



Office of Purchasing and Supply Services
Facilities Administration Building (FAB)
13300 Old Marlboro Pike, Room 20
Upper Marlboro, MD 20772

301-952-6560 Fax: 301-952-6504

Brenda Allen, Director

NOTICE OF CONTRACT AWARD

February 21, 2014

Hurley Company
A Division of Boiler & Furnace Cleaners, Inc.
4320 Bladensburg Road
Brentwood, MD 20722
Phone: 301-779-4557
Fax: 301-779-6682
Email: dloeffler@hurleyco.com

Johnna Smarr
Phone: 301-952-6560
Fax: 301-952-6504
Email: Johnna.Smarr@pgcps.org

SUBJECT: IFB #032-14 Pointer Ridge Elementary School-Boiler Replacement PSC: No.16.119.13 EEI-14SR

Attn: David Loeffler

Hurley Company has been selected as the vendor to provide services in accordance with the above-mentioned IFB. This contract sets-forth the terms and conditions and is provided for your review and acceptance. Any changes or additions made by your company must first be accepted by the Purchasing Division before the contract is valid.

The intent of this contract is to provide the Board with an expedited means of procuring supplies and/or services at the lowest cost. This contract is for the convenience of the Board and is considered by Purchasing Department to be a "Non-Exclusive" use contract. The Board does not guarantee any usage. The Board will not be held to purchase any particular Brand, in any groups, prices or discount ranges, but reserves the right to purchase any item/items listed in the price schedule submitted.

Until the contract is signed by Hurley Company and the BOARD, authorization for commence to service sites on behalf of the contract is forbidden. Please sign below and return all documents to the PURCHASING OFFICE within fifteen (15) days. Failure to sign the contract award and return all required documents within the specified time, shall rule your offer null and void and, therefore, award shall be made to the next low responsive bidder.

A 100% Performance Bond and 100% Labor and Material Payment Bond or Certified Check in the amount of \$212,800.00 made in favor of the **BOARD OF EDUCATION OF PRINCE GEORGE'S COUNTY, UPPER MARLBORO, MARYLAND 20772-9983**, must be submitted to the PURCHASING OFFICE with the returned signed NOTICE OF AWARD WITHIN FIFTEEN (15) DAYS.

This notice of award, bid documents terms and/or attachments and any conditions and instructions will constitute the entire contract after acceptance by your firm and the BOARD. Please refer to the bid for all applicable terms and conditions.

CONTRACT AWARD ESTIMATED AMOUNT

The estimated amount of award is

\$212,800.00

INITIAL CONTRACT TERM

The initial term of the contract will be date of award until completion as specified in the bid documents. All prices must be submitted per F.O.B. destination only unless otherwise specified herein.

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OPTION TO RENEW CONTRACT (N/A)

Upon satisfactory service and by mutual agreement the BOARD OF EDUCATION OF PRINCE GEORGE'S COUNTY reserves the right to renew the contract. The term of renewal shall not exceed two (2) additional one (1) year periods.

THIS NOTICE OF AWARD IS NOT AN ORDER TO COMMENCE SERVICE/WORK OR TO MAKE DELIVERIES at this time. Commence service/work/deliveries only after receipt of Notice of Contract Award signed by the Purchasing Agent and a Notice to Proceed.

INSURANCE

Certificate of Insurance, made in favor of the **BOARD OF EDUCATION OF PRINCE GEORGE'S COUNTY, UPPER MARLBORO, MARYLAND 20772-9983**, must be submitted to the PURCHASING OFFICE with the returned signed contract award WITHIN FIFTEEN (15) DAYS. The Certificate should reference the BID NUMBER as shown herein. It will be the responsibility of the contractor to ensure that a current Certificate of Insurance is on file in the Purchasing Office during the entire period of the contract.

PERFORMANCE/PAYMENT BOND

The successful Respondents shall submit a performance or payment bond, Cashier's or Certified Check in the amount of one hundred percent (100%) as determined by the BOARD and specified in the JFB, of all phases of the contract to ensure the satisfactory completion of the work for which a contract or purchase order is awarded that exceed \$100K. (Comar 21.06.07.03) The Board reserves the right to request performance bond for amount under or over \$1000.00. The performance bond shall be submitted with the return of the signed contract award WITHIN FIFTEEN (15) DAYS.

The bond, cashier's or certified check must be made in favor of the **BOARD OF EDUCATION OF PRINCE GEORGE'S COUNTY, UPPER MARLBORO, MARYLAND 20772-9983**.

FINGERPRINT AND BACKGROUND CHECKS

Pursuant to BOARD Administrative Procedure 4215, all Independent Contractors and Outsourced Agencies and their employees who will be on BOARD property and will or may have contact with students, MUST have a fingerprint and background check provided by the BOARD at the contractor's expense. The contractor will be responsible to call the Fingerprinting Office at 301-952-6775 to schedule an appointment.

LIQUIDATED DAMAGES/FAILURE TO PERFORM WORK

The successful respondents accepts this contract with the understanding that should they fail to complete the work in an acceptable manner and in the time stated, shall be subject to the payment of liquidated damages as stated in the proposal document.

Liquidated Damages Schedule

Amount Per Day

\$25,000 and under	\$100.00
\$25,000 - \$100,000	\$250.00
\$100,000- \$500,000	\$500.00
\$500,000- \$1,000,000	\$550.00
\$1,000, 000-\$2,500,000	\$750.00
\$2,500,000-\$5,000,000	\$1,000.00
\$5,000,000-\$10,000,000	\$1,500.00
\$10,000,000-\$15,000,000	\$2,000.00
\$15,000,000 and More	\$2,500.00

Governor’s Office of Minority Affairs Liquidated Damages Provision for State Funded Contracts Containing

Minority Business Enterprise Participation Goals

“Liquidated Damages”. This contract requires the contractor to make good faith efforts to comply with the Minority Business Enterprise (“MBE”) Program and contract provisions. The State and the Contractor acknowledge and agree that the State will incur damages, including but not limited to loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the Contractor does not make good faith efforts to comply with the requirements of the Page 2 Issued 7/5/13 MBE Program and MBE contract provisions. The parties further acknowledge and agree that the damages the State might reasonably be anticipated to accrue as a result of such lack of compliance are difficult to ascertain with precision.

Therefore, upon a determination by the State that the Contractor failed to make good faith efforts to comply with one or more of the specified MBE Program requirements or contract provisions, the Contractor agrees to pay liquidated damages to the State at the rates set forth below. The Contractor expressly agrees that the State may withhold payment on any invoices as a set-off against liquidated damages owed. The Contractor further agrees that for each specified violation, the agreed upon liquidated damages are reasonably proximate to the loss the State is anticipated to incur as a result of such violation.

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- a. Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B (3): \$168.00 per day until the monthly report is submitted as required.
- b. Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B (4): \$ 84.00 per MBE subcontractor.
- c. Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a contract with an MBE subcontractor and/or amendment of the MBE participation schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the contract.
- d. Failure to meet the Contractor's total MBE participation goal and subgoal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.
- e. [DO NOT INCLUDE IN CONTRACTS THAT ARE SUBJECT TO SECTION 15-226 OF THE STATE FINANCE AND PROCUREMENT ARTICLE – CONSTRUCTION CONTRACTS – PROMPT PAYMENT OF SUBCONTRACTORS]. Failure to promptly pay all undisputed amounts to an MBE subcontractor in full compliance with the prompt payment provisions of this contract: \$100.00 per day until the undisputed amount due to the MBE subcontractor is paid.

Notwithstanding the use of liquidated damages, the State reserves the right to terminate the contract and exercise all other rights and remedies provided in the contract or by law.”

TAXES

Respondents shall assume full responsibility for payment of any and all taxes which may be construed by law authority as being due for materials and supplies under any contract with the BOARD OF EDUCATION OF PRINCE GEORGE'S COUNTY. They shall hold the BOARD OF EDUCATION OF PRINCE GEORGE'S COUNTY safe and harmless from any liability for said taxes.

Responses to the proposal submitted shall not include Federal Excise Taxes or State or Local Sales or Use Taxes (if applicable). The cost of any taxes (operational and/cost of doing business) that are lawfully due and paid by the contractor may be passed on to the Board of Education as part of the overall cost.

The BOARD OF EDUCATION OF PRINCE GEORGE'S COUNTY is subject to the provisions of Article 81, Section 326 (a) of the Annotated Code of Maryland which provides that the Retail Sales Tax shall not apply to the following Sales:

State Sales - “Sales to the State of Maryland or any of its political subdivisions. Provided that this sub-section shall not be construed or applied to exempt any sale, otherwise taxable under this subtitle, or tangible personal property to contractors or builders to be used for the construction, repair or alteration of real property, on contracts advertised for solicitation after July 1, 1968.”

The Board of Education of Prince George's County Tax Exemption Certificate will be provided upon request.

INSPECTION AND ACCEPTANCE

Inspection and acceptance of materials or supplies will be made after delivery at specified destinations unless otherwise stated. The Board will bear the expense of inspection except for the value of samples used in case of rejection. Final inspection shall be conclusive except in regard to latent defects, fraud or such gross mistakes as to amount to fraud. Final inspection and acceptance or rejection of the materials or supplies will be made in a reasonable time, but failure to inspect and accept or reject materials or supplies shall not impose liability on the Board for such materials or supplies as are not in accordance with the specifications.

CHANGES IN TERMS OR DELIVERY/COMPLETION DATE

After award of individual contracts, any questions or correspondence related but not limited to the following matters must be directed to the PURCHASING OFFICE, BOARD OF EDUCATION OF PRINCE GEORGE'S COUNTY, UPPER MARLBORO, MARYLAND 20772-9983, in writing:

In the event of strikes, Acts of God, or other circumstances beyond the contractors control which prevent completion of work or delivery, the contractor must secure temporary contractual relief. The circumstances and duration must be stated by the contractor in writing and be forwarded to the PURCHASING OFFICE within ten (10) days after their development. Contractual relief shall be only that which is acceptable to and in agreement with the PURCHASING OFFICE, for those goods and services which are necessary for the day to day needs of the BOARD. **Please Note: ALL OVERTIME MUST BE APPROVED IN ADVANCE**

INVOICES

Invoices must be submitted in DUPLICATE, ACCOMPANIED BY A SIGNED DELIVERY TICKET, TO CAPITAL IMPROVEMENT OFFICE, BOARD OF EDUCATION OF PRINCE GEORGE'S COUNTY, FACILITIES ADMINISTRATION BUILDING, 13300 OLD MARLBORO PIKE, ROOM 11, UPPER MARLBORO, MD 20772, attention Rita Mack-Woods and contain the following minimal information:

- Purchase order number
- Request for Proposal number
- Delivery destinations as it appears on the purchase document
- Quantity, item number, and description of item billed
- Unit price and extended price of item
- Total amount of invoice
- Serial number of each item.

GUARANTEES & WARRANTIES

All guarantees and warranties required shall be furnished by the successful vendor and shall be delivered to the Purchasing department before final payment on the contract is made. Unless in conflict with this contract or as otherwise stated, manufacturer's standard warranty applies.

PAYMENT

Payment will be made upon receipt of proper invoices. Payment shall be NET 30 days from date of receipt of invoice.

DAMAGES OR INJURY

Qualifying contractors will be held pecuniary responsible for any and all damage to BOARD property done or caused by them or their employees or other personnel engaged in the execution of the contract.

The contractor shall be similarly responsible for all injury to persons that occur as a result of his fault or negligence.

The contractor shall take proper safety and health precautions to protect the work, the workers, the public and the property of others.

The contractor shall be responsible for any and all damage to adjacent property incurred in the performance of the contract and shall hold the BOARD free of any and all claims for damages arising from the execution of the contract.

TERMINATION FOR CONVENIENCE

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

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TERMINATION FOR DEFAULT

The BOARD OF EDUCATION may, by written notice of default to the Contractor, terminate the whole or any part of the Contract in any one of the following circumstances:

If the Contractor fails to make delivery of the supplies or equipment exactly as specified or perform the services within the time and manner specified herein or any extension thereof, or If the Contractor fails to perform any of the other provisions of this Contract, or so fails to make progress as to endanger performance of this Contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of ten (10) days (or such longer period as the Purchasing Office may authorize in writing) after receipt of written notice from the Purchasing Office specifying such failure, or will fully attempt to make delivery of items other than the items in the Contract, or perform the services other than specified as to quality, contents of pack, work processes or otherwise, without specific authorization in the form of a contract amendment, or If a determination is made by the BOARD OF EDUCATION that the obtaining of the Contract was influenced by an employee of the BOARD having received a gratuity, or promise thereof, in any way or form.

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INFRINGEMENT OF PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET, OTHER INTEREST

The following terms apply to any infringement, of claim or infringement, of any patent, trademark, copyright, trade secret or other proprietary interest based on the manufacture, normal use or sale of any material, equipment, programs or services furnished by Respondent to the Board, unless such infringement or claim results from the Respondent following written instruction or directions of The BOARD. Respondent shall indemnify the Board, for any loss, damage, expense, or liability that may result by reason of any such infringement or claim. Respondent shall defend or settle, at Respondent's own expense, any action or suit for which Respondent is responsible hereunder. The Board shall notify Respondent promptly of any claim or infringement for which Respondent is responsible and shall cooperate with Respondent in every way to facilitate the defense of any such claim.

NON-DISCRIMINATION

The Contractor is to conduct business in a non-discriminatory manner prohibiting discrimination in any manner against any employee or applicant for employment because of sex, race, creed, color, age, mental or physical disability, sexual orientation or national origin.

RIGHT TO DATA

All data, reports and other documents generated for the BOARD and accumulated by the consultant/contractor in the performance of this order/award, shall remain the property of the BOARD, and shall be returned to the control of the BOARD upon completion of the contract. No personal student or BOARD information, as defined by federal and state law and BOARD policy, shall be disclosed or published unless otherwise agreed herein.

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RIGHT TO AUDIT

The contractor shall agree that in accordance with Section 952 of the Omnibus Budget Reconciliation Act of 1980, its contracts, books, documents and records will be made available to the Comptroller General of the United States and the BOARD until the expiration of services is finalized under this Agreement.

AVAILABILITY OF FUNDS

The contract shall be deemed executory only to the extent of appropriations available to the BOARD for the purchase of such articles. The obligation of the BOARD on all contracts, including those which envision funding through current and successive fiscal years, shall be contingent upon actual Board appropriations for the fiscal year(s) involved.

RESTRICTIONS

Potential contractors/vendors of the Board of Education of Prince George's County Schools are advised that Maryland law now provides the following mandatory restrictions on registered sex offenders performing work or services on school system property: "A person who enters into a contract with a county board of education or a nonpublic school may not knowingly employ an individual to work at a school if the individual is a registrant. A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding \$5,000 or both."

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Persons or entities awarded contracts with the Board of Education of Prince George's County are required to certify that no employee, subcontractor, subcontractor employee, or material supplier that is a registered sex offender will be allowed to enter onto school system property at any time in the performance of the work or services for which the contract is awarded. Such certification is a condition precedent to any contract award, and failure to so certify will be grounds for not awarding a contract. It will be the responsibility of contractors to obtain similar certification from all sub-contractors and material suppliers performing work or services on school system property and to monitor adherence to this requirement. In the event that the Board of Education of Prince George's County determines that a registered sex offender has entered upon school system property in the performance of work for a contractor/vendor, such will be grounds for termination of the contract.

LAWS AND PERMITS

The contractor shall, without additional cost to the BOARD, be responsible for paying for and obtaining any necessary licenses, inspections and permits for complying with any and all FEDERAL, STATE AND LOCAL LAWS, CODES AND REGULATIONS, in connection with the performance of the work.

Laws of the STATE OF MARYLAND and PRINCE GEORGE'S COUNTY shall govern the contract.

The contractor may not assign or transfer this contract any interest herein or any claim hereunder, except as expressly authorized in writing by the Director.

No officer or employee of the Board of Education Prince George's County Public Schools, whether elected or appointed, has in any manner whatsoever, any interest in or has received prior hereto or will received subsequent hereto any benefit, monetary or material, or consideration from the profits or emoluments of this contract, job, work or service for the Board, and that no officer or employee has accepted or received or will receive in the future a service or thing of value, directly or indirectly, upon more favorable terms than those granted to the public generally, nor has any such officer or employee of the Board received or will receive, directly or indirectly, any part of any fee, commission or other compensation paid or payable to the Board in connection with this contract, job, work, or service for the Board, excepting, however, the receipt of dividends on corporation stock.

ACCEPTED BY:

FOR THE FIRM:

FOR THE BOARD OF EDUCATION:

 3/26/2014
SIGNATURE DATE

 3/4/14
SIGNATURE DATE

Patrick L Hurley
NAME
Secretary/Treasurer
TITLE

Brenda Allen
NAME:
Director, Purchasing & Supply Services
TITLE:

Hurley Company, A Div. of Boiler & Furnace Cleaners, Inc.
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FOR THE BOARD OF EDUCATION OF PRINCE GEORGE'S COUNTY UPPER MARLBORO, MD 20772-998