

FORSYTH COUNTY SCHOOL SYSTEM
Purchasing Department

GENERAL TERMS AND CONDITIONS

1.0 PREPARATION OF PROPOSALS

- 1.1 Proposals must be on Forms furnished with this Request for Proposal. They must be submitted in a sealed envelope marked with your company name and **“P22-02 Learning Management System”** clearly marked on the outside of the envelope.
- 1.2 Vendors are instructed to carefully read all terms, conditions and specifications as set forth in the Request for Proposal. Proposal forms must be completed in their entirety. Responses must be either typed or written in ink. Any correction made on the proposal form (white out or strike through) must be initialed by an authorized representative of the company submitting the RFP or the proposal may be rejected by FCSS. Each vendor is required to furnish all information requested in the Request for Proposal.
- 1.3 Each vendor is responsible for having knowledge and understanding of any applicable State of Georgia Code and FCSS regulations or policies pertaining to FCSS procurement.
- 1.4 FCSS Purchasing Regulations are hereby acknowledged, understood, and agreed to by the both parties and are hereby fully incorporated into the RFP and Proposal Contract.
- 1.5 **Conditional RFP’s-** Proposals that in any way qualify or vary the terms and conditions and specifications of this RFP may be considered non-responsive and disqualified from consideration of award.

2.0 COMMUNICATIONS WITH FCSS STAFF

- 2.1 All communications concerning this RFP must be submitted **in writing** to the FCSS Purchasing Department. Email to **ttryan@forsyth.k12.ga.us** is the preferred method of communication. Only written questions submitted via email or fax will be accepted. No response other than written, distributed by the Purchasing Department will be binding upon FCSS. User departments may be called upon for clarification in their area of expertise at the discretion of the Purchasing Department. **Questions must be received by 5:00 PM October 21, 2021. All Q&A will be posted on website for all vendors to see.**
- 2.2 From the issue date of this Proposal until the completion of the selection process and the award notification is announced, vendors are not allowed to communicate with school system employees and/or contracted agents related to this RFP for any reason except as authorized by the Purchasing Department. Violation of this provision may result in rejection of the vendor’s response.
- 2.3 It is the vendor’s responsibility to check the FCSS Current Solicitations website for any addenda, responses to vendor questions, or other communications, which may be necessary during the solicitation period.

3.0 SUBMISSION OF PROPOSALS

- 3.1 The **Original and One Copy of the RFP response PLUS thumb drive will ALL RFP information including this document and attachments** must be received at the Forsyth County School System, Attention: Purchasing Department, 441 Canton Hwy, Cumming, Georgia 30040 no later than the date and time (determined by the date/time stamp of the FCS) set forth in the Request for Proposal.
- 3.2 Responses are due by mail or hand delivery no later than the date and time (determined by the date/time stamp of the FCSS Procurement Services Department) set forth in this Request for Proposal.

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- 3.3 Any proposal received after the designated time will be deemed late and will not be considered by the FCSS.** Telephone or fax quotations in lieu of RFP Form will not be accepted. FCSS cannot be responsible for lateness of receipt due to delivery delays.
- 3.4** Verify your quotation before submission as it cannot be withdrawn, corrected, or altered after submission. A responsible officer or employee must sign and all obligations assumed by such signature must be fulfilled.

4.0 SPECIFICATIONS

- 4.1** Any deviation from the specifications must be clearly identified in a letter accompanying the RFP. The furnishing of cuts, catalogs or printed descriptions will not relieve the vendor of this requirement. FCSS shall determine in its sole discretion whether substitutions or modifications of the requested specifications are comparable to those contained within the Request for Proposal. If FCSS determines that the modifications or deviations from the specifications are not in compliance, the offer may be rejected.
- 4.2** A vendor's failure to deliver any items/services according to specifications set forth in their RFP may result in cancellation of the purchase and permanent removal from the vendor's list. If any items do not meet these specifications, the items will be picked up at vendor's expense and removed from FCSS property at the sole cost of the vendor.
- 4.3** For Goods: Unless specified otherwise, manufacturers listed, in the Invitation to Bid is to establish the general quality required. Items of other manufacturers of equal or better specifications may be considered. The FCSS will be the sole determiner as to whether the substituted item is approved as an alternative
- 4.4** If an awarded brand/model is discontinued during the award period, the awarded vendor may offer a replacement item. The replacement brand/model must meet or exceed minimum specifications listed in RFP document as well as current industry standards. Replacement units must be made available to FCSS for review and approved prior to the end of life of the awarded model. FCSS reserves the right to accept or reject the replacement item.
- 4.5** All products and materials furnished must comply with all applicable federal, state, and local laws, codes and regulations.

5.0 PRICES QUOTED

- 5.1** Unless specified otherwise, prices must remain firm for a period of one year from the award date unless specified otherwise in the Special Terms and Conditions. The Forsyth County School System reserves the option to renew the RFP annually if agreeable to both the successful vendor and the Forsyth County School System. RFP may be renewed up to four times annually.
- 5.2** Quantities/amounts shown on the Request for Proposal are estimates. Vendors are advised that the actual number purchased/required may vary from those on the proposal, depending upon the needs of the FCSS and the availability of funds.
- 5.3** Proposals that contain minimum order amounts will not be accepted unless called for in the Special Terms and Conditions.
- 5.4** Pricing must be submitted on Proposal Form as requested without conditions unless called for in Special Terms & Conditions.

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6.0 SAMPLES

- 6.1 When required, samples must be furnished at the vendor's expense.
- 6.2 Samples not used or destroyed in testing will be returned to the vendor at vendor's request and at vendor's expense. If vendor does not arrange for pick-up of samples as defined in Special Terms & Conditions, samples will become the property of FCSS.

7.0 AWARDS

- 7.1 The FCSS reserves the right to accept or reject any part of a submitted proposal (in whole or in part), to accept the entire proposal from one vendor, to accept portions of the proposal from several vendors, or to reject any and/or all proposals submitted or waive any minor irregularity.
- 7.2 The FCSS reserves the right to award by line item, to more than one vendor, and/or to award by group or any combination thereof.
- 7.3 Award will be made to the responsive and responsible vendor based on price, availability, past vendor experience, references, and compliance with the proposal specifications and requirements as outlined in the evaluation criteria included in this solicitation. Award of proposal will be made in the best interest of FCSS.
- 7.4 A determination of competitive range may be made after initial submission of proposal and after any additional revisions. Offerors not in the competitive range of being selected for award shall be eliminated from further discussion.
- 7.5 During the evaluation phase, discussions may be conducted with offerors who submit proposals determined to be reasonably likely to be selected for award. These discussions are for the purpose of negotiations, clarification, and to assure full understanding of and responsiveness to the solicitation requirements. Offerors will be accorded fair and equal treatment with respect to an opportunity for discussion and revision of proposals. FCSS Purchasing may permit revisions, after submission and prior to award, for the purpose of obtaining best and final offers. In all events, FCSS reserves the right to re-solicit the item(s) involved.
- 7.6 Purchases by the FCSS are not subject to Federal Excise Tax or State and Local Sales Tax. No taxes should be included in this RFP.

8.0 CONTRACT

- 8.1 **THE CONTRACT AGREEMENT MUST BE COMPLETED BY THE VENDOR AND RETURNED WITH THIS PROPOSAL IN ITS ENTIRETY.**
- 8.2 It is understood and expressly agreed that, upon proper acceptance of any or all items by the Purchasing Department, a contract shall hereby be created.
- 8.3 Failure to observe any of the general or special terms of this contract may constitute for rejection of award and removal from bidders list.
- 8.4 Unless otherwise stated in the Special Terms and Condition, FCSS requires that all prices quoted will be firm for 12 months from award of contract.
- 8.5 By signing of contract, vendor confirms responsibility as an authorized agent to sell, distribute all products and services as proposed. In addition, vendor confirms ability and responsibility to provide all manufacturer warranties for the items proposed. This includes additional warranty items that may be included in the Special T&C.

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- 8.6 **Authority-** Each party warrants that such party has full power and authority to enter into and perform this contract. The person signing on behalf of each party represents that person as duly authorized to enter into this contract on behalf of such party
- 8.7 **Choice of Law and Venue-**The Laws of the State of Georgia shall govern this contract in all respects. Any lawsuit or other action based on claims arising from this contract shall be brought in a court or other forum of competent jurisdiction in Forsyth County, Georgia.
- 8.8 **Entirety of Contract-** All documents submitted in response to the RFP, including any attachments and appendices are incorporated into the contract between FCSS and the Vendor and contain the entire agreement between the parties and supersedes all prior oral and written agreements and understandings between the parties with respect to the subject matter hereof. If any language of the RFP Response by the Vendor conflicts with the language of the RFP, the language of the RFP shall govern and control for all purposes, unless consented and agreed to by FCSS in writing.
- 8.9 FCSS reserves the right to review and accept or deny requests for price changes due to extenuating circumstances in the economy, market place or acts of God. This option will only be exercised if it is deemed in the best interest of the FCSS.

9.0 **SHIPPING**

- 9.1 All prices are to include delivery to the location(s) specified in the Proposal or the Purchase Order. All delivery for goods must be FOB destination, unless specified otherwise in the Special Terms and Conditions, with delivery to the location specified by the FCSS.
- 9.2 In the event of damage, shortage, or other loss resulting from shipment to any FCSS facility by common carrier, any claim for such damage, shortage, or other loss shall be a matter between vendor and the carrier.
- 9.3 FCSS reserves the right to cancel the purchase of the bid items/services and/or any other pending purchase orders to the same vendor and/or permanently remove the vendor from the vendor list if the items/services have not been delivered/completed by the specified delivery date and no written extension of such delivery date has been granted by FCSS.

10.0 **INVOICING**

- 10.1 Payment will be made by the FCSS after final delivery and acceptance of all items/services. However, final acceptance will not be made until after inspection and approval by the FCSS authorized representative.
- 10.2 All accounts are paid on a current basis. Best effort will be made by FCSS to take any discounts offered; however, cash discounts will not factor into price consideration for award of contract. Time will be computed from delivery (date of FCSS signature) at destination or from the date a correct invoice is received, if later than the date of delivery.
- 10.3 **Invoicing Procedure-** Invoices must be original. Copies or facsimiles are not acceptable. Invoices must not be altered in any way from the original by handwriting or by machine. Invoices will be paid within 30 days of receipt of invoice and within 30 days of notification receipt of goods or services by receipt. Computer-produced invoices are preferred. Invoices must contain the company name, the remit to address, and FCSS purchase order number.

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11.0 ASSIGNMENT, DELEGATION, OR SUBCONTRACT

11.1 Except as may be specifically permitted by the RFP, Vendor shall not delegate, subcontract, assign, or otherwise permit anyone other than the Vendor personnel to perform any of the work required under this Contract, or assign any of its rights or obligations hereunder, without written consent of FCSS, which consent may be withheld at its sole discretion.

12.0 INDEMNIFICATION

12.1 The successful Vendor shall be liable for any injury, damage or loss occasioned by negligence of the successful Vendor, its agents, or any other person the successful Vendor has designated to visit FCSS property and shall indemnify and hold harmless the Board, its officers, employees, agents, volunteers from any liability arising in the performance of this contract. Vendor's obligation under this section shall not extend to any liability caused by the sole negligence of the FCSS, or its employees.

13.0 TERMINATION

13.1 **Termination-**If FCSS or the successful vendor(s) wish to cancel this contract, written notice thirty (30) days in advance will be required of either party. In addition, either party may terminate the contract in the event the other party breaches any of its duties and obligations under this contract and fails to cure such breach within thirty (30) days after receiving notice specifying the breach. FCSS reserves the right to terminate without warning in the event of critical and/or material breach of contract.

14.0 ADDENDUM

14.1 Addendum(s) issued in writing during the time of solicitation will be incorporated in the subsequent contract. Vendor is responsible for checking the webpage frequently during solicitation period for any potential addendums.

15.0 SPECIAL TERMS AND CONDITIONS

Should the General Terms and Conditions be in conflict with the attached Special Terms and Conditions, the Special Terms and Conditions will control.

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SPECIAL TERMS AND CONDITIONS

1.0 PURPOSE AND OBJECTIVE

Forsyth County Schools (FCS) is formally converting RFI I21-01 to RFP 22-02 in pursuit of awarding a contract for a new Learning Management System. The Conversion Process is detailed below but is formally based upon the research, findings, testing, and product evaluation of the previous RFI. It should be noted that FCS built a short list of potential Vendors during the RFI evaluation phase and does not deem it prudent to backtrack again over the same processes in light of the time, and cost already expending by all participating Vendors. The basis of the pre-approved RFP products is based upon those evaluations. If you are not included on the pre-approved list, then there are instructions for potential inclusion in the RFP process, albeit through limited and defined circumstances. This contract shall meet the specifications, terms and conditions herein and be consistent with premium industry standards and best practices for this performance of work. **Price will not be the sole determinant of award as FCSS will consider non-cost elements to include qualifications, experience, past performance, references, and ability to perform work in an extremely rigid, but necessary time frame**

- A) **Process-** FCS is beginning this RFP with a pre-set list of approved products. As mentioned above, this list is based upon the thorough evaluation process of FCS Technology and Information personnel including, but not limited to, review of RFI response content, verbal and written communications, product testing, and references. If your company was not asked for access to product demonstration/testing, then you were eliminated from consideration at that point and informed via written correspondence on 4/29/21.
- 1) **Companies still under consideration via RFP 22-02 include:**
- i. Canvas (Instructure)
 - ii. D2L Brightspace
 - iii. Schoology
- B) **Potential for Inclusion if not preapproved-** even though the original RFI has been converted to an RFP, FCS will consider additional products under the following circumstances only:
- 1) **Lack of Participation in original RFI-** if your company was unable to participate in the original RFI, then you can email Trey Tryan at ttryan@forsyth.k12.ga.us for participation instructions. You will be sent the original RFI contents, which must be submitted along with the requirements of the RFP. FCS will be the sole determinant of product inclusion in the process after review of submission.
- 2) **Significant and Material Product Update/Enhancement-** if you participated in the RFI but wasn't selected for short list AND your product has significantly and materially changed, then you can submit for reconsideration. Please note, this is not an opportunity for subtle updates but only for major product roll-outs and/or significant changes to overall functionality of the entire platform. With respect to your time, we do not want to convey an opportunity for re-entry unless changes since the RFI warrant review as the committee did a thorough evaluation of all products before reaching the short list and determined your product was not a "fit" for FCS at this time. Should you feel your product has met the threshold as described herein, then please email Trey Tryan at ttryan@forsyth.k12.ga.us for further instructions.
- C) **Potential for Contract Commencement-** at this time, there are many variables that could affect when FCS would desire to commence a new contract. Suffice it to say that FCS may entertain a roll-out in 2022, but it might be more likely that a district-wide commencement may not begin until Fall of 2023.
- 1) Please detail in writing (tab and label) your understanding as well as, your company's thoughts and capacity for either option.
- 2) It is possible, that a hybrid approach might be beneficial to both parties in which FCS could award and begin "back of the house" implementation, training etc in 2022, with full roll out in 2023.
- 3) **Cost-** Bid Form will include cost options for either with understanding that a hybrid approach, if mutually agreeable, would be negotiated with finalist.

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D) Requirements for Companies approved to continue process through this RFP

- 1) Download and complete LMS Vendor Questionnaire as linked herein- You should answer as requested on the spreadsheet and know that it is acceptable to submit supporting verbiage, evidence, or samples in written response.
(tab and label accordingly)
- 2) **Provide actual contract** pricing as detailed in Section 3.0 of this document (Bid Form)
- 3) Please provide updated References for current engagements with preference for K-12 in the State of Georgia or similar size/scale/scope K-12. Please provide name of district, key contact (phone and email), as well as, brief narrative on implementation and overall contract engagement. **(tab and label with response)**
- 4) Make/keep available Demo access to FCS Evaluation team
 - i. Demo's may be needed in small groups (exec teams) or larger subgroups such as teacher groups, other stakeholder groups for testing and evaluation. Total demo licenses may be necessary for up to 120 users.
 - ii. Demo licenses need to be available for entire evaluation period-tbd
- 5) Be prepared to answer questions or clarifications via email, phone, or video interface. Also be prepared to present in person should FCS evaluation team deem necessary
- 6) **FCS Software Products and Services Agreement-** FCS Legal Services requires the inclusion of the attached (to be download with RFP package) Software Terms of Services document. Note: In the event of conflict between these terms and boilerplate of the RFP, the FCS Software Products and Services Agreement shall supersede. Please submit with written package.
- 7) Sign and include all other required elements of RFP

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2.0 BASIC RFP AND CONTRACT GUIDELINES AND REQUIREMENTS

- A) **Evaluation-** Award will be made based upon the evaluation criteria published in this RFP. It is also known that FCS may use information from any corresponding meeting with specific vendors pre-proposal or during the evaluation as it relates to the published evaluation criteria. FCS may use experience from past performance in evaluation considerations.

NOTE: While Cost is a material consideration and will be proportionately evaluated, it should be understood that **cost will not be the sole determinant for final award decision**. FCS will seek to find the **Best Value** including all criteria with an emphasis on product functionality, usability, references, support, product testing, vendor interface/presentation/responsiveness, training, service and support. FCS will be the sole determinant for best value based upon a thorough investigative set of internal processes and evaluative tools.

- B) **Award Period-** Awarded contract will be valid for one year from the date of award with option to renew annually up to four additional years.
- C) **Price Modification-** Prices must remain firm for entire contract period. Contract must also stipulate “not to exceed” increases for years 2-5 which may be used to evaluate final award decisions. If contract exceeds year 5m then the Vendor can request a price modification at the beginning of each new contract period, but it must be accompanied by documentation supporting the increase. FCS reserves the right to accept, negotiate, or deny and re-solicit any request for price escalation if it is determined that acceptance is budget prohibitive.
- D) **Clarification-** FCS may seek written clarification at any point during the evaluation process. Vendor is responsible to provide information to the best of their ability within the format and time parameters provided by evaluation committee.
- E) **Presentation/Meetings/Demonstrations-** FCS, at its sole discretion may invite finalists for a verbal presentation, meeting, conference call and/or a web demonstration.
- F) **Best and Final Offer (BAFO) -** FCS may request a best and final offer if applicable.
- G) **Terms and Conditions-** FCS expects the terms and conditions of this RFP, and all FCS related documents, to be the prevailing contract agreement. FCS will not sign any contract document that forfeits control or supersedes this contract. If you request different or supplemental contract language to be incorporated into this contract, please provide with your initial submission. FCS will consider all reasonable requests and will attempt to negotiate in good faith to provisions offered in good faith. However, if mutually accepted language cannot be reached, FCS may deem your offer non-responsive. In addition, any document that materially alters the terms and conditions of this agreement or placed undue burden on FCS *may be deemed non-responsive and removed from consideration*.
- i. **Any contract language that you request MUST be provided with initial response, as it will not be possible to supplement contract language later.** If you submit supplemental contract language, it is the responsibility of the vendor to detail differences in contractual language at the time of response.
 - ii. Preference may be given to an organization whose offer complies, or best complies with all FCS terms and conditions herein.
 - iii. The provisions made for negotiation herein deals with contractual language governing the legal elements of this contract. It does not pertain to mandatory contract specifications such as scope of work, cost, delivery, customer service etc.

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3.0 BID FORM (Based upon estimated 1st year student population of 52K)

Products and Services	Term	Cost (2022 implementation- Sec 1.0 C)	Cost (2023 implementation)
LMS cost per license inclusive of annual subscription, maintenance, and support	Year One		
	Not to exceed Year Two		
	Not to exceed Year Three		
	Not to exceed Year Four		
	Not to exceed Year Five		
One Time Implementation Cost inclusive of all fees and costs to implement the product as you have proposed (feel free to expound or itemize services below) (Excluding Training Costs)	Implementation		
Recommended Training- Please provide your recommendation for optimal training, based upon your expertise and experience, for a District our size, with this particular scope of work. Note: you are requested to expound with detail and provide options. This is just a preliminary cost for review based upon your professional recommendation of what is optimal. FCS will work through actual training needs as the RFP process evolves. Training cost will not be the sole factor of Cost Evaluations, but Vendors should note that Cost/Scope of the Training Package will be a consideration of final award.	Training		

Implementation Notes (Can be provided on additional pages if tabbed and labeled)

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Training Notes and Options (Can be provided on additional pages if tabbed and labeled)

General Notes:

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THE CONTRACT AGREEMENT MUST BE COMPLETED BY THE OFFEROR AND RETURNED WITH THE PROPOSAL PACKAGE.

P22-02- CONTRACT AGREEMENT

We have carefully examined and fully understand the General and Special Terms and Conditions and related documents in providing **Learning Management System** to the Forsyth County School System and do agree to all terms and conditions by so signing this document.

Withdrawals, cancellations, etc., will not be accepted unless the Purchasing Director gives authorization. In the event vendors fail to comply, they may be removed from the vendors' list.

_____ Company Name	_____ Representative's Signature (Must be signed in ink)
_____ Address	_____ Representative's Name (Please type or print)
_____ City, State, and Zip Code	_____ E-Mail Address
_____ Date	_____ Telephone Number and Extension
_____ Terms (If payment terms are not indicated, will be determined to be net 30 days).	_____ Fax Number

PLEASE INDICATE YOUR LEAD TIME UPON RECEIPT OF PURCHASE ORDER:

PRICES MUST REMAIN FIRM FOR CONTRACT TERM

Signing the Contract Agreement affirms that the original RFP document has not been altered in any way.

Upon notice of Award, this page will become the prevailing Contract Agreement between your organization and the FCSS.

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IMMIGRATION AND SECURITY FORM
(GEORGIA SECURITY AND IMMIGRATION COMPLIANCE ACT AFFIDAVIT)

Contractor Affidavit under O.C.G.A. § 13-10-91(b)(1)

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services on behalf of **(Forsyth County School System)** has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned contractor will continue to use the federal work authorization program throughout the contract period and the undersigned contractor will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the contractor with the information required by O.C.G.A. § 13-10-91(b). Contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification Number (4-6 Digits, no letters)

Date of Authorization (of E-Verify authorization)

Name of Contractor

Name of Project/Contract Number/Purchase Order Number

Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, ____, 202__ in _____(city), _____(state).

Signature of Authorized Officer or Agent

Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME
ON THIS THE _____ DAY OF _____, 202__.

NOTARY PUBLIC

My Commission Expires:

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Subcontractor Affidavit under O.C.G.A. § 13-10-91(b)(3)

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with (_____) on behalf of (**Forsyth County School System**) has

Name of Contractor

registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned subcontractor will continue to use the federal work authorization program throughout the contract period and the undersigned subcontractor will contract for the physical performance of services in satisfaction of such contract only with sub-subcontractors who present an affidavit to the subcontractor with the information required by O.C.G.A. § 13-10-91(b). Additionally, the undersigned subcontractor will forward notice of the receipt of an affidavit from a sub-subcontractor to the contractor within five business days of receipt. If the undersigned subcontractor receives notice that a sub-subcontractor has received an affidavit from any other contracted sub-subcontractor, the undersigned subcontractor must forward, within five business days of receipt, a copy of the notice to the contractor. Subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification Number (4-6 Digits, no letters)

Date of Authorization (of E-Verify authorization)

Name of Contractor

Name of Project/Contract Number/Purchase Order Number

Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, __, 202__ in _____(city), _____(state).

Signature of Authorized Officer or Agent

Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME
ON THIS THE _____ DAY OF _____, 202__.

NOTARY PUBLIC
My Commission Expires:
