

JEFFERSON COUNTY PUBLIC SCHOOLS

CONTRACT FOR THE PROCUREMENT OF PROFESSIONAL SERVICES

THIS CONTRACT FOR PROCUREMENT OF PROFESSIONAL SERVICES (hereinafter "Contract") is entered into between the JEFFERSON COUNTY BOARD OF EDUCATION (hereinafter "Board"), a political subdivision of the Commonwealth of Kentucky, with its principal place of business at 3332 Newburg Road, Louisville, Kentucky 40218 and NCS Pearson, Inc. (hereinafter "Contractor"), with its principal place of business at 5601 Green Valley Drive, Bloomington, MN 55437.

WITNESSETH:

WHEREAS, the Board desires to procure the particular services of Contractor, which are more fully defined below; and

WHEREAS, Contractor has held itself out to be competent and capable of performing the services contracted for herein;

NOW, THEREFORE, in consideration of the mutual promises and agreements hereinafter set forth, the Board and Contractor (hereinafter "Parties") agree as follows:

ARTICLE I

Entire Agreement; Amendments

This Contract is the entire agreement between the Parties and supersedes any and all agreements, representations and negotiations, either oral or written, between the Parties before the effective date of this Contract. This Contract may not be amended or modified except in writing as provided in Article VIII. This Contract is supplemented by the Board's Procurement Regulations currently in effect (hereinafter "Regulations") that are incorporated by reference into and made a part of this Contract. In the event of a conflict between any provision of this Contract and any provisions of the Regulations, the Regulations shall prevail.

ARTICLE II

Services

Contractor agrees to perform the following services (hereinafter "Services") of a quality and in a manner that is within the highest standards of Contractor's profession or business. The Services are as follows:

Contractor shall provide software licenses to various schools for NNAT3 (Naglieri) which focuses on testing for Gifted & Talented identification. NNAT3 (Naglieri) software license pricing is attached and incorporated herein by reference. Contractor has agreed to provide a 10% discount for purchase of no less than 20,000 online licenses in the first three years of service to JCPS.

Contractor agrees that they will not operate a motor vehicle in the performance of this Contract. The Contract Administrator hereby waives the insurance requirement for automobile liability insurance. If during the terms of this Contract, Contractor is not required by Kentucky law to maintain workers compensation insurance, then the Contract Administrator hereby waives the requirement for workers compensation insurance contained in Article V. All other provisions of Article V shall remain the same.

ARTICLE III Compensation

The Board shall pay Contractor the total amount stated below (hereinafter "Contract Amount"). The Contract Amount shall be paid in a lump sum upon completion of the Services, unless a schedule of progress payments is stated below. The Contract Amount shall be for total performance of this Contract and includes all fees, costs and expenses incurred by Contractor including but not limited to labor, materials, taxes, profit, overhead, travel, insurance, subcontractor costs and other costs, unless otherwise stated below. To receive payment, Contractor must submit an itemized invoice or invoices. If progress payments are authorized, each invoice must specify the actual work performed. If payment of costs or expenses is authorized, receipts must be attached to the invoice.

Contract Amount:	\$248,500
Progress Payments (if not applicable, insert N/A):	N/A
Costs/Expenses (if not applicable insert N/A):	N/A
Fund Source:	General Fund

ARTICLE IV Term of Contract

Contractor shall begin performance of the Services on August 1, 2022 and shall complete the Services no later than July 31, 2023 unless this Contract is modified as provided in Article VIII.

ARTICLE V Performance of Services by Contractor

The Services shall be performed by Contractor, and in no event shall Contractor subcontract with any other person to aid in the completion of the Services without the prior written approval of the Contract Administrator defined below.

Contractor shall appoint one person who shall be responsible for reporting to the Board on all Services performed under the terms of this Contract and who shall be available for consultation with the Contract Administrator.

Contractor is an independent contractor, not an employee. Contractor is responsible for the payment of all federal, state and local payroll taxes and providing unemployment insurance and workers compensation coverage to Contractor's employees. Contractor shall provide all equipment, materials and supplies necessary for the performance of the Services.

Contractor shall at all times during the term of this Contract comply with all applicable laws, regulations, rules and policies. Contractor shall obtain and keep in force all licenses, permits and certificates necessary for the performance of the Services.

Contractor agrees to hold harmless, indemnify, and defend the Board and its members, agents, and employees from any and all claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation, including the Contractor itself ("Claims"), which are the result of, or are caused by, any act or omission of negligence, or any willful misconduct by Contractor or any supplier, contractor, or subcontractor furnishing work, services, or materials to Contractor under the control of Contractor, in connection with the

performance of this Contract. The Board will provide Contractor with prompt written notice of any such Claims, and, to the extent not prohibited by law, the Contractor shall have the right to manage and control the defense and/or settlement of any such Claims. This provision survives termination of this Contract.

Unless waived in writing by the Contract Administrator, Contractor shall maintain during the term of this Contract policies of primary insurance covering the following risks and in at least the following amounts: commercial general liability, including bodily injury, property damage, personal injury, products and completed operations, and contractual, \$1,000,000; and automobile liability, \$1,000,000. Contractor shall furnish to the Contract Administrator certificates of insurance evidencing this coverage and naming the Board as an additional insured under Contractor's blanket endorsement. Additionally, as applicable, Contractor shall maintain workers compensation coverage with limits required by law; and professional errors and omissions coverage with minimum limits of \$1,000,000. Contractor shall furnish certificates of insurance evidencing this coverage to the Contract Administrator.

ARTICLE VI Equal Opportunity

During the performance of this Contract, Contractor agrees that Contractor shall not discriminate against any employee, applicant or subcontractor because of race, color, national origin, age, religion, marital or parental status, political affiliations or beliefs, sex, sexual orientation, gender identity, gender expression, veteran status, genetic information, disability, or limitations related to pregnancy, childbirth, or related medical conditions. If the Contract Amount is paid from federal funds, this Contract is subject to Executive Order 11246 of September 24, 1965 and in such event the Equal Opportunity Clause set forth in 41 Code of Federal Regulations 60-1.4 is hereby incorporated by reference into this Contract as if set forth in full herein.

ARTICLE VII Prohibition of Conflicts of Interest

It shall be a breach of this Contract for Contractor to commit any act which is a violation of the provisions of Article XI of the Regulations entitled "Ethics and Standards of Conduct," or to assist or participate in or knowingly benefit from any act by any employee of the Board which is a violation of such provisions.

ARTICLE VIII Changes

The Board and Contractor may at any time, by mutual agreement set forth in a written addendum, make changes in the definition of the Services; the scope of the Services; and the Contract Amount. The Contract Administrator and Contractor may, at any time, by mutual agreement set forth in a written addendum, make changes in the time within which the Services are to be performed; the schedule of Progress Payments; and mutual Termination of the Contract.

ARTICLE IX Termination for Convenience of the Board

The Board may terminate this Contract in whole or in part at any time by giving written notice to Contractor of such termination and specifying the effective date thereof, at least thirty (30) days before the specified effective date. The Board shall compensate Contractor for Services satisfactorily performed through the effective date of termination.

ARTICLE X Termination for Default

The Board may, by written notice of default to Contractor, terminate the whole or any part of this Contract, if Contractor breaches any provision of this Contract, or so fails to make progress as to endanger performance of this Contract, and in either of these circumstances, does not cure the breach or failure within a period of thirty (30) days after receipt of notice specifying the breach or failure. In the event of termination for default, the Board may secure the required services from another contractor. The rights and remedies of the Board provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

ARTICLE XI Disputes

Any differences or disagreements arising between the Parties concerning the rights or liabilities under this Contract, or any modifying instrument entered into under Article VIII of this Contract, shall be resolved through the procedures set out in the Regulations.

ARTICLE XII Contractor's Work Product

Unless waived in writing by the Contract Administrator, the Board shall retain ownership in and the rights to any reports, research data, creative works, designs, recordings, graphical representations or other works of a similar nature that are specifically developed by Contractor for the Board under this Contract (hereinafter "Works"), subject to any limited use rights granted to third parties for any permissioned work(s) included in the materials. Contractor agrees that any such specifically developed Works are "works for hire" and Contractor assigns all right, title and interest in such specifically developed Works to the Board. Notwithstanding the foregoing, Contractor retains all rights, including all intellectual property rights and licensed rights, in any of the software or training products, whether provided in print or digital format, and any materials or derivative works, enhancements, modifications, translations, revisions thereto included in the final deliverables (except any specifically developed Works) that Contractor provides to the Board pursuant to this Contract. Except as otherwise specified herein above, products and materials furnished by the Contractor to the Board under this Contract are provided under a non-exclusive limited license, and are not "works for hire" under U.S. copyright law. Title to such products and materials does not transfer to the Board and the Board is prohibited from making copies or preparing any derivative works of them.

Any reports, information, data, etc. given to or prepared or assembled by Contractor under this Contract shall not be made available to any individual or organization by Contractor without the prior written approval of the Board. Provided, nothing in this Article may be used to violate the provisions of any Kentucky or Federal statute or regulation which requires reporting of information.

ARTICLE XIII Contract Administrator

The Board shall appoint a Contract Administrator for the purposes of daily administrative decision-making pertaining to the Contract. If Contractor and the Contract Administrator disagree on any circumstance or set of facts pertaining to the administration or execution of this Contract, the Board shall resolve the matter after notification by either the Contract Administrator or the Contractor in the manner prescribed by the Regulations. If the Board fails to give notice to Contractor of the appointment of a Contract Administrator, the Contract Administrator shall be the Board's Chief Financial Officer.

ARTICLE XIV Right to Audit

The Board shall have the right to inspect and audit all accounting reports, books or records ("Records") which concern the performance of the Services. Inspection shall take place during normal business hours at Contractor's place of business. Contractor shall retain all records relating to the performance of this Contract for five (5) years after the end of the term of this Contract. The Board may exercise its right to audit Contractor's Records once within each twelve-month period, and the Board will provide the Contractor with at least fourteen (14) days advance written notice of any such audit. The Contractor shall have the right to require that any third-party engaged by the Board to assist or participate in any such audit shall be required to execute a confidentiality agreement in favor of Contractor.

ARTICLE XV Miscellaneous

- A. All Articles shall be construed as read, and no limitation shall be placed on any Article by virtue of its descriptive heading.
- B. Any notices or reports by one Party to the other Party under this Contract shall be made in writing, to the address shown in the first paragraph of this Contract, or to such other address as may be designated in writing by one Party to the other. Notices shall be effective when received if personally delivered, or three days after mailing if mailed.
- C. If any part of this Contract is held to be void, against public policy or illegal, the balance of this Contract shall continue to be valid and binding.
- D. This Contract shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky.
- E. No delay or omission by either Party in exercising any right under this Contract shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of this Contract.
- F. At all times during the term of this Contract, Contractor shall comply with the Family Educational Rights and Privacy Act of 1974. If Contractor has access to student records, Contractor shall limit its employees' access to those records to persons for whom access is essential to perform this Contract.
- G. If this Contract requires Contractor and/or any employees of Contractor access to school grounds on a regularly scheduled and continuing basis for the purpose of providing services directly to a student or students, all individuals performing such services under this Contract are required to submit per KRS 160.380 to a national and state criminal history background check by the Department of Kentucky State Police and the Federal Bureau of Investigation and have a letter, provided by the individual, from the Cabinet for Health and Family Services stating no administrative findings of child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services.
- H. Contractor shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Contractor or subcontractor for the duration of this Contract and shall reveal any final determination of a violation by the Contractor or subcontractor of the preceding KRS Chapters.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract to be effective as of June 29, 2022.

Contractor's Social Security Number or Federal Tax ID Number:

JEFFERSON COUNTY BOARD OF
EDUCATION

By: _____

Title: Martin A. Pollio, Ed.D.
Superintendent

NCS PEARSON, INC.
CONTRACTOR

By: *Randall T. Trask*
Randall T. Trask (May 24, 2022 10:01 MDT)

Title: Randall T. Trask
Senior Vice President

Cabinet Member: Dr. Dena Dossett

(Initials)

Jefferson County Public Schools
**NONCOMPETITIVE NEGOTIATION
DETERMINATION AND FINDING**

1. An emergency exists which will cause public harm as a result of the delay in competitive procedures (Only the Superintendent shall declare an emergency.) —

State the date the emergency was declared by the superintendent: _____

2. There is a single source for the items within a reasonable geographic area —

Explain why the vendor is a single source: _____

3. The contract is for the services of a licensed professional, education specialist, technician, or an artist —

State the type of service: Education Specialist: Software License

4. The contract is for the purchase of perishable items purchased on a weekly or more frequent basis —

State the item(s): _____

5. The contract is for proprietary item(s) for resale: This can include the buying or selling of item(s) by students when it is part of the educational experience —

State the type(s) of item(s): _____

6. The contract is for replacement parts when the need cannot be reasonably anticipated and stockpiling is not feasible —

State the item(s): _____

7. The contract or purchase is for expenditures made on authorized trips outside the boundaries of Jefferson County Public Schools —

State the location: _____

8. The contract is for a sale of supplies at reduced prices that will afford Jefferson County Public Schools a savings (Purchase must be approved by Director of Purchasing) —

Explain the logic: _____

9. The contract is for the purchase of supplies which are sold at public auction or by receiving sealed bids —

State the items: _____

I have determined that, pursuant to K.R.S. 45A. 380, the above item(s) should be obtained by the Noncompetitive Negotiation Methods since competition is not feasible.

Dr. Dena Dossett

Print name of person making Determination

Research & Systems Improvement

School or Department

Signature of person making Determination

Date

NCS Pearson, Inc.

Name of Contractor (Contractor Signature Not Required)

Requisition Number

Explanation of Noncompetitive Negotiation Methods can be found under K.R.S. 45A.380 and on page 15 in the Procurement Regulations

F-471-1

Revised 05/2011



Pearson

QUOTE / PROFORMA

Customer Bill-to:

JEFFERSON COUNTY PUBLIC
SCHOOLS
PO BOX 35340
LOUISVILLE KY, 40232-5340

Attention:**Customer Ship-to:**

JEFFERSON COUNTY PUBLIC SCHOOLS
ACCOUNTS PAYABLE
PO BOX 35340
LOUISVILLE KY, 40232-5340

Attention:**NCS Pearson, Inc.**

P.O Box 599700,
San Antonio, TX 78259
Tel: 800-627-7271
Tax ID No:
41-0850527

Quote/Proforma Number : 157864
Date : 27-APR-2022
Customer Account# : 3840794
Sales Order Number : 157864
Customer PO# :
Currency : USD
Shipment Terms : Paid
Customer Tax Number :
Number of Pages : Page 1 of 3

Prices will be honored for 60 days from price quote date.

This price quote does not guarantee stock availability and shipping amount is estimated, standard shipping charges apply.

Total Ordered Quantity (No. Of Items) :			REMITTANCE INFORMATION	
24015			Make Checks Payable to:	Bank Wire to:
Other Charges : USD \$0.00			13036 COLLECTION CENTER DRIVE	Bank of America N A
Net Amount : USD \$248,500.00			CHICAGO	071000039
Tax Total : USD \$0.00			60693	A/C No: 8188105388
Quote/Proforma Total : USD \$248,500.00			NCS Pearson, Inc.	SWIFT : 071000039
Amount Due : USD \$248,500.00				



Quote/Proforma Number: 157864						Page 2 of 3
Item Number	Item Description	Quantity	Unit Price	Discount	Tax	Line Total
0150018304	NNAT3 ONLINE LICENSE - PLATFORM	24000	10.35	NET	0.00	\$248,400.00
0150017391	NNAT3 LEVEL A FORM 1 CONS BOOKLET-HANDSCORE	1	7.25	NET	0.00	\$7.25
0150017405	NNAT3 LEVEL A FORM 2 CONS BOOKLET-HANDSCORE	1	7.25	NET	0.00	\$7.25
0150017413	NNAT3 LEVEL B FORM 1 CONS BOOKLET-HANDSCORE	1	7.25	NET	0.00	\$7.25
0150017448	NNAT3 LEVEL B FORM 2 CONS BOOKLET-HANDSCORE	1	7.25	NET	0.00	\$7.25
0150017464	NNAT3 LEVEL C FORM 1 CONS BOOKLET-HANDSCORE	1	7.25	NET	0.00	\$7.25
0150017472	NNAT3 LEVEL C FORM 2 CONS BOOKLET-HANDSCORE	1	7.25	NET	0.00	\$7.25
0150017480	NNAT3 LEVEL D FORM 1 CONS BOOKLET-HANDSCORE	1	7.25	NET	0.00	\$7.25
0150017499	NNAT3 LEVEL D FORM 2 CONS BOOKLET-HANDSCORE	1	7.25	NET	0.00	\$7.25
0150017839	NNAT3 LEVEL C FORM 1 REUSE BOOKLET-HANDSCORE	1	6.00	NET	0.00	\$6.00
0150017847	NNAT3 LEVEL C FORM 2 REUSE BOOKLET-HANDSCORE	1	6.00	NET	0.00	\$6.00
0150017855	NNAT3 LEVEL D FORM 1 REUSE BOOKLET-HANDSCORE	1	6.00	NET	0.00	\$6.00
0150017863	NNAT3 LEVEL D FORM 2 REUSE BOOKLET-HANDSCORE	1	6.00	NET	0.00	\$6.00
0150017871	NNAT3 LEVEL E REUSE BOOKLET-HANDSCORE	1	6.00	NET	0.00	\$6.00
0150017898	NNAT3 LEVEL F REUSE BOOKLET-HANDSCORE	1	6.00	NET	0.00	\$6.00
015001791X	NNAT3 LEVEL G REUSE BOOKLET-HANDSCORE	1	6.00	NET	0.00	\$6.00

*** IMPORTANT CUSTOMER MESSAGES ***

NNAT3 EXISITNG CUSTOMER PRICE QUOTE ONLY

QUOTE/PROFORMA TOTALS	Subtotal	Total Other Charges	Total Tax	Total Due
	USD	USD	USD	USD
	\$248,500.00	\$0.00	\$0.00	\$248,500.00



By placing your order, you hereby agree to the Terms and Conditions which govern your purchase:
<https://www.pearson.com/en-us/legal-information/business-purchasers-terms.html>