

EANES INDEPENDENT SCHOOL DISTRICT

GENERAL TERMS For Purchasing Solicitations and Contracts

Effective Date of February 1, 2021

The following general terms are hereby issued in accordance with the laws, rules, and policies applicable to Eanes Independent School District ("District" or "EISD"). These terms may be amended as determined to be in the best interest of the District. Prospective vendors and awarded Contractors are cautioned to read and understand the general terms set forth in this document prior to responding to a District Solicitation to which this document is referenced for governance of any actions taken.

Unless otherwise directed within the solicitation, any exceptions to or failure to follow these general terms may be cause for a vendor's solicitation response to be deemed non-responsive and disqualified by the District and any award being deemed in breach. These general terms will take precedence over the terms and conditions within the solicitation when they are in conflict unless specific exception is noted within the solicitation. These general terms will also take precedence over any conflicting terms and conditions on any purchase or work orders, invoices, checks, order acknowledgements, forms, or similar commercial documents issued by a vendor unless specific exception is noted and agreed to by the District.

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PART I: DEFINITIONS, TERMS AND ACRONYMS

The following terms may be found in this document or may be used in the normal operations of the District's Purchasing Department.

Term	Definition
Addendum.....	A document that has been issued by the District that has made material changes to a Solicitation.
Agreement.....	A set of documents that create a binding contract that has been signed by authorized individuals for both the District and the Vendor. Used as a synonym for the term "Contract".
Bid.....	Vendor's response to a Request for Bid or RFB. The term may be used to represent all types of solicitations.
Buyer.....	The Buyer (the District Representative) is the District's approved business representative for all matters of solicitation, evaluation, award, and administration of a Contract Award. There will be only one appointed Buyer at any time for each purchasing action. Vendors shall address all business/contract issues about a Contract Award to the Buyer.
Alternate or Substitute.....	A good or service substituted for another by a Vendor with approval of the District Representative.
Closing.....	Refers to the designated date and time after which proposals in response to a Solicitation will no longer be accepted.
Conflict of Interest (COI).....	A Conflict of Interest (COI) is established through EISD Policy BBFA(LEGAL) and 2 CFR § 200.318(c), as applicable. A COI exists when a Vendor or any affiliated person or business entity provides goods or services under a Contract Award whereby one or more personal, business, or financial interest or relationship exists which would cause a reasonable individual with knowledge of the relevant facts to question the integrity or impartiality of persons involved in a District Contract; or any other facts that exist which the District, at its sole discretion, determines during the Solicitation or the performance of an existing District Contract that the Vendor obtained an unfair competitive advantage favoring the interest of the Vendor or any person with whom the Vendor has or is likely to have a personal or business relationship. Conflicts of interest are further defined in District Policy BBFA(LEGAL) and state and federal law.
Contract Award.....	The acceptance of a Quote, Bid, Proposal or Offer by the District by the issuance of a District Purchase Order, District Contract Agreement, or other formal District notification of award issued by an authorized official of the Purchasing Office.
Contract Documents.....	A set of documents that create an Agreement that has been signed by authorized individuals for both the District and the Vendor. Used as a synonym for the term "Agreement". Also referred to herein as "Contract."
Contract Term.....	The length of time a Contract will be in effect and available for use by the District.
Contracting Duties Related to Contracted Services.....	The term is defined in the Texas Administrative Code 19 TAC 153.1101(2) . Work duties that are performed pursuant to a contract to provide services to a district on a regular, repeated basis rather than infrequently or one-time only.
Contracting Entity.....	The term is defined in the Texas Administrative Code 19 TAC 153.1101(1) . An entity that contracts with another entity that is not a district to provide services to a school district, open-enrollment charter school, or shared services arrangement. <i>Education Code 22.0834(p)(1)</i>

Contractor.....	The awarded Vendor of a specific Solicitation.
Copyright.....	A form of protection provided by the laws of the United States for "original works of authorship" comprising exclusive rights granted by law to copyright owners for protection of their works. Any original work commissioned by the District shall be deemed a work for hire and the exclusive property of the District.
Covered Contract Employee.....	The term is defined in the Texas Administrative Code <u>19 TAC 153.1101(3)</u> as an individual who: <ol style="list-style-type: none"> 1) Is employed or offered employment by a service contractor or a subcontractor of a service contractor, is an individual independent contractor of the district, or is an individual subcontractor of a service contractor; 2) Has or will have continuing duties related to the contracted services; 3) Has or will have direct contact with students; and 4) Is not a student of (or enrolled in) the district for which the services are performed.
CTPA.....	Central Texas Purchasing Alliance. A purchasing cooperative representing Texas school and junior college districts. The CTPA shares knowledge, resources, and contracts as appropriate to further its common interest. More information can be found at www.txctpa.org .
Debarment.....	Action taken by the District which prevents a Vendor from participating in the solicitation process for a period of time, usually as a result of improper business practices on the part of the Vendor. The term also includes reference to the list of government-wide exclusions in the System for Award Management (Debarment and Suspension Orders Executive Orders 12549 and 12689); Vendor understands that Vendor is ineligible to receive a Contract Award if Vendor or its principal(s) is listed on the government-wide exclusions in the System for Award Management. This term is normally associated with purchases made with federal funds.
Deliverable.....	Goods or services which are required by a Contract Award to be provided to the District by a Vendor.
Direct Contact with Students.....	The opportunity for physical interaction with students, during the course of providing goods or services to the District, that is not supervised 100% of the time by a professional district employee.
Discount Contract.....	An awarded Contract where pricing is based on a firm-fixed discount from a Vendor's published price list, catalog, or other medium that is published for the majority of the Vendor's customers.
District.....	Eanes Independent School District
District Business Day.....	Days the District is officially conducting business (excludes weekends, District- observed holidays, etc.).
District Website.....	The official District website, available at http://www.Eanesisd.net .
Formal Invitation	A Solicitation that requires the response from the Vendor to be sealed prior to submittal and will not be officially opened until after the opening / closing date indicated on the Solicitation.
Intellectual Property.....	Exclusive rights granted by law for creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce, including patents, trademarks, copyrights, and trade secrets.
EISD.....	Eanes Independent School District
Line Item Contract.....	An awarded Contract where goods or services are specified and individually priced.

Notice of Award.....	A formal, written document issued by an authorized official of the District's Purchasing Department informing a Vendor that a Contract has been awarded to Vendor based on its Solicitation Response.
Offer.....	Term used in conjunction with or in place of a Vendor's Solicitation Response.
Opening.....	Refers to the designated date and time that bids will be formally opened.
Professional Services Contract.....	A Contract awarded for performance of professional services by Vendors as defined by <u>Texas Gov. Code 2254.002(a) and (b)</u> , and <u>Texas Education Code 44.031(f)</u> .
Proposal.....	Vendor's response to a solicitation.
Purchase Order.....	Formal order for goods, materials and/or services from a Vendor; a binding commitment for the District to remit payment to the Vendor after the service or item(s) and an invoice are received by the District.
Quote.....	Also identified as a <i>Request for Quote</i> . Used for small dollar purchases valued at less than the formal bid threshold. This informal solicitation method can be documented internally (e.g. email, phone, or fax) and the solicitation requirements are minimal (no advertisement, minimal response time, etc.). May be used for one-time purchases or to establish low-dollar Term Contracts. A quote from a vendor should include a unique quote number and date through which the quote is valid by the vendor.
RFB.....	<i>Request for Bids</i> . A formal solicitation method used for acquiring one-time purchases or for establishing Term Contracts for acquiring goods or services with aggregate values of \$50,000 or greater. This solicitation method is considered formal and requires a legal notice that is published at time of issuance for purchases over an aggregate of \$50,000 per District fiscal year. Award is typically based on lowest-price Bid or objective-based Best Value criteria.
RFCP.....	<i>Request for Cooperative Proposal</i> . Used solely for vendors that have established, awarded contracts through a purchasing cooperative to which Eanes ISD is an active member. The process resembles an RFP but has already met the legal competitive procurement requirements (Tx. Education Code Section <u>44.031(a)(4)</u>), is not required to be published in a local newspaper, and can only consider vendors who have met the cooperative requirements for an award).
RFCQ.....	<i>Request for Cooperative Quote</i> . Used solely for vendors that have established, awarded contracts through a purchasing cooperative to which Eanes ISD is an active member. The process resembles a normal quote process, but has already met the legal competitive procurement requirements (Tx. Education Code Section <u>44.031(a)(4)</u>), is not required to be published in a local newspaper, and can only consider vendors who have met the cooperative requirements for an award).
RFCSP.....	<i>Request for Competitive Sealed Proposal</i> . Solicitation method used primarily for construction projects. Allows for the use of the formal evaluation process and can use Best Value determinations for an award. Negotiations are allowed prior to the award, in accordance with applicable law.
RFO.....	<i>Request for Offer</i> . Used solely for technology purchases issued through the State of Texas / Department of Information Resources (DIR) procurement processes.
RFP.....	<i>Request for Proposal</i> . Solicitation method used to acquire highly technical, negotiated goods or services. Standard RFPs will allow for evaluations based on specific criteria established within the RFP. Used primarily for higher dollar valued purchases but may be used for smaller purchases where requirements warrant this Solicitation method. Negotiations are allowed prior to the award.

RFQ.....	<i>Request for Qualifications</i> . Solicitation method used to procure professional services defined in <u>Texas Gov. Code 2254.002(a)</u> and (b), and <u>Texas Education Code 44.031(f)</u> . In an RFQ, pricing cannot be considered.
School Business Days.....	Days the District is officially conducting school (excludes weekends, District-observed holidays, etc.)
Service Contract	An awarded Contract for performance of a service by a Vendor for a specified period of time.
Service Contractor.....	The term is defined in the Texas Administrative Code 19 TAC 153.1101(10). An entity, including a government entity and an individual independent contractor, that contracts or agrees with a district by written agreement or verbal understanding to provide services through individuals who receive compensation.
Signature Authority	Individuals who have been identified by District leadership to have the authority to bind the District in a contract or agreement (reference EISD Policy CH (LOCAL)). Includes the Superintendent and his authorized designees.
Solicitation.....	General term used to refer to an RFB, RFBP, RFCQ, RFCSP, RFO, RFP, or RFQ, or other procurement/purchasing solicitation issued by the District.
Solicitation Response.....	Vendor's response to an RFB, RFBP, RFCQ, RFCSP, RFO, RFP, or RFQ, or other Solicitation issued by the District.
Solicitation Tabulation.....	Official tabulation of Solicitation Responses, issued by the Purchasing Department after Contract Award.
Subcontracting Entity.....	The term is defined in the Texas Education Code 22.0834(p)(2). A "subcontracting entity" is an entity that contracts with another entity that is not a district to provide services to a school district.
Subcontractor.....	Company or business that has contracted with the prime contractor for performing services for the District. The prime contractor is responsible to the District for the work performed by the subcontractor. No contract will exist between the subcontractor and the District.
Term Contract.....	An awarded Contract for delivery of goods or performance of services by a Vendor for a specific period of time.
Time.....	All references to time shall be in Central Standard Time. For both electronic and hard copy solicitations, the time to which responses are due shall be before the time indicated (e.g. 1:59:59 pm for a 2:00 pm opening). Responses received on or after the time indicated shall be considered late.
Vendor.....	Bidder, Offeror, Proposer, or Contractor.
Vendors of Record.....	The compiled bid list of Vendors for a specific Solicitation, that is to include Vendors that were selected to receive the Solicitation or have notified the District that they have interest in the Solicitation and are added to the initial list of Vendors.

PART II: SOLICITATION INFORMATION AND RESPONSE INSTRUCTIONS

1. PREPARATION OF A SOLICITATION RESPONSE

- 1.1. **Electronic Solicitation.** In preparation of a Solicitation Response, each Vendor shall abide by the following:
 - 1.1.1. Electronic submissions shall be submitted to purchasing@eanesisd.net.
 - 1.1.2. Furnish all information required by the Solicitation;
 - 1.1.3. Authorized *Signature*. Solicitation Responses must be signed and/or submitted by those individuals who have been given authority to bind the Vendor under contract.
 - 1.1.3.1. An unsigned Solicitation Response may be deemed non-responsive and disqualified.
 - 1.1.4. Have all erasures or other changes initialed by the signer of the Solicitation Response;
 - 1.1.5. Solicitation Responses submitted on other forms or with different terms or provisions may be deemed non-responsive by the District and disqualified;
 - 1.1.6. Unless otherwise instructed by the Solicitation, Vendors shall submit the lowest and best price, F.O.B. destination, freight prepaid and allowed, on each item, including packaging and transportation.
 - 1.1.7. All Solicitation Responses and accompanying samples or documents of any kind become the property of the District. The District will be under no obligation to return any part of a Solicitation Response to a Vendor.
 - 1.1.8. When responding to a Solicitation, the Vendor must respond with all information/documents pertaining to the award of the product and/or service to include any exceptions to the District's Terms and Conditions, Statement of Work, and/or any agreements.
 - 1.1.9. Any required information/documents/exceptions received after the response closing date may not be considered.
- 1.2. **Hard Copy Solicitation.** In preparation of a hard copy Solicitation Response, each Vendor shall:
 - 1.2.1. Furnish all information required by the Solicitation;
 - 1.2.2. Authorized Signature. Solicitation Responses must be signed and/or submitted by those individuals who have been given authority to bind the Vendor under contract.
 - 1.2.2.1. For Solicitations that require a hard copy response, the Solicitation Response must be manually signed by an authorized representative;
 - 1.2.2.2. An unsigned Solicitation Response may be deemed non-responsive and disqualified.
 - 1.2.3. Have all erasures or other changes initialed by the signer of the Solicitation Response;
 - 1.2.4. Solicitation Responses submitted on other forms or with different terms or provisions may be deemed non-responsive by the District and disqualified;
 - 1.2.5. Unless otherwise instructed by the Solicitation, Vendors shall submit the lowest and best price, F.O.B. destination, freight prepaid and allowed, on each item, including packaging and transportation.
 - 1.2.6. All Solicitation Responses and accompanying samples or documents of any kind become the property of the District. The District will be under no obligation to return any part of a Solicitation Response to a Vendor.
 - 1.2.7. When responding to a Solicitation, the Vendor must respond with all information/documents pertaining to the award of the product and/or service to include any exceptions to the District's Terms and Conditions, Statement of Work, and/or any agreements.
 - 1.2.8. Any required information/documents/exceptions received after the response closing date may not be considered.
- 1.3. **Affirmation of Certifications.** The Vendor shall complete, sign (hard copy) or affirm (electronic) all certification documents required by the Solicitation, as applicable. Based on the type of Solicitation, the forms that may be required are:
 - 1.3.1. Federal Compliance Guidelines for Use of Federal Funds (also known as "EDGAR").
 - 1.3.1.1. The District has elected to solicit requests to bid under the requirements set forth by the Code of Federal Regulations (CFR) Title 2 Grants and Agreements, Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200). Following these federal requirements will allow for federal funds entrusted to the District to be used to make purchases through an awarded District contract. The CFR is the codification of the general and permanent rules published in the Federal Register by the departments and agencies of the Federal Government produced by the Office of the Federal Register (OFR) and the Government Publishing Office. The CFR may change during the term of the Contract, and the Vendor may be required to make adjustments as necessary.
 - 1.3.1.2. By submission of a Solicitation Response, the Vendor certifies and agrees that it, as a company/entity/individual, understands and agrees to comply with all applicable laws and rules. Some of the laws and rules may not be applicable to this Solicitation and it is the Vendor's sole responsibility to identify which areas are appropriate for the Solicitation. Failure to affirm and agree to these requirements may, at the District's discretion, disqualify the associated Solicitation Response or limit the use of the awarded Contract based on the funding source.

- 1.3.1.3. The District reserves the right at any time within the Contract Term to require an awarded Vendor to reaffirm, sign and resubmit proper documentation stating that Vendor is not debarred or suspended, confirm that no other circumstances have changed related to Vendor's original Solicitation Response, and/or agree to supplemental terms and conditions, as applicable.
- 1.3.1.4. General. The following items are applicable to all Solicitations regardless of type or specialty.
- 1.3.1.4.1. Debarment and Suspension (Executive Orders 12549 and 12689). A Contract Award (see 2 CFR 180.220) must not be made to parties listed on the government wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System in SAM (sam.gov) contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Prior to award, the District will verify that the Vendor is not currently listed as debarred by the Federal government. If the Vendor is found to be on the Federal debarment list, the District, at its sole option, may elect to not award to the Vendor if the funds intended for use with the contract will be federal funds. If awarded and during the Contract Term the Vendor or any of its principals becomes debarred or suspended, the Vendor must notify the District within five (5) District business days of the debarment/suspension. The District, in its sole judgment, may elect to terminate the associated contract without penalty to the District or limit the contract to non-federal funds. Such decision will be communicated in writing within twenty (20) District business days. During this assessment period, no contract orders can be placed by the District using federal funds.
- 1.3.1.4.2. Conflict of Interest. 2 CFR 200.318(c)(1) states that the District must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from the contract awarded to a specific supplier. The officers, employees, and agents of the District may neither solicit nor accept gratuities, favors, or anything of monetary value from suppliers or parties to subcontracts. However, the District may set standards for situations in which the financial interest is not substantial, or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the District. It is the responsibility of the Vendor to identify and make the District aware of any potential conflicts of interest that exist between Vendor and the District. Failure to do so will cause the associated Vendor's Solicitation Response to be disqualified from further consideration, or if already awarded, the associated contract will be terminated immediately without penalty to the District based on cause.
- 1.3.1.4.3. Termination for Cause. All federal contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement. Termination may occur for Vendor's failure to meet schedules, deadlines, and/or delivery dates within specified time frames, make any payments owed, otherwise perform in accordance with the procurement solicitation and/or contract, and to the greatest extent authorized by law, if an award no longer effectuates the program goals or priorities of the Federal awarding agency or the District. The District, however, does not have a minimum threshold for contract termination; as such, all Contracts for any amount may be terminated for cause by the District.

- 1.3.1.4.4. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). The Byrd Amendment applies to all federal contracts, grants, or cooperative agreements, and subcontracts expected to exceed the Simplified Acquisition Threshold (SAT). All contractors and subcontractors must comply with the requirements of this Amendment, as applicable. Vendor shall certify for orders over the SAT that it has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. The Vendor must also disclose any lobbying activities paid for with non-Federal funds that takes place in connection with obtaining any Federal award.
- 1.3.1.4.5. Small Purchases (2 CFR 200.320). Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not cost more than the Simplified Acquisition Threshold (SAT). If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources. Specifically, for multiple award catalog-based or no identifiable pricing, the District may be required to submit a request for quotation from the contracted vendors for the purpose of meeting the competitive procurement requirements of this section.
- 1.3.1.5. *Large Purchases*. For individual purchases that exceed the Simplified Acquisition Threshold.
- 1.3.1.5.1. Simplified Acquisition Threshold. Contracts for more than the Simplified Acquisition Threshold (SAT), which may be adjusted for inflation by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. In any case, contracts in excess of the state's or state agency threshold must address the foregoing. Any purchase that is over the SAT threshold will require additional cost/price analysis by the District. The Vendor may be required to provide additional documentation to support this requirement based on the federal requirements at the time of the purchase.
- 1.3.1.5.2. Cost Analysis / Negotiation of Profit (2 CFR 200.323). For contracts over the SAT, the District must negotiate profit as a separate element of the price for each contract in which there is no price competition, including solicitations that received only one viable response. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
- 1.3.1.5.3. Vendor Violation or Breach of Contract Terms. For Contract Awards valued at or greater than the SAT, the District must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as appropriate. The remedies under this provision are in addition to any other remedies that may be available under law or in equity.
- 1.3.1.5.4. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Contracts and sub-grants of amounts in excess of the SAT must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 1.3.1.5.5. Never Contract with the Enemy. The District will terminate any grant, cooperative agreement, or contract resulting from this procurement solicitation as a violation of Never Contract with the Enemy, as detailed in 2 CFR Part 183, if the contract is expected to exceed \$50,000 and is performed outside of the United States, including U.S. territories, to a person or entity that is actively opposing United States or coalition forces involved in contingency operations in which Armed Forces members are engaged in hostilities. The District has a responsibility to ensure no Federal award funds are provided directly or indirectly to the enemy, to terminate subawards in violation of this provision, and to allow the Federal Government access to records to ensure that no Federal award funds are provided to the enemy.

- 1.3.1.5.6. Prohibition on Certain Telecommunications. In accordance with 2 CFR § 200.216, the District is prohibited from either obligating or expending Federal financial assistance, to include loan or grant funds, for the procurement of services, equipment, or systems that utilize covered telecommunications equipment or services as a substantial or essential component of any system or critical technology. Covered telecommunications equipment means equipment and physical security surveillance or critical infrastructure and other video surveillance and telecommunications equipment produced by expressly, prohibited entities, as detailed in 2 CFR §200.216. The Vendor shall certify to the District that it will not purchase equipment, services, or systems that use covered telecommunications, as a substantial or essential component of any system, or as critical technology as part of any system procured by the District.
- 1.3.1.5.7. Domestic Preferences for Procurements/Buy America Act. To the extent consistent with law, and as appropriate, in accordance with 2 CFR § 200.322, the District has a preference for the purchase, acquisition, or use of certain goods, or materials produced in the United States when spending federal funds. Vendor shall certify to the district that it is in compliance with all applicable provisions of this regulation (2 CFR § 200.322).
- 1.3.1.5.8. Affirmative Steps for Minority and Women-Owned Firms. When Federal funds are expended by the District, the Vendor is required to take all affirmative steps to solicit and reach out to small, minority and women-owned firms for any subcontracting opportunities on the solicited project, in accordance with 2 CFR § 200.321.
- 1.3.1.6. Construction (applies only to solicitations for construction contracts under Texas Government Code 2269).
 - 1.3.1.6.1. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The District must place a copy of the current prevailing wage determination issued by the Department of Labor in each Solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The District must report all suspected or reported violations to the Federal awarding agency. The contract must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The District must report all suspected or reported violations to the Federal awarding agency.
 - 1.3.1.6.2. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

- 1.3.1.6.3. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the District in excess of \$100,000 of federal funds that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- 1.3.1.7. *Specialized Procurements*. Applies only to Solicitations for which specialized requirements are identified.
- 1.3.1.7.1. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or sub-recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or sub-recipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
- 1.3.1.7.2. Energy Policy and Conservation Act (42 U.S.C.6201). Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
- 1.3.1.7.3. Solid Waste Disposal Act. The District and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- 1.3.2. State Divestment Statute List.
- 1.3.2.1. The District is forbidden by the following State of Texas statutes to conduct business with companies on the State of Texas Comptroller of Public Accounts (Comptroller's) *Divestment Statute List*:
- 1.3.2.1.1. Companies that do business with countries that support Designated Foreign Terrorist Organizations — Govt. Code 2270.0201. Investing Entities listed in Texas Government Code 2270.001 (7) have divestment requirements related to any investments in these companies.
- 1.3.2.1.2. Companies that Boycott Israel – Texas Government Code 808.051(c).
- 1.3.2.2. The Comptroller's list is available at:
- 1.3.2.2.1. <https://comptroller.texas.gov/purchasing/publications/divestment.php>
- 1.3.2.3. By submission of a Solicitation Response, the Vendor certifies and verifies 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.

- 1.3.2.4. If (a) Vendor is not a sole proprietorship; (b) Vendor has ten (10) or more full-time employees; and (c) the Contract has a value of \$100,000 or more, the following certification shall apply; otherwise, this certification is not required. Pursuant to Chapter 2270 of the Texas Government Code, Vendor hereby certifies and verifies that neither the Vendor, nor any affiliate, subsidiary, or parent company of the Vendor, if any (the "Vendor Companies"), boycotts Israel, and the Contractor agrees that the Vendor and Vendor Companies will not boycott Israel during the term of the Contract. For purposes of the Contract, the term "boycott" shall mean and include refusing to deal with, terminating business activities with, 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, but does not include an action made for ordinary business purposes.
- 1.3.2.5. If Vendor is not a governmental body and (a) the Contract has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the District; or (b) the Contract results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the District in a District fiscal year, the following certification shall apply; otherwise, this certification is not required. As required by Tex. Gov't Code § 552.374(b), the following statement is included in the Solicitation and the Contract (unless the Contract is (1) related to the purchase or underwriting of a public security; (2) is or may be used as collateral on a loan; or (3) proceeds from which are used to pay debt service of a public security of loan): "The requirements of Subchapter J, Chapter 552, Government Code, may apply to this RFP and Agreement and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter." Pursuant to Subchapter J, Chapter 552, Texas Government Code, the Vendor hereby certifies and agrees to (1) preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the District for the duration of the Contract; (2) promptly provide to the District any contracting information related to the Contract that is in the custody or possession of the Vendor on request of the District; and (3) on completion of the Contract, either (a) provide at no cost to the District all contracting information related to the Contract that is in the custody or possession of Vendor, or (b) preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the District.
- 1.3.3. Felony Conviction Notice.
- 1.3.3.1. Texas Education Code Section 44.034 requires that a person or business entity (excluding publicly-held corporations) that enters into a Contract with the District shall give advance notice to the District if the person or an owner or operator of the business entity has been convicted of a felony.
- 1.3.3.2. Vendors shall complete, execute and return as part of the Solicitation Response, the Felony Conviction Notice information referenced in the Solicitation.
- 1.3.3.3. The District may immediately terminate a Contract with a person or business entity for cause and without penalty to the District if the District determines, in its sole discretion, that the person or business entity failed to give notice as required by the Education Code or misrepresents the conduct resulting in the conviction.
- 1.3.4. Bid / Proposal Certification and Affirmation (hard copy only). This document must be signed by an authorized representative who is authorized to legally bind the Vendor and is to be included with the Solicitation Response for the response to be considered. Failure to sign and submit this document may disqualify the Solicitation Response.
- 1.3.5. W-9 Certificate. The Vendor is encouraged to submit with their Solicitation Response a copy of a W-9 Vendor Identification Number Certificate to expedite the payment process if awarded a Contract. A copy of the form can be found at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>.
- 1.4. **Clarifications and Questions of Current Solicitation.**
- 1.4.1. VERBAL RESPONSES OR CONVERSATIONS ARE NOT BINDING AND WILL BE WITHOUT LEGAL EFFECT - ONLY QUESTIONS ANSWERED BY FORMAL WRITTEN ADDENDA WILL BE BINDING AND WILL BE MADE PART OF THE SOLICITATION DOCUMENTS.
- 1.4.2. All requests for clarification, interpretations, and/or questions should be submitted through the identified process in the Solicitation. All requests must be submitted prior to the date indicated by the question cutoff date.
- 1.4.3. Only fully completed requests, including all pertinent information, for valid and current Solicitations are eligible to receive a response; late or delinquent requests will not be entertained or answered.
- 1.4.4. Failure to provide all information may delay a response from the District.
- 1.4.5. The District reserves the right to inform the requester that the response to the request will be submitted through an addendum to all interested vendors and not be addressed directly through the request.
- 1.4.6. The respondent is discouraged from contacting the District's Buyer directly unless necessary.

- 1.4.7. Contact with other employees of the District outside the EISD Purchasing Office is prohibited during the Solicitation process unless directed by the Buyer or other District Purchasing officers. Respondents who fail to adhere to this requirement may have their Solicitation Responses disqualified.
- 1.4.8. All interpretations or clarifications considered necessary and approved by the District will be provided by written Addendum through Bonfire.
- 1.4.9. The District is not responsible for any other explanation or interpretations, which anyone presumes to make by any other source other than the District Purchasing Office.
- 1.5. **Addendum.**
 - 1.5.1. Should an addition or correction become necessary after a Solicitation is issued, an Addendum will be posted on the [District's Bid Opportunities page](#).
 - 1.5.2. It is the Vendor's responsibility to continuously check the District's Bid Opportunities page and Solicitation for any addenda issued.
 - 1.5.3. If required, Vendors shall acknowledge an Addendum by returning the Addendum in a separate response, or with the response, or by physically noting the change or addition on the Solicitation Response with a notation acknowledging the Addendum.
 - 1.5.4. Failure to return or acknowledge an Addendum may result in the Solicitation Response being deemed non-responsive by the District and may result in disqualification unless otherwise indicated within the Solicitation. Any clarification, corrections, approvals, supplemental instructions or changes to the Solicitation will be made by written Addendum.
 - 1.5.5. Sole issuing authority of addenda shall be vested in the District Purchasing Office.
- 1.6. **Evaluation Criteria.**
 - 1.6.1. All formal Solicitations will be evaluated using the Best Value method as defined in Texas Education Code Section 44.031(b) and/or Texas Government Code Chapter 2269 (construction only).
 - 1.6.2. The Solicitation will indicate the criteria and ranking to be used to determine Best Value.
 - 1.6.3. The Vendor is encouraged to provide all information necessary to receive proper points based on the criteria listed.
- 1.7. **Conflict of Interest.**
 - 1.7.1. Disclosure of Certain Relationships with Local Government Officials.
 - 1.7.1.1. Any individual or business entity that contracts or seeks to contract for the sale or purchase of property, goods, or services with the District must file a Vendor Conflict of Interest Questionnaire with the District Purchasing Office in accordance with Texas Local Government Code Chapter 176, no later than the 7th business day after the recipient becomes aware of facts that require filing.
 - 1.7.1.2. This requirement applies to a person who is an agent of a vendor in the Vendor's business with the District.
 - 1.7.1.3. Forms and additional information are available at <http://www.Eanesisd.net>.
 - 1.7.1.4. Forms are also posted at the Texas Ethics Commission's website at <https://www.ethics.state.tx.us>.
 - 1.7.2. Employee.
 - 1.7.2.1. In accordance with District Policies CH (Local) Purchasing and Acquisition and DBD (Local) Employment Requirements and Restrictions, all Vendors must disclose the name of any District employee who owns, directly or indirectly, an interest in the Vendor's firm or any of its branches.
 - 1.7.2.2. Failure to provide such information may be grounds for disqualification of the bid or immediate termination without penalty to the District of a Contract resulting from the Solicitation.
 - 1.7.2.3. Purchase of services or equipment from a business owned in whole or in part by a District employee shall be permitted only when approved by the Superintendent and executed through a documented competitive process.
 - 1.7.2.4. Services that might be provided by the employee as an extension of the employee's regular job responsibilities are exempted from consideration.
- 1.8. **Pre-proposal Conference.**
 - 1.8.1. If identified within the Solicitation as an event, a pre-proposal conference is not mandatory, but the District highly recommends Vendor representation and attendance.
 - 1.8.2. As a norm, the District will not schedule additional conferences or walkthroughs after the initial pre-proposal conference; therefore Vendors should plan to attend the conference.
 - 1.8.3. It is not always anticipated that a pre-proposal conference will create an addendum to the Solicitation; however, if one is issued due to questions posed during the conference, the issuance of an addendum will be issued as stated herein.
 - 1.8.4. If the conference will be hosted at a school campus or restricted facility, Vendors will be required to sign in at the main reception desk and obtain a visitor's badge prior to attending the conference. A current driver's license may be required. It is suggested attendees arrive early for badge processing.
 - 1.8.5. A Vendor that fails to have representation at the conference shall not be excused from having complete knowledge of the specifications and/or scope of work requirements. Price adjustments, change orders, etc., that would be considered a part of the working knowledge of the Vendor, based on the project specifications, pre-proposal conference, and the walkthrough (as applicable), will not be accepted by the District.

- 1.9. **Site Visitation.**
- 1.9.1. The Vendor shall be responsible for fully understanding the scope of the Solicitation. If considered applicable to the goods or services being solicited, the District recommends that Vendors visit the District site and examine the space and/or equipment to be serviced. Vendors shall obtain prior District Representative approval for all site visitations. Site visits by Vendors may be requested up to three District business days prior to bid opening / proposal closing.
 - 1.9.2. Optional pre-submittal conferences may be established by the District to allow Vendors access to the associated site.
 - 1.9.3. The Vendor shall carefully examine the venue(s), specifications, and requirements.
 - 1.9.4. If necessary, Vendors shall secure additional information from the Buyer that may be requisite to a clear and full understanding of the work.
- 1.10. **Interlocal Agreement.**
- 1.10.1. **General.**
 - 1.10.1.1. As governed by Texas Government Code Chapter 791 and Texas Education Code Section 44.031(a)(4) and unless otherwise indicated within the Solicitation, the Contract established by a Solicitation shall be made available to any State of Texas governmental jurisdiction wishing to adopt the terms and conditions set forth within the Contract with the exception of any requirements directly related to the District and its own operations.
 - 1.10.1.2. Adoption of a District Contract by an adopting governmental entity shall be made with the consent of the awarded Vendor.
 - 1.10.2. **Central Texas Purchasing Alliance (CTPA).**
 - 1.10.2.1. **Membership.** Eanes ISD is a member in good standing of the of the Central Texas Purchasing Alliance (CTPA), an alliance of over 100 school districts in Texas representing millions of students, sharing information, services and contractual opportunities. CTPA is an alliance created in accordance with Section 791.001 of the Texas Government Code through interlocal agreements.
 - 1.10.2.2. **Adoption of Awarded Contracts.** In support of this collaborative effort, all awards made by the District may be adopted by other active CTPA member districts. By adopting a contract from another CTPA member district, the adopting district has met the competitive bidding requirements established by the Texas Education Code Section 44.031(a)(4) and as required by the adopting district's policies. There is no obligation on either party to participate unless both parties agree. The goods and services provided under the contract will be at the same or better contract pricing and purchasing terms established by the originating district.
 - 1.10.2.3. **Document Sharing between Members.** To assist an adopting member district in establishing their supporting documentation, the awarded vendor's response and related documents owned by the originating district may be shared without prior notification to the awarded vendor, unless the vendor at the time of their response to the original solicitation clearly annotates that such sharing of their response is to not occur without prior permission of the vendor.
 - 1.10.2.4. **Adopted Contract Management.** The adopting district shall be responsible for the management of the new contract and all payments to the contracted vendor. The originating district shall have no responsibilities under the new contract agreement. Upon adoption of the contract by the adopting CTPA member district, the original term of the contract and any renewal or extension options allowed under the original contract shall then transfer to the adopted contract, and such renewals options may be executed by the adopting member district at its sole discretion and independently of the originating member district's decision to execute such renewal options on the original contract.
- 1.11. **USDA/TDA Special Terms and Conditions.**
- 1.11.1. The following terms and conditions apply to all procurements and purchases involving federal School Nutrition Program funds. In the event of a conflict or inconsistency between the following terms and conditions and any provision of the Agreement, the procurement solicitation issued by the District, or the portion of Vendor's proposal submitted in response to the District's procurement solicitation that is satisfactory to the District, the following terms and conditions shall control.
 - 1.11.2. **Market Basket Analysis**
The District reserves the right, in its sole discretion, to use a "Market Basket Analysis" method, as that term is defined by applicable USDA/TDA regulations and guidance. The Market Basket Analysis sample is established to represent 75% of the total estimated value of the Contract. The most recent velocity/sales report(s) from the District's current supplier(s) was used to project the balance of the year and adjusted for any estimated change in menu and participation for the following year. As a result, this list of [100] goods to be purchased under this procurement solicitation and any resulting Contract includes the top [60] goods purchased by dollar volume representing the 75% threshold. Prices for the remaining [40] goods listed in this procurement solicitation should also be included, though they will not be a part of the Market Basket Analysis. The Market Basket Analysis shall not be used for service or equipment contracts/procurement solicitations or for Fee-For-Service Processing contracts.
 - 1.11.3. **Material Change**

If a material change (as the term is defined by TDA rules and regulations) to a contract entered into between the District and Vendor occurs, then the contract will not be renewed upon the conclusion of its term. Upon the expiration of the term, the District may issue a new RFP for the goods or services procured under the previously existing contract. Material change for purposes of this Section 1.11.3 means a modification that substantially exceeds the terms of the original contract between the District and Vendor.

1.11.4. **Supplemental Contracts**

Supplemental Contracts are entered into pursuant to the piggyback method delineated in the U.S. Department of Agriculture directive SP 35-2012. Should the "piggybacking" result in a material change to the Contract, the District will proceed under Section 1.11.3 of this RFP.

1.11.5. **New Products**

During the Term of a Contract awarded under this RFP, additional purchases not included in the original RFP list and resulting awarded contract may become necessary and benefit the District. Vendor and the District agree that the aggregate value of added purchases during each year of the Contract (if renewed) shall not exceed 10% of the estimated total value of the Contract. The total value of the Contract must be agreed upon, and the dollar value listed in the Contract and each renewal term of the Contract (if any). For purposes of this section, the total value of the Contract includes all contracts awarded as a result of the procurement solicitation to all vendors. For the initial Term of a Contract awarded under this RFP, Vendor and the District agree that the total value of the Contract shall be \$200 million. Additions of new products may be included in the awarded Contract list during the renewal of the Contract through an amendment to the Contract, and the total Contract value adjusted accordingly. For each renewal term of the Contract, the total actual value of the Contract in the preceding year and the additional new product(s) made during that Term will be the basis for determining the maximum dollar amount (not to exceed 10%) of the additional new product(s) that will be allowed during the next Contract renewal term.

1.11.6. **Bonds**

Vendor shall provide all bonds, including bid guarantee, performance bond, and payment bond, as applicable, under U.S. Department of Agriculture and/or Texas Department of Agriculture rules.

1.11.7. **Use by Other Governmental Entities**

In the event that the District allows other governmental entities to "piggyback" onto any existing contract between the District and Vendor entered into pursuant to this procurement solicitation, Vendor agrees and understands that such other governmental entities may include "school food authorities," as that term is used in SP 35-2012. Should the "piggybacking" result in a material change to the Agreement for purposes of USDA/TDA purchases, the District will proceed under the foregoing section entitled "Material Changes."

1.11.8. **No Guarantee of Quantities**

Quantities for purchases paid for with School Nutrition Program funds are subject to change for various reasons, which include, but are not limited to the following: USDA commodity allocation(s), variations in student population, production item substitution(s), changes in consumer taste or expectations, pricing, and nutrition regulatory changes.

1.11.9. **Buy American Act**

The Buy American Act, set forth in 7 C.F.R. Part 210.21(d), requires that participants in the National School Lunch Program and School Breakfast Program use the federal nonprofit food service funds, to the maximum extent practical, to buy domestic commodities or products for Program meals. 7 CFR Part 210.21(d) defines a "domestic commodity or product" as one that is either produced in the U.S. or is processed in the U.S. substantially using agricultural commodities that are produced in the U.S. "Substantially" means that over 51 percent of the final processed product consists of agricultural commodities that were grown domestically.

Because the District participate in the National School Lunch Program and School Breakfast Program, the District requires Vendor to certify whether its products are "domestic commodities or products", as defined by 7 C.F.R. Part 210.21(d). Accordingly, Vendor agrees to provide certification and any necessary documentation requested by the District that the food product was processed in the U.S. and the percentage of U.S. content, by weight or volume, in the food component of processed food products supplied to the District. A "domestic commodity or product" is defined as one that is either produced in the U.S. or is processed in the U.S. substantially using agricultural commodities that are produced in the U.S. as provided in 7 C.F.R. 210.21(d). "Substantially" means that over 51 percent of the final processed product consists of agricultural commodities that were grown domestically. When USDA Foods items are manufactured into processed end products, 51% of resulting food products must be of United States origin.

Vendor certifies that Vendor shall provide food products that meet the Buy American provision. Vendor further certifies that, in compliance with the Buy American provision, its products are "domestic commodities or products" as defined by 7 C.F.R. § 210.21(d). Vendor further certifies that the food products it supplies are processed in the U.S. and Vendor shall certify the percentage of U.S. content, by weight or volume, in the food component of processed food products supplied to the District.

If Vendor is repetitively unable to provide domestic food products, the District may require Vendor to provide evidence that Vendor is capable of fulfilling the terms and conditions of the Contract and specifically, the Buy American provision. If the District determines that Vendor is not capable of fulfilling the terms and conditions of the Contract and/or specifically, the Buy American provision, the District may terminate its Contract with Vendor. Vendor shall provide documentation that demonstrates that food products meet the Buy American provision.

Vendor must notify the District if a delivery contains non-domestic products, so the District may approve delivery as an exception to the Buy American provision. Vendor certifies that it will adhere to the notification requirements for the Buy American provision

Exceptions to the Buy American provision should be used as a last resort; however, an alternative or exception may be approved by the District, upon request, by occurrence (i.e., delivery). Blanket exception approvals are not allowed. The District must determine that the use of a non-domestic food product is appropriate, using the USDA-prescribed questions in making the decision. See "Requirements for an Exception," ARM Section 17b Buy American, at p. 19 (August 12, 2020). Vendor agrees to provide information to the District that will assist the District in this determination. The decision to purchase or accept delivery of a non-US product must be made by the District. Vendor agrees to comply with all requirements imposed by applicable law, USDA/TDA guidance, and the District concerning Buy American provision exceptions.

In the event Vendor or Vendor's supplier(s) are unable or unwilling to certify compliance with the Buy American Provision, or the applicability of an exception to the Buy American provision, the District may decide not to purchase from Vendor and/or District may terminate this Contract if Vendor is incapable of fulfilling the terms and conditions of the Contract, including the Buy American requirements. Additionally, the District may require country of origin on all products and invoices submitted for payment by Vendor, and Vendor agrees to comply with any such requirement.

1.11.10. **Records Retention**

When school nutrition program funds are expended by the District pursuant to this Contract, Vendor certifies that it will comply with the record retention requirements promulgated by USDA/TDA. Vendor further certifies that Vendor will retain all records as required by USDA/TDA for a period of five (5) years after the end of the fiscal year to which the documentation/records pertain. Vendor further certifies that these records must be accessible to appropriate District personnel and federal or state reviewers. See TDA ARMS Manual, 17.107.

2. **SUBMISSION OF A SOLICITATION RESPONSE.**

- 2.1. A Solicitation Response shall represent a true and correct statement and shall contain no cause for claim of omission or error.
- 2.2. All Solicitation Responses must be received by the District based on the method of response, electronic or hard copy, before the date and time indicated within the Solicitation to be considered a viable response.
- 2.3. By submitting a Solicitation Response to the District to provide goods or services, Vendor acknowledges receipt and willingness to accept all terms and conditions contained in these General Provisions.
- 2.4. All responses to a Solicitation shall be valid for a minimum of ninety (90) calendar days from the date the Solicitation was due to the District unless otherwise modified within the Solicitation.
- 2.5. ***Electronic Response.***
 - 2.5.1. The Vendor shall provide all required documentation and information electronically as stated within the Solicitation.
 - 2.5.2. Unless otherwise directed by the Solicitation, the Vendor is discouraged from sending any documentation, samples, catalogs, etc. to the District under separate cover.
 - 2.5.3. **Hard Copy Response to an Electronic Solicitation.**
 - 2.5.3.1. To submit a Solicitation Response, the District Purchasing Office will make available a computer with Internet access to any Vendor that does not have Internet access. The Vendor is to contact the District's Purchasing Office prior to arrival to make arrangements for such access.
 - 2.5.3.2. If the Vendor will be unable to submit by electronic means, the Vendor must contact the Buyer listed on the Solicitation in sufficient time to allow the Buyer a reasonable opportunity to send an official paper copy of the Solicitation.
 - 2.5.3.3. All hard copy Solicitation Responses shall meet all requirements set forth in the Solicitation provided by the Buyer.
 - 2.5.3.4. Hard copy responses shall contain:
 - 2.5.3.4.1. The signed official Invitation Document provided by the Buyer;
 - 2.5.3.4.2. Any additional documents or information required by the Solicitation.
 - 2.5.3.5. To be considered viable, a Solicitation Response must be physically received at the District's Administrative Lobby located at 601 Camp Craft Road, Austin, TX 78746 before the time and date indicated in the Solicitation.

- 2.5.3.6. Failure to provide a signed Solicitation Response on the official Solicitation form as part of a hard copy Solicitation's Response may result in the Solicitation Response being considered non-responsive and may be disqualified.
- 2.5.3.7. Late Solicitation responses will not be accepted or considered by the District under any circumstances.
- 2.6. **Hard Copy Response (non-electronic).**
 - 2.6.1. Solicitation Response must contain:
 - 2.6.1.1. *The Solicitation Response Form*;
 - 2.6.1.2. Specification documents, if applicable;
 - 2.6.1.3. The certifications and representations as applicable;
 - 2.6.1.4. Any additional documents required by the Solicitation.
 - 2.6.2. Solicitation Responses must be physically received at the District's Administrative Lobby located at 601 Camp Craft Road, Austin, TX 78746, before the time and date indicated in the Solicitation. Late Solicitation responses will not be accepted or considered by the District under any circumstances
- 2.7. **Solicitation Response Certification.**
 - 2.7.1. By submitting a Solicitation Response, the Vendor certifies and represents to the District that:
 - 2.7.1.1. The Solicitation Response has been manually signed or electronically submitted by an authorized representative of the company or firm submitting the bid, proposal, offer or other Solicitation Response document;
 - 2.7.1.2. The Vendor's firm or any of its individuals have not prepared the Solicitation Response in collusion with any other Vendor or individual; and
 - 2.7.1.3. The contents of the Solicitation Response as to price, terms and conditions or other details of the Solicitation Response have not been communicated by the Vendor or by any employee or agent to any other person engaged in this type of business prior to the official opening of the Solicitation.
 - 2.7.1.4. Failure on the Vendor's part to have an authorized Company representative sign the Solicitation Response may result in the Solicitation Response being considered non-responsive and the Solicitation Response may be disqualified.
- 2.8. **Withdrawal of Solicitation prior to Opening or Closing.**
 - 2.8.1. For all Hard Copy Solicitations, a Vendor may withdraw its Solicitation Response in person by completing a *Bid/Response Withdrawal Form* available at the District's Administrative Lobby, or presenting the request to withdraw on their company letterhead at any time prior to the Solicitation Response opening/closing date and time.
 - 2.8.2. The Vendor representative must be an authorized agent of the Vendor or the individual must provide proof of assignment from an authorized agent of the company for the request to be considered.
 - 2.8.3. To request the release of the Solicitation Response in person, the Vendor representative must present one of the following valid types of identifications:
 - 2.8.3.1. Corporate identification card (e.g. business card or photo badge)
 - 2.8.3.2. Photo identification card (e.g. Texas Driver's License)
 - 2.8.3.3. Other legally recognized form of identification
 - 2.8.4. The identification must match the person withdrawing a Solicitation Response for the response to be released.
 - 2.8.5. The District reserves the right to require additional proof of identification if deemed necessary.
 - 2.8.6. Any reference to the receipt of the response will be stricken from the procurement folder and the Bid/Response Withdrawal Form or company letter will become part of the procurement file.
 - 2.8.7. Vendors who are unable to present the Bid/Response Withdrawal Form or Letterhead in person may send their signed request via email to purchasing@eanesisd.net. Please note the District will use the email and attached documents as authorization to withdraw the Solicitation Response.
 - 2.8.8. Withdrawing the Solicitation Response does not prohibit the Vendor from resubmitting its Solicitation Response prior to the Solicitation opening/closing date and time.
- 2.9. **Late Solicitation Response.**
 - 2.9.1. Late Solicitation Responses will **NOT** be considered under any circumstances and the Solicitation Response will not be accepted by the District after the time and date indicated in the Solicitation.
 - 2.9.1.1. *Hard Copy Responses.* A Solicitation Response will be considered late if the response is not physically received at the District's Administrative Lobby located at 601 Camp Craft Road, Austin Texas, 78746, before the time and date indicated in the Solicitation.
 - 2.9.1.2. *Electronic Responses.* Electronic responses will only be allowed by the system if the response is submitted before the time and date indicated in the Solicitation.
 - 2.9.2. The Purchasing Department will not be responsible for, and no allowances will be made for, Solicitation Responses delivered to other locations within the District, delays caused by the Post Office, technical delays or problems, courier services, or any other delays.
 - 2.9.3. The official deadline date and time is determined by the Purchasing Office and specified in the Solicitation.

- 2.10. **Post Opening / Closing Withdrawal of a Solicitation Response.** Any Vendor who is extended the privilege of withdrawing a Solicitation response after the opening/closing of a Solicitation because of having proven mechanical error in the Solicitation Response, at the District's discretion, may not be considered for an Award on similar items for a specific period of time deemed appropriate by the District, usually considered one (1) year. Such actions will be issued in writing from the District Purchasing Office and shall include the time frame to which the Vendor is ineligible to receive an award.
- 2.11. **Confidentiality of Documents.**
- 2.11.1. All documents associated with a Solicitation shall be governed by the Texas Public Information Act, Texas Government Code Chapter 552.
 - 2.11.2. All documents submitted as part of the Vendor's Proposal Response to a Solicitation will be deemed confidential during the evaluation process to the maximum extent permitted by applicable law.
 - 2.11.3. There shall be no disclosure of any Proposer's information to a competing Proposer prior to award of the Solicitation Responses, unless otherwise dictated by applicable law.
 - 2.11.4. As a governmental body, the District is subject to the Texas Public Information Act found in Chapter 552, Texas Government Code. Solicitation Responses and other information submitted to the District in connection with a Solicitation or the Contract may be subject to release as public information. If a Proposer believes that part(s) of its proposal or any other information submitted by Vendor to the District in connection with a Solicitation or the Contract contain confidential, proprietary, and/or trade secret information or otherwise may be excepted from disclosure under Texas law, the Vendor must clearly and conspicuously mark the applicable information as "CONFIDENTIAL." Marking information as "CONFIDENTIAL" does not guarantee that the information will be withheld from disclosure. If the District receives a request for public information involving information that Vendor has clearly and conspicuously marked as "CONFIDENTIAL," the District will respond pursuant to Chapter 552, Texas Government Code, which may or may not require that the District provide notice of the request to Vendor.
 - 2.11.5. The District assumes no obligation or responsibility relating to the disclosure or nondisclosure of information submitted by Vendor. Vendor waives any claim against and releases from liability the District, its officers, employees, agents, and attorneys with respect to disclosure of information provided under or in connection with the Solicitation or Contract or otherwise created, assembled, maintained, or held by Vendor and determined by the District, the Attorney General of Texas, or a court of law to be subject to disclosure under the Texas Public Information Act. Further, even if Vendor marks information as "CONFIDENTIAL," Vendor expressly agrees that the District may disclose Vendor's Solicitation Response and/or Contract, including, but not limited to, pricing information, to other governmental entities and/or members of CTPA.

3. **COMPONENTS OF A SOLICITATION**

- 3.1. **Types of Contracts.** Each Solicitation will identify the type of Contract being advertised. One of the following contracting methods will typically be used, but the District reserves the right to use any contracting method it deems to be in the best interest of the District:
- 3.1.1. Firm-Fixed Price.
 - 3.1.1.1. Prices shall be firm-fixed for the term specified in the Contract and all extensions exercised by the District.
 - 3.1.1.2. No increases will be allowed during the Contract term.
 - 3.1.1.3. Price decreases are acceptable at any time during the term of the Contract.
 - 3.1.2. Fixed-Price with a Price Adjustment Allowance.
 - 3.1.2.1. Prices shall be firm for a term specified in the Contract.
 - 3.1.2.2. Prices can be adjusted based on escalation provisions as identified in the Contract.
 - 3.1.2.3. The District reserves the sole right to evaluate the applicability of any price adjustment and accept or reject any formula included in any Solicitation Response or accept or reject any Solicitation Response containing a price adjustment proposal.
 - 3.1.3. Firm-Fixed Discount Percentage, Discount-from-List, or Cost Markup-From-List.
 - 3.1.3.1. Discount or cost mark-up shall be firm-fixed for the period specified in the Contract, but prices may vary based upon changes in a District-approved price list or other pricing document, by the method and frequency identified in the Contract.
 - 3.1.3.2. Used when the pricing is based on a discount or a cost-plus mark-up percentage from an established, publicly recognized price list.
 - 3.1.3.3. Prices shall be from a current Vendor's price list or a cost-plus percentage add-on to a Vendor's distributor/producers price list.
 - 3.1.3.4. Vendor's price list shall be the current price list published and available to and recognized by the trade. A price list especially prepared for a given Solicitation will not be accepted. The District shall be the sole determinant as to acceptability.
 - 3.1.3.5. Unless otherwise indicated within the Solicitation, the period of acceptance shall be no earlier than ten (10) District Business Days from receipt and approval.

- 3.1.3.6. In order for a price list to be changed, a new or amended price list must be submitted to the Purchasing Department by the Vendor and approved by the District Representative within the Contract time specified prior to the requested price change taking effect. Otherwise, the last District-approved price list remains in effect until such time that the District approves the price change.
 - 3.1.3.7. Prices for this type of Contract cannot be increased for 30 days after the Contract commences unless otherwise specified in the Solicitation. Price reductions shall be offered immediately upon becoming available to a Vendor at any time after Contract Award.
- 3.2. **Solicitation Pricing.**
- 3.2.1. Prices included in Solicitation Responses must be firm for ninety (90) days from Solicitation opening/bid closing date until Contract Award unless otherwise specified in the Solicitation.
 - 3.2.2. Unless otherwise identified within the Solicitation, all items bid are to be bid without minimum quantity requirements. Any bid received with minimum quantity requirements may be disqualified as non-responsive, as determined by the District in its sole discretion.
 - 3.2.3. The Solicitation will dictate to the Vendor how the pricing is to be provided based on the type of products or services.
 - 3.2.3.1. *Unit Price.* The Vendor shall provide pricing for the item based on the unit of measure stated.
 - 3.2.3.2. *Alternate.*
 - 3.2.3.2.1. If offering an alternate product to the one referenced within the Solicitation, the Vendor shall provide the manufacturer and model number of the alternate.
 - 3.2.3.2.2. Failure to provide an alternative product will require the Vendor to provide the referenced product for the term of the Contract Award.
 - 3.2.3.3. *Hourly Price.* The Vendor shall provide the hourly pricing based on the service type.
 - 3.2.3.4. *Lot Price.* The Vendor shall provide a total price to include all items that are considered within the identified lot(s).
 - 3.2.3.5. *Discount.* The Vendor shall provide a discount from the standard price for the item(s) listed within the Solicitation.
 - 3.2.3.6. *Trade-in.*
 - 3.2.3.6.1. The Vendor may provide a price for the item to be considered as a trade-in for the item to be purchased.
 - 3.2.3.6.2. If the Vendor is awarded the item to be purchased and the trade-in is considered acceptable to the District, the trade-in will be listed on the associated purchase order or award.
- 3.3. **Quantities.** Any quantities listed within the Solicitation are a close approximation based on estimated requirements and available funds, but the District reserves the right to purchase more or less than the estimated quantities, at the current Contract price, for the term of the Contract unless otherwise specified in the Solicitation.
- 3.4. **Delivery Terms.**
- 3.4.1. All goods included in the Solicitation shall be F.O.B. ("Free on Board") destination, unless otherwise indicated within the Solicitation.
 - 3.4.2. All goods or products will be considered freight prepaid and allowed and included in the unit price.
 - 3.4.3. If separation of the delivery cost is a necessity for bidding, the Vendor must provide a "not-to-exceed" price with the Solicitation Response. The District will not accept a "to-be-determined" delivery/shipping submission. Any shipping costs submitted in addition to the unit price will be added to the unit price and considered in the evaluation process.
 - 3.4.4. The place of delivery shall be set forth in the block of the purchase order entitled "Ship To".
 - 3.4.5. The District expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect goods/products at delivery before accepting them and to reject defective or non-conforming goods/products.
 - 3.4.6. Services shall be provided/scheduled as specified or directed by the District.
- 3.5. **Brand Name and Product Number Reference.**
- 3.5.1. If applicable to the Solicitation, the use of referenced brand/stock numbers in a Solicitation are for brevity in establishing minimum specifications and are not intended to be restrictive. Whenever an article or material is defined by the District by describing a proprietary product or by using the name of a manufacturer or brand name, the term "or equal" if not inserted shall be implied (as applicable). The specified article or material shall be understood as indicating type, function, minimum standard of design, efficiency and quality desired and shall not be construed as to exclude other manufactured products or comparable quality, design and efficiency (as applicable).
 - 3.5.2. "Buyer approved equal" indicates that the District will consider other manufacturer's products that meet or exceed the published specifications. The District shall make the final determination of acceptable substitutions/alternates.
 - 3.5.3. All items stating the terms "No Alternatives", "No Substitute" or "Must Match Existing" shall mean that the District will not accept any other manufacturer's products.

- 3.5.4. If the referenced manufacturer's stock number space is left blank, the District will consider the bid to be as specified.
- 3.5.5. If an exception is made to the referenced manufacturer's product, the alternate manufacturer, brand name and number must be indicated for each item bid. The Vendor will be required to forward any illustrations that render its equivalency. Any additional specifications must reference the line item number to which it corresponds.
- 3.5.6. The District shall be the sole judge of quality. Products of inferior quality may be rejected by the District, in its sole discretion.
- 3.6. **Sample Requirements.**
 - 3.6.1. The District may require a sample of a product at any time for evaluation and testing, from a Vendor participating in a Solicitation process or a Vendor supplying items to the District under contract.
 - 3.6.2. The Vendor should not submit a sample with the Solicitation Response unless directed to do so.
 - 3.6.3. Request of Sample.
 - 3.6.3.1. If it is determined that a sample is required as part of the Evaluation Process, the requirement will be issued in writing to the Vendor by the Buyer.
 - 3.6.3.2. Samples must be received by the District's Purchasing Office within five (5) District Business Days after written notification is issued, unless the notification instructs otherwise.
 - 3.6.3.3. A representative sample of the item(s) offered must be provided.
 - 3.6.3.4. The Vendor will cover all costs in shipping and providing the sample product to the District.
 - 3.6.3.5. Failure to provide a requested sample may disqualify the Vendor from further consideration in award of the associated Solicitation item.
 - 3.6.3.6. If a sample is found to not meet the Solicitation specifications or the intended purpose of the product, the associated Solicitation item may be disqualified.
 - 3.6.4. Sending of Samples.
 - 3.6.4.1. If a sample is required by the District, samples must be clearly marked with the following information:
 - 3.6.4.1.1. The word "Sample" in large print;
 - 3.6.4.1.2. The name of the company submitting the sample; and
 - 3.6.4.1.3. The number and title of the Solicitation or Contract.
 - 3.6.5. Return of Samples.
 - 3.6.5.1. Unless specifically agreed to by the District in writing, all samples provided shall become the property of the District.
 - 3.6.5.2. If the sample is required by the Vendor to be returned, any and all costs associated with the return of the sample will be the responsibility of the Vendor.
- 3.7. **Attachment.**
 - 3.7.1. Vendors may include attachments to describe goods or services being offered and/or to exhibit that products offered meet all written specifications; however, Vendors shall not submit samples unless requested to do so.
 - 3.7.2. Page and paragraph numbers shall properly reference each page of an attachment in the Solicitation Response.
 - 3.7.3. The name of the Vendor submitting the attachment shall also be prominently displayed on each page of the attachment.
 - 3.7.4. No terms or conditions recorded on any attachment will be considered binding unless specifically made a part of the Solicitation Response in writing and agreed to by the District as part of the Contract Award.
 - 3.7.5. Any added terms or conditions may result in disqualification of a Solicitation Responses (e.g., Solicitation Responses subject to laws of a state other than Texas, requirements for prepayment, limitations on remedies, change in venue, indemnification requirements imposed on the District, etc.).
- 3.8. **References.**
 - 3.8.1. If required in the Solicitation, the Vendor is to submit references of entities/individuals who have contracted with Vendor to provide like products or services. It is recommended that the Vendor list school districts or other local government organizations equal to the District in size and structure, if possible.
 - 3.8.2. The District reserves the right to use the results of any references in the evaluation process.

PART III: SOLICITATION EVALUATION AND AWARD

1. **RESERVATIONS.** The District expressly reserves the right to:
 - 1.1. Waive deviations from specifications and/or formalities or technicalities, if deemed in the best interest of the District;
 - 1.2. Waive any minor informality or deficiency in any Solicitation procedure;
 - 1.3. Reject any or all Solicitation Responses;
 - 1.4. Cancel the Solicitation;
 - 1.5. Reissue a Solicitation;
 - 1.6. Extend the Solicitation opening time and date, the Contract Award date, or both;
 - 1.7. Award one or more Contracts, in part or in whole, to a single or to multiple Vendors; the decision to award multiple contracts, award only one contract, or to make no awards rests solely with the District; any Contract resulting from a Solicitation is non-exclusive and shall be awarded with the understanding and agreement that it is for the sole convenience of the District;
 - 1.8. Award Contracts for individual products or services as may appear advantageous;
 - 1.9. Negotiate separately in any manner necessary to serve the best interests of the District;
 - 1.10. accept, reject, or negotiate modifications in any terms of a Solicitation Response or any parts thereof;
 - 1.11. Be the sole judge of quality and equality;
 - 1.12. Specify approximate quantities;
 - 1.13. Increase or decrease the quantity specified in the Solicitation;
 - 1.14. Consider and accept alternates or substitutions in the best interest of the District;
 - 1.15. Procure any goods or services by other means;
 - 1.16. Purchase no goods or services.

2. **COMPETITIVE SELECTION USING BEST VALUE.**
 - 2.1. **Solicitation.**
 - 2.1.1. All formal Solicitations will be evaluated using the Best Value method as defined in Texas Education Code § 44.031(b).
 - 2.1.2. In determining Best Value, the District shall consider the following (except where otherwise prohibited by law):
 - 2.1.2.1. Purchase price;
 - 2.1.2.2. Reputation of the Vendor and of the Vendor's goods or services;
 - 2.1.2.3. Quality of the Vendor's goods or services;
 - 2.1.2.4. Extent to which the goods or services meet the District's needs;
 - 2.1.2.5. Vendor's past relationship with the District;
 - 2.1.2.6. The impact on the ability of the District to comply with laws and rules relating to historically underutilized businesses;
 - 2.1.2.7. Total long-term cost to the District to acquire the Vendor's goods or services;
 - 2.1.2.8. 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;
 - 2.1.2.8.1. Has its principal place of business in this state; or
 - 2.1.2.8.2. Employs at least 500 persons in this state; and
 - 2.1.2.9. Any other relevant evaluation criteria specifically listed in the Solicitation.
 - 2.1.3. The Solicitation will indicate the criteria and ranking to be used to determine Best Value. In the absence of criteria in the Solicitation, the criteria in 2.1.2 will be used.
 - 2.2. **Award.**
 - 2.2.1. Award will not necessarily be made to the Vendor submitting the lowest priced offer.
 - 2.2.2. The District will evaluate the Solicitation Responses and may request additional information, including conducting interviews, oral presentations, negotiations, or any requirements deemed appropriate;
 - 2.2.3. After Solicitation Responses are received, the District may, in its sole discretion, make an Award without discussion or further negotiation with any Vendor. The District reserves the right to conduct interviews, oral presentations, negotiations (if applicable), or any other requirements deemed appropriate with only one, with some, or with all Vendors. Solicitation Responses should therefore be submitted with the most favorable terms.
 - 2.2.4. The District reserves the right to not make any award if it is deemed to be in the best interest of the District.

3. **PARTNERING AND/OR SUBCONTRACTING.** If the Vendor has joined with one or more business partners or is Subcontracting any work to respond to the Solicitation, the District reserves the right to:
 - 3.1. Reject the Vendor's offer based on that/those partnership(s) and/or Subcontractors.
 - 3.2. Accept, at its option, subsequent offers with new partnership(s) and or Subcontractors, should the Subcontracting Vendors in the initial offer be unacceptable for any reason.

- 3.3. The Vendor shall be responsible for Subcontractors and their agents and employees and other persons performing portions of the work, including but not limited to applicable training in their area of expected expertise and safety.
- 3.4. All Subcontractors must be insured to the same levels as the Vendor as required herein.
4. **EVALUATION.**
 - 4.1. As identified within the Solicitation, the District will evaluate qualified, responsive Solicitation Responses based on the applicable method, including, as applicable, the Best Value method as defined in Texas Education Code § 44.031(b).
5. **AWARD OF CONTRACT.**
 - 5.1. The District will indicate acceptance of a Vendor's Solicitation Response by issuance of a Notice of Award, Purchase Order, District Contract, or other form at completion of the evaluation of Solicitation Responses.
 - 5.2. ***Notice of Award.***
 - 5.2.1. A majority of the contracts awarded by the District will be issued by a formal Notice of Award issued by the District Purchasing Office.
 - 5.2.2. Unless otherwise stated within the notice, the District makes no obligation as to the quantities or deliveries of the items awarded, and it is at the Vendor's own risk if any orders are placed or items manufactured prior to receipt of a District issued Purchase Order.
 - 5.3. ***Purchase Order.***
 - 5.3.1. If the Contract is issued in the form of a Purchase Order, the Purchase Order together with any other documents which the District has attached thereto and/or referenced as part of the Purchase Order, constitutes an offer by the District to purchase from the Vendor the goods and/or services indicated, subject to these General Provisions.
 - 5.3.2. The Purchase Order, its attachments, and/or referenced documents, including these General Provisions, are the sole and complete Contract between the District and Vendor with respect to the goods and services ordered and supersede all prior oral and written understandings.
 - 5.3.3. No additional terms or modifications to the Purchase Order proposed by the Vendor in any acknowledgement, sales order, or other form of communication shall be binding on the District.
 - 5.3.4. The District's failure to object to provisions contained in any communication from the Vendor shall not be deemed a waiver of the provisions hereof or an approval of the terms therein.
 - 5.3.5. Acceptance of the Purchase Order is conditional on Vendor's acceptance of the terms and conditions in these General Provisions.
 - 5.3.6. The District expressly objects to and rejects any terms or conditions in addition to or different from those contained in these General Provisions, whether previously or hereafter proposed in any form from Vendor unless the District has expressly agreed with them in writing.
 - 5.4. ***District Contract.***
 - 5.4.1. If a formal District Contract is issued, the terms and conditions of the Contract shall be governed in the following order of precedence:
 - 5.4.1.1. The original Solicitation;
 - 5.4.1.2. Any Addenda submitted prior to the opening of the Solicitation;
 - 5.4.1.3. District General Provisions;
 - 5.4.1.4. The portions of the Vendor's Solicitation Response accepted by the District; and
 - 5.4.1.5. Any subsequent contractual documents agreed upon and signed by both parties.
 - 5.4.2. Failure to accept this obligation may result in the cancellation of any award;
 - 5.4.3. Any damages suffered by the District as a result of the Vendor's failure to Contract shall be recovered from the Vendor.
6. **CERTIFICATE OF INTERESTED PARTIES.**
 - 6.1. An awarded vendor will be required to complete and submit the Form 1295 if the award meets the requirements of Texas Government Code Section 2252.908. If applicable, the Vendor must submit a Disclosure of Interested Parties (Form 1295) to the District at the time business entity submits the signed contract. Section 2252.908 applies to a District Contract that (1) requires an action or vote by the District's Board of Trustees before the contract may be signed; (2) has a value of at least \$1 million; or (3) is for services that would require a person to register as a lobbyist under Tex. Gov't Code Chapter 305. The Form 1295 requirement does not apply to: (1) a contract with a publicly traded business entity or wholly owned subsidiary of the same; (2) an electric utility; or (3) a gas utility.
 - 6.2. The Vendor must file the Form 1295 electronically with the Texas Ethics Commission. The online filing application can be found at https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm.
 - 6.3. Instructions are available on the Texas Ethics Commission website at <https://www.ethics.state.tx.us/file>.
7. **POST-AWARD DEBRIEF.**

7.1. Open records requests for other documentation shall be made based on the requirements set forth in the District Policy GBAA (Legal) found at <https://pol.tasb.org/Policy/Search/1151?filter=GBAA>.

8. **RIGHT TO PROTEST.**

8.1. All Vendors who believe they have been aggrieved shall be permitted to protest an award based on the procedures outlined in District Policy CHE (LEGAL) – *Vendor Relations*.

8.2. Only upon learning of the aggrievement, the District will advise the Vendor of the policy, and the Vendor shall take full responsibility for understanding and following the policy, including the timing of such protests.

8.3. CHE (LEGAL) is provided on the District web site at <https://pol.tasb.org/Policy/Code/1151?filter=CHE>.

PART IV: CONTRACT TERMS, CONDITIONS, AND REQUIREMENTS

1. GENERAL TERMS.

- 1.1. **Title.** The awarded Vendor shall be hereby known in the section as "Contractor".
- 1.2. **Term of Contract.**
 - 1.2.1. The Contract established by the Contract Award shall be in effect from date of award or the commencement date, whichever is later, through the expiration date stated in the Contract ("Term").
 - 1.2.2. Any Purchase Orders dated during the Term of the Contract must be honored even if received after the Contract expiration date. Contractor may not specify a "final order" receipt date.
 - 1.2.3. Pricing is established by the date the order is placed unless otherwise stated in the Contract.
 - 1.2.4. Term Extensions.
 - 1.2.4.1. All extensions will be issued in writing prior to the end of the current Contract term.
 - 1.2.4.2. Extension Types.
 - 1.2.4.2.1. Sole Option by the District. The choice to extend the Contract for the extension period is based solely on the determination by the District. The Contractor shall be required to honor the extension under the original terms and conditions.
 - 1.2.4.2.2. Option of Both Parties. The choice to extend the Contract for the extension period is based on the determination of both the District and the Contractor. If either party rejects the extension option, the Contract will be terminated at the end of the current Contract period.
 - 1.2.5. Short Term Contract Extension.
 - 1.2.5.1. If the District determines that additional time is required to avoid a Contract lapse, at its sole option, the District may extend the Contract up to 90 days, under the current Contract pricing, terms and conditions.
 - 1.2.5.2. Such extension will be done in writing prior to the end of the current Contract term.
- 1.3. **Price Escalation.** The District shall only allow price escalations within a Contract if such provisions were identified and agreed to within the original Solicitation.
- 1.4. **New Products.** New products that meet the specifications detailed in the Solicitation may be added to the Contract, with prior written approval from the District. Pricing of any new products shall be equivalent to the percentage discount or proposed prices for other similar products. Contractor may replace or add products to an existing Contract if: the replacing products are equal to or superior to the original products offered; are discounted in a similar or to a greater degree; and the products meet the requirements of the original Solicitation. No products may be added to avoid competitive procurement procedures. The District may reject any proposed additions, without cause, in its sole discretion.
- 1.5. **Availability of Funds.**
 - 1.5.1. Any Purchase Order resulting from a Solicitation is contingent upon the continued availability of appropriations and is subject to cancellation, without penalty, either in whole or in part, if funds are not appropriated by the Eanes ISD Board of Trustees or otherwise not made available to the District.
 - 1.5.2. The District's payment obligations are payable only and solely from funds appropriated and available for the purpose of the purchase.
 - 1.5.3. The absence of appropriated or other lawfully available funds shall render the Contract Award null and void to the extent funds are not appropriated or available and any Deliverables delivered but unpaid shall be returned to the Contractor.
 - 1.5.4. The District shall provide the Contractor written notice of the failure of the District to make an adequate appropriation for any fiscal year to pay the amounts due under the Contract Award or the reduction of any appropriation to an amount insufficient to permit the District to pay its obligations.
- 1.6. **Conflict of Interest.**
 - 1.6.1. If the Contractor becomes aware of facts that require filing of a Vendor Conflict of Interest Questionnaire with the District Purchasing Office, Contractor must file the Questionnaire within seven (7) District Business Days in accordance with Texas Local Government Code Chapter 176.
 - 1.6.2. This requirement also applies to a person who is an agent of the Contractor.
 - 1.6.3. Forms and additional information are available at <http://www.Eanesisd.net>.
 - 1.6.4. Forms are also posted at the Texas Ethics Commission's website at: <https://www.ethics.state.tx.us/>.
- 1.7. **Federal Recertification at Time of Extension.**
 - 1.7.1. The District may choose to require the Contractor to submit a recertification of the federal requirements on a periodic basis or at the time of Contract extension as applicable.
 - 1.7.2. The requirements shall be as identified in Part II, Item 1.3.1., *Federal Compliance Guidelines for Use of Federal Funds* (also known as "EDGAR") herein.
- 1.8. **Contract Kick-off Meeting.**
 - 1.8.1. The District reserves the right to require the Contractor to meet with District representatives prior to the start of the Contract.

- 1.8.2. The meeting shall include discussion, at a minimum, of the performance requirements, service specifications, expectations of professionalism, and access issues, if necessary.
- 1.9. **Periodic Performance Review.**
- 1.9.1. The District reserves the right to require periodic performance reviews with the Contractor.
- 1.9.2. These reviews shall evaluate, at a minimum, the Contractor's ability to:
- 1.9.2.1. Provide goods or perform services within the required specifications and/or performance requirements;
- 1.9.2.2. Meet the District's schedule; and
- 1.9.2.3. Perform in a professional manner.
- 1.10. **Usage Report.**
- 1.10.1. The District reserves the right to require the Contractor to provide usage reports of the goods or services purchased from the Contractor during the Contract Term.
- 1.10.2. This right may be extended beyond the end of the Contract Term for a maximum of two years.
- 1.10.3. The reports shall be in a mutually agreed upon format that is useful by the District and made available by the Contractor.
- 1.11. **Rights to Work Product.**
- 1.11.1. All unique and previously unavailable products created by the Vendor under Contract with the District shall be considered Work Product.
- 1.11.2. The Work Product shall be the sole property of the District.
- 1.11.3. Contractor hereby assigns all of its rights, title and interest in any and all Work Product and all drafts thereof, including all worldwide copyright ownership rights in the Work Product, to the District.
- 1.11.4. The District has the right to legible and complete copies of any and all such work papers upon the District's request.
- 1.12. **Disclosure of Intellectual Property Produced.**
- 1.12.1. Contractor shall promptly disclose to the District all Intellectual Property which Contractor or Contractor's employees, Subcontractors, or Subcontractor's employees may produce, either solely or jointly with others, during the course of the services performed.
- 1.12.2. All such services commissioned by the District that create intellectual property shall render the intellectual property to be exclusively owned by the District.
- 1.12.3. In addition, Contractor shall promptly disclose to the District all Intellectual Property to which Contractor may acquire rights in connection with the performance of the services hereunder.
- 1.12.4. Any disclosure under this paragraph shall contain sufficient technical detail to convey a clear understanding of the Intellectual Property, and shall identify any publication, sale, public use, or impending publication.
- 1.12.5. Promptly upon request, Contractor shall supply such additional information as the District may require.
- 1.12.6. **Modification and Derivative Works.**
- 1.12.6.1. The District shall have the right, at its own discretion, to independently modify any Intellectual Property incorporated in the services for the District's own purposes and use, through the services of its own employees or independent contractors.
- 1.12.6.2. The District shall own all Intellectual Property Rights to such modifications.
- 1.12.6.3. Contractor shall comply with all laws and regulations relating to Intellectual Property. Contractor represents and warrants to the District that Contractor shall not infringe upon any Intellectual Property Rights of any third party.
- 1.12.6.4. Contractor shall require its employees to execute any agreements, assignments, licenses or other instruments, and to provide information related to Intellectual Property, as may be necessary to effectuate the provisions of this Contract.
- 1.12.6.5. Contractor shall require its Subcontractors and Suppliers to execute any agreements, assignments, licenses or other instruments, and to provide information related to Intellectual Property, as may be necessary to effectuate the provisions of this Contract.
- 1.13. **Copyrighted Product or Service.**
- 1.13.1. If commissioned by the District, paid or unpaid, to create a design, artwork, or custom-made product or service, the District shall be sole and exclusive owner of any copyrights available for the end product. Any original work commissioned by the District shall be deemed a work for hire and the exclusive property of the District.
- 1.13.2. The Contractor shall turn over all relevant items, physical and electronic, to the District upon request at no cost to the District if the Vendor has received full compensation for the Contract.
- 1.14. **Gratuity and Bribes.**
- 1.14.1. The District may, by written notice to the Contractor, terminate a Contract for cause and without penalty or liability to the District if it is determined by the District that gratuities or bribes were offered or given, by the Contractor or any principal, agent or representative of the Contractor to any officer or employee of the District with a view toward securing the Contract or securing favorable treatment with respect to the awarding, amending or the making of any determinations with respect to such Contract.
- 1.14.2. In the event the Contract is terminated by the District pursuant to 1.13.1 above, the District shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

- 1.15. **Delays by the District.** The District will have the right to delay a scheduled delivery or other service performance dates by written notice to the Contractor if the District determines that doing so is in its best interest.
- 1.16. **Delays by the Contractor.**
- 1.16.1. If a Contractor foresees the delay of a scheduled delivery of a product or other service performance date, Contractor shall give timely notice to the District. Timely notice is defined as a minimum of three (3) District business days after receipt of the Purchase Order.
- 1.16.2. The District may extend the delivery or service date for valid reasons, which may include delays due to unforeseen raw material or component shortages at the manufacturer, weather related events, unexpected events outside of the controls of the Contractor, or any other reason deemed acceptable by the District Purchasing Office at its sole discretion.
- 1.16.3. The Contractor must keep the District advised at all times of the status of the goods or services.
- 1.16.4. If the delay will create a burden on the District, the District reserves the right to use any other means available to secure the goods or services outside the Contract.
- 1.17. **Warranties and Remedies.**
- 1.17.1. Price.
- 1.17.1.1. The Contractor warrants the prices offered to the District are no higher than the Contractor's current prices on orders by others for like Deliverables under similar terms of purchase.
- 1.17.1.2. The Contractor certifies that the prices in the Solicitation Response have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.
- 1.17.1.3. In addition to any other remedy available, the District may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like Deliverables under similar terms of purchase.
- 1.17.2. Title.
- 1.17.2.1. The Contractor warrants that it has valid title to all Deliverables furnished under the Contract, and that the Deliverables are free and clear of all liens, claims, security interests and encumbrances.
- 1.17.2.2. **THE CONTRACTOR SHALL INDEMNIFY AND HOLD THE DISTRICT HARMLESS FROM AND AGAINST ALL ADVERSE TITLE CLAIMS TO THE DELIVERABLES.**
- 1.17.3. Deliverables.
- 1.17.3.1. The Contractor warrants and represents that all Deliverables sold to the District under the Contract shall be free from defects in design, workmanship and/or manufacture, and conform in all material aspects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable state, federal or local laws, rules, and regulations, and industry codes and standards.
- 1.17.3.2. The Contractor warrants and represents that it has all intellectual property rights necessary to enter into and perform its obligations in the Contract.
- 1.17.3.3. Unless otherwise stated in the Solicitation, the Deliverables shall be new or recycled merchandise, and not used or reconditioned. Recycled Deliverables shall be clearly identified as such.
- 1.17.4. Warranty Period.
- 1.17.4.1. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of the District's acceptance of the goods or services.
- 1.17.4.2. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand resupply the goods or perform the services again in accordance with the above standards at no additional cost to the District.
- 1.17.4.3. All costs incidental to such repair or replacement, including, but not limited to, any packaging and shipping costs, shall be borne exclusively by the Contractor.
- 1.17.4.4. The District will endeavor to give the Contractor written notice of the breach of warranty within thirty (30) days of discovery of the breach, but failure to give timely notice shall not impair the District's rights under this section.
- 1.17.5. Transfer of Manufacturer's Warranty.
- 1.17.5.1. If the Contractor is not the manufacturer, and the Deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the District.
- 1.17.5.2. If for any reason the manufacturer's warranty cannot be fully transferred to the District, the Contractor shall assist and cooperate with the District to the fullest extent to enforce such manufacturer's warranty for the benefit of the District.
- 1.17.6. Failure to Repair or Replace.
- 1.17.6.1. If the Contractor is unable or unwilling to timely repair or replace defective or non-conforming Deliverables as required by the District, then in addition to any other available remedy, the District may reduce the quantity of Deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming Deliverables from other sources.
- 1.17.6.2. In such an event, the Contractor shall pay to the District upon demand the increased cost, if any, incurred by the District to procure such Deliverables from another source.

- 1.17.7. Damage Assessment.
- 1.17.7.1. If a Contractor is in default on an order, the District reserves the right to purchase the goods or services in default and charge the increase in price, if any, and cost of handling to the Contractor.
- 1.17.7.2. Failure to pay a damage assessment is cause for Contract termination and/or debarment of the Contractor from the District's Solicitation list for a minimum of one (1) year.
- 1.17.8. Services. The Contractor warrants and represents that all services to be provided to the District under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable federal, state, and local laws, rules or regulations.
- 1.17.9. Limitation of Warranty. The Contractor shall not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
- 1.17.10. Delivery of Goods or Performance of Services. If the Contractor is unable or unwilling to deliver goods or perform services in accordance with the terms of the Contract, then in addition to any other available remedy, the District may reduce the amount of the Contract Award to the Contractor, and purchase conforming goods or services from other sources. In such an event, the Contractor shall pay to the District upon demand the increased cost, if any, incurred by the District to procure such goods or services from another source.
- 1.18. **Indemnification.**
- 1.18.1. Per the State of Texas Constitution, Article III, Section 52, and subsequent Texas Office of the Attorney General Opinion #GA-0176, dated April 8, 2004, the District shall not indemnify and hold harmless the Contractor and its agents and employees.
- 1.18.2. **CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE DISTRICT AND ITS AGENTS, EMPLOYEES, AND TRUSTEES FROM ALL CLAIMS, DAMAGES, LIABILITIES, COSTS, SUITS OF LAW OR IN EQUITY, LOSSES AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEY'S FEES, FINES, PENALTIES, OR DAMAGES ARISING FROM OR RELATING TO THE ACTS OR OMISSIONS OF CONTRACTOR, CONTRACTOR'S EMPLOYEES, AGENTS, OR SUBCONTRACTORS, IN CONNECTION WITH THE CONTRACT OR ORDER. SUCH OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR OTHERWISE REDUCE ANY OTHER RIGHT OR OBLIGATION OF INDEMNITY WHICH WOULD OTHERWISE EXIST AS TO ANY PARTY OR PERSON DESCRIBED IN THIS PARAGRAPH.**
- 1.18.3. In any and all claims against the District or any of its agents or employees by any employee of the Contractor, anyone directly or indirectly employed by the Contractor, or anyone for whose acts Contractor may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor under workers' compensation acts, disability benefits acts or other employee benefit acts.
- 1.18.4. In the event of loss, damage, or destruction of any property owned by or loaned by the District that is caused by Contractor or Contractor's representative, agent, employee, or Subcontractor, Contractor shall indemnify the District and pay to the District the full value of or the full cost of repair or replacement of such property, whichever is greater, within thirty (30) days of the District's receipt of written notice of the District's determination of the amount due. If Contractor fails to make timely payment, the District may obtain such money from the Contractor by any means permitted by law, including, without limitation, offset or counterclaim against any money otherwise due to Contractor by the District.
- 1.19. **Invoices and Payment.**
- 1.19.1. The District is only obligated to pay invoices for purchases that were made based on the District's purchasing policies and procedures submitted by authorized District employees.
- 1.19.2. Contractor shall submit separate invoices on each Contract Award after each delivery of goods or completion of service. If the District authorizes partial shipments or deliveries, it will be shown on the Purchase Order and a separate invoice must be sent for each shipment or delivery made.
- 1.19.3. Invoices shall indicate the Purchase Order or Contract number and shall be itemized, and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice.
- 1.19.4. Invoices shall be sent via:
- 1.19.4.1. Emailed (preferred) to accountspayable@Eanesisd.net
- 1.19.4.2. Mailed to Eanes ISD, 601 Camp Craft road, Austin Texas, 78746, Attention: Accounts Payable
- 1.19.5. Federal excise taxes, State taxes, and District sales taxes shall not be included in the invoiced amount. The District is not liable for these taxes. The District will furnish a tax exemption certificate upon request.
- 1.19.6. All valid and complete invoices received by the District will be paid within 30 days of the District's receipt of the Deliverables or of the invoice, whichever is later.
- 1.19.7. All payments and penalties for late payments for goods and services shall be governed by Texas Government Code Chapter 2251.
- 1.19.8. In addition to all other rights and remedies that the District may have, the District shall have the right to setoff, against any and all amounts due to Contractor by the District, whether due under the Contract or any other agreement between the District and the Contractor, any sums for which the District is entitled to under the Contract, as determined by the District in its sole discretion, including, without limitation, sums due by Contractor to the District as a result of indemnification obligations, warranty claims, etc., as applicable.

- 1.20. **Non-compliant Purchases by District Personnel.**
- 1.20.1. When procurements made by District staff do not follow District policy (specifically [CH\(LOCAL\)](#)), guidelines and procedures, the purchase is considered non-compliant.
- 1.20.2. Policy [CH\(LOCAL\)](#) states that an end user is to create a purchasing requisition and a purchase order issued before any purchase is made from a Contractor; this does not include purchases made by District staff through an issued purchasing card ("Pcard").
- 1.20.3. Note that the existence of a District contract award does not exempt an "after the fact" purchase requisition.
- 1.20.4. If the purchase requires that the District be invoiced prior to the issuance of a purchase order, the District employee must first receive written permission from the Purchasing Office before creating the obligation with the vendor. Failure to receive such permission will be grounds for the purchase being non-compliant.
- 1.20.5. A District employee may be personally liable for the cost and payment of non-compliant purchases.
- 1.20.6. If a non-compliant purchase is identified, a purchase order to cover the acquisition, if issued by the District in its sole discretion, will include the following statement or like language:
- 1.20.6.1. "PLEASE NOTE - THIS PURCHASE IS NOT IN COMPLIANCE WITH THE DISTRICT'S PURCHASING PROCEDURES. THIS PURCHASE ORDER IS BEING ISSUED SOLELY TO FACILITATE PAYMENT TO THE VENDOR. THE DISTRICT IS ONLY RESPONSIBLE FOR PURCHASES MADE IN ACCORDANCE WITH PROPER PURCHASING PROCEDURES. FUTURE OCCURRENCES MAY RESULT IN A DELAY IN PAYMENT TO THE VENDOR, AND/OR DEBARMENT OF THE VENDOR FROM DOING BUSINESS WITH THE DISTRICT FOR A PERIOD NOT TO EXCEED TWO YEARS, AND/OR PAYMENT HAVING TO BE MADE BY THE DISTRICT EMPLOYEE MENTIONED IN THE ATTN: LINE OF THE SHIP TO ADDRESS ON THE PURCHASE ORDER BASED ON DISTRICT POLICY AND ADMINISTRATIVE DECISION."
- 1.20.7. Contractor's Obligation.
- 1.20.7.1.1. The Contractor shall be aware of the above requirements of purchases made by District staff and shall support and encourage District staff to follow the District's purchasing policies, guidelines and procedures.
- 1.20.7.1.2. The District's obligation to the Contractor shall be based on the level of involvement in the potential non-compliant purchase. The District may meet obligations to the Contractor if the Contractor can provide proof of no negligence or support of the non-compliant action on its part. If negligence or support is evident, as determined by the District in its sole discretion, the District shall have no liability in the purchase, and the Contractor may be required to secure payment from the identified District employee to which the action was taken.
- 1.20.7.1.3. If a campus or department is aware of vendors that either encourage or facilitate pre-purchase order processing, this is to be brought to the attention of the Purchasing Office immediately. If proven, the District may elect to remove the Contractor's award. All compliant procurements will be paid by the District.
- 1.21. **Right to Assurance.**
- 1.21.1. Whenever one party to the Contract Award in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform.
- 1.21.2. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract Award.
- 1.22. **Advertising; Relationship of the Parties.** The Contractor shall not advertise or publish, without the District's prior consent, the fact that the District has entered into a Contract with Contractor. The District and Contractor are independent contractors and have no power or authority to assume or create any obligation or responsibility on behalf of the other party. The Contract shall not be construed or deemed an endorsement of a specific company or product. It is the intention of the parties that Contractor is independent of the District and is not an employee, agent, joint venturer, or partner of the District, and nothing in this Contract shall be interpreted or construed as creating or establishing the relationship of employer and employee, agent, joint venturer or partner, between the District and Contractor or the District and any of Contractor's agents. Contractor agrees that the District has no responsibility for any conduct of any of Contractor's employees, agents, representatives, contractors, or Subcontractors.
- 1.23. **Customer Support.** Contractor shall provide timely and accurate technical advice and sales support to the District and its staff. Contractor shall respond to requests for customer support within one (1) District Business Day after receipt of the request. Contractor shall provide training to District staff regarding products and/or services supplied by Contractor, at no additional charge, if requested by the District.

- 1.24. **Equal Opportunity.** It is the policy of the District not to discriminate on the basis of race, color, National origin, gender, limited English proficiency or handicapping conditions in its programs. Contractor 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. Contractor 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.
- 1.25. **No Waiver of District's Immunity.** The execution of a Contract and the performance of the District of any of its obligations under a Contract or Solicitation are not, and are not intended to waive or relinquish, and the District shall not waive or relinquish, any governmental, sovereign immunity or defense from or to liability or prosecution available to the District, its trustees, officers, employees, or agents under federal or Texas laws.

2. **CONTRACT AGREEMENT.**

2.1. **Signature Authority.**

- 2.1.1. Signature Authority is based on EISD Policy [CH\(LOCAL\)](#).
- 2.1.2. Only those individuals who have been identified by District leadership shall be considered authorized to sign and bind the District under contract.
- 2.1.3. At a minimum, the Superintendent shall sign all Contracts unless a designee has been assigned. Designees include:
- 2.1.3.1. Chief Financial Officer; and
 - 2.1.3.2. Senior Director of Business Process Improvement
 - 2.1.3.3. It is the responsibility of the Contractor to ensure that a Contract has been properly executed before any items are shipped or work has been started.
- 2.1.4. The District will not be liable for any expenses to the Contractor for Contracts that have not been properly executed with the signatories listed above or by District policy.

2.2. **Interpretation.**

- 2.2.1. The Contract Documents are intended by the Contractor and the District as a final, complete and exclusive statement of the terms of their agreement.
- 2.2.2. No prior arrangements, past performance, oral agreements or other factors between the Contractor and the District shall be relevant to supplement or explain any term used in the Contract Documents.
- 2.2.3. Although the Contract Documents may have been substantially drafted by one party, it is the intent of the Contractor and the District that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other.
- 2.2.4. No verbal or oral agreements or understandings constitute any part of the Contract either on the part of the District or the Contractor. Only items specifically addressed in writing and agreed as part of the Contract are binding on either party.

2.3. **Jurisdiction and Venue.**

- 2.3.1. The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Business and Commerce Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction.
- 2.3.2. The mandatory and exclusive jurisdiction for any dispute under the Contract is in the state and federal courts located in Williamson County, Texas. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the District to seek and secure injunctive relief from any competent authority as contemplated herein.

2.4. **Notice.**

- 2.4.1. Any notice provided under the terms of the Contract by either party to the other shall be in writing and shall be given by hand-delivery or by certified or registered mail, return receipt requested.
- 2.4.2. Notice to Contractor shall be sufficient if made or addressed to Contractor if sent to the address listed in the signature line of the Solicitation Response.
- 2.4.3. Notice to the District shall be sufficient or addressed to the District as follows: the Eanes ISD representative listed on the contract.
- 2.4.4. 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 or registered mail, return receipt requested.

2.5. **Modification.**

- 2.5.1. The Contract Documents, terms, covenants and conditions can be modified or amended only in writing, when executed by both Contractor and the District.

- 2.5.2. No pre-printed or similar terms on any Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
- 2.6. **Termination for Cause or Default.**
- 2.6.1. In the event of performance issues or default by the Contractor, the District shall have the right to terminate the Contract in whole or in part, by written Notice of Termination effective in ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the District's reasonable satisfaction that such default does not, in fact, exist.
- 2.6.2. In addition to any other remedy available under law or in equity, the District will be entitled to recover all actual damages, costs, losses and expenses incurred by the District as a result of the Contractor's default, including, without limitation, cost of recovery, reasonable attorneys' fees, court costs, and prejudgment and post judgment interest at the maximum lawful rate.
- 2.6.3. Additionally, in the event of a default by the Contractor, the District may debar the Contractor from the District's Vendor Bid Notification list for a minimum of one (1) year. The length of District debarment is to be determined by District administration based on the reason for default or cause, which may include permanent removal from the notification system.
- 2.6.4. Contractor agrees that upon termination of the Contract for any reason, Contractor shall, in good faith and with reasonable cooperation, aid in the transition to any new arrangement and/or vendor.
- 2.6.5. All rights and remedies under the Contract Award are cumulative and are not exclusive of any other right or remedy provided by law.
- 2.7. **Termination for Convenience.**
- 2.7.1. The District shall have the right to terminate the Contract, in whole or in part, for its own convenience and without cause any time upon thirty (30) days prior written Notice of Termination. Upon receipt of a Notice of Termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the Notice of Termination.
- 2.7.2. The District will pay the Contractor, to the extent of funds appropriated or otherwise legally available for such purposes, for all goods delivered and accepted by the District and services performed and accepted by the District, and obligations incurred prior to the date of termination in accordance with the terms hereof.
- 2.7.3. Contractor agrees that upon termination of the Contract for any reason, Contractor shall, in good faith and with reasonable cooperation, aid in the transition to any new arrangement and/or vendor.
- 2.8. **Assignment – Third-Parties.**
- 2.8.1. The Contract shall be binding upon and to the mutual benefit of the District and the Contractor and their respective successors and assignees; provided, however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the District.
- 2.8.2. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph.
- 2.8.3. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there are no third-party beneficiaries to the Contract.
- 2.8.4. Contractor is required to notify the District when any material change in operations occurs, including but not limited to, changes in distribution rights for awarded products, bankruptcy, material changes in financial condition, change of ownership, and the like, within three (3) District Business Days of such change.
- 2.8.5. If the Contractor (seller) has sold its business and the Contract is conveyed to another business entity (buyer) in the purchase, the Contractor shall provide the District with documentation that can be legally recognized in a State of Texas court of law, or a public announcement stating the terms of the purchase with its request to assign the Contract to the buyer. The District, in its sole discretion, may approve the consent to assignment, in writing, after any necessary District approvals.
- 2.9. **Severability.**
- 2.9.1. In the event that 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.
- 2.10. **Waiver.**
- 2.10.1. No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.
- 2.10.2. No waiver by either the Contractor or the District of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
- 2.11. **Force Majeure.**
- 2.11.1. Neither the District nor Contractor 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, pandemic/epidemic, 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 such party's control. The parties to the Contract 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 party 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. Neither party shall have any claim for damages against the other resulting from delays caused solely by force majeure. Notwithstanding any other provision of the Contract, in the event the Contractor's performance of its obligations under the Contractor is delayed or stopped by a force majeure event, the District shall have the option to terminate the Contract. This section shall not be interpreted as to limit or otherwise modify any of the District's contractual, legal, or equitable rights.

3. **GOODS-RELATED CONTRACT.**

3.1. **General.**

- 3.1.1. Goods are to be delivered to the required destination(s) within the number of District Business Days as identified within the Solicitation after receipt of order (ARO).
- 3.1.2. All products shall be delivered F.O.B. destination, freight prepaid and allowed unless otherwise indicated within the Contract Award.
- 3.1.3. Ordering and delivery will involve various locations within the District, unless otherwise specified within the purchase order.

3.2. **Hours for Delivery.**

- 3.2.1. Delivery of all goods shall be made during the normal working hours listed below for departments of the District unless prior approval for after-hours delivery has been obtained from the District.
- 3.2.2. For larger orders or deliveries requiring large trucks, the Contractor should notify the receiving department a reasonable time prior to arrival.
 - 3.2.2.1. All Schools. Delivery times shall be 9:00 AM to 3:00 PM on District School Days.
 - 3.2.2.2. District Distribution Center (Warehouse) and Other Facilities. Delivery times shall be 8:30 AM to 4:00 PM on District Business Days.

3.3. **Facilities.** With the exception of the District Distribution Center, no other facilities have areas available for dock-level deliveries.

3.4. **Inside Delivery.** The Contractor shall make inside deliveries within a facility to a location determined by the District if required within the Solicitation.

3.5. **Expedited Deliveries.**

- 3.5.1. In case of an urgent need for an expedited delivery by the District, the Contractor is requested to supply the needed material immediately, if possible.
- 3.5.2. If the Contractor cannot promptly respond, the emergency requirement may be purchased on the open market. Such purchases shall not be considered a breach of Contract by the District or the Contractor.

3.6. **Shipment of Goods under Reservation Prohibited.** The Contractor is not authorized to ship goods under reservation and no tender of a bill of lading will operate as a tender of deliverables.

3.7. **Packaging of Goods.**

- 3.7.1. The Contractor shall package all goods in accordance with good commercial practice unless otherwise instructed.
- 3.7.2. Each shipping container shall be clearly and permanently marked as follows:
 - 3.7.2.1. The Contractor's name and address;
 - 3.7.2.2. The District's name, address and purchase order or purchase release number if applicable;
 - 3.7.2.3. Container number and total number of containers, e.g. box 1 of 4 boxes; and
 - 3.7.2.4. The number of the container bearing the packing slip.
- 3.7.3. The Contractor shall bear all cost of packaging.
- 3.7.4. Goods shall be suitably packed to secure lowest transportation costs and to conform to requirements of common carriers and any applicable specifications. The District's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

3.8. **Material Safety Data Sheet.** Contractor must provide, at no cost, at least one copy of any applicable Manufacturer's Material Safety Data Sheet(s) (MSDS) with each shipment, and upon request, during the Term of the Contract. If OSHA or Federal or State laws provide for additional requirements, those requirements are in addition to the MSDS requirement.

3.9. **Inspection and Testing.**

- 3.9.1. The District expressly reserves all rights under law, including, but not limited to, the Texas Business and Commerce Code, to inspect the Deliverables at delivery before accepting them and to reject defective or non-conforming Deliverables.
- 3.9.2. All goods are subject to inspection and testing for compliancy to the Contract specifications by the District.
- 3.9.3. When products tested fail to meet or exceed all applicable specifications, as determined by the District in its sole discretion, the cost of the product used and the cost of any testing shall be borne by the Contractor.

- 3.9.4. Goods, which have been delivered and rejected in whole or in part, may be, at the District's option, returned to the Contractor at Contractor's risk and expense or disposed of in accordance with the District's policies.
- 3.9.5. The Contractor may request that rejected goods be held at Contractor's risk for a reasonable period of time for later disposition at the Contractor's expense.
- 3.9.6. Latent defects may result in revocation of acceptance of any product.
- 3.10. ***Substitutions of Goods.***
 - 3.10.1. All substitutions of goods require prior written approval of the District.
 - 3.10.2. The District reserves the right to require the Contractor to offer possible substitutes if any material or equipment becomes unobtainable during the Term of the Contract.
 - 3.10.3. Outstanding orders are not automatically amended by an approved substitution.
 - 3.10.4. During the Contract Term, Contractor may request a substitution of an item if the item is no longer manufactured or has been discontinued or superseded by a replacement model and is no longer available to the Contractor.
 - 3.10.5. Substitution Approval Process. Under the forgoing or similar conditions, the Contractor may be granted an allowance of an item substitution under the following conditions:
 - 3.10.5.1. The Contractor provides the District Purchasing Office with written verification from the manufacturer that the product is no longer manufactured or has been discontinued or superseded by a replacement model and is no longer available to the Contractor.
 - 3.10.5.2. All substitution requests must be submitted within ten (10) District Business Days after the material facts are known.
 - 3.10.5.3. If the manufacturer has a substitution model, Contractor must provide product specifications along with a written letter requesting the item be substituted.
 - 3.10.5.4. The substitution must meet or exceed all specification requirements associated with the original Solicitation.
 - 3.10.5.5. If substitutions are made to an item that has accessories, the Contractor must also provide substitutions for accessories, as applicable.
 - 3.10.5.6. The Contractor will be expected to supply the substitute item at the same or better price than originally bid, unless the Solicitation provided a price increase provision and the substitute can meet the provision requirements.
 - 3.10.5.7. Approved substitutions will be in effect for the Term of the Contract or until another substitution is required.
 - 3.10.5.8. All substitutions must be approved in writing by the Purchasing Office prior to its effect.
 - 3.10.5.9. The District reserves the right to approve and disapprove substitutions or to cancel the items in its entirety and procure the items by a separate procurement process.
- 3.11. ***Electrical Items.*** All electrical items furnished shall meet all applicable OSHA standards and regulations and bear the appropriate listing from UL, FMRC or NEMA.

4. **SERVICE-RELATED CONTRACT.**

- 4.1. ***Contractor's Obligation.*** The Contractor shall fully and timely provide all Deliverables described in the Solicitation and in the Vendor's Solicitation Response in strict accordance with the terms, covenants, and conditions of the Contract and all applicable federal, state, and local laws, rules, and regulations.
- 4.2. ***Competence of Contractor.***
 - 4.2.1. The Contractor warrants it shall have available the necessary personnel, organization, equipment, and facilities to perform all the services and/or provide all the goods required under a Purchase Order or Contract.
 - 4.2.2. Only qualified personnel trained in the required services shall be employed by the Contractor.
 - 4.2.3. The Contractor shall obtain all licenses/permits required for the performance of the services. For the entire duration of the Contract, Contractor and all Subcontractors shall maintain all required licenses, certifications, permits, and any other documentation necessary to perform the Contract. Contractor must comply with all state and local building code requirements unless otherwise specifically provided in the Purchase Order, and Contractor must pay all fees and charges for connections to outside services and for use of property outside the project site.
 - 4.2.4. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services, which they will perform under the Contract.
 - 4.2.5. The Contractor, its employees, Subcontractors, and Subcontractor's employees may not use or possess any firearms, alcoholic or other intoxicating beverages, tobacco, illegal drugs or controlled substances while on the job or on the District's property, nor may such workers be intoxicated, or under the influence of alcohol or drugs on the job.
 - 4.2.6. The District reserves the right to prevent, forbid, and/or temporarily or permanently bar any of Contractor's employees, Subcontractors, or Subcontractor's employees from any District facility for whatever reason it determines necessary to maintain the safety, decorum, scheduling and day-to-day operations of the District.
- 4.3. ***Performance and Payment Bonds.***
 - 4.3.1. The requirement for a performance and/or payment bond will be identified and the required value(s) stated within the Solicitation, as applicable.

- 4.3.2. All bonds shall be written by a bonding company (insurance company) that is duly authorized to do business in the State of Texas and which meets all requirements of Texas law in connection with its issuance of bonds.
- 4.3.3. If any surety upon any bond becomes insolvent or otherwise ceases to do business in the State of Texas, Contractor shall immediately furnish equivalent security to protect the interests of the District and of persons furnishing labor and materials in the performance of the work under the Contract.
- 4.3.4. If the amount of the bond is in an amount in excess of ten percent (10%) of the surety company's capital and surplus, the District, as a condition to accepting the bond, will require written certification that the surety company has reinsured the portion of the risk that exceeds 10% of the surety company's capital and surplus with one or more reinsurers who are duly authorized, accredited, or trusted to do business in the State of Texas.
- 4.3.5. The Contractor shall deliver the bonds not later than the 10th District Business Day after the date the Contractor executes the Contract unless the Contractor furnishes a bid bond or other financial security acceptable to the District.
- 4.3.6. **Payment and Performance Bonds.**
 - 4.3.6.1. If required, bonds shall be presented by the Contractor to the appropriate District representative prior to commencement of work.
 - 4.3.6.2. Contractor will provide a Performance Bond and a Payment Bond, each in principal amount equal to 100% of the Contract amount, conditioned that Contractor will faithfully perform all undertakings in the Contract and will fully pay all persons furnishing labor and material in the prosecution of the work provided for in the Contract.
 - 4.3.6.3. The Performance Bond and Payment Bond are requested to be on forms supplied by the District.
- 4.4. **Licensing and Certification.**
 - 4.4.1. If the Contract requires licensing and/or certification to perform services, the Contractor shall provide only qualified licensed/certified individuals to perform such tasks.
 - 4.4.2. The Contractor must maintain any required licenses/certification for the duration of the Contract.
 - 4.4.3. The District reserves the right to require the Contractor to show proof of licensing/certification at any time during the Contract Term.
- 4.5. **Place and Condition of Work.**
 - 4.5.1. The District shall provide the Contractor access to the sites where the Contractor is to provide the goods or perform the services as required.
 - 4.5.2. The Contractor acknowledges that it has satisfied itself as to the nature of the District's service requirements and specifications, the location and essential characteristics of the work site(s) the quality and quantity of materials, equipment, labor and facilities necessary to provide the goods or perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the Contract.
 - 4.5.3. The Contractor hereby releases and holds the District harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.
- 4.6. **Compliance with Safety Regulations.**
 - 4.6.1. The Contractor, its Subcontractors, 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 the services, including, but not limited to, those imposed by the District and by the Occupational Safety and Health Administration (OSHA).
 - 4.6.2. In case of conflict, the most stringent safety requirements shall govern.
 - 4.6.3. **THE CONTRACTOR SHALL INDEMNIFY AND HOLD THE DISTRICT HARMLESS FROM AND AGAINST ALL CLAIMS, DEMANDS, SUITS, ACTIONS, JUDGMENTS, FINES, PENALTIES AND LIABILITY OF EVERY KIND ARISING FROM THE BREACH OF THE CONTRACTOR'S OBLIGATIONS UNDER THIS PARAGRAPH.**
- 4.7. **Security and Background Investigations.**
 - 4.7.1. Security and background investigations shall meet the requirements outlined in Texas Education Code Section 22.083 -.087, as applicable.
 - 4.7.2. The Contractor shall be responsible for ensuring the District is protected from potential threats that may be created by their employees.
 - 4.7.3. The District will have the right to require Contractor's principals, Contractor's employees assigned to the Contract, Subcontractor's principals, and Subcontractor's employees assigned to the Contract, and any other individuals deemed to be providing services for the District to be investigated (including fingerprinting) for criminal records and/or history.
 - 4.7.4. All expenses shall be incurred by the Contractor for performing background checks and will not be reimbursed by the District.
 - 4.7.5. The District reserves the right to prevent, forbid, and/or temporarily or permanently bar any Contractor, Contractor's employee, Subcontractor, or Subcontractor's employee from any District facility for whatever security reason it determines necessary to maintain the safety of District employees, students, and operations.
 - 4.7.6. **Criminal History Record Information.** The following requirements are pursuant to Texas Education Code Section 22.0834 and District Policy [CJA\(LEGAL\)](#).

- 4.7.6.1. The Contractor shall perform national criminal history record checks on all individuals, either employed by the Contractor or working as a Subcontractor for the Contractor, which will be required to be on a District campus to perform the services stated herein. The Contractor shall provide proof of proper documentation of such checks as required by the District.
- 4.7.6.2. "National criminal history record information" means criminal history record information obtained from the Texas Department of Public Safety under Subchapter F, Chapter 411, of the Texas Government Code (TGC), and from the Federal Bureau of Investigation under Section 411.087, TGC.
- 4.7.6.3. It is not anticipated that under this Contract any Contractor's staff or Subcontractors will come into direct contact with students.
- 4.7.6.4. Individuals who may come in contact with students as defined by State of Texas statute shall be fingerprinted and the person's national criminal history record information researched to determine the individual's criminal history.
- 4.7.6.5. If, during the term of the Contract, the State of Texas changes or implements new laws related to criminal history information or the District changes or implements new policies or guidelines for contractors that will have contact with students, the Contractor will be subject to such changes.
- 4.7.7. **Criminal Background Checks for Employees on Public Works Projects.**
 - 4.7.7.1. Pursuant to Texas Education Code Section 22.08341 (HB 3270, 85th Regular Legislative Session), covered employees do not include employees of a contracting or sub-contracting entity that is providing engineering, architectural, or construction services on a project to design, construct, alter, or repair a public work if:
 - 4.7.7.2. The public work does not involve the construction, alteration, or repair of an instructional facility as defined by Texas Education Code Section 46.001;
 - 4.7.7.3. The employee's duties will be completed more than seven (7) days before a new instructional facility will be used for instruction; or
 - 4.7.7.4. For an existing instructional facility, the work area contains sanitary facilities separated from all areas used by students by a fence at least six (6) feet high, and the Contractor adopts, informs employees of, and enforces a policy prohibiting employees and any sub-contractor's employees from interacting with students or entering areas used by students.
- 4.8. ***Subcontractor.***
 - 4.8.1. Where a Subcontractor may be used, the Contractor shall be fully responsible to the District for all acts and omissions of the Subcontractor(s) just as the Contractor is responsible for the Contractor's own acts and omissions.
 - 4.8.2. The District will not accept any obligation to pay or to see to the payment of any moneys due to any Subcontractor, except as may otherwise be required by law.
- 4.9. ***District Policy for Work Attire.***
 - 4.9.1. The Contractor, its employees, and Subcontractor employees shall meet the minimum requirements of the District's dress code if required to have presence on District property.
 - 4.9.2. A copy of the manual that includes the dress code can be provided to the Contractor upon request.
- 4.10. ***Insurance for Services Performed.***
 - 4.10.1. **Auto Liability.** If the Contractor will be on District property with a vehicle or equipment, the Contractor must comply with all Texas Department of Public Safety requirements for auto liability insurance requirements and must be able to prove coverage upon request.
 - 4.10.2. **State Certificate of Insurance.** Prior to providing services as a result of a Contract Award, the Contractor shall provide the District with a completed Certificate of Insurance Form providing the below listed coverage or such coverage as may be required in the Solicitation.
 - 4.10.3. **Waiver of Subrogation Endorsement.** Waiver of Subrogation Endorsement in favor of the District shall be a part of each policy for coverage listed. The District will allow deductible policies. The Contractor shall pay the deductible amount. Such coverage shall remain in effect during the full Term of Contract. Required insurance coverage is specified in the Solicitation.
 - 4.10.4. **Proof of Insurance.** For the duration of the Contract, the Contractor shall provide proof and maintain the following insurance coverage:
 - 4.10.4.1. Workers' Compensation as required by law.
 - 4.10.4.2. Comprehensive Liability with Bodily Injury Limits of \$500,000 for each accident and \$1,000,000 for the aggregate. It shall include Property Damage Liability Insurance with limits of \$500,000 for each accident and \$1,000,000 for the aggregate.
 - 4.10.4.3. Comprehensive Automobile Liability Insurance to cover all vehicles owned by, hired by, or used on behalf of the Contractor, with combined single limit of \$1,000,000.
 - 4.10.5. **Certificate of Insurance.**
 - 4.10.5.1. A certificate of insurance for each of the above policies shall be delivered to the District before providing services as a result of a Contract Award.
 - 4.10.5.2. At any time during the Contract Term or any extensions the Certificate of Insurance lapses, the Contractor shall provide to the District an updated certificate within thirty (30) days of policy.

4.11. **Records Retention.**

4.11.1. Contractor shall maintain its records and accounts in a manner that shall assure a full accounting for all goods and/or services provided by Contractor to the District under the Contract. These records and accounts shall be retained by Contractor and made available for audit by the District for a period of not less than five (5) years from the date of completion of the services, receipt of the goods, or the date of the receipt by the District of Contractor's final invoice or claim for payment in connection with the Contract, whichever is later. If an audit has been announced, Contractor shall retain its records and accounts until such audit has been completed.

4.11.2. When federal funds are expended by the District pursuant to this Contract, Contractor certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.333. Contractor further certifies that Contractor will retain all records as required by 2 CFR § 200.333 for a period of five (5) years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

4.12. **Right to Audit.** The District shall have the right to audit all of the Contractor's books, records, and accounts pertaining to all goods and services during the hours of the normal workday during the Term of Contract and for a period of five (5) years following expiration of the Contract. Records subject to audit shall include, but are not limited to, records which may have a bearing on matters of interest to the District in connection with Contractor's work for the District and shall be open to inspection and subject to audit and/or reproduction by the District and/or its authorized representative(s).

4.13. **Right to Self-perform.** At any time during the Contract Term, the District may elect to self-perform such services and terminate the services of the Contractor.

4.13.1. The District shall provide sixty (60) calendar days' prior written Notice of Termination to the Contractor and the date to which the Contractor's services will no longer be required by the District.

4.13.2. The District will pay the Contractor, to the extent of funds appropriated or otherwise legally available for such purposes, for all services performed and accepted by the District and obligations incurred prior to the date of termination in accordance with the terms hereof.