Contract's execution, such Contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the District within five (5) business days of such conviction, determination, or disposition of appeal.

8. Prohibition On Purchase Of Tropical Hardwoods

The Contractor certifies and warrants that all wood products to be used under this Contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165. (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the the District. Qualification for an exemption under this law will be the responsibility of the Contractor to establish to meet with the approval of the the District.

In addition, when any portion of this Contract involving the use of woods, whether supply or installation, is to be performed by any Subcontractor, the prime Contractor will indicate and certify in the submitted Bid that the Subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the the District; otherwise, the Bid may not be considered responsive. Under Bidder Certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the District.

9. Set-Off Rights

The District shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the option to withhold for the purposes of set-off any moneys due to the Contractor under this Contract up to any amounts due and owing to the District with regard to this Contract or any other Contract with the District, including any contract for a term commencing prior to the term of this Contract, plus any amounts due and owing to the District for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The District shall exercise its set-off rights in accordance with its normal practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the District or its representatives.

10. Records

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this Contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The District, and any other person or entity authorized to conduct an examination (collectively, "authorized examiner"), shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the District, for the term specified above for the purposes of inspection, auditing and copying. An authorized examiner shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform the authorized examiner, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the District's right to discovery in any pending or future litigation.

11. Identifying Information And Privacy Notification

Federal Employer Identification Number and/or Federal Social Security Number. All invoices or POs submitted for payment for the sale of goods or services or the lease of real or personal property to the District must include the payee's Tax Identification Number, i.e., the seller's or lessor's Identification Number. The Number is either the payee's Federal Employer Identification Number or Federal Social Security Number, or both such Numbers when the payee has both such Numbers. Failure to include this Number or Numbers may delay payment.

Where the payee does not have such Number or Numbers, the payee, on the invoice or PO, must give the reason or reasons why the payee does not have such Number or Numbers.

The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the District is mandatory. The principal purpose for which the information is collected is to enable the District to issue appropriate year-end tax forms.

12. Contractor’s Preservation of Confidential Information

- (a) Contractor further warrants, covenants and represents that any confidential information obtained by Contractor, its agents, Subcontractors, officers, distributors, resellers or employees in the course of performing its obligations, including without limitation, security procedures, business operations information, student educational information, or commercial proprietary information in the possession of the District hereunder or received from another third party, will not be divulged to any third parties. Contractor further agrees to take appropriate steps as to its agents, Subcontractors, officers, distributors, resellers or employees regarding the obligations arising under this clause to insure such confidentiality.
- (b) Contractor shall not be required to keep confidential any such material that is publicly available through no fault of Contractor, independently developed by Contractor without reliance on confidential information of the District, or otherwise obtained under the Freedom of Information Act or other applicable New York State laws and regulations.
- (c) This warranty shall survive termination of this Contract.

13. Public Works and Building Services Contracts – Wages & Hours

If any portion of work being Bid is subject to the prevailing wage rate provisions of the Labor Law, the following shall apply:

- (a) “Public Works” and “Building Services” - Definitions
 - (i) Public Works: Labor Law Article 8 applies to Contracts for public improvement in which laborers, workers or mechanics are employed on a “public works” project (distinguished from public “procurement” or “service” Contracts). The wage and hours provision applies to any work performed by Contractor or Subcontractors

- (ii) **Building Services:** Labor Law Article 9 applies to Contracts for building service work over one thousand five hundred dollars (\$1,500) with a public agency, that: (A) involve the care or maintenance of an existing building, or (B) involve the transportation of office furniture or equipment to or from such building, or (C) involve the transportation and delivery of fossil fuel to such building, or (D) the principal purpose of which is to furnish services through use of building service employees.

(b) **Prevailing Wage Rate Applicable to Bid Submissions**

A copy of the applicable prevailing wage rates to be paid or provided are annexed to the Bid Documents. Bidders must submit Bids which are based upon the prevailing hourly wages, and supplements in cash or equivalent benefits (i.e., fringe benefits and any cash or non-cash compensation which are not wages, as defined by law) that equal or exceed the applicable prevailing wage rate(s) for the location where the work is to be performed. Bidders may not submit Bids based upon hourly wage rates and supplements below the applicable prevailing wage rates as established by the New York State Department of Labor. Bids that fail to comply with this requirement will be disqualified.

(c) **Wage Rate Payments / Changes During Contract Term**

The wages to be paid under any resulting Contract shall not be less than the prevailing rate of wages and supplements as set forth by law. It is required that the Contractor keep informed of all changes in the Prevailing Wage Rates during the Contract term that apply to the classes of individuals supplied by the Contractor on any projects resulting from this Contract, subject to the provisions of the Labor Law. Contractor is solely liable for and must pay such required prevailing wage adjustments during the Contract term as required by law.

(d) **Public Posting & Certified Payroll Records**

- (i) **Posting:** The Contractor must publicly post on the work site, in a prominent and accessible place, a legible schedule of the prevailing wage rates and supplements.
- (ii) **Payroll Records:** Contractors and Subcontractors must keep original payrolls or transcripts subscribed and affirmed as true under the penalties of perjury as required by law. For public works contracts over twenty five thousand dollars (\$25,000) where the Contractor maintains no regular place of business in New York State, such records must be kept at the work site. For building services contracts, such records must be kept at the work site while work is being performed.

(iii) **Submission of Certified Payroll Transcripts for Public Works Contracts Only:** Contractors and Subcontractors on public works projects must submit monthly payroll transcripts to the District, who has prepared or directs the preparation of the plans and Bid Specifications for a public works project, as set forth in the Bid Specifications. Upon mutual agreement of the Contractor and the District, the form of submission may be submitted in a specified disk format acceptable to the Department of Labor provided: (A) the Contractor/Subcontractor retains the original records; and, (B) an original signed letter by a duly authorized individual of the Contractor or Subcontractor attesting to the truth and accuracy of the records accompanies the disk. This provision does not apply to Article 9 of the Labor Law building services Contracts.

(iv) **Records Retention:** Contractors and Subcontractors must preserve such certified transcripts for a period of three (3) years from the date of completion of work on the awarded Contract.

(e) **Day's Labor**

No laborers, workmen or mechanics in the employ of the Contractor, Subcontractor or other person doing or contracting to do all or part of the work contemplated by the Contract shall be permitted or required to work more than eight (8) hours in any one (1) calendar day or more than five (5) calendar days in any one (1) week except in cases of extraordinary emergency including fire, flood or danger to life or property. "Extraordinary emergency" shall be deemed to include situations in which sufficient laborers, workers and mechanics cannot be employed to carry on public work expeditiously as a result of such restrictions upon the number of hours and days of labor and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the NYS Commissioner of Labor for the preservation of the Contract site or for the protection of the life and limb of the persons using the Contract site.

14. Late Payment

Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Section 3-a of the General Municipal Law.

15. No Arbitration

Disputes involving this Contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

16. Service Of Process

In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the District's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the District, in writing, of each and every change of address to which service of process can be made. Service by the District to the last known address shall be sufficient.

17. Mercury Content

Any Product supplied to the District that contains mercury shall be labelled in compliance with Article 27, Title 21 of the State Environmental Conservation Law.

18. Contract Creation/Execution

Subject to and upon receipt of all required approvals as set forth in the Bid Specifications, a Contract shall be deemed executed and created with the successful Bidder(s), upon the District's mailing or electronic communication to the address on the Bid/Contract of: (i) the final Contract Award Notification; and either (ii) a fully executed Contract; or (iii) a properly-authorized PO.

19. Participation in Centralized Contracts

The District retains the right to purchase items from BOCES Contracts, New York State Contracts or County Contracts, provided the same or similar items can be purchased for better terms or conditions.

20. Modification of Contract Terms

The terms and conditions set forth in the Contract shall govern all transactions by the District under this Contract. The Contract may only be modified or amended upon mutual written agreement of the District and Contractor. The Contractor may, however, offer the District more advantageous pricing, payment, or other terms and conditions than those set forth in the Contract. In such event, a copy of such terms shall be furnished to the District by the Contractor at the time of such offer.

Other than where such terms are more advantageous for the District than those set forth in the Contract, no alteration or modification of the terms of the Contract, including substitution of Product, shall be valid or binding against the District unless authorized by the District or specified in the Contract Award Notification. No such alteration or modification shall be made by unilaterally affixing such terms to Product upon delivery (including, but not limited to, attachment or inclusion of standard pre-printed order forms, Product literature, "shrink wrap" terms accompanying software upon delivery, or other documents) or by incorporating such terms onto order forms, POs or other documents forwarded by the Contractor for payment, notwithstanding the District's subsequent acceptance of Product, or that the District has subsequently processed such document for approval or payment.

21. Scope Changes

The District reserves the right, unilaterally, to require changes, by written order altering, adding to or deducting from the Bid Specifications, such changes to be within the general scope of the Contract. The District may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the consent of the Contractor, which consent shall not be unreasonably withheld.

22. Estimated/Specific Quantity Contracts

Estimated quantity contracts are expressly agreed and understood to be made for only the quantities, if any, actually ordered during the Contract term. No guarantee of any quantity(s) is implied or given. Purchases the District from contracts for services and technology are voluntary.

With respect to any specific quantity stated in the Contract, the District reserves the right after award to order up to twenty percent (20%) more or less (rounded to the next highest whole number) than the specific quantities called for in the Contract. Notwithstanding the foregoing, the District may purchase greater or lesser percentages of Contract quantities should the District and Contractor so agree. Such agreement may include an equitable price adjustment.

23. Purchase Orders (POs)

Unless otherwise authorized in writing by the District, no Product is to be delivered or furnished by Contractor until transmittal of an official PO from the District. Unless terminated or cancelled by the District, POs shall be effective and binding upon the Contractor when placed in the mail or electronically transmitted prior to the termination of the Contract period, addressed to the Contractor at the address for receipt of orders set forth in the Contract or in the Contract Award Notification.

All POs issued pursuant this Contract must bear the appropriate Bid or Contract number. As deemed necessary, the District may confirm pricing and other Product information with the Contractor prior to placement of the PO. The District reserves the right to require any other information from the Contractor which the District deems necessary in order to complete any PO placed under the Contract. Unless otherwise specified, all POs will be placed by the District directly with the Contractor and any discrepancy between the terms stated on the Vendor's order form, confirmation or acknowledgment, and the Contract terms shall be resolved in favor of the terms most favorable to the District. Should the District add written terms and conditions to the PO that conflict with the terms and conditions of the Contract, the Contractor has the option of rejecting the PO within five (5) business days of its receipt but shall first attempt to negotiate the additional written terms and conditions in good faith with the District, or fulfill the PO. Notwithstanding the above, the District reserves the right to dispute any discrepancies arising from the presentation of additional terms and conditions with the Contractor.

24. Product Delivery

Delivery must be made as ordered to the address specified on the PO and in accordance with the terms of the Contract or Contract Award Notification. Unless otherwise specified in the Bid Documents, delivery shall be made within fourteen (14) calendar days after receipt of a PO by the Contractor. The decision of the District as to compliance with delivery terms shall be final. The burden of proof for delay in receipt of Po shall rest with the Contractor. In all instances of a potential or actual delay in delivery, the Contractor shall immediately notify the District and confirm in writing the explanation of the delay, and take appropriate action to avoid any subsequent late deliveries. Any extension of time for delivery must be requested in writing by the Contractor and approved in writing by the District. Failure to meet such delivery time schedule may be grounds for cancellation of the order or, in the District's discretion, the Contract.

25. Weekend and Holiday Deliveries

Unless otherwise specified in the Bid Specifications or by the District, deliveries will be scheduled for ordinary business hours, Monday through Friday (excluding legal holidays). Deliveries may be scheduled by mutual agreement for Saturdays, Sundays or legal holidays where the Product is for daily consumption, an emergency exists, the delivery is a replacement, delivery is late, or other reasonable circumstance in which event the convenience of the District shall govern.

26. Shipping/Receipt of Product

- (a) **Packaging:** Tangible Product shall be securely and properly packed for shipment, storage and stocking in appropriate, clearly labeled shipping containers and according to accepted commercial practice, without any extra charges for packing materials, cases or other types of containers. The container shall become and remain the property of the District unless otherwise specified in the Contract documents.
- (b) **Shipping Charges:** Unless otherwise stated in the Bid Specifications, all deliveries shall be deemed to be freight on board (F.O.B.) destination tailgate delivery at the dock of the District. Unless otherwise agreed, items purchased at a price F.O.B. Shipping point plus transportation charges shall not relieve the Contractor from responsibility for safe and proper delivery notwithstanding the District's payment of transportation charges. Contractor shall be responsible for ensuring that the Bill of Lading states "charges prepaid" for all shipments.
- (c) **Receipt of Product:** The Contractor shall be solely responsible for assuring that deliveries are made to personnel authorized to accept delivery on behalf of the District. Any losses resulting from the Contractor's failure to deliver Product to authorized personnel shall be borne exclusively by the Contractor.

27. Title and Risk of Loss

Notwithstanding the form of shipment, title or other property interest, risk of loss shall not pass from the Contractor to the District until the Products have been received, inspected and accepted by the receiving entity. Acceptance shall occur within a reasonable time or in accordance with such other defined acceptance period as may be specified in the Bid Specifications or PO. Mere acknowledgment by District personnel of the delivery or receipt of goods (e.g., signed bill of lading) shall not be deemed or construed as acceptance of the Products received. Any delivery of Product that is substandard or does not comply with the Bid Specifications or Contract terms and conditions, may be rejected or accepted on an adjusted price basis, as determined by the District.

28. Re-Weighing Product

Deliveries are subject to re-weighing at the point of destination by the District. If shrinkage occurs which exceeds that normally allowable in the trade, the District shall have the option to require delivery of the difference in quantity or to reduce the payment accordingly. Such option shall be exercised in writing by the District.

29. Product Substitution

In the event a specified manufacturer's Product listed in the Contract becomes unavailable or cannot be supplied by the Contractor for any reason (except as provided for in the Savings/Force Majeure Clause) a Product deemed in writing by the District to be equal to or better than the specified Product must be substituted by the Contractor at no additional cost or expense to the District. Unless otherwise specified, any substitution of Product prior to the District's written approval may be cause for cancellation of Contract.

30. Rejected Product

When Product is rejected, it must be removed by the Contractor from the premises of the District within ten (10) calendar days of notification of rejection by the District. Upon notification of rejection, risk of loss of rejected or non-conforming Product shall remain with Contractor. Rejected items not removed by the Contractor within ten (10) calendar days of notification shall be regarded as abandoned by the Contractor, and the District shall have the right to dispose of Product as its own property. The Contractor shall promptly reimburse the District for any and all costs and expenses incurred in storage or effecting removal or disposition after the ten (10) calendar day period.

31. Installation

Where installation is required, Contractor shall be responsible for placing and installing the Product in the required locations. All materials used in the installation shall be of good quality and shall be free from any and all defects that would mar the appearance of the Product or render it structurally unsound. Installation includes the furnishing of any equipment, rigging and materials required to install or place the Product in the proper location. The Contractor shall protect the site from damage for all its work and shall repair damages or injury of any kind caused by the Contractor, its employees, officers or agents. If any alteration, dismantling or excavation, etc. is required to effect installation, the Contractor shall thereafter promptly restore the structure or site. Work shall be performed to cause the least inconvenience to the District and with proper consideration for the rights of other Contractors or workers. The Contractor shall promptly perform its work and shall coordinate its activities with those of other Contractors. The Contractor shall clean up and remove all debris and rubbish from its work as required or directed. Upon completion of the work, the building and surrounding area of work shall be left clean and in a neat, unobstructed condition, and everything in satisfactory repair and order.

32. Repaired or Replaced Parts/Components

Where the Contractor is required to repair, replace or substitute Product or parts or components of the Product under the Contract, the repaired, replaced or substituted Products shall be subject to all terms and conditions for new parts and components set forth in the Contract including Warranties, as set forth in the Additional Warranties Clause herein. Replaced or repaired Product or parts and components of such Product shall be new and shall, if available, be replaced by the original manufacturer's component or part. Remanufactured parts or components meeting new Product standards may be permitted by the District. Before installation, all proposed substitutes for the original manufacturers installed parts or components must be approved by the District. The part or component shall be equal to or of better quality than the original part or component being replaced.

33. On-Site Storage

With the written approval of the District, materials, equipment or supplies may be stored at the District's site at the Contractor's sole risk.

34. Employees, Subcontractors & Agents

All employees, Subcontractors or agents performing work under the Contract must be trained staff or technicians who meet or exceed the professional, technical and training qualifications set forth in the Bid Documents, whichever is more restrictive, and must comply with all security and administrative requirements of the District. The right to conduct a security background check or otherwise approve any employee, Subcontractor or agent furnished by Contractor and to refuse access to or require replacement of any personnel for cause based on, including but not limited to, professional, technical or training qualifications, quality of work or change in security status or non-compliance with the District's security or other requirements. Such approval shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract terms. The District reserves for itself and each the District the right to reject and/or bar from the facility for cause any employee, Subcontractor, or agents of the Contractor.

35. Assignment

The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the Contract or its right, title or interest therein, or its power to execute such Contract to any other person, company, firm or corporation in performance of the Contract without the prior written consent of the District (as applicable). Failure to obtain consent to assignment from the District shall revoke and annul such Contract. Notwithstanding the foregoing, the District shall not hinder, prevent or affect assignment of money by a Contractor for the benefit of its creditors. Prior to a consent to assignment of monies becoming effective, the Contractor shall file a written notice of such monies assignment(s) with the District. The District reserves the right to reject any proposed assignee in its discretion.

Upon notice to the Contractor, the Contract may be assigned without the consent of the Contractor to another District pursuant to a reorganization or assignment of functions under which the functions are transferred to a successor District or to another District that assumes responsibilities for the Contract.

36. Subcontractors and Suppliers

The District reserves the right to reject any proposed Subcontractor or supplier for bona fide business reasons, which may include, but are not limited to: they are on the Department of Labor's list of companies with which New York State cannot do business; the District determines that the company is not qualified; the District determines that the company is not responsible; or, the company has previously provided unsatisfactory work or services.

37. Performance/Bid Bond

The District reserves the right to require a Bidder or Contractor to furnish without additional cost, a performance, payment or Bid bond or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Contract. Where required, such bond or other security shall be in the form prescribed by the District.

38. Suspension of Work

The District, in its sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, in the best interests of the District. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze or reduction on spending, declaration of emergency, Contract compliance issues or other such circumstances. Upon issuance of such notice, the Contractor is not to accept any POs, and shall comply with the suspension order. Activity may resume at such time as the District issues a formal written notice authorizing a resumption of performance under the Contract.

The District may issue a formal written notice for the suspension of work for which it has engaged the Contractor for reasons specified in the above paragraph. The written notice shall set forth the reason for such suspension and a copy of the written notice shall be provided to the District.

39. Termination of Contract

- (a) For Cause: If a material breach by the Contractor remains uncured for more than thirty (30) days or other specified period after written notice to the Contractor, or if the Contractor becomes unable or incapable of performing, or meeting any requirements or qualifications set forth in the Contract, or if there is a determination that Contractor is non-responsible, then the Contract or PO may be terminated by the District at the Contractor's expense. Such termination shall be upon written notice to the Contractor. In such event, the District may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.
- (b) For Convenience: This Contract may be terminated at any time by the District for convenience upon sixty (60) days written notice or other specified period without penalty or other early termination charges due. Such termination of the Contract shall not affect any project or PO that has been issued under the Contract prior to the date of such termination. If the Contract is terminated pursuant to this subdivision, the District shall remain liable for all accrued but unpaid charges incurred through the date of the termination. Contractor shall use due diligence and provide any outstanding deliverables.

40. Savings/Force Majeure

A Force Majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled. Force Majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Contractor or the District. This paragraph shall govern when Contract non-performance is attributable to a Force Majeure occurrence and the exercise of reasonable diligence could not have prevented the non-performance. Contractor shall provide the District with written notice of any Force Majeure occurrence as soon as the delay is known.

Neither the Contractor nor the District shall be liable to the other for any delay in or failure of performance under the Contract due to a Force Majeure occurrence. Any such delay in or failure of performance shall not constitute default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Contractor and the District to be necessary to enable complete performance by the Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed.

Notwithstanding the above, at the discretion of the District where the delay or failure will significantly impair the value of the Contract to the District, the District may:

- (a) Accept allocated performance or deliveries from the Contractor. The Contractor, however, hereby agrees to grant preferential treatment to the District with respect to Product subjected to allocation; and/or
- (b) Purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the Products which are the subject of the delay, which purchases may be deducted from the Contract quantities without penalty or liability to the District; or
- (c) Terminate the Contract or the portion thereof which is subject to delays, and thereby discharge any unexecuted portion of the Contract or the relative part thereof.

In addition, the District reserves the right, in its sole discretion, to make an equitable adjustment in the Contract terms and/or pricing should extreme and unforeseen volatility in the marketplace affect pricing or the availability of supply. "Extreme and unforeseen volatility in the marketplace" is defined as market circumstances which meet the following criteria: (i) the volatility is due to causes outside the control of Contractor; (ii) the volatility affects the marketplace or industry, not just the particular Contract source of supply; (iii) the effect on pricing or availability of supply is substantial; and (iv) the volatility so affects Contractor's performance that continued performance of the Contract would result in a substantial loss.

41. Contract Billings

Contractor and the distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to the District, together with complete and accurate supporting documentation as required by the District in order to receive payment. Billings must contain all information required by the Contract. The District shall render payment for purchases under this Contract, in accordance with its ordinary procedures and practices.

Submission of an invoice and payment thereof shall not preclude the District from demanding reimbursement or a price adjustment in any case where the Product delivered is found to deviate from the terms and conditions of the Contract or where the billing was inaccurate.

Contractor shall provide, upon request of the District, any and all information necessary to verify the accuracy of the billings. Such information shall be provided in the format requested by the District and in a format commercially available from the Contractor. The District may direct the Contractor to provide the information to the State Comptroller or to any the District.

42. Default – District

- (a) **Breach of the District:** The District’s breach shall not be deemed a breach of the Contract, rather it shall be deemed a breach of the District’s performance under the terms and conditions of the Contract.
- (b) **Failure to Make Payment:** In the event the District fails to make payment to the Contractor for Products delivered, accepted and properly invoiced, within sixty (60) days of such delivery and acceptance, the Contractor may, upon ten (10) days advance written notice to the District’s purchasing official, suspend additional shipments of Product or provision of services to such entity until such time as reasonable arrangements have been made and assurances given by such entity for current and future Contract payments.
- (c) **Notice of Breach:** Notwithstanding the foregoing, the Contractor shall, at least ten (10) days prior to declaring a breach of Contract by the District, by certified or registered mail, notify the District’s purchasing official of the specific facts, circumstances and grounds upon which a breach will be declared.
- (d) It is understood, however, that if the Contractor’s basis for declaring a breach is insufficient, the Contractor’s declaration of breach and failure to service the District shall constitute a breach of its Contract and the District may thereafter seek any remedy available at law or equity.

43. Remedies for Breach

It is understood and agreed that all rights and remedies afforded below shall be in addition to all remedies or actions otherwise authorized or permitted by law:

- (a) **Cover/Substitute Performance:** In the event of Contractor’s material breach, the District may, with or without formally bidding: (i) Purchase from other sources; or (ii) If the District is unsuccessful after making reasonable attempts, under the circumstances then existing, to timely obtain acceptable service or acquire replacement Product of equal or comparable quality, the District may acquire acceptable replacement Product of lesser or greater quality. Such purchases may, in the discretion of the District, be deducted from the Contract quantity and payments due Contractor.
- (b) **Withhold Payment:** In any case where a question of non-performance by Contractor arises, payment may be withheld in whole or in part at the discretion of the District. Should the amount withheld be finally paid, a cash discount originally offered may be taken as if no delay in payment had occurred.

- (c) **Bankruptcy:** In the event that the Contractor files a petition under the U.S. Bankruptcy Code during the term of this Contract, the District may, at their discretion, make application to exercise its right to set-off against monies due the debtor or, under the Doctrine of Recoupment, credit the District the amounts owed by the Contractor arising out of the same transactions.
- (d) **Reimbursement of Costs Incurred:** The Contractor agrees to reimburse the District promptly for any and all additional costs and expenses incurred for acquiring acceptable services, and/or replacement Product. Should the cost of cover be less than the Contract price, the Contractor shall have no claim to the difference. The Contractor covenants and agrees that in the event suit is successfully prosecuted for any default on the part of the Contractor, all costs and expenses expended or incurred by the District in connection therewith, including reasonable attorney's fees, shall be paid by the Contractor.

Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the Contract, the District may rent substitute equipment temporarily. Any sums expended for such rental shall, upon demand, be reimbursed to the District promptly by the Contractor or deducted by the District from payments due or to become due the Contractor on the same or another transaction.

- (e) **Deduction/Credit:** Sums due as a result of these remedies may be deducted or offset by the District from payments due, or to become due, the Contractor on the same or another transaction. If no deduction or only a partial deduction is made in such fashion the Contractor shall pay to the District the amount of such claim or portion of the claim still outstanding, on demand. The District reserves the right to determine the disposition of any rebates, settlements, restitution, liquidated damages, etc., which arise from the administration of the Contract.

44. Assignment of Claim

Contractor hereby assigns to the District any and all its claims for overcharges associated with this Contract which may arise under the antitrust laws of the United States, 15 USC Section 1, et. seq. and the antitrust laws of the State of New York, General Business Law Section 340, et. seq.

45. Toxic Substances

Each Contractor furnishing a toxic substance as defined by Section 875 of the Labor Law, shall provide the District with no less than two (2) copies of a Material Safety Data Sheet (MSDS), which sheet shall include for each such substance the information outlined in Section 876 of the Labor Law. Before any chemical product is used or applied on or in any building, a copy of the product label and MSDS must be provided to and approved by the District's representative.

46. Independent Contractor

It is understood and agreed that the legal status of the Contractor, its agents, officers and employees under this Contract is that of an independent contractor, and in no manner shall they be deemed employees of the District, and therefore are not entitled to any of the benefits associated with such employment. The Contractor agrees, during the term of this Contract, to maintain at Contractor's expense those benefits to which its employees would otherwise be entitled by law, including health benefits, and all necessary insurance for its employees, including worker's compensation, disability and unemployment insurance, and to provide the District with certification of such insurance upon request. The Contractor remains responsible for all applicable federal, state and local taxes, and all FICA contributions.

47. Security

Contractor warrants, covenants and represents that it will comply fully with all security procedures of the District in performance of the Contract including but not limited to physical, facility, documentary and cyber security rules, procedures and protocols.

48. Cooperation with Third Parties

The Contractor shall be responsible for fully cooperating with any third party, including but not limited to other Contractors or Subcontractors of the District, as necessary to ensure delivery of Product or coordination of performance of services.

49. Additional Warranties

Where Contractor, product manufacturer or service provider generally offers additional or more advantageous warranties than set forth below, Contractor shall offer or pass through any such warranties to the District. Contractor hereby warrants and represents:

- (a) **Product Performance:** Contractor warrants and represents that Products delivered pursuant to this Contract conform to the manufacturer's specifications, performance standards and documentation, and the documentation fully describes the proper procedure for using the Products.
- (b) **Title and Ownership Warranty:** Contractor warrants, represents and conveys (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver perpetual license rights to any Products transferred to the District under this Contract. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor fully indemnifies the District for any loss, damages or actions arising from a breach of said warranty without limitation.

- (c) **Contractor Compliance:** Contractor represents and warrants to pay, at its sole expense, for all applicable permits, licenses, tariffs, tolls and fees to give all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of the District that it meets or exceeds all requirements of the Bid/Contract and any applicable laws, including but not limited to, permits, insurance coverage, licensing, proof of coverage for worker's compensation, and shall provide such proof as required by the District. Failure to do so may constitute grounds for the District to cancel or suspend this Contract, in whole or in part, or to take any other action deemed necessary by the District.
- (d) **Product Warranty:** Unless recycled or recovered materials are available in accordance with the "Recycled or Recovered Materials" clause, Product offered shall be standard new equipment, current model or most recent release of regular stock Product with all parts regularly used with the type of equipment offered; and no attachment or part has been substituted or applied contrary to the manufacturer's recommendations and standard practice.
- (e) **Project Warranty Period:** Contractor further warrants and represents that components or deliverables specified and furnished by or through Contractor shall individually, and where specified and furnished as a system, be substantially uninterrupted or error-free in operation and guaranteed against faulty material and workmanship for the warranty period, or for a minimum of one (1) year from the date of acceptance, whichever is longer ("Project Warranty Period"). During the Project Warranty Period, defects in the materials or workmanship of components or deliverables specified and furnished by or through Contractor shall be repaired or replaced by Contractor at no cost or expense to the District. Contractor shall extend the Project Warranty Period for individual component(s), or for the system as a whole, as applicable, by the cumulative period(s) of time, after notification, during which an individual component or the system requires servicing or replacement (down time) or is in the possession of the Contractor, its agents, officers, Subcontractors, distributors, resellers or employees ("extended warranty").
- (f) **Replacement Parts Warranty:** If during the regular or extended warranty period product defects are discovered, the Contractor shall promptly repair or, upon demand, replace the defective unit or component part affected. All costs for labor and material and transportation incurred to repair or replace defective Product during the warranty period shall be borne solely by the Contractor, and the District shall in no event be liable or responsible therefor.

Any part or component replaced by the Contractor under the Contract warranty shall be replaced at no cost to the District and guaranteed for the greater of: a) the warranty period under paragraph (e) above; or b) if a separate warranty for that part or component is generally offered by the manufacturer, the standard commercial warranty period offered by the manufacturer for the individual part or component.

- (g) **Virus Warranty:** The Contractor represents and warrants that Licensed Software contains no known viruses. Contractor is not responsible for viruses introduced at Licensee's site.
- (i) **Workmanship Warranty:** Contractor warrants that all components or deliverables specified and furnished by or through Contractor under this Contract meet the completion criteria set forth in these Bid Documents and any subsequent statement(s) of work, and that services will be provided in a workmanlike manner in accordance with industry standards.
- (j) **Survival of Warranties:** All warranties contained in this Contract shall survive the termination of this Contract.
- (k) **Remanufactured Components:** Warranties on refurbished or remanufactured components or Products must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment.

50. Legal Compliance

Contractor represents and warrants that it shall secure all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of the District that it meets or exceeds all requirements of the Bid and Contract and any applicable laws, including but not limited to, permits and licensing, and shall provide such proof as may be required by the District. Failure to comply or failure to provide proof may constitute grounds for the District to cancel or suspend the Contract, in whole or in part, or to take any other action deemed necessary by the District.

51. Indemnification

Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully indemnify and save harmless the District from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by any intentional act or negligence of Contractor, its agents, employees, partners or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of a the District.

52. Indemnification Relating To Third Party Rights

The Contractor will also indemnify and hold the District harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs that may be finally assessed against the District in any action for infringement of a United States Letter Patent, or of any copyright, trademark, trade secret or other third party proprietary right except to the extent such claims arise from the District's gross negligence or willful misconduct, provided that the District shall give Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of Contractor.

If usage shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion to take action in the following order of precedence: (i) to procure for the District the right to continue usage (ii) to modify the service or Product so that usage becomes non-infringing, and is of at least equal quality and performance; or (iii) to replace said service or Product or part(s) thereof, as applicable, with non-infringing service or Product of at least equal quality and performance. If the above remedies are not available, the parties shall terminate the Contract, in whole or in part as necessary and applicable, provided the District is given a refund for any amounts paid for the period during which usage was not feasible.

The foregoing provisions as to protection from third party rights shall not apply to any infringement occasioned by modification by the District of any Product without Contractor's approval.

In the event that an action at law or in equity is commenced against the District arising out of a claim that the District's use of the service or Product under the Contract infringes any patent, copyright or proprietary right, and Contractor is of the opinion that the allegations in such action in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify the District and the Office of the Attorney General in writing and shall specify to what extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract. Contractor shall in such event protect the interests of the District and secure a continuance to permit the District to appear and defend its interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the District may have. This constitutes the District's sole and exclusive remedy for patent infringement, or for infringement of any other third party proprietary right.

53. Limitation of Liability

Except as otherwise set forth in the Indemnification Paragraphs above, the limit of liability shall be as follows:

- (a) Contractor's liability for any claim, loss or liability arising out of, or connected with the Products and services provided, and whether based upon default, or other liability such as breach of Contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages in: (i) an amount equal to two (2) times the charges specified in the PO for the Products and services, or parts thereof forming the basis of the District's claim, (said amount not to exceed a total of twelve (12) months charges payable under the applicable PO) or (ii) one million dollars (\$1,000,000), whichever is greater.
- (b) The District may retain such monies from any amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like asserted against the District unless Contractor at the time of the presentation of claim shall demonstrate to the District's satisfaction that sufficient monies are set aside by the Contractor in the form of a bond or through insurance coverage to cover associated damages and other costs.
- (c) Notwithstanding the above, neither the Contractor nor the District shall be liable for any consequential, indirect or special damages of any kind which may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by the District, the Contractor, or by others.

54. Insurance

- A. The Successful Bidder shall procure and maintain insurance satisfactory to Rome City School District in the following coverages and amounts indicated by a checkmark (✓):
 - ✓ (1). Commercial General Liability Insurance - \$1,000,000 per occurrence/\$2,000,000 general and products/completed operations aggregates. The general aggregate shall apply on a per-project basis.
 - ✓ (2). Automobile Liability Insurance - \$1,000,000 combined single limit for owned, hired and borrowed and non-owned motor vehicles.
 - ✓ (3). Workers' Compensation – Statutory Workers' Compensation and Employers' Liability Insurance for all employees.
 - ✓ (4). Excess Insurance – Umbrella limit \$5,000,000.
- B. If not checked above insurances are not required for this bid.

The Successful Bidder shall arrange with its insurance carrier to have the policy endorsed to include Rome City School District, and its officers, employees, and agents listed as additional named insureds on all insurance policies required for performance of this Contract and shall provide proof acceptable to Rome City School District that those amendments to the insurance contract(s) have been accomplished. Forms C-105.2, U-20.3, GSI-105.2 or SI-12 are the only forms that will be accepted as proof of Workers' Compensation Insurance. Certificates of Insurance must be furnished with this Bid. In addition, proof of continuing coverage in the amounts set forth shall be produced upon renewal and/or upon demand prior to expiration date of existing certificate.

Part C - Terms and Conditions Specific to This Purchase

IFB Number 2020-06-24	Product/Service Requested Inventory and Appraisal Services
Contract Period July 1, 2020 – June 30, 2023	
Submission Deadline June 24, 2020	
Note: Proposals are to be mailed or delivered to the above address. E-mail Proposals will not be accepted.	
Designated Contact David Dreidel Director of Business and Finance Telephone: (315) 338-6541 E-mail: ddreidel@romecsd.org	RFP Opening Date: June 24, 2020 Time: 11:00 AM Place: Rome City School District Director of Business and Finance 409 Bell Road Rome, NY 13440

I. Purpose

1. This Invitation for Bids is for the purpose of selecting a qualified and experienced vendor of **Inventory and Appraisal Services** for the Rome City School District.

II. Brief Description of Duties

1. The purpose of this bid is to solicit prices for: (1) Building Valuation and Equipment Appraisal Services and Reports, and (2) Itemized Asset Inventory and Annual Maintenance Services and Reports by the Appraisal Company. The District reserves the right to select either or both of these options.
2. All Building Valuations and Equipment Appraisal services and reports must include the physical plant (building), all land/outbuildings associated with each building, all equipment physically located in/on each building/land/outbuilding and vehicles. All appraisals and reports must be GASB 34 compliant.
3. Building information (All buildings are located in Rome, New York, Zip Code 13440):

Building	Street	Site Acreage	Square Footage
Rome Free Academy	95 Dart Circle	80.0	333,290*
Staley Upper Elementary School	620 East Bloomfield Street	35.1	112,170
Strough Middle School	801 Laurel Street	14.5	172,400
Maintenance Building	255 Brookley Road		16,864
Bellamy Elementary School	7118 Brennan Avenue	17.2	35,726
Clough Elementary School	409 Bell Road	12.0	41,638
Denti Elementary School	1001 Ruby Street	15.2	66,046
Ft. Stanwix Elementary School	110 West Linden Street	3.2	58,732
Gansevoort Elementary School	758 Liberty Street	3.4	52,343
John Joy Elementary School	8194 Bielby Road	18.5	36,600
Ridge Mills Elementary School	7841 Rome-Westernville Rd	10.6	35,857
Stokes Elementary School	9095 Turin Road	12.0	37,750
Stadium Support Facility	500 Turin Street	19.4	15,000
Total		243.1	1,014,416

* - Includes Rome Free Academy (320,000 sq. ft.), Kennel (1,950 sq. ft.) and Pike Building (11,340 sq. ft.)

4. Asset Inventory and Annual Maintenance services and itemized reports will include: Item Description, Location (Building & Room Number), Manufacturer and Model (If Any), Serial/Identification Number (If Any) and Vehicle Identification Number and Mileage (for Vehicles).
5. All reports generated must be compliant with GASB 34.

6. Other information:
 - a. Total student enrollment: 5,926
 - b. Capitalization threshold: \$5,000.00
 - c. Itemized physical inventory of equipment, materials and furniture threshold: \$500.00
 - d. Prior appraisal: Completed by Industrial Appraisal Company following 2017-2018 school year

III. Bid Format

Your Bid shall include at a minimum:

1. This Invitation for Bids document
2. Description of services your firm provides
3. References of three (3) clients that your firm conducted services of similar scope and size to the District
4. Fee Part 1: Fee for Initial Building Valuation/Physical Appraisal and Reports in 2020-2021 School Year and Annual fee for Maintenance/Updates/Services/Reports for 2021-2022 and 2022-2023 School Years, which includes recording new tag numbers and placing new tags on assets that meet our threshold.
5. Fee Part 2: Annual fee for Itemized Asset Inventory and Maintenance services and Reports for the 2020-2021 School Year and Annual fee for Updates/Reports for 2021-2022 and 2022-2023 School Years
6. Fee Part 3: All inclusive fee for all services and reports listed in this IFB
7. Sealed bids must be clearly marked “Inventory and Appraisal Services, IFB 2020-06-24” will be received until 11:00 AM on June 24, 2020.

IV. Other Information

1. It is preferred that the appraisal and inventory begin after June 25 and be completed by July 30 of each year. By completed, it is meant that all documentation has been received by the Rome City School District.
2. By signing below and submitting this Bid for consideration by the Rome City School District, the Vendor acknowledges that he/she has read, understood and agreed to all aspects of the Specifications and Special Instructions as presented without reservation or alteration.

Signature _____

Print Name _____

Company _____

BID RESPONSE FORM

NAME OF BIDDER: _____

ADDRESS: _____

PREPARED BY: _____

TITLE: _____

The undersigned declares that _____ has carefully examined the Invitation For Bids and Definitions, Part A - Terms and Conditions of the IFB Process, Part B - Standard Contract Terms and Conditions, Part C – Terms and Conditions Specific to This Purchase and Part D - Bid Form and Certifications and will furnish the services in compliance with such documents for the price(s) set forth in this Bid Response Form.

Date: _____

Firm: _____

Address: _____

Phone: _____

Name(s): _____

Bid prepared by: _____

(Signature of persons, firm or corporation submitting bid)

Title: _____

BID RESPONSE FORM

1. Building Valuation and Equipment Appraisal Services and Reports Only

2020-2021 School Year, Initial Physical Appraisal	Cost \$ _____
2021-2022 School Year, Maintenance/Updates/Services/Reports	Cost \$ _____
2022-2023 School Year, Maintenance/Updates/Services/Reports	Cost \$ _____
Total	Cost \$ _____

2. Itemized Asset Inventory and Annual Maintenance Services and Reports Only

2020-2021 School Year, Initial Physical Appraisal	Cost \$ _____
2021-2022 School Year, updated report	Cost \$ _____
2022-2023 School Year, updated report	Cost \$ _____
Total	Cost \$ _____

3. All Inclusive Fee for All Services and Reports Listed in this IFB

Cost \$ _____

Please explain in detail any value added features included in your bid:

REFERENCES

Please list three (3) customer references, preferably school districts or BOCES located in New York State.

Customer Reference #1

Organization Name _____

Contact Name and Title _____

Address _____

Telephone _____

Customer Reference #2

Organization Name _____

Contact Name and Title _____

Address _____

Telephone _____

Customer Reference #3

Organization Name _____

Contact Name and Title _____

Address _____

Telephone _____

Part D - Bid Form and Certifications

The Bid must be fully and properly executed by an authorized person. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this Invitation For Bids, Part A (Terms and Conditions of the IFB Process, Part B (Standard Contract Terms and Conditions), and Part C (Terms and Conditions Specific to This Purchase), and that all information provided is complete, true and accurate.

Legal Business Name of Company:		Bidder's Federal Tax Identification No.:	
D/B/A - Doing Business As (if applicable):			
Street	City	State	Zip
County			
Bidder's Signature:		Printed or Typed Name:	
Title:		Date:	
Phone : () - ext ()		Toll Free Phone: () - ext ()	
Fax : () - ext ()		Toll Free Fax : () - ext ()	
E-mail Address:		Company Web Site:	

Certification of Non-Collusion

By submission of this Bid, each Bidder, and each person signing on behalf of the Bidder, certifies under penalty of perjury that to the best of its and their knowledge and belief:

- (1) The prices in this Bid have been arrived at independently and without collusion, consultation, communication or agreement relating to such prices with any other Bidder or with any competitor; and
- (2) Unless otherwise required by law, the prices which have been quoted in this Bid have not been knowingly disclosed by this Bidder prior to opening of the Bid, directly or indirectly, to any other Bidder or any competitor; and
- (3) No attempt has been made or will be made by this Bidder to induce any other person, partnership, or corporation to submit or not to submit a Bid for the purpose of restricting competition.

Signature: _____ Title: _____

Please Print Name: _____ Date: _____

[] As a Bidder, I cannot make the above certification, but have furnished a signed statement with my Bid that sets forth in detail the reasons I cannot sign the certification.

Please Complete the Remainder of the Bid Form

CERTIFICATION OF COMPLIANCE WITH THE IRAN DIVESTMENT ACT

As a result of the Iran Divestment Act of 2012 (the “Act”), Chapter 1 of the 2012 Laws of New York, a new provision has been added to State Finance Law (SFL) § 165-a and New York General Municipal Law § 103-g, both effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) will be developing a list of “persons” who are engaged in “investment activities in Iran” (both are defined terms in the law) (the “Prohibited Entities List”). Pursuant to SFL § 165-a(3)(b), the initial list is expected to be issued no later than one hundred twenty (120) days after the Act’s effective date at which time it will be posted on the OGS website.

By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, each Bidder/Contractor, any person signing on behalf of any Bidder/Contractor and any assignee or subcontractor and, in the case of a joint bid, each party thereto, certifies, under penalty of perjury, that once the Prohibited Entities List is posted on the OGS website, that to the best of its knowledge and belief, that each Bidder/Contractor and any subcontractor or assignee is not identified on the Prohibited Entities List created pursuant to SFL § 165-a(3)(b).

Additionally, Bidder/Contractor is advised that once the Prohibited Entities List is posted on the OGS Website, any Bidder/Contractor seeking to renew or extend a Contract or assume the responsibility of a Contract awarded in response to this solicitation must certify at the time the Contract is renewed, extended or assigned that it is not included on the Prohibited Entities List.

During the term of the Contract, should the District receive information that a Bidder/Contractor is in violation of the above-referenced certification, the District will offer the person or entity an opportunity to respond. If the person or entity fails to demonstrate that he/she/it has ceased engagement in the investment which is in violation of the Act within ninety (90) days after the determination of such violation, then the District shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages or declaring the Bidder/Contractor in default.

The District reserves the right to reject any bid or request for assignment for a Bidder/Contractor that appears on the Prohibited Entities List prior to the award of a contract and to pursue a responsibility review with respect to any Bidder/Contractor that is awarded a Contract and subsequently appears on the Prohibited Entities List.

I, _____, hereby certifies under the penalty of perjury that I am the
_____ of the _____

Corporation and that neither the Bidder/Contractor nor any proposed subcontractor is identified on the Prohibited Entities List.

SIGNED

Rome City School District
Part D – Bid Form and Certifications
Inventory and Appraisal Services IFB 2020-06-24
Page | 3

My signature affirms that before submitting this Bid I was fully informed as to the extent and character of the service, supplies, materials, or equipment required, and certifies that I can and will furnish the service, supplies, materials, or equipment as proposed in this Bid, and in compliance with all of the specifications and conditions stated in the Bid Documents.

Signature

Please Print Name

Company or Organization

Date:
