



**FOOD SERVICE**  
**Request for Proposal General Terms and Conditions**

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## Part 1: General Information:

1. Intent of Request for Proposal (RFP): It is the intent of the formal proposal process to solicit responses for goods and/or services specified in the RFP documents.
2. Definitions:
  - a. Addenda: Document released to the Public to clarify and/or modify the RFP documents, and/or respond to questions from Planholders,
  - b. Amendment: A document issued and executed by a Purchasing Administrator to modify a contract resulting from the award of a RFP,
  - c. Board or Board of School Trustees: Clark County School District Board of School Trustees,
  - d. District: Clark County School District,
  - e. EDI: Electronic data interface,
  - f. May: Indicates something that is not mandatory but permissible,
  - g. NRS: Nevada Revised Statute(s),
  - h. Planholder: Any party that has received or downloaded the RFP documents,
  - i. Protestor: Any party who is allegedly aggrieved by the proposed award of the RFP,
  - j. Purchasing Administrator: Coordinators, Assistant Director, and/or Director of Purchasing,
  - k. Response: Offers for goods and/or services as specified by the Request for Proposal documents,
  - l. Respondent: A prospective Supplier submitting a Response,
  - m. RFP: Request for Proposal,
  - n. RFP Opening: Deadline for submission of Responses,
  - o. Shall/Must/Will: A mandatory requirement,
  - p. Supplier: Any Respondent who is awarded the entire Response or a portion thereof, and
  - q. Work: The provision of required goods/items and services.

## Part 2: Submission and Preparation Instructions:

1. Additional Responses: Respondents may submit more than one Response as long as all such Responses comply with and/or exceed the RFP terms, conditions, and specifications.
2. Respondent's Representation: Respondent is certifying that by submitting a Response: it has read and understands the RFP documents.
3. Collusion: Any evidence of agreement or collusion among Respondents and prospective Respondents acting to restrain freedom of competition by agreement to offer a fixed price or otherwise, shall render the Responses of such Respondents void.

Advance disclosures of any information to any particular Respondent, which gives that particular Respondent any advantage over any other interested Respondent in advance of the opening of the Responses, made or permitted by a member of the District, or an employee or representative thereof, shall void all Responses of that particular RFP .

4. Complaints and Questions Regarding Requirements and Specifications: Any Planholder may submit complaints if it believes the RFP unduly constrains competition or contains criteria that are inadequate or improper. Additionally, any prospective Respondent may submit questions to obtain necessary clarifications to the RFP documents.

The District reserves the right to modify requirements, support specifications, or both. Should the Planholder complaint(s) and/or question(s) identify a justifiable change(s), an addendum detailing the modifications shall be publicly posted. All complaints and questions regarding this RFP must be submitted in writing electronically to one of the email addresses indicated on Page 1 of this RFP 15 or more calendar days prior to the required due date.

Any deviation from this policy or attempt to directly contact or influence any District employee(s) may result in disqualification of the Respondent. Any oral communications shall be considered unofficial and non-binding on the District.

5. Cooling Off Period: Per District Regulation 4371, the District may not enter into any contract, agreement, or consulting arrangement directly or indirectly, with any employee or former employee for a period of one year from the date of termination of employment other than as a member of a bargaining unit, or as a substitute employee, unless (1) there is full disclosure of the nature and extent of the employee's or former employee's interest in the matter, and (2) the contract is noticed and acted upon in an open session before the Board and approved by a majority of the Board.
6. Conflict of Interest/Nepotism: Pursuant to District Regulation 3312, the District shall not enter into a purchase transaction for any amount with any person related within the third degree of consanguinity or affinity to a member of the Board of School Trustees, or to a person acting as the authorizing official for the District, except as fully disclosed and authorized in advance. Authorizing official is being defined for this purpose as the person who has final authority to administer budgets, or his/her designee.

The Respondent is hereby put on notice, by this condition, that it is his/her responsibility to disclose any relationship or affinity with a Board of School Trustee or an authorizing official in writing to the Director of Purchasing & Warehousing. Failure to properly disclose such relationship shall result in termination of the purchase contract and may jeopardize the Respondent's future business dealings with the District.

7. Confidential and Proprietary Information/Public Records: The District is a Public Entity as defined by Nevada Law, and, as such, it is subject to the Nevada Public Records Law (NRS Chapter 239). Under that law, all of the District's records are public records (unless otherwise declared by law to be confidential) and are subject to inspection and copying by any person.

Respondents are advised that after an award recommendation has been made by the Director of Purchasing, the complete content of all proposals will become a public record and nothing contained in the proposal will be deemed to be confidential. Respondents should not include any information in its proposal that is proprietary in nature or that they would not want to be released to the public. Proposals should contain sufficient information to be evaluated without reference to any proprietary information.

8. Cost to Prepare and Submit Responses: All costs incurred in the preparation and submission of responses to the RFP shall be the responsibility of the Respondent.
9. Covenant: The Respondent covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Further, the Respondent covenants, to its knowledge and ability, that in performance of said services no person having any such interest shall be employed.
10. Duration of Offer: Response submitted in association with the RFP shall be considered firm offers for a minimum of 120 calendar days after the date of RFP opening in order to allow the District to evaluate and consider award.
11. Preparation of Hard Copy Responses: All Responses shall be submitted on the provided RFP forms. All figures must be written in ink or typed. Mistakes may be crossed out and corrections may be inserted adjacent thereto and initialed in ink by the person signing the Response. If there are any discrepancies between unit prices offered and the extended total, the unit price shall prevail.
12. Submission of Hard Copy Responses: All Hard Copy Responses must be submitted in a sealed envelope or box plainly marked with the name and address of the Respondent and the RFP number and title. No responsibility shall attach to the District, or any official or employee thereof, for the pre-opening of, post-opening of, or the failure to open a Response not properly addressed and identified. Responses are time-stamped upon receipt. Responses time-stamped after the due date and time will be returned unopened to the Respondent. Regardless of the method used for delivery, Respondent shall be wholly responsible for the timely delivery of submitted Responses.

FAXED OR EMAILED RESPONSES ARE NOT ALLOWED AND SHALL NOT BE CONSIDERED.

Mail Responses to: Clark County School District  
Purchasing and Warehousing  
4212 Eucalyptus Avenue, Bldg. #7  
Las Vegas, Nevada 89121  
Attention: Director of Purchasing & Warehousing

13. Withdrawal of Responses: Hard copy Responses may be modified or withdrawn prior to the established opening date by delivering written notice to the Director of Purchasing prior to the opening date. Respondents may submit its proposal any time prior to opening date and time. Completed Responses must be received in entirety by the deadline for submission and opening date.

Should a Respondent recommended for award withdraw their Response, or if an awarded Respondent should breach the contract, that Respondent may be deemed non-responsible for a period of up to 2 years.

### **Part 3: Evaluation and Award:**

1. Method of Award: Award will be made to the lowest responsive and responsible Respondent(s). In the event that the total award amount exceeds \$50,000.00, the award must be made by the Board of School Trustees.

The determination of the lowest responsive and responsible Respondent may involve all or some of the following factors: price, conformity to specifications, financial ability to meet the contract, previous performance, facilities and equipment, availability of repair parts, experience, delivery promise, terms of payment, compatibility as required, other costs, and other objective and accountable factors which are reasonable. In addition to the criteria listed herein the evaluation of food products may also include: adherence to nutritional requirements, taste, visual appeal, and packaging to facilitate easy dispensing/access for students in a cafeteria environment.

Award will be made of all items on a lot basis, item-by-item basis, and/or entire RFP basis as is in the best interest of the District.

2. Product Brand Names or "Equal": Whenever any particular materials, process, and/or equipment are indicated or specified by patent, proprietary or brand name, or by name of manufacturer such wording will be deemed to be used for the purpose of facilitating description of the material, process, and/or equipment desired, and will be deemed to be followed by the words "or equal." Unless a different brand, model, or make is specified, it will be assumed that the Respondent is offering the item brand as specified.
3. Products Classified as No Substitute: "No Substitute" means there is only one brand name product that is acceptable to perform the function required by the using department.
4. Product Substitutions: Specifications are intended to show kind and qualities required and are not intended to be restrictive. Additional offerings that are equal to, or exceed the requirements stated in this document are invited. Proof satisfactory to the District, must be provided by the Respondent to show that the alternative product is, in fact, equal to, or exceeds the product required in the specifications. Respondents desiring to submit more than one offer for items other than those specified shall observe the following procedure:
  - a. Clearly indicate in the appropriate location within the Response exactly what it proposes to furnish in lieu of the specified product,
  - b. Submit with the Response complete manufacturer's brochures of the actual items being offered, including pictures and/or dimensional drawings,
  - c. Proof, satisfactory to the District, must be provided by Respondent to show that the product is equal to, or exceeds the RFP specifications,
  - d. Equivalent items may be subject to testing, and
  - e. No approvals will be issued prior to the RFP opening.

The District hereby reserves the right to approve, as an equal, or to reject, as not being equal, an article the Respondent proposes to furnish which contains major or minor variations from specification requirements but may comply substantially therewith.

5. Prompt Payment Discount: Prompt payment discount shall be defined as the amount of discount offered by the Respondent to the District if payment is made within a specified time frame. Terms of payment or cash discounts that require payment in less than 15 calendar days shall not be considered in the cost evaluation.
6. Protests: Any Respondent who is allegedly aggrieved in connection with the solicitation or the award recommendation may protest. The protest must be submitted in writing to the Director of Purchasing & and Warehousing, within seven (7) calendar days after the recommendation has been made public by posting the recommendation on Bonfire. The following criteria must be observed:
  - a. Protest letter(s) shall be addressed to the Office of the Director of Purchasing and Warehousing and must be sent via Certified U.S. Mail, FedEx, or other means directly to 4212 Eucalyptus Avenue, Bldg. #7, Las Vegas, NV 89121. The protest letter shall also be sent via facsimile to (702) 799-5018.
  - b. All criteria for the protest must be in writing and disclosed in the protest letter.
  - c. An impartial Purchasing Administrator will issue a written response which will be sent to the Protestor prior to any additional action taking place on the award recommendation.
  - d. If the Protestor wishes to appeal the decision rendered by the impartial Purchasing Administrator it may do so by submitting a letter to the Director of Purchasing and Warehousing (following the initial criteria) which succinctly states why it believes the initial decision was erroneous. The appeal must be submitted at least three full calendar days prior to the scheduled Board meeting.
  - e. The Director of Purchasing and Warehousing shall examine the merits of the protest and may either schedule a meeting with the Protestor and/or issue a written response declaring whether or not the protest will be upheld, or if the recommendation shall be presented to the Board of School Trustees for its consideration. If this response cannot be sent prior to the scheduled Board meeting, the Director shall postpone presenting the recommendation to the Board.

The decision of the Board shall be final. The Board need not consider protests unless this procedure is followed. A protest lodged after award by the Board of Trustees shall not be considered.

7. Recycled Products – Preference: In accordance with NRS 332.065.2 (a), the District shall give preference to Respondents who propose recycled products if the Respondent is found to be responsive and responsible, the recycled product meets all of the requirements in the RFP, and costs no more than a comparable non-recycled product. Respondents shall note in their Response if a recycled product is being offered. Respondents shall submit the appropriate documentation to validate that the recycled product meets, or exceeds all of the requirements defined in this document with its Response.

The District also reserves the right to give preference to other Respondents who propose recycled products as specified in NRS 332.065.

8. Rejection of Response: The District reserves the right to reject any and all Responses received and to waive any minor informality or irregularity in Responses.

Responses may be rejected for any of, but not limited to, the following causes:

- a. Failure to use the specified RFP form(s) furnished by the District,
- b. Lack of signature by an authorized representative on the RFP form,
- c. Failure to properly complete the RFP response form(s),
- d. Evidence of collusion among Respondents,
- e. Unauthorized alteration of the RFP form,
- f. Failure to offer on items as specified,
- g. Failure to meet the terms and conditions as specified in the RFP documents,
- h. Failure to submit bonding, or surety as required by the RFP documents, and
- i. Failure to submit the Response prior to the specified opening date and time.

9. Tie Responses: A tie-Response is defined as an instance where Responses are received from two or more Respondents who are the low Respondents, and their offers are identical. Responses must be identical in all evaluation areas; e.g., price, quality, delivery, terms, and ability to supply. If any of these areas are not identical, it is not considered a tie-Response, and the District will then make award to the Respondent with the best Response.

The procedure for tie-Responses is to hold a public drawing and award the entire RFP to the winner of the draw. When a drawing is necessary, a Purchasing Administrator will contact the Respondents involved and describe the reason for the drawing. The Purchasing Administrator will indicate the time and place of the drawing and invite the Respondents to attend, but specify that attendance is not mandatory for the drawing. The Purchasing Administrator will ensure that an impartial witness will be present at the drawing.

10. Test Models: The District may request any or all Respondents to provide a test model or samples of consumable item(s) of the product(s) offered on a no-charge basis. The performance, characteristics, and components of the model(s) submitted for inspection and testing shall be considered a representative model of the product(s) offered and intended for delivery. Any product tested and found not capable of meeting the requirements of the RFP specifications will not be considered for award. At the conclusion of the testing the Respondent may retrieve the product(s) (if practical). The District is not responsible for any damages that may occur to any products supplied for testing.

#### **Part 4: General Terms and Conditions:**

1. Amending Contract: Once awarded, the RFP documents, as accepted by the District, shall be the final expression of the contract between the parties and may not be altered, changed, or amended except by mutual agreement, in writing. The only officers with authority to execute an amendment to this contract are Administrators of the District's Purchasing Department.
2. Applicable Law, Jurisdiction and Venue: This contract shall be construed and interpreted according to the laws of the State of Nevada. The venue of any action brought hereunder shall be Clark County, Nevada.
3. Assignment of Contractual Rights: The Supplier shall not assign, transfer, convey, or otherwise dispose of the contract or its right, title, or interest in, or to the same, or any part thereof, without previous written consent of the District and any sureties.
4. Attorneys' Fees: The parties agree that in the event of a dispute, each party shall bear its own costs of litigation and attorneys' fees.
5. Balance of the Line Discount: The balance of the line discount shall be used to establish prices for future unidentified requirements and/or to set pricing for items that may either be replaced with newer models and/or developed during the term of this contract.

Wherever indicated in the RFP documents Respondent shall indicate the percentage discount from the Manufacturer's published price list(s). The percentage discount shall remain firm for the duration of the contract. The price list(s) which is submitted with the Response must be current and in effect at the time of RFP opening. If more than one column of pricing is published the Respondent shall indicate which column that the discount shall be applied to.

The balance of the line discount must be equal in value to the discount that is provided for all identified items. In the event that there are discrepancies in part numbers and descriptions, or new requirements emerge, the District may use the discount to either clarify said discrepancies and/or utilize it for determining the basis of award.

6. Compliance with Applicable Law (Code, Regulation, Licensing, etc.): The Supplier shall perform the contract in accordance with all OSHA, EPA, HIPAA, and all other Federal, state and local statutes, laws, ordinances, codes, order rules, regulations, proclamations, and other governmental requirements, relative to conducting business with the District; all the aforementioned provisions are incorporated by reference.
7. Compliance with District Regulations: Supplier shall comply with all District policies and regulations; these requirements are incorporated by reference.
8. Compliance with FERPA: In the event that the District shares education records with the Supplier, the following provision shall apply. Supplier is a contractor or outside service provider with whom the District has outsourced institutional services or functions that it would otherwise use employees to perform. For purposes of the Family Educational Rights and Privacy Act (FERPA), Supplier constitutes a school official with a legitimate educational interest in obtaining access to education records, and will only have access to those particular education records in which they have a legitimate educational interest. Supplier shall be under the direct control of the District with respect to the maintenance and use of personally identifiable information from education records provided under this Contract. Supplier is subject to the same conditions on the use and re-disclosure of personally identifiable information from education records that govern other school officials, including 34 C.F.R. § 99.33 and the requirements established by the District.
9. Consumption Estimates: Unless specified differently, the quantities appearing in the RFP documents are approximate only, based on annual consumption unless otherwise noted, and are prepared for the solicitation of Responses. Payment to the Supplier shall be made only for the actual quantities of items furnished in accordance with the RFP, and it is understood that the scheduled quantities of items to be furnished may be increased, decreased, or omitted without in any way invalidating the contract prices.
10. Confidential Treatment of Information: In the event the Supplier is furnished with or otherwise has access to confidential District information, while fulfilling its responsibilities under the terms of this agreement, the Supplier shall agree to hold such information in strict confidence and shall take all reasonable precautions to maintain the confidentiality of the information. The Supplier shall exercise the same degree of care and protection that would be exercised with respect to its own confidential information. The Supplier shall only use and access confidential information as necessary to fulfill its obligations under this contract. The Supplier shall not directly or indirectly disclose, sell, copy, distribute, reproduce, transfer, display, modify, create derivative works from, demonstrate, or allow any third party to have access to any of the District's confidential information which may include, but not be limited to: student academic records, student medical records, student photographs, budgetary information, etc..
11. Continuation: The District reserves the right to extend or continue the life of the contract period by up to six , one- year periods if the contract is performed to the District's satisfaction and if all parties are agreeable to the extension.
12. Contract Extension: The District reserves the right to extend this contract for up to 90 calendar days from its expiration date for any reason.
13. Discontinued Products: In the event that the manufacturer discontinues a product or model, the Supplier may petition the District to accept the manufacturer's model equivalent replacement. The substitute product must meet, or exceed the specifications of the discontinued model; and the pricing shall either match the obsolete products cost, or equal the balance of the line discount stated in the original Response documents. The District shall have the final decision to accept the suggested substitution.
14. Dispute Resolution:
  - a. Mediation: In the event of a dispute, the District's Purchasing Department will schedule a meeting with the Supplier to attempt to mediate and resolve any outstanding claims or disputes prior to initiating a request for arbitration (or commencing litigation). If through good faith efforts the matter is not resolved within 14 working days after the scheduled meeting, the parties may agree to continue mediation or may decide to proceed with the formal resolution process set forth herein.
  - b. Formal Dispute: In the event that mediation is unsuccessful, the controversy or claim arising out of or related to the contract, or the breach thereof, shall be settled by arbitration, unless the District, at its sole option, rejects arbitration by so notifying the Supplier. If the District rejects arbitration, the Supplier shall have 30 calendar days from the date of the receipt of the notice of rejection to commence litigation(s) by the service of a summons and complaint upon the District. Failure to effect service upon the District within said time period shall act as a bar to litigation of the claim which was the subject of the request for arbitration. If the matter is arbitrated, the rules of the American Arbitration Association shall apply, except as otherwise indicated in this contract. Judgment on such awards may be entered by Nevada courts. The parties agree that no attorneys' fees may be awarded by any arbitrator to any party or sub-tier party that arise out of or relate to any and all claims and other disputes pertaining to the contract (in any case).
15. Engineering Services: Should a product fail to operate properly upon start-up, if requested, the Supplier shall provide the services of a field engineer/technician as needed. This service shall be furnished at no additional cost to the District.

16. Expenses: In the event that the District agrees to pay for any of the Supplier's expenses directly related to this Work, the following parameters shall apply: no overhead, and/or profit shall be permitted. Supplier shall only receive reimbursement in amounts that are consistent with applicable travel guidelines established by the District policy, regulations, and procedures for its own employees and Suppliers. Reports of expenses shall be submitted on an approved form along with invoices for all itemized charges.
17. Federal Funding: In the event federal funds are used for payment of all or part of this Contract: Supplier certifies that by signing this Contract, neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, in receipt of a notice of proposed debarment, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.

Supplier agrees to provide immediate notice to the District's Purchasing Department in the event of being suspended, debarred, or declared ineligible by any Federal department or agency, or upon receipt of a notice of proposed debarment during the term of this contract.

18. Fiscal Fund Out: The District reasonably believes that funds can be obtained sufficiently to make all payments during the term of this contract. If the District does not allocate funds to continue the purchase of the product and/or services, this contract shall be terminated when appropriated funds expire.
19. Force Majeure: Neither party shall be liable for failure or delay in performance under any Agreement anticipated by this order due in whole or in part to an act of God, strike, lockout or other labor dispute, civil commotion, sabotage, fire, flood, explosion, pandemic, epidemic, acts of any government, unforeseen shortages or unavailability of fuel, power, transportation, raw materials or supplies, inability to obtain or delay in obtaining governmental approvals, permits, licenses or allocations, and any other causes which are not within such party's reasonable control, whether or not the kind specifically enumerated above. During any period of Supplier's inability to perform, the District may acquire from others, without incurring liability to Supplier, said goods or services
20. Gratuities: In accordance with District Policy 3316, District employees are prohibited from accepting any gratuity (including food or beverages) from Suppliers or prospective Suppliers.
21. Headings: Paragraph/section headings, numbers and alphabetical designations have been inserted for convenience of reference only. If there is any conflict between any such designations and the text of this contract, the text shall take precedence.
22. Hierarchy of Documents: In the event of a discrepancy between the documents that form this contract the below listed sequence defines the priority and precedence for interpreting and performing the Work.
  - a. Amendments to the contract executed by a District Purchasing Administrator and the Supplier,
  - b. Any Addenda issued to modify the RFP's requirements (i.e. material specifications, performance rates, increased rates, contractual provisions),
  - c. RFP Special Conditions,
  - d. District's Attachments and/or Exhibits attached hereto and made part of the RFP,
  - e. RFP Respondent's Instructions and General Conditions,
  - f. Food Service RFP General Terms and Conditions,
  - g. Supplier's response to the RFP,
23. Identification: All invoices, packing lists, packages, boxes, shipping notices, and other written documents affecting this order shall contain the applicable order number. Packing lists shall be enclosed in each and every box or package shipped pursuant to this order, indicating the content therein. Invoices will not be processed for payment until all items invoiced are received. The contents of each package or box shall contain items for one purchase order only. Each purchase order shall be packaged and invoiced separately. Do not combine purchase orders on packing lists or packages.
24. Indemnity: The Supplier agrees, by entering into this contract, regardless of the coverage provided by any insurance policy, to pay all costs necessary to indemnify, defend, and hold the District harmless from any and against all claims, demands, actions, suits, judgments, losses, damages, attorney's fees, costs, and/or expenses based upon or arising out of any acts, errors, omissions, fault or negligence of Supplier or its principals, employees, subcontractors, or other agents while performing services under this contract. The Supplier shall indemnify, defend, and hold harmless the District for any attorneys' fees or other costs of defense, even if the allegations of the claim are groundless, false or fraudulent.
25. Installation: If required by the RFP documents, minimally the Supplier shall be responsible for performing installation startup and commissioning services, including the removal of all residual packing or shipping materials.

26. Intellectual Property: Any drawings, written reports, or other works made by the Supplier shall be considered works for hire and become the property of the District. Any such works shall not be stamped with the Supplier's proprietary markings.
27. Invoicing: All invoices are to be sent via SAP Business Network (preferred) or to Clark County School District, 2832 East Flamingo Avenue, Las Vegas, NV 89121, Attention: Accounts Payable or inbox060@nv.ccsd.net. Payment of invoices will be made within 30 calendar days, unless otherwise specified or unless pre-payment discounts are offered, after receipt of delivery and an accurate invoice. All invoices shall include the following information:
- Supplier's name,
  - Complete address (including street, city, state, and zip code),
  - Telephone number,
  - Contact person,
  - Itemized description of products delivered (including quantities, or if applicable, services rendered (including dates),
  - District's purchase order number,
  - Supplier's Federal Tax Identification Number, and
  - RFP number.
28. Invoice Audits: The Supplier shall provide to the District, within 14 calendar days of request, a report to validate that the price(s) charged are in accordance with the Contracted price(s). The report shall be provided in the format specified by the District. Discrepancies, errors, and/or omissions found in the report shall require the Supplier to update and correct the report within seven calendar days of notice from the District. In the event the Supplier undercharged the District, the District shall reimburse the Supplier within 30 calendar days. In the event that the Supplier overcharged the District, it shall reimburse the District within 14 calendar days. If overcharges are found, the District may declare the Supplier in breach of contract, terminate the contract, and designate the Supplier non-responsible for future Request for Proposal and Invitations to Bid efforts for two years and pursue any other legal or equitable remedies available by law.
29. No Third Party Rights: This Agreement is made for the benefit of the District and the Supplier, and not for any outside party .
30. Non-Endorsement: As a result of the selection of a Supplier to supply goods and/or services, the District is neither endorsing nor suggesting that the Supplier's service is the best or only solution. The Supplier agrees to make no reference to the District in any literature, promotional material, brochures, sales presentations, internet postings, or the like, without the express written consent of the District's Director of Purchasing and Warehousing.
31. Notices to the District: Any notice required to be given to the District under this contract or any amendments thereof shall be sent by certified U.S. Mail or FedEx to the following address: Clark County School District, Director of Purchasing & Warehousing, 4212 Eucalyptus Ave. Bldg. #7, Las Vegas NV 89121. Any notice required to be given shall be deemed to have been given when received by the party to whom it is directed
32. Operational Systems: The Supplier shall furnish a completely operational system whether or not all items necessary to make the system operational are specified.
33. Out of State Suppliers: Out of state Suppliers shall accept collect calls or provide a toll free number for the placement of orders and conducting business with the District.
34. Patent Indemnity: The Supplier agrees to indemnify and hold the District harmless from any claim involving patent infringement or copyrights on goods supplied.
35. Penalties: In case of default by the Supplier, the District may procure the articles and/or services from other sources and may deduct from any unpaid balance due the supplier or collect against the bond, security, or from the surety for the amount of excess costs so paid.
36. Price Changes: During the life of this contract, there may be a general published price change by the manufacturer. In the event of a decrease, the District shall receive the benefit of this change within 60 calendar days of enactment. In the event of an increase, the District may allow, upon presentation of suitable proof and 60 calendar days advance written notification, an increase over Contract price. Increases shall apply only to products affected by an increase in a raw material, labor, or another like cost factor. No increases shall be allowed earlier than 150 calendar days from the date of award inclusive of the 60 calendar days advance written request requirement. Price increases shall not be retroactive. All written escalation requests shall be sent to the Director of Purchasing & Warehousing and the Buyer as specified in the RFP document and, at a minimum, shall be provided with:
- Comparison of prices prior to and proposed increases (expressed in both dollars and percentages),
  - Detailed information on why the cost(s) has risen,
  - Validation from the Supplier's supply sources relative to the amount of the increase,
  - (Optional) Nationally recognized industry trade publications supporting the increase,
  - Schedule of Values of the products which indicates the relationship between the ratio of components escalating versus the products actual overall cost, and



- f. Other as necessary to demonstrate the need for and the amount of the requested increase.

In the event that an increase cannot be supported to the District's satisfaction and/or the parties cannot agree on the amount of the increase the District reserves the right to:

- a. Terminate the contract in part or in whole; and
- b. Award the portion in dispute to the next lowest Respondent, or acquire the goods/services from another Supplier as permitted by NRS 332.

37. Purchase Orders: Delivery of and invoicing for the product(s) and/or services offered will only be authorized upon issuance of a purchase order by the District.
38. Records: Records shall be maintained as required by the successful Supplier in compliance with applicable municipal, federal or state laws, ordinances, codes, and as prescribed by the District. At any time during normal business hours, as the District deems necessary, all records shall be made available to the District at a location in the Las Vegas, NV area for examination with respect to all matters covered by any subsequent agreement. The District may audit, examine and/or take excerpts or transcripts from such records including, but not limited to, invoices, materials, payrolls, records of personnel, conditions of employment, or any other data as may be pertinent to this RFP.
39. Relationship: The parties agree that the Supplier is an independent contractor; the Supplier is not a District employee. There shall be no withholding of income taxes by the District, industrial insurance coverage provided by the District, participation in group insurance plans which may be available to employees of the District, participation or contributions by either the Supplier or the District to the Public Employees Retirement System, accumulation of vacation leave or sick leave, nor unemployment compensation coverage provided by the District.
40. Replacement Parts: All major component replacement parts shall be readily available from Supplier within ten calendar days.
41. Sales Tax: Any Respondent that sells tangible personal property to any commercial business in the State of Nevada is required to possess a Nevada Sales Tax Permit and shall collect and pay the taxes as defined in NRS Chapters 372 and 374. Permit information can be obtained by contacting the Nevada State Department of Taxation at (775) 687-4892.
42. Severability: It is mutually agreed that all of the terms, covenants, provisions and/or agreements contained herein are severable and that, in the event any of them shall be held to be held invalid, illegal, or unenforceable by a competent court or arbitrator, the contract shall be interpreted as if such invalid terms, covenants, and/or provisions were not contained herein, and the remaining provisions shall be valid and enforceable.
43. Special Conditions: Special Conditions, if included in the RFP documents, are used for the purpose of modifying, augmenting, and/or replacing the General Terms and Conditions contained herein. Special Conditions shall take precedence over all other conditions, RFP requirements, and specifications.
44. Supplier's Stock: The Supplier shall agree to maintain access to sufficient stock of any item awarded in this RFP to assure that delivery lead times are met as specified.
45. Suspension: The District may suspend performance by Supplier under this Contract for such period of time as the District, at its sole discretion, may prescribe by providing written notice at least five working days prior to the date on which the District wishes to suspend. Upon such suspension, the District shall pay Supplier its contracted compensation, based on materials and/or work completed. Supplier shall not deliver additional materials and/or perform further services under this Contract after the effective date of suspension until receipt of written notice from the District to resume performance.
46. Taxes: The District is a political subdivision of the State of Nevada and under the provisions of NRS 372.325 is exempt from payment of Sales and Use Tax (Tax Identification Number is 88-6000030). The prices offered must be net, exclusive of taxes.
47. Terms of Payment: Terms of payment as listed on the RFP Form shall be defined as the amount of discount offered by the Respondent to the District if payment is made within a specified time frame. Example:
  - a. Terms of payment: 2%, 30 calendar days: A 2% payment discount will be deducted from the purchase price if the invoice is paid within 30 calendar days of receipt of a properly prepared and submitted invoice or delivery of an acceptable product and/or services, whichever is later.
  - b. Terms of Payment: 0%, 30 calendar days: No payment discount is offered and payment is due within 30 calendar days of receipt of a properly prepared and submitted invoice or delivery of an acceptable product and/or services, whichever is later. In cases where no discount is offered the District shall endeavor to hold payment up to the full 30 day cycle.
48. Termination for Cause: If the Supplier fails to perform in accordance with the agreed terms, conditions, or warranties applicable to this contract, the District may immediately cancel all or part of the contract upon written notice of intent to cancel without any liability by the District to the Supplier. In the event of cancellation for cause, the District may cancel

any delivery or service and purchase the product or service elsewhere on such terms or in such manner as the District may deem appropriate, and the Supplier shall be liable to the District for any excess cost and/or other expenses incurred by the District.

49. Termination for Convenience: This contract may be terminated in whole or in part by the District for its convenience; but only after the Supplier is given:

- a. Not less than five calendar days written notice of intent to terminate, and
- b. An opportunity for consultation with the District prior to termination.

In the event of termination, the District shall be liable only for goods and services that have been received and accepted and shall not be liable for anticipated profits of the contract.

50. Title and Risk of Loss: The title and risk of loss of material or service shall not pass to the District until material is delivered to the specified location, quantities are verified, and the material is inspected for damage or service is completed as specified.

51. Uniform Commercial Code: Article 2 of the Uniform Commercial Code, including but not limited to, all rights, obligations, remedies and warranties set forth therein, shall apply to this order regardless of whether it covers services, the leasing of goods or any other transaction not expressly within the scope of Article 2.

52. Use by Other Government Entities: NRS 332.195 states that local governments and the State of Nevada may use the contracts of other local governments within Nevada, if approved by the Supplier. The local government that originally awarded the contract is not liable for the obligations of the local government which uses the contract.

53. Waiver: No waiver or any breach of this contract or any of the terms or conditions hereof shall be held to be a waiver of any other subsequent breach; nor shall any waiver be valid or binding unless the same shall be in writing and signed by the party alleged to have granted the waiver

54. Warranty-Respondent: Unless required differently by the RFP documents the Supplier shall minimally guarantee all workmanship, materials, and equipment they have furnished for a period of no less than one year after the final acceptance of the equipment and/or materials; and, if during the guarantee period, any defect or faulty materials are found, it shall immediately, upon notification by the District, proceed at its own expense to replace and repair same, together with any damage to all finishes, fixtures, equipment, and furnishings that may be damaged as a result of this defective equipment or workmanship.

55. Warranty – Services: Supplier warrants that the Work shall be performed with the degree of skill, care, and judgment customarily accepted as sound and quality practice and procedure. Supplier further warrants that the Work fulfills the requirements and intent of the entire Contract inclusive of the Supplier's RFP response. If the Work fails to meet the aforementioned criteria and/or is in the judgment of the District to be inadequate, the Supplier shall re-perform the Work or portion that is unsatisfactory. The Supplier shall be liable for all costs and expenses incurred in the performance of corrective work and services, inclusive of travel, per diem, etc. The District agrees to meet with the Supplier (if requested) on an as-needed basis to monitor the effectiveness of ongoing Work and notify the Supplier of deficiencies within a reasonable time of discovery

56. Products-New: The Supplier shall guarantee that the product provided to the District shall be new, of the latest and most improved model of current production, and shall be of first quality as to workmanship and materials used in said units. A new product is defined as a product that is made up completely of unused, genuine, original parts. The product shall not have been operated for any purpose other than routine operational testing. A demonstrator product does not meet this definition and is not acceptable.

OR

If the RFP specifies Reconditioned Product: A reconditioned product is defined as a product that, although it may contain some used components, has been completely disassembled and reassembled including all cleaning, adjustment, and replacement of components necessary to make the product capable of having exactly the same guarantee as a new product. The reconditioned product must be certified by the Supplier's standard maintenance contract at rates that are no higher than the rates for a new product.

New products are to be offered unless the RFP specifically calls out for reconditioned product.

**End of Document**