



Magnolia Independent School District

Standard Terms & Conditions Governing the Purchase of Goods and Services

NOTE: Vendors/Contractors/Firms are cautioned to inform themselves fully on the terms, conditions, and instructions hereinafter set forth.

Business Office
281-356-3571

Mailing Address:
P.O. Box 138
Magnolia, Texas 77353

Physical Address:
31141 Nichols Sawmill Road
Magnolia, Texas 77355

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I. SOLICITATION INSTRUCTIONS, TERMS, AND CONDITIONS

Magnolia ISD has established a web-based e-bid system (the “System”) to post online requests for competitive sealed bids, proposals, or qualifications and to gather electronic responses from interested vendors. Any applicable solicitation documents and related terms, conditions, specifications, instructions, and any applicable addenda (collectively, the “Solicitation”) will be made available through the System.

To participate in a Solicitation, interested vendors must first register in the System to create a login username and password. The District’s System may be accessed by clicking on the following link: <https://magnoliaisd.bonfirehub.com/login>. Click on ‘New Vendor Registration’ and follow the prompts to complete the registration process. If you require assistance with the online registration process, please contact Purchasing at 281-356-3571.

NOTE: By registering in the System, vendors are added to the District’s Bidder’s List and will receive automated e-mail notifications regarding future bid opportunities associated with the commodity codes selected by the vendor within the System. A vendor that is registered in this System IS NOT considered an “authorized vendor” or “contracted vendor”. At Magnolia ISD, a Contracted Vendor is a vendor that has been awarded a contract authorized by the Magnolia ISD Board of Trustees as a result of a competitive procurement process. A non-contracted vendor may still be authorized to engage with the District if certain procurement requirements and criteria are met. Vendors wanting to inquire about their eligibility to engage with the District should contact the Magnolia ISD Business Office at 281-356-3571.

1.1. POINTS OF CONTACT: Unless specified otherwise, the District’s sole points of contact for questions regarding solicitations are listed below. Unless otherwise indicated on a specific solicitation, any communication regarding a solicitation, including questions and requests for clarification, must be directed via e-mail only to:

Lauren Ebert - Senior Buyer - lebert@magnoliaisd.org - 281-356-3571

1.2. DEADLINE FOR ELECTRONIC SUBMISSION OF PROPOSALS (BID OPENING): Responses shall be submitted electronically via the District’s System by no later than the time and date referenced on the Solicitation (the “Submission Deadline” or “Bid Opening”). After such Submission Deadline, the System “locks” and does not allow the submissions of any responses. The District will not accept late submissions. Respondents are encouraged to submit their electronic responses with plenty of time in advance of the deadline indicated to ensure a timely response. The District will not be responsible for lateness of receipt due to Internet delays or unavoidable circumstances. Since responses are submitted electronically through the System, there will be no public bid opening.

1.3. ERRORS AND OMISSIONS: Due care and diligence have been used in the preparation of the specifications and information contained in the solicitation and is believed to be substantially correct. However, the responsibility for determining the full

extent of the exposure and the verification of all information presented herein shall rest solely on the respondent. The District and its representatives will not be responsible for any errors and omissions in the Specifications nor the failure on the part of the Proposer to determine the full extent of the exposures.

1.4. WITHDRAWING ('RETRACTING') RESPONSES: Responses may be withdrawn for any reason prior to the Submission Deadline. To do so, vendors must view their submission click on the 'un-submit' option available within the System. Respondents who retract a response may then perform any corrections and resubmit the response, if desired, prior to the Submission Deadline. After the Submission Deadline, no Proposals may be withdrawn.

1.5. ADDENDA TO SOLICITATION: Any additions, deletions, modifications, corrections, clarifications, or changes made to this Solicitation shall be processed through an electronic addendum (the "Addendum" or "Addenda"), which will be posted and distributed to all participating respondents through the System. In the event that an Addendum is issued, the System will submit an electronic notification ("Notification") via email to the email address of the individual who is registered as a user in the System ("System User"). The Notification will contain important information and/or instructions pertaining to the Addendum. In some events, an Addendum may include a notification regarding the addition, modification, or omission of Solicitation documents. In such case, said Solicitation documents may be provided to the Proposers for review as attachments within the appropriate field in the System.

It shall be the sole responsibility of each Proposer to ensure review of all Addenda issued in connection to this Solicitation prior to submitting a response. By submitting an Offer, the Proposer hereby affirms that such Offer is made in compliance with the terms, conditions, and specifications referenced within such Addenda.

1.6. TERM OF OFFERS: Unless otherwise specified, all competitive sealed bids/proposals or price quotations ("Proposal" or "Quotation") submitted by Vendor in response to a Solicitation or other District-initiated request are to be considered an offer ("Offer") by the submitting Vendor. Unless specified otherwise by Magnolia ISD, all Offers, including pricing, terms, and conditions referenced in the Offer must remain in effect for a minimum of ninety (90) calendar days from either the date of the Submission Deadline ("Bid Opening") referenced in a Solicitation or the date referenced in a Quotation. This allows the District time to review and evaluate all Offers until a decision is made on which Offer(s) to recommend for contract award.

1.7. EQUAL OPPORTUNITY: Magnolia ISD is committed to fair and equal competition among vendors. The District does not discriminate against any otherwise qualified vendor because of the vendor's race, color, national origin, age, religion, sex, or disability.

1.8. RESPONDENTS FULLY RESPONSIBLE FOR COST OF PROPOSALS: The District accepts no financial responsibility for any costs incurred by the Vendor in the course of responding to a Solicitation.

1.9. **AFFIRMATION OF AUTHORITY TO BIND INTO A CONTRACT:** All Proposals submitted in response to a request originated by the District must be made by a responsible officer, employee, or agent (the “Authorized Agent” or “Respondent”) authorized to bind its firm or organization into a legal contract, subject to the terms, conditions, and obligations contained in the Solicitation and/or Purchase Order. By submitting a Proposal, the Authorized Agent hereby acknowledges its understanding of all terms, conditions, and obligations and affirms to having authority to bind the Proposer/Contractor to the obligations stated in the Solicitation and/or Purchase Order.

1.10. **NOTICE OF NO BID:** Should Respondent opt not to participate in a Solicitation, please indicate “No Bid” within the System and provide a brief explanation as to your decision not to participate.

1.11. **NON-COLLUSION STATEMENT:** By submitting an Offer, Respondent affirms that the Respondent and Proposer’s officers, employees, or agents, have not prepared its submitted Offer in collusion with any other entity participating on a Solicitation and that the contents of the Offer as to prices, terms, or conditions have not been communicated by the Respondent or any of the Proposer’s officers, employees, or agents to any other person or firm engaged in this type of business prior to the official opening of the Solicitation.

1.12. **ANTI-LOBBYING STATEMENT:** By submitting an Offer, Respondent and Proposer certifies that no attempt has been or will be made by the Contractor’s officers, employees, or agents to lobby, directly or indirectly, the Magnolia Independent School District Board of Trustees or other Local Government Officer between the Solicitation’s Submission Deadline and the date of contract award by the District’s Board. For a listing of the names of the Magnolia ISD Board of Trustees, Proposers may visit the District’s website at www.Magnoliaisd.org and click on the Board of Trustees link found under Our District tab.

1.13. **DEBARMENT OR SUSPENSION:** The following shall be applicable to Solicitations that are funded by federal funds:

1.13.1. The Proposer who submits a Proposal on behalf of its organization hereby affirms that neither the individual nor their firm or principals of the firm are listed on the Federal Government’s “List of Parties Excluded from Federal Procurement and Non-Procurement Programs” published by the U.S. General Services Administration (GSA) effective as of the date of opening (bid/proposal submission deadline) of the Proposal.

1.13.2. The District will use the Federal Government’s System for Award Management (SAM) system managed by the GSA, found at www.sam.gov, to determine Contractor’s eligibility prior to contract award.

1.14. **TEXAS LAW REGARDING FOREIGN ORGANIZATIONS AND ISREAL BOYCOTTS:** Proposers 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 (the “Foreign Organization List”). In the event that Proposers is added to the Foreign Organization List at any time during the term of this Contract, Proposer shall promptly provide notice to MISD. MISD may, at its discretion, terminate this Contract immediately upon receipt and verification of information, by any means, that Provider has been added to the Foreign Organization List. Proposer further certifies and verifies that neither Proposer, nor any affiliate, subsidiary, or parent company of Proposer, if any (the “Related Companies”), currently boycotts Israel, and Proposer agrees that Proposer and Related Companies will not boycott Israel during the term of this Contract. For purposes of this Contract, the term “boycott” shall mean refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory. The term “boycott” shall not include an action made for ordinary business purposes.

1.16 CERTIFICATION PROHIBITING DISCRIMINATION AGAINST FIREARM AND AMMUNITION INDUSTRIES: If (a) Contractor is not a sole proprietorship; (b) Contractor has at least ten (10) full-time employees; (c) this Agreement has a value of at least \$100,000 that is paid wholly or partly from public funds; (d) the Agreement is not accepted under TEX. GOV’T CODE § 2274.003 of SB 19 (87th leg.); and (e) governmental entity has determined that Contractor is not a sole-source provider or Magnolia ISD has not received any bids from a company that is able to provide this written verification, the following certification shall apply; otherwise, this certification is not required. Pursuant to TEX. GOV’T CODE Ch. 2274 of SB 19 (87th session), the Contractor hereby certifies and verifies that the Contractor, or association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary parent company, or affiliate of these entities or associations, that exists to make a profit, does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association. For purposes of this Agreement, “discriminate against a firearm entity or firearm trade association” shall mean, with respect to the entity or association, to: “(1) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (2) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (3) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association. See TEX. GOV’T CODE § 2274.001(3) of SB 19. “Discrimination against a firearm entity or firearm trade association” does not include: “(1) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; and (2) a company’s refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency, or for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity’s or association’s status as a firearm entity or firearm trade association.” See TEX. GOV’T CODE § 2274.001(3) of SB 19.

1.17 CERTIFICATION REGARDING CERTAIN FOREIGN-OWNED COMPANIES IN CONNECTION WITH CRITICAL INFRASTRUCTURE: Magnolia ISD is prohibited from entering into a contract or other agreement relating to critical infrastructure that would grant to the Contractor direct or remote access to or control of critical infrastructure in this state, excluding access specifically allowed by the Magnolia ISD for product warranty and support purposes. Contractor, certifies that neither it nor its parent company nor any affiliate of Contractor or its parent company, is (1) owned by or the majority of stock or other ownership interest of the company is held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or a designated country; (2) a company or other entity, including governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; or (3) headquartered in China, Iran, North Korea, Russia, or a designated country. For purposes of this Addendum, “critical infrastructure” means “a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility.” See TEX. GOV’T CODE § 2274.0101(2) of SB 1226 (87th leg.). The Contractor verifies and certifies that Contractor will not grant direct or remote access to or control of critical infrastructure, except for product warranty and support purposes, to prohibited individuals, companies, or entities, including governmental entities, owned, controlled, or headquartered in China, Iran, North Korea, Russia, or a designated country, as determined by the Governor.

1.18 CERTIFICATION PROHIBITING THE BOYCOTT OF ENERGY COMPANIES: Magnolia ISD is prohibited from entering into a contract or other agreement relating to the boycott of energy companies. By entering into an agreement with Magnolia ISD, the contractor represents and warrants that: it does not, and will not for the duration of the contract, boycott energy companies or the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If Contractor is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Contractor verifies that, pursuant to Texas Government Code 2274, it does not boycott energy companies; and will not boycott energy companies during the term of the Agreement. This verification is not required for an agreement where a governmental entity determines that these requirements are inconsistent with the governmental entity’s constitutional statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.

1.20 COPELAND ANTI-KICKBACK ACT: This part prescribes “anti-kickback” regulations under section 2 of the Act of June 13, 1934, as amended ([40 U.S.C. 276c](#)), popularly known as the Copeland Act. This part applies to any contract which is subject to Federal wage standards and which is for the construction, prosecution, completion, or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States. The part is intended to aid in the enforcement of the minimum wage provisions of the Davis-Bacon Act and the various statutes dealing with federally assisted construction that contain similar minimum wage provisions, including those provisions which are not subject to Reorganization Plan No. 14 (e.g., the College Housing Act of 1950, the Federal Water Pollution Control Act, and the Housing Act of 1959), and in the enforcement of the overtime provisions of the Contract Work Hours Standards Act whenever they are applicable to construction work. The part details the

obligation of contractors and subcontractors relative to the weekly submission of statements regarding the wages paid on work covered thereby; sets forth the circumstances and procedures governing the making of payroll deductions from the wages of those employed on such work; and delineates the methods of payment permissible on such work.

II. COMPETITIVE PROCUREMENT PROCEDURES, GENERAL EVALUATION CRITERIA, AND CONTRACT AWARD

2.1. **COMPETITIVE PROCUREMENT METHOD:** The procedures used by the District in awarding a contract through a competitive procurement process shall be in accordance with the procedures set forth in Texas Education Code 44.031 and any other criteria referenced in a Solicitation (as applicable). Respondents will submit a Proposal electronically through the District's e-Sourcing System, which will retain Proposals in a "sealed" (locked and unopened) status and will not allow any District staff to "unseal" the responses until the posted bid opening deadline.

2.2. CONTRACT AWARD:

2.2.1. **AWARD RECOMMENDATION:** Upon evaluation of a Solicitation, the District will submit to the Magnolia ISD Board of Trustees, as an Agenda Item, its recommendation for awarding a contract to the Vendor(s) whose Proposal was deemed to offer the best value to the District. Unless otherwise specified in the Solicitation, the Board of Trustees reserves the right to award to a single proposer or multiple proposers to best meet the needs of the District.

2.2.2. **RIGHT TO ACCEPT/REJECT OFFERS:** The District Board reserves the right to accept or reject any or all Offers, accept or reject all or any part of a proposal, waive any minor formalities and/or technicalities in the solicitation process, and award the contract in a manner that best serves the interests of the District. The District Board also reserves the right to No-Award or re-bid a solicitation for any reason.

2.2.3. **NON-RESIDENT BIDDERS:** The District shall not award a governmental contract to a proposer whose principal place of business is not in Texas, unless the nonresident underprices the lowest proposal submitted by a responsible resident bidder by an amount that is not less than the amount by which a resident Proposer would be required to underprice a nonresident proposer to obtain a comparable contract in the state in which the nonresident's principal place of business is located. [This requirement does not apply to a contract involving federal funds.]; Texas Government Code, Title 10, Section 2252.002.

2.3. **EVALUATION:** The District will generally award contracts on the basis of "best value". Award will be made to the best responsive, responsible offer, price and other factors considered.

Criteria: The following criteria shall be considered by Magnolia ISD when evaluating vendor responses for contract award:

- a. Purchase price or discount,
- b. Long term costs (service, supplies, maintenance, etc.), total cost of ownership,
- c. Quality of services or products,
- d. Extent to which the good or service meets District's needs,
- e. Vendor reputation,
- f. Vendor's past relationship with the District,
- g. The impact on the ability of the District to comply with laws and rules relating to historically underutilized businesses,
- h. For a contract for goods and services, other than goods and services related to telecommunication and information services, building construction and maintenance, or instructional materials, whether the vendor or the vendor's ultimate parent company or majority owner (i) has its principal place of business in this state; or (ii) employs at least 500 persons in this state; and
- i. Any other relevant factor specifically listed in the solicitation.

NOTE: Although all evaluation criteria listed above shall be considered by the District, the District will decide which criteria will determine the successful bidder(s) to be considered for contract award.

2.4. **SAMPLES:** Unless indicated otherwise within the Solicitation, and when required as specified in the Solicitation, product samples and/or layout drawings of fabricated items (collectively, "Samples") must be furnished free of expense to the District within ten (10) days of the date of request, or as otherwise stipulated in the Solicitation. Samples must be tagged with the bidder's company name and sent to the District at the address indicated on the Solicitation. Unless otherwise specified by the Proposer at the time of submitting Samples, the Samples will become property of the District upon receipt into a District facility and such Samples may be used, consumed, or destroyed in testing by the District, as necessary, without any further duty or obligation to the Proposer.

2.5. **VENDOR CREDIBILITY:** Vendors may be required to furnish evidence in writing that they maintain permanent places of business and have adequate equipment, finances, and personnel to furnish the items offered satisfactorily and expeditiously and that they are authorized dealers and can provide necessary warranties for items they propose to furnish.

2.6. **PRODUCT ALTERNATES:** When an article of a particular make or trade name is specified, this is done to establish a quality standard and is not intended to eliminate competition by alternate products of equal quality standards, specifications, and/or performance ("Product Alternates"), unless such Product Alternates are specifically not allowed in the Solicitation. In some cases, the District may limit, restrict, or not accept the offer of Product Alternates due to one or more factors which may include, but are not limited to, (i) the District's desire to maintain uniformity of products already deployed in the District, (ii) the District's desire to accept only products which it deems acceptable based on certain product specifications, life expectancy, total cost of ownership (TCO) projections, performance history, reputation, service/maintenance requirements, safety specifications/history, (iii) or other relevant product attributes of interest and/or concern

to the District. If not indicated, vendors may quote alternate products and provide catalogues and specifications of each alternate item. If alternates are not identified in the vendor response, the District will assume that quotation is based on our specifications.

2.7. **DELIVERY LEAD TIMES:** In Solicitations associated with the purchase and delivery of goods to a designated District facility, the standard delivery lead times proposed by the Proposer may be considered as an evaluation criteria. Any delivery lead times indicated by Proposer must be stated in definite terms and must be adhered to completely. In the event that delivery lead times fluctuate consistently and/or are not properly communicated to the District at the time of receipt of a Purchase Order, the District shall reserve the right to cancel any undelivered Purchase Order(s) for a full refund and/or terminate the Agreement without penalty or further obligations to Contractor. The District shall pay Contractor for any product delivered through the date of termination.

2.8. **PRICING ERRORS:** In case of pricing errors, the smallest unit price requested will be considered to be the price bid.

2.9. **SOLE SOURCE CERTIFICATION:** If the proposer professes to be the exclusive source of the item(s) or service(s) requested herein, the proposer must provide with its proposal a written statement to the fact that the sole source claim is due to one or more of the following, as applicable:

- a. A patent, copyright, secret process, or monopoly;
- b. A film, manuscript, or book;
- c. A utility service (i.e. electricity, gas, or water); or
- d. A captive replacement part or component for equipment

Such statements must be issued on a letter signed by the owner or an authorized agent of the firm submitting a Proposal.

III. GENERAL CONTRACT TERMS & CONDITIONS

Upon award of a District contract, the following terms and conditions shall be legally binding of both District and Contractor and shall remain in full force during the term of the Contract, unless such Contract is amended in writing and executed by both parties, terminated prior to the expiration of the contract term, or replaced by a subsequent contract.

DEVIATIONS OR EXCEPTIONS: Any exceptions or deviations (“Deviations”) from these Standard Terms & Conditions, or any other special terms, conditions, or specifications referenced in a Solicitation document or District Purchase Order must be disclosed in writing by the proposing Vendor and submitted along with the Vendor’s Offer for consideration by the District. The District, at its sole discretion, reserves the right to accept, reject, or negotiate the Deviations to ensure the resulting Contract offers the best value to the District.

3.1. OFFER, ACCEPTANCE, AND CONTRACT FORMATION:

3.1.1. Offer: An offer shall exist when one of the following circumstances exists:

3.1.1.1. Offer through Competitive Bid Process: A Vendor's proposal or quotation submitted to Magnolia ISD in response to a request for competitive sealed bids, proposals or qualifications shall be considered an offer by the vendor ("Offer").

3.1.1.2. Offer through Non-Competitive Bid Process: A duly authorized District Purchase Order issued to a Vendor through a non-competitive bid process shall be considered an offer by the District ("District Offer"). Normally, the Purchase Order will be made in accordance with the pricing, terms, and conditions disclosed by the Vendor through a pricing proposal or pricing quotation.

3.1.2. Acceptance of Offer by Magnolia ISD: Acceptance by Magnolia ISD of an Offer shall exist when one of the following circumstances occur:

3.1.2.1. Acceptance through Competitive Bid Process: In the event of a competitive bid process, Acceptance of the Offer will occur when all the following criterion have been met:

- a. The District's recommendation to award a contract to the selected Offeror(s) is authorized by the Magnolia ISD Board of Trustees;
- b. A Notice of Award message/letter, Contract Award Acknowledgement letter, or other similar notification has been issued to the selected Offeror(s) by the District's Purchasing department;
- c. A written contract is executed between the Offeror(s) and the District (if such written agreement is required by the District); and

NOTE: In the absence of a separate written agreement executed by all parties involved, the Contractor's Offer, these Standard Terms & Conditions, any Special Terms & Conditions referenced in the Solicitation or any related accompanying documents ("Exhibits" or "Attachments") included or referenced within the Solicitation, and the District's Purchase Order, together, shall constitute a contract equally binding between the awarded Contractor and Magnolia ISD.

- d. A duly authorized District Purchase Order is issued to the selected Offeror(s).

3.1.2.2. Acceptance through Non-Competitive Bid Process: In the event that the engagement with a vendor is formed through a non-competitive bid process, then acceptance of the Offer will occur when the following criterion have been met:

- a. A written contract is executed between the Offeror(s) and the District (if such written agreement is required by the District); and
- b. A duly authorized District Purchase Order is issued to the selected Offeror(s).

3.1.3. Acceptance of Offer by Vendor/Offeror: Acceptance by Vendor/Offeror shall exist when the Vendor/Offeror fulfills an order and/or renders services in accordance with the mutual written agreement between Magnolia ISD and Vendor/Offeror and/or in accordance with the District's Purchase Order.

3.1.4. **Contract Formation:** A binding agreement (“Contract” or “Agreement”) between the parties shall be formed when the elements of Acceptance and Offer have occurred, as described above.

3.2. **TERM AND ALLOWABLE RENEWALS:** Unless specified otherwise, the initial Contract term shall be effective for a period of one year (the “Initial Term”) beginning on the date indicated on the Solicitation, Purchase Order, or other written contract duly executed by both parties hereto (the “Effective Date”). Thereafter, unless otherwise specified in the Solicitation, Purchase Order, or other resulting Agreement, the District shall have the right to renew the Agreement for a maximum of four (4) additional one-year terms, subject to the terms and conditions of the Solicitation, Purchase Order, and/or the executed Agreement. Unless agreed to otherwise between the parties, Contract renewals shall be evidenced in writing and executed by both parties.

3.3. **MULTI-YEAR CONTRACTS:** The following terms and conditions shall apply to any multi- year contract executed by the District and Contractor.

3.3.1. The District may enter into a multi-year contract for goods and/or services to be provided by Contractor beyond the first fiscal school year covered by the Contract.

3.3.2. The District’s fiscal school year extends from September 1 to August 31.

3.3.3. Goods and/or services to be provided by Contractor in years subsequent to the first fiscal school year will be dependent upon the appropriation and allotment of funds, as stipulated in Section 4 below (Appropriation and Allotment of Funds).

3.3.4. Under a multi-year contract, authorization for Contractor to provide goods and/or services must be evidenced by a separate District Purchase Order for each fiscal school year covered by the contract. If a Purchase Order is not issued by the District to the Contractor for a consecutive fiscal year, the contract shall be considered terminated. In such termination event, the Contractor shall not provide any additional goods or render any additional services, and the District shall pay Contractor for such goods delivered and/or services rendered under the last duly authorized Purchase Order.

3.4. **APPROPRIATION AND ALLOTMENT OF FUNDS:** Performance by Magnolia ISD under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the “Legislature”) and/or allocation of funds by the Board of Education of Magnolia ISD (the “Board”). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then Magnolia ISD will issue written notice to Vendor and Magnolia ISD may terminate this Agreement without further duty or obligation under this Agreement. Vendor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of Magnolia ISD.

3.5. **PRICING:** Unless otherwise specified by the Offeror’s Proposal and accepted by the District, the pricing, incentives, and or discounts offered by the Proposer shall remain firm for the Initial Term of the Contract. Price increases may only be considered at the renewal points, at which time such price increase requests shall be followed by proper

justification (e.g. Letter from manufacturer). The District shall then have the opportunity to negotiate any price increase requests, but shall not be obligated to accept any price increases. Unless specific market conditions exist which may have a significant impact on the Proposer's costs associated with providing the products and/or services under this contract, any price changes shall be no greater than a maximum per unit increase over the previous year of 3% or Consumer Price Index (CPI), whichever the greater.

3.6. AUTHORIZED METHOD OF ORDER (PURCHASE ORDERS): District orders to the awarded Contractor shall be made through a duly written and signed District purchase order ("Purchase Order"), and Contractor shall not fulfill any orders or render any services without receipt of such document of authorization. Failure of a Contractor to withhold delivery of goods or rendering of services until a Purchase Order is received shall create an invalid contract and may lead to return of the goods for a full refund (including return shipping, handling, and restocking fees) or non-payment for unauthorized services.

3.7. PAYMENT TERMS: As allowed by Government Code 2251.021 (b), payment terms under this contract for products that have been delivered and/or services rendered shall be Net 30 days from receipt of Vendor's invoice. The District will consider early payment discounts. Unpaid invoices past the due date will accrue interest at a rate not to exceed that which is allowed by laws of the State of Texas.

3.8. LINE ITEMS: The District's Board of Trustees (the "Board") reserves the right to award a competitively bid contract by individual items or combination of items, whichever is to the best interest of the District.

3.9. ORDER QUANTITIES: The District reserves the right to place orders at quoted prices above or below the estimated quantities referenced in a Solicitation, or other form of District-initiated request for pricing, without the consent of the Contractor. Quantities may be increased or decreased to meet the actual needs of the District and such quantities shall be referenced in the District's Purchase Order. Fulfillment of an order (i.e. order processing, shipment, or providing access to goods) by a Vendor in accordance with the quantities referenced on a Purchase Order shall signify acceptance by the Vendor of such quantities at the price referenced on the Purchase Order.

3.10. INVOICES: Vendors shall submit a separate invoice for each purchase order, and invoices shall indicate the respective purchase order number.

Unless otherwise specified in the respective Solicitation or Purchase Order, invoices shall be itemized and emailed to:

Accounts Payable: misdinvoices@magnoliaisd.org

3.11. TERMINATION: The District reserves the right to terminate the Contract under any of the following circumstances:

- a. The District may cancel or terminate all or any undelivered part of the Contract for convenience and without penalty, for any reason or for no reason, upon thirty (30) days written notice to Contractor.
- b. The District reserves the right to terminate this Contract, without penalty, for non-appropriation or non-availability of funds, as referenced herein.
- c. The District reserves the right to immediately terminate all or any part of the Contract for default if the awarded Vendor becomes insolvent or files any petition in bankruptcy. Such right of termination is in addition to and not in lieu of any other remedies which District may have in law or equity, specifically including, but not limited to collect for damages or demand specific performance.
- d. The District reserves the right to terminate for default all or any part of the Contract upon proving vendor written notice and 30 days to cure such breach to the reasonable satisfaction of Magnolia ISD for failure of the awarded Vendor to perform as per conditions listed but not limited to those given below:
 - Failure to perform as per terms of the corresponding solicitation (excluding any exceptions disclosed by Vendor and accepted by the District upon contract award).
 - Failure to perform as per terms and conditions of an awarded contract executed in writing by both the District and Contractor, if applicable.
 - Failure to perform as per usual and customary industry practices.
 - Failure to perform as per guarantees and performance standards submitted.
 - Failure upon breach of any federal, state, or local laws, rules and regulations or District policies

3.12. DELIVERY:

3.12.1. All prices are to be firm, including shipping and handling charges, shipped F.O.B Destination, Freight Allowed and are to include all charges noted on the Solicitation specifications.

3.12.2. Delivery must be accompanied by a packing list that itemizes the items included. Boxes will be plainly labeled as to destination.

3.12.3. Pallets and/or boxes are to be labeled with a bar code including the product UPC/EAN code.

3.13. TAXES: The District is exempt from all Federal Excise, Texas State and Local taxes. Exemption Certificate may be furnished to Vendor upon request.

3.14. WARRANTY FOR GOODS AND SERVICES: Goods procured by Magnolia ISD from awarded Vendor shall carry a minimum Manufacturer's warranty. Any defective merchandise shall carry a manufacturer's warranty and vendor shall authorize

either an exchange at no additional cost or return for full credit within 30 days following the purchase. Vendor warrants that any services rendered by Vendor will be fully and timely performed in a professional 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.

3.15. **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.

3.16. **WARRANTY PERIOD:**

3.16.1. Unless otherwise specified, the warranty period shall be at least one year from acceptance of the goods or services.

3.16.2. If the manufacturer's warranty is less than the required warranty period, the Contractor shall warrant the product/service to the full extent as provided by the manufacturer.

3.16.3. The District will endeavor to give the Contractor written notice of the breach of warranty within thirty (30) days of discovery of the breach of warranty, but failure to give timely notice shall not impair the District's rights under this section.

3.17. **PRODUCT SUBSTITUTIONS, ADDITIONS, OR CANCELLATIONS:**

In the event that the needs of the District change during the effective term of an awarded contract, the District may decide to either (i) substitute a previously awarded item with another product that meets new requirements, (ii) add a new product to the awarded contract, or (iii) cancel/remove a product from the contract. Magnolia ISD will reserve the right to take any of these actions at any time and at its sole discretion with prior written notice to the affected vendor(s), as stated herein:

3.17.1. **Product Substitutions.** Product substitutions may be either negotiated directly with the vendor awarded the original item or quotes may be requested from any of the other awarded vendors. If the product substitute recommended by any given vendor is not acceptable to Magnolia ISD for any reason, then Magnolia ISD reserves the right to purchase the product substitute through a vendor on a Purchasing Cooperative or another vendor of its choice.

3.17.2. **Product Additions.** Related products not originally listed in this solicitation that the District expects to order on an ongoing basis over the term of the contract may be added to the contract of an awarded vendor, as needed, and Magnolia ISD reserves the right to either negotiate pricing for such product(s) directly with one or more of the awarded vendors, to obtain price quotes from one or more of the awarded vendors and then negotiate final pricing with any of the awarded vendors, or to purchase such product(s) from a Purchasing Cooperative.

3.17.3. **Product Cancellations.** Products no longer desired or required by the District may be cancelled/removed from any awarded contract at any time and for any reason by not placing any additional reorders for such product and by notifying the affected vendor(s) of such decision. In such instances, the District will be liable only for any products ordered by and delivered to the District prior to the District issuing a written notice to the affected vendors of its decision to remove such product(s) from the awarded contract.

3.18. **RETURNS:** Merchandise received by Magnolia ISD in defective or damaged condition will be returned to Vendor for either replacement or full credit at no charge to Magnolia ISD, including freight & handling and any restocking charges. Prior to returning the product to the Vendor, Magnolia ISD will contact the Vendor to process a proper Return Material Authorization, if applicable.

3.19. **INSURANCE:** Awarded vendor represents and agrees that it shall provide and maintain certain insurance requirements as required by Magnolia ISD, including but not limited to, professional liability, general liability, automobile liability, and worker's compensation insurance in amounts that are satisfactory to Magnolia ISD. Upon contract award, awarded Vendor(s) shall provide to Magnolia ISD original certificates of insurance indicating proof of any such required insurance. All such policies of insurance shall contain a provision that they shall not be cancelled or altered, nor the amount of coverage reduced, until at least thirty (30) days after notice of such cancellation, alteration, or reduction has been delivered to the District.

Certificates of Insurance and/or notices regarding a cancellation, alteration, or reduction in limits shall be submitted to the District, as follows:

Magnolia Independent School District
Attn: Purchasing
PO Box 138
Magnolia, TX 77353

3.20. **TRANSPORTATION DAMAGE CLAIMS:** Unless otherwise agreed to in writing by Magnolia ISD, Vendor shall be responsible for filing claims with the respective transportation carriers for damage to goods occurring in-transit to the ship-to location specified by Magnolia ISD.

3.21. **EXCEPTIONS TO SOURCING FROM CONTRACTED VENDORS:** In certain cases it may be necessary for the District to purchase products covered by the awarded Contract from a vendor or vendors other than the originally contracted vendor(s).

Those exceptions may include but are not limited to the following:

3.21.1. Need of a good or service is acute and delay in obtaining it would adversely affect the District.

3.21.2. A contracted vendor cannot (i) render the necessary services when required by the District or (ii) supply the necessary goods and cannot special order the goods (at no additional charge to District) in a timely manner or under the original terms and conditions of the Contract.

3.21.3. The goods and/or services offered by an awarded contractor may be obtained through an authorized Purchasing Cooperative under better terms (i.e. Lower pricing, shorter lead time, better quality, etc.).

3.21.4. Deviation in pricing and/or product or service requirements originally agreed to by Contractor and Magnolia ISD.

3.22. SUBCONTRACTORS: If any services to be rendered by Contractor under the Contract will be (or may be) performed by individuals other than the Contractor's own employees (hereinafter referred to as "Subcontractors"), then Contractor must inform District of such Subcontractor engagement and shall describe the extent of the work to be performed by the Subcontractor. Contractor shall disclose to District the name of the firm and/or individuals Subcontracted and any other information the District may require to ensure the Subcontractor is qualified to perform such services in connection with the Contract. Subcontractors shall operate under, and shall be bound by, the same terms and conditions of the Contract. Compensation and supervision of Subcontractors shall be the sole responsibility of the Contractor. The District reserves the right to, at any time, to reject services provided by a Subcontractor and reserves the right to interview the Subcontractor prior to accepting any services from such.

3.23. THE RIGHT TO AUDIT: The District, upon written notice, shall have the right to audit all documents relating to the services and work provided by the awarded vendor under the contract. Records subject to audit shall include, but not be limited to records which may have a bearing on matters of interest to the District in connection with products and/or services and work for the District and shall be open to inspection and subject to audit and/or reproduction by the District to the extent necessary to adequately permit evaluation and verification of (i) Vendor's compliance with contract requirements; (ii) compliance with the District's procurement policies and procedures; (iii) compliance with provisions for computer billings to the District; and (iv) any other matters related to the contract between the District and Vendor.

3.24. GOVERNING LAW AND VENUE: Respondent agrees that this solicitation and any contract that may result thereof will be governed by and construed in accordance with the laws of the State of Texas without regard to conflict to law principles. Respondent agrees that the exclusive venue of any dispute or legal proceeding relating to this solicitation or any related written contract awarded to the successful respondent will be Montgomery County, Texas.

3.25. TEXAS LAWS: All Contracts shall adhere to Texas laws regarding the purchase of goods and services, including but not limited to the Texas Education Code regarding school district contracts and the Texas Business and commerce code.

3.26. COMPLIANCE WITH APPLICABLE LAWS: Vendor assumes full responsibility and liability for compliance with any and all local, state, and federal laws and regulations applicable to the Vendor and its employees.

3.27. NO ARBITRATION: There will be no agreement for binding arbitration in any written contract between Magnolia ISD and Respondent relating to a dispute involving the services, products or goods made the subject of this bid.

3.28. RELATIONSHIP OF PARTIES: It is understood and agreed that Vendor is an independent contractor and that neither it nor any employees (paid or volunteer) or agents contracted by it, or otherwise performing duties of Vendor, shall be deemed for any purposes to be employees or agents of Magnolia ISD. This contract does not create a joint venture, business partnership, agency, franchise, or employment relationship, under Texas law. Vendor assumes full responsibility for the actions of any such persons while performing any services incident of this contract, and Vendor shall remain solely responsible for their supervision, daily direction and control, payment, if any, of salaries (including withholding of income taxes and social security), worker's compensation, and disability benefits and like requirements and obligations.

3.29. TITLE AND RISK OF LOSS: Title and risk of loss pass to Magnolia ISD either (a) on delivery to Magnolia ISD's delivery location as designated on the corresponding Purchase Order or (b) if Magnolia ISD is unable to take delivery of product at the time of order and requests that seller store product, on the date of storage.

3.30. DELIVERY AND INSTALLATION:

3.30.1. If applicable, delivery and installation of goods ordered by Magnolia ISD must be coordinated with the respective Magnolia ISD staff ordering such goods. This will ensure that Magnolia ISD personnel are on hand to receive the shipment and coordinate the installation. Failure to meet this requirement may result in refusal to receive goods.

3.30.2. Overtime labor costs will be added when overtime work is performed at Magnolia ISD's request or if Vendor incurs additional labor costs due to unfavorable building conditions.

3.30.3. The job site will be clean and free of debris prior to delivery and installation. It is the responsibility of Magnolia ISD to clear the area and move computers and other related equipment prior to the start of the installation. It is the Vendor's responsibility to remove all debris resulting from work done.

3.31. LIMITATION OF LIABILITY: Magnolia ISD will not contractually agree to limit in any manner the District's rights to recover damages against Vendor as otherwise provided by applicable law relating to or arising from Vendor providing the goods or services made the subject of this bid. The District will seek damages to the extent authorized by the Constitution and laws of the State of Texas.

3.32. GENERAL LIABILITY: Magnolia ISD does not waive or relinquish any immunity of defense on behalf of itself, trustees, officers, employees (paid or volunteer) and agents as a result of this solicitation and performance of the functions or obligations described in the solicitation.

3.33. STATUTE OF LIMITATIONS: Magnolia ISD does not agree to limit or modify the statute of limitations for potential claims as otherwise provided by applicable law.

3.34. RESPONSIBILITY: Each party represents and warrants to the other that any contract resulting from this solicitation has been duly authorized and this contract constitutes a valid and enforceable obligation of such party according to its terms.

3.35. NO WAIVER: No waiver of a breach of provision of any contract resulting from this solicitation shall be construed to be a waiver of any other provision. No delay in acting with regard to any breach of any provision shall be construed to be a waiver of any such breach.

3.36. INDEMNIFICATION:

3.36.1. To the fullest extent authorized by law, the Contractor agrees at all times to defend, indemnify, and hold harmless Magnolia ISD, its trustees, officers, employees, and agents from any and all claims for damages or injuries and other losses, including but not limited to costs and attorney's fees, resulting directly or indirectly from any act or omission of Vendor's officials, employees, agents, subcontractors or volunteers arising out of the performance of this contract, whether such claims are asserted before or after termination of this contract.

3.36.2. The District, in accordance with the Texas Constitution, shall not indemnify and hold harmless the Contractor and its agents and employees.

3.37. ASSIGNMENT: No assignment of this contract or any duty or obligation of performance hereunder shall be made in whole or in part by any party without prior consent from all parties hereto.

3.38. CONFLICT OF INTEREST DISCLOSURES:

3.38.1. Conflict of Interest Questionnaire (FORM CIQ). Chapter 176 of Texas Local Government Code requires vendors seeking to contract with the District to disclose certain business relationships, affiliations, and gifts made to Local Government Officers of the District. Vendors may request a list of District Local Government Officers from the Purchasing Department. By law, this questionnaire (FORM CIQ) must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1). [Click here \(FORM CIQ\)](#) to obtain a copy of Form CIQ and to review the criteria that qualify as a conflict of interest.

3.38.2. Certificate of Interested Parties (Form 1295). In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code. The law states that a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties (Form 1295) to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency.

- a. Contracts Requiring a Form 1295: The law applies only to a contract of a governmental entity or state agency that either:
 - Requires an action or vote by the governing body of the entity or agency before the contract may be signed; or
 - Has a value of at least \$1 million.

Gov't Code § 2252.908. The disclosure requirement applies to a contract entered into on or after January 1, 2016.

NOTE: A contract does not require an action or vote by the governing body of a governmental entity or state agency if:

- The governing body has legal authority to delegate to its staff the authority to execute the contract;
- The governing body has delegated to its staff the authority to execute the contract; and
- The governing body does not participate in the selection of the business entity with which the contract is entered into.

- b. Vendor Instructions for Completing Form 1295: The Texas Ethics Commission has adopted rules requiring the business entity to file Form 1295 electronically with the Commission. A business entity must file Form 1295 using the Texas Ethics Commission's online filing application located on the following website: https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

- c. Vendor Instructions for Submitting a Notarized Copy of Form 1295 to Magnolia ISD:

- A business entity who was required to file a Form 1295 electronically on the Texas Ethics Commission website is also required to submit a notarized copy of the form to Magnolia ISD's Purchasing office via email (preferred method) at lebert@Magnoliaisd.org (Reference "Form 1295" on the Subject line of your email). Otherwise you may also submit the notarized form via U.S. First Class Mail with Certified Mail and Return Receipt to the following address: Magnolia Independent School District, Purchasing Office, Attn: Certificate of Interested Parties, 31141 Nichols Sawmill, Magnolia, TX 77355.

3.39. EMPLOYMENT PRACTICES: The District does not discriminate on the basis of race, color, national origin, gender, religion, age, or disability in employment or the

provision of services. By entering into a contract with the District, the contracted Vendor hereby affirms that it meets Equal Employment Opportunity Commission (EOC) standards and American Disability Act (ADA) standards in employment practices.

3.40. PUBLIC INFORMATION: The District is a public entity subject to the Texas Public Information Act (Tex. Govt. Code Ch. 552). Responses to this invitation are subject to release as public information unless the response or specific parts of the response are exempted from public disclosure under such Act. Respondents should consult with their legal counsel regarding disclosure issues and take the appropriate precautions to safeguard trade secrets or any other proprietary information before responding to this invitation.

3.41. FORCE MAJEURE: The parties to this contract may be excused from performance hereunder during the time and to the extent that they are prevented from performance due to work stoppages, accidents, manufacturer's production schedule, an act of God, fire, strike, lockout, when satisfactory evidence thereof is presented to the other party and provided that such non-performance is not due to the fault of the non-performing party.

3.42. FELONY CONVICTION NOTICE: Contractor must give advance notice to the District if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony. The District may terminate this Agreement pursuant to Article 8 Termination if the District determines that the person or business entity failed to give notice as required by this paragraph or misrepresented the conduct resulting in the conviction. This paragraph requiring advance notice does not apply to a publicly held corporation.

3.43. NON-COLLUSION STATEMENT: By entering into a Contract with the District, the Officer, employee, or authorized agent ("Authorized Agent") executing the contract affirms that neither the Contractor or Authorized Agent have been involved in any acts of collusion with any other Contractors and that the contents of the Vendor's Proposal or Quotation (as applicable) have not been communicated by the Authorized Agent (nor by any other person) to any other person or entity prior to the official opening of the Offer (pertains to Bid Process only) or submission of the Quotation to Magnolia ISD.

3.44. CRIMINAL HISTORY REVIEWS: Contractor shall certify compliance with Texas Education Code 22.0834 and Education Commissioner's rules regarding criminal history record review for all employees, applicants for employment, agents or subcontractors of the Contractor. Contractor will obtain criminal history record information that relates to an employee, applicant for employment, or agent of the Contractor if the employee, applicant, or agent has or will have continuing duties related to the contracted services and will have direct contact with students. The District considers "continuing duties" to exist when a Contractor will be providing services in District grounds over a term that spans beyond one (1) calendar day or school day, whichever applicable. The District considers "direct contact" to exist either when a Contractor will be providing services to students directly or providing services in a

manner that could lead to opportunities for significant verbal or physical contact with students. The Contractor shall certify to the District before beginning work and at no less than an annual basis thereafter that criminal history record information has been obtained. Contractor shall assume all expenses associated with the background checks, and shall immediately remove any employee or agent who was convicted of a felony or misdemeanor involving moral turpitude, as defined by Texas law, from District property or other location where students are regularly present. District shall be the final decider of what constitutes a “location where students are regularly present.”

3.45. GENERAL PROVISIONS AND ASSURANCES FOR CONTRACTS FUNDED WITH FEDERAL FUNDS (In accordance with the New EDGAR): The following provisions and assurances are required and apply when the Magnolia Independent School District expends federal funds for any contract resulting from this procurement process. Accordingly, the parties agree that the following terms and conditions apply to the awarded Contract between the District and the awarded Vendor in all situations where Vendor has been paid or will be paid with federal funds:

I. REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS (APPENDIX II TO 2 CFR PART 200)

- A. Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Pursuant to Federal Rule (A) above, when Magnolia ISD expends federal funds, Magnolia ISD reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

- B. Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

Termination for Cause: Pursuant to Federal Rule (B) above, when Magnolia ISD expends federal funds, Magnolia ISD reserves the right to immediately terminate any contract in excess of \$10,000 resulting from this procurement process in the event of a breach or default of the agreement by Vendor in the event Vendor fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in the procurement solicitation, contract, and/or a purchase order; (2) make any payments owed; or (3) otherwise perform in accordance with the contract and/or the procurement solicitation.

Termination for Non-Appropriation of Funds or for Convenience: Magnolia ISD also reserves the right to terminate the contract immediately upon written notice to vendor either (i) for unavailability of funds if the Board of Trustees fails to obtain and appropriate funds for any fiscal year during the term of the contract or (ii) for convenience, with or without cause, if Magnolia ISD believes in its sole discretion that it is in the best interest of Magnolia ISD to do so.

If the contract is terminated in accordance with the terms referenced above, Magnolia ISD shall compensate Vendor for any work performed and accepted and goods accepted by Magnolia ISD as of the termination date. Any award under this procurement process is not exclusive and Magnolia ISD reserves the right to purchase goods and services from other vendors when it is in Magnolia ISD's best interest.

- C. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

Pursuant to Federal Rule (C) above, when Magnolia ISD expends federal funds on any federally assisted construction contract, the equal opportunity clause is incorporated by reference herein.

- D. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides

that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

Pursuant to Federal Rule (D) above, when Magnolia ISD expends federal funds during the term of an award for all contracts and subgrants for construction or repair, Vendor will be in compliance with all applicable Davis-Bacon Act provisions.

- E. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Pursuant to Federal Rule (E) above, when Magnolia ISD expends federal funds, Vendor certifies that Vendor will be in compliance with all applicable provisions of the Contract Work Hours and Safety Standards Act during the term of an award for all contracts by Magnolia ISD resulting from this procurement process.

- F. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

Pursuant to Federal Rule (F) above, when federal funds are expended by Magnolia ISD, Vendor certifies that during the term of an award for all contracts by Magnolia ISD resulting from this procurement process, Vendor agrees to comply with all applicable requirements as referenced in Federal Rule (F) above.

- G. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$100,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Pursuant to Federal Rule (G) above, when federal funds are expended by Magnolia ISD, Vendor certifies that during the term of an award for all contracts by Magnolia ISD resulting from this procurement process, Vendor agrees to comply with all applicable requirements as referenced in Federal Rule (G) above.

- H. Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Pursuant to Federal Rule (H) above, when federal funds are expended by Magnolia ISD, Vendor certifies that during the term of an award for all contracts by Magnolia ISD resulting from this procurement process, Vendor certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

- I. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Pursuant to Federal Rule (I) above, when federal funds are expended by Magnolia ISD, Vendor certifies that during the term and after the awarded term of an award for all contracts by Magnolia ISD resulting from this procurement process, the vendor certifies that it is in compliance with all applicable provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). The undersigned further certifies that:

1. No Federal appropriated funds have been paid or will be paid for on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.
 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
 3. The undersigned shall require that the language of this certification be included in the award documents for all covered sub-awards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.
- J. Procurement of Recovered Materials. Vendor agrees to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, where applicable. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery, and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- K. Domestic Preferences for Procurements – As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. For purposes of 2 CFR Part 200.322, "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. Moreover, for purposes of 2 CFR Part 200.322, "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum, plastics and polymer-based products such as polyvinyl chloride pipe, aggregates such as concrete, glass, including optical fiber, and lumber.

Pursuant to Federal Rule (K) above, when federal funds are expended by the District, vendor certifies, by signing this document, that to the greatest extent practicable vendor will provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

- L. Ban on Foreign Telecommunications – Federal grant funds may not be used to purchase equipment, services, or systems that use “covered telecommunications” equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. “Covered telecommunications” means purchases from Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities), and video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

Pursuant to Federal Rule (L) above, when federal funds are expended by the District, vendor certifies, by signing this document, vendor will not purchase equipment, services, or systems that use “covered telecommunications”, as defined by 2 CFR §200.216, equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

II. RECORD RETENTION REQUIREMENTS FOR CONTRACTS INVOLVING FEDERAL FUNDS

When federal funds are expended by Magnolia ISD for any contract resulting from this procurement process, Vendor certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.334. Vendor further certifies that it will retain all records as required by 2 CFR § 200.334 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

III. CERTIFICATION OF COMPLIANCE WITH THE ENERGY POLICY AND CONSERVATION ACT

When Magnolia ISD expends federal funds for any contract resulting from this procurement process, Vendor certifies that it will comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.; 49 C.F.R. Part 18).

IV. CERTIFICATION OF EQUAL EMPLOYMENT STATEMENT

It is the policy of Magnolia ISD not to discriminate on the basis of race, color, national origin, gender, limited English proficiency or handicapping conditions in its programs.

Vendor agrees not to discriminate against any employee or applicant for employment to be employed in the performance of this Contract, with respect to hire, tenure, terms, conditions and privileges of employment, or a matter directly or indirectly related to employment, because of age (except where based on a bona fide occupational qualification), sex (except where based on a bona fide occupational qualification) or race, color, religion, national origin, or ancestry. Vendor further agrees that every subcontract entered into for the performance of this Contract shall contain a provision requiring non-discrimination in employment herein specified, binding upon each subcontractor. Breach of this covenant may be regarded as a material breach of the Contract.

V. CERTIFICATION OF COMPLIANCE WITH BUY AMERICA PROVISIONS

Magnolia ISD has a preference for domestic end products for supplies acquired for use in the United States when spending federal funds (purchases that are made with non-federal funds or grants are excluded from the Buy America Act). Vendor certifies that it is in compliance with all applicable provisions of the Buy America Act.

VI. CERTIFICATION OF ACCESS TO RECORDS – 2 C.F.R. § 200.336

Vendor agrees that the District's Inspector General or any of their duly authorized representatives shall have access to any books, documents, papers and records of Vendor that are directly pertinent to Vendor's discharge of its obligations under the Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to Vendor's personnel for the purpose of interview and discussion relating to