

Request for Proposal

BID NO: 179-1819-524-CART
TITLE: Chromebook/Laptop Cart
PROGRAM LEAD: Stephen Brown
Networking & Infrastructure Manager
1817 Hamlin Road
Durham, North Carolina 27704
Stephen.Brown@dpsnc.net

Table of Contents

Contents

Request for Proposal	1
Table of Contents	2
Scope of Work	3
· Bid Submittal	3
· Pre-Bid Meeting	4
· Communications	4
· Contract Form	4
· MBE/WBE Status	4
· Award	4
Proposal Checklist	5
Exhibit 1	5
· Scope/Specifications	5
· Warranty	6
· Quantity	6
Cost Proposal/Execution of Proposal	7
Vendor Scorecard	9
Exhibit 2	10
Exhibit 3	23

Durham Public Schools (DPS) seeks Proposals for the above referenced project.

Scope of Work

Scope/Specifications are described on Exhibit 1. Any applicable plans and specifications are referenced therein.

Instructions are as follows.

- **Bid Submittal**

Bids will be received no later than: December 6, 2018 by 2 p.m.

Refer to Bidder's Checklist for documents required for bid submittal.

Bid shall be submitted in the manner indicated below:

Sealed Proposals will be received no later than 2 p.m. on December 6, 2018 at the IT Division Office of Durham Public Schools, which is 1817 Hamlin Road, Durham, North Carolina 27704.

All sealed proposals must be in an opaque envelope or box marked with the Proposal number 179-1819-524-CART.

IMPORTANT NOTE: All proposals shall be physically delivered to the office address listed above on or before the proposal deadline in order to be considered timely, regardless of the method of delivery. **This is an absolute requirement.** All risk of late arrival due to unanticipated delay—whether delivered by hand, U.S. Postal Service, courier or other delivery service is entirely on the Vendor. It is the sole responsibility of the Vendor to have the proposal physically in this Office by the specified time and date of opening. The time of delivery will be marked on each proposal when received, and any proposal received after the proposal submission deadline will be rejected. Sealed proposals, subject to the conditions made a part hereof, will be received at the address indicated in this Section, for furnishing and delivering the commodity as described herein.

All Vendors are urged to take the possibility of delay into account when submitting a proposal. **Attempts to submit a proposal via facsimile (FAX) machine, telephone or electronic means, including but not limited to email, in response to this RFP shall NOT be accepted.**

Submit your proposal in a sealed package. Clearly mark each package with: (1) Vendor name; (2) the RFP number; and (3) the due date. Address the package(s) for delivery as shown in this section. If Vendor is submitting more than one (1) proposal, each proposal shall be submitted in separate sealed envelopes and marked accordingly. For delivery purposes, separate sealed envelopes from a single Vendor may be included in the same outer package. Proposals are subject to rejection unless submitted with the information above included on the outside of the sealed proposal package.

The electronic copies of your proposal must be provided on separate read-only CD's, DVD's or flash drives. The files on the discs **shall NOT** be password protected, shall be in .PDF or .XLS format, and shall be capable of being copied to other media including readable in Microsoft Word and/or Microsoft Excel.

Disc must contain the entire Technical and Cost Proposal including any proprietary information and have the following label affixed to the disc: 1) Vendor name; (2) the RFP number; (3) the due date.

IMPORTANT NOTE: Evaluation of Proposals will determine which Vendors will be requested to send samples or attend a demonstration meeting. SAMPLES SHALL NOT BE SENT UNLESS A SPECIFIC REQUEST HAS BEEN MADE.

- Pre-Bid Meeting

A Pre-Bid Meeting will **NOT** be held.

- Communications

During the Proposal processes all communications shall be directed to the Program Lead as identified above. Failure to meet the requirement may consider your bid non-responsive. Make sure your subject line contains "179-1819-524-CART" on all email questions submitted.

All questions relating to this project shall be directed to the Program Lead identified above in the form of an email no later than November 28, 2018 by 4 p.m. ET. Responses will be provided to all bidders.

- Contract Form

The contract shall be DPS standard Purchase Order. E-Procurement Fees may apply.

Your attention is directed to DPS BOE Standard Terms and Conditions, Exhibit 2, which shall be deemed to be incorporated into any purchase order or contract. Especially note applicable insurance requirements and obligations to comply with all applicable laws and Durham Public Schools Board of Education policies. Insurance certificates shall be provided upon request of DPS Program Lead.

- MBE/WBE Status

Vendor must provide MBE/WBE Status using Exhibit 3.

- Award

DPS reserves the right to award this project in a method considered to be most advantageous.

This includes the right to issue single award, multiple awards, or reject all proposals.

DPS is not required to award a contract. DPS reserves the right to waive any informality in proposals. If a Vendor wants to protest a contract awarded by Durham Public Schools resulting from this solicitation, then they must submit a written request to the DPS Purchasing Office within five (5) consecutive calendar days from the date of the contract award. Protest letters must contain specific reasons and any supporting documentation for the protest. Note: Contract award notices are sent only to those actually awarded contracts, and not to every person or firm responding to this solicitation.

Proposal Checklist

- Executed Cost Proposal Form
- Supporting Documentation
- Offeror Information (Experience, Business Ratings, etc.)
- Product Literature (Manufacturer, Parts Availability, Warranty, etc.)
- Additional Information as to why DPS should award your company the contract (e.g., rebates)
- Sample of cart, only if requested (include instructions for return)

Exhibit 1

Scope/Specifications

Durham Public Schools is seeking charging carts that can accommodate up to 36 Chromebook / laptop devices. The carts should provide intelligent charging capabilities and adequate cable management. The carts should have the capability of one master key.

Proposals should not go below our preferences.

- All carts are shipped fully-assembled
- Ability to store, secure, and charge up to 36 Chromebooks
- Supports one master key
- Supports devices with up to 15" display
- Supports intelligent charging capabilities
- Cable Management for power cords
- Locking front and rear doors
- Two External Power Outlets
- UL-Approved
- Must work with a standard 15 Amp electrical circuit
- Adjustable Shelves preferred but not mandatory
- Slide out shelves preferred but not mandatory
- Four swivel heavy-duty casters with two locking
- Top Surface Platform Weight Capacity Minimum 25lbs
- Warranty Mechanical Minimum 5 years
- Warranty Electrical Minimum 3 years

Warranty

- Products shall be new with full manufacturer's warranty.
- Minimum of 5-year mechanical protection
- Minimum of 3-year electrical component protection
- Product replacement within the warranty period shall be replaced at no cost to DPS. No cost shall include, but not be limited to, material, labor, and freight.
- Contractor shall provide contact information for Warranty including, but not limited to, Personnel Name, Telephone Number, Email Address, and Physical Address.

Quantity

- The district is looking to purchase **160** Chromebook / laptop carts.

Pricing shall include delivery to:

- Vendor will ship designated amounts to DPS Warehouse at 1817 Hamlin Road, Durham, North Carolina 27704. Attention - Stephen Brown.

Cost Proposal/Execution of Proposal

By submitting this proposal, the potential contractor certifies the proposal is signed by an authorized representative of the firm.

- The cost and availability of all equipment, materials, and supplies associated with performing the services described herein have been determined and included in the proposed cost.
- All labor costs, direct and indirect, have been determined and included in the proposed cost.
- The offeror is aware of prevailing conditions associated with performing these services.
- The potential contractor has read and understands the conditions set forth in this bid and agrees to them with no exceptions.

Therefore, in compliance with this Request for Proposal, and subject to all conditions herein, the undersigned offers and agrees, if this proposal is accepted within **120 days** from the date of the opening, to furnish the subject services for a cost not to exceed the amounts below.

The Proposal amount shall be all inclusive with the exception of sales tax. DPS is not tax exempt; therefore, taxes are to be itemized on the invoice. Payment options will be discussed with winning bidder. Vendor may furnish options as part of proposal documents.

Item / Model #	Cart Description	Quantity	Cost	Tax 7.5%	Total Cost
		160			

Provide individual quote (valid for 120 days from bid due date) for carts with Bidder's response.

RFP 179-1819-524-CART

BIDDER: _____

EXECUTION:

Offeror: _____

Federal ID No. _____

Address: _____

City, State, Zip _____

Telephone Number: _____

Signature

By: _____

Title: _____

Email: _____

Date: _____

Typed or Printed Name

Vendor Scorecard

CRITERIA	SCORE WEIGHT	POINTS AWARDED
Price	30	
Specifications	30	
Durability	20	
Strength of Warranty	15	
Relationship History	5	
Grand Total	100	

Exhibit 2

TECHNOLOGY SERVICES AGREEMENT

THIS TECHNOLOGY SERVICES AGREEMENT (the "Agreement") effective this [redacted] day of [redacted] is made and entered into by and between the Durham Public School Board of Education ("Board") and [redacted] (the "Contractor").

RECITALS

WHEREAS, Board is a local board of education working to provide public schools within its local school administrative unit as directed by law.

WHEREAS, Contractor is a North Carolina corporation in good standing in the business of digital technology management and operation services, and other related services with a principal place of business at [redacted].

WHEREAS, Contractor desires to provide its services to Board and Board desires to obtain such services.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereby agree as follows:

AGREEMENT

1. CONTRACTOR'S SCOPE OF SERVICES. Contractor represents, warrants, covenants, and agrees to be responsible for the following and to provide the following services:

a. The services to be performed are generally described, but are not limited to those set forth in the Contractor's Proposal for Chromebook/Laptop Cart (179-1819-524-CART), which is incorporated herein by reference, and any additional services as may be required to meet the intent of the Durham Public Schools' Request for Proposal for Chromebook/Laptop Cart services:

2. CONTRACTOR'S COVENANTS. Contractor represents, warrants, covenants, and agrees to be responsible for the following and to provide the following services:

- a. Contractor shall, in performing services under this Agreement, exercise the highest degree of care and perform such services in an expert fashion.

- b. Contractor shall maintain such supplies, equipment and employees as are necessary to perform of the services provided for herein. Contractor warrants its services and warrants that the Contractor will perform substantially in conformance with Board's specifications. In the event any non-conformance cannot be corrected within 10 business days, Contractor shall take all steps required to correct the problem and Board shall be entitled to a refund for services and expenses.

- c. Contractor shall service digital imaging equipment and shall inspect, test, maintain, and repair all equipment as needed to maximize equipment performance, efficiency and durability per Contractor's Proposal

- d. The services provided shall not violate or in any way infringe on the rights of third parties.

- e. Contractor understands and agrees that Board shall have the right to modify the services required under this Agreement.

- f. Contractor has obtained and shall maintain insurance to sufficiently protect Contractor and Board from any and all potential claims or damages, including but not limited to Worker's Compensation, Comprehensive General and Contractual Liability Insurance in no event less than the amount of \$1,000,000 or more for each occurrence with an insurer having a "Best Policyholders" rating of B+ or better. Board shall be named as an additional insured on the Certificate of Insurance. Copies of certificates of insurance shall be provided to Board and shall include the following:
 - (1) Name of insurance company, policy number, and expiration date;

 - (2) The coverage required and the limits on each, including the amount of deductibles or self-insured retentions (which shall be for the account of the Contractor);

 - (3) A statement indicating that Board shall receive thirty (30) days' notice of cancellation or significant modification of any of the

policies which may affect Board's interest;

- (4) A statement confirming that Board has been named an additional insured (except for Workers' Compensation) on all policies; and
- (5) A statement confirming that Board, its agents and employees have been provided a waiver of any rights of subrogation which Consultant may have against them.

g. Contractor is a corporation duly organized, validly existing, and in good standing under the laws of the State of North Carolina.

h. Contractor has all necessary corporate power and authority to enter into and perform this Agreement.

i. Contractor understands that Board does not wish to receive from Contractor any information which may be considered confidential or proprietary to Contractor or any third party. Contractor represents and warrants that any information disclosed or provided by Contractor to Board is not confidential or proprietary to Contractor or to any third party.

j. Contractor warrants that it has good and marketable title to all of the inventions, information, material, work, or product made, created, conceived, written, invented, or provided by Contractor pursuant to the provisions of this Agreement (Product). Contractor further warrants that the Product shall be free and clear of all liens, claims, encumbrances, or demands of third parties, including any claims by any such third parties of any right, title, or interest in or to the product arising out of any trade secret, copyright, or patent. Contractor shall indemnify and hold harmless Board from any and all liability, loss, costs, damage, judgment, or expense (including reasonable attorneys' fees) resulting from or arising in any way out of any such claims by any third parties and/or which are based upon, or are the result of any breach of the warranties contained in this Subsection. The parties agree that this indemnification clause is an "evidence of indebtedness" for purpose of N. C. Gen. Stat. § 6-21.2. In the event of a breach, Consultant shall, at no additional cost to Board replace or modify the Product with a functionally equivalent and conforming Product, obtain for Board the right to continue using the Product, and in all other respects use its best efforts to remedy the breach.

k. Should Board permit Contractor to use any of Board equipment, tools or facilities during the term of this Agreement, such permission will be gratuitous, and

Contractor shall indemnify and hold harmless Board and its officers, directors, agents, and employees from and against any claim, loss, expense, or judgment for injury to person or property (including death) arising out of the use of any such equipment, tools, or facilities, whether or not such claim is based upon the condition or on the alleged negligence of Board in permitting its use.

l. In exchange for Board engaging Contractor, Contractor waives all claims which Contractor, Contractor's heirs, estate, or successors in interest have or may acquire against Board and its officers, directors, agents, and employees, for injury or death arising out of Contractor's performance of the services or use of Board equipment or facilities.

m. Contractor shall keep accurate records and books of account showing all charges, disbursements or expenses made or incurred by Contractor in the performance of the services herein. Board shall have the right, upon reasonable notice, to audit at any time, the direct costs, expenses, and disbursements made or incurred in connection with the services to be performed herein as well as for the validity of the representations made and in the compensation provisions of this Agreement, and may examine Contractor's books and records relating to these several areas.

n. Contractor shall comply with all applicable laws and regulations in providing services under this Agreement. In particular, Contractor shall not employ any individuals to provide services to Board who are not authorized by federal law to work in the United States. Contractor represents and warrants that it is aware of and in compliance with the Immigration Reform and Control Act and North Carolina law (Article 2 of Chapter 64 of the North Carolina General Statutes) requiring use of the E-Verify system for employers who employ twenty-five (25) or more employees and that it is and will remain in compliance with these laws at all times while providing services pursuant to this Agreement. Contractor shall also ensure that any of its subcontractors (of any tier) will remain in compliance with these laws at all times while providing subcontracted services in connection with this Agreement. Contractor is responsible for providing affordable health care coverage to all of its full-time employees providing services to the Board. The definitions of "affordable coverage" and "full-time employee" are governed by the Affordable Care Act and accompanying IRS and Treasury Department regulations.

3. PAYMENT OF FEES. Board and Contractor agree that Contractor shall be paid \$ _____ according to the Contractor's Proposal.

4. TERM. This Agreement shall commence upon execution by both parties. Time is of the essence. The term of the Agreement is for five years with the option to renew annually for up to two additional years by mutual written consent.

5. Board's COVENANTS. Board covenants and agrees to be responsible for the following:

a. Board shall grant access to equipment as needed according to the prior notice and prescribed schedule established by Contractor with the approval of Board.

b. Board reserves the right to exercise prior approval of scheduled services.

c. Board shall have the right to request written reports at any time during the performance of this Agreement which shall be furnished within seven (7) days after such request, in the manner directed, describing progress, status of costs, data, and other matters pertaining to the services rendered, at no additional cost to Board.

6. INDEMNIFICATION. Contractor shall indemnify, defend and save harmless Board against any and all claims, actions, demands, costs, damages, loss, or expense of any kind whatsoever, in whole or part, resulting from or connected with any acts under this Agreement or from the omission or commission of any act, lawful or unlawful, by Contractor, its agents and/or employees, including but not limited to court costs and attorney's fees incurred by Board in connection with the defense of said matters. Board shall not in any event, be liable in damages for business loss or other incidental, indirect, special, punitive or consequential damages of whatever kind or nature, regardless of the cause of such damage, and Contractor, and anyone claiming by or through it, expressly waives all claims to such damages.

7. EVENTS OF DEFAULT. This paragraph shall not limit the Board's right to terminate this Agreement as provided in the foregoing sections of this Agreement. The occurrence of any one of the following events shall constitute an event of default allowing either party to terminate this Agreement upon fifteen (15) days written notice to the other party:

a. A party's failure to provide payment, including credit owed, or services required under this Agreement or a party's material breach of its obligations under this Agreement and a failure to cure such failure or breach within seven (7) days after written notification of such failure or breach.

- b. A party's purported unauthorized transfer or assignment of this Agreement or any rights or obligations under this Agreement.
- c. A party or any agent or employee of that party commits, during the course of performance of any activity for or on behalf of the other party, any act punishable by fine or imprisonment under state or federal law.
- d. A party or any agent or employee of that party commits an act or omission, in the course of its performance hereunder, that endangers or threatens the health and safety of others.
- e. A party or any agent or employee of that party commits an act of fraud, defalcation, or dishonesty, or any act or omission or series of acts or omissions which singly or together constitute an unfair or deceptive act or practice.
- f. Any discovery that any material representation by a party is materially misleading or inaccurate, or a party's failure to perform any material covenant, obligation, term or condition contained in this Agreement.
- g. A party's cessation of doing business as a going concern, assignment for the benefit of creditor's, admission in writing of its inability to pay debts as they become due, filing of a petition in bankruptcy or appointment of a receiver, acquiescence in the appointment of a trustee or liquidator of it or any substantial part of its assets or properties.
8. RIGHTS UPON TERMINATION. Upon the occurrence of an event of default, the non-offending party shall have the right to terminate the Agreement upon fifteen (15) days written notice to the other party, and seek all legal and equitable remedies to which it is entitled, including but not limited to refunds for amounts paid. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other remedies available to it.
9. NONAPPROPRIATION. Board agrees, if necessary, to duly request the appropriation of funds for all payment amounts specified in this Agreement. Notwithstanding anything to the contrary herein, if the funds the Board requests for a fiscal year are not appropriated, Board will not be obligated to pay amounts due beyond the end of the last funded fiscal year. If a

nonappropriation of this kind occurs, Board will notify Contractor, the Agreement will terminate at the end of the last fiscal year for which funds were appropriated, and Board will not be in default notwithstanding the default provisions that might otherwise appear herein

10. CONFIDENTIALITY OF STUDENT AND OTHER INFORMATION. The

Contractor acknowledges that it may be given access to or acquire information which is confidential in nature, including student information. Contractor agrees to hold such information in the strictest confidence and not to disclose such information to third parties or to use such information for any purpose other than providing the services outlined in this agreement. Any violation of this section shall constitute a material breach of this agreement. Contractor further agrees that all student or other data obtained in the course of providing services to Board under this Agreement shall be subject to the confidentiality and disclosure provisions of applicable federal and state statutes and regulations, and Board's policies. Contractor will comply with all FERPA, federal, state law governing data security per the Contractor's Proposal. Upon termination of this Agreement Contractor shall destroy all digital images or data residing on their equipment and systems related to the Board's use of equipment.

11. LUNSFORD ACT/CRIMINAL BACKGROUND CHECKS. The Contractor shall conduct at its own expense sexual offender registry checks on each of its employees, agents, ownership personnel, or contractors ("contractual personnel") who will engage in any service on or delivery of goods to school system property or at a school-system sponsored event, except checks shall not be required for individuals who are solely delivering or picking up equipment, materials, or supplies at: (1) the administrative office or loading dock of a school; (2) non-school sites; (3) schools closed for renovation; or (4) school construction sites.. The checks shall include at a minimum checks of the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry ("the Registries"). For the Contractor's convenience only, all of the required registry checks may be completed at no cost by accessing the United States Department of Justice Sex Offender Public Website at <http://www.nsopw.gov/>

The Contractor shall provide certification that the registry checks were conducted on each of its contractual personnel providing services or delivering goods under this Agreement prior to the commencement of such services or the delivery of such goods. The Contractor shall conduct a current initial check of the registries (a check done more than 30 days prior to the date of this Agreement shall not satisfy this contractual obligation). In addition, Contractor agrees to conduct the registry checks and provide a supplemental certification before any additional contractual personnel are used to deliver goods or provide services pursuant to this Agreement. Contractor further agrees to conduct annual registry checks of all contractual personnel and provide annual certifications at each anniversary date of this Agreement. Contractor shall not assign any individual to deliver goods or provide services pursuant to this Agreement if said individual appears on any of the listed registries. Contractor agrees that it will maintain all records and documents necessary to demonstrate that it has conducted a thorough check of the registries as to each contractual personnel, and agrees to provide such records and documents

to the school system upon request. Contractor specifically acknowledges that the school system retains the right to audit these records to ensure compliance with this section at any time in the school system’s sole discretion. Failure to comply with the terms of this provision shall be grounds for immediate termination of the Agreement. In addition, the school system may conduct additional criminal records checks at the school system’s expense. If the school system exercises this right to conduct additional criminal records checks, Contractor agrees to provide within seven (7) days of request the full name, date of birth, state of residency for the past ten years, and any additional information requested by the school system for all contractual personnel who may deliver goods or perform services under this Agreement. Contractor further agrees that it has an ongoing obligation to provide the school system with the name of any new contractual personnel who may deliver goods or provide services under the Agreement. The school system reserves the right to prohibit any contractual personnel of Contractor from delivering goods or providing services under this Agreement if the school system determines, in its sole discretion, that such contractual personnel may pose a threat to the safety or well-being of students, school personnel or others.

12. NOTICE. Any notice, consent or other communication in connection with this Agreement shall be in writing and may be delivered in person, by mail or by facsimile transmission (provided sender confirms notice by written copy). If hand-delivered, the notice shall be effective upon delivery. If by facsimile copy, the notice shall be effective when sent. If served by mail, the notice shall be effective three (3) business days after being deposited in the United States Postal Service by certified mail, return receipt requested, addressed appropriately to the intended recipient as follows:

If to Board:

Stephen Brown
Networking & Infrastructure Manager
1817 Hamlin Road
Durham, North Carolina 27704

If to Contractor:

13. PUBLICITY. No publicity releases (including news releases and advertising) relating to this Agreement and the services hereunder shall be issued by Contractor without the prior written approval of Board. Any inquiry which Contractor may receive from news media concerning this Agreement will be referred to Board for coordination prior to response. Any technical paper, article, publication, or announcement of advances generated in connection with the services under this Agreement, during the period of performance of the Agreement or in the future, shall require Board's prior written approval.

14. RESTRICTED COMPANIES LISTS. Contractor represents that as of the date of this Agreement, Contractor is not included on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C. Gen. Stat. § 147-86.58. Contractor also represents that as of the date of this Agreement, Contractor is not included on the list of restricted companies determined to be engaged in a boycott of Israel created by the North Carolina State Treasurer pursuant to N.C. Gen. Stat. § 147-86.81.

15. ANTI-NEPOTISM. Contractor warrants that, to the best of its knowledge and in the exercise of due diligence, none of its corporate officers, directors, or trustees and none of its employees who will directly provide services under this Agreement are immediate family members of any member of the Durham Public Schools Board of Education or of any principal or central office staff administrator employed by the Board. For purposes of this provision, "immediate family" means spouse, parent, child, brother, sister, grandparent, or grandchild, and includes step, half, and in-law relationships. Should Contractor become aware of any family relationship covered by this provision or should such a family relationship arise at any time during the term of this Agreement, Contractor shall immediately disclose the family relationship in writing to the Superintendent of Schools. Unless formally waived by the Board, the existence of a family relationship covered by this Agreement is grounds for immediate termination by Board without further financial liability to Contractor.

16. APPLICABLE BOARD OF EDUCATION POLICIES. Contractor acknowledges that the Board has adopted policies governing conduct on Board property and agrees to abide by any and all relevant Board policies while on Board property. Contractor acknowledges that Board's policies are available on the Board's website at <https://www.dpsnc.net/domain/112>.

17. NO THIRD PARTY BENEFICIARIES. Nothing herein is intended or shall be construed to confer upon or to give to any person or entity other than the parties hereto and their successors or permitted assigns, any rights or remedies under this Agreement.

18. SEVERABILITY. Unless otherwise expressly provided herein, the rights of the parties hereunder are severable rights, not rights jointly held with each other or with any other party. Any invalidity, illegality or limitation of the enforceability of any part of this Agreement, whether

arising by reason of law or otherwise, shall in no way affect or impair the validity, legality or enforceability of this Agreement in all other respects.

19. FORCE MAJEURE. Neither party shall be liable to the other by reason of any failure of performance hereunder if such failure arises out of the acts of governmental authority, acts of God, acts of the public enemy, acts of civil or military authority, governmental priorities, fires, unavailability of energy resources, riots, war, or events of similar nature. Any party experiencing such an event shall give as prompt notice as possible under the circumstances and such protection from liability shall last only for the duration of the event of such *force majeure*. In the event a school facility is damaged by fire, weather, or by events of a similar nature to those described in this paragraph and this substantially prevents Board's use of Contractor's service, Board shall have the option of suspending payments due under the Agreement for the time period use is substantially prevented or terminating the Agreement immediately without penalty or further expense.

20. COUNTERPARTS. This Agreement may be executed in several counterparts, all of which taken together, shall constitute one single agreement between the parties hereto.

21. WAIVER. No delay or omission by either party hereto to exercise any right or power hereunder shall be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant contained herein. All remedies provided for in this Agreement shall be cumulative and, in addition to any remedies available to either party at law, in equity or otherwise.

22. ASSIGNMENT. This Agreement may not be assigned without the written agreement of all parties, but if the same is assigned by agreement, it shall be binding on the assignee and his heirs.

23. GOVERNING LAW. This Agreement and the rights and obligations of the parties hereto shall be governed by and construed and enforced in accordance with the laws of the State of North Carolina without regard to any principles of conflicts of laws that would make applicable the law of any other jurisdiction. Further, the parties irrevocably agree that any legal action or proceedings brought by or against them with respect to this Agreement or its subject matter shall be in the General Court of Justice in Durham County, North Carolina or in the United States District Court for the Middle District of North Carolina and, by execution and delivery hereof, the parties hereby irrevocably submit to each such jurisdiction and hereby irrevocably waive any and all objections which they may have with respect to such proceedings in any of the courts of North Carolina identified above.

24. BINDING. All provisions of this Agreement shall be binding upon, and inure to the benefit of, and be enforceable by and against the parties, their respective heirs, representatives, successors, and assigns.

25. FURTHER ASSURANCES. The parties hereto shall each perform such acts, execute and deliver such instruments and documents, and do all such other things as may be reasonably necessary to accomplish the transactions contemplated herein.

26. HEADINGS. The articles and section headings are for reference and convenience only and shall not be considered in the interpretation of this Agreement.

27. RELATIONSHIP OF PARTIES. The relationship of the parties established by this Agreement is solely that of independent contractors, and nothing contained herein shall be construed to (i) give any party the power to direct and control the day-to-day activities of the other; or (ii) constitute such parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking; or (iii) make Contractor an agent of the Durham Public School System for any purpose whatsoever except as otherwise agreed in writing by the parties hereto.

28. ENTIRE UNDERSTANDING. This Agreement contains the final expression of the parties' intent and the sole and entire understanding between Contractor and Board. The parties agree that any statements, representations, discussions, or documentation, whether made prior to or contemporaneously with the execution of this Agreement, have been merged into this Agreement and this Agreement fairly and comprehensively memorializes the final negotiated agreement between the parties. The Agreement shall not be modified or amended in any manner except in writing signed by both parties hereto.

IN WITNESS WHEREOF, the parties to this agreement have hereunder set their respective hands on the day and year first above written.

DURHAM PUBLIC SCHOOLS BOARD OF EDUCATION

By:

Board Chairperson

ATTEST:

Superintendent/Secretary

[Corporate Seal]

CONTRACTOR'S NAME

By:

_____, President

ATTEST:

Corporate Secretary

[Corporate Seal]

This instrument has been preaudited in the manner required by the School budget and Fiscal Control Act.

(Date)

(Signature of finance officer)

Exhibit 3

MBE/WBE Status

Please denote your MBE/WBE Status for your Company Here: _____