



THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

7720 WEST OAKLAND PARK BOULEVARD, SUITE 323, SUNRISE, FLORIDA 33351 · TEL 754-321-0505 · FAX 754-321-0936

PROCUREMENT & WAREHOUSING SERVICES

MARY CATHERINE COKER, DIRECTOR

www.BrowardSchools.com/PWS

The School Board of
Broward County, Florida

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April 29, 2020

ADDENDUM NO.: 1

RFP # FY21-031 RETIREMENT PLAN ADMINISTRATION & INVESTMENT MANAGEMENT SERVICES

TO ALL PROPOSERS:

Amend the above referenced RFP in the following particulars only:

1. Attached are responses to the questions received
2. Attachments A, B, C, G, H, J, K, L, M, N and O are provided in a separate downloadable document in a usable Microsoft Word format.

This Addendum is for informational purposes only and need not be returned with your Proposal. By virtue of signing the "Required Response Form", Page 1 of RFP #FY21-031, Proposer certifies acceptance of this Addendum.

Sincerely,

Michelle Bryant Wilcox
Purchasing Agent

➤ **Question 1**

In regard to the current RFP for Retirement Plan Administration and Investment Management Services. I want to see if this was an RFP for a new Record Keeping company or if this was an RFP for an investment advisor such as a 321 or 338 Fiduciary like my Company?

➤ **Answer 1**

Refer to Section 2.1 of the RFP, which outlines the services that are currently being performed.

➤ **Question 2**

Is BENCOR invited to rebid?

➤ **Answer 2**

Yes.

➤ **Question 3**

What is the current asset size of the 401(a) FICA Alternative and Special Pay Plan?

➤ **Answer 3**

Currently the asset size is \$87,548,767. Refer to Attachment D of the RFP for a break down.

➤ **Question 4**

Where do I find the downloadable Word versions of Attachments A, B, C, D, E, F, G, H, I, K, L, M, and N?

➤ **Answer 4**

The downloadable Word Version is being provided for in this Addendum for Attachments A, B, C, G, H, J, K, L, M, N and O.

Attachments D and E are provided as a PDF format only.

In the original Bid Document a link was provided to access and download the fillable document for Attachment F.

In the original Bid Document a link was provided to access and download the fillable document for Attachment I.

➤ **Question 5**

On page 3 of the RFP, you state “SBBC will also not consider any 403(b) tax sheltered annuity products, but on the same page you describe the plan for which you are requesting proposals as a “401(a) FICA Qualified alternative and Special Pay Plan.” Please provide your definition of 403(b) tax sheltered annuity products and provide further clarification on your statement. What exactly will you not consider with regard to offered products in the 401(a) FICA Qualified Alternative and Special Pay Plan?

➤ **Answer 5**

This RFP is specifically for the FICA Qualified Alternative & Special Pay Plan, any proposer may not introduce any 403(b) Product or Service. The 403(b) Plan is covered by a different RFP process that is completely separate from this submission.

➤ **Question 6**

Will Broward County Public Schools consider a group fixed annuity for the fixed/guaranteed account option?

➤ **Answer 6**

All types of Stable/Fixed account options will be considered by Evaluation Committee. All provisions of any contract/account shall be disclosed and a specimen contract of the specific contract shall be provided.

➤ **Question 7**

In light of the COVID-19 pandemic, will you accept electronic submissions, rather than the 26 hard copy submissions of the proposals requested on pages 1 and 14 and throughout the RFP?

➤ **Answer 7**

No SBBC will still require hard copies, but will reduce the number to 1 original, 17 copies and 2 electronic copies.

➤ **Question 8**

How many participants currently have a balance (regardless of active vs. terminated)?

➤ **Answer 8**

29,531

➤ **Question 9**

What was the total amount of distributions from the plan in 2019?

➤ **Answer 9**

\$18,576,041

➤ **Question 10**

How many group meetings and how many individual meetings were held in 2019? How many days per year would the plan prefer going forward?

➤ **Answer 10**

The District require that there be at least one (1) Districtwide group meeting per year. The current vendor has reported that they have conducted approximately 1,200 group/individual in person and telephonic meetings.

➤ **Question 11**

We do see that Broward County Public Schools is requesting hard copy submissions of RFP responses. At present as a precautionary measure, we have a policy of electronic-only submissions for RFP responses due to the COVID-19 outbreak. We are inquiring with you on your flexibility to submit only an electronic response by the due date on 5/12 and once hard copy submission restrictions are lifted, we would immediately sent the requested hard copy items. Please advise if this would be acceptable?

➤ **Answer 11**

Refer to Question 7 of this Addendum.

➤ **Question 12**

Please provide information on the fixed funds in the plan today. Do they have a fixed rate of return? If so, when does the rate reset? What is the current rate? Is there a minimum rate for the fund? If so, what is it? What are the expense ratios? Are there any termination provisions or liquidity restrictions (i.e. MVA, 12 month put, etc.)? Is it a general account product or a pooled stable value fund? Is there a market value termination option? If so, would any gain or loss on the portfolio be included in the termination payout? What is the current market-to-book ratio?

➤ **Answer 12**

The Lincoln Stable Value Account is the capital preservation option in the plans. As of 3/31/20 there was a total of \$42,562,182 invested in the stable value account earning 1.95% and \$38,674,294 earning a rate of 2.05%. The crediting rate resets on a semi-annual basis. These rates are in effect through 12/31/2020. The Lincoln Stable Value Account has a lifetime guaranteed minimum interest rate of 1.50%. Deposits into the Lincoln Stable Value Account are managed within Lincoln's \$100 billion general account. The Lincoln Stable Value Account has an Immediate Lump sum payment option that guarantees the payment can never be less than principal plus interest at 1.50%. The maximum payment factor is full book value. As of 3/31/2020, the market to book ratio is 100% Alternatively, the contract owner can also elect a book value installment option in which 6 payments are made over a 5 year period of time.

➤ **Question 13**

What is the preferred date from transfer of assets? What is the preferred date for contract start date?

➤ **Answer 13**

The preferred date for transfer of assets would be determined during the implementation of the product. Please refer to Section 2.3 of the RFP for the contract start date.

➤ **Question 14**

Please provide a list of any ancillary fees that are currently being charged to the plan and or its participants, i.e.) QDORO's financial advice, etc.

➤ **Answer 14**

There are no plan-level fees. The following participant fees apply:

QDRO: \$250

Loans: \$75 initiation, \$6.25 quarterly administration

Maintenance: \$1.25/mo after 24 months of inactivity if the account balance is under \$1,000

➤ **Question 15**

What is your current payroll vendor? What version of payroll software for that vendor do you currently use?

➤ **Answer 15**

SBBC uses SAP for the payroll system and is on version Business Suite on HANA/ECC 6.0.

➤ **Question 16**

Do you have any specific "wish list" as you review a potential new relationship?

➤ **Answer 16**

SBBC current and future exceptions will be for the best in class services for both the District and its members.

➤ **Question 17**

What is the current fee for the plan today?

➤ **Answer 17**

BENCOR does not charge a fee for the Plan(s).

➤ **Question 18**

Does the plan currently utilize managed accounts? If so, please provide the company being used as well as the total assets in the program today.

➤ **Answer 18**

The plan does not currently utilize managed accounts.

➤ **Question 19**

Please provide a sample of the current contribution file feed that the plan uses today. Please provide data definitions as well as field level definitions for the file.

➤ **Answer 19**

This information will be provided during the implementation phase.

➤ **Question 20**

Is there any update on the availability of the forms in Word format?

➤ **Answer 20**

Refer to Question 4 of this Addendum.

➤ **Question 21**

In addition, can you please confirm that the due date and time is May 12 at 2:00pm ET. Item 6.1 on page 14 states the proposals are due May 5 at 2:00pm ET.

➤ **Answer 21**

The due date for this RFP is May 12, 2020 at 2:00 pm

➤ **Question 22**

We were not able to locate the ACH Payment Agreement Form (Attachment N), Can you please provide this document in Word Format?

➤ **Answer 22**

Refer to Question 4 of this Addendum.

➤ **Question 23**

The RFP mentioned that many of the attachments were being provided in Word Format, as we are required to complete them and submit in Word format. However, the attachments that were available in Demandstar were in PDF format only. Will you be providing Word version?

➤ **Answer 23**

Refer to Question 4 of this Addendum.

➤ **Question 24**

The RFP indicates that our Certificate of Insurance will need to include Broward County Schools as additional insured. Should our COI reflect the additional insured with our proposal submission, or is the intent that we would add SBBC as an additional insured later if we are awarded the RFP.

➤ **Answer 24**

The Certificate of Insurance with SBBC listed as an Additional insurer is required after the award of the RFP

➤ **Question 25**

Attachment B (Current Plan Design) indicates it must be submitted in Word format with our proposal. Can you advise what needs to be done with the Plan Design document? Also, elsewhere in the RFP, Attachment B is referred to as “Sample Communication Pieces”. Can you please explain what is require for Attachment B and/or what is required for Sample Communication Pieces? Is there perhaps an attachment missing that is related to sample communication pieces, because Attachment B pertains to the current plan design?

➤ **Answer 25**

Refer to Question 4 of this Addendum

➤ **Questions 26**

There are multiple stable value funds (Prudential and Lincoln). Are all stable value funds receiving new contributions or are some of them closed to new money?

➤ **Answer 26**

The Lincoln Stable Value Account is the capital preservation option in the plans. As of 3/31/20 there was a total of \$42,562,182 invested in the stable value account earning 1.95% and \$38,674,294 earning a rate of 2.05%. The crediting rate resets on a semi-annual basis. These rates are in effect through 12/31/2020. The Lincoln Stable Value Account has a lifetime guaranteed minimum interest rate of 1.50%. Deposits into the Lincoln Stable Value Account are managed within Lincoln’s \$100 billion general account. The Lincoln Stable Value Account has an Immediate Lump sum payment option that guarantees the payment can never be less than principal plus interest at 1.50%. The maximum payment factor is full book value. As of 3/31/2020, the market to book ratio is 100%. Alternatively, the contract owner can also elect a book value installment option in which 6 payments are made over a 5 year period of time.

The Prudential account is closed to new money. There are no assets in a Prudential account or any other stable value account, as all money is in the Lincoln accounts.

➤ **Question 27**

For the stable value funds, please provide the current interest rates and minimum guarantees. Also, are there any termination restrictions on the stable value funds, such as multi-year payments on termination or Market Value Adjustments? If yes, please provide the contract language which details the application of the restriction or applicable calculations.

➤ **Answer 27**

The Lincoln Stable Value Account is the capital preservation option in the plans. As of 3/31/20 there was a total of \$42,562,182 invested in the stable value account earning 1.95% and \$38,674,294 earning a rate of 2.05%. The crediting rate resets on a semi-annual basis. These rates are in effect through 12/31/2020. The Lincoln Stable Value Account has a lifetime guaranteed minimum interest rate of 1.50%. Deposits into the Lincoln Stable Value Account are managed within Lincoln’s \$100 billion general account. The Lincoln Stable Value Account has an Immediate Lump sum payment option that guarantees the payment can never be less than

principal plus interest at 1.50%. The maximum payment factor is full book value. As of 3/31/2020, the market to book ratio is 100%. Alternatively, the contract owner can also elect a book value installment option in which 6 payments are made over a 5 year period of time.

The Prudential account is closed to new money. There are no assets in a Prudential account or any other stable value account, as all money is in the Lincoln accounts.

➤ **Question 28**

Are there any wrap fees or any other asset charges in addition to the fund's expense ratio?

➤ **Answer 28**

There are no wrap fees or additional charges in addition to the funds' expense ratios.

➤ **Question 29**

Are the two Lincoln stable value funds identical in rate and exit provisions?

➤ **Answer 29**

Rates differ per contract. Exit provisions are the same.

➤ **Question 30**

What are the exit provisions of the Lincoln stable value funds?

➤ **Answer 30**

Refer to Question 12 of this Addendum.

➤ **Question 31**

What is the rate being credited by each of the Lincoln stable value funds?

➤ **Answer 31**

1.95% and 2.05%

➤ **Question 32**

What is the asset charge on the variable funds and is revenue sharing recaptured?

➤ **Answer 32**

There is no asset charge on the variable funds. Fund expense ratios for each variable fund are as follows. Any 12b-1 or sub-TA fees are retained by the administrator.

INVESTMENT NAME	EXPENSE RATIO
Vanguard Target Retirement 2035 Inv	0.14
T. Rowe Price Growth Stock Adv	0.92
Vanguard Target Retirement 2050 Inv	0.15

Vanguard Target Retirement 2015 Inv	0.13
Vanguard Target Retirement 2025 Inv	0.13
American Beacon Mid Cap Value Instl	0.93
BlackRock High Yield Bond Instl	0.62
Fidelity Total Market Index	0.02
Vanguard Target Retirement 2020 Inv	0.13
INVESCO DIVERS DIVIDEND A	0.82
PRIMECAP Odyssey Stock	0.66
Vanguard Target Retirement 2030 Inv	0.14
American Funds Europacific Growth R4	0.84
Metropolitan West Total Re Bd Admin Cl	0.78
Vanguard Target Retirement 2040 Inv	0.14
Janus Henderson Venture I	0.75
Vanguard Target Retirement Income Inv	0.12
Delaware Small Cap Value R6	0.72
Vanguard Target Retirement 2055 Inv	0.15
Hartford MidCap R6	0.75
American Funds Fundamental Investors R6	0.28
JPMorgan US Equity R6	0.44
Vanguard Target Retirement 2045 Inv	0.15

➤ **Question 33**

The RFP instructs us to submit the Sample Agreement (Attachment K) and the HIPPA business Associate Agreement (Attachment L) with our proposal. Can you please clarify if the intent is for us to complete our legal review of the agreements and submit with our signatures, or are you asking us to review and provide feedback to the agreements for consideration?

➤ **Answer 33**

Refer to Sections 4.7.15 and 4.7.22 which states that SBBC wants the Proposer to identify any redlined requested changes in the Attachments. However, the submittal of signatures for the Agreement and BAA will be required after the recommendation of an award to the selected vendor.

➤ **Question 34**

Will the Board please consider accepting this RFP submission in email format (PDF) only? If unable to accept email format only, would the Board please consider accepting an electronic signature where manual ink signature is requested in the response?

➤ **Answer 34**

RFP submittal must be in accordance with the requested format, as stated in the RFP. Refer to Question 7 of this Addendum.

➤ **Question 35**

Can the Board please provide any plan-level, participant-level or fund-level asset transfer restrictions that would prevent any assets from transferring immediately, if applicable?

➤ **Answer 35**

There are no restrictions on any of the mutual funds offered in the plan; see question 12 above in regard to the Lincoln products.

➤ **Question 36**

Are the Plans or any of the funding vehicles subject to surrender charge or market value adjustment?

➤ **Answer 36**

There are no restrictions on any of the mutual funds offered in the plan; see question 12 above in regard to the Lincoln products.

➤ **Question 37**

Can the Board confirm that all assets are available to transfer at the Plan-level?

➤ **Answer 37**

Refer to Question 12 of this Addendum.

➤ **Question 38**

Can the Board please provide the total number of unique active and terminated participants with account(s) across the FICA Alternative and Special Pay Plans?

➤ **Answer 38**

29,531 unique accounts are maintained across the FICA Alternative and Special Pay Plan, including both active and terminated participants.

➤ **Question 39**

Can the Board please provide the current Plan pricing and stable value net crediting rate, both specific to each plan type?

➤ **Answer 39**

Refer to Question 12 of this Addendum.

➤ **Question 40**

Can the Board please confirm the Proposal due date? May 12 at 2 PM EST is indicated throughout, except for section 6.1 under Special Conditions. May 5 is indicated in this section.

➤ **Answer 40**

Refer to Question 21 of this Addendum.

➤ **Question 41**

I have noticed the announcement about the Broward County School Board RFP for Retirement Plan Administration and Investment Management Services. Please send me a copy of the RFP documents

➤ **Answer 41**

SBBC advertised solicitation for this RFP can be obtain at Demandstar.com.



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PROCUREMENT & WAREHOUSING SERVICES

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Dr. Rosalind Osgood
Nora Rupert

Robert W. Runcie
Superintendent of Schools

April 8, 2020

Dear Prospective Proposers:

**SUBJECT: Instructions to Proposers
Request for Proposals (RFP) FY21-031 Retirement Plan Administration
and Investment Management Services**

The School Board of Broward County, Florida (SBBC) is interested in receiving Proposals, in response to the attached RFP, for **Retirement Plan Administration and Investment Management Services**. Any questions regarding this RFP should be addressed to me, in writing, at the address stated above, via facsimile at 754-321-0533 or via e-mail michelle.wilcox@browardschools.com. No other SBBC staff member should be contacted in relation to this RFP. Any information that amends or supplements any portion of this RFP, which is received by any method other than an Addendum issued to the RFP should not be considered and is not binding on SBBC.

In order to assure that your Proposal is in full compliance with all requirements of the RFP, carefully read all portions of this RFP document paying particular attention to the following areas:

SUPPLIER DIVERSITY OUTREACH PROGRAM PARTICIPATION (See Section 4.12 of the RFP)

SBBC has implemented a Supplier Diversity Outreach Program as part of the SBBC's competitive solicitation and contracting activity in accordance with School Board Policy 3330. The purpose of the program is to utilize available small, minority and women business enterprises (S/M/WBE's) within the Board's market area to compete for the award of SBBC purchasing contracts. **S/M/WBE vendors utilized for this contract must be certified by SBBC's, Supplier Diversity Outreach Program Office.** For information on business enterprise certification, contact SBBC's Supplier Diversity & Outreach Program at 754-321-0550.

REQUIRED RESPONSE FORM

Section 1.0, Required Response Form must be completed in full and executed by an authorized representative.

PROPOSAL SUBMITTAL FORMAT

Proposers are requested to organize their Proposals in accordance with Section 4.0. SBBC reserves the right to reject and not consider any Proposal not organized and not containing all the information outlined in Section 4.0.

DUE DATE

Proposals are due in the Procurement & Warehousing Services on the date and time stated in Section 3.0. In order to have your Proposal considered, it must be received on or before the date and time due. Proposals received after 2:00 p.m. ET on date due will not be considered.

STATEMENT OF "NO RESPONSE"

If you are **not** submitting a Proposal in response to this RFP, please complete **Attachment O**, Statement of "No Response" and return via facsimile to 754-321-0533 or scan and send via e-mail michelle.wilcox@browardschools.com. Your response to the Statement of "No Response" is very important to the Procurement & Warehousing Services when creating future RFPs.

Thank you for your interest in SBBC. Again, if you have any questions, please contact me at 754-321-0503 or e-mail address stated above.

Sincerely,

Michelle Bryant Wilcox Digitally Signed

Michelle Bryant Wilcox
Purchasing Agent

REQUEST FOR PROPOSALS (RFP)

RFP FY21-031

Retirement Plan Administration and Investment Management Services



RFP Release Date: April 8, 2020

Written Questions Due: On or Before 5:00 p.m. ET April 15, 2020
in Procurement & Warehousing Services

Proposals Due:* On or Before 2:00 p.m. ET
May 12, 2020 in Procurement & Warehousing
Services Department

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
Procurement & Warehousing Services
7720 W. Oakland Park Boulevard, Suite 323
Sunrise, Florida 33351-6704

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Individuals with disabilities requesting accommodations under the Americans with Disabilities Act (ADA) may call EEO/ADA Compliance at 754-321-2150 or Teletype Machine (TTY) 754-321-2158.

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PROPOSER'S SUBMITTAL CHECKLIST

1. Proposer's Attachments

The following table identifies all documents being attached as part of the RFP response and the purpose for each attachment. Add more rows as needed.

Table 1 Proposers Attachment Checklist

Item #	Attachment Name / Purpose	Attachment Provided?		Reference to Proposal Response Section
1		YES <input type="checkbox"/>	NO <input type="checkbox"/>	
2		YES <input type="checkbox"/>	NO <input type="checkbox"/>	
3		YES <input type="checkbox"/>	NO <input type="checkbox"/>	
4		YES <input type="checkbox"/>	NO <input type="checkbox"/>	
5		YES <input type="checkbox"/>	NO <input type="checkbox"/>	
6		YES <input type="checkbox"/>	NO <input type="checkbox"/>	

2. Proposer's Response Checklist

The following table verifying all RFP responses and the items completed as instructed.

Table 2 Proposer's Response Checklist

Item #	Proposal Response Item	Completed and Provided as Instructed?		Reference to Proposal Response Section
1	Section 1.0 - Required Response Form	YES <input type="checkbox"/>	NO <input type="checkbox"/>	
2	Section 4.2 - Minimum Eligibility	YES <input type="checkbox"/>	NO <input type="checkbox"/>	
3	Section 4.7 – Scope of Services	YES <input type="checkbox"/>	NO <input type="checkbox"/>	
4	Section 4.12 – S/M/WBE	YES <input type="checkbox"/>	NO <input type="checkbox"/>	
5	Attachment A - Questionnaire	YES <input type="checkbox"/>	NO <input type="checkbox"/>	
6	Attachment B – Current Plan Design/Communication	YES <input type="checkbox"/>	NO <input type="checkbox"/>	
7	Attachment C – Financial Response Form	YES <input type="checkbox"/>	NO <input type="checkbox"/>	
8	Attachment F - Supplier Diversity Outreach Program – F1, F2, F3, F4 and F5	YES <input type="checkbox"/>	NO <input type="checkbox"/>	
9	Attachment G - Disclosure of Potential Conflict of Interest and Conflicting Employment or Contractual Relationship	YES <input type="checkbox"/>	NO <input type="checkbox"/>	
10	Attachment H – Certificate of Debarment, Suspension, Ineligibility, and Voluntary Exclusion Lower Tier Transactions	YES <input type="checkbox"/>	NO <input type="checkbox"/>	
11	Attachment I - W-9 Form	YES <input type="checkbox"/>	NO <input type="checkbox"/>	
12	Attachment J – Drug-Free Workplace Form	YES <input type="checkbox"/>	NO <input type="checkbox"/>	

Item #	Proposal Response Item	Completed and Provided as Instructed?		Reference to Proposal Response Section
13	Attachment K – SBBC Sample Agreement	YES <input type="checkbox"/>	NO <input type="checkbox"/>	
14	Attachment L – Business Associate Sample Agreement	YES <input type="checkbox"/>	NO <input type="checkbox"/>	
15	Attachment M – Performance Standards and Guarantees	YES <input type="checkbox"/>	NO <input type="checkbox"/>	
16	Attachment N – ACH Payment Agreement Form	YES <input type="checkbox"/>	NO <input type="checkbox"/>	
17	Attachment O – Statement of “No Response”	YES <input type="checkbox"/>	NO <input type="checkbox"/>	

REQUEST FOR PROPOSALS (RFP) FY21-031
1.0 REQUIRED RESPONSE FORM

RELEASE DATE: April 8, 2020

TITLE: Retirement Plan Administration and Investment Management Services

This Proposal must be submitted to the **Procurement & Warehousing Services of The School Board of Broward County, Florida, 7720 W. Oakland Park Boulevard, Suite 323, Sunrise, Florida 33351-6704, on or before 2:00 p.m. ET May 12, 2020** and plainly marked **RFP FY21-031, Retirement Plan Administration and Investment Management Services**. Proposals received after 2:00 p.m. ET on date due will not be considered.

One complete, ORIGINAL hard-copy Proposal (clearly marked as such), and **two complete, original electronic versions** (all clearly marked as "original") will constitute the original governing documents. . In the case of any discrepancy between the ORIGINAL hard-copy Proposal and the electronic version, the ORIGINAL hard-copy Proposal shall be the governing document. The two electronic versions in Microsoft Word 6.0 or higher on separate thumb drives and **25 hard-copies** (which must be **IDENTICAL** to the original Proposal, **including any supplemental information/marketing materials**), of the RFP Proposal, including this **REQUIRED RESPONSE FORM** (Page 1 of RFP FY21--031), must be fully executed and returned on or before 2:00 p.m. ET on date due to the Procurement & Warehousing Services in accordance with the submittal requirements. (See Page 2 for formatting electronic data) In the case of any discrepancy between the original Proposal and the copies, the original Proposal will be the governing document. The proposal must contain all the information required to be included in the Proposal as described herein. Completed Proposals must be submitted in a sealed envelope (package, box, etc.) with the RFP number and name clearly typed or written on the front.

PROPOSER INFORMATION

PROPOSER'S (COMPANY) NAME: _____
STREET ADDRESS: _____
CITY, STATE AND ZIP CODE: _____
PROPOSER TELEPHONE: _____ PROPOSER FAX: _____
PROPOSER TOLL FREE: _____
CONTACT PERSON: _____
CONTACT PERSON'S ADDRESS: _____
CONTACT PERSON'S EMAIL ADDRESS: _____
CONTACT TELEPHONE: _____ FAX: _____ TOLL FREE: _____
E-MAIL ADDRESS TO SEND PURCHASE ORDERS TO: _____
INTERNET URL: _____
PROPOSER TAXPAYER IDENTIFICATION NUMBER: _____

Proposal Certification

I hereby certify that: I am submitting the following information as my firm's (Proposer) Proposal and am authorized by Proposer to do so. Proposer has not divulged, discussed, or compared the Proposal with other Proposers and has not colluded with any other Proposer or party to any other Proposal; Proposer, its principals, or their lobbyists has not offered campaign contributions to School Board Members or offer contributions to School Board Members for campaigns of other candidates for political office during the period in which the Proposer is attempting to sell goods or services to the School Board. This period of limitation of offering campaign contributions shall commence at the time of the "Cone of Silence" period for any solicitation for a competitive procurement as described by School Board Policy 3320, Part II, Section GG as well as School Board Policy 1007, Section 5.4 – Campaign Contribution Fundraising. Proposer acknowledges that all information contained herein is part of the public record as defined by the State of Florida Sunshine and Public Records Laws; all responses, data and information contained in this Proposal are true and accurate. **Proposer agrees to complete and unconditional acceptance of the contents of all pages in this Request for Proposals (RFP), and all appendices and the contents of any Addenda released hereto; Proposer agrees to be bound to any and all specifications, terms and conditions contained in the Request for Proposals, and any released Addenda and understand that the following are requirements of this RFP and failure to comply will result in disqualification of Proposal submitted.**

Signature of Proposer's Authorized Representative (**blue ink preferred on original**) Date

Name of Proposer's Authorized Representative Title of Proposer's Authorized Representative

NOTE: Entries must be completed in ink or typewritten. This original Required Response Form must be fully executed and submitted with this Proposal (see Section 4.1.4).

NOTE TO PROPOSERS

TWO COMPLETE ELECTRONIC COPIES OF YOUR PROPOSAL, IDENTICAL TO THE ORIGINAL PROPOSAL, ON SEPARATE THUMB DRIVES, WILL BE REQUIRED IN MICROSOFT WORD 6.0 OR HIGHER AND EXCEL.

WHEN CREATING YOUR DIGITAL FILES, AS STATED ABOVE, **ONE COMPLETE PDF COPY** OF YOUR ORIGINAL PROPOSAL MUST BE CREATED AS “**ONE FILE**”. DO NOT PROVIDE PDF FILES WHICH ARE BROKEN INTO SEPARATE FILES.

PROCUREMENT AND WAREHOUSING SERVICES PREFERS THESE FILE BE STORED ON TWO SEPARATE THUMB DRIVES.

IF YOU HAVE CONFIDENTIAL OR PROPRIETARY INFORMATION, CREATE A SEPARATE BOOK AND FILE SO INFORMATION CAN BE KEPT CONFIDENTIAL. BOOKS AND FILES MUST BE CLEARLY MARKED “CONFIDENTIAL”.

DO NOT PASSWORD PROTECT YOUR FILES

2.0 INTRODUCTION AND GENERAL INFORMATION

2.1 The School Board of Broward County, Florida (hereinafter referred to as "SBBC") is the sixth largest school district in the United States and has approximately 26,000 employees and approximately 6,000 part-time substitute and seasonal employees. SBBC desires to receive Proposals for **Retirement Plan Administration and Investment Management Services** as described herein.

SBBC sponsors The School Board of Broward County 401(a) FICA Qualified Alternative and Special Pay Plan. The Plan is a qualified defined contribution plan with participant-directed investments. The Plan was originally adopted effective on July 1, 1996, as a FICA alternative retirement plan for SBBC's part-time, substitute, and seasonal employees. In 1999, the plan was amended to provide contributions of accrued and unused vacation and sick leave pay for certain other employees (referred to hereafter as "Special Pay"). The incumbent for the Plan's administration and investment management services is Bencor, Inc. **Attachment B** describes the Plan's Current Design, and **Attachment D** provides the Plan's Investment Activity for the Plan Years ending December 31, 2018 and December 31, 2019. The Proposer should be able to provide a plan design that matches, and all the services necessary to administer, the current plan design.

SBBC is seeking proposals from organizations to provide investment products, administration, employee communication, and legal consultation services to support the Plan.

In order to properly evaluate the financial impact of the Proposer's response, this RFP requests data necessary to evaluate the services proposed. Proposers who do not provide the requested information "may" be negatively impacted during the scoring process.

SBBC will contract with only one vendor to provide all of the requested services, even if vendor delivers the requested services through a bundled arrangement. SBBC will not contract with independent agents or brokers to provide these services. SBBC will also not consider any 403(b) tax sheltered annuity products. All Proposers must be in compliance with all applicable Florida statutes.

Gallagher Benefit Services, Inc. will be providing consultant services to SBBC in relation to this RFP (Reference General Condition 7.41).

The School Board of Broward County, Florida, Supplier Diversity Outreach Program, works to increase the participation of Small, Minority, and Women Business Enterprises (S/M/WBE). It is the intent of the Supplier Diversity Outreach Program to have a diverse group, as well as an equitable distribution of S/M/WBE's participating on any award of this Proposal. To be considered for the greatest amount of evaluation points for S/M/WBE participation, the Proposer must provide significant information on the specific certified S/M/WBE vendor(s) that will be used on any contract award for services described in this RFP. The Proposer should include the specific elements of work each S/M/WBE vendor(s) will be responsible for performing, the dollar value of the work, and the percentage of the total contract value. For a list of certified S/M/WBE's, refer to <http://www.broward.k12.fl.us/supply/sdop/vendorlist.html>.

2.2 **Questions and Interpretations:** Any questions concerning any portion of this RFP must be submitted, in writing, to **Michelle Bryant Wilcox Procurement & Warehousing Services, 754-321-0503** at the address listed in Section 6.1 or via facsimile 754-321-0533 or via e-mail michelle.wilcox@browardschools.com. Any questions which require a response which amends the RFP document in any manner will be answered via Addendum by the Procurement & Warehousing Services and provided to all Proposers. No information given in any other matter will be binding on SBBC.

Any questions concerning any condition or requirement of this RFP must be received in the Procurement & Warehousing Services, in writing, **on or before 5:00 p.m. ET April 15, 2020**. Questions received after this date and time will not be answered. Submit all questions to the attention of the individual stated above. If necessary, an Addendum will be issued. Any verbal or written information, which is obtained other than by information in this RFP document or by Addenda, shall not be binding on SBBC.

2.3 **Contract Term:** The purpose of this RFP is to establish a contract **beginning January 1, 2021, and continuing through December 31, 2023**. The term of the contract may, by mutual agreement between SBBC and the Awardee, upon the Superintendent's Insurance Advisory Committee's approval, be extended for two additional one-year periods. If needed, upon SBBC's sole option after the initial or any one-year renewal option, an extension of 180 days beyond the expiration

2.0 INTRODUCTION AND GENERAL INFORMATION

date of the renewal period at the same rates/fees as the previous twelve (12) months. Procurement & Warehousing Services, will, if considering renewing, request a letter of intent to renew from each Awardee, prior to the end of the current contract period. The Awardee will be notified when the recommendation has been acted upon by the School Board. All prices shall be firm for the initial term of the contract. The Proposer agrees to this condition by signing its Proposal.

- 2.4 **Submittal Of Proposal:** Submit Proposals in accordance with Section 4.0. Proposals should be organized and shall include necessary information as to be in full compliance with this Section. In order to facilitate the Proposal evaluation process, special attention should be paid to organizing Proposals in a manner consistent with Section 4.0. SBBC reserves the right to reject and not consider any proposal that is not submitted in accordance with Section 4.0 or that does not include any necessary information.
- 2.5 **Price Adjustments:** Prices offered shall remain firm through the first three years of the initial term of the contract in accordance with the Scope of Services Section 4.7, Attachments A, B and C. A request for price adjustment must be submitted in writing at least 270 days prior to the first renewal date of the contract. Notice that a change in rates or consideration is proposed, without stating clearly the exact amount and the effect of the proposed change on the overall consideration of the Agreement shall not constitute a valid notice. A written notice of any change in rates or other change in consideration shall be delivered by certified mail to: Director, Benefits & Employment Services, The School Board of Broward County, Florida, 7770 W. Oakland Park Blvd., Sunrise, Florida 33351. If a price increase is approved after the first renewal date, then that price must remain firm for the two remaining years of the contract. SBBC reserves the right to not renew any contract regardless of price considerations.
- 2.6 **Evaluation and Award:** Evaluation and award will be made in accordance with Section 5.0.

3.0 CALENDAR

April 8, 2020	Release of RFP FY21-031
April 15, 2020	Written questions due on or before 5:00 p.m. ET in Procurement & Warehousing Services
May 12, 2020	*Proposals due on or before 2:00 p.m. ET in Procurement & Warehousing Services. Proposal opening will be at: 7720 West Oakland Park Blvd., Suite 323, Sunrise, Florida 33351-6704*
June 17, 2020	*Evaluation Committee reviews Proposals and makes Recommendation for an award. Meeting to be held at 9:00 a.m.: TSSC Annex 7770 West Oakland Park Blvd. Sunrise, Florida 33351
June 22, 2020	Posting of Recommendation

*These are public meetings. The School Board of Broward County, Florida, prohibits any policy or procedure which results in discrimination on the basis of age, color, disability, gender identity, gender expression, national origin, marital status, race, religion, sex or sexual orientation. Individuals who wish to file a discrimination and/or harassment complaint may call the Director of EEO/ADA Compliance at 754-321-2150 or Teletype Machine (TTY) 754-321-2158.

Individuals with disabilities requesting accommodations under the Americans with Disabilities Act (ADA) may call EEO/ADA Compliance at 754-321-2150 or Teletype Machine (TTY) 754-321-2158.

4.0 INFORMATION TO BE INCLUDED IN THE SUBMITTED PROPOSAL

- 4.1 In order to maintain comparability and facilitate the review process, it is requested that Proposals be organized in the manner specified below. Include all the information requested herein in your Proposal.
- 4.1.1 **Title Page:** Include RFP number, subject, the name of the Proposer, address, telephone number, and the date.
- 4.1.2 **Table of Contents:** Include a clear identification of the material by section and by page number.
- 4.1.3 **Letter of Transmittal:** Include the names of the persons who will be authorized to make representations for the Proposer, their titles, addresses, and telephone numbers.
- 4.1.4 **Required Response Form:** (Page 1 of RFP) with all required information completed and all signatures as specified (blue ink preferred on original). Any modifications or alterations to this form shall not be accepted, and Proposal may be rejected. The enclosed original Required Response Form will be the only acceptable form.
- 4.1.5 **Notice Provision:** Should your firm become an Awardee under this RFP, please specify the name and address of the person(s) to whom any notices should be sent under SBBC's contract with the Awardee:

Name / Title / Address and email address of Awardee's Representative for Notices:

With a Copy To: (Name/Title and Address)

- 4.2 **Minimum Eligibility** In order to be considered for an award and to be further evaluated, Proposer must meet or exceed the following criteria as of the opening date of the Proposal. The Proposer is responsible for providing the following information in its response.
- 4.2.1 Proposer must agree to the language in Section 7.1, Liability.
- 4.2.2 All Proposers must be licensed in the State of Florida. Provide a copy of your current license and/or certificate that allows Proposer to provide the services proposed.
- 4.2.3 If Proposer is an insurance carrier, the Proposer must be licensed to provide coverages in the State of Florida with an AM Best rating of A- or higher and financial size category of VI or larger.
- 4.2.4 Three (3) years of **independent audited** financial statements **must** be provided if Proposer is an insurance carrier and cannot comply with 4.2.3 or if Proposer is not an insurance carrier.
- 4.2.5 Proposer must agree to the language in Section 6.4, Insurance Requirements.
- 4.2.6 Proposer must execute and submit, with their submitted Proposal, **Attachment H, Certification of Debarment, Suspension, Ineligibility, and Voluntary Exclusion Lower Tier Transactions.**
- 4.2.7 Complete and return, with your Proposal, **Attachment G – Disclosure of Potential Conflict of Interest and Conflicting Employment or Contractual Relationship** of the RFP.
- 4.2.8 All Proposers must have IRS determination letter in place.

4.0 INFORMATION TO BE INCLUDED IN THE SUBMITTED PROPOSAL (Continued)

4.2.9 The Proposer must fund SBBC staff to assist in the administration and clerical duties of the Plan. The funding includes benefits, office equipment, supplies, travel, and professional dues. The cost is \$97,500 per year and will be included in any contract awarded and will be billed to the Awardee on an annual basis.

4.3 Experience and Qualifications of the Proposer:

- 4.3.1 State under what other or former name(s) the Proposer is currently operating under or has operated under.
- 4.3.2 State whether Proposer's firm(s) is local (Broward, Miami-Dade, or Palm Beach Counties), regional or national.
- 4.3.3 Give the location of the office from which service is to be performed and the number of partners, managers, supervisors, senior managers and other professional staff employed at that office and the name of each individual in charge.
- 4.3.4 Provide a statement of any litigation or regulatory action that has been filed or is pending against your firm(s) in the last three years. If an action has been filed, state and describe the litigation or regulatory action filed, and identify the court or agency before which the action was instituted, the applicable case or file number, and the status or disposition for such reported action. If no litigation or regulatory action has been filed against your firm(s), provide a statement to that effect. For joint venture or team Proposers, submit the requested information for each member of the joint venture or team.

4.4 **Addenda:** Proposer has determined that it has received all Addenda released prior to its Proposal submittal. It is the Proposer's responsibility to make sure it has received all Addenda.

4.5 **Questionnaire:** Proposer shall complete the questionnaire contained in **Attachment A** of this RFP. The Questionnaire is being provided in an electronic format through DemandStar. Failure to respond may result in a reduction of points in the evaluation process or your Proposal being determined as non-responsive.

4.6 **Plan Design:** Complete the Plan Design contained in **Attachment B** of this RFP. The Plan Design is being provided in an electronic format through DemandStar. Failure to respond may result in a reduction of points in the evaluation process or your Proposal being determined as non-responsive.

4.7 **Scope of Services Provided:** Clearly, describe how the Proposer can accomplish each of the following Scope of Services provided below. Minimum must include the following:

Services Requested	Yes, Will Comply	Yes, Will Comply, but with Deviations	No, Will Not Comply
4.7.1 Provide customer service lines with a 754/954 Area Code for employees, as well as a toll-free line for employees residing outside the 754/954 area code. Within the schools themselves, employees do not have access to dial a 1-800 number; the number must be a 754/954 number.			
4.7.2 Awardee is required to maintain compliance with appropriate federal and state statutes.			
4.7.3 Awardee agrees to provide a bilingual customer service representative at no additional cost if requested by SBBC.			

Services Requested	Yes, Will Comply	Yes, Will Comply, but with Deviations	No, Will Not Comply
4.7.4 Since the Plan is a participant-directed, defined contribution plan, the Plan should offer participants a variety of investment options, and give the participants sufficient information to make informed decisions about their investments, and the ability to change investment choices on a daily basis.			
4.7.5 The administrator is responsible for any required reporting or disclosures, including the preparation of Forms 1099, eligible rollover distribution notices, and participant benefit statements.			
4.7.6 The administrator is responsible for all recordkeeping including, but not limited to, contributions, allocation of investment results, disbursements, loans, rollovers, and qualified domestic relations order (QDRO) determinations.			
4.7.7 The Benefits Department shall review and approve all communication materials, including direct mailing. Postage and production costs are to be paid by the Awardee.			
4.7.8 Awardee agrees to provide an extension of 180 days beyond the expiration date of the renewal period at the same rates/fees as the previous 12-month period, as outlined in Section 2.3 of the RFP.			
4.7.9 Awardee will assist in creating and maintaining a benefits portion of the Benefits video for all new hires and employees at no cost to SBBC. The video is produced by SBBC and the Awardee is responsible for providing information, presentations, and speakers to be included in the video.			
4.7.10 Awardee commits to maintain sufficient support to service SBBC.			
4.7.11 Awardee will provide employee communication materials as requested and approved by SBBC (Refer to Attachment B for sample communication pieces).			
4.7.12 The Awardee must offer web-based capabilities for participants to conduct and/or review financial transactions and account inquiries at no additional cost.			
4.7.13 The Awardee must provide trustee services to accept funds from SBBC, hold plan assets, and make disbursements.			

Services Requested	Yes, Will Comply	Yes, Will Comply, but with Deviations	No, Will Not Comply
4.7.14 Awardee will communicate the program to newly eligible employees. The communication should describe the program and employee options, and provide enough information for each eligible employee to make responsible and informed decisions.			
4.7.15 Awardee(s) agree to accept the terms contained in SBBC's Agreement as outlined in Attachment K and submit any additional documents that require signature at the time of Award. Describe any and all deviations in detail.			
4.7.16 Awardee shall agree to supply SBBC with standardized reports, upon request, for both industry data and based on SBBC specific membership. These reports will include, but will not be limited to cash flow data, member enrollment information on a monthly basis, etc.			
4.7.17 Provide employee information statements at a minimum, on a quarterly basis. Statements on the front page are to outline the cost that the member has paid for these investments.			
4.7.18 Awardee will provide educational and informational hard copy brochures as requested by SBBC.			
4.7.19 Awardee will conduct educational seminars as requested by SBBC.			
4.7.20 Provide a dedicated Account Manager who will have the overall responsibility for managing SBBC's relationship.			
4.7.21 Provide qualified personnel to attend (in person) and participate in meetings as needed.			
4.7.22 Awardee(s) agree to accept the terms contained in SBBC's HIPAA Business Associate Agreement as outlined in Attachment L . Describe any and all deviations in detail.			
4.7.23 All documents that will require signature by SBBC or its representative upon award must be included with your proposal in signature ready format. Any such documents that are not included with your proposal will not be executed. Proposer must complete Section 1.0 Proposer Data Submittal Checklist.			

4.0 INFORMATION TO BE INCLUDED IN THE SUBMITTED PROPOSAL (Continued)

- 4.8. Describe any additional services that Proposer is able to provide in relation to the scope of this RFP.
- 4.9. Disclose if any commissions and/or service fees are included in your rate quotation. Specify the amount of the commissions and/or service fees, to whom they may be paid and your reason(s) for including them.
- 4.10. **Performance Standards and Guarantees:** Complete the Performance Standards/Guarantees contained in **Attachment M** of this RFP. The Performance Standards/Guarantees is being provided in an electronic format through DemandStar. Failure to respond may result in a reduction of points in the evaluation process or your Proposal being determined as non-responsive. SBBC reserves the right to negotiate through the Committee any and all performance standards and guarantees with the Awardee(s).
- 4.11. **Cost of Services:** Complete the applicable **Attachment C**, Financial Response Form for each plan/program offered. The Financial Response Form is being provided in an electronic format through DemandStar. Failure to respond may result in a reduction of points in the evaluation process or your Proposal being determined as non-responsive.
- 4.12. **SUPPLIER DIVERSITY OUTREACH PROGRAM (SDOP):** The SBBC has implemented a Supplier Diversity Outreach Program (SDOP) as part of the SBBC's competitive solicitation and contracting activity in accordance with School Board Policy 3330, Supplier Diversity Outreach Program and Guidelines. S/M/WBE is defined as an enterprise whose annual revenues and number of employees shall be no greater than fifty percent (50%) of the small business size standards for its industry (ies) as established by the U.S. Small Business Administration and meets significant business presence requirements as defined in Policy 3330. **SBBC Diversity Policy 1.5 & Supplier Diversity Outreach Policy 3330 can be seen at website URL: broward.k12.fl.us/sbbcpolicies.**

Nondiscrimination:

Each Bidder hereby certifies and agrees that the following information is correct: In preparing its response to this project, the Bidder has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in "discrimination" as defined in School Board Policy 3330 – Supplier Diversity Outreach Program, Section D.1.; to wit: discrimination in the solicitation, selection, or commercial treatment of any subcontractor, vendor, supplier, or commercial customer on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or on the basis of disability or other unlawful forms of discrimination. Without limiting the foregoing, "discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination." Without limiting any other provision of the solicitation for responses on this project, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for SBBC to reject the response submitted by the Bidder on this project, and terminate any contract awarded based on the response. As part of its response, the Bidder shall provide SBBC with a list of all instances within the immediate past four (4) years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Florida that Bidder discriminated against its subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that complaint, including any remedial action taken. As a condition of submitting a response to SBBC, the Bidder agrees to comply with SBBC's Commercial Nondiscrimination Policy as described under its School Board Policy 3330 – Supplier Diversity Outreach Program, Section D.1.

INDUSTRY-SPECIFIC REMEDIAL AFFIRMATIVE PROCUREMENT INITIATIVES

The Goal Setting Committee (GSC) has considered the following in the course of reaching a determination regarding which, M/WBE industry-specific remedial programs shall be applied to this solicitation and resulting contract:

The Affirmative Procurement Initiative (API) implemented in this solicitation is the M/WBE Annual Aspirational Goals:

The M/WBE Annual Aspirational Goals is a non-mandatory annual percentage goal for overall M/WBE prime and subcontract participation in School Board contracts. It is established each year by the Goal Setting Committee (GSC) based upon the M/WBE availability by industry in accordance with the District's 2015 MTA Disparity Study findings,

4.0 INFORMATION TO BE INCLUDED IN THE SUBMITTED PROPOSAL (Continued)

along with relative M/WBE availability data to be collected by the School Board through its Centralized Bidder Registration (CBR) system, and the utilization of M/WBEs.

Proposers committing to utilizing a SBBC Certified MWBE firm(s) at the time of submission will be awarded up to a maximum of five (5) points, as described in the Evaluation Preference Point Table. (Ancillary services performed by an SBBC Certified MWBE will be counted towards the District's M/WBE Annual Aspirational Goals.) The proposer shall identify each SBBC-Certified M/WBE firm, that will be utilized by completing the Form 00470 Statement of Intent to Perform as an M/WBE Subcontractor and Form 00475 Subcontractor Participation Schedule (see Attachment A). **NOTE:** M/WBE Proposers who are self-performing must identify themselves by completing the Form 00470 and 00475. The Statement of Intent submitted with the proposal reflects the intent to self-perform. Additionally, it will detail the scope of work and percentage/dollar amount to perform.

The SBBC Supplier Diversity Outreach Program works to increase the participation of small, minority and women-owned business enterprises in construction and purchasing contracts. It is the intent of the School Board of Broward County to have a diverse group of vendors to participate in the procurement process.

Please go to the following link to view the current list of SBBC-Certified firms: browardschools.com/Page/46981

M/WBE INFORMATION: Proposals will be evaluated based on the evaluation criterion 4.12		Maximum Points
4.12.1	<p>Proposers committing to utilizing a SBBC Certified MWBE firm(s) at the time of submission will be awarded up to a maximum of five (5) points. Points are to be awarded as described in the Evaluation Preference Point Table. (<u>Ancillary services performed by an SBBC Certified M/WBE will be counted towards the District's M/WBE Annual Aspirational Goals.</u>) The proposer shall identify each SBBC-Certified MWBE firm, that will be utilized by completing the <i>Form 00470</i> - Statement of Intent to Perform as a MWBE Subcontractor - and <i>Form 00475</i> - Subcontractor Participation Schedule - (see Attachment F). The Statement of Intent submitted with the proposal reflects the intent of the parties, both prime and subcontractor, to establish a business relationship. Additionally, it will detail the type of work and percentage/dollar amount of work that the subcontractor will perform.</p> <p><u>If the Proposer is MWBE-Certified by SBBC, The Proposer must identify itself as an SBBC-Certified MWBE firm, by completing the <i>Form 00470</i> (see Attachment F).</u> The Statement of Intent submitted with the proposal reflects the intent to self-perform. Additionally, it will detail the scope of work and percentage/dollar amount to perform.</p> <p>Indicate the extent and nature of the firm's work with specificity, as it relates to the services as described in this RFP.</p> <p>Provide proof, in writing, that the MWBE proposer is certified by The School Board of Broward County (SBBC), Florida. Any participation by firms not certified with SBBC at the time the proposal is due will not count towards the points for this solicitation. If you are not a SBBC Certified M/WBE Proposer state N/A on the form and return it with your Proposal.</p>	5
4.12.2	<p>Community Involvement: Proposer shall submit information of its involvement in the minority community. Such evidence may include, but not be limited to, minority sponsored events, scholarship contributions targeting minority students, financial contributions and/or other corporate resources for community projects benefitting minorities.</p>	10
	MAXIMUM POINTS TO BE AWARDED	15
	<p>*If awarded, the Awardee will be required to submit <i>Form 00485</i> - Minority or Women Business Enterprise (MWBE) Monthly Utilization Report (Utilization Report) (see Attachment F) to the Supplier Diversity Outreach Program Office which will track payments made. The timing of the Utilization Report shall coincide with invoice submission.</p> <p><u>State your willingness to comply with this requirement.</u></p>	Yes _____ No _____

5.0 EVALUATION OF PROPOSALS

- 5.1 The Evaluation Committee (hereinafter referred to as "Committee"), shall evaluate all Proposals received, which meet or exceed Section 4.2, Minimum Eligibility Requirements and Section 7.1 Indemnification, according to the following criteria:

CATEGORY	MAXIMUM POINTS
A. Experience and Qualifications	25
B. Scope of Services	25
C. Cost of Services	35
D. Supplier Diversity & Outreach Program	15
TOTAL	100

The SBBC shall award a maximum of fifteen (15) points for M/WBE Participation/Community Involvement as listed in the Evaluation Preference Point Table below. Please note the M/WBE Participation points are upon the dollars and are not cumulative.

SDOP Evaluation Preference Point Table

<u>Scope of Work</u>	<u>Assigned # of M/WBE Preference Points</u>
\$5000 to \$7499	1
\$7500 to \$14,999	3
Over \$15,000	5
Community Involvement	10
Total Maximum Points	15

Note: Evaluation points for "Category D" shall be provided by the Supplier Diversity Outreach.

Failure to respond, provide detailed information or to provide requested Proposal elements may result in the reduction of points in the evaluation process. The Committee may recommend the rejection of any proposal containing material deviations from the RFP. The Committee may recommend waiving any irregularities and technicalities. If only one responsive proposal is received, the Committee will proceed without scoring the one responsive proposal and may negotiate the best terms and conditions with that sole proposer or may recommend the rejection of all proposals as permitted by Section 6A-1.012(12)(c), F.A.C."

The SBBC Supplier Diversity Outreach Program works to increase the participation of small, minority and women-owned business enterprises in construction and purchasing contracts. It is the intent of the School Board of Broward County to have a diverse group of vendors to participate in the procurement process. The current list of SBBC S/M/WBE-Certified firms can be viewed at: browardschools.com/Page/46981.

At the time of the bid submittal, the Bidder shall identify itself as an SBBC-Certified M/WBE firm, by completing the *Form 00470* and *Form 00475*. Once awarded, the Bidder is required to submit the Monthly Utilization Report Form, #00485. The Bidder must also adhere to Section 9 and 13 of the SDOP Standard Operating Procedures, which is available at browardschools.com/Page/32544.

- 5.2 The Committee reserves the right to ask questions of a clarifying nature once Proposals have been opened, require presentations from all Proposers, interview any or all Proposers that respond to the RFP, or make their recommendations based solely on the information contained in the Proposals submitted. Presentations, if required, will be part of the evaluation process.

5.0 EVALUATION OF PROPOSALS

- 5.3 **Committee's Recommendation.** The number of firms to be recommended for an award is solely at the discretion of the Committee. The Committee has the discretion to recommend an award to one or more proposer(s) or to reject any or all of the submitted proposals. The Committee also has the discretion to commence negotiations with ranked responsive proposers. During any such negotiations, the Committee reserves the right to negotiate any term, condition, specification, or price (other than those found or specified in Section 4.2 and Section 7.1 of this RFP) during an exempt negotiation session with any ranked responsive proposer. Each ranked responsible proposer must be represented during its exempt negotiations session by an authorized representative possessing the authority to bind the proposer. This authorized representative must be prepared during negotiations to present SBBC with the ranked responsive proposer's best and final offer under the RFP. The Committee will recess the open public portion of the evaluation meeting and conduct the exempt negotiations session of the competitive selection process beginning with the highest-ranked responsive proposer as determined under Section 5.1 of this RFP. In accordance with Section 286.0113(2), Florida Statutes, any negotiations session will be conducted to the exclusion of the other ranked responsive proposers. The Committee may choose to conduct one or more exempt negotiations sessions with as many ranked responsive proposers as it, in its sole judgment, deems appropriate prior to making its recommendation for award to the Superintendent. A complete recording shall be made of each exempt negotiation session conducted by the Committee. Any information communicated between the Committee and a ranked responsive proposer during an exempt negotiations session shall not be disclosed to anyone including other ranked responsive proposers until disclosure is permitted pursuant to Section 286.0113(2), Florida Statutes. After concluding an exempt negotiations session with a ranked responsive proposer, the Committee shall reconvene the open public portion of the evaluation meeting and determine, by motion and a roll call vote, whether to recommend an award to one or more ranked responsive proposers; to declare an impasse with a ranked responsive proposer; or to proceed with further negotiations with one or more of the next highest-ranked responsive proposers. The Committee's recommendation(s) will be forwarded to the Superintendent for his/her consideration. The Superintendent may choose to post the Committee's recommendation(s) as the school district's intended action in accordance with Section 120.57(3), Florida Statutes, or may choose to return the recommendation(s) to the Committee for further action consistent with the RFP. If the negotiation is not successful, the Committee reserves the right not to award a ranked proposer if it is in the best interest of SBBC.
- 5.4 **Award:** The number of firms to be recommended for an award is solely at the discretion of the Committee. SBBC intends to make award(s) to the Proposer(s) that has complied with the terms, conditions, and requirements of the overall RFP. After the conclusion of negotiations, the recommended award would be made for the goods and services sought in the RFP in accordance with the terms of negotiations. The award(s) shall not be a guarantee of business or a guarantee of specified quantities of products or volume of service. An Agreement (in the form of SBBC's Sample Agreement attached hereto as **Attachment J**) shall be prepared for execution by the Awardee and The School Board, and shall be governed by the laws of the State of Florida, and must have venue established in the 17th Judicial Circuit Court of Broward County, Florida or the United States Court of the Southern District of Florida. The agreement approved by the SBBC General Counsel will be submitted to SBBC for final approval. **Approval shall not be a guarantee of business, a guarantee of a specified volume of service or minimum dollar revenue to be received on this contract.**
- 5.5 **Tie Proposals:** If the Committee's evaluation results in a tie total score between two or more Proposals, priority shall be given to Proposers in the following sequence:
- A business that certifies that it has implemented a drug-free workplace program shall be given preference in accordance with the provisions of Chapter 287.087, Florida Statutes, as currently enacted or as amended from time to time;
 - The Broward County Certified Minority/Women Business Enterprise vendor;
 - The Palm Beach or Miami-Dade County Certified Minority/Women Business Enterprise vendor;
 - The Florida Certified Minority/Women Business Enterprise vendor;
 - The Broward County vendor, other than a Minority/Women Business Enterprise vendor;
 - The Palm Beach or Miami-Dade County vendor, other than a Minority/Women Business Enterprise vendor;
 - The Florida vendor, whose main office is in the State of Florida, other than a Minority/Women Business Enterprise vendor.
 - If application of the above criteria does not indicate a priority for award, the award will be decided by a coin toss. The coin toss shall be held publicly either in the Procurement & Warehousing Services or the location where the RFP Evaluation takes place. The vendors with the same scores will be invited to be present as witnesses.

6.0 SPECIAL CONDITIONS

- 6.1 The complete original Proposal properly completed and signed must be submitted in a sealed envelope and received **on or before 2:00 p.m. ET, May 5, 2020** at the following address in order to be considered:

PROCUREMENT & WAREHOUSING SERVICES
THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
7720 West Oakland Park Boulevard, Suite 323
Sunrise, Florida 33351-6704

Attention: RFP FY21-031 - Retirement Plan Administration and Investment Management Services

- 6.2 **One complete, original hard-copy Proposal** (clearly marked as such), and **two complete, original electronic versions** (all clearly marked as "original") will constitute the original governing documents. The two electronic versions in Microsoft Word 6.0 or higher on thumb drives and 25 copies (which must be identical to the original Proposal, **including any supplemental information/marketing materials**), of the RFP Proposal, including the **REQUIRED RESPONSE FORM** (Page 1 of RFP FY21-031), must be fully executed and returned on or before 2:00 p.m. ET on date due to the Procurement & Warehousing Services in accordance with the submittal requirements. The Proposal containing the original manual signature (blue ink preferred) and the electronic versions should be clearly identified as the original Proposals. In the case of any discrepancy between the original hard-copy Proposal and the copies, the original hard-copy Proposal will be the governing document. In the case of any conflict between the original hard-copy Proposal and the original electronic versions, the original hard-copy Proposal will be the governing document. All Proposals shall be submitted in sealed packaging with RFP number and the Proposers' firm name clearly marked on the exterior of the package. All additional copies should be **identical** to the original Proposal submitted, including all supplemental information/marketing materials.

- 6.3 **JOINT VENTURES:** In the event, multiple Proposers submit a joint proposal in response to the RFP, a single Proposer shall be identified as the Prime Proposer. If offering a joint Proposal, Prime Proposer must include the name and address of all parties of the joint Proposal. Prime Proposer shall provide all bonding and insurance requirements, execute any Contract, complete the **REQUIRED RESPONSE FORM** shown herein, and have overall and complete accountability to resolve any dispute arising within this contract. Only a single contract with one Proposer shall be acceptable. Prime Proposer responsibilities shall include, but not be limited to, performing of overall contract administration, preside over other Proposers participating or present at SBBC meetings, oversee the preparation of reports and presentations, and file any notice of protest and final protest as described herein. Prime Proposer shall also prepare and present a consolidated invoice(s) for services performed. SBBC shall issue only one check for each consolidated invoice to the Prime Proposer for services performed. Prime Proposer shall remain responsible for performing services associated with response to this RFP.

- 6.4 **INSURANCE REQUIREMENTS:**

MINIMUM INSURANCE REQUIREMENTS

- 6.4.1 **GENERAL LIABILITY:** Limits not less than \$1,000,000 per occurrence for Bodily Injury/ Property Damage; \$1,000,000 General Aggregate. Limits not less than \$1,000,000 for Products/Completed Operations Aggregate. Please indicate on the certificate, "All policies are primary of all other valid and collectible coverage maintained by The School Board of Broward County, Florida" and "Certificate holder is named as an additional insured" in the description box on General Liability certificate.
- 6.4.2 **WORKER'S COMPENSATION:** Florida Statutory limits in accordance with Chapter 440; Employer's Liability limits not less than \$100,000/\$100,000/\$500,000 (each accident/disease-each employee/disease-policy limit).
- 6.4.3 **AUTO LIABILITY:** Owned, Non-Owned and Hired Auto Liability with Bodily Injury and Property Damage limits of not less than \$1,000,000 Combined Single Limit.

6.0 SPECIAL CONDITIONS

If Awardee does not own any vehicles, hired and non-owned automobile liability coverage in the amount of \$1,000,000 shall be accepted. In addition, an affidavit signed by the Awardee must be furnished to SBBC indicating the following:

_____ (Awardee Name) does not own any vehicles. In the event the insured acquires any vehicles throughout the term of this agreement, the insured agrees to provide proof of "Any Auto" coverage effective the date of acquisition.

6.4.4 **ACCEPTABILITY OF INSURANCE CARRIERS:** The insurance policies shall be issued by companies qualified to do business in the State of Florida. The insurance companies must be rated at least A- VI by AM Best or Aa3 by Moody's Investor Service.

6.4.5 **VERIFICATION OF COVERAGE:** Proof of Insurance must be furnished within 15 days of execution of this Agreement. To streamline this process, SBBC has partnered with EXIGIS RiskWorks to collect and verify insurance documentation. All certificates (and any required documents) must be received and approved by SBBC before any work commences to permit Awardee time to remedy any deficiencies. EXIGIS RiskWorks will send an email notification within three (3) business days after receipt of the award letter.

- New vendors will receive an email notification requesting account verification and insurance agent information.
- Existing vendors will receive an email notification of the current status.

6.4.6 **REQUIRED CONDITIONS:** Liability policies must contain the following provisions. In addition, the following wording must be included on the Certificate of Insurance:

6.4.6.1 The School Board of Broward County, Florida, its members, officers, employees, and agents are added as additional insured.

6.4.6.2 All liability policies are primary of all other valid and collectible coverage maintained by the School Board of Broward County, Florida.

6.4.6.3 Certificate Holder: The School Board of Broward County, Florida, c/o EXIGIS Risk Management Services, P. O. Box 4668-ECM, New York, New York 10163-4668

6.4.7 **CANCELLATION OF INSURANCE:** Vendors are prohibited from providing services under this Agreement with SBBC without the minimum required insurance coverage and must notify SBBC within two business days if required insurance is canceled.

6.4.8 The School Board of Broward County, Florida reserves the right to review, reject or accept any required policies of insurance, including limits, coverage's or endorsements, herein throughout the term of this agreement.

6.5 **ACCEPTANCE AND REJECTION OF PROPOSALS:**

6.5.1 **Acceptance:** All Proposals properly completed and submitted will be evaluated in accordance with Section 4.0 and Section 5.1. SBBC reserves the right to reject any or all Proposals that contain material deviations from the RFP or that fail to meet all mandatory requirements. SBBC may reject any or all Proposals when it serves the best interest of SBBC.

6.5.2 SBBC also reserves the right to waive irregularities or technicalities in any Proposal received if such action is in the best interest of SBBC. However, such a waiver shall in no way modify the RFP requirements or excuse

6.0 SPECIAL CONDITIONS

the Proposer from full compliance with the RFP specifications and other contract requirements if the Proposer is awarded the contract.

6.5 ACCEPTANCE AND REJECTION OF PROPOSALS (Cont'd):

- 6.5.3 **Rejection:** A Proposal may be rejected if it does not conform to the rules or the requirements contained in this RFP. Examples for rejection include, but are not limited to, the following:
- 6.5.3.1 The Proposal is time-stamped at the Procurement & Warehousing Services Department after the deadline specified in the RFP.
 - 6.5.3.2 Failure to execute and return the enclosed original **REQUIRED RESPONSE FORM** as defined in Subsection 4.1.4 (see Section 1.0- Required Response Form).
 - 6.5.3.3 Failure to respond to all subsections within the RFP.
 - 6.5.3.4 Proof of collusion among Proposers, in which case all suspected Proposals involved in the alleged collusive action shall be rejected, and any participants to such collusion shall be barred from future procurement opportunities until reinstated.
 - 6.5.3.5 The Proposal shows non-compliance with applicable laws or contains any unauthorized additions or deletions, is a conditional Proposal, is an incomplete Proposal, or contains irregularities of any kind, which make the Proposal incomplete, indefinite, or ambiguous as to its meaning.
 - 6.5.3.6 The Proposer adds provisions reserving the right to accept or reject an award or to enter into a contract pursuant to an award or adds provisions contrary to those in the RFP.
 - 6.5.3.7 In the best interest of SBBC, the Board reserves the right to reject any or all proposals received when there is sound documented business reasons that serve the best interest of SBBC.

6.6 AWARDEE ACCOUNTING RECORDS AND RIGHT TO AUDIT PROVISIONS:

- 6.6.1 Awardee's and Sub-Contractor's records shall include, but not be limited to, accounting records, payroll time sheets, audited and unaudited financial statements to substantiate payment rates and income, written policies and procedures, Sub-Contractor's files and any other supporting evidence necessary to substantiate payments and income related to this Agreement (all the foregoing hereinafter referred to as "records") shall be open to inspection and subject to audit and/or reproduction, during normal working hours, by SBBC's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of any invoices, payments or claims submitted by the Awardee(s) or any of his/her payees pursuant to the execution of the Agreement. Such records subject to the examination shall also include, but not be limited to, those records necessary to evaluate and verify payments and any other matters or items associated with this Agreement.
- 6.6.2 For the purpose of such audits, inspections, examinations and evaluations, SBBC's agent or authorized representative shall have access to said records from the effective date of this Agreement, for the duration of the work, and until five (5) years after the date of final payment by Awardee(s) pursuant to this Agreement. All payments which cannot be documented as paid as required by the Agreement and found not to be in compliance with the provisions of this Agreement shall be reimbursed to SBBC.
- 6.6.3 SBBC's agent or its authorized representative shall have access to the Awardee's facilities, shall have access to all necessary records and shall be provided adequate and appropriate workspace, in order to conduct audits in

6.0 SPECIAL CONDITIONS

compliance with this article. SBBC's agent or its authorized representative shall give audited firm reasonable advance notice of intended audits.

- 6.6.4 Awardee(s) shall certify that payments are accurate and correct on each and every payment. If an audit reveals discrepancies, such as an overpayment, the Awardee will be required to reimburse SBBC for the discrepancy with a minimum of eighteen percent (18%) per annum.
- 6.6.5 If an audit inspection or examination in accordance with this article, discloses overpayments (of any nature) to the Awardee(s) by SBBC in excess of ten percent (10%) of the total payments, the actual cost of SBBC's audit shall be paid by the Awardee as well as the overpayments by SBBC.

6.7 **VENDOR REGISTRATION:** To become a registered vendor for SBBC, vendors must access, complete and submit a Supplier Profile Questionnaire (SPQ) through SBBC's new eProcure Online Supplier Portal, powered by Ariba which can be located at: <http://schoolboardofbrowardcounty.supplier.ariba.com/register> Training materials are available via our website at <https://www.browardschools.com/PWS> (if needed).

6.8 **NONDISCRIMINATION STATEMENT – POLICY 4001.1** The School Board of Broward County, Florida, prohibits any policy or procedure in discrimination on the basis of age, color, disability, gender identity, gender expression, genetic information, marital status, national origin, race, religion, sex or sexual orientation. The School Board also provides equal access to the Boy Scouts and other designated youth groups. Individuals who wish to file a discrimination and/or harassment complaint may call the Director, Equal Educational Opportunities/ADA Compliance Department & District's Equity Coordinator/Title IX Coordinator at 754-321-2150 or Teletype Machine (TTY) 754-321-2158.

7.0 GENERAL CONDITIONS

- 7.1 **LIABILITY:** This General Condition of the RFP is NOT subject to negotiation and any Proposal that fails to accept these conditions will be rejected as "non-responsive".
- 7.1.1 By SBBC: SBBC agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence, or its employees' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.
- 7.1.2 By AWARDEE: AWARDEE agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments, costs, and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery costs, court costs and all other sums which SBBC, its agents, servants and employees may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by AWARDEE, its agents, servants or employees; the equipment of AWARDEE, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of AWARDEE or the negligence of AWARDEE'S agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including SBBC's property, and injury or death of any person whether employed by AWARDEE, SBBC or otherwise.
- 7.2 **SEALED PROPOSAL REQUIREMENTS:** The "Required Response Form" must be completed, signed and returned with your submitted proposal. To be considered, all proposals must be delivered in a sealed envelope, clearly marked with the words "Proposal Documents", Request for Proposal (RFP) number and the title of the RFP and received in the Procurement & Warehousing Services Department no later than the specified date and time for the Request for Proposal opening.
- 7.2.1 **PROPOSER'S RESPONSIBILITY:** It is the responsibility of the Proposer to be certain that all numbered pages of the RFP and all attachments thereto are received and all Addendum released are received prior to submitting proposal without regard to how a copy of this RFP was obtained.
- 7.2.2 **PROPOSAL SUBMITTED:** Completed proposal must be submitted in a sealed envelope with the RFP number and name clearly typed or written on the front of the envelope. Proposals must be time-stamped in Procurement & Warehousing Services Department **on or before 2:00 p.m. ET on the date due** for proposal to be considered. Proposals will be opened at 2:00 p.m. ET on the date due. Failure to timely submit such a proposal shall disqualify the Proposer and such a proposal will be either returned to the Proposer or stored and unopened. **NO FAXED PROPOSALS SHALL BE ACCEPTED. The School Board of Broward County (SBBC) reserves the right to reject any proposal that fails to comply with these submittal requirements.**
- 7.2.3 **EXECUTION OF PROPOSAL:** Proposal must contain an original manual signature (**in blue ink**) of an authorized representative, who can bind the company to the requirements of the RFP, in the space provided on the Required Response Form. All proposals must be typewritten. It is requested that the submitted proposal follow the exact format as outlined in the RFP.
- 7.3 **SUBMITTAL OF PROPOSALS:** All Proposers are reminded that it is the sole responsibility of the PROPOSER to assure that their proposal is time-stamped in **PROCUREMENT AND WAREHOUSING SERVICES on or before 2:00 p.m. ET on the date due.** The address for proposal submittal, including hand-delivery and overnight courier delivery, is indicated as **7720 West Oakland Park Boulevard, Suite 323, Sunrise, Florida 33351-6704.** The Proposer is fully and completely responsible for the payment of all delivery costs associated with the delivery of their proposal or related material. Procurement and Warehousing Services will not accept delivery of any proposal or related material requiring the School Board to pay for any portion of the delivery cost or the complete delivery cost. Prior to proposal submittal, it is the responsibility of the Proposer to be certain that all Addenda released have been received, that all Addendum requirements have been completed, and that all submittals required by the Addendum have been timely filed. (See General Condition 7.2.2)

7.0 GENERAL CONDITIONS

- 7.4 **ORIGINAL DOCUMENT FORMAT:** Only the terms and conditions of this solicitation, as they were released by SBBC, or amended via Addendum, are valid. Any modification to any term or condition by a Proposer is not binding unless it is expressly agreed to, in writing, by SBBC.
- 7.5 **IRREVOCABILITY OF PROPOSAL:** A Proposal may not be withdrawn before the expiration of 180 days from the date of Proposal opening.
- 7.6 **EVALUATION COMMITTEES AND PROPOSALS:** SBBC and its Proposal Evaluation Committees evaluate and negotiate all Proposals in accordance with State Statutes 119.071 and 286.0113.
- 7.7 **ADVERTISING:** In submitting a proposal, Proposer agrees not to use the results therefrom as a part of any commercial advertising without prior approval of the School Board.
- 7.8 **CONFLICT OF INTEREST AND CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP:** Section 112.313 (3) and (7), Florida Statutes, sets forth restrictions on the ability of SBBC employees acting in a private capacity to rent, lease, or sell any realty, goods or services to SBBC. It also places restrictions on SBBC employees concerning outside employment or contractual relationships with any business entity which is doing business with SBBC. Each Proposer is to disclose any employees it has who are also SBBC employees by submitting **Attachment G, Disclosure of Potential Conflict of Interest and Conflicting Employment or Contractual Relationship**, with its proposal. Any employees identified by the Proposer when completing Attachment W should obtain legal advice as to their obligations and restrictions under Section 112.313 (3) and (7), Florida Statutes.
- 7.9 **INSURANCE:** Insurance Requirements are shown in Section 6.4 of this RFP. The proposer shall take special notice that SBBC shall be named as an additional insured under the General Liability policy including Products Liability. (Refer to the Special Conditions of the RFP for the threshold requirements)
The insurance policies shall be issued by companies qualified to do business in the State of Florida. The insurance companies must be rated at least A-VI by AM Best or Aa3 by Moody's Investor Service. All policies must remain in effect during the performance of the contract.
- 7.10 **PRIORITY OF DOCUMENTS:** In the event of a conflict between the documents, the order of priority of the documents shall be as follows:
- a) Any Agreement resulting from the award of this RFP; then
 - b) Addenda released for this RFP, with the latest Addendum taking precedence; then
 - c) The RFP; then
 - d) Awardee's proposal.
- In case of any doubt or difference of opinion, the decision of SBBC shall be final and binding on both parties.
- 7.10.1 **DISPUTES:** In the event, any dispute or difference of opinion concerning the interpretation of the Agreement and any documents incorporated therein, the decision of SBBC shall be final and binding upon all parties.
- 7.11 **PATENTS & ROYALTIES:** Awardee(s), without exception, shall indemnify and save harmless The School Board of Broward County, Florida and its employees from liability of any nature or kind, including cost and expenses for any copyrighted, patented, or unpatented invention, process, or article manufactured or used in the performance of the contract, including its use by The School Board of Broward County, Florida. If the Awardee(s) uses any design, device, or materials covered by letters, patent, or copyright, it is mutually understood and agreed without exception that the proposal prices shall include all royalties or cost arising from the use of such design, device or materials in any way involved in the work.
- 7.12 **SPECIAL CONDITIONS:** The Superintendent or Designee has the authority to issue Special Conditions and Specifications as required for individual proposals. Any and all Special Conditions that may vary from these General Conditions shall have precedence.

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- 7.13 **ANTI-DISCRIMINATION:** The School Board of Broward County, Florida, prohibits any policy or procedure which results in discrimination on the basis of age, color, disability, gender identity, gender expression, national origin, marital status, race, religion, sex or sexual orientation. Individuals who wish to file a discrimination and/or harassment complaint may call the Director, EEO/ADA Compliance at 754-321-2150 or Teletype Machine (TTY) 754-321-2158.
- 7.14 **INFORMATION NOT IN RFP:** No verbal or written information which is obtained other than by information in this document or Addenda to this Request for Proposal shall be binding on SBBC.
- 7.15. **CANCELLATION:** In the event any of the provisions of this RFP are violated by the Awardee(s), the Superintendent shall give written notice to the Awardee(s) stating the deficiencies and unless deficiencies are corrected within five days (or as required), recommendation will be made to the School Board for immediate cancellation of the Awardee's contract.
- 7.16 **ASSIGNMENT:** Neither any award of this RFP nor any interest in any award of this RFP may be assigned, transferred or encumbered by any party without the prior written consent from the Director, Procurement and Warehousing Services. There shall be no partial assignments of this RFP including, without limitation, the partial assignment of any right to receive payments from SBBC.
- 7.17 **EXTENSION:** In addition to any extension options contained herein, SBBC is granted the right to extend any award resulting from this RFP for the period of time necessary for SBBC to release, award and implement a replacement RFP for the goods, products and/or services provided through this RFP. Such extension shall be upon the same prices, terms and conditions as existing at the time of SBBC's exercise of this extension right. The period of any extension under this provision **shall not be for a period in excess of six months** from (a) the termination date of a contract entered into as a result of this bid or (b) the termination date under any applicable period of extension under a contract entered into as a result of this bid.
- 7.18 **PURCHASE AGREEMENT:** This RFP, written Agreement will constitute the complete agreement. SBBC will not accept proposed terms and conditions that are different than those contained in this RFP, including pre-printed text contained on catalogs, price lists, other descriptive information submitted or any other materials. By virtue of submitting a proposal, Awardee(s) agrees not submit to any SBBC employee, for signature, any document that contains terms and conditions that are different than those contained herein and that in the event any document containing any term or condition that differs from those contained herein is executed, said document shall not be binding on SBBC.
- 7.19 **SUPPLIER DIVERSITY OUTREACH PROGRAM (SDOP) PARTICIPATION:** SBBC has implemented a Supplier Diversity Outreach Program (SDOP) as part of the SBBC's competitive solicitation and contracting activity in accordance with School Board Policy 3330, Supplier Diversity Outreach Program. The purpose of the program is to utilize available small, minority and women businesses within the Board's market area to compete for the award of SBBC construction and purchasing contracts. S/M/WBE vendors utilized for this contract must be certified by SBBC's Supplier Diversity Outreach Program Office prior to submission of bid proposal. **For information on S/M/WBE Certification, contact SBBC's Supplier Diversity Outreach Program at 754-321-0550 or <https://www.browardschools.com/Page/32544>**
- 7.20 **SBBC PHOTO IDENTIFICATION BADGE:**
Background Screening: Awardee agrees to comply with all the requirements of Sections 1012.32 and 1012.465, Florida Statutes, and that Awardee and all its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. **Personnel shall include employees, representatives, agents or sub-contractors performing duties under the contract to SBBC, and who meet any or all of the three requirements identified above.** This background screening will be conducted by SBBC in advance of the Awardee or its personnel providing any services. The awardee will bear the cost of acquiring the background screening required under Section 1012.32, Florida Statutes, and any fee imposed by the Florida

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Department of Law Enforcement to maintain the fingerprints provided with respect to Awardee and its personnel. The Parties agree that the failure of Awardee to perform any of the duties described in this section shall constitute a material breach of this ITB entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. Awardee agrees to indemnify and hold harmless SBBC, its officers and employees of any liability in the form of physical or mental injury, death or property damage resulting in Awardee's failure to comply with the requirements of this section or Sections 1012.32 and 1012.465, Florida Statutes.

SBBC issued identification badges must be worn at all times when on SBBC property and must be worn where they are visible and easily readable.

As of 7/01/15, Fieldprint, Inc. has been contracted to provide all background and fingerprinting services. All questions pertaining to fingerprinting, photo identification and background check services must be directed to the Project Coordinator at 754-321-1830 or 754-321-2374. **Each individual, for whom an SBBC photo identification badge is requested, must be registered into the Fieldprint, Inc. applicant enrollment website.** A background check will be conducted for each badge applicant. SBBC reserves the right to require additional information, should it be necessary, and to deny the issuance of a badge to an applicant. Any applicant, that has been denied a badge, is prohibited from entering SBBC property as an employee, sub-contractor or agent of a contract Awardee. **Applicant enrollment and scheduling website is www.fieldprintflorida.com.** The total fee(s) for the SBBC photo identification badge, fingerprinting and an FBI background check can be found at the following website: http://www.broward.k12.fl.us/police/pdf/secclle/GROUP_FEE_FIELDPRINT%20CODE.pdf Payment options can be made by electronic check (e-check), Visa, MasterCard or use of an established escrow account code. **These fees are non-refundable and are subject to change without notice. Badges are issued for a one-year period and must be renewed annually. The renewal date will be one year from the date of issuance. Failure to renew the badge, at that time, will result in the vendor being required to re-apply and pay the going rate for badging and fingerprinting.**

Vendors shall return expired and/or terminated employee badges to the following location: The School Board of Broward County, Florida, Attn: Fieldprint, Inc., 600 S.E. 3rd Avenue, Fort Lauderdale, Florida 33301.

7.21 **PROTESTING OF BID CONDITIONS/SPECIFICATIONS:** Any person desiring to protest the conditions/specifications in this RFP, or any Addenda subsequently released thereto, shall file a notice of intent to protest, in writing, **within 72 hours after electronic release of the competitive solicitation or Addendum** and shall file a formal written protest within ten calendar days after the date the notice of protest was filed. Saturdays, Sundays, state holidays or days during which the school district administration is closed shall be excluded in the computation of the 72 hours. If the tenth calendar day falls on a Saturday, Sunday, state holiday or day during which the school district administration is closed, the formal written protest must be received on or before 5:00 p.m. ET of the next calendar day that is not a Saturday, Sunday, state holiday or day during which the school district administration is closed. Section 120.57(3)(b), Florida Statutes, as currently enacted or as amended from time to time, states that **"The formal written protest shall state with particularity the facts and law upon which the protest is based."** Failure to file a notice of protest or to file a formal written protest within the time prescribed by Section 120.57(3), Florida Statutes, or a failure to post the bond or other security required by SBBC Policy 3320, within the time allowed for filing a bond, shall constitute a waiver of proceedings. The failure to post the bond required by SBBC Policy 3320, Part VIII, as currently enacted or as amended from time to time, shall constitute a waiver of proceedings. Notices of protest, formal written protests, and the bonds required by SBBC Policy 3320, shall be filed at the office of the Director, Procurement and Warehousing Services, 7720 West Oakland Park Boulevard, Suite 323, Sunrise, Florida 33351-6704 (fax 754-321-0936). Fax filing will not be acceptable for the filing of bonds.

7.0 GENERAL CONDITIONS

7.22 **POSTING OF BID RECOMMENDATIONS/TABULATIONS:** RFP Recommendations and Tabulations will be posted in Procurement and Warehousing Services and on www.demandstar.com on **June 22, 2020 3:00 p.m. ET**, and will remain posted for 72 hours. Any change to the date and time established herein for posting of RFP Recommendations/Tabulations shall be posted in Procurement and Warehousing Services and/or at www.demandstar.com (under the document section for this RFP). In the event the date and time of the posting of RFP Recommendations/Tabulations is changed, it is the responsibility of each Proposer to ascertain the revised date of the posting of RFP Recommendations/Tabulations. Any person desiring to protest the intended decision shall file a notice of protest, in writing, within 72 hours after the posting of the RFP tabulation and shall file a formal written protest within ten calendar days after the date the notice of protest was filed. Saturdays, Sundays, state holidays and days during which the school district administration is closed shall be excluded in the computation of the 72 hours. If the tenth calendar day falls on a Saturday, Sunday, state holiday or day during which the school district administration is closed, the formal written protest must be received on or before 5:00 p.m. ET of the next calendar day that is not a Saturday or Sunday, state holiday or days during which the school district administration is closed. No submissions made after the Bid opening amending or supplementing the Bid shall be considered. Section 120.57(3)(b), Florida Statutes, as currently enacted or as amended from time to time, states that **“The formal written protest shall state with particularity the facts and law upon which the protest is based”**. Any person who files an action protesting an intended decision shall post with SBBC, **at the time of filing the formal written protest**, a bond, payable to SBBC, in an amount equal to one percent (1%) of SBBC’s estimate of the total volume of the contract. SBBC shall provide the estimated contract amount to the Proposer within 72 hours, excluding Saturdays, Sundays and other days during which SBBC administration is closed, of receipt of notice of intent to protest. The estimated contract amount is not subject to protest pursuant to Section 120.57(3), Florida Statutes. The bond shall be conditioned upon the payment of all costs which may be adjudged against the protestant in an Administrative Hearing in which the action is brought and in any subsequent appellate court proceeding. In lieu of a bond, SBBC may accept a cashier’s check, official bank check or money order in the amount of the bond. If, after completion of the Administrative Hearing process and any appellate court proceedings, SBBC prevails, SBBC shall recover all costs and charges which shall be included in the Final Order or judgment, including charges made by the Division of Administrative Hearings, but excluding attorney’s fees. Upon payment of such costs and charges by the protestant, the bond shall be returned. If the protestant prevails, then the protestant shall recover from the School Board all costs and charges which shall be included in the Final Order or judgment, excluding attorney’s fees. **All documentation necessary for the protest proceedings will be provided electronically by SBBC.**

Failure to file a notice of protest or to file a formal written protest within the time prescribed by Section 120.57(3), Florida Statutes, or a failure to post the bond or other security required by SBBC Policy 3320 within the time allowed for filing a bond, shall constitute a waiver of proceedings. The failure to post the bond required by SBBC Policy 3320, Part VIII, as currently enacted or as amended from time to time, shall constitute a waiver of proceedings. Notices of protests, formal written protests, and the bonds required by Policy 3320, shall be filed at the office of the Director, Procurement and Warehousing Services, 7720 West Oakland Park Boulevard, Suite 323, Sunrise, Florida 33351-6704 (fax 754-321-0936). Fax filing will not be acceptable for the filing of bonds.

7.23 **AUDIT AND INSPECTION OF AWARDEE’S DOCUMENTS AND RECORDS:** The District or its representative reserves the right to inspect and/or audit all the Awardee’s documents and records as they pertain to the products and services delivered under this agreement. Such rights will be exercised with notice to the Awardee to determine compliance with and performance of the terms, conditions and specifications on all matters, rights and duties, and obligations established by this agreement. Documents/records in any form shall be open to the District or State’s representative and may include but are not limited to all correspondence, ordering, payment, inspection, and receiving records, contracts or sub-contracts that directly or indirectly pertain to the transactions between the District and the Awardee(s). (See Special Condition 6.0 of the RFP)

7.0 GENERAL CONDITIONS

- 7.24 **NONCONFORMANCE TO CONTRACT CONDITIONS:** Services offered may be audited for compliance with RFP conditions and specifications at any time. Services not conforming to RFP specifications shall be corrected and performed again to meet the specifications of the RFP at the expense of the Awardee. Services not delivered as per delivery date in RFP and/or Purchase Order may be rejected upon delivery and/or may be purchased on the open market. Any increase in cost may be charged against the Awardee. Any violation of these stipulations may also result in:
- a) Cancellation and default of contract;
 - b) For a period of two years, any proposal submitted by vendor will not be considered and will not be recommended for award.
 - c) All departments being advised not to do business with vendor.
- 7.25 **CONE OF SILENCE:** Any proposer, or lobbyist for a proposer, is prohibited from having any communications (except as provided in this rule) concerning any solicitation for a competitive procurement with any School Board member, the Superintendent, any Evaluation Committee Member, or any other School District employee after Procurement and Warehousing Services releases a solicitation to the General Public. All communications regarding this solicitation shall be directed to the Purchasing Agent identified in this competitive solicitation or his/her designee or such other person identified, in writing, by Procurement and Warehousing Services. This "Cone of Silence" period shall go into effect and shall remain in effect from the time of release of the solicitation until the contract is awarded by the School Board. Further, any vendor, its principals, or their lobbyists shall not offer campaign contributions to School Board Members or offer contributions to School Board Members for campaigns of other candidates for political office during the period in which the vendor is attempting to sell goods or services to the School Board. This period of limitation of offering campaign contributions shall commence at the time of the "cone of silence" period for any solicitation for a competitive procurement as described by School Board Policy 3320, Part II, Section GG as well as School Board Policy 1007, Section 5.4 – Campaign Contribution Fundraising. **Any vendor or lobbyist who violates this provision shall cause their Proposal (or that of their principal) to be considered non-responsive and therefore be ineligible for award.**
- 7.26 **TERMINATION:** This contract award may be terminated with or without cause by SBBC during the term hereof thirty (30) days after the Superintendent gives written notice to the other parties that a recommendation will be made to the School Board for the contract award's termination.
- 7.27 **USE OF OTHER CONTRACTS:** SBBC reserves the right to utilize any other SBBC contract, any State of Florida Contract, any contract awarded by any other city or county governmental agencies, other school boards, other community college/state university system cooperative bid agreement, or to directly negotiate/purchase per School Board policy and/or State Board Rule 6A-1.012, as currently enacted or as amended from time to time, in lieu of any offer received or award made as a result of this bid if it is in its best interest to do so.
- 7.28 **PURCHASE BY OTHER PUBLIC AGENCIES:** With the consent and agreement of the awarded contractor(s), purchases may be made under this RFP by other agencies. Such purchases shall be governed by the same terms and conditions as stated herein.
- 7.29 **SEVERABILITY:** In case of any one or more of the provisions contained in this RFP shall be for any reason be held to be invalid, illegal, unlawful, unenforceable or void in any respect, the invalidity, illegality, unenforceability or unlawful or void nature of that provision shall not affect any other provision and this RFP shall be considered as if such invalid, unlawful, unenforceable or void provision had never been included herein.

7.0 GENERAL CONDITIONS

- 7.30 **DISTRIBUTION**: DemandStar by Onvia, www.demandstar.com, is the official method approved by Procurement and Warehousing Services for the distribution of all competitive solicitations including ITBs and RFPs. It is the responsibility of all interested parties to assure they have received all necessary documents, including Addenda and have included all necessary information within their response. SBBC is not responsible for Proposer's failure to obtain complete bidding documents from DemandStar. SBBC reserves the right to reject any bid as non-responsive for failure to include all necessary documents or required Addenda. For information regarding the above-referenced solicitation, contact the designated Purchasing Agent as stated herein.
- 7.31 **LOBBYIST ACTIVITIES**: In accordance with SBBC Policy 1100B, as currently enacted or as amended from time to time, persons acting as lobbyists must state, at the beginning of their presentation, letter, telephone call, e-mail or facsimile transmission to School Board Members, Superintendent or Members of Senior Management, the group, association, organization or business interest she/he is representing.
- a) A lobbyist is defined as a person who for immediate or subsequent compensation, (e.g., monetary profit/personal gain) represents a public or private group, association, organization or business interest and engages in efforts to influence School Board Members on matters within their official jurisdiction.
 - b) A lobbyist is not considered a person representing school-affiliated groups (e.g., PTA, DAC, Band Booster Associations, etc.) nor a public official acting in her/his official capacity.
 - c) Lobbyists shall annually (July 1) disclose in each instance and for each client prior to any lobbying activities, their identity and activities by completing the lobbyist statement form which can be obtained from Official School Board Records, School Board Member's Offices or the Superintendent's Office and will be recorded on The School Board of Broward County's website, www.browardschools.com.
 - d) The lobbyist must disclose any direct business association with any current elected or appointed official or employee of SBBC or any immediate family member of such elected or appointed official or employee of SBBC.
 - e) Senior-level employees (Salary Band C/Pay Grade 30 and above) and/or School Board Members are prohibited from lobbying activities for one year after resignation or retirement or expiration of their term of office.
- 7.32 **CONFIDENTIAL RECORDS**: The Awardee acknowledges that certain information about the District's students is contained in records created, maintained or accessed by the Awardee and that this information is confidential and protected by the Family Educational Rights and Privacy Act of 1974 (FERPA) (20 U.S. C. 1232g), and/or the Health Insurance Portability and Accountability Act (HIPAA) (45 CFR parts 160-164) and related District policies, as amended from time to time, currently available at www.browardschools.com. The confidential information cannot be disclosed unless valid consent is obtained from the students or their legal guardians. Both parties agree to protect these records in compliance with FERPA, HIPAA, and the District's policy. To the extent permitted by law, nothing contained herein shall be construed as precluding either party from releasing such information to the other so that each can perform its respective responsibilities.

Awardee agrees that it may create, receive from or on behalf of the District, or have access to, records or record systems that are subject to FERPA and/or HIPAA (collectively, the "Confidential Records"). Awardee represents, warrants, and agrees that it will: (1) hold the Confidential Records in strict confidence and will not use or disclose the Confidential Records except as (a) permitted or required by this Agreement, (b) required by law, or (c) otherwise authorized by the District in writing; (2) safeguard the Confidential Records according to commercially reasonable administrative, physical and technical standards as required by law; and (3) continually monitor its operations and take any and all action necessary to assure that the Confidential Records are safeguarded in accordance with the terms of this Agreement. At the request of the District, Awardee agrees to provide the District with a written summary of the procedures Awardee uses to safeguard the Confidential Records. A breach of these confidentiality requirements shall constitute grounds for the District to terminate any Agreement with Awardee.

7.0 GENERAL CONDITIONS

7.33 **PUBLIC INSPECTION OF PROPOSALS:** Pursuant to Section 119.071 (1)(b), Florida Statutes, responses received as a result of this RFP shall be exempt from public inspection and copying until thirty (30) days after the opening of the proposals or until posting of the recommendation for intended award, whichever is earlier. If SBBC rejects all proposals and concurrently provides notice of its intent to reissue the competitive solicitation, the rejected proposals shall remain exempt from public inspection and copying until such time as SBBC posts notice of an intended decision concerning the reissued competitive solicitation or until SBBC withdraws the reissued competitive solicitation.

If a Proposer contends that any portion of its response to the RFP is confidential and exempt from public inspection and copying, it is the Proposer's responsibility to clearly label each such portion of its proposal as confidential and specify the applicable statutory exemption from public inspection and copying on such portion(s) of its proposal. Confidential or exempt portions of any proposal must also be submitted in a separate sealed envelope and marked as such. A failure by the Proposer to prepare and label the confidential or exempt portions of its proposal in the manner specified in this section of the RFP shall constitute a waiver by Proposer of any applicable exemptions from disclosure or any confidential status including ones that may be applicable to trade secrets under Florida law.

SBBC will promptly provide a Proposer's contact person with written notice if a public records request has been made for any portions of Proposer's response to the RFP. SBBC will provide for the inspection or copying any non-exempt portions of any proposal in its possession in accordance with applicable law. If a Proposer wishes to preclude the inspection or copying of any non-exempt portions of its response to the RFP or if a dispute exists as to whether such portions are entitled to an exemption, the Proposer must obtain a protective order from a court of competent jurisdiction prohibiting the inspection or copying of the requested materials. The failure to timely initiate such legal proceedings shall constitute a waiver by the Proposer of any applicable exemption or confidential status of the requested materials. By submitting a response to this RFP, the Proposer agrees to waive any cause of action or claim for damages it may have against SBBC for its release of records in response to a public records other than those that are prepared and labeled as confidential or exempt as described in this section. The Proposer agrees to hold SBBC harmless from any award to a plaintiff for damages, costs or attorney's fees based upon SBBC's non-disclosure of portions of Proposer's response that have been prepared and labeled as confidential or exempt from public inspection and further agrees to reimburse SBBC for any attorney's fees and costs it may incur in the defense of such non-disclosure.

7.34 **SBBC INFORMATION SECURITY GUIDELINES:** It is the responsibility of the Awardee to read and adhere to the SBBC Information Security Guidelines when using any device connected to the SBBC's network. Following the conclusion of the contract term, all of SBBC's confidential information must be removed from Awardee's equipment and all access privileges must be revoked. Final payment will be withheld until the Awardee has confirmed, in writing, that all SBBC's confidential information has been purged from any and all electronic technology devices that were used during this contract and were connected to the SBBC's network.

7.35 **REASONABLE ACCOMMODATION:** Individuals with disabilities requesting accommodations under the Americans with Disabilities Act (ADA) may call EEO/ADA Compliance at 754-321-2150 or Teletype Machine (TTY) 754-321-2158.

7.36 **GRATUITIES:** Proposers shall not offer any gratuities, favors, or anything of monetary value to any official, employee, or agent of SBBC; including any School Board Member, Superintendent of Schools and any Evaluation Committee Members, for the purpose of influencing consideration of this Proposal.

7.37 **PREPARATION COST OF PROPOSAL:** Proposer is solely responsible for any and all costs associated with responding to this RFP. SBBC will not reimburse any Proposer for any costs associated with the preparation and submittal of any Proposal, or for any travel and per diem costs that are incurred by any Proposer

7.0 GENERAL CONDITIONS

- 7.38 **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY OR VOLUNTARY EXCLUSION - Lower Tier Covered Transactions:** Executive Order 12549, as currently enacted or as amended from time to time, provides that, to the extent permitted by law, Executive departments and agencies shall participate in a government-wide system for non-procurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and non-financial assistance and benefits under Federal programs and activities. Except as provided in § 85.200, Debarment or Suspension, § 85.201, Treatment of Title IV HEA participation, and § 85.215, Exception Provision, debarment or suspension of a participant in a program by one agency shall have government-wide effect. A lower tier covered transaction is, in part, any transaction between a participant [SBBC] and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction; and any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently \$100,000) under a primary covered transaction; or any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person shall have a critical influence on or substantive control over that covered transaction. A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. Each participant shall require participants in lower tier covered transactions to include the certification for it and its principals in any bid submitted in connection with such lower tier covered transactions. (See **Attachment H**)

CERTIFICATION

- a) The prospective lower tier participant certifies, by submission of this RFP, 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 department or agency.
- b) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this bid.

- 7.39 **RE-RATING ENDORSEMENT:** Notwithstanding any provision in the Agreement between SBBC and Awardee to the contrary:

- 7.39.1 Awardee(s) must provide SBBC valid written notice, stating the amount of change proposed, at least 180 calendar days prior to the effective date of the increase during the first year of the Agreement, and at least 270 calendar days prior to the effective date of the increase subsequent to the first year of the Agreement. Notice that a change in rates or consideration is proposed, without stating clearly the exact amount and the effect of the proposed change on the overall consideration of the Agreement shall not constitute a valid notice. A written notice of any change in rates or other change in consideration shall be delivered by certified mail to: Director, Benefits & Employment Services, SBBC, 7770 W. Oakland Park Boulevard, 1st Floor, Sunrise, Florida 33351.
- 7.39.2 Any increase of rates or other provisions shall be preceded by delivery to SBBC of notice of any increase in rates or other provisions. Any such increase in rates or other provisions shall be effective only on January 1st following the current plan or applicable rate period year.
- 7.39.3 Notice by an Awardee(s) of intent to effect any change in consideration shall thereby entitle SBBC to cancel the Agreement without penalty.

7.0 GENERAL CONDITIONS

- 7.40 **PRICE REDUCTIONS:** If, from date of RFP opening, the Awardee either proposes the same service(s) at a lower price than offered to SBBC or reduces the price of the proposed product or service, the lowest of these reduced prices will be extended to SBBC.
- 7.41 **SBBC's CONSULTANT:** Gallagher Benefit Services, Inc. will be providing consultant services to SBBC in relation to this RFP. The Cone of Silence, General Condition 7.25, is hereby lifted when a representative from Gallagher Benefit Services contacts the Proposer for clarification issues or comments written in your submitted proposal. The Cone of Silence shall resume once the clarification issue has been answered. The word "clarification" shall mean the action of making a statement or situation less confusing and more comprehensible
- 7.42 **Public Records.** The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. Awardee(s) shall keep and maintain public records required by SBBC to perform the services required under this contract. Upon request from SBBC's custodian of public records, Awardee(s) shall provide SBBC with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. Awardee(s) shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract's term and following completion of the contract if Awardee(s) does not transfer the public records to SBBC. Upon completion of the contract, Awardee(s) shall transfer, at no cost, to SBBC all public records in possession of Awardee(s) or keep and maintain public records required by SBBC to perform the services required under the contract. If Awardee(s) transfers all public records to SBBC upon completion of the contract, Awardee(s) shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Awardee(s) keeps and maintains public records upon completion of the contract, Awardee(s) shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to SBBC, upon request from SBBC's custodian of public records, in a format that is compatible with SBBC's information technology systems.

IF A PARTY TO THIS CONTRACT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 754-321-1900, RECORDREQUESTS@BROWARDSCHOOLS.COM, RISK MANAGEMENT DEPARTMENT, PUBLIC RECORDS DIVISION, 600 SOUTHEAST THIRD AVENUE, FORT LAUDERDALE, FLORIDA 33301.

ATTACHMENT A

Questionnaire

Submit responses in Hard Copy and Electronic Version in a useable Microsoft Word format.

For your convenience, Attachment A is also available as a separate downloadable document in a useable Microsoft Word format.

Experience and Qualifications Section

1. Provide a brief (one page or less) history of your organization including ownership structure and any other organization with which you are affiliated. Disclose if any discussions with any third parties are underway with regards to the possible changes to the ownership structure.
2. On what date did your organization enroll its first group in Florida for coverage and for what type of coverage?

Type of Coverage	Date
FICA ALT	
Special Pay Plan	

3. Provide the enrollment data (including all plans) requested below for the organization submitting this Proposal:

a.) National Enrollment

	1/1/2017	1/1/2018	1/1/2019	YTD 1/1/2020
FICA Alt				
Special Pay Plan				
Other Enrollment				
Total Enrollment				

b.) Florida Enrollment

	1/1/2017	1/1/2018	1/1/2019	YTD 1/1/2020
FICA Alt				
Special Pay Plan				
Other Enrollment				
Total Enrollment				

c.) South Florida (Broward, Miami-Dade, and Palm Beach Counties) Enrollment

	1/1/2017	1/1/2018	1/1/2019	YTD 1/1/2020
FICA Alt				
Special Pay Plan				
Other Enrollment				
Total Enrollment				

d.) Broward County Enrollment

	1/1/2017	1/1/2018	1/1/2019	YTD 1/1/2020
FICA Alt				
Special Pay Plan				
Other Enrollment				
Total Enrollment				

4. What percent of your Florida enrollment in 2019 and 2020 is from public sector clients?

QUESTIONNAIRE

ATTACHMENT A

Florida Enrollment	Total Enrollment	2019 % of Public Sector	2020 % of Public Sector
FICA Alt			
Special Pay Plan			
Total Enrollment			

5. Provide references for your five (5) largest self-funded clients (government preferred), by enrollment, for South Florida (Broward, Miami-Dade, and Palm Beach Counties) using the following format:

Employer Name	Total Number of Employees in South Florida	Number of Employees Enrolled in Your Plan(s)	Date Services Commenced	Contact Person	Address	Phone Number	Email Address
1.							
2.							
3.							
4.							
5.							

6. Provide information for your three (3) largest self-funded (government preferred) South Florida (Broward, Miami-Dade, and Palm Beach Counties) clients who have terminated your plan(s) during the past 24 months using the following format:

Employer Name	Total Number of Employees in South Florida	Date Services Terminated	Reason for Termination	Contact Person	Address	Phone Number	Email Address
1.							
2.							
3.							

7. Detail any mergers/acquisitions and outcomes involving your organization, which have occurred in the last 12-month period, and any which are planned for the next 12 to 24 months.

8. Describe Proposer’s past performance and experience, specifically for groups with over 10,000 employees.

9. List the name and purpose of all subcontractors who will be assigned to this project.

10. Do you currently have all the necessary federal and state license and registrations to perform the activities proposed? Yes ___ No ___ Provide copies of such licenses and registrations. Do you provide to SBBC an IRS approved plan document for their use? Yes ___ No ___ Describe the type of Plan utilized, custom, volume submitter, prototype, etc. Does the plan that will be utilized carry any IRS approvals, please state them. Will you maintain the plan document for SBBC and make all required changes, as needed during the contract award period?

11. Has your company been cited or been threatened with citations within the last five years by federal or state regulators for violations of state or federal laws or for not implementing regulations? Yes ____ No ____ Over the last five years, have any of your employees been disciplined by a regulatory body such as FINRA and/or the State Insurance Department? Yes ____ No ____ If yes, explain fully.
12. Does your company provide a bond or guarantee to protect the program, the employer, and participants from any loss resulting from fraud or dishonesty by your employees or representatives? Yes ____ No ____ If yes, what amount?

Scope of Services

13. Has your organization had a negative audit finding during a client audit in the past five (5) years Yes__ No__ If yes, please summarize findings and resolution.
14. Confirm your organization can administer all current benefits as outlined in **Attachment B**? Yes ____ No ____ Provide any deviations to covered services, limitations/exclusions and system limitations in **Attachment B**. Failure to disclose deviations that contribute to additional cost may result in the Awardee(s) being financially liable for the additional cost.
15. Describe briefly the organizational structure of your company with emphasis on the personnel or division providing FICA ALT/Special Pay Plan services in your company's organization structure. Are these employees W-2 employees? Yes ____ No ____ Provide an organization chart of your company.
16. Have there been any significant changes to management within your organization over the past five years? Yes ____ No ____ If yes, please explain.
17. Provide the name, address, and qualifications of the local individual(s) who will manage the SBBC account. Describe the credentials and experience of the individuals who will be responsible for all aspects of SBBC account service (including program implementation, data processing, recordkeeping, administration, employee communication and investment management services). Are these individual W-2 employees or 1099 employees? W-2 employees ____ 1099 employees ____
18. Describe, in detail, the training, background, specialized knowledge and skills your company representatives must possess or attain. What services will these people provide other than the enrollment of participants?
19. How are these company representatives compensated? Please be specific. If commission is paid, does it vary according to the investment options selected? Yes ____ No ____ If yes, explain.
20. Do you offer investment education seminars to future participants? Yes ____ No ____ If yes, what is the charge for and scope of this service?
21. Explain your online capabilities for both the employer and employee.
22. How many of your clients have been audited by the IRS/DOL in the past 12 months? What was the key issue(s) examined in the audit? What was the result of those audits (% pass/fail)?
23. What administrative responsibilities, if any, would SBBC have under the FICA ALT/Special Pay Program?

QUESTIONNAIRE

ATTACHMENT A

24. Does your firm participate in any revenue sharing arrangements with any outside Third Party Administrators? Yes ___ No ___ If yes, are all revenue sharing arrangements disclosed to clients and provide all details on any/all revenue sharing arrangements?

25. What are the total assets under management? Complete the following table:

Type of Program	2018	2019	2020 (ytd)
Employer Sponsored Defined Contributions			
FICA Alternative Plans			
Special Pay Plans			
Other			

26. What are your organization’s target goals for the following metrics:

Member Service	Target Goal	2019 Actual Performance	2020 YTD Performance
Average Speed of Answer			
Average Length of Call			
First Call Resolution Rate			
Call Abandonment Rate			

27. How many verbal and written complaints were received per 1,000 members during 2018, 2019 and YTD 2020?

Year	Number per 1000
2018	
2019	
YTD 2020	

28. How do you track verbal and written complaints received by your organization?

29. Are you able to report the number and types of complaints (both written and telephonic) received in a calendar year for all plan members (total population) and SBBC members specifically? Yes ___ No ___

30. Do you require any minimum or maximum contributions for any investment option? Do you require a minimum allocation per investment option?

31. How long would the terms of your contract involving investment products be guaranteed? Under what conditions(s) may the contract be changed or terminated by your company?

32. Describe how participants can change their investment options, for both existing balances and future contributions.

33. Does your contract allow for partial withdrawals? Is there a minimum amount that must be withdrawn?

34. How many business days does it take to process withdrawal requests?

QUESTIONNAIRE

ATTACHMENT A

- 35. Will your company agree that all names and information concerning participants or eligible employees will be used only for purposes of administering the Plan? The use of names for soliciting for other than program purposes will not be allowed.
- 36. Describe your recordkeeping system. Does it maintain a split of principal and earnings on all contributions?
- 37. Fully enunciate your firm's Cybersecurity systems/protocols and include any guarantee and correction policy if your systems are defeated.
- 38. If a participant's sign on credentials are stolen, what steps do you employ that their account will not be compromised?
- 39. Describe your system's ability to accept and generate electronic data.
- 40. Is the basic recordkeeping system proprietary or purchased? (If purchased, specify vendor).
- 41. Describe your participant communications, including confirmation of investment changes, and periodic account activity reports.
- 42. Will you mail individual participant statements directly to participants? Yes ___ No ___ If yes, how often? If no, how do you communicate account balance, investment activity information and cost to participants?
- 43. Can you provide the participants cost on the front page of any investment/communication pieces that explains what the participant is paying to be a part of a specific fund? Yes ___ No ___
- 44. What is your minimum guarantee annual interest rate for your fixed account? How is the minimum interest rate calculated?
- 45. Please disclose the portfolio composition of the fixed account and include the ratings for the guarantor of the account.
- 46. What effective duration is the fixed account managed to and the composite credit rating?
- 47. Do you provide the market to book ratio for the fixed account? If not, will you calculate it for this contract?
- 48. Specify the number investment options you will offer under the Plan:

Investment Options	Number of Investments Options
Fixed/Guaranteed Options	
Equity Indexed Annuity	
Variable Account Options	
Mutual Funds	
Other	

- 49. Describe your implementation process if you are the Awardee(s), including significant deliverables, project manager and timelines for an implementation date of January 1, 2021.

QUESTIONNAIRE

ATTACHMENT A

50. List three of your largest active defined contribution plans, their inception dates, annual cash flow, total assets managed and total number of eligible employees and participants. Provide a brief description of the types of services provided.

Client Name	Inception Date	Annual Cash Flow	Total Assets Managed	Total Number of Eligible Employees	Services Provided

51. Complete the following chart for each investment option offered

Fund Name/Ticker of CUSIP)	Fund Objectives	Date 1st Offered	Assets as of March 31, 2020

52. List two of your largest FICA Alternative and or Special Pay plan clients, their inception dates, annual cash flow, total assets managed and total number of eligible employees and participants. Provide a brief description of the types of services provided.

Client Name	Inception Date	Annual Cash Flow	Total Assets Managed	Total Number of Eligible Employees	Services Provided

ATTACHMENT B

Current Plan Design/Communication Pieces

Submit responses in Hard Copy and Electronic Version in a useable Microsoft Word format.

For your convenience, Attachment B is ONLY available as a separate downloadable document.

CURRENT PLAN DESIGN

Plan Name: The School Board of Broward County 401(a) FICA Alternative and Special Pay Plan

Eligibility: All employees of The School Board of Broward County are eligible to participate in the Plan, except the following classes of employees:

- Employees currently covered by and actively participating in a government retirement system
- Employees who are not:
 - Instructional staff as defined by state law
 - Educational support employees as defined by state law
 - Part-time, seasonal, and temporary employees
 - Full-time administrators

Contributions: The Plan allows the following types of contributions in the following amounts. Each type of contribution is held in a separate sub-account within the participant's Plan account.

- Basic Employer Contributions*: 7.5% of an eligible participant's Compensation in lieu of FICA contributions.
- Other Employer Contributions*: 100% of an eligible participant's accumulated and unused sick leave and accumulated and unused vacation leave.
- Rollover Contributions.

*Combined total of Basic and Other Employer Contributions must total at least 7.5% of a participant's Compensation.

Compensation: The Plan defines compensation as W-2 wages, including any amounts deferred to an IRC §457(b) eligible deferred compensation plan, an IRC §403(b) tax-sheltered annuity plan, and an IRC §125 cafeteria plan.

Allocations: Basic and Other Employer Contributions are credited to participant's individual accounts as of the last day of the Plan Year within which the participant terminated employment with SBBC.

Distributions: The Plan offers the following distribution options:

- Installment payments, payable on future dates chosen by the participant.
- Immediate lump sum payment, payable as soon as administratively feasible after termination of employment.
- Deferred lump sum payment, payable on a future date chosen by the participant.
- Direct rollover.

Loans: A participant may borrow money from his total Plan account subject to the Plan's loan procedures and limitations.

Investment of Plan Assets: The Plan gives participants the opportunity to self-direct their individual accounts under the Plan.

CURRENT PLAN DESIGN

The following chart summarizes the Eligibility and Contribution provisions of the Plan:

Employee Group	Basic Employer Contribution Percentage	Other Employer Contribution Percentage	Rollover Contribution Percentage
Seasonal, Temporary and Part-Time	7.5%		100%
Instructional Staff		100%	100%
Support Employees		100%	100%
Full-Time Administrators		100%	100%

The sum of Basic and Other Employer Contributions must be at least 7.5%.

ATTACHMENT C

Financial Response Form

Submit responses in Hard Copy and Electronic Version in a useable Microsoft Word format.

For your convenience, Attachment C is also available as a separate downloadable document in a useable Microsoft Word format.

FINANCIAL RESPONSE FORM

For January 1, 2021-December 31, 2021 Plan Year

Recordkeeping

	Marketing Company	Administrative Company	Investment Manager	Trustee	Other	Total
Administrative, Enrollment and Communication fees						
Set-up fees						
Annual fees						
Participant fees						
Transaction fees						
Other (Describe)						

Investment Management (list all charges that are assessed, whether directly or offset against investment results). If your charges vary by investment option, include a sheet for each option.

Description	Charges
Deposit Charge	
Asset Charge	
Withdrawal Penalty	
Other	

For the January 1, 2022-December 31, 2022 Plan Year Recordkeeping

	Marketing Company	Administrative Company	Investment Manager	Trustee	Other	Total
Administrative, Enrollment and Communication fees						
Set-up fees						
Annual fees						
Participant fees						
Transaction fees						
Other (Describe)						

ATTACHMENT C

Investment Management (list all charges that are assessed, whether directly or offset against investment results). If your charges vary by investment option, include a sheet for each option.

Description	Charges
Deposit Charge	
Asset Charge	
Withdrawal Penalty	
Other	

For the January 1,2023-December31,2023 Plan Year Recordkeeping

	Marketing Company	Administrative Company	Investment Manager	Trustee	Other	Total
Administrative, Enrollment and Communication fees						
Set-up fees						
Annual fees						
Participant fees						
Transaction fees						
Other (Describe)						

ATTACHMENT C

Investment Management (list all charges that are assessed, whether directly or offset against investment results). If your charges vary by investment option, include a sheet for each option.

Description	Charges
Deposit Charge	
Asset Charge	
Withdrawal Penalty	
Other	

ATTACHMENT D

Plan Investment Activity Report

For your convenience, Attachment D is ONLY available as a separate downloadable document.

ATTACHMENT E

Current SBBC / Bencor Agreement

For your convenience, Attachment E is ONLY available as a separate downloadable document.

ATTACHMENT F

- F1 Form 00470 – Statement of Intent
- F2 Form 00475 – Participation Schedule Form
- F3 Form 00485 – Utilization Report
- F4 Supplier Diversity and Outreach Policy
3330
- F5 SDOP website with list of Certified S/M/WBE
Vendor

Submit responses in Hard Copy and Electronic Version in a useable Microsoft Word format.

For your convenience, Attachment F is also available as a separate downloadable document in a useable Microsoft Word format.

ATTACHMENT F – S/M/WBE FORMS

The following forms are due (if applicable) at the time of Bid submittal:

1. FORM 00475 - PARTICIPATION SCHEDULE FORM

Document Link:

https://www.browardschools.com/cms/lib/FL01803656/Centricity/domain/12708/sdop%20files/sdop%20forms%20-%20policies/ParticipationSchedule_082017_Final.pdf

Document Preview:

Document Number 00475
Attachment _____

Procurement & Warehousing Services
Supplier Diversity Outreach Program
Broward County Public Schools

SMALL/MINORITY/WOMEN BUSINESS ENTERPRISE
SUBCONTRACTOR PARTICIPATION SCHEDULE

DATE: _____

SOLICITATION INFORMATION						
Contract #:				Project Start Date:		
Project Name:						
Project Location:						
Bidder/Proposer:						
Address:						
Contact Person:		Email Address:		Phone #:		
ORGANIZATION STATUS						
Business Association	Business Name	Business Address	Business Phone #	Type of Work to be Performed	% of Work	\$ Amount
Prime Bidder/ Proposer					%	\$
Non S/M/WBE Subcontractor					%	\$
S/M/WBE Subcontractor					%	\$

2. FORM 00470

Document Link:

https://www.browardschools.com/cms/lib/FL01803656/Centricity/domain/12708/sdop%20files/sdop%20forms%20-%20policies/00470%20StatementofIntent_082017_Final.pdf

Document Preview:

Document Number 00470
Attachment _____

Procurement & Warehousing Services
Supplier Diversity Outreach Program
Broward County Public Schools

STATEMENT OF INTENT TO PERFORM
AS AN S/M/WBE SUBCONTRACTOR

SOLICITATION #: _____

CONTRACT #: _____

A signed *Statement of Intent to Perform as a Small/Minority/Women Business Enterprise (S/M/WBE) Subcontractor* form must be completed by the owner or authorized principal of each S/M/WBE firm listed in the *S/M/WBE Subcontractor Participation Schedule*.

STATEMENT OF INTENT

The undersigned is certified as an S/M/WBE vendor by The School Board of Broward County, Florida's (SBBC) Supplier Diversity Outreach Program: Yes No

_____ (Name of S/M/WBE Subcontractor) agrees to perform work on the above contract as a (check one):

Individual Partnership Corporation

The S/M/WBE subcontractor will enter into a formal agreement with _____ (Name of Bidder/Proposer) conditioned upon the Bidder/Proposer executing a contract with SBBC.

DESCRIPTION OF WORK & VALUE

Please provide the details and value of the work to be performed:

Item No.	Type of Work	Agreed Upon Price	% of Work

3. FORM: 00485 UTILIZATION REPORT

Document Link:

https://www.browardschools.com/cms/lib/FL01803656/Centricity/domain/12708/sdop%20files/sdop%20forms%20-%20policies/00485%20SMWBEMonthlySubcontractorUtilizationReport%20082017_Finalv2.pdf

Document Preview:

Procurement & Warehousing Services Supplier Diversity Outreach Program Broward County Public Schools		Document Number 00485 Attachment _____						
S/M/WBE MONTHLY SUBCONTRACTOR UTILIZATION REPORT								
SECTION I - GENERAL INFORMATION								
Project Name:		Contract Number and Work Order Number (if applicable):						
Report #:	Reporting Period: _____ to _____	S/M/WBE Contract Goal:	Contract Completion Date:					
Prime Contractor Name:		Project Manager (PM) Name:						
Prime Contractor Street Address:								
Prime Contractor Phone #:	Prime Contractor Email Address:	PM Phone #:	PM Email Address:					
SECTION II - UTILIZATION INFORMATION								
Prime Contractor must list ALL Certified and non-certified subcontractors that will be utilized for the entire contract period. For assistance in completing this form, please call the Supplier Diversity Outreach Program at (754) 321-0505.								
ROLE	FEDERAL IDENTIFICATION NUMBER	BUSINESS NAME	S/M/WBE CERTIFIED BY SBBC (Y/N)	DESCRIPTION OF WORK	TOTAL PROJECT AMOUNT	AMOUNT PAID DURING REPORTING PERIOD	INVOICE #	TOTAL PAID TO DATE
PRIME CONTRACTOR					\$	\$		\$
SUBCONTRACTOR					\$	\$		\$
SUBCONTRACTOR					\$	\$		\$
SUBCONTRACTOR					\$	\$		\$

4. SBBC Supplier Diversity Outreach Policy 3330 can be seen at website URL:

[https://www.browardschools.com/cms/lib/FL01803656/Centricity/Domain/12708/Policy_3330_Final Adoption.pdf](https://www.browardschools.com/cms/lib/FL01803656/Centricity/Domain/12708/Policy_3330_Final_Adoption.pdf)

5. SDOP website with list of Certified S/M/WBE Vendors: browardschools.com/sdop

ATTACHMENT G

DISCLOSURE OF POTENTIAL CONFLICT OF INTEREST AND CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP

**Submit responses in Hard Copy and Electronic Version in a
useable Microsoft Word format.**

**For your convenience, Attachment G is also available as a separate
downloadable document in a useable Microsoft Word format.**

ATTACHMENT G

The School Board of Broward County, Florida
FY21-031 • Retirement Plan Administration and Investment Management Services

**DISCLOSURE OF POTENTIAL CONFLICT OF INTEREST AND CONFLICTING EMPLOYMENT
OR CONTRACTUAL RELATIONSHIP**

MUST BE COMPLETED BY ALL PROPOSERS AND SUBMITTED WITH PROPOSAL

In accordance with General Condition 7.8, each Proposer must disclose, in its RFP, the names of any employees who are employed by Proposer who are also an employee of SBBC. Persons identified below may have obligations and restrictions applicable to them under Chapter 112, Florida Statutes.

Name of Proposer's Employee	SBBC Title or Position of Proposer's Employee	SBBC Department/ School of Proposer's Employee
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Check one of the following and sign:

I hereby affirm that there are no known persons employed by Proposer who are also an employee of SBBC.

I hereby affirm that all known persons who are employed by Proposer, who are also an employee of SBBC, have been identified above.

Signature

Company Name

Name of Official

Business Address

City, State, Zip Code

ATTACHMENT H

CERTIFICATION OF DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION LOWER TIER TRANSACTIONS

Submit responses in Hard Copy and Electronic Version in a useable Microsoft Word format.

For your convenience, Attachment H is also available as a separate downloadable document in a useable Microsoft Word format.

**CERTIFICATION OF DEBARMENT, SUSPENSION, INELIGIBILITY,
AND VOLUNTARY EXCLUSION LOWER TIER TRANSACTIONS**

MUST BE COMPLETED BY ALL PROPOSERS AND SUBMITTED WITH PROPOSAL

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 45 CFR 1183.35, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by going to this link: <http://www.gpo.gov/fdsys/granule/CFR-2011-title45-vol3/CFR-2011-title45-vol3-sec1183-35>

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

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

Organization Name FY21-031
RFP Number

Name(s) and Title(s) of Authorized Representative(s)

Signature(s) Date

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “person,” “primary covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List (Telephone Number).
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

ATTACHMENT I

W-9 Form

Please retrieve the latest version of the W-9 form from the IRS website listed below:

<https://www.irs.gov/pub/irs-pdf/fw9.pdf>

This form can be filled out online and printed for signature. Only page one (1) needs to be returned.

ATTACHMENT J

Drug-Free Workplace

Submit responses in Hard Copy and Electronic Version in a useable Microsoft Word format.

For your convenience, Attachment J is also available as a separate downloadable document in a useable Microsoft Word format.

**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
SWORN STATEMENT PURSUANT TO SECTION 287.087, FLORIDA STATUTES, AS CURRENTLY ENACTED OR AS
AMENDED FROM TIME TO TIME, ON PREFERENCE TO BUSINESSES WITH DRUG-FREE WORKPLACE
PROGRAMS.**

**THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC
OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.**

This sworn statement is submitted to The School Board of Broward County, Florida,

by _____
(Print individual's name and title)

for _____
(Print name of entity submitting sworn statement)

whose business address is _____

and (if applicable) its Federal Employer Identification Number (FEIN) is _____
(If the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement:
_____.)

I certify that I have established a drug-free workplace program and have complied with the following:

1. Published a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Informed employees about the dangers of drug abuse in the workplace, the business' policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Given each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notified the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five days after such conviction.
5. Will impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community by, any employee who is so convicted.
6. Am making a good faith effort to continue to maintain a drug free workplace through implementation of this section.

Sworn to and subscribed before me this _____ day of _____, 20____. _____ (Signature)

Personally Known _____

OR Produced identification _____

(Type of identification)

Notary Public - State of _____

My commission expires _____

(Printed, typed or stamped commissioned name of notary public)

ATTACHMENT K

SBBC Sample Agreement

Submit responses in Hard Copy and Electronic Version in a useable Microsoft Word format.

For your convenience, Attachment K is also available as a separate downloadable document in a useable Microsoft Word format.

(SAMPLE) AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, _____, by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA (hereinafter referred to as "SBBC"), a body corporate and political subdivision of the State of Florida, whose principal place of business is 600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

INSERT EXACT LEGAL NAME OF OTHER PARTY (hereinafter referred to as "[insert a short name here]"), whose principal place of business is [insert address here].

WHEREAS, [insert information in this portion of the document to explain the purposes and objectives for which the parties are entering into an agreement];

WHEREAS, [you may use as many of these recitals or "whereas clauses" as necessary to express the parties' purposes and objectives];

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1 - RECITALS

1.01 Recitals. The parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

ARTICLE 2 – SPECIAL CONDITIONS

2.01 Term of Agreement. Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence on _____, 20__ and conclude on _____, 20__ . The term of the Agreement may, by mutual agreement between SBBC and VENDOR be extended for two additional one-year periods and, if needed, 180 days beyond the expiration date of the renewal period. SBBC's Procurement & Warehousing Services Department, will, if considering renewing, request a letter consenting to renewal from VENDOR, prior to the end of the term. Any renewal period shall be approved by an Amendment to this Agreement executed by both parties.

2.02 **Description of Services Provided.** VENDOR shall provide SBBC with the Scope of Services as proposed in its Proposal and in compliance with this Agreement and the RFP and its Addenda and as specified in **Scope of Services**.

2.03 **Priority Documents:** In the event of a conflict between documents, the following priority of documents shall govern.

- First: This Agreement, then;
- Second: *[Insert Any Addendums to this list]*
- Sixth: *[Inert RFP Number and Title]*, then;
- Seventh: Proposal submitted in response to the RFP by VENDOR.

2.04 **Cost of Services.** [Insert the Cost of Services here]

2.05 **SBBC Disclosure of Education Records.**

- (a) *[State the purpose(s) of the disclosure of the education records]*
- (b) SBBC will provide *[Insert Name]* with the following education records: *[Insert list of any and all education records that District staff will disclose or to which vendor will be allowed access.]*
- (c) SBBC will obtain consent from each student’s parent/guardian or student age 18 or older whose education records are to be shared prior to disclosing or allowing access to the education records listed in _____. *(Should you believe that the vendor falls under an exception to obtaining consent, then consult with SBBC Privacy Officer on appropriate language.)*

2.04 c: OR

SBBC will obtain written consent from each student’s parent/guardian or student age 18 or older prior to providing VENDOR with the education records (or access to the education records) listed in 2.04 (b).

_____ is considered a "school official" with a legitimate educational interest to receive the aforementioned types of information from SBBC student education records for the purposes listed above. Prior written consent of the parent or student age 18 or over is needed for any types or purposes of disclosures of education records beyond those listed above

2.06 [Insert Name] **Confidentiality of Education Records.**

(a) Notwithstanding any provision to the contrary within this Agreement, [Insert Name] shall:

1) fully comply with the requirements of Sections 1002.22, 1002.221, and 1002.222, Florida Statutes; the Family Educational Rights and Privacy Act, 20 U.S.C § 1232g (FERPA) and its implementing regulations (34 C.F.R. Part 99), and any other state or federal law or regulation regarding the confidentiality of student information and records;

2) hold any education records in strict confidence and not use or redisclose same except as required by this Agreement or as required or permitted by law unless the parent of each student or a student age 18 or older whose education records are to be shared provides prior written consent for their release;

3) ensure that, at all times, all of its employees who have access to any education records during the term of their employment shall abide strictly by its obligations under this Agreement, and that access

to education records is limited only to its employees that require the information to carry out the responsibilities under this Agreement and shall provide said list of employees to SBBC upon request;

4) safeguard each education record through administrative, physical and technological safety standards to ensure that adequate controls are in place to protect the education records and information in accordance with FERPA's privacy requirements;

5) utilize the education records solely for the purposes of providing products and services as contemplated under this Agreement; and shall not share, publish, sell, distribute, target advertise, or display education records to any third party;

6) notify SBBC immediately upon discovery of a breach of confidentiality of education records by telephone at 754-321-0300 (Manager, Information Security), and 754-321-1900 (Privacy Officer), and email at privacy@browardschools.com, and take all necessary notification steps as may be required by federal and Florida law, including, but not limited to, those required by Section 501.171, Florida Statutes;

7) fully cooperate with appropriate SBBC staff, including Privacy Officer and/or Information Technology staff to resolve any privacy investigations and concerns in a timely manner;

8) prepare and distribute, at its own cost, any and all required breach notifications, under federal and Florida Law, or reimburse SBBC any direct costs incurred by SBBC for doing so, including, but not limited to, those required by Section 501.171, Florida Statutes;

9) be responsible for any fines or penalties for failure to meet breach notice requirements pursuant to federal and/or Florida law;

10) provide SBBC with the name and contact information of its employee who shall serve as SBBC's primary security contact and shall be available to assist SBBC in resolving obligations associated with a security breach of confidentiality of education records; and

11) securely erase education records from any media once any media equipment is no longer in use or is to be disposed; secure erasure will be deemed the deletion of the education records using a single pass overwrite Secure Erase (Windows) or Wipe (Unix).

(b) All education records shall remain the property of SBBC, and any party contracting with SBBC serves solely as custodian of such information pursuant to this Agreement and claims no ownership or property rights thereto and, upon termination of this Agreement shall, at SBBC's request, return to SBBC or dispose of the education records in compliance with the applicable Florida Retention Schedules and provide SBBC with a written acknowledgment of said disposition.

(c) *[Insert Name]* shall, for itself, its officers, employees, agents, representatives, contractors or subcontractors, to fully indemnify and hold harmless SBBC and its officers and employees for any violation of this section, including, without limitation, defending SBBC and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon SBBC, or payment of any and all costs, damages, judgments or losses incurred by or imposed upon SBBC arising out of a breach of this covenant by the party, or an officer, employee, agent, representative, contractor, or sub-contractor of the party to the extent that the party or an officer, employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this section or of Sections 1002.22 and/or 1002.221, Florida

Statutes. This section shall survive the termination of all performance required or conclusion of all obligations existing under this Agreement.

2.06 **HIPAA Compliance.** *[Insert Name]* acknowledges that the Health Insurance Portability and Accountability Act (“HIPAA”) and the Health Information Technology for Economic and Clinical Health Act of 2009 (“HITECH Act”) (HIPAA and HITECH Act are collectively referred to herein as “HIPAA”) protect the privacy of protected health information (“PHI”) and may be applicable to student records in certain circumstances; and shall enter into SBBC’s HIPAA Business Associate Agreement (“BAA”) attached as **Exhibit** *Insert appropriate Exhibit letter or number*. PHI may be used and disclosed only in compliance with HIPAA.

2.07 **Inspection of *[Insert Name]*’s Records by SBBC.** *[Insert Name]* shall establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All *[Insert Name]*’s Records, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation and/or reproduction, during normal working hours, by SBBC’s agent or its authorized representative to permit SBBC to evaluate, analyze and verify the satisfactory performance of the terms and conditions of this Agreement and to evaluate, analyze and verify any and all invoices, billings, payments and/or claims submitted by *[Insert Name]* or any of *[Insert Name]*’s payees pursuant to this Agreement. *[Insert Name]*’s Records subject to examination shall include, without limitation, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement. *[Insert Name]*’s Records subject to this section shall include any and all documents pertinent to the evaluation, analysis, verification and reconciliation of any and all expenditures under this Agreement without regard to funding sources.

(a) ***[Insert Name]*’s Records Defined.** For the purposes of this Agreement, the term “*[Insert Name]*’s Records” shall include, without limitation, accounting records, payroll time sheets, cancelled payroll checks, W-2 forms, written policies and procedures, computer records, disks and software, videos, photographs, executed subcontracts, subcontract files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, change order files (including sufficient supporting documentation and documentation covering negotiated settlements), and any other supporting documents that would substantiate, reconcile or refute any charges and/or expenditures related to this Agreement.

(b) **Duration of Right to Inspect.** For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC’s agent or authorized representative shall have access to *[Insert Name]*’s Records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to *[Insert Name]* pursuant to this Agreement.

(c) **Notice of Inspection.** SBBC’s agent or its authorized representative shall provide *[Insert Name]* reasonable advance notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction.

(d) **Audit Site Conditions.** SBBC’s agent or its authorized representative shall have access to *[Insert Name]*’s facilities and to any and all records related to this Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section.

(e) **Failure to Permit Inspection.** Failure by *[Insert Name]* to permit audit, inspection, examination, evaluation and/or reproduction as permitted under this section shall constitute grounds for termination of this

Agreement by SBBC for cause and shall be grounds for the denial of some or all of any *[Insert Name]*'s claims for payment by SBBC.

(f) Overcharges and Unauthorized Charges. If an audit conducted in accordance with this section discloses overcharges or unauthorized charges to SBBC by *[Insert Name]* in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by *[Insert Name]*. If the audit discloses billings or charges to which *[Insert Name]* is not contractually entitled, *[Insert Name]* shall pay said sum to SBBC within twenty (20) days of receipt of written demand under otherwise agreed to in writing by both parties.

(g) Inspection of Subcontractor's Records. *[Insert Name]* shall require any and all subcontractors, insurance agents and material suppliers (hereafter referred to as "Payees") providing services or goods with regard to this Agreement to comply with the requirements of this section by insertion of such requirements in any written subcontract. Failure by *[Insert Name]* to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the exclusion of some or all of any Payee's costs from amounts payable by SBBC to *[Insert Name]* pursuant to this Agreement and such excluded costs shall become the liability of *[Insert Name]*.

(h) Inspector General Audits. *[Insert Name]* shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

2.08 Inspection of *[Insert Name]*'s Records by SBBC. *[Insert Name]* shall establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All *[Insert Name]*'s applicable records, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation and/or reproduction, during normal working hours, by SBBC's agent or its authorized representative to permit SBBC to evaluate, analyze and verify the satisfactory performance of the terms and conditions of this Agreement and to evaluate, analyze and verify the applicable business records of *[Insert Name]* directly relating to this Agreement in order to verify the accuracy of invoices provided to SBBC. Such audit shall be no more than one (1) time per calendar year.

(a) Duration of Right to Inspect. For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to *[Insert Name]*'s records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to *[Insert Name]* pursuant to this Agreement.

(b) Notice of Inspection. SBBC's agent or its authorized representative shall provide *[Insert Name]* reasonable advance written notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction.

(c) Audit Site Conditions. SBBC's agent or its authorized representative shall have access to *[Insert Name]*'s facilities and to any and all records related to this Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section.

(d) Failure to Permit Inspection. Failure by *[Insert Name]* to permit audit, inspection, examination, evaluation and/or reproduction as permitted under this section shall constitute grounds for termination of this

Agreement by SBBC for cause and shall be grounds for SBBC’s denial of some or all of any *[Insert Name]’s* claims for payment.

(e) Overcharges and Unauthorized Charges. If an audit conducted in accordance with this section discloses overcharges or unauthorized charges to SBBC by *[Insert Name]* in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC’s audit shall be paid by *[Insert Name]*. If the audit discloses billings or charges to which *[Insert Name]* is not contractually entitled, *[Insert Name]* shall pay said sum to SBBC within twenty (20) days of receipt of written demand unless otherwise agreed to in writing by both parties.

(f) Inspection of Subcontractor’s Records. If applicable, *[Insert Name]* shall require any and all subcontractors, insurance agents and material suppliers (hereafter referred to as “Payees”) providing services or goods with regard to this Agreement to comply with the requirements of this section by insertion of such requirements in any written subcontract. Failure by *[Insert Name]* to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the exclusion of some or all of any Payees’ costs from amounts payable by SBBC to *[Insert Name]* pursuant to this Agreement and such excluded costs shall become the liability of *[Insert Name]*.

(g) Inspector General Audits. *[Insert Name]* shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

2.09 Notice. When any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving notice:

To SBBC: Superintendent of Schools
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

With a Copy to: *Insert Job Title of District Representative*
The School Board of Broward County, Florida
Insert Address of District Representative

To *[Insert Name]*: *[Insert Name] Provided by Other Party*
The School Board of Broward County, Florida
Insert Address Provided by Other Party

With a Copy to: *[Insert Name] Provided by Other Party*
Insert Address Provided by Other Party

2.10 Background Screening. *[Insert Name]* shall comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of *[Insert Name]* or its personnel providing any services under the conditions described in the previous sentence. *[Insert Name]*

shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to *[Insert Name]* and its personnel. The parties agree that the failure of *[Insert Name]* to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. *[Insert Name]* agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from *[Insert Name]*'s failure to comply with the requirements of this section or with Sections 1012.32 and 1012.465, Florida Statutes.

2.11 **Public Records.** The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. *[Insert Name]* shall keep and maintain public records required by SBBC to perform the services required under this Agreement. Upon request from SBBC's custodian of public records, *[Insert Name]* shall provide SBBC with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. *[Insert Name]* shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement's term and following completion of the Agreement if *[Insert Name]* does not transfer the public records to SBBC. Upon completion of the Agreement, *[Insert Name]* shall transfer, at no cost, to SBBC all public records in possession of *[Insert Name]* or keep and maintain public records required by SBBC to perform the services required under the Agreement. If *[Insert Name]* transfers all public records to SBBC upon completion of the Agreement, *[Insert Name]* shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If *[Insert Name]* keeps and maintains public records upon completion of the Agreement, *[Insert Name]* shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to SBBC, upon request from SBBC's custodian of public records, in a format that is compatible with SBBC's information technology systems.

IF A PARTY TO THIS AGREEMENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 754-321-1900, RECORDREQUESTS@BROWARDSCHOOLS.COM, RISK MANAGEMENT DEPARTMENT, PUBLIC RECORDS DIVISION, 600 SOUTHEAST THIRD AVENUE, FORT LAUDERDALE, FLORIDA 33301.

2.12 **Liability.** This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

(a) By SBBC: SBBC agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence, or its employees' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.

(b) By *[Insert Name]*: *[Insert Name]* agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments, costs, and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery costs, court costs and all other sums which SBBC, its agents, servants and employees may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by *[Insert Name]*, its agents, servants or employees; the equipment

of *[Insert Name]*, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of *[Insert Name]* or the negligence of *[Insert Name]'s* agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including SBBC's property, and injury or death of any person whether employed by *[Insert Name]*, SBBC or otherwise.

2.13 **Insurance Requirements.** *[Insert Name]* shall comply with the following insurance requirements throughout the term of this Agreement:

(a) **General Liability.** *[Insert Name]* shall maintain General Liability insurance during the term of this Agreement with limits not less than \$1,000,000 per occurrence for Bodily Injury/ Property Damage; \$1,000,000 General Aggregate; and limits not less than \$1,000,000 for Products/Completed Operations Aggregate.

(b) **Professional Liability/Errors & Omissions.** *[Insert Name]* shall maintain Professional Liability/Errors & Omissions insurance during the term of this Agreement with a limit of not less than \$1,000,000 per occurrence covering services provided under this Agreement.

(c) **Workers' Compensation.** *[Insert Name]* shall maintain Workers' Compensation insurance during the term of this Agreement in compliance with the limits specified in Chapter 440, Florida Statutes, and Employer's Liability limits shall not be less than \$100,000/\$100,000/\$500,000 (each accident/disease-each employee/disease-policy limit).

(d) **Auto Liability.** *[Insert Name]* shall maintain Owned, Non-Owned and Hired Auto Liability insurance with Bodily Injury and Property Damage limits of not less than \$1,000,000 Combined Single Limit.

(e) **Acceptability of Insurance Carriers.** The insurance policies required under this Agreement shall be issued by companies qualified to do business in the State of Florida and having a rating of at least A- VI by AM Best or Aa3 by Moody's Investor Service.

(f) **Verification of Coverage.** Proof of the required insurance must be furnished by *[Insert Name]* to SBBC's Risk Management Department by Certificate of Insurance within fifteen (15) days of the date of this Agreement. To streamline this process, SBBC has partnered with EXIGIS Risk Management Services to collect and verify insurance documentation. All certificates (and any required documents) must be received and approved by SBBC's Risk Management Department before any work commences to permit *[Insert Name]* to remedy any deficiencies. *[Insert Name]* must verify its account information and provide contact details for its Insurance Agent via the link provided to it by email.

(g) **Required Conditions.** Liability policies must include the following terms on the Certificate of Insurance:

- 1) The School Board of Broward County, Florida, its members, officers, employees and agents are added as additional insured.
- 2) All liability policies are primary of all other valid and collectable coverage maintained by The School Board of Broward County, Florida.

- 3) Certificate Holder: The School Board of Broward County, Florida, c/o EXIGIS Risk Management Services, P.O. Box 4668-ECM, New York, New York 10163-4668.

(h) Cancellation of Insurance. *[Insert Name]* is prohibited from providing services under this Agreement with SBBC without the minimum required insurance coverage and must notify SBBC within two (2) business days if required insurance is cancelled.

(i) SBBC reserves the right to review, reject or accept any required policies of insurance, including limits, coverage or endorsements, herein throughout the term of this Agreement.

2.14 **Nondiscrimination.**

(a) As a condition of entering into this Agreement, *[Insert Name]* represents and warrants that it will comply with the SBBC's Commercial Nondiscrimination Policy, as described under, Section D.1 of SBBC's Policy No. 3330 – Supplier Diversity Outreach Program.

(b) As part of such compliance, *[Insert Name]* shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall *[Insert Name]* retaliate against any person for reporting instances of such discrimination. *[Insert Name]* shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the SBBC's relevant marketplace. *[Insert Name]* understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in SBBC Agreements, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

2.16 **Annual Appropriation.** The performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If SBBC does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBBC in the event this provision is exercised, and SBBC shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

2.17 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC.

2.18 **Incorporation by Reference.** Exhibit[s] *[Insert appropriate Exhibit letters or numbers]* attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

ARTICLE 3 – GENERAL CONDITIONS

3.01 **No Waiver of Sovereign Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the

termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

3.02 **No Third Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any Agreement.

3.03 **Independent Contractor.** The parties to this Agreement shall at all times be acting in the capacity of independent contractors and not as an officer, employee or agent of one another. Neither party or its respective agents, employees, subcontractors or assignees shall represent to others that it has the authority to bind the other party unless specifically authorized in writing to do so. No right to SBBC retirement, leave benefits or any other benefits of SBBC employees shall exist as a result of the performance of any duties or responsibilities under this Agreement. SBBC shall not be responsible for social security, withholding taxes, contributions to unemployment compensation funds or insurance for the other party or the other party's officers, employees, agents, subcontractors or assignees.

3.04 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) day period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party additional cure time. Upon the occurrence of a default that is not cured during the applicable cure period, this Agreement may be terminated by the non-defaulting party upon thirty (30) days' notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

3.05 **Termination.** This Agreement may be canceled with or without cause by SBBC during the term hereof upon thirty (30) days written notice to the other parties of its desire to terminate this Agreement. In the event of such termination, SBBC shall be entitled to a *pro rata* refund of any pre-paid amounts for any services scheduled to be delivered after the effective date of such termination. SBBC shall have no liability for any property left on SBBC's property by any party to this Agreement after the termination of this Agreement. Any party contracting with SBBC under this Agreement agrees that any of its property placed upon SBBC's facilities pursuant to this Agreement shall be removed within ten (10) business days following the termination, conclusion or cancellation of this Agreement and that any such property remaining upon SBBC's facilities after that time shall be deemed to be abandoned, title to such property shall pass to SBBC, and SBBC may use or dispose of such property as SBBC deems fit and appropriate.

3.06 **Compliance with Laws.** Each party shall comply with all applicable federal, state and local laws, SBBC policies, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.07 **Place of Performance.** All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

3.08 **Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted exclusively to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida or to the jurisdiction of the United States District Court for the Southern District of Florida. Each party agrees and admits that the state courts of the Seventeenth Judicial Circuit of Broward County, Florida or the United States District Court for the Southern District of Florida shall have jurisdiction over it for any dispute arising under this Agreement.

3.09 **Entirety of Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

3.10 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

3.11 **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

3.12 **Captions.** The captions, section designations, section numbers, article numbers, titles and headings appearing in this Agreement are inserted only as a matter of convenience, have no substantive meaning, and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way affect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.13 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

3.14 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.15 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.16 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

3.17 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense (“Force Majeure”). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

3.18 **Survival.** All representations and warranties made herein, indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

3.19 **Agreement Administration.** SBBC has delegated authority to the Superintendent of Schools or his/her designee to take any actions necessary to implement and administer this Agreement.

3.20 **Counterparts and Multiple Originals.** This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement.

3.21 **Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the date first above written.

FOR SBBC

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

By _____
[[Insert Name] of current Board Chair here], Chair

ATTEST:

Approved as to Form and Legal Content:

Robert W. Runcie, Superintendent of Schools

Office of the General Counsel

[THIS SPACE IS INTENTIONALLY LEFT BLANK]

FOR [INSERT A SHORT NAME OF THE OTHER PARTY HERE]:

(Corporate Seal)

[Insert Exact Full Legal Name of the other Corporation, Agency or Other Legal Entity]

ATTEST:

By _____

_____, Secretary

Print Name: _____

-or-

Title: _____

Witness

Witness

The Following Notarization is Required for Every Agreement Without Regard to Whether the Party Chose to Use a Secretary's Attestation or Two (2) Witnesses.

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by _____ of _____

Name of Person

_____, on behalf of the corporation/agency.

Name of Corporation or Agency

He/She is personally known to me or produced _____ as identification and did/did not first take an oath. Type of Identification

My Commission Expires:

Signature – Notary Public

(SEAL)

Printed Name of Notary

Notary's Commission No.

ATTACHMENT L

SAMPLE - BUSINESS ASSOCIATE AGREEMENT

Submit responses in Hard Copy and Electronic Version in a useable Microsoft Word format.

For your convenience, Attachment L is also available as a separate downloadable document in a useable Microsoft Word format.

(SAMPLE) BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("**Agreement**") is made and entered into as of this _____ day of _____, 20____ (the "**Effective Date**"), by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
(hereinafter referred to as "**SBBC**" or "**Covered Entity**"),
a body corporate and political subdivision of the State of Florida,
whose principal place of business is
600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

INSERT NAME OF OTHER PARTY
(hereinafter referred to as "Business Associate"),
whose principal place of business is
[insert their address here]

WHEREAS, by virtue of some of the services that Business Associate performs for SBBC, Business Associate may be a "business associate," as that term is defined at 45 C.F.R. §160.103; and

WHEREAS, SBBC and Business Associate may share Protected Health Information ("PHI") (as defined below) in the course of their relationship; and

WHEREAS, SBBC and Business Associate understand that, with respect to coverages subject to regulation under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), they are subject to the requirements governing business associates, including but not limited to the Privacy Rule and the Security Rule (both defined below) of HIPAA, the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH"), the Omnibus Rule of 2013, and applicable Florida law, any of which may be amended from time to time or supplemented by new legislation or guidance (hereinafter collectively referred to as "Business Associate Requirements"); and

WHEREAS, SBBC and Business Associate intend to fully comply with current and future Business Associate requirements and mutually desire to outline their individual responsibilities with respect to Protected Health Information ("**PHI**") as mandated by the "Privacy Rule", the "Security Rule", and the HITECH Act; and

WHEREAS, SBBC and Business Associate understand and agree that the Business Associate requirements require SBBC and Business Associate to enter into a Business Associate Agreement which shall govern the use and/or disclosure of PHI and the security of ePHI.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE 1 – RECITALS

1. **Definitions.** When used in this Agreement and capitalized, the following terms have the following meanings:
 - (a) "**Breach**" has the same meaning as that term is defined in §13400 of the HITECH Act and shall include the unauthorized acquisition, access, use, or disclosure of PHI that compromises the security or privacy of such information.

- (b) "**Business Associate**" shall mean Business Associate named above and shall include all successors and assigns, affiliates, subsidiaries, and related companies.
- (c) "**Designated Record Set**" has the same meaning as the term "designated record set" in 45 CFR §164.501, which includes enrollment, payment, billing, claims adjudication and case or medical management record systems maintained by or for a health plan, or other information used in whole or part by or for the Plan to make decisions about individuals.
- (d) "**EDI Rule**" shall mean the Standards for Electronic Transactions as set forth at 45 CFR Parts 160, Subpart A and 162, Subpart A and I through R.
- (e) "**HIPAA**" means the Health Insurance Portability and Accountability Act of 1996.
- (f) "**HITECH Act**" means the Health Information Technology for Economic and Clinical Health Act of 2009.
- (g) "**Individual**" shall have the same meaning as the term "Individual" in 45 C.F.R. §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. §164.502(g).
- (h) "**Minimum Necessary**" means the least amount of PHI needed to accomplish the intended purpose of the use or disclosure.
- (i) "**Omnibus Rule**" means the HIPAA Omnibus Rule of 2013.
- (j) "**Privacy Rule**" shall mean the Standards for Privacy of Individually Identifiable Health Information as set forth at 45 C.F.R. Parts 160 and 164, subparts A and E.
- (k) "**Protected Health Information**" or "**PHI**" shall have the same meaning as the term "protected health information" in 45 C.F.R. §160.103 (as amended by the HITECH Act) limited to the information created or received by Business Associate from or on behalf of SBBC.
- (l) "**Required by Law**" shall have the same meaning as the term "required by law" in 45 C.F.R. §164.103.
- (m) "**Secretary**" shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- (n) "**Security Rule**" shall mean the Standards for Security of ePHI as set forth at 45 C.F.R. Parts 160 and 164 Subpart C.
- (o) "**Unsecured PHI**" shall mean PHI that is not secured through the use of a technology or methodology specified by the Secretary in guidance or as otherwise defined in §13402(h) of the HITECH Act.

Terms used but not defined in this Agreement shall have the same meaning as those terms in 45 C.F.R. §§ 164.103 and 164.501 and the HITECH Act.

ARTICLE 2 – SPECIAL CONDITIONS**2. Obligations and Activities of Business Associate Regarding PHI.**

- (a) Business Associate agrees to not use or further disclose PHI other than as permitted or required by this Agreement or as Required by Law.
- (b) Business Associate agrees to comply with the “Minimum Necessary” rule when using, disclosing, or requesting PHI, except when a specific exception applies under HIPAA or the HITECH Act.
- (c) Business Associate agrees to use appropriate safeguards and comply, where applicable, with the HIPAA Security Rule to prevent use or disclosure of the PHI other than as provided for by this Agreement.
- (d) Business Associate agrees to report to SBBC, as soon as reasonably practicable, any impermissible use or disclosure of PHI it becomes aware of, and any use or disclosure of PHI not provided for by this Agreement. Any report of breach should be in substantially the same form as Exhibit A hereto.
- (e) Business associate shall promptly inform SBBC of a Breach of Unsecured PHI following the first day on which Business Associate knows of such Breach or following the first day on which Business Associate should have known of such Breach.
- (f) For the Breach of Unsecured PHI in its possession:
 - 1. Business Associate will perform a Risk Assessment to determine if there is a low probability that the PHI has been compromised. Business Associate will provide SBBC with documentation showing the results of the Risk Assessment. The Risk Assessment will consider at minimum the following factors:
 - a. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
 - b. The unauthorized person who used the PHI or to whom the disclosure was made;
 - c. Whether the PHI was actually acquired or viewed; and
 - d. The extent to which the risk to the PHI has been mitigated.
 - 2. Business Associate will prepare and distribute, at its own cost, any and all required notifications under Federal and Florida law, or reimburse SBBC any direct costs incurred by SBBC for doing so.
 - 3. Business Associate shall be responsible for all fines or penalties incurred for failure to meet Breach notice requirements pursuant to by Federal and/or Florida law.
- (g) Business Associate agrees to ensure that, and obtain assurance from, any and all agents, including sub-contractors (excluding entities that are merely conduits), to whom it provides PHI agree to the same restrictions and conditions that apply to Business Associate with respect to such information. All agents and subcontractors engaged by the Business Associate that create, maintain, receive or transmit PHI must comply with the HIPAA Rules, including the rules to extend the requirements to the agent’s or subcontractor’s subcontractors.
- (h) Business Associate agrees to provide access, at the request of SBBC, and in the time and manner designated by SBBC, to PHI in a Designated Record Set that is not also in SBBC’s possession, to SBBC in order for SBBC to meet the requirements under 45 C.F.R. § 164.524.

- (i) Business Associate agrees to make PHI available for amendment and incorporate all amendments to PHI in a Designated Record Set that SBBC directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of SBBC or an Individual in the time and manner designated by SBBC. Business Associate agrees to make internal practices, policies, books and records relating to the use and disclosure of PHI available to SBBC, or at a request of SBBC to the Secretary, in a time and manner as designated by SBBC or the Secretary, for purposes of the Secretary determining SBBC's compliance with the Privacy Rule. Business Associate shall immediately notify SBBC upon receipt or notice of any and all requests by the Secretary to conduct an investigation with respect to PHI received from SBBC.
- (j) Business Associate agrees to document any and all disclosures of PHI and information related to such disclosures that are not excepted under 45 C.F.R. § 164.528(a)(1) as would be reasonably required for SBBC to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- (k) Business Associate agrees to provide to SBBC or an Individual, in a time and manner designated by SBBC, information collected in accordance with paragraph (j) above, to permit SBBC to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- (l) Business Associate agrees to use or disclose PHI pursuant to the request of SBBC; provided, however, that SBBC shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by SBBC.
- (m) Business Associate agrees to mitigate, to the extent practicable, any and all harmful effects that are known to Business Associate of a use or disclosure of PHI, or a Breach of Unsecured PHI, by Business Associate in violation of the requirements of this Agreement, the Privacy Rule, the Security Rule, the HITECH Act or HIPAA generally.
- (n) Business Associate shall provide SBBC with a copy of any notice of privacy practices it produces in accordance with 45 C.F.R. § 164.520, as well as any and all changes to such notice.
- (o) Business Associate, if performing a function that applies to Covered Entity, agrees to comply with the requirements that apply to the Covered Entity.

3. **Permitted Uses and Disclosures of PHI by “Business Associate”.**

- (a) Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, SBBC as previously agreed to by the parties (the “Service Agreement”) provided that such use or disclosure would not violate the Privacy Rule if done by SBBC.
- (b) Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate.
- (c) Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate if: (i) such disclosure is Required by Law, or (ii) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that such information will remain confidential and used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person agrees to notify Business Associate of any and all instances of which it is aware that the confidentiality of the information has been breached.

- (d) Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to SBBC as permitted by 42 C.F.R. § 164.504(e)(2)(i)(B).

4. Obligations of SBBC Regarding PHI.

- (a) SBBC shall provide Business Associate with the notice of privacy practices that SBBC produces in accordance with 45 C.F.R. § 164.520, as well as any changes to such notice.
- (b) SBBC shall provide Business Associate with any and all changes in, or revocation of, authorization by an Individual to use or disclose PHI, if such changes affect Business Associate permitted or required uses and disclosures.
- (c) SBBC shall notify Business Associate of any and all restrictions to the use or disclosure of PHI that SBBC has agreed to in accordance with 45 C.F.R. § 164.522.
- (d) SBBC and its representatives shall be entitled with ten (10) business days prior written notice to Business Associate to audit Business Associate from time-to-time to verify Business Associate compliance with the terms of this Agreement. SBBC shall be entitled and enabled to inspect the records and other information relevant to Business Associate compliance with the terms of this Agreement. SBBC shall conduct its review during the normal business hours of Business Associate, as the case may be, and to the extent feasible without unreasonably interfering with Business Associate normal operations.

5. Security of Electronic Protected Health Information.

- (a) Business Associate has implemented policies and procedures to ensure that its receipt, maintenance, or transmission of “electronic protected health information” (as defined in 45 C.F.R. §160.103) (“ePHI”) on behalf of SBBC complies with the applicable administrative, physical, and technical safeguards required for protecting the confidentiality and integrity of ePHI under the Security Standards 45 C.F.R. Part 160 and 164 subpart C.
- (b) Business Associate agrees that it will ensure that agents or subcontractors agree to implement the applicable administrative, physical, and technical safeguards required to protect the confidentiality and integrity of ePHI under the Security Standards 45 C.F.R. Part 164.
- (c) Business Associate agrees to report to SBBC all Security Incidents (as defined 45 C.F.R. Part 164.304 and in accordance with applicable Florida law) of which it becomes aware. Business Associate agrees to report the Security Incident to SBBC as soon as reasonably practicable, but not later than 10 business days from the date the Business Associate becomes aware of the incident.
- (d) SBBC agrees and understands that SBBC is independently responsible for the security of ePHI in its possession or for ePHI that it receives from outside sources including “Business Associate”.

6. Compliance with EDI Rule .

Business Associate agrees that, on behalf of SBBC, it will perform all transactions for which a standard has been developed under the EDI Rule that Business Associate could reasonably be expected to perform in the ordinary course of its functions on behalf of SBBC.

Business Associate agrees that it will comply with all applicable EDI standards. Business Associate further agrees that it will use its best efforts to comply with all applicable regulatory provisions in addition to the EDI Rule and the Privacy Rule that are promulgated pursuant to the Administrative Simplification Subtitle of HIPAA.

7. **Subsequent Legislative or Regulatory Changes.**

Any and all amendments to the laws or regulations affecting the Privacy Rule, Security Rule, the HITECH Act, Omnibus Rule, or HIPAA in general shall be deemed to amend this Agreement to incorporate said changes without further action.

8. **Amendment.**

The parties agree to take any and all actions necessary to amend this Agreement from time to time so that SBBC is in compliance with the Privacy Rule, the Security Rule, the HITECH Act and HIPAA in general. The parties may agree to amend this Agreement from time to time in any other respect that they deem appropriate. This Agreement shall not be amended except by written instrument executed by the parties.

9. **Term and Termination.**

- (a) ***Term.*** This Agreement shall be effective as of the Effective Date and shall remain in effect until such time as SBBC exercises its rights of termination under section 9(b) or 9(c) and until the requirements of Section 9(d) below are satisfied. The rights and obligations of Business Associate under Section 9(d) shall survive termination of this Agreement.
- (b) ***Termination for Convenience.*** This Agreement may be terminated without cause and for convenience by SBBC during the term thereof upon thirty (30) days written notice to Business Associate.
- (c) ***Termination for Cause by SBBC.*** Upon SBBC's knowledge of a material breach by Business Associate, SBBC shall provide an opportunity for Business Associate to cure the breach. If Business Associate does not cure the breach within thirty (30) days from the date that SBBC provides notice of such breach to Business Associate, SBBC shall have the right to terminate this Agreement, the Service Agreement, or both, by providing thirty (30) days advance written notice of such termination to Business Associate.

SBBC may terminate this Agreement without penalty or recourse to SBBC if SBBC determines that Business Associate has violated a material term of this Agreement.

Upon Business Associate knowledge of a material breach by SBBC, for example, if SBBC makes illegal demands on Business Associate, Business Associate shall provide an opportunity for SBBC to cure the breach. If SBBC does not cure the breach within thirty (30) days of the date that Business Associate provides notice of such breach to SBBC, Business Associate shall have the right to terminate this Agreement, the Service Agreement, or both, by providing thirty (30) days advance written notice of such termination to Covered Entity.

- (d) ***Effect of Termination.*** Except as set forth in this Section 9(d), upon termination of this Agreement for any reason, at the request of SBBC, Business Associate shall return or destroy all PHI received from SBBC, or created or received by Business Associate on behalf of SBBC. Business Associate shall not retain any copies of the PHI. In the event that Business Associate determines that returning or destroying the PHI is infeasible, such as in the use of data aggregation, Business Associate shall provide to SBBC written notification of the conditions that make return or destruction infeasible. If the return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

10. **Indemnification.**

- (a) **By SBBC:** SBBC agrees to be fully responsible for its acts of negligence or its agent's acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.
- (b) **By Business Associate:** Business Associate agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments, costs and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery cost, court costs and all other sums which SBBC, its agents, servants and employees must pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods, or services furnished by Business Associate, its agents, servants or employees; the equipment of Business Associate, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of Business Associate agents when acting within the scope of their employment or agency, whether such claims, judgments, costs and expenses be for damages, damage to property including Business Associate property, and injury or death of any person whether employed by Business Associate, SBBC or otherwise.

ARTICLE 3 – GENERAL CONDITIONS

11. **No Waiver of Sovereign Immunity.**

Nothing contained herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or as a waiver of limits to liability or rights existing under Section 768.28, Florida Statutes.

12. **No Third Party Beneficiaries.**

The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

13. Non-Discrimination.

The parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this Agreement because of age, color, disability, gender identity, gender expression, national origin, marital status, race, religion, sex or sexual orientation.

14. Records.

Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law.

15. Preparation of Agreement.

The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

16. Waiver.

The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

17. Compliance with Laws.

Each party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

18. Binding Effect.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

19. Assignment.

Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

20. Force Majeure.

Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

21. **Place of Performance.**

All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

22. **Notices.**

When any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving notice:

To SBBC: Superintendent of Schools
The School Board of Broward County, Florida
600 Southeast 3rd Avenue
Fort Lauderdale, FL 33301

With a Copy to: _____
(Insert Name of Relevant Administrator)

(Insert Name of Relevant Department)

(Address)

(Address)

Privacy Officer
Risk Management Department
The School Board of Broward County, Florida
600 S.E. 3rd Avenue, 11th Floor
Ft. Lauderdale, FL 33301

To Business Associate: _____
(Name of Other Party)

(Address)

(Address)

With a Copy to: _____
(Name to be Provided by Other Party)

(Address)

(Address)

23. Severability.

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, unlawful, unenforceable or void in any respect, the invalidity, illegality, unenforceability or unlawful or void nature of that provision shall not affect any other provision and this Agreement shall be considered as if such invalid, illegal, unlawful, unenforceable or void provision had never been included herein.

24. Captions.

The captions, section numbers, title and headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

25. Authority.

Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement. The person signing on behalf of "Business Associate" has authority to bind "Business Associate" with respect to all provisions contained in this Agreement.

26. No Waiver of Rights, Powers and Remedies.

No failure or delay by a party hereto in exercising any right, power or remedy under this Agreement, and no course of dealing between the parties hereto, will operate as a waiver of any such right, power or remedy of the party. No single or partial exercise of any right, power or remedy under this Agreement by a party hereto, nor any abandonment or discontinuance of steps to enforce any such right, power or remedy, will preclude such party from any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. The election of any remedy by a party hereto will not constitute a waiver of the right of such party to pursue other available remedies. No notice to or demand on a party not expressly required under this Agreement will entitle the party receiving such notice or demand to any other or further notice or demand in similar or other circumstances or constitute a waiver of the right of the party giving such notice or demand to any other or further action in any circumstances without such notice or demand. The terms and provisions of this Agreement may be waived, or consent for the departure there from granted, only by written document executed by the party entitled to the benefits of such terms or provisions. No such waiver or consent will be deemed to be or will constitute a waiver or consent with respect to any other terms or provisions of this Agreement, whether or not similar. Each such waiver or consent will be effective only in the specific instance and for the purpose for which it was given, and will not constitute a continuing waiver or consent.

27. Regulatory References.

A reference in this Agreement to a section in the Privacy Rule, the Security Rule, the HITECH Act, or HIPAA in general means the referenced section or its successor, and for which compliance is required.

28. Governing Law.

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

29. **Entire Agreement.**

This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this Agreement. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

30. **Interpretation.**

Any ambiguity in this Agreement shall be interpreted in a manner that permits SBBC to comply with the Privacy Rule, Security Rule, the HITECH Act, HIPAA in general and any subsequent legislation or regulations otherwise affecting Business Associates.

IN WITNESS WHEREOF, the parties have executed this Business Associate Agreement as of the Effective Date.

FOR SBBC

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

By _____
_____, Chair

ATTEST:

Approved as to Form and Legal Content:

Robert W. Runcie, Superintendent of Schools

Office of the General Counsel

FOR BUSINESS ASSOCIATE

Signature

Print Name and Title

Witness

Witness

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by _____ who is personally known to me or who produced _____ as identification and who did / did not first take an oath this _____ day of _____, 20_____.

My Commission Expires:

Signature – Notary Public

Notary's Printed Name

Notary's Commission No.

EXHIBIT A

NOTIFICATION TO THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
ABOUT A BREACH OF UNSECURED PROTECTED HEALTH INFORMATION

This notification is made pursuant to Section 2(d) of the Business Associate Agreement between THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA (“SBBC”) and

_____ (Business Associate).

Business Associate hereby notifies SBBC that there has been a breach of unsecured (unencrypted) protected health information (PHI) that Business Associate has used or has had access to under the terms of the Business Associate Agreement.

Description of the breach: _____

Date or date range of the breach: _____

Date of the discovery of the breach: _____

Number of individuals affected by the breach: _____

The types of unsecured PHI that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code): _____

Description of what Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches: _____

Recommended steps the individuals whose information was breached should take to protect themselves from potential harm resulting from the breach: _____

Contact information to ask questions or learn additional information:

Name: _____

Title: _____

Address: _____

Email Address: _____

Phone Number: _____

ATTACHMENT M

Performance Standards and Guarantees

Submit responses in Hard Copy and Electronic Version in a useable Microsoft Word format.

For your convenience, Attachment M is also available as a separate downloadable document in a useable Microsoft Word format.

PERFORMANCE STANDARD GUARANTEES

Please review the outlined Performance Standard Guarantees and liquidated damages. Fully explain all deviations and how your company will track and meet each of the below performance standards.

Performance Standard Guarantees	Amount of Liquidated Damages	Yes, Can Comply	Yes, Can Comply with Deviations
Implementation Measurements			
Brochures/descriptive literature must be delivered to SBBC, or to its designee, as directed, in final form, within 60 calendar days prior to open enrollment. Additional materials to be provided within 30 calendar days of the Benefits Department request.	\$250.00 per calendar day		
Claim Timeliness			
On average 90% of all request for payouts will be processed within 3 calendar days. The turnaround time is calculated from the date the request is received in the office to the date that it is processed.	\$2,000		
Claim Inquiries/Complaints			
All written inquiries or complaints, and other contacts with the vendor by the Benefits Department, the Payroll Deduction Unit, or SBBC employees and their covered dependents must have a written response within ten (10) calendar days of receipt by the vendor.	\$100 per occurrence per day beyond, as outlined		
Telephone Responsiveness			
The employees of SBBC must have their telephone calls returned within twenty-four hours from receipt.	\$100 per occurrence per day beyond, as outlined		
Average response time of 30 seconds or better. (Monthly)	\$2,000		
Abandonment rate of 5% or less. (Monthly)	\$2,000		
Administration			
Proposer agrees to liquidated damages for employee satisfaction ratings below 85%.	\$1,500 for each percentage point below 85%.		
The Supplier Diversity Outreach Program office will require a 30-day written notice for the substitution of an S/M/WBE vendor.	\$100 per calendar day for the first 30 calendar days, \$1,000 beyond		
The Awardee will be required to submit a monthly S/M/WBE Utilization Report, which will track payments to S/M/WBE(s).	\$100 per calendar day		
At a minimum, provide annual reporting metrics for each outlined performance standard.	If reporting is not provided the fully penalty will apply.		

Performance penalties will be capped at \$.10,000.00

ATTACHMENT N

ACH Payment Agreement Form

Submit responses in Hard Copy and Electronic Version in a useable Microsoft Word format.

For your convenience, Attachment N is also available as a separate downloadable document in a useable Microsoft Word format.

ATTACHMENT O

Statement of “No Response”

For your convenience, Attachment O is also available as a separate downloadable document in a useable Microsoft Word format.

ATTACHMENT O, STATEMENT OF "NO RESPONSE"

If your company will not be submitting a response to this Request for Proposal, please complete this Statement of "No Response" Sheet and return, prior to the RFP due date established within, to:

SBBC
 Procurement & Warehousing Services
 7720 West Oakland Park Boulevard, Suite 323
 Sunrise, Florida 33351

This information will help SBBC in the preparation of future RFPs.

RFP Number: _____ Title: _____

Company Name: _____

Contact: _____

Address: _____

Telephone: _____ Facsimile: _____ E-mail: _____

√	Reasons for "NO Response":
	Unable to comply with product or service specifications.
	Unable to comply with scope of work.
	Unable to quote on all items in the group.
	Insufficient time to respond to the Request for Proposal.
	Unable to hold prices firm through the term of the contract period.
	Our schedule would not permit us to perform.
	Unable to meet delivery requirements.
	Unable to meet bond requirements.
	Unable to meet insurance requirements.
	Other (Specify below)

Comments:

Signature: _____ Date: _____