REQUEST FOR PROPOSAL
FOR
COMMISSIONING AUTHORITY SERVICES (CxA)
RFP 2016-13

McMinnville School District No. 40
McMinnville, Oregon

Issued: December 2, 2016
Proposal Closing Date:
December 22, 2016, 10:00 a.m. PST

Single Point of Contact [SPC]:
Susan Escure, Finance Director
Label for RFP Package:
RFP 2016-13 – Commissioning Authority Services (CxA)
Address:
1500 NE Baker Street, McMinnville, OR 97128
Phone: 503-565-4005
Fax: 503-565-4030
Email: sescure@msd.k12.or.us
# Request for Proposals

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The McMinnville School District requests written proposals from qualified firms to secure commissioning authority (CxA) services associated with general building construction projects as assigned by the District. The District passed an $89.4 million bond measure in the May 2016 election for district wide renovation and repairs projects, plus building additions and renovations scheduled at the high school. Some, but not all, of the commissioning services being requested will be for bond-related projects.

The request for proposal packet, specifications and clarifications are available by contacting Susan Escure, Finance Director, phone 503-565-4005, email sesecure@msd.k12.or.us. Sealed proposals will be received no later than 10:00 AM PST, December 22, 2016 at:

McMinnville School District No. 40
Attn: Susan Escure, Finance Director
1500 NE Baker Street
McMinnville, OR 97128

No mandatory pre-meeting will be conducted for this RFP.

The McMinnville School District may reject any proposal not in compliance with prescribed procedures and requirements and may reject for good cause any or all proposals upon a finding of the McMinnville School District that it is in the public interest to do so.
1.1 INTRODUCTION
The McMinnville School District serves 6,700 students in six elementary schools, two middle schools and one high school. The District completed a Long Range Facilities Assessment in November 2012. The District’s Long-Range Facilities Task Force met over a two-year period to develop a prioritized list of projects, which they then recommended to the School Board June 2015.

The estimated costs of the proposed projects total over $100 million. The District voters passed an $89.4 million bond measure in May 2016. In addition to bond proceeds, projects are funded by the Oregon School Capital Improvement Match Grant, Oregon Seismic Rehabilitation Grant Program, SB 1149 Public Purpose Funds, eRate, and District construction excise tax and capital improvement reserve funds.

The District is seeking one (1) experienced Commissioning Authority Service (CxA) for assignment to capital construction projects.

1.2 SCHEDULE OF EVENTS

December 2, 2016 Advertise in the News Register and Daily Journal of Commerce
December 16, 2016 Questions/Requests for Clarification Due
**December 22, 2016** 10:00 AM Closing (Proposals Due)
December 28, 2016 Issuance of Notice of Intent to Award (approximate)
January 4, 2017 Award Protest Period Ends

1.3 PROPOSAL DELIVERY

All proposals may be hand-delivered or mailed with the following label or subject heading: “RFP-2016-13: Commissioning Authority Services (CxA)” to the following address:

McMinnville School District No. 40
Attn: Susan Escure, Finance Director
1500 NE Baker Street
McMinnville, OR 97128

1.4 DISTRICT SINGLE POINT OF CONTACT (SPC)

The single point of contact (SPC) during this procurement process for questions concerning the procurement process, change, clarification, award process and any other questions is Susan Escure, Finance Director, McMinnville School District No. 40, 1500 NE Baker Street, McMinnville, Oregon 97128, telephone 503-565-4005, fax 503-565-4030, email sescure@msd.k12.or.us or regular mail delivered to: 1500 NE Baker Street, McMinnville, OR 97128.

End of Section 1
SECTION 2
AUTHORITY, OVERVIEW, AND SCOPE OF WORK

2.1 AUTHORITY AND METHOD
The McMinnville School District (District) is issuing this RFP under the District’s Public Contracting Rules, District Policy DJC-AR (1) Bidding Requirements for Personal Services Requests for Proposals and pursuant to ORS 279C.120.

2.2 PROJECT OVERVIEW AND BACKGROUND

McMinnville School District successfully passed an $89,400,000 capital bond measure in the May 17, 2016 election that will:
- Protect the community’s investment in school buildings by replacing deteriorating roofs; outdated heating, ventilation and plumbing systems.
- Reduce school operating costs by making energy saving improvements district-wide.
- Increase school safety and security district-wide.
- Provide equitable facilities for elementary students with additional improvements at Newby Elementary School.
- Add a new vocational technical building at the high school.
- Renovate the current high school to increase and update instructional space.

2.3 PROJECT SUMMARY

Scheduled projects range in size and scope, the District may decide to package smaller projects with similar scope together for design and construction. Budgets however will need to be separate for financial tracking required by the terms of the Bond Program.

See **Attachment A**, for a list of projects and timelines.

2.4 SCOPE OF SERVICES

The District will evaluate the qualifications of commissioning authority service firms to support scheduled capital improvement projects per Attachment A.

Typical Scope of Services may include:

**Definitions**

PFAT = Pre-Functional Acceptance Testing
FAT = Functional Acceptance Testing
CxA = Commissioning Authority
Cx = Commissioning
TAB = Test & Balance
HVAC = Heating Ventilation & Cooling
BMS = Building Management Systems
Planning & Design Review Commissioning Services

1. Develop Commissioning Schedule Milestones
2. Develop Owners Project Requirements and acceptance criteria
3. Define commissioning scope, schedule and budget
4. Define roles with Owners Project Manager
5. Develop commissioning plan for assigned projects
6. Confirm with Owners Project Manager systems to be commissioned
7. Update commissioning plan with Contractors details and submit
8. Review, comment on and Monitor Cx equipment submittals
9. Conduct Design Development Construction Document Review and prepare issue log for review with A/E Team and Owners Project Manager
10. Prepare outline CxA documents & PFAT installation checklists
11. Prepare Training requirements

Construction Commissioning Services

1. Coordinate Cx Schedule Milestones incorporation into the General Contractors master schedule and monitor
2. Conduct pre-construction meeting with General Contractor and appropriate sub-Contractors
3. Issue Cx checklists and installation logs for sub-Contractor work scopes
4. Review completeness of Cx checklists over course of construction period
5. Update Cx plan as needed throughout construction period
6. Undertake site inspections during installation and report
7. Witness and validation of PFAT static testing and report results
8. Attend specific construction meetings to review progress of construction and installation of systems
9. Finalize and submit functional acceptance test (FAT) procedures
10. Witness pre-start factory acceptance testing up checks (PFAT) audit and report
11. Review & comment on contractors training plans and scheduled
12. Attend monthly commissioning meetings – more frequent as required by smaller accelerated schedule
13. Issue monthly Cx written Status Reports
14. Maintain log of commissioning observations and resolutions

Functional Acceptance Testing Phase

1. Review and comment on Pre-functional test documentation, TAB reports, BMS startup reports
2. Direct/ Verify/ witness HVAC & Elect Functional Acceptance Tests
3. Direct/Verify/ witness Central Plant Functional Acceptance Tests
4. Direct/ Verify/ witness Fire Smoke Evacuation Functional Acceptance Tests
5. Direct/ Verify/ witness Thermal Imaging for Facility Envelope Functional Acceptance Tests
6. Provide Trouble shooting assistance
7. Detailed Specific testing commissioning meetings & minutes
8. Maintain log of commissioning observations and resolutions
9. Perform Trend log and tuning to seasonal load tests
10. Coordinate & oversee operator user training
11. Prepare and issue Commissioning Final Report
Closeout and Warranty Phase

1. Post construction Operations & Maintenance document review
2. Review initial occupation BMS & Operations group review, partial web based
3. Review opposite season system operation at 6 months post completion
4. Warranty evaluation at 10 month post completion

Possible Additional Services

1. Retro-commissioning of existing systems and building controls

End of Section 2
SECTION 3
PROPOSAL REQUIREMENTS AND EVALUATION

3.1 MINIMUM REQUIREMENTS

The District reserves the right to disqualify proposals failing to meet minimum requirements. To be considered for evaluation, each RFP Package must demonstrate how the Proposer meets all requirements of this section:

1. Successful experience with commissioning services for new or remodeled instructional buildings including K-12 schools.
2. Adequate and qualified staffing in order to meet project schedules.
3. Demonstrated understanding of effective project communications, cooperation and services required to successfully work with Owner Project Manager, design team and CM/GC or General Contractor.
4. Knowledge and understanding of the required services as shown by approach to staffing and scheduling needs.

3.2 MINIMUM SUBMISSION REQUIREMENTS

A. Proposal Format

Proposer shall submit its Proposal without extensive art work, unusual printing or other materials not essential to the utility and clarity of the Proposal. Limit your content to 30 pages. All Proposal forms required per this RFP and your Cover Letter are in addition to the page count noted.

Proposer shall submit RFP Package on white 8 1/2” by 11” paper, bearing the Proposer's authorized representative's signature; one (1) ORIGINAL paper copy + three additional (3) paper copies; and one (1) electronic copy of the RFP Package by USB drive, that must be formatted using Adobe Acrobat (pdf), Microsoft Word (docx), or Microsoft Excel (xlsx).

Documentation provided should contain sufficient information for the District to determine which Proposer will be most qualified to furnish the Services that are contemplated by this RFP. The proposal should include all the information listed under 3.4 Content Requirements.

B. Authorized Representative

The Proposer Certification Form (Attachment B) shall be signed with ink as follows or the bid will be rejected.

- In the case of an individual Proposer, by the individual Proposer.
- In the case of a partnership, the name of the partnership must be listed and the proposal shall be signed in the name of the partnership by at least one general partner. In addition, the names of all general and limited partners must be listed.
- In the case of a corporation, the corporate name shall be subscribed by the president or other managing officer and, under the signature of such officer, the name of the office such individual holds or the capacity in which he or she acts for the corporation.
3.3 PROCUREMENT PROCESS

A. Public Notice

Notice of the RFP has been advertised in the News Register (McMinnville, OR) and the Daily Journal of Commerce. The RFP, including all Addenda and attachments, is available by contacting Susan Escure, Finance Director, at sescure@msd.k12.or.us.

B. Questions / Requests for Clarification

All inquiries, whether relating to the RFP process, administration, deadline or method of award, or to the intent or technical aspects of the RFP must:

- Be delivered to the SPC via email, mailed or hand-delivered in writing
- Reference the RFP name
- Identify Proposer’s name and contact information
- Be sent by an authorized representative
- Refer to the specific area of the RFP being questioned (i.e. page, section and paragraph number); and
- Be received by the due date and time for Questions/Requests for Clarification identified in the Schedule of Events in Section 1.2 above.

Inquiries requiring clarification or modification from the District will be sent to all Proposers in the Form of an addendum to this RFP.

C. Pre-Proposal Conference

No pre-proposal conference will be scheduled for this RFP submittal.

D. Solicitation Protests

Prospective Proposers may submit a written protest of anything contained in this RFP, including but not limited to, the RFP process, Specifications, Scope of Work, and the proposed terms and conditions of the proposed Contract/Price Agreement. This is a prospective Proposer’s only opportunity to protest the provisions of the RFP, except for protests of Addenda or the terms and conditions of the proposed Contract/Price Agreement, as provided below.

Protests to Addenda: Prospective Proposer may submit a written protest of anything contained in the respective Addendum. Protests of matters not added or modified by the respective Addendum will not be considered.

Protests must:

1. Be delivered to the SPC via email, facsimile, hard copy.
2. Reference the RFP name.
3. Identify prospective Proposer’s name and contact information.
4. Be sent by an authorized representative.
5. State the reason for the protest, including: the grounds that demonstrate how the Procurement Process is contrary to law, unnecessarily restrictive, legally flawed, or improperly specifies a brand name; and evidence or documentation that supports the grounds on which the protest is based.
6. State the proposed changes to the RFP provisions or other relief sought.
7. Protests to the RFP must be received by the due date and time identified in the Schedule of Events in subsection 1.2 above.
8. Protests to Addenda must be received by the due date identified in the respective Addendum.

The District will respond timely to all protests submitted by the due date and time listed per the Schedule in Section 1.2. Protests that are not received timely or do not include the required information will not be considered.

E. Proposal Submission Options

Proposer is solely responsible for ensuring its RFP Package is received by the SPC in accordance with the RFP requirements. The District is not responsible for any delays in mail or by common carriers or by transmission errors or delays or mistaken delivery. A Proposal submitted by any means not authorized will be rejected.

The Proposal may be hand-delivered, or submitted through the mail or via parcel carrier, and must be clearly labeled as provided in Section 1.4 and submitted in a sealed envelope, package or box.

Proposals will be accepted during the District’s normal Monday-Friday business hours of 7:00 am to 5:00 pm Pacific Time, except during District holidays and other times when the District office is closed.

F. Proposal Modification or Withdrawal

Any Proposer who wishes to make modifications to a RFP Package already received by the District shall submit its modification in one of the manners listed in the Proposal Submission Options section and must denote the specific change(s) to the Proposal submission.

If a Proposer wishes to withdraw a submitted RFP Package, it shall do so prior to Closing. The Proposer shall submit a written notice Signed by an authorized representative of its intent to withdraw its Proposal. The notice must include the RFP name [as noted on title page] and be submitted to the SPC.

G. Proposal Due

The Proposal and all required submittal items, as well as any modification or withdrawal of a Proposal, must be received by the SPC on or before Closing. Original or modified Proposals received after Closing are considered late and non-responsive, and will be returned unopened or destroyed.

H. Proposal Rejection

The District may reject a Proposal for any of the following reasons:

- Proposer fails to substantially comply with all prescribed RFP procedures and requirements, including but not limited to the requirement that Proposer’s authorized representative sign the Proposal in ink.
- Proposer fails to meet the responsibility requirements of ORS 279B.110.
- Proposer makes any contact regarding this RFP with other District employees or officials
other than the SPC or those the SPC authorizes.
- Proposer attempts to inappropriately influence a member of the Evaluation Committee.

I. Opening of Proposal

Proposals will be publicly opened immediately following the Closing, and the names of all Proposers will be disclosed at that time. However, Proposals received will not be available for inspection until after the evaluation process has been completed and the Notice of Intent to Award is issued.

3.4 CONTENT REQUIREMENTS

A. Proposal Content

The proposal must address each of the items listed in this section and all other requirements set forth in this RFP. The proposal shall be organized as follows:

Firm Information

1. Cover Letter: Include cover letter expressing the firm’s interest and understanding of the District’s Request for Proposal. The letter should name all of the persons authorized to make representations for the Proposer and be signed by an authorized representative.


3. Firm Background: Describe your firm including ownership structure, service area and length of time in the industry.

4. List of Proposer’s recent, current and projected workload by project name, geographical location and construction dollar value.

Firm Experience

5. Identify specific Commissioning services provided ie. Owner’s Project Requirements, Design review, systems commissioned, etc.

6. List five project references in the past five years. Provide the following information: Owner contact name, address, phone number and email address; month and year of construction completion/occupancy, commissioning services provided by your firm, project team members from your firm associated with the project.

Staffing Plan

7. Staffing Plan: Provide your firm’s staffing plan for a typical project and specify key personnel to be assigned to manage contract and staff for project assignments. Include an organizational chart, staff roles and a current brief resume of key personnel.

8. Qualifications: Describe what qualification and licenses are held by your firm and the key individuals identified in the prepared Staffing Plan.
Project Approach

9. Describe the approach you will take for integrating the commissioning activities into the design and construction, including what you will do to foster teamwork and cooperation from contractors and designers.

10. Describe how project communication will be managed with the Owner Representative, the Design Team and the General Contractor during the course of a project. Provide sample documents reflecting management of data and documentation of results through the Commission Phases.

11. Quality Control: What strategies does your firm use to deliver quality project results for the Owner and the operation of building systems at turn-over and beyond.

Fee Schedule

12. Provide a Fee Schedule of Hourly Rates used to calculate fees.

13. Provide list of reimbursable expenses: non-salary costs such as mileage, printing, reproductions & associated project costs. Indicate mark-ups as they apply.

B. Public Record/Confidential or Proprietary Information

All Proposals are public record and are subject to public inspection after the District issues the Notice of the Intent to Award. If a Proposer believes that any portion of its RFP Package contains any information that is a trade secret under ORS Chapter 192.501(2) or otherwise is exempt from disclosure under the Oregon Public Records Law (ORS 192.410 through 192.505), Proposer shall complete and submit an Affidavit of Trade Secrets (Attachment D) and a fully redacted version of its RFP Package.
3.5 EVALUATION PROCESS

A. Responsiveness and Responsibility Determination

RFP Packages will be reviewed for Responsiveness to all RFP requirements, including timely submission, compliance with Minimum Requirements and RFP Package contents. If the RFP Package is unclear, the SPC may request clarification from Proposer. However, clarifications may not be used to rehabilitate a non-Responsive RFP Package. If the SPC finds the RFP Package non-Responsive, the RFP Package may be rejected, however, the District may waive mistakes in accordance with OAR 137-047-0470.

C. Evaluation Criteria

RFP Packages meeting RFP Package Content Requirements will be evaluated by an Evaluation Committee using criteria and priorities as defined by the District. The Evaluation Committee will determine which RFP Package or RFP Packages taken as a whole, and in the District sole judgment, are in the best interest of the organization. RFP Packages should address the evaluation criteria listed below.

The SPC may request further clarification to assist the Evaluation Committee in gaining additional understanding of RFP Packages. A response to a clarification request must be to clarify or explain portions of the already submitted RFP Package and may not contain new information not included in the original RFP Package.

<table>
<thead>
<tr>
<th>EVALUATION CRITERIA</th>
<th>Points</th>
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<tbody>
<tr>
<td>1 Firm Information</td>
<td>10</td>
</tr>
<tr>
<td>2 Firm Experience</td>
<td>20</td>
</tr>
<tr>
<td>3 K-12 School Experience</td>
<td>20</td>
</tr>
<tr>
<td>4 Staffing Plan, Staff Qualifications, Workload Capacity</td>
<td>20</td>
</tr>
<tr>
<td>5 Project Approach, Communications, Quality Control</td>
<td>20</td>
</tr>
<tr>
<td>6 Fee Schedule</td>
<td>10</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>100</strong></td>
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D. Selection Process

The Evaluation Committee reserves the right to invite the recommended finalist or finalists for an interview based solely upon its evaluation of the RFP Packages and the evaluation criteria. If the Committee elects to interview finalists, the final recommendation will be based on the majority opinion of the interview panel. The Evaluation Committee at its sole discretion may forego the interview process.

End of Section 3
SECTION 4
AWARD AND NEGOTIATION

4.1 AWARD NOTIFICATION PROCESS

A. Intent to Award Notice

The District, if it awards a contract, shall award to the highest ranking Responsible Proposer based upon the evaluation criteria described in Section 3. The District may award less than the full scope defined in this RFP. The District will notify all Proposers in writing of its intent to award a contract to the selected Proposer subject to successful negotiation of any negotiable provisions.

B. Protest of Notice of Intent to Award

An affected Proposer shall have seven (7) calendar days from the date of the intent to award notice to file a written protest and specify the grounds for the protest as set forth in ORS 279B.410(1).

Protests must be delivered to the SPC via email or hardcopy, reference the RFP name, identify the Proposer’s name and contact information, be signed by an authorized representative, and specify the grounds for the protest. The District will address all timely submitted protests within a reasonable time and will issue a written decision to the respective Proposer.

4.2 APPARENT SUCCESSFUL PROPOSER SUBMISSION REQUIREMENTS

A. Insurance

Prior to the execution of the Contract, the apparent successful Proposer shall secure and demonstrate to Agency proof of insurance coverage meeting the requirements identified in the RFP or as otherwise negotiated.

B. Taxpayer Identification Number

The apparent successful Proposer shall provide its Taxpayer Identification Number (TIN) and backup withholding status on a completed W-9 form. District will not make any payment until a properly completed W-9 form is received.

C. Contract Negotiation

After selection of a successful Proposer, the District may negotiate the statement of work, pricing, methods of payment, inclusive of additional services. If an agreement cannot be reached, the District may open negotiations with the next ranked Proposer.

By submitting a RFP Package, the Proposer agrees to comply with the requirements of the RFP, including terms and conditions of the Sample Contract (Attachment C). Proposer shall review the attached Sample Contract and note exceptions. Unless Proposer notes exceptions in its RFP Package, the District intends to enter into a Contract with the successful Proposer substantially in the form set forth in Sample Contract.

End of Section 4
SECTION 5
ADDITIONAL INFORMATION

5.1 GOVERNING LAWS AND REGULATIONS

This RFP is governed by the laws of the State of Oregon. Venue for any administrative or judicial action relating to this RFP, evaluation and award is the Circuit Court of Yamhill County for the State of Oregon.

5.2 OWNERSHIP/PERMISSION TO USE MATERIALS

All RFP Packages submitted in response to this RFP become the property of the District. By submitting a RFP Package in response to this RFP, Proposer grants the District a non-exclusive, perpetual, irrevocable, royalty-free license for the rights to copy, distribute, display, prepare derivative works of and transmit the RFP Package solely for the purpose of evaluating the RFP Package, negotiating an Agreement, if awarded to Proposer, or as otherwise needed to administer the RFP process, and to fulfill obligations under Oregon Public Records Law (ORS 192.410 through 192.505). RFP Packages, including supporting materials, will not be returned to Proposer unless the RFP Package is submitted late.

5.3 CANCELLATION OF RFP

Pursuant to ORS 279B.100, the District may reject any or all RFP Packages in-whole or in-part, or may cancel this RFP at any time when the rejection or cancellation is in the best interest of the District. The District is not liable to any Proposer for any loss or expense caused by or resulting from the delay, suspension, or cancellation of the RFP, award, or rejection of any RFP Package.

5.4 COST OF RFP PACKAGE

Proposer shall pay all the costs in submitting its RFP Package, including, but not limited to, the costs to prepare and submit the RFP Package, costs of samples and other supporting materials, costs to participate in demonstrations, or costs associated with protests.

5.5 CONTRACT

All specifications, terms and conditions contained in the Request for Proposals shall be incorporated by reference and made a part of a contract awarded to the successful bidder. A copy of our sample contract is attached to this document.

End Section 5
## POTENTIAL COMMISSIONING PROJECTS

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<thead>
<tr>
<th>Location</th>
<th>Contractor</th>
<th>Schedule</th>
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<tr>
<td>Adams School</td>
<td>Triplett Wellman Contractors</td>
<td>Jun2017 – Feb2017</td>
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<tr>
<td>Mechanical Replacement</td>
<td></td>
<td></td>
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<tr>
<td>Facilities Building</td>
<td>Triplett Wellman Contractors</td>
<td></td>
</tr>
<tr>
<td>New Walk-in Freezer</td>
<td>TBD – Bid pending</td>
<td>Mar2016 – Jul2017</td>
</tr>
<tr>
<td>Cook School</td>
<td>Triplett Wellman Contractors</td>
<td>Nov2016 – Mar2017</td>
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<tr>
<td>Admin Offices</td>
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<td>McMinnville High School</td>
<td>LGC Pence Construction</td>
<td></td>
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<tr>
<td>New Vocational Tech Bldg</td>
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<td>Mar2017 – Aug2017</td>
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<tr>
<td>McMinnville High School</td>
<td>LGC Pence Construction</td>
<td>May2018 – Aug2019</td>
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<tr>
<td>New Addition</td>
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<td>McMinnville High School</td>
<td>LGC Pence Construction</td>
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<tr>
<td>Mechanical Replacement</td>
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<td>Jun2017 – Aug2017</td>
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<tr>
<td>Newby Elementary Remodel</td>
<td>GBC Construction</td>
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<tr>
<td>Patton Middle School</td>
<td>TBD – Bid pending</td>
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<td>Mechanical Replacement</td>
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ATTACHMENT B

PROPOSER CERTIFICATION SHEET

The undersigned certifies that he/she has read, understands and agrees to abide by all terms and conditions of the Request for Proposal if awarded.

Acknowledgement of Addendum: None ______ 1. ______ 2. ______ 3. ______

Proposer further certifies as follows:

1. Proposal is FIRM for 180 days following the Closing.

2. All contents of the Proposal [including any other forms or documentation, if required under the RFP and this Proposal Certification Sheet], are truthful and accurate and have been prepared independently from all other Proposers, and without collusion, fraud or other dishonesty.

3. The Proposer does not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, national origin, marital status, age or disability or other non-job-related factors as per ORS chapter 659 and 42 U.S.C. 2000e.

4. If awarded a contract, Proposer agrees to perform the scope of work and meet the performance standards set forth in the final negotiated contract and statement of work.

Company Name [DBA]:

Legal Name:

Type of Organization [Circle One]: Sole Proprietor / Partnership / Corporation

If Corporation, State of Incorporation:

If Partnership, attach a list of the general and limited partners.

Is the Proposer an Oregon Resident Bidder as provided in ORS 279A.120 [i.e., paid unemployment taxes or income taxes in Oregon during the 12 calendar months immediately preceding submission of the proposal, and has a business address in Oregon]?:

YES ______ NO ________

BY: ___________________________ TITLE: ___________________________

Signature

BY: ___________________________ TITLE: ___________________________

Print / Type Name

CONTACT PERSON:

Name: ___________________________ Telephone: ___________________________

Email: ___________________________ Fax: ___________________________
TERMS AND CONDITIONS
CONSULTANT SERVICES CONTRACT

[Project Name]

[Consultant Name]

Contract No: XX

These General Terms and Conditions are part of the Project as named above, entered into by and between the McMinnville School District No. 40 (“District”) and the Consultant as named above (“Consultant”), and are incorporated therein by this reference. These terms and conditions replace and supersede any other terms or conditions, written or oral, provided by either party, including but not limited to those provided in Consultant’s Proposal Documents as Exhibit A, except as expressly agreed to in writing by the parties hereto.

1. Authority. Consultant represents and warrants it has the power and authority to enter into and perform the Contract and the signer of this Contract has the authority to sign and obligate the Consultant.

2. Independent Contractor. The Consultant shall be an independent contractor for all purposes. Nothing in this Contract shall be interpreted to create an employer-employee relationship between the District and the Consultant. The Consultant shall be responsible for any and all required state and federal tax and Social Security withholding and payment for income due or paid to the Consultant under this Contract, and to Consultant’s employees or subcontractors. The Consultant shall be responsible for obtaining worker’s compensation insurance, and paying premiums therefor, for the Consultant and any employees of the Consultant.

3. Indemnity/Hold Harmless. Consultant shall indemnify and hold District harmless from any and all liens, lawsuits, liabilities, costs and expenses (including reasonable attorney fees and other defense costs) arising out of or connected with the Project and which are directly or indirectly caused by the intentional or negligent acts or omissions of Consultant, any of Consultant’s subcontractors, or any agent of Consultant or any agent of Consultant’s subcontractors. District shall not be liable for and Consultant hereby releases District from all claims for harm, injury, death, damage or loss suffered by Consultant, Consultant’s subcontractors, and any agent or employee of Consultant or Consultant’s subcontractors or any other third party for damage to or for loss of tools, equipment, or other personal property that occurs on or off the Project unless the claim is due to District’s actions. The protection of this provision shall extend to District and to District’s board members, employees, agents and insurers.

District agrees to indemnify and hold harmless Consultant from and against any and all claims, actions, losses, expenses, costs or damage arising out of or in any way connected with negligence of the District, its employees or agents in the performance of the Services.

District further agrees to indemnify Consultant from and against any and all claims, actions, losses, expenses, costs or damage arising out of or in any way connected the presence, discharge, release, or escape of contaminants of any kind, excluding only such liability as may arise out of the negligent acts of Consultant in the performance of the Services described herein.
4. **Insurance Requirements.** Consultant shall be insured and shall provide proof of insurance as follows (required if checked):

- **Worker’s compensation coverage** for all employees in minimum amounts required by law.
- **Professional liability coverage** with a combined single limit, or the equivalent, of not less than $1,000,000 for each claim, incident, or occurrence.
- **General liability insurance** with a combined single limit of not less than $2,000,000 for each occurrence for bodily injury and property damage; $3,000,000 in the aggregate.
- **Automobile liability insurance** with a combined single limit, or the equivalent, of not less than:
  - That required by Oregon’s Financial Responsibility Law, ORS 806.060 ($10,000 property damage, $50,000 bodily injury, $25,000 personal injury).
  - $1,000,000 each accident for bodily injury and property damage, including coverage for owned, hired, or non-owned vehicles, as applicable.

The Consultant shall name as additional insured the District, its officers, employees and its agents as part of this Contract. Provide these insurance certificates to the District. The insurance certificates need to list the project name.

5. **No Assignment.** The Consultant was selected for experience, skills, and abilities unique to the Consultant. Therefore, the Consultant may not assign this Contract, nor assign any duties under this Contract, without the express written consent of the District. Consultant may employ subcontractors or employees to assist in performance of Consultant’s duties under this Contract, but Consultant shall be solely responsible for the performance of such subcontractors or employees and shall indemnify and hold harmless District for any and all legal obligations associated therewith.

6. **Dispute Resolution.**

   6.1 Any claim, dispute or other matter in question arising out of or related to this Contract shall be subject to mediation as a condition precedent to an arbitration hearing or court trial. The parties shall share the mediator's fee. The mediation shall take place in McMinnville, Oregon.

   6.2 If the parties are unable to resolve a dispute through mediation, either party may bring legal action to enforce the terms of this Contract in the Yamhill County Circuit Court, which shall be the exclusive venue for such action. If the parties agree to arbitrate a dispute, the arbitration will be conducted by Arbitration Service of Portland, and all arbitration hearings will take place in McMinnville, Oregon.

   6.3 The prevailing party in any legal action shall be awarded its reasonable attorney fees and litigation costs and expenses, including costs and expenses upon appeal.
7. **Performance Standard.**

7.1 All services and work performed in connection with this Contract shall be performed in a manner consistent with the standard of care applicable to those who specialize in providing such services for projects of the type, scope and complexity of the Project. Consultant covenants and warrants that it shall be responsible for performing and completing, and for causing any sub-contractors to perform and complete the Work in accordance with all applicable standards and laws. No other representation, guarantee, or warranty, express or implied, is included or intended in this Contract, or in any communication (written or oral), report, opinion document, or instrument of service.

7.2 Consultant is not responsible for the completion or quality of work that is dependent upon or performed by the Client or third parties not under the direct control of Consultant, nor is Consultant responsible for their acts or omissions or for any damages resulting therefrom.

8. **Inspection and Acceptance of Work.** The quality of work shall be subject to inspection by the District. If, in the District’s sole discretion, the work is not satisfactory or the requirements of the specifications are not being met, the District shall insist on compliance and will provide Consultant with written notice deficiencies. Consultant will have a reasonable period of time (considering the scope of the project and the nature of the deficiency) in which to remedy the deficiency, but shall do so at no additional cost to District.

9. **Payment for Services.**

9.1 District will pay Consultant pursuant to monthly written invoices provided by Consultant itemizing the Services performed, including reimbursable expenses, according to the Fee/Price Schedule attached as Exhibit A.

9.2 Payment will be made within thirty (30) days following the date of each invoice.

9.3 If District fails to timely pay any amounts due Consultant pursuant to this Contract, Consultant may elect to terminate this Contract pursuant to subsection 11.3 of this Contract.

10. **Compliance With Laws.**

10.1 Consultant, and any sub-contractor providing services to Consultant, shall comply with all applicable federal, state and local laws and regulations in performing this Contract.

10.2 Pursuant to ORS 279C.540(8) persons employed under this Contract shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279C.540(1)(b)(B) to (G), and for all time worked in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater.

The employer shall give notice in writing to employees who work on the Contract, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.
10.3 Pursuant to ORS 279B.220, Consultant shall:

   a) Make payment promptly, as due, to all persons supplying to Consultant labor or material for the performance of the work provided in this Contract.

   b) Pay all contributions or amounts due the Industrial Accident Fund from the Consultant or Consultant’s sub-contractors incurred in the performance of the Contract.

   c) Not permit any lien to be filed or prosecuted against District on account of any labor or material furnished.

   d) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

10.4 Pursuant to ORS 279B.230, Consultant shall promptly, as due, make payment to any person, co-partnership, association, or corporation, which furnishes medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of Consultant, of all sums for which Consultant agrees to pay for such services and all moneys and sums which the Consultant collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

10.5 All subject employers working under the Contract shall be either employers that will comply with ORS 656.017 or are employers that are exempt under ORS 656.126 (Worker’s Compensation requirements).

11. Termination.

   11.1 District may terminate this Contract effective upon delivery of written notice to Consultant, or at such later date as may be established by District, under any of the following conditions:

   a) If District’s funding from federal, state, local, or other sources is not obtained and continued at level sufficient to allow for the purchase of the indicated quantity of services. This Contract may be modified to accommodate a reduction in funds.

   b) If Federal or State regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Contract.

   c) If any license or certificate required by law or regulation to be held by Consultant, its contractors, agents, and employees to provide the services required by this Contract is for any reason denied, revoked, or not renewed.

   d) If Consultant becomes insolvent, if voluntary or involuntary petition in bankruptcy is filed by or against Consultant, if a receiver or trustee is appointed for Consultant, or if there is an assignment for the benefit or creditors of Consultant.
Any termination under this subsection shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

11.2 By written notice to Consultant of default, District may terminate the whole or any part of this Contract:

a) If Consultant fails to provide services called for by this agreement within the time specified herein or any extension thereof, or

b) If Consultant fails to perform any of the other provisions of this Contract, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, after receipt of written notice of default from District.

The rights and remedies of District provided in this subsection are not exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

11.3 Consultant may terminate this Contract with thirty (30) days’ written notice to District if District fails to timely pay Consultant, or if the project is abandoned or delayed for any reason beyond Consultant’s control. In the event of termination by Consultant, Consultant shall be entitled to compensation for services provided up to and including the effective date of termination, plus termination expenses reasonably incurred by Consultant in winding down the project.

12. Intellectual Property. Consultant shall retain ownership of all right, title, and interest (including copyright) in and to the intellectual property it provides through this Contract. Nothing in these Terms and Conditions constitutes a transfer or conveyance of any right, title or interest in the intellectual property, except the limited license to use it for its intended purpose, which includes the general maintenance and management of the asset or project.

13. Exclusive Use. Services provided under this Contract, including all reports, information or recommendations prepared or issued by Consultant, are for the exclusive use of District for the purposes specified. No other use is authorized under this Contract. Except as required by law, the District will not distribute or convey Consultant’s reports, designs, or recommendations to any person other than those identified in the project description without Consultant’s prior written approval.

14. Non-Waiver. The failure of District to insist upon or enforce strict performance by Consultant of any of the terms of this Contract, or to exercise any rights hereunder, shall not be construed as a waiver or relinquishment of its rights to assert or rely upon such terms or rights on any future occasion.

15. Severability If any provision or portion of this Contract is held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining terms and provisions shall not be affected to the extent that it did not materially affect the intent of the parties when they entered into the agreement.

16. Complete Agreement This Contract and attached Exhibit(s) as listed in Section 26 and Reference Document(s) in Section 27 below and all documents specifically mentioned as part of the contract,
constitute the entire Agreement between the parties. No waiver, consent, modification, or change of terms of this Contract shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract. Consultant, by the signature of its authorized representative, hereby acknowledges that he/she has read this Contract, understands it and agrees to be bound by its terms and conditions.

17. **Governing Law.** The provisions of this Contract shall be construed in accordance with the provisions of the laws of the State of Oregon.

18. **Conflict Between Terms.** In the event of conflict between the terms of this Contract and any other document, including but not limited to Consultant’s Proposal, this Contract shall control.

19. **Audit.** Consultant shall maintain records to ensure conformance with the terms and conditions of this Contract, and to ensure adequate performance and accurate expenditures within the contract period. Consultant agrees to permit District, the State of Oregon, the federal government, or their duly authorized representatives to audit all records pertaining to this Contract to assure the accurate expenditure of funds.

20. **Access to Records.** District shall have access to such books, documents, papers and records of Consultant as are directly pertinent to this Contract for the purpose of making audit, examination, excerpts and transcripts.

21. **Confidential Information.** Confidential attachments, data, documentation and other information supplied by Consultant to the District shall be utilized in a prudent manner by the District so as to allow Consultant to maintain its competitive operating advantages and trade knowledge. However, the District shall not be held liable for any breaches of or relating to confidentiality and should such a breach occur, Consultant agrees to hold District harmless in such circumstances. It is understood by Consultant the District is subject to Oregon’s Public Records Laws.

Consultant shall not divulge any confidential information communicated or disclosed by the District in the course of carrying out the services. No such information shall be used by Consultant on any other project without written approval of the District. These obligations of confidentiality shall not apply to information which is in the public domain; which is provided to Consultant by a third party without obligation of confidentiality; which is independently developed by Consultant without use of the District’s information; or which is required to be disclosed by law or court order.

22. **Successors and Assigns.** This Contract shall be binding upon the parties, their partners, successors, and assigns.

23. **Amendment.** This Contract may be amended or modified only in a writing signed by both parties hereto.

24. **Third-Party Beneficiaries.** Nothing in this Contract shall create a contractual relationship with or cause of action in favor of a third party against either the District or the Consultant. The Services under this Contract are being performed solely for the District’s benefit, and no other party or entity shall have any claim against the Consultant because of this Contract or the performance or non-performance of
25. Fingerprinting and Background Checks.

**Student Safety.** As required by ORS 326.603, Contractor shall ensure that Contractor, any subcontractors, and their officers, employees, and agents will have no direct, unsupervised contact with students while on District property. Contractor shall work with the District to ensure compliance with this requirement.

To ensure the safety of District staff and students, the Contractor must take reasonable precautions to ensure that individuals convicted of crimes listed in ORS 342.143 do not provide contracted services to the District. Furthermore, the Contractor shall provide timely notification to District once they become aware that an employee providing services within the District has been arrested or charged with a crime listed in ORS 342.143, and remove said individual from District premises until the issue is resolved.

**Student Occupied Site.** Prior to entry of a Contractor’s employees onto a student occupied jobsite, the Contractor authorizes the District to obtain information about contractor personnel to conduct the appropriate criminal history verification per the District standards for background clearance as follows:

(a) Contractors, consultants and their employees must have a Fingerprint-Based Criminal History Verification in addition to a Nationwide Criminal History Verification if they are to be given unsupervised entry access to any school site.

(b) All other employees of the contractor or consultant who will be working on site must have successfully completed a Nationwide Criminal History Verification.

(c) The District will process the background checks and provide contractor personnel with photo id badges at the District’s expense. A fee of $200 will be charged for each badge not returned.

**Defense and Indemnity.** The Contractor agrees to defend, indemnify, and hold harmless the District, its officers, employees and agents, from all liabilities, claims, suits, actions or expenses of any nature resulting from or arising out of the acts, errors, omissions or negligence of Contractor with regards to Contractor’s duties and responsibilities under Section 17n and ORS 326.603.

26. List of Exhibit(s)

Exhibit A  Consultant’s Proposal dated XXX

Fee: $XXX

27. Reference Documents

Reference Document 1:
Consultant’s Proposal in Response to Request for Proposals (RFP 2016-13) dated XX

Reference Document 2:
McMinnville School District RFP 2016-13 Commissioning Authority Services (CxA) 12/09/16
I have read this Contract including the attached Exhibit(s) in Section 26 and the Reference Document(s) of Section 27. I certify that I have the authority to sign and enter into this Contract. I understand the Contract and agree to be bound by its terms.

Name of Firm

Federal Tax ID No.________________________

________________________
Signature

________________________
Title

________________________
Name (please print)

________________________
Date

Contact for Consultant:

(This contract is not binding on the District until signed by the appropriate signing authority)

________________________
Finance Director

________________________
Signature

________________________
Title

________________________
Name (please print)

________________________
Date

McMinnville School District No. 40
1500 NE Baker Street
McMinnville, Oregon 97128

sescure@msd.k12.or.us
ph: 503 565 4005

Account Code:
ATTACHMENT D

AFFIDAVIT OF TRADE SECRET

____________________ (Affiant), being first duly sworn under oath, and representing [insert Proposer Name] ________________________________(hereafter “Proposer”), hereby deposes and swears or affirms under penalty of perjury that:

1. I am the Proposer, I have knowledge of the Request for Proposals referenced herein, and I have full authority to submit this affidavit and accept the responsibilities stated herein.

2. I am aware that the Proposer has submitted a Proposal, dated on or about [insert date]_________________________________(the “Proposal”), to the McMinnville School District in response to Request for Proposals _____________________ [insert number], for __________________________________________[insert brief description of the goods and/or services sought in the RFP] and I am familiar with the contents of the RFP and Proposal.

3. I have read and am familiar with the provisions of Oregon's Public Records Law, Oregon Revised Statutes ("ORS") 192.410 through 192.505, and the Uniform Trade Secrets Act as adopted by the State of Oregon, which is set forth in ORS 646.461 through ORS 646.475. I understand that the Proposal is a public record held by a public body and is subject to disclosure under the Oregon Public Records Law unless specifically exempt from disclosure under that law.

4. I have reviewed the information contained in the Proposal. The Proposer believes the information listed in Exhibit A is exempt from public disclosure (collectively, the “Exempt Information”), which is incorporated herein by this reference. It is my opinion that the Exempt Information constitutes “Trade Secrets” under either the Oregon Public Records Law or the Uniform Trade Secrets Act as adopted in Oregon because that information is either:

   A. A formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information that:
      i. is not patented,
      ii. is known only to certain individuals within the Proposer’s organization and that is used in a business the Proposer conducts,
      iii. has actual or potential commercial value, and
      iv. gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

   or

   B. Information, including a drawing, cost data, customer list, formula, pattern, compilation, program, device, method, technique or process that:
      i. Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and
      ii. Is the subject of efforts by the Proposer that are reasonable under the circumstances to maintain its secrecy.
5. I understand that disclosure of the information referenced in Exhibit A may depend on official or judicial determinations made in accordance with the Public Records Law.

Affiant’s Signature

State of ___________________) ss:

County of ___________________) ss:

Signed and sworn to before me on ________ (date) by ______________________ (Affiant’s name).

Notary Public for the State of ___________________

My Commission Expires: ________
EXHIBIT A

Proposer identifies the following information as exempt from public disclosure: