



**HARMONY PUBLIC SCHOOLS**  
**Open Enrollment Charter School**  
**REQUEST FOR SEALED PROPOSALS # HPS2425\_CAT1**  
**FOR**  
**Category 1 Internet and WAN SERVICES**  
**Form 470# 240007076**

Questions about this RSP must be submitted via eBid Portal no later than December 21, 2023, at 11 am CST. All questions and answers will be posted on the eBid Portal on December 22, 2023.

**Issued by:**  
Norah Yavuz  
HPS Purchasing Department  
Phone: (713) 343-3333 | Fax: (713) 777-8555  
URL: [www.harmonytx.org](http://www.harmonytx.org)  
Email: [purchasing@harmonytx.org](mailto:purchasing@harmonytx.org)

**Online Submittal Deadline**

January 19, 2024, 11:00 a.m. CST

## **Table of Contents**

Items below comprise the components of this Request for Sealed Proposals packet. Proposers are requested to review the packet to ensure that all applicable parts are included. If any portion of the package is missing, please notify Norah Yavuz immediately.

1. Legal Notice
2. Instructions to Proposers
3. Scope and Specifications
4. Evaluation and Award of Proposals
5. Agreement Terms and Conditions

**1. LEGAL NOTICE**

Notice is hereby given that Harmony Public Schools, an open enrollment charter school with 69 campuses, and the schools to which Harmony Public Schools provides services, intends to procure Internet and Wide Area Network services for the 2024-2025 E-rate year.

HPS is requesting responses for the following terms: one (1), three (3), and five (5) years, with the option for voluntary extensions. HPS may elect to extend any contract awarded pursuant to this procurement solicitation for up to three (3) additional one-year terms.

All interested parties may request a copy of the Request for Sealed Proposals packet by contacting:

Norah Yavuz  
Purchasing Manager  
Harmony Public Schools Central Office  
9321 West Sam Houston Parkway South,  
Houston, Texas 77099  
Phone: (713) 343 3333 ext. 1226  
Email: [purchasing@harmonytx.org](mailto:purchasing@harmonytx.org)

or access the RSP package online in the HPS eBid system at the following address:  
<https://harmonytx.ionwave.net/Login.aspx>.

No offer of intent to enter into a contract with any party should be construed from this legal notice. Harmony Public Schools may enter into a contract only if, in the sole opinion of Harmony Public Schools, it is in Harmony Public Schools' best interest to do so.

Harmony Public Schools reserves the right to reject any and/or all proposals, to award contracts for individual products or services as may appear advantageous, and to negotiate separately in any manner necessary to serve the best interests of Harmony Public Schools. Harmony Public Schools further reserves the right to accept, reject, or negotiate modifications in any terms of a proposed vendor's proposal or any parts thereof. Harmony Public Schools further reserves the right to waive any formalities or technicalities if deemed in the best interest of Harmony Public Schools. Harmony Public Schools also reserves the right as sole judge of quality and equality.

**Harmony Public Schools**

By: **Norah Yavuz**

Title: **Purchasing Manager**

**PROPOSALS DUE/PROPOSAL OPENING: January 19, 2024 at 11:00AM CST.**

## 2. INSTRUCTIONS TO PROPOSERS

1. Definitions: “HPS” shall mean “Harmony Public Schools.” “RSP” shall mean this “Request for Sealed Proposals” packet. The term vendor, contractor, and/or service provider may be used interchangeably.
2. Proposal Response Format: To qualify for evaluation, a proposal must have been submitted on time and must materially satisfy all mandatory requirements identified in this RSP. Vendors must follow the format instructions detailed below in preparing and submitting their proposals.

### 2.1 Required Format: Vendors can submit proposals as described below:

Vendors shall submit proposals online in the HPS eBid system at the following address: <https://harmonytx.ionwave.net/Login.aspx>. The Vendor is responsible for ensuring that HPS has the appropriate company name, authorized representatives, and contact information on file for the purpose of receiving notices, changes, addenda or other critical information.

2.2 The following items must be included in the Response Attachment section of the eBid System or in the submission package. In order for proposals to be considered, said proposal must be clear, concise, complete, well organized and demonstrate both respondent’s qualifications and its ability to follow instructions. The quality of answers, not the length of responses or visual exhibits is important.

Failure to include these items may result in non-award and/or disqualification.

1. Completed Attachment Packet
2. Letter of interest
3. Insurance forms
4. A brief overview of agency history, philosophy and capacities
5. Pricing Sheet – “24\_HPS\_C1 Pricing Sheet”

Additional documents can be uploaded to the Response Attachment section.

2.3 Submission of Proposals: Respondents must submit proposals electronically using the HPS eBid System by the established deadline. The HPS eBid System does not accept responses after the due date and time. Please note that if you begin responding to the procurement solicitation request and do not click “submit” by the time the RSP is scheduled to close, your proposal will not have been submitted. HPS will only accept bids and proposals submitted online. Faxed or electronically transmitted proposals will not be accepted. Deviations from any terms, conditions and/or specifications shall be conspicuously noted in writing by the Vendor and shall be included with the proposal.

3. Withdrawal of Submitted Proposal: At any time prior to the specified time and date set for proposal opening as set forth above, a proposer (or a designated representative) may withdraw a submitted proposal by submitting a request to withdraw in writing to Norah Yavuz at [purchasing@harmonytx.org](mailto:purchasing@harmonytx.org).
4. RSP Documents / Contract: Proposers are required to respond to all requests identified in this RSP and indicate their acceptance or objection to the terms of the RSP and the terms of the Agreement; any exceptions to the terms and conditions of the RSP or the Agreement must be

clearly indicated in the proposal. Each proposer, by submitting a proposal, represents that the proposer has read and understands the RSP and the Agreement.

A proposal submitted in response to the RSP is an offer to contract with Harmony Public Schools, based upon the terms, conditions, and specifications of this RSP. A proposal does not become a contract unless and until it is accepted by Harmony Public Schools after approval by its Board.

By submitting a proposal, each proposer guarantees that the proposal submitted, including the price(s) detailed therein, shall remain firm for a period of not less than sixty (60) days from the deadline for proposals to be submitted. No proposal may be withdrawn during the 60-day period of firm offers.

Proposer's representative must complete and sign all required documents and exhibits, including the Request for Sealed Proposals Signature Page, and return them in the proposal package. It is permissible to copy the forms if required. Failure to provide complete and accurate information may disqualify the proposer from consideration.

5. Open Records: As an open-enrollment charter school, Harmony Public Schools is subject to the Texas Public Information Act. Proposals submitted to Harmony Public Schools as a result of this RSP may be subject to release as public information after contracts are executed or the procurement is terminated. If a proposer believes that its response, or parts of its response, may be exempted from disclosure under Texas law, the proposer must specify page-by-page and line-by-line the parts of the response which it believes are exempt. In addition, the proposer must specify which exception(s) to the Texas Public Information Act are applicable and provide detailed reasons to substantiate the exception(s). Vague or general claims to confidentiality will not be accepted. Harmony Public Schools assumes no obligation or responsibility relating to the disclosure or nondisclosure of information submitted by proposers.
6. Conflict of Interest: HPS is required to comply with Texas Local Government Code Chapter 176, Disclosure of Certain Relationships with Local Government Officers. Any vendor that does business or seeks to do business with HPS must fill out a Conflict-of-Interest Questionnaire (CIQ) whether or not a conflict of interest exists. A conflict of interest exists in the following situations:
  - (1) If the vendor has an employment or other business relationship with a local government officer of HPS or a family member of the officer, as described by section 176.003(a)(2)(A) of the Texas Local Government Code; or
  - (2) If the vendor has given a local government officer of HPS, or a family member of the officer, one or more gifts with the aggregate value of \$100, excluding any gift accepted by the officer or family member of the officer if the gift is: (a) a political contribution as defined by Title 15 of the Election Code; or (b) a gift of food accepted as a guest; or
  - (3) If the vendor has a family relationship with a local government officer of HPS.

**“Vendor”** means a person who enters or seeks to enter into a contract with a local governmental entity. The term includes an agent of a vendor. The term includes an officer or employee of a state agency when that individual is acting in a private capacity to enter into a contract. The term does not include a state agency except for Texas Correctional Industries. *Texas Local Government Code 176.001(7)*.

**“Business relationship”** means a connection between two or more parties based on the commercial activity of one of the parties. The term does not include a connection based on: (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal,

state, or local governmental entity; (B) a transaction conducted at a price and subject to terms available to the public; or (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency. *Texas Local Government Code 176.001(3)*.

**“Family relationship”** means a relationship between a person and another person within the third degree by consanguinity or the second degree by affinity, as those terms are defined by Subchapter B, Chapter 573, Government Code. *Texas Local Government Code 176.001(2-a)*.

**“Local government officer”** means: (A) a member of the governing body of a local governmental entity; (B) a director, superintendent, administrator, president, or other person designated as the executive officer of a local governmental entity; or (C) an agent of a local governmental entity who exercises discretion in the planning, recommending, selecting, or contracting of a vendor. *Texas Local Government Code 176.001(4)*.

If no conflict of interest exists, you must fill out Box 1 and type N/A on Box 3 of the CIQ form, sign and date it.

In the event of changed circumstances, an updated CIQ must be filed within seven (7) business days after the vendor becomes aware of a conflict of interest exists.

- HPS’ Board of Directors include:
  - Dr. Oner Ulvi Celepcikay
  - Mrs. Helen Sherwood
  - Dr. Hakduran Koc
  - Dr. Osman Kanlioglu
  - Ms. Laura Gonzales
  - Dr. Mehmet Argin
  - Ms. Kimberly House
  
- Current local government officers include, but not necessarily limited to:
  - Fatih Ay, M.Ed. – Chief Executive Officer
  - Umit Alpaslan, M.Ed. – Senior Deputy Superintendent
  - Dr. Nihat Bayhan – Deputy Superintendent of Operations & Business
  - Emin Cavusoglu, M.Ed. – Deputy Superintendent of Programs
  - Minh Baca, M.Ed. – Chief of Compliance
  - Ebru Akyildiz, MBA - Chief Financial Officer
  - Bulent Coban, M.Ed. – Chief Operations Officer
  - Norah Yavuz, MA – Purchasing Manager

#### **EDGAR Conflict of Interest Requirements**

In accordance with federal EDGAR requirements, 2 CFR § 318(c)(1), 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 a firm considered for a contract.

The officers, employees, and agents of HPS may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.

Violations of this standard by an employee will be reported to the Superintendent's Office and addressed through HPS' personnel policies. Violations of this standard by an officer or the Superintendent shall be addressed to the Board President and addressed through HPS Board policies.

7. Tax exemption: Harmony Public Schools is tax-exempt. Proposal prices should not include taxes.
8. Undue Influence: In order to ensure the integrity of the selection process, proposer's officers, employees, agents, or other representatives shall not lobby or attempt to influence a vote or recommendation related to the proposer, directly or indirectly, through any contact with Harmony Public School board members or HPS officials from the date this RSP is released until the award of a contract by the HPS Board of Directors.
9. Rights Reserved by Harmony Public Schools and Restrictions on the RSP Process:
  - a. HPS reserves the right to cancel this solicitation in whole or in part by issuance of a revised or amended Request for Sealed Proposals or a cancellation of the RSP.
  - b. HPS further reserves the right to award one or more contracts, in part or in whole, to a single or to multiple prospective vendors or proposers. The decision to award multiple contracts, award only one contract, or to make no awards rests solely with HPS. HPS may make multiple awards, and this fact should be taken into consideration by each proposer.
  - c. HPS further reserves the right to award a contract or make purchases on an item-by-item basis or on the basis of a group of items, as determined by HPS in its sole discretion. HPS further reserves the right to purchase in total from one proposer or divide the purchase by selection of various items from multiple proposers. Some items may be combined at HPS's discretion for the purpose of awarding contracts. In these cases, HPS requests totals for the items combined. HPS will not accept or consider "all-or-none" combinations which are not solicited.
  - d. HPS assumes no financial responsibility for any costs incurred by prospective vendors in developing and submitting a proposal or any amendments or addenda, participating in bid conferences, participating in any negotiation sessions or discussions, or any other costs incurred by proposers prior to award of a contract pursuant to this RSP.
  - e. HPS reserves the right to reject any and/or all proposals, to award contracts for individual products or services as may appear advantageous, and to negotiate separately in any manner necessary to serve the best interests of HPS. HPS further reserves the right to accept, reject, or negotiate modifications in any terms of a proposed vendor's proposal or any parts thereof.
  - f. HPS further reserves the right to waive any formalities or technicalities if deemed in the best interest of HPS. HPS also reserves the right as sole judge of quality and equality.
10. Questions and Clarification: Questions regarding the requirements specified in this RSP may be directed through the Questions section of eBid system. All questions must be submitted before

December 21, 2023 at 11 am CST. Harmony Public Schools will not answer questions verbally. Any responses to a proposer's questions will be communicated to proposers by the eBid system on December 22, 2023.

11. Addendum: Any interpretations, corrections, additions, or changes to this RSP will be communicated to proposers by the issuance of an addendum. It is the responsibility of the proposer, prior to submitting the proposal, to determine whether an addendum was issued. All proposers shall comply with the requirements specified in any addendum issued by Harmony Public Schools.

Proposers who have not obtained this RSP directly from HPS, or who may have downloaded the document from the HPS website, shall be responsible for immediately notifying HPS of their interest in order to receive all written addenda on a timely basis. Proposers who do not so notify HPS and submit proposals without receipt of all addenda issued may be deemed to have submitted proposals not responsive to this RSP.

12. Tentative Procurement Schedule: HPS anticipates following the following timetable for this RSP:
  - a. Newspaper Ads: December 8, 2023 and December 15, 2023
  - b. Questions Period: December 8, 2023 through December 21, 2023 at 11 a.m. CST
  - c. Answers Posted: December 22, 2023
  - d. Deadline for submission of proposals: January 19, 2024 at 11:00 a.m. (CST)
  - e. Proposal evaluation dates: January 19, 2024, through February 9, 2024
  - f. HPS Board Finance Committee approval date (Tentative): February 9, 2024.
  - g. Board approval date (Tentative): February 24, 2024
  - h. Agreement date initial term: TBD



### 3. SCOPE AND SPECIFICATIONS

#### 3.1 Request for Sealed Proposals Defined

The intention of this Request for Sealed Proposals (RSP) is to solicit proposals for Internet and Wide Area Network Services for Harmony Public Schools and the schools to which Harmony Public Schools provides services. The service provider shall, at the request of HPS, provide these services under the terms of this RSP and the Contract set forth in Section 5, "Agreement Terms and Conditions."

#### 3.2 Scope of Services

HPS is looking to obtain proposals from vendors to provide Direct Internet Access and Wide Area Network services for HPS and the schools to which Harmony Public Schools provides services.

##### **Specifications:**

HPS is seeking proposals for Dedicated Internet Access and/or Transport service. Offerors may submit proposals for either service type or both. Proposals for each service type will be evaluated separately. If the Offeror's proposed pricing is dependent on a complete award (both Dedicated Internet and Transport), this must be explicitly stated in the proposal and alternative pricing provided for each service type should a partial award be determined the most cost-effective solution.

**Dedicated Internet Access:** HPS currently has (54) dedicated Internet connections ranging from 2 Gbps to 10 Gbps. In this procurement, HPS is seeking bids (2) new dedicated Internet connections. Please see the attached pricing sheet, "24\_HPS\_C1 Pricing Sheet," for location details.

The new service is being planned to begin on July 1, 2024, which represents the start of the 2024-25 E-rate Funding Year. **All respondents must be capable of providing telecommunication services under the Universal Service Support Mechanism, be a registered vendor with USAC, and have a USAC issued 498 ID (formerly Service Provider Identification Number-SPIN).**

**Wide Area Network:** HPS currently has (54) contracted Wide Area Network (WAN) connections ranging from 1 Gbps to 10 Gbps. In this procurement, HPS is seeking bids for (2) of these connections with an expiring contract, as well as (2) additional WAN connections. HPS is looking for mesh connectivity for these locations. Please see the attached pricing sheet, "24\_HPS\_C1 Pricing Sheet" for location details.

##### **Service Requirements**

**Dedicated Internet Access:** HPS requires a minimum of 2 Gbps dedicated, fully-managed, symmetrical bandwidth with Service Level Agreement (SLA) guarantees to the specified site. Service providers are requested to submit offers for incremental bandwidths from 2 Gbps up to 10 Gbps. Applicant will consider offers for leased lit fiber and all services provided over third-party networks. Offerors may propose solutions for all modes of transport and all proposed solutions that meet the requested scope of service requirements will be evaluated.

All solutions must terminate service or infrastructure in the demarcation point at address(es) specified in the Service Request section of this document. Solutions bringing service to the property line but not to the demarcation point are not acceptable. Contract must terminate service at an MDF to be designated by the Applicant. Vendors must specify specific demarcation setup included in base fees, e.g. wall mounted CPE and CAT6a handoff, rack mount patch panel, etc.

**WAN:** HPS requires fully-managed symmetrical bandwidth connections (minimum 1 Gbps, maximum 5 Gbps) to terminate at (4) locations. These connections will be any to any (mesh); Latency (one-way) max 30ms.

All solutions must adhere to the Service Level Agreement (SLA) terms below:

1. Proposed services must meet the following specifications:
  - a. The provider will make all reasonable efforts to ensure 99.99% network availability of each circuit.
  - b. .25% frame/packet loss commitment
  - c. 3ms network latency commitment
  - d. 4ms network jitter commitment
  - e. There is no right of provider to limit or throttle the capacity of the circuit at any time for any reason
  - f. Vendor stated commitment is to respond to any outage within two (2) hours and a four (4) hour restoration of service.
2. Network operations center: Solution will provide customer support functions including problem tracking, resolution and escalation support management on a 24x7x365 basis. Customer has the right and is encouraged to call concerning any problems that may arise relative to its connection with vendor provided services.
3. Trouble reporting and response: Upon interruption, degradation or loss of service, Customer may contact Vendor by defined method with a response based on trouble level. Upon contact from the Customer, the Vendor support team will initiate an immediate response to resolve any Customer issue. Customer will receive rapid feedback on trouble resolution, including potential resolution time.
4. Escalation: In the event that service has not been restored in a timely manner, or the Customer does not feel that adequate attention has been allocated, the Customer can escalate the trouble resolution by request. A list of escalation contacts will be provided when implementation schedule is completed.
5. Resolution: The Customer will be notified immediately once the problem is resolved and will be asked for verbal closure of the incident.
6. Trouble reporting, escalation and resolution: A detailed trouble reporting, escalation and resolution plan will be provided to the district.
7. Measurement: Time starts from the time the Customer contacts vendor and identifies the problem. Credits for outages of a certain duration or longer will be identified.
8. Reports: Upon request, an incident report will be made available to the Customer within five (5) working days of resolution of the trouble.
9. Link performance per segment: The service will maintain the proposed link performance throughout the term of the contract.  
Historical uptime: Provide aggregate uptime statistics for your proposed service in the geographic area encompassing Applicant.

### **E-rate Specific Considerations/Information**

Per USAC E-rate rules, “cost of eligible services” will be the highest valued criterion in the evaluation process; however, other criteria with a lesser value may also be considered.

Service providers proposing to temporarily loan equipment for product demonstration and/or evaluation purposes are required to clearly state that such loans are of limited duration. Product demos extending beyond thirty (30) days must be explicitly authorized by both parties and provided at a fair market rate.

By submitting a proposal on the requested services herein, the vendor certifies that its equipment and services are compliant with the FCC’s recent Order (FCC 19-121) prohibiting the sale, provision, maintenance, modification, or other support of equipment or services provided or manufactured by Huawei, ZTE, or any other covered company posing a national security threat to the integrity of communications networks or the communications supply chain. See <https://www.fcc.gov/supplychain/coveredlist>.

As required by E-rate rules, all proposals in response to this Form 470 must offer the Lowest Corresponding Price (LCP). See <https://www.usac.org/e-rate/service-providers/step-2-responding-to-bids/lowest-corresponding-price/>.

### **Deviation(s) from Specifications:**

All deviations from the specifications must be noted in detail by proposer, in writing, and included with proposer’s proposal submission. The absence of a written list of specification deviations at the time of submittal of the proposal will hold the proposer strictly accountable to HPS to the specifications as written. Any deviations from the specifications as written not previously submitted, as required by the above, will be grounds for rejection.

## **4. EVALUATION AND AWARD OF PROPOSALS**

In accordance with Harmony Public Schools’ policy, award(s) of a contract(s) resulting from this RSP will be made to the responsible proposer(s) whose proposal(s) is/are determined, after evaluation by Harmony Public Schools, to be the best value to Harmony Public Schools. To qualify for evaluation, a proposal must have been submitted on time and must materially satisfy all mandatory requirements of the RSP.

### **4.1 Evaluation Criteria**

An evaluation committee will review and evaluate all proposals based on the factors detailed herein. HPS has engaged the Texas Association of School Business Officials (TASBO) to provide legal advice and procurement consulting services to HPS. TASBO consultant/s will oversee the procurement process, including the evaluation, and will make a recommendation to Harmony Public Schools’ Board based on the HPS evaluation committee’s recommendation. HPS’ Board of Directors will make the final decision on whether and to whom a contract is to be awarded.

<b>Evaluation Factors</b>	<b>Weighted Value</b>
1. Price of the ELIGIBLE services/products	25
2. Reputation of Proposer and of Proposer's goods and/or services	15
3. Quality of Proposer's goods and/or services	10
4. Extent to which the goods and/or services meet HPS' needs	10
5. Proposal accuracy and completeness	10
6. Proposer's past relationship with HPS or similar entities	10
7. Total long-term cost to HPS to acquire Proposer's goods and/or services	10
8. Proposer's Installation Plan and Scope	10
	<b>100 points</b>

In case of ambiguity or lack of clarity in a proposal, HPS reserves the right to consider the most advantageous construction thereof, or to reject the proposal, in HPS' sole discretion.

#### **4.2 Award of Contract**

A proposal submitted in response to this RSP is an offer to contract with Harmony Public Schools, based upon the terms, conditions, and specifications of this RSP. A proposal does not become a contract unless and until it is accepted by Harmony Public Schools.

Any contract resulting from this RSP is non-exclusive and shall be awarded with the understanding and agreement that it is for the sole convenience of Harmony Public Schools. Harmony Public Schools is free to have multiple contracts for the awarded goods and services and may initiate other procurement solicitations or purchasing activity with other vendors at any time, in Harmony Public Schools' sole discretion.

Harmony Public Schools makes no guarantee or commitment of any kind concerning quantities that will actually be purchased. Harmony Public Schools makes no guarantee or commitment of any kind regarding usage of any contracts resulting from this solicitation.

## **5. AGREEMENT TERMS AND CONDITIONS**

The words “bids,” “requests for sealed proposals,” “quotes,” “RSPs,” “solicitation,” “procurement,” and their derivatives may be used interchangeably in these terms and conditions. These terms and conditions apply to all bids, requests for proposals, quotes, competitive sealed proposals, and other procurement solicitations to which they are attached. The term “Vendor” means each awarded vendor chosen by Harmony Public Schools.

These General Terms and Conditions are part of the final contract in each commodity and/or service contract and are part of the terms and conditions of each purchase order or other bid/proposal forms issued in connection with this solicitation.

Proposers are responsible for identifying any exceptions to these terms and conditions. ANY EXCEPTIONS MUST BE NOTED IN PROPOSER’S SUBMITTED PROPOSAL. Proposals that are qualified with conditional clauses, items not called for, or other irregularities may be considered non-responsive by HPS and eliminated from further consideration by HPS.

This Agreement is entered into between Harmony Public Schools (“HPS”) and Vendor, having submitted a proposal in response to a procurement solicitation issued by HPS and whose proposal has been accepted and awarded by HPS. In consideration of the mutual covenants and conditions contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, HPS and Vendor, intending to be legally bound, and subject to the terms, conditions, and provisions of this Agreement, agree as follows:

### **5.1 Advertising**

Vendor shall not advertise or publish, without the prior written consent of HPS, the fact that HPS has entered into this Agreement with Vendor, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state, or local government.

### **5.2 Agreement Terms; Amendment**

The terms of this Agreement shall govern all procurements conducted hereunder. No pre-published terms on the Vendor’s order acknowledgments, invoices, or other forms shall have any force or effect. Further, no amendment of this Agreement shall be permitted unless first approved in writing by HPS, and no such amendments shall have any effect unless and until a written amendment to this Agreement is executed by HPS’s CEO, Deputy Superintendent or Chief Financial Officer (or their designees) after any necessary approvals have been obtained from the HPS Board of Directors.

### **5.3 Assignment of Agreement**

Vendor may not assign this Agreement or any of its rights, duties, or obligations hereunder without the prior written approval of HPS. Any attempted assignment of this Agreement by Vendor shall be null and void. Any purchase or work order made as a result of this Agreement may not be transferred, assigned, subcontracted, mortgaged, pledged, or otherwise disposed of or encumbered in any way by Vendor without the prior written approval of HPS. Vendor is required to notify HPS when any material change in operations occurs, including but not limited to, changes in distribution rights for awarded products, bankruptcy, material changes in financial condition, change of ownership, and the like, within three (3) business days of such change.

#### **5.4 Buy America Act**

HPS 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.

#### **5.5 Captions**

The captions herein are for convenience and identification purposes only, are not an integral part hereof, and are not to be considered in the interpretation of any part hereof.

#### **5.6 Catalog Discounts**

In the event of a catalog discount type proposal, Vendor may be allowed to make additions and/or deletions from Vendor's offerings on an annual basis during the Agreement renewal period, in HPS's sole discretion, provided the item(s) substituted are of a like quality and category. These changes will be compliant with the format of Vendor's original proposal (i.e. manufacturer name, product category, or entire catalog discount). HPS will send notification to Vendor(s) seeking any additions and/or deletions, and Vendor will return these proposed changes on company letterhead within the given timeframe. If HPS, in its sole discretion, accepts Vendor's proposed changes, such changes will remain in effect for the entire year until the next renewal period.

#### **5.7 Compliance with Laws**

Vendor and HPS agree to secure the confidentiality of all information and records in accordance with applicable federal and state laws, rules, and regulations. Vendor and HPS understand that the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, governs the privacy and security of educational records and information and agree to abide by FERPA rules and regulations, as applicable. Vendor also acknowledges that HPS is subject to the Texas Public Information Act, and Vendor waives any claim against and releases from liability HPS, its officers, employees, agents, and attorneys with respect to disclosure of information provided under or in this Agreement or otherwise created, assembled, maintained, or held by Vendor and determined by HPS, the Attorney General of Texas, or a court of law to be subject to disclosure under the Texas Public Information Act.

#### **5.8 Confidentiality**

Vendor and HPS agree to secure the confidentiality of all information and records in accordance with applicable federal and state laws, rules, and regulations. Vendor and HPS understand that the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, governs the privacy and security of educational records and information and agree to abide by FERPA rules and regulations, as applicable. Vendor also acknowledges that HPS is subject to the Texas Public Information Act, and Vendor waives any claim against and releases from liability HPS, its officers, employees, agents, and attorneys with respect to disclosure of information provided under or in this Agreement or otherwise created, assembled, maintained, or held by Vendor and determined by HPS, the Attorney General of Texas, or a court of law to be subject to disclosure under the Texas Public Information Act.

#### **5.9 Contract Term**

The initial term of the Agreement is to be determined. HPS is requesting responses for the following terms: one (1), three (3), and five (5) years, with the option for voluntary extensions. HPS may elect to extend any contract awarded pursuant to this procurement solicitation for up to three (3) additional one-year terms. Any renewal of this Agreement shall be by mutual written consent of HPS and Vendor. The phrase "Term" in this Agreement shall mean the then-current Term of the Agreement, whether the initial term or a renewal term.

All contracts must allow for bandwidth increases throughout the term of the contract; increases in bandwidth during the contract period and/or optional renewal periods shall be considered modifications to the existing agreement, not new agreements and thus do not extend the term of the contract.

All contracts must include a provision permitting early termination of circuits, with no penalty, should a location be closed by the Applicant. Additionally, if the Applicant opens a new location, the final agreement must include a provision permitting that site to be added at the existing MRC rate for the duration of the contract, with the Applicant paying for any one-time charges associated with adding the new site to the network.

No increased pricing will be allowed during the term of the quoted special construction, NRC, and MRC rate. Service providers proposing equipment whose prices may increase depending upon new U.S. government tariffs imposed on imports are encouraged to (a) identify such products in their offers, and (b) propose an acceptable methodology for limiting price adjustments over the life of the contract. Subject to contract restrictions, services may be reevaluated for cost-effectiveness at any time during the life of the agreement including renewal periods.

**5.10 Criminal History Review (SB 9 Contractor Certification: Contractor Employees Form must be filled out and attached to proposal, if applicable)**

Prior to commencing any work under the Agreement, if Vendor contracts with HPS to provide services, Vendor must certify, on the form provided herein, that for each covered employee of Vendor who will have direct contact with students, Vendor has obtained, as required by Texas Education Code Section 22.0834: (a) state criminal history record information from a law enforcement or criminal justice agency or a private entity that is a consumer reporting agency governed by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.) for each covered employee of Vendor employed before January 1, 2008; and (b) national criminal history record information for each employee of Vendor employed on or after January 1, 2008. Vendor must also obtain similar certifications of compliance with Texas Education Code Chapter 22's requirements from any subcontractors. Covered employees with disqualifying criminal history are prohibited from serving at HPS; Vendor and any subcontracting entity may not permit a covered employee to provide services at a school if the employee has been convicted of a felony or misdemeanor offense that would prevent a person from being employed under Tex. Educ. Code § 22.085(a) (i.e., Title 5 felony or an offense requiring registration as a sex offender and victim was under 18 years of age or was enrolled in a public school at the time the offense occurred). The criminal history record information review obligation applies if Vendor contracts with HPS to provide services; it does not apply to a contract for the purchase of goods or real estate.

**5.11 Customer Reference List**

Vendor agrees to submit a customer reference list upon request by HPS.

**5.12 Customer support**

Vendor shall provide timely and accurate technical advice and sales support to HPS and HPS staff. Vendor shall respond to requests for customer support within one (1) business day after receipt of the request. HPS shall have the right to terminate this Agreement, effective immediately, due to unsatisfactory service rendered by Vendor. Vendor shall provide training to HPS staff regarding products and/or services supplied by Vendor, the product manufacturer, or a third party at no additional charge, if requested by HPS.

### **5.13 Delivery and Inspection**

All deliveries under this Agreement shall be delivered: Freight Prepaid, F.O.B. Destination, Full Freight Allowed, Inside Delivery and shall be included in all pricing in Vendor's proposal unless otherwise clearly stated in writing in Vendor's proposal.

All deliveries, unless specified otherwise in the purchase order, will be made to the HPS campus or department specified, between the hours of 8:00 a.m. to 4:00 p.m., Monday through Friday, except on school holidays. The delivery shall be made and articles shall be placed inside the building or facility in the room or rooms designated, at no additional charge.

HPS shall have the right to inspect the goods before accepting them. Final inspection shall be made at the delivery site after delivery. In the event HPS rejects good(s) because the good(s) fail to meet requirements of this Agreement or the RSP, are damaged, or are inferior, Vendor shall, without charge, promptly remove such rejected or damaged good(s) and replace them by delivering to the same inspection point, good(s) that meet the requirements of this Agreement and the RSP without any additional expense to HPS, including, without limitation, freight or other charges. Vendor must correct or replace any good(s) rejected by HPS with suitable, conforming good(s) within two weeks, or HPS shall have the right to purchase a replacement in the open market and any costs incurred, including additional costs over and above Vendor's price, will be the responsibility of Vendor.

In the event Vendor fails on three (3) occasions to timely deliver good(s) or to deliver good(s) in accordance with all requirements of the solicitation, HPS may immediately terminate this Agreement and any purchase order(s) issued hereunder and take any remedy detailed in this Agreement or otherwise available at law or in equity to HPS.

**LIQUIDATED DAMAGES:** If Vendor fails to complete the delivery of purchased good(s) within the time specified in the purchase order, or within any extension of time granted by HPS, Vendor will pay to HPS, as liquidated damages, Two Hundred Fifty Dollars (\$250.00) for each calendar day that Vendor shall be in default after the time stipulated in purchase order.

### **5.14 Entire Agreement**

This Agreement, the procurement solicitation issued by HPS, and Vendor's proposal submitted in response to HPS's procurement solicitation, and the attached and incorporated addendum or exhibits, if any, contain the entire agreement of the parties relative to the purpose(s) of the Agreement and supersede any other representations, agreements, arrangements, negotiations, or understanding, oral or written, between the parties to this Agreement. In the event of a conflict between this Agreement and the procurement solicitation issued by HPS or Vendor's proposal submitted in response to HPS's procurement solicitation, this Agreement shall control. In the event of a conflict between the procurement solicitation issued by HPS and Vendor's proposal submitted in response to HPS's procurement solicitation, HPS's procurement solicitation shall control. This Agreement supersedes any conflicting terms and conditions on any purchase or work orders, invoices, checks, order acknowledgements, forms, purchase orders, or similar commercial documents relating hereto, and which may be issued by Vendor after the Effective Date of this Agreement.

### **5.15 Equal Opportunity**

It is the policy of HPS 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 Agreement, 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 Agreement 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 Agreement.

#### **5.16 Force Majeure**

Neither HPS or Vendor shall be deemed to have breached any provision of this Agreement as a result of any delay, failure in performance, or interruption of service resulting directly or indirectly from acts of God, network failures, acts of civil or military authorities, civil disturbances, wars, energy crises, fires, transportation contingencies, interruptions in third-party telecommunications or Internet equipment or service, other catastrophes, or any other occurrences which are reasonably beyond such party's control.

The parties to this Agreement are required to use due caution and preventive measures to protect against the effects of force majeure, and the burden of proving that a force majeure event has occurred shall rest on the party seeking relief under this provision. The party seeking relief due to force majeure is required to promptly notify the other party in writing, citing the details of the force majeure event and relief sought, and shall resume performance immediately after the obstacles to performance caused by a force majeure event have been removed, provided the Agreement has not been terminated. Delay or failure of performance, by either party to this Agreement, caused solely by a force majeure event, shall be excused for the period of delay caused solely by the force majeure event. Neither party shall have any claim for damages against the other resulting from delays caused solely by force majeure. Notwithstanding any other provision of this Agreement, in the event the Vendor's performance of its obligations under this Agreement is delayed or stopped by a force majeure event, HPS shall have the option to terminate this Agreement. This section shall not be interpreted as to limit or otherwise modify any of HPS's contractual, legal, or equitable rights.

#### **5.17 Governing Law and Venue**

The laws of the State of Texas, without regard to its provisions on conflicts of laws, govern this Agreement. This Agreement is also governed by HPS policies, as adopted by HPS' Board of Directors. Any dispute under this Agreement must be brought in the state and federal courts located in Houston, Harris County, Texas.

#### **5.18 Gratuities**

Vendor shall not offer gifts or anything of value to any officer or employee of HPS for any reason related to this Agreement or the RSP. HPS may, by written notice to Vendor, terminate this Agreement without liability to Vendor if it is determined by HPS, in HPS' sole discretion, that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by Vendor or any agent or representative of Vendor, to any officer or employee of HPS with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such a contract. In the event this Agreement is terminated by HPS pursuant to this provision, HPS shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Vendor in providing such gratuities.

### 5.19 HPS Property

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

### 5.20 Indemnification

**VENDOR SHALL INDEMNIFY AND HOLD HPS HARMLESS FROM ALL CLAIMS, LIABILITIES, COSTS, SUITS OF LAW OR IN EQUITY, EXPENSES, ATTORNEYS' FEES, FINES, PENALTIES OR DAMAGES ARISING FROM THE ACTS OR OMISSIONS OF VENDOR, VENDOR'S EMPLOYEES, AGENTS, OR SUBCONTRACTORS, IN CONNECTION WITH THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE ARISING FROM CLAIMED INFRINGEMENT OF ANY PATENTS, TRADEMARKS, COPYRIGHT OR OTHER CORRESPONDING RIGHT(S) WHICH IS RELATED TO ANY ITEM VENDOR IS REQUIRED TO DELIVER.** Vendor's obligations under this clause shall survive acceptance and payment by HPS.

### 5.21 Insurance

Vendor is required to provide HPS with copies of certificates of insurance, naming HPS as an additional insured, for Texas Workman's Compensation and General Liability Insurance. Certificates of Insurance, name and address of Vendor, the limits of liability, the effective dates of each policy, and policy number shall be delivered to HPS prior to commencement of any work under this Agreement. The insurance company insuring Vendor shall be licensed in the State of Texas and shall be acceptable to HPS. Vendor shall give HPS a minimum of ten (10) days' notice prior to any modifications or cancellation of said policies of insurance. Vendor shall require all subcontractors performing any work under or relating to this Agreement to maintain coverage as specified below.

#### Minimum Insurance Requirements:

- Vendor shall, at all times during the Term of this Agreement, maintain insurance coverage with not less than the type and requirements shown below. Such insurance is to be provided at the sole cost of Vendor. These requirements do not establish limits of Vendor's liability.
- All policies of insurance shall waive all rights of subrogation against HPS, its officers, employees, and agents.
- Upon request, certified copies of original insurance policies shall be furnished to HPS.
- HPS shall be named as an "additional insured" on all insurance policies.
- HPS reserves the right to require additional insurance should HPS deem additional insurance necessary, in HPS's sole discretion.
  - A. Workers' Compensation (with Waiver of subrogation to HPS) Employer's Liability, including all states, U.S. Longshoremen, Harbor Workers and other endorsements.
  - B. Commercial General Liability Occurrence in an amount no less than \$1,000,000, including, but not limited to, Premises and Operations, Products Liability Broad Form Property Damage, Contractual Liability, Personal and Advertising Injury Liability and where the exposure exists, coverage for watercraft, blasting collapse, and explosions, blowout, catering and underground damage.
    - \$300,000 each occurrence Limit Bodily Injury and Property Damage

- combined
  - \$300,000 Products-Completed Operations Aggregate Limit \$500,000 per Job Aggregate
  - \$300,000 Personal and Advertising Injury Limit
- C. Automobile Liability Coverage
- \$300,000 Combined Liability Limits Bodily Injury and Property Damage Combined

## **5.22 Interpretation**

Vendor agrees that the normal rules of construction that require that any ambiguities in this Agreement are to be construed against the drafter shall not be employed in the interpretation of this Agreement. No course of prior dealings between HPS and Vendor and no usage of trade shall be relevant to, supplement, or explain any term used in this Agreement. Acceptance or acquiescence in a course of performance rendered under this Agreement shall not be relevant to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection.

## **5.23 Invoices; Payments**

Invoices shall be directed to HPS's Accounts Payable Department. All invoices shall be itemized to include the type of good(s) and/or service(s) rendered. Vendor shall submit invoices within a timely manner during HPS's fiscal year in which the good(s) and/or services are purchased. Payments are due to Vendor within thirty (30) days after the later of the following: (1) the date HPS receives the goods under the Agreement; (2) the date the performance of the service under the Agreement is completed; or (3) the date HPS receives an invoice for the goods or service. Vendor agrees to pay any subcontractors, if any, the appropriate share of the payment received from HPS not later than the tenth (10th) day after the date Vendor receives the payment from HPS.

## **5.24 IRS W-9**

In order to receive payment under this Agreement, Vendor shall have a current I.R.S. W-9 Form on file with HPS.

## **5.25 Multiple Contract Awards; Non-Exclusivity**

HPS reserves the right to award multiple contracts for each commodity category. Commodity categories are established at the sole discretion of HPS. Nothing in this Agreement may be construed to imply that Vendor has the exclusive right to provide products and/or services to HPS. During the Term of this Agreement, HPS reserves the right to use all available resources to procure other products and/or services as needed and doing so will not violate any rights of Vendor.

## **5.26 New Products**

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

### **5.27 No Substitution**

Any purchase order issued pursuant to this Agreement shall conform to the specifications and descriptions identified in this Agreement and in the solicitation. Good(s) delivered must be new, in first-class condition, including shipment and storage containers, unless otherwise indicated on Vendor's proposal or in a purchase order. Unless otherwise agreed to in advance by HPS, Vendor will not deliver substitutes without prior authorization from HPS.

### **5.28 No Agency or Endorsements**

HPS and Vendor are independent contractors and have no power or authority to assume or create any obligation or responsibility on behalf of the other party. This Agreement shall not be construed or deemed an endorsement of a specific company or product. It is the intention of the parties that Vendor is independent of HPS and is not an employee, agent, joint venturer, or partner of HPS, and nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee, agent, joint venturer or partner, between HPS and Vendor or HPS and any of Vendor's agents. Vendor agrees that HPS has no responsibility for any conduct of any of Vendor's employees, agents, representatives, contractors, or subcontractors.

### **5.29 Non-Appropriation Clause**

Notwithstanding any other provision of this Agreement or obligation imposed on HPS by this Agreement, HPS shall have the right to terminate this Agreement and/or any purchase order issued pursuant to this Agreement, without default or liability to Vendor resulting from such termination, if it is determined by HPS, in HPS's sole discretion, that there are insufficient funds to make payments under this Agreement. The parties agree that this Agreement is a commitment of HPS's current revenue only. Renewal of this Agreement, if any, is expressly contingent upon appropriation of funds and satisfactory performance by Vendor under this Agreement.

### **5.30 Notice**

Any notice provided under the terms of this Agreement by either party to the other shall be in writing and shall be given by hand-delivery or by certified or registered mail, return receipt requested. Notice shall be sufficient if made or addressed to the address listed in the signature line of this Agreement. Notice shall be deemed effective upon receipt. Each party may change the address at which notice may be sent to that party by giving notice of such change to the other party by certified or registered mail, return receipt requested.

### **5.31 Penalties**

If Vendor fails or is unable to provide the goods or services at the prices quoted in Vendor's proposal, if Vendor fails to deliver the goods or services in accordance with the timeline detailed in a purchase order, or if Vendor fails to fulfill or abide by the terms and conditions of the Agreement, HPS may take the following action(s), in HPS's sole discretion, and Vendor agrees to comply with HPS's action(s):

- (a) insist that Vendor honor the quoted price(s) specified in Vendor's proposal;
- (b) have Vendor pay the difference between Vendor's price and the price of the next acceptable proposal (as determined by HPS);
- (c) have Vendor pay the difference between Vendor's price and the actual purchase price of the good or service on the open market; and/or
- (d) recommend to HPS's Board of Trustees that Vendor no longer be given the opportunity to submit a proposal to HPS and/or that this Agreement be immediately terminated.

### **5.32 Performance**

Vendor agrees to use commercially reasonable best efforts to provide the good(s) and/or service(s) subject to this Agreement.

### **5.33 Performance and Payment Bonds**

Vendor agrees to provide performance bonds and/or payment bonds as required by Texas law on specified contracts and/or projects, as applicable. HPS will include the performance and payment bonds requirement in the specifications section of any solicitation or in a purchase order if performance bonds and/or payment bonds are required.

### **5.34 Prevailing Wage Rates**

Vendor and all subcontractors of Vendor shall comply with all laws regarding wage rates including, but not limited to, Texas Government Code Chapter 2258 and any related federal requirements applicable to this Agreement and to this solicitation by HPS.

### **5.35 Prices**

All prices in Vendor's proposal shall be firm for the Term of the Agreement. Unit prices shall include shipping/freight/inside delivery and installation charges to all HPS locations.

All price changes shall be presented to HPS for acceptance or rejection by HPS, in its sole discretion, using the same format as was accepted in Vendor's original proposal; all price changes for goods and/or services provided under this Agreement must be approved, in writing, by HPS prior to taking effect. The following documentation shall be provided to support a request for a price change: justification for change/increase; terms and conditions; market conditions; manufacturers/distributors' impact (if any).

### **5.36 Quantities**

Because all commodities will be provided on an "as needed" basis, HPS makes no representation either orally or in writing to the amount of commodities, services, or related items HPS will use during the Term of the Agreement. Any quantities shown on the RSP are estimates only, based on projected use and need; it is specifically understood and agreed that these quantities are approximate. HPS reserves the right to increase or decrease quantities. In the event quantities are increased or decreased, the amount added or deducted shall be based upon the unit price included in Vendor's proposal.

### **5.37 Records Retention**

Vendor shall maintain its records and accounts in a manner that shall assure a full accounting for all goods and/or services provided by Vendor to HPS under this Agreement. Such records shall include, but not be limited to, accounting records, written policies and procedures, subcontract files, all paid vouchers (including those for out-of-pocket expenses), ledgers, cancelled checks, deposit slips, bank statements, journals, original estimates, estimating work sheets, contract amendments, change orders, purchase orders, insurance documents, memoranda, and correspondence relating to this Agreement. These records and accounts shall be retained by Vendor and made available for audit by HPS and/or HPS' representatives for a period of not less than five (5) years from the date of completion of the services, receipt of the goods, or the date of the receipt by HPS of Vendor's final

invoice or claim for payment in connection with this Agreement, whichever is later. If an audit has been announced, Vendor shall retain its records and accounts until such audit has been completed.

When federal funds are expended by HPS pursuant to this Agreement, Vendor certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.333. Vendor further certifies that Vendor will retain all records as required by 2 CFR § 200.333 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.

#### **5.38 Right to Audit**

HPS, upon written notice, shall have the right to audit all of Vendor's records and accounts relating to this Agreement. Records subject to audit shall include, but are not limited to, records which may have a bearing on matters of interest to HPS in connection with Vendor's work for HPS and shall be open to inspection and subject to audit and/or reproduction by HPS or its authorized representative(s) to the extent necessary to adequately permit evaluation and verification of:

- (a) Vendor's compliance with this Agreement and the requirements of the solicitation,
- (b) compliance with HPS procurement policies and procedures,
- (c) compliance with provisions for computing billings to HPS, and/or
- (d) any other matters related to this Agreement.

#### **5.39 Severability**

In the event that 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 provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

#### **5.40 Shipments**

Vendor shall ship ordered products within seven (7) working days for available goods and within four (4) to six (6) weeks for special-order items after the receipt of the purchase order unless otherwise previously agreed to, in writing, by HPS. If a product cannot be shipped within that timeframe, Vendor shall notify HPS of the reasons why the product has not shipped and shall provide an estimated shipping date, if applicable. HPS may cancel the order if the estimated shipping time is not acceptable to HPS, in its sole discretion.

#### **5.41 Subcontractors**

If Vendor uses subcontractors in the performance of any part of this Agreement, Vendor shall be fully responsible to HPS for all acts and omissions of the subcontractors just as Vendor is responsible for Vendor's own acts and omissions. Nothing in this Agreement shall create for the benefit of any such subcontractor any contractual relationship between HPS and any such subcontractor, nor shall it create any obligation on the part of HPS to pay or to see to the payment of any moneys due any such subcontractor except as may otherwise be required by law.

#### **5.42 Taxes**

HPS is tax-exempt, and HPS shall not pay taxes for goods and/or services provided under this Agreement. Vendor represents and warrants that it shall pay all taxes or similar amounts resulting from this Agreement, including, without limitation, any federal, state, or local income, sales or excise taxes of Vendor or its employees. HPS shall not be liable for any taxes resulting from this Agreement.

#### **5.43 Tax Responsibilities of Vendor and Indemnification for Taxes**

Vendor and all subcontractor(s) of Vendor shall pay all federal, state, and local taxes applicable to their operation and any persons employed by Vendor and all subcontractors of Vendor. Vendor shall require all subcontractors to hold HPS harmless from any responsibility for taxes, damages, and interest. If applicable, contributions required under federal, state, and/or local laws and regulations and any other costs including, but not limited to, transaction privilege taxes, unemployment compensation insurance, Social Security, and Worker's Compensation, shall be the sole responsibility of Vendor.

#### **5.44 Termination of Contract**

- i. Termination for the HPS's convenience. The HPS reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Vendor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Vendor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Vendor can demonstrate to the satisfaction of the HPS using its standard record keeping system, have resulted from the termination. The Vendor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the HPS any right to audit the Vendor's records. The Vendor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.
- ii. Termination for cause. The HPS may terminate this contract, or any part hereof, for cause in the event of any default by the Vendor, or if the Vendor fails to comply with any contract terms and conditions, or fails to provide the HPS, upon request, with adequate assurances of future performance. In the event of termination for cause, the HPS shall not be liable to the Vendor for any amount for supplies or services not accepted, and the Vendor be liable to the HPS for any and all rights and remedies provided by law. If it is determined that the HPS improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

#### **5.45 Title and Risk of Loss**

Whenever HPS is purchasing (and not leasing) an item under this Agreement, title and risk of loss shall not pass to HPS until HPS actually receives, accepts, and takes possession of the goods at the point(s) of delivery. The place of delivery shall be as set forth in any duly authorized purchase orders.

#### **5.46 Waiver**

No failure on the part of either party at any time to require the performance by the other party of any term hereof shall be taken or held to be a waiver of such term or in any way affect such party's right to enforce such term, and no waiver on the part of either party of any term hereof shall be taken or held to be a waiver of any other term hereof or the breach thereof. No waiver, alteration, or modification of any of the provisions of this Contract shall be binding unless in writing and signed by duly authorized representatives of the parties hereto.

#### **5.47 Warranty – Price**

The price to be paid by HPS for goods and/or services shall be that contained in Vendor's proposal, which Vendor warrants to be no higher than Vendor's current prices on orders by others for products

of the kind and specifications covered by this Agreement for similar quantities under similar or like conditions and methods of purchase. In the event Vendor breaches this warranty, the prices of the items shall be reduced to the Vendor's current prices on orders by others, or in the alternative, HPS may immediately terminate this Agreement, without liability to HPS. Vendor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Vendor for the purpose of securing business. For breach or violation of this warranty, HPS shall have the right in addition to any other right or rights to terminate this Agreement without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

#### **5.48 Warranty – Goods and/or Services**

All goods and/or services provided by Vendor under this Agreement must be warranted to be free from defects in material, workmanship, and free from such defects in design for a period of one (1) year upon the later of HPS's acceptance of the product and/or service or payment of the applicable invoice. Vendor warrants that all goods and/or services furnished under this Agreement shall conform in all respects to the terms of this Agreement, including any drawings, specifications, and/or standards incorporated herein, including, without limitation, those detailed in the procurement solicitation issued by HPS. In addition, Vendor warrants that goods and/or services are suitable for and will perform in accordance with the purposes for which they are intended. Vendor shall assume all liabilities incurred within the scope of consequential damages and incidental expenses, as set forth in the vendor or manufacturer's warranty, which result from either delivery or use of product, which does not meet the specifications within this Agreement or the solicitation procurement. Vendor shall not limit or exclude any implied warranties and any attempt by Vendor to do so shall render this Agreement terminable by HPS, in HPS' sole discretion.

#### **5.49 Warranty – Safety**

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

Vendor warrants that the goods and/or services sold to HPS shall conform to the standards promulgated by applicable law and governing bodies, including, without limitation, OSHA and the Consumer Product Safety Commission. In the event the good or service does not conform to applicable standards, HPS may return the product for correction or replacement at Vendor's expense. In the event Vendor fails to make the appropriate correction within reasonable time, correction made by HPS will be at Vendor's expense. Additionally, no asbestos in any form may be used in the manufacture or processing of any product purchased by HPS. If any product called for by name in the RSP should contain any asbestos material, Vendor must notify the HPS Purchasing Office immediately for the name of a suitable substitute asbestos-free product.

#### **5.50 Warranty – Infringement**

Vendor warrants that the goods and/or services delivered pursuant to this Agreement will not give



rise to a claim of intellectual property infringement by a third party.

**5.51 Website Support**

Vendor agrees to cooperate with HPS in publicizing contract particulars on HPS's website. Vendor agrees to work with HPS in updating and maintaining current information on Vendor's activities related to the Agreement on the website. Vendor agrees to provide an electronic version of its logo for use on HPS's website upon request and provide other information as reasonably requested by HPS to help ensure that HPS's website is current and consistently updated.

**5.52 Workforce**

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