

HURST-EULESS-BEDFORD INDEPENDENT SCHOOL DISTRICT

GENERAL PROVISIONS For Purchasing Solicitations and Contracts

Effective Date of September 1, 2017

The following General Provisions are hereby issued in accordance with the laws, rules, and policies set forth through the Texas Education Code, Chapter 44 and Hurst-Eules-Bedford Independent School District (HEB ISD or District) policy, and may be amended as required by HEB ISD. Prospective Vendors are cautioned to read and understand the General Provisions set forth in this document prior and responding to a HEB ISD Solicitation. Any exceptions to or failure to follow these General Provisions unless otherwise directed within the Solicitation, may be cause for a Vendors Solicitation Response to be deemed non-responsive and disqualified by HEB ISD. These General Provisions will take precedence over the terms and conditions within the Solicitation when they are in conflict unless specific exception is noted within the Solicitation.

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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, modifications, or deletions of information or specifications of a Solicitation.
Agreement.....	A contract that has been agreed upon and signed by both the District and the Vendor.
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 (HEB ISD Buyer) is the Districts 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 HEB ISD Buyer.
CSP.....	Competitive Sealed Proposal. 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.
CTPA.....	Central Texas Purchasing Alliance. A purchasing cooperative representing school districts and Community college districts in the Central Texas geographic area. The CTPA shares knowledge, resources, and contracts as appropriate to further its common interest. More information can be found at www.txctpa.org .
Conflict of Interest.....	A Conflict of Interest shall exist 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 interests or relationships which would cause a reasonable individual with knowledge of the relevant facts to question the integrity or impartiality of those who are or will be acting under a proposed or existing 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 HEB ISD policy and state law.
Contract Award.....	The acceptance of a Quote, Bid, Proposal or Offer; a Purchase Order, District Contract Agreement, or other formal notification of award issued by an authorized official of the District's Purchasing Department.
Contract Documents.....	A set of documents that create an Agreement that has been entered into and signed by both the District and the Vendor.
Contract Term.....	The length of time a Contract or Agreement will be available for use by the District.
Contractor.....	The awarded Vendor(s) of a specific Solicitation.
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.
Deliverable.....	Goods or services which are required by a Contract Award to be provided to the District by a Vendor.
Discount Contract.....	An awarded Contract where pricing is based on a firm-fixed discount from a Vendor's published price list, priced catalog, or other document that is published for the majority of the Vendor's customers.
District.....	Hurst-Eules-Bedford Independent School District

District Business Day.....	Days the District is officially conducting business (excludes weekends, District observed holidays, etc.)
District Web Site.....	The official District web site, available at http://www.hebisd.edu .
EDGAR.....	Education Department General Administrative Regulations
EPCNT.....	Educational Purchasing Cooperative of North Texas. A Purchasing cooperative representing school districts in the North Texas geographic area.
NTPSM.....	North Texas Purchasing & Supply Management. A Purchasing cooperative representing school districts in the North Texas geographic area. The NTPSM shares knowledge, resources, and contracts as appropriate to further its common interest.
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 their firm based on their Solicitation Response.
Offer.....	Term used in conjunction with or in place of a Vendor's Solicitation Response.
Opening.....	Refers to the designated time that bids will be formally opened. These are typically the same time and date.
Professional Services Contract...	A Contract awarded for performance of professional services by Vendors as defined by Texas Gov. Code 2254.002 (a) and (b), and Texas Education Code 44.031(f) which include licensed medical professionals, architects, engineers, or lawyers.
Proposal.....	Vendor's response to a Request for Proposal (RFP).
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 item(s) and an invoice are received by the District.
Quote.....	Vendor's response to a Request For Quote.
RFB.....	Request for Bids. Solicitation method used for acquiring goods or services for one-time purchases or establishing Term Contracts for acquiring goods or services. This solicitation method is formal, and a legal notice is published at time of issuance for purchases over an aggregate of \$50,000. This purchasing method is normally used to establish annual contracts for District-wide goods or services, or major one-time purchases. Award is typically based on low Bid or Best Value Determination.
RFO.....	Request for Offer. Used solely for technology purchases issued through the State of Texas / Department of Information Resources (DIR) procurement processes.
RFQ.....	Request for Quote. Used for small dollar purchases valued at more than \$25,000. Solicitation method is typically informal (e.g., phone, fax or email) and 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 minimum of three quotes is required.
RFP.....	Request for Proposal. 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.
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.

Solicitation.....	General term used to refer to an RFB, CSP, RFO, RFQ or RFP.
Solicitation Response.....	Vendor's response to an RFB, CSP, RFO, RFQ, RFP or other Solicitation issued by the District
Solicitation Tabulation.....	Official tabulation of Solicitation Responses, issued by the Purchasing Department after Contract Award.
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.
Vendor.....	Bidder, Vendor, 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 INSTRUCTIONS

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 HEB ISD reserves the right to use any contracting method it deems to be in the best interest of the District:
 - 1.1. **Firm-Fixed Price.**
 - 1.1.1. Prices shall be firm-fixed for the term specified in the Contract, and all extensions exercised by the District.
 - 1.1.2. No increases will be allowed during the contract term.
 - 1.1.3. Price decreases are acceptable at any time during the term of the Contract.
 - 1.2. **Fixed-Price with a Price Adjustment Allowance.**
 - 1.2.1. Prices shall be firm for a term specified in the Contract.
 - 1.2.2. Prices can be adjusted based on escalation provisions as identified in the Contract.
 - 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.
 - 1.3. **Firm-Fixed Discount Percentage, Discount-from-List, or Cost Markup-From-List.**
 - 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 as identified in the Contract.
 - 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.
 - 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.
 - 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. HEB ISD shall be the sole determinate as to acceptability.
 - 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.
 - 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 HEB ISD Buyer within the Contract time specified prior to the requested price change. Otherwise the last HEB ISD approved price list remains in effect until such time that HEB ISD approves the price change.
 - 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 award.
2. **CONFLICT OF INTEREST.**
 - 2.1. **Disclosure of Certain Relationships with Local Government Officials.**
 - 2.1.1. Any individual or business entity that contracts or seeks to contract for the sale or purchase of property, goods, or services with Hurst-Euless-Bedford ISD must file a Vendor Conflict of Interest Questionnaire with the HEB ISD 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.
 - 2.1.2. This requirement applies to a person who is an agent of a vendor in the Vendor's business with the District.
 - 2.1.3. Forms and additional information are available at www.hebisd.edu
 - 2.1.4. Forms are also posted at the Texas Ethics Commission's website at: www.ethics.state.tx.us/whatsnew/conflict_forms.htm.
 - 2.2. **Employee.**
 - 2.2.1. Reference HEB ISD Policies CH (Local) Purchasing and Acquisition, and DBD (Local) Employment Requirements and Restrictions, all Vendors must disclose the name of any HEB ISD employee who owns, directly or indirectly, an interest in the Vendor's firm or any of its branches.
 - 2.2.2. Failure to provide such information may be grounds for disqualification of the bid or cancellation of a contract resulting from this Solicitation.
 - 2.2.3. 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.
 - 2.2.4. Services that might be provided by the employee as an extension of the employee's regular job responsibilities is exempted from consideration.
3. **SOLICITATION PRICING.** Solicitation prices must be firm for ninety (90) days from Solicitation opening/bid closing date until award unless otherwise specified in the Solicitation.
 - 3.1. Unless otherwise identified within the Solicitation, all items bid are to be bid without minimum quantity requirements. Any bid received with minimum quantity requirements will be disqualified as non-responsive.
4. **QUANTITIES.** Any quantities listed within the Solicitation are a close approximation based on requirements and available funds, but HEB ISD reserves the right to purchase more or less than the estimated quantities, at the current Contract price, for the term of the agreement unless otherwise specified in the Solicitation.
5. **REQUEST FOR EXPLANATION / INTERPRETATION.**

- 5.1. Any explanation desired by a Vendor regarding the meaning or interpretation of this Solicitation must be submitted in writing to the Buyer identified in the Solicitation within seven (7) business days prior to the opening date, in order to allow a response to all Bidders before the submission of a bid.
 - 5.2. The District has provided a web site intended for interested Proposers to direct requests for clarification, interpretations, and/or questions of current Solicitations and only fully completed requests for valid and current Solicitations will receive a response; late or delinquent requests will not be entertained or answered. The web site is: <http://www.hebisd.edu>
 - 5.3. All requests must include all contact and Solicitation information to be considered. Failure to provide this information may delay a response from the District. The District reserves the right to inform the requester that the response to their request will be submitted through an addendum to all interested vendors and not be addressed directly through their request.
 - 5.4. Once a request is received, a notification of receipt by the District will be forwarded to the contact email address.
 - 5.5. Verbal requests for clarification or additional information may not be addressed and will not be binding.
 - 5.6. VERBAL RESPONSES OR CONVERSATIONS ARE NOT BINDING - ONLY QUESTIONS ANSWERED BY FORMAL WRITTEN ADDENDA WILL BE BINDING AND WILL BE MADE PART OF THE PROPOSAL DOCUMENTS.
 - 5.7. Oral and other interpretations or clarifications will be without legal effect. Only questions answered by formal written Addenda will be binding.
 - 5.8. HEB ISD is not responsible for any other explanation or interpretations, which anyone presumes to make by any other source other than the Hurst-Eules-Bedford ISD Purchasing Office.
 - 5.9. Any interpretations, corrections, approvals, supplemental instructions or changes to the Proposal Documents will be made by written Addenda. Sole issuing authority of addenda shall be vested in the Hurst-Eules-Bedford Independent School District Purchasing Office.
6. **DELIVERY TERMS.**
- 6.1. All goods or products included in the Solicitation shall be F.O.B. ("Free on Board") destination, unless otherwise indicated within the Solicitation.
 - 6.2. All goods or products will be considered freight prepaid and allowed, and included in the unit price.
 - 6.3. If separations of the delivery costs are a necessity for bidding, the Bidder must provide a "not-to-exceed" price with their response. The District will not accept a "to-be-determined" submittal. Any shipping costs submitted in addition to the unit price will be added to the unit price and considered in the evaluation process.
 - 6.4. The place of delivery shall be set forth in the block of the purchase order entitled "Ship To".
 - 6.5. The District expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the Deliverables at delivery before accepting them, and to reject defective or non-conforming Deliverables.
 - 6.6. Services shall be provided/scheduled as specified or directed by the District.
7. **SUPPLIER DIVERSITY.** HEB ISD ensures that the District will use its best efforts to encourage small, minority and women-owned businesses to participate in current and future purchasing of all goods and services.
- 7.1. **Program Definitions.**
 - 7.1.1. "*Small Business*" is defined as a business entity which is independently owned and operated, and which is not dominant in its field of operation. The business employs less than 50 employees and/or less than \$3 million in annual business volume from this local operation.
 - 7.1.2. "*Minority Business*" is a business entity which is at least 51% owned by one or more minority individual(s) or, in the case of any publicly owned business, at least 51% of the stock is owned by one or more of the minority individual(s) and whose management and daily business operations are controlled by one or more of the minority individual(s) who own it. Minority individuals means residents of the United States who are members of one of the following groups:
 - 7.1.2.1. African Americans;
 - 7.1.2.2. Hispanics;
 - 7.1.2.3. American Indians;
 - 7.1.2.4. Asian Americans;
 - 7.1.2.5. Alaska Natives;
 - 7.1.2.6. Pacific Islanders; and
 - 7.1.2.7. Other individuals found to be economically and socially disadvantaged by the Small Business Administration under section 8(a) of the Small Business Act.
 - 7.1.3. "*Woman Business Enterprise*" means a business entity which follows the same guideline as a Minority Business Enterprise but which is owned by a woman.
8. **INTERLOCAL AGREEMENT.**
- 8.1. As governed by the Texas Education Code, Chapter 44 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 HEB ISD and its own operations.
 - 8.2. Adoption of a HEB ISD Contract shall be made with the consent of the awarded Vendor.
 - 8.3. **North Texas Purchasing & Supply Management (NTPSM).**
 - 8.3.1. HEB ISD is a member of the NTPSM, an alliance of school districts in the North Texas area who share in information, services and contractual opportunities.
 - 8.3.2. In support of this collaborative effort, HEB ISD includes a response entitled "EPCNT (Educational Purchasing Cooperative of North Texas) Adoption Clause in all Solicitations". A negative reply by the Vendor will not adversely affect consideration of the Vendor's Solicitation Response.

- 8.3.3. If permission is received, the submittal will be provided to the EPCNT member listing and in the event that the Solicitation Response becomes an awarded Contract it may then be used by the Educational Purchasing Cooperative of North Texas to establish separate Contracts.

8.4. **Central Texas Purchasing Alliance (CTPA).**

- 8.4.1. HEB ISD is a member of the CTPA (www.txctpa.org), an alliance of school districts in the Central Texas area who share in information, services and contractual opportunities.

9. **SAMPLE REQUIREMENTS.**

- 9.1. 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.
- 9.2. The Vendor should not submit a sample with the Solicitation Response unless directed to do so.
- 9.3. **Request of Sample.**
 - 9.3.1. 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.
 - 9.3.2. 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.
 - 9.3.3. A representative sample of the item(s) offered must be provided.
 - 9.3.4. The Vendor will cover all costs in shipping and providing the sample product to the District.
 - 9.3.5. Failure to provide a requested sample may disqualify the Vendor from further consideration in award of the associated Solicitation item.
 - 9.3.6. If a sample is found to not meet the Solicitation specifications or the intended purpose of the product, the associated Solicitation item will be disqualified.
- 9.4. **Sending of Samples.**
 - 9.4.1. If a sample is required by the District, samples must be clearly marked with the following information:
 - 9.4.1.1. The word "Sample" in large print;
 - 9.4.1.2. The name of the company submitting the sample; and
 - 9.4.1.3. The number and title of the Solicitation or Contract.
- 9.5. **Return of Samples.**
 - 9.5.1. Unless specifically requested, all samples provided shall become the property of HEB ISD.
 - 9.5.2. 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.

PART III

SOLICITATION RESPONSE

1. **PREPARATION OF A SOLICITATION RESPONSE.** In preparation of a Solicitation Response, each Vendor shall:
 - 1.1. Furnish all information required by the Solicitation;
 - 1.2. Authorized Signature. Solicitation Responses must be signed and/or submitted by those individuals that have been given authority to bind the Vendor under contract.
 - 1.2.1. The Solicitation Response must be manually signed in ink by an authorized representative;
 - 1.2.2. An unsigned Solicitation Response will be deemed non-responsive by HEB ISD and disqualified. Solicitation Responses cannot be signed after the Solicitation opening time even though the Vendor or a representative is present at the Solicitation opening.
 - 1.3. Have all erasures or other changes initialed by the signer of the Solicitation Response;
 - 1.4. Solicitation Responses submitted on other forms or with different terms or provisions may be deemed non-responsive by HEB ISD and disqualified;
 - 1.5. 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.
 - 1.6. All Solicitation Responses and accompanying samples or documents of any kind become the property of HEB ISD. The District will be under no obligation to return any part of a Solicitation Response to a Vendor.
 - 1.7. 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:
 - 1.7.1. Any exception to HEB ISD's Terms and conditions, Statement of Work, and/or any agreements.
 - 1.8. Any information/documents/exceptions received after the response closing date will not be considered under any circumstances.
2. **ADDENDA.**
 - 2.1. Should an addition or correction become necessary after a Solicitation is issued, an Addendum or notice of the availability of such an Addendum on-line will be sent to all Vendors of Record with HEB ISD and will be posted on the District's Purchasing Website. Vendors of Record with HEB ISD are those Vendors having received a copy of the initial Solicitation or notice of the availability of a copy on-line.
 - 2.2. Vendors who have not obtained a Solicitation directly from HEB ISD shall be responsible for immediately notifying the listed HEB ISD Buyer in order to receive all written Addenda on a timely basis. Vendors who do not so notify HEB ISD, and subsequently submit a Solicitation response without receipt of all Addenda issued, may be deemed non-responsive by HEB ISD and disqualified.
 - 2.3. It is the Vendor's responsibility to continuously check the District Purchasing Website for any addenda issued.
 - 2.4. If required, Vendors shall acknowledge an Addendum by returning the Addendum in a separate response, or with the Solicitation, or by physically noting the change or addition on the Solicitation Response with a notation acknowledging the Addendum.
 - 2.5. Failure to return or acknowledge an Addendum may be deemed non-responsive by HEB ISD and result in disqualification.
3. **BRAND NAME AND PRODUCT NUMBER REFERENCE.**
 - 3.1. 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.
 - 3.2. "Buyers approved equal" indicates that the District will consider other manufacturer's product that meets or exceeds the published specifications. The District shall make the final determination of acceptable substitutions.
 - 3.3. 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.
 - 3.4. If the referenced manufacturer's stock number space is left blank, the District will consider the bid to be as specified.
 - 3.5. If an exception is made to the referenced manufacturer's product, the alternate manufacturer, trade and/or brand name and number must be indicated for each item bid. The Bidder will be required to forward any illustrations that render its equivalency. Any additional specifications must reference the line item number to which it corresponds.
 - 3.6. Products of inferior quality will be rejected.
4. **ATTACHMENTS.**
 - 4.1. 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.
 - 4.2. Page and paragraph numbers shall properly reference each page of an attachment in the Solicitation Response.
 - 4.3. The name of the Vendor submitting the attachment shall also be prominently displayed on each page of the attachment.
 - 4.4. No terms or conditions recorded on any attachment will be considered binding unless specifically made a part of the Solicitation Response in writing.
 - 4.5. 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, etc.
5. **SITE VISITATION.**
 - 5.1. The Vendor shall be responsible for fully understanding the scope of the Solicitation, and if considered applicable to the goods or services being solicited, the District recommends that Vendors visit the HEB ISD site and examine the space and/or equipment to be serviced. Vendors shall obtain prior HEB ISD Buyer approval. Site visits by Vendors may be requested up to three District business days prior to bid opening / proposal closing.

- 5.2. Optional pre-submittal conferences may be established by the District to allow Vendors access to the associated facility.
- 5.3. The Vendor shall carefully examine the venue(s), specifications, and requirements.
- 5.4. If necessary, Vendors shall secure additional information from the Buyer that may be requisite to a clear and full understanding of the work.

6. **REFERENCES.**

- 6.1. If required in the Solicitation, the Vendor is to submit references that have contracted with their company to provide like products or services. It is recommended that the Vendor show school districts or other local government organizations equal to HEB ISD in size and structure, if possible.
- 6.2. The District reserves the right to use the results of the reference check in the evaluation process. A negative reference or references may cause a bid to be rejected.

7. **CERTIFICATIONS AND REPRESENTATIONS.**

- 7.1. The Vendor shall complete, sign and provide all documents as required by the Solicitation.
- 7.2. Based on the type of Solicitation, the forms that may be required are:
 - 7.2.1. Felony Conviction Notice.
 - 7.2.1.1. State of Texas Education Code, Section 44 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.
 - 7.2.1.2. School Districts may terminate a Contract with a person or business entity if the District determines that the person or business entity failed to give notice as required by the Education Code or misrepresents the conduct resulting in the conviction.
 - 7.2.1.3. Vendors shall complete, execute and return as part of the Solicitation Response, the Felony Conviction Notice information referenced in the Solicitation.
 - 7.2.2. Educational Purchasing Cooperative of North Texas (EPCNT) Adoption Clause. The Vendor shall indicate their participation level within the EPCNT member network if awarded a Contract.
 - 7.2.3. Bid / Proposal Certification and Affirmation. This document must be signed by an authorized representative that may legally bind the company and is to be included with the Solicitation Response for the response to be considered. Failure to sign and submit this document will disqualify the Solicitation Response.
 - 7.2.4. 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 <http://www.irs.ustreas.gov/pub/irs-pdf/fw9.pdf>.
- 7.3. Respondent certifies that it and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that Respondent is in compliance with the State of Texas statutes and rules relating to procurement and that Respondent is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.epls.gov>.
- 7.4. Termination for listing on Federal Excluded Party List, on the Terrorism List (Executive Order 13224) or on the State of Texas Debarred Vendor List:
 - 7.4.1. HEB ISD shall have the absolute right to terminate this Contract without recourse as follows:
 - 7.4.1.1. If Contractor becomes listed on the prohibited vendors list authorized by Executive Order #13224 "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism," published by the United States Department of Treasury, Office of Foreign Assets Control; or
 - 7.4.1.2. If Contractor becomes suspended or debarred from doing business with federal government as listed in the Excluded Parties List (EPLS) maintained by the General Services Administration; or
 - 7.4.1.3. If the Contractor becomes listed on the State of Texas Debarred Vendor List. HEB ISD will provide Contractor with written notice to terminate the contract, which termination will become effective immediately upon Contractor's receipt of the notice.
- 7.5. Vendor hereby certifies that it is not a company identified on the Texas Comptroller's list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State. Vendor further certifies and verifies that neither Vendor, nor any affiliate, subsidiary, or parent company of Vendor, if any (the "Vendor Companies"), boycotts Israel, and Vendor agrees that Vendor and Vendor Companies will not boycott Israel during the term of this PO. For purposes of this PO, the term "boycott" shall mean and include terminating business activities or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory.

8. **SUBMISSION OF SOLICITATION RESPONSES.**

- 8.1. A Solicitation Response shall represent a true and correct statement and shall contain no cause for claim of omission or error.
- 8.2. If directed by the Solicitation, the Vendor shall provide any and all certifications, forms, and documents as stated within the Solicitation.
- 8.3. **Solicitation Responses.**
 - 8.3.1. Solicitation Responses must contain:
 - 8.3.1.1. The Solicitation Response Form;
 - 8.3.1.2. Specification documents, if applicable;
 - 8.3.1.3. The certifications and representations as applicable;
 - 8.3.1.4. Any additional documents required by the Solicitation.
 - 8.3.1.5. All Solicitation Responses shall meet all requirements set forth in the package provided by the Buyer.
 - 8.3.1.6. Responses shall contain:

- 8.3.1.6.1. The signed official Invitation Document provided by the Buyer;
 - 8.3.1.6.2. Any additional documents or information required by the Solicitation.
 - 8.3.1.7. Failure to provide a signed Solicitation Response on the official Solicitation form as part of the Solicitation Response will result in the Solicitation Response being considered non-responsive and will not be considered by the District.
 - 8.3.1.8. Late Solicitation responses will not be accepted or considered by the District under any circumstances.
 - 8.3.1.9. The Vendor is hereby informed that all responses will be opened after the Solicitation opening date and time by assigned District personnel.
9. **WITHDRAWAL OF A SOLICITATION**. Any Vendor who is extended the privilege of withdrawing a Bid because of having proven mechanical error in the Solicitation Response may not be considered for an Award on similar items for a length of period deemed appropriate by the District, usually considered one (1) year.
10. **SOLICITATION RESPONSE CERTIFICATION**. By signing and submitting a Solicitation Response, the Vendor certifies and represents to HEB ISD that:
- 10.1. The Solicitation Response has been manually signed by an authorized representative of the company or firm submitting the bid, proposal, offer or other Solicitation Response document;
 - 10.2. The Vendor's firm or any of its individual have not prepared the Solicitation Response in collusion with any other Vendor or individual; and
 - 10.3. 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.
 - 10.4. Failure on the Vendor's part to have an authorized Company representative sign the Solicitation response will result in the proposal being disqualified and the submittal will not be considered under any circumstances.
11. **LATE SOLICITATION RESPONSES**.
- 11.1. Late Solicitation Responses will **NOT** be considered under any circumstances.
 - 11.2. A Solicitation Response will be considered late if the Solicitation Response is not received at the Purchasing Department Solicitation Response Desk before the time indicated in the Solicitation and on or before the date indicated in the Solicitation. The stated closing time in the Solicitation is considered late and will not be accepted by the District. Proposals which are physically in the Purchasing Department but are not stamped before the stated closing time are late and will not be accepted by the District.
 - 11.3. The Purchasing Department will not be responsible for and no allowances will be made for misrouting of a Solicitation Response within the District, delays caused by the Post Office, technical delays or problems, courier services, or any other delays.
 - 11.4. The official deadline date and time is determined by the Purchasing Office and specified in the solicitation.
12. **OPEN RECORDS REQUIREMENT**.
- 12.1. All documents submitted as part of the Vendor's Proposal response will be deemed confidential during the evaluation process, and will not be available for review by anyone other than HEB ISD staff or its designated agents.
 - 12.2. Following award of contract, all Proposals become public documents and are available for public viewing upon written request to HEB ISD except where Proposal information is considered to be confidential or a trade secret belonging to the Proposer and, if released would give advantage to a competitor.
 - 12.2.1. This information should be clearly marked: "CONFIDENTIAL – DO NOT DUPLICATE WITHOUT PERMISSION".
 - 12.2.2. Open records requests for documents marked "Confidential" or "Proprietary" will be forwarded by the District to the Attorney General of Texas for an opinion. Based on the resulting published opinion, the District will then notify all parties concerned of the decision of the Attorney General of Texas.

PART IV

SOLICITATION EVALUATION AND AWARD

1. **RESERVATIONS.** The District expressly reserves the right to:
 - 1.1. Waive minor deviations from specifications, if the District determines that the overall cost of the goods or service will be lower and the overall function is improved or not impaired;
 - 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. Specify approximate quantities;
 - 1.8. Increase or decrease the quantity specified in the Solicitation;
 - 1.9. Consider and accept alternate Solicitations, if specified in the Solicitation, when it is considered in the best interest of the District;
 - 1.10. Procure any goods or services by other means;
 - 1.11. 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:
 - 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 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. Any other relevant evaluation criteria specifically listed in the Solicitation.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, HEB ISD may make an Award without discussion with any Vendor. HEB ISD reserves the right to conduct interviews, oral presentation, negotiations if applicable, or any other requirements deemed appropriate with only one, with some, or with all Vendors. Solicitation Responses should therefore, be submitted on the most favorable terms.

Within forty-five (45) calendar days after opening the Proposals, the Owner will evaluate and rank each Proposal with respect to the published selection criteria described under Paragraph 2.3. After opening and ranking, an award may be made on the basis of the initially submitted Proposal, without discussion, clarification or modification, or the Owner may discuss with the selected Proposer any element of the Proposal. Other than the data read at the Proposal opening, the Owner shall not disclose any information derived from the Proposals submitted by competing firms in conducting such discussions. If the Owner determines that it is unable to reach a satisfactory agreement with the first ranked Proposer, the Owner will terminate discussions with that Proposer. The Owner will then proceed with negotiations with each successive Proposer as they appear in the order of ranking until an agreement is reached, or until the Owner has rejected all Proposals. After termination of discussions with any Proposer, Owner will not resume discussions with that Proposer.
District reserves the right to not make any award if it is deemed to be in the best interest of the District.

3. **EVALUATION.** The District will evaluate all Solicitations based on the following procedures:
 - 3.1. **Objective.** Objective evaluation is:
 - 3.1.1. Based on set of pre-determined criteria using formulas and/or sets of ranges; and
 - 3.1.2. By normal District processes (does not include an evaluation team).
 - 3.2. **Subjective.** Subjective evaluation is:
 - 3.2.1. Based on a set of pre-determined criteria; and
 - 3.2.2. By normal District processes (includes the use of an evaluation team to determine the scoring).

4. **AWARD OF CONTRACT.**
 - 4.1. HEB ISD will indicate acceptance of a Vendor's Solicitation Response by issuance of a Purchase Order, District Contract, or other form of Notice of Award to awarded Vendor(s) at completion of the evaluation of Solicitation Responses.

- 4.2. If the Contract is issued in the form of a Purchase Order, the purchase order together with any other documents which the HEB ISD 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. The Purchase Order, its attachments, and/or referenced documents including these General Provisions is 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. 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. 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.
- 4.3. Acceptance of the Purchase Order is conditional on Vendor's consent to the terms and conditions in these General Provisions. HEB ISD 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. 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.
- 4.4. **Order of Precedence.**
- 4.4.1. If a formal District Contract is issued, the terms and conditions of the Contract shall be governed in the following order of importance:
- 4.4.1.1. The Original Solicitation;
- 4.4.1.2. Any Addenda submitted prior to the opening of the Solicitation;
- 4.4.1.3. HEB ISD General Provisions;
- 4.4.1.4. The accepted portions of the Vendor's Solicitation Response; and
- 4.4.1.5. Any subsequent contractual documents agreed upon by both parties.
- 4.4.2. Failure to accept this obligation may result in the cancellation of any award;
- 4.4.3. Any damages suffered by the District as a result of the Vendor's failure to Contract shall be recovered from the Vendor.
- 4.5. **Partnership and/or Subcontracting.** If the Vendor has joined with one or more business partners or is Subcontracting any work to respond to the Solicitation, HEB ISD reserves the right to:
- 4.5.1. Reject the Vendor's offer based on that/those partnerships(s) and/or Subcontractors.
- 4.5.2. 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.
- 4.6. **DISCLOSURE OF INTERESTED PARTIES.** In accordance with LGC 2252.908, the awarded Vendor is required to submit to the Texas Ethics Commission a fully executed Form 1295 electronically after formal Board approval at https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm . The Texas Ethics Commission WILL NOT accept a paper submittal. Upon submittal of that form to the Texas Ethics Commission, the awarded Vendor MUST forward a copy of the submitted form to the Director of Purchasing. The District will then go to the Texas Ethics Commission website and acknowledge receipt of a properly completed Form 1295. This process must be completed within 30 days from Board award date. NO CONTRACT CAN/WILL BE SIGNED OR EXECUTED UNTIL THIS PROCESS HAS BEEN COMPLETED. Failure to complete this process within 30 days will void the contract award by the Board.

PART V

CONTRACT TERMS, CONDITIONS, AND REQUIREMENTS

1. GENERAL TERMS.

1.1. **Titles.** 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.

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, it may, at its sole option, extend the Contract in 30 day increments, 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 Escalations.** The District shall only allow price escalations within a Contract if such provisions were identified and agreed to within the original Solicitation.

1.4. Availability of Funds.

1.4.1. 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 Hurst-Euleless-Bedford ISD Board of Trustees or otherwise not made available to the District.

1.4.2. The District's payment obligations are payable only and solely from funds appropriated and available for the purpose of the purchase.

1.4.3. 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.

1.4.4. 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.

1.5. Conflict of Interest.

1.5.1. If the Contractor becomes aware of facts that require filing of a Vendor Conflict of Interest Questionnaire with the District, Contractor must file the Questionnaire within seven (7) District Business Days in accordance with Texas Local Government Code Chapter 176.

1.5.2. This requirement applies to a person who is an agent of a Contractor in the Contractor's business with the District.

1.5.3. Forms are posted at the Texas Ethics Commission's website at: www.ethics.state.tx.us/whatsnew/conflict_forms.htm.

1.6. The following shall be applicable to Solicitations that are funded by federal funds:

1.6.1. Education Department General Administrative Regulations (EDGAR) and Other Applicable Grant Regulations

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must be fully compliant with all requirements of Title 34, Code of Federal Regulations (CFR), 2 CFR Part 200.

1.6.2. **If the source of funds for a purchase is federal funds, the following federal provisions apply, as applicable:** the Davis-Bacon Act (40 U.S.C. § 276a / 29 CFR Part 5), the Copeland "Anti-Kickback" Act (18 U.S.C. § 874 / 29 CFR Part 5), the Equal Opportunity Employment requirements (Executive Orders 11246 and 11375 / 41 CFR Chapter 60), the McNamara-O'Hara Service Contract Act (41 U.S.C. 351), Section 306 of the Clean Air Act (42 U.S.C. § 1857h, Section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, Environmental Protection Agency regulations (40 CFR Part 15), the Contract Work Hours and Safety Act (40 U.S.C. § 3701-3708; 29 C.F.R. Part 5), Byrd Anti-Lobbying Amendment (31 U.S.C. 1352), Debarment and Suspension (Executive Orders 12549 and 12689), the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200), the Education Department General Administrative Regulations, 2 C.F.R. Parts 200 and 3474, and 34 C.F.R. Parts 75-77 and 81 ("EDGAR"), and mandatory standards and policies contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

1.6.3. Debarment or Suspension.

1.6.3.1. Federal Law (A-102) Common Rule and (A-110) OMB Circular prohibits non-federal entities, including school districts, from contracting with or making sub-awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred.

- 1.6.3.2. Covered transactions include procurement Contracts for goods or services equal to or in excess of \$100,000 and all non-procurement transactions (e.g., sub-awards to sub-recipients).
- 1.6.3.3. Contractors receiving individual awards for \$100,000 or more and all sub-recipients must certify that the organization and its principals are not suspended or debarred. By signature of this Solicitation, the Contractor affirms that neither they nor their principals are suspended or debarred by a federal agency.
- 1.7. **Contract Kick-off Meeting.**
 - 1.7.1. The District reserves the right to require the Contractor(s) to meet with District representatives prior to the start of the Contract.
 - 1.7.2. The meeting shall discuss at a minimum the performance requirements, service specifications, expectations of professionalism, and access issues, if necessary.
- 1.8. **Periodic Performance Reviews.**
 - 1.8.1. The District reserves the right to require periodic performance reviews with the Contractor(s).
 - 1.8.2. These reviews shall evaluate at a minimum, the Contractor's ability to:
 - 1.8.2.1. Provide goods or perform services within the required specifications and/or performance requirements;
 - 1.8.2.2. Meet the District's schedule; and
 - 1.8.2.3. Perform in a professional manner.
- 1.9. **Usage Reports.**
 - 1.9.1. 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 period.
 - 1.9.2. This right may be extended beyond the end of the contract period for a maximum of two years.
 - 1.9.3. The reports shall be in a mutually agreed upon format that is useful by the District and made available by the Contractor.
- 1.10. **Rights to Work Product.**
 - 1.10.1. All Work Product shall be the sole property of the District.
 - 1.10.2. Contractor hereby assigns all 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.
 - 1.10.3. The District has the right to legible and complete copies of any and all such work papers upon the District's request.
- 1.11. **Disclosure of Intellectual Property Produced.**
 - 1.11.1. 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.
 - 1.11.2. All such Intellectual Property becomes the property of the District.
 - 1.11.3. 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.
 - 1.11.4. 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.
 - 1.11.5. Promptly upon request, Contractor shall supply such additional information as the District may require.
 - 1.11.6. **Modification and Derivative Works.**
 - 1.11.6.1. 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.
 - 1.11.6.2. The District shall own all Intellectual Property Rights to such modifications.
 - 1.11.6.3. 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.
 - 1.11.6.4. 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.
 - 1.11.6.5. 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.
- 1.12. **Copyrighted Products or Services.**
 - 1.12.1. If commissioned by the District, paid or unpaid, to create a design, artwork, or custom-made product or service, the District shall be sole owner of any copyrights available for the end product.
 - 1.12.2. The Contractor shall turn over all relevant items, physical or electronic, to the District upon request.
- 1.13. **Gratuities and Bribes.**
 - 1.13.1. The District may, by written notice to the Contractor, cancel a Contract without liability to the District if it is determined by the District that gratuities or bribes were offered or given by the Contractor or any principle, 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 the performing of such Contract.
 - 1.13.2. In the event the Contract is canceled by the District pursuant to this provision, 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.
- 1.14. **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 deems it is in its best interest.
- 1.15. **Delays by the Contractor.**
 - 1.15.1. 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.
 - 1.15.2. The District may extend the delivery or service date for valid reasons.
 - 1.15.3. The Contractor must keep the District advised at all times of the status of the goods or services.

- 1.15.4. 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.
- 1.16. **Warranties and Remedies.**
- 1.16.1. Price.
- 1.16.1.1. 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.
- 1.16.1.2. 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.
- 1.16.1.3. 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.
- 1.16.2. Title.
- 1.16.2.1. 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.
- 1.16.2.2. The Contractor shall indemnify and hold the District harmless from and against all adverse title claims to the Deliverables.
- 1.16.3. Deliverables.
- 1.16.3.1. The Contractor warrants and represents that all Deliverables sold to the District under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects 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.
- 1.16.3.2. 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.
- 1.16.4. Warranty Period.
- 1.16.4.1. Unless otherwise specified in the Contract, the warranty period shall be at least one year from acceptance of the goods or services.
- 1.16.4.2. If the manufacturer's warranty is less than the required warranty period, the Contractor shall warrant the Deliverable to the full extent as provided by the manufacturer.
- 1.16.4.3. 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 standard at no additional cost to the District.
- 1.16.4.4. 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.
- 1.16.4.5. 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.
- 1.16.5. Transfer of Manufacturer's Warranty.
- 1.16.5.1. 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.
- 1.16.6. 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.
- 1.16.7. Failure to Repair or Replace. If the Contractor is unable or unwilling to 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. In such 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.
- 1.16.8. Damage Assessment.
- 1.16.8.1. 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.
- 1.16.8.2. Failure to pay a damage assessment is cause for Contract cancellation and/or debarment of the Contractor from the District's Solicitation list for a minimum of one year.
- 1.16.9. Services. The Contractor warrants and represents that all services to be provided 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.
- 1.16.10. 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.
- 1.16.11. 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 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.
- 1.17. **Indemnification.**
- 1.17.1. The District shall not be required to indemnify and hold harmless the Contractor and its agents and employees.

- 1.17.2. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the District and its agents, employees, and trustees from all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of property resulting there from, and (2) is caused in whole or in part by any negligent act or omission of the Contractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. 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.
- 1.17.3. 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 any of them or anyone for whose acts any of them 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. **Invoices and Payment.** The Contractor shall submit separate invoices in duplicate 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.
 - 1.18.1. 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. Invoices shall be mailed to HEB ISD, 1849 Central Dr., Bedford, TX, Attention: Accounts Payable Department.
 - 1.18.2. Federal excise taxes, State taxes, or 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.
 - 1.18.3. 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. **Right to Assurance.**
 - 1.19.1. 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.
 - 1.19.2. 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.
- 1.20. **Advertising.** 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.

2. **CONTRACT AGREEMENTS.**

- 2.1. **Inclusions.** Contract Agreement may include Agreements, Contract Awards, Contract Documents, Purchase Orders and Service Contracts.
- 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 agreement 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. All issues arising from this Contract shall be resolved in the courts of Tarrant County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts.
 - 2.3.3. 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. **Modifications.**
 - 2.4.1. The Contract Documents, and terms, covenants and conditions can be modified or amended only in writing, when executed by both parties.
 - 2.4.2. 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.
- 2.5. **Termination for Default.**
 - 2.5.1. In the event of a default by the Contractor, the District shall have the right to terminate the Contract Award in whole or in part for cause, by written Notice of Termination effective in ten (10) 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.
 - 2.5.2. 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.

- 2.5.3. 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 year.
 - 2.5.4. All rights and remedies under the Contract Award are cumulative and are not exclusive of any other right or remedy provided by law.
 - 2.6. **Termination for Convenience.**
 - 2.6.1. 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 Award, with such exceptions, if any, specified in the Notice of Termination.
 - 2.6.2. The District will pay the Contractor, to the extent of funds appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
 - 2.7. **Assignment – Delegation.**
 - 2.7.1. The Contract shall be binding upon and to the mutual benefit of the District and the Contractor and their respective successors and assigns, 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.
 - 2.7.2. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph.
 - 2.7.3. 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.
 - 2.7.4. If the Contractor (seller) has sold their 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.
 - 2.8. **Waiver.**
 - 2.8.1. No claim or right arising out of a breach of the Contract Award 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.
 - 2.8.2. 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 Award, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
3. **GOODS-RELATED CONTRACTS.**
- 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 with HEB ISD, 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 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 8:00 AM to 3:30 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 respond, the emergency requirement may be purchased on the open market. Such purchases shall not be considered a breach of Contract by HEB ISD 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 with 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 Sheets.** 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 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 HEB ISD.
 - 3.9.3. When products tested fail to meet or exceed all applicable specifications, 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 HEB ISD's option, returned to the Contractor at Contractor's risk and expense or disposed of in accordance with HEB ISD'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 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. Substitution 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 CONTRACTS.**
- 4.1. **Contractors Obligations.** 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 Award 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 Agreement.
 - 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.
 - 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. **Licensing and Certification.**
- 4.3.1. If the Contract requires licensing and/or certification to perform services as required, the Contractor shall provide only qualified licensed / certified individuals to perform such tasks.
 - 4.3.2. The Contractor must maintain any required licenses / certification for the duration of the Contract.
 - 4.3.3. The District reserves the right to require the Contractor to show proof of licensing / certification at any time during the Contract Term.
- 4.4. **Place and Condition of Work.**

- 4.4.1. The District shall provide the Contractor access to the sites where the Contractor is to provide the goods or perform the services as required.
- 4.4.2. 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.
- 4.4.3. 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.
- 4.5. **Compliance with Safety Regulations.**
 - 4.5.1. 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).
 - 4.5.2. In case of conflict, the most stringent safety requirements shall govern.
 - 4.5.3. 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.
- 4.6. **Security and Background Investigations.**
 - 4.6.1. The Contractor shall be responsible for ensuring the District is protected from potential threats that may be created by their employees.
 - 4.6.2. If directed by the laws of the State of Texas, the Contractor shall adhere to any requirements that may be legislated during the term of any contract, or any enacted District policy.
 - 4.6.3. The District will have the right to require Contractor's principles, Contractor's employees assigned to the Contract Award, Subcontractor's principles, and Subcontractor's employees assigned to the Contract Award, and any other individuals deemed to be providing goods or services for the District to be investigated (including fingerprinting) for criminal records and/or history.
 - 4.6.4. The District reserves the right to prevent, forbid, and/or temporarily or permanently bar any of Contractor, Contractor's employees, Subcontractors, or Subcontractor's employees from any District facility for whatever security reason it determines necessary to maintain the safety of District employees and operations.
- 4.7. **Subcontracts.** Where a Subcontract may be used, the Contractor shall be fully responsible to the District for all acts and omissions of the Subcontracts just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontract any Contractual relationship between the District and any such Subcontract, nor shall it create any obligation on the part of the District to pay or to see to the payment of any moneys due any such Subcontract except as may otherwise be required by law.
- 4.8. **District Policy for Work Attire.**
 - 4.8.1. 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.
 - 4.8.2. A copy of the manual that includes the dress code can be provided to the Contractor upon request.
- 4.9. **Insurance for Services Performed.**
 - 4.9.1. Additional Insured as required by contract on a primary and non-contributory basis. HEB ISD shall be named as an "additional Insured" on all policy allowed by law.
 - 4.9.2. State Certificate of Insurance. Prior to providing services as a result of a Contract Award, the Contractor shall provide the District with a completed State Certificate of Insurance Form 20.102 (only the State forms are acceptable) providing the below listed coverage or such coverage as may be required in the Solicitation.
 - 4.9.3. 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 service. Required insurance coverage is specified in the Solicitation.
 - 4.9.4. Proof of Insurance. For the duration of this Contract, the Contractor shall provide proof and maintain the following insurance coverage applicable to liability which could be incurred in conjunction with this project:
 - 4.9.4.1. **Workers' Compensation and Employer's Liability (Away from The Project Site*):**
 - Part One -Workers' Compensation: Statutory Limit
 - State: Texas
 - Part Two -Employer's Liability:
 - Bodily Injury by Accident: \$1,000,000 Each Accident
 - Bodily Injury by Disease: \$1,000,000 Each Employee
 - Bodily Injury by Disease: \$1,000,000 Policy Limit
 - Part Three - All states coverage with the exception of monopolistic states.
 - Minimum Best Rating of "A-X or Higher".**
 - 4.9.4.2. **General Liability Insurance for operations of the Contractor or any tier of Subcontractor:**

Annual General Aggregate (Per Project/Location):	\$2,000,000
Annual Products/Completed Operations Aggregate:	\$2,000,000
Annual Personal/Advertising Injury Limit:	\$1,000,000
Each Occurrence Limit:	\$1,000,000

 - Coverage shall be on an "Occurrence Form" and include:30 Days' Notice of Cancellation
 - Products liability for any product manufactured, assembled or otherwise worked upon away from Project Site
 - Hazards of operations (including explosion, collapse and underground coverage)
 - Elevators, independent contractors, products and completed operations, with contractual liability coverage and personal injury liability coverage for claims arising out of the Work for personal injury, bodily injury and property damage.
 - 4.9.4.3 **Automobile Liability:**

Covering all owned, non-owned and hired autos, trucks and trailers of the respective parties required to provide and maintain this insurance.

Such insurance shall provide coverage not less than that of the Standard Comprehensive Automobile Liability policy in limits not less than \$1,000,000 Combined Single Limit each occurrence for Contractors and all tiers of Subcontractors.

Contractual Liability, if not provided in the policy form, is to be provided by endorsement.

4.9.4.4 **Umbrella/Excess Liability:** \$5,000,000 Each Occurrence/Annual Aggregate For Prime Contractors

Follow form of the General Liability, Automobile Liability and Employers Liability

4.9.5. Certificate of Insurance.

4.9.5.1. A certificate of insurance for each of the above policies shall be delivered to the HEB ISD before providing services as a result of a Contract Award.

4.9.5.2. 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.

4.9.5.3. Definitions:

Contractor's Equipment: The CONTRACTOR is responsible for their construction tools and equipment, including but not limited to construction trailers and their contents, and temporary scaffolding, whether owned, leased, rented, borrowed or used at the Site; and the Enrolled Parties agree that Owner will not be responsible for any loss or damage to its tools and equipment.

Additional Insureds: Each policy required (except Workers' Compensation) will name as additional insured the Owner, the Owner's representatives, their respective parent companies, their subsidiaries, related and affiliated companies of each and the officers, directors, agents, employees and assigns of each. General Liability coverage maintained by Contractor and all Subcontractors shall contain an additional insured endorsement pursuant to the Agreement.

Subrogation And Waiver: Each Contractor shall require all policies of insurance that are secured and maintained by the Contractor and Subcontractors of all tiers must waive all of its rights of recovery, under subrogation or otherwise, against Owner and Contract Manager. Each Contractor shall require Subcontractors of all tiers to waive the rights of recovery (as a waiver by the Contractor/Subcontractor) against Owner and Contract Manager.

Notice of Cancellation: All insurance policies and certificates of insurance will include a requirement providing for thirty (30) days prior written notice to Owner of any cancellation of coverage. If any such notice is given, Owner will have the right to require that a substitute policy be obtained prior to said cancellation with appropriate evidence thereof at the discretion of Owner. The CONTRACTOR will immediately notify Owner and will cease operations on the occurrence of any such cancellation and will not resume operations until the required insurance is in force and new certificates of insurance have been filed with Owner.

4.9.6. **Builders Risk/Property Insurance**

4.9.6.1. Unless otherwise provided, the Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builders risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles.

4.9.6.2. DEFINITIONS

OWNER: The person or entity that owns the property.

CONTRACT: The written agreement between Owner and the Contractor and/or Subcontractors of any tier describing the Work, Contract Terms and Conditions. The terms "Contract" and "Agreement" are used interchangeably.

CONTRACTOR: The person, firm or corporation or other party with whom Owner has entered into a Contract to perform the Work.

SUBCONTRACTOR: Person or entity who has a Contract with a Contractor to perform any of the Work at the Project Sites.

WORK: Operations, as fully described in the Contract, performed at or arising directly from the Project Sites.

PROJECT SITES: The specific project site as defined in the Contract.

PROJECT MANAGER: That person within the firm designated by the Owner as "Construction Manager" or "General Contractor" who is charged with furnishing construction administration and management services. Said

(company) has the ultimate responsibility for the management and oversight of each "Contractor" and "Subcontractor" involved with the Job Site.

- 4.10. **Right to Audit.** The District will have the right to audit the Contractor's books and records pertaining to all goods and services during the hours of the normal workday during the term of agreement and for a period of five (5) years following expiration of the Contract.