

TERMS AND CONDITIONS

The following terms and conditions are incorporated into this Quote and incorporated into any formal written agreement between EISD and the successful awarded Proposer(s).

AGREEMENT, INTEGRATION, TERM & TRANSITION, PURCHASE ORDER REQUIREMENTS

The Request for Proposals, with all Addenda, those provisions in the proposal that are satisfactory to the District, and the District's Agreement Form(s), which may include, but are not limited to a written contract, agreement letter or Purchase Order constitutes the Agreement between the Supplier and the District (collectively, the, "Agreement") NOTWITHSTANDING ANYTHING TO THE CONTRARY IN ANY SUPPLIER FORM PROPOSAL OR DOCUMENTATION, THE TERMS AND CONDITIONS OF THE AGREEMENT AS INTEGRATED ABOVE SHALL BE CONTROLLING IN ALL INSTANCES.

To the extent there is any conflict between or among the documents composing the Agreement, the following hierarchy (form most to least authoritative) shall prevail: (I) District's Agreement (written contract, agreement letter or Purchase Order as applicable), (ii) RFP as provided by the District, to include all Addenda, and (iii) any Proposal provisions agreed to by the District, in the event a project is awarded to a Supplier and the Supplier requests changes to the Agreement, the District reserves the right to cancel the award and re-award the project to an alternate Supplier(s).

In the event of a license agreement (if applicable), or other contract document requested by the Supplier for execution, the District reserves the right to review and amend such document at the District's discretion.

Unless otherwise provided or required by the District, a standard agreement which results from this RFP shall be for a period of one (1) year from Effective Date of the Agreement with an exclusive option by the District to renew on an annual basis thereafter for additional one (1) year term, or as otherwise stated in the Agreement. At the District's option, there may be an additional ninety (90) day transitional period added to the end of the initial term or any renewal term. The Agreement prices, terms and conditions are to remain in force during the transitional period. However, the District has the sole option not to renew the Agreement.

Renewal, if applicable, of the contract resulting from this RFP will be in accordance with Local Government Code §271.903 concerning non-appropriation of funds for multi-year contracts. The EISD's Board of Directors, or its designee, reserve the right to rescind the contract at the end of the fiscal year if it is determined that there are insufficient funds to extend the contract.

Should the Agreement with the Supplier terminate during the initial or any renewal

term for any reason, the District reserves the right to have the same transitional period, terms and conditions as if the Agreement terminated at the expiration of that term.

EISD reserves the right to make changes to a Purchase Order (e.g., increase/decrease quantities, change delivery date, delivery address). Any changes to a Purchase Order shall be communicated to the awarded supplier by the issuance of a Purchase Order change/amendment. Only the EISD Purchasing Department may make a change to the Purchase Order by issuing and sending an updated Purchase Order to the awarded supplier.

Once the performance of the Agreement has begun, any change order(s) to requests will be made in accordance with the Texas Education Code Section §44.0411 and applicable EISD procedures and policies. Unless indicated otherwise in the Agreement, only the Purchasing Department is authorized to make changes to the Agreement with the approval of the Board of Directors. If a Proposer acts on the discretion of a District employee that is not authorized to make changes, Proposer does so at their own risk or peril and possible termination of the Agreement for cause. Also, if a Supplier attempts or receives a modification/amendment from a District employee that is not authorized to make changes, the Supplier does this at their own risk or peril and risks termination of the Agreement for cause.

QUANTITY

There is not guaranteed amount of business expressed or implied to be purchased or contracted for by EISD. However, the Supplier shall furnish all required goods and/or services to the District at the stated price, when and if required.

NON-ASSIGNMENT

The Supplier may not assign, sell, or otherwise transfer its interest in the Agreement award or any part thereof without prior written consent from the District. The Supplier shall have full responsibility for the completion and performance of all services and the delivery of all goods/services awarded to Supplier pursuant to this RFP.

USE OF DISTRICT NAME OR LOGO(S)

Supplier may not use the District's official name or logo, or any phrase associated with the District, without the written permission from the Purchasing Department.

AUTHORIZATION / PERMITS

The Supplier must have and maintain during the term of the Agreement current licenses, permits, fees and similar authorizations required by the City of San Antonio, Bexar County, and the State of Texas, where applicable, to conduct business and provide awarded goods/services to the District. Upon the request of the District, Supplier must provide copies of all such licenses, permits, and fees as being paid for

type of business they are seeking to provide to the District.

SUPPLIER NATIONWIDE CRIMINAL BACKGROUND CHECKS

Pursuant to Sections §22.085 and §22.0834 of the Texas Education Code, Supplier hereby certifies that all employees, subcontractors and volunteers of the Supplier who are hired by Supplier on or after January 1, 2008, and who have continuing duties related to the contracted services, and who have or will have direct contact with students, have passed a national criminal history background record information review as required by those sections.

Supplier shall send or ensure that the employees or applicant sends to the Texas Department of Public Safety (“DPS”) information that is required by the DPS for obtaining national criminal history record information, which may include fingerprints and photographs. DPS shall obtain the person’s national criminal history record information and report the results through the criminal history clearinghouse as provided by Section §411.0845, Government Code.

Supplier must also obtain certifications from all subcontractors that their employees to whom Section §22.0834 applies have also passed a national criminal history background record information review.

Supplier must also provide assurances that all its employees, subcontractors and volunteers, including those hired before January 1, 2008, who have contact with students have passed a criminal history background check current within the last year. If an employee, subcontractor or volunteer of the Supplier has a criminal conviction or has received deferred adjudication for a felony offense or a misdemeanor involving moral turpitude, the District may elect not to enter into a contract or cancel the contract.

WARNING: Section §44.034 of the Texas Education Code requires that a person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony.

The District may terminate the awarded contract if the District determines that the person or business entity failed to give notice as required by Section §44.034(b) or misrepresented the conduct resulting in the conviction. The District will compensate the person or business entity for services performed before the termination of the contract.

CONFLICT OF INTEREST DISCLOSURE

Pursuant to Chapter §176, Texas Local Government Code, vendors doing or seeking to do business with EISD must submit a Conflict-of-Interest Disclosure Form if they have a business relationship as defined by Section §176.001(1-a) with a local government

entity and meet the disclosure requirements of Section §176.006(a). A person commits an offense (Class C Misdemeanor) if they knowingly violate Section §176.006, Local Government Code, The District's Electronic Conflict of Interest Disclosure Form can be found at:

<https://www.ethics.state.tx.us/data/forms/conflict/CIQ.net>

CERTIFICATE OF INTERESTED PARTIES

Effective January 1, 2016, all contracts executed by the EISD Board of Directors', regardless of dollar amount, will require completion of Form 1295 "Certificate of Interested Parties", per the new Government Code Statute §2252.908. All vendors submitting a response to a formal Bid, RFP, SOQ or any contracts, contract amendments, renewals or change orders are required to complete the Form 1295 online through the State of Texas Ethics Commission website. Additional information can be found at:

<https://www.ethics.state.tx.us/filinginfo/1295/>.

EDGEWOOD INDEPENDENT SCHOOL DISTRICT VENDOR VERIFICATION FORMS

All vendors submitting a response to a formal Bid, RFP, SOQ or any contract, contract amendments, renewals or change orders are required to complete the forms within this document.

SUPPLIER DOCUMENT AUDIT AND INSPECTION/RECORD RETENTION

The District reserves the right to audit various Supplier documents as requested by the District. From time to time, the District may desire to audit certain Supplier documents to ensure compliance with the Agreement and/or proposal response. Some audits may include but are not limited to checking Supplier's invoices, authenticating the origin, Safety and Data Sheet (SDS), shelf life of products, and/or other similar types of documents. The Supplier agrees to furnish the District, in a reasonable time at a mutually agreeable place, documents requested by the District to perform such reviews or audits. EISD or its authorized representative, shall be afforded unrestricted access to and permitted to inspect and copy all Supplier's records, which shall include but not limited to accounting records (hard copy as well as computer readable data), correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to this project. Supplier shall preserve all such records for a period of five (5) fiscal years or for such longer as may be required by law, after final payment relating to this project. If this project is funded from contract/grant funds provided by the U.S. Government or the State of Texas, all documentation, including books and records, shall be available for review and audit by the Comptroller General of the U.S. Inspector General of the federal sponsoring agency, and/or the State of Texas and its duly authorized representatives, including but not limited to the State Comptroller of Public

Accounts.

CONFIDENTIAL AND PROPRIETARY INFORMATION

The District and the Supplier may provide technical information, documentation, and expertise to each other that is either (1) marked as being confidential, or (2) (if delivered in oral form) summarized in writing within ten (10) working days and identified as being confidential (“Confidential Information”). The receiving party shall be for a period of five (5) years from the date of disclosure: (I) hold the disclosing party’s Confidential Information in strict confidence, (ii) not publish or disclose the disclosing party’s Confidential Information to anyone other than the receiving party’s employees on a need-to-know basis, except as previously authorized in writing by the disclosing party, and (iii) use the disclosing party’s Confidential Information solely for performance of this project. The foregoing requirement shall not apply to any portion of a party’s Confidential Information which (a) becomes publicly known through no wrongful act or omission of the part of the receiving party; (b) is already known to the receiving party at the time of the disclosure without similar non-disclosure obligations; (c) is rightfully received by the receiving party from a third party without similar non-disclosure obligations; (d) is approved for release by written authorization of the disclosing party; (e) is clearly demonstrated by the receiving party to have been independently developed by the receiving party without access to the disclosing party’s Confidential Information; or (f) is required to be disclosed by order of a court or governmental body or by applicable law, provided that the party intended to make such required disclosure shall notify the other party of such intended disclosure in order to allow such party to seek a protective order or other remedy.

TEXAS PUBLIC INFORMATION ACT (TPIA)

Supplier acknowledges that the District is subject to the Texas Public Information Act (TPIA). As such, upon receipt of a request under the TPIA, the District is required to comply with the requirements of TPIA. Proposers must clearly and conspicuously mark any pages of their RFP response when they feel they are not subject to the TPIA as “PROPRIETARY AND CONFIDENTIAL.” In the event, that the request involves documentation that the Supplier has clearly marked as confidential and/or proprietary, the District will provide the Supplier with the notices under TPIA. Supplier acknowledges that it has the responsibility to file exceptions with the Teas Attorney General’s Office on why the documents identified as confidential and/or proprietary fall within an exception to public disclosure. Supplier further acknowledges that pages of their RFP response not clearly marked as “PROPRIETARY AND CONFIDENTIAL” may be released as part of a TPIA request without notice to Supplier.

WORK MADE FOR HIRE

All work resulting from this project shall be deemed “Work Made For Hire” as defined by the Unites States Copyright Law, and EISD retains sole ownership of all proprietary

rights in and to all designs, engineering details and other data pertaining to any discoveries, inventions, patent rights, software, improvements and the like made by the Supplier's personnel in the course of performing the work.

STUDENT CONFIDENTIALITY (if applicable)

Supplier acknowledges that the District has a legal obligation to maintain the confidentiality and privacy of student records in accordance with applicable law and regulations, including, but not limited to the Family Educational Rights and Privacy Act ("FERPA"). Any student information provided to Supplier shall be provided in compliance with the requirements and exceptions outlined in FERPA. Supplier must comply with said law and regulations and safeguard student information. Supplier may not disclose student information to a third party without prior written consent from the parent or eligible student. Supplier must destroy any student information received from the District when no longer needed for the purposes of the Agreement.

RETENTION OF PROPOSAL DOCUMENTATION

All proposal materials and supporting documentation that are submitted in response to this proposal becomes the permanent property of EISD.

RESERVATION OF RIGHTS

The District reserves the right to reject any, and all proposals at its sole discretion and cancel the entire RFP in its entirety. The District reserves the right in its sole discretion to accept the proposal(s) it considers as Best Value and waive any, and all minor irregularities in the proposal(s). Additionally, the District reserves the right to waive any requirements of the RFP. The District further reserves the right to reject all proposals and seek new proposals when such action would be deemed in the best interest of the District.

DISPUTE RESOLUTION

Dispute resolution will begin with the Director of Facilities & Operations.

Any unresolved issues will be addressed by the selected Contractor, the Director of Facilities & Operations and the CFO.

While it is the District's desire to resolve and rectify all disputes timely and fairly, issues regarding unsatisfactory performance may result in payment being withheld until resolution.

SECTION 7 INSURANCE REQUIREMENTS

INSURANCE

Unless otherwise agreed to by EISD, the Supplier shall carry insurance with responsible carriers acceptable to EISD rated “A” or better. Best within minimum limits of liability coverage, as stated below, against claims for damages caused by bodily injury, including death, to employees and third parties, and claims for property damage. The Supplier shall furnish certificates of insurance to EISD indicating compliance with this paragraph. With no intent to limit Proposer(s) liability or the indemnification provision set forth herein, the Proposer(s) shall provide and maintain certain insurance in full force and current at all times during the term of the awarded agreement and any extensions thereto.

INSURANCE TYPE	AMOUNT REQUIRED								
Automobile Liability – Covering any auto	\$1,000,000 Combined Single Limit								
Comprehensive (Commercial) General Liability – Including Products, Completed Operations, Independent Contractors, Broad Form Property Damage, Pollution, and Blanket Contractual Liability Coverage; XCU exclusions to be removed when underground work is performed.	\$2,000,000 Aggregate, Occurrence & Personal Injury \$500,000 Fire Damage \$5,000 Medical Payments Per Project Aggregate Evidence of coverage must be shown on insurance certificate								
Professional Errors & Omissions Liability – may be required from all contractors and licensed or certified as professionals; (e.g., Engineers, Architects, Insurance Agents, Physicians, Attorneys, Banks, Financial Consultants, etc.).	\$1,000,000 Consultant on a limited basis in the are of student Support and staff development One time project limit for all other consulting services \$2,000,000 Occurrence & Aggregate Minimum \$5,000,000 Maximum Limit \$50,000Deductible Retroactive Date – Preceding date of contract must be shown Extended Reporting Period – 3 years past contract completion								
Worker’s Compensation – Limits to comply with the requirements of the Texas Worker’s Compensation Act.	Statutory Limits								
Employer’s Liability	\$1,000,000								
Umbrella or Excess Liability – (Excess of primary General Liability, Automobile Liability, and WC Coverage B).	One time contract amount for all contracts exceeding: <table data-bbox="889 1297 1370 1415"> <thead> <tr> <th>Contract Amount</th> <th>Total Amount</th> </tr> </thead> <tbody> <tr> <td>\$100,000</td> <td>\$2,000,000</td> </tr> <tr> <td>\$500,000</td> <td>\$10,000,000</td> </tr> <tr> <td>\$1,000,000+</td> <td>\$25,000,000</td> </tr> </tbody> </table>	Contract Amount	Total Amount	\$100,000	\$2,000,000	\$500,000	\$10,000,000	\$1,000,000+	\$25,000,000
Contract Amount	Total Amount								
\$100,000	\$2,000,000								
\$500,000	\$10,000,000								
\$1,000,000+	\$25,000,000								

FORM OF POLICIES

The insurance may be in one or more policies and the form of which must be approved by the District.

INSURED PARTIES

Each policy, except those for Workers’ Compensation, Employer’s Liability, and Professional Liability, must name the District (and it’s elected and appointed officials, officers, agents, and employees) as Additional Insured parties on the original policy and all renewals during the term of the Contract.

DEDUCTIBLES

A policy may contain deductible amounts only if the District approves the amount and scope of the deductible. Proposer shall assume and bear any claims or losses to the extent of such deductible amount and waives any claim it may ever have for the same against the District, its officers, agents, or employees.

CANCELLATION

Each policy must expressly state that it may not be cancelled, materially changed, or non-renewed unless thirty (30) days advanced notice of cancellation is given in writing to the District by the insurance company. Proposer shall give written notice to the District within five (5) days of the date upon which total claims by any party against Proposer reduces the aggregated amount of coverage below the amounts required by the Contract.

SUBROGATION

Each policy must contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against the District, its elected officials and appointed officials, officers, agents, or employees.

ENDORSEMENT OF PRIMARY INSURANCE

Each policy must contain an endorsement that such policy is primary insurance to any other insurance available to the Additional Insured with respect to claims arising hereunder and that the insurance applies separately to each insured.

DELIVERY OF POLICIES

All of the insurance required to be carried by Proposer hereunder shall be by policies that give thirty (30) days written notice to the District before they may be cancelled or materially changed. Within such thirty (30) day period, Proposer agrees that it will provide either suitable policy in lieu of those about to be cancelled or materially changed, so as to maintain in effect the coverage required. Failure or refusal of Proposer to obtain and keep in force the above required insurance shall authorize the District, at its discretion, to terminate the Contract at once.

GENERAL PROVISIONS

TAXES

EISD is exempt from local, state, and federal taxes. In the event taxes are imposed on the goods and/or services purchased, the District will not be responsible for payment

of the taxes. The Supplier shall absorb the taxes entirely. The District will supply tax exemption information upon request.

INVOICES/PAYMENT

EISD's standard payment terms are net thirty (30) days after receipt of goods/services and invoice. Supplier may offer the District a cash discount for payment of an invoice(s) with stated discount terms. Unless otherwise specified, Supplier's invoices should be sent to Edgewood ISD, Accounts Payable, 1930 Herbert Lane, San Antonio, Texas 78227.

Invoices will be date and time stamped upon receipt in the Accounts Payable Department and the cash discount, when applicable, will be calculated from the "receipt date" stamped on the invoice. Supplier's invoices must contain the appropriate EISD Purchase Order Number on the face of the invoice. Each line item on the invoice should contain the corresponding line-item number shown on the Purchase Order. Invoices submitted without the correct Purchase Order Number shown may be returned to the Supplier for correction. Corrected invoices will be subject to the same payment provisions as original invoices.

Invoices should be provided to the District in a timely manner. Supplier is requested to invoice the District within thirty (30) days of providing goods and/or services to the District. In the event a Supplier presents the District with invoices, statements, reports, etc., that are incomplete, or in need of substantial internal research, may result in payment delay. The District will not be responsible for any interest charges and/or late fees as a result of delayed payment due to time delays caused by inadequate or incomplete information provided in invoices by Supplier.

BONDING

At the District discretion, Performance and Payment Bonds may be required on certain projects valued in excess of designated amounts for capital projects (\$100,000 for Performance Bond and \$25,000 for Payment Bond). The District will determine the necessity of Performance Bond and Payment Bond on a project-by-project basis. The Purchasing Department will advise potential Proposers if a particular project requires bonding.

GOVERNING LAW

Any Agreement resulting from this RFP shall be governed by, construed, and enforced in accordance with the policies of the EISD Board of Trustees, laws of the State of Texas without regard to the conflicts or choice of law principals thereof, and the Uniform Commercial Code. The parties irrevocably consent to the jurisdiction of the State of Texas and agree that any state court of competent jurisdiction sitting in the County of Bexar, State of Texas, shall be an appropriate place of venue and shall be the sole and exclusive place of venue to resolve any dispute with respect to the Agreement.

RELATIONSHIP OF THE PARTIES

It is understood and agreed that the Supplier is a separate legal entity from EISD and neither it nor any employees, volunteers, or agents contracted by it shall be deemed for any purposes to be employees or agents of EISD. The Supplier assumes full responsibility for the actions of its personnel and volunteers while performing any services outlined in the Agreement and shall remain solely responsible for their supervision, daily direction, control, payment of salary, (including withholding of income taxes and social security), workers' compensation, disability benefits, and like requirements and obligations normally associated with employee status.

Supplier covenants and agrees to conduct itself with independent contractor status and that it will neither hold itself out as nor claim to be officer, partner, employee, or agent of EISD.

NO WAIVER OF IMMUNITY

The District does not waive or relinquish any immunity or defense on behalf of itself and its trustees, officers, employees, and agents as a result of entering into an Agreement or contract relating to this project or by performing any of the functions or obligations relating to the project. Nothing in any Agreement shall be construed as creating any personal liability on the part of any trustee, officer, employee, or representative of EISD. No waiver of a breach of any provision of the contract and/or Agreement shall be construed to be a waiver of any breach of any other provision. No delay in acting with regard to any breach of any provision shall be construed to be a waiver of such breach.

INDEMNIFICATION

THE SUPPLIER SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND EISD AND EACH OF ITS RESPECTIVE PAST, PRESENT AND FUTURE OFFICERS, TRUSTEES, AGENTS, AND EMPLOYEES IN THEIR INDIVIDUAL AND OFFICIAL CAPACITIES, FROM AND AGAINST ALL CLAIMS, LOSSES OR DAMAGES, INCLUDING ATTORNEY'S AND EXPERT'S FEES, COURT COSTS, AND EXPENSES INCURRED BY EISD AND IT'S OFFICERS, TRUSTEES, AGENTS AND EMPLOYEES, FOR INJURY, INCLUDING DEATH, TO PERSONS, OR DAMAGE TO OR DESTRUCTION OF PROPERTY, AND LAWSUITS, DEMANDS OR CAUSES OF ACTION OF WHATSOEVER KIND OR NATURE BASED UPON, RESULTING FROM OR ARISING OUT OF OR IN CONNECTION WITH ANY NEGLEGENT ACT, ERROR, OMISSION, MIREPRESENTATION, OR MISCONDUCT BY SUPPLIER AND ITS EMPLOYEES, OFFICERS, SUB-CONSULTANTS/CONTRACTORS, OR AGENTS ARISING OUT OF OR IN CONNECTION WITH SUPPLIER'S PERFORMANCE OF THE AGREEMENT.

All obligations as set forth in this paragraph shall survive the completion of or termination of the Agreement. It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligation, such legal limitations are made a part of the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligations shall continue in full force and effect.

NOTICE

Any notice required to be given relating to the Agreement shall be in writing and shall be duly served when hand-delivered to the addresses set forth below, or shall have been deposited, duly registered or certified, return receipt requested, via the United States Postal Service, addressed to the other party at the following addresses. Any party may designate a different address by giving the other party ten (10) days prior written notice in the manner provided above.

To: Supplier's Contact Name and Address as listed in Exhibit A

To: Edgewood Independent School District,
Attn: Purchasing Department
1930 Herbert Lane
San Antonio, Texas 78227

SECTION HEADINGS

The headings of sections and paragraphs contained in any document related to this project are for convenience only, and they shall not, expressly or by implication, limit, define, extend, or construe the terms or provisions to the project.

THIRD PARTIES

Nothing relating to this project shall be deemed or construed to create any third-party beneficiaries or otherwise give any third party any claim or right of action against EISD or the Supplier(s). Nothing in this RFP shall create a contractual relationship with or a cause of action in favor of a third party against either EISD or the Supplier.

TERMINATION

The District reserves the right to terminate the awarded Agreement without cause and for any reason resulting from this RFP upon thirty (30) calendar days prior written notice or five (5) days prior written notice for cause. EISD also has the right to terminate the Agreement for convenience, without penalty, for non-appropriation or non-availability of funds by delivery to the Supplier of a "Notice of Termination" specifying the extent to which performance hereunder is terminated and the date upon which such termination becomes effective in the event of termination prior to completion of the Project, compensation shall be prorated on the basis of work actually performed, and the

Supplier shall only be entitled to receive just and equitable compensation for any satisfactory work completed up to the date of termination unless otherwise mutually agreed upon by District and Supplier.

DEFECTIVE-CONFORMING WORK

If following seven (7) calendar days of a written notice to a Supplier identifying defective or nonconforming work, the Supplier or its subcontractors fail to correct such defective or nonconforming work, EISD may order the Supplier to stop further work or any portion thereof until the defect or nonconformance has been properly corrected by the Supplier or its subcontractors.

Should the Supplier not proceed with the correction of defective or non-conforming work within three (3) additional calendar days of EISD's order to stop further work, as set forth above, EISD may cause the removal, repair, or correction of the defective or nonconforming work and may charge all associated costs of the same to the Supplier.

DEAFULT CONDITIONS

If the Supplier: (i) breaches any provision of the Agreement; (ii) becomes insolvent, enters voluntary or involuntary bankruptcy, or receivership proceedings, or makes an assignment for the benefit of creditors; or (iii) is in violation of any state or federal law (collectively, "event(s) of default"), EISD will have the right (without limiting any other rights or remedies that it may have in the Agreement or by law) to terminate the Agreement with five (5) days prior written notice to the Supplier, EISD will then be relieved of all obligations, except to pay the reasonable value of the Supplier's prior performance, satisfactory to EISD (at a cost not exceeding the Agreement rate and subject to any claims, costs and expenses incurred by EISD as a result of Supplier default). In the event of default, EISD is expressly authorized to obtain the goods or services that would have been provided by Supplier under this Agreement from an alternate source. The Supplier will be liable to EISD for all costs exceeding the Agreement price that EISD incurs in completing or procuring the services and goods as provided for in the Agreement. EISD's right to require strict performance of any obligation is the Agreement will not be affected by any previous waiver, forbearance, or course of dealing.

WARRANTIES

SUPPLIER EXPRESSLY WARRANTS THAT ALL GOODS AND SERVICES COVERED BY THE AGREEMENT RESULTING FROM THIS RFP WILL BE IN EXACT ACCORDANCE WITH THE REQUIREMENTS OF THE AWARD OF THE RFP AND RESULTING AGREEMENT AND FREE FROM DEFECTS IN MATERIALS AND/OR WORKMANSHIP. SUPPLIER EXPRESSLY WARRANTS MERCHANTABILITY FOR ALL GOODS /SERVICES PROVIDED PURSUANT TO THE RESULTING AGREEMENT, ALL WARRANTIES SHALL SURVIVE DELIVERY OF THE GOODS AND

COMPLETION OF THE SERVICES AND SHALL NOT BE DEEMED WAIVED EITHER BY REASON OF THE DISTRICT'S ACCEPTANCE OF SAID GOODS AND SERVICES OR BY PAYMENT FOR THEM. ANY DEVIATIONS FROM THE AGREEMENT, OR DESCRIPTIONS OR SPECIFICATIONS FURNISHED THEREUNDER, OR ANY OTHER EXCEPTIONS OR ALTERATIONS MUST BE APPROVED IN WRITING BY THE DISTRICT'S CHIEF FINANCIAL OFFICER.

USE BY OTHER GOVERNMENT ENTITIES

The Texas Education Code §44.031(a)(4) allows for government entities, state agencies, local governments, and school districts, to enter into cooperative agreements to allow the procurement process to be performed by a single entity on behalf of all those electing to participate. Any of the above entities may be granted the privilege of joining the awarded Agreement. In the event EISD allows another governmental entity to join the Agreement, it is expressly understood that EISD shall in no way be liable for the obligations of the joining governmental entity.

UNENFORCEABLE SECTIONS

If any portion of this RFP, or any Agreement is deemed to be unenforceable, the remainder of the RFP and Agreement shall be construed as if such unenforceable provisions had been contained therein.

SUBCONTRACTING

The Supplier shall not subcontract services provided in this RFP without prior written approval by EISD.

WORK STOPPAGE

In no event shall EISD be liable or responsible to the Supplier or any other person for or on account of, any stoppage or delay in work.

HAZARDOUS MATERIALS

In the performance of the Supplier's services, the Supplier shall not cause any release of Hazardous Substances, including asbestos or contamination of the environment, including the soil, the atmosphere or any water course or ground water. Supplier shall be liable for any claims or damages resulting from such release of or exposure to any such substances as a result of the Supplier's activities.

BUSINESS ETHICS

During the course of the awarded project by this RFP, the Supplier will maintain business ethics standards aimed at avoiding real or apparent impropriety or conflicts of interest. No gift(s) or gratuities, entertainment, payments, loans, or other

considerations beyond that which may be collectively categorized as incidental shall be made to any officials of EISD, its authorized agents and representatives, or to family members of any of them. At any time, the Supplier believes there may have been a violation of this obligation, the Supplier shall notify EISD of the possible violation. EISD is entitled to request a representation letter from the Supplier, its subcontractors or vendors at any time to disclose all things of value passing from the Supplier, its subcontractors or vendors to EISD's personnel or its authorized agents and representatives.

BUSINESS CERTIFICATES / EISD TAXES

All individuals or entities entering into a contract with EISD must adhere to the following applicable Texas Laws as they pertain to their individual type of ownership.

CORPORATIONS

Domestic (formed under Texas Law) or foreign (formed under laws of another state) shall be properly registered with the State of Texas and the Comptroller of Public Accounts as required by state laws. A current "Certificate of Good Standing" from the Texas Comptroller of Public Accounts shall be made available upon request stating that the corporation charter is current, and all Texas Franchise Reports and taxes are paid.

Partnerships, Joint Stock Companies, and Limited Liability Partnerships:

Domestic (formed under Texas Law) or foreign (formed under laws of another state) shall be properly registered with the Texas Secretary of State in accordance with applicable state laws. All partners in a Partnership must file a "Certificate of Limited Partnership" with the Secretary of State, which shall be made available for inspection upon request.

Entities Whether, Corporate, or Sole Owner must be current on EISD Property Taxes:

If commercial personal property is located within EISD's jurisdiction, current renditions of these properties must be filed with the Chief Appraiser, as required by Section §22.01 of the Texas "PROPERTY TAX CODE." In the event that a Proposer is, or subsequently becomes delinquent in the payment of school ad valorem taxes, such fact may be grounds for rejection of the Proposal, or if already awarded, the Contract/Agreement will be terminated without prejudice to the District. However, the District reserves the right to deduct any amounts owed for delinquent taxes from pending payments that the District may owe to the Supplier as a result of such Contract/Agreement.

ATTORNEY FEES

In connection with EISD's defense of any suit against it and/or EISD's prosecution of any claim, counterclaim or action to enforce any of its rights and/or claims related to this RFP or any Agreement, in which EISD prevails as to all or any portion of its

defense(s), claims, counterclaims, or actions, EISD shall be entitled to recover its actual Attorney's fee and expenses incurred in defending such suit and/or in prosecuting such claim or action.

COMPETITION INTENDED

It is the Districts' intent to maximize competition for all solicitations. It shall be the Proposer's responsibility to inform the District in writing if any language, requirement, specifications, etc., or any combination thereof, inadvertently restricts or limits the requirements stated in the RFP to a single source. Such information must be in writing and received not later than five (5) days prior to the date set for receipt/opening of proposals.

PROPOSER'S EXPERTISE

By submitting a Proposal and/or accepting a Purchase Order, Proposer represents that they are knowledgeable in the goods or services being offered including historical, current, and future market conditions and that the District can rely on this representation. Proposer will deliver products, goods and/or services per solicitation specifications, requirements, and deliverables.

DEBARMENT

By submitting a response to this RFP, the Proposer certifies that it is not currently debarred by the State Building and Procurement Commission, the District, or similar State/Federal Agency.

EXPENSES INCURRED IN PROPOSAL PREPARATION

The District will not be liable in any way for any costs incurred by the Proposer in the preparation of its response to the RFP nor the presentation of its Proposal and/or participation in any discussions and/or negotiations.

OUT OF STATE PROPOSERS

The "Reciprocity Rule" applies. Proposer(s) whose principal place of business is located in a state which gives preference to residents are subject to the same restrictions when submitting a Proposal with an entity of the State of Texas.

WARRANTY

The products, goods or services furnished under an Agreement shall be covered by the most favorable commercial warranties available to any customer for same or similar products, goods or services.

AWARD TO MULTIPLE VENDORS

The District reserves the right to award a single vendor or multiple vendors, i.e., primary, secondary, and tertiary suppliers, etc. The Agreement is not exclusive to one Proposer unless so stated in the RFP.

ACCEPTANCE BY DISTRICT

No award of an Agreement shall be valid, and no Agreement is crated or binding until the Proposal has been accepted by the District's approval authority.

TITLE RISK OF LOSS

The title and risk of loss of the goods / services shall not pass to the District until the District actually receives and accepts possession of goods/services at the point of delivery regardless of F.O.B. terms.

PLACE OF DELIVERY

The place of delivery shall be set forth in the Purchase Order. All deliveries must be inside deliveries unless other arrangements are made. All PRICES shall be F.O.B. DESTINATION – SHIPPING and HANDLING CHARGES PRE-PAID. For "Services" scope of work, the Purchase Order will reflect location and work specifications.

RIGHT OF INSPECTION

The District has the right to inspect the goods/services at delivery before acceptance. If the District is not able to inspect the goods/services at the time of delivery/performance, the District reserves the right to inspect and approve the material/workmanship within a reasonable time after delivery/performance. If specifications are not met, material may be returned at Supplier's expense and the Supplier assumes all risk for damages incidental to the rejection of such goods. Payment shall not constitute an acceptance of the material nor impair the District's right to inspect or invoke any of its remedies. If Supplier does not meet specifications for services, the District will notify Supplier of said not-met deliverables to rectify pending services.

UNAUTHORIZED PURCHASES

Proposer understands and acknowledges that during the term of the Agreement any shipment or delivery of goods and services made to District's campuses and departments without a properly approved Purchase Order/Delivery Order constitutes an unauthorized purchase and financial obligation. The District does not assume any responsibility for these goods/services. Offeror understands and accepts full responsibility and will not seek payment for unauthorized purchase. Offeror further understands and acknowledges that the District will not issue payment for

goods/services delivered without properly approved Purchase Order/Delivery Order.

MATERIAL SAFETY DATA SHEETS

The District will not receive any materials, products or chemicals which may be hazardous to an employee's health unless accompanied by a Material Safety Data Sheet.

TIME

Time is of the essence: Proposer(s) agree to perform all obligations, deliver goods/services set forth herein.

RECOVERY OF FUNDS

If the Proposer fails to deliver both the quality and quantity of items/services on which the award was made in the manner specified in the Agreement, the District reserves the right to purchase the specified goods/services on the open market and Proposer agrees to allow the District to deduct the difference in price and costs of handling, if any, from pending invoices. If there are not outstanding invoices, the Proposer will be billed accordingly and will pay the amount within fifteen (15) days of the notification of the District.

REMEDIES FOR NON-PERFORMANCE

If the Proposer fails to fulfill or abide by the terms, conditions, or specifications of the Agreement (i.e., delays, defaults, non-performance, etc.), the District reserves the right to employ any remedy allowed by Contract/Agreement, in law, in equity, or by Uniform Commercial Code (UCC) to include, but not limited to, the purchase on the open market and charge the Proposer the difference between contract and actual purchase price and/or terminate the Agreement within ten (10) days written notification or intent.

LIQUIDATED DAMAGES

If the successful Proposer fails to deliver or defaults on this Agreement within the time specified in the Agreement, the District will seek liquidated damages from Proposer's Performance Bond. Assessment of liquidated damages does not preclude the District from seeking and obtaining other remedies as set forth in this solicitation or any other remedy at law or in equity available to the District.

FORCE MAJEURE

The District shall not be liable for defaults or delays due to acts of God or the public enemy, acts or demands of any governmental agency, strike, fires, floods, accidents, pandemic(s), or other unforeseen causes beyond its control and not due to its fault or

negligence.

CONTRACT MODIFICATION

Amendments/addenda may be made for additions, deletions and/or modifications of goods/services under substantially the same terms and conditions of the awarded Contract/Agreement. Such amendments/addenda must be in writing and approved by an authorized representative for the Offeror and the District. The Contract/Agreement will not be modified by an oral statement made by any District employee.

EFFECTIVE DATE

The Effective Date of the Agreement, if any, is the date that award is approved by Edgewood ISD's Board of Trustees of designated representative. In some cases, the Effective Date and the date for the start of services may be separated by several weeks and/or months.

ACCELERATED DELIVERY

If the District urgently requires delivery of any quantity of an item/service before the delivery date under the Contract/Agreement, and if the Proposer will not accept an order providing for the accelerated delivery, the District may acquire the urgently required goods/services from another source.

ETHICS IN PUBLIC CONTRACTING

District employees are prohibited from receiving, soliciting any gifts, inducement, gratuities, or kickbacks. The District may, by written notice to the Proposer, terminate this Agreement without liability to the District if it is determined by the District that gifts, gratuities, etc., in the form of entertainment, gifts, or otherwise, were offered or given by the Proposer, or any agent, or representative of the Proposer, to any officer or employee of the District with a view toward securing an Agreement or securing special treatment with respect to the awarding or amending or the making or any determinations with respect to the performing of such an Agreement. In the event the Agreement is terminated by the District pursuant to the revision, the District shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Proposer in providing such gratuities.

RESPONSIBILITY FOR ACTIONS

Proposer is solely responsible for its actions and those of its agents, employees, or subcontractors, and agrees that neither Proposer nor any of the foregoing has any authority to act or speak on behalf of the District.

EMPLOYEE DISCRIMINATION

During the performance of the awarded Agreement, the Proposer agrees to not discriminate against any employee or applicant for employment with Proposer because of race, creed, color, sex, age, national origin, disability, political belief, sexual orientation, marital and/or veteran status.

WAIVER

No claim or right arising out of a breach of awarded Contract/Agreement by the Proposer can be discharged in whole or in part by a waiver or enunciation of the claim or right unless the waiver or renunciation is supported by Consideration and in writing signed by the District.

COMPLIANCE WITH STATUTES / CODES

Proposer's compliance with Federal, State and Local Statutes, Codes, Guidance, etc., is mandatory in order to obtain and maintain an Agreement with the District. The following are a few statutes, codes, etc., that must be followed:

Child Support Certification: Texas Family Code Section §231.006 (Child Support Certification) states, in part, that (a) A child support obligor who is more than thirty (30) days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least twenty-five

(25) percent is not eligible to: (1) receive payments from state funds under a contract to provide property, materials, or services; or (2) receive a state funded grant or loan. Proposer certifies that the individual or business entity named in responding to this solicitation or Agreement is not ineligible to receive the specified grant, loan, or payment and acknowledges that the Agreement may be terminated and may be withheld if the certification is inaccurate.

Clean Air and Water Act: Proposer represents it is in compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act of 1970, as amended (42 U.S.C. 1857(h)). Section 508 of the Clean Water Act, as amended (33 U.S.C. 1368), Executive Order 117389 and Environmental Protection Agency Regulation, 40 CFR, Part 15, as required under OMB Circular A-102, Attachment 0, Paragraph 14(1) regarding reporting to the grantor agency and to the United States Environmental Protection Agency, Assistant Administrator for the Enforcement.

No Boycott of Israel: Proposer certifies that it (and any of its affiliates or parent company), does not, and will not, boycott Israel during the term of any contractual arrangement with the District. For purposes of any contractual arrangement with the District, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli territory, but does not include an action made for ordinary business purposes.

Prohibition of Contracts Engaged in Business with Iran, Sudan, or Foreign Terrorist Organizations: Proposer certifies that it is not a company identified by the Texas Comptroller as a company known to have contracts with or provide supplies or services to a foreign terrorist organization.

Transactions with an Abortion Provider or Affiliate: In accordance with Texas Government Code Chapter 2272, and effective September 1, 2019, Proposer certifies that it is not an abortion provider, nor an affiliate of such provider as noted in the statute. Violation or non-compliance of this statute by Proposer will result in the awarded Agreement and/or taxpayer transaction being voidable by the District and Proposer agrees to defend and indemnify the District against any action brought by the Office of the Attorney General for a violation of Section 2272.003.

DISQUALIFICATION OF PROPOSER

Proposer shall be disqualified, and their RFP response not considered for any of the following reasons:

- Failure to submit RFP response by required date and time
- Failure to submit required documents as specified in the RFP
- Any pertinent information coming to the attention of the District resulting in material legal matters
- Any grievances filed against the District or other school districts
- Reason for believing collusion exists among proposers
- The Proposer being interest in any litigation against the Board of Trustees
- The Proposer being in arrears on any existing Contract or having defaulted on a previous contract
- Failure to demonstrate competency as revealed by any financial statement
- Current or uncompleted work, which, in the judgement of the District, will prevent or hinder the timely completion of additional work, if awarded
- Other information or circumstances which establish reasonable grounds for belief that the bidder or proposer is not a “responsible bidder” or “responsible proposer.”
- Proposer has been sued or has sued other school districts
- Proposer has had any complaints against them
- Proposer has filed complaints against the District

ADDITIONAL REQUIREMENTS

Notice of Terms of “Click-Through” License Terms. (If Applicable) In the event that Vendor requires Authorized users to agree to terms relating to the use of the Service(s) before permitting Authorized Users to gain access to the Service(s) (commonly referred to as “click-through” licenses), Vendor shall provide Institution with notice of and an opportunity to comment on such terms prior to their

implementation. In no event shall the terms of such “click-through” licenses materially differ from the provisions of this Agreement. In the event of any conflict between the terms of such “click-through” licenses and this Agreement, the terms of this Agreement shall prevail.

Delinquent Child Support Obligation. A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from the state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The Texas Family Code requires the following statement: “Under Section 231.006, Texas Family Code, the Vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specific grant, loan, or payment and acknowledges that this contract may be terminated, and payment may be withheld if this certification is inaccurate.”

Franchise Tax Certification. If Vendor is a taxable entity subject to the Texas Franchise Tax (Chapter 171, Texas Tax Code), then Vendor certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that Vendor is exempt from the payment of franchise (margin) taxes.

Loss of Funding. Performance by Institution under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the “Legislature”). If the Legislature fails to appropriate or allot the necessary funds, Institution will issue written notice to Vendor and Institution may terminate this Agreement without further duty or obligation hereunder. Vendor acknowledges that appropriation of funds is beyond the control of Institution.

State Auditor’s Office. Vendor understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the State of Texas Auditor’s office, or any successor agency (collectively, “Auditor”), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), Texas Education Code. Vendor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. Vendor will include this provision in all contracts with permitted subcontractors.

Non-Waiver. Vendor expressly acknowledges that Institution is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver of relinquishment by Institution of its right to claim such exemptions, privileges, and immunities as may be provided by law.

Dispute Resolution. The dispute resolution process provided in Chapter 2260, Texas Government Code, and the related rules adopted by the State Attorney General pursuant to Chapter 2260, shall be used by Institution and Vendor to attempt to resolve any claim for breach of contract made by Vendor that cannot be resolved in the ordinary

course of business. Vendor shall submit written notice of a claim of breach of contract under this Chapter to Institution's Purchasing Office, who shall examine Vendor's claim and any counterclaim and negotiate with Vendor in an effort to resolve the claim.

Access by Individuals with Disabilities. Vendor represents and warrants that the electronic and information resources and all associated information, documentation, and support that it provides to Institution under this Agreement (collectively, the "EIRs") comply with the applicable requirements set forth in Title 1, Chapter 213 of the Texas Administrative Code and Title 1, Chapter 206, §206.70 of the Texas Administrative Code (as authorized by Chapter 2054, Subchapter M of the Texas Government Code). To the extent Vendor becomes aware that the EIRs, or any portion thereof, do not comply, then Vendor represents and warrants that it will, at no cost to Institution, either (1) perform all necessary remediation or (2) replace the EIRs with new EIRs. In the event that Vendor fails or is unable to do so, then Institution may terminate this Agreement and Vendor will refund to Institution all amounts Institution has paid under this Agreement within thirty (30) days after the termination date.

Public Information.

Vendor acknowledges that Institution is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law.

Upon Institution's written request, Vendor will provide specific information exchanged or created under this Agreement that is not otherwise excepted from disclosure under Chapter 552, Texas Government Code, to Institution in a non-proprietary format acceptable to Institution. As used in this provision, "public information" has the meaning assigned Section 552.002, Texas Government Code, but only includes information to which Institution has a right of access.

Vendor acknowledges that Institution may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), Texas Government Code.

Limitations. THE PARTIES ARE AWARE THAT THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF INSTITUTION (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS OF THE AGREEMENT, INCLUDING BUT NOT LIMITED TO, THOSE TERMS AND CONDITIONS RELATING TO LIENS ON INSTITUTION'S PROPERTY; DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; LIMITATIONS OF PERIODS TO BRING LEGAL ACTION; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR

OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEY'S FEES; DISPUTE RESOLUTION; INDEMNITIES; AND CONFIDENTIALITY (COLLECTIVELY, THE "LIMITATIONS"), AND TERMS AND CONDITIONS RELATED TO THE LIMITATIONS WILL NOT BE BINDING ON INSTITUTION EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.

Enforceability. This Agreement is enforced only against and by the parties who have executed it; the Agreement neither creates nor restricts the rights of third parties. Further, if any provision of this Agreement provides that Institution shall enforce the terms of this Agreement against third parties, or restricts the legal rights of third parties, such provision shall be void.

9.12. Addendum Controlling. In the event there is a conflict between the terms and conditions of the Agreement and Appendix A, then Appendix A will control.

9.13 Equal Opportunity. This contractor and subcontractor shall abide by the requirements of 41 CFT §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.