

CONTRACT BETWEEN
THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA
AND
BOOKSMART ENTERPRISES, INC.

This contract entered into this _____ day of _____, 2006, between THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA, a political subdivision of the state of Florida, (hereinafter referred to as the "School Board") and BOOKSMART ENTERPRISES, INC., located at 678 Glades Road, Boca Raton, Florida 33431, (hereinafter referred to as the "Contractor" to provide Instructional Materials for Dual Enrolled Students at Palm Beach Community College and Florida Atlantic University.

SECTION I - Term of Contract

This contract shall be for the period beginning August 22, 2006 through August 21, 2008.

SECTION II – Cost of Goods, Services and Delivery

The Contractor shall provide instructional materials at a variable discount off catalog/book list price for the term of the contract. The vendor acknowledges this discount may vary depending on availability, market demand and age of the book. New books will average 6.25% off the new book list price published by the Missouri Book Service (MBS) Textbook Exchange Buying Guide.

Vendor must provide any book on the adopted list for Palm Beach County Community College and any book for any of the courses offered for dual enrollment through Florida Atlantic University.

Students or a designated School District Staff member may pick-up needed books from Booksmart Enterprises, Inc. at either of their three store locations (Boca Raton, Lake Worth or Palm Beach Gardens) or the schools or District Department may request to have the materials delivered directly to them by Booksmart Enterprises, Inc. within three days after receipt of notification. Booksmart shall be paid by the District for each instructional material (textbook) purchased.

At the conclusion of the student's course, the student may purchase the material from the School District at cost, or return the material to the School District to recycle it to another student in a future class or return the material to Booksmart Enterprises, Inc. and receive a return receipt for the book.

The return of instructional materials will occur by one of two means. The first option is for the students to return the materials to their school's Instructional Materials Contact who will arrange to send the materials to the Instructional Materials Department, who in turn will notify Booksmart Enterprise, Inc. to pick-up the books for resale. The second option is for the student to return the materials directly to Booksmart Enterprises, Inc. at either of their three locations. At that time Booksmart Enterprises, Inc. will give the student a return receipt which the student is to take back to their school's Instructional Materials Contact. Booksmart will then generate a weekly return list, which is to be faxed to the Instructional Materials Department (fax 561 684-5107) at the conclusion of each week. Booksmart will pay the District for returned books at the current market buyback rate where applicable.

SECTION IV - Terms and Conditions

The Contractor shall have the option to terminate the contract upon written notice to the authorized representative of the School Board. Such notice must be received at least 90 days prior to the effective date of termination. The School Board shall have the option to terminate the contract without cause upon written notice to the authorized representative of the Contractor. Such notice must be received at least 30 days prior to the effective date of termination and the Contractor shall only be entitled to compensation up to the date of termination. The Contractor shall not be entitled to lost profits.

Early termination of the contract by the Contractor may prohibit the Contractor from submitting proposals for a period of three years from the date of completion of the contract. The School Board shall establish the expiration date of the contract for use thereof.

There shall be no assignment of the contract or compensation to be derived therefrom by the Contractor.

SECTION V – Indemnification/ Hold Harmless Agreement

Contractor shall, in addition to any other obligation to indemnify the Palm Beach County School District and to the fullest extent permitted by law, protect, defend, indemnify and hold harmless the School District, their agents, officers, elected officials and employees from and against all claims, actions, liabilities, losses (including economic losses), costs arising out of any actual or alleged;

- A. bodily injury, sickness, disease or death, or injury to or destruction of tangible property including the loss of use resulting therefrom, or any other damage or loss arising out of, or claimed to have resulted in whole or in part from any actual or alleged act or omission of the contractor, subcontractor, anyone directly or indirectly employed by any of them, of anyone for whose acts any of them may be liable in the performance of the work; or
- B. violation of law, statute, ordinance, governmental administration order, rule or regulation by contractor in the performance of the work; or
- C. liens, claims or actions made by the contractor or any subcontractor or other party performing the work.

The indemnification obligations hereunder shall not be limited to any limitation on the amount, type of damages, compensation or benefits payable by or for the contractor of any subcontractor under workers' compensation acts; disability benefit acts, other employee benefit acts or any statutory bar.

This article will survive the termination of this contract.

SECTION VI - Insurance

Booksmart Enterprises, Inc. shall provide complete copies of any insurance certificates for the required coverage within seven days of the date of request by the Purchasing Department but in any respect at least 30 days prior to the commencement of any contract term.

- A. **COMMERCIAL GENERAL LIABILITY:** Booksmart Enterprises, Inc. shall procure and maintain, for the life of this contract, Commercial General Liability Insurance. This policy shall provide coverage for death, bodily injury, personal injury, or property damage that could arise directly or indirectly from the performance of this contract. It must be an occurrence based policy. **THE SCHOOL BOARD OF PALM BEACH COUNTY SHALL BE NAMED AS AN ADDITIONAL INSURED ON THE CERTIFICATE FOR COMPREHENSIVE GENERAL LIABILITY INSURANCE.**

The minimum limits of coverage shall be \$1,000,000 per occurrence, Combined, Single Limit for Bodily Injury Liability and Property Damage Liability.

- B. **BUSINESS AUTOMOBILE LIABILITY:** Booksmart Enterprises, Inc. shall procure and maintain, for the life of the Contract/Agreement, Business Automobile Liability Insurance. **THE SCHOOL**

DISTRICT OF PALM BEACH COUNTY SHALL BE NAMED AS AN ADDITIONAL INSURED ON THE CERTIFICATE FOR BUSINESS AUTOMOBILE LIABILITY INSURANCE.

The minimum limits of coverage shall be \$1,000,000 per occurrence, Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This coverage shall be an "Any Auto" form policy. The insurance must be an occurrence form policy.

In the event the contractor does not own any vehicles, we will accept hired and non-owned coverage in the amounts listed above. In addition, we will require an affidavit signed by the contractor indicating the following:

_____ (Company Name) does not own any vehicles. In the event we acquire any vehicles throughout the term of this contract/agreement, _____ (Company Name) Agrees to purchase "Any Auto" coverage as of the date of acquisition.

All insurance must be issued by a company or companies approved by the School Board. Copies of the Certificates of Insurance meeting the specific required provision specified within this contract shall be forwarded to the Palm Beach County School Board's Purchasing Department and approved prior to the start of any work. Renewal certificates must be forwarded to the same department prior to the policy renewal date.

Thirty days written notice must be provided to the Palm Beach County School Board via certified mail in the event of insurance cancellation. The notice must be sent to The School Board of Palm Beach County, Purchasing Department at 3300 Forest Hill Blvd., Suite A-323, West Palm Beach, FL 33406-5813.

SECTION VII – Cancellation of Award/Termination

In the event any of the provisions of this proposal are violated by the responder(s), the Superintendent or designee will give written notice to the responder(s) stating the deficiencies and unless the deficiencies are corrected within ten (10) days, recommendation will be made to the District for immediate cancellation. Upon cancellation hereunder, the District may pursue any and all legal remedies as provided herein and by law. In the event that it is subsequently determined that a cancellation under this paragraph was incorrect, the termination shall be converted to a termination for convenience pursuant to the next paragraph.

The District, reserves the right to terminate this contract, at any time and for no reason, upon giving 30 days prior written notice to the other party. If said contract should be terminated for convenience as provided herein, the District will be relieved of all obligations under said contract. The District will only be required to pay to the responder(s) that amount of the contract actually performed to the date of termination.

The contractor will have the option to terminate the contract upon written notice to the Director of Purchasing. Such notice must be received at least 90 days prior to the effective date of termination.

Cancellation of contract by awardee may result in removal from bidders/responder list for a period of three years.

SECTION VIII - Funding Out, Termination, Cancellation

Florida School Laws prohibit School Board from creating obligations on anticipation of budgeted revenues from one fiscal year to another without year-to-year extension provisions in the agreements.

It is necessary that fiscal funding out provisions be included in all contracts in which the terms are for periods of longer than one year.

Therefore, the following funding out provisions are an integral part of this contract and must be agreed to by all responders:

The School Board may, during the contract period, terminate or discontinue the services covered in this contract for lack of appropriated funds upon the same terms and conditions as set forth in Section VII Cancellation of Award / Termination.

Such prior written notice will state:

- A. That the lack of appropriated funds is the reason for termination, and
- B. Agreement not to replace the services being terminated with services similar to those covered in this contract from another vendor in the succeeding funding period.

"This written notification will thereafter release the School Board of all further obligations in any way related to such equipment covered herein".

This completed statement must be included as part of any contract submitted by the successful responder. No contract will be considered that does not include this provision for "funding out".

SECTION IX – Jessica Lundsford Act

All Contract personnel (vendors, individuals, or entities) under contract with the School Board who are permitted access on school grounds when students are present, who may have direct contact with any student of the School District, or who may have access to or control of school funds must be fingerprinted and background checked. The contractor agrees to undergo a background check and fingerprinting if he/she is an individual who meets any of the above conditions and to require that all individuals in the organization who meet any of the conditions to submit to a background check, including fingerprinting by the School District's Police Department, at the sole cost of the contractor. Contractor shall not begin providing services contemplated by this Agreement until contractor receives notice of clearance by the School District. The School Board, nor its members, officers, employees, or agents, shall not be liable under any legal theory for any kind of claim whatsoever for the rejection of contractor (or discontinuation of contractor's services) on the basis of these compliance obligations. Contractor agrees that neither the contractor, nor any employee, agent or representative of the contractor who has been convicted or who is currently under investigation for a crime delineated in Florida Statutes §435.04 will be employed in the performance of this contract.

SECTION X - Default

In the event that the contractor should breach this contract the District reserves the right to seek remedies in law and/or in equity.

SECTION XI - Debarment

The Board shall have the authority to debar a person / corporation for cause for consideration or award of future contracts. The debarment shall be for a period commensurate with the seriousness of the causes, generally not to exceed three (3) years. When the offense is willful or blatant, a longer term of debarment may be imposed, up to an indefinite period.

SECTION XII – Federal and State Tax

The District is exempt from federal and state taxes for tangible personal property. The Purchasing Department Coordinator will sign an exemption certificate submitted by the successful responder(s). Responder(s) doing business with the District will not be exempted from paying sales tax to their suppliers

for materials to fulfill contractual obligations with the District, nor will any responder be authorized to use the District's Tax Exemption Number in securing such materials.

SECTION XIII - Amendment

This contract shall only be amended or modified in writing executed by both parties.

SECTION XIV - Strict Performance

The failure of either party to insist on strict performance of any covenant or conditions herein shall not be construed as a waiver of such covenants or conditions for any instance.

This contract shall be construed in accordance with the laws of the State of Florida.

If any litigation shall result from this agreement, venue shall lie in Palm Beach County, Florida.

This agreement shall not be construed against the party who drafted the same as both parties have had experts of their choosing review the same.

This agreement is binding on the parties hereto, their heirs, successor and/or assigns.

Section XV

Should either party breach this agreement, the non-breaching party shall be entitled to all remedies as provided by law and equity.

In witness whereof, this contract has been executed on the day and year first above written.

BOOKSMART ENTERPRISES, INC.

THE SCHOOL BOARD OF
PALM BEACH COUNTY,
FLORIDA

SIGNATURE: _____

BY: _____

Thomas E. Lynch, Chairman

PRINT NAME: _____

Date

TITLE: _____

Attest: _____

DATE: _____

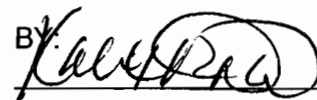
Arthur C. Johnson, Ph.D.,
Superintendent

Reviewed and Approved for
Form and Legal Sufficiency:

DATE: _____

7/10/06

BY: _____



Attorney