



LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT

General Terms and Conditions For Purchasing Solicitations and Contracts Reference Document #GTC-01, Version 01 Effective Date of February 13, 2018

These General Terms and Conditions govern the relationship between the District and Offeror and are hereby made part of the Agreement/Contract between the parties. "Offeror" refers to the firm/company submitting a response to a solicitation by the District. After acceptance of the Offer and a resulting Contract, "Offeror" will become synonymous with "Vendor", "Contractor", "Provider", or similar title. "Offer" refers to a response to a solicitation for an Offer—i.e., "Bid" for an IFB/RFB; "Proposal" for RFP/RFQ; or "Offer" for RFO.

The District is **exempt from Texas State and Local Sales Tax and Federal Excise Tax** in accordance with Article 20.04 (F) 3, Chapter 20, Title 122a, Taxation, General, RCS, 1925, as amended by the 57th Legislature, first Called Session, 1961 – DO NOT INCLUDE TAX IN BIDS OR PROPOSALS OR CONTRACTS.

The District is afforded a degree of **sovereign immunity** under various statutes. The District does not intend to surrender or reduce any of its sovereign or contractual rights provided under Federal and/or Texas statute(s) and any attempt at any time during the Contract process, or Contract effective dates, by the Offeror or any third-party to do so is null and void.

1. **The following subparagraphs apply generally to solicitations, responses to solicitations (i.e., Offers), evaluation, and Contract award; however, remedies, representations, and performance-type requirements apply during Contract performance:**

- a. **SUBMISSION OF OFFER.** Submission of a response to an RFP, IFB, RFO, or similar solicitation document shall be considered as the representation that the Offeror has carefully read all aspects of the solicitation document and has investigated all past, present and required conditions of the goods or services being offered in the solicitation and freely submits an Offer.
- b. **RESPONSIVENESS.** It is the Offeror's responsibility to read and comply with the information provided. Failure to complete and submit the bid/proposal according to the information and instructions may result in Offeror being declared "non-responsive" and being disqualified from further consideration.
- c. **SEALED SUBMISSION OF OFFER.** Offeror should submit its Offer in a sealed envelope, plainly marked with Offeror's name, Bid/Proposal number, receipt/opening date and time. Offers may be mailed or delivered; however the Offers should be in an envelope as noted above regardless of delivery method.
- d. **LATE SUBMISSION.** Offers received after the time and date specified will **not** be accepted. Offers must be submitted in sufficient time to be received and time-stamped at the Purchasing Department on or before the Offer Receipt/Opening Time and Date. The District will not be responsible for delivering mail from the post office.
- e. **SIGNATURE BLOCK.** Offers received without proper signature will **not** be accepted.
- f. **FACSIMILE (FAX) OFFERS.** Facsimile (fax) bids/proposals will **not** be accepted unless otherwise noted elsewhere in the solicitation.
- g. **PRICES/COMMENTS IN INK AND UNIT PRICE EXTENSIONS.** All prices and comments must be typed or written in ink. Offers written in pencil will **not** be accepted. Mistakes may be crossed out, and corrections inserted and initialed by Offeror. Unit prices should be extended. The unit price will prevail in resolution of mathematical errors in extension or total. Offeror must submit prices and other information required in the proper spaces on the offer forms provided. Deviation may result in disqualification of the Offer.
- h. **ESTIMATE OF REQUIREMENT.** The quantities stated elsewhere in the solicitation documents (IFB, RFP, RFO, etc.) are an estimate of use ONLY unless clearly stated in the Statement of Work. The District makes no express or implied warranties whatsoever that any particular quantity or dollar amount of products and related services will be procured through the Contract unless stated in the Statement of Work. Specific quantities will be noted on subsequent Purchase/Delivery Orders issued under this Contract. If the District's requirements do not result in orders in the quantities described as "estimated" in the minimum specifications, that fact shall not constitute the basis for an equitable price adjustment. The District is not required to purchase requirements in excess of the estimated quantity on any item from the Offeror.

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- i. **DISCOUNT PURCHASES.** If solicitation is for discount purchases instead of fixed prices, Zero (0) percent discounts will generally not be considered for contract award. The District may select 3 to 5 of the most qualified/responsive offering the most competitive pricing. Offerors must submit a catalog or price list, if applicable, with the Offer for evaluation purposes. Failure to submit a catalog may result in disqualification. Contracts/Agreements shall be awarded to the Offerors, as determined by the District, offering the most competitive pricing based upon a comparative analysis of each Offeror's manufacturer/catalog pricing.
- j. **CONTRACT RIDERS.** All School Districts, with a Board approved inter-local agreement with the District expressing an interest in riding the contract resulting from this solicitation may do so with written notification. Please indicate if contract pricing and terms will NOT be extended to these districts. The District may assess a nominal administrative fee to the interested parties upon request. District assumes no responsibility in the evaluation and award of any contract that result from this rider. Any contract resulting from this rider is strictly between the individual School Districts and the Offeror.
- k. **ACKNOWLEDGEMENT OF AMENDMENTS/ADDENDA.** Changes to the solicitation document (IFB, RFP, RFO, etc.) statement of work, specifications, or similar substantial changes, prior to award, may be made in the form of an addendum. Each addendum must be returned with the signed Offer and with any other addendum at the time and date of the solicitation opening or prior to that time. If the addendum **is not returned**, the Offer **may be** disqualified.
- l. **ALTERNATIVE BIDS.** This subparagraph is specific to a "Bid" (i.e., an Offer to an IFB or RFB). No alternate Bid will be accepted, unless otherwise stated in the solicitation. Submission of an alternate or taking exceptions to the IFB/RFB (including, but not limited to, the Statement of Work; Specifications; and General Terms and Conditions) may result in the Offer being declared "non-responsive" and not being further considered for award.
- m. **CHANGES IN NAME, ADDRESS, OR PHONE NUMBER.** Offerors are solely responsible for notifying the District's Purchasing Department, of any changes, in writing, to the company's name, address and telephone number. If an Offeror fails to notify the District of any changes in their contact information, the Offeror may be suspended from transacting business with the District until the changes have been made.
- n. **SUBSTITUTIONS.** The use of brand names and catalog numbers does not prohibit the substitution of other brands of equal quality unless "**NO SUBSTITUTE**" is specified; however, the determination of an acceptable "substitute" is at the sole discretion of the District. No substitutions or cancellations are permitted after award without written approval by the District's Director of Purchasing.
- o. **BRAND NAME OR EQUAL.** The use of brand/models in the solicitation document (IFB, RFP, RFO, etc.) is to establish a standard of quality, workmanship, performance, etc. Offerors may bid/propose brands/models they deem equivalent or equal to those shown on the bid/proposal. The burden of proof of equivalency or "Equal or" is upon the Offeror; however, the final determination of "Equal" is at the sole discretion of the District. For line items, the Offeror must specify make or model or each line item, even if offering the brand specified. DO NOT state "As Specified" or "Equal"—clearly and completely list the brand/make/model. Offeror (s) submitting brands or models other than those specified may be requested to furnish samples, at Offeror's expense, of their offerings for evaluation by the District. These samples will generally NOT be returned and may be destroyed or consumed in testing/evaluation.
- p. **DEMONSTRATIONS/SAMPLES.** In order for the District to determine an acceptable "substitute" or to determine "as equal" for "brand name or equal", a demonstration or sample of the products/goods may be requested.
 - (1) Offeror shall provide the demonstration version or sample at no cost to the District. Offeror shall bear all expenses for transportation, installation, removal, operational supplies and repair parts of the demonstration/sample.
 - (2) Offeror understands that this evaluation is without monetary consideration for the use of the equipment. It is for evaluation only and does not obligate the District to purchase the products or goods at the present or any future time.
 - (3) The District agrees to use the demonstration version/sample for evaluation only and to use the product/good in an environment and under circumstances substantially consistent with the product's/good's design and intended use. The District agrees to provide reasonable care and safeguard of the demonstration version/sample while it is in the District's possession; however, Offeror acknowledges that the demonstration version/sample may be damaged/consumed destroyed during the evaluation. Offeror understands that the results of the evaluation

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many not be used as an endorsement or for promotional purposes by the District.

- (4) Offeror will indemnify, save harmless and defend the District from and against any and all claims, actions, debts, liabilities, and attorney fees arising out of, claimed on account of, or in any manner predicated upon loss of, or damage to the demonstration version/sample, or injuries to, or death of any and all persons whatsoever, in any manner caused by or attributed to Offeror or Offeror's agents, servants, representatives, consultants, or employees while in, on, or about the District or attributed to the failure or malfunction of the demonstration version/sample provided by the Offeror during the District's use, test, or evaluation of the demonstration version/sample.
- q. **FACILITY MODIFICATIONS.** If any part of the Offer will necessitate any existing facility modifications to include, but not limited to, the removal or relocation of any physical elements, the Offeror shall provide a detail list of every modification necessary and associated cost to address each item. Further, if there is an increase of existing electrical, plumbing or mechanical load(s) to the existing facility that will necessitate additional electrical outlets, water sewer, air conditioning, etc., the Offeror shall provide a comprehensive list of such, the necessary details and associate cost to address such item. The Offeror shall comply with all applicable codes, regulations, statutes.
- r. **INFORMALITIES AND IRREGULARITIES.** The District reserves the right to waive minor irregularities and/or informalities and to accept or reject any bids/proposals in whole or in part or to negotiate separately in any manner necessary and/or to terminate the procurement solicitation process in its entirety provided that action is in the best interest of the District. The Purchasing Director shall reject the Offer of the Offeror who is deemed non-responsive. The unreasonable failure of an Offeror to promptly provide information with respect to responsibility may be grounds for a determination of non-responsibility.
- s. **OFFER WITHDRAWAL.** An Offeror may withdraw its Offer upon written request at any time prior to the receipt/opening date and time. "Bids" cannot be amended or altered, except to correct price extension errors, after the opening date and time; however, "Proposals" or "Offers" may be amended or altered IF the District initiates discussions.
- t. **PROHIBITION AS SUBCONTRACTORS.** No Offeror who is permitted to withdraw a proposal shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn proposal was submitted.
- u. **PUBLIC INFORMATION ACT.** Offeror agrees and acknowledges that any and all documents submitted in response to solicitations or incorporated into a Contract/Agreement are subject to disclosure under the State of Texas Public Information Act.
- v. **PROPRIETARY INFORMATION.** Offeror must attach a detailed listing of any/all restrictions on the dissemination, public disclosure, or use of any data contained in their response and be informed that any declared proprietary information will be addressed as required by applicable law, regulation and District policy.
- w. **DISCOUNTS.** Offerors are encouraged to offer discounts for quantity buys, timeliness of buys, and/or prompt payment incentives as "value-adds". The conditions for earning the discount may be indicated by the item being offered or by submitting a separate page with the information. These discounts may be considered in determining the low Offer and will be part of any contract issued.
- x. **ECONOMIC PRICE ADJUSTMENT (EPA).** Offeror may include an EPA in its Offer; however, the offered price increases are to be capped by the appropriate Consumer Price Index (CPI) or Producer Price Index (PPI) that should be identified by the Offeror. EPA price increases must be justified by the Offeror, in writing, and may be contingent upon Board of Trustee approval. The District reserves the right to terminate a Contract, without prejudice to the District, if a proposed price increase is not reasonable as determined by the sole discretion of the District.
- y. **COMPETITION INTENDED.** It is the District's intent to maximize competition for all solicitations. It shall be the Offeror's responsibility to advise the District's Director of Purchasing, in writing, if any language, requirement, specification, etc. or any combination thereof, inadvertently restricts or limits the requirements stated in this solicitation to a single source. Such notification must be received not later than five (5) days prior to the date set for receipt/opening.

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- z. **SOLICITATION DOCUMENT PART OF CONTRACT.** The contents of the Offer submitted by the successful Offeror, solicitation document, and General Terms and Conditions will become part of any Contract awarded. The successful Offeror will be expected to perform and honor a Contract awarded by the District as a result of Offeror's Offer.
- aa. **F.O.B. DESTINATION (FREE ON BOARD).** F.O.B. destination for all competitive Offers is the District's standard for Offers and inside delivery.
- bb. **RECEIPT AND OPENING OF OFFERS.** (1) Bids (i.e., Offers from IFBs/RFBs) will be publicly opened, Offerors identified, and prices read aloud immediately following the Receipt/Opening Date/Time. Bidders are invited to be present at the opening of the bids on the date and hour specified. (2) Proposals (i.e., Offers from RFPs, RFOs, and RFQs) will be opened by the District in a non-public forum. Names of Offerors and prices will NOT be disclosed until after evaluation and award. (3) All Offers received in response to solicitation documents (IFBs, RFPs, RFOs, RFQs, etc.) will be forwarded to an applicable Evaluation Committee for evaluation and recommendation.
- cc. **NON-CONFORMING TERMS AND CONDITIONS.** Offerors submitting a non-conforming response or an Offer that includes corporate forms, brochures, or sample contract forms that do not conform to the solicitation document may be requested to withdraw non-conforming terms and conditions that do not affect the price, quality, or delivery of goods/services. If the response is to a RFB/IFB AND price, quality or delivery is affected, the Offer will be deemed "non-responsive" and will not be considered for further evaluation and/or award.
- dd. **OFFEROR DOCUMENTATION.** The Offeror's "binder", cover letter, and/or standard statement of work template, etc. may become a part of the Contract Documents, but the Terms and Conditions (General and Special) and Statement of Work (SOW) of the District's solicitation document (RFP, IFB, RFO, RFQ, etc.) take precedence unless Offeror's deviations/exceptions are specifically identified in a separate document (substantially titled "Exceptions to Terms, Conditions, and/or SOW") that is executed by Offeror and the District's Purchasing Director and included as an attachment/addendum to the Contract.
- ee. **EXCEPTIONS FROM SCOPE OF WORK.** If there is any proposed exception from that prescribed in the scope of work/services, the appropriate line in the scope of work/services shall be ruled out and the exception clearly stated. The District reserves the right to determine the responsiveness of any such deviation. If the District determines any such deviation is unacceptable, the Offer may be deemed "non-responsive" and not be considered for further evaluation and/or award.
- ff. **DEBARMENT.** By submitting a proposal, the Offeror certifies that it is not currently debarred by the Texas Building and Procurement Commission, the District, or similar State/Federal Agency.
- gg. **SUBCONTRACTORS.** Offeror shall include a list of all subcontractors anticipated to be used in fulfilling the Offer. Offeror shall also include a statement of the Subcontractor's qualifications. The District reserves the right to reject the Offeror's selection of any or all Subcontractors.
- hh. **EXPENSES INCURRED IN OFFER PREPARATION.** The District will not be liable in any way for any costs incurred by any Offeror in the preparation of its Offer, nor for the presentation of its Offer and/or participation in any discussions and/or negotiations.
- ii. **REQUIREMENT FOR INTERPRETATION.** Requests by the District's Director of Purchasing for clarification of Offers shall be in writing unless the clarification does not impact on price, delivery, quality, or a specific portion of the Statement of Work. Applicable requests shall not alter the Offeror's pricing information contained in its price proposal.
- jj. **TAXES.** Because fiscal responsibility is an evaluation criterion, in the event that an Offeror is, or subsequently becomes, delinquent in the payment of school advalorem taxes, such fact may be grounds for rejection of the Offer, or if already awarded the Contract/Agreement, for termination of the contract without prejudice to the District. However, the District reserves the right to deduct any amounts owed for delinquent taxes from pending payments that the District may owe to the Offeror as a result of such Contract.
- kk. **PAYMENT OF TAXES.** All Offerors located or owning property in Travis County shall assure that all real and personal property taxes are paid. The District will verify payment of all real and personal property taxes due by the Offeror

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prior to award of any contract award or renewal.

- ii. **DISCLOSURE OF INDEPENDENCE OF RELATIONSHIP.** Offeror will disclose any relationship that could be construed as a conflict of interest or potential conflict of interest or prejudice the independent relationship of the District and the Offeror.
- mm. **RELIANCE ON OFFEROR ASSURANCES.** In the performance of the services hereunder, Offeror represents that it, its owner and employees have all licenses and permits to (if required) work in the state of Texas and that Offeror is a business either fully incorporated in the state of Texas or recognized and allowed to operate in the state of Texas. Offeror represents that it, its owner and employees have the knowledge, abilities, skills and resources to provide the technical assistance and support services specified in this agreement as required by the District. Further, Offeror represents that it has the competence and qualifications to render such services with little or no guidance from the District and has experience in providing said goods, products, commodities, and/or services and in reliance on such assurances, the District may enter into an agreement with the Offeror. Offeror shall comply with all applicable federal, state, and local laws, executive regulations and orders.
- nn. **EVALUATION CRITERIA.** In awarding a Contract, Offers will be evaluated on: the purchase price, the reputation of the vendor and of the vendor's goods and services, the quality of the vendor's goods or services, the extent to which the goods or services meet the District's needs, the vendor's past relationship with the District, the impact on the ability of the District to comply with laws relating to historically underutilized businesses, the total long-term cost to the District to acquire the goods or services, and vendor's references, record for fiscal and contracting responsibility, knowledge of the product/good/service and any other relevant factor specifically listed in the solicitation "Other relevant factors" are identified elsewhere in the solicitation. Quality and suitability of the product and not price alone shall be considered in the acceptance of Offers.
- oo. **ACTIONS REGARDING OFFERS TO SOLICITATIONS/CONTRACTS.** The District expressly reserves the right, without prejudice, to:
- (1) Reject or cancel any or all proposals;
 - (2) Waive any defect, irregularity or informality in any response to a solicitation procedure allowed by statute or policy;
 - (3) Waive as an informality, minor deviations from specifications at a lower price than other proposals meeting all aspects of the specifications if it is determined that total cost is lower and the overall function is not impaired;
 - (4) Reissue solicitation (i.e., RFP/IFB/RFO/RFQ);
 - (5) Consider and accept an alternate proposal as provided herein when most advantageous to the District;
 - (6) The District has the right to cancel the contract with a thirty day written notice, without prejudice, for factors including, but not limited to, non-availability or non-appropriation of funds; and/or
 - (7) Procure any item or services by other means to meet time-sensitive requirements.
- pp. **OUT OF STATE OFFERORS.** The "Reciprocity Rule" applies. Offerors whose principal place of business is located in a state which gives preference to residents are subject to the same restrictions when submitting an Offer with an entity of the State of Texas.
- qq. **WARRANTY.** The products, goods, or services furnished under this Contract shall be covered by the most favorable commercial warranties available to any customer for same or similar products, goods, or services.
- rr. **ENVIRONMENT OF DISTRICT.** The District is tobacco-free, drug-free, weapon-free and alcohol-free environment. It is the responsibility of the Offeror to ensure that Offeror's employees, agents, subcontractors, etc. are not under the influence and/or possession of drugs, tobacco, alcohol or weapons. If an employee, agent, subcontractor, etc. of Offeror is found to be under the influence and/or in possession of drugs/tobacco and/or alcohol and/or weapons at the time of service, the Offeror will be notified at once by the District that the individual(s) must be immediately restricted from all District campuses/departments. Repeated offenses by Offeror could result in Contract termination for default.
- ss. **FIRM PRICE OFFER PERIOD.** Offer pricing shall be firm for a minimum period of one hundred and twenty (120) calendar days following the date established for the receipt/opening date to allow time for the District to evaluate, accept, and/or reject Offers.

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- tt. **AWARD TO MULTIPLE VENDORS.** The District reserve the right to award to a single vendor or multiple vendors i.e. primary, secondary and tertiary suppliers. The Contract is not exclusive to one Offeror unless so stated in the Statement of Work, or Offeror states "all or none" in its response/Offer and Offer is accepted by District.
- uu. **ACCEPTANCE BY DISTRICT.** No award of Contract shall be valid, and no contract is created or binding, until the Offer has been accepted by the District's appropriate approval authority.
- vv. **CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE.** Contract Documents are the documents that comprise the basis of contractual agreement between the District and the successful Offeror. In the simplest contracts, Contract Documents include the District's solicitation document (RFP, IFB, RFO, RFQ, etc.); the Offeror's response to the solicitation document; and the notice of award or acceptance by the District. In more complex contracts, Contract Documents may be identified in the District's notice of award or acceptance and may include the District's solicitation document (RFP, IFB, RFO, RFQ, etc.); the Offeror's response to the solicitation document; the District's request for Best and Final Offer (BAFO); the Offeror's response to the BAFO; any other documents impacting on the Agreement as deemed necessary by the District; and the notice of award or acceptance by the District.
- (a) Offeror will ensure the District's terms and conditions, statement of work, and Contract Documents order of precedence flow-down to Offeror's subcontractors, agents, and/or third-party business "partners".
 - (b) Regardless of the documents comprising the Contract Documents, the District's solicitation document (to include the Statement of Work (SOW) and Terms and Conditions) take precedence over other Contract Documents (regardless of date) unless specifically identified in a separate document (substantially titled "Exceptions to Terms, Conditions, and/or SOW") executed by Offeror and the District's Purchasing Director and included as an attachment/addendum to the Contract. Phrases imbedded in supporting documents submitted in response to a solicitation document that attempt to limit, change, restrict, or replace the precedence over the District's solicitation document may be declared null and void by the District unless such "changes" are specifically identified in a separate document (substantially titled "Exceptions to Terms, Conditions, and/or SOW") executed by Offeror and the District's Purchasing Director and included as an attachment/addendum to the Contract.
 - (c) After contract award, the successful Offeror, its sub-contractors and/or other third-parties to the Contract may provide additional information and/or documentation to facilitate accomplishment of the Contract's SOW in the form of administrative procedures, processes, flow charts, templates, etc.; however, these additional documents (especially imbedded comments or general references terms, conditions, SOW) do not change nor replace existing Contract language nor do they supersede or change precedence of the Contract Documents unless specifically identified in a separate document (substantially titled "Exceptions to Terms, Conditions, and/or SOW") executed by Offeror and the District's Purchasing Director and included as an attachment/addendum to the Contract. Any attempt by the Offeror and/or its subcontractors, agents, third-parties, etc. to submit or introduce documents that supercede or take precedence over the Contract Documents may be declared null and void by the District.
 - (d) Supporting and/or backup information and/or documentation to include, but not limited to, administrative procedures, work flow charts, templates, third-party documents, end-user license agreements, "shrink-wrap" and/or "click-wrap" licenses, etc. may be used to define processes, procedures, or performance expectations; however, this supporting/backup information/documentation does not take precedence over the solicitation document and/or documents identified as Contract Documents unless specifically identified in a separate document (substantially titled "Exceptions to Terms, Condition, and/or SOW") that is executed by Offeror and the District's Purchasing Director and included as an attachment/addendum to the Contract.
2. **APPEAL PROCESS.** A protest shall be in writing and shall be filed with the Purchasing Director. A protest of a solicitation shall be received by the Purchasing Director before the receipt/opening date. A protest of a proposed award or of an award or notice of termination or default shall be filed within ten (10) working days after the protester knows or should have known the basis of the protest. A protest received after the ten (10) working day period will not be considered and will be returned. A protest must include:
- a. The name, address and telephone number of the protestor;
 - b. The signature of the protestor or its representative;
 - c. Identification of the solicitation or contract number;
 - d. A detailed statement of the legal and factual grounds of protest including copies of relevant documents;
 - e. The form of relief requested.

The Purchasing Director will respond to all protests not later than ten (10) working days of receipt.

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3. **OFFICIAL CORRESPONDENCE.** All official Contract related correspondence must be mailed to the District's Purchasing Director as noted on the cover page of the solicitation document.
4. **PURCHASE ORDERS/DELIVERY ORDERS.** A Purchase Order will be issued after award of a Contract and will cite the IFB/RFP/RFO/RFQ number, a brief explanation of the goods and/or services being purchased under the Contract, and required delivery dates of deliverables under the Contract. The terms and conditions of the applicable IFB/RFP/RFO/RFQ take precedence over the General Terms and Conditions associated with a "normal" Purchase Order. The purchase order also serves as the tracking document to facilitate payments, therefore, the successful vendor **shall not** begin work/services or deliver merchandise without a signed purchased order. Successful Offeror must be willing to accept the District's Purchase Orders for the duration of the contract term. Any Purchase Order issued during the effective period of this Contract, and not completed within the effective period of the Contract, will be completed by the Offeror under the terms and conditions of this Contract.
5. **DISPUTES.** Any controversy, dispute, or claim arising out of this Agreement will be attempted to be resolved by discussions between the parties. If discussions do not result in resolution, a discussion between an officer of Offeror (or a designated representative of an officer) and the District's Director of Purchasing (or designated representative) will attempt to resolve the controversy, dispute, or claim.
6. **UNAUTHORIZED PURCHASES.** Offeror understands and acknowledges that during the term of the Contract any shipment or delivery of goods and services made to District's campuses and departments without a properly approved purchase order/delivery order constitutes an unauthorized purchase and financial obligation. The District does not assume any responsibility for these products, goods, and services. Offeror understands and accepts full responsibility and will not seek payment for unauthorized purchases. Offeror further understands and acknowledges that the District will not issue payment for products, goods and services delivered without a properly approved purchase order/delivery order.
7. **ASSIGNMENT/DELEGATION.** No assignment nor transfer of this Contract (or resulting Contract), in whole or in part, to any other party will be allowed unless the Offeror to whom the Contract is awarded formally notifies the District in writing and written approval from the District's Director of Purchasing or designee is received prior to the transfer/assignment.
8. **PLACE OF DELIVERY.** The place of delivery shall be that set forth in the purchase order. All deliveries must be inside deliveries, unless other arrangements are made. All PRICES - F.O.B. DESTINATION - SHIPPING and HANDLING CHARGES PREPAID.
9. **TITLE AND RISK OF LOSS.** The title and risk of loss of the goods shall not pass to the District until the District actually receives and accepts possession of the goods at the point or points of delivery.
10. **RIGHT OF INSPECTION.** The District has the right to inspect the goods at delivery before acceptance. If the District is not able to inspect the goods at the time of the delivery, the District reserves the right to inspect and approve the material within a reasonable time after delivery. If specifications are not met, material may be returned at Offeror's expense and the Offeror assumes all risk for damages incidental to the rejection of such goods. Payment shall not constitute an acceptance of the material nor impair the District's right to inspect or invoke any of its remedies.
11. **DELIVERY TERMS.** If a delivery is to be made to a location other than the District's central warehouse/distribution center, the delivery shall be made and articles shall be placed inside the school building or district facility in the room(s) designated, at no additional charge. Offeror is required to contact the School/Department specified on the purchase order, twenty-four (24) hours prior to delivery.
12. **POINT OF CONTACT.** Offeror may be assigned a day-to-day contact person/representative at the District as the Point of Contact for this Agreement/Contract. The District's representative is a functional area expert or a day-to-day contract administrator or manager for the District, but is not authorized to modify this contract. Amendments to solicitation documents and contracts/agreements will be made by the District's Director of Purchasing after proper coordination and notification. Offeror is not authorized to act on the guidance of a District employee that is not authorized to make changes.
13. **MATERIAL SAFETY DATA SHEETS.** The District will not receive any materials, products or chemicals which may be hazardous to an employee's health unless accompanied by a Material Safety Data Sheet.

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14. **TIME.** Time is of the essence. Offeror agrees to perform all obligations, deliver products, and/or render services set forth herein.
15. **INDEMNIFICATION and HOLD HARMLESS.** Offeror agrees to indemnify, defend, and hold District harmless from any patent, copyright, trademark, or trade secret infringement claim or cause of action, or any similar intellectual or proprietary rights infringement claim or cause of action, which are based on or related on goods or services sold or used by the Offeror in connection with this Agreement. Offeror agrees to indemnify, defend, and hold harmless the District, its officers, directors, trustees, agents, and employees from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and reasonable attorneys' fees, for damages arising out of or in connection with the Offeror's negligence and/or intentional acts in providing the goods, products, commodities, and/or services furnished under this Agreement. Offeror shall defend any such claims or causes of action at its own expense, and the District shall have the right to have such litigation monitored by its own counsel at District expense.
16. **RECOVERY OF FUNDS.** If the Offeror fails to deliver both the quality and quantity of items on which the award was made in the manner specified in the Contract, the District reserves the right to purchase the specified products, goods, and/or services on the open market and Offeror agrees to allow the District to deduct the difference in price and cost of handling, if any, from pending invoices. If there are no outstanding invoices the Offeror will be billed accordingly and will pay the amount within fifteen (15) days of the notification by the District.
17. **REMEDIES FOR NON-PERFORMANCE.** If at any time, the Offeror fails to fulfill or abide by the terms, conditions, or specifications of the Contract (i.e., delays, defaults, non-performance, etc.), the District reserves the right to employ any remedy allowed by Contract, in law, in equity, or by Uniform Commercial Code (UCC) to include, but not limited to, the purchase on the open market and charge the Offeror the difference between contract and actual purchase price and/or terminate the Contract within ten (10) days written notification of intent.
18. **LIQUIDATED DAMAGES.** If the successful Offeror fails to deliver or defaults on this Contract within the time specified in the contract, the Offeror shall pay (or have withheld from payments due), at the option of the District as liquidated damages \$200, or the amount identified elsewhere in the solicitation/Contract, per line item of Delivery Order/Purchase Order that is delinquent. Offeror agrees that this is a reasonable cost to compensate the District for time and effort involved in procuring replacement products and/or services, which costs would be difficult, if not impossible, to compute with certainty, and does not constitute a penalty. Assessment of liquidated damages does not preclude the District from seeking and obtaining other remedies as set forth in this solicitation or any other remedy at law or in equity available to the District.
19. **FORCE MAJEURE.** The District shall not be liable for defaults or delays due to acts of God or the public enemy, acts or demands of any governmental agency, strikes, fires, floods, accidents, or other unforeseeable causes beyond its control and not due to its fault or negligence.
20. **APPLICABLE LAW AND VENUE.** The validity, construction and effect of this contract and any and all extensions and/or modifications shall be governed by the laws of the State of Texas. Texas law shall govern regardless of any language in any attachment or other document that the Offeror may provide. Both parties agree that the venue for any litigation arising from this contract shall occur in Austin, Travis County, Texas.
21. **CONTRACT MODIFICATION.** Amendments/addenda may be made for additions, deletions and or modifications of products, goods or services under substantially the same terms and conditions of this Contract. Such amendments/addenda must be in writing and approved by an authorized representative for the Offeror and the District. The Contract will not be modified by any oral statement made by any District employee.
22. **CONTRACT PERIOD/EXTENSIONS.** Contract period is as outlined elsewhere in the solicitation/Contract and the District reserves the right to exercise renewal option with or without prejudice. Contract renewals/extensions will be exercised and executed within forty-five (45) days of the expiration of the then current term unless a different time is noted elsewhere in the solicitation/Contract. Any Contract may be extended in writing via an addendum for up to one hundred twenty (120) days beyond the date of the then current expiration date at the sole option of the District with mutual agreement between the parties.
23. **SEVERABILITY.** In case any one or more of the provisions contained in this agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other

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provision thereof and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

24. **PURCHASE OF SUBSTANTIALLY SIMILAR PRODUCTS/GOODS/SERVICES.** The District at its discretion may purchase from existing Contracts/Agreements for products, goods, supplies, and services which may be the same or similar to those identified in the existing Contract/Agreement, as is deemed in the best interest of the District.
25. **ACCELERATED DELIVERY.** If the District urgently requires delivery of any quantity of an item before the delivery date under this Contract, and if the Offeror will not accept an order providing for the accelerated delivery, the District may acquire the urgently required product(s) from another source.
26. **CONFLICT OF INTEREST.**
- (1) ***Disclosure of Certain Relationships with Local Government Officials.***
- a. Any individual or business entity that contracts or seeks to contract for the sale or purchase of property, goods, or services with the District must file a Vendor Conflict of Interest Questionnaire with the District Purchasing Office in accordance with Texas Local Government Code Chapter 176, no later than the 7th business day after the recipient becomes aware of facts that require filing.
 - b. This requirement applies to a person who is an agent of a vendor in the Vendor's business with the District.
 - c. Forms and additional information are available at <http://www.ltisdschools.org>.
 - d. Forms are also posted at the Texas Ethics Commission's website at: https://www.ethics.state.tx.us/filinginfo/conflict_forms.htm.
- (2) ***Employee.***
- a. Reference District Policies CH (Local) Purchasing and Acquisition, and DBD (Local) Employment Requirements and Restrictions, all Vendors must disclose the name of any District employee who owns, directly or indirectly, an interest in the Vendor's firm or any of its branches.
 - b. Failure to provide such information may be grounds for disqualification of the bid or cancellation of a contract resulting from this Solicitation.
 - c. 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.
 - d. Services that might be provided by the employee as an extension of the employee's regular job responsibilities is exempted from consideration.
27. **ETHICS IN PUBLIC CONTRACTING.** District employees are prohibited from receiving, soliciting any gifts, inducement, gratuities, or kickbacks. The District may, by written notice to the Offeror, terminate this Contract without liability to the District if it is determined by the District that gifts, gratuities, etc. in the form of entertainment, gifts, or otherwise, were offered or given by the Offeror, or any agent, or representative of the Offeror, to any officer or employee of the District with a view toward securing a contract or securing special treatment with respect to the awarding or amending or the making or any determinations with respect to the performing of such a contract. In the event this Contract is terminated by the District pursuant to this revision, 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 Offeror in providing such gratuities.
28. **SPECIAL TOOLS, TEST EQUIPMENT, MASTER TEMPLATES.** If the price stated on the face hereof includes the cost of any special tooling or special test equipment fabricated or required by Offeror for the purpose of filling this order or if a master template/die has to be constructed, such special tooling equipment and templates/dies and any process sheets related thereto shall become the property of the District and to the extent feasible and desired by the District.
29. **RIGHT TO AUDIT.** The Offeror's activities conducted and records maintained pursuant to the Contract shall be subject to monitoring and evaluation by the District or its duly appointed representative(s). All records must be maintained for 24 months from the completion of the Contract (including any or all extensions) unless longer retention is required and identified elsewhere in the solicitation/Contract.
30. **RESPONSIBILITY FOR ACTIONS.** Offeror is solely responsible for its actions and those of its agents, employees, or subcontractors, and agrees that neither Offeror nor any of the foregoing has any authority to act or speak on behalf of the District.
31. **CRIMINAL BACKGROUND CHECK.** In accordance with Senate Bill 9, Offeror will obtain criminal history record information that relates to an employee, applicant for employment, agent of the Offeror, if the employee, applicant, agent or subcontractor has or will have continuing duties related to the contracted services; and the duties are or will be performed on District property or at another location where students, or students' records, are regularly present. The Offeror shall

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certify to the District before beginning work and at no less than an annual basis thereafter that criminal history record information has been obtained. Offeror shall assume all expense associated with the background checks, and shall immediately remove any employee, agent, or subcontractor who was convicted of a felony, or misdemeanor involving moral turpitude, or any crime involving harm to a child, as defined by Texas law, from District property or other location where students are regularly present. District shall be the final arbiter of what constitutes a "location where students, or students' records, are regularly present." Further, unless otherwise specified in the contract, Offeror's and its employee(s), agents or subcontractors, while on District property, shall not have direct contact with any student. If the Offeror is the owner or sole operator of the business entity, that individual may not self-certify regarding the criminal history record information and its review. Offeror must submit original evidence of criminal history record information acceptable to the District with this Agreement showing compliance.

32. **EMPLOYEE DISCRIMINATION.** During the performance of this Contract, the Offeror agrees not to discriminate against any employee or applicant for employment because of race, creed, color, sex, age, national origin, disability, political belief, religion, marital and/or veteran status.
33. **INVOICES AND PAYMENTS.** Payment terms will be net thirty (30) days after acceptance of delivery or receipt of correct invoice, whichever comes later, unless a prompt payment discount is offered or unless different payment terms are noted elsewhere in the Contract. All invoices must be mailed to the District's address as noted elsewhere in this solicitation/Contract, but Attention: Accounts Payable.
34. **TERMINATION.** The award or Agreement/Contract (or Agreement/Contract resulting from this solicitation) may be terminated or cancelled under the following circumstances.
 - a. District may cancel or terminate the award or agreement for convenience upon 30 day written notice.
 - b. During the term of the agreement, District may terminate the agreement at the expiration of each District budget period if funds are not appropriated for payment under the agreement.
 - c. Work under the agreement may be terminated in whole or in part by the District upon delivery to Offeror of a notice of termination specifying the extent to which performance of work under the agreement is terminated and the date upon which termination becomes effective. This right of termination is in addition to and not in lieu of District rights to cancel undelivered goods or services under the agreement.
 - d. District may cancel all or any part of the undelivered goods or services of the agreement if Offeror breaches any of the terms of the agreement, including, but not limited to, warranties of Offeror, or if Offeror becomes insolvent or begins bankruptcy or reorganization proceedings.
 - e. District's rights of termination or cancellation are in addition to other remedies District may have in law or equity including, but not limited to, debarment or suspension from future Contracts for a period decided by the District and/or termination for default.
35. **WAIVER.** No claim or right arising out of a breach of this Contract by the Offeror can be discharged in whole or in part by a waiver or enunciation of the claim or right unless the waiver or renunciation is supported by Consideration and in writing signed by the District.
36. **SOFTWARE REMOTE ACCESS.** Offeror shall not install a remote access or backdoor into Offeror's systems during its analysis of the District's system or at any other time. Offeror will remove remote access or backdoor from third party software to be used by the District.
37. **LEGAL FEES AND COURT COSTS.** The resulting award from this solicitation constitutes a Contract between the District and the awarded Offeror. If the District has to take an action, in state or federal court, to enforce or interpret this Contract, the District is entitled to recover its reasonable attorneys' fees and court costs from the Offeror. Without waiving any rights available to the District for recovery, if the District is the prevailing party, Offeror hereby agrees and authorizes the District to deduct the reasonable attorneys' fees and court costs from amounts, if any, owed to Offeror under the Contract.
38. **INSURANCE.**
 - a. The Offeror shall not commence work under this contract until all insurance required under this section has been

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obtained and evidence of insurance has been submitted to and verified by the District. Required insurance coverage must be written by an insurance company licensed to conduct business in the State of Texas, or listed as an eligible surplus lines carrier, as determined by the State Board of Insurance. In addition, the District may consider the A.M. Best rating of the insurance company to determine the company's acceptability to the District.

- b. An original certificate of insurance confirming coverage must be submitted to the District within ten (10) working days after receipt of Notice of Award. The District reserves the right to revoke Board Award or terminate the Offeror for default if the Offeror does not provide an original certificate of insurance within ten (10) working days from the Notice of Award.
- c. Contractor shall obtain and maintain insurance, with the exception of Worker's Compensation and Employer's Liability coverage, with the District named as an additional insured. For Worker's Compensation and Employer's Liability, the Contractor will provide and maintain this coverage, and waive subrogation in favor of the District. The certificate(s) of insurance provided the District by the Contractor must reflect the above-stated requirements.
- d. Workers' Compensation: Offeror must maintain workers' compensation coverage for its employees as required by all applicable Federal, State, Maritime, and local laws including Employer's Liability with a limit of at least \$100,000. Offeror acknowledges that the District will NOT provide Workers Compensation coverage to the Offeror and Offeror represents to the District that all employees, subcontractors, agents, representatives, etc. of the Offeror who will provide products, goods, or services to the District will be covered by worker's compensation coverage for the duration of the Contract, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions. Persons providing "products, goods, or services" to the District include all persons or entities performing all or part of the services that the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers and owner-operators. "Services" include without limitation, providing hauling or delivering equipment or materials, or providing labor, transportation, or other services related to the project. "Services" do not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets. (Vernon's Ann. Civ. Stat., Art. 8308-3.23)
- e. Comprehensive General Liability: Offeror must maintain comprehensive general liability insurance including contractor's liability; contingent liability; contractual liability; and completed operations and products liability all on the occurrence basis with personal injury coverage and broad form property damage with at least \$300,000 coverage. In Addition to the Comprehensive General Liability requirements shown above, Excess Liability or Umbrella Policy in the amount of \$1,000,000.00 is required for contracts of \$25,000.00 or more, unless Comprehensive General Liability limits of \$1,500,000.00 or more for each occurrence can be provided as a substitute for the Excess Liability requirement.
- f. Property Damage: Offeror must maintain property damage coverages with at least the following coverages:
 - Bodily injury of \$100,000;
 - Property damage of \$300,000;
 - Aggregate of \$300,000 or
 - Consolidated single liability of \$300,000.
- g. Automobile Liability: Offeror must maintain automobile liability coverage for owned, non-owned, and hired vehicles with minimum limits as follow:
 - Bodily injury of \$100,000;
 - Property damage of \$300,000;
 - Aggregate of \$300,000; or
 - Consolidated single liability \$300,000.
- h. Professional Liability: For professional/consulting services, professional liability/errors omissions in the amount of \$500,000 is required.
- i. Pollution Insurance (Not covered by General Liability): For environmental/hazmat services, pollution insurance of \$1,000,000 per occurrence is required.

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39. **SAFETY.** All Offerors and Subcontractors performing services for the District are required and shall comply with all Occupational Safety and Health Administration (OSHA) State and County Safety and Occupational Health Standards and any other applicable rules and regulations. Also, all Offerors and Subcontractors shall be held responsible for the safety of their employees and any unsafe acts or conditions that may cause injury or damage to any person or property within and around the work site area under this contract. Additionally, Offerors and Subcontractors must ensure that their employees refrain from carrying firearms, illegal drugs and or alcoholic beverages while performing duties in accordance with this contract.
40. **BONDS:** Bid bonds, performance bonds, cashier's checks, and/or irrevocable letters of credit are required to ensure performance and safeguard taxpayer funds.
- a. In General: The Bonds shall in all respects conform to the requirements of the law of the State of Texas including, without limitation, the requirements in TEX. PROP. CODE §§53.201-53.239, as amended, and shall (1) name obligees; the Owner (i.e., District) and the other Indemnities, a lender(s) of Owner, if any, and the title insurance company(ies) which has (have) issued title policies to Owner or its lender(s), if any, (2) be in form satisfactory to Owner and be issued by a surety licensed and admitted to do business in Texas, which maintains at least a "B+" rating or better as issued by A.M Best & Co.
- b. Reinsurance: In accordance with Tex. Ins. Code §7.19-1, for any risk exceeding 10% of the surety's capital on any bid bond, surety bond, or performance bond, the respective surety shall obtain reinsurance on such risk with one or more reinsurers that are duly authorized, accredited, or trusted to do business in Texas. Such reinsurance shall be witnessed by written certification as a condition precedent to District's acceptance of the bond.
- c. Venue: If any suit shall be instituted against a surety, guarantee, or Fidelity Company by the District, the proper Court of the county where the bond has been filed shall have jurisdiction of this case, and the surety, guarantee or Fidelity Company shall be deemed resident of the county wherever they may do business. Tex. Ins. Code §7.01 et seq.
- d. **BID BOND REQUIREMENTS:**
- (1) Cashier's check or bid bond is required with bid of \$10,000.00 or more.
 - (2) Each solicitation shall be accompanied by either a cashier's check or Surety Company bid bond in the amount of not less than five (5) percent of total bid/proposal amount. Check or bond shall be payable to the District as payee or obligee, and shall be effective on the receipt/opening date of the solicitation. If the Offeror submits a Cashier's Check in lieu of a Bid Bond the following statement must be typed at the bottom left hand side of the Cashier's Check: "In Lieu of Bid Bond". Bid Bond shall be executed by a surety duly authorized to do business in Texas and licensed by the State of Texas to issue surety bonds.
 - (3) Such checks or bid bonds will be returned to all except the three lowest Offerors (or all Offerors in the competitive range) after the opening of the Offers; the remaining checks or bid bonds will be returned after the contract award. The surety amount of not less than five (5) percent of the total bid/proposal amount made payable to the District may be forfeited in whole or in part if the vendor does not execute a contract and post the applicable Performance/Payment Bonds or Insurance Certificate required within ten (10) working days after Notice of Award of the Contract.
 - (4) If any such bid bond is in an amount in excess of ten percent of the surety company's capital and surplus, the District may require, as a condition to accepting the bond, written certification that the surety company has reinsured the portion of the risk that exceeds ten percent of the surety company's capital and surplus with one or more reinsurers who are duly accredited, trusted, licensed and admitted to do business in the State of Texas. The amount reinsured by any reinsurer may not exceed ten percent of the reinsurer's capital and surplus.
 - (5) If an Irrevocable Letter of Credit is submitted in lieu of a Cashier's Check or Bid Bond the financial institution must be subject to the laws of the State of Texas. The letter must be made payable to the District in the amount of not less than five (5) percent of total bid/proposal amount. The letter must state "Irrevocable" in order to satisfy the District's surety requirement. In the event the contract is not awarded to the applicable Offeror, the original letter of credit will be returned.

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- e. PERFORMANCE AND PAYMENT BONDS OR IRREVOCABLE LETTER OF CREDIT REQUIREMENT:
- (1) Are required on contracts for \$25,000.00 or more.
 - (2) Offeror agrees that upon award of Contract, Offeror will execute and submit the required documents within ten (10) working days after receipt of Notice of Award. Offeror shall not commence work under this contract until the Performance and Payment Bond required under this section have been obtained and submitted to the District. The District reserves the right to automatically revoke Board Award and/or terminate the Offeror for default if the Offeror does not provide Performance and Payment Bonds within ten (10) working days from Board Award Date.
 - (3) Successful Offeror shall furnish a performance and a payment bond executed by a surety acceptable to the District in an amount of 100 percent of the contract price as security for the completion of the work and for the payment of all persons performing labor and furnishing material in connection with this contract, whether or not they become part of the completed project.
 - (4) Performance and Payment bonds shall be executed by a surety duly authorized to do business in the State of Texas and licensed by the State of Texas to issue surety bonds. If any such bond is in an amount in excess of ten percent of the surety company's capital and surplus, the District may require, as a condition to accepting the bond, written certification that the surety company has reinsured the portion of the risk that exceeds ten percent of the surety company's capital and surplus with one or more reinsurer who are duly accredited, trusted or licensed and admitted to do business in the State of Texas. The amount reinsured by any reinsurer may not exceed ten percent of the reinsurer's capital and surplus.
- f. IRREVOCABLE LETTER OF CREDIT. The District may accept an Irrevocable Letter of Credit for low risk type services as determined by the District. If an Irrevocable Letter of Credit is accepted in lieu of Performance Bond, based upon the District's determination, the financial institution must be subject to the laws of the State of Texas. The letter must state "irrevocable" to be made payable to the District in the amount of 100% of total bid/proposal amount. The District reserves the right to automatically revoke Board Award and/or terminate the Offeror for default if the Offeror does not provide an Irrevocable Letter of Credit within ten (10) working days from Board Award Date. If submitted in lieu of a Bid Bond, the Letter of Credit will be returned to the unsuccessful Offeror(s) within 10 working days after contract award. If the successful Offeror(s) does not execute a Contract and post the applicable Insurance Certificate required by the District, within ten (10) working days after Notice of Award of the Contract, the District shall file a written claim with the financial institution to forfeit the face value amount in whole or in part.
41. **COMPLIANCE WITH STATUTES/CODES.** Offerors shall complete, sign (hard copy) or affirm (electronic) all certification documents required by the Solicitation, as applicable. Based on the type of Solicitation, the forms that may be required are:
- a. Federal Compliance Guidelines for Use of Federal Funds (also known as "EDGAR").
- (1) The District has elected to solicit requests to bid under the requirements set forth by the *Code of Federal Regulations (CFR) Title 2 Grants and Agreements, Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200)*. Following these federal requirements will allow for federal funds entrusted to the District to be used to make purchases through an awarded District contract. The CFR is the codification of the general and permanent rules published in the Federal Register by the departments and agencies of the Federal Government produced by the Office of the Federal Register (OFR) and the Government Publishing Office. The CFR may change during the term of the contract and the Vendor may be required to make adjustments as necessary.
 - (2) By submission of a Solicitation Response, the Vendor certifies and agrees that they as a company understand and comply with all applicable areas identified herein. Some of the areas may not be applicable to this solicitation and it is the supplier's sole responsibility to identify which areas are appropriate for the solicitation. Failure to affirm and agree to these requirements may, at the District's discretion, disqualify the associated response to this solicitation or limit the use of the awarded contract based on the funding source.
 - (3) The District reserves the right at any time within the contract term to require an awarded supplier to reaffirm, sign and resubmit proper documentation stating that their company is not debarred, nor have any other circumstances changed related to their original response.

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- b. Child Support Certification. Texas Family Code Section 231.006 (Child Support Certification) states, in part, that (a) A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to: (1) receive payments from state funds under a contract to provide property, materials, or services; or (2) receive a state-funded grant or loan. Offeror certifies that the individual or business entity named in responding to this solicitation or Contract or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.
- c. General. The following items are applicable to all Solicitations regardless of type or specialty.
- (1) Debarment and Suspension (Executive Orders 12549 and 12689). A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System in SAM (sam.gov) contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Prior to award, the District will verify that the supplier is not currently listed as debarred by the Federal government. If the supplier is found to be on the Federal debarment list, the District, at its sole option, may elect to not award to the supplier if the funds intended for use with the contract will be federal funds. If awarded and during the contract term the supplier becomes debarred, the supplier must notify the District within five (5) District business days of the debarment. The District, upon its sole judgment, may elect to cancel the associated contract or limit the contract to non-federal funds. Such judgment will be done in writing within twenty (20) District business days. During this assessment period, no contract orders can be placed by the District using federal funds.
 - (2) Conflict of Interest. 2 CFR 200.318(c)(1) states that the District must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from the contract awarded to a specific supplier. The officers, employees, and agents of the District may neither solicit nor accept gratuities, favors, or anything of monetary value from suppliers or parties to subcontracts. However, the District may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the District. It is the responsibility for the supplier to identify and make the District aware any potential conflicts of interest that exist between their company and the District. Failure to do so will cause the associated supplier response to be disqualified from further consideration, or if already awarded, the associated contract will be cancelled based on cause.
 - (3) Termination for Cause. All federal contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement. The District does not have a threshold, so therefore, all contracts for any amount may be terminated for cause (Part V, Item 2 – Contract Agreements, sub-item 2.5 Termination by Default).
 - (4) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). The Byrd Amendment applies to all federal contracts, grants, or cooperative agreements, and subcontracts expected to exceed the Simplified Acquisition Threshold (SAT). All contractors and subcontractors should comply with the requirements of this Act. Suppliers must certify for orders over the SAT that they have not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. The supplier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.
 - (5) Small Purchases (2 CFR 200.320). Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold (SAT). If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources. Specifically for multiple award catalog-based or no identifiable pricing, the District may be required to submit a request for quotation from the contracted vendors for the purpose of meeting the competitive bidding requirement of this section.

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- (6) Large Purchases. For individual purchases that exceed the Simplified Acquisition Threshold.
- a. Simplified Acquisition Threshold. Contracts for more than the Simplified Acquisition Threshold (SAT) currently set at \$150,000 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. In any case, contracts in excess of the state's or state agency threshold must address the foregoing. Any purchase that is over the SAT threshold will require additional cost/price analysis by the District. The supplier may be required to provide additional documentation to support this requirement based on the federal requirements at the time of the purchase.
 - b. Cost Analysis / Negotiation of Profit (2 CFR 200.323). For contracts over the SAT, the District must negotiate profit as a separate element of the price for each contract in which there is no price competition, including solicitations that received only one viable response. In all cases, a cost analysis is to be performed by the District. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
 - c. Supplier Violation or Breach of Contract Terms. For contract awards valued at or greater than the SAT the District must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. The remedies under this provision are in addition to any other remedies that may be available under law or in equity.
- (7) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Contracts and sub-grants of amounts in excess of the SAT must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- d. Construction (applies only to solicitations for construction under Texas Government Code 2269).
- (1) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The 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 sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
 - (2) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
 - (3) 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

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- 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.
- (4) Specialized Procurements. Applies only to solicitations for which specialized requirements are identified.
- a. *Rights to Inventions Made Under a Contract or Agreement*. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or sub-recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or sub-recipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
 - b. *Energy Policy and Conservation Act* (42 U.S.C.6201). Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
 - c. *Solid Waste Disposal Act*. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- (5) State Divestment Statute List.
- a. The District is forbidden by the following State of Texas Statutes to conduct business with companies on the State of Texas Comptroller of Public Accounts (Comptroller's) *Divestment Statute List*:
 - i. Companies that do business with countries that support Designated Foreign Terrorist Organizations — Govt. Code 2270.0201. Investing Entities listed in Govt. Code 2270.001 (7) have divestment requirements related to any investments in these companies.
 - ii. Companies that Boycott Israel – Texas Government Code 808.051(c)
 - b. By submission of a Solicitation Response, the Vendor certifies and verifies that they as a company are 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.
 - c. The Vendor further certifies and verifies that neither the Vendor, nor any affiliate, subsidiary, or parent company of Vendor, if any (the "Contractor Companies"), boycotts Israel, and Vendor agrees that they and any affiliated companies will not boycott Israel during the term of an awarded contract.
 - d. The District will terminate a Contract with a person or business entity if the District determines that the person or business entity misrepresented their response and subsequent award by false affirmation, or the person or business entity is added to the Comptroller's list after an award is made.
 - i. The Comptroller's list is available at:
<https://comptroller.texas.gov/purchasing/publications/divestment.php>
- (6) HB 1295. Should this procurement falls under the requirements of HB1295 (Government Code Section 2252.908). The awarded Contractor will be required to complete and submit form 1295. The form along with instructions are available on the Texas Ethics Commission website at https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm.

(REVISED Feb 2018)

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