

Sexton, Pamela Rambo

From: Sexton, Pamela Rambo
Sent: Wednesday, August 31, 2022 4:12 PM
To: Mary Causey
Cc: Brad Boyd; Randy Hughes; Stephen K. Kendrick; Chisolm, Keith A
Subject: RE: Mid-Continental - Choice Partners

Thank you for the confirmation and all our assistance.
-Pam

From: Mary Causey <mcausey@hcde-texas.org>
Sent: Wednesday, August 31, 2022 1:59 PM
To: Sexton, Pamela Rambo <Pamela.Sexton@fortworthtexas.gov>
Cc: Brad Boyd <brad_boyd@midcontinental.com>; Randy Hughes <randy_hughes@midcontinental.com>; Stephen K. Kendrick <skendrick@hcde-texas.org>
Subject: FW: Mid-Continental - Choice Partners

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Pamela,

Attached are the line-item estimate for the Burnett Building and Will Rogers Auditorium and Coliseum. I have reviewed the estimate and they are compliant with the Choice Partners contract 18/029JN-06.

If you have any questions or need additional information, please let me know.

Thank you.

From: Sexton, Pamela Rambo <Pamela.Sexton@fortworthtexas.gov>
Sent: Wednesday, August 31, 2022 7:51 AM
To: Mary Causey <mcausey@hcde-texas.org>
Cc: Joann Nichols <jnichols@hcde-texas.org>; Stephen K. Kendrick <skendrick@hcde-texas.org>; Monique Joseph <mojoseph@hcde-texas.org>; Randy Hughes <randy_hughes@midcontinental.com>; Brad Boyd <brad_boyd@midcontinental.com>; Lucy Gladbach <lucy_gladbach@midcontinental.com>; scott

<halsey@midcontinental.com>; Chisolm, Keith A <Keith.Chisolm@fortworthtexas.gov>; Kelley, Sylvia <Sylvia.Kelley@fortworthtexas.gov>

Subject: RE: Mid-Continental - Choice Partners

Thank you Ms. Causey,

And were you also able to confirm pricing in the quote I attached was in compliance with 18/029JN-06 for the 2022/2023 contract period?

I appreciate your assistance,

Pam

From: Mary Causey <mcausey@hcde-texas.org>

Sent: Wednesday, August 31, 2022 7:04 AM

To: Sexton, Pamela Rambo <Pamela.Sexton@fortworthtexas.gov>

Cc: Joann Nichols <jnichols@hcde-texas.org>; Stephen K. Kendrick <skendrick@hcde-texas.org>; Monique Joseph <mojoseph@hcde-texas.org>; Randy Hughes <randy_hughes@midcontinental.com>; Brad Boyd <brad_boyd@midcontinental.com>; Lucy Gladbach <lucy_gladbach@midcontinental.com>; scott <halsey@midcontinental.com>; Chisolm, Keith A <Keith.Chisolm@fortworthtexas.gov>; Kelley, Sylvia <Sylvia.Kelley@fortworthtexas.gov>

Subject: RE: Mid-Continental - Choice Partners

CAUTION: This email originated from outside of the City of Fort Worth email system. Do not click any links or open attachments unless you recognize the sender and know the content is safe.

Good morning, Pamela

Attached is the signed contract renewal letter for Mid-Continental Restoration Company, Inc. for Choice Partners contract 18/029JN-06 for the 2022/2023 contract period.

If you have any questions or need additional information, please let me know.

Respectfully

Mary Causey

Mary Causey, RTSBA
Contract Compliance Specialist
Choice Partners a Division of
Harris County Department of Education

6005 Westview Drive
Houston Texas 77055
Phone: 713.696.8270
mcausey@hcde-texas.org

Visit us online at www.choicepartners.org

Members: Please ensure compliance with the contracts and report any PO's using our contracts to ecatalog@hcde-texas.org The contract number should be on all PO's reported.

Vendors: Please ensure compliance with your contract by reporting all usage to facilityreporting@choicepartners.org (if a facility contract) or supplyreporting@choicepartners.org if a supplier or a service provider.

Make the Right Choice! Choice Partners



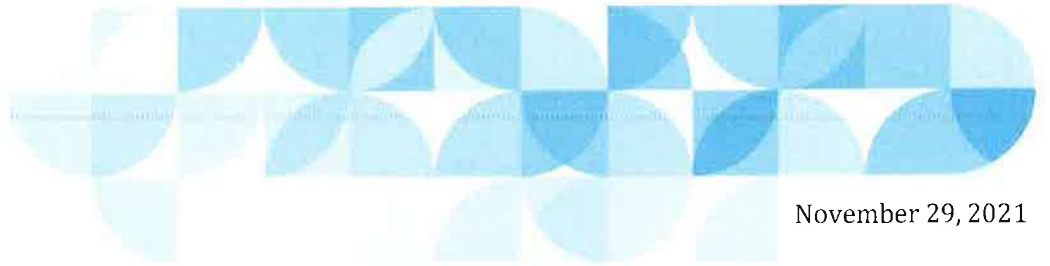
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November 29, 2021

Subject: Contract Renewal for CSP #18/029JN for JOCIDIQ Construction for Harris Department of Education (HCDE)/Choice Partners Cooperative

Dear CP Vendor Partner:


Your contract with Choice Partners (CP), a division of Harris County Department of Education (HCDE) is scheduled to expire **February 27, 2022**. This contract has **one(1)** one-year annual renewal option remaining before final expiration. Choice Partners values this contract and is exercising the option to extend this contract for one year beginning **February 28, 2022**.

If you agree to renew this contract, please complete, sign and attach this letter under the "Response Attachments" section of the Choice Partners eBid System <http://www.choicepartners.org/vendor-login.php> **December 16, 2021 at 2:00 p.m. central time.**

In addition, provide any updated pricing and/or discounts for your contract and attach a current copy of your certificate of insurance (if applicable) and any forms that may have changed since the original proposal was submitted.

If you have any questions or concerns, or need to discuss this contract renewal please contact Cora Day at 713-696-8208 or e-mail to cora@choicepartners.org.

Sincerely,

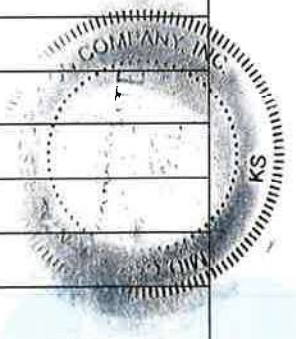

Jeff Drury, Director
Choice Partners
A division of Harris County Department of Education


Jesus Amezcua (Feb 17, 2022 21:47 CST)

Jesus J. Amezcua, PhD., CPA, RTSBA
Assistant Superintendent for Business Services
Harris County Department of Education

The individual signing below has authority to enter into this agreement on behalf of the Vendor.

Corporate Name:	Mid-Continental Restoration Co Inc
Authorized Signature:	
Print Name:	J. Frank Halsey
Title:	President
Date:	12/2/2021
Address:	401 E. Hudson Street
City, State, Zip Code:	Fort Scott, KS 66701
Phone:	620-223-3700
Email Address:	frank_halsey@midcontinental.com





Harris County Department of Education
6300 Irvington Blvd., Houston, Texas 77022-5618

CSP #18/029JN

**Competitive Sealed Proposals
for
Job Order Contracting IDIQ Minor Construction, Maintenance,
Repair, Alteration, Renovation, and Remediation services**

Submittal Deadline and Proposal Opening Deadline:

January 11, 2018 at 2 pm CT

Proposals received after the date and time stated above will not be considered.

Questions regarding this CSP must be submitted via email or fax no later than **five (5) business days** prior to the submittal deadline date. All questions and answers will be posted online at <http://www.choicepartners.org/current-rfps>

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1.0 NOTICE OF INTENT

It is the intent of Harris County Department of Education (HCDE) to award one or more contract(s) as a result of this Job Order Contracting CSP for use by HCDE/CP and/or CP members. Product(s) and/or services considered for award shall equal or exceed a minimum quality level of industry standard(s) as defined within this CSP, including **Section 6.0 Scope of Proposal**, and shall comply with all applicable federal, state and local technical, environmental, and performance standards and specifications.

Further, it is the intent of HCDE/CP to allow CP members to “piggyback” onto any existing contract between HCDE and Vendor entered into pursuant to this CSP, as contemplated in United States Department of Agriculture Memorandum SP35-2012, Procuring Services of Purchasing Cooperatives, Group Purchasing Organizations, Group Buying Organizations, etc., June 12, 2012 (“SP 35-2012”). Accordingly, pursuant to HCDE’s membership agreements with CP members (as permitted under the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, and Chapter 271, Subchapter F of the Texas Local Government Code, and similar statutes in other states), CP members are authorized to enter into separate and independent contracts with Vendor that employ the same negotiated terms and conditions contained in an existing contract(s) between HCDE and Vendor. Further, it is the intent of HCDE/CP to comply with the most restrictive federal (EDGAR) or state (FARSG) rule or regulation, and HCDE/CP intends to conduct a cost or price analysis in connection with every procurement action using federal funds.

This CSP is being procured in accordance with Texas Education Code (TEC) Section 44.031, Purchasing Contracts and Texas Government Code (TGC) Chapter 2269, Contracting and Delivery Procedures for Construction Projects, specifically TGC 2269.401-451, Job Order Contracting Method, for use by HCDE and CP members for job order contracting, including the maintenance, repair, alteration, renovation, remediation, or minor construction of a facility when the work is of a recurring nature but the delivery times, type, and quantities of work are indefinite.

In no event shall a job order issued as a result of this CSP be used in connection with a highway, road, street, bridge, utility, water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, wharf, dock, airport runway or taxiway, drainage project, or related type of project associated with civil engineering construction or a building or structure that is incidental to a project that is primarily a CIVIL ENGINEERING construction project. TEX. GOV’T CODE § 2269.402.

In compliance with TEX. GOV’T CODE § 2269.403(b), HCDE/CP is establishing the maximum annual aggregate contract price for all contracts awarded under this CSP for the entire CP cooperative program at \$200 million. The governing body of a CP member that is a governmental entity must approve each job, task, or purchase order that exceeds \$500,000. TEX. GOV’T CODE § 2269.403(c).

Any Job Order issued pursuant to this CSP must be signed by the representative of the governmental entity/CP member’s representative that solicits the Job Order and the Contractor. TEX. GOV’T CODE § 2269.410(a). The Job Order may be (1) a fixed price, lump-sum quote based substantially on unit pricing applied to estimated quantities; or (2) a unit price job order based on the quantities and line items delivered. TEX. GOV’T CODE § 2269.410(b).

1.1 **The initial base term of the prospective contract is a period of two calendar years, and HCDE/CP may elect to extend any contract awarded pursuant to this CSP for up to three additional one-year renewal terms.** TEX. GOV’T CODE § 2269.409.

1.2 In this CSP and in the Contract, the following terms shall mean as follows:

1.2.1 **“HCDE”** means the Harris County Department of Education, a county school district established under the laws of the State of Texas; 6300 Irvington Blvd., Houston, Texas 77022.

1.2.2 **“CP”** means Choice Partners cooperative, a national cooperative purchasing program and division of HCDE. HCDE/CP is a local governmental agency, as that term is used in SP 35-2012.

- 1.2.3 “**CP member(s)**” means the non-profit entities, public and private schools (including independent school districts and charter schools), education service centers, colleges, universities, municipalities, counties, political subdivisions, and other governmental entities and agencies throughout the United States that have followed local governing authority allowing them to utilize contracting vehicles procured and administered by HCDE, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, and Chapter 271, Subchapter F of the Texas Local Government Code, and similar statutes in other states.
- 1.2.4 “**Vendor(s)**” means the proposer(s) responding to this CSP and vendor(s) to whom a contract has been awarded as a result of this CSP by HCDE/CP. A responsible vendor is a vendor who has adequate financial resources (or the ability to obtain such resources), can comply with the delivery requirements, and is a qualified and established firm regularly engaged in the type of business that provides the product(s) /service(s) listed herein.
- 1.2.5 “**Contract**” means the contract terms and conditions in **Section 5.0 Contract Terms and Conditions**, as further defined in the Entire Agreement provision of Section 5.0. A contract is exclusively between HCDE/CP and Vendor. All existing contracts shall be made available to CP members to review and copy. Further, all records, reports, and other documents related to HCDE/CP’s competitive procurement of existing contracts shall also be made available to CP members to review and copy
- 1.2.6 “**Supplemental Contract**” means a separate, supplemental contract entered into between a CP member and the Vendor, which utilizes the negotiated terms and conditions contained in the existing competitively-procured contract(s) between HCDE/CP and Vendor. Supplemental Contracts may further define the level of service and/or product requirements over and above the minimum defined in the Contract and the CSP, including, without limitation, invoice requirements, ordering requirements, on-campus service, specialized delivery, discounted pricing, etc. Supplemental Contracts may be a Purchase Order or Job Order issued by a CP member. Supplemental Contracts are exclusively between a CP member and Vendor and are executed pursuant to the piggyback method delineated in SP35-2012. Vendor shall immediately notify HCDE/CP of all Supplemental Contracts entered into with a CP member.
- 1.2.7 “**Best Value**” means the method by which a contract, if any, is awarded, in accordance with applicable laws, rules, and regulations. Best Value includes multiple parameters, including experience, references, quality of the Vendor’s product(s)/service(s), and price, as detailed in **Section 4.0 Evaluation and Award**.
- 1.2.8 “**HCDE/CP Administrative Fee**” or “**HCDE/CP Fee**” means the fee paid by Vendors to HCDE/CP for the limited purpose of funding the total administrative costs of the HCDE/CP program. HCDE/CP will invoice the Vendor for the HCDE/CP Administrative Fee. *See* Section 5.30. **The HCDE/CP Fee must be included in Vendor’s price coefficient and must not be issued as a separate line item in any Job Order Proposal issued to CP members.** Vendors must pay the HCDE/CP Fee within thirty days of the completion of payment for any Job Order. If the Job Order has progress payments, the Vendor is required to pay the HCDE/CP Fee in proportion to progress payments within thirty days of the payment date. All rebates, discounts, and other applicable credits from the Vendor resulting from Supplemental Contract(s) shall accrue exclusively to CP members.
- 1.2.9 “**Purchase Order**” or “**PO**” means the agreed-upon purchase order between HCDE or the CP member and the Vendor. Special terms and conditions agreed to by the Vendor and HCDE/CP or the CP member may be added as addendums to the PO, including such items as requirements concerning certificates of insurance, bonding, and small or disadvantaged business goals.
- 1.2.10 “**Premium Hours**” means those hours not included in Regular Hours or federal holidays. Premium Hours must be approved by HCDE/CP or the CP member for each Purchase Order or Job Order.
- 1.2.11 “**Regular Hours**” means the the normal business hours of your company, Monday thru Friday, excluding the following holidays: Presidents’ Day, Easter, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and New Year’s Day.

Definitions related to Job Order Contracting:

- 1.2.12 **“Job Order Contracting or JOC”** is “a procurement method used for maintenance, repair, alteration, renovation, remediation, or minor construction of a facility when the work delivery is of a recurring nature but the delivery times, type and quantities or work required are indefinite (IDIQ).” TEX. GOV’T. CODE § 2269.401. JOC is negotiated by line-item delivery orders (job orders) based upon a contract’s priced coefficient applied to the city cost index and the line items in the unit price book. Once the line items are agreed to by the Vendor and HCDE or the CP member, a lump-sum, firm fixed price contract for the negotiated Scope of Work exists. The product(s) and/or service(s) to be purchased under the awarded contract(s), if any, may be of indefinite delivery and indefinite quantity (IDIQ).
- 1.2.13 **“Unit Price Book or UPB”** means the current addition(s) of the applicable unit price book(s) and the published quarterly updates. TEX. GOV’T. CODE § 2269.404 (“The governmental entity may establish contractual unit prices for a job order contract by specifying one or more published construction unit price books and the applicable divisions or line items or providing a list of work items and requiring the Vendor to propose one or more coefficients or multipliers to be applied to the price book or pre-priced work items as the price proposal.”) **The Unit Price Book(s) for this JOC CSP are the current edition of the RS Means Unit Price Cost Data (RSMMeansOnline.com) or JOC software using the unit pricing of RSMMeans and the Craftsman National Construction Estimator Unit Price Book and software, using the most recent edition “Total Inc. O&P” or the Total column assuming a 35% O&P for the National Construction Estimator book.** When required by insurance or FEMA, Xactimate may be used in place of the UPB or cost data used in this CSP. Vendors, at their expense, will make copies of the UPB available to CP Members upon request via electronic or printed media. See Section 6.0 “Scope of Proposal” and Section 7.0 “Specifications” of this CSP for additional information.
- 1.2.14 **“Construction Specification Institute (CSI) Format”** is a published system of titles and numbers used extensively to organize construction information. All unit price data in the UPB is arranged in a CSI Master Format system.
- 1.2.15 **“Coefficient”** means the Vendor’s coefficient multiplier that is applied to the local City Cost Index and the total sum of line item estimates for each individual Job Order, including all overhead items and HCDE/CP administrative fee. If Vendor is using Xactimate, a coefficient is not applicable.
- 1.2.16 **“City Cost Index”** means the defined pricing indices published by the Unit Price Book as local zip code modifiers to the national cost data.
- 1.2.17 **“Job Order”** is a unit price order based on the quantities and line items delivered. TEX. GOV’T. CODE § 2269.403(b). A Job Order is an order for a job or project that includes HCDE’s or the CP member’s job or project’s written Scope of Work and must be signed by the Vendor and HCDE or CP member. TEX. GOV’T. CODE § 2269.410(a). A signed Job Order is a contract between the Vendor and HCDE or the CP member. The governing body of each CP member that is a governmental entity, as defined in Chapter 2269 of the Texas Government Code, must approve each Job Order or Purchase Order that exceeds \$500,000. TEX. GOV’T. CODE § 2269.403(c).
- 1.2.18 **“Job Order Quote Request”** originates from HCDE/CP or the CP member and provides a general scope of project services and/or engineering/architectural drawings, a requested schedule, and any special addendum requirements from which the Vendor will develop a Scope of Work to be included in the Vendor’s Job Order Proposal.
- 1.2.19 **“Job Order Quote”** means the response from the Vendor to HCDE/CP or the CP member’s request for a specific project and contains the line-item estimate for the project as defined in the UPB and includes a written Scope of Work for services to be performed and/or products to be delivered. Each Job Order Quote submitted to HCDE/CP or the CP member must contain a line item estimate generated by one of the approved software programs, including all of the UPB items, quantities, pricing and total cost.

- 1.2.20 **“Scope of Work or SOW”** is the specific work that has been agreed to be undertaken and accomplished by Vendor for HCDE/CP or the CP member via the Job Order process.
- 1.2.21 **“Vendor’s Project General Manager (PGM)”** is the senior member of the Vendor’s team and will be the ultimate interface between HCDE/CP and CP members and Vendor.
- 1.2.22 **“Vendor’s Key Staff Members”** are critical to the quality, implementation, and successful support and execution of the contract and will be evaluated by HCDE/CP. Vendor’s Key Staff Members typically include the PGM, Delivery Order Managers, Business Manager, Safety/Environmental Manager, Quality Assurance/Quality Control Manager, and Marketing Manager.
- 1.2.23 **“Non-Pre-Priced Items”** means those items that cannot be found or reasonably compared to listed line items in the UPB. The process detailed in Section 6.3.2 shall apply to Non-Pre-Priced Items.

1.3 Time Table

HCDE/CP anticipates following the time table listed below for this job. The table below is only an estimate and may vary.

TIME TABLE		
Item	Activity	Date
1	CSP Advertised - 1 st run	Friday, December 8, 2017
2	CSP Advertised - 2 nd run	Monday, December 11, 2017
3	Pre-Proposal Meeting	Wednesday, December 13, 2017 @ 11 a.m. (6005 Westview Drive, Houston TX 77055)
4	Proposals Due	Thursday, January 11, 2018 @ 2 p.m. CT
5	Award Date	Wednesday, February 28, 2018

2.0 INTRODUCTION TO CHOICE PARTNERS COOPERATIVE

2.1. Description of CP members

- 2.1.1. Contract(s), if any, awarded as a result of this CSP will be available for use by HCDE/CP. Additionally, contract(s) awarded as a result of this CSP will also be available for use by CP members pursuant to the piggyback method delineated in SP 35-2012. HCDE/CP, a local governmental entity, currently has more than 1,375 members and keeps growing every day. Many CP members constitute “school food authorities,” as that term is used in SP 35-2012.

Contract(s), if any, awarded as a result of this CSP will be available to CP members to review and copy on an “as needed” basis from a list of contracts that have been competitively procured and awarded to Vendors based on the selection criteria set forth in Section 4.0 Evaluation and Award. All related records, reports, and documents related to the competitive procurement of any contract(s) awarded as a result of this CSP will also be available to CP members to review and copy on an “as needed” basis.

- 2.1.2. By allowing eligible entities to piggyback onto existing contract(s) between HCDE/CP and Vendors, those entities can accomplish the legally-required competition for contracts of commonly purchased products and services, thereby saving the individual entity the cost of going through the procurement process. Vendors benefit as well by having a multi-year contract and by saving the time and expense of going through the procurement process for each individual participating governmental entity. The specific scope of work for each Supplemental Contract/Purchase Order shall be determined in advance and in writing between the CP member and the Vendor.
- 2.1.3. Pursuant to TEX. GOV’T. CODE Chapter 791, the Interlocal Cooperation Act, and similar statutes of other states, as well as directives issued by the Texas Department of Agriculture and the United States Department of Agriculture, HCDE/CP and CP members participate in an Interlocal Contract to provide governmental functions and services, including procurement services, which permits CP members to make purchases using contracts procured by HCDE.¹ **A local government that purchases products and services under the Interlocal Cooperation Act satisfies the requirement of the local government to seek competitive bids for the purchase of the products and services.** TEX. GOV’T. CODE § 791.025(c). An interlocal contract between a governmental entity and a purchasing cooperative may not be used to purchase engineering or architectural services. TEX. GOV’T. CODE § 791.011(h).

¹ See, e.g., TEX. EDUC. CODE § 44.031(a)(4) (“all school district contracts for the purchase of goods and services, except contracts for the purchase of produce or vehicle fuel, valued at \$50,000 or more in the aggregate for each 12-month period shall be made by the method...that provides the best value for the district[, including] an interlocal contract”); TEX. EDUC. CODE § 51.9335(a)(4) (each institution of higher education, as that term is defined by Tex. Educ. Code § 61.003, including each public junior college to the extent possible, “may acquire goods or services by the method that provides the best value to the institution, including... a group purchasing program.”); TEX. EDUC. CODE § 73.115(a)(4) (University of Texas at Houston “may acquire goods or services by the method that provides the best value to the institution, including... a group purchasing program.”); TEX. EDUC. CODE § 74.008(a)(4) (University of Texas Medical Branch at Galveston “may acquire goods or services by the method that provides the best value to the medical branch, including...a group purchasing program.”); TEX. LOCAL GOV’T. CODE Chapter 271 (Purchasing and Contracting Authority of Municipalities, Counties, and Certain Other Local Governments); TEX. LOCAL GOV’T. CODE Chapter 262 (Purchasing and Contracting Authority of Counties); 2 C.F.R. § 200.318(e) General Procurement Standards (“To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.”); Texas Department of Agriculture, *Participation on Purchasing Cooperatives*, May 9, 2014, Angela Olige; United States Department of Agriculture Memorandum SP35-2012, *Procuring Services of Purchasing Cooperatives, Group Purchasing Organizations, Group Buying Organizations, etc.*, June 12, 2012.

2.1.4. **Contracts Involving Federal Funds**

Because at the time of procurement, HCDE/CP is unable to determine which of its procurements/contracts will be used by CP members using federal funds, HCDE/CP intends to competitively procure each and every contract awarded by HCDE/CP under Section 44.031 of the Texas Education Code and intends to comply with EDGAR for every procurement action. To comply with EDGAR, HCDE/CP will make an independent estimate of the value of goods or services in the current market before receiving bids or proposals. After HCDE/CP receives bids and proposals but before awarding a contract, HCDE/CP will also conduct a price or cost analysis and document its findings. For contracts at or above \$150,000, CP members must verify that HCDE/CP fulfilled its requirement to conduct a cost or price analysis in order to benefit from the ability to purchase goods and services from CP directly without the need for additional procurement activities or documentation. HCDE/CP will provide its Independent Estimate Determination Form and Determination of Cost or Price Reasonableness Form to a CP member upon request, but HCDE/CP recommends that when circumstances necessitate separate evaluation of lump-sum pricing, CP members also conduct an independent evaluation of cost or price reasonableness tailored to the CP member's specific purchases so that the CP member can independently determine the reasonableness of the cost/price of the particular purchase. Stated differently, if the CP member's verification of CP's compliance with EDGAR reveals that the lump-sum price includes goods or services for which CP could not have performed a cost or price analysis, the Choice member should conduct an independent cost or price analysis.²

2.2. **Financing of HCDE/CP**

- 2.2.1. HCDE/CP does not charge membership fees to CP members.
- 2.2.2. The total cost of the HCDE/CP program is funded through the HCDE/CP Administrative Fee paid to HCDE/CP by Vendors. The HCDE/CP Fee is based on a percentage of vendor sales, less special insurance and required bonding, if applicable.
- 2.2.3. HCDE/CP will provide limited oversight in assisting both CP members and Vendors in marketing to CP members, training (education), and provide, at a minimum, an annual review of each Vendor. This service will be paid for out of the HCDE/CP Fee. HCDE/CP will not market or sell directly for Vendors.
- 2.2.4. All rebates, discounts, and other applicable credits that are granted by Vendors as a result of Supplemental Contracts shall accrue exclusively to CP member(s).

2.3. **HCDE/CP Procedures**

- 2.3.1. Contracts are awarded through fair and open competition in compliance with applicable procurement rules and regulations.
- 2.3.2. The CP member sends a proposal request to the Vendor.
- 2.3.3. The Vendor prepares and sends to the CP member its proposal. The CP member conducts an evaluation of cost or price reasonableness, if the CP member is using \$150,000 or more of federal funds and an independent cost/price evaluation is necessary.
- 2.3.4. The Vendor and the CP member agree on a Purchase Order. Purchase Orders/Supplemental Contracts are reported and sent by individual CP members to the Vendor and to HCDE/CP, where they are logged and filed.
- 2.3.5. The Vendor delivers product(s)/service(s) directly to the CP member and then invoices the CP member.
- 2.3.6. The Vendor receives payment directly from CP member.
- 2.3.7. The Vendor reports the administrative fee to HCDE/CP and pays the fee to HCDE/CP.

² See *News from the Div. of Grants Admin.: Procurement Question Added to EDGAR FAQ Doc.*, Texas Educ. Agency (July 2, 2015); *New EDGAR Regs. Frequently Asked Questions: Preliminary Guidance Applicable to all Federally Funded Grant Programs Administered by the Texas Educ. Agency* (2014); 2 C.F.R § 323(a) (cost or price analysis requirement).

3.0 INSTRUCTIONS TO VENDORS

3.1. 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 CSP. Vendors must follow the format instructions detailed below in preparing and submitting their proposals.

3.1.1 Required Format

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

3.1.2 The following items must be included in the **Response Attachment** section of the eBid System. Failure to include these items may result in non-award.

- 1) Completed 10.0 Attachment Packet, containing EDGAR and TX Ethics Commission documents
- 2) Pricing with coefficient – in Line Items
- 3) Insurance Coverage Certification (See Section 5.44).
- 4) Vendor's logo in JPEG format
- 5) Marketing Plan
- 6) Link to Vendor's website
- 7) Any applicable certificates (i.e., HUB, MWBE, SBE licenses, etc.)
- 8) Safety report showing the last 3 years of listed accidents
- 9) Surety letter showing Vendor's bonding capacity

3.1.3 Proposal Response Location

Proposals shall be received no later than the submittal day and time deadline **in the HCDE/CP eBid System**.

3.1.4 Submission of Proposals

HCDE/CP 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. Withdrawal of proposals will not be allowed for a period of 180 days following the opening. Withdrawal of proposals prior to the submission deadline is permitted. **Copyrighted proposals are unacceptable and may be disqualified.**

3.1.5 HCDE/CP Reservations

HCDE/CP reserves the right to:

- a) Cancel this solicitation in whole or in part, at the sole discretion of HCDE/CP.
- b) Accept, reject, or negotiate modifications in any terms of the Vendor's proposal or any parts thereof.
- c) Conduct oral interviews/discussions or presentations necessary to select the best value Vendor and/or to obtain competitive pricing.
- d) Reject and/or disqualify any or all proposals received, to award contracts for individual products or services as may appear advantageous, and to negotiate separately in any manner necessary to serve the best interest of HCDE/CP and/or CP members.
- e) Waive any formalities, technicalities, or other defects if deemed in the best interest of HCDE/CP and/or CP members; Request clarification and/or correction of Vendor(s) for the purpose of eliminating minor errors, clerical errors, and/or non-substantive irregularities.
- f) Be the sole judge of quality and equality.
- g) Award one or more contracts, in part or in whole, to a single or to multiple Vendors, in HCDE/CP sole discretion.
- h) Make all decisions regarding this CSP, including, without limitation, the right to decide whether a proposal substantially complies with the requirements of this CSP.

3.1.6 Financial Responsibility

HCDE/CP assumes no financial responsibility for any costs incurred by Vendors in developing and submitting

a proposal or any amendments or addenda, participating in pre-proposal meetings, participating in any negotiation sessions or discussions, or any other costs incurred by Vendors pursuant to this CSP.

3.1.7 Compliance with Specifications and Contract

Vendors are requested to submit a proposal offering their total line of available products and services that are commonly purchased by governmental entities, school districts, and other public, not-for-profit agencies and organizations. Proposals shall be deemed responsive if they comply with all material and administrative aspects of this CSP. Vendors are required to respond to all requests identified in this CSP and indicate their acceptance or objection to the terms of the CSP and the Contract terms in section 5 Terms and Conditions. Any exceptions to the terms and conditions in the CSP or the Contract must be clearly indicated in the Vendor's submitted proposal. Deviations or exceptions stipulated in a Vendor's response may result in disqualification. Any language to the effect that the Vendor does not consider this CSP to be part of a contractual obligation may result in the Vendor's proposal being disqualified. Each Vendor, by making its proposal, represents that the Vendor has read and understands the CSP and the Contract.

4.0 EVALUATION AND AWARD

4.1. **Award of Contract**

In accordance with applicable laws, rules, and regulations for public procurement, award(s) will be made to the responsible Vendor(s) whose proposal(s) is/are determined after evaluation by HCDE/CP to be the best value to HCDE/CP and to CP members. To qualify for evaluation, a proposal must have been submitted on time and must materially satisfy all mandatory requirements identified in this document.

4.2. **Competitive Range**

It may be necessary for HCDE/CP to establish a competitive range of acceptable proposals as part of the evaluation process. Proposals not in the competitive range are unacceptable and will not receive further award consideration.

4.3. **Conflict of Interest – EDGAR**

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 HCDE may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, through HCDE's written procedures, HCDE has set a de minimis amount of less than \$50 per year for items that are unsolicited and of minimal value and promotional items. Violations of this standard by an employee will be reported to the Superintendent's Office and addressed through HCDE's personnel policies. Violations of this standard by an officer or the Superintendent shall be addressed to the **Board President and addressed through HCDE Board policies.**

4.4. **Deviations and Exceptions to Requirements**

Deviations or exceptions stipulated in a Vendor's response may result in disqualification. Any language to the effect that the Vendor does not consider this CSP to be part of a contractual obligation may result in the Vendor's proposal being disqualified.

4.5. **Clarification and/or Discussions**

HCDE/CP may request clarification from Vendor(s) for the purpose of eliminating minor errors, clerical errors, and/or non-substantive irregularities. Clarification does not give a Vendor the opportunity to revise, change, or modify its proposal in any way except to the extent of correction of the error. Discussion between HCDE/CP and Vendor can also take place after the initial receipt of proposals. HCDE/CP reserves the right to conduct discussions with all, some, or none of the Vendor submitting proposals. HCDE/CP will not assist the Vendor in the revision or modification of its proposal, nor will HCDE/CP assist the Vendor in bringing its proposal to the same level of other proposals received by HCDE/CP.

Questions related to the CSP can be submitted online at <http://hcdeebid.ionwave.net> no later than five (5) business days prior to the submittal deadline date. All submitted questions and answers will be listed online. Questions will not be answered verbally or by phone.

4.6. **No Guarantee of Quantities**

HCDE/CP makes no guarantee or commitment of any kind concerning quantities that will actually be purchased under this CSP and the resulting contract, if any. HCDE/CP makes no guarantee or commitment of any kind regarding usage of any contracts resulting from this CSP.

4.8. **Minority and Women's Business Enterprise (MWBE), Historically Under-utilized Business (HUB) and Small Business Enterprise (SBE) Participation**

HCDE/CP encourages the use of HUB, MWBE, and SBE both as prime and subcontractors. However, these entities must meet the same minimum standards and requirements as the prime contractor. It will be the responsibility of the prime contractor to pre-qualify any subcontractors offered as HUB, MWBE and SBE participants. Some CP members have specific goals for subcontracting requirements and will require that a plan be attached to meet their goals. The Vendor shall also indicate on their submitted proposals whether or not they are a HUB, MWBE, or SBE vendor and with whom they are certified, e.g., State, City, Federal, and attach a copy of the certificate(s) under “Response Attachments” section of the eBid system.

4.9. **Formation of Contract (Execution of Offer)**

A response to this CSP is an offer to contract with HCDE/CP based upon the terms, conditions, scope of work, and specifications contained in this CSP. A CSP does not become a contract unless and until it is accepted by HCDE/CP after approval by the HCDE Board of Trustees. A contract is formed when either HCDE’s Superintendent or Assistant Superintendent for Business Support Services signs the Signature Form. The Vendor must submit a signed Signature Form, thus eliminating the need for the formal signing of a separate contract.

4.10. **Multiple Awards**

HCDE/CP reserves the right to award contracts to multiple vendors. The decision to award multiple contracts, award only one contract, or to make no awards rests solely with HCDE/CP. HCDE/CP may make multiple awards; this fact should be taken into consideration by each Vendor.

4.11. **Non-Exclusive Contract**

Any contract resulting from this CSP is non-exclusive and shall be awarded with the understanding and Contract that it is for the sole convenience of HCDE/CP and CP members. HCDE/CP and CP members are free to have multiple contracts for the awarded products and/or services and may initiate other procurement solicitations or procurement activity with other suppliers at any time, at HCDE’s or CP members’ sole discretion.

4.12. **Disqualification**

A Vendor may be disqualified before or after the proposals are opened upon evidence of collusion with the intent to defraud or evidence of intent to perform other illegal activities for the purpose of obtaining an unfair competitive advantage. A Vendor may also be disqualified before or after the proposals are opened in the event Vendor is out of compliance with an existing contract with HCDE/CP.

4.13. **Environmental Initiatives**

HCDE/CP is committed to reducing waste and promoting energy conservation. Toward that end, Vendors responding to this solicitation are encouraged to provide their company’s environmental policy and green initiative.

4.14. **Interpretation**

This solicitation represents the basis for any award and supersedes all prior offers, negotiations, exceptions and understandings (whether orally or in writing). Submitted proposals should be self-explanatory and should not require any clarification or additional information.

4.15. **No Return of Proposals**

Once submitted, HCDE/CP will not return proposals to Vendor.

4.16. **Non-Collusion Statement**

Vendors are required to certify a **Non-Collusion Statement**. (See Section 10.0 Attachments) Vendors are required to state the party submitting a proposal or bid, that such proposal or bid is genuine and not collusive or sham; that Vendor has not colluded, conspired, connived or agreed, directly or indirectly, with an entity or person, to put in a sham proposal or bid or to refrain from proposing, and has not in any manner, directly or indirectly, sought by Contract or collusion, or communication or conference, with any person, to fix the proposed price or of any other vendor, or to fix any overhead, profit or cost element of said proposed price, or of that of any other vendor, or to secure any advantage against HCDE/CP or any person interested in the proposed contract, and that all statements in said proposal are true.

- 4.17. **Open Records Policy**
HCDE/CP is a governmental body subject to the Texas Public Information Act. Proposals submitted to HCDE/CP as a result of this CSP may be subject to release as public information after contracts are executed or the procurement is terminated. If a Vendor believes that its response, or parts of its response, may be exempted from disclosure under Texas law, the Vendor must specify page-by-page and line-by-line the parts of the response which it believes are exempt. In addition, the Vendor 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. HCDE/CP assumes no obligation or responsibility relating to the disclosure or nondisclosure of information submitted by Vendors.
- 4.18. **Preferences**
HCDE/CP may apply applicable preferences for Texas resident Vendors in the event of a tie bid. Preferences must be explicitly claimed by Vendor and may not be applicable in procurements and/or contracts involving federal funds unless the procurement and/or contract involves unprocessed locally grown or locally raised agricultural products for use by HCDE/CP in a Child Nutrition Program. *See* TEXAS GOV'T. CODE §2252.001-.004; 2 C.F.R. § 200.319.
- 4.19. **Responsible Vendor**
HCDE/CP may only award contracts to Responsible Vendor(s) who possess the ability to perform successfully under the terms and conditions of a proposed procurement contract. A Responsible Vendor is a vendor who has adequate financial resources (or the ability to obtain such resources), can comply with the delivery requirements, and is a qualified and established firm regularly engaged in the type of business that provides the items listed herein. When determining if a vendor is responsible, HCDE/CP will consider the proposer's integrity, compliance with public policy, record of past performance, and financial and technical resources.
- 4.20. **Responsive Proposal**
Proposals shall be deemed responsive if they comply with all material and administrative aspects of this CSP.
- 4.21. **Similar Products or Materials**
Whenever product(s) and/or material(s) are referred by HCDE/CP in this solicitation by describing a proprietary product or by using the name of a manufacturer or brand name, the term "or equal" if not inserted shall be implied, as applicable. The specified product(s) and/or material(s) shall be understood as indicating type, function, minimum standard of design, efficiency and quality desired and shall not be construed as to exclude other manufactured products or comparable quality, design and efficiency, as applicable.
- 4.22. **Material Changes**
If a material change to a contract entered into between HCDE/CP and Vendor occurs, then the contract will not be renewed upon the conclusion of its term. Upon the expiration of the term, HCDE/CP may issue a new CSP for the goods or services procured under the previously-existing contract. Material change means a modification that substantially exceeds the terms of the original contract between HCDE/CP and Vendor.
- 4.23. **Appeal/Protest Process**
Any Vendor who submitted a proposal may appeal HCDE's award, if the appeal is based on deviations from laws, rules, regulations, or HCDE Board policies. HCDE Board Policy GF (Local) applies to any Vendor wishing to appeal a proposal and/or award of a contract. In accordance with Policy GF (Local), a Vendor shall submit a complaint/appeal form by hand-delivery, fax, or U.S. mail, to HCDE's Director of Choice Partners. Complaints/appeals must be received by the close of business on or before the 15th HCDE business day after award of the contract. In the event Vendor is unsure about the award of the contract, it is the Vendor's responsibility to contact Choice Partners on the next business day after the award is announced and verify details concerning the award.
- 4.24. **Evaluation of Proposals**
A committee of HCDE/CP employees and/or CP members will review and evaluate proposals and make a recommendation to the HCDE Board of Trustees. HCDE/CP will base a recommendation for contract award on the following factors:

Evaluation Factors	Weighted Value
(1) Price <ul style="list-style-type: none"> • Vendor’s proposed coefficient(s) 	30
(2) Vendor’s experience and reputation <ul style="list-style-type: none"> • References for local governmental entities and with a purchasing cooperative program • Local government agencies within the past 5 years • Other projects completed within the past 10 years 	20
(3) Quality of Vendor’s products/services and extent to which the products/services meet HCDE/CP and CP members’ needs, including: <ul style="list-style-type: none"> • JOC Project Management • JOC Infrastructure Solutions • Quality of Vendor’s Products/Service • Demonstrated ability (include line item estimate) to perform JOC work • Vendor’s proposed personnel – include organizational chart and resume’s 	20
(4) Impact on the ability of CP members to comply with laws and rules relating to HUB/MWBE/SBE, etc	0
(5) Vendor’s safety record, including current OSHA safety report	5
(6) Whether Vendor’s financial capability is appropriate to the size and scope of the project and the total long-term cost to HCDE/CP and CP members to acquire the products/services	10
(7) For a contract for goods and services, other than goods and services related to telecommunications and information services, building construction and maintenance, or instructional materials, whether the Vendor or the Vendor’s ultimate parent company or majority owner: <ul style="list-style-type: none"> (A) has its principal place of business in this state; or (B) employs at least 500 persons in this state³ 	0
(8) Vendor’s past relationship with HCDE/CP and/or CP members, including Vendor’s job order contracting relationship with HCDE/CP and/or CP members	7
(9) Marketing Plan	5
(10) Value Add Products/Services *	3
TOTAL POSSIBLE POINTS:	<u>100</u>

* “Value-Add” is other products and services that will enhance and add value to the contract for HCDE/CP and CP members. HCDE/CP reserves the right to accept or reject additional proposed services or products in the best interests of HCDE/CP and CP members.

³ As a general rule, HCDE/CP may not apply geographic preferences for procurements involving federal funds. *See* 2 C.F.R. § 200.319. However, HCDE/CP may apply an optional geographic preference in the procurement of unprocessed locally grown or locally raised agricultural products for use in a Child Nutrition Program. *See* 2 C.F.R. §§ 210 (National School Lunch Program), 215 (Special Milk Program for Children), 220 (School Breakfast Program), 225 (Summer Food Service Program), 226 (Child and Adult Care Food Program).

5.0 CONTRACT TERMS AND CONDITIONS

These Contract Terms and Conditions are part of the final contract in each product and/or service contract awarded as a result of this CSP and are part of the terms and conditions of each Purchase Order, Job Order, or proposal forms issued in connection with this CSP. Vendors are responsible for identifying any exceptions to these terms and conditions. **ANY EXCEPTIONS MUST BE NOTED DIRECTLY BELOW EACH OF THE RESPECTIVE TERMS AND CONDITIONS.** Proposals that are qualified with conditional clauses, items not called for, or other irregularities may be considered non-responsive by HCDE/CP and eliminated from further consideration.

**CONTRACT BETWEEN
HARRIS COUNTY DEPARTMENT OF EDUCATION AND
("VENDOR")
FOR
JOB ORDER CONTRACTING, IDIQ PUBLIC WORK,
MINOR CONSTRUCTION, MAINTENANCE, AND RENOVATION WORK**

This Contract is entered into between HCDE/CP and Vendor, having submitted a proposal in response to this CSP issued by HCDE/CP and whose proposal has been accepted and awarded by HCDE. In consideration of the mutual covenants and conditions contained in this Contract and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, HCDE/CP and Vendor, intending to be legally bound, and subject to the terms, conditions, and provisions of this Contract, agree as follows:

5.1. Definitions

The terms used in this Contract shall have the meanings assigned to them in **Section 1.0 Notice of Intent** of the CSP.

5.2. Use of Contract by CP members

Vendor agrees and understands that this CSP and Contract may be used to accomplish work for HCDE/CP, a local governmental entity. Vendor further agrees and understands that this CSP and Contract may also be utilized by CP members pursuant to the piggyback method, as contemplated in the U.S. Department of Agriculture Memorandum SP 35-2012, *Procuring Services of Purchasing Cooperatives, Group Purchasing Organizations, Group Buying Organizations, etc.* ("SP 35-2012). Vendor agrees and understands that CP members include "school food authorities," as that term is used in SP 35-2012.

5.3. Contract Terms; Amendment

The terms and conditions of this Contract shall govern all procurements conducted hereunder. No pre-published terms on Vendor's Purchase Order, acknowledgments, invoices, or other forms shall have any force or effect unless expressly agreed to by the CP member and Vendor. No amendment of this Contract shall be permitted unless and until first approved in writing by HCDE/CP and, if necessary, the CP member(s), and no such amendment shall have any effect unless and until a written amendment to this Contract is executed by the HCDE Superintendent or his designee after any necessary approvals have been obtained from the HCDE Board of Trustees. In the event that a Vendor has an existing HCDE/CP contract in the same contract title, upon award, the new contract will immediately supersede the older contract, if applicable.

5.4. Term of Contract; Renewal of Contract

The initial term of this Contract is for a period of two (2) years, with HCDE/CP having the option to renew the Contract for three (3) additional one-year terms, at HCDE's sole discretion, unless otherwise specified in **Section 6.0 Scope of Proposal**. Consequently, the total term of the Contract may be for a period of **five (5) years**. The phrase "Term" in this Contract shall mean the then-current Term of the Contract, whether an initial term or a renewal term.

5.5. Termination of Contract; Survival

This Contract shall remain in effect until (1) the Contract expires by its terms or (2) the Contract is terminated by mutual consent of HCDE/CP and Vendor. All Supplemental Contracts, purchase orders, and/or orders for goods or services issued by HCDE and/or CP members and accepted by Vendor shall survive the expiration or

termination of this Contract. During the term of any Supplemental Contract entered into between Vendor and a CP member, all terms of this Contract shall continue to apply to the Supplemental Contract.

In the event of a breach or default of the Contract and/or the CSP by Vendor, HCDE/CP reserves the right to enforce the performance of the Contract in any manner prescribed by law or deemed to be in the best interest of HCDE/CP and/or CP members. HCDE/CP further reserves the right to terminate the Contract immediately in the event Vendor fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in the CSP, this Contract, and/or a Purchase Order; (2) make any payments owed; or (3) otherwise perform in accordance with this Contract and/or the CSP. HCDE/CP also reserves the right to terminate the Contract immediately, with written notice to Vendor, if HCDE/CP believes, in its sole discretion that it is in the best interest of HCDE/CP and/or CP members to do so.

In the event that a material change to the terms of the Contract occurs, then the Contract shall be allowed to expire and shall not be renewed upon the conclusion of the Contract's term. The phrase "material change" in this paragraph shall mean a modification that substantially exceeds the terms of the original contract between HCDE/CP and Vendor. Upon the expiration of the Contract's term, HCDE/CP may issue a new CSP for the goods or services procured under the previous contract.

Vendor agrees that HCDE/CP shall not be liable for damages in the event that HCDE/CP declares Vendor to be in default or breach of this Contract and/or the CSP. Vendor further agrees that upon termination of the Contract for any reason, Vendor shall, in good faith and with reasonable cooperation, aid in the transition to any new arrangement and/or Vendor.

5.6. **Buy America Act; Prevailing Wage Rates**

Buy American Act

The Buy American Act, set forth in 7 C.F.R. Part 210.21(d), requires that participants in the National School Lunch Program and School Breakfast Program use the federal nonprofit food service funds, to the maximum extent practical, to buy domestic commodities or products. 7 CFR Part 210.21(d) defines a "domestic commodity or product" 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. "Substantially" means that over 51 percent of the final processed product consists of agricultural commodities that were grown domestically.

Because many HCDE/CP members participate in the National School Lunch Program and School Breakfast Program, HCDE/CP requires Vendor to certify whether its products are "domestic commodities or products", as defined by 7 C.F.R. Part 210.21(d). Accordingly, Vendor agrees to provide certification of the domestic content in the parts, components, and other elements contained in the product, including specific information about the percentage of U.S. content from the supplier (i.e., manufacturer or distributor).

Exceptions to the Buy American provision should be used as a last resort; however, an alternative or exception may be approved by the CP member, upon request. To be considered for an exception to the Buy American provision, Vendor may submit a good faith request for an exception, certifying that Vendor reasonably believes that:

- (a) the product is not produced or manufactured in the U.S. in sufficient and reasonable available quantities of a satisfactory quality; and/or
- (b) the costs of a U.S. product are significantly higher than the non-domestic product.

In the event Vendor or Vendor's supplier(s) are unable or unwilling to certify compliance with the Buy American Provision, or the applicability of an exception to the Buy American provision, HCDE/CP members may decide not to purchase from Vendor.

Additionally, HCDE/CP members may require country of origin on all products and invoices submitted for payment by Vendor, and Vendor agrees to comply with any such requirement.

Prevailing Wage Rates

Vendor and all subcontractors of Vendor shall comply with all laws regarding prevailing wage rates, including, but not limited to, TEX. GOV'T. CODE Chapter 2258, applicable to the construction of a public work, and any

related federal requirements, including the DAVIS-BACON ACT. In the event TEX. GOV'T. CODE Chapter 2258 applies to a product or service provided by Vendor to HCDE/CP or a CP member, Vendor and any subcontractor(s) shall comply with the prevailing wage rates set by HCDE/CP or the CP member.

5.7. **Change Orders**

Pursuant to TEX. EDUC. CODE § 44.0411(a), for HCDE/CP and CP members that are Texas school districts, if a change in plans or specifications is necessary after the performance of a Purchase Order or Job Order has begun or if it is necessary to decrease or increase the quantity of work to be performed or of materials, equipment, or supplies to be furnished, the CP member may approve change orders making the changes. The total Purchase Order or Job Order price may not be increased because of the changes unless additional money for increased costs is approved for that purpose from available money or is provided for by the authorization of the issuance of time warrants. The CP member may grant general authority to an administrative official to approve the change orders. A Purchase Order or Job Order with an original contract price of \$1 million or more may not be increased under TEX. EDUC. CODE § 44.0411(a) by more than 25 percent. If a change order for a Purchase Order or Job Order with an original contract price of less than \$1 million increases the contract amount to \$1 million or more, the total of the subsequent change orders may not increase the revised contract amount by more than 25 percent of the original contract price.

5.8. **Compliance with Laws**

Vendor shall comply with all applicable federal, state, and local laws, statutes, ordinances, standards, orders, rules, and regulations, including, as applicable, workers' compensation laws; minimum and maximum salary and wage statutes and regulations; prompt payment and licensing laws and regulations; anti-discrimination statutes and regulations (Title VI of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title 7 C.F.R. Parts 15, 15a, and 15b; the Americans with Disabilities Act; and FNS Instruction 113-1, Civil Rights Compliance and Enforcement—Nutrition Programs and Activities); the Davis-Bacon Act (40 U.S.C. § 276a / 29 CFR Part 5); the Copeland "Anti-Kickback" Act (18 U.S.C. § 874 / 29 CFR Part 5); the Equal Opportunity Employment requirements (Executive Orders 11246 and 11375 / 41 CFR Chapter 60); the McNamara-O'Hara Service Contract Act (41 U.S.C. 351); Section 306 of the Clean Air Act (42 U.S.C. § 1857h); Section 508 of the Clean Water Act (33 U.S.C. § 1368); Executive Order 11738, Environmental Protection Agency regulations (40 CFR Part 15); the Contract Work Hours and Safety Act (40 U.S.C. § 3701-3708; 29 C.F.R. Part 5); the Solid Waste Disposal Act (Section 6002 as amended by the Resource Conservation and Recovery Act for procuring solid waste management services in a manner that maximizes energy and resource recovery when contract amount is in excess of \$10,000); the Education Department General Administrative Regulations ("EDGAR") (2 C.F.R. Part 200); mandatory standards and policies contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871); and all applicable requirements and regulations, including those related to reporting, patent rights, copyrights, data rights, and those mandated by federal agencies making awards of federal funds to HCDE/CP and/or CP members. Vendor understands that Vendor is ineligible to receive a contract award with HCDE/CP if Vendor or its principal(s) is listed on the government wide exclusions in the System for Award Management (Debarment and Suspension Orders Executive Orders 12549 and 12689) or is 30 days or more delinquent in paying child support (Tex. Fam. Code § 231.006). For the entire duration of this Contract, Vendor and all subcontractors shall maintain all required licenses, certifications, permits, and any other documentation necessary to perform this Contract. All permits will be acquired by Vendor and invoiced to the CP member at cost as part of the Purchase Order, unless the permits are provided by the CP member. For the entire duration of this Contract, Vendor and all subcontractors shall also comply with all requirements pertaining to local, state, or federal health and safety certifications, licensing, or regulations. Vendor must comply with all state and local building code requirements unless otherwise specifically provided in the CP member's Purchase Order, and Vendor must pay all fees and charges for connections to outside services and for use of property outside the project site. The states of individual CP members may have regulations and laws that govern payment retention and progress payments for public projects. Vendor is responsible for being acquainted with and complying with each state's requirements. When required or requested by HCDE/CP or a CP member, Vendor shall furnish HCDE/CP and/or the CP member with satisfactory proof of Vendor's compliance with this provision.

5.9. **Confidentiality**

Vendor and HCDE/CP agree to secure the confidentiality of all information and records in accordance with applicable federal and state laws, rules, and regulations. Vendor and HCDE/CP 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 HCDE/CP and numerous CP members are subject to the Texas Public Information Act, and Vendor waives any claim against and releases from liability HCDE/CP and CP members, their respective officers, employees, agents, and attorneys with respect to disclosure of information provided under or in this Contract or otherwise created, assembled, maintained, or held by Vendor, HCDE, or a CP member and determined by HCDE/CP or the CP member, the Attorney General of Texas, or a court of law to be subject to disclosure under the Texas Public Information Act.

5.10. **Performance and Payment Bonds**

Vendor agrees to provide performance bonds and/or payment bonds as required by law, based on the amount or estimated amount of any Purchase Order or Job Order for a public work contract, which is defined as a contract for constructing, altering, or repairing a public building or carrying out or completing any public work. TEX. GOV'T. CODE §§ 2253.001(4); 22269.411. Pursuant to TEX. GOV'T. CODE § 2253.021, a performance bond is required if a Purchase Order is in excess of \$100,000 for CP members that are governmental entities subject to Chapter 2253; a payment bond is required if a Purchase Order or Job Order is in excess of \$25,000 for CP members that are governmental entities subject to Chapter 2253 and are not municipalities or a joint board created under Subchapter D, Chapter 22 of the Tex. Transp. Code, and a payment bond is required if a Purchase Order or Job Order is in excess of \$50,000 for CP members that are governmental entities subject to Chapter 2253 and are municipalities or a joint board created under Subchapter D, Chapter 22 of the TEX. TRANSP. CODE. Additionally, Vendor shall provide all bonds, including bid guarantee, performance bond, and payment bond, as applicable under U.S. Department of Agriculture and/or Texas Department of Agriculture rules.

5.11. **Title and Risk of Loss**

Whenever HCDE/CP or a CP member is purchasing (and not leasing) a product under this Contract, title and risk of loss shall pass upon the later of HCDE/CP or the CP member's acceptance of the product or payment of the applicable invoice.

5.12. **Warranty Conditions**

All product(s) and/or service(s) provided by the Vendor under this Contract 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 HCDE's or the CP member's acceptance of the product and/or service or payment of the applicable invoice. Vendor warrants that all products and/or services furnished under this Contract shall conform in all respects to the terms of this Contract, including any drawings, specifications, and/or standards incorporated herein, including, without limitation, those detailed in the CSP and Purchase Order. In addition, Vendor warrants that products 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 Contract, the CSP, or Purchase Order.

5.13. **Criminal History Review**

Section 10.0 Attachment–SB 9 Contractor Certification: Contractor Employees (Required) and Attachment–SB 9 Contractor Certification: Subcontractor Form (If Applicable) must be submitted with packet, if applicable.

Prior to commencing any work under the Contract, if Vendor contracts with HCDE/CP 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 TEX. EDUC. 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 TEX. EDUC. CODE, Chapter 22 requirements from any subcontractors on the form provided herein. Covered employees with disqualifying criminal history are prohibited from serving at HCDE/CP or at CP school district members' locations; 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). Covered employees do not include employees of a contracting or subcontracting entity that is providing engineering, architectural, or construction services on a project to design, construct, alter, or repair a public work if: (1) the public work does not involve the construction, alteration, or repair of an instructional facility as defined by Texas Education Code Section 46.001; (2) the employee's duties will be completed more than seven (7) days before a new instructional facility will be used for instruction; or (3) for an existing instructional facility, the work area contains sanitary facilities separated from all areas used by students by a fence at least six (6) feet high, and the Contractor adopts, informs employees of, and enforces a policy prohibiting employees and any subcontractor's employees from interacting with students or entering areas used by students. Tex. Educ. Code §§ 22.0834(a-1), .08341. The criminal history record information review obligation applies only if Vendor contracts with HCDE/CP to provide services; it does not apply to a contract for the purchase of goods, products or real estate.

5.14. Customer Support

Vendor shall provide timely and accurate technical advice and sales support to HCDE/CP staff, and CP members. Vendor shall respond to requests for customer support within one (1) business day after receipt of the request. Vendor shall provide training to HCDE/CP staff and/or CP members regarding products and/or services supplied by Vendor, at no additional charge, if requested by HCDE/CP or a CP member.

5.15. HCDE/CP and/or CP members' Property

In the event of loss, damage, or destruction of any property owned by or loaned by HCDE/CP or a CP member that is caused by Vendor or Vendor's representative, agent, employee, or contractor, Vendor shall indemnify HCDE/CP or the CP member and pay to HCDE/CP or the CP member 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 HCDE's or the CP member's determination of the amount due. If Vendor fails to make timely payment, HCDE/CP or the CP member 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 HCDE/CP or the CP member.

5.16. Tax Exempt Status

HCDE/CP and all CP members that are Texas governmental entities or agencies are exempt from payment of Texas State Sales Taxes under TEXAS TAX CODE § 151.310 for the purchase of tangible personal property. Laws of other states govern the tax status of CP members in states other than Texas. Vendor represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, without limitation, any federal, state, or local income, sales or excise taxes of Vendor or its employees. HCDE/CP and CP members shall not be liable for any taxes resulting from this Contract, except where otherwise required by law.

5.17. Other State Tax Requirements

5.17.1. Payment of Taxes by CP members Outside of Texas – CP members outside of Texas will pay only the rate and/or amount of taxes identified in Vendor's proposal submitted in response to the CSP as appropriate to the specific CP member.

5.17.2. State and Local Transaction Privilege Taxes – The CP member is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sales of products and are the sole responsibility of Vendor, as the seller, to remit. Failure to remit taxes from HCDE/CP and/or the CP member, as the buyer, does not relieve Vendor, as the seller, from its obligation to remit taxes.

5.18. State of Texas Franchise Tax

By submitting a proposal in response to the CSP, Vendor certifies that Vendor is not currently delinquent in Vendor's payment of any franchise taxes or other taxes owed to the State of Texas.

5.19. Tax Responsibilities of Vendor and Indemnification for Taxes

Vendor is responsible for complying with the tax laws of states and the federal government. Vendor and all subcontractor(s) of Vendor shall pay all federal, state, and local taxes applicable to Vendor's operation, any

persons employed by Vendor, and all subcontractors of Vendor. Vendor shall require all subcontractors to hold HCDE/CP and the CP member 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.

5.20. **IRS W-9**

To receive payment under this Contract, Vendor shall have a current I.R.S. W-9 Form on file with the CP member.

5.21. **Assignment of Contract**

Vendor may not assign this Contract or any of its rights, duties or obligations hereunder without the prior written approval of HCDE. Any attempted assignment of this Contract by Vendor shall be null and void. Any Purchase Order or Job Order made as a result of this Contract 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 HCDE/CP and, if applicable, the CP member.

5.22. **Notification of Material Change**

Vendor is required to notify HCDE/CP when any material change in operations occurs, including 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.

5.23. **Performance**

Vendor agrees to use commercially reasonable best efforts to provide the product(s) and/or service(s) subject to this Contract. Vendor shall furnish all supervision, labor, tools, equipment, permits, licenses, transportation, insurance, material, and supplies necessary to complete any scope of work, Purchase Order, or Job Order under this Contract. Vendor shall use skilled, trained personnel, who shall be supervised by Vendor.

5.24. **Subcontractors**

If Vendor uses subcontractors in the performance of any part of this Contract, Vendor shall be fully responsible to HCDE/CP and CP members for all acts and omissions of the subcontractors. Nothing in this Contract shall create for the benefit of any such subcontractor any contractual relationship between HCDE/CP and any such subcontractor, nor shall it create any obligation on the part of HCDE/CP or CP members to pay or to see to the payment of any monies due any such subcontractor except as may otherwise be required by law. Vendor represents and warrants that it is willing, able, and capable of obtaining, supervising, and being responsible for any subcontractors who perform and/or provide products and services related to this Contract.

If Vendor uses subcontractors in the performance of any Purchase Order or Job Order issued as a result of a Job Order Contract awarded via this procurement solicitation, subcontractors must issue their Job Order Quotes using the same pricing method(s) outlined in the procurement solicitation and according to Texas Government Code Chapter 22269, Subchapter I, Job Order Contracts Method.

5.25. **Non-Appropriation**

Renewal of this Contract, if any, will be in accordance with TEX. LOCAL GOV'T. CODE § 271.903 concerning non-appropriation of funds for multi-year contracts. Notwithstanding any other provision of this Contract or obligation imposed on HCDE/CP or any CP member by this Contract, HCDE/CP and CP members shall have the right to terminate this Contract, any Supplemental Contract, Purchase Order, and/or Job Order without default or liability to Vendor resulting from such termination, effective as of the expiration of each budget period of HCDE/CP or any CP member if it is determined by HCDE/CP or any CP member, at their sole discretion, that there are insufficient funds to extend this Contract, any Supplemental Contract, any Purchase Order. The parties agree that this Contract, any Supplemental Contract, any Purchase Order, and/or any Job Order are commitments of the current revenue of HCDE/CP and CP members only.

5.26. **Ordering Procedures**

Purchase Orders/Job Orders are issued by HCDE/CP and/or CP members to the Vendor according to this Contract and any Supplemental Contract between HCDE/CP and the CP member. CP members must send Purchase

Orders/Job orders to HCDE/CP, unless otherwise stipulated by HCDE/CP. HCDE/CP may request confirmation of receipt of the Purchase Order/Job Order from Vendor.

HCDE/CP also may elect to require e-commerce functionality, in which Purchase Orders/Job Orders are sent directly to Vendor and reported by the CP member to HCDE/CP on a specified basis. The e-commerce approach must be approved by HCDE/CP prior to the start date of any Term of the Contract.

5.27. **Invoices; Payments**

5.27.1. Vendor shall submit invoices, in duplicate, directly to HCDE/CP or the CP member at the appropriate location(s) specified by HCDE/CP or the CP member. Each invoice shall include HCDE's or the CP member's Purchase Order/Job Order number and HCDE/CP Contract Number. All invoices shall be itemized to include the type of product(s) and/or service(s) rendered. Vendor shall submit invoices within a timely manner during HCDE's or the CP member's fiscal year in which the product(s) and/or service(s) are purchased. The shipment tracking number or pertinent information for verification of HCDE's or the CP member's receipt shall be made available upon request by HCDE/CP or the CP member.

5.27.2. HCDE/CP or the CP member will make payments directly to Vendor. HCDE/CP or the CP member placing the Purchase Order/Job Order with Vendor shall alone be liable and/or responsible for payment for product(s) and/or service(s) ordered and must be invoiced directly by Vendor. Neither HCDE/CP nor any CP member shall be liable for the indebtedness of any one CP member.

5.27.3. TEX. GOV'T. CODE § 2251.021 shall govern when payments are due to the Vendor. Payments are due to Vendor by HCDE/CP and any CP member whose governing body meets only once a month or less frequently, **within forty-five (45) days** after the later of the following: (1) the date HCDE/CP or the CP member receives the products and services under the Contract; (2) the date the performance of the service under the Contract is completed; or (3) the date HCDE/CP or the CP member receives an invoice for the products or service. For CP members whose governing bodies meet more than once a month or more often, payments are due by those CP members **within thirty (30) days** after the later of the following: (1) the date the CP member receives product(s) under the Contract; (2) the date the performance of the service under the Contract is completed; or (3) the date the CP member receives an invoice for product(s) or service(s). Vendor agrees to pay any subcontractors the appropriate share of the payment received from HCDE/CP or the CP member not later than the **tenth (10th) day** after the date the Vendor receives the payment from HCDE/CP or the CP member.

The exceptions to payments made by HCDE, a CP member, and/or Vendor listed in TEX. GOV'T. CODE § 2251.002 shall apply to this Contract.

5.28. **Reporting**

The Vendor shall provide HCDE/CP with a detailed monthly report showing the total dollar volume of all sales under this Contract for the previous month in Microsoft Excel format, in the format and with the information specified by HCDE/CP. Reports are due on the **fifteenth (15) day of the month**, after the close of the previous month and shall provide information regarding Purchase Orders/Job Orders during the previous month. Vendor is responsible for collecting and compiling all sales under this Contract from all CP members and submitting **one (1)** consolidated monthly report. The monthly report shall include, at a minimum, the date of each Purchase Order/Job Order, Purchase Order/Job Order number, CP member name, city/town, and Purchase Order total dollar amount. Reports shall be submitted in an electronic format to HCDE/CP at 6005 Westview, Houston, Texas 77055, or electronically mailed to facilityreporting@choicepartners.org. **Reports are required even if there is no activity to report.**

5.29. **Pricing Changes**

All prices and discount percentages in Vendor's proposal shall be firm for the Term of this Contract. Pricing may be negotiated during the Contract renewal period. Vendor agrees to promptly lower the proportionate price of any product purchased through this Contract following a reduction in the price the Vendor is paying suppliers. All pricing submitted to HCDE/CP in Vendor's proposal shall include the administrative fee to be remitted to

HCDE/CP by Vendor. It is Vendor's responsibility to keep all pricing up-to-date and on file with HCDE/CP. All price changes shall be presented to HCDE/CP for acceptance or rejection by HCDE/CP, in its sole discretion, using the same format as was accepted in Vendor's original proposal; all price changes for products and/or services provided under this Contract must be approved, in writing, by HCDE/CP 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

All price decreases shall be allowed for all products and/or services.

5.30. **HCDE/CP Administrative Fee**

HCDE/CP will invoice Vendor for the HCDE/CP Administrative Fee of **4%**, subject to the Administrative Incentive Clause, below. HCDE/CP reserve the right to modify the Administrative Fee at any time, upon notice to Vendor. The invoice for the Administrative Fee will be based on total sales made through this Contract. Vendor shall remit payment of the HCDE/CP Fee to HCDE/CP no later than **thirty (30)** days following the end of the month. Failure to pay the HCDE/CP Administrative Fee in a timely manner may result in Vendor breaching this Contract and may result in HCDE/CP suspending or terminating this Contract. Vendor shall honor and pay HCDE/CP the HCDE/CP Administrative Fee for any sales resulting from this Contract that occurred within **thirty (30) days** of the expiration or termination of this Contract. All rebates, discounts, and other applicable credits granted by Vendor as a result of any Supplemental Contracts entered into between Vendor and CP members shall accrue exclusively to CP member(s).

Administrative Fee Incentive Clause. The following incentives will be determined in the sole discretion of HCDE/CP and will be based on amounts actually billed by Vendor. Vendor's failure to abide by the Contract's terms and conditions, including, without limitation, Vendor's requirement to report sales to HCDE/CP, may result in HCDE/CP voiding the Administrative Fee Incentive, in HCDE/CP's sole discretion.

One-Year Term(s)

- **Gross sales above \$5M invoiced by Choice Partners = 3% for remainder of the then-current Contract Term**
- **Subsequent renewal 1-year Term = 3.75% and Vendor must maintain production of \$5M to keep 3.75% fee for the next subsequent renewal 1-year Term**

Individual Job Orders

- **\$2M or above = 3.5% only in the Contract Term in which they are invoiced**
- **\$1M or above = 3.75% only in the Contract Term in which they are invoiced**

5.31. **Records Retention**

Vendor shall maintain its records and accounts in a manner that shall assure a full accounting for all product(s) and/or service(s) provided by the Vendor to HCDE/CP and/or CP members under this Contract. These records and accounts shall be retained by Vendor and made available for review and copying by HCDE/CP and CP members for a period of **not less than three (3) years** from the date of completion of the service(s), receipt of product(s), the date of the receipt by HCDE/CP or the CP member of Vendor's final invoice or claim for payment in connection with this Contract, or the date HCDE/CP or the CP member makes final payments and closes pending matters in connection with a federal grant, whichever is later. If an audit or a compliance review has been announced, the Vendor shall retain its records and accounts until such audit or compliance review has been completed.

When federal funds are expended by HCDE or any CP member pursuant to this Contract, 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.

5.32. **Right to Review, Audit and Inspect**

HCDE/CP, CP members, any federal agency that has awarded federal funds/grant(s) to HCDE/CP or a CP member, and the Comptroller General of the United States, and/or any of their authorized representatives, shall, upon written notice, have the right to audit and examine all of Vendor's records and accounts relating to this Contract and inspect any project performed by the Vendor relating to this Contract. Records subject to audit/review shall include, but are not limited to, all Purchase Orders and/or Job Orders resulting from this Contract and records which may have a bearing on matters in connection with the Vendor's work for HCDE/CP and/or CP members, and shall be open to inspection and subject to audit/review and/or reproduction by HCDE/CP, CP member, and/or their authorized representative(s) to the extent necessary to adequately permit evaluation and verification of:

5.32.1. Vendor's compliance with this Contract and the requirements of the CSP.

5.32.2. Compliance with procurement laws, policies, and procedures, including, without limitation, reviewing/comparing pricing on invoices and the appropriate Unit Price Book for JOC work performed for HCDE/CP and/or CP members.

5.32.3. Compliance with provisions for computing billings to HCDE/CP and/or to CP members.

5.32.4. Any other matter related to this Contract.

5.33. **Indemnification**

VENDOR SHALL INDEMNIFY AND HOLD HARMLESS HCDE/CP AND EACH CP MEMBER, INCLUDING HCDE'S AND CP MEMBERS' TRUSTEES, OFFICERS, ADMINISTRATORS, EMPLOYEES, AND AGENTS, FROM ALL CLAIMS, LIABILITIES, COSTS, SUITS OF LAW OR IN EQUITY, EXPENSES, ATTORNEYS' FEES, FINES, PENALTIES OR DAMAGES ARISING FROM ACTS OR OMISSIONS OF VENDOR, VENDOR'S EMPLOYEES, AGENTS, OR SUBCONTRACTORS, IN CONNECTION WITH THIS CONTRACT, 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 HCDE/CP OR THE CP MEMBER.

5.34. **Governing Law and Exclusive Venue**

The laws of the State of Texas, without regard to its provisions on conflicts of laws, govern this Contract. Any dispute under this Contract involving HCDE/CP must be brought exclusively in the state and federal courts located in Houston, Harris County, Texas. Any dispute not involving HCDE/CP but involving a CP member and Vendor shall be governed by the laws of the state of the CP member, without regard to its provisions on conflicts of laws, and exclusive jurisdiction and venue shall lie in the city, county, and state of the CP member.

5.35. **Multiple Contract Awards; Non-Exclusivity**

HCDE/CP reserves the right to award multiple contracts under the CSP, including multiple contracts for each product/service category. Product/Service categories are established at the sole discretion of HCDE/CP. Nothing in this Contract may be construed to imply that Vendor has the exclusive right to provide products and/or services to HCDE/CP and/or CP members. During the Term of this Contract, HCDE/CP and CP members reserve 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. In the event that a Vendor has an existing HCDE/CP contract in the same contract title, upon award the new contract will immediately supersede the older contract.

5.36 **New Products**

New products that meet the specifications detailed in the CSP may be added to this Contract, with prior written approval from HCDE/CP. 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 the contract if: the replacing products

are equal to or superior to the original products offered or discounted in a similar degree or to a greater degree and the products meet the requirements of the CSP. No products may be added to avoid competitive procurement procedures. HCDE/CP may reject any proposed additions, without cause, in its sole discretion.

5.37. **No Substitution**

Any Purchase Order issued pursuant to this Contract shall conform to the specifications and descriptions identified in this Contract and the CSP. Vendor shall not deliver substitutes without prior written authorization from HCDE/CP or the CP member.

5.38 **Penalties**

If the Vendor is unable to provide the product(s) or services at the prices quoted in Vendor's proposal or if Vendor fails to fulfill or abide by the terms and conditions of the Contract, the CSP, or a Supplemental Contract, HCDE/CP or the CP member may take the following action(s), in the sole discretion of HCDE/CP or the CP member, and Vendor agrees to comply with the chosen action(s):

- 5.38.1 Insist that the Vendor honor the quoted price(s) specified in Vendor's proposal or the Supplemental Contract, as applicable;
- 5.38.2 Have the Vendor pay the difference between the Vendor's price and the price of the next acceptable proposal, as determined by HCDE/CP or the CP member;
- 5.38.3 Have the Vendor pay the difference between Vendor's price and the actual purchase price of the product or service on the open market; and/or
- 5.38.4 Recommend to HCDE Board of Trustees that the Vendor no longer be given the opportunity to submit a proposal to HCDE/CP and/or that this Contract be terminated.

5.39. **Promotion of Contract Marketing Plan**

The marketing of Vendor's company, product, and/or services shall be the sole responsibility of Vendor. HCDE/CP may only supply Vendor with CP members' contact lists that contain name, address, phone numbers, and/or email addresses. Other items geared toward the joint-marketing of HCDE/CP and Vendor's company, product, and/or services shall be at HCDE/CP's sole discretion. Encouraging CP members to circumvent this Contract by purchasing directly from Vendor may result in suspension or termination of this Contract. For so long as this Contract is valid and enforceable between the parties, Vendor agrees to display the CP seal in its marketing collateral materials, such as Vendor's website and related marketing materials. Vendor shall submit all promotional materials to HCDE/CP and obtain written approval before Vendor finalizes or publishes promotional material bearing the HCDE/CP or HCDE/CP name or seal. Vendor may not release any press release or other publication regarding this Contract or HCDE/CP unless and until HCDE/CP first approves the press release or publication in writing.

5.40. **Website Support**

Vendor agrees to cooperate with HCDE/CP in publicizing contract particulars on the CP website. Vendor also agrees to work with HCDE/CP in updating and maintaining current information on Vendor activities related to the Contract on the CP website. Vendor agrees to provide an electronic version of its logo for use on the CP website upon Contract award and provide other information as reasonably requested by HCDE/CP to help ensure that the CP website is current and consistently updated.

5.41. **Safety**

Vendor, its subcontractor(s), 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 Contract, including, without limitation, those promulgated by HCDE/CP, CP members, and by the Occupational Safety and Health Administration ("OSHA"). In case of conflict, the most stringent safety requirements shall govern. Vendor shall comply with all other safety guidelines and standards as required by HCDE/CP or CP members. Vendor shall indemnify and hold HCDE/CP and/or the CP member 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.

5.42. **Workforce**

Vendor shall employ only orderly and competent workers, skilled in the performance of the services, if any, which shall be performed under this Contract. 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 HCDE/CP and CP members' property, nor may such workers be intoxicated or under the influence of alcohol or drugs on HCDE/CP and CP members' property.

5.43. **Supplemental Contracts**

A CP member and Vendor may enter into a separate, Supplemental Contract. Any Supplemental Contract developed as a result of this Contract and/or the CSP is exclusively between the CP member and Vendor and shall have no effect or impact on HCDE, any other CP member, or this Contract. Any Supplemental Contract between Vendor and a CP member is exclusively between that specific CP member and Vendor and will be subject to immediate cancellation by the CP member (without penalty to the CP member) if, in the opinion of the CP member, the quality, service, and specification requirements, and/or the terms and conditions are not maintained as stated in the Supplemental Contract. Vendor shall promptly notify HCDE/CP of any Supplemental Contract executed between Vendor and a CP member. Supplemental Contracts are entered into pursuant to the piggyback method delineated in the U.S. Department of Agriculture directive SP 35-2012.

5.44. **Insurance**

Vendor is required to provide HCDE/CP and/or the CP member with copies of certificates of insurance, naming HCDE/CP and/or the CP member as additional insured's for Texas Workers Compensation and General Liability Insurance, **within 14 business days of contract award and prior to the commencement of any work under this Contract.** 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 HCDE/CP and/or the CP member prior to commencement of any work under this Contract. The insurance company insuring Vendor shall be licensed in the State of Texas or the state in which the CP member is located, and shall be acceptable to HCDE/CP and/or the CP member. Vendor shall give HCDE/CP or the CP member 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 Contract to maintain coverage as specified below. Vendor shall, at all times during the Term of this Contract, maintain insurance coverage with not less than the type and requirements shown below. If the CP member has higher insurance requirements than those listed below, such may be added to the Purchase Order. Such insurance is to be provided at the sole cost of the Vendor. These requirements do not establish limits of Vendor's liability.

All policies of insurance shall waive all rights of subrogation against HCDE, CP members, and HCDE/CP and CP members' officers, employees and agents.

Upon request, certified copies of original insurance policies shall be furnished to HCDE/CP and/or to CP members.

HCDE/CP and the CP member, as requested, shall be named as an "additional insured" on insurance policies.

HCDE/CP and the CP member reserve the right to require additional insurance should HCDE/CP or the CP member deem additional insurance necessary, in their sole discretion.

- Workers Compensation (with waiver of subrogation to HCDE/CP and the CP member) Employer's Liability, including all states, U.S. Longshoremen, Harbor Workers and other endorsements.
- Statutory, and Bodily Injury by Accident: \$100,000 each employee. Bodily Injury by Disease: \$500,000, policy limit \$100,000 each employee.
- Commercial General Liability Occurrence Form 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, cratering 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.

- Automobile Liability Coverage: \$300,000 Combined Liability Limits Bodily Injury and Property Damage Combined.

5.45. **Participation in HCDE/CP**

Vendor acknowledges and agrees that continued participation in the HCDE/CP cooperative purchasing program is subject to HCDE/CP's sole discretion and that Vendor may be removed from the HCDE/CP program at any time, with or without cause, in HCDE/CP's sole discretion. All work resulting from this Contract must cease immediately after completion of the final accepted Purchase Order/Job Order. Nothing in this Contract or in any other communication between HCDE/CP and Vendor may be construed as a guarantee that HCDE/CP or CP members will submit any Purchase Order/Job Order to Vendor at any time.

At a minimum, to continue participation in the HCDE/CP cooperative purchasing program, Vendor must:

- **Submit detailed monthly reports of all sales activity (such report is required even if there is no sales activity for a given month);**
- **Timely remit Administrative Fee(s) to HCDE/CP;**
- **Market Choice Partners, including inclusion of CP seal on Vendor's website, development and execution of marketing plan, and participation in at least 5 of marketing events (such as trade shows and conferences) annually;**
- **Maintain a minimum annual sales activity of \$15,000;**
- **Completion of all required forms (such as Form 1295, EDGAR Certifications, etc.); and**
- **Maintain required insurance and submit updated certificate(s) to CP annually**

5.46. **No Agency or Endorsements**

It is the intention of the parties to this Contract that Vendor is independent of HCDE/CP and CP members, is an independent contractor, and is not an employee, agent, joint venturer, or partner of HCDE/CP or any CP member. Nothing in this Contract shall be interpreted or construed as creating or establishing the relationship of employer and employee, agent, joint venturer or partner, between HCDE/CP and Vendor, any CP member and Vendor, HCDE/CP and any of Vendor's agents, or any CP member and any of Vendor's agents. Vendor has no power or authority to assume or create any obligation or responsibility on behalf of HCDE/CP or any CP member, and HCDE/CP and HCE members have no power or authority to assume or create any obligation or responsibility on behalf of Vendor. This Contract shall not be construed to create or imply any partnership, agency, or joint venture, nor shall it be construed or deemed an endorsement of a specific company or product. Vendor agrees that HCDE/CP and CP members have no responsibility for any conduct of any of Vendor's employees, agents, representatives, contractors, or subcontractors.

5.47. **Equal Opportunity**

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

5.48. **Force Majeure**

Neither HCDE, any CP member, or Vendor shall be deemed to have breached any provision of this Contract 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 HCDE, any CP member, or Vendor's control.

HCDE, CP members, and Vendor 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 parties 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 Contract has not been terminated. Delay or failure of performance, by either party to this Contract, caused solely by a force majeure event, shall be excused for the period of delay caused solely by the force majeure event. HCDE, CP members, and Vendor shall not have any claim for damages against any other party resulting from delays caused solely by force majeure. Notwithstanding any other provision of this Contract, in the event the Vendor's performance of its obligations under this Contract is delayed or stopped by a force majeure event, HCDE/CP shall have the option to terminate this Contract. This section shall not be interpreted as to limit or otherwise modify any of HCDE's or CP members' contractual, legal, or equitable rights.

5.49. **Severability**

In the event any one or more of the provisions contained in this Contract 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 Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

5.50. **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.

5.51. **Entire Agreement**

The Contract, the CSP, Vendor's proposal submitted in response to the CSP, the attached and incorporated attachments, addendum, and/or exhibits, if any, and the Supplemental Contract, if any, contain the entire agreement of the parties relative to the purpose(s) of the Contract and supersede any other representations, agreements, arrangements, negotiations, or understandings, oral or written, between the parties to this Contract. In the event of a conflict between this Contract and the CSP or Vendor's proposal submitted in response to the CSP, this Contract shall control. In the event of a conflict between the CSP and Vendor's proposal submitted in response to the CSP, the CSP shall control. This Contract supersedes any conflicting terms and conditions on any Purchase Order/Job Order, 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 Contract.

In addition to this Contract, a Supplemental Contract between Vendor and the CP member may be established to further detail the terms and conditions of the CP member's specific project. In the event of a conflict between this Contract and the Supplemental Contract, as to HCDE, this Contract shall prevail. In the event of a conflict between this Contract and the Supplemental Contract, as to the CP member, the Supplemental Contract shall prevail unless the Supplemental Contract states otherwise.

5.52. **Interpretation**

Vendor agrees that the normal rules of construction that requires that any ambiguities in this Contract are to be construed against the drafter shall not be employed in the interpretation of this Contract.

5.53. **Notice**

Any notice provided under the terms of this Contract by the parties to any 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 party at the address listed in the signature line of this Contract. 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 mail, return receipt requested.

5.54. **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.

5.55 **Certifications**

Vendor hereby certifies that it is not a company identified on the Texas Comptroller's list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State. Vendor further certifies and verifies that neither Vendor, nor any affiliate, subsidiary, or parent company of Vendor, if any (the "Vendor Companies"), boycotts Israel, and Vendor agrees that Vendor and Vendor Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term "boycott" shall mean and include terminating business activities or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory.

Vendor certifies and agrees that it shall not assist an employee, contractor, or agent of HCDE or of any other school district in obtaining a new job if the Vendor knows, or has probable cause to believe, that the individual engaged in sexual misconduct regarding a minor or student in violation of the law. Routine transmission of an administrative or personnel file does not violate this prohibition. *See* HCDE Policy CJ (Legal) and (Local).

6.0 SCOPE OF PROPOSAL

- 6.1. It is the intention of HCDE/CP to establish one or more contracts as a result of this Job Order Contracting CSP for use by HCDE/CP and CP members for job order contracting, including the maintenance, repair, alteration, renovation, remediation, or minor construction of a facility when the work is of a recurring nature, but the delivery times, type, and quantities of work are indefinite.
- 6.2. Vendors are required to submit a **coefficient** proposal based on their products and services as listed in the Unit Price Book(s) based on the CSI's Master Format Division Numbers. The coefficient should include the provision of reasonable oversight by Vendor. The Vendor's coefficient proposal shall include all overhead items and HCDE/CP Administrative Fee - unless they are using Xactimate, which does not require a coefficient.

Selection of architects, engineers, and other professional services shall be in accordance with applicable law, including Chapter 2224 of the Texas Government Code. If a Job Order or an order issued under this JOC/CSP requires **architectural or engineering services** that constitute the practice of architecture within the meaning of Chapter 1051, Texas Occupations Code, or the practice of engineering within the meaning of Chapter 1001, Occupations Code, the CP Member must select or designate the architect or engineer to prepare the construction documents for the project. This requirement does not apply to a Job Order contract or an order issued under this JOC/CSP for industrialized housing, industrialized buildings, or relocatable educational facilities subject to and approved under Chapter 1202, Texas Occupations Code, if the Vendor employs the services of an architect or engineer who approves the documents for the project. TEX. GOV'T. CODE § 2269.408.

6.3 Job Order Process for JOCs

- 6.3.1. The CP Member may make a **JOB ORDER QUOTE REQUEST** of a Vendor via phone, the web, e-mail, fax, or in person. The Vendor may not refuse to perform any project requested by a CP member unless such project is unlawful. Upon notification of a pending request, the Vendor shall make contact with the CP Member as soon as possible, but at least within two business days. As projects are identified, the Vendor will participate in a joint scope meeting, at which time a Job Order Quote Request for the individual project(s) will be explained to the Vendor and the Vendor will be provided an opportunity to ask questions and inspect the site. If necessary or requested by the CP member, Vendor shall visit the CP member's site and conduct a walk-through/project scoping with the CP Member's representative to define the Scope of Work. Vendor shall perform due diligence to request and gather pertinent information, including existing conditions and CP Member documents, including, but not limited to, hazardous materials surveys and other relevant documents.

Conditions Affecting the Work. Vendor is responsible for having taken steps reasonably necessary to ascertain the nature and location of the work and the general and local conditions that can affect the work or its costs. Any failure by the Vendor to have done so does not relieve the Vendor from responsibility for successfully performing the work without additional expense to the CP Member. Vendor shall promptly, and before conditions are disturbed, give written notice to the CP Member of (1) subsurface or latent physical conditions at the site that differ materially from those indicated in the Purchase Order, Job Order, drawings, or specifications; or (2) unknown physical conditions at the site of an unusual nature that differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Purchase Order, Job Order, drawings, or specifications. By beginning any portion of the work, Vendor acknowledges that Vendor is satisfied as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the CP Member, as well as from the drawings and specifications. The CP Member assumes no responsibility for any understandings or representations concerning conditions made by any of its officers or agents before execution of this Contract or a Purchase Order or Job Order, unless such understanding or representations by the CP Member are expressly stated in the Purchase Order or Job Order.

Record "As Built" Drawings (if any). Vendor shall review all drawings furnished to Vendor immediately upon receipt and shall promptly notify the CP member of any discrepancy. Vendor shall compare all drawings and verify the figures before laying out the work and will be responsible for any errors that may have been

avoided thereby. Throughout the progress of the work, the Vendor must keep a master set of prints on the job site, on which is kept a complete, careful and neat record of all deviations from the drawings made during the course of the work. Any deviation from the drawings or specifications made by Vendor without prior written approval from the CP member (or HCDE, if the work is for HCDE) shall be at Vendor's own risk and expense.

Upon completion of construction, the "as built" prints must be certified as to their correctness by the signature of the Vendor and turned over to the architect/engineer of record for use in preparing a permanent set of "as built" drawings within thirty (30) calendar days after completion of construction.

In addition to reproducible submissions, the Vendor should submit a CADD system (when requested) electronic file for "as built" documents prepared with a CADD system compatible with the CP Member's CADD system identified by the CP Member's representative. The CP Member reserves the right to review "as built" documents at any time. Costs associated with the preparation and completion of the "as built" drawings shall be part of the Vendor's multiplier.

Materials and Workmanship. Unless otherwise specifically provided in a Purchase Order, Job Order or Supplemental Contract, all equipment and materials incorporated in the work must be new and of the most suitable grade for the purpose intended. Unless otherwise specifically provided, reference to any equipment, material, or patented process by brand name, make, or catalog number establishes a standard of quality only. Vendor may substitute any equipment, material, or process that the CP Member finds to be equal to that named. To obtain approval to use a different equipment, material, or process, the Vendor must furnish the CP Member with the manufacturer's name, the model number, and other identifying data and information regarding the capacity, nature, rating, and performance of the proposed substitute. If requested by the CP Member, samples must be submitted for approval at the Vendor's expense, shipping charges prepaid. Materials or processes substituted without approval may be rejected. Vendor shall be responsible for all materials delivered and work performed until completion and acceptance of the entire work by the CP Member, except for any completed unit of work which may have been previously accepted by the CP Member.

Vendor must obtain the CP member's approval of the machinery and mechanical equipment incorporated into the work. Vendor must submit samples of all materials and equipment as directed by the CP member or as required by the JOC/CSP.

All work must be performed in a skillful and workmanlike manner. The CP member may, in writing, require the Vendor to remove from the work any employee the CP member deems incompetent, careless, or otherwise objectionable.

Associated Project Support Requirements. Vendor shall remove movable desks and furniture in the work area and place such items back in the required location upon completion of the work. The purchase, delivery, and storage of project construction materials must not interfere with the CP member's operations.

Vendor must provide to his project offices, with minimal down time (24 hours service calls), a computer system with applicable software, including Microsoft Office, unaltered JOC project estimating software that is compatible with the most current utilized edition of RS Means, and/or the current edition of National Construction Estimator or Xactimate for insurance claims.

Vendor is required to furnish and maintain a field office in an awarded region, at the Vendor's expense. Utilities and water at the job sites will be furnished to the Vendor at the CP member's expense. Upon project completion, Vendor shall remove the utility and water connections at the direction of the CP member. Vendor is responsible for analyzing its electrical needs and the ability of CP member to accommodate such. Vendor shall communicate and coordinate his utility and water requests to the CP member. If additional capacity is required above and beyond the capacity that the CP member is able to provide, Vendor is responsible for arranging for the equipment, installation, and removal at Vendor's own expense. If possible, toilet facilities will be made available by the CP member, or the Vendor will make arrangements for portable toilets.

6.3.2. The Vendor will prepare a **JOB ORDER PROPOSAL** for the project, including a price proposal (based on the bid coefficient applied to the UPB), schedule, written Scope of Work, including the UPB and the UPB's

12-digit line number and/or unit description, using an automated software system that will provide a line item estimate of the individual tasks, the quantities, the city cost index, Vendor's bid coefficient (if applicable), and any applicable Pass Through cost additions, and additional items within the scope of this JOC/CSP and Vendor's response to the JOC/CSP. The line items taken from the UPB and the estimated quantities totaled will be modified with the application of the city cost index and the contractor's coefficient. Any adjustment factors from division one will be added to establish the final price as agreed to for the project. Cost adjustment factors, as allowed, must clearly identify those individual tasks (line items) to which they are applicable and include corresponding percentage (this will not allow for additional mark-up for (1) General Contractor's mark up for Subs and (2) General Contractor's Overhead and Profit). Each Job Order Quote shall be good for a period of 30 days unless an extension is agreed to by Vendor.

In preparing the Job Order Proposal, including estimating line items for a Job Order, the Vendor shall endeavor not to micro-estimate line items. Micro-estimating is the intentional breaking down of projects into their smallest components when a single line item or two would suffice. An example is the need to replace a door where a pre-hung door and frame would be the fastest and cheapest route to use. Instead of the single line item defining the pre-hung door, the estimator breaks down this portion of the job into individual line items such as door frame, hinges and screws, which unnecessarily increases the cost to the CP Member. Vendors shall not micro-estimate, and evidence of micro-estimating will be evaluated during HCDE/CP's contract compliance audit/review.

EXAMPLE: Using sample figures from a Job Order Quote, the total cost with all of the adjustments would be as follows:

Total of divisional line items based on the quantities and unit prices from the Unit Price Book, including the OH&P column	\$500,000	
City Cost Index:	0.91 adjusted	\$455,000
Bid Coefficient:	0.82 adjusted	\$373,000
Premium Hours:		N/A
Davis Bacon Act:		N/A
TOTAL COST (as adjusted):		\$373,000

When providing UPB costs as part of a Job Order Proposal, Vendor shall adhere to the following:

- UPB's quotes must use the current edition.
- All work proposed under the UPB method must use the UPB format, even if subcontractors are used to do the work. Subcontractor's invoices must align to the UPB spreadsheet.
- A line item estimate **must** be submitted to substantiate the quote/Job Order Proposal given to the CP Member. Vendors must ensure that the line item estimates are expanded to show the full UPB number or a sufficient amount of the description.
- Pricing **must** be done by City Cost Index. National Average will not be allowed. To select the "closest" city cost index, the first three (3) numbers of the zip code will be used to determine the city cost index in each state. The same criteria are used by UPB.
- Vendor's bid co-efficient, bonding and permit costs, and sales taxes, if applicable, must be shown as separate line items at the bottom of the UPB line item estimate. This information may be handwritten or typed on the line item estimate or may be shown on a separate summary sheet. The summary sheet must start with the line item estimate total and show the detail for each of the items stated above.
- All change orders which list items covered by the UPB must be supported by a UPB line item estimate.

Alternative Costing/Non Pre-Priced Items

If a project/Job Order requires materials and/or services that are not covered by the UPB (i.e., Non Pre-Priced Items), the Vendor may obtain three (3) written cost proposals from local providers. The Vendor must use the most advantageous cost proposal and **may add its normal and customary markup and overhead provided as part of its response** to obtain the retail cost. The stated CP discount will then be taken to arrive at the CP

price. All materials and services falling under this category must be submitted in advance and approved by the CP member prior to being included in any Job Order Proposal. If a material or service is required that must be custom designed and manufactured to meet an individual project site's conditions and/or provided for a unique application or project, the Vendor may provide three (3) or more written cost proposals or quotes from providers of such custom materials and services. Normal and customary markup and overhead may be added, and the CP designated discount taken. All materials and services falling in this category should be submitted in advance and approved by the CP Member prior to being included in any Job Order Quote. HCDE/CP and CP Members reserve the right to accept or reject any third-party cost proposals or quotes and/or proposed prices for Non Pre-Priced Items provided by the Vendor. If a material or service is required as part of the performance of a Job Order under this JOC and can only be obtained and/or manufactured from a single source and falls under the sole source exception to procurement requirements, the offeror must provide the CP Member with the necessary documentation to substantiate the purchasing method.

- 6.3.3. HCDE/CP and/or the CP Member will review the Job Order Quote and may request changes. Once an acceptable Job Order Quote and Scope of Work have been agreed to, the CP Member may issue a **PURCHASE ORDER AND/OR JOB ORDER** for the project, which must be signed by Vendor and the CP Member as a lump sum fixed price contract. TEX. GOV'T. CODE § 2269.410(a) ("An order for a job or project under a job order contract must be signed by the governmental entity's representative and the contractor."). **The governing body of each CP Member that is a governmental entity, as defined in Chapter 2269 of the Texas Government Code, must approve each job, task, or purchase order that exceeds \$500,000.** TEX. GOV'T. CODE § 2269.403(c).

Prior to Vendor's acceptance of any Job Order more than \$2,000,000, Vendor must submit the Job Order to HCDE (if HCDE is issuing the Job Order), or the CP Member (if the CP Member is issuing the Job Order), to determine whether the project is a "JOCable" project – that is, if the project constitutes maintenance, repair, alteration, renovation, remediation, or minor construction of a facility, the work is of a recurring nature but the delivery times are indefinite, and indefinite quantities and orders are awarded substantially on the basis of pre-described and pre-priced tasks, pursuant to TEX. GOV'T. CODE § 2269.403. **The final determination of whether a particular project is a "JOCable" project and conforms to TEX. GOV'T. CODE § 2269.403 is made by HCDE (if HCDE/CP is issuing the Job Order), or the CP Member issuing a Job Order.**

The CP member reserves the right to reject a Job Order Quote or cancel a project for any reason. The Vendor shall not recover any costs arising out of or related to the development of the Purchase Order/Job Order, including, but not limited to, the costs to review the Job Order Quote Request and/or prepare a Job Order Quote.

Vendor is required to ensure that the Purchase Order/Job Order includes the following, as applicable:

- The contract number, lump sum price, start date, schedule, and notice to proceed. The schedule will include the mobilization, materials purchase, installation and delivery, design, weather, and site cleanup and inspection. No additional claims may be made for delays because of these items.
- Each individual Purchase Order/Job Order may be limited to work at a single facility and will describe the Scope of Work to be performed. Descriptions may be written, by sketch, and/or by drawing and should include the location where work is to be performed, whether work may be performed during Regular Hours, the project completion time, and the price to be paid for the work.
- The date for commencing services and/or delivery of products ("work"). Upon commencing work, the Vendor will proceed diligently toward contract completion. Any delay in the work beyond the Vendor's control must be reported to the CP member's authorized representative immediately.
- Compensation for received products, terms of progress payments, and a schedule of payments. The CP member retains the right to extend the schedule of work/delivery time or to suspend the work and to direct the Vendor to resume work when appropriate. The Purchase Order/Job Order must describe an equitable adjustment for added costs caused by any suspension. Any increases will be invoiced through HCDE/CP as allowed in the Contract or CSP.

- A schedule for performance of work that can be met without planned overtime, which shall be Vendor's responsibility.
- Monthly progress reports must be given to the CP member by the Vendor. The specifics of what is reported should be described in the Purchase Order.
- Terms for acceptance by the CP member and title to work must be clearly agreed upon and described. If any part of the work requires the CP member to assume control prior to the completion, this must be defined. Vendor and the CP member must agree on the definition of what constitutes final acceptance before payment of any retained compensation.
- Terms regarding retainage or a substitute security must be clearly agreed upon, detailed, and in compliance with applicable law.

No work shall be performed until a **written Purchase Order/Job Order** has been signed by the Vendor and the CP member. Any work performed under a Purchase Order/Job Order before the Vendor's receipt of the written Purchase Order/Job Order is at the Vendor's risk.

Notwithstanding the foregoing, in the event of an emergency (as determined by the CP member), a portion of the Scope of Work may be issued orally by the CP member to Vendor, who is required to confirm the oral Purchase Order/Job Order by issuing a written Purchase Order/Job Order as soon as possible, but in no event less than 5 business days after the oral order is received.

After the Purchase Order/Job Order is signed, a copy of the Purchase Order/Job Order shall be sent to Choice Partners at facilityreporting@choicepartners.org.

6.3.5 Performance of the Purchase Order/Job Order

On a daily basis during the progress of the work for a CP member, the Vendor must remove and dispose of the resultant dirt and debris and keep the premises clean.

6.3.6 Samples, Testing

During the course of performance of the Purchase Order or Job Order, the CP Member may secure samples, according to construction industry standards, guidelines, or industry standards, of materials being used from containers at the job site, and submit them to an independent laboratory for comparison to specified material. In the event test results prove that a material is not equal to or better than specified, the Vendor shall be responsible for the costs of the tests as well as the all costs incurred to replace, remove and dispose of non-compliant materials. In the event test results provide that a material is equal to that specified, the Vendor shall be notified of the results, and the CP member shall be responsible for the costs of the tests.

6.3.7 Completion of the Purchase Order/Job Order.

The Vendor shall perform the scope of work within the project completion time and for the fixed price of the Purchase Order/Job Order.

The Vendor is required to perform all work under a Purchase Order/Job Order which has been issued and received before the expiration date of this Contract. If the Purchase Order/Job Order is not received by the Vendor before the expiration date of this Contract, the Purchase Order will be considered cancelled. Purchase Orders/Job Orders sent in the last 30 days of a Term should be sent "Return Receipt Requested". Any Purchase Order/Job Order issued during the Term of the Contract and not completed before the expiration date of the Contract must be completed within the completion/delivery time stated in the Purchase Order/Job Order, and the rights and obligations of the Vendor and the CP member with respect to the Purchase Order/Job Order will be the same as if the Purchase Order/Job Order were completed during the Term of the Contract.

When the Purchase Order/Job Order has been completed, the Vendor shall notify the CP Member, and the CP Member shall inspect the work for acceptance under the scope and terms in the Purchase Order and/or Job Order. The CP Member will issue, in writing, any corrective actions/punch list items that are required, and Vendor shall promptly complete all corrective actions/punch list items. Final payment of a Purchase Order or

Job Order for which progress payments have been made will not be made until the project is totally completed (including punch list items), and the final application for payment is approved and signed by the CP Member.

The Vendor shall, upon completion of the work, remove all equipment and surplus materials (except materials or equipment that are to remain at the CP member's property), and leave the premises in a clean, neat, and orderly condition satisfactory to the CP member.

Upon completion of the project, the Vendor shall deliver to the CP Member all associated as-built drawings, warranties, and owner's manuals/instructions.

7.0 SPECIFICATIONS

- 7.1 It is the intention of HCDE/CP to establish one or more contract(s) with highly qualified Vendor(s) for job order contracting, including the maintenance, repair, alteration, renovation, remediation, or minor construction of a facility when the work is of a recurring nature, but the delivery times, type, and quantities of work are indefinite. Vendor(s) shall, at the request of HCDE/CP or any CP member, provide these products and/or covered services under the terms of this CSP and the Contract set forth in Section **5.0 Contract Terms and Conditions**. Vendor shall assist the CP member with making a determination of its individual needs.
- 7.2 The Vendor shall provide all personnel, equipment, tools, materials, supervision, and other items and services necessary to perform under this JOC CSP for Minor Construction, Maintenance, Repair, Alteration, Renovation, and Remediation services under the UPB and all other related services for HCDE/CP and CP members.

All division cost data has been derived from the 48 divisions according to the Construction Specifications Institute's (CSI) MasterFormat, a system of titles and numbers used extensively to organize construction information. The following will allow you to complete an accurate estimate using the Unit Price Book cost data.

1. Scope out the Project. Identify the individual work tasks that will need to be covered in your estimate.
2. Quantify the number of units required for each work task that you identified. Experienced estimators include an allowance for waste in their quantities. Waste is not included in Unit Price Line items for your estimate unless stated.
3. Price the Quantities. Use the Unit Price Table of Contents, and the Index, to locate individual Unit Price line items for your estimate.
4. Multiply the total number of units needed for your project by the total including O&P cost for each Unit Price line item.

These Specifications are to be used as a general guide in developing your proposal. CP members will have defined Scope of Work/Specifications for each project.

8.0 PRICING / DELIVERY INFORMATION

8.1 Pricing for JOC CSP

Vendors must provide their coefficients in the HCDE/CP eBid System (www.choicepartners.org) including any additional pricing examples and pricing discount schedules that need to be submitted to provide HCDE/CP with a comprehensive response. CP members may request the Vendor to provide discounts or other adjustments, on a per-Purchase Order basis. If discounts or quantity prices are offered by the Vendor, the Vendor must also offer the same reductions in pricing for orders of similar size and scope to HCDE/CP and other CP members.

Vendors are required to submit a **coefficient proposal** based on their products and services as listed in the Unit Price Book(s) based on the CSI's Master Format Division Numbers unless they are using Xactimate, which does not require a coefficient. The coefficient should include the provision of reasonable oversight by Vendor. The Vendor's coefficient proposal shall include all overhead items and HCDE/CP Administrative Fee.

Also, include your usual and customary mark-up pricing for any non-pre-priced items you may encounter.

9.0 VENDOR QUESTIONNAIRE

9.1 Please complete the Vendor Questionnaire attached to the proposal in the HCDE/CP eBid System

~~http://www.choicepartners.org/html/bidder_info.php~~

This questionnaire is now in the online attributes and will not be listed on the document response in 9.0.

10.0 ATTACHMENTS

10.1 Please complete the Attachment Packet attached to the proposal in the HCDE/CP eBid System

<https://hcdeebid.ionwave.net/Login.aspx>



5125 NE Parkway, Fort Worth, TX 76106
Ph: (817) 498-7277 Fax: (817) 656-4764
www.midcontinental.com
CHOICE PARTNERS 18/029-JN06

August 31, 2022

Keith Chisolm
City of Fort Worth
1201 Houston St
Fort Worth, TX 76102

RE: Exterior Building Repairs
Will Rogers Auditorium and Coliseum

Dear Mr. Chisolm:

Attached is our proposal for the work to be performed on the Will Rogers Auditorium and Coliseum project. This scope of work is based on the work we performed on the North and East elevations in 2019. Should you have questions regarding the proposal, please feel free to contact me at (800) 906-0610.

We trust that the enclosed will meet with your approval and that we will have the opportunity of working with you on this project.

Respectfully submitted,

MID-CONTINENTAL RESTORATION CO., INC.

Randy Hughes
Estimator / Branch Manager
Cell: (817) 401-6393
randy_hughes@midcontinental.com

RH/kc

Encl.



5125 NE Parkway, Fort Worth, TX 76106
Ph: (817) 498-7277 Fax: (817) 656-4764
www.midcontinental.com

**PROPOSAL / CONTRACT
CHOICE PARTNERS 18/029-JN06**

August 31, 2022

From: Randy Hughes, Estimator / Branch Manager, Fort Worth, TX
Cell: (817) 401-6393 email: randy_hughes@midcontinental.com

To: Keith Chisolm, City of Fort Worth, 1201 Houston St, Fort Worth, TX 76102
email: keith.chisolm@fortworthtexas.gov

Subject: Exterior Building Repairs

Job Name: Will Rogers Auditorium and Coliseum – 3401 W Lancaster Ave, Fort Worth, TX 76107

BASE BID: WORK ON THE WEST AND SOUTH ELEVATIONS of Auditorium and the Coliseum where work was not performed in 2019





- (1) All masonry surfaces shall be restored to the original color as closely as possible with pressurized water and chemical cleaning agents. The chemical cleaning agents shall be applied to the surface, given time to dwell, and rinsed in strict accordance with the manufacturer's specifications. Chemical cleaners shall be applied no more than two times to any masonry surface.
- (2) All brick mortar joints shall be carefully inspected and those found to have voids, cracks or openings greater than 1/64th inch in width or those found to be eroded more than 1/8 inch in depth, shall be cut back to a depth of two times the joint width, but in no case deeper than 1-inch. Mortar joints shall then be pointed (filled and tightly packed) with a non- staining, non- shrinking Type N masonry pointing mortar, colored and tooled to match the adjacent joints in appearance as close as possible. This proposal includes 6,600 feet of tuckpointing.



- (3) All stone-to-stone joints shall have all old sealant removed. Once complete, all skyward facing joints shall have new silicone sealant installed. All remaining stone-to-stone joints shall then have new Type "N" mortar installed, matching original mortar as closely as possible in color and appearance.



- (4) Areas of spalled, deteriorated, or fractured stone shall be removed by square cutting the perimeter of the repair area and chipping away the unsound material to a sound surface. The void shall then be patched with a Conproco Matrix Material, carved and finished to match the original profile in appearance as closely as possible. The color shall be one of Conproco's standard colors, matching the adjacent surfaces as closely as possible. Patching material shall be applied in strict accordance with manufacturer's specifications. This proposal includes **30** locations of stone patching.



- (5) On the West Elevation at the 1970s addition, there are 2 pre-cast stones that shall be replaced.



- (6) All surfaces of exposed concrete foundation shall be repaired by chipping away all loose and/or deteriorated material down to a sound surface and then cleaned by use of air and/or water pressure to remove loose residue. The surfaces shall be patched utilizing a polymer modified, cementitious base repair mortar, tooled or shaped to match the contour of the original as closely as possible. All material shall be applied in strict accordance with manufacturer's specifications.
- (7) After surfaces have been properly prepared, the face of all exposed concrete foundation surfaces shall be given **two (2)** applications of an elastomeric, exterior coating that will provide a durable, flexible, water-resistant membrane on the surface. All material shall be applied in strict accordance with manufacturer's specifications.



- (8) The perimeter of all window and door frames (masonry-to-frame joints) shall have all existing fill materials removed, the joint surface area shall be cleaned of all foreign residue and resealed with a silicone sealant. New sealant shall be tooled to a neat, uniform appearance and color shall be selected by Owner from a manufacturer's standard color chart.
- (9) Upon completion of the previously outlined work, all exterior brick and cast stone surfaces shall be given **one (1)** application of a transparent, penetrating, siloxane water repellent solution. This material shall be applied in strict accordance with manufacturer's recommendations.
- (10) All Limestone shall be given 1 application of Prosoco's Natural Stone Treatment at approximately 125 to 150 square feet per gallon.
- (11) The **OWNER** shall be responsible for contacting the electrical power company to provide power line protection, rerouting, or deenergize the lines prior to the start of the project. OSHA restricts access to within 3' feet for Insulated lines less than 300 volts, 10' feet for Insulated lines above 300 volts to 50kv. The only exception to the above regulation is the utility company or electrical power system operator must be notified of the need to work closer and the systems operator must deenergize, relocate, or install protective covering to prevent accidental contact with the lines or weather heads.
- (12) The **OWNER** shall be responsible for supplying adequate water and electrical circuitries to power contractor's equipment.
- (13) During the construction phase, all precautions shall be taken to protect any other building surfaces, pedestrians, and automobiles. Mid-Continental follows all OSHA safety regulations in scaffolding and public protection, **including full compliance with the OSHA Respirable Crystalline Silica Standard.** Upon completion, all surrounding surfaces of the building and premises shall be cleaned and left in an orderly fashion.
- (14) Mid-Continental Restoration Co., Inc. has been retained to perform defined installation and/or repair work on the building or at the jobsite and has not guaranteed the removal or eradication of any mold/fungi/organic pathogens and other airborne contaminants. Mid-Continental Restoration Co., Inc., shall be held harmless from and against any and all claims, suits or damages resulting in anyway whatsoever from mold/fungi/organic/pathogens or other airborne contaminants, that may be present at the jobsite before, during and after Mid-Continental has completed its work pursuant to this contract.

- (17) All masonry surfaces shall be restored to the original color as closely as possible with pressurized water and chemical cleaning agents. The chemical cleaning agents shall be applied to the surface, given time to dwell, and rinsed in strict accordance with the manufacturer's specifications. Chemical cleaners shall be applied no more than two times to any masonry surface.
- (18) All brick mortar joints shall be carefully inspected and those found to have voids, cracks or openings greater than 1/64th inch in width or those found to be eroded more than ¼-inch in depth, shall be cut back to a depth of two times the joint width, but in no case deeper than 1-inch, and shall then be cleaned of all loose and foreign debris with air and/or water pressure.
- (19) Defective mortar joints that have been cut and cleaned shall then be pointed (filled and tightly packed) with a non-staining, non-shrinking, Type "N" masonry pointing mortar, colored and tooled to match the adjacent joints in appearance as closely as possible. Prior to installing the new mortar, the masonry surfaces shall be thoroughly wet, with no standing water (saturated surface dry).
- (20) All stone-to-stone joints shall have all old sealant removed. Once complete, all joints shall have new silicone sealant installed per manufacturer's written instructions.
- (21) All control joints shall have old sealant removed and new silicone sealant installed as per manufactures written instructions.
- (22) Upon completion of the previously outlined work, all exterior brick and cast stone surfaces shall be given **one (1)** application of a transparent, penetrating, siloxane water repellent solution. This material shall be applied in strict accordance with manufacturer's recommendations.

TO ACCEPT ALTERNATE BID #1, PLEASE SIGN BELOW

FORTY-SEVEN THOUSAND, THREE HUNDRED TWENTY-FIVE DOLLARS \$47,325.00
(This price is *IN ADDITION TO* the Base Bid)

Due to the current volatility of material pricing, the above price shall only be valid for a period of thirty days (30) days, after which pricing is subject to change.

If ALTERNATE #1 is accepted, please sign here:

Mid-Continental Restoration Co., Inc.

By: _____
 Owner / Owner Representative Dated

By: _____
 Contractor Dated

THE ABOVE PROPOSAL IS ACCEPTED UPON THE TERMS AND CONDITIONS SET FORTH IN EXHIBIT "A" ATTACHED.

PLEASE SIGN AND RETURN THE COMPLETE PROPOSAL TO THE OFFICE. OUR COMPANY WILL RETURN A FULLY SIGNED COPY TO YOU FOR YOUR RECORDS. IF DESIRED, YOU MAY EMAIL OR FAX THE PROPOSAL ACCEPTANCE TO THIS OFFICE AT (817) 656-4764 OR TO OUR CORPORATE OFFICE AT (620) 223-5052. THE EMAILED OR FAXED COPY OF THE SIGNED PROPOSAL WILL BE CONSIDERED A LEGAL BINDING DOCUMENT.

THE PROPOSAL SET FORTH HEREIN IS THE RESULT OF THE COMPANY'S INITIAL INSPECTIONS OF THE OWNER'S PROPERTY AND WAS DEVELOPED BASED UPON THE COMPANY'S EXPERIENCE IN THE INDUSTRY AND THE COMPANY'S WORK ON SIMILAR PROJECTS. MID-CONTINENTAL RESTORATION COMPANY, INC. DOES NOT EMPLOY A LICENSED ARCHITECT OR ENGINEER, THEREFORE THE "PROPOSAL" IS NOT AND SHOULD NOT BE CONSIDERED AN "ENGINEER'S REPORT" OR AN "ARCHITECT'S REPORT." AS A RESULT, THE COMPANY HEREBY DISCLAIMS ANY LIABILITY WHATSOEVER THAT MAY RELATE TO THE COMPANY'S ANALYSIS OF THE EXISTING CONDITIONS OF THE OWNER'S BUILDING AND THE COMPANY'S RECOMMENDATIONS FOR REPAIR/REMEDATION THEREOF.

EXHIBIT "A"
TERMS & CONDITIONS

LIMITED WARRANTY

Goods and material installed by Mid-Continental Restoration are the products of reputable manufacturers. Mid-Continental Restoration shall use its best efforts to obtain from each manufacturer's warranty (copies of which will be furnished upon request) or customary practice, the repair or replacement of equipment, goods or material that may prove defective in material or workmanship. The foregoing shall constitute the exclusive remedy of the customer and sole obligation of Mid-Continental Restoration.

THERE ARE NO WARRANTIES, WRITTEN, ORAL, IMPLIED OR STATUTORY RELATING TO THE DESCRIBED EQUIPMENT, GOODS OR MATERIAL WHICH EXTEND BEYOND THAT DESCRIBED IN THIS PROPOSAL. THE IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE SHALL NOT APPLY AND IS EXPRESSLY WAIVED.

Mid-Continental Restoration warrants its workmanship to be free from defects for a period of one (1) year from the date of completion of installation of the above goods and material. Mid-Continental Restoration's warranty is limited to the materials and equipment which Mid-Continental Restoration or its agents or employees install. No warranty is provided for materials and equipment which Mid-Continental Restoration does not install or provide.

The foregoing proposal, subject to these terms and conditions, is submitted for customer's consideration with the understanding that it must be approved by an authorized representative of Mid-Continental Restoration after its acceptance by the customer and is not binding upon Mid-Continental Restoration until so approved in writing and delivered to the customer. When so approved, it shall constitute the entire contract between the parties and no understanding or obligations not herein expressly set forth are binding upon them.

Your acceptance of this proposal is expressly limited to the terms contained within this document. Any conditions set forth in the purchase order or in any similar communication shall not be binding nor effective unless assented to in writing by an authorized representative of Mid-Continental Restoration. Any additional terms or conditions, oral or written, express or implied, not contained within this document are not binding or controlling on the parties unless assented to in writing by an authorized representative of Mid-Continental Restoration. Any order or any statement of intent to proceed with installation or any direction to proceed with installation or acceptance of this proposal or payment in full or part for any of the work or equipment furnished shall constitute customer's assent to the terms and conditions of this proposal.

EXCLUSIONS FROM LIMITED WARRANTY. The following are *not* covered by this warranty:

Any damage to the extent it is caused or made worse by failure by the Owner, General Contractor or by anyone other than Mid-Continental Restoration, its employees, agents, contractors or subcontractors, to comply with the Warranty requirements of manufacturers of appliances, fixtures and items of equipment, or failure by the Owner to give notice to the Contractor of any defects within a reasonable time.

Any damage from the presence of mold or fungus or the creation of conditions that may contribute to the growth of mold or fungus.

Mid-Continental Restoration's liability on any claim for loss or damage arising out of this contract or from the performance or breach thereof or connected with the supplying of any labor, equipment, goods or materials hereunder, or their sale, resale, operation or use, whether based on contract, warranty, tort (including negligence) or other grounds, shall not exceed the amount attributable to such labor, equipment, goods or material or part thereof involved in the claim. Mid-Continental Restoration shall not, under any circumstances be liable for any labor or charges without the prior written consent of Mid-Continental Restoration. Mid-Continental Restoration shall not in any event be liable, whether as a result of breach of contract, warranty, tort (including negligence) or other grounds, for special, consequential, incidental or penal damages, including, but not limited to loss of profits, revenues, loss of use of the product or any associated product, cost of capital, cost of substitute products, facilities or services, downtime costs or claims of the Customer for such damages. If Mid-Continental Restoration furnishes Customer with advice or other assistance which concerns any labor, equipment, goods or material furnished hereunder, or any system or equipment in which any of such equipment goods or material may be installed, and which is not required pursuant to this contract, the furnished of such advice or assistance will not subject any service to any liability, whether based on contract, warranty, tort (including negligence or other grounds).

If Mid-Continental Restoration encounters asbestos or polychlorinated biphenyl (PCB) on the site, Mid-Continental Restoration shall immediately stop work and report the condition to the owner's representative in writing. Mid-Continental Restoration shall not resume work in the affected area until the asbestos or polychlorinated biphenyl (PBS) has been removed or rendered harmless. Mid-Continental Restoration shall not be required to perform any work relating to asbestos or polychlorinated biphenyl (PCB) without its consent.

Any installation dates given in advance are estimated and are subject to prior orders with Mid-Continental Restoration. Mid-Continental Restoration shall not be liable for failure to perform or delay in performance resulting from strikes, accidents, fires, labor difficulties, transportation difficulties, delays in usual sources of supply, major changes in economic conditions, or, without limitations by the foregoing, any cause beyond Mid-Continental Restoration's reasonable control.

If on any breach of default by any party hereto in its obligations to any other party hereto, it shall become necessary for the non-defaulting party to employ an attorney to enforce or defend any of its rights or remedies hereunder, the defaulting party agrees to pay the non-defaulting party its reasonable attorneys' fees, whether or not suit is instituted in connection herewith.

This agreement plus any attachments and/or addendums (both sides) constitutes the entire agreement between the parties, and no terms or understandings not herein contained shall be valid or binding unless contained in writing signed by both parties.

Net cash upon completion of the work, unless this contract extends beyond one month (30 days), in which case Mid-Continental Restoration will be paid for work completed and invoiced monthly and the balance due upon completion of our work. Those projects extending over 30 days will be invoiced at 30-day intervals. Any accounts 30 days past due will be assessed a finance charge of 1½ % per month. Within ten (10) calendar days from commencement of this project, MCR reserves the right to invoice the Owner for all startup costs such as material purchases, equipment purchases and mobilization costs. The invoice for start-up costs will be payable to MCR within fourteen (14) calendar days from the invoice date. In the event time payments are desired, terms shall be included in the specifications and balance due secured by note.

Mid-Continental Restoration agrees to provide the following insurance coverage, subject to change without notice to Customer: (1) Worker's Compensation and/or Employer's Liability insurance – State Requirement; (2) Automobile Liability insurance with limits of at least \$1,000,000.00 combined single limit, bodily injury and property damage for injuries to person or persons involved in an accident in connection with this contract; (3) Contractor's Liability, with limits of \$1,000,000.00 combined single limit bodily injury and property damage per occurrence, \$2,000,000.00 Products/Completed Operations Aggregate; \$2,000,000.00 Policy Aggregate and (4) Excess Liability - \$5,000,000.00.



5125 NE Parkway, Fort Worth, TX 76106
Ph: (817) 498-7277 Fax: (817) 656-4764
www.midcontinental.com
CHOICE PARTNERS 18/029-JN06

August 31, 2022

Keith Chisolm
City of Fort Worth
1201 Houston St
Fort Worth, TX 76102

RE: Exterior Building Repairs
Will Rogers Auditorium and Coliseum

Dear Mr. Chisolm:

Attached is our proposal for the work to be performed on the Will Rogers Auditorium and Coliseum project. This scope of work is based on the work we performed on the North and East elevations in 2019. Should you have questions regarding the proposal, please feel free to contact me at (800) 906-0610.

We trust that the enclosed will meet with your approval and that we will have the opportunity of working with you on this project.

Respectfully submitted,

MID-CONTINENTAL RESTORATION CO., INC.

Randy Hughes
Estimator / Branch Manager
Cell: (817) 401-6393
randy_hughes@midcontinental.com

RH/kc

Encl.



5125 NE Parkway, Fort Worth, TX 76106
Ph: (817) 498-7277 Fax: (817) 656-4764
www.midcontinental.com

**PROPOSAL / CONTRACT
CHOICE PARTNERS 18/029-JN06**

August 31, 2022

From: Randy Hughes, Estimator / Branch Manager, Fort Worth, TX
Cell: (817) 401-6393 email: randy_hughes@midcontinental.com

To: Keith Chisolm, City of Fort Worth, 1201 Houston St, Fort Worth, TX 76102
email: keith.chisolm@fortworthtexas.gov

Subject: Exterior Building Repairs

Job Name: Will Rogers Auditorium and Coliseum – 3401 W Lancaster Ave, Fort Worth, TX 76107

BASE BID: WORK ON THE WEST AND SOUTH ELEVATIONS of Auditorium and the Coliseum where work was not performed in 2019





- (1) All masonry surfaces shall be restored to the original color as closely as possible with pressurized water and chemical cleaning agents. The chemical cleaning agents shall be applied to the surface, given time to dwell, and rinsed in strict accordance with the manufacturer's specifications. Chemical cleaners shall be applied no more than two times to any masonry surface.
- (2) All brick mortar joints shall be carefully inspected and those found to have voids, cracks or openings greater than 1/64th inch in width or those found to be eroded more than 1/8 inch in depth, shall be cut back to a depth of two times the joint width, but in no case deeper than 1-inch. Mortar joints shall then be pointed (filled and tightly packed) with a non- staining, non- shrinking Type N masonry pointing mortar, colored and tooled to match the adjacent joints in appearance as close as possible. This proposal includes 6,600 feet of tuckpointing.



- (3) All stone-to-stone joints shall have all old sealant removed. Once complete, all skyward facing joints shall have new silicone sealant installed. All remaining stone-to-stone joints shall then have new Type "N" mortar installed, matching original mortar as closely as possible in color and appearance.



- (4) Areas of spalled, deteriorated, or fractured stone shall be removed by square cutting the perimeter of the repair area and chipping away the unsound material to a sound surface. The void shall then be patched with a Conproco Matrix Material, carved and finished to match the original profile in appearance as closely as possible. The color shall be one of Conproco's standard colors, matching the adjacent surfaces as closely as possible. Patching material shall be applied in strict accordance with manufacturer's specifications. This proposal includes **30** locations of stone patching.



- (5) On the West Elevation at the 1970s addition, there are 2 pre-cast stones that shall be replaced.



- (6) All surfaces of exposed concrete foundation shall be repaired by chipping away all loose and/or deteriorated material down to a sound surface and then cleaned by use of air and/or water pressure to remove loose residue. The surfaces shall be patched utilizing a polymer modified, cementitious base repair mortar, tooled or shaped to match the contour of the original as closely as possible. All material shall be applied in strict accordance with manufacturer's specifications.
- (7) After surfaces have been properly prepared, the face of all exposed concrete foundation surfaces shall be given **two (2)** applications of an elastomeric, exterior coating that will provide a durable, flexible, water-resistant membrane on the surface. All material shall be applied in strict accordance with manufacturer's specifications.



- (8) The perimeter of all window and door frames (masonry-to-frame joints) shall have all existing fill materials removed, the joint surface area shall be cleaned of all foreign residue and resealed with a silicone sealant. New sealant shall be tooled to a neat, uniform appearance and color shall be selected by Owner from a manufacturer's standard color chart.
- (9) Upon completion of the previously outlined work, all exterior brick and cast stone surfaces shall be given **one (1)** application of a transparent, penetrating, siloxane water repellent solution. This material shall be applied in strict accordance with manufacturer's recommendations.
- (10) All Limestone shall be given 1 application of Prosoco's Natural Stone Treatment at approximately 125 to 150 square feet per gallon.
- (11) The **OWNER** shall be responsible for contacting the electrical power company to provide power line protection, rerouting, or deenergize the lines prior to the start of the project. OSHA restricts access to within 3' feet for Insulated lines less than 300 volts, 10' feet for Insulated lines above 300 volts to 50kv. The only exception to the above regulation is the utility company or electrical power system operator must be notified of the need to work closer and the systems operator must deenergize, relocate, or install protective covering to prevent accidental contact with the lines or weather heads.
- (12) The **OWNER** shall be responsible for supplying adequate water and electrical circuitries to power contractor's equipment.
- (13) During the construction phase, all precautions shall be taken to protect any other building surfaces, pedestrians, and automobiles. Mid-Continental follows all OSHA safety regulations in scaffolding and public protection, **including full compliance with the OSHA Respirable Crystalline Silica Standard.** Upon completion, all surrounding surfaces of the building and premises shall be cleaned and left in an orderly fashion.
- (14) Mid-Continental Restoration Co., Inc. has been retained to perform defined installation and/or repair work on the building or at the jobsite and has not guaranteed the removal or eradication of any mold/fungi/organic pathogens and other airborne contaminants. Mid-Continental Restoration Co., Inc., shall be held harmless from and against any and all claims, suits or damages resulting in anyway whatsoever from mold/fungi/organic/ pathogens or other airborne contaminants, that may be present at the jobsite before, during and after Mid-Continental has completed its work pursuant to this contract.

- (15) For complete insurance coverage, see **Exhibit "A"** attached hereto. Please review the Terms and Conditions attached hereto and marked **Exhibit "A"**.
- (16) **STATE AND LOCAL SALES TAX IS EXCLUDED FROM THIS CONTRACT. A VALID TAX EXEMPTION OR RESALE CERTIFICATE MUST BE PROVIDED PRIOR TO COMMENCEMENT OF WORK.**

EXCLUDES: P&P BONDS if required (2%).

We shall accomplish the above outlined work for the sum of:
FOUR HUNDRED NINETYSEVEN THOUSAND NINE HUNDRED AND NINE DOLLARS
\$497,909.00
 Due to the current volatility of material pricing, the above price shall only be valid for a period of thirty days (30) days, after which pricing is subject to change.

TO ACCEPT THE BASE BID, PLEASE SIGN BELOW

If **BASE BID** is accepted, please sign here:

Mid-Continental Restoration Co., Inc.

By: _____
 Owner/Owner Representative Dated

By: _____
 Contractor Dated

ALTERNATE #1: WORK TO ADJOINING BUILDING TO COLISEUM



- (17) All masonry surfaces shall be restored to the original color as closely as possible with pressurized water and chemical cleaning agents. The chemical cleaning agents shall be applied to the surface, given time to dwell, and rinsed in strict accordance with the manufacturer's specifications. Chemical cleaners shall be applied no more than two times to any masonry surface.
- (18) All brick mortar joints shall be carefully inspected and those found to have voids, cracks or openings greater than 1/64th inch in width or those found to be eroded more than ¼-inch in depth, shall be cut back to a depth of two times the joint width, but in no case deeper than 1-inch, and shall then be cleaned of all loose and foreign debris with air and/or water pressure.
- (19) Defective mortar joints that have been cut and cleaned shall then be pointed (filled and tightly packed) with a non-staining, non-shrinking, Type "N" masonry pointing mortar, colored and tooled to match the adjacent joints in appearance as closely as possible. Prior to installing the new mortar, the masonry surfaces shall be thoroughly wet, with no standing water (saturated surface dry).
- (20) All stone-to-stone joints shall have all old sealant removed. Once complete, all joints shall have new silicone sealant installed per manufacturer's written instructions.
- (21) All control joints shall have old sealant removed and new silicone sealant installed as per manufactures written instructions.
- (22) Upon completion of the previously outlined work, all exterior brick and cast stone surfaces shall be given **one (1)** application of a transparent, penetrating, siloxane water repellent solution. This material shall be applied in strict accordance with manufacturer's recommendations.

TO ACCEPT ALTERNATE BID #1, PLEASE SIGN BELOW

FORTY-SEVEN THOUSAND, THREE HUNDRED TWENTY-FIVE DOLLARS \$47,325.00
(This price is *IN ADDITION TO* the Base Bid)

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If ALTERNATE #1 is accepted, please sign here:

Mid-Continental Restoration Co., Inc.

By: _____
 Owner / Owner Representative Dated

By: _____
 Contractor Dated

THE ABOVE PROPOSAL IS ACCEPTED UPON THE TERMS AND CONDITIONS SET FORTH IN EXHIBIT "A" ATTACHED.

PLEASE SIGN AND RETURN THE COMPLETE PROPOSAL TO THE OFFICE. OUR COMPANY WILL RETURN A FULLY SIGNED COPY TO YOU FOR YOUR RECORDS. IF DESIRED, YOU MAY EMAIL OR FAX THE PROPOSAL ACCEPTANCE TO THIS OFFICE AT (817) 656-4764 OR TO OUR CORPORATE OFFICE AT (620) 223-5052. THE EMAILED OR FAXED COPY OF THE SIGNED PROPOSAL WILL BE CONSIDERED A LEGAL BINDING DOCUMENT.

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EXHIBIT "A"
TERMS & CONDITIONS

LIMITED WARRANTY

Goods and material installed by Mid-Continental Restoration are the products of reputable manufacturers. Mid-Continental Restoration shall use its best efforts to obtain from each manufacturer's warranty (copies of which will be furnished upon request) or customary practice, the repair or replacement of equipment, goods or material that may prove defective in material or workmanship. The foregoing shall constitute the exclusive remedy of the customer and sole obligation of Mid-Continental Restoration.

THERE ARE NO WARRANTIES, WRITTEN, ORAL, IMPLIED OR STATUTORY RELATING TO THE DESCRIBED EQUIPMENT, GOODS OR MATERIAL WHICH EXTEND BEYOND THAT DESCRIBED IN THIS PROPOSAL. THE IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE SHALL NOT APPLY AND IS EXPRESSLY WAIVED.

Mid-Continental Restoration warrants its workmanship to be free from defects for a period of one (1) year from the date of completion of installation of the above goods and material. Mid-Continental Restoration's warranty is limited to the materials and equipment which Mid-Continental Restoration or its agents or employees install. No warranty is provided for materials and equipment which Mid-Continental Restoration does not install or provide.

The foregoing proposal, subject to these terms and conditions, is submitted for customer's consideration with the understanding that it must be approved by an authorized representative of Mid-Continental Restoration after its acceptance by the customer and is not binding upon Mid-Continental Restoration until so approved in writing and delivered to the customer. When so approved, it shall constitute the entire contract between the parties and no understanding or obligations not herein expressly set forth are binding upon them.

Your acceptance of this proposal is expressly limited to the terms contained within this document. Any conditions set forth in the purchase order or in any similar communication shall not be binding nor effective unless assented to in writing by an authorized representative of Mid-Continental Restoration. Any additional terms or conditions, oral or written, express or implied, not contained within this document are not binding or controlling on the parties unless assented to in writing by an authorized representative of Mid-Continental Restoration. Any order or any statement of intent to proceed with installation or any direction to proceed with installation or acceptance of this proposal or payment in full or part for any of the work or equipment furnished shall constitute customer's assent to the terms and conditions of this proposal.

EXCLUSIONS FROM LIMITED WARRANTY. The following are *not* covered by this warranty:

Any damage to the extent it is caused or made worse by failure by the Owner, General Contractor or by anyone other than Mid-Continental Restoration, its employees, agents, contractors or subcontractors, to comply with the Warranty requirements of manufacturers of appliances, fixtures and items of equipment, or failure by the Owner to give notice to the Contractor of any defects within a reasonable time.

Any damage from the presence of mold or fungus or the creation of conditions that may contribute to the growth of mold or fungus.

Mid-Continental Restoration's liability on any claim for loss or damage arising out of this contract or from the performance or breach thereof or connected with the supplying of any labor, equipment, goods or materials hereunder, or their sale, resale, operation or use, whether based on contract, warranty, tort (including negligence) or other grounds, shall not exceed the amount attributable to such labor, equipment, goods or material or part thereof involved in the claim. Mid-Continental Restoration shall not, under any circumstances be liable for any labor or charges without the prior written consent of Mid-Continental Restoration. Mid-Continental Restoration shall not in any event be liable, whether as a result of breach of contract, warranty, tort (including negligence) or other grounds, for special, consequential, incidental or penal damages, including, but not limited to loss of profits, revenues, loss of use of the product or any associated product, cost of capital, cost of substitute products, facilities or services, downtime costs or claims of the Customer for such damages. If Mid-Continental Restoration furnishes Customer with advice or other assistance which concerns any labor, equipment, goods or material furnished hereunder, or any system or equipment in which any of such equipment goods or material may be installed, and which is not required pursuant to this contract, the furnished of such advice or assistance will not subject any service to any liability, whether based on contract, warranty, tort (including negligence or other grounds).

If Mid-Continental Restoration encounters asbestos or polychlorinated biphenyl (PCB) on the site, Mid-Continental Restoration shall immediately stop work and report the condition to the owner's representative in writing. Mid-Continental Restoration shall not resume work in the affected area until the asbestos or polychlorinated biphenyl (PBS) has been removed or rendered harmless. Mid-Continental Restoration shall not be required to perform any work relating to asbestos or polychlorinated biphenyl (PCB) without its consent.

Any installation dates given in advance are estimated and are subject to prior orders with Mid-Continental Restoration. Mid-Continental Restoration shall not be liable for failure to perform or delay in performance resulting from strikes, accidents, fires, labor difficulties, transportation difficulties, delays in usual sources of supply, major changes in economic conditions, or, without limitations by the foregoing, any cause beyond Mid-Continental Restoration's reasonable control.

If on any breach of default by any party hereto in its obligations to any other party hereto, it shall become necessary for the non-defaulting party to employ an attorney to enforce or defend any of its rights or remedies hereunder, the defaulting party agrees to pay the non-defaulting party its reasonable attorneys' fees, whether or not suit is instituted in connection herewith.

This agreement plus any attachments and/or addendums (both sides) constitutes the entire agreement between the parties, and no terms or understandings not herein contained shall be valid or binding unless contained in writing signed by both parties.

Net cash upon completion of the work, unless this contract extends beyond one month (30 days), in which case Mid-Continental Restoration will be paid for work completed and invoiced monthly and the balance due upon completion of our work. Those projects extending over 30 days will be invoiced at 30-day intervals. Any accounts 30 days past due will be assessed a finance charge of 1½ % per month. Within ten (10) calendar days from commencement of this project, MCR reserves the right to invoice the Owner for all startup costs such as material purchases, equipment purchases and mobilization costs. The invoice for start-up costs will be payable to MCR within fourteen (14) calendar days from the invoice date. In the event time payments are desired, terms shall be included in the specifications and balance due secured by note.

Mid-Continental Restoration agrees to provide the following insurance coverage, subject to change without notice to Customer: (1) Worker's Compensation and/or Employer's Liability insurance – State Requirement; (2) Automobile Liability insurance with limits of at least \$1,000,000.00 combined single limit, bodily injury and property damage for injuries to person or persons involved in an accident in connection with this contract; (3) Contractor's Liability, with limits of \$1,000,000.00 combined single limit bodily injury and property damage per occurrence, \$2,000,000.00 Products/Completed Operations Aggregate; \$2,000,000.00 Policy Aggregate and (4) Excess Liability - \$5,000,000.00.