



**GWINNETT
COUNTY
PUBLIC
SCHOOLS**

**DEPARTMENT OF PURCHASING
& PROPERTY MANAGEMENT**

General Instructions & Conditions

**Gwinnett County Public Schools
General Instructions & Conditions**

The following General Instructions and Conditions are standard to all Gwinnett County Public County (GCPS) Invitation for Bids (IFB), Request for Proposals (RFP), and Request for Information (RFI) documents. **If more specific instructions are given in the individual bid package, those instructions should prevail.** Taking exceptions to these terms and conditions or submitting conflicting language may cause the vendor's response to be rejected.

1.0 PREPARATION OF RESPONSES

- 1.1** GCPS cannot guarantee that all vendors will be sent an announcement each time a solicitation is released. Invitation for Bids and Request for Proposals issued by GCPS are advertised on the GCPS Euna Procurement (formerly Bonfire) Interactive Portal located on the Purchasing and Property Management website (www.gcps.org) and the Georgia Procurement Registry if applicable. It is the vendor's responsibility to review the GCPS Euna Procurement (formerly Bonfire) Interactive Portal frequently for a listing of open solicitations. To view it on the internet, go to www.gcpsk12.org. From this screen, select Quick Links, then select Purchasing/Property Management. Under Purchasing Bids, find the link to the Euna Procurement (formerly Bonfire) on the right side of the page.
- 1.2** **All responses must be entered into Euna Procurement (formerly Bonfire).** Each bidder or proposer shall furnish all information required by the solicitation form or document. An authorized agent of the company must submit the solicitation. All such submitted solicitations shall evidence an intent and authority to bind the prospective bidder or proposer. The firm's name and telephone number must be shown, and obligations assumed by such submission must be fulfilled.
- 1.3** Individuals, firms, and businesses seeking an award of a Gwinnett County Public School's (GCPS) contract may not initiate or continue any verbal or written communications regarding a solicitation with any School Board Member, employee, or other GCPS representative without permission of the Buyer named in the solicitation between the date of the issuance of the solicitation and the date of the final contract award by the Board of Education. The Director of Purchasing will review violations. If it is determined that such communication has compromised the competitive process, the offer submitted by the individual, firm, or business may be disqualified from consideration for the award.
- 1.4** Each vendor is responsible for having knowledge and understanding of any Federal laws and regulations, Georgia laws, Department of Education regulations or policies, and GCPS policies and/or regulations pertaining to GCPS procurement.
- 1.5** Each bidder or proposer shall examine the drawings, specifications, schedule, and all instructions. Failure to do so will be at the bidder's or proposer's risk, as the bidder or proposer will be held accountable for their response.
- 1.6** An electronic price worksheet may be provided online to prospective bidders or proposers through the solicitation link and should be completed by an authorized agent of the company. Unit price should not exceed two decimal points and should include freight

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charges. Prices submitted on the electronic price worksheet should be in number format. Other prices in the Bid should be stated in words and numbers. In the event of a conflict, the word version will prevail.

- 1.7** Time of delivery is part of the solicitation process and must be adhered to. If it is impossible to meet the delivery specified in the solicitation, the bidder or proposer shall state the best delivery possible in the space provided on the solicitation request. Words such as "immediate," "as soon as possible," etc shall not be used. Time shall be stated in days, and days shall mean "calendar days" (Saturday, Sunday, and holidays are to be included in that number).
- 1.8** GCPS assumes no responsibility or obligation to the vendors. GCPS will not pay for any costs associated with preparing or submitting a response. This provision applies whether or not a dispute arises.
- 1.9** Bidder, Contractor, Offeror, Proposer and/or Vendor are synonymous in this document and refer to the person, entity, or firm that submits a response to a solicitation.
- 1.10** GCPS reserves the right to revise processes as needed during extenuating circumstances. Processes may include but not be limited to pre-bid/pre-proposal conferences and bid submittal/ proposal submittal.
- 1.11** When responding to a GCPS solicitation, if an item is to be quoted at "zero cost" to the district, supporting documentation must be provided under the "Additional Supplier Information –If needed" section within Euna Procurement (formerly Bonfire).
- 1.12** Alterations of GCPS documents are strictly prohibited and will result in automatic disqualification of the firm's solicitation response. If there are "exceptions" or comments to any of the solicitation requirements or other language, then the firm may make notes to those areas but may not materially alter any document language.

2.0 **AUTHORITY**

Each party warrants that such party has full power and authority to enter into and perform this contract. The person submitting on behalf of each party represents that such person is duly authorized to enter into this contract on behalf of such party.

The affirmative act of submitting a solicitation shall bind the submitting party for pricing and all terms as of the date of submission.

3.0 **SPECIFICATIONS**

- 3.1** Each completed solicitation shall be submitted online in Euna Procurement (formerly Bonfire) before the due date and time as indicated in the solicitation. **Please note: All required documentation MUST be uploaded and confirmed before the due date and time**

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for your submission to be accepted/completed within Euna Procurement (formerly Bonfire). Please keep in mind this is a web-based program, and your firm should allow sufficient time to upload all required documents within the system. Once your submission is completed, a confirmation code and a confirmation email to the address on file are provided. A video tutorial is also available under the "Submission" section within Bonfire.

Sealed hard copies/telephone/faxed bids will not be considered. Any addenda should be submitted with the electronic response.

- 3.2** For Goods: Listings such as "Equivalent" or "GCPS Approved Equivalent" in the solicitation documents are set forth to establish the general quality required. Items from other manufacturers of equal or better specifications may be considered. GCPS will be the sole determiner of whether the substituted item is an equal or better specification.
- 3.3** The vendor must clearly identify any deviation from the appropriate response form(s) specifications. If the vendor wishes to provide additional detail regarding the variations in an accompanying letter, it should be noted on the proper response form(s). The furnishing of cuts, catalogs, or printed descriptions will not relieve the vendor of this requirement. GCPS shall determine at its sole discretion whether substitutions or modifications of the requested specifications are comparable to those contained within these solicitation documents. If GCPS determines that the modifications or deviations from the specifications are not compliant, the response may be rejected.
- 3.4** An awarded vendor's failure to deliver any items/services according to specifications outlined in their response may result in cancellation of the purchase without liability to GCPS and suspension or disqualification from doing business with GCPS. If any item(s) does (do) not meet these specifications, the item(s) will be picked up and removed from the premises of GCPS at the sole cost of the vendor.
- 3.5** If there is an error in the description or specifications contained in this solicitation document, GCPS reserves the right to notify each vendor separately from this solicitation document of such specification or description change and may require all responses to comply with such modification. In the case of an error in the specifications or the descriptions, GCPS further reserves the right to cancel this solicitation and re- issue.
- 3.6** If an awarded brand/model is discontinued during the award period, the awarded vendor may offer a replacement item. The replacement brand/model must meet or exceed the minimum specifications listed in the awarded vendor's response as well as current industry standards. The item must be offered at the same or better discount/fee structure level as the originally awarded item or a lower price than the original item. Replacement units must be made available to GCPS for review and approval before the awarded model's end of life. GCPS reserves the right to accept or reject the proposed replacement item and to negotiate with the awarded vendor to purchase different brands/models when in the District's best interest.
- 3.7** Items offered must meet required specifications and must be of a quality that will adequately serve the use and purpose for which they are intended.

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- 3.8** The awarded vendor's solicitation response team or customer service must be available to communicate in real-time during the hours of 7:00 a.m. to 5:00 p.m. Eastern Standard Time.
- 3.9** The bidder or proposer must certify that the items to be furnished are new or unused and that the quality has not deteriorated so as to impair its usefulness.

4.0 **APPROXIMATE ANNUAL QUANTITIES**

Most solicitations are "demand usage" contracts, and the estimated quantities listed on the attached pricing schedules are an approximate amount based on prior, current, or next year's estimated usage. The quantities during the solicitation term may change as the district needs change, and in some instances, GCPS will have under or overestimated quantities or amounts of items to be purchased. Please note all prices quoted should be firm until the last order within the term, and any price increase may affect renewal options for the solicitation. Estimates in this solicitation are not a commitment to purchase the same amount as originally specified.

5.0 **SAMPLES**

- 5.1** When required, samples must be furnished at the vendor's expense and at no cost to GCPS within the times specified.
- 5.2** Samples are to be tagged or labeled with the bidder's name and solicitation number as directed in the solicitation information.
- 5.3** Samples not used or destroyed during testing will be available for return to the vendor at the vendor's request and expense. If the vendor does not arrange for the pick-up of samples as defined in the solicitation information, samples will become the property of GCPS.
- 5.4** GCPS will assume no responsibility for items lost or destroyed when being inspected or tested.

6.0 **VENDOR'S EVIDENCE OF RESPONSIBILITY**

GCPS reserves the right to require a financial statement and/or Dun and Bradstreet rating from any vendor who submits a response. The vendor must submit a current financial statement and/or Dun and Bradstreet rating within 48 hours after notification of such requirement.

7.0 **DEBARRED, SUSPENDED, AND INELIGIBLE STATUS**

- 7.1** Vendor certifies that the vendor and/or any of its subcontractors (if applicable) have not been debarred, suspended, or declared ineligible by an agency of the State of Georgia or as defined in the 2 CFR 200.214 which states "Non-federal entities are subject to the non-procurement debarment and suspension regulations, implementing Executive Orders 12549 and 12689, 2 CFR part 180." The vendor will immediately notify GCPS in writing if the vendor is debarred by the State of Georgia or placed on a Consolidated List of Debarred, Suspended, and Ineligible Contractors by a federal entity, such as being listed in SAM.gov. The regulations in 2 CFR part 180 restrict making Federal awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from receiving or participating in Federal awards.
- 7.2** 2 C.F.R. Section 180.300 requires that when the School District enters into a covered transaction with an entity at a lower tier, the School District must verify that the entity

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is not suspended, debarred, or otherwise excluded or disqualified. "Covered transactions" include those procurement contracts for goods and/or services awarded under a grant or cooperative agreement that are expected to equal or exceed \$25,000. Furthermore, grantees and sub-grantees must not make any award or permit any award at any tier to any party that is debarred or suspended or is otherwise excluded or disqualified. By submitting this contract, you affirm that neither you, the vendor, nor any principal of the vendor is suspended, debarred, or otherwise excluded or disqualified at the date of your signature.

8.0 NON-COLLUSION

The vendor, by submitting a solicitation, certifies that the vendor's response is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a response for the same materials, supplies, or equipment and is in all respects fair and without collusion or fraud. The vendor understands that collusive bidding violates State and Federal law and can result in fines, prison sentences, and civil damage awards.

9.0 OBLIGATION TO MAINTAIN CONFIDENTIALITY

9.1 Vendor acknowledges that some material and information which may come into its possession or knowledge in connection with the solicitation documents or in connection with its performance under any resulting contract may consist of confidential information of GCPS, its students, or employees, the disclosure of which to, or use by, third parties may be damaging to GCPS, its students or employees and/or may violate applicable law(s). Vendor accordingly agrees to hold all such confidential information, together with all material containing confidential information, in strictest confidence, not to make use thereof other than as reasonably necessary to respond to this solicitation and/or to perform under any resulting contract, and not to release or disclose any confidential information to any other person or entity except as may be required by law. The vendor shall inform and instruct all employees, subcontractors, or other agents or representatives of this obligation of confidentiality. The vendor shall immediately remove any of its employees, subcontractors, or other agents or representatives from performing work in connection with any contract resulting from a solicitation upon request of notice from GCPS that GCPS reasonably believes such person or entity has failed to comply with the confidentiality obligations hereunder. Any employee, subcontractor, or other agent or representative so removed shall be replaced as provided for in the staffing requirements of this solicitation and/or the resulting contract.

9.2 For the purposes hereof, "Confidential Information" includes, without limitation, all educational records, student data, student personally identifiable data, trade secrets, copyrighted material, and other confidential and proprietary information not subject to disclosure or use, as such terms may be respectively defined in O.C.G.A. § 10-1-761, O.C.G.A. § 20-2-662, O.C.G.A. § 50-18-72, 34 C.F.R. § 5b.9, 20 U.S.C. § 1232g, 34 C.F.R. § 99.3, 45 C.F.R. § 164.524, 45 C.F.R. § 84.14(d) and 20 U.S.C. §§ 1400-1482. "Confidential Information" further includes, without limitation, all employee data, personnel records, health records, physician and provider notes, medical bills, claims, and other written information of a personal nature. Per 2 CFR 200.303, vendor must take reasonable cybersecurity and other measures to safeguard information including protected personally identifiable information (PII) and other types of information. This also includes information the Federal agency or pass-through entity designates as sensitive or other information the recipient or subrecipient considers sensitive and is consistent with

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applicable Federal, State, local, and tribal laws regarding privacy and responsibility over confidentiality.

- 9.3** Vendor acknowledges and agrees that vendor's response hereto, the terms of any contract awarded according to this solicitation, and information concerning the goods and/or services provided in connection with any contract awarded according to this solicitation are generally subject to the requirements of the Georgia Open Records Act, O.C.G.A. §50-18-70 *et seq.* Vendor acknowledges that this requirement includes but is not limited to such public records prepared and maintained or received by a private person or private entity in the performance of a service or function for or on behalf of GCPS pursuant to O.C.G.A. §50-18-71.
- 9.4** Should vendor contend that it has submitted any records to GCPS which constitute "trade secrets" (as such term is defined in O.C.G.A. § 10-1-761) and desires to exempt such trade secrets from the requirements of the Open Records Act according to O.C.G.A. §50- 18-72(a) (34), vendor shall submit and attach to any such records it contends constitute trade secrets an affidavit affirmatively declaring that specific information in the records constitutes trade secrets. Should the vendor attach such an affidavit, GCPS shall notify the vendor at least ten (10) days before disclosing such information, should GCPS determine that such information does not rise to the level of a "trade secret" (again, as such term is defined in O.C.G.A. § 10-1-761). Should the vendor fail to move for an appropriate court order within such ten (10) day period, or should the vendor fail to provide an affidavit as required by O.C.G.A. §50-18-72(a) (34), GCPS may disclose such information as it deems appropriate.

10.0 ORIGINALITY AND TITLE TO CONCEPTS, MATERIALS AND GOODS PRODUCED

The vendor represents and warrants that all the concepts, materials, goods, and services produced or provided to GCPS shall be wholly original with the vendor or that the vendor has secured all applicable interests, rights, licenses, permits, or other intellectual property rights in such concepts, materials, and works. The vendor represents and warrants that the concepts, materials, goods, and services provided by the vendor to GCPS and GCPS's use of same shall not infringe upon any other work or violate the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm or corporation and that the concepts, materials, and works will not infringe upon the copyright, trademark, trade name, trade dress patent, literary, dramatic, statutory, common law or any other rights of any person, firm or corporation or other entity.

11.0 RECORDS

- 11.1 Retention** - The vendor must retain all books, records, and documents per generally accepted accounting principles and procedures and which sufficiently and adequately document and calculate all charges billed to GCPS throughout the term of the contract and for at least five (5) years following the date of final payment or completion of any required audit, whichever is later. Records to be maintained include both financial records and service records.
- 11.2 Access** - The vendor shall permit GCPS or any duly authorized representative from the Department of Education, United States Department of Agriculture (USDA), and/or where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronically or optically stored and created records or other records of the vendor relating to orders,

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invoices or payments or any other documentation or materials about the contract where such records may be located during normal business hours. The vendor shall not impose a charge for auditing or examining the vendor's books and records. If an audit discloses incorrect billings or improprieties, GCPS reserves the right to charge the vendor for the cost of the audit and appropriate reimbursement.

12.0 CIVIL RIGHTS AND ASSURANCE

- 12.1** GCPS hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.); Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794); the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.); Title II and Title III of the Americans with Disabilities Act (ADA) of 1990 as amended by the ADA Amendment Act of 2008 (42 U.S.C. § 12131-12189); Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." (August 11, 2000); all provisions required by the implementing regulations of the Department of Agriculture (USDA) (7 CFR Part 15 et seq.); Department of Justice Enforcement Guidelines (28 CFR Part 35, 42 and 50.3); and Food and Nutrition Services (FNS) directives and guidelines, to the effect that, no person shall, on the grounds of race, color, national origin, sex (including gender identity and sexual orientation), age, or disability, be excluded from participation in, be denied benefits of, or otherwise be subject to discrimination under any program or activity for which the Program applicant receives Federal financial assistance from USDA; and hereby gives assurance that it will immediately take measures necessary to effectuate this Agreement.
- 12.2** The USDA non-discrimination statement that in accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs).
- 12.3** This assurance is given in consideration of and for the purpose of obtaining any Federal financial assistance, grants, and loans of Federal funds, reimbursable expenditures, grants, or donation of Federal property and interest in the property, the detail of Federal personnel, the sale, and lease of, and the permission to use Federal property or interest in such property or the furnishing of services without consideration or at a nominal consideration, or at a consideration that is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale, lease, or furnishing of services to the recipient, or any improvements made with Federal financial assistance extended to the Program applicant by USDA. This includes any Federal agreement, arrangement, or other contract that has as one of its purposes the provision of cash assistance for the purchase of food and cash assistance for the purchase or rental of food service equipment or any other financial assistance extended in reliance on the representations and agreements made in this assurance.
- 12.4** By accepting this assurance, GCPS agrees to compile data, maintain records, and submit records and reports as required to permit the effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review

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and copy such records, books, and accounts, access such facilities and interview such personnel as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, the Department of Agriculture, FNS, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on Gwinnett County Public Schools, its transferees, and assignees as long as it receives assistance or retains possession of any assistance from USDA.

13.0 AWARDS

- 13.1** GCPS reserves the right to award by line item to more than one vendor and/or to award by group or any combination thereof. The award will be made in the best interest of GCPS.
- 13.2** In case of a tie and subject to compliance with state and federal regulations and guidelines, the award will be made as follows:
- 13.2.1** The award will be to the in-county vendor.
 - 13.2.2** The award will be to the in-state vendor.
 - 13.2.3** If applicable, the award will be to the vendor with goods made in Georgia.
 - 13.2.4** If applicable, the award will be to the vendor with the lesser total dollar volume within this solicitation.
 - 13.2.5** If these preferences are insufficient for resolution, drawing lots in a public forum will resolve the tie.
- 13.3** GCPS reserves the right to negotiate a lower price than the award price on any line item with the successful vendor. If GCPS is unable to negotiate an acceptable price, it reserves the right to re-solicit the item(s)/service(s) involved.
- 13.4** GCPS reserves the right to purchase related items/services from the awarded vendor(s) when necessary, provided the pricing granted is in accordance with the cost structure awarded for similar items/services.
- 13.5** Purchases by GCPS are not subject to Federal Excise Tax or State and Local Sales Tax. Tax Exemption Certificates will be furnished upon request.
- 13.6** Awards will be posted on the internet on the GCPS Euna Procurement (formerly Bonfire) Interactive Portal. Go to www.gcpsk12.org. From this screen, select Quick Links, then select Purchasing/Property Management. Under Purchasing Bids, find the link to the Euna Procurement (formerly Bonfire) Interactive Portal on the right side of the page.

14.0 COST

It is GCPS's expectation that your firm submits its best pricing at the time of the solicitation. The District understands that external factors may impact your firm's ability to hold pricing for the term of the contract.

GCPS reserves the right to review and accept or deny requests for price changes due to extenuating circumstances in the economy, marketplace, or acts of God. This option will only be exercised if it is deemed in the District's best interest.

- 14.1** The supplier may request an adjustment in the unit prices/total cost in the event of a cost

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escalation of the unit price/total cost if such items/materials are subject to circumstances in the economy, marketplace, or acts of God or materially impacted by a tariff that arises after the supplier's response was submitted to GCPS. The existence and timing of such unit prices/total cost escalation must be fully documented by the supplier and shall be subject to the following conditions:

- 14.1.1** The supplier must provide written notice to GCPS of any anticipated cost escalation within ten (10) days of becoming aware of such escalation
- 14.1.2** The supplier must submit detailed documentation, including supplier quotes or other evidence reasonably acceptable to GCPS, to substantiate the increased costs;
- 14.1.3** GCPS shall have the right to verify the cost escalation through independent means;
- 14.1.4** Any adjustment to unit prices/total cost shall be limited to the actual increase in costs incurred by the supplier and shall not include any additional overhead, profit or fee; and
- 14.1.5** The supplier shall undertake all reasonable efforts to mitigate the impact of price/cost escalations, including, without limitation, seeking and/or proposing alternative suppliers or materials where feasible and ordering materials in advance.
- 14.1.6** In such case, GCPS and the supplier shall negotiate in good faith to agree on the appropriate adjustment to the unit prices/total cost. If after execution of the price/cost Amendment a tariff or other market condition is subsequently reduced or removed, or prices of impacted materials are reduced, supplier must provide written notice to GCPS within ten (10) days of supplier becoming aware of such removal or reduction. GCPS and the supplier shall then negotiate in good faith to agree on the appropriate reduction to the prices/cost, which shall be formalized through a revised award letter in accordance with the terms of the Agreement.

15.0 CONTRACT

- 15.1** The Acknowledgement and Agreement question on the Questionnaire must be affirmatively answered. THIS ACKNOWLEDGMENT BECOMES A PART OF YOUR SOLICITATION AND WITHOUT IT YOUR SOLICITATION IS NOT COMPLETE AND WILL BE SUBJECT TO REJECTION.
- 15.2** Vendor must fully comply with all applicable federal and state security and immigration laws, including, without limitation, the Georgia Security and Immigration Compliance Act. The vendor must affirm the vendor's compliance by completing and returning the Georgia Security and Immigration Compliance Documents with the bid, proposal, or quote.
- 15.3** **Entirety of Contract** – The contract between GCPS and the vendor shall include but not be limited to the original solicitation, G C P S General Terms and Conditions, subsequent addenda, clarifications, vendor questions/answers, the purchase order (if any), and award letter, as well as all GCPS accepted documents submitted in response to this solicitation, including any attachments and appendices. The entire agreement between the parties supersedes all prior oral and written agreements and understandings between the parties concerning the subject matter hereof. If any language of the response submitted by the

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vendor conflicts with the language of the solicitation, GCPS General Terms and Conditions, or any addenda, the language of the solicitation, GCPS General Terms and Conditions, or any addenda shall govern and control for all purposes unless consented to and agreed to by GCPS in writing.

- 15.4** If the vendor has additional terms and conditions, including but not limited to a vendor-drafted contract or purchase order that it is proposing, then the vendor must disclose and submit those terms and conditions in writing for evaluation by GCPS with its initial solicitation response. If the vendor objects to any term or condition in this solicitation, then any such objection shall be clearly indicated in writing. If any of the vendor's proposed contract terms conflict with any of GCPS's terms and conditions, every term the conflicting vendor proposes must be identified separately from the contract in writing. GCPS is not under any obligation to consider any terms or conditions proposed by the vendor that are not included in the vendor's initial response and not disclosed in the manner outlined in this paragraph. Further, unless expressly agreed to in writing, GCPS will not be bound by any terms and conditions in any vendor contract, packaging, service catalog, brochure, technical data sheet, or any other document that attempts to impose any conditions at variance with or in addition to the terms and conditions contained in the GCPS solicitation and the GCPS purchase order related to this solicitation or contract. Submitting terms and conditions that GCPS considers to conflict with GCPS terms and conditions may result in a vendor being deemed non-responsive.
- 15.5** This Agreement and all other contracts or agreements entered into between the Parties shall be governed, construed, and enforced according to the laws of the State of Georgia without regard to the principles of conflicts of laws. The Parties agree that this Agreement will be performed in the State of Georgia. The Parties consent to exclusive jurisdiction and venue in the State of Georgia and agree that all disputes between the parties regarding any Contract or Agreement the Parties entered into during the term shall be brought in the state courts of Gwinnett County or the federal court for the Northern District of Georgia, Atlanta Division.

16.0 SHIPPING

- 16.1** All prices are to include delivery to the location(s) specified in the solicitation documents or the purchase order. All delivery for goods must be FOB Destination, unless specified otherwise in the solicitation, with delivery to the location specified by the GCPS.
- 16.2** Inside delivery is required for all goods. At no time should goods be left outside of any building. Vendors are asked to be mindful of school arrival and dismissal times and avoid attempting delivery during those times. For large, heavy items, vendors are encouraged to call ahead to the delivery location to give prior notice and ascertain any delivery details particular to that location (i.e., loading dock availability, which entrance provides access to the loading dock, etc.).
- 16.3** All merchandise will be received in our warehouse on weekdays between the hours of 7:00 A.M. and 3:00 P.M. Where two or more items are packaged together, their combined weight shall be no more than two thousand (2,000) pounds.
- 16.4** **MARKING:** Include a packing list in each shipment. The packing list must show the GCPS Purchase Order Number, Contents, and Shipper's Name and Address; mark the packing list

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and Invoices covering the final Shipment "Order Completed." If no packing list accompanies the shipment, the Buyer's count will be accepted. Mark (upper left corner) of each package (box, crate, barrel, bundle, piece) clearly with
(1) the Shipper's name and address, (2) Contents, (3) Board of Education Purchase Order Number, and (4) Bill of Lading or Express Receipt and on every package the marking specified above, will obligate Shipper for any and all extra cost incurred, including drayage or demurrage.

- 16.5** If the goods/services have not been delivered/completed by the specified delivery date, and GCPS has granted no written extension of such delivery date, GCPS reserves the right to cancel the purchase of the items/services and/or any other pending purchase orders to the same vendor. If delivery of goods or services is not complete within the time specified, GCPS may, without liability and in addition to any other rights or remedies, terminate the agreement by notice effectively when received as to goods or services not yet delivered or rendered. GCPS may purchase substitute goods or services elsewhere and charge the awarded vendor for any additional expense incurred.

17.0 INVOICING

- 17.1** GCPS will make payment after the final delivery and acceptance of all items/services. However, final acceptance will not be made until after inspection and approval by the

GCPS authorized representative. Acceptance of any part of the order shall not bind GCPS to accept any future shipments nor deprive it of any right to return goods already accepted.

- 17.2** All invoices must show the purchase order number and the item number and should be mailed to GCPS, Finance Department, 437 Old Peachtree Road, NW, Suwanee, Georgia 30024-2978.

- 17.3** Invoices should be submitted no later than thirty (30) days after the last day of services or formal acceptance of last delivery of goods.

- 17.4** Prompt payment discounts offered for payment up to thirty (30) days will be taken.

- 17.5** No invoice will be processed for payment until all contractual obligations have been met and/or items ordered have been received and approved by the GCPS authorized representative.

18.0 PAYMENT

PAYMENT IN FULL will be made by the Board of Education when an invoice is received indicating that the goods and/or services have been delivered. The Board of Education will also make **PARTIAL PAYMENT** when partial shipment is received, as long as an invoice is received indicating partial delivery.

19.0 COMPLIANCE

GCPS will make final inspection of all products/services for acceptance or rejection. Final inspection resulting in acceptance or rejection of the products/services will be made as soon as practicable. Still, failure to inspect shall not be construed as a waiver by GCPS of its rights to reject such

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products/services or to claim reimbursement or damages for such products/services that are later found to be defective, not in conformance with the required specifications, or not to perform as claimed by the vendor.

20.0 RIGHTS AND REMEDIES

20.1 As permitted by law, in lieu of canceling the purchase order, GCPS may levy a charge if the successful vendor fails to deliver the item(s). Such a charge is not a penalty; instead, it is the agreed-upon liquidated damages representing the estimated damages that GCPS will incur due to the vendor's failure to deliver the item(s) as required.

20.2 GCPS does not waive any of its rights under contract law. Vendor acknowledges and agrees that if the vendor breaches this agreement, GCPS may cover such goods by contracting to purchase goods in substitution for those due from the seller. GCPS may recover from the vendor as damages the difference between the cost of cover, the contract price, and any incidental or consequential damages. Failure of GCPS to effect cover does not bar it from any other remedy. In such circumstances that GCPS is not able to cover or chooses not to cover the goods purchased under this solicitation, then the vendor acknowledges and agrees that GCPS can recover the difference between the market price of the goods at the time GCPS learned of the breach and the contract price of the goods, including any incidental and consequential damages. Suppose GCPS has accepted non-conforming goods purchased under this solicitation. In that case, the vendor acknowledges and agrees that GCPS can recover the value of the goods promised by the vendor and the value of the non-conforming goods provided. The preceding remedies are not exclusive of any other remedies permitted to GCPS under Georgia law. The vendor acknowledges and agrees that GCPS is owed its reasonable attorney's fees and costs incurred by exercising GCPS's rights in connection with the foregoing remedies.

20.2.1 Partial completion of a purchase order will not exempt a vendor from this charge. GCPS further has the right, after assessing such charge, after the continuing failure of the vendor to complete, to terminate the purchase order.

20.3 Warranty and Support Requirements – GCPS is not waiving, amending, or abridging any warranty rights/contractual rights provided to GCPS under state or federal law. GCPS is not bound by any terms or conditions in any vendor's contract, packaging, invoices, service catalog, brochure, technical datasheet, or another document that attempts to impose any conditions that waive, amend, abridge, abrogate, are in conflict with or are in addition to GCPS's contractual rights as provided under state or federal law. In addition to the foregoing warranty and contractual rights of GCPS, the vendor further warrants and agrees as follows:

20.3.1 Any good(s) purchased under this contract will be defect-free in materials and workmanship and be of the quality, size, and dimensions ordered and specified. The packaging, packing, marking, and shipping of such goods will conform to the requirements of the solicitation documents and as outlined in the vendor's response. This express warranty shall not be waived because of acceptance of the goods or payment thereof by GCPS.

20.3.2 For Goods: Upon request by GCPS, the vendor further agrees to immediately correct, without charge to GCPS, any defects in the goods which develop during the

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life of the warranty after acceptance and payment by GCPS. The vendor further agrees to indemnify GCPS against damages of any sort resulting from faulty workmanship or materials by the vendor while performing any warranty or guarantee work hereunder (or by any third party performing such work for and on behalf of the vendor). Any goods or parts thereof, corrected or furnished in replacement under this clause, shall also be subject to the terms of this clause to the same extent as goods initially delivered.

20.3.3 For Goods: Vendor is fully aware of GCPS's business requirements and intended uses of the product(s) and warrants that the product(s) shall be fit for such intended uses.

20.3.4 GCPS shall give written notice to the vendor of any breach of warranties in this section, and such notice shall contain information concerning the deficiencies found, the location of the nonconforming good(s), and the quantity involved, including GCPS's notification of the remedy for the non-conforming or defective good(s).

21.0 **TERMINATION**

21.1 If GCPS wishes to cancel this contract or any purchase order following the award, GCPS will provide written notice thirty (30) days in advance. GCPS reserves the right to terminate the contractual relationship with the vendor at any time without cause and penalty on thirty (30) days' written notice to the vendor. GCPS shall pay the vendor for the work performed before the date of notice of termination. The vendor shall not be paid for any work performed or incurred after the receipt of the notice of termination nor for costs incurred by its vendors. In addition, GCPS may terminate the contract with the vendor in the event the vendor breaches any of its duties and obligations under this contract, and the vendor fails to cure such breach within ten (10) days after receiving notice from GCPS specifying the breach.

21.2 The rights and remedies of GCPS, as stated above, shall not be exclusive and are in addition to any other rights and remedies provided by law or under the contract.

21.3 Any purchase orders which result from this contract must be issued prior to the expiration of the contract; however, Bidder or Proposer performance, GCPS payment obligations, and any applicable warranty periods or other Bidder or Proposer or GCPS obligations may extend beyond the term of the contract unless said purchase order is terminated in writing pursuant to Section 20.1 above.

21.4 **Multi-year Awards** – As provided in O.C.G.A. § 20-2-506, any contract awarded pursuant to this solicitation shall be deemed to obligate GCPS only for those sums payable during the calendar year of its execution or, in the event of renewal by GCPS, for those sums payable in the calendar year in which the renewal occurs. In no event shall any contract awarded pursuant to this solicitation be deemed to create a debt of GCPS for the payment of any sum beyond the calendar year of its execution or, in the event of renewal by GCPS, for those sums payable in the calendar year in which the renewal occurs.

21.4.1 The contract awarded pursuant to this solicitation shall terminate absolutely and without further obligation on the part of GCPS at the close of the calendar year in

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which it was executed and at the close of each succeeding calendar year for which it may be renewed as provided herein unless earlier terminated as provided in this contract or renewed as provided herein. If GCPS wishes to terminate pursuant to O.C.G.A. § 20-2- 506, GCPS will provide thirty (30) days' notice prior to the close of the calendar year. If GCPS does not provide such notice, the contract will automatically renew January 1 for the following calendar year during the term unless otherwise terminated or non-renewed in accordance with the contract.

21.4.2 The contract awarded pursuant to this solicitation shall state the total obligation of GCPS for the calendar year in which it was executed and for each calendar year for which it may be renewed as provided herein.

21.4.3 The contract awarded pursuant to this solicitation shall not exceed seven and one-half percent (7.5%) of the total local revenue collected for the maintenance and operation of GCPS in its most recently completed fiscal year.

21.5 The contract awarded pursuant to this solicitation will terminate immediately and absolutely at such time as appropriated and otherwise unobligated funds are no longer available to satisfy the obligations of GCPS, pursuant to O.C.G.A. § 20-2-506.

In the event GCPS determines that appropriated funds no longer exist or are insufficient to fulfill GCPS's obligations hereunder, GCPS may terminate the contract awarded pursuant to this solicitation by providing thirty (30) days' written notice of termination to the vendor. Notice of any such termination shall include a certification by GCPS of the unavailability or insufficiency of funds, and such certification shall constitute an agreement by GCPS not to replace the services covered hereunder in whole or in part with any service obtained from a provider other than the vendor before the end of the calendar year in which the notification of such termination is provided. GCPS shall make payments to the vendor through the date of termination.

21.6 Termination for Cause – The occurrence of any one or more of the following events shall constitute cause for GCPS to declare the vendor in default of its obligations under the contract:

21.6.1 The vendor fails to deliver or has delivered nonconforming goods or services or fails to perform, to GCPS's satisfaction, any material requirement of the contract or is in violation of a material provision of the contract, including, but without limitation, the express warranties made by the vendor;

21.6.2 GCPS determines that the satisfactory performance of the contract is substantially endangered or that a default is likely to occur;

21.6.3 The vendor fails to make substantial and timely progress toward the performance of the contract;

21.6.4 The vendor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law, including bankruptcy laws; the vendor terminates or suspends its business, or GCPS reasonably believes that the vendor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;

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21.6.5 The vendor has failed to comply with applicable federal, state, and local laws, rules, ordinances, regulations, and orders when performing within the scope of the contract;

21.6.6 The vendor has engaged in conduct that has or may expose the GCPS to liability, as determined in GCPS's sole discretion, or

21.6.7 The vendor has infringed on a third party's patent, trademark, copyright, trade dress, or any other intellectual property rights.

21.7 Notice of Default – If the vendor causes a default event, GCPS shall provide written notice to the vendor requesting that the breach or non-compliance be remedied within the period of time specified in GCPS's written notice to the vendor. If the breach or non-compliance is not remedied within the period of time specified in the written notice, then GCPS may:

21.7.1 Immediately terminate the contract without additional written notice and/or;

21.7.2 Procure substitute goods or services from another source and charge the difference between the contract and the substitute contract to the defaulting vendor, including without limitation offsetting amounts owed by GCPS to the vendor by such charges and/or

21.7.3 Enforce the terms and conditions of the contract and seek any legal or equitable remedies.

21.8 Termination upon Assignment or Change in Control. In the event that the vendor attempts to assign this contract to a third party, or in the event the vendor changes control, GCPS shall have the right, at its sole discretion, to terminate the contract immediately upon written notice.

22.0 NO ASSIGNMENT, DELEGATION, OR SUBCONTRACT WITHOUT DISTRICT CONSENT

22.1 Except as may be specifically permitted by the solicitation, the vendor shall not delegate, subcontract, assign, or otherwise permit anyone other than vendor personnel to perform any of the work and/or provide any of the services required of the vendor under this contract or assign any of its rights or obligations hereunder, without the prior written consent of GCPS, which consent may be withheld by GCPS in its sole discretion.

22.2 No subcontract, which the vendor enters into with respect to the performance of work and/or provision of services under this contract, shall in any way relieve the vendor of any responsibility for any performance or obligation required of it by this contract. The vendor hereby accepts responsibility for ensuring that all subcontractors who perform any of the services under this contract also comply with the terms and conditions of this contract. Vendor expressly agrees to indemnify and hold harmless GCPS from any and all claims, demands, liabilities, losses, damages, costs, and expenses which result from any failure by any such subcontractor to comply with any of the terms and conditions of this contract. The vendor shall give GCPS immediate notice in writing by registered or certified mail of any claim, action, or suit filed against the vendor by any subcontractor and prompt notice of

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any claim made against the vendor or any subcontractor, which may result in litigation, related in any way to this contract.

22.3 Vendor must notify GCPS of all subcontractors used to fulfill this contract, including those contracted by their agents (such as delivery services). GCPS reserves the right to require that a subcontractor be removed from the contract.

22.4 A completed Subcontractor E-Verify Affidavit form must be submitted for each subcontractor that will be used to fulfill this contract.

23.0 TAXES

The vendor will timely pay all taxes lawfully imposed upon the vendor with respect to this Contract. The vendor makes no representation whatsoever regarding any tax liability of the vendor nor regarding any exemption from tax liability related to this contract.

24.0 FORCE MAJEURE

Neither party shall be liable or responsible to the other party, nor deemed to have defaulted under or breached the contract awarded pursuant to this solicitation, for any failure or delay in fulfilling or performing any term of such contract, when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's reasonable control including, without limitation, Acts of God, flood, fire, earthquake, explosion, global pandemic, war, invasion, hostilities, terrorist threats or acts, riots or other civil unrest, governmental order or law, actions, embargoes or blockades, strikes, labor stoppages or slowdowns. The impacted party shall promptly give notice to the other party within five (5) days of the occurrence of any such event, which shall identify the period of time the occurrence is expected to continue. The impacted party shall use diligent efforts to end the failure or delay and ensure the effects of such an event are minimized. The party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. GCPS may revise/stop services and/or deliveries while school(s) are closed and will not be held responsible for any payment for services not provided or items not delivered.

25.0 SURVIVAL OF REPRESENTATIONS

The provisions, representations, and warranties contained in this contract shall survive the delivery of all components procured hereunder and the payment of fees, therefore, and any termination of this contract in accordance with their respective terms and conditions.

26.0 RELATIONSHIP OF PARTIES

This contract is not intended by the parties to constitute or create a joint venture, pooling arrangement, partnership, or formal business organization of any kind, and the rights and obligations of the parties shall be only those expressly set forth herein. The vendor shall be deemed an independent contractor, and the employees and agents of the vendor shall not be deemed to be the employees or agents of GCPS. GCPS is not responsible for the payment of any taxes, insurance, or benefits on behalf of the vendor's employees.

27.0 SERVERABILITY

Any section, subsection, paragraph, term, condition, provision, or other parts of this contract which is held, found, or declared to be voidable, void, invalid, illegal, or otherwise not fully enforceable shall not void any other section, subsection, paragraph, term, condition, provision, or part of this contract, and the remainder of this contract shall continue to be of full force and effect. Any

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agreement of the parties to amend, modify, eliminate, or otherwise change any section, subsection, paragraph, term, condition, provision, or other terms of this contract shall not affect any other section, subsection, paragraph, term, condition, provision, or part of the contract, and the remainder of this contract shall continue to be of full force and effect.

28.0 RESPONDERS EVIDENCE OF RESPONSIBILITY

Responders may be required to furnish evidence in writing that they maintain permanent places of business and have adequate equipment, finances, and personnel to furnish the items offered satisfactorily and expeditiously and that they are authorized dealers and can provide necessary services and warranties for items they propose to furnish.

29.0 WAIVERS

The failure of either party to assert any claim or right against the other party regarding its obligations hereunder, in any one or more instances, shall not constitute a waiver of such claim or right with respect to the future performance of such obligations and other obligations under this contract.

30.0 PUBLICITY

The vendor shall not prepare or disseminate any publicity relating to this contract, products sold or licensed, or the services performed under this contract without the express written prior consent of GCPS. As used in this section, the term “publicity” includes but is not limited to advertisements, flyers, public announcements, pamphlets, press releases, reports, books, broadcasts, signs, social media, and similar public information.

31.0 USE BY OTHER AGENCIES

So long as such additional use of this Agreement does not interfere in the fulfillment of obligations to GCPS by the Bidder or Proposer, and only upon the consent of the Bidder or Proposer, this solicitation is available and open to public and nonprofit entities across the United States and Canada; such as federal, state/province, municipal, K-12 and higher education, tribal government, and other public entities; to buy off this bid or proposal at the same prices quoted during the effective term.

Charter Schools – Selected GCPS contracts and pricing have been made available for use by GCPS Charter Schools. Sales to GCPS Charter Schools by the Contractor will be optional and not be considered when determining the award, i.e., allowing other agencies to participate is not mandatory. It is to be understood, however, that GCPS shall not be responsible for any problems that may arise between a GCPS Charter School and the contractor as a result of any sales. Any resulting contract is solely between the bidder or proposer and third-party GCPS Charter School. Billings for items purchased under this agreement shall be directed to the agency making the purchase.

32.0 VENDOR’S EMPLOYEES ON GCPS PROPERTY

32.1 All vendor’s employees, agents, and subcontractors working on GCPS property must wear an ID, preferably a photo ID, be neat and clean in appearance, and must comply with all of the policies and procedures related to on-campus work that are in effect at the school or administrative site, as the case may be. The vendor shall provide and institute necessary security measures to prevent **unauthorized** access to all computer networks and

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proprietary information, trade secrets, or student information of GCPS by any of its employees or agents. The vendor shall be liable and responsible to GCPS for all security breaches by its employees or agents. All vendor employees shall conduct themselves in a professional manner and shall not give the appearance of fraternizing with the students and teachers.

32.2 GCPS is a drug-free workplace - By submission of a response to the solicitation, the GCPS vendor certifies that employees, agents, and subcontractors will not engage in the unlawful manufacture, sale, distribution, dispensation, possession, or use of controlled substances or drugs while on the GCPS property during the performance of the contract.

32.3 GCPS is a tobacco-free workplace - By submission of a response to the solicitation, the vendor certifies that employees, agents, and subcontractors will not use tobacco products or electronic nicotine delivery systems while on GCPS property at any time during the performance of the contract. The use of electronic nicotine delivery systems (e.g., e-cigarettes, e-cigars, e-hookahs, e-pipes, and other forms of what is commonly referred to as "vaping") shall be prohibited at all times. GCPS reserves the right to request the removal of any vendor employees, agents, or subcontractors from GCPS property.

33.0 BACKGROUND CHECKS

33.1 GCPS requires the vendor, at the vendor's expense, to perform background checks on any employee or subcontractor who will be working on GCPS property (delivery personnel excluded). A comprehensive criminal history background check, including both the Georgia Crime Information Center (GCIC) and National Crime Information Center (NCIC), is required on each applicant assigned to GCPS. Minimum findings that warrant exclusion include:

33.1.1 Any felony conviction

33.1.2 Any misdemeanor drug offense within the past seven (7) years

33.1.3 Any crime against children

33.1.4 Any sex-related conviction

33.1.5 Regardless of ultimate disposition, the total number of arrests exceeds four (4)

33.1.6 Regardless of ultimate disposition, more than two (2) arrests for crimes of similar nature (e.g., assault, shoplifting, DUI)

33.1.7 Pending Charges – Any applicant out on bond and awaiting disposition for any offense

33.1.8 Failure to disclose any criminal history (regardless of how long ago) on application

33.2 Once employed by the vendor, the employee has the obligation to self-report any arrest to the vendor within twenty-four (24) hours. The vendor should contact Gwinnett County Public Schools' designated representative within twenty-four (24) hours of the report.

33.3 Background checks must be provided to the GCPS designated representative upon request by the GCPS. Please note: It is required that all necessary background checks be completed prior to the employee beginning work.

34.0 AMENDMENTS IN WRITING

No amendment of any term or condition contained in this contract, including the solicitation

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documents and vendor's response, shall be effective unless it is in writing and signed and dated by duly authorized representatives of the parties. No representation, request, instruction, directive, or order made or given by any official, employee, or agent of GCPS, whether verbal or written, shall be effective to amend this agreement or excuse or modify performance hereunder unless reduced to a formal amendment and executed as set forth above. The vendor shall not be entitled to rely on any such representation, request, instruction, directive, or order and shall not, under any circumstances whatsoever, be entitled to additional compensation, delay in performance, or other benefit claimed for relying upon or responding to any such representation, request, instruction, directive, or order.

If necessary, addendums or amendments to the solicitation will be posted up to seventy-two (72) hours before the solicitation opening time.

35.0 PARTIES BOUND

The contract of which these General Terms and Conditions are a part shall be binding on and inure to the benefit of the parties to this contract and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

36.0 RELEASE, WAIVER AND INDEMNIFICATION

- 36.1** Vendor hereby waives, releases, relinquishes, discharges and agrees to indemnify, protect, and hold harmless members of the GCPS Board of Education (BOE), GCPS and its officers, agents, and employees (hereinafter collectively referred to as "Indemnitees"), of and from any and all claims, demands, liabilities, loss, costs, or expenses for any loss or damage (including but not limited to reasonable attorneys' fees) growing out of, or otherwise occurring in connection with this contract, due to any act or omission on the part of vendor, its agents, employees, subcontractors, or others working at the direction of vendor or on its behalf; or due to any breach of this contract by vendor; or due to the application or violation of any pertinent Federal, State, or local law, rule, or regulation by vendor, its agents, employees, subcontractors, or others working at the direction of vendor or on its behalf.
- 36.2** As permitted by Georgia law, this indemnification shall apply notwithstanding the fact that the Indemnitees may be partially responsible for the situation giving rise to the claim. This indemnification shall apply notwithstanding the fact that a claim results in a monetary obligation that exceeds any contractual commitment. This indemnification shall not apply if the situation giving rise to the claim results solely from the negligence or willful acts of Indemnitees.
- 36.3** This indemnification extends to the successors and assigns of the vendor, and this indemnification and release survives the duration of this contract, the termination of this contract, and the dissolution or, to the extent allowed by law, the bankruptcy of the vendor.
- 36.4** Vendor shall, at its expense, be entitled to and shall have the duty to participate in the defense of any suit against the Indemnitees. No settlement or compromise of any claim, loss, or damage asserted against Indemnitees shall be binding upon Indemnitees unless expressly approved by the Indemnitees.

37.0 COMPLIANCE WITH LAWS

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- 37.1** Vendor shall, at its own expense, obtain all necessary permits, give all notices, pay all license fees and taxes, and comply with all applicable local, State, and Federal Laws, ordinances, rules, and regulations in connection with its performance under this contract.
- 37.2** Vendor further agrees that in the performance of the contract, it will comply with all laws, regulations, rules, and policies that may apply to public education in general and the operation of GCPS in particular.
- 37.3** Notwithstanding or in limitation of the foregoing, the vendor acknowledges and agrees that it shall, at all times during this solicitation process and in the performance of any contract resulting therefrom (if any), comply with the provisions of the Georgia Student Data Privacy and Transparency Act, O.C.G.A. §20-2-660 *et seq.*

38.0 COMPLIANCE WITH FEDERAL LAWS

All vendors must comply with all applicable federal laws and regulations, including, without limitation:

- 38.1** Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. §7606), section 508 of the Clean Water Act (33 U.S.C. §1368), Executive Order 11738, and Environmental Protection Agency regulations 40 C.F.R Part 35 (Contracts, subcontracts, and sub-grants of amounts in excess of \$100,000).
- 38.2** Mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163, 89 Stat. 871). (Contracts, subcontracts, and sub- grants of amounts in excess of \$100,000.)
- 38.3** BOYCOTT OF ISRAEL - Bidder or Proposer certifies that Bidder or Proposer is not currently engaged in and agrees for the duration of this Contract not to engage in, a boycott of Israel, as defined in O.C.G.A. § 50-5-85.
- 38.4** Buy American Policy (If Applicable)–The Federal “Buy American” Policy mandates that the District/State agency/Territory participates in the National School Lunch Program and School Breakfast Program and is required to use the nonprofit food service funds, to the maximum extent practicable, to buy domestic commodities or products for Program meals. A “domestic commodity or product” is defined as one that is either produced in the U.S. or is processed in the U.S. substantially using agricultural commodities that are produced in the U.S. as provided in 7 CFR 210.21 (d).” Additionally, vendors must be able to provide documentation verifying the domestic origin of products as defined in 7 CFR 210.21 (d) if requested.
- 38.4.1** Exceptions to the Buy American provision are very limited; however, an alternative or exception may be approved upon request. An alternative or exception may be considered if the request is submitted in writing to a designated official a minimum of 10 days in advance of delivery. The request must include the following: (1) Alternative substitute(s) that are domestic and meet the required specifications: (a) Price of the domestic food alternative substitute(s); and (b) Availability of the domestic alternative substitute(s) in relation to the quantity ordered. (2) Reason

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for exception: limited/lack of availability or price (include price): (a) Price of the domestic food product; and

(b) Price of the non-domestic product that meets the required specification of the domestic product and the product is listed on the Federal Acquisitions Regulations Nonavailable articles list found at 48 CFR 25.104 and/or is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality.

GCPS must also ensure that they do not exceed the following non-domestic food purchase caps by the established deadlines:

(A) By July 1, 2025, non-domestic food purchases must not exceed 10 percent of total annual commercial food costs that a school food authority purchases per school year.

(B) By July 1, 2028, non-domestic food purchases must not exceed 8 percent of total annual commercial food costs that a school food authority purchases per school year.

(C) By July 1, 2031, non-domestic food purchases must not exceed 5 percent of total annual commercial food costs that a school food authority purchases per school year.

GCPS should contact the State Agency if accommodations are needed due to challenges with purchasing domestic items during the procurement process, if realizing that challenges around commonly purchased items aren't non-domestic items, or challenges organizing and tracking purchases and meeting to meet required annual percentage limits.

38.5 Domestic Preferences for Procurement

As appropriate and to the extent consistent with law, the recipient and/or subrecipient should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Federal agencies providing Federal financial assistance for infrastructure projects must implement the Buy American preferences set forth in 2 CFR part 184.

38.6 Procurement of Telecommunications & Video Surveillance (If Applicable)

Contractors and subcontractors are prohibited from using federal funds to enter into, extend or renew contracts for covered equipment, services, or systems that use covered telecommunications as a substantial or essential component of any system or critical technology as part of any system.

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38.7 Davis Bacon Act (for construction contracts in excess of \$2,000) [Appendix II to 2 CFR 200(D)]

Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, vendors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, vendors must be required to pay wages not less than once a week. The recipient and/or subrecipient must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The recipient and/or subrecipient must report all suspected or reported violations to the Federal agency.

The contracts must also include a provision for compliance with the **Copeland "Anti-Kickback"** Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Vendors and Sub vendors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each vendor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The recipient and/or subrecipient must report all suspected or reported violations to the Federal agency.

38.8 Equal Employment Opportunity

In accordance with Federal Law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. To file a complaint of discrimination, write USDA, Director, Office of Adjudication, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410 or call toll free (866) 632-9992. (Voice) Individuals who are hearing impaired or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339; or (800) 845-6136 (Spanish). USDA is an equal opportunity provider and employer.

(Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.")

38.9 Procurement of Recovered Materials 2 CFR 200.323 (If Applicable)

An SFA and its [vendors](#) must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act if and when applicable. The requirements of Section 6002 include procuring only items designated in the guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain the highest

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percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

The recipient or subrecipient should, to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable. This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products. See Executive Order 14057, section 101, Policy.

38.10 Byrd Anti-Lobbying Amendment- 31 U.S. Code 1352 2 CFR Appendix 2 to Part 200 (I)

A Lobbying Certification must be completed for all federally funded bids \$100,000 and over. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352): Vendors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

38.11 Contract Work Hours/Safety Standards Act (40 U.S.C. 3701-3708) (If Applicable)

All contracts awarded by the recipient and/or subrecipient in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each vendor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours.

Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies, materials, or articles.

38.12 Rights to Inventions Made Under a Contract or Agreement (Appendix II to 2 CFR 200(F))

If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or sub-recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment, or performance of experimental, developmental, or research work under that "funding agreement," the recipient or sub-recipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under

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Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

38.13 HUB (Historically Underutilized Business) STATEMENT (2 CFR 200.321)

When possible, the recipient or subrecipient should ensure that small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms (See U.S. Department of Labor's list) are considered as set forth below. Such consideration means:

- (1) These business types are included on solicitation lists;
- (2) These business types are solicited whenever they are deemed eligible as potential sources;
- (3) Dividing procurement transactions into separate procurements to permit maximum participation by these business types;
- (4) Establishing delivery schedules (for example, the percentage of an order to be delivered by a given date of each month) that encourage participation by these business types;
- (5) Utilizing organizations such as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring a contractor under a Federal award to apply this section to subcontracts.

38.14 Food Recalls (Applicable for Food Contracts/Processing Contracts)

Responders shall be expected to comply with all federal, state, and local mandates regarding the identification and recall of foods from the commercial and consumer marketplace. Responder shall have a process in place to effectively respond to a food recall.

The process must include accurate and timely communications to GCPS and assurance that unsafe products are identified and removed from GCPS sites in an expedient, effective, and efficient manner. Selected Vendor will be expected to maintain all paperwork required for immediate and proper notification of recalls for full and split cases. Vendor will define their policy and procedures for handling food recalls on a separate document to be submitted along with solicitation.

Responder will provide the food recall contact person and the backup person's contact information to the school nutrition director or designee by completing the chart below. GCPS will provide the vendor with a contact person and a backup person's contact information by completing the chart below. Food recall procedures can be found in 7 CFR 250.

38.15 Biosecurity (Applicable for Food Contracts/Processing Contracts)

Responder must have a written policy regarding biosecurity and the food supply, in accordance with the Bioterrorism Act 2002 under the U.S. Department of Health and Human Services, FDA and under the USDA, Food Safety, and Inspection Service. Responder will define their biosecurity policy and procedures on a separate document to be submitted along with bid.

39.0 RESPONDER CODE OF CONDUCT:

GCPS aims to operate in a manner that reflects high ethical standards and is committed to complying with all applicable laws, regulations, and other legal requirements.

Accordingly, GCPS seeks to conduct business with Responders who share our commitment to high

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ethical standards and operate in a responsible and ethical manner.

All GCPS employees are expected to act at all times in accordance with good business judgment for the benefit of the District and to avoid activities that could create a conflict of interest or the appearance of such a conflict. Responders when doing business with GCPS, in turn, are expected to conduct their business in an ethical manner and act with integrity.

Responder's employees may be required to perform work at government owned facilities, including schools. Responder's employees and agents must conduct themselves in a professional manner while on the premises, and in accordance with GCPS policies and procedures, and all applicable laws.

Acceptance of Entertainment & Gifts:

Responders may neither offer nor give any gift to any GCPS employee or contracted staff who conduct business for GCPS except those items of nominal value, which may then be subject to disclosure by the receiving party to an immediate supervisor and/or the GCPS Department of Internal Audit. For purposes of this Procedure, a "gift" shall mean anything of value that shall include, but is not limited to, goods, loans, money, personal services, gratuities, entertainment, etc. Any prohibited activity or gift may result in the termination of existing contracts. Any activity or gift is strictly forbidden where it is being given under circumstances where it can be reasonably inferred that it was intended to influence GCPS employees in the performance of his or her official duties or during the solicitation and award process of a bid.

Responder Submittals:

GCPS expects all responders to be forthcoming and always submit true and accurate information in response to a GCPS Purchasing solicitation or in regard to an existing business relationship. If the GCPS Purchasing Department determines that the bidder has intentionally omitted or failed to provide pertinent information and/or falsified or misrepresented material information submitted to the Purchasing Department, the Department shall act in accordance with applicable GCPS policies and procedures and applicable State of Georgia Law.

Information and Communication During the Solicitation:

All bidding information received, including pricing, remains confidential until an award is made so as not to compromise the competitive bid process. Likewise, to protect the integrity of the solicitation process, any communication with GCPS, including clarification of a quote, bid, or proposal, must go through the assigned Purchasing Department Senior Buyer.

By accepting our Solicitation "Instructions and Conditions" terms and agreeing to do business with GCPS, all responders are agreeing to comply with this Code of Conduct.

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BID PROTEST PROCEDURE

This bid protest procedure applies to challenges to the awarding of bids or contracts by the Purchasing Department of the Gwinnett County Public Schools. This procedure applies to electronically submitted bids, RFPs, quotes, and contracts.

If the protesting party does not submit a completed bid, proposal, quote, or contract, the protest must be submitted prior to the date and time of the solicitation opening or prior to the date on which the Bid, RFP, Quote, or Contract is due to be received by the Board. Any protests received after those dates will not be reviewed and considered and will be dismissed as untimely.

For those protestors who did submit a completed and confirmed bid, RFP, quote, or contract response, their protests must be filed within seven calendar days after the protesting party knew or should have known of the facts giving rise to the protest. However, no protest that is filed more than seven calendar days after the date the notice of award of the contract is posted on the Purchasing Department of the GCPS website will be accepted. Untimely protests will be dismissed.

The date of filing is the date the Purchasing Department receives the protest. A protest must be in writing and must be sent to GCPS, Purchasing Department, 437 Old Peachtree Road, NW, Suwanee, Georgia 30024, Attn: Director of Purchasing.

Each protest must specify the reasons the protesting party believes that the solicitation or award was improper. Issues not raised in the written protest are deemed waived and may not be raised on appeal. The protesting party may submit any documents or information deemed relevant to the protest. If the contract has been awarded, the Purchasing Department shall notify the successful bidder or contractor of the protest. If the protest is received before the contract is awarded and the protest raises substantial issues, all bidders and offerors who appear to have a substantial and reasonable prospect of winning the award shall be notified of the protest and the reasons for the protest and they may file their position on the issues with the Purchasing Department, in writing, within five days after receipt of notice of the protest.

Upon the filing of a protest, further action on the solicitation or award shall be stayed, or if the protest is timely received after the award, the performance of the contract should be suspended until the protest is resolved. The Purchasing department may, however, determine that the protest is clearly without merit or that the award of the contract without delay is necessary to protect the substantial interests of the Board. In such case, if the Director of Purchasing determines that the protest is clearly without merit or will substantially harm the Board and does not stay the procurement, he shall immediately issue the decision.

Within 15 days of receiving a protest, the Purchasing Department will issue a response. The response may include any documents or information that the contracting officer or Director of Purchasing deems relevant to the protest. If additional time is required to investigate the protest, he shall inform the protesting party of the additional time needed to render a determination and obtain the protesting party's consent.

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Unless an extension of time has been agreed to, the Director of Purchasing shall issue a final written determination stating the reasons for the decision within 60 days of the date the protest was filed.

The Purchasing Department shall send a copy of the decision to the protesting party and any other person determined to be affected by the decision. If the protest is denied, the decision shall inform the protesting party of its right to file an appeal. The appeal will need to be sent to GCPS, Business and Finance Division, 437 Old Peachtree Road, NW, Suwanee, Georgia 30024, Attn: Chief Financial Officer, and received within 15 days of the mailing date of the decision.