

BIRDVILLE ISD
STANDARD TERMS AND CONDITIONS

This solicitation seeks bids, proposals, or other types of procurement methods sought by **DISTRICT**. The following Terms and Conditions are standard for **DISTRICT** and apply to all types of purchases, including this solicitation. In these Terms and Conditions, “bids,” “proposals,” “solicitation” or “bids and/or proposals” generically refer to all types of procurement. Any specifications, details, or specific instructions for this solicitation will be found following these Standard Terms and Conditions. Some of these Standard Terms and Conditions may not be applicable to a specific bid or proposal. To the extent each of the terms and conditions is applicable, these shall be deemed to be part of **VENDOR’s** bid or proposal documents. If there are specific terms and conditions contained in the bid or proposal documents which are inconsistent with the Standard Terms and Conditions, the specific terms and conditions in the bid and RFP documents shall control. By submitting a bid or proposal, each **VENDOR** or proposer agrees to waive any claims it has or may have against the Owner, the Architect, and their respective officers, trustees, employees, agents, or representatives, arising out of or in connection with the administration, evaluation, recommendation, or selection of any bid or proposal; waiver of any requirements under the bid or proposal documents or contract documents; acceptance or rejection of any bid or proposal; and award of the contract.

1. **INDEPENDENT PROPOSER**: **VENDOR** shall operate hereunder as an independent proposer and not as an officer, agent, servant or employee of **DISTRICT**. **VENDOR** shall have exclusive control of, and the exclusive right to control, the details of its operations hereunder and all persons performing same, and shall be solely responsible for the acts and omissions of its officers, agents, employees, proposers, subcontractors and consultants.
2. **AUTHORITY**: If **DISTRICT’s** Board of Trustees has delegated any of its authority regarding this bid or proposal to any other person or entity, notice of that delegation will be provided in this request for bids or proposals.
3. **SIGNATURE BLOCK**: Any bid or proposal from **VENDOR** shall be physically or electronically signed and submitted by **VENDOR’s** authorized representative(s). Any unsigned bid or proposal submitted shall be disqualified from consideration. **DISTRICT** shall be entitled to rely on the authority of any person signing on behalf of **VENDOR** to legally bind **VENDOR** to the terms of **VENDOR’s** bid or proposal.
4. **TIME FRAME**: All bids and proposals from the **VENDOR** must remain open for acceptance for ninety (90) days after submittal.
5. **RESERVATIONS**: **DISTRICT** expressly reserves the right to:
 - 1) Specify approximate quantities;
 - 2) Extend the opening date and time;
 - 3) Consider and accept alternates, if specified in the documents, when most advantageous to the School District;
 - 4) Waive as an informality, minor deviations from specifications, provided they do not affect competition or result in functionally unacceptable goods or services;
 - 5) Waive any minor informality in any RFCSP or procedure (A minor informality is one that does not affect the competitiveness of the Proposer);
 - 6) Add additional terms or modify existing terms in the proposal;
 - 7) Reject a proposal because of unbalanced unit proposal prices;
 - 8) Reject or cancel any or all RFCSP’s;
 - 9) Reissue a RFCSP; and/or
 - 10) Procure any item by other means.
6. **ADDENDA**: Addenda will be posted to **DISTRICT’s** e-bidding system (<https://birdvilleschools.ionwave.net>). It is the responsibility of **VENDOR** to obtain all addenda that pertain to the RFP. **VENDORS** who submit a bid or proposal without acknowledging receipt of all addenda issued may be deemed to have submitted a bid or proposal not responsive to the RFP. Failure to receive such addenda does not relieve **VENDOR** from any obligation under the bid or proposal submitted. All formal written addenda become a part of **VENDOR’s** bid or proposal documents.
7. **MODIFICATION OF BID/PROPOSAL**: Any bid or proposal to **DISTRICT** by **VENDOR**, or contract between **DISTRICT** and **VENDOR**, can be modified or withdrawn only by written agreement between **DISTRICT** and **VENDOR**.

8. **WITHDRAWAL OF BID/PROPOSAL**: Bids or proposals by **VENDOR** may be withdrawn **before** the response deadline. No withdrawal of a bid or proposal by **VENDOR after** bids or proposals are opened shall be accepted by **DISTRICT**, unless agreed in writing by **VENDOR** and **DISTRICT**.
9. **CRITERIA FOR AWARD**: In awarding bids or proposals, **DISTRICT** shall consider criteria set out in Texas Education Code Ann. §44.031(b) to determine the best value to **DISTRICT**:
10. **BEST VALUE**: If **DISTRICT** is seeking bids or proposals relating to construction, **DISTRICT** will determine the best value to **DISTRICT** consistent with the terms and conditions found in Texas Government Code Ann. Chapter 2269.
11. **GEOGRAPHIC PREFERENCE**: **DISTRICT** may apply preference to agricultural products produced, processed, or grown in Texas if the cost to **DISTRICT** is equal and the quality is equal; if agriculture products produced, processed, or grown in Texas are not equal in cost and quality to other products, **DISTRICT** gives preference to agriculture products produced, processed, or grown in other states of the United States over foreign products if the cost to **DISTRICT** is equal and the quality is equal; a school district that purchases vegetation for landscaping purposes, including plants, shall give preference to Texas vegetation if the cost to the school district is equal and the quality is not inferior. Preferences must be explicitly claimed by **VENDOR** and may not be applicable in procurements and/or contracts involving federal funds unless the procurement and/or contract involves unprocessed locally grown or locally raised agricultural products for use by **DISTRICT**, in a Child Nutrition Program. See Texas GOV'T Code 2252.001-.004; 2 C.F.R 200.319.
12. **PRICING**: All prices proposed by **VENDOR**, and accepted by **DISTRICT**, shall remain in effect throughout the term of the bid proposal, award, contract, or purchaser order, and cannot be increased during that term without written agreement between **VENDOR** and the **DISTRICT's** Board of Trustees or its designee. Documentation may be required for the exact nature of the change substantiated by, but not limited to, relevant commodity price indexes at the discretion of **DISTRICT**. **DISTRICT** reserves the right to show a preference to any bid or proposal that provides a standard discount percentage for goods or services, or a discount for early payment of any bill to **VENDOR** for its goods or services.
13. **ALTERNATE**: **VENDOR** may offer an "equal" product as an alternate. Final "approved equal" determination remains with **DISTRICT**.
14. **SAMPLES**: Samples and/or product specification documents may be required for items. Product specification shall be submitted with the RFCSP, properly referenced and clearly marked to indicate related RFCSP item. Samples, when requested, must be furnished at no cost to **DISTRICT** and will not be returned. Each sample should be clearly marked with **VENDOR** name, RFCSP number, and item number on the RFCSP. **DISTRICT** assumes no responsibility for the handling of samples in any manner. Improperly identified samples will not be considered.

When samples and/or product specifications are not required to be submitted, **DISTRICT** reserves the right to request samples and/or product specification documents for any merchandise submitted for RFCSP before final selections are made. Samples and/or product specifications requested after RFCSP opening must be received within five (5) calendar days after request.
15. **QUANTITIES**: RFCSP's must be submitted on units of quantity specified. The quantities appearing in this RFCSP are approximate only, and **DISTRICT** reserves the right to increase, decrease or delete any or all items. If the quantities of materials to be furnished are increased, such increase shall be paid for according to the unit prices established for the item. The successful **VENDOR** shall have no claims against **DISTRICT** for anticipated profits for the quantities called for, diminished or deleted. Estimated quantity change of products on bid or proposal shall be no more than the statutory change order limits.
16. **BRAND NAME/MODEL**: If a brand name or specific model name is shown in the proposed specifications or bid form, such usage is to indicate an acceptable standard which must be considered if bidding better or equivalent products. Any bid or proposal for such better or equivalent products shall provide significant information on the products to allow

DISTRICT to determine whether or not they are acceptable. Final determination of a product as an “equal” solely remains with **DISTRICT**. **DISTRICT** may deem it necessary to specify Brand Name Only, “No Substitutes,” after conclusive testing, prior usage or standardization.

17. QUALITY OF MATERIAL: Any item that does not perform or meet tests as specified by the seller shall be replaced by **VENDOR** at no cost to **DISTRICT**.

18. TITLE AND RISK OF LOSS: The terms of the agreement are “no arrival, no sale” The title and risk of loss of the goods shall not pass to **DISTRICT** until **DISTRICT** actually receives and takes possession of the goods at the point or points of delivery. **DISTRICT** shall have the right to inspect the goods at delivery before accepting them.

19. WARRANTIES: Warranties for goods and services shall be a minimum of one (1) year from completion of the bid or proposal. If goods or services to be provided are of comparable quality, **DISTRICT** may give preference to longer warranties when evaluating the bid or proposal.

1) The price to be paid by **DISTRICT** shall be that contained in **VENDOR's** response, which **VENDOR** warrants to be no higher than **VENDOR's** current prices on orders by others for products of the kind and specification covered by the agreement for similar quantities under similar or like conditions and methods of purchase. In the event **VENDOR** breaches this warranty, the prices of the items shall be reduced to **VENDOR's** current prices on orders by others or, in the alternative, **DISTRICT** may cancel this contract without liability to **VENDOR** for breach or **VENDOR's** actual expense.

2) **VENDOR** warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by **VENDOR** for the purpose of securing business. For breach or violation of this warranty, **DISTRICT** shall have the right in addition to any other right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

3) **VENDOR** shall not limit or exclude any implied warranties and any attempt to do so shall render this contract voidable at the option of **DISTRICT**. **VENDOR** warrants that the goods furnished will conform to the specifications, drawings and descriptions listed in the invitation and to the sample(s) furnished by **VENDOR**, if any. In the event of a conflict between the specifications, drawings and descriptions, the specifications shall govern. All equipment items awarded as a result of the solicitation will be covered by all parts and labor warranty, including any/all transportation charges, for a minimum period of one (1) year, or as specified in the solicitation.

20. OWNERSHIP OF GOODS/SERVICES: **VENDOR** warrants that it owns and is legally able to transfer ownership of the goods or materials that are the basis of the Solicitation to **DISTRICT**. **VENDOR** warrants that it owns a clear title free of any materialman’s, suppliers, or other type of liens, mortgage, encumbrance, or other security interest in the goods or materials supplied to **DISTRICT**. Any breach to this warranty of title shall be considered a default by **VENDOR** and good cause for termination of the award, contract, or purchase order.

21. MANUFACTURER’S MATERIAL SAFETY DATA SHEET (MSDS): **VENDOR** shall provide, at no cost to **DISTRICT**, at least one (1) copy of any Manufacturer’s Material Safety Data Sheet (MSDS) applicable to any goods or materials to be supplied by **VENDOR** in response to the Solicitation.

22. PROPOSER TO PACKAGE GOODS: **VENDOR** will package goods in accordance with good commercial practice. Each shipping container, shall be clearly and permanently marked as follows: (a) **VENDOR’s** name and address; (b) Consignee's name, address and purchase order or purchase change order number; (c) Container number and total number of containers, e.g., box 1 of 4 boxes; and (d) Number of the container bearing the packing slip. **VENDOR** shall bear cost of packaging unless otherwise provided. Goods shall be suitably packed to secure lowest transportation costs and to conform to requirements of common carriers and any applicable specifications. **DISTRICT’s** count or weight shall be final and conclusive on shipments not accompanied by packing list.

- 23. RIGHT OF INSPECTION:** **DISTRICT** shall have the right to inspect the goods upon deliver before accepting them. **VENDOR** shall be responsible for all charges for the return to **VENDOR** of any goods rejected as being nonconforming under the specifications.
- 24. PRODUCT GUARANTEE:** **VENDOR** guarantees equipment or product offered will meet or exceed specifications identified in this proposal invitation. **VENDOR** shall, upon request, replace any equipment or product proved to be defective and make any and all adjustments necessary without any expense to **DISTRICT**. If at any time, the equipment or product cannot satisfactorily meet the requirements of the specifications, the **VENDOR** shall, upon written request from the **DISTRICT**, promptly remove such equipment or product without any further expense to the **DISTRICT**.
- 25. NEW MATERIAL:** Unless otherwise stated in the specifications, all supplies and components to be provided under this RFCSP shall be new (not used or reconditioned, and not of such age or so deteriorated as to impair their usefulness or safety), of current production, and of the most suitable grade for the purpose intended. If at any time during the performance of this RFCSP the **VENDOR** believes that the furnishing of supplies or components, which are not new, is necessary or desirable, it shall notify **DISTRICT** immediately, in writing, including the reasons and proposing any consideration, which will flow to **DISTRICT** if authorization to use such supplies or components is granted.
- 26. DELIVERY OF GOODS:** All items covered by this RFCSP shall be delivered F.O.B Destination to **DISTRICT**, from point of assembly to the District location(s) specified on each consolidated order. **RFCSP pricing shall include all freight/delivery charges.** **DISTRICT** shall not be liable for any deliveries of merchandise unless same has been received at the specified delivery location within **DISTRICT**, inspected and accepted as in full compliance with the Specifications. Risk of theft, destruction, loss or damage to any work, materials, shipment, or deliveries will be borne exclusively by the successful proposer until after **DISTRICT** completes its inspection and acceptance of said work, material, shipments, or deliveries; the burden and cost of insurance against such risks shall be assumed by the successful **VENDOR**.

Deliveries will be made only upon authorization of **DISTRICT**, and shall be made if, as, and when required and ordered by **DISTRICT**, at such intervals as directed by **DISTRICT**. Deliveries shall be to the location identified on each order. Each proof of delivery shall list the exact quantity delivered and back orders if any.

VENDOR warrants that all deliveries made under the purchase will be of the type and quality specified; and **DISTRICT** may reject and/or refuse any delivery that falls below the quality specified in the Specifications. **DISTRICT** shall not be held to have accepted any delivery until after an inspection of same has been made and an opportunity to exercise its right of rejection has been afforded.

Failure by **VENDOR** to make reasonable delivery as and when requested shall entitle **DISTRICT** to acquire quantities from alternate sources wherever available, with the right to seek reimbursement from **VENDOR** for amounts, if any, paid by **DISTRICT** over and above the RFCSP price.

All materials delivered shall be free of any and all liens and shall upon acceptance thereof become the property of **DISTRICT**, free and clear of any liens.

Acceptance by **DISTRICT** of any delivery shall not relieve **VENDOR** of any guarantee or warranty, express or implied, nor shall it be considered an acceptance of material not in accordance with the Specifications and shall not waive **DISTRICT**'s right to request replacement of defective material.

- 27. PRODUCT CONDITIONS:** All products shall arrive in the best possible condition. Any item received not in proper temperature or in a damaged box or container will be returned for full credit or replacement.
- 28. STOCK LEVELS:** **VENDORS** are expected to carry sufficient inventories to cover the needs of **DISTRICT**. **DISTRICT** shall not be held responsible for any product that the supplier has on hand at the end of the proposal period.
- 29. SHORTAGES:** **VENDOR** shall give 72-hour prior notice to the ordering entity of any anticipated shortages, back orders and/or out-of-stock items prior to delivery. **VENDOR** must keep the ordering entity informed at all times the status of the order. Default in promised delivery, without acceptable reason, authorizes **DISTRICT** to purchase goods elsewhere, and charge any increase in cost and handling to the defaulting vendor.

30. PRODUCT SUBSTITUTION: Any and all substitutions require prior written approval by **DISTRICT**. If applicable, the product substitution request must be accompanied with product information. **DISTRICT** reserves the right to require **VENDOR** to offer possible substitutes if any material or equipment becomes unobtainable during the term of the contract. Outstanding orders are automatically amended by approved substitution. **VENDOR** must contact the qualified ordering entity 72-hours prior to shipment of approved substitution.

If substitutions are made without approval of **DISTRICT**, under Uniform Commercial Code, **DISTRICT** shall retain the right to remedy and purchase the products(s) from another supplier, charging the difference of the bid price to **VENDOR**.

31. FLEXIBILITY FOR POOR PERFORMING PRODUCTS: Any product that is considered by **DISTRICT** to be poor performing or low participation items shall be replaced. Products will be replaced with similar or equal products mutually agreed upon by both parties. Replacement products will be priced at the same cost per unit. **DISTRICT** will limit product changes for Child Nutrition items to no more than 10% of the items on the proposal annually.

32. ADDITION OF NEW GOODS AND/OR SERVICES: **DISTRICT** may add new goods and/or services throughout the term of this contract. New goods and/or services must have prior written approval from **DISTRICT** Purchasing. Only goods and/or services not specified elsewhere in the contract may be considered new. Pricing is subject to the terms and conditions outlined in the procurement solicitation and shall be equivalent to the percentage discount or proposed prices for other similar good and/or services. **DISTRICT** may replace or add products to the contract if: the replacing products are equal to or superior to the original products offered or discounted in a similar degree or to a greater degree and the products meet the requirements of the proposal. Goods and/or services may not be added to avoid competitive procurement procedures. The additions of new goods and/or services cannot materially change the contract between **DISTRICT** and the **VENDOR**. **DISTRICT** may reject any proposed additions, without cause, in its sole discretion.

33. ADDITION OR DELETION OF LOCATIONS: **DISTRICT**, by written notice at any time during the term of the contract, may add or delete locations as deemed necessary. Any such written notice shall take effect on the date stated in the notice from **DISTRICT**. Any added or deleted items will be reflected in the cost in accordance with the proposal unit price for that location. **DISTRICT** shall determine if any adjustments are needed to the proposed schedule and shall provide any changes in writing to **VENDOR**.

34. NOTICE OF DELAYS: Whenever **VENDOR** encounters any difficulty which delays or threatens to delay timely performance, **VENDOR** shall immediately give notice, in writing, to **DISTRICT**, including all relevant information. Such notice shall not in any way constitute a basis for an extension of the delivery or performance schedule or be construed as a waiver by **DISTRICT** of any right or remedies to which it is entitled by law or pursuant to provisions herein. Failure to give such notice, however, may be grounds for denial of any request for an extension of the delivery or performance schedule because of such delay.

35. INVOICING: Terms of payment to the successful proposer will be contingent upon the terms offered based on invoices submitted to and approved by **DISTRICT** for payment. Invoices shall be in accordance with the individual pricing for each item.

Invoices will be paid upon completion of delivery and acceptance. Invoices must reflect only the amount due for goods or the portion of the services performed, materials and equipment furnished for the period covered by each invoice. Invoices shall be priced per unit prices as awarded.

Please include the following items on your invoice document:

- Company Name and Name of Contact
- Remit Address
- Invoice Number
- Invoice Date
- Prompt Pay Discount, if proposed
- Ship to Information
- Details of items shipped and/or services rendered
- Total amount due

It is preferred that you email your invoices to accounts.payable@birdvilleschools.net unless otherwise requested by the **DISTRICT**; however, if you do not have this capability, you may mail your invoice to the following address:

Birdville ISD
ATTN: Accounts Payable
P. O. Box 14689
Haltom City, Texas 76117

Product support services and rebates will be accepted by DISTRICT for any technical support training, or promotional rebates pertaining to your product. However, this will not be a factor in awarding the proposal. Final proposal award will be based on the factors identified in the evaluation section. Any and all monetary rebates shall be paid by check to DISTRICT within the contract year.

- 36. CASH DISCOUNTS:** Normal payment terms are approximately 45 calendar days, given that the goods and/or services received are in satisfactory condition. Any discounts available to **DISTRICT** for early payment should be noted in the proposal. **VENDORS** may propose volume discounts or other adjustments to the price for large orders.
- 37. CONFLICT OF INTEREST AND 1295:** The Texas Ethics Commission has adopted Forms CIS and CIQ. Failure to abide by statutory requirements can result in possible criminal penalties. **VENDORS** that do business with a school district are required to file a questionnaire to identify any potential conflicts of interest. The CONFLICT OF INTEREST QUESTIONNAIRE is available as an attachment in the bid or proposal or can be downloaded from the Texas Ethics Commission web address at <https://www.ethics.state.tx.us/forms/conflict/>. Note: The **DISTRICT** will not provide any interpretation or information regarding these requirements under Certificate of Interested Parties. **DISTRICT** may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to **DISTRICT** at the time the **VENDOR** submits the signed contract. Additional information is available on the Texas Ethics Commission website at <https://www.ethics.state.tx.us/filinginfo/1295/>. (Use the Solicitation number as the "Contract ID number" and the title of the Solicitation for the "Description of Goods and Services.")
- 38. CRIMINAL HISTORY CHECKS AND BADGING REQUIREMENTS:** During the term of this agreement, **VENDOR's** employees have access to **DISTRICT** facilities while students are present which could result in contact with students. Subsequently, **VENDOR** is responsible for complying with Texas Education Code § 22.0834. The various levels of criminal history and badging requirements are described below:
- A. All proposers who will only deliver to the front office, but not enter a school building to perform service may be required to provide identification to the campus to receive a badge before entering further than the front office.
 - B. For all proposers who perform service within the school buildings, but do not involve direct and ongoing contact with students, the proposer is instructed to follow the procedures as outlined for obtaining badging through FC Background. FC Background is an independent firm selected to perform criminal history checks for the Birdville ISD contractors and vendors who do not have direct and ongoing contact with students. In addition to FC Background's badging process, the proposer is responsible for ensuring direct access to students is prohibited. The proposer and all workers on Birdville ISD property will enforce compliance and shall certify compliance with Texas Education Code § 22.0834. At a minimum the contractor/vendor is responsible for the following:
 - 1. Contractor/vendor shall only use restrooms designated for contractors/workers. Student restrooms are prohibited from use. The following are the only facilities for use:
 - a. Inside Birdville ISD buildings, "faculty only" facilities, if necessary, with preference for contractors to use contractor furnished "portable" facilities;
 - b. Outside Birdville ISD property, contractor/vendor furnished "portable" facilities.
 - 2. Proposers are not allowed direct and ongoing unsupervised contact with students in areas including, but not limited to: classrooms, elevators, athletic buildings, weight rooms, gymnasiums, auditorium, practice rooms, band halls, hallways, locker rooms, office spaces where students are located.

3. Precautions listed in this section are minimal requirements to avoid direct and unsupervised contact with students. The successful proposer is responsible for implementing additional measures to ensure direct and ongoing unsupervised contact with a student does not exist.
4. The company recommended for award shall complete the background screening and badging process with FC Background to have all employees and sub-contractors working on-site for Birdville ISD. All costs associated with badging are the responsibility of the successful proposer.
 - a. FC Background Information:
 - i. FC Background
Phone 972-404-4479 Fax 214-306-8207
Monday-Friday 6am – 6pm (CST)
Customer.support@fcbackground.com
 - ii. Facility maps are available on www.fcbackground.com
 - iii. Cost per employee is \$30.00 per subject (additional criminal records search fees may apply)
 - b. Birdville ISD Badging Qualifications:
 - i. No felony convictions, no open or pending felony cases (no limit);
 - ii. No misdemeanor convictions involving crimes against children or crimes of moral turpitude;
 - iii. No registered sex offenders; or
 - iv. No outstanding warrants for crimes that would disqualify an individual from receiving a badge.
5. If at any time a contractor finds themselves with direct and ongoing unsupervised contact, they should report to the administrator on duty and remove themselves from the service until requirements listed in section C can be completed.

C. For all proposers who perform service where there is direct and ongoing unsupervised contact with students(s) proposer shall comply with the following:

- a. If an employee of a contractor is covered under SB 9 the contractor must bear the burden of obtaining a national, fingerprint-based criminal history check. Under Section 22.0834 of the Education Code, the contractor is then required to certify to the district that the criminal history check has been performed. The contractor, not the district, is responsible for contacting DPS directly to set up an account for the purposes of obtaining criminal history record information. Under the statute SB 9, a contractor is required to conduct a criminal history review on an employee only when the following criteria has been met: The employer has contracted with the district to provide services. The particular employee will have continuing duties relating to the contract with the district. The particular employee will have contact with students. A contractor or sub-contractor may not work on District property or any location the District deems a place where students are regularly present when: they have been convicted of a felony or misdemeanor involving moral turpitude, as defined by Texas law they have charges pending, they have been convicted, received probation or deferred adjudication of any of the following: 1. Any offense against a child 2. Any sex offense 3. Any felony offense involving controlled substances 4. Any felony offense against property 5. Any other offense the District believes might compromise the safety of student, staff or property.

A Proposer's violation of this section shall constitute substantial failure. If the Proposer is the person or owner or operator of the business entity, that individual may not self-certify regarding the criminal history record information and its review, and must submit original evidence acceptable to the district with this Agreement showing compliance. Possession of fire arms, alcohol and/or drugs, even in vehicles, is strictly prohibited on school property. The use of tobacco products are not allowed on school district property.

39. SAFETY: VENDOR, its subcontractors, and their respective employees shall comply fully with all applicable federal, state, and local safety and health laws, ordinances, rules and regulations in the performance of services under this Agreement, including without limitation, those promulgated by **DISTRICT** and by the Occupational Safety and Health Administration (OSHA). All items must meet all applicable OSHA standards and regulations and all electrical items must bear appropriate listing from UL, FMRC or NEMA. In case of conflict, the most stringent safety requirements shall govern. **VENDOR** shall comply with all other safety guidelines and standards as required by **DISTRICT**. **VENDOR** shall indemnify and hold **DISTRICT**, harmless from all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of **VENDOR'S** obligations under this provision.

40. SUBCONTRACTORS: VENDOR will not subcontract or enter into any subcontracting agreements pertaining to this contract, without obtaining approval from the Purchasing Department. If you are subcontracting any part of this contract, the following must be provided: name(s) of the subcontractor(s), addresses, points of contact and phone numbers.

In no event will any subcontracting by **VENDOR** relieve the Contractor from any of the obligations or conditions of this contract. As between the parties hereto, any of **VENDOR'S** subcontractors will be considered the agent and employee of the **VENDOR**, and the acts or omission of the subcontractors and any person directly or indirectly acting for them will be deemed to be the acts or omission of the **VENDOR**, and the **VENDOR** will remain liable and responsible to **DISTRICT** as if no subcontract had been made. All submittals required of **VENDOR** shall also be required of any subcontractors.

41. BONDS: VENDOR is required to tender to **DISTRICT**, prior to commencing of the work, performance and payment bonds, as required by Texas Government Code, Chapter 2253. Each bond shall be executed by a corporate surety or sureties authorized to do business in the State of Texas and acceptable to **DISTRICT** and in compliance with the relevant provisions of the Texas Insurance Code.

A surety shall be listed on the US Department of Treasury's Listing of Approved Sureties maintained by the Bureau of Financial Management Services (FMS), www.fms.treas.gov/c570, stating companies holding Certificates of Authority as acceptable Sureties on Federal bonds and acceptable reinsuring companies (FMS Circular 570).

A Performance bond is required if the Contract Sum is in excess of \$100,000. The performance bond is solely for the protection of **DISTRICT**. The performance bond is to be for the Contract Sum to guarantee the faithful performance of the Work in accordance with the specifications. The form of the bond shall be approved by the Office of the Attorney General of Texas. The performance bond shall be effective through the **VENDOR'S** warranty period.

A Payment bond is required if the Contract Sum is in excess of \$25,000. The payment bond is to be for the Contract Sum and is payable to **DISTRICT** solely for the protection and use of payment bond beneficiaries. The form of the bond shall be approved by the Office of the Attorney General.

Bonds shall be received by the successful **VENDOR** within 10 calendar days after the notification of award.

42. INSURANCE REQUIREMENTS: These requirements apply to all non-Capital Improvement Program construction projects and to the other proposals as required unless otherwise detailed in the scope of work. The successful **VENDOR** will submit Certificates of Insurance naming **DISTRICT** as Certificate Holder and named additional insured on General Liability Certificates. Certificates may be emailed to the contract administrator. The selected **VENDOR** will be required to supply the insurance certificate(s) prior to the start of the project. The selected **VENDOR** agrees to provide insurance policies or contracts for insurance, when requested, in addition to Certificates of Insurance. **DISTRICT reserves the right to require higher limits of coverage depending on the size, scope, and nature of a solicitation.**

VENDOR shall agree to waive all right of subrogation against DISTRICT, its officials, employees and volunteers for losses arising from work performed by the contractor for DISTRICT.

TYPES OF INSURANCE COVERAGE	LIMITS OF LIABILITY						
<p>Worker's Compensation</p>	<p>Statutory – VENDOR shall provide and maintain Worker's Compensation and Employer's Liability Insurance with a limit of not less than:</p> <table data-bbox="565 405 982 506"> <tr> <td>Each Accident</td> <td>\$100,000</td> </tr> <tr> <td>Disease-Policy Limit</td> <td>\$500,000</td> </tr> <tr> <td>Disease-Each Employee</td> <td>\$100,000</td> </tr> </table> <p>VENDOR shall require subcontractors to provide insurance for the latter's employees, unless such employees are covered by a Worker's Compensation policy furnished by the General Proposer.</p>	Each Accident	\$100,000	Disease-Policy Limit	\$500,000	Disease-Each Employee	\$100,000
Each Accident	\$100,000						
Disease-Policy Limit	\$500,000						
Disease-Each Employee	\$100,000						
<p>General Liability</p>	<p>VENDOR shall provide and maintain Comprehensive General Liability Insurance protection including "Products and Completed Operations" coverage with a limit not less than:</p> <table data-bbox="565 674 993 774"> <tr> <td>General Aggregate</td> <td>\$1,000,000</td> </tr> <tr> <td>Each Occurrence</td> <td>\$1,000,000</td> </tr> <tr> <td>Products-Comp Ops</td> <td>\$1,000,000</td> </tr> </table>	General Aggregate	\$1,000,000	Each Occurrence	\$1,000,000	Products-Comp Ops	\$1,000,000
General Aggregate	\$1,000,000						
Each Occurrence	\$1,000,000						
Products-Comp Ops	\$1,000,000						
<p>Auto Liability Insurance</p>	<p>VENDOR shall provide and maintain during the life of this RFCSP, automobile public liability insurance in amounts of not less than \$300,000 each single occurrence for bodily injury or death (maximum of \$100,000 per person), and \$100,000 for each single occurrence of property damage or destruction. Said insurance policy must provide protection for non-owned and hired vehicles as well as vehicles owned by VENDOR.</p>						

43. DISQUALIFICATION: Any bid or proposal that does not contain all required contents required by **DISTRICT** may be disqualified. **VENDOR** is strongly encouraged to carefully review its bid or proposal documents prior to submitting their response to ensure all requirements are met. Failure to provide the information requested, in its entirety, may be grounds for disqualification of the bid or proposal. Bidders or proposers may also be disqualified and their bids or proposals not considered, among other reasons, for any of the following specific reasons:

- 1) Reason for believing collusion exists among the Bidders or proposers.
- 2) Reasonable grounds for believing that any bidder or proposer is interested in more than one bid or proposal for the work contemplated.
- 3) Where the bidder or proposer, any subcontractor or supplier, or the surety on any bond given, or to be given, is in litigation with **DISTRICT**, or where such litigation is contemplated or imminent, in the sole opinion of **DISTRICT**.
- 4) The bidder or proposer being in arrears on any existing contract or purchase order or having defaulted on a previous purchase order.
- 5) Evidence of lack of competency, including but not limited to, experience and equipment, financial statement and questionnaires.
- 6) Uncompleted work that, in the judgement of **DISTRICT**, will prevent or hinder the prompt competition of additional work if awarded.
- 7) Where the bidder or proposer has failed to perform in a satisfactory manner on a previous purchase order or contract.

44. **LOBBYING:** In order to ensure the integrity of the selection process, **VENDOR's** employees, officers, agents, or other representatives shall not lobby or attempt to influence a vote or recommendation related to the **VENDOR's** response, directly or indirectly, through any contact with school board members or other district officials involved in the Solicitation from the date it is released until the award.
45. **BOARD MEMBER ABSTAINING:** Any **DISTRICT** board member who has any substantial interest, either direct or indirect, in any business entity seeking to contract with **DISTRICT**, shall, before any vote or decision on any matter involving the business entity, file an affidavit stating the nature and extent of interest and shall abstain from any participation in the matter. This is not required if the vote or decision will not have any special effect on the entity other than its effect on the public. However, if a majority of the governing body are also required to file, and do file similar affidavits, then the member is not required to abstain from further participation. Texas Local Government Code Ann. Ch. 171.
46. **IF THE SOLICITATION IS BEING PROCESSED AS A REQUEST FOR PROPOSAL OR REQUEST FOR COMPETITIVE SEALED PROPOSAL (RFP or RFCSP):** An RFP or RFCSP is an interactive negotiation process; therefore, only the identity of the respondent will be revealed at the opening of the submitted proposals.
47. **RIGHT TO REJECT:** **DISTRICT** reserves the right to reject all bids or proposals; waive any minor informality or deficiency in a bid or proposal; re-advertise for new bids or proposals, or take other actions at its sole discretion and in the best interests of **DISTRICT**. **DISTRICT** reserves the right to make awards to one or multiple vendors if found to be in **DISTRICT's** best interests. As part of its evaluation of bids and proposals, **DISTRICT** reserves the right to seek additional information from bidders or proposers, interview bidders or proposers, and negotiate the terms of a proposal as allowed by Texas law. Inclusion of any contract terms in the bid or proposal that vary from or contradict the Terms and Conditions may constitute grounds for rejection of **VENDOR's** bid or proposal. Inclusion of any contract term in a bid or proposal does not indicate **DISTRICT's** acceptance of those terms if they are not expressly contained or adopted in **DISTRICT's** contract, purchase order, or award.
48. **AWARD:** Successful **VENDORS** may be notified in writing of **DISTRICT's** award. No work shall begin, goods procured or delivered, or costs incurred by **VENDOR** until the official notice is received. Any cost incurred by **VENDOR** prior to notice shall not be reimbursed by **DISTRICT**.
49. **INTERLOCAL AGREEMENT CLAUSE:** **DISTRICT** is a member of various purchasing cooperatives. If these governmental entities decide to participate in this award, it is assumed that **VENDOR** agrees that all terms, conditions, specifications, and pricing would apply. Governmental entities utilizing Internal Governmental contracts with **DISTRICT** will be eligible, but not obligated, to purchase materials/services under the contract(s) awarded as a result of this Solicitation. All purchases by governmental entities, other than **DISTRICT**, will be billed directly to that governmental entity and paid by that governmental entity. **DISTRICT** will not be responsible for another governmental entity's debts. Each governmental entity will order its own materials/services as needed.
50. **PROTEST PROCEDURES FOR VENDOR/PROPOSER PROTESTS:** Vendors/proposers are encouraged to discuss purchasing concerns with the Director of Purchasing. Concerns should be expressed as soon as possible to allow for early resolution at the lowest possible administrative level.

If a vendor desires to protest a decision by Birdville ISD Purchasing Department, the vendor must submit a letter notifying of the intent to protest and include in the letter the reason for the protest along with any evidence available supporting the vendor's position. Submit the letter to Birdville ISD Purchasing Department, 3124 Carson Street, Haltom City, TX 76117.

The Director shall respond to the vendor within fifteen (15) business days from receipt with an explanation or offer a compromise. If the vendor is not satisfied, the vendor may submit a formal complaint under Board Policy GF (LOCAL).

Even after initiating a formal complaint process, individuals are encouraged to seek informal resolution of their concerns. An individual whose concerns are resolved may withdraw a formal complaint at any time.

51. TAX-EXEMPT: **DISTRICT** is a tax-exempt entity under Texas law. **VENDOR** should not include taxes in its bid, proposal, quote, or invoice to **DISTRICT**.

1) Birdville ISD's Federal ID number is 75-60000193.

52. PAYMENTS: **DISTRICT** shall make all payments under this Agreement from current revenues available. In the event no funds, or insufficient funds due to non-appropriation, are available at any time or during any fiscal period when such payment is due, in accordance with Local Government Code Ann. §271.903, **DISTRICT** shall notify **VENDOR** of such occurrence and this Agreement shall terminate on the last day of the fiscal period for which payment was received without penalty or expense to **DISTRICT** of any kind whatsoever. However, **DISTRICT** shall be responsible to remit payment for all services provided by the **VENDOR** to the **DISTRICT** prior to the termination date.

53. INDEMNITY: **VENDOR** shall indemnify, hold harmless, and defend **DISTRICT**, its trustees, employees, and agents from all claims, demands, damages, and legal proceedings arising in any way out of or related to **VENDOR**'s goods and services.

54. CONFIDENTIAL INFORMATION: During the term of this Agreement, **VENDOR** may disclose to **DISTRICT**'s confidential information and trade secrets proprietary to **VENDOR**, including, but not limited to, systems, methods of operations, marketing and advertising procedures, internal procedures, programs, and forms. **VENDOR** agrees it will expressly notify **DISTRICT** if it considers specific information to be confidential or proprietary trade secrets; and **DISTRICT** will have no obligation to protect or otherwise limit disclosure of such information if **VENDOR** has not notified **DISTRICT** to that designation. Subject to the legal requirements of the Open Meetings Act, the Texas Public Information Act, or other Texas laws, **DISTRICT** shall not disclose such information.

1) **FERPA:** **DISTRICT** may be required to disclose confidential information to **VENDOR** during the term of the agreement including, without limitation, personally-identifiable information about **DISTRICT** students, which is protected by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g and 34 C.F.R. Part 99, or other federal and state laws. **VENDOR** covenants and agrees it will:

- a) comply with all legal requirements regarding the use and confidentiality of such information;
- b) maintain the confidentiality of such information;
- c) not use or release such information in violation of FERPA or other applicable laws;
- d) notify all of its employees, staff, or outside vendors of such confidentiality and legal requirements;
- e) return such information to **DISTRICT** at termination of the Agreement or delete or destroy such information to **DISTRICT**'s satisfaction; and
- f) notify **DISTRICT** in the event of any breach or inadvertent disclosure of such information immediately upon its awareness of such a breach or inadvertent disclosure.

2) **HIPAA:** In the event **VENDOR** receives or obtains individually identifiable health information (also referred to as "Protected Health Information" or "PHI") from **DISTRICT** during **VENDOR**'s provision of goods or services under this solicitation, or the performance of any contract or agreement with **DISTRICT** pursuant to this solicitation, **VENDOR** agrees and acknowledges, by submitting its bid or proposal, that it shall comply with the privacy requirements of the Health Insurance Portability and Accountability Act ("HIPAA"), accompanying federal regulations, and any state law, whether **VENDOR** is considered a "covered entity" or a "business associate" under such laws. Such agreement shall be considered a term of any contract or agreement with **DISTRICT**. **VENDOR** shall: (1) not use or disclose such PHI, other than as permitted or required under such laws; (2) shall use appropriate safeguards to prevent unauthorized use or disclosure; (3) report to **DISTRICT** any unauthorized use or disclosure by **VENDOR** or its subcontractors; (4) ensure that its agents or subcontractors agree to these restrictions and conditions; (5) make PHI available as required by HIPAA, including for amendments; (6) make such information available as required for an accounting of disclosures; (7) make its internal practices, books, and records relating to disclosures available as required by law; and (8) at the termination of the contract, return or destroy all PHI obtained from **DISTRICT**, and retain no copies of such PHI. If return or destruction is not feasible, **VENDOR** agrees to extend these requirements to **DISTRICT**. Any breach of these requirements shall be a material breach of **VENDOR**'s agreement with **DISTRICT** and shall authorize the immediate termination of **VENDOR**'s agreement with **DISTRICT**.

Any failure to comply with these requirements shall constitute a material breach of the agreement and constitute good cause for termination of the agreement at any time.

55. ASSIGNMENT: No assignment of a bid, proposal, or resulting contract is permitted without the prior notice to and written consent of the authorized **DISTRICT** representative. No assignment, transfer or conveyance under this contract will be effective without the prior written consent of the **DISTRICT**.

56. ASSURANCES: VENDOR (owners, officers, employees, volunteers, etc.) may not work on district property where students may or may not be present when they have charges pending, have been convicted, received probation or deferred adjudication for the following:

- 1) Any offense against a child
- 2) Any sex offense
- 3) Any crimes against persons involving weapons or violence
- 4) Any felony offense involving controlled substances
- 5) Any felony offense against property
- 6) Any other offense the District believes might compromise the safety of students, staff, or property

57. DRUG FREE: DISTRICT is a tobacco-free, drug-free, weapon-free and alcohol-free environment. It is the responsibility of the **VENDOR** to ensure that its employees, agents, and subcontractors are not under the influence of drugs or alcohol and/or in possession of drugs, tobacco, alcohol, or weapons. If an employee, agent, or subcontractor of **VENDOR** is found to be under the influence and/or in possession of drugs/tobacco, alcohol, or weapons at the time of service, the **VENDOR** will be notified at once by **DISTRICT** that the individual(s) must be immediately restricted from all **DISTRICT** campuses/departments. Repeated offenses by **VENDOR** could result in contract termination for default.

58. ASBESTOS: Any **VENDOR** who performs work inside **DISTRICT** facilities is hereby notified that **DISTRICT** buildings may contain asbestos containing materials. This notification is required by both the State of Texas Department of State Health Services and the Federal EPA Asbestos regulations. These guidelines cover both the **DISTRICT's** responsibilities and the **VENDOR's** responsibility to its employees. As a **VENDOR**, it is the **VENDOR's** responsibility to check each building prior to performing any work in that facility. These building materials may include, but are not limited to: ceiling tile, floor tile and mastic, sheetrock, tape and bed compound, thermal pipe insulation, spray-on ceiling material, calks, and roofing products. As there have been numerous asbestos containing products manufactured over the years, **VENDOR** must check each building's Asbestos Management Plan. This plan is normally kept in the **DISTRICT's** main office. Check with the school/department secretary who will allow **VENDOR** to look at it. It is the **VENDOR's** responsibility to notify all employees working for them that **DISTRICT** facilities may contain asbestos and where **VENDOR's** employees may find the **DISTRICT's** Asbestos Management Plan. It is **VENDOR's** responsibility to check the Asbestos Management Plan for each facility prior to working in the facility and then to notify its employees performing the actual work. The information is found in section eight (8) for all asbestos that remains in the building. If after looking in the Asbestos Management Plan **VENDOR** is uncertain about whether the area **VENDOR** will be working in contains asbestos or not, please contact the environmental department at 817-871-3300.

59. FIREARM ENTITY/TRADE ASSOCIATION NONDISCRIMINATION: If **VENDOR** is not a sole proprietorship, has ten (10) or more employees, and the value of **VENDOR's** bid or proposal has a value of \$100,000 or more, **VENDOR** certifies by submitting **VENDOR's** bid or proposal that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, as defined by Texas Government Code Ann. Chapter 2274, and will not during the term of any contract with the **DISTRICT**, unless excepted from that law.

60. ENERGY COMPANY BOYCOTT: As required by Texas Government Code Ann. Chapter 2274, if **VENDOR** has ten (10) or more employees, is not a sole proprietorship, and if the value of **VENDOR's** bid or proposal has a value of \$100,000 or more, **VENDOR** certifies by submitting **VENDOR's** bid or proposal that it does not boycott energy companies and will not during the term of any contract with the **DISTRICT**, unless excepted by that law.

61. ISRAEL BOYCOTT: If **VENDOR** is a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary,

majority-owned subsidiary, parent company, or affiliate of those entities or business associations (specifically excluding sole proprietorships) that exists to make a profit, has ten (10) or more full-time employees, and the value of the contract with Owner is \$100,000 or more, pursuant to Texas Government Code Ann. Chapter 2271, as amended, **VENDOR** certifies to the **DISTRICT**, by submitting a bid or proposal or signing a contract with **DISTRICT**, that the **VENDOR** does not boycott Israel and will not boycott Israel during the term of this Agreement.

- 62. TERRORIST ORGANIZATIONS:** Pursuant to Texas Government Code Ann.. Chapter 2252, **VENDOR** verifies and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If **VENDOR** has misrepresented its inclusion on the Comptroller's list, such omission or misrepresentation will void this Contract.
- 63. ABORTION PROVIDERS:** Pursuant to Texas Government Code Ann. Chapter 2272, by submitting a bid or proposal and entering a contract with the **DISTRICT** on such bid or proposal, the **VENDOR** verifies by its signature below that it is not an abortion provider or an affiliate of abortion providers, whereby the provider or affiliate receives something of value derived from state or local tax revenue. Any contract entered into by the **DISTRICT** is void if the **VENDOR** has such a prohibited affiliation or contractual relationship.
- 64. PUBLIC INFORMATION ACT (PIA) / FREEDOM OF INFORMATION ACT (FOIA):** By entering into this **CONTRACT**, pursuant to Texas Government Code Ann. Chapter 552, Subchapter J, the **VENDOR** agrees to be bound by the following terms if the **CONTRACT** has a stated expenditure of at least \$1,000,000 for the purchase of goods or services by the **DISTRICT** or if the **CONTRACT** results in the expenditure of at least \$1,000,000 in public funds for the purchase of goods or services by the **DISTRICT** in a fiscal year of the **DISTRICT**. If the **DISTRICT** receives a written request for public information related to this Contract that is in the possession or custody of the **VENDOR** and not in the possession or custody of the **DISTRICT**, the **DISTRICT** shall send, not later than the third business day after the date the **DISTRICT** receives the written request, a written request to the **VENDOR** that **VENDOR** provide that information to the **DISTRICT**.

The **VENDOR** must:

- Preserve all contracting information related to the **CONTRACT** as provided by the records retention requirements applicable to the **DISTRICT** for the duration of the **CONTRACT**;
- Promptly, within four business days, provide to the **DISTRICT** any requested contracting information that is in the custody or possession of the **VENDOR** upon request of the **DISTRICT**; and,

On completion of the **CONTRACT**, either:

- Provide to the **DISTRICT** at no cost all contracting information related to the **CONTRACT** that is in the custody or possession of the **VENDOR**; or
- Preserve the contracting information related to the **CONTRACT** as provided by the records retention requirements applicable to the **DISTRICT**.

If the requirements of Subchapter J, Chapter 552, Texas Government Code Ann. apply to this Solicitation or Contract, **VENDOR** agrees that the contract can be terminated if the **VENDOR** knowingly or intentionally fails to comply with the requirements of that subchapter. Texas Government Code Ann. Chapter 552.374.

Further, under Texas Government Code Ann. Chapter 552.372(c), the **DISTRICT** may not accept a bid from or award a contract to an entity that the **DISTRICT** has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J, unless the **DISTRICT** determines and documents that the entity has taken adequate steps to ensure future compliance.

If a **VENDOR** fails to provide the requested information to the **DISTRICT**, Texas Government Code Ann. §552.373 requires the **DISTRICT** to notify the **VENDOR** in writing of the failure and allow 10 business days to cure the violation. **DISTRICT** may terminate the **CONTRACT** if **VENDOR** fails to remedy the failure, **DISTRICT** determines the failure was knowing and intentional, and steps have not been taken to ensure future compliance.

- 65. GRATUITIES:** The **DISTRICT** may, by written notice to the **VENDOR**, cancel its contract, purchase order, or award, without liability to **VENDOR** if it is determined by **DISTRICT** that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the **VENDOR**, or any agent, or representative of the **VENDOR**, to any officer or employee of the **DISTRICT** with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or the making or any determinations with respect to the performing of such a contract. In the event this contract is canceled by **DISTRICT** pursuant to this provision, **DISTRICT** shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount used by **VENDOR** to provide such gratuities.
- 66. TERMINATION:** **DISTRICT** shall have the right to terminate any purchase order to, contract with, or awarded to, **VENDOR**, in whole or in part, for cause (including breach of the proposal, warranties, or contract by **VENDOR**, or because of loss of federal funding) or for the **DISTRICT**'s convenience at any time. Any award, contract, or purchase order is subject to termination by **DISTRICT** if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Solicitation on behalf of **DISTRICT**, is at any time while the Solicitation is in effect, an employee of **VENDOR** in any capacity or as a consultant to **VENDOR** with respect to the subject matter of the Solicitation.
- 67. FORCE MAJEURE:** Neither **DISTRICT** nor **VENDOR** shall be responsible or deemed to be in default of its obligations to the other to the extent any failure to perform or delay in performing its obligations under the bid or proposal is caused by events or conditions beyond the reasonable control of that party, and are not due to the negligence or willful misconduct of such party (hereinafter, "Force Majeure events"). For purposes of the bid or proposal, Force Majeure events shall include, but not be limited to, acts of God or public enemy, war, riot or civil commotion, strikes, epidemic, fire, earthquake, tornado, hurricane, flood, explosion, weather-related emergencies, or other catastrophes, or events or conditions due to law, regulations, ordinances, order of a court of competent jurisdiction, or executive decree or order. However, in the event of such delayed non-performance, the party so delayed shall furnish prompt written notice to the other party (including the date of inception of the Force Majeure event and the extent to which it will affect performance) and shall undertake all efforts reasonably possible to cure the delay or nonperformance and mitigate its effects, or to otherwise perform. The **DISTRICT** shall not be responsible for payment for any product or service delayed or foreclosed by any Force Majeure event unless and until such delayed or foreclosed product or service is provided. These provisions shall not preclude **DISTRICT** from canceling or terminating any resulting award (or any order for any goods or services included herein), or from revising the scope of the work, as otherwise permitted under the bid or proposal.
- 68. COMPLIANCE WITH LAWS:** **VENDOR** shall comply with all federal, state and local laws, statues, ordinances, rules and regulations, including, if applicable, worker's compensation laws, minimum and maximum salary and wage statues and regulations, prompt payment and licensing laws and regulations. For the entire duration of this contract, **VENDOR** shall maintain all required licenses, certifications, permits and any other documentation necessary to perform this Agreement. When required or requested by **DISTRICT**, **VENDOR** shall furnish proof of **VENDOR**'s compliance with this provision.
- 69. MEDIATION:** In the event of any dispute arising out of, related to, or regarding **VENDOR**'s bid or proposal, or charges for goods or services provided by **VENDOR**, those disputes will be resolved under the terms of Texas Government Code Ann. Chapter 2251. **VENDOR** further agrees that any dispute regarding the sufficiency of the goods or services supplied by **VENDOR** that is not resolved by discussion with **DISTRICT**, will be submitted to mediation in Tarrant County, Texas, with a mutually-agreed mediator, before either party may file suit. The costs of the mediator will be divided equally between the parties. In the event of any litigation between the parties, the prevailing party shall be entitled to recover reasonable and necessary attorneys' fees from the other party.
- 70. LITIGATION:** This procurement, and any resulting award, contract, purchase order, or other agreement arising out of or related to it, shall be governed and interpreted by the laws of the State of Texas, and any litigation shall be conducted in state district court. Mandatory and exclusive venue shall be in Tarrant County, Texas, or, if no county is specified, then in the county in which the **DISTRICT**'s main administrative office is located.
- 71. EQUAL OPPORTUNITY:** It is the policy of **DISTRICT** not to discriminate on the basis of race, color, national origin, gender, limited English proficiency or handicapping conditions in its programs. **VENDOR** agrees not to discriminate against any employee or applicant for employment to be employed in performance of this Agreement, with respect to hire, tenure, terms, conditions and privileges of employment, or matter directly or indirectly related to

employment, because of age (except where based on bona fide occupational qualification) or race, color, religion, national origin, or ancestry. **VENDOR** further agrees that every subcontractor entered into for the performance of this Agreement shall contain a provision requiring non-discrimination in employment herein specified, binding upon each subcontractor. Breach of this covenant may be regarded as a material breach of the agreement.

72. MINORITY & WOMEN'S BUSINESS ENTERPRISE (MWBE), HISTORICALLY UNDERUTILIZED BUSINESS (HUB) AND SMALL BUSINESS ENTERPRISE (SBE) PARTICIPATION: **DISTRICT** encourages the use of MWBE, HUB and SBE as prime and subcontractors. However, these entities must meet the same minimum standards and requirements of the prime contractor. It will be the responsibility of the prime contractor to pre-qualify any subcontractors offered as MWBE, HUB or SBE participants. Proposers shall indicate on their submitted proposals whether or not they are WMBE, HUB or SBE vendor and whom they are certified e.g. City, State, Federal. Complete the enclosed HUB Certification and provide a copy of the certificate(s) with the proposal. Please note that **DISTRICT** does not have any percentage of participation or a disparity study completed.

73. RECYCLED MATERIALS: Texas state law requires that a purchasing preference be given to any product made from recycled material if it meets written specifications as to quality and quantity. If a product bid on this solicitation contains recycled material, identify the item number and report the percent of the recycled material in the product and the percent of the post-consumer material used in the product. "Post-consumer" means material that has been recycled after sale to a consumer as opposed to reuse of manufacturing waste prior to sale. In addition, identify any products that meet the criteria of "Environmentally Sensitive."

74. RIGHT TO AUDIT: **VENDOR** agrees that the **DISTRICT** shall, until the expiration of three (3) years after final payment under this Contract, have access to and the right to examine any directly pertinent books, documents, papers and records of the **VENDOR** involving transactions relating to this Contract. **VENDOR** agrees that **DISTRICT** shall have access, during normal working hours, to all necessary **VENDOR** facilities, and shall be provided adequate and appropriate workspace, in order to conduct audits in compliance with the provisions of this section. **DISTRICT** shall give **VENDOR** reasonable advance notice of intended audits.

75. OPEN RECORDS: Following the award of a contract, responses to this RFCSP are subject to release as public information unless the response or specific parts of the response can be shown to be exempt from the Texas Open Records Act. **VENDORS** are advised to consult with their legal counsel regarding disclosure issues and take the appropriate precautions to safeguard trade secrets or any other proprietary information. **DISTRICT** assumes no obligation or responsibility for asserting legal arguments on behalf of potential proposers.

If a proposer believes that a proposal or part(s) of a proposal is confidential, then the proposer must so specify. The proposer must submit specific detailed reasons, including any relevant legal authority, stating why the proposer believes the material to be confidential. Vague and general claims as to confidentiality will not be accepted. **DISTRICT** will be the sole judge as to whether a claim is general and/or vague in nature.

76. COPYRIGHT: All contracts paid from State or Federal grants administered by a State or Federal agency must retain copyright for the State and Federal government (if a Federally funded contract) unless otherwise negotiated in writing with the State or Federal agency pursuant to the provisions in 2 CFR 200.315, title to intangible property vests the **DISTRICT**, as long as such property is used for authorized purposes. However, the State and Federal awarding agency reserve a royalty-free, non-exclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so. **VENDOR** agrees to protect **DISTRICT**, from any claim involving infringement of patents or copyrights.

77. SILENCE OF SPECIFICATION: The apparent silence of these specifications as to any detail or to the apparent omission from it of a detailed description concerning any point shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of these specifications shall be made on the basis of this statement.

78. DISABILITY: In accordance with the provisions of the Americans With Disabilities Act of 1990 (ADA), **VENDOR** warrants that it, and any and all of its subcontractors, will not unlawfully discriminate on the basis of disability in the provision of services to the general public, nor in the availability, terms and/or conditions of employment for applicants for employment with, or employees of **VENDOR** or any of its subcontractors. **VENDOR warrants it will fully comply**

with ADA's provisions and any other applicable federal, state and local laws concerning disability and will defend, indemnify and hold DISTRICT harmless against any claims or allegations asserted by third parties or subcontractors against DISTRICT arising out of VENDOR's and/or its subcontractor's alleged failure to comply with the above-referenced laws concerning disability discrimination in the performance of this contract.

79. NO THIRD-PARTY BENEFICIARY: For purposes of this contract, including its intended operation and effect, the parties to this contract specifically agree and contract that: (1) the agreement only affects matters/disputes between the parties to this contract, and is in no way intended by the parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entity may be in a contractual relationship with **DISTRICT** or **VENDOR** or both; and (2) the terms of this contract are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either **DISTRICT** or **VENDOR**.