

AN ORDINANCE 2010-03-11-0184

**AUTHORIZING A CONTRACT WITH HATCH, INC. TO PROVIDE THE DEPARTMENT OF COMMUNITY INITIATIVES WITH 610 EARLY CHILDHOOD COMPUTER LEARNING CENTERS FOR THE HEAD START PROGRAM FOR A TOTAL COST OF \$606,950.00 FUNDED WITH AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (ARRA) FUNDS.**

\* \* \* \* \*

**WHEREAS**, an offer was submitted by Hatch, Inc., using a Federal Supply Schedule contract of the United States General Services Administration ("GSA"), to provide the Department of Community Initiatives with 610 Early Childhood Computer Learning Centers for the Head Start Program for a cost of \$606,950.00; and

**WHEREAS**, this purchase meets the requirements under Texas Local Government Code §271.103; **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The offer submitted by Hatch, Inc., using the GSA Federal Supply Schedule contract, to provide the City of San Antonio Department of Community Initiatives with the purchase of 610 Early Childhood Computer Learning Centers for the Head Start Program for a total cost of \$606,950.00 is hereby accepted, subject to and contingent upon the deposit of all required bonds, performance deposits, insurance certificates and endorsements. The contract and bid tabulation sheet attached hereto and incorporated herein for all purposes as **Exhibit I**.

**SECTION 2.** The sum of \$606,950.00 is hereby appropriated in the designated funds below in the acceptance of this bid and will be disbursed as follows:

Internal Order	Fund	Title	Amount
138000000805	2302238000	Head Start ARRA	\$599,985
138000000738	2606038003	CSBG	<u>6,965</u>
			\$606,950

**SECTION 3.** Payment is authorized to Hatch, Inc. upon issuance of a Purchase Order and receipt of goods.

**SECTION 4.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP

LOC; cah  
03/11/10  
Item No. 5F

Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

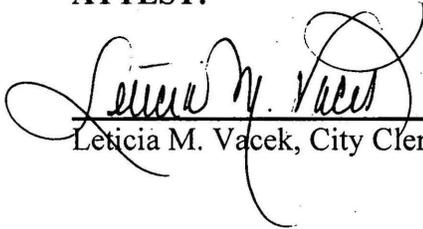
**SECTION 5.** This ordinance shall be effective immediately upon passage by eight or more affirmative votes; otherwise, it shall be effective on the tenth day after passage.

**PASSED and APPROVED** this 11<sup>th</sup> day of March, 2010.



M A Y O R  
Julián Castro

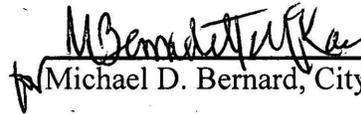
**ATTEST:**



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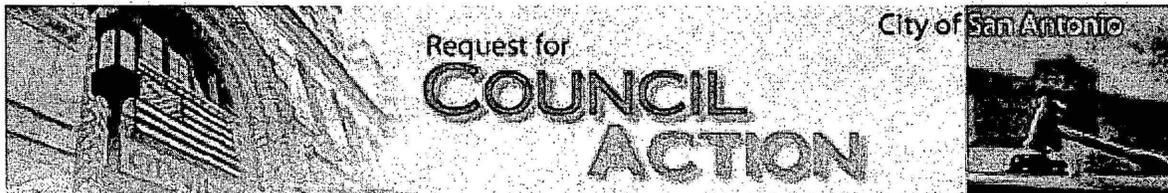
Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**



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Michael D. Bernard, City Attorney



### Agenda Voting Results - 5F

<b>Name:</b>	5A, 5C, 5D, 5E, 5F, 5G						
<b>Date:</b>	03/11/2010						
<b>Time:</b>	10:53:58 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing a contract with Hatch, Inc. to provide the Department of Community Initiatives with 610 early childhood computer learning centers for the Head Start program for a total cost of \$606,950.00 funded primarily with American Recovery and Reinvestment Act of 2009 (ARRA) funds.						
<b>Result:</b>	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x			x	
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				x
Leticia Cantu	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
John G. Clamp	District 10		x				

Exhibit I

City of San Antonio Bid Tabulation

Opened: December 16, 2009 For: Early Childhood Computer Learning Center for Head Start Program 10-037		WF	<b>GSA</b> Hatch, Inc. 301 N. Main Street, Suite 101 Winston Salem, NC 27101-2857 800-624-7968
Item	Description	Qty	
1	Imagination Station GSA SIN 132-8 (includes installation, training, lifetime technical support and re-training, workshops and 2 year warranty as provided for in SIN 132-8)  Price Each Price Total	610	\$995.00 \$606,950.00
	Estimated Total		\$606,950.00
	<b>Estimated Total Award</b>		<b>\$606,950.00</b>

CITY OF SAN ANTONIO  
PURCHASING AND GENERAL SERVICES DEPARTMENT

Issued By: WF; CITY CONTRACT NO. 10-037-WF  
COOPERATIVE CONTRACT NO.: GS-35F-0496J  
PROCURING ENTITY/COOPERATIVE: GSA

Date Issued: January 13, 2010

TERMS & CONDITIONS FOR CONTRACT FOR  
EARLY CHILDHOOD COMPUTER LEARNING CENTERS

**Contract Documents:** The terms and conditions for performance and payment of compensation for this contract are set forth in the following contract documents, true and correct copies of which are attached hereto and fully incorporated herein for all purposes:

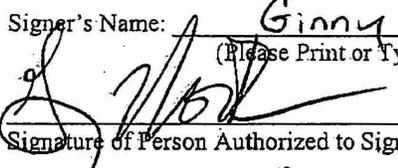
- a. This Terms and Conditions Document;
- b. Any Purchase Orders and Work Orders issued hereunder by the City of San Antonio ("City"); and
- c. Exhibit I - All applicable terms and conditions of Contract # GS-35F-0496J, between Hatch, Inc. and the General Services Administration (GSA) procured by GSA and made available to local government entities through Federal supply schedule 70 of the United States General Services Administration, and
- d. Exhibit II - the Hatch, Inc. Proposal dated January 5, 2010.

Should a conflict arise among the provisions of the contract documents, this Terms and Conditions Document and any Purchase Order issued hereunder shall govern over Exhibits I and II, and Exhibit II shall govern over Exhibit I, unless otherwise specifically provided herein.

This Terms & Conditions Document includes the following: General Terms and Conditions, Product Specifications and Description of Services, any attachments or exhibits identified herein.

The City's Purchasing and General Services Department is willing to assist any vendor(s) in the interpretation of this Terms and Conditions Document. Assistance may be received by visiting the Purchasing Office at 111 Soledad, 11th Floor, San Antonio, Texas 78205, or by calling (210) 207-7260.

The undersigned, by his/her signature, represents that he/she is authorized to bind the Vendor to fully comply with the contract for the amount(s) shown on the accompanying Exhibit II. A signature below indicates that the Vendor has read this entire document, which is incorporated herein, and agreed to the terms therein.

Signer's Name: Ginny Norton Firm Name: HATCH  
(Please Print or Type)  
Address: 301 N Main St Suite 100  
Signature of Person Authorized to Sign Offer:  City, State, Zip Code: Winston Salem NC 27101  
Email Address: norton@hatchearlychildhood.com Telephone No.: 800-624-7968 x1295  
Fax No.: 800-410-7282

Please complete the following:

Prompt Payment Discount: NA % \_\_\_\_\_ days. (If no discount is offered, Net 30 will apply.)

FOR CITY USE ONLY

AWARD

Items Accepted: \_\_\_\_\_ Ordinance No: \_\_\_\_\_ Date: \_\_\_\_\_ Amount: \_\_\_\_\_

Approved: \_\_\_\_\_

CITY OF SAN ANTONIO

ORIGINAL

Please check the following blanks which apply to your company:

Ownership of firm (51% or more):

Non-minority  Hispanic  African-American  Other Minority (specify) \_\_\_\_\_

Female Owned  Handicapped Owned  Small Business (less than \$1 million annual receipts or 100 employees)

Indicate Status:  Partnership  Corporation  Sole Proprietorship  Other (specify) \_\_\_\_\_

Tax Identification Number: 56-1445445

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## I. GENERAL TERMS AND CONDITIONS

1. The terms "bidder", "contractor", and "vendor" all mean the party providing goods or services to the City pursuant to this contract.
2. **Rejection of Disclaimers of Warranties & Limitations of Liability.** Any term or condition in Exhibit I, or any document furnished by Vendor, disclaiming the implied warranty of merchantability or of fitness for a particular purpose, or attempting to limit Vendor's liability shall be of no force or effect, and shall be stricken from the contract documents as if never contained therein.
3. **Acceptance of Offer.** By signing and submitting this document, Vendor is making an offer to City. A written award of acceptance (manifested by a City Ordinance) and appropriation or purchase order mailed or otherwise furnished to the Vendor results in a binding contract without further action by either party.
4. Vendors shall make all investigations necessary to thoroughly inform themselves regarding plant and facilities for delivery of material and equipment as required by the contract documents. No plea of ignorance by the vendor of conditions that exist or that may hereafter exist as a result of failure or omission on the part of the vendor to make the necessary examinations and investigations, or failure to fulfill in every detail the requirements of the contract documents, will be accepted as a basis for varying the requirements of the City or the compensation to the vendor.
5. **Taxes.** Vendor shall not include federal taxes nor State of Texas limited sales excise and use taxes in prices, since the City of San Antonio is exempt from payment of such taxes. An exemption certificate will be signed by City where applicable upon request by Vendor.
6. **Point of Destination.** All goods, materials and equipment shall be delivered FOB Destination, City of San Antonio's designated facility, or to the "ship to" address indicated on the purchase order, inside delivery. Regardless of shipping terms used, title and risk of loss shall pass to City only upon receipt at City's "ship to" address.
7. **Delivery Times.** Proposed delivery time must be shown and shall include weekends and holidays, unless specified otherwise herein.
8. **Failure to Meet Delivery Schedule.** When delivery is not met as provided for in the contract, the Purchasing and General Services Department reserves the right to make the purchase on the open market, with any cost in excess of the contract price paid by the vendor, in addition to any other damages, direct, indirect, consequential, or incidental incurred by the City as a result thereof.
9. **Acceptance By City.** The City shall have a reasonable time (but not less than 30 days) after receipt to inspect the goods and services tendered by Vendor. The City at its option may reject all or any portion of such goods or services which do not, in City's sole discretion, comply in every respect with all terms and conditions of the contract. The City may elect to reject the entire goods and services tendered even if only a portion thereof is nonconforming. If the City elects to accept nonconforming goods and services, the City, in addition to its other remedies, shall be entitled to deduct a reasonable amount from the price thereof to compensate the City for the nonconformity. Any acceptance by the City, even if non-conditional, shall not be deemed a waiver or settlement of any defect in such goods and services.
10. **Warranty.** Unless a specific warranty is provided elsewhere in these contract documents, the supplies or services furnished under this contract shall be covered by the most favorable commercial warranties given to any customer for same or similar supplies or services.

11. Change Orders. In order to comply with Texas law governing purchases made by municipalities, the follow rules shall govern all change orders made under this contract.

- (a) Any change orders that become necessary during the term of this contract as a result of changes in plans, specifications, quantity of work to be performed, materials, equipment or supplies to be furnished may be approved by the Director of Purchasing and General Services Department ("Purchasing Director"), or her designee, provided that such change orders:
  - (1) are made in writing, signed by the Purchasing Director or her designee;
  - (2) do not involve an increase or decrease in contract price of more than \$25,000; and
  - (3) sufficient funds have already been allocated by City or are available to the Purchasing Director to cover any increase in contract price.
- (b) Any other change will require approval of the City Council, City of San Antonio.
- (c) Changes that do not involve an increase in contract price may, however, be made by the Purchasing Director.

12. Contract Termination

TERMINATION-BREACH:

- (a) Should Vendor fail to fulfill in a timely and proper manner, as determined solely by the Director of Purchasing and General Services, its obligations under this contract, or violate any of the material terms of this contract, the City shall have the right to immediately terminate the contract. Notice of termination shall be provided in writing to the contractor, effective upon the date set forth in the notice. Such termination shall not relieve the vendor of any liability to the City for damages sustained by virtue of any breach by the vendor.

TERMINATION-NOTICE:

- (b) The City may cancel this contract for convenience upon ten days prior written notice.

TERMINATION-FUNDING:

- (c) City retains the right to terminate this contract at the expiration of each of City's budget periods. This contract is conditioned on a best efforts attempt by City to obtain and appropriate funds for payment of any debt due by City herein.

13. INDEMNIFICATION

**VENDOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to VENDOR'S activities under this Agreement, including any acts or omissions of VENDOR, any agent, officer, director, representative, employee, consultant or subcontractor of VENDOR, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT VENDOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS,**

**WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. VENDOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or VENDOR known to VENDOR related to or arising out of VENDOR's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at VENDOR's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving VENDOR of any of its obligations under this paragraph.

**14. Assignment and Subcontracting**

- (a) Vendor shall not sell, assign, pledge, transfer or convey any interest in this contract, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the Director of City's Purchasing Division. As a condition of such consent, if such consent is granted, Vendor shall remain liable for completion of the services outlined in this contract in the event of default by the successor vendor, assignee, transferee or subcontractor.
- (b) Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Contract. Compliance by subcontractors with this contract shall be the responsibility of Vendor. City shall in no event be obligated to any third party, including any subcontractor of Vendor, for performance of services or payment of fees.
- (c) Any attempt to transfer, pledge or otherwise assign this contract without said written approval, shall be void ab initio, and shall confer no rights upon any third person. Should Vendor assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this contract, City may, at its option, cancel this contract and all rights, titles and interest of Vendor shall thereupon cease and terminate, notwithstanding any other remedy available to City. The violation of this provision by Vendor shall in no event release Vendor from any obligation under the terms of this contract, nor shall it relieve or release Vendor from the payment of any damages to City, which City sustains as a result of such violation.

**15. Independent Contractor.** Vendor covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City. City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the vendor under this contract and that the vendor has no authority to bind the City.

**16. Patents/Copyrights.** The Vendor agrees to indemnify and hold the City harmless from any claim involving patent infringement or copyrights on goods supplied.

**17. Public Information Act.** Vendor is advised that all City contracts are subject to all legal requirements provided for in the City Charter and/or applicable City Ordinances, state and federal statutes. All contracts are subject to the Public Information Act, Texas Government Code Chapter 552; therefore Vendor must clearly indicate any portion of the contract documents that Vendor claims is not subject to public inspection under the Public Information Act.

**18. Conflict of Interest.** No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or shall benefit financially, directly or indirectly, in the sale to the City of any materials, supplies or services, except on behalf of the City as an officer or employee. This prohibition extends to the City Public Service Board, San Antonio Water System, and all City boards and commissions other than those which are purely advisory. In this instance a City employee is defined as any employee of the City who is required to file a financial involvement report pursuant to the City's ethics ordinance.

19. Severability. If any clause or provision of this contract is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this contract shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this contract that is invalid, illegal, or unenforceable, there be added as a part of the contract a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

20. Nonwaiver of Performance. Unless otherwise specifically provided for in this contract, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this contract shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this contract, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option.

21. Non-discrimination Policy. It is the City's policy that Small and/or Minority Business Enterprises shall have the maximum practicable opportunity to participate in the performance of public contracts. Vendor agrees that if this offer is accepted, he/she will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age, handicap or political belief or affiliation.

22. Compliance with Law. Vendor shall provide and perform all services required under this contract in compliance with all applicable federal, state and local laws, rules and regulations.

23. Venue. Venue of any court action brought directly or indirectly by reason of this contract shall be in Bexar County, Texas. This contract is made and is to be performed in Bexar County, Texas, and is governed by the laws of the State of Texas.

24. Entire Agreement. This contract, together with its authorizing ordinance and its attachments, purchase orders, and exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this contract shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with the Change Order provision herein.

25. Invoicing and Payment.

(a) Address for Invoices. All invoices must be sent to: City of San Antonio, Attn: Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976.

(b) Information Required On Invoice.

All invoices must be in a form and content approved by the City. City may require modification of invoices if necessary in order to satisfy City that all billing is proper and pursuant to the terms of the contract. Invoices are required to show each City Purchase Order Number. Invoices must be legible. Items billed on invoices must be specific as to applicable stock, manufacturer, catalog or part number (if any). All invoices must show unit prices for each item being billed, the quantity of items being billed and the total for each item, as well as the total for all items on the invoice. If prices are based on list prices basis, then the list prices, the percentage discount or percentage surcharge, net unit prices, extensions and net total prices must be shown. Prompt payment discounts offered shall be shown separately on the invoice.

(c) Payment by City. City shall have not less than 30 days to pay for goods or services. Time for payment, including payment under discount terms, will be computed from the later of: (1) the date the City receives

conforming goods under the contract; (2) the date performance of the service under the contract is completed; or (3) the date the City receives a correct and valid invoice for the goods or services. Payment is deemed to be made on the date of mailing of the check. Payment is made in US dollars only.

This provision shall not apply where there is a bona fide dispute between the City and Vendor about the goods delivered or the service performed that causes the payment to be late, or where the invoice is not mailed to the address provided herein.

The payment amount due on invoices may not be manually altered by City personnel. Once disputed items are reconciled, Vendor must submit a corrected invoice, or a credit memorandum for the disputed amount, or the item must be issued by the vendor. City will not make partial payments on an invoice where there is a dispute.

- (d) NECESSITY OF TIMELY INVOICE / WAIVER OF PAYMENT. NOTWITHSTANDING THE FORGOING, THE CITY CANNOT PAY FOR ANY GOODS OR SERVICES WITHOUT AN INVOICE. VENDOR MUST INVOICE CITY NO LATER THAN 90 CALENDAR DAYS FROM THE DATE GOODS ARE DELIVERED OR SERVICES RENDERED. FAILURE TO SUBMIT AN INVOICE WITHIN SAID 90 DAY SHALL NEGATE ANY LIABILITY ON THE PART OF CITY AND CONSTITUTE A WAIVER BY VENDOR OF ANY AND ALL RIGHT OR CLAIMS TO COLLECT MONEYS THAT VENDOR MAY RIGHTFULLY BE OTHERWISE ENTITLED TO FOR GOODS OR SERVICES PERFORMED.
- (e) The total price for all goods and/or services is shown on the Price Schedule. No additional fees or expenses of Vendor shall be charged by Vendor nor be payable by City. The parties hereby agree that all compensable expenses of Vendor are shown on the Price Schedule. If there is a discrepancy on the Price Schedule between the unit price for an item, and the extended price, the unit price shall govern.
- (f) Tax Exemption. The City of San Antonio is exempt from payment of federal taxes, and State of Texas limited sales excise and use taxes. Bidders must not include such taxes in bid prices. An exemption certificate will be signed by City where applicable upon request by bidder after contract award.
- (g) Prompt Payment Discount. Provided Bidder meets the requirements stated herein, City shall take Bidder's offered prompt payment discount into consideration in determining who the low bidder is. The evaluation will not be based on the discount percentage alone, but rather the net price as determined by applying the discount to the bid price, either per line item or total bid amount. However, the City reserves the right to reject a discount if the percentage is too low to be of value to the City, all things considered. The City may also reject a discount if the percentage is so high as to create an overly large disparity between the price City would pay if it is able to take advantage of the discount and the price City would pay if it were unable to pay within the discount period. City may always reject the discount and pay within the 30 day period, at City's sole option.

The City will not consider discounts that provide fewer than 10 days to pay in order to receive the discount.

For example, payment terms of 2% 5, Net 30 will NOT be considered in bid evaluations or in the payment of invoices. However, payment terms of 2% 10, Net 30 will result in a two percent reduction in the bid price during bid evaluation, and the City will take the 2% discount if the invoice is paid within the 10 day time period.

## II. PRODUCT SPECIFICATIONS AND DESCRIPTION OF SERVICES

1. Term. This contract shall begin upon the effective date of the award by the San Antonio City Council and end upon completion of the delivery of goods and services described herein.

2. Quantity and Description of Product. City shall purchase and Vendor shall deliver up to 610 Imagination Stations, including both hardware and preinstalled software, (the "Equipment") as more particularly described in the brochure, which is attached to Vendor's proposal as Exhibit II. The exact quantity of Equipment to be purchased shall be reflected on City's purchase order.

3. Date for Delivery of Equipment and Training Services. Vendor shall deliver all Equipment to City's stockroom within 30 calendar days after receipt of City's purchase order. City shall distribute the Equipment to its delegate agencies operating Head Start Centers. Final set up of Equipment and initial training of Head Start Center managers on use of the Equipment in the classroom shall be completed no later than May 1, 2010. Thereafter, Vendor shall provide additional supplemental training to Head Start teachers as an in-kind grant match to City for no additional cost. Vendor shall provide a minimum of 397 training hours to a minimum of 822 teachers no later than September 30, 2010. Additional training shall be provided at no additional cost to City. Exact dates and quantities shall be established by mutual agreement of the parties.

4. Prices shall remain firm for the duration of the contract term.

5. GSA Survivability. All applicable software license agreements, warranties or service agreements that are entered into between Vendor and City under the terms and conditions of this Contract shall survive the expiration or termination of the Contract. All Purchase Orders issued by City and accepted by Vendor shall survive expiration or termination of the Contract.

6. Source of Funds – American Recovery & Reinvestment Act.

Funds for this contract come in whole or in part from a grant made available through the American Recovery and Reinvestment Act of 2009 ("ARRA").

(1.) Job Creation and Retention

Pursuant to section 1512c of the ARRA, not later than 5 days after the end each calendar quarter, you must submit a report to the City that contains an estimate of the number of jobs created and the number of jobs retained as a result of your receiving ARRA funds pursuant to this contract. Include a brief description of the types of jobs created and jobs retained. This description may rely on job titles, broader labor categories, or your existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work.

- a. "Jobs created" means an estimate of those new positions created and filled, or previously existing unfilled positions that are filled, as a result of funding by the ARRA. This definition covers only prime contractor positions established in the United States and outlying areas. The number shall be expressed as "full-time equivalent" (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.
- b. "Jobs retained" means an estimate of those previously existing filled positions that are retained as a result of funding by the ARRA. This definition covers only prime contractor positions established in the United States and outlying areas. The number shall be expressed as "full-time equivalent" (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.
- c. "Outlying areas" means:

- (1) Commonwealths.
  - (i) Puerto Rico.
  - (ii) The Northern Mariana Islands;
- (2) Territories.
  - (i) American Samoa.
  - (ii) Guam.
  - (iii) U.S. Virgin Islands; and
- (3) Minor outlying islands.
  - (i) Baker Island.
  - (ii) Howland Island.
  - (iii) Jarvis Island.
  - (iv) Johnston Atoll.
  - (v) Kingman Reef.
  - (vi) Midway Islands.
  - (vii) Navassa Island.
  - (viii) Palmyra Atoll.
  - (ix) Wake Atoll.

(2.) Access to Contractor Records

Inspectors General, the Accountability and Transparency Board, and the Government Accountability Office are granted authority to examine any records of the contractor regarding ARRA transactions as required by ARRA Sections 902, 1514 and 1515. You acknowledge this requirement and agree to grant such access to these entities and the City, if requested. You shall maintain documentation of your purchases of materials or goods furnished hereunder that are sufficient to demonstrate that they are U.S.-made. You must retain this documentation for the duration of this contract and for four years after the expiration or termination of this contract. You shall permit inspection and copying of such documents to these parties and the City at no cost.

(3.) Anti-discrimination and Equal Opportunity Provisions

All anti-discrimination and equal opportunity statutes, regulations, and Executive Orders that apply to the expenditure of funds under Federal contracts, grants, cooperative agreements, loans, and other forms of Federal assistance shall apply here. You shall comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975. Generally applicable civil rights laws apply, including (but not limited to) the Fair Housing Act, the Fair Credit Reporting Act, the Americans With Disabilities Act Title VII of the Civil Rights Act of 1964, the Equal Educational Opportunities Act, the Age Discrimination in Employment Act, and the Uniform Relocation Act. You agree that you will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability.

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**EXHIBIT I**  
**GSA CONTRACT**

Option to Extend Contracts Expiring in 2009

<b>AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT</b>			1. CONTRACT ID CODE	PAGE OF PAGES 1   17
2. AMENDMENT/MODIFICATION NO. <i>PS 0011</i>	3. EFFECTIVE DATE SEE BLOCK 16C. Code <i>2009-01-01</i>	4. REQUISITION/PURCHASE REQ. NO. REFRESH 22	5. PROJECT NO. (IF APPLICABLE)	
6. Issued By General Services Administration FAS, IT Schedule Program (QTBB) Crystal Plaza #4; Room 606 2200 Crystal Drive Arlington, VA 22202		7. ADMINISTERED BY (If other than Item 6) Code		
8. Name and Address of Contractor (No., street, county, State and ZIP Code) <i>301 N. Main St Winston Salem, NC 27101</i>		(X)	9A. AMENDMENT OF SOLICITATION NO.	
			9B. DATED (SEE ITEM 11)	
			10A. MODIFICATION OF CONTRACT/ORDER NO. <i>GS-35F-04965</i>	
			10B. DATED (SEE ITEM 13) <i>10/30/09</i>	
CODE	FACILITY CODE			
<b>11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS</b>				
<input type="checkbox"/> The above numbered solicitation is amended as set forth in item 14. The hour and date specified for receipt of Offers <input type="checkbox"/> is extended <input type="checkbox"/> is not extended.				
Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:				
(a) By completing Items 8 and 16, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.				
12. ACCOUNTING AND APPROPRIATION DATA (If required)				
<b>13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.</b>				
(X)	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.			
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).			
X	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: (DATE OF CONTRACTOR'S LETTER)			
X	D. OTHER (Specify type of modification and authority) I-FSS-163 OPTION TO EXTEND			
E. IMPORTANT: Contractor <input type="checkbox"/> is not, <input checked="" type="checkbox"/> is required to sign this document and return <b>ORIGINAL PLUS 2</b> copies to the issuing office.				
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)				
The above referenced contract under FSC Group 70, Information Technology Multiple Award Schedule, is hereby extended covering the contract period from <u>June 4, 2009</u> thru <u>June 3, 2014</u> .				
(NOTE: By signing this modification, Contractor has agreed to and incorporated by reference all the changes into the contract.)				
Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.				
15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)		
		<i>David E O'Neill</i>		
15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA	16C. DATE SIGNED	
	<i>10.30.09</i>	BY <i>David E O'Neill</i>	<i>11/17/2009</i>	
(Signature of person authorized to sign)		(Signature of Contracting Officer)		

NSN 7540-01-152-8070 PREVIOUS EDITION UNUSABLE

30-105

STANDARD FORM 30 (REV. 10-83) Prescribed by GSA, FAR (48 CFR) 53.243

(Note: This is an FBS reproduction using word processing software)

Option to Extend Contracts Expiring in 2009

1. By signing this modification, Contractor agrees to and incorporates by reference all the Clauses, Provisions, Terms and Conditions of the current Information Technology Schedule Solicitation Number FCIS-JB-980001-B, Refresh 22. This solicitation is posted on [www.fbo.gov](http://www.fbo.gov) for review purposes.

2. Per clause **OPTION TO EXTEND THE TERM OF THE CONTRACT (EVERGREEN) (I-FSS-163)**, Contractor acknowledges that the electronic catalog/pricelist has been received, approved, posted, and kept current on *GSA Advantage!*.

3. **POST-AWARD SMALL BUSINESS PROGRAM REREPRESENTATION 52.219-28 (JUNE 2007)**

(a) Definitions. As used in this clause--

*Long-term contract* means a contract of more than five years in duration, including options. However, the term does not include contracts that exceed five years in duration because the period of performance has been extended for a cumulative period not to exceed six months under the clause at 52.217-8, Option to Extend Services, or other appropriate authority.

*Small business concern* means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (c) of this clause.

(b) If the Contractor represented that it was a small business concern prior to award of this contract, the Contractor shall re-represent its size status according to paragraph (e) of this clause or, if applicable, paragraph (g) of this clause, upon the occurrence of any of the following:

(1) Within 30 days after execution of a novation agreement or within 30 days after modification of the contract to include this clause, if the novation agreement was executed prior to inclusion of this clause in the contract.

(2) Within 30 days after a merger or acquisition that does not require a novation or within 30 days after modification of the contract to include this clause, if the merger or acquisition occurred prior to inclusion of this clause in the contract.

(3) For long-term contracts--

(i) Within 60 to 120 days prior to the end of the fifth year of the contract; and

(ii) Within 60 to 120 days prior to the exercise date specified in the contract for any option thereafter.

(c) The Contractor shall re-represent its size status in accordance with the size standard in effect at the time of this re-representation that corresponds to the North American Industry Classification System (NAICS) code assigned to this contract. The small business size standard corresponding to this NAICS code can be found at <http://www.sba.gov/services/contractingopportunities/sizestandardstudies/>.

(d) The small business size standard for a Contractor providing a product which it does not manufacture itself, for a contract other than a construction or service contract, is 500 employees.

(e) Except as provided in paragraph (g) of this clause, the Contractor shall make the re-representation required by paragraph (b) of this clause by validating or updating all its representations in the Online Representations and Certifications Application and its data in the Central Contractor Registration, as necessary, to ensure they reflect current status. The Contractor shall notify the contracting office by e-mail, or otherwise in writing, that the data have been validated or updated, and provide the date of the validation or update.

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(f) If the Contractor represented that it was other than a small business concern prior to award of this contract, the Contractor may, but is not required to, take the actions required by paragraphs (e) or (g) of this clause.

(g) If the Contractor does not have representations and certifications in ORCA, or does not have a representation in ORCA for the NAICS code applicable to this contract, the Contractor is required to complete the following re-representation and submit it to the contracting office, along with the contract number and the date on which the re-representation was completed:

The Contractor represents that it x is,        is not a small business concern under NAICS Code 334111  
541519  
assigned to contract number gs-35f-0496j

AUTHORIZED SIGNER'S NAME: Alan Wright  
AUTHORIZED SIGNER'S TITLE: Director of Customer Service

  
(Signature)

10.28.09  
(Date)

**4. OFFEROR REPRESENTATIONS AND CERTIFICATIONS-COMMERCIAL ITEMS (FAR 52.212-3) (NOV 2007)**

An offeror shall complete only paragraph (l) of this provision if the offeror has completed the annual representations and certifications electronically at <http://orca.bpn.gov>. If an offeror has not completed the annual representations and certifications electronically at the ORCA website, the offeror shall complete only paragraphs (b) through (k) of this provision.

(a) *Definitions.* As used in this provision—

*"Emerging small business"* means a small business concern whose size is no greater than 50 percent of the numerical size standard for the NAICS code designated.

*"Forced or indentured child labor"* means all work or service—

- (1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or
- (2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

*"Manufactured and product"* means any end product in Federal Supply Classes (FSC) 1000-9999, except—

- (1) FSC 5510, Lumber and Related Basic Wood Materials;
- (2) Federal Supply Group (FSG) 87, Agricultural Supplies;
- (3) FSG 88, Live Animals;
- (4) FSG 89, Food and Related Consumables;
- (5) FSC 9410, Crude Grades of Plant Materials;
- (6) FSC 9430, Miscellaneous Crude Animal Products, Inedible;

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- (7) FSC 9440, Miscellaneous Crude Agricultural and Forestry Products;
- (8) FSC 9610, Ores;
- (9) FSC 9620, Minerals, Natural and Synthetic; and
- (10) FSC 9630, Additive Metal Materials.

*"Place of manufacture"* means the place where an end product is assembled out of components, or otherwise made or processed from raw materials into the finished product that is to be provided to the Government. If a product is disassembled and reassembled, the place of reassembly is not the place of manufacture.

*"Service-disabled veteran-owned small business concern"*—

- (1) Means a small business concern—
  - (i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and
  - (ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.
- (2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

*"Small business concern"* means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and size standards in this solicitation.

*"Veteran-owned small business concern"* means a small business concern—

- (1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and
- (2) The management and daily business operations of which are controlled by one or more veterans.

*"Women-owned business concern"* means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

*"Woman-owned small business concern"* means a small business concern—

- (1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
  - (2) Whose management and daily business operations are controlled by one or more women.
- (b) *Taxpayer Identification Number (TIN)* (26 U.S.C. 6109, 31 U.S.C. 7701). (Not applicable if the offeror is required to provide this information to a central contractor registration database to be eligible for award.)

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- (1) All offerors must submit the information required in paragraphs (b)(3) through (b)(5) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(e) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the Internal Revenue Service (IRS).
- (2) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C. 7701(o)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.
- (3) *Taxpayer Identification Number (TIN).*

\_\_\_\_\_ TIN: 107892473

- (4) Type of organization.

Corporate entity (not tax-exempt);

- (5) Common parent.

\_\_\_\_\_ Name and TIN of common parent:

Name Wall Family Enterprises

TIN WFE-20-8230779

- (c) Offerors must complete the following representations when the resulting contract will be performed in the United States or its outlying areas. Check all that apply.

- (1) *Small business concern.* The offeror represents as part of its offer that it is a small business concern.
- (2) *Veteran-owned small business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents as part of its offer that it is not a veteran-owned small business concern.
- (3) *Service-disabled veteran-owned small business concern.* [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(2) of this provision.] The offeror represents as part of its offer that it is not a service-disabled veteran-owned small business concern.
- (4) *Small disadvantaged business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, for general statistical purposes, that it is not a small disadvantaged business concern as defined in 13 CFR 124.1002.
- (5) *Women-owned small business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it is not a women-owned small business concern.

Note: Complete paragraphs (c)(6) and (c)(7) only if this solicitation is expected to exceed the simplified acquisition threshold.

- (6) *Women-owned business concern (other than small business concern).* [Complete only if the offeror is a women-owned business concern and did not represent itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it is not a women-owned business concern.

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- (7) *The bid priority for labor surplus area concerns.* If this is an invitation for bid, small business offerors may identify the labor surplus areas in which costs to be incurred on account of manufacturing or production (by offeror or first-tier subcontractors) amount to more than 50 percent of the contract price:

- (8) Small Business Size for the Small Business Competitiveness Demonstration Program and for the Targeted Industry Categories under the Small Business Competitiveness Demonstration Program, *[Complete only if the offeror has represented itself to be a small business concern under the size standards for this solicitation.]*

(i) *[Complete only for solicitations indicated in an addendum as being set-aside for emerging small businesses in one of the designated industry groups (DIGs).]* The offeror represents as part of its offer that it is not an emerging small business.

(ii) *[Complete only for solicitations indicated in an addendum as being for one of the targeted industry categories (TICs) or designated industry groups (DIGs).]* Offeror represents as follows:

- (A) Offeror's number of employees for the past 12 months (check the Employees column if size standard stated in the solicitation is expressed in terms of number of employees); or
- (B) Offeror's average annual gross revenue for the last 3 fiscal years (check the Average Annual Gross Number of Revenues column if size standard stated in the solicitation is expressed in terms of annual receipts).

(Check one of the following):

Number of Employees	Average Annual Gross Revenues
<input type="checkbox"/> 50 or fewer	<input type="checkbox"/> \$1 million or less
<input type="checkbox"/> 51-100	<input type="checkbox"/> \$1,000,001-\$2 million
<input checked="" type="checkbox"/> 101-250	<input type="checkbox"/> \$2,000,001-\$3.5 million
<input type="checkbox"/> 251-500	<input type="checkbox"/> \$3,500,001-\$5 million
<input type="checkbox"/> 501-750	<input type="checkbox"/> \$5,000,001-\$10 million
<input type="checkbox"/> 751-1,000	<input type="checkbox"/> \$10,000,001-\$17 million
<input type="checkbox"/> Over 1,000	<input checked="" type="checkbox"/> Over \$17 million

- (9) *[Complete only if the solicitation contains the clause at FAR 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, or FAR 52.219-25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting, and the offeror desires a benefit based on its disadvantaged status.]*

(i) *General.* The offeror represents that either—

- (A) It  is,  is not certified by the Small Business Administration as a small disadvantaged business concern and identified, on the date of this representation, as a certified small disadvantaged

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business concern in the database maintained by the Small Business Administration (PRO-Net), and that no material change in disadvantaged ownership and control has occurred since its certification, and, where the concern is owned by one or more individuals claiming disadvantaged status, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(e)(2); or

(B) It \_\_\_\_\_ has,  has not submitted a completed application to the Small Business Administration or a Private Certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR 124, Subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted.

(11) ~~Joint Ventures under the Price Evaluation Adjustment for Small Disadvantaged Business Concerns.~~ The offeror represents, as part of its offer, that it is a joint venture that complies with the requirements in 13 CFR 124.1002(f) and that the representation in paragraph (c)(9)(i) of this provision is accurate for the small disadvantaged business concern that is participating in the joint venture. [The offeror shall enter the name of the small disadvantaged business concern that is participating in the joint venture: \_\_\_\_\_]

(10) HUBZone small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, as part of its offer, that—

(i) It is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR part 126; and

(ii) It is not a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (c)(10)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture: \_\_\_\_\_] Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

(d) Representations required to implement provisions of Executive Order 11246—

(1) Previous contracts and compliance. The offeror represents that—

(i) It  has, \_\_\_\_\_ has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation; and

(ii) It  has, \_\_\_\_\_ has not filed all required compliance reports.

(2) Affirmative Action Compliance. The offeror represents that—

(i) It  has developed and has on file, \_\_\_\_\_ has not developed and does not have on file, at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR parts 60-1 and 60-2), or

(ii) It  has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(e) Certification Regarding Payments to Influence Federal Transactions (31 U.S.C. 1352). (Applies only if the contract is expected to exceed \$100,000.) By submission of its offer, the offeror certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an

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officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with the award of any resultant contract. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, the offeror shall complete and submit with its offer, OMB Standard Form 278, Disclosure of Lobbying Activities, to provide the name of the registrants. The offeror need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(f) *Buy American Act Certificate.* (Applies only if the clause at Federal Acquisition Regulation (FAR) 52.225-1, Buy American Act Supplies, is included in this solicitation.)

(1) The offeror certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products. The terms "component," "domestic end product," "end product," "foreign end product," and "United States" are defined in the clause of this solicitation entitled "Buy American Act—Supplies."

(2) Foreign End Products:

Line Item No.	Country of Origin
NA	

(List as Necessary)

(3) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(g) (1) *Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate.* (Applies only if the clause at FAR 52.225-3, Buy American Act—Free Trade Agreements—Israeli Trade Act, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(1)(ii) or (g)(1)(iii) of this provision, is a domestic end product and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The terms "Bahrainian or Moroccan end product," "component," "domestic end product," "end product," "foreign end product," "Free Trade Agreement country," "Free Trade Agreement country end product," "Israeli end product," and "United States" are defined in the clause of this solicitation entitled "Buy American Act—Free Trade Agreements—Israeli Trade Act."

(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian or Moroccan end products) or Israeli end products as defined in the clause of this solicitation entitled "Buy American Act—Free Trade Agreements—Israeli Trade Act":

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Free Trade Agreement Country End Products (Other than Bahrainian or Moroccan End Products) or Israeli End Products:

Line Item No.	Country of Origin
NA	

(List as Necessary)

- (iii) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (g)(1)(ii) of this provision) as defined in the clause of this solicitation entitled "Buy American Act—Free Trade Agreements—Israeli Trade Act." The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products. Other Foreign End Products:

Line Item No.	Country of Origin
NA	

(List as Necessary)

- (iv) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

- (2) *Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, Alternate I.* If Alternate I to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled "Buy American Act—Free Trade Agreements—Israeli Trade Act":

Canadian End Products:

Line Item No.
NA

(List as Necessary)

- (3) *Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, Alternate II.* If Alternate II to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

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(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled "Buy American Act—Free Trade Agreements—Israeli Trade Act":

Canadian or Israeli End Products:

Line Item No.	Country of Origin
NA	

(List as Necessary)

(4) *Trade Agreements Certificate.* (Applies only if the clause at FAR 52.225-5, Trade Agreements, is included in this solicitation.)

- (i) The offeror certifies that each end product, except those listed in paragraph (g)(4)(ii) of this provision, is a U.S.-made or designated country end product, as defined in the clause of this solicitation entitled "Trade Agreements."
- (ii) The offeror shall list as other end products those end products that are not U.S.-made or designated country end products.

Other End Products:

Line Item No.	Country of Origin
NA	

(List as Necessary)

(iii) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25. For line items covered by the WTO GPA, the Government will evaluate offers of U.S.-made or designated country end products without regard to the restrictions of the Buy American Act. The Government will consider for award only offers of U.S.-made or designated country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for such products are insufficient to fulfill the requirements of the solicitation.

- (h) *Certification Regarding Debarment, Suspension or Ineligibility for Award (Executive Order 12689).* The offeror certifies, to the best of its knowledge and belief, that the offeror and/or any of its principals--
  - (1) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency; and
  - (2) Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing

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a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(3) Are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses.

(i) *Certification Regarding Knowledge of Child Labor for Listed End Products (Executive Order 13126). [The Contracting Officer must list in paragraph (i)(1) any end products being acquired under this solicitation that are included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, unless excluded at 22.1503(b).]*

(1) *Listed end products.*

End Product	Country of Origin
NA	

(List as Necessary)

(2) *Certification. [If the Contracting Officer has identified end products and countries of origin in paragraph (i)(1) of this provision, then the offeror must certify to either (i)(2)(i) or (i)(2)(ii) by checking the appropriate block.]*

(i) The offeror will not supply any end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product.

(j) *Place of Manufacture. (Does not apply unless the solicitation is predominantly for the acquisition of manufactured end products.) For statistical purposes only, the offeror shall indicate whether the place of manufacture of the end products it expects to provide in response to this solicitation is predominantly—*

(1)  *In the United States (Check this box if the total anticipated price of offered end products manufactured in the United States exceeds the total anticipated price of offered end products manufactured outside the United States); or*

(k) *Certificates regarding exemptions from the application of the Service Contract Act. (Certification by the offeror as to its compliance with respect to the contract also constitutes its certification as to compliance by its subcontractor if it subcontracts out the exempt services.)*

[The contracting officer is to check a box to indicate if paragraph (k)(1) or (k)(2) applies.]

\*  \* (1) *Maintenance, calibration, or repair of certain equipment as described in FAR 22.1003-4(e)(1). The offeror  does \_\_\_\_\_ does not certify that—*

(l) *The items of equipment to be serviced under this contract are used regularly for other than Governmental purposes and are sold or traded by the offeror in substantial quantities to the general public in the course of normal business operations;*

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- (ii) The services will be furnished at prices which are, or are based on, established catalog or market prices (see FAR 22.1003-4(c)(2)(ii)) for the maintenance, calibration, or repair of such equipment; and
- (iii) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract will be the same as that used for these employees and equivalent employees servicing the same equipment of commercial customers.

\* \_\_\_\_\_ \* (2) Certain services as described in FAR 22.1003-4(d)(1). The offeror  X  does \_\_\_\_\_ does not certify that--

- (i) The services under the contract are offered and sold regularly to non-Governmental customers, and are provided by the offeror (or subcontractor in the case of an exempt subcontract) to the general public in substantial quantities in the course of normal business operations;
- (ii) The contract services will be furnished at prices that are, or are based on, established catalog or market prices (see FAR 22.1003-4(d)(2)(iii));
- (iii) Each service employee who will perform the services under the contract will spend only a small portion of his or her time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the Government contract; and
- (iv) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract is the same as that used for these employees and equivalent employees servicing commercial customers.

(3) If paragraph (k)(1) or (k)(2) of this clause applies--

- (i) If the offeror does not certify to the conditions in paragraph (k)(1) or (k)(2) and the Contracting Officer did not attach a Service Contract Act wage determination to the solicitation, the offeror shall notify the Contracting Officer as soon as possible; and
- (ii) The Contracting Officer may not make an award to the offeror if the offeror fails to execute the certification in paragraph (k)(1) or (k)(2) of this clause or to contact the Contracting Officer as required in paragraph (k)(3)(i) of this clause.

- (i) (1) *Annual Representations and Certifications.* Any changes provided by the offeror in paragraph (l)(2) of this provision do not automatically change the representations and certifications posted on the Online Representations and Certifications Application (ORCA) website.
- (2) The offeror has completed the annual representations and certifications electronically via the ORCA website at <http://orca.bnn.gov>. After reviewing the ORCA database information, the offeror verifies by submission of this offer that the representations and certifications currently posted electronically at FAR 52.212-3, Offeror Representations and Certifications—Commercial Items, have been entered or updated in the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR 4.1201), except for paragraphs  X .

*[Offeror to identify the applicable paragraphs at (b) through (k) of this provision that the offeror has completed for the purposes of this solicitation only, if any.*

*These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.*

*Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted on ORCA.]*

**5. COMMERCIAL SALES PRACTICES FORMAT (CSP-1)**

Name of Offeror: Hatch, Inc.

SIN(s): 132-8

Note: Please refer to clause 552.212-70, PREPARATION OF OFFER (MULTIPLE AWARD SCHEDULE), for additional information concerning your offer. Provide the following information for each SIN (or group of SINs or Sub SIN for which information is the same).

(1) Provide the dollar value of sales to the general public at or based on an established catalog or market price during the previous 12-month period or the offerors last fiscal year: ~~\$190,116~~ State beginning and ending of the 12 month period. Beginning Jan 1 Ending Dec 31. In the event that a dollar value is not an appropriate measure of the sales, provide and describe your own measure of the sales of the item(s).

(2) Show your total projected annual sales to the Government under this contract for the contract term, excluding options, for each SIN offered. If you currently hold a Federal Supply Schedule contract for the SIN the total projected annual sales should be based on your most recent 12 months of sales under that contract.

Special Item No.	132-3	Leasing of Product	\$ _____
Special Item No.	132-4	Daily / Short Term Rental	\$ _____
Special Item No.	<del>132-8</del>	<del>Purchase of Equipment</del>	<del>\$190,116</del>
Special Item No.	132-12	Maintenance of Equipment, Repair Service, and Repair Parts/Spare Parts	\$ _____
Special Item No.	132-32	Term Software Licenses	\$ _____
Special Item No.	132-33	Perpetual Software Licenses	\$ _____
Special Item No.	132-34	Maintenance of Software	\$ _____
Special Item No.	132-50	Training	\$ _____
Special Item No.	132-51	Information Technology Professional Services	\$ _____
Special Item No.	132-52	Electronic Commerce Services	\$ _____
Special Item No.	132-53	Wireless Services	\$ _____
Special Item No.	132-60	Access Certificates for Electronic Services (ACES) Program	\$ _____
Special Item No.	132-61	Public Key Infrastructure (PKI) Shared Services Provider (SSP) Program	\$ _____
Special Item No.	132-62	HSPD-12 Product and Service Components	\$ _____

(3) Based on your written discounting policies (standard commercial sales practices in the event you do not have written discounting policies), are the discounts and any concessions which you offer the Government equal to or better than your best price (discount and concessions in any combination) offered to any customer acquiring the same items regardless of quantity or terms and conditions? Yes (See definition of "concession" and "discount" in 552.212-70.)

(4) (a) Based on your written discounting policies (standard commercial sales practices in the event you do not have written discounting policies), provide information as requested for each SIN (or group of SINs for which the information is the same) in accordance with the instructions at Figure 515.2, which is

Option to Extend Contracts Expiring in 2009

COLUMN 1 CUSTOMER	COLUMN 2 DISCOUNT	COLUMN 3 QUANTITY/VOLUME	COLUMN 4 FOB TERM	COLUMN 5 CONCESSIONS
State and local Governments	5% - any non standard discount will be made available to the government.	Negotiable	Customer, 5%	No other concessions
Educational and Non profit Institutions	5% - any non standard discount will be made available to the government.	Negotiable	Customer, 5%	No other concessions
National and Corporate Accounts	5% - any non standard discount will be made available to the government.	Negotiable	Customer, 5%	No other concessions
Commercial End User	5% - any non standard discount will be made	Negotiable	Customer, 5%	No other concessions
Proposed GSA Discounts	10%	None	HATCH - Free	No other concessions

(b) Do any deviations from your written policies or standard commercial sales practices disclosed in the above chart ever result in better discounts (lower prices) or concessions than indicated? YES \_\_\_ NO X \_\_. If YES, explain deviations in accordance with the instructions at Figure 515.4-2, which is provided in this solicitation for your convenience.

(5) If you are a dealer/reseller without significant sales to the general public, you should provide manufacturers' information required by paragraphs (1) through (4) above for each item/SIN offered, if the manufacturer's sales under any resulting contract are expected to exceed \$500,000. You must also obtain written authorization from the manufacturer(s) for Government access, at any time before award or before agreeing to a modification, to the manufacturer's sales records for the purpose of verifying the information submitted by the manufacturer. The information is required in order to enable the Government to make a determination that the offered price is fair and reasonable. To expedite the review and processing of offers, you should advise the manufacturer(s) of this requirement. The contracting officer may require the information be submitted on electronic media with commercially available spreadsheet(s). The information may be provided by the manufacturer directly to the Government. If the manufacturer's item(s) is being offered by multiple dealers/resellers, only one copy of the requested information should be submitted to the Government. In addition, you must submit the following information along with a listing of contact information regarding each of the manufacturers whose products and/or services are included in the offer (include the manufacturer's name, address, the manufacturer's contact point, telephone number, and FAX number) for each model offered by SIN:

- (a) Manufacturer's Name
- (b) Manufacturer's Part Number
- (c) Dealer's/Reseller's Part Number
- (d) Product Description
- (e) Manufacturer's List Price
- (f) Dealer's/Reseller's percentage discount from List Price or net prices

Figure 515.4-2-Instructions for Commercial Sales Practices Format

Option to Extend Contracts Expiring in 2009

If you responded "YES" to question (3), on the COMMERCIAL SALES PRACTICES FORMAT, complete the chart in question (4)(a) for the customer(s) who receive your best discount. If you responded "NO" complete the chart in question (4)(a) showing your written policies or standard sales practices for all customers or customer categories to whom you sell at a price (discounts and concessions in combination) that is equal to or better than the price(s) offered to the Government under this solicitation or with which the Offeror has a current agreement to sell at a discount which equals or exceeds the discount(s) offered under this solicitation. Such agreement shall be in effect on the date the offer is submitted or contain an effective date during the proposed multiple award schedule contract period. If your offer is lower than your price to other customers or customer categories, you will be aligned with the customer or category of customer that receives your best price for purposes of the Price Reduction clause at 552.238-75. The Government expects you to provide information required by the format in accordance with these instructions that is, to the best of your knowledge and belief, current, accurate, and complete as of 14 calendar days prior to its submission. You must also disclose any changes in your price list(s), discounts and/or discounting policies which occur after the offer is submitted, but before the close of negotiations. If your discount practices vary by model or product line, the discount information should be by model or product line as appropriate. You may limit the number of models or product lines reported to those which exceed 75% of actual historical Government sales (commercial sales may be substituted if Government sales are unavailable) value of the special item number (SIN).

**Column 1-Identify the applicable customer or category of customer.** A "customer" is any entity, except the Federal Government, which acquires supplies or services from the Offeror. The term customer includes, but is not limited to original equipment manufacturers, value added resellers, state and local governments, distributors, educational institutions (an elementary, junior high, or degree granting school which maintains a regular faculty and established curriculum and an organized body of students), dealers, national accounts, and end users. In any instance where the Offeror is asked to disclose information for a customer, the Offeror may disclose information by category of customer if the offeror's discount policies or practices are the same for all customers in the category. (Use a separate line for each customer or category of customer.)

**Column 2-Identify the discount.** The term "discount" is as defined in solicitation clause 552.212-70, Preparation of Offer (Multiple Award Schedule). Indicate the best discount (based on your written discounting policies or standard commercial discounting practices if you do not have written discounting policies) at which you sell to the customer or category of customer identified in column 1, without regard to quantity; terms and conditions of the agreements under which the discounts are given; and whether the agreements are written or oral. Net prices or discounts off of other price lists should be expressed as percentage discounts from the price list which is the basis of your offer. If the discount disclosed is a combination of various discounts (prompt payment, quantity, etc.), the percentage should be broken out for each type of discount. If the price lists which are the basis of the discounts given to the customers identified in the chart are different than the price list submitted upon which your offer is based, identify the type or title and date of each price list. The contracting officer may require submission of these price lists. To expedite evaluation, offerors may provide these price lists at the time of submission.

**Column 3-Identify the quantity or volume of sales.** Insert the minimum quantity or sales volume which the identified customer or category of customer must either purchase/order, per order or within a specified period, to earn the discount. When purchases/orders must be placed within a specified period to earn a discount indicate the time period.

**Column 4-Indicate the FOB delivery term for each identified customer.** See FAR 47.3 for an explanation of FOB delivery terms.

**Column 5-Indicate concessions regardless of quantity granted to the identified customer or category of customer.** Concessions are defined in solicitation clause 552.212-70, Preparation of Offers (Multiple Award Schedule). If the space provided is inadequate, the disclosure should be made on a separate sheet by reference.

If you respond "YES" to question 4 (b) in the Commercial Sales Practices Format, provide an explanation of the circumstances under which you deviate from your written policies or standard commercial sales practices disclosed in the chart on the Commercial Sales Practices Format and explain how often they occur. Your explanation should include a discussion of situations that lead to deviations from standard practice, an explanation of how often they occur, and the controls you employ to assure the integrity of your pricing. Examples of typical deviations may

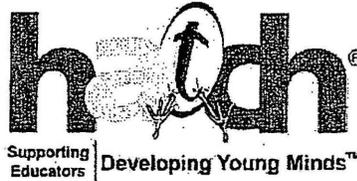
Option to Extend Contracts Expiring in 2009

include, but are not limited to, one time goodwill discounts to charity organizations or to compensate an otherwise disgruntled customer; a limited sale of obsolete or damaged goods; the sale of sample goods to a new customer; or the sales of prototype goods for testing purposes.

If deviations from your written policies or standard commercial sales practices disclosed in the chart on the Commercial Sales Practices Format are so significant and/or frequent that the Contracting Officer cannot establish whether the price(s) offered is fair and reasonable, then you may be asked to provide additional information. The Contracting Officer may ask for information to demonstrate that you have made substantial sales of the item(s) in the commercial market consistent with the information reflected on the chart on the Commercial Sales Practice Format, a description of the conditions surrounding those sales deviations, or other information that may be necessary in order for the Contracting Officer to determine whether your offered price(s) is fair and reasonable. In cases where additional information is requested, the Contracting Officer will target the request in order to limit the submission of data to that needed to establish the reasonableness of the offered price.

**EXHIBIT II  
PROPOSAL AND PRICING**

**(Includes Vendor letter and brochure dated January 5, 2010)**



January 5, 2010

Edward Gonzales  
City of San Antonio  
Po Box 839966  
San Antonio, TX, 78283

Dear Mr. Gonzales:

Hatch is a North Carolina-based Early Childhood educational materials and technology company that has been in business since 1984. Hatch distributes a complete line of developmentally-appropriate educational materials for preschool and kindergarten classrooms nationwide.

Hatch is pleased to offer GSA discounted pricing – 10% discount and Free Shipping – on our Computer Learning Centers.

**Hatch's GSA Contract number for Computer Learning Centers is GS-35F-0496J.**

As an addition to our current GSA contract we would like to extend the following special that is valid from January 4<sup>th</sup>, 2010 to February 28<sup>th</sup>, 2010:

Imagination Station with no Table and no Printer:	\$1113.91
GSA Discount (10%):	(\$111.39)
IFF (.0075)	(\$7.52)
Subtotal	\$995.00
<u>Freight</u>	<u>FREE</u>
<b>Total:</b>	<b>\$995.00</b>

If you have any questions please feel free to contact me at (800) 624-7968 X:1295 or via email at [szona@hatchearlychildhood.com](mailto:szona@hatchearlychildhood.com).

Computers for Kids™  Instant Classroom™

301 North Main Street, Suite 101  
Winston-Salem, North Carolina 27101  
800.624.7968 [www.hatchearlychildhood.com](http://www.hatchearlychildhood.com)