

# TRINITY BASIN PREPARATORY REQUEST FOR PROPOSAL

## TBP-C1-CIRCUITS-2024-2025

### ERATE 2024-2025 CIRCUITS/WAN PRODUCTS & SERVICES

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Trinity Basin Preparatory, Dallas, Texas (TBP) is seeking proposals for E-rate Category One (“C1”) services in accordance with specifications set forth in the Request for Proposal (“RFP”).

Proposals will be accepted until **March 14th, 2024 @ 4:30 PM CST**. Proposals received after this time will not be accepted. One original and three (3) copies of your proposal must be submitted along with one electronic copy on a USB drive. No award will be made until Trinity Basin Preparatory has had sufficient time to evaluate the proposals. Trinity Basin Preparatory reserves the right to contract in the best interest of the district.

Responses must be sealed and marked on the lower left-hand corner with the proposal name and number, name and address of the vendor, opening date and time. Fax/electronic responses cannot be accepted. Address, mail or deliver all proposals and accessory documents to:

Trinity Basin Preparatory Purchasing Department  
2730 N State Hwy 360  
Grand Prairie, TX 75050

Inquiries for information regarding procurement procedures, proposal submission requirements, or other fiscal/administrative concerns shall be directed to [rfpresponses@trinitybasin.net](mailto:rfpresponses@trinitybasin.net).

Milestones for this RFP are as follows:

RFP released Wednesday, February 14<sup>th</sup>, 2024

**Bids Due: March 14th, 2024 @ 4:30PM CST**

Purchasing Forms and Additional information, including RFP documents and Q&A can be accessed at: <http://www.trinitybasin.net/rfp> or <https://data.usac.org/publicreports/Forms/Form470Rfp/Index>

Trinity Basin Preparatory Billed Entity Number (BEN) is **222195**

## TRINITY BASIN PREPARATORY RFP (TBP-C1-CIRCUITS-2024-2025)

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1. **PURPOSE:** Trinity Basin Preparatory (“TBP”, the “District”) wishes to contract with providers to acquire WAN circuit services as specified or equivalent, in accordance with the specifications set forth in this Request for Proposal (“RFP”).

**It is the intent of the District to file an E-rate application for Funding Year 2024-2025 for the equipment and services included in this Request for Proposal.** The start of service is not dependent on receipt of E-rate funds; however, the proposer understands and accepts that the district will request reimbursement from USAC using the BEAR method once the Funding Commitment Decision Letter is received. Full implementation of the project may be dependent upon receipt of E-rate funding and other factors unknown to the District at this time.

“I understand and comply.” \_\_\_\_\_

2. **PERIOD OF CONTRACT PERFORMANCE:** The period of goods received subject to this solicitation and any resulting contract are anticipated to commence July 1, 2024 conditional upon board approval. Under no circumstance shall work commence prior to April 1, 2024. The Initial term may be one year, three years, or five years and two one-year voluntary extensions.

“I understand and comply.” \_\_\_\_\_

3. **INSTALLATION AND CONSTRUCTION PROCESSES:** The successful bidder(s) will work with TBP to coordinate and resolve proposed scheduling conflicts. Access will be coordinated with the technology department and construction management team of the school district. All areas must be kept clean and no materials are to be stored on site other than those which are currently in the process of being installed; due to the construction nature of the main site, the facility security cannot be guaranteed. The awarded vendor(s) may not use the main site as a storage facility. Any changes to installation or implementation activities once a contract is completed must be preceded by an approved change order.

“I understand and comply.” \_\_\_\_\_

4. **TECHNICAL SPECIFICATIONS:** Vendors shall propose the equipment as specified or equivalent as listed below. Provided component details and specifications are a minimum requirement and any solutions not meeting minimum performance specifications as outlined may not be considered. Pricing must be presented with totals by individual school site including connecting cables and all necessary termination components and must include complete installation and configuration cost as separate call outs. The vendor is responsible for providing all materials to meet specifications as presented unless otherwise outlined within this RFP. Trinity Basin Preparatory reserves the right to award some, all, or none of the RFP components and to award to multiple vendors. Trinity Basin Preparatory reserves the right to increase or decrease quantities/bandwidth during the life of the contract. Vendors are not guaranteed to be awarded both equipment purchase and installation/implementation services for a single component.

“I understand and comply.” \_\_\_\_\_

4a. **NON-SPECIFIED / EQUIVALENT RESPONSES:** Vendors providing responses as “EQUIVALENT” to the provided specifications MUST provide a side-by-side comparison of the proposed solution to the specified requested solution in a chart format. The comparison MUST provide detailed data/technical specifications which allow Trinity Basin Preparatory to evaluate the performance characteristics of the proposed solution to those being requested. Failure to provide complete and accurate comparison data in the response in a side-by-side chart format may result in the disqualification of the proposal from the scoring process.

“I understand and comply.” \_\_\_\_\_

**5. RESPONSES:** All responses must be provided using the provided table within this RFP. The table must be completed for each provided solution and site. Proposals may be provided using additional documentation and narrative information, but not in place of completion of this table. The tabular response data must be provided as a Microsoft Excel compatible electronic spreadsheet.

“I understand and comply.” \_\_\_\_\_

## ITEMS REQUESTED AND SPECIFICATIONS

### WAN CIRCUITS

Trinity Basin Preparatory is seeking responses for WAN connectivity between the listed sites. TBP will accept responses for solutions which meet the technical requirements, which include but are not limited to: lit leased, and dark leased. TBP is looking for responses for solutions which provide a dedicated symmetric solution for speeds of 1 Gbps. TBP is seeking responses for contract options for these services of 1, 3, and 5 year initial terms. Vendor should indicate if they are willing to extend the initial term for two one-year voluntary extensions for the same price as the initial term.

1. All handoffs to TBP must be 1 or 10 Gbps LC multi-mode fiber as appropriate for the provided and selected bandwidth.
2. All proposals must include full documentation for service provider SLAs and warranties.

Originating Site Name	Originating Address	Terminating Site Name	Terminating Address
HPA Upper Campus	1256 Jim Wright Fwy, White Settlement, TX 76108	Databank	400 S Akard St, Dallas, TX 75202
HPA South Campus	7241 Crowley Rd, Fort Worth, TX 76134	Databank	400 S Akard St, Dallas, TX 75202
HPA West Campus	8300 West Fwy, White Settlement, TX 76108	Databank	400 S Akard St, Dallas, TX 75202

Tyler Street Campus	915 W 9th St, Dallas, TX 75208	Databank	400 S Akard St, Dallas, TX 75202
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**5. DOCUMENTATION:** The awarded vendor(s) is responsible to provide full as-builds for all components which include detailed labeling of components in the correct locations utilizing provided site plan drawings; no 3<sup>rd</sup> party layouts will be accepted for physical cabling plant, structured cabling, or network rack as-built documentation. As-built documentation for network infrastructure must include all logical and physical layer drawings and configuration documentation.

Return this **Request for Proposal** document along with proposal information organized into the following sections and appropriately indexed/labeled:

- **Proposal Section A, Executive Summary.** A top-level summary that highlights the major features/most important aspects of the proposal, containing a concise description of the proposed solution, limited to two pages. It should clearly indicate any options or alternatives offered. In short, the reader should be able to determine the essence of the proposal and generally how well it meets the requirements by reading the Summary.
- **Proposal Section B, Background.** Describe the company, its size, number of employees, and annual sales volume. This shall include a brief history of the offering firm, emphasizing its experience in providing product/services to education customers comparable to TBP.
- **Proposal Section C, Proposal Pricing.** Price each item listed in Section 4 along with interconnecting cables and installation services using the response form. Any surcharge, fee and/or tax must be itemized in the proposal response.
- **Proposal Section D, Support Services.** Define the warranty, maintenance terms and conditions. Explain in detail the support options provided for the services once it is in production, including the quantity of support staff, method of escalation of urgent cases and location of support staff.
- **Proposal Section E, Alternative Proposals, Exceptions and Clarifications.** Vendors may provide more than one solution in order to provide alternative creative proposals that the District may not have been aware of or considered. Any alternatives and/or exceptions to the RFP specifications must be detailed and clearly noted in this Section.
- **Proposal Section F, Proposed Contract.**
- **Proposal Section G, Attachments.** Trinity Basin Preparatory Purchasing documents completed, signed.

6. **AWARD:** Proposals will be evaluated by a TBP committee. TBP reserves the right to award either “all or none” or portions thereof, whichever is in the best interest of the district. All proposals submitted for E-rate eligible products and services will be carefully considered, with price being the primary factor, and the proposal selected will be for the most cost-effective service offering consistent with §54.511 per the FCC’s competitive bidding requirements (47 C.F.R. § 54.503)<sup>1</sup>.

7. **BID EVALUATION CRITERIA:**

Criteria	Points
<b>Purchase Price: E-Rate Eligible Goods and Services</b> Lowest Price/Vendor Price X 25	25
<b>Purchase Price: Non E-Rate Eligible Goods and Services</b>	5
<b>Reputation of the vendor and the vendor’s goods or services</b> 10 = Good reputation of vendor and vendor’s goods or services 5 = Fair reputation of vendor and vendor’s goods or services 0 = Poor reputation of vendor and vendor’s goods or services	10
<b>Quality of the vendor’s goods or services</b>	10
<b>Extent to which the goods or services meet the District’s needs</b> 10 = Goods or services meet most or all district requirements 5 = Goods or services meet some district requirements 0 = Goods or services do not meet the needs of the district	10
<b>Vendor’s past relationship with the District</b> 10 = Past positive relationship with district 5 = Past relationship with other school districts 0 = Past negative relationship with district	10
<b>Total long-term cost to the District to acquire the vendor’s goods or services</b>	10
<b>Impact on ability of the district to comply with laws and rules relating to historically underutilized businesses</b>	0
<b>Safety and suitability for the intended use</b>	5
<b>Vendor's delivery capabilities, warranty and warranty service history</b>	10
<b>Vendor RFP Response was Responsive, Complete, and Comprehensible – 5 Points</b> <b>Vendor RFP Response was non-responsive, incomplete, or incomprehensible – 0 Points.</b>	5
<b>TOTAL</b>	<b>100</b>

**TRINITY BASIN PREPARATORY STANDARD TERMS AND CONDITIONS**

<sup>1</sup> www.ecfr.gov

The following terms and conditions are requirements that bind the Vendor that is awarded a bid or proposal. These terms and conditions communicate the District's expectations with regard to the Vendor's performance in connection with the District's purchase.

Trinity Basin Preparatory may also be referred to as "Trinity Basin Preparatory," "TBP," "Buyer," or "the District" throughout this and related documents.

Vendor may also be referred to as "Supplier," "Seller," "Bidder," or "Contractor" throughout this and related documents.

The words "bids, proposals, competitive sealed proposal, quotes" and their derivatives may be used interchangeably in these terms and conditions. These terms and conditions are applicable on all bids, requests for proposals, quotes, competitive sealed proposals, etc. to which they are attached.

1. Pursuant to Texas Education Code § 44.034(a), contractors or sub-contractors 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. A school district may terminate a contract with a person or business entity if the school district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract. TEX. EDUC. CODE § 44.034(b).

Additionally, pursuant to Texas Education Code § 22.0834 and Texas Government Code § 411.082, Vendor will, at least annually, obtain criminal history record information that relates to an employee, applicant, or agent of Vendor, if the person has or will have continuing duties related to the District, and the duties are or will be performed on the District's property or at another location where students are regularly present. Vendor shall assume all expenses associated with the background checks, and shall immediately remove any employee or agent who was convicted of a felony or a misdemeanor involving moral turpitude from the District's property or other location where students are regularly present. The District shall determine what constitutes "moral turpitude" or "a location where students are regularly present." Vendor understands that failure to comply with the requirements of this section may be grounds for termination of any Agreement.

2. Possession of firearms, alcohol and/or drugs, even in vehicles, is strictly prohibited on school district property. The use of tobacco products is not allowed on school district property.
3. Bid Submittal: ALL bids must be provided in hard copy as sealed bids, delivered to the Trinity Basin Preparatory Purchasing Department by the Close Date and Time. Trinity Basin Preparatory is not responsible for lateness of mail, carrier, etc., and the time/date stamp clock in Trinity Basin Preparatory Purchasing Department shall be the official time of receipt. If mailed or delivered, bid must be submitted in a sealed envelope with Vendor's name, bid name and bid number clearly written on the front of the outer envelope. No faxed bids will be accepted.

**NO BIDS WILL BE ACCEPTED AFTER THE CLOSING DATE**

4. Brands and Models: Brands and model numbers, where listed, are used for specification reference only, unless otherwise stated, and are not intended to limit the District's consideration of an approved equal. Descriptive information or samples may be requested for any item bid other than the referenced item.
5. All items bid must be new, unused, and in first-class condition unless otherwise requested by the District; no grey market materials will be approved by the District. Materials sold to or installed in any Trinity Basin Preparatory facility are not to contain any asbestos material. Any Vendor who sells or installs asbestos containing material in any Trinity Basin Preparatory facility shall be liable for and shall be required to bear the entire burden of any or all expenses associated with the removal and replacement of the material.
6. Equivalent Clause: If bidding on other than referenced specifications, Vendor's bid must show the specifications, manufacturer, brand, model, etc. of the product being offered. If other than brand(s) specified is offered, complete descriptive information of each product being offered must be included with Vendor's bid.

In every case, Trinity Basin Preparatory, in its sole discretion, will determine if a product is an approved equal. If brands other than that specified are offered, complete descriptive information of said article must be included with the bid. If Bidder takes no exception to specifications or reference date, Bidder will be required to furnish brand names, models, etc. as specified.

- a. Samples, when requested in the bid specifications, must be furnished with the bid, or the bid will be disqualified. When samples are requested after the bid opening, they must be furnished within five (5) school business days of the request at no cost to the District, or the bid will be disqualified. If not destroyed in examination, they will be returned to Bidder on request.
  - b. Once the contract is awarded, no substitutions of the products on the orders will be allowed without specific written consent from the Director for Purchasing Services. An approval for substitution on one order does not equate to automatic approval for substitution on subsequent orders. Application of the product must be reviewed for each project, job, and use.
7. Products delivered that are determined by the District not to be of equal or comparable quality to the requested articles shall be promptly picked up by Vendor as requested and scheduled by the District, at no expense to the District, and replaced with the product specified at the same price as bid. Products or services bid and provided under any subsequent orders must conform to appropriate local, State and Federal ordinances, and statutes and regulations governing the manufacture, sale, safety and installation of the products or provision of services.
  8. Material Safety Data Sheets ("MSDS"): The District requires product verification in the form of MSDS reports submitted at the time of the bid opening and on any product offered by a vendor if applicable.

9. Evaluation:

(a) Evaluation Pursuant to Texas Education Code Section 44.031 for purchases made with non-federal funds: In evaluating qualified bids, the following considerations will be taken into account for award recommendations: (1) purchase price (PRIMARY FACTOR), (2) quality of Vendor's goods or services, (3) reputation of Vendor and Vendor's goods or services, (4) the extent to which the goods or services meet the District's needs, (5) Vendor's past relationship with the District, (6) total long-term cost to the District to acquire Vendor's goods or services, (7) impact on the District's ability to comply with laws and rules relating to historically underutilized businesses, (8) safety and suitability for the intended use, (9) Vendor's delivery capabilities, warranty, and warranty service history, (10) non-responsive, incomplete, and incomprehensible bids, The District reserves the right to conduct any tests, evaluations, or comparisons it deems necessary to complete the evaluation process and awards on the basis of best value to the District. The District may award a contract for any or all sections of this bid and/or by individual items or combination of items. The District does not purchase on the basis of low bid alone. The District follows the criteria set forth by statute.

(b) Evaluation for purchases made with federal funds: In addition to the criteria stated above in 9(a), the following considerations will be taken into account for award recommendations: (a) the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals is prohibited, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference; (b) when contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract; (c) impact on the District's ability to comply with laws and rules relating to historically underutilized businesses to provide for consideration to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible; (d) for each contract in which there is no price competition, and in all cases where cost analysis is performed, consideration of profit as a separate element of the price shall be made, and to establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

10. The District reserves the right to decrease by 100% and/or increase the quantity listed in the specifications at the same bid price at any time, beginning with the approval of the Board of Trustees of the Trinity Basin Preparatory.
11. The District reserves the right to (1) reject any, part of any, or all bids, (2) award the contract for any item as it may appear advantageous to the District, and/or (3) waive any informalities or irregularities in the bidding process. In case of tie bids, the District will award according to District policy CH (Legal).
12. Trinity Basin Preparatory, may at its sole option, extend this bid for an additional sixty (60) days from the date of expiration, under the same pricing and terms and conditions, if it is determined by the District that additional time is required to avoid a contract lapse.



13. Trinity Basin Preparatory is a participating member of numerous cooperatives. As such, Trinity Basin Preparatory has executed Inter local Agreements, as permitted under Chapter 791 of the Government Code, with certain other governmental entities authorizing participation in cooperative purchasing programs.
14. In absence of a mutually agreed contract document, it is understood and agreed that, once Vendor has taken action to fill a purchase order for any or all items, a contract shall thereby be created pursuant to and subject to these standard terms and conditions set forth herein. To the extent a vendor's terms or conditions differ, Trinity Basin Preparatory's terms and conditions shall control.
15. The successful Bidder must comply with the following federal laws regarding contracts:
  - a. Contract Work Hours and Safety Standards Act, 40 U.S.C. 3701-3708.
  - b. Equal Employment Opportunity Act.
  - c. Energy Policy and Conservation Act (P.L. 94-163).
  - d. Equal Opportunity and Affirmative Action Employer.

Neither party shall discriminate because of race, color, religion, sex, age, national origin, handicap, or status as a Veteran, as defined and prohibited by applicable government law, in the recruitment, selection, training, utilization, promotion, termination, or other employment related activities concerning personnel. In addition, Bidder affirms that it is an equal opportunity and affirmative action employer and shall comply with all applicable federal, state, and local laws and regulations including, but not limited to, Executive Order 11246 as amended by 11375 and 12086; 12138; 11625; 11750; 12073; the Rehabilitation Act of 1973, as amended; the Vietnam Era Veterans Readjustment Assistance Act of 1975; Civil Rights Act of 1964; Equal Pay Act of 1963; Age Discrimination in Employment Act of 1976; and Public Law 95-507.

16. Seller of Package Goods: Seller will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently packed as follows: (a) Seller's name and address; (b) Consignee's name, address and purchase order number; (c) Container number and total number of containers, e.g. "box 1 of 4 boxes"; and (d) the number of the container bearing the packing slip. Seller shall bear cost of packaging unless otherwise provided and agreed to by the District. Goods shall be suitably packed to secure lowest transportation costs and to conform to requirements of common carriers and any applicable specifications. Buyer's count or weight shall be final and conclusive on shipments not accompanied by packing lists.
17. Shipment Under Reservation Prohibited: Seller is not authorized to ship goods under reservation and no tender of a bill of lading will operate as a tender of goods.
18. Title and Risk of Loss: The title and risk of loss of the goods shall not pass to Buyer until Buyer actually receives and takes possession of the goods at the point or points of delivery and has

taken action to specifically signify that the Buyer accepts the goods as conforming. Mere acceptance of delivery shall not be acceptance as conforming.

19. No Placement of Defective Tender: Every tender or delivery of goods must fully comply with all provisions of this contract as to time of delivery, quality and the like. If a tender is made which does not fully conform, this shall constitute a breach and Seller shall not have the right to substitute a conforming tender provided. Where the time for performance has not yet expired, the Seller may reasonably notify Buyer of his intention to cure and may then make a conforming tender within the contract time but not afterward.
20. Delivery Terms and Transportation Charges: F.O.B. Destination. All freight/delivery charges are to be included in the line item bid prices. If the shipping and handling costs are not included in the bid price of each line item, the bid cannot be fairly compared and evaluated and it WILL NOT be considered due to being NOT AS SPECIFIED. No additional freight or delivery charge for line items will be paid on invoice unless agreed to by Trinity Basin Preparatory. No tailgate or curbside deliveries will be permitted; shipment must arrive at destination with proper equipment to make delivery inside Buyer's building.
21. Trinity Basin Preparatory is not liable for orders accepted without a purchase order.
22. Inspection Requirements: Final inspection and testing shall be made at the site after delivery and installation. In case of rejection of installed products & services because of failure to meet contract requirements, or as otherwise provided herein, Vendor shall, without charge, promptly cure any insufficiencies in order to meet the contract requirements without any additional expense to the owner.
23. Invoices and Payments: **UNIVERSAL SERVICE (E-RATE) REQUIREMENTS**
  - a. Seller shall submit separate invoices on each purchase order after each delivery. Invoices shall indicate the purchase order number and be itemized, and transportation charges, if any, shall be listed separately. The delivery by Vendor shall be accompanied by a set of commercial invoices (one original and one duplicate copy) on the Vendor's regular invoice form. Payment will not be made on partial shipments of purchase orders unless the invoice only indicates the items that were shipped. Payments will be made within thirty (30) days. Vendors should keep the District's Accounts Payable Department advised of any changes in remittance address by providing notice to the following address: Trinity Basin Preparatory, Attn: Accounts Payable, 400 S Zang Blvd, Suite 700, Dallas, Texas 75208.
  - b. Do not include Federal Excise, State or City Sales Tax. Trinity Basin Preparatory is exempt from taxation under the Sales Tax and Use Tax Laws. Tax exemption number is listed on all purchase orders or will be provided by the Purchasing Services Department upon request.
  - c. Trinity Basin Preparatory is subject to the Texas Prompt Payment Act, Texas Government Code Chapter 2251.
24. Gratuities: The Buyer may, by written notice to the Seller, cancel this contract without liability to Seller if it is determined by Buyer that gratuities in the form of entertainment, gifts, or otherwise

were offered or given by the Seller, or any agent or representative of the Seller, to any officer or employee of the school district with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such a contract. In the event this contract is canceled by Buyer, pursuant to this provision, Buyer shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Seller in providing such gratuities.

25. Warranty Price:

- a. The price to be paid by Trinity Basin Preparatory shall be that contained in Vendor's offer 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 this 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, Trinity Basin Preparatory may cancel this contract without liability to Vendor whatsoever.
- b. 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, Trinity Basin Preparatory shall have the right, in addition to any other right or rights, to cancel this contract price, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

26. Warranty Products: Seller shall not limit or exclude any implied warranties, and any attempt to do so shall render this contract voidable at the option of the Buyer. Seller warrants that the goods furnished will conform to the specifications, drawings and descriptions listed in the bid invitation and to the sample(s) furnished by Seller, if any. In the event of a conflict between the specifications, drawings and descriptions, the specifications shall govern.

27. Safety Warranty: Seller warrants that the product sold to Buyer shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event the product does not conform to OSHA standards, Buyer may return the product for correction or replacement at Seller's expense. In the event Seller fails to make the appropriate correction within a reasonable time, correction made by Buyer will be at Seller's expense.

28. No Warranty by Buyer Against Infringements: As part of this contract for sale, Vendor agrees to ascertain whether goods manufactured in accordance with the specifications included in this agreement will give rise to the rightful claim of any third person by way of infringement or the like. Trinity Basin Preparatory makes no warranty that the production of goods according to the specification(s) will not give rise to such a claim, and in no event shall Trinity Basin Preparatory be liable to Vendor for indemnification in the event that Vendor is sued on the grounds of infringement or the like. If Vendor is of the opinion that an infringement or the like will result, he/she will notify Trinity Basin Preparatory to this effect in writing within two (2) weeks after signing of this agreement. If Trinity Basin Preparatory does not receive notice and is

subsequently held liable for the infringement or the like, Vendor will indemnify and hold Trinity Basin Preparatory harmless. If Vendor in good faith ascertains that production of the goods in accordance with the specifications will result in infringement or the like, this contract may be null and void, at Trinity Basin Preparatory's sole option, at which time Trinity Basin Preparatory may pay Vendor the reasonable cost of his/her search as to infringements.

29. Cancellation: Buyer shall have the right to cancel for default all or any part of the undelivered portion of this order if Seller breaches any of the terms hereof including warranties of Seller or if the Seller becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any other remedies that Buyer may have in law or equity.
30. Termination: The performance of work under this contract may be terminated in whole or in part by the Buyer in accordance with this provision. Termination of work hereunder shall be effected by the delivery to the Seller of a "Notice of Termination" specifying the extent to which performance of work under the order is terminated and the date upon which such termination becomes effective. Such right of termination is in addition to and not in lieu of rights of Buyer set forth herein.

The District shall have the right to terminate any Agreement or Contract with or without cause upon 10 days' notice to Vendor.

Valid causes for termination of this contract by the District for cause include, but are not limited to:

- a. Lack of funds by the District. Lack of funds includes, but is not limited to, non- appropriation and/or non-availability of funds.
- b. Non-compliance with all federal regulations including, but not limited to the "Contract Work Hours and Safety Standards Act," "Equal Employment Opportunity Act," and the "Energy Policy and Conservation Act" by Grantee.
- c. Failure to meet bidding specifications as determined by Trinity Basin Preparatory.
- d. Failure of the successful Bidder to deliver the item(s) within the specified time.
- e. Delivery of items on two (2) or more occasions that are rejected by the District.
- f. In the event that Bidder becomes insolvent or commits act of bankruptcy, Bidder shall notify the District in writing immediately.
- g. Breach of warranties or service agreements.
- h. Breach by Bidder of any term or condition of the contract.
- i. Any attempt by the successful Bidder to misrepresent the product or service provided. (i.e., listing a product as the product ordered on the statement of charges and shipping a non-approved alternate.

- j. Any unethical business practice, or attempt to misrepresent or commit fraud against the District.

The basis for settlement prior to completion of the contract will, at Trinity Basin Preparatory's discretion, be non-payment to the successful Bidder (Grantee), assessment of liquidated damages, and any other remedy at law or in equity available to Trinity Basin Preparatory. Bidder agrees that this is a reasonable cost to compensate TBP for time and effort involved in procuring replacement products, goods, or services, which cost would be difficult, if not impossible, to compute with certainty, and does not constitute a penalty. Assessment of liquidated damages does not preclude Trinity Basin Preparatory from seeking and obtaining other remedies as set forth in this solicitation or any other remedy at law or in equity available to Trinity Basin Preparatory.

Violation or breach of the federal requirements entitled "Contract Work Hours and Safety Standards Act," "Equal Employment Opportunity Act," and "Energy Policy and Conservation Act" may be grounds for termination of the contract and for debarment from future bidding.

- 31. Other Contractual Obligations: For contracts awarded in excess of \$10,000.00 by the school district, the successful Bidder and their contractors or sub-grantees must be in compliance with executive order 11246 "Equal Employment Opportunity" as amended by executive order 11375, and as supplemented in Department of Labor Regulations (41 C.F.R. Part 60) - Executive Order 11246, as amended, prohibiting job discrimination because of race, color, religion, sex, or national origin and requiring affirmative action to ensure equality of opportunity in all aspects of employment.

The successful Bidder must agree to provide to the school district, the Texas Education Agency, the Comptroller General of the United States, or any other duly authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions. The successful Bidder must also agree to maintain all required records for five (5) years after the school district makes final payment and all other pending matters are closed.

For contracts awarded by the school district for \$2,500.00 or more, the successful Bidder and sub grantees must comply with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor Regulations (29 C.F.R., Part 5) Section 103. Each Contractor is required to compute wages of every laborer and mechanic on the basis of a standard workday of eight hours and a standard workweek of 40 hours. Work in excess of eight hours per day or forty hours per week shall be compensated at a rate of not less than 1.5 times the basic rate of pay. No Contractor may require a laborer or mechanic to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his/her health and safety as determined under construction, safety, and health standards promulgated by the Secretary of Labor.

Successful bidders must comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

For contracts awarded by the school district for construction and repair, the successful Bidder and sub-grantees must include a provision in the contract and sub-grants for compliance with the Copeland "Anti-Kickback" Act. This Act provides that each Contractor or sub-grantee shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation, to which he/she is otherwise entitled.

For all construction contracts in excess of \$2,000.00, the successful Bidder and sub-grantees shall include a provision for compliance with the Davis-Bacon Act. Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages established by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week.

32. Right to Assurance: In the event the District, in good faith, has reason to question the Vendor's intent to perform under the contract, the District may demand that the Vendor provide written assurance of its intent to perform. In the event that a demand is made and no assurance is provided within five (5) business days, the District may treat this failure as an anticipatory repudiation of the contract.
33. Force Majeure: If by reason of Force Majeure, either party shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and full particulars of Force Majeure in writing to the other party within fourteen (14) days after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

The term Force Majeure, as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, orders of any kind of government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, land sinkage, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, pipelines or canals, or other causes not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty.

34. Assignment Delegation: No right or interest in this contract shall be assigned or delegation of any obligation made by Seller without the written permission of the Buyer. Any attempted assignment or delegation by Seller shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.
35. Waiver: The waiver by either party of a breach of any provision of this Agreement will not be construed as a waiver of any subsequent breach. The invalidity, in whole or in part, of any

provision of this Agreement will not affect the validity of the remaining provisions. Notwithstanding anything contained herein to the contrary, no provision herein may be construed as a waiver of the District's sovereign immunity.

36. **Governing Law and Venue:** This Agreement shall be construed and governed in accordance with the laws of the State of Texas without regard to its choice of law provisions. Both parties agree that venue for any litigation arising from this contract shall lie in Bell County, Texas.
37. **Prohibition Against Personal Interest in Contracts:** Any School Board member which has any substantial interest, either direct or indirect, in any business entity seeking to contract with the 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. Vernon's Texas Codes Annotated, Local Government Code, Ch. 171.

For Vendor or other person doing business with local governmental entity:

A Conflict of Interest Questionnaire must be filed in accordance with Chapter 176, Local Government Code by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law, this Questionnaire must be filed with the records administrator of the local governmental entity not later than the seventh (7th) business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code. A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

The Conflict of Interest Questionnaire (Form CIQ) reflecting the newly updated law for a vendor doing business with local governmental entity is attached hereto.

38. **Penalties for Non-Performance:** If, at any time, Vendor fails to fulfill or abide by the terms, conditions, or specifications of the contract, Trinity Basin Preparatory reserves the right to:
  - a. Purchase on the open market and charge Contractor the difference between contract and actual purchase price, or
  - b. Deduct such charges from existing invoice totals due at the time, or
  - c. Cancel the contract within ten (10) days by written notification of intent.
39. **Liens:** All goods delivered or labor performed under this contract shall be free of all liens and upon request, a formal release of all liens will be delivered to the District.
40. Vendor agrees to abide by and comply with the District's Board Policies, rules, and regulations.

41. For any proposed multi-year Agreement by and between the District and any Vendor, should the District's Board of Trustees not approve funds for such Agreement, the Agreement shall automatically terminate on the last day of the school fiscal year for which funds have been appropriated at no further cost or obligation of the District.
42. Contracts Under Federal Awards: In addition to the terms and conditions herein provided, all contracts made by the District with a vendor under a Federal award must contain provisions covering the following, as applicable:
- a. Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
  - b. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.
  - c. Equal Employment Opportunity. Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. Part 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 F.R. 12319, 12935, 3 C.F.R. Part, 1964- 1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 C.F.R. part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
  - d. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis- Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 C.F.R. Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or sub-recipient must be prohibited from inducing, by any means, any person employed in the construction,



completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

- e. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- f. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the recipient or sub-recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or sub-recipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- g. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and sub-grants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (“EPA”).
- h. Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 C.F.R. 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (“SAM”), in accordance with the OMB guidelines at 2 C.F.R. 180 that implement Executive Orders 12549 (3 C.F.R. part 1986 Comp., p. 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contain the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- i. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an

award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

# E-RATE REQUIREMENTS

## UNIVERSAL SERVICE (E-RATE) REQUIREMENTS

To warrant consideration for an award of contract resulting from this Request for Proposal, vendors must agree to participation in the Universal Service Support Mechanism for Schools and Libraries (commonly known as “E-rate”) as provided for and authorized under the federal Telecommunications Act of 1996 (Reference 47 U.S.C. §254, “Universal Service”). Vendors acknowledge that any contractual relationship resulting from this solicitation of proposals may be partially or entirely dependent upon the successful receipt of Universal Service Fund (“USF”) subsidies. To ensure compliance with all applicable USF regulations, program mandates and auditing requirements, vendors must comply with the following:

### **USF Knowledge**

Vendor shall have, at a minimum, a working knowledge of the federal Universal Service Support Mechanism for Schools and Libraries (commonly known as “E- rate”).

### **USF Registration**

Vendor shall submit with its proposal a valid Service Provider Identification Number (“SPIN”) and a valid Federal Communications Commission Registration Number (“FCCRN”).

### **USF Participation**

Vendor shall agree to participate in the E-rate Program and to cooperate fully and in all respects with the District, the Universal Service Administrative Company (“USAC”), and any agency or organization administering the E-rate Program to ensure that the District receives all of the E-rate funding for which it has applied and to which it is entitled in connection with Vendor’s services and/or products.

### **USF Documentation**

Vendor shall provide to District staff and/or the District’s E-rate consultant within a commercially reasonable period of time, all of the information and documentation that the Vendor has or that Vendor reasonably can acquire that the District may need to prepare its E-rate applications and/or to document transactions eligible for E-rate support.

### **Invoicing Procedures**

Vendor shall itemize, price, and invoice separately any materials or services that are ineligible for E-rate funding. Vendor must include the following information on all invoices to the District for E-rate eligible equipment and/or services:

- Date of invoice
- Date(s) of service
- Funding Request Number (“FRN”)
- Vendor’s signature on invoice attesting to the accuracy and completeness of all charges
- Detailed description of services performed and materials supplied that matches District’s contract specifications, Form 470 and Form 471 descriptions of same
- Clear, concise breakdown of amount(s) to be billed to USAC (discounted portion of eligible charges) and amount(s) to be billed to the District (non- discounted amount of eligible charges)

- Invoice on Vendor’s letterhead or on a Vendor-generated invoice with company logo
- INVOICES MUST BE SUBTOTALLED BY EACH SCHOOL SITE
- Proper E-rate discount percentage as set forth by the applicable FRN and USAC funding commitment decision letter (“FCDL”)

**USF Discounted Invoicing and Reimbursement Processes**

Vendor shall, at the District’s request, either

- a. Invoice the District only for the non-discounted amounts due on E-rate-approved transactions and simultaneously invoice the Universal Service Administrative Company (“USAC”) for the balance [Service Provider Invoice Method “SPI”] or
- b. Remit to the District within twenty days of receipt the reimbursement payments vendor receives from USAC or any other third-party payer for the discounted portions of E-rate-approved transactions involving the District [Reimbursement Method “BEAR” ].

**Reimbursement Process (BEAR Method)**

– Twenty Days

Vendor understands that E-rate Program rules require it to remit a reimbursement payment to the District within twenty (20) days of receiving it from USAC.

– Liquidated Damages

Vendor further understands that it may not withhold a reimbursement payment from or refuse to remit such a payment to the District for any reason. Moreover, Vendor understands and agrees that its failure to make a reimbursement payment to the District in a timely manner will adversely affect the District’s operations, but that the resulting damages will be impossible to ascertain with any degree of certainty. Vendor therefore agrees that if it fails to remit to the District a reimbursement payment within forty-five (45) days after receiving it from USAC, Vendor will pay to the District as liquidated damages a total of \$500 per day for each day that lapses without payment after the 45th day.

**Delayed USF Funding Commitment**

Vendor understands that, due to circumstances beyond the District’s control, the District may not receive an E-rate funding commitment by the beginning of the E-rate funding year, July 1, for the services it intends to purchase from Vendor during that funding year.

– Retroactive Invoicing

When E-rate funding is approved, Vendor shall invoice USAC for the discounted amount the District is owed retroactive to July 1st of the funding year or to whenever approved service to the District began, whichever date is later.

**USF Audit and Document Retention Requirement**

Vendor shall maintain all bids, quotes, records, correspondence, receipts, vouchers, delivery information, memoranda and other data relating to Vendor’s services to the District. All such records shall be retained for TEN (10) years following completion of services and shall be subject to

inspection and audit by the District. Vendor shall include in all subcontractor agreements for services, provisions requiring subcontractors to maintain the same records and allowing the District the same right to inspect and audit those records as set forth herein. (Equipment continuously covered under maintenance funding from E-rate require maintaining records 10 years following end of life of that equipment.)

In addition to the foregoing, Vendor will create, implement and enforce an internal E-rate audit process that ensures that Vendor complies with all E- rate program rules and regulations. This process must include the following:

- Separating ineligible project management and other professional services costs, if any, from other charges
- Maintaining detailed, signed individual timesheets for maintenance conducted
- Ensuring that ineligible charges are not submitted to USAC
- Invoicing to USAC that is consistent with the contract and the District's 470 and 471
- Ensuring that services or products are not provided to the District without District's express written permission or official purchase authorization
- Ensuring that District-approved substitute services or products are prominently noted on invoices submitted to USAC and the District
- Documenting that E-rate funded services were provided within the allowable contract period and program year
- Charging proper FRN(s)
- Ensuring that invoices and USAC forms are submitted to the District in a timely manner
- Ensuring that USAC forms are filled out completely, accurately and on time
- Ensuring that Forms 472 are signed/dated by vendor's representative in a timely manner

### **Contract Term Modification**

The District will reserve the right to extend or abbreviate the contract period if such extension or abbreviation is necessary to make the Contract term coincide with an E- rate "program year" or an extended service end date for an E-rate program year pursuant to a "service delivery deadline extension," as those terms are defined by the Federal Communications Commission ("FCC") and/or the Universal Service Administrative Company ("USAC").



