



The School District of Philadelphia

visit our web site at: www.phila.k12.pa.us/purchasing

E-mail: purchasing@phila.k12.pa.us

Office of Procurement Services

School District of Philadelphia Education Center

440 N. Broad Street, Philadelphia, PA 19130

Office: 215.400.4380, Fax: 215.400.4381

INSTRUCTIONS FOR ON-LINE BID PACKAGES

Please note that all Advertised Sealed Bids and/or Request for Proposals (RFP's) accessed and printed from this site "must" be mailed to:

**THE SCHOOL DISTRICT OF PHILADELPHIA
PURCHASING DEPARTMENT SEALED BIDS
P.O. BOX 8127
PHILADELPHIA, PA 19101-8127**

or hand delivered to our Bid Reception Room G2 located on the ground floor 15th Street Entrance at the SDP Education Center, 440 N. Broad Street, Philadelphia, Pennsylvania 19130. Bids sent via non-U.S. Postal Service package delivery services must deliver to and be accepted at our Bid Reception Room G2 at the School District of Philadelphia, Education Center. They may not be submitted via the internet, via e-mail or faxed. The format of the envelope that must be used to mail your completed Advertised Sealed Bid is shown on page ii of each Sealed Advertised Bid Document. Bidders must fill in the Bid number and the due date (from the Bid) in the spaces provided.

NOTE: The preferred method of requesting a bid is through our website

NAME OF BIDDER: _____

ADDRESS: _____

ADDRESS: _____

ADDRESS: _____

Bids may be hand delivered to SDP Education Center, 440 N. Broad St, Phila., PA 19130

BID NUMBER _____

FOR _____

DUE DATE: _____ UNTIL 11:00 A.M.

**THE SCHOOL DISTRICT OF PHILADELPHIA
PURCHASING DEPARTMENT SEALED BIDS
P.O. BOX 8127
PHILADELPHIA, PA 19101-8127**

THE SCHOOL DISTRICT OF PHILADELPHIA
OFFICE OF PROCUREMENT SERVICES

SCHOOL DISTRICT STAMP AREA

INVITATION FOR BID AND CONTRACT FORM
(REQUIREMENTS OR BLANKET PURCHASE AGREEMENTS)

ATTENTION:

1. **THIS IS NOT A PURCHASE ORDER.**
2. READ ALL INSTRUCTIONS, TERMS AND CONDITIONS **CAREFULLY.**
3. FAILURE TO COMPLY WITH THE MANDATORY REQUIREMENTS WILL RESULT IN **REJECTION** OF YOUR BID.

BID NUMBER: A10-33713	DATE ISSUED: 3-23-2010	SIGNED BIDS MUST BE RECEIVED BY 11:00 A.M. ON: Month April Day 20, Year 2010	BUYER: Harry Smith/ke
DELIVERY LOCATION: 90x: Various Locations		CONTRACT PERIOD: FROM: date of award TO: 2 years	CASH DISCOUNT OFFERED:
GOODS OR SERVICES REQUIRED: BPA: Plumbing Supplies			

USE ENCLOSED ENVELOPE

**RETURN ALL PAGES OF THIS SEALED BID
IDENTIFIED WITH LABEL TO:**

SCHOOL DISTRICT OF PHILADELPHIA

OFFICE OF PROCUREMENT SERVICES

440 NORTH BROAD STREET, ROOM G2

PHILADELPHIA, PA 19130-4015

BIDDING INSTRUCTIONS:

1. SEALED BIDS FOR FURNISHING THE SPECIFIED GOODS AND/OR SERVICES ARE TO BE SUBMITTED TO THE BID RECEPTION ROOM G2, LOCATED ON THE GROUND FLOOR, 15TH STREET ENTRANCE, 440 NORTH BROAD ST, PHILADELPHIA, PA., 19130-4015 UNTIL THE DATE AND TIME SPECIFIED ABOVE. **ALL BIDS RECEIVED AFTER THE SPECIFIED TIME AND DATE WILL BE REJECTED.**
2. BIDDERS MUST QUOTE F.O.B. DESTINATION FREIGHT PREPAID AND ALLOWED.
3. BIDS MUST BE FOR A FIRM FIXED PRICE UNLESS OTHERWISE REQUESTED IN THE INVITATION FOR BID (I.F.B.).
4. BIDS MUST BE SUBMITTED ON THE BID/CONTRACT FORM PROVIDED WITH THIS I.F.B. FAILURE TO SUBMIT YOUR BID ON THIS FORM WILL RESULT IN **REJECTION OF YOUR BID.**
5. BIDS MUST BE SIGNED IN THE SPACE PROVIDED ON THIS FORM. FAILURE TO SIGN YOUR BID WILL LEAD TO **REJECTION OF YOUR BID.**
6. PAYMENT DISCOUNTS WILL NOT BE USED IN DETERMINING THE LOWEST RESPONSIBLE BIDDER.
7. THE TERMS AND CONDITIONS OF THIS INVITATION, INCLUDING ALL GENERAL CONDITIONS, PLUS ANY SPECIAL CONDITIONS ENUMERATED HEREIN, SHALL BE PART OF THE CONTRACT(S) RESULTING FROM THIS BID.
8. IN THE EVENT OF AN ERROR IN EXTENSIONS OR FOOTING, UNIT PRICES SHALL PREVAIL.

REQUIREMENTS CONTRACT TERMS AND CONDITIONS:

1. PRICES QUOTED ARE TO REMAIN FIRM FOR THE TERM OF THE CONTRACT. QUANTITIES ARE ESTIMATED. THE SCHOOL DISTRICT RESERVES THE RIGHT TO PURCHASE MORE OR LESS THAN THE ESTIMATED QUANTITY DURING THE TERM OF THE CONTRACT WITH NO MINIMUM OR MAXIMUM GUARANTEED.
2. PURCHASE ORDERS WILL BE ISSUED AS REQUIRED IN VARIOUS LOT SIZES DURING THE TERM OF THE CONTRACT FOR DELIVERY TO VARIOUS SCHOOLS, TO OUR WAREHOUSE AND OTHER SCHOOL DISTRICT LOCATIONS. DELIVERY DATES MAY BE SCHEDULED FOR UP TO SIX (6) MONTHS AFTER EXPIRATION OF THE CONTRACT.
4. VENDOR AGREES TO ACCEPT CONTRACT ORDERS FROM INDIVIDUAL SCHOOLS AND OFFICES ON AUTHORIZED PRENUMBERED PURCHASE ORDER FORMS.

BIDDER CHECK LIST

HAVE YOU:

1. SIGNED YOUR BID: ☐
2. FILLED OUT ALL APPLICABLE FORMS:..... ☐
3. INCLUDED ALL REQUIRED DOCUMENTS:..... ☐
4. RETURNED ORIGINAL BID DOCUMENTS:..... ☐
5. ENTERED PRICE AND DELIVERY ON ALL ITEMS:..... ☐
6. SIGNED AFFIDAVIT (S):..... ☐
7. INCLUDED BID BOND (IF REQUIRED):..... ☐

THE UNDERSIGNED BIDDER HAS CAREFULLY READ AND UNDERSTANDS THE TERMS AND CONDITIONS OF THIS I.F.B. AND ITS ACCOMPANYING DOCUMENTS AND HEREBY AGREES TO FURNISH THE GOODS AND/OR SERVICES AND ALL INCIDENTAL WORK CONTEMPLATED HEREIN IN ACCORDANCE WITH THE TERMS AND CONDITIONS AND CONTRACT PROVISIONS AT THE PRICES STATED HEREIN.

BIDDER:

ADDRESS:

ENTITY: ☐ CORPORATION ☐ PROPRIETORSHIP ☐ PARTNERSHIP
☐ MBE ☐ WBE

TAX I.D. NO.:

STATE OF INCORPORATION:

PRINT AUTHORIZED NAME:

AUTHORIZED SIGNATURE:

PHONE NO.:

TITLE

DATE:

CONDITIONS OF BIDDING

1. Bids must be submitted on this form and signed by the bidder. No Bid shall be withdrawn for 90 days. The School Reform Commission (SRC) may accept this bid any time within the said 90 days, or later if agreed to by the SRC and bidder.

Changes, alterations, or interlineations in the bid may void the bid entirely.

2. (a) Bids must show unit and total price, but where the figures are irreconcilable, awards will be made on the basis of unit price. The School District is exempt from the payment of any federal excise or transportation taxes and is excluded from the provision of the Pennsylvania Sales Tax. The bid price must be net exclusive of taxes.

(b) A bidder agrees that the SRC may make its award for one or for more than one of the articles, or may make its award for all of the articles set forth in the specifications hereon. The SRC has the right to accept or reject all or any portion of any bid submitted and to make the award in the best interest of the School District of Philadelphia.
3. All articles must be delivered at the bid price which includes transportation charges, and at the place(s) set forth in the specification inside building at the first floor level unless otherwise specified.
4. When a formal, numbered specification is referred to in this invitation no deviation therefrom will be permitted and the bidder will be required to furnish articles in conformity with that specification. When catalogues, models or cuts are listed in the invitation, they are, unless otherwise specified, included for the purpose of furnishing bidders with information concerning the style, type or kind of article desired and a bidder may offer an article which he certifies to be equal in quality, performance and other essential characteristics. In so doing the bidder must set forth a complete description of the article proposed to be furnished and may also be required to furnish the article described in the invitation.
5. Where SRC sample is indicated in the specification, unless otherwise stated such sample may be seen at the Education Center at 440 N. Broad Street. Samples provided by the bidder shall be removed at his expense within 30 days after the awarding of a bid after such time they may be stored at his risk and expense or may be deemed abandoned property and disposed of as such. The SRC shall not be responsible for any samples which may be destroyed or damaged in examination.
6. Full tare must be allowed on delivery weights. No charge will be made for packaging except when provided for in the specification. Weigher's certificate will accompany invoices whenever the Senior Vice President, Procurement Services may so require.
7. Any vendor of goods, wares and merchandise, or purveyor of services, who has been awarded a contract by the School District of Philadelphia, will be liable for payment of one or more of the following taxes: Mercantile License Tax, Net Profits Tax, City Wage Tax or General Business Tax. Successful bidder, if not already paying the aforesaid taxes, is required to apply to the Department of Revenue, Room 240, Municipal Services Building, 15th Street and John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19107, for an account number, and to file appropriate business tax returns as provided by law.
8. The successful bidder will be required to enter into a contract with the School District that consists of (1) the District's Invitation for Bid; (2) the District's Standard Terms and Conditions attached as Exhibit A; and (3) the Contractor's Bid. By submitting a bid, Contractor agrees to be bound by the District's Invitation for Bid and the District's Standard Terms and Conditions and the content of its bid.
9. The School District may, at its sole discretion, extend the contract for an additional period of up to six (6) months, commencing as of the expiration of the contract period, in order to ensure continuity in the provision of goods or services pending the award of a new contract.

ALL BIDS MUST BE SIGNED IN THE SPACE PROVIDED. FAILURE TO PROPERLY SIGN YOUR BID WILL BE CONSIDERED A MATERIAL OMISSION AND YOUR BID WILL BE REJECTED.

Please be advised that vendor bidding by FAX machine or e-mail is not acceptable. If bids are received by FAX or e-mail, they will be rejected.

The SRC will not be responsible for any oral communications, explanations, or interpretations of the attached bid specifications. Interpretation of the attached specifications may be made only by an addendum or bulletin issued by the Office of Procurement Services for the School District of Philadelphia. A copy of said addendum or bulletin will be e-mailed or delivered to each vendor. A record will be maintained on persons to whom these documents have been e-mailed or delivered. If any bidder is in doubt as to the meaning of any part of the attached specifications or contract language; he may submit to the Senior Vice President, Procurement Services a written request for interpretation. All responses must be in form of written addendum to be binding on the School District of Philadelphia.

The contractor shall be responsible for assuring that his own employees, his subcontractors and his subcontractor's employees shall have no direct contract with and shall identify themselves and check in at the school or administrative offices upon arrival and check out departure.

WORKER AND COMMUNITY RIGHT-TO-KNOW ACT MATERIAL SAFETY DATA SHEETS (MSDS)

The bidder does hereby agree that he will fully comply with all requirements and mandates of the Worker and Community Right-to-Know Law 35 P.S. 7301 et-seq. (The Act), and the regulations promulgated pursuant to the Act, 35 PA Code chs. 301, 305, 307, and 309, and any amendments. The bidder will furnish all applicable Material Safety Data Sheets (MSDS) with bid or upon request by the School District of Philadelphia. Vendors must agree to include all required MSDS sheets with each shipment.

DISCRIMINATION

The successful bidder shall not discriminate nor permit discrimination against any person because of race, color, religion, age, natural origin, ancestry, creed, handicap, sexual orientation, union membership, disabled or Vietnam era veteran status, or limited English proficiency in the performance of this contract, including but not limited to preparation, manufacture, fabrication, installation, erection and delivery of all supplies and equipment. In the event of receipt of such evidence of such discrimination by the successful bidder, or its agents, employees or representatives of the School District shall have the right to terminate this contract. In the event of the continued refusal on the part of the bidder to comply with this anti-discrimination provision, the contractor may be removed from the list of approved bidders of the School District.

The successful bidder is to include subparagraph (1) with appropriate adjustments for the identity of the parties in all subcontracts which are entered into for work to be performed pursuant to this contract.

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Education Center
440 N. Broad Street, Philadelphia, PA 19130
Office: 215.400.4380, Fax: 215.400.4381
E-mail: purchasing@phila.k12.pa.us

Email Alert!!

In order to help streamline our bid process and control costs the Office of Procurement Services has made a decision to move toward sending bid solicitations by way of email. In order to ensure that your vendor file has complete information and to ensure that you will receive bid solicitations in this manner in the future please provide the correct email address where these bid solicitations should be sent. Thank you.

My Email address is: _____

EXHIBIT "A"
SCHOOL DISTRICT
STANDARD TERMS AND CONDITIONS

1. General Conditions of the Work.

a. *Standard of Performance.* In carrying out the Work, the Contractor shall exercise the highest degree of competence and diligence exercised by providers in the Contractor's field. The Contractor shall cooperate with the School District and all other Persons contracting with the School District whose work affects the Contractor's Work. The Contractor shall perform all Work under this Contract to the satisfaction of the School District.

b. *Compliance with Applicable Law.* The Contractor shall comply with all Applicable Law in connection with this Contract.

c. *Warranty.* To the extent that the Work includes the sale or the furnishing of Materials, the Contractor warrants that the Materials shall be good, free of defects, merchantable and fit for the particular purposes for which the School District intends to use them.

d. *Contractor Responsibility for Quality of the Work.* Payment by the School District or acceptance of the Work, including any Materials, shall not relieve the Contractor of responsibility for the substance and quality of all Materials and Work. Without any additional compensation, the Contractor shall diligently and expeditiously correct any errors, deficiencies or omissions in the Work, including any Materials, and shall remain liable in accordance with this Contract and Applicable Law for all damages to the School District caused by the Contractor or the Work, including any Materials.

e. *Contractor Staff.* The Contractor shall not assign any Person dismissed from School District employment to perform any Work under this Contract. The Contractor shall reassign from any Work any employee within seven (7) days if the Responsible Official notifies the Contractor in writing that, in the opinion of the Responsible Official, the employee is incompetent or incapable of carrying out any part of the Work assigned to such Person.

f. *Meetings.* Upon seventy-two (72) hours prior notice from the School District, the Contractor shall attend any meetings requested by the School District, at a location to be determined by the School District.

g. *Site License(s).* To the extent that Exhibit "A" to this Contract requires the Contractor to carry out any portion of the Work on premises of the School District, the School District, subject to the terms, covenants and conditions set forth in this Contract, hereby grants the Contractor a limited, revocable license to use such School District premises, and only such School District premises, as are expressly provided or by necessary implication required in order for the Contractor to complete the Work in conformity with the requirements of this Contract. The School District shall have the right at any time and for any reason to terminate the foregoing license. The Contractor covenants and agrees to comply with all rules and regulations concerning the use of School District premises imposed by the School District, including but not limited to rules and regulations set by a principal concerning his or her school. The Contractor shall promptly repair any and all damage to School District premises caused by the Contractor or any of the Contractor's officers, agents, employees or Subcontractors.

2. **Background Checks.** In accordance with 24 P.S. § 1-111, as amended, and 23 Pa. C.S.A. §§ 6354-6358, as amended, before starting any Work, the Contractor shall submit to the School District the originals of a current (*i.e.*, processed by the Commonwealth of Pennsylvania within one (1) year prior to the Contractor's starting Work) criminal history record information report and child abuse history official clearance statement for the Contractor, if the Contractor is an individual, and for each of the Contractor's and any of its Subcontractor's employees, officers, agents, servants, volunteers or Subcontractors who will have direct contact with children while performing any of the Work. Commonwealth Board of Education regulations define "direct contact"; see 22 Pa. Code § 8.1. Before starting any Work, the Contractor shall submit to the School District the original of a current report of the Federal Bureau of Investigation federal criminal history record information for the Contractor, if the Contractor is an individual, and for each of the Contractor's and any of its Subcontractor's employees, officers, agents, servants, volunteers or Subcontractors who will have direct contact with children while performing any of the Work.

3. Compensation, Invoices.

a. *Invoices Exclusive of Taxes.* Invoices shall be exclusive of state or local sales, use or gross receipts taxes, and

federal excise taxes. The School District's Pennsylvania Sales Tax Blanket Exemption Number is 76-51500-1; its Federal Tax ID Number is 23-6004102; and its Federal Excise Tax Number is 23-63-0021-K.

b. *Support for Invoices.* If the Contractor, after a request by the School District, does not provide evidence satisfactory to the School District supporting any item set forth on an invoice, the School District shall have no liability to make any payment with respect to such an item. If the School District has already made such a payment, the School District may by notice to the Contractor require the Contractor to refund to the School District the amount of any such overpayment, or the School District, at its option, may set off such overpayment against any payments accruing thereafter to the Contractor under this Contract or any other contract between the Parties.

4. ***Favored Nation.*** The Contractor shall perform the Work at the lowest price the Contractor charges to other school districts or other governmental entities for like work. If the School District pays a price for the Work in excess of the lowest price the Contractor charges or has recently charged to a governmental entity, in addition to all other remedies, the School District shall have a right, as damages, to a refund equal to the difference between the price charged to the School District and the lowest price the Contractor charges or has recently charged to another governmental entity, together with interest at a rate equal to the prime rate of interest as published from time to time by the *Wall Street Journal*, plus five percent (5.0%).

5. ***Unavailability of Funds, Crossing Fiscal Years.***

a. *Unavailability of Funds.* In the event the School District, in its sole determination, does not or cannot obtain or continue the funding for this Contract from any source or sources at an aggregate level sufficient to allow for payment for the Work, the School District may exercise one of the following alternatives: (1) terminate this Contract effective upon a date specified in a Termination Notice; or (2) continue this Contract by reducing, through written notice to the Contractor, the amount of this Contract and the scope of the Work, consistent with the nature, amount and circumstances of the loss of funding. Any termination or reduction of this Contract pursuant to this subsection shall not affect any obligations or liabilities of either Party accruing prior to such termination or reduction. The School District shall not face any liability or penalty as a result of such termination or reduction of this Contract.

b. *Crossing Fiscal Years.* If the School District will pay any portion of the Compensation in any School District fiscal year subsequent to the current fiscal year (the School District's fiscal year is July 1 – June 30), the portion of the Compensation that may accrue hereunder in a subsequent fiscal year remains subject to legally mandated budget authorization by the School Reform Commission, or the Board of Education, as the case may be, of the School District, under Applicable Law. If for any reason funds for that portion of the Compensation that may accrue hereunder in a subsequent fiscal year are not continued in any subsequent School District fiscal year, this Contract and the School District's liability under this Contract shall automatically terminate at the end of the fiscal year for which the School Reform Commission or the Board of Education, as the case may be, authorized funds.

6. ***Grant-Funded Contracts; Trust-Funded Contracts.***

a. *Compliance with Grant.* If the School District pays for all or any portion of the Work with funds received by the School District as grants or under other terms and conditions from any source, including the United States of America, the Commonwealth of Pennsylvania, The City of Philadelphia (the "City"), or any department or agency of said governments, or from any public or private charitable trust fund, then the Contractor shall comply with the terms of the applicable grant agreement, contract or trust indenture, as the case may be, in carrying out the Work, and the School District shall comply with the terms of said grant agreement, contract or trust indenture, as the case may be, in making any payment or payments hereunder to the Contractor. The Contractor shall not take any action, or omit to act, if such act or omission would cause a breach or default under any such grant agreement, contract or trust indenture.

b. *Timely Submission of Invoices.* If the School District pays any of the Compensation from federal government or Commonwealth of Pennsylvania grant funds, the Contractor shall bill the School District for any outstanding compensation owed to the Contractor within thirty (30) days after the end of the Term (see Section 3 of the Agreement for Services). In the event the Contractor does not bill the School District for the balance of any compensation within said thirty (30) day period, the School District reserves the right to withhold payment of the balance of the Compensation to the Contractor based upon the unavailability of federal government or Commonwealth of Pennsylvania funds, in which event the School District shall have no liability to the Contractor for said balance of the Compensation.

7. ***Independent Contractor.*** The School District has engaged the Contractor as an independent contractor to carry out the Work, and neither the Contractor nor any of the Contractor's agents, employees or Subcontractors shall in any way or for

any purpose whatsoever be deemed an agent or employee of the School District. Neither the Contractor nor any of its agents, employees or Subcontractors constitute employees of the School District, and shall have any right to receive School District any employee benefits or any other privileges available to School District employees. Neither the Contractor nor its agents, employees or Subcontractors shall represent themselves in any way as agents or employees of the School District, and none of the Contractor, its agents, employees or Subcontractors has any power to legally bind the School District to any third party.

8. **Non-Discrimination.** The Contractor, for itself, its officers, agents, employees and Subcontractors, covenants and agrees that it shall not discriminate against or intimidate any employee or other Person on account of age, race, color, sex, sexual orientation, handicap, disability, religious creed, ancestry, national origin or Vietnam-era or any other veteran status. The School District is an equal opportunity employer under Applicable Law, and requires the same of the Contractor. The School District shall not do business with any Person that unlawfully discriminates on the basis of age, race, color, sex, sexual orientation, handicap, disability, religious creed, ancestry, national origin or Vietnam-era or any other veteran status, or any other impermissible ground in hiring, promotion, subcontracting or procurement practices. The Contractor shall include the first three sentences of this Section 8, with appropriate adjustments for the identity of the parties, in any Subcontracts that it enters into. If the School District has selected the Contractor pursuant to a public solicitation or through a request for proposals (RFP) process and the Contractor submitted a plan describing the participation of minority and women-owned businesses as part of the solicitation or the RFP, then the Contractor shall comply with its participation plan.

9. **Subcontracts.**

a. **School District Consent Required.** The Contractor shall not delegate or enter into any Subcontract for the performance of any of its obligations under this Contract, including any portion of the Work, in whole or in part, without in each instance first giving notice to and obtaining the written consent of the School District, which consent the School District may grant, withhold, condition or delay in its sole discretion. The School District hereby consents to any Subcontract entered into by the Contractor specifically referenced in Exhibit "A", the Contractor's Statement of Work, to this Contract. Any Subcontract made in violation of this Section shall be null and void. The School District shall have no obligation to any Subcontractor. Each Subcontract shall contain clauses to the effect that (i) the Subcontractor shall have no recourse to the School District for any payment, or for performance under, such Subcontract; (ii) the Subcontractor consents to any assignment of the Subcontract by the Contractor to the School District, at the School District's sole option; and (iii) the Contractor shall make payment to any Subcontractor within five (5) business days after receipt of payment from the School District with respect to work properly invoiced by a Subcontractor to the Contractor and reflected in the payment by the School District to the Contractor.

b. **No Change in the Contractor's Obligations.** The existence of any Subcontract shall not alter or limit the obligations of the Contractor to the School District under this Contract. The Contractor shall at all times remain fully responsible for its Subcontractors, and shall ensure that it legally binds all Subcontractors to the same terms and conditions as the Contractor under this Contract, including without limitation, non-discrimination, warranties, confidentiality, maintenance and preservation of records and audit by government representatives.

10. **Non-Assignment.** The Contractor acknowledges that the Work constitutes personal or professional services, or both, of the Contractor. Except through a Subcontract subject to Section 9 above, the Contractor shall not assign this Contract, or any part of this Contract, nor delegate performance of any part of this Contract, without the prior written consent of the School District, which consent the School District may grant, withhold, condition or delay in its sole discretion. This Contract legally binds the Parties and their respective successors and assigns. Any purported assignment in violation of this provision shall be void and of no effect. The School District's consent to an assignment shall not release the assignor from any liability accrued or thereafter accruing under this Contract. Any assignment shall be in writing and shall contain an express assumption by the assignee of all liability accrued or thereafter accruing under this Contract. Consent by the School District to any assignment shall not constitute a course of conduct, dealing or performance with respect to any other assignment or proposed assignment. For purposes of this Section 10, an assignment includes the acquisition of the Contractor, or a controlling interest therein, through an asset sale or a corporate or other merger, the appointment of a receiver or bankruptcy trustee for the Contractor, and the transfer of this Contract or the Contractor in any bankruptcy or other insolvency-related proceeding. A receiver or trustee of or for the Contractor in any federal or state bankruptcy, insolvency or other proceeding concerning the Contractor shall comply with the requirements set forth in this Contract, including but not limited to this Section.

11. **Audits; Records and Payments.**

a. **Audits.** From time to time during the Term of this Contract, and for a period of six (6) years after the expiration or termination of this Contract (see 24 P.S. § 5-518), the School District, the Controller of the City, the Commonwealth of

Pennsylvania Auditor General or a department, agency or instrumentality of the United States of America, if the School District funds this Contract with federal funds, or any of their authorized representatives (each, for the purposes of this Section, an "Auditor") may audit any and all aspects of the Contractor's performance under this Contract, including but not limited to its billings and invoices. If requested by an Auditor or the School District, the Contractor shall submit to the Auditor and the School District for review or inspection, all invoices presented for payment pursuant to this Contract, all cancelled checks, Materials, invoices, vouchers, reports, work product, work papers, books, records and accounts upon which the invoices are based, and any and all documentation and justification in support of expenditures or fees incurred pursuant to this Contract.

b. *Inspection.* The Contractor acknowledges and agrees that any Auditor may inspect or review all of its Work and Materials, and all of its sites, locations and facilities related to its performance under this Contract. Inspection and review of Work and Materials shall take place at the offices of the Contractor in the City, or in another location with the Auditor's consent. The Contractor shall cooperate with all School District, Commonwealth of Pennsylvania and federal inspections and reviews conducted in accordance with the provisions of this Contract. The scope of such inspection and review of the Work and Materials, and sites, locations and facilities, including, without limitation, programs, lies in the sole discretion of the Auditor. Such inspection or review may include, without limitation, meetings with persons receiving services under this Contract, review of staffing ratios and job descriptions, and meetings with any of the Contractor's staff members who either directly or indirectly participate or participated in carrying out any of the Work, including preparing, delivering or installing any Materials.

c. *Availability of Records.* The Contractor shall make available, in the City at reasonable times during the Term of this Contract and for the period set forth in Section 11.d. below, all records pertaining to this Contract for the purpose of inspection, audit or reproduction by any Auditor. The Contractor shall provide such records without unreasonable delay when requested by an Auditor.

d. *Retention of Records.* The Contractor shall retain all records, books of account and documentation pertaining to this Contract for the greater of the period required by Applicable Law or six (6) years following expiration or termination of this Contract; if, however, any litigation, claim or audit is commenced prior to expiration of said six (6) year period, then the records shall be retained until all litigation, claims or audit findings have been completely terminated or resolved without right of further appeal.

12. Indemnification; Litigation Cooperation; Notice of Claims:

a. *Indemnification.* The Contractor shall indemnify, defend and hold harmless the School District, its officers, employees, agents and the members of the School Reform Commission and the Board of Education, from and against any and all losses, costs (including, but not limited to, litigation and settlement costs and counsel fees and expenses), claims, suits, actions, damages, liability and expenses for or on account of loss of life, bodily injury, personal injury, damage to property, or the use of facilities or equipment furnished to the Contractor arising out of or related to the performance or non-performance of the Work by the Contractor or the Contractor's agents, Subcontractors, assignees, independent contractors, employees or servants. The Contractor shall indemnify, defend and hold harmless the School District, its officers, employees, agents and the members of the School Reform Commission and the Board of Education, from and against any and all losses, costs (including, but not limited to, litigation and settlement costs and counsel fees and expenses), claims, suits, actions, damages, liability and expenses for or on account of the violation of any third party's copyright, trademark, patent, trade secret or other valid proprietary right, contamination or adverse effects on the environment, intentional acts or omissions, failure to pay any Subcontractors or suppliers or any Event of Default under of this Contract or any breach of any Subcontract arising out of or related to the performance or non-performance of the Work by the Contractor or the Contractor's agents, Subcontractors, assignees, independent contractors, employees or servants.

b. *Indemnification; Contractor's Employees.* This Section 12 protects the School District, its officers, employees, agents and the members of the School Reform Commission and the Board of Education from all claims of employees or workers of the Contractor or any Subcontractor who are injured on School District real property or as a result of School District personal property, from the commencement to the completion of this Contract and after. The Parties shall not construe this Section 12 to alter, limit, negate, abridge or otherwise reduce any other right or obligation which would otherwise exist as to any Party or Person described in this Contract. This Section 12 functions independently of the Contractor's or its Subcontractors insurance or lack thereof, and the Parties do not intend that rights set forth in this Section 12 be deemed limited by the Pennsylvania's Worker's Compensation Act. This Section 12 shall apply, particularly, but not exclusively, to the claims of the Contractor and all of its Subcontractors, and all of their respective officers, agents, representatives and employees, against the School District, its officers, employees and agents, and the members of the School Reform Commission and the Board of Education. The Contractor and all of its Subcontractors, and all of their respective officers, agents, representatives

and employees, shall have no claim against the School District, its officers, employees and agents and the members of the School Reform Commission and the Board of Education for the acts, failures to act or negligence of the School District, or its officers, employees and members of the School Reform Commission or Board of Education.

c. *Litigation Cooperation.* If at any time, including after the expiration or earlier termination of the Term of this Contract, the School District becomes involved in a dispute or receives notice of a claim, or is involved in litigation concerning the Work and Materials provided under this Contract, the resolution of which requires the services or cooperation of the Contractor, and the Contractor does not otherwise have a duty to indemnify and defend the School District pursuant to the provisions of subsections 12. a. or 12. b. above, the Contractor shall provide such services and shall cooperate with the School District in resolving such claim or litigation as part of the Work and Materials under this Contract.

d. *Notice of Claims.* If the Contractor receives notice of a legal claim against it in connection with or in any way related to this Contract, the Contractor shall (1) submit appropriate written notice of such claim to its insurance carrier within the time frame required for submission of claims by the applicable insurance policy and, (2) within five (5) business days of receipt of notice of the claim, give notice of such claim to the School District.

13. **School District Statutory Immunity:** Any other term, covenant or condition of this Contract to the contrary notwithstanding, the School District, its officers, employees and agents and the members of the School Reform Commission and the Board of Education, retain their statutory governmental, official and any other immunity provided pursuant to the laws of the Commonwealth of Pennsylvania, including under 42 Pa. C.S.A. §§ 8501 and 8541 *et seq.*, and do not waive the defenses of governmental and official immunity derived from such laws. The School District does not waive for itself or for its officers, employees, agents, or for the members of the School Reform Commission and Board of Education, any other defenses or immunities available to it or any of them.

14. **Insurance.** The Contractor shall, at its own expense, procure and maintain the types and minimum limits of insurance specified below covering the performance of the Work. All insurance shall be procured from reputable insurers who are financially responsible and authorized to do business on an admitted basis in the Commonwealth of Pennsylvania or otherwise acceptable to the School District's Office of Risk Management. The Contractor shall procure all insurance through an insurance carrier or carriers, each of which shall have at least an A- (Excellent) rating from a reputable agency (*e.g.*, A.M. Best). All insurance herein, except the professional liability insurance, shall be written on an "occurrence" basis and not a "claims-made" basis. In no event shall the Contractor commence performing any part of the Work until the Contractor has delivered to the School District the required evidence of insurance. The insurance policies shall provide for at least thirty (30) days prior written notice to the School District in the event the Contractor and its insurer or insurers materially change, cancel or non-renew any insurance policy. The Contractor shall ensure that it names the School District of Philadelphia and its officers, employees and agents shall be named as additional insureds on the general liability insurance policy, and the Contractor shall ensure that its insurer so endorses said policy. The Contractor shall procure an endorsement or endorsements stating that (i) the coverage afforded the School District and its officers, employees and agents as additional insureds shall be primary to any other coverage available to them, and (ii) no act or omission of the School District or its officers, employees and agents shall invalidate the coverage, other than an act or omission that would constitute willful misconduct or gross negligence.

a. *Workers' Compensation and Employer's Liability.* Workers' Compensation limits shall be the statutory limits and employers' liability insurance, with limits of (1) \$100,000 Each Accident-Bodily Injury by Accident; (2) \$100,000 Each Employee-Bodily Injury by Disease; and (3) \$500,000 Policy Limit-Bodily Injury by Disease. Any other states' insurance under this subsection shall include Pennsylvania.

b. *General Liability Insurance.* Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability; \$1,000,000 advertising injury; \$2,000,000 general aggregate and \$2,000,000 aggregate for products and completed operations. The general liability insurance shall cover: premises operations; blanket contractual liability, personal injury liability; products and completed operations; independent contractors, employees and volunteers as additional insureds; cross liability; broad form property damage (including completed operations). The School District may require higher limits of liability if in the School District's sole discretion, the potential risk so warrants.

c. *Automobile Liability Insurance.* Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability arising from owned, non-owned, and hired vehicles when any motor vehicle is used in connection with the Work.

d. *Professional Liability Insurance.* Limit of Liability: \$1,000,000 with a deductible not to exceed \$100,000. The professional liability insurance shall cover errors and omissions, including liability assumed under this Contract. The

Contractor may permit its insurer to write said coverage on a claims-made basis, provided that coverage for occurrences arising out of the performance of the Work required under the Contract shall be maintained in full force and effect under the policy or “tail” coverage for a period of at least two (2) years after completion of the Work.

Certificates of Insurance evidencing the required coverages must specifically reference the School District contract number set forth on the first page of the Agreement for Services (please type this contract number in the ‘Description’ section of the certificate). The Contractor shall deliver the original certificate to:

The School District of Philadelphia
Office of Risk Management
The Education Center
440 North Broad Street
Third Floor
Philadelphia, PA 19130-4015
(215) 400-4590

The Contractor shall deliver the certificate of insurance to the School District at least ten (10) days before any Work or any renewal Term begins. Under no circumstances shall the Contractor actually begin Work (or continue Work, in the case of renewal) without providing the evidence of insurance. The Contractor shall not self-insure any of the coverages required under this Contract without the prior written consent of the School District’s Office of Risk Management. The School District reserves the right to require the Contractor to provide certified copies of the original policies of all insurance required under this Contract at any time upon ten (10) days written notice to the Contractor.

15. Confidentiality, Student Records.

a. *Confidential Information.* The Contractor shall keep in strict confidence all information acquired in connection with or as a result of this Contract that is not generally known to others (“Confidential Information”). During the Term of this Contract and at any time thereafter, without the prior written consent of the School District, the Contractor shall not disclose or use to its advantage, profit or gain any Confidential Information or information which is subject to a third party’s proprietary right, such as a copyrighted or trademarked work.

b. *Student Records.* The Contractor shall keep in strict confidence as required and to the fullest extent required by any Applicable Law, including but not limited to the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (“FERPA”), any and all records and information, in whatever form or format received, pertaining to the School District’s individual students and children, including but not limited to any academic or grade information, attendance, truancy, discipline, receipt of special education services or supplementary educational services, social security or public benefits, or information as to race, ethnicity or disability. The School District shall transmit information or records, or both, protected by FERPA solely to the individual named in Section 7 of the Agreement for Services, and such other duly authorized individuals as the Contractor may specify by notice to the School District (see Section 7 of the Agreement for Services and Section 21 of these Standard Terms and Conditions).

c. *Publication Rights.* With regard to any reports, studies or other works developed in the course of this Contract, or as a result thereof, the Contractor shall not publish Confidential Information or any other information which identifies students, employees or officers of the School District by name without first obtaining written consent from such individuals, or in the case of a student, his or her parent or legal guardian. The Contractor shall provide to the School District for its review any proposed publication, brochure or advertisement in which the School District is named not less than thirty (30) calendar days prior to submission for publication, and the Contractor shall remove the School District’s name or information identifying the School District from the publication if the School District requests removal. The Contractor shall not issue, publish or divulge any Materials developed or used in the performance of this Contract or make any statement to the media relating to the Contract without the prior consent of the School District.

16. Materials, Intellectual Property.

a. *Computer Programs.* The Contractor shall ensure that all of its computer programs, tapes and software developed under this Contract comply with any pertinent specifications or requirements set by the School District.

b. *License.* The Contractor hereby grants, and shall require its Subcontractors, if any, to grant, to the School District the irrevocable royalty-free right to reproduce, distribute copies of, adapt, display, perform, translate, and publish, throughout

the universe, in any medium now known or hereafter invented, all Materials and works of authorship, including without limitation studies, media, curricula, and other things of any nature, that are developed pursuant to this Contract.

17. Conflict of Interest.

a. *Disclosure of Conflict of Interest.* The Contractor represents, warrants and covenants that it has no public or private interest which does or may conflict in any manner with the performance of the Work and that neither it, nor any of its directors, officers, members, partners, employees or Subcontractors, has or shall during the Term acquire, directly or indirectly, any such interest. The Contractor shall promptly and fully disclose to the School District's Responsible Official all interests which may constitute such a conflict.

b. *Improper Gift; Improper Relationship.* The Contractor represents, warrants and covenants that it has not directly or indirectly offered or given and shall not directly or indirectly offer or give any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value to any School District employee who participated in the decision to authorize or enter into this Contract. The Contractor warrants that, to its knowledge, neither a School District employee or officer who participated in the decision to enter into this Contract, nor any member of the employee's immediate family, receives more than \$1,000 per year from the Contractor, has a direct or indirect investment worth \$1,000 or more in the Contractor or is a director, officer, partner, trustee or employee of the Contractor.

c. *School District Employees Not to Benefit.* The Contractor shall not make any payment or give anything of more than nominal value to any School District official or employee except in accordance with Applicable Law and School District policy. The Contractor shall comply with the School District vendor's Code of Ethics, and also, to the extent applicable, with the School District's Code of Ethics for School District officers and employees. The Contractor shall disclose to the School District the name of each School District official or employee who receives payment from the Contractor, the amount such official or employee receives and the services rendered by the official or employee in consideration of the payment.

18. Default; Notice and Cure; Remedies:

a. *Event of Default.* Each of the following constitutes an Event of Default by the Contractor under this Contract:

i. Failure by the Contractor or any Subcontractor to comply with any term, covenant or condition set forth in this Contract.

ii. The Contractor's (a) filing for bankruptcy, (b) making any assignment for the benefit of creditors, (c) consent to the appointment of a trustee or receiver (d) insolvency, as defined by Applicable Law, or (e) the filing of an involuntary petition against the Contractor under the Federal Bankruptcy Code or any similar state or federal law which remains undismissed for a period of forty-five (45) days.

iii. Default under any other agreement the Contractor may have with the School District.

iv. Any material misrepresentation by the Contractor in (A) this Contract, (B) any other document submitted to the School District by the Contractor, or (C) otherwise by the Contractor directly or indirectly to the School in connection with the School District's decision to execute, deliver and perform this Contract.

v. Failure of the Contractor to provide, within five (5) business days, assurance reasonably acceptable to the School District that it can perform the Work in conformity with the terms of the Contract if (1) the School District has a reasonable basis to believe at any time during the Term of the Contract that Contractor will not be able to perform the Work; and (2) the School District demands in writing assurance of the Contractor's performance.

vi. Misappropriation by the Contractor of any funds provided under this Contract or failure by the Contractor to notify the School District upon discovery of any misappropriation.

vii. Indictment of or other issuance of formal criminal charges against the Contractor, or any of its directors, employees, agents or Subcontractors or any of the directors, employees or agents of a Subcontractor or any criminal offense or any other violation of Applicable Law directly relating to this Contract, the Work or the Materials, or which adversely affects the Contractor's performance of this Contract in accordance with its terms, whether or not a court of law or other tribunal ultimately accepts a verdict or plea of guilty or no contest regarding the charged offense.

viii. Debarment or suspension of the Contractor or any director, agent, employee or Subcontractor of the Contractor or any Person controlling, under common control with or controlled by the Contractor under a federal, state or local law, rule or regulation.

b. *Notice and Cure.* If the Contractor commits or permits an Event of Default, the School District shall notify the Contractor in writing of its determination that an Event of Default has occurred. The Contractor shall have ten (10) business days from receipt of that notice, or such additional cure period as the School District may authorize in its sole discretion, to correct the Event of Default; provided, however, that no such notice from the School District or period of cure shall be required before invoking the remedies described in subsection 18.c. if: (1) the Contractor has temporarily or permanently ceased performing the Work; (2) an emergency has occurred relating to the Work, and such emergency requires immediate exercise of the School District's rights or remedies, as determined by the School District in its sole discretion; (3) the School District has previously notified the Contractor more than once in the preceding twelve (12) month period of any Event of Default under this Contract; (4) an Event of Default occurs as described in subsection 18.a. (vi), (vii), or (viii) above; or (5) the Contractor breaches any of its obligations under Sections 2 or 8 of these Standard Terms and Conditions. Nothing contained in this Subsection shall limit the School District's rights under subsection 18.c.

c. *Remedies.* If the Contractor does not cure the Event of Default within the period allowed by the School District, or if the Contractor commits or permits an Event of Default for which subsection 18.b provides no notice or period of cure, then the School District may, without further notice or demand to the Contractor and without waiving or releasing the Contractor from any of its obligations under this Contract, invoke and pursue any or all of the following remedies:

- i. terminate this Contract by giving the Contractor a Termination Notice.
- ii. perform (or cause a third party to perform) this Contract, in whole or in part. The Contractor shall be liable to the School District, as damages, for all expenses incurred by the School District (or a third party) pursuant to this subsection 18.c.(ii), together with interest at the prime rate of interest as published from time to time by the *Wall Street Journal*, plus five percentage points (5.0%). The School District shall not in any event be liable for inconvenience, expense, loss of profits or other damage incurred by the Contractor by reason of the School District's performance or paying such costs or expenses.
- iii. withhold payment of, or offset against, any funds payable to or for the benefit of the Contractor.
- iv. collect, foreclose or realize upon any bond, collateral, security or insurance provided by or on behalf of the Contractor.
- v. any other legal or equitable remedy available to the School District, including but not limited to a legal action for breach and damages against the Contractor.

d. *Specific Performance.* The Work and Materials purchased from the Contractor are unique and not otherwise readily available. Accordingly, the Contractor acknowledges that, in addition to all other remedies to which the School District is entitled, the School District shall have the right to enforce the terms of this Contract by either a decree of specific performance or an injunction, or both, restraining a violation, or attempted or threatened violation, of any provision of this Contract.

e. *Concurrent Pursuit of Remedies.* The School District may exercise any or all of the remedies set forth in this Section 18, each of which may be pursued separately or in conjunction with such other remedies as the School District shall determine. The School District may in its sole discretion elect not to exercise any of the above remedies and may permit the Contractor to continue to perform the Work. No extension or indulgence granted by the School District to the Contractor shall operate as a waiver of any of the School District's rights in connection with this Contract, and the obligations of the Contractor under this Contract shall not be altered or affected in any manner by the School District's exercise of its rights under this Section 18.

19. ***Termination for Convenience.*** The School District may terminate this Contract for its convenience, that is, for any reason or for no reason at all, at any time, at its sole discretion upon fourteen (14) days prior written notice to the Contractor of the School District's intention to terminate this Contract (a "Termination Notice") and without penalty, cost or liability to the School District. If the School District terminates this Contract, the School District shall make payment for any Work satisfactorily completed before the effective date of termination, but in no event shall the Contractor have any right to receive costs caused by or related to loss of profits for Work that the Contractor did not perform because of the early termination, or for

loss of profits for services the Contractor could have performed for other Persons absent its engagement under this Contract.

20. Contractor Actions upon Termination. Upon receipt of a Termination Notice from the School District, the Contractor shall take immediate action to effect the orderly discontinuation of the Work. The Contractor shall collect, assemble and transmit to the School District, at the Contractor's sole expense, all Materials developed under this Contract. The Contractor shall clearly label and index to the satisfaction of the School District all such Materials, and shall deliver all such Materials to the School District within thirty calendar (30) days after receipt of a Termination Notice, or in such shorter period as the School District may specify in its Termination Notice.

21. Notices. Except as may be expressly provided to the contrary in any other Section of this Contract, the Parties shall give all notices, waivers, consents and approvals required under this Contract in writing. Such notices, waivers, consents and approvals shall be deemed to have been duly made (a) when received or refused if delivered by hand with receipt given or refused; (b) on the next business day if delivered by a nationally recognized overnight courier service (e.g., Federal Express, United Parcel Service); (c) on the date confirmed for receipt by facsimile if delivered by facsimile, provided that any notice by facsimile shall be promptly confirmed by one of the other methods set forth in this section; and (d) upon receipt or refusal of delivery if sent by certified or registered United States mail, return receipt requested. In each case notices shall be sent to the Responsible Official and the Contractor at the addresses set forth in Section 7 of the Agreement for Services. The Parties agree that neither shall transmit any notices required under or in connection with this Contract by electronic mail.

22. Representations and Warranties. The Contractor represents and warrants to the School District that:

- a. It has all necessary power and authority to execute, deliver and perform this Contract and has completed all actions necessary in order to duly authorize the execution, delivery and performance of this Contract; including duly authorizing the Person who signs this Contract to do so on its behalf;
- b. This Contract, when executed and delivered, shall be a legal, valid and binding obligation of the Contractor, enforceable against the Contractor in accordance with its terms;
- c. The Contractor is financially solvent, is able to pay all its debts as they mature and is possessed of sufficient working capital to perform the Work.
- d. The Contractor owns or has duly and validly licensed from a third party the Materials and any other materials used by the Contractor in performing the Work; the Contractor's use or delivery thereof to the School District in connection with this Contract, and any use thereof by the School District as contemplated by this Contract, does not and shall not violate any third party's copyright, patent, trade secret or other proprietary right;
- e. The Contractor is and shall be, at all times during the Term of this Contract, duly qualified to transact business in the Commonwealth of Pennsylvania, professionally competent and duly licensed to perform the Work (if the performance of the Work requires a license).
- f. The Contractor and any other Person controlling, controlled by, or under common control with the Contractor are not currently indebted to the City or the Commonwealth of Pennsylvania for or on account of any delinquent taxes for which no written settlement agreement or payment plan with the City, or the Commonwealth of Pennsylvania, as the case may be, has been executed and delivered.
- g. Neither the Contractor nor any of its principals or Subcontractors, nor any other Person controlling, controlled by or under common control with the Contractor, are under suspension or debarment, have received official notice of commencement of proceedings for debarment or have been declared ineligible by the Commonwealth of Pennsylvania, the City, any Federal agency or any school district. The Contractor shall provide immediate written notice to the Responsible Official if at any time during the Term of this Contract the Contractor learns that the above certification was erroneous when the Contractor signed this Contract or subsequently became erroneous by reason of changed circumstances.

23. Definitions. Except as expressly provided to the contrary elsewhere in these Standard Terms or Conditions or in the Agreement for Services, capitalized terms shall have the meanings specified in this Section. In the event of a conflict between a definition in these Standard Terms and Conditions and the Agreement for Services, the definition in the Agreement for Services shall apply. In the event of a conflict between a definition in any exhibit, addendum or attachment to the Agreement for Services and a definition in these Standard Terms and Conditions, the definition in these Standard Terms and Conditions shall apply.

a. *Agreement for Services*. “Agreement for Services” means the instrument headed “Agreement for Services”, which forms a part of this Contract and which contains the signatures of the School District and the Contractor, and sets forth certain of the terms, covenants and conditions specific to the Contractor’s engagement.

b. *Applicable Law*. “Applicable Law” means and includes all federal, state, and local statutes, ordinances, resolutions and regulations, including the rules and regulations of any government authority, School District rules, regulations and policies applicable to the School District, the Contractor and the Work, and includes all applicable case law, court orders, injunctions and consent decrees.

c. *City*. “City” has the definition set forth above in subsection 6.a.

d. *Contract*. “Contract” means the agreement of the Parties evidenced by the instruments integrated into and forming a part of this Contract, *i.e.*, the Agreement for Services, Exhibit “A”, Exhibit “B”, if any, these Standard Terms and Conditions and any other Exhibit incorporated into this Contract as set forth in the Agreement for Services.

e. *Event of Default*. “Event of Default” means those events defined and identified in Section 18.a. of these Standard Terms and Conditions.

f. *FERPA*. “FERPA” has the definition set forth above in subsection 15.b.

g. *Materials*. “Materials” means any and all reports, records, documents, documentation, information, supplies, plans, original drawings, specifications, computations, sketches, renderings, arrangements, videos, pamphlets, advertisements, statistics and other data, computer tapes, computer software, and other tangible work product, materials or goods prepared, supplied or developed by the Contractor as part of or in connection with the Work, or for the Contractor by a Subcontractor in connection with the Work, and delivered to the School District by the Contractor or its Subcontractor pursuant to this Contract.

h. *Party; Parties*. A “Party” means either the School District or the Contractor; the “Parties” means the School District and the Contractor.

i. *Person*. “Person” means any individual, association, partnership, limited partnership, joint venture, corporation, limited liability company or other form of entity or association recognized at law.

j. *Responsible Official*. “Responsible Official” means the School District official named in Section 7 of the Agreement for Services.

k. *Subcontract; Subcontractor*. “Subcontract” means a contract made between the Contractor and a Subcontractor providing for the completion of some part or parts of the Work or Materials by a Subcontractor. “Subcontractor” means a Person performing under a contract with the Contractor a part of the Work or Materials that the Contractor has agreed to carry out pursuant to this Contract.

l. *Termination Notice*. “Termination Notice” means a notice given by the School District of its intent to terminate the Contract and its termination of the Contract as referenced in Sections 5, 18, 19 and 20. Such notice shall specify an effective date.

m. *Work*. “Work” means the work, including any Materials, that the Contractor has agreed to complete under this Contract, as described in Section 1 of the Agreement for Services, Exhibit “A” to this Contract, and any relevant exhibits or addenda forming part of this Contract.

24. *Miscellaneous*.

a. *Applicable Law; Venue*. This Contract shall be construed and enforced under the law of the Commonwealth of Pennsylvania, regardless of its conflict of laws provisions, and without the aid of any canon, custom or rule of law requiring construction against the draftsman. In the event that the Parties cannot amicably resolve any dispute and a Party resorts to legal action, such Party shall file suit only in the state or federal courts sitting in Philadelphia, Pennsylvania.

b. *Headings*. Section headings contained in this Contract are for reference only and shall not in any way affect the meaning or interpretation of this Contract.

c. *Order of Precedence.* In the event of conflict or variation between the Standard Terms and Conditions or the Agreement for Services and any other exhibit, addendum or attachment, the Standard Terms and Conditions or the Agreement for Services, as the case may be, shall govern. In the case of conflict or variation between the Standard Terms and Conditions and the Agreement for Services, the Agreement for Services shall govern.

d. *Severability.* If a court holds any term, covenant or condition of this Contract invalid, such holding shall not affect or impair the validity of any other terms, covenants or conditions of this Contract, which the Parties hereby deem severable and which shall remain in full force and effect.

e. *Survival.* Any and all provisions of this Contract which contemplate performance by a Party after the expiration or earlier termination of this Contract shall survive and be enforceable after such expiration or termination, including without limitation provisions relating to ownership of Materials and indemnification.

f. *Waiver.* No one shall or may find, hold or determine that a Party has waived any term, covenant or condition set forth in this Contract, any Event of Default, or any remedy set forth in this Contract, unless that Party has set forth its waiver in a writing signed by that Party.

g. *No Partnership or Agency.* Anything in this Contract to the contrary notwithstanding, including but not limited to any references in Exhibits "A", "B" or "D" to a purported "partnership" or "partner" relationship, the Parties do not intend to create, and nothing contained in this Contract shall be construed as creating, a joint venture or partnership between the School District and the Contractor with respect to the Work. Neither the Contractor nor the School District shall have any power to bind the other Party in any manner whatsoever to any third party. The Contractor does not function as an agent of the School District in its dealings with any third party.

h. *No Third Party Beneficiaries.* Nothing in this Contract shall be construed to create any contractual relationship with, or to give a cause of action or remedy in favor of, any third party against either the School District or the Contractor. Nothing in this Contract is intended to benefit any third party.

i. *Entire Agreement; Amendment.* This Contract includes all exhibits and addenda, if any, referred to herein, all of which are hereby incorporated by reference. This Contract constitutes the entire agreement between the Parties and supersedes all prior and contemporaneous oral and written agreements and statements, all of which have been fully integrated herein. This Contract also supersedes any course of conduct, performance or dealing between the Parties. No amendment or modification changing this Contract's scope or terms shall have any force or effect unless executed and delivered in writing and signed by both Parties.

j. *Counterparts.* The Parties may execute and deliver this Contract in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute, together, one and the same agreement.

k. *Interpretation; Number, Gender.* The words "herein" "hereof" and "hereunder" and other words of similar import refer to this Contract as a whole, and not to any particular Section, subsection or clause contained in this Contract. Whenever the context requires, words used in the singular shall be construed to include the plural and vice versa, and pronouns of any gender shall be deemed to include the masculine, feminine and neuter genders.

l. *Time.* Time is of the essence of the Contractor's performance of the Work, including the delivery of any Materials to the School District, under this Contract.

**THE SCHOOL DISTRICT OF PHILADELPHIA
EDUCATION CENTER
440 N. BROAD STREET, THIRD FLOOR
PHILADELPHIA, PENNSYLVANIA 19130**

OFFICE OF PROCUREMENT SERVICES

TELEPHONE (215) 400-4380
FAX (215) 400-4381

Date: March 23, 2010

Bid Number: A10-33713

Bid Name: BPA Plumbing Supplies

Bid Opening Date: April 20, 2010

Please be advised that a pre-bid opening conference for answering vendor questions and discussing the District's Anti-Discrimination in contracting policy has been scheduled for the above bid.

Vendors attending the Pre-Bid Conference are encouraged to submit written questions at least twenty-four (24) hours prior to the conference in order to enable the Office of Procurement Services to formulate better Vendor Conference oral responses. No responses will be given prior to the Conference.

The conference data appears below:

Day: Thursday

Date: April 08, 2010

Time: 9:00am

Where: Education Center

Office of Procurement Services

440 North Broad Street – 3rd Floor

Philadelphia, PA 19130

Conference Room # 3049

Attendance at the pre-bid conference is not mandatory, but is recommended.

BID NO. A10-33713

**SCHOOL DISTRICT OF PHILADELPHIA
ANTI-DISCRIMINATION POLICY**

NOTICE TO BIDDERS

This Invitation to Bid is issued under the Anti-Discrimination Policy adopted by the School Reform Commission on March 12, 2003. A fundamental requirement of the Policy is that all contractors, vendors and consultants who contract with the District provide a full and fair opportunity for the participation of Minority and Woman-Owned firms (M/WBE's) in the performance of the contract. Ranges of participation have been established that represent meaningful and substantial participation for this contract based upon the availability of bona fide M/WBE firms in the Philadelphia Metropolitan Statistical Area. The range of participation is:

MWBE Range: 20% - 25%

The Anti-Discrimination Policy and Participation Form are included with the bid documents. The form must be completed and submitted with the bid. Bidders are advised to carefully review the instructions. Failure to comply may result in disqualification.

This range of participation for this bid may be amended or adjusted. Notification of any change will be announced at the pre-bid meeting, the time and date which are included in the bid package, and posted on the Procurement Services Web-site.

All questions about the Anti-Discrimination Policy and Bidder compliance should be directed to the ***Small Business Development Department at (215) 400-4390.***

ANTI-DISCRIMINATION POLICY of the SCHOOL DISTRICT OF PHILADELPHIA

SECTION 1. THE POLICY

It is the policy of the School District of Philadelphia (the “District”) acting through and by the School Reform Commission (the “SRC”) to ensure equal opportunity in all contracts let by the District (the “Contracts”). In light of this policy, the District has adopted this Anti-discrimination Policy (the “Policy”) which is applicable to all Contracts, including but not limited to, Contracts for the design, development, construction, operation and maintenance of school buildings and other buildings and structures owned, leased or used by the District or its contractors, assignees, lessees and licensees (the “Facilities”); Contracts for professional services and Contracts for the purchase of goods, services, supplies and equipment for the District and the Facilities. The objective of the Policy is the promotion of prime contract and subcontract opportunities for minority and woman-owned business enterprises (“M/W/BEs”) that are approved by the District or they are certified by the Minority Business Enterprise Council of the City of Philadelphia, Southeastern Pennsylvania Transportation Authority or any other certifying agency designated by the District in its discretion.

The fundamental requirement of the Policy is that all contractors, vendors and consultants, who contract with the District (the “Contractors”), satisfy the District that they will: (i) not discriminate against any person in regard to race, color, religion, age, national origin, sex, ancestry, handicap or disability; and (ii) provide a full and fair opportunity for the participation of M/W/BEs in Contracts. Contractors must demonstrate that the participation of M/W/BEs is “meaningful and substantial” in all phases of a Contract under criteria adopted by the District. “Meaningful and substantial” shall be interpreted by the District as meaning the range of participation that reflects the availability of bona fide M/W/BEs in the Philadelphia Metropolitan Statistical Area. Participation shall be measured in terms of the actual dollars received by M/W/BEs.

“Minority” as used in this Policy, means Black American (all persons having origins in any of the Black African racial groups); Hispanic/Latino American (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin); Asian Pacific Island American (all persons having origin in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and Native American (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

SECTION 2. PROCEDURES FOR IMPLEMENTATION

Articulation of the Policy, Staffing and Reporting

The Office of General Counsel and Office of Small Business Development will develop language to be included in bid solicitations and requests for proposals which clearly sets forth the objective of the Policy (the “Solicitation Language”). District employees shall include the Solicitation Language in all bids, public solicitations and requests for proposals. The Policy shall be articulated to the public in general, and to each Contractor, assignee, lessee or licensee doing business with the District.

The District may employ additional staff or contract with other public or private entities to assist in the implementation of the Policy. District staff shall provide the SRC with periodic reports on the levels M/W/BE participation in all contracting activities.

Promotion of M/W/BEs

The District recognizes the importance of having meaningful and substantial M/W/BE participation in all Contracts. To that end, the District will take steps to ensure that M/W/BEs are afforded a fair and equal opportunity to participate. Those steps may include but are not limited to: (i) making public contracting opportunities; (ii) advertising in newspapers and periodicals published by community-based organizations and M/W/BEs; and (iii) designing bid packages in such a way as to promote rather than discourage M/W/BE participation.

Contracting Requirements

Prior to the dissemination of any bid, request for proposals or public solicitation (the "Solicitation"), the District shall determine the projected range of M/W/BE participation in the area to be bid (the "Participation Range"), and may include this information, along with the names and addresses of bona fide M/W/BEs that are available for contracting or joint-venture opportunities with the Solicitation. Each bidder or respondent shall be required to submit: (i) a plan with its bid or proposal which meets the Participation Range set forth in the Solicitation and which lists the names, addresses, dollar amounts and scope of work to be performed by M/W/BEs (the "Participation Plan"); or (ii) a brief narrative explaining its reasons for not submitting a Plan which meets the Participation Range set forth in the Solicitation. Submission of the Participation Plan is an element of responsiveness and failure to submit a completed Participation Plan or a narrative explaining the reasons that the Participation Ranges could not be met may result in the rejection of a bid or proposal.

If the Participation Range in a bid or proposal meets or exceeds the level determined by the District to be meaningful and substantial, there shall be a presumption of compliance with the Policy. If, however, the proposed Participation Range falls below the level determined by the District to be meaningful and substantial, the bidder or respondent must prove to the satisfaction of the District that it did not discriminate in the solicitation of potential subcontractors and/or joint venture partners.

Sanctions

The Participation Plan shall be a part of each Contract between the District and a Contractor and shall be enforceable as any other contractual term or condition. Sanctions for breach of a Participation Plan may include suspension, cancellation of the Contract and/or disbarment from future contracting opportunities with the District.

**SCHOOL DISTRICT OF PHILADELPHIA
OFFICE OF PROCUREMENT SERVICES
MINORITY/WOMAN-OWNED BUSINESS ENTERPRISE (MWBE) PARTICIPATION PLAN FORM**

I. Information in this section refers to the Prime Contractor/Vendor.

Company Name _____ Contact Person: _____
 Address: _____ Phone: _____
 City: _____ State: _____ Zip: _____
 Fax: _____ E-mail: _____
 Owner: ___African-American, ___Hispanic, ___Asian, ___Native American ___Woman, ___Non-Profit ___Caucasian,
 Federal Tax ID _____ Certifying Agency: _____ Certification No.: _____
 Bid Number or Subject: _____

II. Information in this section refers to MWBE firms to be used in the performance of this contract.

Company Name: _____ Owner: _____
 Address: _____ Phone: _____
 City: _____ State: _____ Zip: _____
 Fax: _____ E-mail: _____
 Owner: ___African-American, ___Hispanic, ___Asian, ___Native American ___Woman, ___Non-Profit ___Caucasian,
 Federal Tax ID _____ Certifying Agency: _____ Certification No.: _____
 Description of Work: _____
 Dollar Value \$ _____ Percentage of Total Contract _____
 Vendor Signature _____

Company Name: _____ Owner: _____
 Address: _____ Phone: _____
 City: _____ State: _____ Zip: _____
 Fax: _____ E-mail: _____
 Owner: ___African-American, ___Hispanic, ___Asian, ___Native American ___Woman, ___Non-Profit ___Caucasian
 Federal Tax ID _____ Certifying Agency: _____ Certification No.: _____
 Description of Work: _____
 Dollar Value \$ _____ Percentage of Total Contract _____
 Vendor Signature _____
 If no commitment, give reasons and supporting documentation (e.g., evidence of contacting MWBEs).

[illegible]

I certify that the information provided is true and correct _____ Date: _____
Authorized Representative

**School District of Philadelphia
Anti-Discrimination Policy**

INSTRUCTIONS TO BIDDERS
(TO BE INCLUDED IN BID DOCUMENTS AND REQUESTS FOR PROPOSALS)

SEPTEMBER 2003

INSTRUCTIONS TO BIDDERS/PROPOSERS

BIDDER RESPONSIBILITIES

THE POLICY

The School Reform Commission (“SRC”) adopted the Anti-Discrimination Policy (“Policy”) relating to the participation of Minority and Woman-Owned Businesses in School District (“District”) contracts. The purpose of this policy is to provide equal opportunity for all businesses and to ensure that School District funds are not used, directly or indirectly, to promote, reinforce or perpetuate discriminatory practices. The District is committed to fostering an environment, in which all businesses are free to participate in business opportunities, flourish without the impediments of discrimination and participate in all District contracts on an equitable basis. In accordance with the contracting requirements of the District, Policy is applicable to bids for supplies, services & equipment, design & construction contracts, and contracts for professional services.

(See Attachment #1)

PARTICIPATION RANGES

The School District has contracted with the Minority Business Enterprise Council (MBEC) of the City of Philadelphia to establish ranges of participation for bids and Requests for Proposals, which serve as a guide in determining each bidder’s responsibility. These ranges represent the percentage of M/WBE participation that should be attained in the available market absent discrimination in the solicitation and selection of these businesses. These ranges are based upon an analysis of factors such as the size and scope of the contract and the availability of certified M/WBE’s to perform various elements of the contract. M/WBE Participation Forms are included in all applicable bid packages. These forms must be carefully reviewed and completed as the submission of a Participation Form with bids and responses to Requests for Proposals is an element of responsiveness and failure to submit a Participation Form will result in rejection of the Bid/RFP. (See Attachment #2)

Participation ranges included in bids and requests for proposals represent the percentage of participation by M/WBE firms that reflects the availability of these firms ready and able to provide the services required by the solicitation. These participation ranges serve exclusively as a guide in determining bidder responsibility.

CERTIFICATION REQUIREMENTS

Only firms certified by an approved certifying agency prior to bid opening will be credited toward the participation ranges. Approved agencies include state and city certification offices, State Departments of Transportation, the Small Business Administration, National and Local Minority Supplier Development Councils; National Association of Women Business Owners and other identified certifying agencies approved by the School District.

PARTICIPATION CREDIT

M/WBE subcontractors and manufacturers and suppliers of products are credited toward the participation range at 100%.

Bidders who utilize indirect contracting with M/WBE firms to satisfy the participation range may do so, however indirect participation may not exceed 25% of the requirement.

In order to maximize opportunities for as many businesses as possible, a firm that is certified in two or more categories will only be credited toward one participation range as either an MBE or WBE. The firm will not be credited toward more than one category. Bidders will note with their submission which category; MBE or WBE is submitted for credit.

A M/WBE submitting as the prime bidder will receive credit toward the participation ranges for its own work or supply effort.

In listing amounts committed to on the Solicitation and Commitment Form, bidders should list both the dollar amount and percentage of total bid for each commitment made. In calculating the percentage amount, bidders may apply the standard mathematical rules in rounding off numbers. In the event of an inconsistency between the dollar and percentage amounts listed on the Participation Form, the amount, which results in the greater commitment, will be used.

RESPONSIVENESS

Bidders must submit documentary evidence of M/WBE's who have been solicited and with whom commitments have been made.

Documentation of all solicitations (regardless of whether commitments resulted there from) as well as all commitments made prior to bid opening shall be submitted, concurrently with the bid, on the enclosed document entitled "Participation Form". If the bidder has entered into a joint venture with a M/WBE partner, the bidder must submit a copy of the joint-venture agreement along with the Participation Form.

Failure to submit the required information on M/WBE participation will result in rejection of the bid as non-responsive. (Bidders should note that only commitments that have been made prior to bid opening and listed on the Participation Form will be credited toward the participation ranges. Since the School District must ensure that all bidders respond on equal terms, a bid which indicates that the bidder will make commitments after bid opening will be rejected as non-responsive.)

Upon award, the completed forms and accompanying documents regarding solicitation and commitments with M/WBE's become part of the contract. A bidder should only make actual solicitations of M/WBE's whose work or materials are within the scope of the invitation to bid. Mass mailing of a general nature will not be deemed solicitation, but rather will be treated as informational notification only. A reasonable period of time should be given to all solicited firms to ensure that they have sufficient time to adequately prepare their quotes.

The bidder's listing of a commitment with an M/WBE as described on the Participation Form constitutes a representation that the bidder has, prior to bid opening, made a binding commitment to contract with such firm, upon receipt of a contract award from the School District.

BID REVIEW

Upon receipt of bids for this contract, the bidder's submittal will be subject to review by the SBD to determine whether the bidder has submitted a bid within each of the projected range(s) for M/WBE participation, if the ranges are met, the bidder will be rebuttably presumed not to have met the requirements Anti-Discrimination Policy in its selections.

M/WBE percentage commitments are to be maintained throughout the term of the contract and shall apply to the total contract value (including approved change orders and amendments). Any change in commitment, including but not limited to substitutions for the listed firm(s), changes or reductions in the work and/or listed dollar/percentage amounts must be approved by the School District.

ACCESS TO INFORMATION

The Small Business Development Unit or designee shall have the right to make site visits to the bidder's place of business and/or job site and obtain documents and information from any bidder, subcontractor, supplier, manufacturer of contract participant that may be required in order to ascertain bidder responsibility.

Failure to cooperate with Small Business Development in its review will result in a recommendation to the User Department that the bidder be deemed not responsible and its bid rejected

RECORDS AND REPORTS

The successful bidder shall maintain records relating to its M/WBE commitments (e.g. copies of subcontracts, joint venture agreement, correspondence, cancelled checks, invoices, telephone logs) for a period of at least one year following acceptance of final payment. These records shall be made available for inspection by the SBD and/or other appropriate School District officials.

The successful bidder agrees to submit reports and other documentation to the School District as deemed necessary by the SBD unit to ascertain the successful bidder's fulfillment of its M/WBE commitments.

REMEDIES

The successful bidder's compliance with the requirements the Anti-Discrimination Policy is material to the contract. Any failure to comply with these requirements constitutes a substantial breach of the contract. It is further understood and agreed that in the event it is determined that the successful bidder has failed to comply with these requirements, the School District may, in addition to any other rights and remedies the they may have under the contract, any bond filed in connection therewith or at law or in equity, exercise one or more of the following remedies which shall be deemed cumulative and concurrent:

Withhold payment(s) or any part thereof until corrective action is taken.

Terminate the contract, in whole or in part.

Suspend the successful bidder from bidding on and/or participating in any future School District contracts for a specified period.

Recover as liquidated damages, one percent of the total dollar amount of the contract for each one percent (or fraction thereof) of the commitment shortfall. (NOTE: The "total dollar amount of the contract" shall include approved change orders, amendments and for requirements contracts shall be based on actual quantities ordered by the School District.)

APPEAL PROCESS

Appeal of any action taken under the Anti-Discrimination Policy shall be in writing to the Sr. Vice President of Procurement Services, 440 N. Broad Street 3rd Floor, Philadelphia, PA 19130.

**THE SCHOOL DISTRICT OF PHILADELPHIA
OFFICE OF PROCUREMENT SERVICES
VENDOR CODE OF ETHICS**

The School District of Philadelphia (“SDP”), through its Office of Procurement Services (“OPS”), is committed to a procurement process that fosters fair and open competition, is conducted under the highest ethical standards and enjoys the complete confidence of the public. To achieve these purposes, OPS requires each vendor who seeks to do business with the SDP to subscribe to this Vendor Code of Ethics.

- ❑ A Vendor’s bid or proposal will be competitive, consistent and appropriate to the bid documents.
- ❑ A Vendor will not discuss or consult with other Vendors intending to bid on the same contract or similar SDP contract for the purpose of limiting competition.
- ❑ A Vendor will not disclose the terms of its bid or proposal, directly or indirectly, to any other competing Vendor prior to the closing date for bids or proposals.
- ❑ A Vendor will not make any attempt to induce any individual or entity to submit or not to submit a bid or proposal.
- ❑ A Vendor will completely perform any contract awarded to it at the contracted price pursuant to the terms set forth in the contract.
- ❑ A Vendor will submit timely, accurate and appropriate invoices for goods and/or services actually performed under the contract.
- ❑ A Vendor will properly, accurately and fairly record all financial transactions with the SDP in its books, journals, ledgers and/or other appropriate records.
- ❑ A Vendor will not offer or give any gift, item or service of value, directly or indirectly, to an SDP employee, School Reform Commission (SRC) member, SDP consultant or contractor employed in connection with the subject matter of the bid or proposal or to any member of their immediate families. This restriction also applies to any family member, employee, SRC member, SDP consultant and/or contractor employed in connection with SDP.
- ❑ A Vendor will not, without the prior written consent of the SDP, initiate, negotiate or render an offer of employment to any SDP employee who is directly concerned with, or personally participating on behalf of the SDP with respect to any procurement or other matter involving the Vendor.
- ❑ A Vendor will not cause, influence or attempt to cause or influence any SDP employee or SRC member: (i) in any member which might tend to impair his/her objectivity or independence of judgment; or (ii) to use or attempt to use his/her official position to secure any unwarranted privileges or advantage for that Vendor or for any other person.
- ❑ A Vendor will comply with the SDP’s Anti-Discrimination Policy regarding inclusion of Small Women/Minority Owned Businesses in District contracts.

SCHOOL DISTRICT OF PHILADELPHIA

BUYER: HARRY SMITH

BID NUMBER: A10-33713
 BID OPEN DATE: 04/20/10
 BID OPEN TIME: 11:00

BLANKET PURCHASE AGREEMENT: PLUMBING
 SUPPLIES

CONTRACT TERM: AWARD DATE TO TWO YEARS

			UNIT OF			
			QTY.	MEASURE	UNIT PRICE	TOTAL COST
001	** *****NONE***	***	2.000	YEAR	-----	-----

COMMODITY CODE: 67000

PLUMBING EQUIPMENT

BLANKET PURCHASE AGREEMENT: PLUMBING SUPPLIES

SEE SPECIFICATION ATTACHED,

CONTRACT TERM: AWARD DATE TO TWO YEARS

**THE SCHOOL DISTRICT OF PHILADELPHIA
OFFICE OF PROCUREMENT SERVICES
COMMODITY CODE: 67001555801**

DATE: March 8, 2010

BLANKET PURCHASE AGREEMENT-PIPE, VALVES, FITTINGS AND MISCELLANEOUS PLUMBING SUPPLIES

I REQUEST

Bidders are requested to quote on a Blanket Purchase Agreement for pipe, valves, fittings and miscellaneous plumbing supplies to be purchased during the contract period. Facilities Management and Services Department will utilize this contract.

II SCOPE AND INTENT

- A. The intent of this contract is to provide a means for the District to obtain plumbing and heating supplies for maintenance and repairs with delivery of the items to the work site or via pick-up by District personnel at the vendor's facility.
- B. Periodically the School District may require the delivery of plumbing and heating supplies to a particular location. However, in these cases, orders will be placed 48 hours prior to the delivery date.

III REQUIREMENTS

Bid pricing should extend to all items in the bidder's inventory typically known in the industry as plumbing and heating supplies including, but not limited to: steel, bronze, copper, cast iron, plastic pipe, valves including gate, globe, butterfly, grooved; fittings, couplings, compression fittings, flared fittings, heating products such as: oil burners, controls, gauges, pumps, nozzles, parts, circulators, bathroom fixtures including faucets, toilets, showers, urinals, lavatories etc.; repair parts, sink strainer parts, flappers, tanks, balls, ball cocks, flush valves, toilet tanks, water supply valves, drain, fitting, faucets, etc.

The successful bidder(s) must maintain an adequate inventory to allow for the pick up or delivery of various materials defined herein.

The successful bidder should have over the counter service during the contract period. The over the counter service must meet the following criteria:

Vendor must have an area where District personnel may enter and obtain parts and supplies;

- A. It does not require a telephone call prior to a pickup at the counter.
- B. The over-the-counter operation must be staffed from 8:00 a.m. to 5:00 p.m., Monday through Friday, in order to distribute parts and supplies to District personnel;
- C. The over-the-counter facility must maintain adequate inventory to fill orders as needed;
- D. Successful bidder's over the counter facility must be located within the City of Philadelphia, or within one mile of the City limits
- E. Normal delivery is 30 days or less after receipt of the order. In some cases, delivery must be made to the site within 48 hours after receipt of the order or request. Vendor must maintain an 80% fill ratio for all orders. Back orders must be filled within 48 hours after receipt of the initial order.

- F. In the event that the vendor receives an order for parts or supplies not specifically priced and incorporated into the contract, they must withhold delivery and notify the Materials Manager at telephone number 215.400.6395 email wwhitaker@philasd.org. NOTE The District shall have no obligation to pay for items delivered without a purchase order that are not specifically covered and priced into the contract.

MANUFACTURER	PERCENTAGE DISCOUNT	MANUFACTURERS' CATALOGUE DATE
Flomatic	_____	_____
Anvil International	_____	_____
Ametek	_____	_____
Crane	_____	_____
Brass Craft	_____	_____
Eljer	_____	_____
American Standard	_____	_____
World Dryer	_____	_____
Acorn	_____	_____
Universal Rundle	_____	_____
Lasco Fittings	_____	_____
Symmons	_____	_____
Sloan	_____	_____
Delta Aqua	_____	_____
Chicago faucet	_____	_____
Gerber	_____	_____
Kohler	_____	_____
Trident	_____	_____
Bobrick	_____	_____
Central Brass	_____	_____
Moen	_____	_____
Mansfield	_____	_____

Speakman	_____	_____
Bemis	_____	_____
Elkay	_____	_____
Crane	_____	_____
Grohe America	_____	_____
Airspeed	_____	_____
Powers	_____	_____
T&S Brass	_____	_____

IV CONTRACT PERIOD

The contract shall be for a period from the date of award and continue for two years

V CONTRACT TERMS

- A. The selected vendor(s) will be issued a Blanket Purchase Order(s) for the current contract period.
- B. The successful vendor(s) agrees to furnish the item or items requested by the authorized representative of the School District Facilities Service Division only, when the representative provides the vendor with.
 - 1) School District Work Order Number (example W.O. 6497) and Purchase Order # (5 digit numeric)
 - 2) Proper Identification - Employee I.D. No.
- C. Vendor agrees that there will be no back orders and packing slips will be issued only for items received
- D. Generally, the Blanket Agreement awarded under this bid will be for items or groups of items totaling less than \$500.00. For requisitions totaling \$500.00 or more, it is the intent of the School District of Philadelphia to obtain competitive price quotes from the companies awarded contracts for the bid.
- E. Those items picked up by authorized Facilities Service employees of the School District, are not to include packing and delivery charges in the invoice price.
- F. The contractor agrees to periodic audits, with 5 days written notice, by the School District's duly authorized representatives, including internal auditors, to be conducted at the contractor's facility using any vendor record deemed appropriate by the School District to verify pricing of School District invoices.

Vendor shall assist the Philadelphia School District in the audit, examination, and inspection of records by providing access to knowledgeable personnel who can explain the records. The Philadelphia School District shall have the right to copy any documents included in the audit.
- G. The School District of Philadelphia will make awards in up to five geographic regions, (see exhibit A), within the City of Philadelphia.
- H. The successful bidder(s) must have a full-line of plumbing and heating supply items. Bidders whose major business is other than plumbing and heating supplies may be rejected, if it is determined in the School District's sole judgment that the bidder's catalog(s) and inventory are not comprehensive enough to serve the District's needs.

- I. Successful bidders must supply to Facilities Services the most current price lists from the manufacturers which they are awarded. The price lists must be provided within 1 weeks of request. After award of the contract the successful bidder must supply a compact disc (CD) containing the manufacturer's list prices.
- In lieu of a CD, a printed copy of the manufacturer's catalogue will be acceptable. If a manufacturer issues a new price list during the contract term, such new list must also be provided, and will go into effect when the new list is effective. However, under all circumstances, the discounts as bid will remain firm and fixed for the entire contract period.

VI PROOF OF VENDOR'S CAPABILITY

- A. The past and present competence, facilities and responsibilities of bidders will be considered in making the award, as well as satisfactory past performance. The District may make such investigation as deemed necessary to determine the ability of the contractor to discharge his contract. The contractor shall furnish the District with all such information and data as may be required for that purpose and shall furnish financial statement(s) if so requested.
- B. Vendor must demonstrate their ability to supply the parts needed under this contract on an emergency basis. Therefore, vendor's stockroom must be fully stocked.
- C. The School District of Philadelphia reserves the right to cancel in part or in its entirety this contract upon (30) days written notice.

VII BASIS FOR AWARD/PRICING

- A. In addition to pick up of over the counter supplies, the delivery of plumbing and heating supplies to the work site by the vendor is estimated to be 80% of this contract.
- B. Successful vendor must submit on a monthly basis a monetary report (2 Ea.) showing the current month's expenditure and a cumulative total to date for all monies spent by the Facilities Management service Department for this contract.

Send One Copy To:

William Whitaker
Materials Manager
Education Center, Third Floor
440 N. Broad St
Philadelphia, PA 19130

Send One Copy To:

Harry Smith
Office of Procurement Services
Education Center, Third Floor
440 N. Broad St
Philadelphia, PA 19130

VII WARRANTY

- A. All materials purchased under this contract shall be covered with the standard manufacturer's warranty for that particular item.

VIII BILLING

A. Facilities Services

1. The packing slip will be signed by School District representative indicating receipt of the material and one copy given to him. Each packing slip shall contain the M.O. number, W.O. number and blanket P.O. number.

2. Original invoices should be forwarded bi-weekly to:

Maintenance Operations Department
Education Center, Third Floor
440 N. Broad St
Philadelphia, PA 19130

3. A copy of the invoice is not required. The P.O. number, M.O. number and W.O. number must be shown on each invoice. Invoices submitted without the required information will not be paid.

EXHIBIT A**The Five Geographic Areas:**

Bidder to check below where stocking facility is located.

- | | | |
|----------------------|---|-----|
| 1) <u>Northeast-</u> | Levick St to Woodhaven
State Rd to Tookany Parkway | { } |
| 2) <u>Central</u> | Levick St to Market St | { } |
| 3) <u>South</u> | Market St to Bartram Ave,
Delaware Ave to Schuylkill Ave
and Woodland Ave | { } |
| 4) <u>West</u> | 30th St to City Line
Schuylkill Expressway to
Cobbs Creek Parkway | { } |
| 5) <u>Northwest</u> | Roosevelt Blvd to Northwestern Ave
Stenton Ave to Main Street | { } |

All prospective vendors bidding on School District of Philadelphia's requirements must read the terms as set forth below and sign the certification at the end of this section.

1. Contractor Debarment; Suspension

a. Contractor Certification

The Contractor certifies that it is not currently under suspension or debarment by any governmental entity, and if the Contractor cannot certify, then it agrees to submit written explanation of why such certification cannot be made

b. Authority to Debar

The School District shall have the authority to debar a Contractor for cause from consideration for award of contracts for a period of not more than three (3) years or to suspend a contractor from consideration for award of contracts, if there is probable cause for debarment, for a period of not more than three (3) months. Contractor shall be given reasonable notice and opportunity to be heard prior to a final debarment or suspension determination by the School District.

c. Cause for Debarment

The School District is authorized to debar or suspend a Contractor from contracting with the School District for any of the following causes which occurred within the past five (5) years.

- i. Conviction, including a plea of guilty or nolo contendere, for Commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract in the performance of a contract or subcontract;
- ii. Conviction, including a plea of guilty or nolo contendere, under Federal or State statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibilities as a Contractor;
- iii. Conviction, including a plea of guilty or nolo contendere, under Federal or State antitrust statutes arising out of the submission of bids or proposals;
- iv. Any of the following violations of contract provisions of a character which is regarded by the School District to be so serious as to justify debarment action;
 - a) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract
 - b) A recent record of failure to perform, unsatisfactory performance or performance not in accordance with the terms of one or more contracts
- v. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
- vi. Commission of fraud or a criminal offense or other improper conduct or knowledge of, approval of, or acquiescence in such activities by a contractor or any affiliate, officer, employee or other individual or entity associated with obtaining, attempting to obtain, or performing a public contract or subcontract;
- vii. Violation of Federal or State antitrust statutes;
- viii. Violation of any Federal or State law regulating political campaign contributions;

- ix. Violation of any Federal or State law regulating hours of labor, minimum wage standard or prevailing wage standards, discrimination in wages or child labor violations;
- x. Violation of the Workers' Compensation Act;
- xi. Violation of any Federal or State law prohibiting discrimination in Employment;
- xii. Debarment by any agency or department of the Federal Government or by any other State;
- xiii. Three or more occurrences where the Contractor has been declared ineligible for a contract;
- xiv. Unsatisfactory performance, including, but not limited to, any of the following:
 - a.) Failure to comply with the terms of a School District contract or subcontract, including, but not limited to, willful failure to perform in accordance with the terms of one or more contracts; a history of failure to perform; or, unsatisfactory performance of one of more contracts.
 - b.) Offering unbalanced bids.
 - c.) Failure to complete the work in the time frame specified in the contract.
 - d.) Being declared in default on prior work or project.
 - e.) Failure to submit documents, information or forms as required by contract.
 - f.) Making false statements or failing to provide information or otherwise to cooperate with a contracting agency
- xv. Any other act or omission indicating a lack of skill, ability, capacity, quality control, business integrity or business honesty that seriously and directly affects the present responsibility of a Contractor as determined by the School District;
- xvi. Any other cause the School District determines to be so serious and compelling as to affect responsibility as a Contractor, including debarment by another governmental entity for any cause set forth above

d. Determination; Decisions

- i. The School District shall issue a written decision to debar or suspend after the Contractor has been given notice of the potential adverse action and the opportunity to be heard. Failure to perform or unsatisfactory performance caused by acts beyond the control of the Contractor shall not be considered a basis for debarment.
- ii. The decision shall:
 - a.) State the reasons for the action taken;
 - b.) Inform the debarred or suspended Contractor involved of the right to judicial review.
- iii. A copy of the decision shall be delivered by registered mail to the debarred or suspended Contractor and any other person intervening.
- iv. The debarment or suspension shall be final and conclusive unless the debarred or suspended Contractor appeals to a court of competent jurisdiction within thirty (30) days after receipt of the decision.

e. Reimbursement; Investigations

The Contractor agrees to reimburse the School District for the reasonable costs of investigation incurred for the investigations of the Contractor's compliance with terms of this Contract or any other agreement between the Contractor and the School District, which result in the suspension, or debarment of the Contractor. Such costs shall include, but not be limited to, salaries of investigators, including overtime, travel, and lodging expenses and expert witnesses and documentary fees. The Contractor shall not be responsible for investigative costs for investigations which do not result in the Contractor's suspension or debarment.

f. Subcontractors; Employees

If the Contractor enters into any subcontract or employs under this Contract any subcontractors/individuals who are currently suspended or debarred by any governmental entity or who becomes suspended or debarred by any governmental entity during the term of this Contract or any extensions or renewals thereof, the School District shall have the right to require the Contractor to terminate such subcontracts or employment.

g. Right of Nondisclosure

Information furnished by a bidder pertinent to determining responsibility of that bidder for contract award shall not be disclosed outside of the School District without prior written consent by the bidder, subject to provisions relating to the retention of contract documents.

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion by any Federal or State Funded Agency

By signing and submitting this proposal, the prospective lower tier bidder is providing certification as set out below:

- 1.) The prospective lower tier participant bidder certifies by submission of this proposal that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal or State department or agency.
- 2.) Where the prospective lower tier participant is unable to certify to any of the Statements in this certification, such prospective participants shall attach an Explanation to this proposal.

Signature of Bidder_____

Print Name_____

Position Held_____

Date_____

Attachment

INSTRUCTIONS FOR NON-COLLUSION AFFIDAVIT

1. This Collusion Affidavit is material to any contract awarded pursuant to this bid. According to the Pennsylvania Anti-bid-Rigging Act, 73 P.S. SS 1611 et seq., governmental agencies may require Non-Collusion Affidavits to be submitted together with bids.
2. The member, officer or employee of the bidder who makes the final decision on prices must execute this Non Collusion Affidavit and the amount quoted in the bid.
3. Bid rigging and other efforts to restrain competition and the making of false sworn statements in connection with the submission of bids are unlawful and may be subject to criminal prosecution. The person who signs the Affidavit should examine it carefully before signing and assure himself or herself that each statement is true and accurate, making diligent inquiry, as necessary, of all other persons employed by or associated with the bidder with responsibilities for the preparation, approval or submission of the bid.
4. In the case of a bid submitted by a joint venture, each party to the venture must be identified in the bid documents, and an Affidavit must be submitted separately on behalf of each party.
5. Individuals are not permitted to participate in any manner in the preparation or submission of bids on behalf of more than one legal entity. Any individual participating in the submission of a bid as a member of a joint venture will not be permitted to submit a bid in his or her individual capacity. Each bidder shall disclose, on a separate sheet attached to this affidavit, a written description of each and every legal relationship of affiliation that it has with the shareholders, directors, officers, or employees of any other potential bidders for this contract.
6. The term "complementary bid" as used in the Affidavit has the meaning commonly associated with the term in the bidding process, and includes the knowing submission of bids higher than the bid of another firm, any intentionally high or non-competitive bid, and any other form of bid submitted for the purpose of giving a false appearance of competition.
7. **Failure to file an affidavit in compliance with these instructions will result in disqualification of the bid.**

NON-COLLUSION AFFIDAVIT

State of _____

Contract/Bid No: _____

County of _____

I state that I am _____ of _____

{Title}

{Name of my firm}

and that I am authorized to make this affidavit on behalf of my firm, and its owners, directors, and officers. I am the person responsible in my firm for the price(s) and the amount of this bid.

I further state that:

(1) The price(s) and amount of this bid have been arrived at independently and without consultation, communication or agreement with any other contractor, bidder or potential bidder.

(2) Neither the price(s) nor the amount of this bid, and neither the approximate price(s) nor approximate amount of this bid, have been disclosed to any other firm or person who is a bidder or potential bidder, and they will not be disclosed before bid opening.

(3) No attempt has been made or will be made to induce any firm or person to refrain from bidding on this contract, or to submit a bid higher than this bid, or to submit any intentionally high or noncompetitive bid or other form of complementary bid.

(4) The bid of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive bid.

(5) _____, its affiliate subsidiaries, officers, directors and

{Name of my firm}

employees are not currently under investigation by any governmental agency and have not in the last three years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as follows:

I state that _____ understands and acknowledges that the above

{Name of my firm}

representations are material and important, and will be relied on by the School District of Philadelphia in awarding the contract(s) for which this bid is submitted. I understand and my firm understands that any misstatements in this affidavit is and shall be treated as fraudulent concealment from School District of Philadelphia of the true facts relating to the submission of bids for this contract.

{Contractor signature}

{Name and Company Position}

SWORN TO AND SUBSCRIBED

BEFORE ME THIS _____ DAY
OF _____, 200__

Notary Signature: _____

