



Spring Branch Independent School District

955 Campbell Road, Houston, Texas 77024
Phone (713) 464-1511

Standard Terms & Conditions Governing SBISD's Purchase of Goods and Services

Purchasing Department
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Houston, Texas 77055-6016
Phone 713.251.1100
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Caution: Vendors, Contractors, and Prospective Respondents are cautioned to inform themselves fully of the terms, conditions, and instructions hereinafter set forth.

Spring Branch Independent School District ("SBISD") contracts for the purchase of goods and services, except contracts for the purchase of produce or vehicle fuel, valued at \$50,000 or more in the aggregate for each 12-month period shall be made by one of the procurement methods stipulated in Chapter 44, section 44.031 of the Texas Education Code and approved by the SBISD Board of Trustees.

These Standard Terms & Conditions ("Standard Terms & Conditions") are requirements that are binding upon the firm, organization, agent, or individual awarded an SBISD contract for goods or services through either (i) participation in a competitive procurement process (i.e. Invitation to Bid, Request for Proposals, Request for Qualifications, Competitive Sealed Proposals, etc.) or (ii) receipt of a duly authorized SBISD Purchase Order. Unless agreed to otherwise in writing between authorized representatives of SBISD and the vendor, these Standard Terms & Conditions communicate SBISD's expectations in regards to the vendor's performance in connection with SBISD's purchases.

NOTE: Any terms, specifications, or requirements that are specific to a competitive procurement process shall apply only to a vendor who is awarded a Contract as a result of the vendor's participation in such process.

1. SOLICITATION INSTRUCTIONS, TERMS, AND CONDITIONS

Any applicable solicitation documents and related terms, conditions, specifications, instructions, and any applicable addenda (collectively, the "solicitation") will be made available on the Purchasing Department's Bids & Proposals webpage. Interested vendors may access these documents by clicking on the following link:

<https://www.springbranchisd.com/about/departments/finance/purchasing/bids-proposals>

At SBISD, a contract vendor is a vendor that has been awarded a contract authorized by the SBISD Board of Trustees as a result of a competitive procurement process, an Interlocal Agreement, or a Cooperative Purchasing Program of which SBISD is a member. A non-contract vendor may still be authorized to engage with SBISD if certain procurement requirements and criteria are met. Vendors wanting to inquire about their eligibility to engage with SBISD should contact the Purchasing Department at 713.251.1100.

1.1. In a solicitation, the terms shall mean as follows:

- 1.1.1 **"Best Value"** means the method by which a proposal/contract, if any, is awarded, in accordance with applicable laws, rules, and regulations. Best value includes multiple parameters, including experience, references, quality of the respondent's product(s)/service(s), and price.
- 1.1.2 **"Contract"** means the final contract for each product and/or service contract awarded as a result of the solicitation. It shall include the solicitation, the vendor's response to the solicitation, the attached and incorporated attachments, addendums, and/or any exhibits as detailed in the Contract Terms and Conditions.
- 1.1.3 **"Purchase Order or PO"** means the SBISD purchase order(s) issued to vendor(s). Special terms and conditions agreed to by the vendor and SBISD may be added as addenda to the PO, including insurance, bonding, warranty, etc.
- 1.1.4 **"Regular Hours"** means Monday through Friday between the hours of 7 a.m. and 4 p.m., excluding the following holidays: MLK Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and New Year's Day.
- 1.1.5 **"SBISD"** refers to the Spring Branch Independent School District, a Harris county school district established under the laws of the State of Texas, with its principal office located at 955 Campbell Road, Houston, Texas 77024.
- 1.1.6 **"Respondent"** refers to a person, organization, business or other entity that submits a response to the solicitation. The term respondent includes its officers, employees, contractors, consultants, agents and representatives. May be used interchangeably with "vendor."
- 1.1.7 **"Response"** means a response to the solicitation that, if accepted, would bind the respondent to perform the resultant contract. Responses to invitations for bids (sealed bidding) are offers called "bids" or "sealed bids"; responses to requests for proposals

(negotiation) are offers called “proposals”; however, responses to requests for quotations (simplified acquisition) are “quotations,” not offers.

1.1.8 “Vendor” refers to the person(s)/firm(s)/entity(ies) to whom a contract is awarded pursuant to the solicitation.

1.2. APPLICABILITY. These conditions are applicable and form a part of the solicitation, the resulting contract documents, and each purchase order issued for materials, equipment, and/or services included in the specifications and response forms issued herewith.

1.3. CODE OF SILENCE. SBISD has adopted a “Code of Silence” policy to enforce its commitment to ethical contracting standards and improve accountability and public confidence.

1.3.1. The Code of Silence is the prohibition on any communication regarding a competitive procurement solicitation between:

1. Any person who seeks an award from SBISD, including potential vendors or vendor’s representative, and
2. Board members, the Superintendent of Schools, senior staff members, principals, department heads, directors, managers, or other District representatives who have influence in the evaluation or selection process.

1.3.2. SBISD’s Code of Silence for competitive procurements begins the day the solicitation is posted to the Purchasing Department’s Bids & Proposals webpage (or electronic bidding platform) and ends after the Board of Trustees has approved the project, or upon the execution of the contract, whichever occurs first.

1.4. QUESTIONS concerning the solicitation shall be addressed to the Director of Purchasing Services or a designee from the Purchasing Department.

1.5. CONFLICT OF INTEREST DISCLOSURES. By signing the solicitation, a respondent affirms that he/she has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with the response submitted.

1.5.1. RESPONDENTS SHALL NOTE any and all relationships that might be a conflict of interest and include such information with the response.

1.5.2. For SBISD to award a contract, the Purchasing Department must have on file the completed Conflict of Interest Questionnaire. The Conflict of Interest Questionnaire must be complete with company name, signature, and date even if company has no conflict of interest.

1.6. NON-COLLUSION STATEMENT. Respondents are required to certify a Non-Collusion Statement. By signing the solicitation and the Non-Collusion Statement, a respondent affirms:

1.6.1. To the best of his/her knowledge, the response has been arrived at independently, and is submitted without collusion with anyone to obtain information or gain any favoritism that would in any way limit competition or give them an unfair advantage over other respondents in the award of the solicitation.

1.6.2. Such response is genuine and not collusive or a sham; that respondent has not colluded, conspired, connived or agreed, directly or indirectly, with an entity or person, to put in a sham response or to refrain from responding, and has not in any manner, directly or indirectly, sought by Contract or collusion, or communication or conference, with any person, to fix the proposed price or that of any other respondent, or to fix any overhead, profit or cost element of said proposed price, or of that of any other respondent, or to secure any advantage against SBISD or any person interested in the proposed contract, and that all statements in said response are true.

- 1.7. **DISQUALIFICATION.** Each respondent, by submitting its response, represents that the respondent has read and understands the solicitation and the resulting Contract, if applicable. Any language to the effect that the respondent does not consider the solicitation to be part of a contractual obligation may result in the response being disqualified. Additionally, a respondent may be disqualified before or after the responses are opened upon evidence of collusion with the intent to defraud or evidence of intent to perform other illegal activities in order to obtain an unfair competitive advantage.
- 1.8. **SPECIFICATIONS.** Specifications may be those developed by the using department or by the manufacturer to represent items of regularly manufactured products.
- 1.9. **DISTRICT SPECIFICATIONS** have been developed by the using department to show minimal standards as to the usage, materials, and contents based on their needs.
- 1.10. **MANUFACTURER'S SPECIFICATIONS (Design Guide).** Whenever an article in the solicitation is defined by description as either a proprietary product or by using the name of a manufacturer, the respondent is encouraged to offer an item which is equal in quality, durability and in full compliance with our specifications. If the term equivalent, alternate, or equal is not inserted, it shall be implied. The specified article or material shall be understood as descriptive, not restrictive.
- 1.11. **RESPONSES SHALL BE SUBMITTED ON THESE FORMS.** No deviations to the general, special, and/or contract terms and conditions will be accepted.
- 1.12. **ACCEPTABLE RESPONSE FORMATS.** Responses must be sealed and must be submitted according to the instructions provided in the solicitation document furnished by the Purchasing Department. This may include an instruction to submit the response by hand delivery, mail, or via the electronic bidding platform. Faxed responses will not be accepted by SBISD since the fax process does not provide for the delivery of a sealed response.
- 1.13. **ANY REQUIRED ADDENDA** will be posted on the Bids & Proposals webpage (for offline solicitations) or in the electronic bidding system (for online solicitations). SBISD reserves the right to revise and amend the specifications contained in the solicitation prior to the date set for the opening. Respondents are requested to clarify any ambiguity, conflict, discrepancy, omission or other error(s) in the solicitation in writing, and request the modification or clarification desired. SBISD will issue an addendum to evidence any revisions or amendments made to the solicitation. As a courtesy, every effort will be made to send an issued addendum to the parties known to have been furnished a complete copy of the solicitation.
- 1.14. **RESPONSIBLE VENDOR.** A responsible vendor is a vendor who has adequate financial resources (or the ability to obtain such resources), can comply with the delivery requirements, and is a qualified and established firm regularly engaged in the type of business that provides the items listed herein.
- 1.15. **FINANCIAL RESPONSIBILITY.** SBISD assumes no financial responsibility for any costs incurred by respondents in developing and submitting a response or any amendments or addenda, participating in pre-proposal meetings, participating in any negotiation sessions or discussions, or any other costs incurred by respondents pursuant to the solicitation.
- 1.16. **RESPONSIVE RESPONSES.** Responses shall be deemed responsive if they have been submitted on time, and comply with all material and administrative aspects of the solicitation. Respondents are expected to examine and be familiar with all requirements and obligations of the entire solicitation and the evaluation criteria as set forth in 2.0 Evaluation and Award. Failure to do so will be at the respondent's risk.
- 1.17. **BEST AND FINAL OFFERS** must be received by the date and time provided during discussions and/or negotiations, or the originally submitted response will be used for further evaluation and award recommendation.
- 1.18. **EVALUATION OF RESPONSES** takes into account the following considerations: price, quality, suitability for the intended use, probability of continuous availability, proposer's service, safety record, and date of proposed delivery and placement. It is not the policy of SBISD to award contracts based on low response prices alone.

- 1.19. WITHDRAWAL OF RESPONSES** will not be allowed for a period of 90 days following the response opening. Rejection or withdrawal after the offer is accepted shall constitute a breach of contract.
- 1.20. RETENTION OF RESPONSE DOCUMENTATION.** All response materials and supporting documentation that are submitted in response to the solicitation becomes the permanent property of SBISD.
- 1.21. REBID.** SBISD may elect to rebid the project if SBISD believes that, in its sole discretion, it is in the best interest of SBISD to do so.
- 1.22. FORMATION OF CONTRACT.** A response to the solicitation is an offer to contract with SBISD based upon the terms, conditions, scope of work, and specifications contained in the solicitation. Clarifications and negotiations, if applicable, will become a part of the completed contract if included in the final contract document, duly executed by the respondent and accepted by SBISD. An offer does not become a contract unless and until SBISD accepts it. A contract is formed when SBISD's Board of Trustees/Director of Purchasing Services approves the complete offer and the Director of Purchasing Services, or a designee from the Purchasing Department, signs the final notification of award documents.
- 1.23. MULTIPLE CONTRACT AWARDS.** SBISD reserves the right to award multiple contracts under the solicitation, including multiple contracts for each product and/or service category. Product and/or service categories are established at the sole discretion of SBISD. The decision to award multiple contracts, award only one contract, or to make no awards rests solely with SBISD. These facts should be taken into consideration by each respondent.
- 1.24. THROUGH INTERLOCAL AGREEMENTS**
Pursuant to the Texas Education Code 44.031(a)(5), the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code and Chapter 271 of the Texas Local Government Code, it is anticipated that school districts will recognize the broad applicability of SBISD contracts and how they apply to school districts.

All respondents should indicate their willingness to provide all or some of the goods and/or services requested in the solicitation to other Districts. The responses to the solicitation will be used as a baseline to determine which firms may be eligible for further participation in SBISD's marketing program. The marketing program is designed to help school districts improve their educational learning and business environments by the formation of mutually beneficial partnerships with firms that provide supportive expertise and services.

While each Interlocal Agreement will encompass part, or all of the services requested, each will be individually adapted, using the response from the solicitation, to the individual needs of the participating district. Separate, but related contracts, will be drawn to reflect Agreements on each additional district partnership. Even though the solicitation has been developed to be as comprehensive as possible, it is impossible to assure that all services needed in every Interlocal Agreement will be included in the response. Therefore, all respondents responding positively to this section shall also agree that such additional goods and/or services may be needed to satisfy the requirements of future Interlocal Agreements to provide goods and/or services to other districts will be included as part of the solicitation.

- 1.25. OPEN RECORDS POLICY.** SBISD is a governmental entity subject to the Texas Public Information Act. Responses submitted to SBISD as a result of the solicitation may be subject to release as public information after contracts are executed or the procurement is terminated. If a respondent believes that its response, or parts of its response, may be exempted from disclosure under Texas law, the respondent must specify page-by-page and line-by-line the parts of the response that it believes are exempt. In addition, the respondent must specify which exception(s) to the Texas Public Information Act are applicable and provide detailed reasons to substantiate the exception(s). Vague or general claims to confidentiality will not be accepted. SBISD assumes no obligation or responsibility relating to the disclosure or nondisclosure of information submitted by respondents.
- 1.26. CONFIDENTIAL INFORMATION OR TRADE SECRETS (Government Code, Article 252.049).** If any of the information is considered to be confidential or a trade secret belonging to the respondent and, if released would give advantage to a competitor or other respondent, that information should be

filed with the response in a separate envelope marked "CONFIDENTIAL – DO NOT DUPLICATE WITHOUT PERMISSION".

1.27. SBISD RESERVATIONS

SBISD reserves the right to:

- a) Cancel the solicitation in whole or in part, at the sole discretion of SBISD.
- b) Accept, reject, or negotiate modifications in any terms of the response or any parts thereof.
- c) Conduct oral interviews/discussions or presentations necessary to select the best value respondent and/or to obtain competitive pricing.
- d) Reject and/or disqualify any or all responses received.
- e) To award contracts for individual products or services as may appear advantageous.
- f) To negotiate separately in any manner necessary to serve the best interest of SBISD.
- g) Waive any formalities, technicalities, or other defects if deemed in the best interest of SBISD.
- h) Request clarification and/or correction by respondent(s) to eliminate minor errors, clerical errors, and/or non-substantive irregularities.
- i) Be the sole judge of quality and equality.
- j) Award one or more contracts, in part or in whole, to a single or multiple respondents, in SBISD's sole discretion.
- k) Make all decisions regarding the solicitation, including, without limitation, the right to decide whether a response substantially complies with the requirements of the solicitation.

1.28. SUPPLIER DIVERSITY PROGRAM. SBISD will use its best efforts to encourage small, minority and women-owned businesses to participate in current and future purchases of goods and services. Any business wishing to be identified by SBISD as a small, women-owned or minority business shall be certified as such either by the State of Texas or Texas Local Government which conducts a certification or by self-certification.

1.29. DEFAULT CONDITIONS. If the respondent breaches any provision of the solicitation stipulations, becomes insolvent, enters voluntary or involuntary bankruptcy, or receivership proceedings, or makes an assignment for the benefit of creditors, SBISD will have the right (without limiting any other rights or remedies that it may have in the contract or by law) to terminate the contract with five (5) days written notice to the respondent.

SBISD will then be relieved of all obligations, except to pay the value of the respondent's prior performance (at a cost not exceeding the contract rate). The respondent will be liable to SBISD for all costs exceeding the contract price that SBISD incurs in completing or procuring the service as described in the solicitation. SBISD's right to require strict performance of any obligation in the contract will not be affected by any previous waiver, forbearance, or course of dealing.

1.30. SAMPLES, when called for, shall be submitted with the response per instructions set forth in the Special Terms and Conditions.

1.30.1. ADDITIONAL SAMPLES needed for a response to be evaluated properly shall be delivered within (5) business days from the time the respondent is notified by the Purchasing Department.

1.30.2. SAMPLE ITEMS from the successful respondent may be retained by SBISD in order to determine whether the quality and workmanship of the delivered items are comparable to the sample.

2. SPECIAL SOLICITATION TERMS AND CONDITIONS

2.1. COMPLIANCE WITH SPECIFICATIONS AND CONTRACT

Respondents are requested to submit a response offering their total line of available products and services that are commonly purchased by school districts. Responses shall be deemed responsive if they comply with all aspects of the solicitation. Respondents are required to respond to all requests identified in the solicitation and indicate their acceptance to the terms of the solicitation and the Contract terms in Section 5.0 Contract Terms and Conditions.

2.2. CLARIFICATION AND DISCUSSIONS

The Director of Purchasing Services, or a designee from the Purchasing Department, may request clarification from respondent(s) for eliminating minor errors, clerical errors, and/or non-substantive irregularities. Clarification does not give a respondent the opportunity to revise, change, or modify its response in any way except to the extent of correction of the error. Discussion between the Director of Purchasing Services, or a designee from the Purchasing Department, and respondent may also take place after the initial receipt of responses. The Director of Purchasing Services, or a designee from the Purchasing Department, reserves the right to conduct discussions with all, some, or none of the respondents submitting responses. The District will not assist the respondent in the revision or modification of its response.

2.3. DESCRIPTION OF PRODUCT(S) AND/OR SERVICE(S). Respondent shall describe the product(s) and/or service(s) it is offering to provide to SBISD. If available, a matrix that will allow SBISD to appraise the respondent's products and/or services offering versus other respondents shall also be provided.

2.4. DESCRIPTION OF VALUE-ADDED PRODUCT(S) AND/OR SERVICE(S). Respondents shall include any additional information he/she believes SBISD should have when making its decision concerning contract award(s), if any, including detailing any value-added options offered by respondent. If value-added options are best described in a line item format, add value-added items to the designated area at the end of the line item list.

2.5. QUANTITIES REQUIRED are substantially correct. SBISD reserves the right to purchase additional quantities above that stated at the same unit price unless otherwise specified by the respondent.

2.6. NO GUARANTEE OF QUANTITIES

SBISD makes no guarantee or commitment of any kind concerning quantities that will actually be purchased under the solicitation and the resulting contract, if any. SBISD makes no guarantee or commitment of any kind regarding usage of any contracts resulting from the solicitation.

2.7. DELIVERIES required in the solicitation shall be freight prepaid F.O.B. destination and response prices shall include all freight and delivery charges. For shipments designated on the purchase order to the SBISD Central Warehouse, delivery hours are 7:00 A.M. to 3:00 P.M., Monday through Friday. NO DELIVERIES WILL BE ACCEPTED AFTER 3:00 P.M.

2.8. ENERGY EFFICIENT REQUIREMENTS. SBISD is committed to enhancing the learning environment, and to National, State, and Local energy conservation and reliability goals. Design professionals should consider including innovative features of high performance/sustainable/green schools as defined by the Sustainable Building Industry Council as facilities that are healthy and productive for students and teachers (acoustic, thermal, and visual comfort; natural daylight; superior indoor air quality; safe and secure); cost effective (optimized energy performance, life cycle approach to costs of ownership, and a commissioning process); and sustainable (energy conservation; high-performance mechanical and lighting systems; environmentally preferable materials; and water-efficient design).

2.9. OTHER REQUIREMENTS. Any problems or discrepancies that are not covered by the above requirements should be directed to the Director of Purchasing Services for a determination or clarification prior to any action taken on said problem or discrepancy. If the respondent fails to make such request, no excuse will thereafter be entertained for failure to carry out the work in a satisfactory manner.

3. CONTRACT TERMS AND CONDITIONS

These Contract Terms and Conditions will form part of the final contract for each product and/or service contract **AWARDED AS A RESULT OF THE SOLICITATION** and the terms and conditions of each Purchase Order or response forms issued in connection with the solicitation.

Solicitations that are qualified with conditional clauses, items not called for, or other irregularities may be considered non-responsive by SBISD and eliminated from further consideration. Deviations or exceptions stipulated in a vendor's response may result in disqualification. Any language to the effect that the vendor does not consider the solicitation and/or these terms and conditions to be part of a contractual obligation may result in the vendor's proposal being disqualified.

- 3.1. **DEFINITIONS.** The terms used in the Contract shall have the meanings assigned to them in **1.0 Notice of Intent** of the solicitation.
- 3.2. **CONTRACT TERMS; AMENDMENT.** The terms and conditions of the Contract shall govern all procurements conducted hereunder. No amendment of the Contract shall be permitted unless and until first approved in writing by SBISD, and no such amendment shall have any effect unless and until a written amendment to the Contract is executed by SBISD's Superintendent of Schools or designee.
- 3.3. **LETTER OF AWARD.** Notwithstanding anything to the contrary contained in these terms and conditions, upon SBISD's acceptance of a response, the vendor and SBISD will have entered into a binding contract. The contract is enforceable from the time of acceptance without regard to the time of notification to the vendor of acceptance. Vendor will be notified by a "Letter of Award" issued by the Director of Purchasing Services, or a designee from the Purchasing Department. This letter, together with the vendors signed Solicitation Forms, Purchase Order, and Contract Documents will be defined as the "original" contract.
- 3.4. **NON-EXCLUSIVE CONTRACT.** Any contract resulting from the solicitation is non-exclusive and shall be awarded with the understanding that the contract is for the sole convenience of SBISD. Nothing in the Contract may be construed to imply that vendor has the exclusive right to provide products and/or services to SBISD. During the Term of the Contract, SBISD reserves the right to use all available resources to procure other products and/or services as needed and doing so will not violate any rights of vendor. SBISD is free to have multiple contracts for the awarded products and/or services and may initiate other procurement solicitations or procurement activity with other suppliers at any time, at SBISD's sole discretion.
- 3.5. **USE OF DISTRICT NAME OR LOGO(S).** Vendor may not use SBISD's official name or logo, or any phrase associated with SBISD, without written permission from SBISD's Board of Trustees, Superintendent of Schools, or their designee.
- 3.6. **EMPLOYEE SOLICITATIONS.** SBISD and awarded vendor shall agree that, during the term of the Contract, neither party will directly solicit, induce, or attempt to induce any of the other party's employees to leave the employment of the other party. This provision does not restrict an employee of either party from exercising his/her individual rights to apply for any vacant position(s) with the other party.
- 3.7. **NO AGENCY OR ENDORSEMENTS.** It is the intention of the parties to the Contract that vendor is independent of SBISD, is an independent contractor, and is not an employee, agent, joint venturer, or partner of SBISD. Nothing in the Contract shall be interpreted or construed as creating or establishing the relationship of employer and employee, agent, joint venturer or partner, between SBISD and vendor, or SBISD and any of vendor's agents. Vendor has no power or authority to assume or create any obligation or responsibility on behalf of SBISD and SBISD has no power or authority to assume or create any obligation or responsibility on behalf of vendor. The Contract shall not be construed to create or imply any partnership, agency, or joint venture, nor shall it be construed or deemed an endorsement of a specific company or material. Vendor agrees that SBISD has no responsibility for any conduct of any of vendor's employees, agents, representatives, contractors, or subcontractors.

- 3.8. BUSINESS ETHICS AND CONFLICTS OF INTEREST.** Vendor is required to provide SBISD a complete Conflict of Interest Questionnaire with Company Name, Signature, and Date. This form must be provided even if company has no conflict of interest.

During the course of pursuing contracts, and the course of contract performance, vendor will maintain business ethics standards aimed at avoiding real or apparent impropriety or conflicts of interest. No substantial gifts, entertainment, payments, loans or other considerations beyond that which would be collectively categorized as incidental shall be made to any employees or officials of SBISD, its authorized agents and representatives, or to family members of any of them. At any time vendor believes there may have been a violation of this obligation, vendor shall notify SBISD of the possible violation. SBISD is entitled to request a representation letter from vendor, its subcontractors or vendors at any time to disclose all things of value passing from vendor, its subcontractors or vendors to SBISD's personnel or its authorized agents and representatives.

- 3.9. TERM OF CONTRACT; RENEWAL OF CONTRACT.** The term of the Contract will be provided in the solicitation documents. Any subsequent renewal of the Contract must be agreed to in writing by both parties. In the event the contract expires before a mutually agreed written and approved renewal contract is executed, vendor shall extend the contract on a month-to-month basis by mutual written agreement.

- 3.10. FUNDING OUT CLAUSE.** The term of the Contract is a commitment of SBISD's current revenue only.

3.10.1. The District retains the continuing right to terminate the contract at the expiration of each budget period during the term of the contract.

3.10.2. The contract is conditioned on a best efforts attempt by SBISD to obtain and appropriate funds for payment of the contract.

- 3.11. NON-APPROPRIATION OF FUNDS.** Renewal of the Contract, if any, will be in accordance with TEX. LOCAL GOV'T. CODE 271.903 concerning non-appropriation of funds for multi-year contracts. Notwithstanding any other provision of the Contract or obligation imposed on SBISD by the Contract, SBISD shall have the right to terminate the Contract or any Purchase Order without default or liability to vendor resulting from such termination, effective as of the expiration of each budget period of SBISD if it is determined by SBISD, at its sole discretion, that there are insufficient funds to extend the Contract or any Purchase Order. The parties agree that the Contract and/or any Purchase Order are commitments of the current revenue of SBISD only.

- 3.12. TERMINATION OF CONTRACT.** The Contract shall remain in effect until:
- (1) the Contract expires by its terms, or
 - (2) the Contract is terminated by mutual consent of SBISD and vendor.

In the event of a breach or default of the Contract and/or the solicitation by vendor, SBISD reserves the right to enforce the performance of the Contract in any manner prescribed by law or deemed to be in the best interest of SBISD.

Vendor(s) shall provide SBISD with ninety (90) days' written notice of contract termination and either loss or reduction of any coverage.

Vendor further agrees that upon termination of the Contract for any reason, vendor shall, in good faith and with reasonable cooperation, aid in the transition to any new arrangement and/or vendor.

3.12.1. CAUSE TERMINATION

SBISD reserves the right to terminate the Contract immediately in the event vendor fails to:

- (1) meet schedules, deadlines, and/or delivery dates within the time specified in the solicitation, the Contract, and/or a Purchase Order;
- (2) make any payments owed;
- (3) otherwise perform in accordance with the Contract and/or the solicitation;

- (4) or failure to comply with usual and customary practices of the industry and upon breach of any laws, rules or regulations.

Vendor agrees that SBISD shall not be liable for damages in the event that SBISD declares vendor to be in default or breach of the Contract and/or the solicitation.

3.12.2. NO CAUSE TERMINATION

- SBISD also reserves the right to terminate the Contract, with thirty (30) days' advance written notice to vendor, if SBISD believes that, in its sole discretion, it is in the best interest of SBISD to do so.
- It is understood that SBISD retains the option to terminate the Agreement for any reason at the end of each contract year without pecuniary risk or penalty. The termination will become effective and the Agreement shall terminate following the written notification of intent.

3.13. NO WAIVER OF IMMUNITY. SBISD does not waive or relinquish any immunity or defense on behalf of itself, its trustees, officers, employees, and agents as a result of its execution of the Contract and performance of the functions or obligations described herein.

3.14. COMPLIANCE WITH LAWS. Vendor shall comply with all applicable federal, state, local, and State of Texas laws, statutes, ordinances, standards, orders, rules, and regulations, including, as applicable, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, prompt payment and licensing laws and regulations, and building code requirements. For the entire duration of the Contract, vendor and all subcontractors shall maintain all required licenses, certifications, permits, and any other documentation necessary to perform the Contract. Vendor must pay all fees and charges for connections to outside services and for use of property outside the project site.

3.15. ALL CONTRACTS AND AGREEMENTS between Merchants and SBISD shall strictly adhere to the statutes as set forth in the Uniform Commercial Code as last amended by the American Law Institute in the National Conference of Commissioners on Uniform State Laws, if applicable. Reference: Uniform Commercial Code or latest, Official Text.

3.16. GOVERNING LAW AND EXCLUSIVE VENUE. The laws of the State of Texas, without regard to its provisions on conflicts of laws, govern the Contract. Any dispute under the Contract involving SBISD must be brought exclusively in the state and federal courts located in Houston, Harris County, Texas, and the parties hereby submit to the exclusive jurisdiction of said courts.

3.17. TEXAS SB 252 AND HB 89. Pursuant to Texas Senate Bill 252, Verification Regarding Terrorist Organizations, and House Bill 89, Certification Regarding Israel, vendor hereby certifies that it is not a company identified on the Texas Comptroller's list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State. Vendor further certifies and verifies that neither vendor, nor any affiliate, subsidiary, or parent company of vendor, if any (the "Vendor Companies"), boycotts Israel, and vendor agrees that vendor and Vendor Companies will not boycott Israel during the term of the Agreement. For purposes of the Contract, the term "boycott" shall mean and include terminating business activities or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory.

3.18. PURCHASES USING FEDERAL GRANT FUNDS (2 C.F.R. 200). When SBISD seeks to procure goods and services using funds under a federal grant or contract, specific federal laws, regulations, and requirements may apply in addition to those under state law. This includes, but is not limited to, the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 C.F.R. 200 (sometimes referred to as the "Uniform Guidance" or new "EDGAR").

3.18.1. All vendors awarded a contract under the solicitation must complete the [SBISD EDGAR Contract Addendum](#) before a purchase order can be entered as proof of their willingness

and ability to comply with certain requirements which may be applicable to specific SBISD purchases using federal grant funds.

3.18.2. This information will be made available to SBISD for its use while considering their purchasing options when using federal grant funds.

3.19. CUSTOMER SUPPORT. Vendor shall provide timely and accurate technical advice and sales support to SBISD staff. Vendor shall respond to requests for customer support within one (1) business day after receipt of the request.

3.20. WORKFORCE (IF APPLICABLE). Vendor shall employ only orderly and competent workers, skilled in the performance of the services, if any, which/shall be performed under the Contract. Vendor, its employees, subcontractors, and subcontractor's employees may not use or possess any firearms, alcoholic or other intoxicating beverages, illegal drugs or controlled substances while on the job or on SBISD property, nor may such workers be intoxicated or under the influence of alcohol or drugs on SBISD property.

3.21. SUBCONTRACTORS (IF APPLICABLE). If vendor uses subcontractors in the performance of any part of the Contract, vendor shall be fully responsible to SBISD for all acts and omissions of the subcontractors. Nothing in the Contract shall create for the benefit of any such subcontractor any contractual relationship between SBISD and any such subcontractor, nor shall it create any obligation on the part of SBISD to pay or to see to the payment of any monies due any such subcontractor except as may otherwise be required by law.

Vendor represents and warrants that it is willing, able, and capable of obtaining, supervising, and being responsible for any subcontractors who perform and/or provide products and services related to the Contract.

3.22. SBISD LOCAL CRIMINAL BACKGROUND HISTORY/CHECKING. The awarded vendor(s), who will be performing services on District property, must pass a criminal history background check conducted by SBISD's Police Department via the electronic background check system located at <http://tsapp.springbranchisd.com/BackgroundCheck>.

3.23. TEXAS SENATE BILL 9 CRIMINAL BACKGROUND HISTORY/CHECKING
(TEC, §22.0834; TEC, §22.085; Texas Government Code, §411.0845)

Vendors (owners, officers, employees, volunteers, etc.) may not work on District property where students may or may not be present when they have charges pending, have been convicted, received probation, or deferred adjudication for the following:

- (a) Any offense against a child
- (b) Any sex offense
- (c) Any crimes against persons involving weapons or violence
- (d) Any felony offense involving controlled substances
- (e) Any felony offense against property
- (f) Any other offense SBISD believes might compromise the safety of students, staff, or property.

Any employee who will have direct contact with students must not have been convicted of an offense identified in Texas Education Code Section 22.085.

CONTRACTOR RESPONSIBILITIES

All contractors, subcontractors, and their employees must submit to SBISD proof of a satisfactory criminal record history of all individuals working on District property through background checks conducted as required by Senate Bill 9.

The criminal history must be obtained by the successful Respondent before any work is performed on SBISD property.

Possession of fire arms, alcohol and/or drugs, even in vehicles, is strictly prohibited on school district property. Use of any tobacco products is not permitted on school property.

(see SB9 requirements:

https://tea.texas.gov/Texas_Educators/Certification/Fingerprinting/Requirements_for_School_District_Contractors/)

- 3.24. IRS FORM W-9.** To receive payment under the Contract, the awarded vendor shall have a current I.R.S Tax Identification Number and W-9 Form on file with SBISD's Purchasing Department.
- 3.25. ORDERING PROCEDURES.** A purchasing commitment represents an obligation to pay a vendor for future delivery of goods or services. SBISD's purchase commitments are made via Purchase Orders. No payments will be made for work performed or goods delivered before a Purchase Order is issued by the Purchasing Department. Vendors who commence work before they have received a valid Purchase Order do so at their own risk. Purchase Orders are issued by SBISD and submitted electronically to the vendor by fax or email.
- 3.26. TAX EXEMPT STATUS.** SBISD is exempt from payment of Texas State Sales Taxes under TEXAS TAX CODE§ 151.310 for the purchase of tangible personal property. Vendor represents and warrants that it shall pay all taxes or similar amounts resulting from the Contract, including, without limitation, any federal, state, or local income, sales or excise taxes of vendor or its employees. SBISD shall not be liable for any taxes resulting from the Contract, except where otherwise required by law.
- 3.27. STATE OF TEXAS FRANCHISE TAX.** By submitting a response to the solicitation, vendor certifies that vendor is not currently delinquent in vendor's payment of any franchise taxes or other taxes owed to the State of Texas. For Corporations, a current "Certificate of Good Standing" from the Texas Comptroller of Public Accounts shall be made available upon request stating that the corporation charter is current and all Texas Franchise Reports and Taxes are paid.
- 3.28. BUSINESS CERTIFICATES.** Vendors must adhere to the following applicable Texas laws as they pertain to their individual type of ownership:
- 3.28.1.** Corporations (domestic or foreign*) shall be properly registered with the Texas Secretary of State and the Comptroller of Public Accounts as required by TITLE 34, Part 1, Chapter 3, Subchapter V, Rule 3.546 of the Texas Administrative Code.
- 3.28.2.** Partnerships and Joint Stock Companies, and Limited Liability Partnerships (domestic or foreign*) shall be properly registered with the Texas Secretary of State in accordance with TITLE 105-- PARTNERSHIPS AND JOINT STOCK COMPANIES, CHAPTER ONE --- PARTNERSHIPS, LIMITED PARTNERSHIPS, TEXAS REVISED LIMITED PARTNERSHIP ACT, Article 6132a-1. "Texas Revised Limited Partnership Act." All partners in a partnership must file a "Certificate of Limited Partnership" with the secretary of state, which shall be made available for inspection upon request.
- *Note: Foreign means formed under laws of another state; Domestic means formed under Texas laws.
- 3.29. TAX RESPONSIBILITIES OF VENDOR AND INDEMNIFICATION FOR TAXES.** Vendor is responsible for complying with the tax laws of states and the federal government. Vendor and all subcontractor(s) of vendor shall pay all federal, state, and local taxes applicable to vendor's operation, any persons employed by vendor, and all subcontractors of vendor. Vendor shall require all subcontractors to hold SBISD harmless from any responsibility for taxes, damages, and interest. If applicable, contributions required under federal, state, and/or local laws and regulations and any other costs, including, but not limited to, transaction privilege taxes, unemployment compensation insurance, Social Security, and Worker's Compensation, shall be the sole responsibility of vendor.

3.30. METHODS OF PAYMENT. Vendors are to select one of the following payment methods:

3.30.1. CARD (Ghost Card) – SBISD's preferred method of payment.

Card payments are made available to the vendor immediately after file payment submission. After vendor receives an auto-generated email remittance advice notification, Vendor can download the payment to their 'card'. Vendors who accept payments via ghost cards must establish their own contracts with a merchant card bank to fund their bank accounts. Some banks charge a fee for using ghost cards; however, SBISD does not charge a fee. Fees are negotiated in the contract between the vendor and their merchant card bank. SBISD processes invoices several times a week for CARD payments.

3.30.2. Automated Clearing House (ACH)

Electronic fund transfer to vendor's bank account. SBISD processes invoices at the end of the week for ACH payments.

3.31. INVOICES; PAYMENTS

3.31.1. Vendor shall submit invoices, in duplicate, directly to SBISD's Account Payable office for processing. Electronic invoices may be sent to accountspayable@springbranchisd.com. Each invoice shall include SBISD's Purchase Order number. All invoices shall be itemized to include the type of product(s) and/or service(s) rendered. Vendor shall submit invoices within a timely manner during SBISD's fiscal year in which the product(s) and/or service(s) are purchased. The shipment tracking number or pertinent information for verification of SBISD's receipt shall be made available upon request by SBISD.

3.31.2. SBISD will make payments directly to vendor. SBISD shall alone be liable and/or responsible for payment for product(s) and/or service(s) ordered and must be invoiced directly by vendor.

3.31.3. TEX. GOV'T. CODE §2251.021 shall govern when payments are due to the vendor. Payments are due to vendor by SBISD within forty-five (45) days after the later of the following: (1) the date SBISD receives the products and services under the Contract; (2) the date the performance of the service under the Contract is completed; or (3) the date SBISD receives an invoice for the products or service.

- SBISD shall initiate payment for purchased goods and/or services thirty (30) days after the goods have been received, or services rendered.
- In the event the contract is terminated prior to the end of the stated term, payments will only be made to the extent that work has been performed prior to termination.

3.31.4. Vendor agrees to pay any subcontractors the appropriate share of the payment received from SBISD not later than the tenth (10th) day after the date the vendor receives the payment from SBISD. The exceptions to payments made by SBISD and/or vendor listed in TEX. GOV'T. CODE § 2251.002 shall apply to the Contract.

3.32. NO SUBSTITUTION. Any Purchase Order issued pursuant to the Contract shall conform to the specifications and descriptions identified in the Contract and the solicitation. Vendor shall not deliver substitutes without prior written authorization from SBISD.

3.33. CHANGE ORDERS (IF APPLICABLE). Pursuant to TEX. EDUC. CODE § 44.0411(a), if a change in plans or specifications is necessary after the performance of a Purchase Order has begun or if it is necessary to decrease or increase the quantity of work to be performed or of materials, equipment, or supplies to be furnished, SBISD may approve change orders making the changes. The total Purchase Order price may not be increased because of the changes unless additional money for increased costs is approved for that purpose from available money or is provided for by the authorization of the issuance of time warrants. A Purchase Order with an original contract price of \$1 million or more may not be increased under TEX. EDUC. CODE § 44.0411(a) by more than 25 percent. If a change order for a Purchase Order with an original contract price of less than \$1 million increases the contract amount to \$1 million or more, the total of the subsequent change orders may not increase the revised contract amount by more than 25 percent of the original contract price.

3.34. VENDOR PERFORMANCE

Vendor agrees to use commercially reasonable best efforts to provide the product(s) and/or service(s) subject to the Contract. Vendor shall furnish all supervision, labor, tools, equipment, permits, licenses, transportation, insurance, material, and supplies necessary to complete any scope of work or Purchase Order under the Contract. Vendor shall use skilled, trained personnel, who shall be supervised by vendor.

3.35. VENDOR NON-PERFORMANCE

If at any time, the vendor fails to fulfill or abide by the terms and conditions or specifications of the Contract, SBISD reserves the right to:

- purchase on the open market and charge the vendor the difference between contract price and actual purchase price, or
- deduct such charges from existing invoice totals currently due, or
- cancel within thirty (30) days written notification of intent and remove the vendor from the active procurement file for a period of time not less than one (1) year.
- re-bid the service/product.
- award to next lower responsible respondent, if accepted by same.

3.36. PRICING CHANGES. All prices and discount percentages in vendor's response shall be firm for the term of the Contract. All price changes for products and/or services provided under the Contract must be approved, in writing, by SBISD prior to taking effect and in the same format as was accepted in vendor's original response.

3.36.1. If the solicitation includes the option to extend for additional year(s), price increases for each additional year will be negotiated not to exceed the Consumer Price Index (CPI) in the SBISD area at the time of renewal. Prices may be negotiated to prices below the current pricing.

3.36.2. Pricing may be negotiated during the Contract renewal period and must be completed sixty (60) days before the date of renewal.

3.36.3. Vendor agrees to promptly lower the proportionate price of any product purchased through the Contract following a reduction in the price the vendor is paying suppliers.

The following documentation shall be provided to support a request for a price change:

- justification for change/increase
- terms and conditions
- market conditions
- manufacturers'/distributors' impact, if any

All price decreases shall be allowed for all products and/or services.

3.37. NEW PRODUCTS. New products that meet the specifications detailed in the solicitation may be added to the Contract, with prior written approval from SBISD. Pricing of any new products shall be equivalent to the percentage discount or proposed prices for other similar products. Vendor may replace or add products to the Contract if the replacing products are equal to or superior to the original products offered or discounted in a similar degree or to a greater degree and the products meet the requirements of the solicitation. No products may be added to avoid competitive procurement procedures. SBISD may reject any proposed additions, without cause, in its sole discretion.

3.38. TITLE AND RISK OF LOSS. Whenever SBISD is purchasing (and not leasing) a product service under the Contract, title and risk of loss shall pass upon the latter of SBISD's acceptance of the product or payment of the applicable invoice.

3.39. WARRANTY CONDITIONS. All product(s) and/or service(s) provided by the vendor under the Contract must be warranted to be free from defects in material, workmanship, and free from such

defects in design for a period of one (1) year upon the later of SBISD's acceptance of the product and/or service or payment of the applicable invoice.

3.39.1. Vendor warrants that all products and/or services furnished under the Contract shall conform in all respects to the terms of the Contract, including any drawings, specifications, and/or standards incorporated herein, including, without limitation, those detailed in the solicitation and Purchase Order.

3.39.2. In addition, vendor warrants that products and/or services are suitable for and will perform in accordance with the purposes for which they are intended.

3.39.3. Vendor shall assume all liabilities incurred within the scope of consequential damages and incidental expenses, as set forth in the vendor or manufacturer's warranty, which result from either delivery or use of product, which does not meet the specifications within the Contract, the solicitation, or Purchase Order.

3.40. NOTIFICATION OF MATERIAL CHANGE. Vendor is required to notify SBISD's Director of Purchasing Services in writing when any material change in operations occurs, including changes in distribution rights for awarded products, bankruptcy, material changes in financial condition, change of ownership, and the like, within three (3) business days of such change.

3.41. CONFIDENTIAL AND PROPRIETARY INFORMATION. The District and the vendor may provide technical information, documentation and expertise to each other that is either (1) marked as being confidential or, (2) if delivered in oral form is summarized in writing within 10 working days and identified as being confidential ("Confidential Information"). The receiving party shall for a period of five (5) years from the date of disclosure (i) hold the disclosing party's Confidential Information in strict confidence, and (ii), except as previously authorized in writing by the disclosing party, not publish or disclose the disclosing party's Confidential Information to anyone other than the receiving party's employees on a need-to-know basis, and (iii) use the disclosing party's Confidential Information solely for performance of the project. The foregoing requirement shall not apply to any portion of a party's Confidential Information which (a) becomes publicly known through no wrongful act or omission on the part of the receiving party; (b) is already known to the receiving party at the time of the disclosure without similar nondisclosure obligations; (c) is rightfully received by the receiving party from a third party without similar nondisclosure obligations; (d) is approved for release by written authorization of the disclosing party; (e) is clearly demonstrated by the receiving party to have been independently developed by the receiving party without access to the disclosing party's Confidential Information; or (f) is required to be disclosed by order of a court or governmental body or by applicable law, provided that the party intending to make such required disclosure shall notify the other party of such intended disclosure in order to allow such party to seek a protective order or other remedy.

3.42. DATA AND PROPRIETARY INFORMATION. All work, regarding the project, shall be deemed "Work Made For Hire" as defined by the United States Copyright Law, and SBISD retains for itself sole ownership of all proprietary rights in and to all designs, engineering details and other data pertaining to any discoveries, inventions, patent rights, software, improvements and the like made by the vendor's personnel in the course of performing the work. SBISD acknowledges and agrees that (i) as between vendor and SBISD, Vendor owns all right, title and interest in and to vendor's Intellectual Property, (ii) nothing in the Contract shall confer in SBISD or any of its affiliates any right of ownership in any of vendor's Intellectual Property, and (iii) SBISD shall not now or in the future contest the validity of any of vendor's Marks.

3.43. TEXAS PUBLIC INFORMATION ACT (TPIA). Vendor acknowledges that SBISD is subject to the Texas Public Information Act (TPIA). As such, upon receipt of a request under the TPIA, SBISD is required to comply with the requirements of the TPIA. In the event that the request involves documentation that the vendor has clearly marked as confidential and/or proprietary, SBISD will provide the vendor with the notices under the TPIA. Vendor acknowledges that it has the responsibility to file exceptions with the Texas Attorney General's Office on why the documents identified as confidential and/or proprietary fall within an exception to public disclosure. Vendor waives any claim against and releases from liability SBISD, its respective officers, employees, agents, and attorneys with respect to disclosure of information provided under or in the Contract or otherwise created, assembled, maintained, or held by vendor, SBISD, and determined by SBISD, the

Attorney General of Texas, or a court of law to be subject to disclosure under the Texas Public Information Act.

3.44. STUDENT CONFIDENTIALITY. Vendor acknowledges that SBISD has a legal obligation to maintain the confidentiality and privacy of student records in accordance with applicable law and regulations, including, but not limited to the Family Educational Rights and Privacy Act ("FERPA"). Any student information provided to vendor shall be provided in compliance with the requirements and exceptions outlined in FERPA. Vendor must comply with said law and regulations and safeguard student information. Vendor may not disclose student information to a third party without prior written consent from the parent or eligible student. Vendor must destroy any student information received from SBISD when no longer needed for the purposes of the Agreement.

3.45. RECORDS RETENTION. Vendor shall maintain its records and accounts in a manner that shall assure a full accounting for all material(s) and/or service(s) provided by the vendor to SBISD under the Contract. These records and accounts shall be retained by vendor and made available for review by SBISD for a period of **not less than five (5) years** from the date of completion of the service(s), receipt of material(s), the date of the receipt by SBISD's final invoice or claim for payment in connection with the Contract, or the date SBISD makes final payments and closes pending matters in connection with a federal grant, whichever is later. If an audit or a compliance review has been announced, the vendor shall retain its records and accounts until such audit or compliance review has been completed.

For Bond funded projects, vendor shall retain these records and accounts and make available for review by SBISD indefinitely.

3.46. RIGHT TO REVIEW, AUDIT, AND INSPECT. SBISD, any federal agency that has awarded federal funds/grant(s) to SBISD, and/or any of their authorized representatives, shall, upon written notice, have the right to audit and examine all of vendor's records and accounts relating to the Contract. Inspect any project performed by the vendor relating to the Contract. Records subject to audit/review shall include, but are not limited to, all purchase orders resulting from the Contract and records which may have a bearing on matters of interest to SBISD in connection with the vendor's work for SBISD, and shall be open to inspection and subject to audit/review and/or reproduction by SBISD, and/or its authorized representative(s) to the extent necessary to adequately permit evaluation and verification of:

3.46.1. Vendor's compliance with the Contract and the requirements of the solicitation.

3.46.2. Compliance with provisions for computing billings to SBISD.

3.46.3. Any other matter related to the Contract.

3.47. PENALTIES. If the vendor is unable to provide the product(s) or services at the prices quoted in vendor's response or if vendor fails to fulfill or abide by the terms and conditions of the Contract or the solicitation, SBISD may take the following action(s), in the sole discretion of SBISD, and vendor agrees to comply with the chosen action(s):

3.47.1. Insist that the vendor honor the quoted price(s) specified in vendor's response, as applicable;

3.47.2. Have the vendor pay the difference between the vendor's price and the price of the next acceptable response, as determined by SBISD;

3.47.3. Have the vendor pay the difference between vendor's price and the actual purchase price of the product or service on the open market; and/or

3.47.4. Recommend to SBISD Board of Trustees that the vendor no longer be given the opportunity to submit a response to SBISD and/or that the Contract be terminated.

3.48. PERFORMANCE AND PAYMENT BONDS (IF APPLICABLE). Vendor agrees to provide performance bonds and/or payment bonds as required by law, based on the amount or estimated amount of any Purchase Order for a public work contract, which is defined as a contract for

constructing, altering, or repairing a public building or carrying out or completing any public work. TEX. GOV'T. CODE § 2253.001(4). Pursuant to TEX. GOV'T. CODE § 2253.021, a performance bond is required if a Purchase Order is in excess of \$100,000.00 for SBISD; a payment bond is required if a Purchase Order is in excess of \$25,000.00 for SBISD. Such bonding shall be executed by a corporate surety duly authorized to do business in this state and be payable to the Spring Branch Independent School District.

- 3.49. DEBARMENT AND SUSPENSION.** Federal Executive Order (E.O.) 12549 "Debarment and Suspension" requires that all contractors receiving individual awards, using federal funds, and all sub-recipients certify that the organization and its principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from doing business with the Federal Government.

Non-Federal entities are prohibited from contracting with or making sub-awards under covered transaction to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement of goods or services. Vendors receiving awards of contracts all sub-recipients must certify that the organizations and its principals are not suspended or debarred.

- 3.50. INDEMNIFICATION.** VENDOR SHALL INDEMNIFY AND HOLD HARMLESS SBISD, INCLUDING SBISD'S TRUSTEES, OFFICERS, ADMINISTRATORS, EMPLOYEES, AND AGENTS, FROM ALL CLAIMS, LIABILITIES, COSTS SUITS OF LAW OR IN EQUITY, EXPENSES, ATTORNEYS' FEES, FINES, PENALTIES OR DAMAGES ARISING FROM ACTS OR OMISSIONS OF VENDOR, VENDOR'S EMPLOYEES, AGENTS, OR SUBCONTRACTORS, IN CONNECTION WITH THE CONTRACT, INCLUDING WITHOUT LIMITATION, THOSE ARISING FROM CLAIMED INFRINGEMENT OF ANY PATENTS, TRADEMARKS, COPYRIGHT OR OTHER CORRESPONDING RIGHT(S) WHICH IS RELATED TO ANY ITEM VENDOR IS REQUIRED TO DELIVER. VENDOR'S OBLIGATIONS UNDER THE CLAUSE SHALL SURVIVE ACCEPTANCE AND PAYMENT BY SBISD.

- 3.51. MATERIAL SAFETY DATA SHEETS (MSDS) (IF APPLICABLE).** Material Safety Data Sheets (MSDS) on chemicals or any other products customarily requiring MSDS Sheets must be provided for each ordering department. MSDS Sheet must be delivered along with the shipment within the contract period. Additional MSDS Sheets must be provided in a timely manner at no charge upon request to SBISD. If OSHA or Federal or State laws provide for additional requirements, those requirements shall be met by vendor, in addition to the MSDS requirement.

- 3.52. ELECTRICAL ITEMS (IF APPLICABLE).** All electrical items must meet all applicable OSHA standards and regulations, and must bear the appropriate listing from US, FMRC, NEMA, or UL Laboratories.

- 3.53. SAFETY.** Vendor, its subcontractor(s), and their respective employees shall comply fully with all applicable federal, state, and local safety and health laws, ordinances, rules, and regulations in the performance of services under the Contract, including, without limitation, those promulgated by SBISD, and by the Occupational Safety and Health Administration ("OSHA"). In case of conflict, the most stringent safety requirements shall govern. Vendor shall comply with all other safety guidelines and standards as required by SBISD. Vendor shall indemnify and hold SBISD harmless from and against all claims, demands, suits, actions, judgments, fines, penalties, and liability of every kind arising from the breach of vendor's obligations under this provision.

- 3.54. SBISD'S PROPERTY.** In the event of loss, damage, or destruction of any property owned by or loaned by SBISD that is caused by vendor or vendor's representative, agent, employee, or contractor, vendor shall indemnify and pay to SBISD the full value of or the full cost of repair or replacement of such property, whichever is greater, within thirty (30) days of vendor's receipt of written notice of SBISD's determination of the amount due. If vendor fails to make timely payment, SBISD may obtain such money from vendor by any means permitted by law, including, without limitation, offset or counterclaim against any money otherwise due to vendor by SBISD.

- 3.55. INSURANCE.** Vendor is required to provide SBISD with copies of certificates of insurance, naming SBISD as additional insured's for Texas Workers Compensation and General Liability Insurance, within 14 business days of contract award and prior to the commencement of any work under the

Contract. Certificates of insurance, name and address of vendor, the limits of liability, the effective dates of each policy, and policy number shall be delivered to SBISD prior to commencement of any work under the Contract. The insurance company insuring vendor shall be licensed in the State of Texas, and shall be acceptable to SBISD. Vendor shall give SBISD a minimum of thirty (30) days' notice prior to any modifications or cancellation of said policies of insurance. Vendor shall require all subcontractors performing any work under or relating to the Contract to maintain coverage as specified below. Vendor shall, at all times during the term of the Contract, maintain insurance coverage with not less than the type and requirements shown below.

All policies of insurance shall waive all rights of subrogation against SBISD and its officers, employees and agents. Upon approval notice, certified copies of original insurance policies shall be furnished to SBISD. SBISD, as requested, shall be named as an "additional insured" on insurance policies. SBISD reserves the right to require additional insurance should SBISD deem additional insurance necessary, in its sole discretion.

[SBISD Insurance Requirements for Vendors/Contractors](#)

- 3.56. PARTICIPATION.** Vendor acknowledges and agrees that continued participation is subject to SBISD's sole discretion and that vendor may be removed at any time, with or without cause, in SBISD's sole discretion. All work resulting from the Contract must cease immediately after completion of the final accepted Purchase Order. Nothing in the Contract or in any other communication between SBISD and vendor may be construed as a guarantee that SBISD will submit any Purchase Order to vendor at any time.
- 3.57. EQUAL OPPORTUNITY.** It is the policy of SBISD not to discriminate on the basis of race, color, national origin, gender, limited English proficiency or handicapping conditions in its programs. Vendor agrees not to discriminate against any employee or applicant for employment to be employed in the performance of the Contract, with respect to hire, tenure, terms, conditions and privileges of employment, or a matter directly or indirectly related to employment, because of age (except where based on a bona fide occupational qualification), sex (except where based on a bona fide occupational qualification) or race, color, religion, national origin, or ancestry. Vendor further agrees that every subcontract entered into for the performance of the Contract shall contain a provision requiring non-discrimination in employment herein specified, binding upon each subcontractor. Breach of this covenant may be regarded as a material breach of the Contract.
- 3.58. SEXUAL AND VERBAL HARASSMENT.** The policies of SBISD, along with sections of Federal and State Laws, prohibit sexual and verbal harassment of any employees, students, faculty or guests. Sexual harassment includes any unwelcome sexual advance, any request for sexual favor or any other verbal or physical conduct of sexual nature that is so pervasive as to create a hostile or offensive work environment or offensive academic environment. Verbal harassment includes, but is not limited to, the use of profanity, loud or boisterous remarks, inappropriate speech, inappropriate suggestive conduct or body movements or comments that could be interpreted by the hearer as being derogatory in nature. This type of behavior and conduct is not tolerated or condoned. Vendors and contractors are required to exercise control over their employees, agents, and subcontractors so as to prohibit acts of sexual and verbal harassment and agree as a term and condition that such vendor, contractor, agents, employees or subcontractors may be immediately removed from the project site and from SBISD premises.
- 3.59. FORCE MAJEURE.** Neither SBISD nor vendor shall be deemed to have breached any provision of the Contract as a result of any delay, failure in performance, or interruption of service resulting directly or indirectly from acts of God, network failures, acts of civil or military authorities, civil disturbances, wars, energy crises, fires, transportation contingencies, interruptions in third-party telecommunications or internet equipment or service, other catastrophes, or any other occurrences which are reasonably beyond SBISD or vendor's control.

SBISD and vendor are required to use due caution and preventive measures to protect against the effects of force majeure, and the burden of proving that a force majeure event has occurred shall rest on the party seeking relief under this provision.

The party seeking relief due to force majeure is required to promptly notify the other parties in writing, citing the details of the force majeure event and relief sought, and shall resume performance

immediately after the obstacles to performance caused by a force majeure event have been removed, provided the Contract has not been terminated. Delay or failure of performance, by either party to the Contract, caused solely by a force majeure event, shall be excused for the period of delay caused solely by the force majeure event. SBISD and vendor shall not have any claim for damages against any other party resulting from delays caused solely by force majeure. Notwithstanding any other provision of the Contract, in the event the vendor's performance of its obligations under the Contract is delayed or stopped by a force majeure event, SBISD shall have the option to terminate the Contract. This section shall not be interpreted as to limit or otherwise modify any of SBISD's contractual, legal, or equitable rights.

- 3.60. SEVERABILITY.** In the event any one or more of the provisions contained in the Contract 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, and the Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.
- 3.61. WAIVER.** No failure on the part of either party at any time to require the performance by the other party of any term hereof shall be taken or held to be a waiver of such term or in any way affect such party's right to enforce such term, and no waiver on the part of either party of any term hereof shall be taken or held to be a waiver of any other term hereof or the breach thereof. No waiver, alteration, or modification of any of the provisions of the Contract shall be binding unless in writing and signed by duly authorized representatives of the parties hereto.
- 3.62. ENTIRE AGREEMENT.** The Contract, the solicitation, vendor's response to the solicitation, the attached and incorporated attachments, addendum, and/or exhibits, if any, contain the entire agreement of the parties relative to the purpose(s) of the Contract and supersede any other representations, agreements, arrangements, negotiations, or understandings, oral or written, between the parties to the Contract. In the event of a conflict between the Contract and the solicitation or vendor's response to the solicitation, the Contract shall control. In the event of a conflict between the solicitation and vendor's response to the solicitation, the solicitation shall control. The Contract supersedes any conflicting terms and conditions on any Purchase Order, invoices, checks, order acknowledgements, forms, purchase orders, or similar commercial documents relating hereto and which may be issued by vendor after the Effective Date of the Contract.
- 3.63. ASSIGNMENT OF CONTRACT.** Vendor may not assign the Contract or any of its rights, duties or obligations hereunder without the prior written approval of SBISD. Any attempted assignment of the Contract by vendor shall be null and void. Any Purchase Order made as a result of the Contract may not be transferred, assigned, subcontracted, mortgaged, pledged, or otherwise disposed of or encumbered in any way by vendor without the prior written approval of SBISD.
- 3.64. NOVATION.** If contractor sells or transfers all assets or the entire portion of the assets used to perform the contract, a successor in interest must guarantee to perform all obligations under the contract. SBISD reserves the right to accept or reject any new party. A simple change of name agreement will not change the contractual obligations of contractor.
- 3.65. NOTICE.** Any notice provided under the terms of the Contract by the parties to any other shall be in writing and shall be given by hand-delivery, certified registered mail, return receipt requested, email, or fax. Notice shall be sufficient if made or addressed to the party at the address listed in the signature line of the Contract. Notice shall be deemed effective upon receipt.

Each party may change the address at which notice may be sent to that party by giving notice of such change to the other party by certified mail, return receipt requested, fax or email.

- 3.66. CAPTIONS.** The captions herein are for convenience and identification purposes only. They are not an integral part and are not to be considered in the interpretation of any part hereof.
- 3.67. INTERPRETATION.** Vendor agrees that the normal rules of construction that requires that any ambiguities in the Contract are to be construed against the drafter shall not be employed in the interpretation of the Contract.

4. EVALUATION AND AWARD OF SOLICITATIONS

4.1. **AWARD OF CONTRACT.** In accordance with applicable laws, rules, and regulations for public procurement, award(s) will be made to the responsible vendor(s) whose proposal(s) is/are determined after evaluation by SBISD to be the best value to SBISD. To qualify for evaluation, a proposal must have been submitted sealed and on time and must materially satisfy all mandatory requirements identified in the solicitation document.

4.2. **COMPETITIVE RANGE.** It may be necessary for SBISD to establish a competitive range of acceptable proposals as part of the evaluation process. Proposals not in the competitive range are unacceptable and will not receive further award consideration.

4.3. **EVALUATION OF RESPONSES.** The evaluation of the proposal will be performed by a committee consisting of designees of SBISD. It is critical to the ultimate award of the contract that the response be complete and accurate. While cost is an important factor, it should be understood that the district is under no obligation to accept the lowest proposal. In evaluating qualified proposals the following considerations will be taken into account for award recommendations (if applicable):

- (1) The purchase price;
- (2) The reputation of the vendor and of the vendor's goods or services;
- (3) The quality of the vendor's goods or services;
- (4) The extent to which the goods or services meet the district's needs;
- (5) The vendor's past relationship with the district;
- (6) The impact on the ability of the districts to comply with laws and rules relating to historically underutilized businesses;
- (7) The total long-term cost to the district to acquire the vendor's goods or services;
- (8) For a contract for goods and services, other than goods and services related to telecommunications and information services, building construction and maintenance, or instructional materials, whether the vendor or the vendor's ultimate parent company or majority owner;
 - (A) Has its principal place of business in the State of Texas; or
 - (B) Employs at least 500 persons in the State of Texas; and
- (9) Any other relevant factor specifically listed in the request for bids or proposals

4.3.1. Vendor Business Capabilities:

- Responsiveness of the proposal related to the scope of the work.
- The ability, capacity, and skill of the proposer to perform the services on a timely basis.
- Reputation of the proposer as evidenced by SBISD and outside referrals.
- Experience and qualifications of the business and individual members of the business in accomplishing similar services
- The sufficiency of financial resources and ability of business to perform the contract.
- Past performance in the area of customer support will play an important part in the evaluation of proposals.

5. PURCHASE ORDER TERMS AND CONDITIONS

- 5.1. ACCEPTANCE.** A SBISD Purchase Order (PO) constitutes a binding contract between the vendor and Spring Branch Independent School District (SBISD), to furnish the goods or service(s) specified on the face of the PO. By acceptance of the Purchase Order, the vendor agrees to furnish all goods or service(s) in accordance with the terms and conditions specified herein. By accepting the purchase order, the vendor (Professional or other applicable term defining the contracting party) verifies that it does not Boycott Israel, and agrees that during the term of the Agreement (Contract as applicable) will not Boycott Israel as that term is defined in Texas Government Code Section 808.001, as amended.
- 5.2. AGREEMENT.** A PO represents the basis for the vendor to deliver the required goods or service(s), and supersedes all prior offers, negotiations, exceptions and understanding (whether done orally or in writing).
- 5.3. ASSIGNMENTS and SUBCONTRACTING.** The rights and responsibilities of the vendor to furnish the goods or service(s), specified herein will not be subcontracted, assigned, transferred, mortgaged, pledged or disposed of, unless agreed to by SBISD and the vendor. No part of the order may be assigned or subcontracted without the prior written approval of SBISD. Payment can only be made to the Supplier names in the order.
- 5.4. CANCELLATION.** SBISD reserves the right to cancel the PO at any time. If the PO is cancelled pursuant to the vendor's default, SBISD may obtain similar goods or service(s) elsewhere, and charge the vendor for any damages incurred.
- 5.5. CHANGES.** SBISD reserves the right to make changes to the PO (e.g., increase/decrease quantities, change delivery address). Any changes to the PO will be communicated to the vendor by the issuance of a Revised PO.
- 5.6. DELIVERY.** The vendor shall deliver all goods Free-On-Board (F.O.B.) Destination, unless specified on PO.
- 5.7. DISCOUNTS.** The vendor shall indicate on the invoice any prompt payment discounts or trade discounts.
- 5.8. FEDERAL FUNDS.** If the source of funds for the purchase is federal funds, the following provisions apply, (as applicable):
- Section 14.52 of the Texas Family Code, added by S.B. 84, Acts, 73rd Legislature, R.S. (1993); Equal Employment Opportunity; Davis-Bacon Act, as amended (40 U.S.C. 314148); Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708); Rights to Inventions Made Under a Contract or Agreement; Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended; Debarment and Suspension (Executive Orders 12549 and 12689; Byrd Anti-Lobbying Amendment (31 U.S.C. 1368), Executive Order 117389 and Environmental Protection Agency Regulation, 40 CFR Part 15; Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat.871; Buy America Act.
- 5.9. FINGERPRINTING.** Prior to commencing any work on the Project, vendor will certify, that for each employee of vendor who will have Direct Contact with Students, the vendor has obtained, as required by Texas Education Code Section 22.0834.
- 5.10. INDEMNIFICATION.** The vendor shall indemnify and hold harmless SBISD (including the Board of Trustees and the employees of SBISD) from all claims of liability to third parties (including but not limited to: the injury or death of person(s), or the loss or damage to property) arising out of or in connection with the performance of the vendor. The vendor shall indemnify and hold harmless SBISD (including the Board of Trustees and the employees of SBISD) from all liabilities, cost, expenses, attorney fees, fines, penalties, or damages for any or claimed infringement of any patents, trademarks, copyrights, or other corresponding right(s) which is related to any part of the goods or service(s) the vendor is required to provide or perform. The vendor's obligation to this clause shall survive acceptance and payment of the goods or service(s) by SBISD.

- 5.11. INSURANCE.** The vendor shall be required to carry insurance protection sufficient to meet all the liabilities that are mentioned herein.
- 5.12. INSPECTION.** Prior to acceptance and payment, SBISD reserves the right to inspect all goods (in whole or in part) and service(s) furnished by the vendor. Goods or service(s), which (in the opinion of SBISD) fail to conform to the required specification(s) or standard(s), may be considered non-conforming.
- 5.13. INTERPRETATION.** The PO shall be construed and interpreted solely in accordance with laws of the State of Texas. Venue of any suit, right or cause of action arising shall lie exclusively in Harris County, Texas.
- 5.14. INVOICING.** Invoices must include the SBISD PO number. Payment may be delayed if PO number is not on invoice. Send invoices via email to SBISD at accountspayable@springbranchisd.com. The price(s) specified on the face of the PO shall remain firm until SBISD has processed the vendor's invoice, or until the item has been accepted by SBISD (whichever is later). The title to any item delivered shall pass to SBISD upon acceptance or payment (whichever is later).
- 5.15. NON-CONFORMANCE.** The vendor assumes all liability for shipping goods that do not meet the specification(s) and standard(s) specified on the face of the PO. SBISD reserves the right to accept or reject goods that are non-conforming. If SBISD rejects the non-conforming goods, said goods shall be returned to the vendor at the vendor's expense. The vendor shall use "best efforts" to replace any non-conforming good(s) at the vendor's risk and expense.
- 5.16. PURCHASING COOPERATIVE.** It is the vendor(s) responsibility to guarantee that a copy of the PO and/or a sales report is provided to the purchasing cooperative organization.
- 5.17. PRODUCT RECALL.** The vendor shall notify the Manager of Purchasing of SBISD immediately if a product recall is instituted on any item(s) the vendor has delivered. This requirement shall survive payment and acceptance.
- 5.18. TERMINATION.** SBISD reserves the right to terminate the order immediately, with written notice to vendor, if SBISD believes, in its sole discretion that it is in the best interest of SBISD to do so.
- 5.19. QUANTITIES.** Quantities in excess of the quantities specified on the face of the PO may be returned to the vendor at the discretion of SBISD. All risk and expense for the return of the good(s) shall be borne by the vendor.
- 5.20. QUALITY.** In the event no quality is specified on the face of the PO, the goods delivered and/or service(s) rendered hereunder shall be of the best quality. The vendor shall ensure that all goods delivered to SBISD will be new (i.e., previously unused and in its original packaging), and have not been remanufactured or refurbished. The vendor also warrants that all services will conform to the standard(s) established herein.
- 5.21. SAFETY.** If applicable, the vendor shall deliver Material Safety Data Sheets (MSDS) with the requested good(s).
- 5.22. TAXES.** The vendor shall not include taxes on the invoice. SBISD's Tax Exempt # 1-74-600137904.
- 5.23. TERMS.** Unless otherwise specified, payment terms are net thirty (30) days.
- 5.24. TITLE.** The title to any item delivered shall pass to SBISD upon acceptance or payment (whichever is later).
- 5.25. W-9 CERTIFICATION.** SBISD requires that awarded vendor(s) complete a "Request for Taxpayer Identification Number" and W-9 Certification, before payment(s) will be processed.
- 5.26. WARRANTY.** The vendor warrants that all goods and service(s) furnished, shall be free from all defects, conform to all applicable specifications, and be suitable for its intended purpose(s). Neither acceptance of, nor payment for said goods and service(s) shall constitute a waiver or modification of any warranties of the vendor, or the rights of SBISD.