

EXECUTION OF OFFER

The undersigned Proposer has carefully examined all instructions, requirements, specifications, terms and conditions of this RFP and the Agreement and certifies:

1. It is a reputable company regularly engaged in providing goods and/or services necessary to meet the requirements, specifications, terms and conditions of the RFP and the Agreement.
2. It has the necessary experience, knowledge, abilities, skills, and resources to satisfactorily perform the requirements, specifications, terms and conditions of the RFP and the Agreement. Further, if awarded, the Proposer agrees to perform the requirements, specifications, terms and conditions of the RFP and the Agreement.
3. All statements, information, and representations prepared and submitted in response to this RFP are current, complete, true, and accurate. Proposer acknowledges that HCDE will rely on such statements, information, and representations in selecting the successful Proposer(s).
4. It is not currently barred or suspended from doing business with the Federal government, any of the members represented, or any of their respective agencies.
5. It shall be bound by all statements, representations, warranties, and guarantees made in its proposal.
6. Submission of a proposal indicates the Proposer's acceptance of the evaluation technique and the Proposer's recognition that some subjective judgments may be made by HCDE and its membership as part of the evaluation.
7. That all of the requirements of this RFP and the Agreement have been read and understood. In addition, compliance with all requirements, terms and conditions will be assumed by HCDE if not otherwise noted in the proposal.
8. The individual signing below has authority to enter into this on behalf of Proposer.
9. Proposer acknowledges that the Agreement may be canceled if any conflict of interest or appearance of a conflict of interest is discovered by HCDE.
10. This Agreement is subject to purchase orders duly authorized and executed by HCDE.

CORPORATE NAME:	Dunbar Armored		
AUTHORIZED SIGNATURE:			
PRINT NAME:	Kevin Cleary		
TITLE:	Vice President Bld Administration		
DATE:	9/28/18		
ADDRESS:	50 Schilling Road		
CITY, STATE, ZIP CODE:	Hunt Valley, MD 21031		
PHONE:	410-229-1845	FAX:	410-229-1846
EMAIL ADDRESS:	kevin.cleary@dunbararmored.com		
WEBSITE URL:	www.dunbararmored.com		

This Section to be Completed by HCDE

Contract Number: 18/068MR-03 Term of contract: 11/14/2018 to 11/13/2019

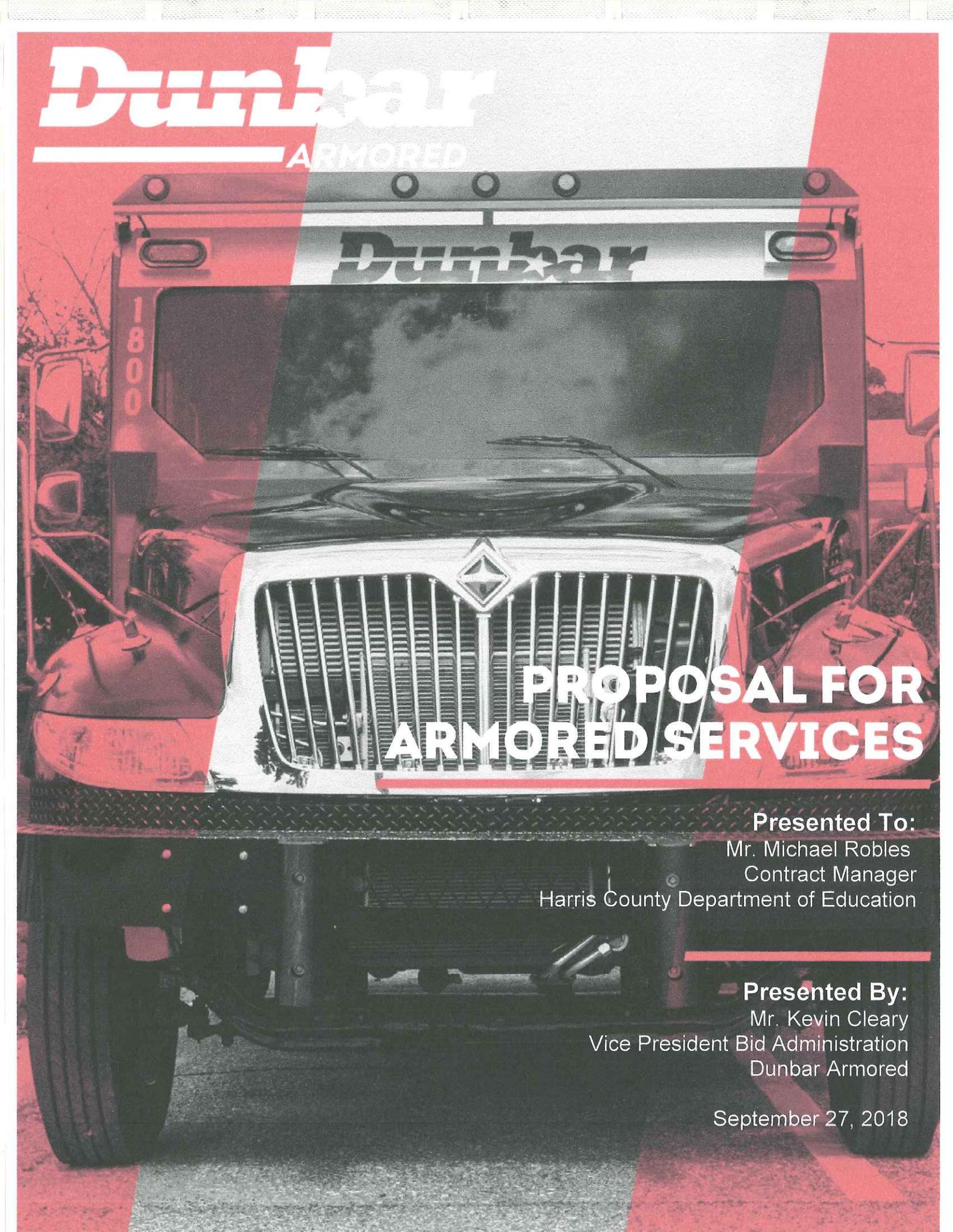
Vendor shall honor all CPC Administrative Fees for any sales resulting from this Contract whether Vendor is awarded a renewal or not.

Approved by Harris County Department of Education:



 Jesus J. Amezcua, PhD., CPA, RSTBA
 Assistant Superintendent for Business Services

11/14/18
 Board Approval Date



Dunbar

ARMORED

PROPOSAL FOR ARMORED SERVICES

Presented To:
Mr. Michael Robles
Contract Manager
Harris County Department of Education

Presented By:
Mr. Kevin Cleary
Vice President Bid Administration
Dunbar Armored

September 27, 2018

Michael Robles
Contract Manager
Harris County Department of Education
6005 Wesview Drive
Houston, TX 77022

September 27, 2018

Re: RFP #18/068MR

Dear Mr. Robles:

Dunbar Armored is pleased to submit a proposal in response to Harris County Department of Education for Proposal "#18/068MR". For nearly 100 years, Dunbar has been devoted to the safety of customers and their property. Our customized solutions are designed to fit your business's needs, providing you peace of mind, superior customer service and allowing you to focus on growing your business.

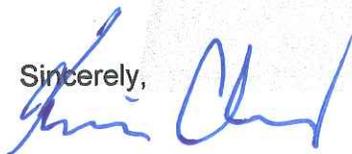
Dunbar continues to expand its services to provide you with complete solutions for the security of your entire business. Our extensive cash management solutions in addition to Cybersecurity, Security Systems, and Protective Services are devoted to safeguard your business against constantly evolving threats. Dunbar is dedicated to ensuring you receive the security you need, where you need it and before you need it.

Per clarifications provided, Dunbar agrees to a maximum of 2% discount to HCDE on any revenue generated from negotiated Endorsements. Dunbar reserves the right to negotiate service rates and add business as an Endorsement to the MSA. Dunbar will only negotiate with potential customers that are in our service footprint and are on route. Dunbar is only bidding on Armored Car Services.

Please review all documents provided in this Proposal to include redlines and exceptions taken to the general terms and conditions.

We have customized our proposal to provide a competitive offer for comprehensive services for your review. We look forward to working with HCDE. Please reach out to me if you have any questions or concerns. I can be reached via telephone at 410-229-1845 or at kevin.cleary@dunbararmored.com.

Sincerely,



Kevin Cleary
Vice President Bid Administration
www.dunbararmored.com

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1.0 Introduction and History

For nearly one hundred years, Dunbar has delivered high quality armored services by leveraging a combination of talented personnel, advanced technology and industry best practices. Dunbar Armored (“Dunbar”) continues this practice by providing HCDE with a comprehensive cash management solution.

Today’s ever-evolving security threat landscape requires organizations to be prepared for anything and Dunbar is uniquely positioned to meet that challenge. Equipped to respond to any security concern, Dunbar provides customers with complete protection including Armored Services, Cash Vault Services, Cash Manager Safes, Cybersecurity and Physical Security.

Our complete solutions are entirely customizable to fit each of our clients’ security needs. And while each solution is unique they all share one important quality: our full commitment to keeping our clients safe by providing the industry’s best risk management services.

Dunbar Armored is structured to provide the highest level of service, account management and inquiry responsiveness. We strive to continually improve, refine and enhance the quality of service that we provide to our customers. There are no plans for any change in management structure.

1.1 Expertise

With nearly one hundred years of experience in the armored services and cash management business, Dunbar Armored continues to operate a financially sound American corporation that continues to meet the growing needs of our clients. Dunbar is dedicated to investments in technology to provide customers with full visibility and peace of mind. Our hand-held scanner technology, D-Trak[®], allows us to utilize an integrated system that tracks a client’s deposits and provide this information directly to our customer via a web-based portal. Access to this daily information is unmatched in the industry.

Additionally, Dunbar’s web-based reporting system, Valu-trak[®], provides our clients with current information to help manage their businesses, reduce costs and provide a higher degree of service for their own banking customers.

Dunbar does not simply propose a client/vendor relationship, but offers a true partnership with ongoing evaluations from both perspectives. This approach promotes mutually beneficial relationships that stand the test of time. In fact, a significant portion of Dunbar’s clients have been with us for many years – testimony that this approach works.

Likewise, as a closely held company with a flat reporting structure, objectives and interests are closely aligned to address and resolve our customers concerns quickly and to their full satisfaction.

Dunbar has a proven management team that will oversee the daily operations provided to HCDE. Most of our managers have been in the cash in transit/cash vault business in excess of twenty years. They understand customer requirements and are efficient in foreseeing problems and correcting performance issues. HCDE will not experience the continuous change in management so prevalent among our competitors.

1.2 The Dunbar Armored Vehicle and Identification

The Dunbar fleet is composed of over 1,500 units of varying models and types. Armored route trucks comprise nearly two-thirds of Dunbar's fleet. Our custom armored route truck bodies are mounted on 25,500 lbs. GVW Navistar chassis. Dunbar's route truck bodies have been constructed to meet or exceed the bullet resistance specifications as defined by The Underwriters Laboratories, Level III. With our continued capital investment in new equipment and strong fleet maintenance program through our onsite mechanics, our trucks are kept in excellent working order to meet our customers' needs.

Our distinct red, white, and black vehicles are easily identifiable by the public and the police departments. Dunbar Armored Cars are always manned by two (2) fully trained personnel. Over the years, we have made structural improvements to make it safer to accommodate new ways of moving larger volumes of cash and valuables.

2.0 The Dunbar Network

Dunbar has operated cash vault facilities for more than 30 years. Since establishing our first cash vault services operation in Springfield, Virginia in 1986, Dunbar Cash Vault Services (DCVS), has grown to 38 operations located across the country.

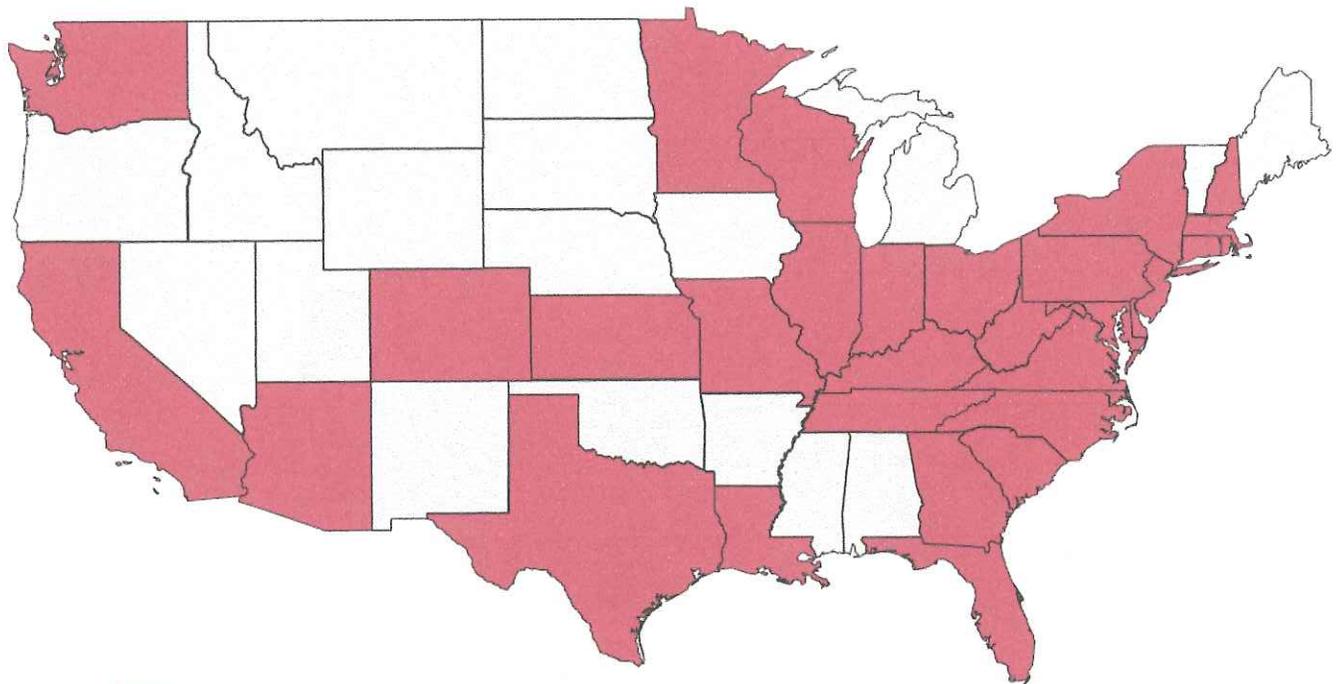
Most of our cash vaults, with the exception of Springfield, Virginia and White Marsh, Maryland, are located inside the same building as our armored transportation operations. This close proximity enables us to take full advantage of the considerable operating efficiencies that exist to benefit our company and our customers.

DCVS verifies and consolidates deposits for multiple location clients, distributes coin and currency shipments to and from the Federal Reserve Bank for financial institutions, provides change order delivery for commercial accounts, services ATM facilities, processes food stamps, and offers a variety of other services utilizing fully automated cash counting and verification equipment.

2.1 Dunbar's Armored Services Coverage

Dunbar Armored delivers industry leading security and cash management services to our customers throughout the United States. True to our heritage, we continue to grow, so that we're ready to support our customers today, tomorrow, and for whatever comes next.

The Dunbar Companies employ more than 5,000 people in more than 80 locations and 40 states. Dunbar operates a fleet of 1,500 trucks, which are now servicing 1,000,000 stops per month. Dunbar has a customer base that exceeds 10,000 customers.



 Denotes State with Dunbar Operations

3.0 Safeguarding Cash Shipments

As Dunbar continues to grow and adapt within the industry, security remains our main focus in all aspects of the business. Our custom security solutions have prevented loss and led to the success of our staff and clientele for nearly 100 years. We provide our customers with the peace of mind knowing their valuables are protected and delivered with efficiency.

Dunbar operates three departments that focus on security:

- **Security**
- **Compliance & Training**
- **Firearms Security**

The **Security Department** consists of a National Director of Security and seven regional Security Directors. Dunbar's Security Directors are responsible for thoroughly investigating all loss incidents and robberies, as well as any reports of suspicious activity. This position is staffed by personnel who possess many years of law enforcement and investigative experience.

The **Compliance & Training Department** oversees a program unique to Dunbar. Our Compliance and Training Officers audit our facilities to ensure compliance with operational policies and procedures and survey routes for safety and security. The officers also work with external parties, such as insurers from London, who audit our facilities and procedures annually. This process increases credibility, minimizes losses and allows Dunbar to pass these benefits onto our customers.

The **Firearms Security Department** is led by Dunbar's National Firearms Instructors. The Firearms Instructors are trained in the NRA's Law Enforcement Firearms Instructors School and the program is certified by the NRA. Dunbar meets or exceeds state firearms training laws in each jurisdiction in which we operate.

3.1 Technology

Our business opportunities continue to trend upward as we are reaching historic benchmarks in terms of personalized service and technology. When it comes to security, we understand the importance of technology and the impact it has on your business. Dunbar continues to invest in the latest resources to increase security and maximize loss prevention.

Dunbar Valu-Trak® provides your business with a web-based portal for consolidated cash management data from multiple locations. Our proprietary system adds audit and loss prevention controls to better manage the daily cash logistics of your organization. Dunbar Valu-Trak allows access to all of your information through:

- **Dunbar D-Trak®** - Barcode scanning technology providing activity tracking for all deposits and change orders
- **Dunbar Veri-Trak®** - Cash vault reports detailing all deposit processing activity
- **Dunbar Cash-Aware®** - Wireless transactional reporting of all Cash Manager Safe activity
- **Web Ordering** - 24/7 order placement and activity details
- **Online Invoicing** - Access to invoices anytime, anywhere, with an option to receive monthly email reports

4.0 Full Service Organization

Dunbar is a full-service security organization with two operating divisions - Cash Management and Security Solutions. Initially founded as an armored car company, we have since evolved to offer a comprehensive portfolio of products and services for every aspect of our customers' needs. Whether our clients require physical or digital protection for their assets, our team leverages an extensive knowledge and industry experience to deliver tailored solutions based on individual requirements.

4.1 Cash Management

Armored Services – Dunbar Armored trucks transport cash, coin and other valuables to and from our clients' businesses. This armored cash in-transit service is the core of our business, serving major retailers, financial institutions and government agencies nationwide. Our trucks keep commerce moving by securely transporting cargo and streamlining the cash management process, providing our customers peace of mind knowing their employees and deposits are protected.

Cash Vault Services – Our secure cash vaults are equipped with state-of-the-art technology to facilitate all processing requirements. The vaults verify and consolidate deposits for multiple locations, help streamline shipments to and from the bank, increase efficiencies and reduce risk of loss and theft.

Cash Manager Safes – The Dunbar Cash Manager Safe is an industry leading total cash management solution that incorporates advanced cash accepting smart safe technology with services to mitigate risk and reduce overall costs and labor. They provide independent real-time wireless communication,

armored car service, change order services, verification and guarantee of deposited funds, live web reporting, and a comprehensive service and warranty program to ensure reliability.

EZChange® – EZChange is available alongside our Armored Services to further improve your cash management operations. EZChange delivers the change you need directly to your door, eliminating reconciliations as well as the labor costs and risks associated with frequent trips to the bank.

ATM Service – Dunbar handles everything from cash order preparation, to timely replenishment, to settlement of your terminal. We'll manage deposit verification and residual cash, and even deliver your perishables (receipt paper, etc.) before you run short. ATM Services also grant access to detailed reports and expert conversion teams.

Security Products – Dunbar Security Products is the designer and distributor of the world's finest adhesive and tamper-evident security containers. This division also provides customers with a wide-range of security-related products for counterfeit detection, money counting and back-office safes.

4.2 Security Solutions

Cybersecurity – Dunbar Cybersecurity delivers customized solutions that allow our customers to maintain their business operations while protecting sensitive information. We assess and monitor all things digital by means of continuous threat monitoring, mobility and remote access, data protection and encryption, online application security, cyber risk management, managed security, security consulting and business continuity. Analysis takes place 24/7 in our state-of-the-art Security Operations Center (SOC), a secure facility featuring video surveillance, biometric access control, redundant fiber-optic Internet connectivity, and battery and diesel redundant power.

Security Systems – Dunbar Security Systems are integrated and customized systems that fit a wide range of industries to keep businesses, employees, and customers safe. Among the solutions offered are access control, fire and life safety, intrusion detection, monitoring services and video surveillance.

Protective Services – Dunbar security personnel, whether armed or unarmed, deliver protection to commercial, industrial and government organizations that is unmatched in the industry for quality and consistency. Protective Services offers the most advanced guard activity tracking, incident reporting, and integration with security systems.

5.0 Customer Service

Approaching 100 years of service that exceeds expectations, Dunbar provides a high level of customer service that is unique within the armored car industry. Our in-depth knowledge and experience, along with a complete continuum of cash management and security solutions, provide our customers with the tools they need for their expanding business requirements.

Dunbar's Operations and Sales staff is specifically structured to identify and resolve obstacles that affect productivity and quality assurance. We continue to expand our capabilities to offer a more efficient and personalized service for our customers.

Dunbar's **Client Help Desk** is located at our Headquarters in Hunt Valley, MD and staffed by our dedicated Customer Service Representatives. The Help Desk is in place to respond to customer inquiries in a timely fashion. Our customers can rely on a designated contact to assist with any

questions or issues that may arise during the course of their service. This benefit has proven to be effective in personalizing the customer experience and improving the issue resolution process.

Dunbar's **Account Maintenance Program** provides our Account Executives with the resources needed to provide superior and personalized customer service. Our Account Executives are in contact with each account to understand their needs and offer the appropriate solutions. This enables Dunbar to ensure customer contentment and preserve our company's reputation in the marketplace.

6.0 Growth Capacity

As we continue to grow our business, we have put a system in place to develop new opportunities while supporting our existing customer base. We are investing in the best trucks, equipment and training for our personnel. We are constantly implementing new technologies to better serve our customers and internal employees to improve communication, streamline processes and maximize performance. These benefits will continue to win new business for Dunbar and allow our organization to gain a competitive advantage in the industry.

Dunbar's latest innovations and cutting edge technologies ensure our customers receive the best possible service. Dunbar takes pride in the security solutions we offer, and we look forward to discussing these approaches with HCDE.

7.0 Invoicing

Dunbar offers an array of electronic invoice formats via the web. Customers can download full invoice detail of services and location charges in a variety of formats such as CSV, PDF, and XML. This provides the customer with the flexibility of downloading into an Excel spreadsheet or importing into their accounting system for reporting and payment.

The benefits of web invoicing include:

- Accelerated access to invoices
- Access to account and payment history
- Expedited invoice reconciliation
- Eliminated paper invoices
- Convenient file download formats
- Email notifications when new invoices are available

Dunbar's invoice payment is net 30 days. Discounts are not offered.

8.0 Business Continuity

Dunbar is structured to maximize business continuity in disruptive or catastrophic situations. Our satellite terminals provide our customers with assurance that alternate sites, referred to as "hot sites" are immediately available when needed. Most other carriers provide only a single mega terminal to service a specific region. If their terminal becomes inoperable, they will have difficulty in quickly establishing alternate sites.

Dunbar's facilities all utilize the same systems and processes. In the event of an emergency, customer accounts and information are loaded into the replacement site using our existing network of shuttles. Back-up computer data is placed in this adjoining site, enabling two sources of customer databases.

Our facilities also have sufficient capacity to absorb an additional workload. This can be accomplished by extending our hours of operation and transferring personnel from the down terminal. Our regionalized business continuity plan is duplicated throughout the Dunbar footprint but customized for individual terminals within the region.

Dunbar's philosophy of operating multiple branches rather than a large single facility provides back-up capabilities that other carriers cannot duplicate. Our local branch management team understands our customers' needs and facilitates the issue resolution process.

9.0 Insurance Coverage

Dunbar provides an "All Risk" coverage known as transit and storage insurance for armored car services. There are no exceptions, warranties or conditions, except the standard war and nuclear exclusion. "All Risk" insurance covers currency, checks and other valuables against risk of physical loss or damage to the insured property up to your stated liability limits. Checks are subject to reconstruction.

The current policy limit is \$600,000,000.00 per occurrence (through Great American Insurance Company) and provides aggregate maximum loss coverage for employee fidelity coverage as extra assurance of performance. This insurance is included in our transit and storage policy. A certificate will be issued should we be awarded a contract, displaying liability limits consistent with your specifications.

9.1 General Insurance Coverage

Dunbar carries public liability insurance for property damage and bodily injury in the amount of \$1,000,000/person and \$1,000,000/accident. This coverage is in place to protect our servants and agents performing work or furnishing services covered by this contract from all claims for personal injury, including loss of life, as well as from all claims for property damage which may arise from operations under this contract, whether caused by us or by anyone directly or indirectly employed by or acting for us. In addition, we have an umbrella policy covering excess liability up to \$50,000,000. A certificate of this coverage will be furnished upon contract award.

9.2 Automobile Liability

Our automobile liability policy provides bodily injury and property damage combined single limits in the amount of \$2,000,000/accident.

9.3 Workers' Compensation

Our Worker's Compensation coverage will be provided with statutory minimum limits and is designed for your protection. Dunbar does not believe in a 'least amount' approach as we have structured the "All Risk" coverage amounts to provide adequate protection based upon the potential volume of activity.

10.0 Environmental Sustainability

Dunbar Armored has never violated any safety and/or environmental regulations. There are no hazardous materials contained in the products we provide.

We are currently investigating the possibilities of using biofuel in our vehicles. Biofuel can be broadly defined as fuel derived from recently dead biological matter, as opposed to fossil fuels which are derived from long dead material. Unlike fossil fuels which return carbon into the air, biofuels offer the possibility of producing energy without a net increase of carbon into the atmosphere. Therefore, biofuels are less likely to increase atmospheric concentrations of greenhouse gases.

Due to the secure nature of our business, the products and services offered by Dunbar Armored are not typically suitable for recycling purposes. We do not offer a take-back program for products at the end of their "life cycle" nor do we maintain a Hazardous Materials Management and Disposal Program. We also do not have a written policy pertaining to the protection of the environment. However, Dunbar does recycle all used oil, anti-freeze, parts cleaning solvent, etc. This is done through a national account with Safety-Kleen. Additionally, all hard parts such as batteries, alternators and other similar devices are recycled through an international dealer network.

Dunbar does have a policy in place to achieve optimum consumption of energy and water supplies in an energy-efficient manner. This is shown through Dunbar's preventative maintenance program, designed to keep our vehicles operating at peak efficiency. Dunbar also utilizes environmentally effective methods to reduce the consumption of goods, materials and waste production. For example, in an effort to reduce waste going into the dumpster, we do not use items such as Oil-Dri on our shop floors to clean up oil. Instead we use mops and buckets with water recycled by Safety-Kleen. Additionally, waste paper from our administrative functions is recycled through a paper shredding/recycling contract.

Dunbar ensures that the option to recycle materials is available for use and communicated clearly to our staff. Recycling receptacles are provided at every Dunbar location to accumulate discarded paper and aluminum cans.

11.0 Competitive Advantage

Dunbar's commitment to customer service and investment in state-of-the-art technology helps differentiate us from the competition. From process improvements that increase security to enhanced training methods that improve productivity, Dunbar is committed to maximizing our potential in the industry.

Security is always our main focus, but quality, courteous and responsive customer service keeps us growing in this business. Our employees look for ways to solve customer problems before they become larger issues.

Value is the bottom line for our customers when it comes to delivering security services. Therefore, Dunbar must constantly adapt to deliver a tailored, reliable, and efficient service that our expanding customer base can expect.

From our trucks to our guards, Dunbar Armored is built to provide a premium service that satisfies our customers in the most productive manner possible.

12.0 Conclusion

Dunbar Armored is looking forward to future business opportunities with HCDE. Our team approach, vast experience, adaptive systems, and reasonable price, make Dunbar the “best value” selection in the industry.

Guarding a customer’s valuables is a serious business. A closer look at the Dunbar “advantage” will help you to realize why Dunbar is truly the “Most Trusted Name in Security.”

Proposal Declarations

- Due to the nature of our business armored car routes are subject to change for a variety of reasons including but not limited to traffic and weather conditions as well as road and security issues.
- Dunbar's pricing assumes that our personnel can be armed at all times in the performance of their duties.
- Dunbar's offer is based on any and all prevailing wage requirements being waived.
- Dunbar's offer is based on any and all MWBE/HUB requirements being waived.
- Dunbar reserves the right to review any and all bond requirements prior to executing an Agreement.
- Deposits should be ready for pick up when the Dunbar Armored representative arrives.
- Dunbar's proposal will remain valid for 90 days following the proposal submission date.
- Changes to the scope of work, liability amount, depository, pick-up location, etc. will result in a review of the contract and possible serviceability and/or pricing adjustments.
- Dunbar employees are required to wear an "All Valuables Shipment" (AVS) badge at all times while they are working. This is a system which has been recognized as an innovative advancement in the security industry. The AVS cards used throughout the network of Dunbar locations are all issued from one central location.

There are only three employees authorized to manufacture these identification cards. They are plastic cards with a scanned computer image of the employee. They cannot be forged, and they cannot be duplicated. The AVS cards our employees wear will be readily identified by the use of artwork and the logo exclusive to Dunbar Armored, Inc.

The AVS card is stored in our vault when the employee is not at work. The cards are then issued to the employees when they report to work, and are returned to the vault at the end of their shift. Our customers are assured when they observe this AVS badge their pickups are being performed by an authorized Dunbar employee. The AVS System is superior to the inefficient "signature list" method which has proven to be fallible.

- Dunbar observes the following holidays:

Martin Luther King Day

Presidents' Day

Memorial Day

Independence Day

Labor Day

Veterans Day

Dunbar is closed on New Year's Day, Thanksgiving Day, and Christmas Day

- All contracts and future endorsements, on Dunbar paper, must be signed via DocuSign.

ADDITIONAL TERMS AND CONDITIONS

1. HCDE or CP Member agrees to maintain a complete record as to maker and amount of all checks placed in any shipment given to Contractor and in case of loss, to promptly, diligently and completely cooperate with Contractor in the identification and replacement of lost, destroyed or stolen checks contained in any such shipment. Complete cooperation shall include requests by HCDE or CP Member to makers of the missing checks to issue duplicates and in the event the makers refuse to do so, then to assert all its legal and equitable rights against said makers or to subrogate such rights to Contractor and its assigns. Contractor agrees to reimburse HCDE or CP Member for all reasonable costs incurred in the reconstruction process.
2. Upon discovery of a claim for loss under this Agreement, HCDE or CP Member shall immediately report the same to the appropriate police authorities and shall maintain and preserve all evidence. Within ten (10) days after discovery of any loss, but in no event more than forty five (45) days after delivery to Contractor of the funds, securities, instruments and/or valuable articles in connection with such claim is asserted, HCDE or CP Member shall give notice of claim in writing to Contractor. If the HCDE or CP Member fails to comply with these conditions, HCDE and CP Member agree that all claims against Contractor relating to the lost items are deemed to be waived and released.
3. It is understood and agreed that Contractor shall not be responsible for any loss or damage caused by hostile or warlike action, civil disorders or any governmental seizure or by atomic weapons, nuclear reaction or radiation or radioactive contamination, whether controlled or uncontrolled, whether such loss be direct or indirect, proximate or remote. The phrase "hostile or warlike action, civil disorders or governmental seizure" is understood by HCDE and CP Member and Contractor to incorporate the provisions of the War Exclusion Clause adopted by the Inland Marine Underwriters and filed by the Inland Marine Insurance Bureau in all states.
4. Neither party shall be liable for any consequential or incidental losses or damages, including loss of interest, under any theory of liability.

Exceptions/Redlines

RFP #18/068MR

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, Purchase Order number, CP member name, city/town, and Purchase Order total dollar amount.

The Vendor shall provide HCDE/CP with velocity/usage reports within five (5) business days of any request by HCDE/CP for such reports.

Reports shall be submitted in an electronic format to HCDE/CP at 6005 Westview, Houston, Texas 77055, or electronically mailed to supplyreporting@choicepartners.org.

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. In the event Proposer's prices will be adjusted or escalated upon a renewal (if any) of the fixed-price contract awarded pursuant to this RFP, Proposer must indicate such in its proposal. Any adjustment or escalation of the fixed price(s) will be based on the CPI index and may only be made at the time of contract renewal. 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 2%, subject to the Administrative Incentive Clause, below. HCDE/CP reserve the right to modify the Administrative Fee at any time, upon notice to Vendor. Such increase shall only apply to new contracts with new CP Members or to existing contracts upon extension. If the Administrative Fee is increased, the increase shall be limited to one (1) percent. 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.

Aggregate Year

- Gross sales above \$5M invoiced by Choice Partners = 1.5% for remainder of the then-current Contract Term
- Subsequent renewal 1-year Term = 1.75% and Vendor must maintain production of \$5M to keep 1.75% fee for the next subsequent renewal 1-year Term

Task Orders/Job Orders

- \$2M or above - 1.5% only in the Contract Term in which they are invoiced
- \$1M or above - 1.75% 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 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 RFP.
- 5.32.2. Compliance with procurement laws, policies, and procedures, including, without limitation, reviewing/comparing pricing on invoices 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. This obligation to indemnify and defend shall not apply to any claim for injury or damage caused by the sole negligence of any indemnified party.

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 RFP, including multiple contracts for each

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 RFP 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 RFP. 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; Product Recall**

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

If a product recall is instituted on any good that has been furnished and delivered to HCDE/CP or any CP member, Vendor must immediately (i.e., within 24 hours but preferably sooner) notify the purchasing agent of HCDE/CP and the purchasing CP member by e-mail or in writing and must include all pertinent information relating to the recall. If Vendor is unable to contact the purchasing agent, Vendor must contact the Director of Purchasing of HCDE/CP and the purchasing CP member. Vendor will be responsible for all costs associated with replacing the recalled product, including replacement cost, shipping charges, etc. This requirement shall survive payment and acceptance of the goods.

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 RFP, 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.~~

Commented [RD1]:

~~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.~~

Commented [RD2]:

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.~~

Commented [RD3]:

5.41-5.39. 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.

5.42-5.40. 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.

5.43-5.41. 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 RFP 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.

5.44-5.42. 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.

Commented [RD4]: Underwriters do not allow customers to be additional insured on workers compensation.

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 automobile and commercial general liability 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.

Commented [RD5]: Dunbar's excess policy far exceeds the required limit. A per job aggregate really is not necessary.

5-45-5.43. 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. 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 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 recommended 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

5-46-5.44. 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.

5-47-5.45. 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.

5.48-5.46 **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.

5.49-5.47 **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.

5.50-5.48 **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.

5.51-5.49 **Entire Agreement**

The Contract, the RFP, Vendor's proposal submitted in response to the RFP, 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 RFP or Vendor's proposal submitted in response to the RFP, this Contract shall control. In the event of a conflict between the RFP and Vendor's proposal submitted in response to the RFP, the RFP shall control. This Contract supersedes any conflicting terms and conditions on any Purchase 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.

5-52-5.50 **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.

5-53-5.51 **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.

5-54-5.52 **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).

5.56 USDA/TDA Special Terms and Conditions

The following terms and conditions apply to all procurements and purchases involving federal School Nutrition Program funds. In the event of a conflict or inconsistency between the following terms and conditions and any provision of the Agreement, the procurement solicitation issued by HCDE, or the portion of Vendor's proposal submitted in response to HCDE's procurement solicitation that is satisfactory to HCDE, the following terms and conditions shall control.

5.56.1 Market Basket Analysis

HCDE/CP reserves the right, in its sole discretion, to use a "Market Basket Analysis" method, as that term is defined by applicable USDA/TDA regulations and guidance. The Market Basket Analysis sample is established to represent 75% of the total estimated value of the Contract. The most recent velocity/sales report(s) from HCDE/CP's current supplier(s) was used to project the balance of the year and adjusted for any estimated change in menu and participation for the following year. As a result, this list of [100] goods to be purchased under this procurement solicitation and any resulting Contract includes the top [60] goods purchased by dollar volume representing the 75% threshold. Prices for the remaining [40] goods listed in this procurement solicitation should also be included, though they will not be a part of the Market Basket Analysis. The Market Basket Analysis shall not be used for service or equipment contracts/procurement solicitations or for Fee-For-Service Processing contracts.

5.56.2 Material Change

If a material change (as the term is defined by TDA rules and regulations) 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 RFP for the goods or services procured under the previously-existing contract. Material change for purposes of this Section 5.56.2 means a modification that substantially exceeds the terms of the original contract between HCDE/CP and Vendor.

6.0 SCOPE OF PROPOSAL

- 6.1. It is the intention of HCDE/CP to establish one or more contracts to furnish and/or deliver Security Services, Supplies and Related Items.
- 6.2. Vendors are requested to submit a proposal offering their total line of available products and services that are commonly purchased by governmental entities and school districts. Vendors are encouraged to offer any applicable terms and conditions should be included for any additional product or service. HCDE/CP reserves the right to accept or reject any items included by Vendor in this section.

Awards will be made to the successful Vendor(s) for the total line of products and services submitted. Proposals can be made for any or all services and products described herein. The terms and conditions listed below apply to all categories and lots within the Security Services and Supplies scope. Each category and lot contains additional terms, conditions, and specifications. If there is a conflict between category or lot terms and conditions and those listed below, the category or lot terms and conditions shall take precedence.

a) **Vendor is required to ensure that the Purchase 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 as a result of these items.
- 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 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 RFP.
- 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.

Commented [RD6]: Not applicable to armored car service.

- b) After the Purchase Order is signed, a copy of the Purchase Order shall be sent to HCDE/CP's business manager.
- c) Each individual Purchase 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.
- d) The Vendor shall perform the scope of work within the project completion time and for the fixed price of the Purchase Order.
- e) No work shall be performed until a written Purchase Order has been signed by the Vendor and the CP member. Any work performed under a Purchase Order before the Vendor's receipt of the written Purchase Order is at the Vendor's risk.

representative of HCDE/CP and any CP Member.

f) **BACKGROUND CHECKS** - Proposer shall provide upon request by HCDE/CP and any CP Member, free background checks and area crime analysis reports. Proposer must be able to provide traffic control for special events as needed. Proposer will be responsible for filing misdemeanor and felony reports with the Harris County District Attorney, or the District Attorney of HCDE/CP and any CP Member County.

g) **COMMUNICATION** - Proposer shall provide both formal and informal procedures for handling: communication, notifications, arrests, prisoner transfer or requests (that may affect HCDE/CP and any CP Member) with Harris County Sheriff's Office or other appropriate office/agency.

h) **INCIDENT PROTOCOL** - Proposer shall have established procedures that regulate response to incidents, emergency contingencies, and contracting supervisors. Such procedures must be provided to the HCDE/CP and any CP Member designated representative at the commencement of the Term of the Agreement.

~~i) **ROSTER** - Proposer's performance of the Services shall be in accordance with the highest standard prevailing in the industry. Proposer shall provide a complete company personnel roster, including an organization chart, and listing of officers, directors, and executive personnel and their qualifications. Proposer will be required to provide updated personnel rosters and organizational charts to the HCDE/CP and any CP Member designated representative whenever changes in the Proposer's personnel are made.~~

Commented [RD7]: Dunbar does not provide a roster or list of employees. Dunbar's security program is explained in our proposal.

j) **OPERATIONS** - The Proposer shall meet periodically with HCDE/CP and any CP Member and/or its designated representative to discuss the Services and any changes in schedules, procedures and operations as to be deemed necessary.

k) **SCHEDULING** - The Proposer must make provisions to cover any occasion that an assigned officer does not show up or is late. It is the Proposer's responsibility to make changes in the work schedule as may be requested by HCDE/CP and any CP Member or its designated representative.

l) **TRAINING** - The Proposer is responsible for assuring that all service personnel providing Services under this RFP/Agreement receive training that is adequate for them to fully understand and perform their duties.

m) **POLICIES** - All of the Proposer's personnel providing Services under this RFP/Agreement shall adhere to the policies and procedures established by HCDE/CP and any CP Member.

~~n) **ACCESS TO BUILDINGS** - The Proposer's service personnel may be issued building entry access cards in the performance of their duties. The Proposer is responsible for the cost to replace any access cards that are damaged, lost, or stolen that were issued to Proposer's service personnel.~~

Commented [RD8]: Our employees typically are not issued access cards.

o) **SECURITY OFFICERS' EQUIPMENT**: Proposer shall, at its expense or at its employees' expense, furnish each security officer with a distinctive uniform and all basic officer supplies, including an identification card bearing a recent photograph of the security officer. Proposer shall provide all necessary equipment to carry out the requirements of the proposal; this includes, but is not limited to: uniform, identification, lethal weapon, non-lethal weapon, handcuffs and a communication device - 2-way radio.

p) **SUPERVISION**: Proposer shall designate a supervisor for the security officers performing Services hereunder. Supervision shall consist of that level of management and administrative activity necessary to ensure that each security officer is performing his/her duties in both a safe and efficient manner.

q) **INDEPENDENT CONTRACTOR**: Proposer shall provide the Services as an independent contractor.

7.5 Minimum Requirements for Licensed Security Officers

Each Security Officer employed to provide services here after shall meet the following minimum criteria and provide applicable certification documents to HCDE/CP and any CP Member.

- a) Must be able to issue on-sight misdemeanor and felony arrest powers in Harris County and the State of Texas and/or the jurisdiction of the CP member's location. (Proposer should detail in which counties in the State of Texas officers possess arrest powers).
- b) Must have authority to issue on-site criminal trespass warnings.
- c) A minimum of three years (3) previous experience providing commissioned peace officer service.
- d) Must have attended certified Texas Commission on Law Enforcement (TCOLE) courses on self-defense and earned TCOLE license, and continue to hold the TCOLE license.
- e) High School graduate or must have obtained Graduate Equivalency Diploma, and must demonstrate a functionally equivalent level of communication in the English language. College education is preferred.
- f) Able to speak, understand, read, and write the English language proficiently.
- g) Not have been convicted in any jurisdiction of any felony unless a full pardon has been granted.
- h) Not have been convicted in any jurisdiction of a misdemeanor involving moral turpitude during the seven year period preceding the date of application unless a full pardon has been granted.
- i) Must not have been declared incompetent by reason of mental defect of disease by any court of competent jurisdiction without having been restored.
- j) Not be suffering from habitual drunkenness or from a drug addiction or dependence.
- k) Must be certified to carry a firearm.
- l) Must be certified in the use of both a primary lethal weapon and a non-lethal secondary weapon.
- m) CPR Certification must be current.
- n) Drug free test results.
- o) Clear felony background check.

7.6 Minimum Requirements for Courier/Armored Car Services

Courier/Armored Car Services here after shall meet the following **minimum** criteria and provide applicable certification documents to HCDE/CP and any CP Member as required. HCDE/CP and any CP member will have their own schedule, needs, and locations.

- a) Guarantees safe delivery from site to financial institution with unopened and untampered deposits.
- b) Provide a process for notifying when ~~scheduled deliveries are to occur and~~ when said deliveries cannot be made because of unforeseen circumstances. If unable to pick up a scheduled deposit, provider will notify promptly/immediately and provide a special run at no additional cost to HCDE/CP or any CP member on the next business day within 24 hours.
- c) If HCDE/CP or any CP member has to cancel a pick up for any reason, there will be no charge with proper notice.
- d) Provide a process for receipting each deposit and providing description of this process.
- e) Process for carrying forward deposits to the next business day in the event that a deposit is not available or ready.
- f) Provide flexible and most efficient pick up schedule.

g) Personnel must provide a signed receipt for the deposit upon pick up. Upon request, deposit information including pick up slips shall be provided to HCDE/CP or any CP member.

Commented [RD9]: This information is available on the web.

h) Original receipt must be retained for a period of two (2) years of the deposit pick up date.

i) Provider shall be responsible for contents of each pick up until arrival to final destination.

j) All employees of provider shall wear an issued uniform and carry proper identification badge at all times when performing services. In addition, employees of provider will abide by all security procedures requested by HCDE/CP and any CP member.

k) If scheduled pick up occurs earlier than expected, excess waiting time will not be charged.

l) No fuel surcharges are allowed.

m) Minimum insurance requirements required for HCDE/CP or any CP member. Reference section 5.44 for minimum insurance requirements.

n) Provider will ensure proper standards and industry specific security controls will be in place to prevent unethical tampering of contents of deposit.

7.7 Minimum Requirements for Canine Services

Canine services here after shall meet the following minimum criteria and provide any necessary documents to HCDE/CP and any CP member as required.

a) Provide canine capable of meeting specifications and performing services in section 7.2.3.

b) Provide proper personnel to care for canine while services are being rendered.

c) Have all proper identification for personnel and canine making sure each are properly identifiable.

d) Canine must have all required medical shots.

e) Minimum insurance requirements required by HCDE/CP or any CP member. Reference section 5.44 for minimum insurance requirements.



CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)
06/22/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Aon Risk Services, Inc. of Maryland 500 East Pratt Street Baltimore MD 21202 USA	CONTACT NAME: PHONE (A/C. No. Ext): (866) 283-7122 FAX (A/C. No.): 800-363-0105		
	E-MAIL ADDRESS:		
INSURED Dunbar Armored, Inc. 50 Schilling Road Hunt Valley MD 21031 USA	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: ACE American Insurance Company		22667
	INSURER B: Property & Casualty Ins Co of Hartford		34690
	INSURER C: Hartford Fire Insurance Co.		19682
	INSURER D: Twin City Fire Insurance Company		29459
	INSURER E: Navigators Insurance Co		42307
	INSURER F: James River Insurance Company		12203

COVERAGES **CERTIFICATE NUMBER: 570071906049** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. **Limits shown are as requested**

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
C	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:			40CSE562002 General Liability	04/01/2018	04/01/2019	EACH OCCURRENCE	\$1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$1,000,000
							MED EXP (Any one person)	\$10,000
							PERSONAL & ADV INJURY	\$1,000,000
							GENERAL AGGREGATE	\$10,000,000
							PRODUCTS - COMP/OP AGG	\$3,000,000
C	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY			40 CSE 562003 Auto	04/01/2018	04/01/2019	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
							BODILY INJURY (Per person)	
							BODILY INJURY (Per accident)	
							PROPERTY DAMAGE (Per accident)	
E	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION			PT18EXR726520IV Lead \$5M	04/01/2018	04/01/2019	EACH OCCURRENCE	\$5,000,000
							AGGREGATE	\$5,000,000
B	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			40WNS62000 Workers Compensation - AO	04/01/2018	04/01/2019	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER	
D	<input type="checkbox"/> Y <input checked="" type="checkbox"/> N <input type="checkbox"/> N/A			40WBR562001 Workers Compensation - WI	04/01/2018	04/01/2019	E.L. EACH ACCIDENT	\$1,000,000
							E.L. DISEASE-EA EMPLOYEE	\$1,000,000
							E.L. DISEASE-POLICY LIMIT	\$1,000,000
A	E&O-Technology			G24579517006 Cyber - Claims Made SIR applies per policy terms & conditions	04/20/2018	04/20/2019	Each Claim Limit SIR	\$3,000,000 \$100,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Evidence of Insurance.

CERTIFICATE HOLDER

Dunbar Armored, Inc.
50 Schilling Road
Hunt Valley MD 21031 USA

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Aon Risk Services, Inc. of Maryland

Holder Identifier :

Certificate No : 570071906049

AGENCY CUSTOMER ID: 10210212

LOC #:



ADDITIONAL REMARKS SCHEDULE

Page _ of _

AGENCY Aon Risk Services, Inc. of Maryland		NAMED INSURED Dunbar Armored, Inc.	
POLICY NUMBER See Certificate Number: 570071906049			
CARRIER See Certificate Number: 570071906049	NAIC CODE	EFFECTIVE DATE:	

ADDITIONAL REMARKS

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance**

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER	
INSURER	
INSURER	
INSURER	

ADDITIONAL POLICIES If a policy below does not include limit information, refer to the corresponding policy on the ACORD certificate form for policy limits.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
	EXCESS LIABILITY							
F				00822300 \$5M xs \$5M	04/01/2018	04/01/2019	Aggregate	\$5,000,000
							Each Occurrence	\$5,000,000
	OTHER							
	Claims Made							

CERTIFICATE OF INSURANCE

ISSUED TO:

SPECIMEN

This is to certify that policies of insurance as described below have been issued to the insured named below and are in force at this time. If such policies are canceled, the limits of liability reduced, or the policies are changed in any way that may affect your coverage during the periods of coverage as stated herein, written notice will be mailed to the party designated above for whom this certificate is issued. Such written notice will be mailed no less than ten (10) days prior to said cancellation, limit reduction, or change that may affect your coverage.

DUNBAR ARMORED, INC.

"ALL RISK" ARMORED CAR CARGO LIABILITY

TO COVER CURRENCY, COIN, BULLION, STOCKS, BONDS, NEGOTIABLE AND NON-NEGOTIABLE SECURITIES, CHECKS AND OTHER PROPERTIES AGAINST ALL RISKS OF PHYSICAL LOSS OF OR DAMAGE TO THE INSURED PROPERTY INCLUDING ANY ACT OR OMISSION OF THE ASSURED OR ANY OF ITS EMPLOYEES, EXCEPT WAR AND NUCLEAR AS EXCLUDED IN THE POLICY.

LIMIT OF LIABILITY PER OCCURRENCE	CARRIER	POLICY NUMBER	EFFECTIVE DATE
\$100,000,000	Great American Ins. Co.	AC-379-30-18	9-1-14 - 8-31-19
\$500,000,000 Excess of \$100,000,000	Lloyds of London	11875W14	9-1-14 - 8-31-19

The insurance afforded is subject to all of the terms of the policy, including endorsements, applicable thereto.

September 1, 2014

Specimen

DATE

CERTIFICATE NUMBER

WILLIS TOWERS WATSON, INC.

AUTHORIZED SIGNATURE

DUN - 566
REV: 6/07

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 RFP and are part of the terms and conditions of each Purchase Order or proposal forms issued in connection with this RFP. 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
Dunbar Armored, Inc. (“VENDOR”)
FOR
Security Services, Supplies and Related Items**

This Contract is entered into between HCDE/CP and Vendor, having submitted a proposal in response to this RFP 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 RFP.

5.2. Use of Contract by CP members

Vendor agrees and understands that this RFP and Contract may be used to accomplish work for HCDE/CP, a local governmental entity. Vendor further agrees and understands that this RFP 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.

5.4. Term of Contract; Renewal of Contract

The initial term of this Contract is for a period of one (1) year, 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 **four (4)** 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 RFP 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 RFP, this Contract, and/or a Purchase Order; (2) make any payments owed; or (3) otherwise perform in accordance with this Contract and/or the RFP. 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 RFP 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 RFP. 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. 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 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 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 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 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, including, without limitation, the U.S. Department of Agriculture and/or Texas Department of Agriculture. 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 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). 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 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 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.

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 RFP 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 RFP, 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 RFP 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 RFP, 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 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 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.

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, or Purchase 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, and/or any Purchase Order are commitments of the current revenue of HCDE/CP and CP members only.

5.26. **Ordering Procedures**

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

HCDE/CP also may elect to require e-commerce functionality, in which Purchase 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 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 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 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, Purchase Order number, CP member name, city/town, and Purchase Order total dollar amount.

The Vendor shall provide HCDE/CP with velocity/usage reports within five (5) business days of any request by HCDE/CP for such reports.

Reports shall be submitted in an electronic format to HCDE/CP at 6005 Westview, Houston, Texas 77055, or electronically mailed to supplyreporting@choicepartners.org.

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. In the event Proposer's prices will be adjusted or escalated upon a renewal (if any) of the fixed-price contract awarded pursuant to this RFP, Proposer must indicate such in its proposal. Any adjustment or escalation of the fixed price(s) will be based on the CPI index and may only be made at the time of contract renewal. 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 **2%**, 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.

Aggregate Year

- **Gross sales above \$5M invoiced by Choice Partners = 1.5% for remainder of the then-current Contract Term**
- **Subsequent renewal 1-year Term = 1.75% and Vendor must maintain production of \$5M to keep 1.75% fee for the next subsequent renewal 1-year Term**

Task Orders/Job Orders

- **\$2M or above - 1.5% only in the Contract Term in which they are invoiced**
- **\$1M or above - 1.75% only in the Contract Term in which they are invoiced**

NOTE: FAILURE TO REPORT WILL VOID THIS ADMINISTRATIVE FEE INCENTIVE

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 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 RFP.

5.32.2. Compliance with procurement laws, policies, and procedures, including, without limitation, reviewing/comparing pricing on invoices 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 RFP, 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 RFP 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 RFP. 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; Product Recall**

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

If a product recall is instituted on any good that has been furnished and delivered to HCDE/CP or any CP member, Vendor must immediately (i.e., within 24 hours but preferably sooner) notify the purchasing agent of HCDE/CP and the purchasing CP member by e-mail or in writing and must include all pertinent information relating to the recall. If Vendor is unable to contact the purchasing agent, Vendor must contact the Director of Purchasing of HCDE/CP and the purchasing CP member. Vendor will be responsible for all costs associated with replacing the recalled product, including replacement cost, shipping charges, etc. This requirement shall survive payment and acceptance of the goods.

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 RFP, 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 RFP 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.

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. 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 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 recommended 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 RFP, Vendor's proposal submitted in response to the RFP, 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 RFP or Vendor's proposal submitted in response to the RFP, this Contract shall control. In the event of a conflict between the RFP and Vendor's proposal submitted in response to the RFP, the RFP shall control. This Contract supersedes any conflicting terms and conditions on any Purchase 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).

5.56. **USDA/TDA Special Terms and Conditions**

The following terms and conditions apply to all procurements and purchases involving federal School Nutrition Program funds. In the event of a conflict or inconsistency between the following terms and conditions and any provision of the Agreement, the procurement solicitation issued by HCDE, or the portion of Vendor's proposal submitted in response to HCDE's procurement solicitation that is satisfactory to HCDE, the following terms and conditions shall control.

5.56.1. **Market Basket Analysis**

HCDE/CP reserves the right, in its sole discretion, to use a "Market Basket Analysis" method, as that term is defined by applicable USDA/TDA regulations and guidance. The Market Basket Analysis sample is established to represent 75% of the total estimated value of the Contract. The most recent velocity/sales report(s) from HCDE/CP's current supplier(s) was used to project the balance of the year and adjusted for any estimated change in menu and participation for the following year. As a result, this list of [100] goods to be purchased under this procurement solicitation and any resulting Contract includes the top [60] goods purchased by dollar volume representing the 75% threshold. Prices for the remaining [40] goods listed in this procurement solicitation should also be included, though they will not be a part of the Market Basket Analysis. The Market Basket Analysis shall not be used for service or equipment contracts/procurement solicitations or for Fee-For-Service Processing contracts.

5.56.2. **Material Change**

If a material change (as the term is defined by TDA rules and regulations) 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 RFP for the goods or services procured under the previously-existing contract. Material change for purposes of this Section 5.56.2 means a modification that substantially exceeds the terms of the original contract between HCDE/CP and Vendor.

5.56.3 **Supplemental Contracts**

Supplemental Contracts are entered into pursuant to the piggyback method delineated in the U.S. Department of Agriculture directive SP 35-2012. Should the “piggybacking” result in a material change to the Contract, HCDE/CP will proceed under Section 5.56.2 of this RFP.

5.56.4 **New Products**

During the Term of a Contract awarded under this RFP, additional purchases not included in the original RFP list and resulting awarded contract may become necessary and benefit HCDE/CP members. Vendor and HCDE/CP agree that the aggregate value of added purchases during each year of the Contract (if renewed) shall not exceed 10% of the estimated total value of the Contract. The total value of the Contract must be agreed upon, and the dollar value listed in the Contract and each renewal term of the Contract (if any). For purposes of this section, the total value of the Contract includes all contracts awarded as a result of the procurement solicitation to all vendors. For the initial Term of a Contract awarded under this RFP, Vendor and HCDE/CP agree that the total value of the Contract shall be \$200 Million. Additions of new products may be included in the awarded Contract list during the renewal of the Contract through an amendment to the Contract, and the total Contract value adjusted accordingly. For each renewal term of the Contract, the total actual value of the Contract in the preceding year and the additional new product(s) made during that Term will be the basis for determining the maximum dollar amount (not to exceed 10%) of the additional new product(s) that will be allowed during the next Contract renewal term.

5.56.5 **Bonds**

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.

5.56.6 **Use by Other Governmental Entities**

In the event that HCDE/CP allows other governmental entities to “piggyback” onto any existing contract between HCDE and Vendor entered into pursuant to this procurement solicitation, Vendor agrees and understands that such other governmental entities may include “school food authorities,” as that term is used in SP 35-2012. Should the “piggybacking” result in a material change to the Agreement for purposes of USDA/TDA purchases, HCDE/CP will proceed under the foregoing section entitled “Material Changes.”

5.56.7 **No Guarantee of Quantities**

Quantities for purchases paid for with School Nutrition Program funds are subject to change for various reasons, which include, but are not limited to the following: USDA commodity allocation(s), variations in student population, production item substitution(s), changes in consumer taste or expectations, pricing, and nutrition regulatory changes.

5.56.8 **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.

5.56.9 **Records Retention**

When school nutrition program funds are expended by HCDE or any CP member pursuant to this Contract, Vendor certifies that it will comply with the record retention requirements promulgated by USDA/TDA. Vendor further certifies that Vendor will retain all records as required by USDA/TDA for a period of five (5) years after the end of the fiscal year to which the documentation/records pertain. Vendor further certifies that these records must be accessible to appropriate HCDE/CP member and federal or state reviewers. *See TDA ARMS Manual, 17.107.*