



# THE SCHOOL DISTRICT OF PHILADELPHIA

BOARD OF EDUCATION  
Office of Capital Programs  
440 North Broad Street, 3<sup>rd</sup> Floor – Suite 371  
Philadelphia, PA 19130

TELEPHONE: (215) 400-4730

## Addendum No. 3

**Subject: Guaranteed Energy Savings Act (GESA) Contract  
Inclusive of Energy Efficient Building Upgrades**

**GESA-2 PROPOSAL DUE DATE: March 8, 2021 – 2:00PM**

**Location: JH Brown School, Bethune School, Beeber School**

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**This Addendum, dated February 25, 2021, shall modify, and become part of the Contract Documents. Any items not mentioned herein, or affected by, shall remain strictly in accordance with the original document.**

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### General:

1. The Due Date for the RFP Proposals is now **March 8th at 2 pm.**
2. The District will now accept a digital download (link) to a PDF submission to **capitalbids@philasd.org** on the due date of March 8th no later than 2:00 PM. The required 1 USB and 1 hard copy will be accepted in the mail within 3 business days of the due date, provided a working digital link was provided by the due date noted above. **Late proposals cannot be accepted.**
3. The official address for submission of hard copy/USB proposals is:

**The School District of Philadelphia  
Office of Capital Programs, Suite 371, Office 3165  
440 North Broad Street  
Philadelphia, PA 19130  
Attn: Jesse Jones**

4. Please assume a **“customer-controlled contingency” of \$532k for hazardous material-related** expenses in the project. It is noted that during the RFP, insufficient time is available to properly assess hazmat costs, so this will serve as a “placeholder” for future abatement expenses for RFP purposes. It is expected that this value will be developed and refined during

### Addendum No. 3 (cont'd)

the CEA development process based on known hazards as part of the work. **Do NOT include** additional hazmat costs in your base scope of work in the proposal.

#### **General Questions**

1. Can the RFP due date be extended by two weeks to Friday, March 19<sup>th</sup>? -

The Due date has been extended to March 8th at 2 PM.

2. Will sign-in sheets from school walkthroughs be made available to attendees? -

yes, see attached.

3. Can the district provide up-to-date MEP and structural drawings for the three buildings? These would greatly help in our assessment. -

The HVAC renovation drawings for Bethune are attached.

4. Architectural Floor Plans & Elevations, Mechanical and Plumbing Plans, Roof Structural Drawings and Electrical Drawings, Electrical Single Line Service Entrance Diagram & Electrical Riser Diagrams for all 3 schools.

Not available at this time.

5. Please elaborate on what you hope to have completed in terms of construction for the summer period. If work is to continue beyond the summer, how do you prefer to have that performed (e.g., 2/3 shift, holidays, summers only) -

The intent is to phase over 2 summers, with as much accomplished during 1st summer pending COVID restrictions.

6. Please provide current utility supply contract expiration dates and/or actual contracts -

Bidders may assume the contracts are non-binding for the purposes of the RFP response.

7. Please provide hours of operations for the following: -

- a. Classes (day)
- b. Classes (evening)
- c. Custodial
- d. Gyms
- e. Locker Rooms/Field Houses
- f. Summer School
- g. Basic HVAC schedules
- h. Any other school/community activities

Please assume the annual operation hours as noted on page 7 of the RFP.

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8. We understand that the District is in the process of completing an update to its Facility Condition Assessment reports? Are any updates available for these three schools? -

[These are not available at this time.](#)

9. Are there any updates to the AHERA reports publicly available for any of the three schools?

[Not at this time.](#)

10. Are any schools designated "historic"?

[Dinmer Beeber and J.H. Brown, YES, National Register as of 1988;](#)

11. What kind of priority will any ECMs shown on page 8 have beyond those listed on pages 9 & 10 of the RFP? Should we only look at those measures which have a return within the contract term? -

[ECMs on page 8 must be assessed and included as applicable, ECMs on pages 9/10 are items the District specifically requests for inclusion](#)

12. Does the District intend to keep the dual fuel capabilities and with oil? If not, will ESCO have to remove/abate fuel oil tanks and systems?

[The intent will be to abandon oil tanks and infrastructure.](#)

13. Can the district share account/meter numbers for all three schools? It will be easy to search the exact bill for each school because the existing utility data files contain monthly bills/amounts for all schools. Additionally, in many cases, the given school addresses do not match with addresses on utility bills. -

[Refer to the file in Appendix D entitled "UTILITY ACCOUNTS SUMMARY.pdf" the relevant account numbers are listed there.](#)

14. Are wireless communications allowable for the controls? -

[Yes, wireless where appropriate to avoid hazardous materials and dead areas, but wired is generally preferred.](#)

15. Has the District notified PECO prior to or during RFP about the possible need to upgrade services at both Brown and Beeber Schools? Please provide District PECO rep contact info.

[No, PECO has not been contacted.](#)

16. Please provide water and sewer bills for buildings included in RFP.

[Not required.](#)

17. Will boilers require an N+1 design?

[N+1 design is acceptable.](#)

18. Are there equipment placement restrictions outside of the building?

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None.

19. Is there piping or electric conduit placement restrictions within buildings? -

No. Boiler rooms must have RMC for electrical in the boiler room, EMT preferred in building spaces throughout building for electrical

20. Will District allow for baseline adjustments, especially given that buildings are currently not providing adequate ventilation?

Not for the RFP, but this will be permitted during the CEA development process.

21. Please verify that ESCOs are to address AC-1 located at Bethune School similar to the scope item #3 on page 9.

Measures on Pages 9/10 are not exhaustive. Please identify any and all opportunities as you see fit. AC-1 may be included.

22. What is the total occupancy of each building in terms of the number of students and the number of staff/faculty?

# of enrolled students

Beeber = 1,092

Bethune = 855

J.H. Brown = 600

23. Please provide roof age, roof submittals and warranty information on roofs, roof manufacturer information for all 3 schools.

Not required at this time.

24. What is the operation of the cafeterias at each school - Cooking or warming? A number of meals? Seating occupancy? for all 3 schools.

Cafeteria modifications are not required.

25. What are the kitchen hood operation hours in terms of hours per day for all 3 schools?

Cafeteria modifications to hoods are not required.

26. If available, please provide mechanical drawings associated with the kitchen hoods and exhaust fans for all 3 schools.

Cafeteria modifications are not required.

27. Are any areas of the schools irrigated? If so please identify including the gross area for all 3 schools.

No irrigation.

**Addendum No. 3 (cont'd)**

28. What is the total number of computers in each school?

Computer Load Management and other measures relating to IT are not acceptable measures to SDP.

29. Please provide the number of walk-in refrigeration/freezer units at each school.

Modifications/controllers on walk-in refrigeration are not acceptable measures to SDP.

30. What is the percent of each building that is heated?

100% heated buildings may be assumed.

31. What is the percent of each building that is cooled?

Bethune is 100% cooled  
Others may be assumed 0% cooled..

32. If available, please provide existing trend data for mechanical equipment for all 3 schools.

Not available.

33. What type of fuel oil is used in each school?

Beeber - #2 Fuel Oil

34. If available, please provide electronic copies of mechanical equipment maintenance logs for all 3 schools.

Not available.

35. Please provide the Calpine electric energy bills from August 2018 to Feb 2020 for the same period as the PECO distribution bills provided in the RFP for all three schools

Calpine services ended on that date. WGL 3rd party supply is noted on the PECO bills moving forward.

36. Please provide copies of the Heating Oil bills for each school. The only bill included in the RFP was for Beeber School from July 2018 to June 2020

That is correct. Other buildings are burning on natural gas.

37. Please provide copies of the Water and Sewer bills for each school

Not required.

38. Please provide 1 year of boiler make-up water meter readings for all boiler plants

### Addendum No. 3 (cont'd)

Not available.

39. JH Brown School- Since half of the classrooms contain New Direct Indirect linear LED suspended with aircraft cables, please advise if the schools expect that same layout and design in the remaining classrooms

Providing lighting and renovations aesthetically consistent with the recent classroom renovations would be preferred.

40. Lighting - Columbia is the preferred manufacturer for the interior is Hubbell which is the parent company of Columbia allowed the preferred Manufacturer on the exterior or other fixture types that do not fall under the provided cut sheets? Or can other manufacturers be used?

Fixtures in applications (exterior, cans, etc.) outside of the products specified may be selected as the best fit for the intended application and performance.

41. Please advise if there is a preferred color temperature (3500K, 4000K, or 5000K) for the interiors of schools.

3500K is preferred.

42. Are there specific project specifications from the Philadelphia School District aside from what is included in Attachments 1-7 of the RFP?

Not at this time.

### **Questions Related to the RFP**

1. The RFP references two different due dates for questions, February 19th at 2:00 pm (pg. 3) and February 23rd (pg. 18). Which of these is correct? -

Questions are due on February 23rd at 2 PM

2. Section IV - D(2) – Please specify where the proposal should be delivered (i.e. address, department, attention to, etc)? Will the SDP office be open for proposals to be delivered by hand? -

The School District of Philadelphia  
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440 North Broad Street  
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3. Section V - C(7) - We cannot provide additional insured status for workers' compensation or professional liability. This is industry standard.

### Addendum No. 3 (cont'd)

Understood- The coverages as outlined in the sample GESA contract (Appendix C) shall prevail.

4. Section V – D(1) - Appendix D is referenced here, but Appendix D is energy consumption data and not terms and conditions. Please advise. -

This should state Appendix C

5. Section VI – B - Appendix D is referenced here, but Appendix D is energy consumption data and not the Evaluation Form. Please advise. -

We didn't provide the scoring form. Refer to Section VI - B(2) for evaluation criteria and scoring allocation

6. Section VIII – This section states that "(If more than ten (10) projects are relevant to this RFP, remaining examples of experience may be briefly summarized) ..." Please confirm that a minimum of 10 references is required.

Section VI - B(1) outlines minimum qualifications. Items G & H specify at least 5 references.

7. Section VIII – This section states "Use a discount rate of 4%. Assume an interest rate of 4%." However, these are both shown as 3% on page 7. Please confirm which is correct. -

3% may be used for interest and discount rates.

8. The work orders, in Appendix F, seem to be for other schools (Conwell, Gompers & Lincoln). Can the district provide work orders for the three schools under this RFP scope? -

This may be omitted for RFP purposes.

9. Section V(C)(1) provides for an 'at least' 90 day period of irrevocability from the proposal due date, as does the Official Statement of Proposer per Section VIII(E), whereas Section II(D) of the RFP states that a time period of 120 days in which the proposal cannot be withdrawn subsequent to the RFP due date. Which is correct?

120 days.

10. Provide a date certain as to when the bid bond must be held open. Can the District further confirm that the risk of forfeiture of the bid security will not extend beyond this specific date?

The Bid bond would be rendered unnecessary following the award of an ESCO for the CEA development as delineated in the RFP.

11. Section V(C)(1), "ESCO fails to execute a contract within the timeline provided in the RFP..." Please provide this timeline. The included timetable does not list a timeline for executing the contract. The time for executing a contract is May 27th- the BOE date delineated in the RFP timeline.

### Addendum No. 3 (cont'd)

12. Section V(C)(1), can the District clarify if the parties are unable to come to mutually agreeable terms of the relevant contract, or if any approvals (internal or external) are unable to be secured, is the proposal security still at risk of forfeiture?

The above-described scenario would not risk the forfeiture of the security.

13. Define operating/working hours related to overtime costs borne by ESCO in section VI(A).

Hours outside personnel work hours, whereby the District would incur overtime to maintain staffing in support of the project, such as construction activity in a building beyond building engineer's normal hours, triggering overtime needs.

14. Section 2.12 of Attachment 2, page 9, speaks to a defined work area. Are there details such as allocated square footage, location of the area, etc., that identify this work area and what is allowed in the work area for each separate school?

The work area is simply defined as the location where work is actively taking place and access is required to undertake the work.

15. Section 33.2 of the GESA form, does identification, sampling, and testing materials fall within \$532k?

Yes.

16. Section 33.2 of the GESA form, does overhead/profit for abatement fall within the \$532k abatement allocation or will the District be responsible for ESCO overhead/profit?

Yes.

17. Savings Guarantee, section V(B) of RFP states ESCO must guarantee energy savings during the term of the energy performance contract. However, Section V(A)(25) states M&V is only sought for the first 3 years of a 20-year contract term. Which is correct?

The RFP should assume only 3 years of M&V services for RFP purposes.

18. Section V(C)(2) of the RFP lists the Insurance Requirements for this project, which are not consistent with those listed in Article 19 of the GESA contract provided in Attachment A. Some policy requirements are different and some amounts of coverage are different between these two sections? Which are accurate?

Article 19 of the GESA contract shall prevail.

19. Section V(D), request a copy of "Appendix D" T&Cs.

T&C's are located within the sample contract provided. Disregard.

20. Request copy of School District Partnership Agreement with the Philadelphia Building Trades Council referenced in Section 37.1 of GESA and Section V(G)(3)(d) of the RFP.

Refer to attachment #8



**Addendum No. 3 (cont'd)**

21. Please provide the schedules (A-T) referenced in the attached sample GESA contract

These are references to the CEA documents and related materials that will be developed later.

Article	Comment
7.5	<p>Please add “The performance and payment bonds apply only to the installation portion of the contract and do not apply in any way to energy savings guarantees, payments or maintenance provisions, except that the performance bond shall guarantee that the installation will be free of defective materials and workmanship for a period of twelve (12) months following completion and acceptance of the work”</p> <p style="color: blue;">Not accepted. The potential distinction between Guarantee versus Acceptance is immaterial and shouldn't be a cause for concern for the ESCO. The expectations for “operation” do not require full-time staffing. It is simply intended for the School District and the ESCO to cooperate to ensure building operations are not disturbed by interruptions of critical services (for example, heat in the winter).</p>
7.5.4	<p>Please provide a copy of the required form of payment and performance bonds.</p> <p style="color: blue;">Attached are sample required Performance, Payment, and Maintenance Bonds</p>
16.1	<p>We believe the reference to Guaranteed Period should be based on the Acceptance Date. Using Guaranteed Period results in a potentially varying term due to the School District's ability to extend the period pursuant to Article 4.4.</p> <p style="color: blue;">Not accepted. The potential distinction between Guarantee versus Acceptance is immaterial and shouldn't be a cause for concern for the ESCO. The expectations for “operation” do not require full-time staffing. It is simply intended for the School District and the ESCO to cooperate to ensure building operations are not disturbed by interruptions of critical services (for example, heat in the winter).</p>
19.1.2	<p>There is a reference to an ISO form “(including Liability for Employee Injury assumed under a Contract provided in the standard ISO policy form)” that is no longer in use. Please strike this language or clarify the required coverage.</p> <p style="color: blue;">Accepted.</p>

**Addendum No. 3 (cont'd)**

19.1.2(e)	<p>Our commercial general liability has an exclusion for EIFS – please allow for “in the alternative, coverage for EIFS can be provided by ESCO’s Pollution Liability Policy.”</p> <p>Accepted.</p>
19.1.4(c)	<p>We request that “including full coverage for mold/fungus, EIFS” be removed, coverage is excluded from the general liability policy and covered by the pollution policy.</p> <p>Accepted.</p>
19.1.5	<p>Please add to the end of the last sentence “or a property policy incidental course of construction/installation floater”.</p> <p>Accepted.</p>
19.1.7(c)	<p>This references Occurrence Form but 19.1.7(a) indicates a claims-made policy. Please remove the reference to Occurrence Form as our policy is claims made.</p> <p>Accepted.</p>
19.1.9	<p>Environmental Liability Insurance – this is the same as our 19.1.7 Pollution Liability Insurance coverage. Please confirm that one policy can satisfy both requirements.</p> <p>Accepted.</p>
19.1.10	<p>This requires all self-insured retentions to be \$50,000 – please increase to \$250,000 as our current general liability deductible is \$250,000.</p> <p>Accepted.</p>
19.1.14(a)	<p>Please add to the beginning “With the exception of professional liability,” It is industry standard that professional liability policies don’t provide this waiver.</p> <p>Accepted.</p>
19	<p>The RFP reference \$3M aggregate for Automotive Liability. Our policy is \$1M but we could provide the balance through umbrella coverage. Please confirm this is acceptance.</p>

**Addendum No. 3 (cont'd)**

	Accepted.
37.19(i)	<p>Please add a cure period and diligent pursuit language similar to 26.3.1.</p> <p>Not accepted. This is the required language for the School District's Tax Compliance Policy.</p>

1. RFP Section IV(D)(4): Existing Conditions. Responsibility with respect to the existing site conditions, the facilities, etc. is limited to the extent we have been provided specific and accurate information from the District, to the extent, ESCO has had an opportunity to review the District premises to date given the limited time allowed on-site, and within the context of the activities performed for the RFP response and final CEA. If given these limitations, we would not be able to reasonably foresee such physical conditions, despite its due diligence as per industry standards, we would be entitled to an equitable adjustment in cost and/or schedule due to unforeseen or differing site conditions.

Terms relating to these items in Attachment#2, Sample GESA contract shall prevail over RFP terms and conditions.

2. RFP Section V(G)(3)(a): Order of priority. In the event of a conflict of terms between contract documents, the order of precedence be descending from the most project-specific documents taking the highest priority (e.g. the final negotiated Agreement, then the final accepted Audit Report) with the more general, broad documents having the least priority (e.g. RFP Response, then the RFP).

Terms relating to these items in Attachment #2, Sample GESA contract shall prevail over RFP terms and conditions.

3. RFP Section VI(A): If, through no fault of ESCO, the schedule is delayed which gives rise to overtime costs for District personnel, we will not be responsible for any associated costs.

Terms relating to these items in Attachment#2, Sample GESA contract shall prevail over RFP terms and conditions.

4. GESA Definitions Section 1.2: (d) Applicable law should include law in effect as of the Effective Date of the GESA with future laws to be addressed in a change in law provision; (vv)(and Section 52.20.10.2) Add clarifying language to the definition of Substantial Completion, achieved when the District receives beneficial use of the equipment, with operational parameters and standards of comfort in place.

This will be further reviewed and adjustments considered during the CEA development period.

### Addendum No. 3 (cont'd)

5. GESA Section 5.3.3: All energy savings guarantees will be provided in accordance with the PA legislation on Guaranteed Energy Savings Contract and not include any Excess Shortfall Penalties.

This will be further reviewed and adjustments considered during the CEA development period. Compliance with PA GESA laws and regulations will be maintained.

6. GESA Section 5.7 Offset (and Section 27.2 Setoff, and Section 37.3(d)-(g)). As we provide all necessary certifications, including tax compliance, as part of the procurement process, there is no need for withholding or offsets, which we cannot agree to.

This will be further reviewed and adjustments considered during the CEA development period.

7. GESA Section 6.3 Non-Authorization of funds: If the District is funding the project via third-party financing, this provision is appropriate only through the proposed lender. If there is no third-party financier, we would expect to be timely paid (e.g. net 30 days) for work performed in accordance with the contract documents, so that we can timely pay all subcontractors and vendors.

This will be further reviewed and adjustments considered during the CEA development period.

8. GESA Section 6.4: Determinations impacting the contracted scope, including removal of scope items, should be mutually agreed upon in advance so that all impacts to the project can be fully vetted, including cost and savings impacts, for which equitable adjustments would be made; further, upon any such removal, we should still be compensated for any costs associated with that removed scope (e.g. development costs, mobilization, etc.)

This will be further reviewed and adjustments considered during the CEA development period.

9. GESA Section 7.3.2: The means and methods of how we implement the Scope of Work is built into our pricing, schedule, and structure for the project as a whole, and if any alternates are required, we would be entitled to corresponding equitable adjustments to cost and schedule; any requirements the District has would need to be made available prior to commencement of the CEA phase of work.

These types of items would be developed and mutually agreed upon during the CEA process.

10. GESA Section 7.3.3: Change Orders should be mutually agreed upon with equitable adjustments to the project costs, schedule, and savings; without knowing the full impact of the change over the construction period, we cannot agree to waive future claims that may result from the change and we cannot be held responsible for delays in the District securing required approvals for the change.

This will be further reviewed and adjustments considered during the CEA development period.

### Addendum No. 3 (cont'd)

11. GESA Section 7.5.2: Our Payment and Performance bonds cover the construction period in addition to a 1 year warranty period; as such a separate Maintenance Bond would be duplicative and not necessary.

This will be further reviewed and adjustments considered during the CEA development period.

12. GESA Section 7.5.6: The District's ability to direct us to substitute another bond or bonds or sureties at any time during the project because of its dissatisfaction is impractical; it is not reasonable nor industry standard for a surety to issue a bond to a company during a project once commenced.

This will be further reviewed and adjustments considered during the CEA development period.

13. GESA Section 8.1: We would suggest that warranty commences upon Substantial Completion by ECM/by building as this is when the District would be receiving beneficial use of the equipment, with operational parameters and standards of comfort in place; the provisions on ownership of new ECMs (title)(Section 18.3), ECM service responsibilities (Article 14), and Risk of Loss (Article 21) should all align with this Substantial Completion by ECM/building date. During the applicable warranty period, we would repair/replace equipment per the warranty, though testing, adjustments, and other labor matters are additional costs.

This will be further reviewed and adjustments considered during the CEA development period.

14. GESA Section 8.2.3: We will act as a liaison for the District on warranty matters during the one-year warranty term.

Noted.

15. GESA Section 9.1: We will provide on-site, refresher training during the M&V period as reasonably requested, to be conducted on-site when M&V measurements are scheduled. Training required prior to Final Acceptance being given by District. ESCO agrees to provide ongoing training "whenever needed" at no cost to the District during the performance period (20 years).

Noted.

16. GESA Article 17: We would need to discuss this further with the District to determine what mutually agreed-upon language is appropriate in the event Option C (per Section 17.3) is not the IPMVP option utilized for this project.

Agreed. The language will be made consistent if other M&V protocols are elected to be used (Options A or B).

17. GESA Section 21.3: We would expect if the District caused damage to us as a result of a breach of the contract or otherwise, that it would be responsible for any such damages.

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This will be further reviewed and adjustments considered during the CEA development period.

18. GESA Section 22.8: The District's withholding of payments due and owing to us based upon liens that are filed by a vendor or lower-tier subcontractor, and potentially using those withheld payments to release said liens, is unreasonable and not agreeable.

Noted. This will be further reviewed and adjustments considered during the CEA development period.

19. GESA Section 24.3: We would expect fair and equitable costs associated with any District suspension, including corresponding relief from the schedule.

This will be further reviewed and adjustments considered during the CEA development period.

20. GESA Article 25: In the event, the District terminates for its convenience, we would expect to be also be paid for any reasonable costs incurred as a result of such termination (e.g. subcontractor termination, non-cancelable purchase commitments, demobilization, etc.)

Noted. This will be further reviewed and adjustments considered during the CEA development period.

21. GESA Section 26.2: The cure period language in this section for Events of Default by ESCO should mirror that in 26.1 with respect to "commencing of a cure" within the respective period stated to align with corrective action afforded to the District.

This will be further reviewed and adjustments considered during the CEA development period.

22. GESA Section 27.2: We would expect to be paid for the work completed per the terms of the contract, up to the date of termination, without withholdings or setoff; we cannot agree to any potential damages in subsections (d)(1) or (d)(2), and those listed in (d)(3) would be limited to the warranty period. The Payment and Performance bonds will be an added level of security for the District for relief in the unlikely event of a default.

This will be further reviewed and adjustments considered during the CEA development period.

23. GESA Section 28.1(a): The time period for ESCO to notify the District of a claim related to the work should be prior to final payment; 28.1(b): We would seek a limitation of liability to direct damages, not to exceed the contract price.

Not accepted. Limitation of Liability provision conflicts with Indemnification provision in GESA Contract. Indemnification language is not negotiable. GESA RFP, page 3, states: "ANY AND ALL LANGUAGE SURROUNDING INDEMNIFICATION IS NON-NEGOTIABLE."

24. GESA Section 28.2(e): Additional language should be added to clarify that in the event no agreement reached mediation, either party is free to pursue all legal remedies in a court of competent jurisdiction.

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Noted. This will be further reviewed and adjustments considered during the CEA development period.

25. GESA Section 29.2: In the event of an ESCO assignment of its obligations under the contract, it would not remain jointly and severally liable to the District.

This will be further reviewed and adjustments considered during the CEA development period.

26. GESA Section 33.2: Clarifying language would be warranted to set specifics around the \$532k abatement allowance, including whether testing, sampling, and identification of hazardous materials is included within this allotment, as well as how ESCO's overhead of profit and extended general conditions associated with any abatement work will be handled within this allotment and the need for relief of schedule in the event of hazardous materials discovery and subsequent remediation.

The allowance is intended to cover all hazmat-related costs during the construction process, including O&P; Costs related to identification and scope development during CEA will be included in the base costs of the GESA contract.

27. GESA Section 37.1: We will need a copy of the School District Partnership Agreement with the Philadelphia Building Trades Council to review the terms and conditions and to flow down to lower-tier subcontractors if we are bound by it for this project.

Refer to Attachment 8 of the RFP.

28. GESA Section 52.21: Delays and extensions of time. We would expect entitlement to relief in both cost and schedule for any delays caused outside ESCO reasonable control and through no fault of ESCO and whether foreseeable or unforeseeable (e.g. delays caused by the District, by the District's A/E, force majeure matters, weather delays, time in securing approvals, etc.); we would need to further negotiate the time period in which a delay claim could be brought, particularly since the significance or impact of a triggering event may not be known within a 7-day time frame.

Noted. This will be further reviewed, and adjustments considered during the CEA development period.

29. GESA Section 52.22: Liquidated Damages. Terms and conditions associated with liquidated damages, if any, would need to be further negotiated and mutually agreed upon. At a minimum, any such negotiations would need to include an overall cap, take into account any delays caused outside ESCO reasonable control and through no fault of ESCO, whether foreseeable or unforeseeable, and beneficial use of any ECMs installed, including accrual of savings; any terms to pay to meet Substantial Completion and/or pay additional charges incurred by the District A/E are not agreeable.

**Addendum No. 3 (cont'd)**

Not accepted. Limitation of Liability provision conflicts with Indemnification provision in GESA Contract. Indemnification language is not negotiable. GESA RFP, page 3, states: "ANY AND ALL LANGUAGE SURROUNDING INDEMNIFICATION IS NON-NEGOTIABLE."

**End of Addendum #3**



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SDP	Jerry LAMINA	609-304-1360	glamina-ext@PHILASD.ORG
WESCO	Dan Verna	610-724-3548	dverna@wesco.com
HRG	Gene Brandt	609-781-0331	gbrandt@hrgnj.com
Constellation	Zen Hughes	732-996-5346	Kenneth.Hughes@Constellation.com

THE SCHOOL DISTRICT OF PHILADELPHIA  
BOARD OF EDUCATION

*Know all Men by these presents*

That we, ..... Principal, and .....  
....., a corporation existing under and by virtue of the laws of the State of ....., Surety, are jointly and severally held  
and firmly bound unto the **SCHOOL DISTRICT OF PHILADELPHIA** in the sum of .....  
**dollars (\$.....)** lawful money of the United States of America, **or One Hundred Percent (100%) of the Contract Sum**, to be paid to the said School  
District, its successors or assigns, to which payment, well and truly to be made, we do bind ourselves and each of us, our and each of our heirs, executors,  
administrators, successors and assigns, firmly by these presents, and do authorize and empower any attorney of any Court of Record to appear for us and each  
of us, our and each of our heirs, executors, administrators, successors and assigns and confess judgment in favor of said School District, its successors and  
assigns, against us and each of us, our and each of our heirs, executors, administrators and assigns, together with an attorney's commission of twenty per cent  
(20%), besides costs of suit, with release of errors and waiver of all laws for stay of execution and exemption.

Sealed with the seal of the said Principal and with the corporate seal of the said Surety, duly executed the ..... day of ..... in the year of  
our Lord **TWO THOUSAND EIGHTEEN (2019)**.

WHEREAS, the above Principal entered into a certain contract of even date herewith with the School District of Philadelphia, a copy of which contract  
is attached hereto and incorporated herein.

NOW THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall and do well and truly in all respects comply with all of the  
provisions, terms, conditions and covenants contained and set forth in the aforesaid contract and in the specifications and plans that are expressly referred to in  
the aforesaid contract, and in the supplemental bulletins, if any were issued to supplement, add to, delete from or change the aforesaid contract and/or  
specifications and plans, and shall and do save, protect, guarantee and indemnify the School District of Philadelphia of, from and against all loss, damage and  
expense (including delay damages, liquidated damages and consequential damages) by reason of Principal's failure for any cause whatsoever to comply with  
the aforesaid contract and with the specifications and plans that are expressly referred to in the aforesaid contract, and with the supplemental bulletins, if any,  
then this Obligation to be void; otherwise to be and remain in full force, virtue and effect.

It is understood and agreed that no change, extension of time, alteration, deduction or addition to the provisions, terms, conditions and covenants of  
the aforesaid contract or specifications or plans or supplemental bulletins, if any, and no change, extension of time, alteration, deduction or addition in the work  
to be done or material to be supplied thereunder, shall, in any manner affect the obligation of the Principal and Surety on this bond and the suretyship of this bond  
shall be taken as covering all such matters and all liability by reason thereof. The Surety does hereby waive notice of any such change, extension of time,  
alteration, deduction or addition to the terms of the contract, specifications, plans and supplemental bulletins. It is further understood and agreed that in the sole  
discretion of the School District of Philadelphia, the Surety may be required to perform and carry out the provisions of the aforesaid contract in the event of breach  
by the Principal.

WE FURTHER AGREE, that if, in the opinion of the said School District, any default shall happen on the part of the said Principal we will pay all loss  
occasioned thereby, and that the ascertained amount thereof, which shall be determined by the Board of Education of said School District, and of the truth of  
which oath or affirmation shall be made by the President of the said Board of Education or by any member thereof, shall be final, binding and conclusive upon us,  
and that execution may forthwith issue against us for the amount of said default. The Surety also agrees to perform this obligation promptly upon a declaration  
by the said School District that such performance is required pursuant to the terms of this Obligation.

This Obligation incorporates by reference Public Works Contractors' Bond Law of 1967; provided, however, that in the event of any inconsistency or  
ambiguity in the meaning of this Obligation and the said Public Works Contractors' Bond Law of 1967, the express terms of this Obligation shall govern and  
control.

If Contractor is an individual proprietorship or is a partnership, sign here ↓

Witness: ..... (Seal)  
..... (Trade Name of Firm)

..... (Seal)  
..... (Signature of Owner or Partner)

If Contractor is a corporation, sign here ↓

(Corporate Seal) .....  
..... (Name of Corporation)

Attest: ..... By: .....  
(Secretary or Treasurer) ..... (President or Vice-President)

(Surety sign below)

.....  
Witness as to Surety

THE SCHOOL DISTRICT OF PHILADELPHIA  
BOARD OF EDUCATION

*Know all Men by these presents*

That we, ..... Principal, and .....  
....., a corporation existing under and by virtue of the laws of the State of ..... Surety, are jointly and severally held and  
firmly bound unto the SCHOOL DISTRICT OF PHILADELPHIA in the sum of .....  
..... dollars (\$.....) lawful money of the United States of America, or **One Hundred Percent (100%) of the Contract Sum**, to  
be paid to the said School District, its successors or assigns, to which payment, well and truly to be made, we do bind ourselves, our heirs, executors,  
administrators, successors and assigns, jointly and severally, and firmly by these presents.

Sealed with the seal of the said Principal and with the corporate seal of the said Surety, duly attested by the proper officers thereof the ..... day of  
..... in the year of our Lord **TWO THOUSAND EIGHTEEN (2019)**.

WHEREAS, the above Principal entered into a certain contract of even date herewith with the School District of Philadelphia, a copy of which contract  
is attached hereto and incorporated by reference herein.

NOW THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal and his Subcontractors, if any, shall promptly pay or cause to be  
paid to any and every person, co-partnership, association, and corporation all sums of money which are or shall become due for all material (as defined in the  
accompanying specifications) furnished and labor supplied or performed in the prosecution of the work contemplated in the attached contract documents, whether  
or not the said material or labor enter into and become component parts of the work or improvement contemplated, and shall likewise pay for all machinery  
employed on or about such work or improvement, and shall comply with the provisions of the Public School Code of 1949, its amendments and supplements, and  
if the Principal (if a foreign corporation) shall file with the School District of Philadelphia a certificate from the Department of Revenue of the Commonwealth of  
Pennsylvania evidencing the payment in full of all bonus taxes, penalties, and interest, and a certificate from the Bureau of Unemployment Compensation of the  
Department of Labor and Industry of the Commonwealth of Pennsylvania evidencing the payment of all unemployment compensation contributions, penalties and  
interest due to the Commonwealth of Pennsylvania by the Principal, or by any foreign corporation which is a Subcontractor under the contract documents attached  
to this bond, or for which liability has accrued against the Principal and/or any of its foreign corporate Subcontractors, but the time for payment has not arrived,  
then this Obligation to be null and void; otherwise to be and remain in full force and effect.

The Commonwealth of Pennsylvania for bonus taxes, penalties and interest, and for unemployment compensation contributions, penalties and interest,  
as set forth in the preceding paragraph, and every person, co-partnership, association, or corporation who, whether as Subcontractor or otherwise, has furnished  
material (as defined in the accompanying specifications) or performed labor (whether or not said material or labor enter into and become component parts of the  
work or improvement contemplated) or furnished machinery in the prosecution of the work contemplated in the attached contract documents, and who has not  
been paid therefore, may sue in assumpsit on this Bond in the name of the School District of Philadelphia, for his, her, their, or its use, and prosecute the same  
to final judgment for such sum or sums as may be justly due him, her, them, or it, and have execution thereon. The terms and conditions for suit on this Obligation  
by claimants are set forth in the Public Works Contractors' Bond Law of 1967, which is incorporated herein by reference; provided, however, that in no event shall the  
School District of Philadelphia be liable for the payment of any costs or expenses of any suit or other proceeding for the enforcement of the rights of claimants hereunder.  
In the event of any inconsistency or ambiguity between the terms of this Obligation and the terms of the Public Works Contractors' Bond Law of 1967, the terms of the  
Public Works Contractors' Bond Law of 1967 shall control and govern.

Proof satisfactory to the BOARD OF EDUCATION, School District of Philadelphia, shall be furnished that written notice of the delivery of the material  
(as defined in the accompanying specifications) of the performance of the labor and/or furnishing of the machinery was given to the above named Principal and  
Surety herein.

The Surety shall not be relieved from liability by reason of any change in the work to be done or material (as defined in the accompanying specifications)  
to be supplied or by any waiver by the Obligee of any default of the Principal. The suretyship of this Bond shall be taken as covering all such matters and all  
liability by reason thereof.

If Contractor is an individual proprietorship or is a partnership, sign here ↓

Witness: ..... (Seal)  
..... (Trade Name of Firm)  
..... (Seal)  
Signature of Owner or Partner)

If Contractor is a corporation, sign here ↓

(Corporate Seal) .....  
..... (Name of Corporation)

Attest: ..... By: .....  
(Secretary or Treasurer) (President or Vice-President)

(Surety sign below) ↓

.....  
Witness as to Surety

THE SCHOOL DISTRICT OF PHILADELPHIA  
BOARD OF EDUCATION

*Know all Men by these presents*

That we, ..... Principal, and .....  
....., a corporation existing under and by virtue of the laws of the State of ....., Surety, are jointly and severally held and firmly bound unto the **SCHOOL DISTRICT OF PHILADELPHIA**, hereinafter called the Oblige, for the performance of warranty obligations (hereinafter identified and incorporated by reference), in the sum of ..... dollars (\$.....) lawful money of the United States of America, or **Ten Percent (10%) of the Contract Sum**, to be paid to the said School District, its successors and assigns, to which payment, well and truly to be made, we do bind ourselves and each of us, our and each of our heirs, executors, administrators, successors and assigns, firmly by these presents, and we do authorize and empower any attorney of any Court of Record to appear for us and each of us, our and each of our heirs, executors, administrators, successors and assigns and confess judgment in favor of said School District, its successors and assigns, against us and each of us, our and each of our heirs, executors, administrators and assigns, together with an attorney's commission of twenty per cent (20%), besides costs of suit, with release of errors and waiver of all laws for stay of execution and exemption.

Sealed with the seal of the said Principal and with the corporate seal of the said Surety, duly executed the ..... day of ..... in the year of our Lord **TWO THOUSAND EIGHTEEN (2019)**.

WHEREAS, the above Principal entered into a certain contract of even date herewith with the School District of Philadelphia, a copy of which contract is attached hereto and incorporated herein.

NOW THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall remedy without cost to the School District of Philadelphia any defects in the work under the aforesaid contract which develop during a period of one (1) year from the date of final completion and acceptance of the work performed under the aforesaid contract, then this Obligation to be void; otherwise to be and remain in full force, virtue and effect. The School District of Philadelphia, or its successors having jurisdiction in the premises, shall determine in its sole discretion whether there exists one or more defects, which is caused by defective, inferior or substandard materials or workmanship, which is the subject of this Obligation, and whether such defects have been satisfactorily remedied.

WE FURTHER AGREE, that if, in the opinion of the said School District, if the said Principal has not remedied all defects as aforescribed, we will pay all loss occasioned thereby, and that the ascertained amount thereof, which shall be determined by the Board of Education of said School District, and of the truth of which oath or affirmation shall be made by the President of the said Board of Education or by any member thereof, shall be final, binding and conclusive upon us, and that execution may forthwith issue against us for the ascertained amount. The Surety also agrees to perform this obligation promptly upon a declaration by the said School District that such performance is required pursuant to the terms of this Obligation.

It is understood and agreed that no change, extension of time, alteration, deduction or addition to the provisions, terms, conditions and covenants of the aforesaid contract or specifications or plans or supplemental bulletins, if any, and no change, extension of time, alteration, deduction or addition in the work to be done or material to be supplied thereunder, shall, in any manner affect the obligation of the Principal and Surety on this bond and the suretyship of this bond shall be taken as covering all such matters and all liability by reason thereof. The Surety does hereby waive notice of any such change, extension of time, alteration, deduction or addition to the terms of the contract, specifications, plans and supplemental bulletins. It is further understood and agreed that in the sole discretion of the School District of Philadelphia, the Surety may be required to perform and carry out the provisions of the aforesaid contract with respect to the remedy of the defects as aforescribed.

This Obligation incorporates by reference Public Works Contractors' Bond Law of 1967; provided, however, that in the event of any inconsistency or ambiguity in the meaning of this Obligation and the said Public Works Contractors' Bond Law of 1967, the express terms of this Obligation shall govern and control.

If Contractor is an individual proprietorship or is a partnership, sign here ↓

Witness: ..... (Seal)  
..... (Trade Name of Firm)  
..... (Seal)  
..... (Signature of Owner or Partner)

If Contractor is a corporation, sign here ↓

(Corporate Seal)  
.....  
..... (Name of Corporation)

Attest: ..... By: .....  
(Secretary or Treasurer) (President or Vice-President)

(Surety sign below)

.....  
Witness as to Surety