

CONTRACT BETWEEN
THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA
AND
RFP DEPOT, LLC

This contract entered into this 20th day of September, 2007, 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 RFP Depot, LLC, 1881 West 820 North Suite1 – Provo, UT 84601, (hereinafter referred to as the "RFPD") to provide Internet web-based electronic services and recordkeeping consisting of an automated system that manages the School Board's entire procurement processes.

SECTION I - Term of Contract

This contract shall be for the period beginning September 20, 2007 through June 30, 2009. The contract may be renewed for additional one-year periods at the annual anniversary date.

SECTION II – Scope of Services

RFPD shall provide:

1. An Industry Standard technically secure system that will allow the School Board to do all of their Request for Quotes, Reverse Auctions, Invitations To Bid's, Invitations To Negotiates, Request For Proposal's, Request For Information's, and Cooperative Bids on-line.
2. A system that will notify all vendors in designated commodity codes of the release of a competitive solicitation and any corresponding addendums automatically by an email or fax and will track and keep receipts of each notification sent.
3. A system that will allow the School Board to create tabulations of bids automatically.
4. Work with vendors currently registered with the School Board to use the RFP Depot system and maintain vendor information on the system.
5. A system that will allow vendors interested in doing business with the School Board to register and all vendors to update their information on-line.
6. Access to the RFP Depot Vendor Support Team that will attract new vendors for the School Board.

7. A system that will provide a reporting tool that will generate elaborate reports automatically from bid specific information.
8. Unlimited training, and customer application and technical support, shall be provided by RFPD at no charge to the School Board.
9. A good faith effort to make sure that the School Board's public bids shall be secure and accessible to anyone, 24 hours, 7 days a week using Industry Best Practices and Procedures.
10. All data will be backed up and secured using Industry Best Practices and Procedures. All of the School Board's backed up data will be delivered to the School Board, not less than monthly, on a CD-Rom. Data will be provided by RFPD to the School Board including all on-line procurement activity and preferred vendor information for all commodities. Competitive procurement activity data will also be provided ready to import into an Access database which will allow it to be loaded into the School Board's system for updating the minority business data.
11. An Industry Standard Secure Communication System Only. Although RFPD's system is sometimes called an online auction system, they do not perform the function of a traditional auctioneer. School Board acknowledges that their site merely provides a secure and reliable communication system and means to allow School Board to request bids and quotations and buy products and services. RFPD is not involved in the actual transaction between Vendors and Buyers. As a result, RFPD does not verify or have any control over the quality, safety or legality of the items sought or offered, the identity of each Vendor, the truth or accuracy of bids, quotations, or statements made, or the ability of Vendors to sell or deliver products or services. Please use caution, common sense, and practice safe trading when using our site. RFPD does not ensure that a Vendor will actually complete a transaction. School Board may wish to take steps to confirm identities and provide additional business security to the transaction.

The School Board's responsibility:

12. All School Board's bid terms, non-technical conditions, and disclaimers shall be produced and controlled by the School Board.
13. As a Buyer, School Board must be legally and financially capable of buying the items for which quotations are requested. School Board's requests for quotations may only include text descriptions, graphics, pictures and other content relevant to the purchase of that item.

14. School Board is solely responsible for all information it provides to RFPD or other users on RFPD's site or in connection with the registration, request for quotes or proposals, bidding, or sale process. RFPD acts as a passive conduit for the online distribution and publication of School Board's information. School Board agrees that it will not intentionally provide information that is false, inaccurate or misleading.

15. School Board will comply with all applicable domestic and international laws, statutes, ordinances and regulations regarding its use of RFPD's service and School Board's requesting quotations, submitting quotations, bidding, listing, purchase, solicitation of offers to purchase, and sale of items.

SECTION III - Cost of Services

RFPD shall be paid:

1. An annual transaction fee of \$58,000 will be charged for this service for the first year of this contract. Fee will be due 30 days from the invoice date and will be paid at the beginning of service year. The District reserves the right to choose to pay the annual transaction fee of \$58,000 for the second year or a monthly fee of \$5400.00 for the duration of the second year. If the fee is paid monthly, the fee will be due 30 days from the invoice date. If the fee for the second year is an annual payment, the fee will be due 30 days from the invoice date and will be paid at the beginning of the second service year.
 - a. This compensation is considered a fixed fee.
 - b. Any additional services such as the RFP Depot Order Management system, Warehouse, and system integrations will be negotiated with the School Board at an additional cost.

SECTION IV - Terms and Conditions

The RFPD 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 RFPD. Such notice must be received at least 30 days prior to the effective date of termination and the RFPD shall only be entitled to compensation up to the date of termination. The RFPD shall not be entitled to lost profits.

Early termination of the contract by the RFPD may prohibit the RFPD 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 there from by the RFPD without prior written consent of the School Board.

SECTION V - Indemnification

RFPD shall, in addition to any other obligation to indemnify the School Board and to the fullest extent permitted by law, protect, defend, indemnify and hold harmless the School Board, its 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 there from, 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 RFPD, sub-contractors of RFPD, 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 RFPD in the performance of the work; or
- C. liens, claims or actions made by the RFPD or any sub-contractors of RFPD 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 RFPD of any sub-contractor of RFPD under workers' compensation acts; disability benefit acts, other employee benefit acts or any statutory bar.

This article will survive the termination of this contract.

The School Board recognizes its liability for certain tortious acts of its agents, officers, employees and invitees to the extent and limits provided in Section 768.28, Florida Statutes, the State of Florida's partial waiver of Sovereign Immunity; provided, however, that this provision shall not be construed as a waiver of any right or defense that the School Board has under said statute.

SECTION VI – Insurance

Insurance will be required as stated below. The School Board of Palm Beach County shall be named as an additional insured.

- A. **COMMERCIAL GENERAL LIABILITY:** RFPD 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, products and completed operations liability and property damage that could arise directly or indirectly from the performance of this contract. It must be an occurrence form policy. THE SCHOOL BOARD OF PALM BEACH COUNTY SHALL BE NAMED AS AN ADDITIONAL INSURED ON THE CERTIFICATE FOR COMMERCIAL 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.

SECTION VII – Amendment

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

SECTION VIII - 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 contract, venue shall lie in Palm Beach County, Florida.

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

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

SECTION IX

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

SECTION X

No verbal agreement or conversation with any officer, agent, or employee of RFPD, either before, during, or after the execution of this contract, shall affect or modify any of the terms or obligations herein contained, nor shall such verbal agreement or conversation entitle School Board to any additional discounts whatsoever under the terms of this contract.

SECTION XI

School Board and RFPD are independent contractors, and no agency, partnership, joint venture, employee-employer or franchiser-franchisee relationship is intended or created by this contract.

SECTION XII ARBITRATION

Any legal controversy or legal claim arising out of or relating to this contract or RFPD's services (excluding legal action taken by RFPD to obtain an injunction relating to, the RFPD site, operations, intellectual property, and our services) that the parties to this contract are unable to resolve within thirty (30) days after written notice by one party to the other of the existence of such controversy or claim, will be settled by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. Any such controversy or claim will be arbitrated on an individual basis, and will not be consolidated in any arbitration with any claim or controversy of any other party. The arbitration will be conducted in School Board's home state and county, and judgment on the arbitration award may be entered into any state or federal court within School Board's home state having jurisdiction thereof. Either School Board or RFPD may seek any interim or preliminary relief from a court of competent jurisdiction in School Board's home state and county necessary to protect the rights or property of School Board or RFPD pending the completion of arbitration. Each party will bear its own attorneys' fees. The fees and expenses of the arbitrators will be apportioned between the parties by the arbitrator in accordance with the findings and results of the arbitration.

SECTION XIII-NOTICE & REQUESTS

All notices and requests in connection with this contract shall be given or made upon the respective parties in writing and shall be deemed to be given as of the day such notice or request is deposited in the U.S. mails, postage prepaid, certified or registered, return receipt requested, addressed as follows:

RFPD: RFP Depot, LLC
1881 West 820 North Suite 1
Provo, UT 84601
Attn: Joseph McCaul

School Board: School District of Palm Beach County, Florida
3300 Forest Hill Blvd. Suite A323
West Palm Beach, Fl. 33406
Attn: Sharon Swan

Or to such address as either party designates by written notice to the other.
In witness whereof, this contract has been executed on the day and year first above written.

RFP DEPOT, LLC

THE SCHOOL BOARD OF PALM BEACH
COUNTY, FLORIDA

BY: _____

BY: _____
William Graham, Chairman

WITNESS: _____

Date

WITNESS: _____

Attest: _____
Arthur C. Johnson, Ph.D., Superintendent

Reviewed and Approved for Form and
Legal Sufficiency:

DATE: 8/30/07

BY: [Signature]
Attorney