SOCORRO INDEPENDENT SCHOOL DISTRICT
PURCHASE ORDER TERMS AND CONDITIONS

Acceptance Agreement This Purchase Order constitutes a binding contract between the Socorro Independent School District ("SISD" or the "District") and Contractor to furnish the goods and/or services specified on the face of the Purchase Order. By acceptance of this Purchase Order, Contractor agrees to furnish all goods and/or services in accordance with the terms and conditions specified herein. Unless otherwise specified in this Purchase Order, Contractor shall not deliver substitutes or inferior materials without prior, written authorization from SISD. Acceptance of Contractor's goods and/or services does not constitute acceptance of any terms and conditions stated in Contractor's documentation or agreements. Contractor's commencement of work on the goods subject to this Purchase Order or shipment of such goods, whichever occurs first, shall be deemed an effective mode of acceptance of this Purchase Order.
This Purchase Order and the terms and conditions specified in the Solicitation, the General Provisions, and Contract Documents (as defined in the Solicitation) and any contract entered into between SISD and Contractor as a consequence of the Solicitation ("Contract") represent the basis for Contractor to deliver the required goods and/or services, and supersede all prior offers, negotiations, exceptions and understandings, whether oral or in writing. In the event of a conflict between a Purchase Order and the Solicitation or the Contract, the Contract shall control. In the event of a conflict between a Purchase Order and the Solicitation, the Solicitation shall control.

Confidentiality and Safeguarding of District Records: Contractor must maintain confidentiality and security compliance requirements with respect to District Records subject to the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g ("FERPA"). Health Insurance Portability and Accountability Act ("HIPAA", Public Law No. 104-191) and the Gramm-Leach-Bliley Act ("GLB", Public Law No. 106-102), National Institute of Standards and Technology (NIST) and the Center for Internet Security (CIS) and on any records
(1) created, (2) obtained, (3) stored, (4) used (5) received from or on behalf of District, or (6) have access to, records or record systems (collectively, "District Records"). Among other things, District Records may contain names, addresses, social security numbers, credit card numbers, or data protected or made confidential or sensitive by Applicable Federal or Texas Laws.

Termination for Convenience of the District SISD reserves the right to terminate any Purchase Order or any part of a Purchase Order for its sole convenience at any time upon thirty (30) days prior written Notice of Termination. Upon receipt of such Notice of Termination, Contractor shall immediately stop all work, and shall immediately cause any of its suppliers or subcontractors to cease such work. Contractor shall be paid, to the extent of funds appropriated or otherwise legally available for such purpose, a reasonable termination charge consisting of a percentage of the Purchase Order price reflecting the percentage of the work performed prior to the Notice of Termination. Contractor shall not be paid for any work done after receipt of the Notice of Termination, or for any costs incurred by Contractor's suppliers or subcontractors which Contractor could reasonably have avoided.

Termination for Cause SISD may also terminate any Purchase Order or any part of a Purchase Order at any time, by written Notice of Termination (effective in ten (10) days, unless otherwise specified, after the date of such notice, unless Contractor, within such ten (10) day period, cures such default) for cause in the event of any default by Contractor or if Contractor fails to comply with any of the terms and conditions of a Purchase Order. Late deliveries, deliveries of products which are defective or which do not conform to an issued Purchase Order, and failure to provide SISD, upon request, of reasonable assurances of future performance shall all be causes allowing SISD to terminate a Purchase Order. In the event of termination for

cause, or due to Contractor's default, SISD shall not be liable to Contractor for any amount, and Contractor shall be liable to SISD for any and all damages sustained by reason of the default (including, without limitation, the difference between Contractor's price and the actual purchase price of the good and/or service on the open market), which gave rise to the termination.

Changes. SISD reserves the right to make changes to issued Purchase Orders (e.g., increase/decrease quantities, change delivery address). Any changes to the Purchase Order shall be communicated to Contractor by the issuance of a written Change Order.

Warranty Contractor expressly warrants that all goods or services furnished under an issued Purchase Order shall conform to all specifications and appropriate standards, shall be new and shall be free from defects in material, design or workmanship. Contractor warrants that all such goods or services shall conform to any statements made on the containers or labels or advertisements for such goods, or services, and that any goods will be adequately contained, packaged, marked and labeled. Contractor warrants that all goods or services furnished to SISD will be merchantable and will be safe, appropriate, and suitable for their ordinary purpose, as well as any special purposes specified by SISD, for a period of one (1) year from the date of SISD's acceptance of the goods and/or services or payment of the applicable invoice, whichever is later.. Contractor warrants that goods or services furnished will conform in all respects to samples, inspections and tests. Acceptance, payment, or use of the goods or services not conforming to the requirements of any Purchase Order shall not affect Contractor's obligations under any warranty and shall not constitute a waiver or modification of any of Contractor's warranties, or the rights of SISD. Such warranties shall survive inspection, tests, acceptance, payment and use. Contractor agrees to replace or correct defects of any goods, or services not conforming to the foregoing warranties promptly without expense to SISD when notified of such nonconformity by SISD provided SISD elects to provide Contractor with the opportunity to do so. In the event of failure of Contractor to correct defects in or replace nonconforming goods or services promptly, SISD, after reasonable notice to Contractor, may, at Contractor's expense, make such corrections or replace such goods and services. Contractor warrants and represents that all services performed by it or its permitted subcontractors and all material used on SISD's behalf, will be completely paid for and that there are no materialman's or other liens attached to the goods, products, merchandise, materials, or services which are provided to SISD.

Price Warranty Contractor warrants that the prices for the articles and services sold to SISD are not less favorable than those currently extended to any other customer, for the same or similar articles or services in similar quantities. In the event Contractor reduces its price for such article during the term of an issued Purchase Order, Contractor agrees to reduce the prices charged to SISD correspondingly. Contractor warrants that prices shown on the Purchase Order shall be complete and no additional charges of any type shall be added without SISD's express written consent. Such additional charges include, but are not limited to shipping, packaging, labeling, custom duties, storage, insurance, boxing, crating.

Insurance In the event that the Purchase Order requires or contemplates performance of services by Contractor's employees or person under contract to Contractor to be done on SISD's property, Contractor agrees that all such work shall be done as an independent contractor and that the persons doing such work shall not be considered employees of SISD. Contractor shall maintain all necessary insurance coverage, including public liability and Workmen's Compensation insurance sufficient to meet all liabilities mentioned

herein. Contractor shall indemnify and save harmless and defend SISD from any and all claims or liabilities arising out of the work covered by this paragraph.

Indemnification CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE DISTRICT (INCLUDING, WITHOUT LIMITATION, THE DISTRICT'S BOARD OF TRUSTEES, EMPLOYEES AND AGENTS) FROM AND AGAINST ANY ALL DAMAGES, CLAIMS, SUITS IN LAW OR IN EQUITY, COSTS (INCLUDING ATTORNEY'S FEES), FINES, PENALTIES, LIABILITIES AND EXPENSES (INCLUDING BUT NOT LIMITED TO THE INJURY OR DEATH OF PERSONS, OR THE LOSS OR DAMAGE TO PROPERTY) ARISING OUT OF OR RESULTING IN ANY WAY FROM ANY DEFECT IN THE GOODS OR SERVICES PURCHASED BY SISD , OR FROM ANY ACT OR OMISSION OF CONTRACTOR, ITS AGENTS, EMPLOYEES OR SUBCONTRACTORS, INCLUDING WITHOUT LIMITATION, THOSE ARISING FROM CLAIMED INFRINGEMENT OF ANY PATENTS, TRADEMARKS, COPYRIGHT, OR OTHER CORRESPONDING RIGHT(S) WHICH IS RELATED TO ANY PART OF THE GOODS AND/OR SERVICES THE CONTRACTOR IS REQUIRED TO DELIVER AND/OR PERFORM. This indemnification shall be in addition to the warranty obligations of Contractor and shall survive acceptance and payment of the goods and/or services by SISD.

Inspection/Testing Payment for the goods delivered to SISD shall not constitute acceptance thereof. Prior to acceptance of any goods and/or services and continuing for a period of thirty (30) days after SISD's first use of the goods and/or services, the District shall have the right to inspect and test such goods and to reject, in whole or in part, said goods or services which in SISD's judgment, are defective or nonconforming. Nothing contained in any Purchase Order shall relieve in any way Contractor from the obligation of testing, inspection and quality control. In the event that SISD does not accept any goods and/or services which have been submitted to SISD, SISD is entitled to any and all remedies provided in law or in equity. In addition, when products tested fail to meet or exceed all applicable specifications, the cost of the sample used and the cost of any testing shall be borne by Contractor. Goods, which have been delivered and rejected in whole or in part, may be, at SISD's option, returned to Contractor at Contractor's risk and expense or disposed of in accordance with SISD's policies. Contractor may request that rejected goods be held by SISD at Contractor's risk for a reasonable period of time for later disposition at the Contractor's expense.

Assignments and Subcontracting No part of any Purchase Order may be assigned, subcontracted, transferred, mortgaged, pledged or otherwise disposed of or encumbered in any way by Contractor without the prior written approval of SISD. Any such attempted assignment by Contractor shall be null and void.

Product Recall Contractor shall notify SISD's Director of Purchasing immediately if a product recall is instituted on any good and/or service Contractor has delivered or if Contractor discovers or becomes aware of any quality or other deficiency in the delivered goods and/or services. This requirement shall survive payment and acceptance of the goods and/or services.

Quantities. The quantities specified for delivery in a Purchase Order are the only quantities required by SISD. If Contractor delivers quantities in excess of those specified on the Purchase Order, SISD is not required to make any payment for the excess goods and, at SISD's election, SISD may keep or return the excess goods. All risk and expense for the return of the quantities of goods in excess of those specified on the face of the Purchase Order shall be borne by Contractor unless prior written authorization is issued by SISD. SISD is not responsible for products delivered or work performed without a written Purchase Order.

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Quality. In the event no quality is specified on the face of the Purchase Order, in the Solicitation, or the Contract, the goods delivered and/or services rendered by Contractor shall be of the best quality.
Contractor shall ensure that all goods delivered to SISD are new (i.e., previously unused and in their original packaging) and have not been reconditioned, repackaged, returned, remanufactured, refurbished, or damaged. Contractor also warrants that all services will conform to the standard(s) established in the issued Purchase Order, the Solicitation, and/or Contract.

Safety If applicable, Contractor shall deliver Material Safety Data Sheets (MSDS) with the requested goods. Contractor shall comply fully with all applicable federal, state, and local safety and health laws, ordinances, rules, and regulations in the performance of services and/or the delivery of goods, including, without limitation, those promulgated by SISD and by the Occupational Safety and Health Administration ("OSHA"). In case of conflict, the most stringent safety requirements shall govern. Contractor agrees to perform services(s) rendered safely, diligently, efficiently, and in a professional manner.

Setoff SISD reserves the right to offset subsequent payments due under any Purchase Order, the Solicitation, or Contract by any amount due and owing by Contractor to SISD, including, without limitation, amounts owed for breach/default of the Purchase Order, the Solicitation, or Contract. SISD is not required to mitigate its damages in order to obtain the relief for any breach of contract remedies available to it.

Waiver SISD's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or SISD's waiver of any breach hereunder shall not thereafter waive any of SISD's other terms, conditions, or privileges, whether of the same or similar type.

Delivery The obligation of Contractor to meet the delivery dates, specifications, and quantities set forth in the Purchase Order is of the essence to the Purchase Order. If, at any time, Contractor believes it may be unable to comply with the delivery or completion schedules, Contractor must immediately notify SISD's Director of Purchasing in writing of the probable length of any anticipated delay, the reasons for the delay, and the estimated delivery/completion date(s). In the event of such notification or of an actual failure by Contractor to comply with the delivery or completion schedules, SISD may, in its sole discretion, in addition to all other remedies, and without liability, (i) require Contractor, at Contractor's expense, to ship the goods via airfreight or expedited routing to avoid or minimize delay; or (ii) cancel the Purchase Order as to items not yet shipped or services not yet rendered and purchase substitute items or services elsewhere and charge Contractor with any loss incurred. All deliveries shall be made to the location(s) identified in the issued Purchase Order, Freight Prepaid, Free on Board (F.O.B.) Destinations, Full Freight Allowed, Inside Delivery, unless otherwise specified on the Purchase Order. Delivery hours are 8:00am to 3:00pm, M-F, except for certain holidays.

Invoices & Payments Itemized invoices shall be directed to SISD's Account Payable Department, P.O. Box 292800, El Paso, TX 79929-2800. Invoices shall indicate the Purchase Order or supply agreement number, if applicable. Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading, and freight waybill when applicable, should be attached to the invoice. In accordance with Texas Government Code § 2251.021, payments are due to Contractor within forty-five (45) days after the later of the following: (1) the date SISD receives the goods; (2) the date the performance of the service is completed; or (3) the date SISD receives an invoice for the goods or services. The Purchase Order number must be included on all invoices, packages and delivery tickets.

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SISD's obligation is payable only and solely from funds available for the purpose of the purchase reflected on the Purchase Order issued to Contractor. There shall be no interest on any delayed, disputed or delinquent payment.

Credits, Rebates, Discounts, and USDA Food Values. Socorro ISD requires that all discounts, rebates, and credits accrue back to the school nutrition account. The vendor will be required to identify the amount of each discount, rebate, or other applicable credit on bills and invoices presented to SISD. All discounts, rebates, and credits will be tracked via monthly invoices or annual velocity reports. Vendors will be required to maintain documentation of costs, discounts, rebates, and credits and make those available to SISD upon request.

Taxes SISD is tax-exempt and shall not pay or be liable for taxes for goods and/or services. Contractor shall not include taxes on the invoices. District will furnish a tax exemption certificate upon request.

Title The title and risk of loss to any and all goods, products, merchandise, materials, and/or services that are provided to SISD shall pass to SISD upon acceptance of the item or payment of the applicable invoice, whichever is later.

Prohibition on Contracts with Companies Boycotting Israel Socorro ISD cannot enter into a contract with any individual and/or company for goods or services unless the contract contains a written verification from the company that it (1) does not boycott Israel; and (2) will not boycott Israel during the term of an awarded contract under the terms of Section 2270 of the Texas Government Code. Should the individual and/or company during the term of the agreement boycott Israel, immediate notification is required to SISD Purchasing Department. I hereby certify that I and/or my company will adhere to Section 2270 of the Texas Government Code, PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL.

Governing Law and Venue The laws of the State of Texas, without regard to its provisions on conflicts of laws, govern any issued Purchase Order. Any dispute under a Purchase Order may be brought in the state and federal courts located in El Paso County, Texas, and the parties hereby submit to the exclusive jurisdiction of said courts.

Severability In the event that any one or more of the provisions contained in a Purchase Order 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 Purchase Order shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

Contract Provisions: In all federally-funded contracts Department of Education (DOE) and United States Department of Agriculture (USDA), the District includes the applicable provisions described in Appendix II to 2 CFR Part 200 – Contract Provisions for Non-Federal Entity Contracts under Federal Awards. 2 CFR § 200.326. Provisions include the following, where applicable:

All contracts paid from state or federal grants administered by SISD pursuant to the provisions in 2 CFR § 200.315, title to intangible property vests in the District as long as such property is used for authorized purposes.

- **a.** All contracts greater than $250,000 must address administrative, contractual, or legal remedies.
- **b.** All contracts greater than $50,000 for United States Department of Agriculture (USDA) must

address administrative, contractual, or legal remedies.

c. All contracts greater than $10,000 must address termination for cause and for convenience.

d. All construction contracts must include the Equal Employment Opportunity clause.

e. All prime construction contracts in excess of $2,000 must include a provision for compliance with the Davis-Bacon Act and its implementing regulations.

f. All contracts in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with the Contract Work Hours and Safety Standards Act and its implementing regulations.

g. All contracts that meet the definition of "funding agreement" and where the District wishes to enter into a contract with a small business firm or nonprofit organization must include a provision for compliance with the Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements.

h. All contracts and sub-grants greater than $150,000 must contain a provision for compliance with the Clean Air Act and the Federal Water Pollution Control Act and their implementing regulations.

i. A contract or subcontract must not be made to any party that is Debarred or Suspended from receiving federal funds.

j. Lobbying Certification and Disclosure of Lobbying (Byrd Anti-Lobbying Amendment) – All contractors that apply or bid for an award of $100,000 or more must file the required Lobbying Certification that it has not and will not use any federal funds to lobby. If non-federal funds are used to lobby, the contractor must complete the Disclosure of Lobbying and forward the disclosure to the next tier, who must forward it through each tier to the federal awarding agency.

k. All contracts greater than $10,000 must include compliance with section 6002 of the Solid Waste Disposal Act and its implementing regulations. 2 CFR § 200.323

l. For purchases using federal funds in excess of $250,000, Socorro ISD may be required to negotiate profit as a separate element of the price. See, 2 CFR 200.324(b).

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

n. When School Nutrition Program (SNP) funds are expended by the District pursuant to this solicitation, Vendor certifies that it will comply with the record retention requirements per United States Department of Agriculture (USDA)/Texas Department of Agriculture (TDA). Vendor will retain all records as required by USDA/TDA for a period of five (5) years after the end of the fiscal year to which the documentation/records pertain. Vendor further certifies that these records must be accessible to the District and federal or state reviewers. (*See TDA Administrator's Reference Manual Section 17).*

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

p. Vendor certifies that Vendor is in compliance with all applicable provisions of the Buy America Act. Purchases made in accordance with the Buy America Act must still follow the applicable procurement rules calling for free and open competition.

q. Buy American Certification. The District participates in the National School Lunch Program and School Breakfast Program and is required to use the nonprofit food service funds, to the maximum extent practicable, to buy domestic commodities or products for Program meals. A domestic

commodity or product is defined as one that is either produced in the U.S. or is processed in the U.S. substantially using agricultural commodities that are produced in the U.S. as provided in 7 CFR 210.21(d). "Substantially" is defined as 51% or more of the final processed product consists of agricultural commodities grown domestically.

r. Vendor agrees that the Inspector General of the District or any of their duly authorized representatives shall have access to any books, documents, papers and records of Vendor that are directly pertinent to Vendor's discharge of its obligations under the Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to Vendor's personnel for the purpose of interview and discussion relating to such documents. 2 CFR. § 200.336

s. Vendor agrees that all contracts it awards pursuant to the Contract shall be bound by the foregoing terms and conditions.

t. Vendor agrees, in accepting an award from Socorro ISD, it shall make a good faith effort to work with Socorro ISD Inter-local contracts to provide such information and to satisfy such requirements as may apply to a particular purchase or purchases including, but not limited to, applicable recordkeeping and record retention requirements.

u. Civil Rights/Discrimination. Vendor certifies that Vendor is in compliance with Title VI of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title 7 CFR Parts 15, 15a, and 15b; the Americans with Disabilities Act; and FNS Instruction 113-1, Civil Rights Compliance and Enforcement – Nutrition Programs and Activities, which prohibit discrimination of all eligible program participants on the basis of age, color, disability, national origin, race, and gender.

v. Vendor certifies that Vendor meets all applicable local, state, and federal health and safety certifications, licensing, or regulations which include, but are not limited, to facility use, food establishment, and authorized providers.

w. Vendor certifies that should Vendor subcontract any work under this contract, vendor shall take the following steps: place qualified small and minority businesses and women's business enterprises on solicitation lists; assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; divide specifications and/or technical requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises; establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

x. Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms are especially invited to submit a response to the solicitation(s).

CFR Section 200.216. Prohibition on certain telecommunications and video surveillance services or equipment.

(a) District is prohibited from obligating or expending funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law

115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Vendor certifies vendor will not provide equipment/services as stated from the entities listed or any subsidiary or affiliate of such entities.

Senate Bill 19 Verification. Effective September 1, 2021. Socorro ISD cannot enter into a contract with any company with at least ten (10) full time employees for goods or services with a value in excess of $100,000.00, unless the contract contains a written verification from the company that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association under the terms of Section 2274 of the Texas Government Code. Should the company during the term of the agreement adopt or enforce these items, immediate notification is required to SISD Purchasing Department.

Pursuant to Section 2274.001, Texas Government Code:

a. *"Discriminate against a firearm entity or firearm trade association" means, with respect to the entity or association, to: "refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association."*

b. *"Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or associations that exists to make a profit. The term does not include a sole proprietorship.*

c. Vendor Certifies that it will adhere to Section 2274 of the Texas Government Code.

SB 12 Compliance Certification. By accepting this Purchase Order, Vendor certifies that it has been notified of and will comply with all applicable provisions of Texas law, including Senate Bill 12 (89th Legislature), the Texas Education Code, and District policies implementing such requirements. Vendor agrees that neither it nor its employees, agents, subcontractors, volunteers, or representatives will engage in activities on behalf of the District that are prohibited by applicable law or District policy. Vendor shall be responsible for ensuring compliance by all personnel assigned to provide services under this Purchase Order. Any violation of this provision may result in termination of the Purchase Order and/or disqualification from future business with the District.