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File ID Number	22-0285
Introduction Date	3-23-22
Enactment Number	22-0506
Enactment Date	3-23-2022 CJH



# Memo

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Curtiss Sarikey, Chief of Staff  
Sailaja Suresh, Senior Director of Strategic Projects

**Meeting Date** March 23, 2022

**Subject** Approve Supply Agreement for Test Kits with Office Depot, LLC and Resolution No. 2122-0207 Authorizing Use of Sole Source Exception to Public Bidding

**Action** Approve Supply Agreement for Test Kits with Office Depot, LLC and Resolution No. 2122-0207 Authorizing Use of Sole Source Exception to Public Bidding

**Background & Discussion** The Board of Education, via Resolution No. 2122-0003 - Requiring COVID-19 Testing At All School Sites, has directed the District to provide biweekly testing at each school site. As such, the District is purchasing iHealth antigen test kits to ensure we have a stable supply of tests for our community for the remainder of the school year. This is purchase 2 of 2.

**Fiscal Impact** \$1,031,410.80 - ESSER II

**Attachment**

- Resolution No. 2122-0207 – Authorizing Use of Sole Source Exception for Office Depot, LLC
- Supply Agreement for Test Kits

**RESOLUTION OF THE  
BOARD OF EDUCATION  
OAKLAND UNIFIED SCHOOL DISTRICT**

**RESOLUTION NO. 2122-0207**

**AUTHORIZING USE OF SOLE SOURCE EXCEPTION TO PUBLIC BIDDING FOR  
SUPPLY AGREEMENT FOR TEST KITS WITH OFFICE DEPOT, LLC**

**WHEREAS**, the Oakland Unified School District (“District”) has a need to contract with Office Depot, LLC for Covid-19 tests;

**WHEREAS**, the contemplated contract is in an amount of \$1,031,410.80;

**WHEREAS**, under Public Contracts Code section 20111, a contract in this amount would ordinarily require competitive bidding;

**WHEREAS**, one exception to this competitive bidding requirement is the “sole source” exception, which applies where there is only one supplier of a needed good or service (Los Angeles Gas & Electric Corporation v. Los Angeles, 188 Cal. 307 (1920); Hodgeman v. City of San Diego, 53 Cal.App.2d 610 (1942); County of Riverside v. Whitlock, 22 Cal.App.3d 863 (1972));

**WHEREAS**,

- The Board of Education has directed staff to set up bi-weekly testing at all OUSD school sites,
- Due to the Omicron variant, Office Depot, LLC is the only company that could provide Covid-19 Tests in a timely manner to sustain the District’s testing policy,
- The Omicron variant has reinforced the District’s resolve to have a sufficient supply of tests to combat future spikes in cases,
- The District is committed to continued safety and health measures by providing families with at-home tests prior for use after Spring Break and before returning to school,

**NOW, THEREFORE, BE IT RESOLVED THAT:**

1. The District waives competitive bidding to allow the District to contract directly with Office Depot, LLC for Covid-19 tests because Office Depot is the sole source for this good.
2. The Supply Agreement for Test Kits for Office Depot, LLC to provide Covid-19 Tests is hereby approved.

**PASSED AND ADOPTED** on [date], by the Governing Board of the Oakland Unified School District by the following vote:

PREFERENTIAL AYE: None

PREFERENTIAL NOE: None

PREFERENTIAL ABSTENTION: None

PREFERENTIAL RECUSE: None

AYES: Aimee Eng, Clifford Thompson, Vice President Benjamin "Sam" Davis, President Gary Yee

NOES: None

ABSTAINED: VanCedric Williams, Mike Hutchinson

RECUSED: None

ABSENT: Student Director Samantha Pal, Student Director Natalie Gallegos Chavez, Shanthi Gonzales

### **CERTIFICATION**

We hereby certify that the foregoing is a full, true and correct copy of a Resolution passed at a Regular Meeting of the Board of Education of the Oakland Unified School District held on [date].

<b>Legislative File</b>	
File ID Number:	22-0285
Introduction Date:	3-23-22
Enactment Number:	22-0506
Enactment Date:	3-23-2022 CJH
By:	

### **OAKLAND UNIFIED SCHOOL DISTRICT**



3-24-2022

Gary Yee  
President, Board of Education



3-24-2022

Kyla Johnson-Trammell  
Superintendent and Secretary, Board of Education

## SUPPLY AGREEMENT FOR TEST KITS

This Supply Agreement for Test Kits ("**Agreement**") is made and entered into as of 1/10/2022 ("**Effective Date**") between Office Depot, LLC, a Delaware limited liability company, located at 6600 North Military Trail, Boca Raton, FL 33496 ("**Office Depot**") and Oakland Unified School District, located at 900 High Street, Oakland CA 94601 ("**Customer**").

**WHEREAS**, Customer seeks to purchase certain COVID-19 test kits ("**Test Kits**") from Office Depot;

**WHEREAS**, entering into this Agreement constitutes an essential part of Office Depot's decision to sell Test Kits to Customer; and

**NOW, THEREFORE**, in consideration of the mutual covenants set forth herein, the parties agree as follows:

1. **Products & Pricing.** Office Depot agrees to supply to Customer those Test Kits set forth in **Exhibit A** attached hereto and incorporated herein by reference at the prices set forth therein. Customer shall purchase the exact quantities of the Test Kits as specified on **Exhibit A**, and shall do so at the prices also set forth on **Exhibit A**. The parties acknowledge that this is a one-time purchase of the Test Kits by Customer and to the extent Customer desires to purchase additional quantities of the Test Kits, or any other products sold by Office Depot, a separate written agreement between the parties is required. Sales of Test Kits shall not be included as part of any incentives or rebates.

2. **Delivery.** Office Depot will arrange to have the Test Kits drop shipped directly from the manufacturer. Additional freight charges may apply for items exceeding certain attributes regarding weight and/or dimensions, Hawaii, Alaska and Puerto Rico orders, special orders and/or rush deliveries.

3. **Payment Terms.** Invoices are due twenty (20) days from the date of invoice. Invoices not paid within twenty (20) days shall bear interest at the rate of 1.5% per month or the maximum amount allowed under law, whichever is less, from the due date of the invoice. Customer's credit limit shall be established by Office Depot, which reserves the right to lower Customer's credit limit or refuse to ship any orders if at any time: (a) Customer is delinquent in making payments to Office Depot or is otherwise in breach of this Agreement; or (b) Customer's credit standing becomes impaired or reasonably unsatisfactory to Office Depot.

In certain instances, orders may be paid using a credit card; provided, however, if Customer elects to use a credit card as a form of payment, payment is due at the time of purchase.

4. **Returns.** No returns or exchanges of the Test Kits are permitted, and the parties acknowledge that Office Depot shall not be required to accept any returns of the Test Kits. Customer shall be responsible for disposing of the Test Kits in accordance with all applicable federal, state, county and local law and regulations, including environmental rules and regulations.

5. **Indemnification and Hold Harmless.** Customer hereby waives, releases, relinquishes, discharges and agrees to defend, indemnify, protect and hold harmless Office Depot, its subsidiaries and affiliates and their respective officers, agents and employees, of and from any and all claims, demands, liabilities, costs and expenses in any way related to the Test Kits, including any injury to persons, including death caused by, growing out of or happening in connection with COVID-19.

6. **Limitation of Liability.** NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY IN ANY OTHER AGREEMENTS BETWEEN THE PARTIES, OFFICE DEPOT'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THE TEST KITS AND THIS AGREEMENT, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL BE LIMITED TO THE AMOUNT PAID BY CUSTOMER TO OFFICE DEPOT FOR THE TEST KITS. In no event shall Office Depot be liable for any indirect, incidental, special, punitive or consequential damages, including without limitation damages for lost profits, even if advised as to the possibility of such damages.

7. **Disclaimer of Warranty.** TEST KITS ARE PROVIDED ON AN "AS IS" BASIS, WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES THAT THE TEST KITS ARE FREE OF DEFECTS, MERCHANTABLE, FIT FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE TEST KITS IS WITH CUSTOMER AND IN NO EVENT WITH OFFICE DEPOT. SHOULD ANY TEST KITS BE MISUSED OR PROVE DEFECTIVE IN ANY RESPECT, REGARDLESS OF WHETHER THE USE OR MISUSE IS BY CUSTOMER, AN END USER, OR OTHERWISE, CUSTOMER ASSUMES ANY AND ALL ENSUING COSTS, DAMAGES AND EXPENSES. NO USE OF ANY TEST KITS IS AUTHORIZED EXCEPT UNDER THIS DISCLAIMER.

- 8. **Assignment.** Customer may not assign this Agreement without the prior written consent of Office Depot.
- 9. **Force Majeure.** Office Depot shall be excused from performance and not be considered in default in the performance of its obligations to the extent that the performance of any such obligation is prevented or delayed by any cause that is beyond its reasonable control.
- 10. **Notices.** All notices, requests, demands and other communications under this Agreement shall be given in writing and sent to the mailing addresses set forth on the signature page of this Agreement.
- 11. **Confidentiality.** "Confidential Information" shall mean all information obtained by one party from the other party that is not generally known to the public and that a reasonable business person would deem confidential. The receiving party will treat Confidential Information as confidential and proprietary and, until two (2) years after expiration or earlier termination of this Agreement, will: (a) use the Confidential Information solely for the purposes set forth in this Agreement; (b) take suitable measures to maintain the confidentiality of the Confidential Information; and (c) not disclose or otherwise furnish the Confidential Information to any third party other than employees or independent contractors of the recipient who have a need to know the Confidential Information to perform its obligations.
- 12. **Choice of Law.** This Agreement shall be construed and governed in accordance with the laws of the State of Florida, without regard to conflict of laws principles.
- 13. **Terms and Conditions.** The terms and conditions located at [www.business.officedepot.com](http://www.business.officedepot.com) are incorporated by reference. In the event of any conflict, the terms and conditions of this Agreement shall govern with respect to the Test Kits.
- 14. **Severability Clause.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the court or other tribunal making such determination is authorized and instructed to modify this Agreement so as to effect the original intent of the parties as closely as possible so that the transactions and agreements contemplated herein are consummated as originally contemplated to the fullest extent possible.
- 15. **Entire Agreement.** Each party hereby objects to and rejects the provisions of any purchase order, acceptance or acknowledgment, agreement or other document which are inconsistent with or in addition to the provisions of this Agreement. This Agreement is the complete and exclusive contract between the parties with respect to the Test Kits and may be modified only in writing signed by authorized representatives of each party. No prior proposals, quotations, statements, forecasts, course of dealing, or usage or trade will be part of the Agreement between the parties.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed as of the Effective Date.

**OFFICE DEPOT, LLC**

**CUSTOMER**

By: Wayne Lajoie  
 Name: Wayne Lajoie  
 Title: Vice President  
 Date: 1/12/2022

By: Preston Thomas  
 Name: Preston Thomas  
 Title: Chief systems and services officer  
 Date: 1/12/2022



Approve as to form by Josh Daniels on March 18, 2022

**EXHIBIT A**

**Products and Pricing**

<b>SKU:</b>	<b>Description:</b>	<b>Vendor Number:</b>	<b>Sell Price:</b>	<b>Order Quantity:</b>
7090695	HOME, COVID-19, TEST, IHEALTH	71054001	\$19.49	52,920 *

\* Order Quantity is a minimum of 7,560 boxes and is required to be a multiple of 7,560.