

CLEANING SUPPLIES AND EQUIPMENT, AND CUSTODIAL RELATED PRODUCTS SERVICES AND SOLUTIONS AGREEMENT

THIS AGREEMENT dated as of September 29, 2022 ("Effective Date"), is made and entered into by and between the Fresno Unified School District ("DISTRICT"), and HD Supply Facilities Maintenance LTD fka Home Depot Pro Institutional ("PROVIDER"). RFP 22-07 Custodial Supplies. Equipment and Custodial Related Products Services and Solutions shall begin on November 1, 2022 through October 31, 2025 ("Service Date").

For the consideration stated below, DISTRICT and PROVIDER agree as follows:

1. The complete Agreement includes and incorporates by reference herein all of the "Contract Documents" including: the Agreement, Request for RFP number 22-07, Notice to Bidders, Bid Instructions, General Terms and Conditions, Service Requirements, Pricing Matrix, Non-collusion Declaration, No Prohibited Interest/Conflict of Interest Declaration, Debarment Suspension, IRAN Contracting Act of Certification, Certification Regarding Lobbying, Prime Point of Contact, References, and all modifications, addenda, bulletins, and amendments.
2. Custodial Supplies, Equipment and Custodial Related Products Services and Solutions shall be provided for the entire "Service Date" period in accordance with Agreement to the Fresno Unified School District for supplies districtwide. The Agreement will be for a 3-year term. Pursuant to the provision of California Education Code Section 17596, school districts may execute contracts for materials and supplies up to three (3) years.
3. As full consideration for the faithful performance of the Agreement, DISTRICT shall pay to Provider, the prices offered in PROVIDER's Pricing Schedule submitted with its BID and set forth on the Agreement. Payment terms shall be Net 30 and invoiced monthly against issued purchase order(s) for custodial supplies satisfactorily provided. The Firm must invoice Fresno Unified School District, Contract Administrator, in order to initiate the payment process. All invoices shall indicate (a) the Bid No. and (b) the purchase order number and should be emailed to Invoices@fresnounified.org. The DISTRICT will not approve for payment any fee which is not documented on the Firm's monthly statement and there is no support documentation on file with the DISTRICT.
4. For the first calendar year of the Contract, pricing will be fixed at the proposal pricing. Ninety (90) calendar days prior to the expiration of the fixed pricing term, the Firm may submit proposed pricing revisions for the following year, which will be subject to negotiation by Fresno Unified School DISTRICT at the DISTRICT's discretion. The Firm must provide adequate documentation to substantiate any request for price increase. In addition to decreasing prices for the balance of the Contract term due to a change in market conditions, Contractor may conduct sales promotions involving price reductions for a specified lesser period. Contractor may offer Participating Agencies competitive pricing which is lower than the not-to-exceed price set forth herein at any time during the Contract term and such lower pricing shall not be applied as a global price reduction under the Contract.
5. In the event any invoices do not match the monthly charge listed in the BID, the DISTRICT reserves the right to withhold any disputed amounts until the billing issues are corrected.
6. Contractor shall use commercially reasonable efforts to comply with the Federal Government's minimum wage requirement.
7. Board approved notification will be issued upon Fresno USD Board award. Purchase Order(s) issued against the RFP shall be proof of the District acceptance of Vendor's/Firm's offer to provide services to the

District per the pricing, and subject to the RFP and Vendor's/Firm's offer to provide services in response to the RFP. In the event of a conflict between the RFP and Vendor's/Firm's offer to provide services in response to the RFP, the final agreed to RFP response shall prevail.

8. It is the intent of the DISTRICT to fully utilize the selected Firm for services listed herein, however the DISTRICT reserves the right to engage services elsewhere to perform specific services due to negligence in performance at any given site or if Firm is unable to provide requested staff. Written notice will be provided to the Firm in an event, which would require exercising this article.

9. This Agreement may be terminated by either party upon giving ninety (90) calendar days advance written notice of an intention to terminate to the other party.

10. The Supplier shall maintain insurance adequate to protect him from claims under Workers' Compensation Laws and from claims for damages for personal injury, including death and damage to property, which may be caused by bidder's operations under the contract. The proposer shall secure and maintain in force during the term of this agreement a **comprehensive general liability and automobile policy** utilizing an occurrence policy form, with combined single limits of One Million Dollars (\$1,000,000.00 or (\$1,000,000.00) per person, (\$1,000,000.00) per accident, as well as an umbrella or excessive liability policy with a limit of Seven Million Dollars (\$7,000,000). Property damage limits shall be \$500,000 per loss. **FRESNO UNIFIED SCHOOL DISTRICT, AND ITS EMPLOYEES AND AGENTS shall be included as an additional insured on the policies by separate, scheduled or blanket, endorsement that shall be attached to the contract as proof of insurance.** Insurance Accord shall state "*All operations resulting from informally or formally quoted projects*". Failure to furnish such evidence and insurance, if required, may be considered default by the bidder(s).

11. PROVIDER acknowledges that it is an independent contractor and not an employee, agent, or representative of DISTRICT. PROVIDER acknowledges that it shall be solely responsible for and shall indemnify and hold DISTRICT harmless from all matters relating to payment of PROVIDER'S employees, subcontractors and others, including compliance with Social Security, withholding and all other laws and regulations governing such matters.

12. Law. In the event of any conflict or ambiguity between these instructions and state or federal law or regulations, the latter shall prevail. Additionally, Supplier shall use commercially reasonable efforts to ensure that all equipment to be supplied or services to be performed under the proposal shall conform to all applicable requirements of local, state and federal law.

13. Compliance with Law. Each and every provision of law and clause required by law to be inserted into this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein. PROVIDER shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, including but not limited to fingerprinting under Education Code section 45125.1, confidentiality of records, Education Code section 49406 and others. PROVIDER agrees that it shall comply with all legal requirements for the performance of duties under this Agreement and that failure to do so shall constitute material breach.

14. Non-Discrimination. There shall be no unlawful discrimination in the contracting of persons under this Agreement because of race, color, national origin, age, ancestry, religion, sex, or sexual orientation of such persons.

15. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. The parties also agree that, in the event of litigation, venue shall be in the proper state or federal court located in Fresno County, California.

16. Assignment of Contracts. The successful Firm shall not assign or transfer by operation of law or otherwise any or all of its rights burdens, duties or obligations without the prior written consent of the DISTRICT, which consent shall not be unreasonably held.

17. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the DISTRICT and PROVIDER and their respective successors and assigns.

18. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or under unenforceable any other provision hereof.

19. Amendments. The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by the parties.

20. Entire Agreement. The complete Agreement, as set forth in paragraph 1 herein above, constitutes the entire agreement of the parties. No other agreements, oral or written, exists between the parties. This Agreement can be modified only by an amendment in writing, signed by both parties.

21. Non-Exclusive Contract. Any resultant contract will be awarded with the understanding and agreement that it is for the sole convenience of the DISTRICT. The DISTRICT reserves the right to obtain like goods or services from another source when necessary.

22. Hold Harmless Cause. The successful proposer agrees to indemnify, defend and save harmless Fresno Unified School DISTRICT, its governing board, related divisions and entities, officers, agents, and employees from and against any and all claims, demands, losses, defense costs, or liability of any kind or nature which the DISTRICT, it's officers, agents, and employees may sustain or injure or which may be imposed upon them for injury to or death of persons, or damage to property to the extent caused by the negligent acts or willful misconduct by the bidder or bidder's agents, employees or subcontractor's performance under the terms of this contract, expecting liability arising out of the sole negligence of the DISTRICT.

23. Permits and Licenses. The successful proposer(s) and all of his employees or agents shall secure and maintain in force such licenses and permits as are required by law, in connection with the furnishing of materials, articles or services herein listed. All operations and materials shall be in accordance with law.

24. Changes to the Contract. The DISTRICT reserves the right to add or delete service and/or sites during the term of the contract. The submitted prices in this RFP will be used to adjust compensation during the contract period

25. Authority. The persons who have signed this Agreement warrant that they are legally authorized to do so on behalf of the respective parties, and by their signatures to bind the respective parties to this Agreement.

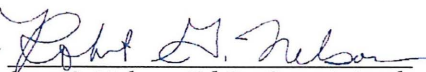
26. To the extent permitted by law, Vendor shall not be liable to the District for any incidental, indirect, punitive, consequential damages such as loss of profits or delay damages, or for any claim that is properly brought only against a third-party manufacturer, or any amount exceeding two million dollars (\$2,000,0000). All claims must be brought within one year of the accrual of the cause of action.

27. Seller is a reseller of Goods and, except for Goods Seller procures from its own or affiliate manufacturing/production sources (i.e., "Private Label" items), Seller does not provide any warranty for the Goods procured from third party manufacturing/production sources ("Third Party Sources"). For items provided hereunder from Third Party Sources, Seller shall pass through to Buyer any transferable manufacturer's standard warranties. EXCEPT AS SET FORTH HEREIN AND WHERE APPLICABLE, AS TO GOODS PROVIDED FROM THIRD PARTY SOURCES, NO WARRANTY OR AFFIRMATION OF FACT OR DESCRIPTION, EXPRESS OR IMPLIED, IS MADE OR AUTHORIZED BY SELLER. BUYER AND PERSONS CLAIMING THROUGH BUYER (COLLECTIVELY "CLAIMANT") SHALL SEEK RECOURSE ONLY FROM THE RELEVANT THIRD-PARTY SOURCE IN CONNECTION WITH ANY DEFECTS IN OR FAILURES OF GOODS, UNLESS RECOURSE AGAINST SELLER IS APPROPRIATE UNDER THE CIRCUMSTANCES (E.G., DUE TO HANDLING OR TRANSPORTATION OF SUCH GOODS). NOTWITHSTANDING THE FOREGOING, THIS SHALL BE THE EXCLUSIVE RECOURSE OF CLAIMANT FOR DEFECTIVE GOODS PROCURED FROM THIRD PARTY SOURCES. SELLER EXCLUDES AND DISCLAIMS ALL OTHER EXPRESS AND IMPLIED WARRANTIES REGARDING GOODS FROM THIRD PARTY SOURCES, INCLUDING, BUT NOT LIMITED TO, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. SELLER ASSUMES NO RESPONSIBILITY WHATSOEVER FOR THE MISUSE, ALTERATION OR MODIFICATION OF GOODS. SELLER DOES NOT CERTIFY OR GUARANTEE THAT ANY GOODS COMPLY WITH ANY STATUTES, LAWS, CODES, ORDINANCES OR REGULATIONS.

IN WITNESS WHEREOF the parties have executed this Agreement on the date first hereinabove written.

FRESNO UNIFIED SCHOOL DISTRICT

HD Supply Facilities Maintenance LTD

By 
Robert G. Nelson, Ed.D., Superintendent

By 
Alyssa Steele (Sep 2, 2022 15:20 EDT)
Chief Commercial Officer

Approved as to form


Ann Loar (Sep 2, 2022 14:32 PDT)

Executive Director, Purchasing



Fresno Unified School District Contract Routing Form

Completed independent contract agreement must be attached

HD Supply Facilities Maintenance, LTD fka

3400 Cumberland Blvd SE, Atlanta, GA 30339

Vendor Name

Address

(770) 261-5686

Alyssa Steele

Phone Number

Vendor Contact

From: 11/1/2022

Through: 10/31/2025

Term (Duration)

FUSD Contract Administrator:

Ann Loorz/ Marisa Thibodeaux

Purchasing

559-457-3584

Name

Site/ Dept

Telephone number

Budget (Fund-Unit-Dept.-Activity-Object) Maintenance and Operations

Annual Cost 1500000

(Estimated Amount)

Fingerprint Requirements: All individuals providing services under this contract are in compliance with the requirements of the "Michelle Montoya" Act, as required therein.

Yes ☐

No ☒

Scope of Work Summary:

Request for Proposal (RFP) 22-07, for district-wide cleaning supplies, and equipment and custodial related products, services and solutions. As the lead agency for this Omnia Partners RFP, the Fresno Unified School District will establish a nationwide master agreement that can be used by more than 50,000 public agencies. Omnia Partners is a nonprofit government purchasing cooperative that reduces the cost of goods and services for participating agencies by aggregating purchasing power nationwide. Lead public agencies competitively solicit contracts which Omnia Partners makes available to agencies and nonprofits nationwide.

Please indicate where the work will be performed: Work to be performed remotely in the st.

Date Item is to appear on **Board of Education Agenda:** 09/28/22
(Contracts of \$15,000.00 or more)

Will this contract be submitted with Bundled Contracts? No

Reviewed & approved by **Cabinet Level Officer:**


Paul Idsvong (Sep 28, 2022 11:08 PDT)

Signed

Date

Reviewed & approved by **Risk Management, or
Exec. Dir. of Purchasing:**


Ann Loorz (Sep 2, 2022 4:32 PDT)

Signed

Date

Please return signed contract to:

Teri Prieto

Purchasing Department

Name

Department