



Arlington Public Schools

Purchasing Department
1426 N. Quincy, Arlington, VA 22206 • Phone: (703) 228-6123 • Fax: (703) 841-0681
www.arlington.k12.va.us

Contract Number: RFP #73FY08

note changed to RFP #73A for Administrator of Plan

This contract entered into this 1st day of January 2009, by TSA Consulting Group, Inc. 15 Yacht Club Drive, Fort Walton Beach, FL 32548, 888-777-5827, hereinafter called "Contractor" and Arlington County School Board called "APS".

WITNESSETH the contractor and the Arlington County School Board through its Purchasing Agent, in consideration of the mutual covenants, promises and agreements herein contained, agrees as follows:

SCOPE OF CONTRACT: The contractor shall provide the plan administration, oversight of five vendors providing investment elections, compliance management and employee education services for the 403b defined contribution retirement plan to the employees of APS as set forth in the Contract Documents.

CONTRACT TERM: The initial contract term shall be effective from 1st day of January 2009 for five (5) years. The contractor agrees that the rates are fixed for the initial five-year term. The contract may be renewed by the Arlington County School Board upon written agreement of both parties for five (5) additional one (1) year periods provided acceptable rates can be negotiated and mutually agreed upon in writing between the Arlington County School Board and Contractor.

PLAN OFFERING:

Provide high quality, efficient plan administration and services including but not limited to:

- A. Provide a written plan for APS that is fully compliant with all IRS requirements and customized to fit the needs of APS. As the IRS modifies the regulations, the Contractor shall edit and maintain the plan documents as needed. The Contractor will also keep the Arlington County School Board abreast of changes in the regulations governing the 403(b) program.
- B. Oversee all aspects of IRS compliance with APS's 403(b) program by all parties involved. In the event of an IRS audit, Contractor will represent APS at the audit.
- C. Provide all necessary Association of School Business Officials (ASBO) and Internal Revenue Service (IRS) compliant forms for Salary Reductions and Service Provider participation.
- D. Develop and maintain all employee files to ensure that each participating employee has an IRS compliant Salary Reduction Agreement on file.
- E. Assist in the preparation of communication material to be distributed to all eligible employees.
- F. Obtain fully executed modified Service Provider Agreements from each investment provider conducting business with APS. These modified Service Provider Agreements shall be compliant with all local, state, and federal regulations, with the exception of not requiring the investment providers to provide and certify Maximum Annual Contribution Limits (MACs) to the employee or APS. Contractor will provide these contribution calculations, and certify to APS and the employee as to the accuracy of these calculations. Vendors that do not execute the modified Service Provider Agreement will not be permitted to enroll new participants.
- G. The Contractor shall inform employees when they pass a benchmark age and years of service requirement to increase their annual contribution limit, and offer employees the option of moving to the higher limit, but shall not move employees to the higher limit without their consent.
- H. Review all employee contributions and perform all necessary calculations to ensure APS's compliance with all IRS regulations pertaining to 403(b) programs.
- I. Review all contributions to ensure that additions to the 403(b) program for each participant are within limits prescribed by Section 415 of the Internal Revenue Code.
- J. Provide an administrative procedure manual to be used by APS to administer the program. This manual shall include master copies of all forms required for the 403 (b) process.



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- K. Review all employees Salary Reduction Agreements and verify compliance with the Internal Revenue Code and applicable regulations. Contractor shall provide a designee who shall receive all new and revised Salary Reduction Agreements. Contractor shall complete review of new and revised Salary Reduction Agreements within three business days. Copies of new and revised Salary Reduction Agreements may be faxed or mailed to Contractor, and will verify changes by semi-monthly download file to the APS Payroll department.
- L. Serve as common remitter for the APS' 403(b) program, and as paying agent on behalf of APS to promptly remit all funds to participating vendors.
- M. Establish a disbursement account on behalf of APS, and shall provide suitable privileges for APS to transfer funds into the account, and for Contractor to transfer funds out of the account.
- N. The Contractor shall maintain and archive all participants 403(b) file and will ensure strict confidentiality of all employee data, records, and files. Contractor will not make available to any outside vendor or sales/marketing organization, any records or information pertaining to APS employees.
- O. APS is responsible to ensure that all monies for 403(b) contributions are wired (ACH is preferred) to their distribution account established no later than one full day prior to pay day and such funds must be available for distribution to Service Providers on or before noon of pay day. APS will use only Contractor approved modified salary reduction agreements and will ensure that reductions will not be initiated until such forms are signed by the appropriate parties. APS will ensure that no additional service providers will be added unless they execute a Contractor approved modified Service Provider Agreement. Contractor assumes no liability for new vendors that will not sign the modified Service Provider Agreement reviewed and approved by Contractor. Additionally, APS will furnish (or arrange to have furnished) all data and information requested by Contractor and necessary for Contractor to ensure that the operation of the 403(b) contract complies with the provisions of Sections 402(g), 403(b), and 415(c) of the Internal Revenue Code. APS understands and agrees that Contractor's obligation to perform the administrative and support services set forth in any resulting Agreement are subject to the obligation of APS to timely supply (or arrange for Contractor to receive) any and all data and information requested by Contractor, and necessary for Contractor to ensure APS' compliance with the 403(b) programs. Contractor will not be responsible for any compliance errors resulting from APS' failure to furnish (or arrange for Contractor to receive) necessary information requested within a reasonable time, or errors resulting from any misrepresentations made by APS or its employees.
- P. The Contractor shall not sell or give to any individual or organization any information, reports, or other materials given to, prepared or assembled by the Contractor under the final contract.
- Q. The Contractor shall not provide or offer any product to APS eligible employees. The sole responsibility of the Contractor is to act as Third Party Administrator providing the necessary services required having a compliant 403(b) program. APS will have five (5) vendors conducting business with eligible employees. It will be at the sole discretion of APS to decide if a reduction/addition in vendors is necessary.
- R. The Contractor shall meet all IRS requirements related to annual notices for employees "automatically enrolled" in the 403(b) program upon hire. Employees who do not opt-out on hire are automatically enrolled and monies defaulted into a fund that meets the IRS' definition of a "Qualified Default Investment Alternative." The Contractor shall provide, at a minimum, those items required of employers by the IRS regulations, to include annual notice of their rights to participants who have been automatically enrolled.
- S. Meet with APS staff within fifteen (15) days after the contract award date to present the proposed communication material, and to jointly establish a preliminary implementation plan and plan education program and schedule.
- T. Provide a single point of contact responsible for quality control, resolving problems and expediting services related to the overall performance of the contract.
- U. Provide an organizational chart and list of contacts (with phone numbers, email, department and title) in relevant functional areas. Provide updates as changes occur.
- V. Provide an administrative procedure manual to be used to administer the program, including necessary forms and instructions.
- W. Maintain a toll-free customer service number for employees.
- X. Transfer of Records at Future Cancellation - The Contractor agrees that at termination of the contract all required data and records necessary to administer the program shall be transferred to the new provider



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within thirty (30) days notice of termination. Such transfer may be accomplished either by electronic format based upon the mutual agreement between the canceled provider and the APS.

Note: Policyholder ability to terminate is noted below.

- E-Contract Documents service, offering online efficiency and convenience in contract document delivery.

COMPENSATION AND METHOD OF PAYMENT:

The Contractor will be paid a monthly fee including Salary Reduction Processing of \$1.75 per participant. The five 403b vendors (AIG Retirement, AXA Equitable, ING, Lincoln Financial Group and Metlife) contracted with APS will be responsible for paying the monthly administrative cost per participant of \$1.75 directly to TSA Consulting Group for the active members by the first of each month as a required condition of being an approved 403b vendor for APS. Additionally, the vendors cannot pass this fee onto participants. The prices are not fixed but vary according to participation level. Below is a representation of current employees and how cost is calculated. The parties agree that the chart below is only a representation based upon the current enrollment figures and will vary on a month to month basis depending the number of employees.

	Members	X	Monthly Fee	=	Monthly Premium
Total Cost for All Vendors	2,722	X	\$1.75	=	\$4, 763.50

GENERAL TERMS AND CONDITIONS:

NON-APPROPRIATION

All funds for payments by Arlington Public Schools under this contract are subject to the availability of an annual appropriation for this purpose by the Arlington County School Board. In the event of non-appropriation of funds by the Arlington County School Board for the goods or services provided under the contract or substitutes for such goods or services which are as advanced or more advanced in their technology, Arlington Public Schools will terminate the contract, without termination charge or other liability to Arlington Public Schools, on the last day of the then current fiscal year or when the appropriation made for the then current year for the services covered by this contract is spent, whichever event occurs first. If funds are not appropriated at any time for the continuation of this contract, cancellation will be accepted by the Contractor on thirty (30) days prior written notice, but failure to give such notice shall be of no effect and the Arlington County School Board shall not be obligated under this contract beyond the date of termination.

ARLINGTON PUBLIC SCHOOLS EMPLOYEES

No employee of Arlington Public Schools shall be admitted to any share or part of this contract or to any benefit that may arise therefrom which is not available to the general public.

EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED

During the performance of this contract, the Contractor agrees as follows:

- The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, any disability or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.



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- b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an Equal Opportunity Employer.
- c. Notices, advertisements and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- d. The Contractor will include the provisions of the foregoing paragraphs a, b, and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- e. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 which prohibits discrimination against individuals with disabilities in employment and mandates their full participation in both publicly and privately provided services and activities.

ARLINGTON COUNTY BUSINESS LICENSES

The Contractor must comply with the provisions of Chapter 11 (Business Licenses) of the Arlington County Code. For further information on the provisions of this chapter and its applicability to this contract, contact the Arlington County Business License Division, Commissioner of the Revenue of Arlington, Virginia, Telephone Number (703) 228-3060.

INDEMNIFICATION

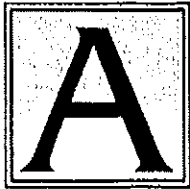
The Contractor covenants to save, defend, hold harmless, and indemnify Arlington County School Board, and all of its officers, departments, agencies, agents, and employees (collectively "Arlington Public Schools") from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, or exposure, however caused, resulting from, arising out of, or in any way connected with the Contractor's performance or nonperformance of the work called for by the Contract Documents.

FAILURE TO DELIVER

In case of failure to deliver goods or services in accordance with the contract terms and conditions, Arlington Public Schools, after due oral or written notice, may procure the goods or services from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which Arlington Public Schools may have; provided, that if public necessity requires the use of materials or supplies not conforming to the specifications, they may be accepted and payment therefore shall be made at a reduction in price to be determined solely by Arlington Public Schools.

ETHICS IN PUBLIC CONTRACTING

The contract incorporates by reference, without limitation, the provisions of law contained in the Virginia Conflict of Interests Act, the Virginia Governmental Frauds Act, Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia as amended, and Article 9 of the Arlington County School Board, Purchasing Resolution. The Contractor certifies that its offer was made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer, or subcontractor in connection with the offer, and that it has not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.



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LIABILITY

The Contractor will not be held responsible for failure to perform the duties and responsibilities imposed by the contract if such failure is due to strikes, fires, riots, rebellions, and major forces beyond the control of the Contractor that make performance impossible or illegal, unless otherwise specified in the contract.

ASSIGNMENT

The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of any award, or any or all of its rights, obligations, or interests under this contract, without the prior written consent of Arlington Public Schools.

APPLICABLE LAW

This contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the Circuit Court of Arlington County, Virginia. The Contractor shall comply with applicable federal, state, and local laws and regulations, including the Americans with Disabilities Act (ADA).

IMMIGRATION REFORM AND CONTROL ACT OF 1986

The Contractor certifies that it does not and will not during the performance of the contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

ANTITRUST

By entering into a contract, the Contractor conveys, sells, assigns and transfers to Arlington Public Schools all rights, title, and interest in and to all causes of action the Contractor may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the goods or services purchased or acquired by Arlington Public Schools under said contract.

RELATION TO ARLINGTON PUBLIC SCHOOLS

The Contractor will be legally considered as an independent contractor and neither the Contractor nor its employees will, under any circumstances, be considered servants or agents of the Arlington County School Board. Arlington Public Schools will not be legally responsible for any negligence or other wrongdoing by the Contractor, its servants or agents. Arlington Public Schools will not withhold from the contract payments to the Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the Contractor. Further, Arlington Public Schools will not provide to the Contractor any insurance coverage or other benefits, including Workers' Compensation, normally provided by Arlington Public Schools for its employees.

ARLINGTON PUBLIC SCHOOLS PURCHASING RESOLUTION

The contract is governed by the applicable provisions of the Arlington County School Board Purchasing Resolution. The time limit for decision by Arlington Public Schools Superintendent in the event of a contractual dispute, as that term is defined in the Purchasing Resolution, is ten days. Procedures for contractual disputes, appeals, and protests are available upon request from the Office of the Purchasing Agent.

ARBITRATION

It is expressly agreed that nothing under the contract shall be subject to arbitration, and any references to arbitration are expressly deleted from the Contract Documents.



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CONTRACTUAL DISPUTES

Contractual claims, whether for money or other relief, shall be submitted to the Purchasing Agent in writing no later than sixty days after final payment, however, written notice of the contractor's intention to file such claim must have been given at the time of the occurrence or beginning to the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after the completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

Any contractual dispute concerning a question of fact as a result of a contract with the Arlington Public Schools which is not disposed of by agreement shall be decided by the Purchasing Agent, who shall reduce his decision to writing and mail or otherwise forward a copy thereof to the contractor within ten (10) days. The decision of the Purchasing Agent shall be final and conclusive unless the contractor appeals to the Superintendent of the Arlington Public Schools within ten (10) days of receipt of the written decision. The Superintendent shall rule on the claim within ten (10) days after receipt of the appeal. Failure of the Superintendent to decide such claim shall mean that the appeal is deemed denied. The Contractor shall not institute legal action in court prior to receipt of the Superintendent's decision.

PATENTS AND ROYALTIES

The Contractor covenants to save, defend, keep harmless, and indemnify the Arlington County School Board, and all of its officers, departments, agencies, agents, and employees (collectively the "Arlington Public Schools") from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, or exposure, however caused, for or on account of any trademark, copyright, patented or unpatented invention, process, or article manufactured or used in the performance of the contract, including its use by Arlington Public Schools. If the Contractor uses any design, device, or materials covered by letters patent or copyright, it is mutually agreed and understood without exception that the contract price includes all royalties or costs arising from the use of such design, device, or materials in any way involved with the work.

PROJECT STAFF

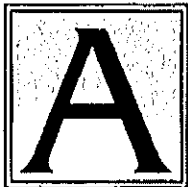
Arlington Public Schools will, throughout the life of this Agreement, have the right of reasonable rejection and approval of staff or subcontractors assigned to the project by the Contractor. If Arlington Public Schools reasonably rejects staff or subcontractors, the Contractor must provide replacement staff or subcontractors satisfactory to Arlington Public Schools in a timely manner and at no additional cost to Arlington Public Schools. The day-to-day supervision and control of the Contractor's employees shall be the sole responsibility of the Contractor.

TERMINATION FOR CONVENIENCE

This contract may be terminated by the Arlington Public Schools in accordance with this clause in whole or in part whenever the Arlington Public Schools Purchasing Agent shall determine that such a termination is in the best interest of the Arlington Public Schools. Any such termination shall be effected by delivery to the Contractor at least five (5) working days prior to the termination date of a Notice of Termination specifying the extent to which performance shall be terminated and date upon which such termination becomes effective. An equitable adjustment in the contract price shall be made for completed service, but no amount shall be allowed for anticipated profit or unperformed services.

TERMINATION FOR DEFAULT

The contract will remain in force for the full period specified or until Arlington Public Schools determines that all requirements and conditions have been satisfactorily met and Arlington Public Schools has accepted the work, and thereafter until the Contractor has met all requirements and conditions relating to the work under the



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Contract Documents following the contract term, including warranty and guarantee periods. However, the Arlington County School Board will have the right to terminate the contract sooner if Arlington Public Schools determines that the Contractor has failed to perform satisfactorily the work required, as determined by Arlington Public Schools in its discretion. In the event the Arlington County School Board decides to terminate the contract for failure to perform satisfactorily, Arlington Public Schools will give the Contractor at least fifteen days written notice before the termination takes effect. Such fifteen day period will begin upon the mailing of notice by Arlington Public Schools. If the Contractor fails to cure the default within the fifteen days specified in the notice and the contract is terminated for the Contractor's failure to provide satisfactory contract performance, the Contractor will be entitled to receive compensation for all contract services satisfactorily performed by the Contractor up to the date of termination of the contract and reasonably allocable to the contract and accepted by Arlington Public Schools prior to such termination. However, an amount equal to all excess costs required to be expended by Arlington Public Schools to complete the work covered by the contract, including costs of delay in completing the project, shall be subtracted from any amount due the Contractor or charged to the Contractor in the event the Arlington County School Board terminates the Contract.

Any failure on the part of APS to comply with this section shall convert any default termination to a termination for convenience and will not create any cause of action for the Contractor or liability to APS.

Except as otherwise directed, the Contractor shall stop work on the date of receipt of notice of the termination or other date specified in the notice, place no further orders or subcontracts for materials, services, or facilities except as are necessary for the completion of such portion of the work not terminated; terminate all vendors and subcontracts and settle all outstanding liabilities and claims.

SUBCONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISE, AND LABOR SURPLUS AREA FIRMS

The Contractor shall take the following steps to assure that, whenever possible, subcontracts are awarded to minority firms, women's business enterprises, and labor surplus area firms:

- (A) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (B) Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
- (C) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;
- (D) Establishing delivery schedules, where the requirements of the contract permit, which encourage participation by small and minority businesses and women's business enterprises; and
- (E) Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and state and local.

FAITH BASED ORGANIZATIONS

The School Board of Arlington Public Schools does not discriminate against faith-based organizations.



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CONTRACT DOCUMENT: The contract documents consist of this agreement and any attachments hereto. No other documents shall be considered part of this contract and no representations or exceptions made prior to the entry of this contract are made a part of this contract.

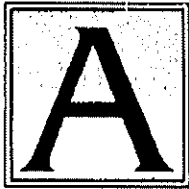
In WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

Contractor:

By: Joseph E. Rollier
Title: PRESIDENT

Arlington County Public School

By: Richard E. Davis 9/30/08
Title: Director/ Purchasing Agent



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- E-Contract Documents service, offering online efficiency and convenience in contract document delivery.

COMPENSATION AND METHOD OF PAYMENT:

The Contractor will be paid a monthly fee including Salary Reduction Processing of \$1.75 per participant. The five 403b vendors (AIG Retirement, AXA Equitable, ING, Lincoln Financial Group and Metlife) contracted with APS will be responsible for paying the monthly administrative cost per participant of \$1.75 directly to TSA Consulting Group for the active members by the first of each month as a required condition of being an approved 403b vendor for APS. Additionally, the vendors cannot pass this fee onto participants. The prices are not fixed but vary according to participation level. Below is a representation of current employees and how cost is calculated. The parties agree that the chart below is only a representation based upon the current enrollment figures and will vary on a month to month basis depending the number of employees.

	Members	X	Monthly Fee	=	Monthly Premium
Total Cost for All Vendors	2,722	X	\$1.75	=	\$4, 763.50

GENERAL TERMS AND CONDITIONS:

NON-APPROPRIATION

All funds for payments by Arlington Public Schools under this contract are subject to the availability of an annual appropriation for this purpose by the Arlington County School Board. In the event of non-appropriation of funds by the Arlington County School Board for the goods or services provided under the contract or substitutes for such goods or services which are as advanced or more advanced in their technology, Arlington Public Schools will terminate the contract, without termination charge or other liability to Arlington Public Schools, on the last day of the then current fiscal year or when the appropriation made for the then current year for the services covered by this contract is spent, whichever event occurs first. If funds are not appropriated at any time for the continuation of this contract, cancellation will be accepted by the Contractor on thirty (30) days prior written notice, but failure to give such notice shall be of no effect and the Arlington County School Board shall not be obligated under this contract beyond the date of termination.

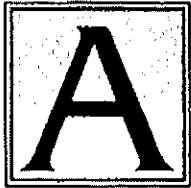
ARLINGTON PUBLIC SCHOOLS EMPLOYEES

No employee of Arlington Public Schools shall be admitted to any share or part of this contract or to any benefit that may arise therefrom which is not available to the general public.

EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED

During the performance of this contract, the Contractor agrees as follows:

- The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, any disability or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.



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- b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an Equal Opportunity Employer.
- c. Notices, advertisements and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- d. The Contractor will include the provisions of the foregoing paragraphs a, b, and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- e. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 which prohibits discrimination against individuals with disabilities in employment and mandates their full participation in both publicly and privately provided services and activities.

ARLINGTON COUNTY BUSINESS LICENSES

The Contractor must comply with the provisions of Chapter 11 (Business Licenses) of the Arlington County Code. For further information on the provisions of this chapter and its applicability to this contract, contact the Arlington County Business License Division, Commissioner of the Revenue of Arlington, Virginia, Telephone Number (703) 228-3060.

INDEMNIFICATION

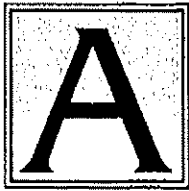
The Contractor covenants to save, defend, hold harmless, and indemnify Arlington County School Board, and all of its officers, departments, agencies, agents, and employees (collectively "Arlington Public Schools") from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, or exposure, however caused, resulting from, arising out of, or in any way connected with the Contractor's performance or nonperformance of the work called for by the Contract Documents.

FAILURE TO DELIVER

In case of failure to deliver goods or services in accordance with the contract terms and conditions, Arlington Public Schools, after due oral or written notice, may procure the goods or services from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which Arlington Public Schools may have; provided, that if public necessity requires the use of materials or supplies not conforming to the specifications, they may be accepted and payment therefore shall be made at a reduction in price to be determined solely by Arlington Public Schools.

ETHICS IN PUBLIC CONTRACTING

The contract incorporates by reference, without limitation, the provisions of law contained in the Virginia Conflict of Interests Act, the Virginia Governmental Frauds Act, Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia as amended, and Article 9 of the Arlington County School Board, Purchasing Resolution. The Contractor certifies that its offer was made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer, or subcontractor in connection with the offer, and that it has not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.



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LIABILITY

The Contractor will not be held responsible for failure to perform the duties and responsibilities imposed by the contract if such failure is due to strikes, fires, riots, rebellions, and major forces beyond the control of the Contractor that make performance impossible or illegal, unless otherwise specified in the contract.

ASSIGNMENT

The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of any award, or any or all of its rights, obligations, or interests under this contract, without the prior written consent of Arlington Public Schools.

APPLICABLE LAW

This contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the Circuit Court of Arlington County, Virginia. The Contractor shall comply with applicable federal, state, and local laws and regulations, including the Americans with Disabilities Act (ADA).

IMMIGRATION REFORM AND CONTROL ACT OF 1986

The Contractor certifies that it does not and will not during the performance of the contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

ANTITRUST

By entering into a contract, the Contractor conveys, sells, assigns and transfers to Arlington Public Schools all rights, title, and interest in and to all causes of action the Contractor may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the goods or services purchased or acquired by Arlington Public Schools under said contract.

RELATION TO ARLINGTON PUBLIC SCHOOLS

The Contractor will be legally considered as an independent contractor and neither the Contractor nor its employees will, under any circumstances, be considered servants or agents of the Arlington County School Board. Arlington Public Schools will not be legally responsible for any negligence or other wrongdoing by the Contractor, its servants or agents. Arlington Public Schools will not withhold from the contract payments to the Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the Contractor. Further, Arlington Public Schools will not provide to the Contractor any insurance coverage or other benefits, including Workers' Compensation, normally provided by Arlington Public Schools for its employees.

ARLINGTON PUBLIC SCHOOLS PURCHASING RESOLUTION

The contract is governed by the applicable provisions of the Arlington County School Board Purchasing Resolution. The time limit for decision by Arlington Public Schools Superintendent in the event of a contractual dispute, as that term is defined in the Purchasing Resolution, is ten days. Procedures for contractual disputes, appeals, and protests are available upon request from the Office of the Purchasing Agent.

ARBITRATION

It is expressly agreed that nothing under the contract shall be subject to arbitration, and any references to arbitration are expressly deleted from the Contract Documents.



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CONTRACTUAL DISPUTES

Contractual claims, whether for money or other relief, shall be submitted to the Purchasing Agent in writing no later than sixty days after final payment, however, written notice of the contractor's intention to file such claim must have been given at the time of the occurrence or beginning to the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after the completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

Any contractual dispute concerning a question of fact as a result of a contract with the Arlington Public Schools which is not disposed of by agreement shall be decided by the Purchasing Agent, who shall reduce his decision to writing and mail or otherwise forward a copy thereof to the contractor within ten (10) days. The decision of the Purchasing Agent shall be final and conclusive unless the contractor appeals to the Superintendent of the Arlington Public Schools within ten (10) days of receipt of the written decision. The Superintendent shall rule on the claim within ten (10) days after receipt of the appeal. Failure of the Superintendent to decide such claim shall mean that the appeal is deemed denied. The Contractor shall not institute legal action in court prior to receipt of the Superintendent's decision.

PATENTS AND ROYALTIES

The Contractor covenants to save, defend, keep harmless, and indemnify the Arlington County School Board, and all of its officers, departments, agencies, agents, and employees (collectively the "Arlington Public Schools") from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, or exposure, however caused, for or on account of any trademark, copyright, patented or unpatented invention, process, or article manufactured or used in the performance of the contract, including its use by Arlington Public Schools. If the Contractor uses any design, device, or materials covered by letters patent or copyright, it is mutually agreed and understood without exception that the contract price includes all royalties or costs arising from the use of such design, device, or materials in any way involved with the work.

PROJECT STAFF

Arlington Public Schools will, throughout the life of this Agreement, have the right of reasonable rejection and approval of staff or subcontractors assigned to the project by the Contractor. If Arlington Public Schools reasonably rejects staff or subcontractors, the Contractor must provide replacement staff or subcontractors satisfactory to Arlington Public Schools in a timely manner and at no additional cost to Arlington Public Schools. The day-to-day supervision and control of the Contractor's employees shall be the sole responsibility of the Contractor.

TERMINATION FOR CONVENIENCE

This contract may be terminated by the Arlington Public Schools in accordance with this clause in whole or in part whenever the Arlington Public Schools Purchasing Agent shall determine that such a termination is in the best interest of the Arlington Public Schools. Any such termination shall be effected by delivery to the Contractor at least five (5) working days prior to the termination date of a Notice of Termination specifying the extent to which performance shall be terminated and date upon which such termination becomes effective. An equitable adjustment in the contract price shall be made for completed service, but no amount shall be allowed for anticipated profit or unperformed services.

TERMINATION FOR DEFAULT

The contract will remain in force for the full period specified or until Arlington Public Schools determines that all requirements and conditions have been satisfactorily met and Arlington Public Schools has accepted the work, and thereafter until the Contractor has met all requirements and conditions relating to the work under the



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Contract Documents following the contract term, including warranty and guarantee periods. However, the Arlington County School Board will have the right to terminate the contract sooner if Arlington Public Schools determines that the Contractor has failed to perform satisfactorily the work required, as determined by Arlington Public Schools in its discretion. In the event the Arlington County School Board decides to terminate the contract for failure to perform satisfactorily, Arlington Public Schools will give the Contractor at least fifteen days written notice before the termination takes effect. Such fifteen day period will begin upon the mailing of notice by Arlington Public Schools. If the Contractor fails to cure the default within the fifteen days specified in the notice and the contract is terminated for the Contractor's failure to provide satisfactory contract performance, the Contractor will be entitled to receive compensation for all contract services satisfactorily performed by the Contractor up to the date of termination of the contract and reasonably allocable to the contract and accepted by Arlington Public Schools prior to such termination. However, an amount equal to all excess costs required to be expended by Arlington Public Schools to complete the work covered by the contract, including costs of delay in completing the project, shall be subtracted from any amount due the Contractor or charged to the Contractor in the event the Arlington County School Board terminates the Contract.

Any failure on the part of APS to comply with this section shall convert any default termination to a termination for convenience and will not create any cause of action for the Contractor or liability to APS.

Except as otherwise directed, the Contractor shall stop work on the date of receipt of notice of the termination or other date specified in the notice, place no further orders or subcontracts for materials, services, or facilities except as are necessary for the completion of such portion of the work not terminated; terminate all vendors and subcontracts and settle all outstanding liabilities and claims.

SUBCONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISE, AND LABOR SURPLUS AREA FIRMS

The Contractor shall take the following steps to assure that, whenever possible, subcontracts are awarded to minority firms, women's business enterprises, and labor surplus area firms:

- (A) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (B) Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
- (C) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;
- (D) Establishing delivery schedules, where the requirements of the contract permit, which encourage participation by small and minority businesses and women's business enterprises; and
- (E) Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and state and local.

FAITH BASED ORGANIZATIONS

The School Board of Arlington Public Schools does not discriminate against faith-based organizations.



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CONTRACT DOCUMENT: The contract documents consist of this agreement and any attachments hereto. No other documents shall be considered part of this contract and no representations or exceptions made prior to the entry of this contract are made a part of this contract.

In WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

Contractor:

By: Joseph E. Rollins

Title: PRESIDENT

Arlington County Public School

By: Richard E. Davis, CPPO, CPPB

Title: Director/ Purchasing Agent