

**WHEREAS**, N.J.S.A. 18A:18A-2(cc) defines proprietary as goods or services of a specialized nature that may be made or marketed by a person or persons have the exclusive right to make or sell them when the need for such goods or services has been certified in writing by the board of education to be necessary for the conduct of its affairs, and;

**WHEREAS**, N.J.A.C. 5:34-9.1 provides guidance on the purchase of proprietary goods or services stating "in determining whether a good or service meets the definition of "proprietary" set forth in N.J.S.A. 40A:11-2(39) or 18A:18A-2cc, the terms used in the definition of "proprietary" shall be defined as follows:

1. "Specialized nature" means that the purpose to which the goods or services will be used has such unique characteristics that only the goods or services of a single vendor are capable of meeting the contracting unit's needs and the following shall be considered as non-limiting examples of goods or services that may, under appropriate conditions, meet the test of being of a specialized nature:

i The use of a good or services other than the proprietary one will undermine the functionality or operational performance of existing facilities; or

ii The good or service is patented and the patented feature is essential for operational performance.

2. "Necessary for the conduct of its affairs" means that the public need for the proprietary designation is of such a compelling nature that the value to the public that is gained by the proprietary designation overshadows the public benefit of permitting "brand name or equivalent" and the benefits of such competition with the following being considered as non-limiting examples of goods or services that may, under appropriate conditions, meet the test of being necessary for the conduct of its affairs:

i The contracting unit has a substantial investment in facilities, training, replacement parts, or complimentary items that warrants reliance on a specific manufacturer or vendor to maintain the value of the investment.

ii Unique circumstances as to a facility or environment preclude the use of other goods or services, and:

**WHEREAS**, N.J.A.C. 5:34-9.1 goes on further stating that "Prior to advertising for the receipt of bids that includes proprietary goods or services, the contracting agent or purchasing agent shall certify in writing to the chief executive officer of the contracting unit an explanation of why the goods or services are of a specialized nature and necessary for the conduct of the affairs of the local contracting unit and the description shall not consist of rewriting or paraphrasing the statute or regulations but shall be specific to the circumstances and such certification shall be included as part of the bid documents, and:

**WHEREAS**, the Brick Township Board of Education currently utilizes Andover Controls Continuum based BACnet system, manufactured by Schneider Electric, for the building automation systems throughout the district, and;

**WHEREAS**, the Brick Township Board of Education is in need of support for the service and maintenance of the Andover Controls Continuum based BACnet system, and;

**WHEREAS**, the Schneider Electric/Continuum based BACnet system is proprietary in that the system utilizes a unique programming language and 'brand specific functionality' that is unlike any other manufacturer and no other manufacturer of similar products is 100% similar and

compatible to this product and the continued use of Schneider Electric/Continuum products is necessary for the continuity of building maintenance and facilities support and therefore the use of another product will undermine the functionality of the existing equipment and make support of the Board's facilities more costly and therefore the Schneider Electric/Continuum based BACnet system meets the definition of Specialized Nature, and:

**WHEREAS**, the public need for the proprietary equipment is of a compelling nature such that the value to the public that is gained by the proprietary designation outweighs the public benefit of permitted brand name or equivalent and benefit of such competition and the Schneider Electric/Continuum System is essential to the District's ability to maintain their buildings in a consistent manner utilizing continuity in operation, maintenance and repairs and although competing products could essentially provide 'similar functionality' and provide a common 'end result', the Board has a significant investment in the Schneider Electric/Continuum brand and has employees and staff trained in the programming, operation and maintenance and as such, the maintenance costs and emergency repair costs are reduced and utilizing a competing product would require new and additional training and additional spare parts and attic stock and in summary, competing products may present minor savings in upfront costs but will certainly be more expensive to the public during the life of the equipment, and;

**WHEREAS**, the Business Administrator/Board Secretary has certified to the Superintendent that the Andover Controls Continuum based BACnet system is of a specialized and proprietary nature and is necessary for the efficient conduct of the affairs of the Brick Township School District;

**NOW THEREFORE BE IT RESOLVED**, the Board hereby authorizes the advertisement of bids that include a proprietary designation for the service and maintenance of Andover Controls Continuum products and related equipment.