

Request for Proposals (RFP)

for

Guaranteed Energy Savings Contract

Issued by:

**Round Lake Area School District 116
Operations Service Center
811 Sunset Dr.
Round Lake, IL. 60073**

Chief Operations Officer: Dr. Mary L. Lamping

Proposal Due Date: October 18, 2021, at 10:00 a.m.

Notice is hereby given that Round Lake Area School District 116 (the "District") at 884 W. Nippersink Road, Round Lake, Illinois 60073, is requesting Qualified Providers to propose energy conservation measures through a guaranteed energy savings contract. The District's objective in issuing this Request for Proposal (RFP) is to provide a competitive means in which to select a qualified Provider for a Guaranteed Energy Savings Contract under a phased approach for all buildings. The contract shall follow the requirements of Article 19b of the Illinois *School Code*.

Proposals shall be in sealed form and submitted no later than October 18, 2021, at 10:00 a.m., at the Operations Service Center, located at 811 Sunset Dr, Round Lake, Illinois 60073. Extensions will not be granted. The District's RFP is available online at <https://www.rlas-116.org/>. For questions contact Dr. Mary L. Lamping, Chief Operations Officer, 884 W. Nippersink Road, Round Lake, Illinois 60073, mlamping@rlas-116.org.

A mandatory pre-bid meeting is scheduled for September 22, 2021, at 2:00 p.m. at the Operations Service Center at 811 Sunset Drive, Round Lake, IL. There will be two walkthrough opportunities that will include options to go onto school rooftops, observe HVAC systems, and walkthrough school buildings and adjacent grounds. Each one will begin at Round Lake High School Main Entrance (800 N. High School Drive, Round Lake, IL 60073) and will include walk throughs at Round Lake High School, Raymond Ellis Elementary School (720 Central Park Dr., Round Lake Beach, IL 60073), and W. J. Murphy Elementary School (220 N. Greenwood Drive, Round Lake Park, IL 60073). Walkthrough dates are September 22, 2021 immediately following the pre-bid meeting and October 6, 2021 beginning at 10:00 a.m. These will be the only opportunities to visit the identified buildings in advance of the district's selection of a preferred provider. If planning to attend please plan to hand carry a current certificate of liability to the walkthrough that names Round Lake Area Schools CUSD 116 as an additional insured.

Providers shall submit three (3) paper copies and one (1) electronic copy of the proposals in a sealed box. No faxed nor electronically submitted proposals will be accepted. Proposals shall include implementation of energy conservation measures. "Energy conservation measure" means any improvement, repair, alteration, or betterment of any building or facility owned or operated by the school district or any equipment, fixture, or furnishing to be added to or used in any such building or facility, subject to the building code authorized in Section 2-3.12 of the *School Code*, that is designed to reduce energy consumption or operating costs. 105 ILCS 5/19b-1.1.

The District reserves the right to reject any or all proposals, to waive irregularities in the proposal procedure, or accept the proposal that, in its opinion, will serve the best interest of the District. The District further reserves the right to award all or a portion of the work to one or more Providers. Any such decision shall be considered final. Failure to meet any of the required criteria may result in automatic rejection of the proposal.

The District will not provide compensation to the Respondent(s) for any expense incurred by the Respondent(s) for Submission preparation, product evaluations, or demonstrations that may be made. All submissions become the property of the District and will not be returned to the energy services company (“ESCO”).

In accordance with Section 19b-5 of the *School Code*, the District discloses that no energy contractor participated in the preparation in this RFP.

I. PROPOSED PROJECT

- a. The work to be included in the project may include upgrades or replacement of equipment and/or material included in, but not limited to roofing, parking lots, windows, doors, security, lighting/electrical, plumbing, HVAC, and construction.
- b. The intent of this RFP is to provide the owner with the means to realize maximum energy and operational savings and/or related improvements to its facilities for all buildings including health, life, and safety needs.
- c. A savings guarantee will be offered as part of the qualified Provider’s proposal. The savings in energy and operating costs must be guaranteed to cover the cost of the contract.
- d. The District is subject to the Illinois *Freedom of Information Act*, 5 ILCS 140/1, et seq. (“**FOIA**”), and any and all information submitted by the Provider to the District may be subject to disclosure to third parties in accordance with FOIA. If the Provider requests that the District withhold any submitted information as trade secrets, commercial information, or financial information from disclosure to a third party in response to a FOIA request, the Provider must notify the District of such request at the time such information is submitted to the District, along with a statement that disclosure of such information will cause competitive harm to the Provider, as provided by FOIA Section 7(1)(g), 5 ILCS 140/7(1)(g). Any content not so marked by the Provider at the time of submission to the District will be presumed to be open to public inspection. The Provider may be required to substantiate the basis for its claims at a later time. Notwithstanding timely notice received from the Provider in accordance with Section 7(1)(g), the District reserves the right, in its sole discretion and subject only to applicable law, to withhold or release the subject information in response to a FOIA request. As a potential provider of a governmental function on behalf of the District, the Provider agrees to cooperate with the District, without additional charge, in responding to any FOIA request, including by timely providing any documents requested by the District that directly relate to the governmental function that the Provider has been engaged to perform on behalf of the District.

II. PROPOSAL CONTENT & FORMAT

Proposals must contain all required information outlined in this section. The District reserves the right to eliminate from further consideration any proposal deemed to be substantially or materially unresponsive to the requests for information contained herein. Moreover, the Board reserves the right to reject any and all proposals and to waive any deficiencies in a proposal.

a. Table of Contents

Proposals shall include an accurate Table of Contents detailing the required sections as described below.

b. Executive Overview

Request for proposals shall include a concise abstract stating the respondent's overview of the company. Please summarize the scope of services offered by your firm for this project.

c. Company Information

- Name of firm
- Business address
- Primary contact person for this project
- Name of officer authorized to bind the firm and office address
- Number of years company has been in business
- Additional relevant information

d. Experience and Qualifications

A Qualified Provider is a person or business experienced in the design, implementation and installation of energy cost savings measures. As required by Section 19b-1.3 of the School Code, the minimum training any person or employee shall have under this agreement shall include the satisfactory completion of at least 40 hours of course instruction dealing with energy conservation measures. The Qualified Provider must have the demonstrated technical and managerial capabilities to provide a comprehensive set of services including, but not limited to, design, acquisition, installation, training, and commissioning of new and/or existing energy systems as well as project monitoring and savings measurement and verification. Additional services may include operation and maintenance for all improvements and/or training of District's staff on routine maintenance and operation of the systems installed. Monitoring and verification services shall include appropriate measurement and timely reporting of the energy and operational savings from the project. The following documentation must be submitted to support required qualifications as part of the Qualified Provider's response:

- Company history – structure of company, financial stability, and longevity. Include firm’s legal structure and identify any predecessor company having one or more of the same owners/managers within the past ten years.
- An organizational chart for only those individuals who will be directly involved in the project.
- Resumes of the key project personnel to the project. Documentation of firm being/or using a licensed engineering/design firm in Illinois.
- Confirmation or evidence that your firm is in good standing with the State of Illinois to perform work/business in Illinois.
- Litigation/Contract Disputes:
 - List any projects with Illinois school districts which have resulted in litigation or arbitration during the past ten years. Provide a brief summary detailing the litigation/arbitration. Include any litigation/arbitration in which any predecessor companies were involved during this time period.
 - List any projects where the responding ESCO or predecessor has signed a contract and not delivered on the agreed upon contract. Please also explain.
- Guarantee History:
 - List any projects for which the ESCO or predecessor has paid a school district for an annual savings shortfall under a guaranteed energy savings contract.
- Relevant Experience: Provide project details on projects where team members have worked on Energy Savings Projects in the K-12 market in the State of Illinois. Include:
 - A brief description of the project
 - Value of the project
 - District contact information

e. Technical Aspects of the Proposal

- Provide a detailed summary of your organization’s technical approach to meeting the District’s energy efficiency and operational savings and needs and objectives. Include the following:
 - Existing conditions: Describe your organization’s assessment of the facilities and existing conditions
 - Solutions for consideration: Provide an overview of the various recommended solutions to address the conditions of the District’s facilities
 - Development: Describe the overall approach to assessment and development of technical solutions
 - Design:

1. Describe your proposed design approach and include preferred design and engineering consultants your organization would like to utilize, within the scope of the project.
 2. Provide any design details and drawings (if any) utilized as part of your response.
- Construction Management: Describe your approach to all phases of construction management, from bid process through final acceptance and warranty. Include the following details:
 1. Describe how your team would work with current building management and maintenance personnel to coordinate construction and avoid conflicts with the building's operation and use.
 2. Describe any project management tools or systems to be utilized on the project.
 3. Identify and describe any components your organization considers to be unique for Construction Management.
 - Commissioning: Describe how your firm intends to provide commissioning for the project
 - Performance Assurance: Describe the performance assurance processes you intend to use to ensure the buildings operate at the desired performance level, both at completion of the construction phase and throughout the contract term.

f. Financial Approach and Guarantee

Provide the following:

- Pricing for proposed recommended solutions and alternatives, if applicable. Profit should be stated as a separate element of the price for each solution and alternative. Price shall include all costs of installations, modifications, and remodeling, including without limitation, costs of a pre-installation energy audit or analysis, design, engineering, installation, maintenance, repairs, debt service, conversions to a different energy or fuel source, or post-installation project monitoring, data collection, and reporting.
- Cash Flow Analysis: Include a cash flow analysis with energy savings, operational savings, annual program cost and net cash flow.
- Payments: Respondents must list the start date, payment amount and frequency (payment schedule) for proposed scope of work.
- Guarantee: Provide an explicitly written guarantee of the savings on an annual basis throughout the term of the agreement. Also, provide a complete description of the guaranteed methodology of measurement and verification that will be used for each facility improvement proposed.

g. Implementation Plan & Project Management

Provide the following:

- Description of approach for project and construction management including processes, type, and availability of company resources to support the project.
- Subcontractor Selection: Describe the process that the Provider utilizes to obtain subcontractors and what criteria will be used to make the subcontractor selections.
- Equipment Selection: Describe the process the Provider will utilize to select and obtain the equipment to be used on the project and specifically what criteria will be used to make any equipment selections.
- Installation Approach: Describe how the Provider intends to implement the installation phase of the project in terms of approach, priorities, philosophies, timelines, modifications, and commissioning.
- Performance Assurance: Describe in detail the performance assurance processes that the Provider intends to utilize to ensure the building operates at peak performance both at the completion of the installation phase and throughout the contract term.

h. Additional Services

- Any additional information, services, and training.

III. PROJECT EVALUATION CRITERIA

A District evaluation team will evaluate all proposals and recommend an award subject to approval by the Board of Education offering the best value proposal. The District will evaluate the proposal with the assistance of a licensed architect or a licensed professional engineer. The District reserves the right to, but is not obligated to, request and require that the proposing firm provide an oral presentation of its proposal. The written proposal and oral presentation, if required, will be the basis for determining the successful ESCO. Proposals will be evaluated according to the following criteria:

- a. Qualifications and experience of the proposer and past performance of the firm or members of the firm on other contracts in terms of size, scope and quality of services. The District may solicit reference information from previous clients.
- b. Qualifications and experience of committed personnel.
- c. Technical Approach: Quality and responsiveness of the proposal to the needs of the District in terms of scope of work, methodology, and project management.
- d. Financial Approach: Total project cost, projected savings and sources, and types of potential financing. The District shall analyze the estimates of all costs of installations, modifications, or remodeling, including, without limitation, costs of a pre-installation energy audit or analysis, design, engineering, installation, maintenance, repairs, debt service, conversions to a different energy or fuel source, or post-installation project monitoring, data collection, and reporting.

The Board of Education or its designee will, in the exercise of their sole discretion, determine which proposal best meets the needs of the District. The District is not liable for any cost incurred by the respondent in preparing or submitting a proposal, or in preparing the contract.

IV. Timeline

The District expects to undertake the selection process described below according to the following schedule:

Advertisement and Issue RFP	September 17, 2021
Mandatory Pre-Bid Meeting	September 22, 2021
Option Site Walkthroughs	September 22, 2021 October 6, 2021
Submissions of Proposals	October 18, 2021
Selection of ESCO	October 19 – 29, 2021
Award Contract	November 1, 2021
Substantial Project Completion	May 30, 2022

V. Contract Requirements

The Provider must enter into a contract with the District including the terms and conditions listed herein. The terms and conditions stated in this Request for Proposals and all exhibits and attachments hereto shall be deemed to be a part of and incorporated into any contract between the Provider and District. By submitting a proposal, the Provider agrees that it has read fully and understands the terms and conditions stated herein. In the event of a conflict between any of the terms and conditions stated herein and any other document, the terms and conditions most favorable to the District shall prevail. Provider also represents and warrants that it has visited the site for the project and is familiar with the conditions under which the work will be performed.

The contract shall contain the following:

A. Guarantee

The contract must result in a guaranteed minimum **annual** energy and operational costs savings, as well as defined levels of occupant comfort, maintenance, monitoring, training or other services. The contract shall provide that either the energy or operational cost savings, or both, will meet or exceed within a specified number of years (not to exceed 20 years) the costs of the ECMs. During the guarantee period, the Provider shall reimburse the District for any shortfall of guaranteed energy savings projected in the contract annually. The contract shall include a clear, simple explanation of what steps, decisions or paperwork must be completed to (a) establish the first day of the District guarantee and (b) measure the actual annual savings realized during each guarantee year. After the ECMs are installed, the operational and energy cost savings shall be documented on an annual basis (either by the Provider or the District), and the District shall designate and appropriate that amount for an annual payment of the contract. If the annual energy savings are less than projected under the contract, the Provider shall pay the difference.

B. Payment and Performance Bonds

The qualified provider must submit to the Board payment and performance bonds in the amount of 100% of the construction costs. The payment bond must provide that it will pay the applicable prevailing wages. The payment and performance bonds shall be provided by the successful contractor prior to commencing the work. The bonds shall include such provision as will guarantee the faithful performance of the Provider's obligations hereunder and pursuant to the *Prevailing Wage Act*.

C. Insurance

The Provider shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Provider from claims set forth below which may arise out of or result from the Provider's operations and completed operations under the Contract and for which the Provider may be legally liable, whether such operations be by the Provider or by a subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

1. Worker's Compensation:

(a) State:	Statutory
(b) Employer's Liability:	\$1,000,000 per Accident
	\$1,000,000 Disease, Policy Limit
	\$1,000,000 Disease, Each Employee

2. Commercial General Liability, including Premises-Operations; Independent Contractors' Protective; Products and Completed Operations; Broad Form Property Damage;

(a) Each Occurrence	\$2,000,000
General Aggregate	\$2,000,000
Products and Completed Operations Aggregate	\$2,000,000
Personal Injury and Advertising Each Occurrence	\$1,000,000

(b) Property Damage Liability Insurance shall provide X, C, and U coverage

(c) Broad Form Property Damage Coverage shall include Products and Completed Operations.

3. Contractual Liability covering the Provider's obligations under Indemnification, and any other indemnification obligation of the Provider contained in the Contract Documents.

4. Personal Injury Liability; with Employment Exclusion deleted:
 Aggregate \$1,000,000

5. Business Auto Liability (including owned, non-owned, and hired vehicles)
 Each Occurrence \$1,000,000

6. Umbrella Excess Liability:
 \$5,000,000 over primary insurance

7. Products and Completed Operations coverage to be maintained for one (1) year after
 final payment Personal Injury Liability; with Employment Exclusion deleted:
 Aggregate \$1,000,000

Certificates of insurance acceptable to the District shall be filed with the District prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Provider with reasonable promptness. Upon the request of the District, the Provider and subcontractor shall provide the District with copies of any insurance policy, with all endorsements, required by the Contract Documents.

The Provider shall cause the commercial liability coverage and the umbrella coverage required by the Contract Documents to include the District, its individual board members, agents, employees, and consultants as additional insureds.

D. Compliance with Laws

Provider and all subcontractors shall pay not less than the general prevailing hourly rate of wages in the locality in which the work is to be performed for each craft or type of work or mechanic needed to execute the agreement or perform such work, and shall in all other respects comply with the *Prevailing Wage Act*, 820 ILCS 130/1. et. seq. (the "Act"), in carrying out the work. The Department of Labor wage rates are available on the Department's official website. Provider shall have the sole responsibility and duty to ensure that the revised prevailing rate of hourly wages is paid by Provider and all subcontractors to each worker to whom a revised rate is applicable; however, in no event shall the increase in any prevailing rate of hourly wages be a basis for a change order or other claim for an increase in the contract sum. Further, the Provider shall comply with the *Illinois Human Rights Act*, 775 ILCS 5/1-101 *et seq.* and the provision of sexual harassment policies and procedures pursuant to Section 2-105 of that Act, including the regulations attached hereto as Exhibit A. The Provider further agrees to comply with all federal Equal Employment Opportunity Laws, including, but not limited to, the *Americans With Disabilities Act*, 42 U.S.C. Section 12101 *et seq.*, and rules and regulations promulgated thereunder. The *Illinois Employment of Illinois Workers on Public Works Act*, 30 ILCS 570/0.01 *et seq.*, and the *Steel Products Procurement Act*, 30 ILCS 565/1 *et seq.*, shall prevail on this project to the extent such Acts are applicable and enforceable. To the extent applicable, the Provider

shall collect and remit Illinois Use Tax on all sales of tangible personal property into the State of Illinois in accordance with the Illinois Use Tax Act, 35 ILCS 105/1 *et seq.*

If awarded a contract, for all employees or subcontractors' employees having direct, daily contact with children, Provider must provide documentation of fingerprint based background checks conducted in accordance with Section 10-21.9 of the *School Code* and evidence of physical fitness to perform duties assigned and freedom from communicable disease in accordance with Section 24-5 of the *School Code*.

The Provider represents that it is in compliance with all requirements of the Grants Certification, attached hereto as Exhibit B.

E. Warranties

The Provider warrants to the District that materials and equipment furnished under the Contract Documents will be of good quality and new unless the Contract Documents require or permit otherwise. The Provider further warrants that the Work will conform to the requirements of the Contract Documents and will be free from faults and defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements shall be considered defective. The warranty will not be affected by the specification of any product or procedure, unless the Provider objects promptly to such product or procedure and advises the District of possible substitute products or procedures which will not affect the warranty. This warranty shall not be restricted by the limitations of any manufacturer's warranty. Inability or refusal of the subcontractor or supplier responsible for the defective work to correct such work shall not excuse the Provider from performing under the warranty.

F. Consequential Damages

The District shall not waive any claims for consequential damages arising out of or relating to this Contract; however, Provider shall waive any and all claims for consequential damages arising out of or relating to this Contract.

G. Indemnification

To the fullest extent permitted by law the Provider waives any right of contribution against and shall indemnify and hold harmless the District, the District's individual board members, agents, consultants and employees from and against all claims, damages, losses and expenses (including but not limited to personal injury, property damage (real and personal) and loss of use of property), including but not limited to attorneys' fees, court costs and expert witness fees arising out of, relating to, resulting from or in connection with (1) any act or omission of Provider, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder, or (2) any breach of the Contract Documents. Such obligations shall not be construed

to negate, abridge, or otherwise reduce any other right or obligation of indemnity or contribution which would otherwise exist as to any party or person described in the Contract Documents.

In any and all claims by an employee of Provider, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligations in the Contract Documents shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Provider or any subcontractor under workers' or workmens' compensation acts, disability benefit acts or other employee benefit acts. Provider and every subcontractor agree to assume the entire liability for all personal injury claims suffered by their own employees allegedly injured on the Project and waive any limitation of liability defense based on workers' compensation acts, or interpretations thereof, against claims by the District for indemnification or contribution, and further agree to indemnify and defend the District and its individual board members, agents and employees and consultants (Indemnitees) from and against all such claims, damages, losses and expenses, including reasonable attorneys' fees, that the Indemnitee's may sustain as a result of such claims, except to the extent that Illinois law prohibits indemnity for the Indemnitee's own negligence, and further agree to pay any contribution appropriate for Provider's and subcontractors' own negligence. Provider shall ensure that this provision is inserted in every contract between Provider and subcontractors. If such provision is not contained within a subcontractor contract, or if a subcontractor's insurance does not cover or is insufficient to pay such claims, Provider shall assume all subcontractor liability for such indemnification of or contribution to the District.

EXHIBIT A

[NOTE: Illinois law requires that this statement be included in all Illinois bids and public contracts (See 44 Ill. Adm. Code 1120.2570)]

The following provisions are included in this Contract pursuant to the requirements of the regulations of the Illinois Department of Human Rights, Title 44, Part 750, of the Illinois Administrative Code, and Provider shall be required to comply with these provisions. As required by Illinois law, in the event of the Provider's non-compliance with the provisions of this Equal Employment Opportunity Clause, the *Illinois Human Rights Act* or the Rules and Regulations of the Illinois Department of Human Rights ("Department"), the Provider may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the contract may be canceled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulations. During the performance of this contract, the Provider agrees as follows:

- A. That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, marital status, order of protection status, national origin or ancestry, age, citizenship status, physical or mental handicap or disability unrelated to ability, military status or an unfavorable discharge from military service, or arrest record status; and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.
- B. That, if it hires additional employees in order to perform this contract or any portion thereof, it will determine the availability (in accordance with the Department's Rules) of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.
- C. That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, sexual orientation, marital status, order of protection status, national origin or ancestry, age, citizenship status, physical or mental handicap or disability unrelated to ability, military status or an unfavorable discharge from military service, or arrest record status.
- D. That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the Provider's obligation under the *Illinois Human Rights Act* and the Department's Rules. If any such labor organization or representative fails or refuses to cooperate with the Provider in its efforts to comply with such Act and Rules, the Provider will promptly so notify the Department and the contracting agency and will recruit employees from other sources when necessary to fulfill its obligation thereunder.
- E. That it will submit reports as required by the Department's Rules, furnish all relevant information as may from time to time be requested by the Department or the contracting agency, and in all respects comply with the *Illinois Human Rights Act* and the Department's Rules.
- F. That it will permit access to all relevant books, records, accounts and work sites by personnel of the contracting agency and the Department for purposes of investigation to ascertain compliance with *Illinois Human Rights Act* and the Department's Rules.
- G. That it will include verbatim or by reference the provisions of this clause in every subcontract it awards under which any portion of the contract obligations are undertaken or assumed, so that such provisions will be binding upon such subcontractor. In the same manner as with other provisions of this contract, the Provider will be liable for compliance with applicable provisions of this clause by such subcontractors; and further it will promptly notify the contracting agency and the Department in the event any subcontractor fails or refuses to comply therewith. In addition, the Provider will not utilize any subcontractor declared by the Illinois Human Rights Commission to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.

EXHIBIT B

FEDERAL GRANT CERTIFICATIONS

The following terms shall be deemed incorporated into the Agreement between the parties:

- a. DEBARMENT Certification. Contractor represents and warrants that it is not listed in the federal System for Award Management (SAM) in accordance with OMB guidelines as being debarred, suspended, or otherwise excluded by agencies or declared ineligible for any contract awards.
- b. Termination. The District may terminate the Agreement for convenience by providing thirty (30) days' written notice to the Contractor or may terminate the Agreement upon seven (7) days' written notice to the Contractor for cause. The District will only pay for services or goods received through the effective date of termination, and Contractor shall refund pro rata any amounts prepaid by District.
- c. EEO Statement. Except as otherwise provided under 41 CFR Part 60, the Agreement shall be deemed to include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." In addition, Contractor shall comply with the *Davis-Bacon Act* (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractor shall pay wages not less than once a week. The current prevailing wage determination issued by the Department of Labor shall be deemed incorporated into the contract and solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The District must report all suspected or reported violations to the federal awarding agency. The Contractor shall also comply with the *Copeland "Anti-Kickback" Act* (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The District must report all suspected or reported violations to the federal awarding agency.
- d. Lobbying Certification. Contractor certifies and will require all subcontractors and their subcontractors to certify in writing that it will not and has not used federal

appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Contractor and all subcontractors and their subcontractors shall disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award, represents and warrants that it is not listed in the federal System for Award Management (SAM) in accordance with OMB guidelines as being debarred, suspended, or otherwise excluded by agencies or declared ineligible for any contract awards.

- e. Overtime. Contractor shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer based on a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous.
- f. Funding Agreements. Contractor shall comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
- g. Clean Air Act. Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the *Clean Air Act* (42 U.S.C. 7401-7671q) and the *Federal Water Pollution Control Act* as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- h. Notwithstanding any other termination provisions in the Agreement, the District may immediately terminate the Agreement, upon written notice, without liability or penalty of any kind, if it determines that the Contractor violated any laws in the performance of this Agreement or breached any material term in the Agreement or any addendum between the parties. Upon such termination, Contractor shall refund pro rata any amounts prepaid by District. All provisions regarding indemnification, warranty, liability, and limits thereon, and confidentiality and/or protections of School Data shall survive the termination of this Agreement.