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January 11, 2013

RFP #117134

ADDENDUM #2

All prospective Offerors are hereby advised to make the following additions/deletions/changes for Professional Architectural Engineering Services for Stafford County Public Schools. All prospective Offerors are hereby advised to make the changes to the Proposal Documents in their possession as follows:

General:

1. This Addendum is hereby made a part of the Contract Documents issued to modify, alter, revise or explain the original drawings and/or specifications. The contents of this Addendum will take precedence over the original instruments and shall be bound with the specifications.
2. All Offerors shall acknowledge the receipt of this Addendum on Page 2.

The identified additions/changes and/or deletions shall read as follows:

REPLACE THE STAFFORD COUNTY PUBLIC SCHOOLS STANDARD TASK ORDER CONTRACT FOR PROFESSIONAL ENVIRONMENTAL ENGINEERING SERVICES WITH THE ATTACHED - to reflect the correct insurance requirements and to add #23 Legal Status.



This Addendum is hereby made part of the Proposal Documents issued to modify, alter, revise or explain the original specifications. All Offerors shall acknowledge the receipt of this Addendum below:

Signature: _____

Name: _____

Firm: _____

**STAFFORD COUNTY PUBLIC SCHOOLS
STANDARD TASK ORDER CONTRACT FOR PROFESSIONAL
ARCHITECTURAL CONSULTING SERVICES**

This Contract is entered into this _____ day of _____, 2013, by and between the Stafford County School Board ("School Board", "Owner", "Stafford County Public Schools", or "SCPS") and _____ (the "Contractor") under the terms and conditions herein.

1. Provision of Services

(a) The Contractor hereby agrees to provide the following services to SCPS: professional architectural consulting services necessary to provide studies, investigations and design work for minor repair, maintenance, renovation and new construction efforts, as outlined in the RFP, Contractor's proposal, and Contractor's schedule of fees attached hereto.

(b) The time, manner, scope and place for performance of such services shall be as directed by SCPS in a written task order or written task orders issued by SCPS's authorized representative to Contractor. To arrive at the task order's price, time, manner of performance and scope, SCPS may request Contractor to provide proposals for any specific task(s) with not-to-exceed ("NTE") prices for the services involved in those task(s), in which case Contractor shall promptly submit a proposal for the task(s). SCPS may then issue a task order for the task(s) based upon the proposal or as negotiated with Contractor, or SCPS may decline to issue a task order in its discretion. No task order shall modify the terms and conditions of the Contract. Notwithstanding the foregoing, for a task order with a NTE amount of \$200,000 or greater, when contractor is an architect, "SCPS may require Contractor to enter into an agreement using the modified version of AIA Document B101-2007 included with the RFP as its basis, in which case such agreement shall control over this Contract as to such task order to the extent of any conflict.

(c) All services provided by or through Contractor pursuant to this Contract or any task order issued hereunder shall be performed with the professional skill and care ordinarily provided by architects, engineers, and consultants practicing in the same or similar locality under the same or similar circumstances.

(d) No substitutions by Contractor of key personnel it has proposed will be permitted without written approval by the Superintendent, SCPS, or his designee.

(e) The extent and character of services furnished by Contractor are subject to the general control of SCPS's Superintendent or his designated representative.

(f) Contractor shall ensure all services provided pursuant to this Contract are consistent with all applicable law, including without limitation, professional registration and licensing requirements.

2. **Time**

Time shall be of the essence as to Contractor's performance under this Contract, except where it is herein specifically provided to the contrary. Contractor shall promptly provide all services on an on-call, as needed basis. This Contract is a one-year professional architectural/engineering consulting services contract, with two (2) option years.

3. **SCPS Obligations**

In return for the services identified above, SCPS shall pay the Contractor per approved task orders issued pursuant to this Contract based on approved annual hourly rates in the schedule of fees attached hereto, but subject to maximum "not-to-exceed" ("NTE") amounts specified in the task orders. Payment by SCPS to Contractor will be made within 45 days after receipt of a properly substantiated invoice.

4. **Termination for Convenience of SCPS/Failure to Issue Task Orders No Termination**

(a) The parties agree that SCPS may terminate this Contract, any work hereunder, any task order issued hereunder, or any portion of any task order issued hereunder, from time to time, either in whole or in part, whenever SCPS determines that such termination is in the best interest of SCPS.

(b) Termination, in whole or in part, shall be effected by delivery of a Notice of Termination signed by the Superintendent of SCPS or his designee, mailed, faxed, e-mailed, or delivered to the Contractor, and specifically setting forth the effective date of termination.

(c) Upon receipt of such Notice, the Contractor shall:

(i) cease any further deliveries or work due under this Contract, on the date, and to the extent, specified in the Notice;

(ii) place no further orders with any subcontractors except as may be necessary to perform that portion of this Contract not subject to the Notice;

(iii) terminate all subcontracts except those made with respect to contract performance not subject to the Notice;

(iv) settle all outstanding liabilities and claims that may arise out of such termination, with the ratification of SCPS's Superintendent or his designee; and

(v) use its best efforts to mitigate any damages that may be sustained by Contractor as a consequence of termination under this clause.

(d) After complying with the provisions of subparagraph (c), above, the Contractor shall submit a termination claim, in no event later than six months after the effective date of its termination, unless one or more extensions of three months each are granted by the Superintendent.

(e) SCPS's Superintendent, or his designee, shall pay from the using department's budget reasonable costs of termination, including a reasonable amount for profit on supplies or services delivered or completed. In no event shall this amount be greater than the original price of task orders issued, reduced by any payments made prior to Notice of Termination, and further reduced by the price of the supplies not delivered, or the services not provided. This Contract shall be amended accordingly, and the Contractor shall be paid the agreed amount.

(f) In the event that the parties cannot agree on the whole amount to be paid to the Contractor by reason of termination under this clause, the Superintendent shall pay to the Contractor the amounts determined as follows, without duplicating any amounts which may have already been paid under the preceding paragraph of this clause:

(i) with respect to all Contract performance prior to the effective date of Notice of Termination, the total of:

(A) cost of work performed or supplies delivered;

(B) the cost of settling and paying any reasonable claims as provided in paragraph 4 (c) (iv), above;

(C) a sum as profit on (A) determined by the Superintendent to be fair and reasonable.

(ii) the total sum to be paid under (i) above shall not exceed the price of task orders issued, as reduced by the amount of payments otherwise made, and as further reduced by the price of work or supplies not terminated.

(g) In the event that the Contractor is not satisfied with any payments determined to be due under this clause, the Contractor may appeal any claim to the Stafford County School Board in accordance with Paragraph 13 of this Contract concerning Disputes.

(h) Contractor shall include similar termination-for-convenience provisions in any subcontract and shall specifically include a requirement that subcontractors make all reasonable efforts to mitigate damages that may be suffered by a termination for convenience. Failure to include such provisions shall bar the Contractor from any recovery from SCPS whatsoever of loss or damage sustained by a subcontractor as a consequence of termination for convenience.

(i) SCPS is not obligated to issue task orders under this Contract for any minimum amount of services, and SCPS's failure to issue task orders, or to issue task orders for any minimum amount, shall not be deemed to be a termination for convenience of this Contract or a breach by SCPS of this Contract.

5. **Termination for Default/Breach**

Either party may terminate this Contract or any task order issued hereunder for the breach or default by the other party or its agents or employees with respect to any term or condition contained herein or in a task order by (a) providing written notice and a period of fourteen days to cure the default or breach; and (b) if the default or breach remains uncured for fourteen days after written notice, by issuing a second written notice terminating the Contract or task order. Notwithstanding the foregoing, Contractor's right to terminate this Contract for default or breach is limited to circumstances when the breach or default would be deemed a material breach of this Contract. If SCPS terminates this Contract or any task order for default or breach and it is later determined that the termination was erroneous, then the termination shall be

deemed to have been for convenience pursuant to paragraph 4 of this Contract, and Contractor's damages recoverable from SCPS shall be limited to those amounts recoverable from SCPS under paragraph 4 for a termination for convenience.

6. Examination of Records

(a) The Contractor agrees that SCPS, or any authorized representative of SCPS, shall, until the expiration of three (3) years after final payment hereunder, have access to and the right to examine and copy any directly pertinent books, documents, papers and records of the Contractor involving transactions related to this Contract.

(b) The Contractor further agrees to include in any subcontract for more than \$10,000 entered into as a result of this Contract, a provision to the effect that the subcontractor agrees that SCPS or any authorized representative of SCPS shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine and copy any directly pertinent books, documents, papers and records of such Contractor involved in transactions related to such subcontract, or this Contract. The term subcontract as used herein shall exclude subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

(c) The period of access provided in subparagraphs (a) and (b) above for records, books, documents and papers which may relate to any arbitration, litigation, or the settlement of claims arising out of the performance of this Contract or any subcontract shall continue until any appeals, arbitration, litigation, or claims shall have been finally disposed of.

7. Termination for Non-Appropriation of Funds

If funds are not appropriated for the purposes of this Contract for any succeeding fiscal year subsequent to the one in which this Contract is entered into, then this Contract shall

automatically terminate as of the date appropriated funds are no longer available, and SCPS shall be liable only for payments for which funds have been appropriated through the date of termination. Upon request by Contractor, SCPS shall promptly advise Contractor as to whether funds have been appropriated.

8. Insurance

(a) The Contractor shall maintain insurance in the amounts, types, and forms set forth herein to insure against the risks identified herein:

- (i) Workers' Compensation, as required by law.
- (ii) Comprehensive Automobile Liability: Contractor shall carry and maintain comprehensive automobile liability insurance covering owned, non-owned, and hired vehicles used in connection with the services provided under this Contract. Such insurance shall have limits of not less than \$2,000,000.00 combined single limits per occurrence for bodily injury and for property damage.

- (iii) Commercial General Liability:

Contractor shall carry and maintain commercial general liability insurance written on an "occurrence basis and not on a "claims made" basis, protecting against all liability with respect to services provided under this Contract and the operations related thereto for bodily injury, death, personal injury and property damage in an amount of not less than \$2,000,000.00 per occurrence, designating Contractor as "Named Insured" and Owner and its officials and employees as "Additional Insured".

- (iv) Professional liability.

Contractor shall carry and maintain professional liability insurance in an amount not less than Two Million Dollars (\$2,000,000), and with a deductible of no greater than \$100,000, for a period beginning with the execution of this Contract and continuing until at least three (3) years following the final completion of the work to be performed in connection with the Contract. Contractor shall cause its subcontractors and consultants engaged for the performance of any professional design services in connection with this Contract to carry and maintain professional liability insurance

in like amount and for the same period, unless excused by SCPS from doing so in writing.

(b) All of the insurance policies required by this paragraph 8 shall be procured from companies that are licensed or authorized to do business in the Commonwealth of Virginia and that have a rating in the latest edition of "Bests Key Rating Guide" of "A-:VII" or better.

(c) Contractor and its subcontractors and consultants shall procure policies for all insurance required by this paragraph 8 for periods of not less than one (1) year and shall procure renewals thereof from time to time at least thirty (30) days before the expiration thereof.

(d) Prior to commencing any work under this Contract, Contractor shall provide SCPS with certified true copies of the insurance policies with the coverages, provisions, clauses and endorsements required by this paragraph 8, and with the certifications and endorsements signed by an official who is an authorized representative of the insurance company concerned, along with adequate proof of such official's authority to act on behalf of the insurance company.

(e) All insurance that the Contractor is required to maintain shall have the following clause or endorsement: This insurance shall remain in force and not be cancelled, materially changed or allowed to lapse unless written notice of such cancellation, material change, or lapse has been given to Stafford County Public Schools and thirty days have elapsed after receipt by Stafford County Public Schools of such written notice.

9. Assignability of Contract

Neither this Contract, nor any part hereof, may be assigned by the Contractor to any other party without the express written permission of SCPS.

10. Ownership of Work Product/Deliverables

The intellectual property contained in any all and all work product by Contractor

or its subcontractors or consultants, including without limitation, studies, investigations, and design work, delivered by Contractor to SCPS, remains the property of Contractor or its subcontractor or consultant, but all such intellectual property rights are irrevocably licensed to SCPS for its use and the use of others providing services to SCPS for whatever purposes SCPS sees fit. The physical deliverables themselves become the property of SCPS upon delivery.

11. Indemnification/Hold Harmless

The Contractor shall indemnify and hold harmless (i) SCPS and any of its officers, agents, employees and representatives from any claims, damages, losses, liabilities, and expenses, including reasonable attorneys' fees, arising from or relating to any claim for violation of intellectual property rights, including without limitation, copyright or patent rights, due to use of any of the services or work product provided by or through Contractor, (ii) SCPS and its successors and assigns from any damages, losses or liabilities to the extent caused by the Contractor's negligent performance of professional services under this Contract or that of its subcontractors or consultants or anyone for whom the Contractor is legally liable.

12. Exercise of Options

SCPS may extend the terms of this Contract for a total of two one-year option periods by giving Contractor written notice that SCPS is exercising its option right before expiration of the Contract's then current term.

13. Disputes

All claims by the Contractor arising from or relating to this Contract or any task order issued hereunder are governed by the terms and conditions of this Contract and by the Virginia Public Procurement Act. For purposes of this Contract, a "claim" by Contractor means a demand or assertion by the Contractor, seeking, as a matter of right, adjustment or

interpretation of Contract terms, payment of money, extension of time, or any other relief with respect to the terms of the Contract or any task order. Any claim by Contractor must be in writing, must state the specific relief sought, including any specific dollar amount sought, and must contain sufficient supporting information to reasonably allow its consideration by SCPS. Any claim by Contractor shall be decided in the first instance by the SCPS's Director of Facilities, who shall, within 90 days after receipt of the claim, produce his/her decision in writing and mail or otherwise furnish a copy thereof to the Contractor. This decision shall be final and binding unless, within thirty (30) days from the date of such decision, the Contractor mails or otherwise furnishes the Director of Facilities with a written appeal addressed to the Superintendent of Stafford County Public Schools. The Superintendent shall decide any appeal within 30 days of its receipt. The decision by the Superintendent shall be final and binding unless, within ten (10) days from the date of receipt of the decision of the Superintendent, Contractor makes an appeal to the Stafford County School Board. The School Board shall act on the appeal within 60 days. The decision of the School Board shall be final and binding unless set aside by a court of competent jurisdiction. Pending the final determination of a dispute, the Contractor shall proceed diligently with the performance of the Contract.

14. **Nondiscrimination**

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

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, except where religion, sex or national origin 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 provisions of this

nondiscrimination clause.

(b) Contractor shall state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor is an equal opportunity employer.

(c) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient compliance with this provision.

Contractor shall include the provisions of the foregoing subparagraphs (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.

15. Drug-Free Workplace

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor'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, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor'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 behalf of the contractor that the contractor 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 Subcontractor or Vendor.

For the purpose of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific Contract awarded to a Contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the

unlawful manufacture, sale distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of the Contract.

16. Additional Terms and Conditions

The RFP, Contractor's Proposal, and the attached annual schedule of fees shall become a part of this Contract; provided however, that, to the extent of any conflict with this Contract, the terms and conditions of this Contract control.

17. Integration Clause

This Contract shall constitute the whole agreement between the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Contract shall supersede all previous communications, representations, or agreements, written or verbal, between the parties hereto.

18. Faith-Based Clause

In accordance with the Code of Virginia Section 2.2-4343.1, this public body does not discriminate against faith-based organizations or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

19. Felons/Sex Offenders

Pursuant to Code of Virginia § 22.1-296.1.C., Contractor certifies that it, any of its employees, any of its subcontractors or consultants, and any of their employees who will have direct contact with any SCPS students have not been convicted of a felony or any offence involving sexual molestation or physical or sexual abuse or rape of a child. Contractor shall promptly report to the Owner any change that would make this certification no longer accurate.

20. Prompt Payment Requirements

(a) Within seven days after Contractor receives amounts paid for work subject to the Agreement performed by any “subcontractor”, as defined in Code of Virginia § 2.2-4347, Contractor shall take one of the two following actions:

(i) Pay the subcontractor for the proportionate share of the total payment received from Owner attributable to the work performed by the subcontractor; or

(ii) Notify Owner and the subcontractor in writing of Contractor’s intent to withhold all or part of the subcontractor’s payment and the reason for nonpayment

(b) Contractor shall provide its Federal employer identification number with each application to Owner for payment.

(c) Contractor shall pay interest to any “subcontractor” on all amounts owed by Contractor that remain unpaid after seven days following receipt by Contractor of payment from Owner for work performed by such subcontractor relating to the Agreement except as to amounts withheld as allowed by 20(a).

(d) Unless otherwise provided under the terms of the Agreement, interest shall accrue at the rate of 1% per month.

(e) Contractor shall include in its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

(f) No obligation imposed by this section shall be construed to create any obligation of Owner. Under Code of Virginia §2.2-4354, no modification to the Agreement may be made for the purpose of providing reimbursement for the interest charge, and Contractor shall not invoice Owner for any such charge.

21. Limitation on Owner's Liability for Interest

Owner shall not be liable to pay any interest to Contractor under any circumstance except, in the case of amounts that Owner does not dispute to be due and payable to Contractor, interest shall accrue on such amounts beginning on the 60th day after payment is due and payable at a rate of 3% per annum.

22. Waiver of Consequential Damages

Contractor hereby waives any claim of consequential damages against SCPS. This Contract entered into as of the day and year first written.

23. Legal Status

All individuals performing work pursuant to this contract must be U.S. Citizens or possess documents that allow them to be employed and work in the United States.

Scott Horan
Assistant Superintendent for Facilities
Stafford County Public Schools

Duly Authorized Representative, Title

Assistant Superintendent for
Financial Services
Stafford County Public Schools