



**Supplemental Educational Services (SES) Contract**  
NCLB Title 1, Section 116(e) of ESEA  
Elementary and Secondary Education Act (as amended)

**Newport News Public Schools**  
ISSUING OFFICE:

PURCHASING DEPARTMENT  
12465 WARWICK BOULEVARD  
NEWPORT NEWS, VA 23606-0130  
TELEPHONE: (757) 591-4525  
FAX: (757) 591-4634

**DATE: August 11, 2009**

Attention of Provider is Directed To  
Section 2.2-4367 to 2.2-4377 Code of  
Virginia  
(Ethics In Public Contracting)

<b>PROCUREMENT OFFICER</b>  <b>Dianne S. Davis, VCO</b>
<b>PERIOD OF CONTRACT</b> <b>INITIAL: October 1, 2009 thru</b> <b>September 30, 2010</b>

All inquiries for information regarding this contract should be directed to Dianne S. Davis, VCO, (757) 591-4525.

**PLEASE FILL IN PROVIDER'S NAME & ADDRESS  
IN THE SPACES PROVIDED BELOW:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**NIGP CODE: 924-78**

**COMMODITY: Instruction and Teaching  
Services, Education**

NNPS DOES NOT DISCRIMINATE AGAINST FAITH-BASED ORGANIZATIONS.

**ACKNOWLEDGE RECEIPT OF ADDENDUM: #1\_\_\_\_ #2\_\_\_\_ #3\_\_\_\_ #4\_\_\_\_ (Please Initial)**

IN COMPLIANCE WITH THIS CONTRACT, AND TO ALL THE CONDITIONS IMPOSED HEREIN, THE UNDERSIGNED OFFERS AND AGREES TO FURNISH THE SERVICES AT THE PRICE(S) INDICATED ON THE PRICING SCHEDULE.

**Authorized Agent**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Email Address

**Company FEI/FIN#**

\_\_\_\_\_

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
FAX Number

**PRICING SCHEDULE: Contract#**

QUANTITY	UNIT (hourly rate or per student (flat fee))	DESCRIPTION	NET UNIT PRICE		NET TOTAL PRICE	
		Instructional Services				

**PRICES:** Shall be in the form of a firm unit price for each item during the contract period.

**DELIVERY:** State your earliest firm delivery or performance date: \_\_\_\_\_20\_\_\_\_.

PAYMENT TERMS: \_\_\_\_\_ DELIVERY TIME: \_\_\_\_\_ DATE: \_\_\_\_\_

**AUTHORIZED AGENT:** \_\_\_\_\_  
**SIGNATURE**

ENCLOSURES



**ANTI-COLLUSION/NONDISCRIMINATION/DRUG-FREE WORKPLACE REQUIREMENTS**

**ANTI-COLLUSION CLAUSE:**

IN THE PREPARATION AND SUBMISSION OF THIS BID, SAID BIDDER DID NOT EITHER DIRECTLY OR INDIRECTLY ENTER INTO ANY COMBINATION OR ARRANGEMENT WITH ANY PERSON, FIRM OR CORPORATION, OR ENTER INTO ANY CONTRACT, PARTICIPATE IN ANY COLLUSION, OR OTHERWISE TAKE ANY ACTION IN VIOLATION OF THE SHERMAN ACT (15 U.S.C. SECTION 1), SECTIONS 59.1-9.1 THROUGH 59.1-9.17 OR SECTIONS 59.1-68.6 THROUGH 59.1-68.8 OF THE CODE OF VIRGINIA.

THE UNDERSIGNED BIDDER HEREBY CERTIFIES THAT THIS CONTRACT, OR ANY CLAIMS RESULTING THEREFROM, IS NOT THE RESULT OF, OR AFFECTED BY, ANY ACT OF COLLUSION WITH, OR ANY ACT OF, ANOTHER PERSON OR PERSONS, FIRM OR CORPORATION ENGAGED IN THE SAME LINE OF BUSINESS OR COMMERCE; AND, THAT NO PERSON ACTING FOR, OR EMPLOYED BY, NNPS HAS AN INTEREST IN, OR IS CONCERNED WITH, THIS BID; AND, THAT NO PERSON OR PERSONS, FIRM OR CORPORATION OTHER THAN THE UNDERSIGNED, HAVE, OR ARE, INTERESTED IN THIS BID.

**DRUG-FREE WORKPLACE:**

DURING THE PERFORMANCE OF THIS CONTRACT, THE SUCCESSFUL BIDDER AGREES TO (I) PROVIDE A DRUG-FREE WORKPLACE FOR THE SUCCESSFUL BIDDER'S EMPLOYEES; (II) POST IN CONSPICUOUS PLACES, AVAILABLE TO EMPLOYEES AND APPLICANTS FOR EMPLOYMENT, A STATEMENT NOTIFYING EMPLOYEES THAT THE UNLAWFUL MANUFACTURE, SALE, DISTRIBUTION, DISPENSATION, POSSESSION, OR USE OF A CONTROLLED SUBSTANCE OR MARIJUANA IS PROHIBITED IN THE SUCCESSFUL BIDDER'S WORKPLACE AND SPECIFYING THE ACTIONS THAT WILL BE TAKEN AGAINST EMPLOYEES FOR VIOLATIONS OF SUCH PROHIBITION; (III) STATE IN ALL SOLICITATIONS OR ADVERTISEMENTS FOR EMPLOYEES PLACED BY OR ON BEHALF OF THE SUCCESSFUL BIDDER THAT THE SUCCESSFUL BIDDER MAINTAINS A DRUG-FREE WORKPLACE; AND (IV) INCLUDE THE PROVISIONS OF THE FOREGOING CLAUSES IN EVERY SUBCONTRACT OR PURCHASE ORDER OF OVER \$10,000, SO THAT THE PROVISIONS WILL BE BINDING UPON EACH SUSUCCESSFUL BIDDER OR VENDOR.

FOR THE PURPOSE OF THIS SECTION, "DRUG-FREE WORKPLACE" MEANS A SITE FOR THE PERFORMANCE OR WORK DONE IN CONNECTION WITH A SPECIFIC CONTRACT AWARDED TO A SUCCESSFUL BIDDER IN ACCORDANCE WITH FEDERAL LAW, THE EMPLOYEES OF WHOM ARE PROHIBITED FROM ENGAGING IN THE UNLAWFUL MANUFACTURE, SALE, DISTRIBUTION, DISPENSATION, POSSESSION OR USE OF ANY CONTROLLED SUBSTANCE OR MARIJUANA DURING THE PERFORMANCE OF THE CONTRACT.

**EMPLOYMENT DISCRIMINATION BY THE SUCESSFUL BIDDER SHALL BE PROHIBITED:**

1. DURING THE PERFORMANCE OF THIS CONTRACT, THE SUCCESSFUL BIDDER AGREES AS FOLLOWS:
  - a THE BIDDER, SHALL NOT DISCRIMINATE AGAINST ANY EMPLOYEE OR APPLICANT FOR EMPLOYMENT BECAUSE OF RACE, RELIGION, COLOR, SEX, NATIONAL ORIGIN, AGE, 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 SUCCESSFUL BIDDER. THE SUCCESSFUL BIDDER AGREES TO POST IN CONSPICUOUS PLACES, AVAILABLE TO EMPLOYEES AND APPLICANTS FOR EMPLOYMENT, NOTICES SETTING FORTH THE PROVISIONS OF THIS NONDISCRIMINATION CLAUSE.
  - b. THE SUCCESSFUL BIDDER, IN ALL SOLICITATIONS OR ADVERTISEMENTS FOR EMPLOYEES PLACED BY OR ON BEHALF OF THE SUCCESSFUL BIDDER, SHALL STATE THAT SUCH SUCCESSFUL BIDDER 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.
2. THE SUCCESSFUL BIDDER 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.

**Name and Address of PROVIDER:**

Date: \_\_\_\_\_ Authorized Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

**Federal Tax Identification Number/Social Security Number:** \_\_\_\_\_

- Is Bidder a "minority" business?  Yes  No      If yes, please indicate the "minority" classification below:  
 African American     Hispanic American     American Indian     Eskimo     Asian American     Aleut     Other; Please Explain:  
 Is Bidder Woman Owned?  Yes  No  
 Is Bidder a Small Business?  Yes  No  
 Is Bidder a Faith-Based Organization?  Yes  No

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## **I. PURPOSE:**

In accordance with NCLB Title I, Section 1116 (e) of ESEA, Elementary And Secondary Education Act (as amended); NNPS is seeking supplemental educational services (SES). The services shall include, but are not limited to, those listed in the Scope of Work as requested by NNPS.

## **II. BACKGROUND:**

The City of Newport News is the fourth largest independent City in the Commonwealth of Virginia. The city is 22 miles long and 4 miles wide encompassing an area of 69.2 square miles. Based on the 2000 census, the population total is 180,150.

NNP Newport News Public Schools educates approximately 33,200 children in four early childhood centers, 28 elementary schools, 9 middle schools, and 5 high schools. There are also programs available for at-risk students in addition to special education programs. Governance is by an elected school board. Seven members are elected through a ward system for staggered four-year terms with one member elected at large. The School Board establishes policy for the operation of the school division; implementation of Board policy is carried out under the direction of the superintendent. The school division is fiscally dependent, with an annual budget request approved and allocated by City Council. For the seventh consecutive year, SchoolMatch, an independent nationwide service, has selected the school division for the "What Parents Want in Public Education" award. Only 15 percent of school divisions nationally are selected for this award. Child Magazine, a national publication for parents, has named Newport News one of the 10 best cities for families. The Newport News, Norfolk and Virginia Beach region is ranked number 2 in the country in the magazine's April 2001 edition. Newport News is cited for offering an excellent school system with a low student-teacher ratio. The school division has 5900 employees of which 2,400 are teachers. A listing of schools and their locations may be accessed via NNPS' official web site at <http://sbo.nn.k12.va.us/schools>.

In an effort to comply with NCLB Title I, Section 1116 (e) of ESEA, Elementary and Secondary Education Act, NNPS is seeking supplemental educational services to provide eligible students highly skilled tutoring services. NNPS feels that the opportunity for highly skilled tutoring services will complement ongoing school improvement efforts in support of the *No Child Left Behind Act*.

## **III. SCOPE OF WORK:**

### **A. General Requirements:**

NNPS intends to enter into a contract with Virginia Department of Education approved Supplemental Educational Services Providers, hereafter referred to as Provider. Provider shall comply with approved Statement of Goals as developed by NNPS and the provider in consultation with the student's parent.

The Provider will be responsible, regularly, and practically engaged in providing the services requested herein, and possess adequate resources for performing said services.

### **B. Specific Requirements:**

#### **1. Instructional Requirements:**

- a. For each eligible student whose parents elect to receive SES from Provider, Provider and NNPS shall develop a Student Learning Plan/Statement of Goals in consultation with the student's parent. See Attachment "A" for NNPS' Student Learning Plan/Statement of Goals to be completed by the school, provider and family. Alternate formats of the learning plan will not be accepted by NNPS.
- b. The Provider shall make no changes in any student's completed Learning Plan/Statement of Goals without the written consent of NNPS and the student's parent.
- c. For each student to whom the Provider gives services under this Contract, Provider shall, on at least a bi-weekly basis, send NNPS and the student's parent a written report describing the student's progress, including benchmark data.
- d. All supplementary services given by Provider under this contract shall be secular, neutral, and non-ideological in instruction and content.

- e. For each eligible student the successful completion of the student's Learning Plan/Statement of Goals shall be mutually agreed upon by NNPS, Provider, and in consultation of parent no later than thirty (30) days after the date Provider receives the student's Supplemental Education Learning Plan (see Attachment A).
  - f. Provider shall provide additional supplemental services at no cost to NNPS or eligible student's parent should a student fail to achieve his or her Learning Plan/Statement of Goals due to failure of Provider to meet his/her responsibilities under this contract.
  - g. Provider shall not invoice or be paid for any hour(s) that student(s) have not received services.
2. Deliverables:
- a. Tutoring services, the provider shall meet with each eligible student who requests SES services from a provider to offer supplemental tutoring in mathematics and language arts aligned with NNPS' standard course of study. This instruction shall be different from, but supplemental and complementary to, NNPS' regular school program. Services shall be delivered consistent with the requirements specified in provider's contract with the Virginia Department of Education ("VDOE").
  - b. Minimum requirements. Each meeting shall be for a minimum of thirty (30) minutes and provider shall offer meetings a minimum of one (1) time per week.
  - c. Schedule. Meetings shall be held in accordance with the provisions of each student's "Supplemental Education Learning Plan".
3. Confidentiality Requirements:
- a. All student records shall be kept in a secure location preventing access by unauthorized individuals. Provider will maintain an access log delineating date, time, agency, and identity of any individual accessing student records who is not in direct employment of the Provider.
  - b. Provider shall not forward to any person other than parent or NNPS any student record, including, but not limited to, the student's identity, without the written consent of the parent and NNPS.
  - c. Provider shall turn over to NNPS all student records (in whatever form they may be kept, whether written, electronic or other, including any and all documents and other materials, in whatever form they may be kept, which support or underlie records) of NNPS eligible students to whom Provider has provided services under this contract upon termination of this contract.
  - d. Provider shall comply with NCLB Section 116 (e)(3)(E) and *Family Education Rights and Privacy Act* (FERPA).
4. Medical Requirements:
- a. Provider shall certify that all tutors so employed in support of this contract have a negative TB result. Copies of a current TB skin test or X-ray shall be provided to NNPS health personnel upon request.
  - b. Provider shall certify that all tutors so employed in support of this contract are free from communicable disease.
5. Criminal Background Check Requirements:
- a. Provider shall certify that all tutors employed in support of the Contract have not been convicted of (i) felony, (ii) any offense involving the sexual molestation, physical or sexual abuse or rape of and child or (iii) a crime of moral turpitude in the State of Virginia or any other state.
  - b. Provider shall certify that all tutors employed in support of the Contract have not been the subject of a founded case of child abuse or neglect in the State of Virginia or any other state.
6. Facility Requirements:
- a. Provider shall allow access to its facilities for periodic monitoring of each student's instructional program by NNPS and shall be invited to participate in any review of each student's progress by NNPS. NNPS representatives shall have access to observe each student at work, observe the instructional setting, interview the Provider and review each student's progress.
  - b. Provider shall complete and submit an original and two copies of the NNPS Facility Rental Application/Contract when instruction is scheduled on NNPS properties.

## **IV. TERMS AND CONDITIONS:**

### **A. Contract Document:**

This document, its addenda, any additional information requested, and negotiated changes will constitute the final contract, hereafter referred to as "this contract". These documents will be incorporated by reference into the NNPS purchase order awarding this contract.

(1) This contract shall be governed by the contract documents in the following order of precedence: 1) This document, the approved Statement of Goals, and negotiated changes to the foregoing documents. 2) The Provider's proposal.

(2) All time limits stated in the contract documents, including but not limited to the time for completion of the work, are of the essence of the contract.

### **B. Contract Modification(s):**

After award, any and all modifications to this contract shall be mutually agreed to by both parties, in writing, and authorized by the NNPS Purchasing Agent or his designee. NNPS' standard method to modify contracts is issuance of a change order (purchase order).

### **C. Contract Term:**

This contract term will commence on October 1 2009 and expire on September 30, 2010.

### **D. Contract Extension:**

This contract may be extended upon mutual contract of both parties for four (4) additional one-year periods, upon the same prices, terms and conditions set forth in the negotiated contract resulting from this contract.

### **E. Time is of the Essence**

Time is of the essence in this Contract. Provider expressly acknowledges that in the performance of its obligations, NNPS is relying on timely performance and will schedule operations and incur obligations to third parties in reliance upon timely performance by Provider and may sustain substantial losses by reason of untimely performance.

### **F. Provider Obligation:**

Provider shall carefully examine the contents of this Contract and any subsequent addenda. Failure to do so shall not relieve the Provider of its obligation to note any exceptions (see Exceptions/Alternatives section) and to fulfill the requirements of this contract.

### **G. Conditions of Work:**

Provider shall inform themselves fully of the conditions relating to services required herein. Failure to do so will not relieve a Provider of the obligation to furnish all services necessary to carry out the provisions of this contract.

### **H. Proprietary Information/Disclosure:**

Provider is advised that the Virginia Public Procurement Act (Section 2.2-4342, Code of Virginia, 1950 as amended) shall govern public inspection of all records submitted by Provider. Specifically, if Provider seeks to protect any proprietary data or materials, pursuant to Section 2.2-4342, Provider shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is needed. Furthermore, the Provider shall submit proprietary information under separate cover, and NNPS reserves the right to submit such information to the NNPS attorney for concurrence of the Provider's claim that it is in fact proprietary. References may be made within the body of the contract to proprietary information; however, all information contained within the body of the contract not labeled proprietary or otherwise not meeting all three of the requirements of Section 2.2-4342 shall be public information in accordance with State statutes. Trade secrets or proprietary information submitted by a Provider in conjunction with this contract are not subject to public disclosure under the Virginia Freedom of Information Act (VFOIA). However, Provider must invoke the protection of the VFOIA prior to or upon submission of the data or other materials. Information submitted that does not meet the above requirements will be considered public information in accordance with the VFOIA.

An all-inclusive statement that the entire contract is proprietary is unacceptable. A statement that Provider's costs and/or pricing are to be protected is unacceptable. Provider will be requested to remove any such statement(s) in order to be eligible for further evaluation and award.

I. Prime Contractor:

If in its performance of this contract, Provider supplies services by or through another party or subcontractor, Provider agrees that:

Provider shall act as the prime contractor for the services to be provided under contract and shall be the sole point of contact with regard to all obligations under this contract.

J. Subcontractors:

Provider's use of subcontractors and the work they are to perform must receive written approval from the NNPS Contract Administrator at least ten (10) calendar days prior to the work being performed. Provider shall be solely responsible for all work performed and materials provided by subcontractors. Provider shall be responsible for the liability of subcontractors for the types and limits required of the Provider.

K. Non-Assignment:

Provider shall not assign its rights and duties under this Contract without the prior written consent of the NNPS Contract Administrator.

L. Insurance:

Provider shall submit to the NNPS Contract Administrator certificates of insurance, prior to beginning work under this contract and no later than ten (10) days after award of the contract.

All policies of insurance required herein shall be written by insurance companies licensed to conduct the business of insurance in Virginia, and acceptable to NNPS, and shall carry the provision that the insurance will not be cancelled or materially modified without thirty days (30) prior written notice to NNPS.

The certificates of insurance shall list NNPS, 12465 Warwick Boulevard, Newport News, Virginia, 23606-0130, as the Certificate Holder.

Insurance shall be maintained during the entire term of the contract and any extensions and shall be of the following forms and limits:

<u>Forms</u>	<u>Limits</u>
Workers' Compensation	Statutory
Automobile Liability	\$1,000,000 Combined Single Limit
Commercial General Liability, including Contractual Liability and Products and Completed Operations Coverage	\$1,000,000 Combined Single Limit

The establishment of minimum limits of insurance by NNPS does not reduce or limit the liability or responsibilities of the Provider.

NNPS employees hired by the Provider to provide services under this contract shall be covered by Provider's insurance.

M. Antitrust:

Any perceived anti-trust violation shall be reported to the State Attorney General for possible enforcement of anti-trust laws.

N. Anticollusion/Nondiscrimination Requirements Form:

The attached "Anticollusion/Nondiscrimination Requirements" form, on page 2 of this contract, shall be executed by Provider and is to be submitted with Provider's Contract. The requirements set forth on said form shall be considered to be binding terms and conditions in any contract resulting from this Contract. A contract will not be awarded to a Provider who has not signed the anticollusion/nondiscrimination statement.

O. Unauthorized Disclosure of Information:

The Provider shall assume the entire responsibility and liability for any and all damages caused by or resulting from or arising out of the negligent or willful unauthorized disclosure of confidential information on the part of the Provider, its subcontractors, agents or employees under or in connection with this contract. The Provider shall save harmless and indemnify NNPS and its agents, volunteers, servants, employees and officers from and against any and all claims, losses or expenses, including but not limited to attorney's fees, which either or both of them may suffer, pay or incur as the result of claims or suits due to, arising out of or in connection with, any and all such unauthorized disclosures, real or alleged. The Provider shall, upon written demand by NNPS, assume and defend, at the Provider's sole expense, any and all such suits or defense of claims alleging unauthorized disclosures of confidential information.

Any negligent or willful unauthorized disclosure of confidential information on the part of the Provider, its subcontractors, agents or employees under or in connection with this contract shall constitute a breach of the terms of this contract. NNPS may proceed by appropriate court action, including seeking injunctive relief, to prevent continuing unauthorized disclosures, and Provider shall save harmless and indemnify NNPS for court costs, litigation expenses and attorney's fees that it may pay or incur as the result of seeking to prevent or stop any and all unauthorized disclosures of confidential information.

P. Hold Harmless/Indemnification:

It is understood and agreed that Provider hereby assumes the entire responsibility and liability for any and all material damages to persons or property caused by or resulting from or arising out of any act or omission on the part of Provider, its subcontractors, agents or employees under or in connection with this Contract or the performance or failure to perform any work required by this Contract. Provider agrees to indemnify and hold harmless NNPS and its agents, volunteers, servants, employees and officials from and against any and all claims, losses, or expenses, including reasonable attorney's fees and litigation expenses suffered by any indemnified party or entity as the result of claims or suits due to, arising out of or in connection with (a) any and all such damages, real or alleged, (b) the violation of any law applicable to this Contract, and (c) the performance of the work by Provider or those for whom Provider is legally liable. Upon written demand by NNPS, Provider shall assume and defend at Provider's sole expense any and all such suits or defense of claims made against NNPS, its agents, volunteers, servants, employees or officials.

Q. Notices:

All notices, requests, demands, and elections under this contract, other than routine operational communications, shall be in writing and shall be deemed to have been duly given on the date when hand-delivered, or on the date of the confirmed facsimile transmission, or on the date received when delivered by courier that has a reliable system for tracking delivery, or six (6) NNPS business days after the date of mailing when mailed by United States mail, registered or certified mail, return receipt requested, postage prepaid. All notices shall be addressed to the following individuals:

To NNPS: NNPS Contract Administrator as designated in this contract.  
To Provider: Provider's Contract Administrator as defined in Provider's contract.

Either party may from time to time change the individual(s) to receive notices and/or its address for notification purposes by giving the other party written notice as provided above.

R. Non-Responsive Performance:

*Delivery Delays:*

NNPS reserves the right to procure services to be provided under this contract from other sources in the event Provider fails to deliver such service deliverables in accordance with delivery dates and time frames set forth in this contract.

*Unacceptable Deliveries (Rejections):*

Upon notification by NNPS that service deliverables provided by the Provider under this contract are not of the quality specified by NNPS, such service deliverables shall be rejected.

*NNPS Purchase From Alternate Sources:*

NNPS reserves the right to authorize immediate purchase from other sources against delayed deliveries and/or rejections.

The Provider shall reimburse NNPS promptly for excess costs incurred by NNPS for such purchases. Any such purchases will be deducted from the contract amount. In the event NNPS' cost of obtaining service deliverables from other sources be less, Provider shall have no claim to the difference.

*Liability:*

Provider shall be liable to NNPS for all costs incurred by NNPS as a result of Provider's failure to perform in accordance with this Contract. Provider's liability shall include, but not be limited to:

Damages and other delay costs, to include costs to procure contracted services from alternate providers.

Increased costs of performance, such as extended overhead and costs resulting from performance delays caused by Provider and/or rejections of Provider's service deliverables.

Liability to third parties and attorney's fees and related costs due to Provider's non-responsive performance.

S. Termination Without Cause:

NNPS may at any time, and for any reason, terminate this Contract by written notice to Provider specifying the termination date, which shall be not less than thirty (30) days from the date such notice is mailed.

Notice shall be given to Provider by certified mail/return receipt requested, addressed to the Provider's Contract Administrator.

In the event of such termination, Provider shall be paid such amount as shall compensate Provider for the work satisfactorily completed, and accepted by NNPS, at the time of termination.

If the event NNPS terminates this Contract, Provider shall withdraw its personnel and equipment, cease performance of any further work under this Contract, and turn over to NNPS any work completed or in process for which payment has been made.

T. Termination With Cause/Breach:

In the event that Provider shall for any reason or through any cause be in default of the terms of this Contract, NNPS may give Provider written notice of such default by certified mail/return receipt requested, addressed to the Provider's Contract Administrator.

Unless otherwise provided, Provider shall have ten (10) days from the date such notice is mailed in which to cure the default. Upon failure of the Provider to cure the default, NNPS may immediately cancel and terminate this Contract as of the mailing date of the default notice.

Upon termination, Provider shall withdraw its personnel and equipment, cease performance of any further work under the Contract, and turn over to NNPS any work in process for which payment has been made.

In the event of violations of law, safety or health standards and regulations, this Contract may be immediately cancelled and terminated by NNPS and provisions herein with respect to opportunity to cure default shall not be applicable.

U. Breach of Contract:

Provider shall be deemed in breach of this contract if the Provider:

Fails to comply with any terms of this contract;

Fails to cure such noncompliance within ten (10) calendar days from the date of the NNPS written notice or such other time frame, greater than ten (10) calendar days, specified by the NNPS Contract Administrator in the notice.

Fails to submit a written response to the NNPS notification of noncompliance within ten (10) calendar days after the date of the NNPS notice.

All notices under this contract shall be submitted, either by fax or certified mail, return-receipt requested, to the respective contract administrator.

Provider shall not be in breach of this contract as long as its default was due to causes beyond the reasonable control of and occurred without any fault or negligence on the part of both the Provider and its subcontractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of NNPS in its sovereign capacity, fires, floods, epidemics, strikes, freight embargoes, and unusually severe catastrophic weather such as hurricanes.

V. Copyright/Patent Indemnity:

The Provider shall pay all royalty and license fees relating to the items covered by this contract. In the event any third party shall claim that the manufacture, use and sales of the goods supplied under this contract constitute an infringement of any copyright, trademark, or patent, the Provider shall indemnify NNPS and hold NNPS harmless from

any cost, expense, damage or loss incurred in any manner by NNPS on account of any such alleged or actual infringement.

W. Applicable Law:

This Contract shall be deemed to be a Virginia contract and shall be governed as to all matters whether of validity, interpretations, obligations, performance or otherwise exclusively by the laws of the Commonwealth of Virginia, and all questions arising with respect thereto shall be determined in accordance with such laws. Regardless of where actually delivered and accepted, this Contract shall be deemed to have been delivered and accepted by the parties in the Commonwealth of Virginia.

X. Compliance With All Laws:

Provider shall comply with all federal, state and local statutes, ordinances, and regulations now in effect or hereafter adopted, in the performance of this contract. Provider represents that it possesses all necessary licenses and permits required to conduct its business and/or will acquire any additional licenses and permits necessary for performance of this contract prior to the initiation of work. If the Provider is a corporation, Provider further expressly represents that it is a corporation of good standing in the Commonwealth of Virginia and will remain in good standing throughout the term of the contract and any extensions. All City of Newport News business license, personal property, real estate and other applicable tax requirements shall be met by Provider.

Y. Venue:

Venue shall be in the Circuit Court of the City of Newport News, Virginia, and the United States District Court for the Eastern District of Virginia, Norfolk Division, compliant with applicable laws and regulations, as deemed appropriate by NNPS.

Z. Severability:

If any provision of this contract is found by any court of competent jurisdiction to be invalid or unenforceable, the invalidity of such provision shall not affect the other provisions of this contract, and all other provisions of this contract shall remain in full force and effect.

AA. Non-Appropriation of Funds:

It is understood and agreed between the parties herein that NNPS shall be bound hereunder only to the extent that the funds shall have been appropriated. In the event no funds or insufficient funds are appropriated, NNPS shall immediately notify the Provider of such occurrence and this Contract shall terminate on the last day funds are available. without penalty or expense to NNPS of any kind whatsoever.

BB. Tax Exemption:

NNPS is exempt from federal excise tax and from all State and local taxes. Provider shall not include such taxes in any invoices under this contract. Upon request, NNPS will furnish the Provider with tax exemption certificates or the NNPS tax exempt number.

CC. Vendor's Invoices:

Provider shall submit to NNPS all invoices promptly upon completion of the requirements for acceptance of the Services required under this contract.

Invoices shall not include any costs other than those identified in the executed NNPS purchase order awarding this contract or any subsequent change orders issued by the NNPS Purchasing Division.

All shipping costs are the Provider's responsibility, except to the extent such charges are identified in the executed NNPS purchase order or change orders.

Provider's invoices shall provide at a minimum:

Type and description of the Service delivered and accepted;

Quantity delivered;

Charge for each student;

Extended total (unit costs x quantity);

This contract number and the NNPS Purchase Order Number.

DD. Payment Terms:

1. To be eligible for payment, all labor, equipment and materials covered under Provider's invoice must be completed and accepted by NNPS.

NNPS agrees to make payments under this contract within thirty (30) days after receipt of a correct invoice for such payment.

Where payment is made by mail, the date of postmark shall be deemed to be the date of payment.

Any amounts due NNPS under the terms of this or any other contract may be applied against Provider's invoices with documentation for the basis of the adjustment attached.

In no event shall any interest penalty or late fee accrue when payment is delayed because of disagreement between NNPS and Provider regarding the quantity, quality, time of delivery, or other noncompliance with the contract requirements for any Product or Service or the accuracy or correctness of any invoice.

2. Terms.

a. Actual services. Provider may charge only for services actually rendered. Provider shall not charge NNPS for students who do not attend scheduled meetings.

b. Per-meeting fee. NNPS shall pay provider a set fee per meeting per student. The fee shall be the per-hour rate established by VDOE's current per pupil expenditure rate for NNPS.

c. Satisfactory services. NNPS shall not be obligated to pay for unsatisfactory services, provided that NNPS shall give provider at least thirty (30) days written notice of its dissatisfaction and offer provider the opportunity to improve. If provider alters its services to NNPS' satisfaction within that thirty (30) days, there shall be no interruption in payment.

3. Invoicing.

a. Monthly invoices. Provider shall submit an invoice for services monthly, not less than five (5) days after services have been rendered and not more than forty-five (45) days after services have been rendered.

b. Documentation required. Invoices shall be submitted on the form provided and shall include the following supporting documentation:

(i) student attendance lists and sign-in sheets for each meeting invoiced;

(ii) signed tutor time sheets or other verified documentation of tutors' hours worked;

(iii) monthly reports of student progress and the results of any tests or assessments administered during the period; and

(iv) completed Student Learning Plan signed by the SES provider and student's parent/guardian or demonstrated "reasonable efforts" to acquire parent/guardian signature.

c. Right of examination. NNPS reserves the right to examine billing records both before and after payment. Payment of an invoice shall not foreclose NNPS' right to recover erroneous, excessive or illegal payments.

EE. Preparation and submission of Contract:

Contract must give the full business address of the Provider and be signed by him/her with his/her usual signature.

Contracts by partnerships must furnish the full name of all partners and must be signed in the partnership name by one of the members of the partnership or any authorized representative, followed by the designation of the person signing.

Contracts by corporations must be signed with the legal name of the corporation followed by the name of the State in which it is incorporated and by the signature and designation of the president, secretary, or other person authorized to bind it in the matter. The name of each person signing shall also be typed or printed below the signature. A contract by a person who affixes to the signature the word "President," "Secretary," "Agent" or other designation without disclosing the principal, may be held to be the contract of the individual signing. When requested by NNPS, satisfactory evidence of the authority of the officer signing in behalf of the corporation shall be furnished.

FF. Patents:

The Provider shall obtain all licenses necessary to use any invention, article, appliance, process, or technique of whatever kind and shall pay all royalties and license fees. The Provider shall hold and save NNPS, its officers, agents, and employees, harmless from any loss or liability for or on account of the infringement of any patent rights in connection with any invention, process, technique, article or appliance manufactured or used in the performance of the contract, including its use by NNPS, unless such invention, process, technique, article, or appliance is specifically named in the specifications or drawings as acceptable for use in carrying out the work. If, before using any invention, process, technique, article, or appliance specifically named in the specifications or drawings as acceptable for use in carrying out the work, the Provider has or acquires information that the same is covered by letters of patent making it necessary to secure the permission of the patentee, or other, for the use of the same, he shall promptly advise NNPS. NNPS may direct that some other invention, process, technique, article, or appliance

be used. Should the Provider have reason to believe that the invention, process, technique, article, or appliance so specified is an infringement of a patent, and fail to inform NNPS, he shall be responsible for any loss due to the infringement.

GG. Audits:

NNPS shall have the right to audit all books and records (in whatever form they may be kept, whether written, electronic or other) relating or pertaining to this Contract (including any and all documents and other materials, in whatever form they may be kept, which support or underlie those books and records), kept by or under the control of Provider, including, but not limited to those kept by Provider, its employees, agents, assigns, successors and subcontractors. Provider shall maintain such books and records, together with such supporting or underlying documents and materials, for the duration of this Contract and for at least three years following the completion of this Contract, including any and all renewals thereof. The books and records, together with the supporting or underlying documents and materials shall be made available, upon request, to NNPS, through its employees, agents, representatives, contractors or other designees, during normal business hours at Provider's office or place of business in Newport News, Virginia. In the event that no such location is available, then the books and records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location in Newport News, Virginia, which is convenient for NNPS.

This paragraph shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which NNPS may have by state, city, or federal statute, ordinance, regulation, or contract, whether those rights, powers, or obligations are express or implied.

HH. Award:

NNPS may elect to award a contract to more than one vendor. NNPS reserves the right to enter into any contract deemed to be in NNPS' best interest.

II. Non-Exclusivity:

NNPS reserves the right to procure goods or services covered under this contract from a third party when, in NNPS' sole discretion, it is deemed to be in NNPS' best interest.

**V. SPECIAL INSTRUCTIONS TO THE PROVIDER:**

A. Definitions:

Whenever used in this solicitation or in the contract documents, the following terms have the meanings indicated, which are applicable to both the singular and plural and the male and female gender thereof:

Newport News Public Schools: The term "Newport News Public Schools" is the common reference for the legal entity, the Newport News School Board, a body corporate pursuant to the law of Virginia. An Authorized Newport News Public Schools' agent shall execute the contracts on behalf of Newport News Public Schools.

Provider: The person, firm or corporation with whom the owner has entered into a contractual contract and includes the plural number and the feminine gender when such are named in the contract as the Provider.

Defective: An adjective which when modifying the word work, refers to work that is unsatisfactory, faulty, or deficient, or does not conform to the contract documents, or does not meet the requirements of any inspections, standard, test, or approval referred to in the contract documents, or has been damaged prior to final payment.

Emergency: Any unforeseen combination of circumstances or a resulting state that poses imminent danger to health, life, or property.

Notice: All written notices, demands, instructions, claims, approvals, and disapprovals required to obtain compliance with the contract requirements. Any written notice by either party to the contract shall be sufficiently given if delivered to or at the last known business address of the person, firm or corporation constituting the party to the contract, or to his, their or its authorized agent, representative or officer, or when enclosed in a postage prepaid envelope addressed to such last known business address and deposited in a United States mailbox.

Owner: Newport News Public Schools, i.e., an agency, institution, or department, with whom the contractor has entered into a contract and for whom the work or services is to be provided.

Provide: Shall mean furnish and install ready for its intended use.

Submittal: All drawings, diagrams, illustrations, schedules, and other data required by the contract documents which are specifically prepared by or for the Provider to illustrate some portion of the work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams, and other information prepared by a supplier and submitted by the contractor to illustrate material or equipment for some portion of the work.

Subcontractor: An individual, partnership or corporation having a direct contract with contractor or with any other subcontractor for the performance of the work. It includes one who provides on site labor but does not include one who only furnishes or supplies materials for Supplemental Educational Services defined herein.

Issuing Office:

Wherever used in this Contract, Issuing Office will be:

Dianne S. Davis, VCO, Buyer  
Newport News Public Schools Purchasing Department  
12465 Warwick Boulevard  
Newport News, VA 23606-3041  
Phone: (757) 591-4525  
Fax: (757) 591-4634  
Email:dianne.davis@nn.k12.va.us

NNPS Contract Administrator:

Wherever used in this contract and for purposes of any notices under this contract, the NNPS Contract Administrator will be:

Chris McLaughlin  
Supervisor, SES  
Federal Grants  
12511 Suite E Warwick Boulevard  
Newport News, VA 23606  
Phone: (757) 881-5461 x178  
Fax: (757) 881-5414  
Email:chris.mclaughlin@nn.k12.va.us

B. Cost of Responding:

This Contract does not commit NNPS to pay any costs incurred by the Provider or any other party in the preparation and/or submission of contract or in making necessary studies or designs for the preparation thereof, nor is NNPS obligated to procure or contract for such services.



Newport News Public Schools

Supplemental Educational Services: Student Learning Plan (SLP)

ATTACHMENT "A"

Student Information			
First Name	Last Name	Student Identification Number	
School	Grade	Teacher	
Student Address	Parent Name	Phone Number(s)	
SES Tutoring Session Information			
SES Provider Name	Tutoring Location	Schedule (Days / Times)	Number of Hours per Contract
Group Size	Transportation Information	Start Date	Projected End Date
SES Agreement Information			
Parent Responsibilities		SES Provider Responsibilities	
<ul style="list-style-type: none"> <li>✓ Participate in the development of the Student Learning Plan (SLP).</li> <li>✓ Participate and ensure child actively participates in the learning process.</li> <li>✓ Ensure that child attends the scheduled sessions for the duration of the SLP.</li> <li>✓ Signature below gives consent to NNPS to share information to the SES provider relating to goals and accommodations required in the IEP, 504, or ELL Plan.</li> </ul>		<ul style="list-style-type: none"> <li>✓ Participate in the development of the Student Learning Plan (SLP).</li> <li>✓ Provide services consistent with applicable health, safety, and civil rights laws;</li> <li>✓ Not disclose to the public the identity of any student eligible for or receiving Supplemental Educational Services without the written permission of the student's parents</li> <li>✓ Measure the student's progress, and informing the student's parents and teachers of that progress on a bi-monthly basis</li> </ul>	
Parent Signature	Date Signed	Signature of Provider	Date Signed

