

# CLEAR CREEK ISD GENERAL TERMS AND CONDITIONS

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These terms and conditions are applicable to and form a part of all contract documents and purchase orders issued as a result of award under this RFP and shall be incorporated by reference into all contract documents.

1. **CONTRACT DOCUMENTS:** The agreement between the parties shall consist of the following documents incorporated herein by reference for all purposes: (1) CCISD's Special Terms and Conditions (if applicable); (2) CCISD's General Terms and Conditions; (3) CCISD's Notice of Award, (4) any valid written purchase orders signed by an authorized representative of CCISD, and (5) vendor's proposed pricing as accepted by CCISD (collectively the "Contract"). The terms of this Contract shall govern all procurements conducted hereunder. No additional terms on the Vendor's order acknowledgments, invoices, or other forms shall have any force or effect. In the event of a conflict, the documents shall control in the order they are listed in this paragraph. This Contract constitutes the entire agreement between the parties and supersedes any previous written or oral agreements.
2. **EFFECTIVE DATE:** This Contract shall be effective solely upon the signature Notice of Award (Form A) by an authorized representative of CCISD. The Effective Date of this Contract shall be the date of CCISD's Notice of Award.
3. **QUANTITIES:** Unless otherwise specified in the RFP, all commodities will be provided on an "as needed" basis, and CCISD makes no representation either orally or in writing to the amount of commodities, services, or related items CCISD will purchase pursuant to this Contract.
4. **AMENDMENT:** Further, no amendment of this Agreement shall be permitted unless first approved in writing by and authorized representative of CCISD. To be effective, any amendment to this Contract must be in writing and signed by authorized representatives of all parties.
5. **ASSIGNMENT:** The parties may not assign this Contract or any of its rights, duties, or obligations hereunder without the prior written approval of both parties. This prohibition includes the an assignment or transfer to a successor in interest to Vendor.
6. **CONTRACT TERM:** The Term of the contract shall be in accordance with the Tern specified in the corresponding RFP.
7. **ANNUAL REVIEW:** This Contract will be reviewed by the District annually for consideration of the renewal options exercisable at CCISD's discretion.
8. **VENDOR CHANGES AND UPDATES:** Vendors shall submit all updates of their company and contact information to the District in writing to the address listed on the cover page.
9. **EXCEPTIONS:** Any exceptions to the terms and conditions of the provisions of this must be stated in writing, and attached as a part of the proposal. No exceptions shall be deemed effective unless the District has indicated its acceptance of the exception in writing signed by an authorized representative of CCISD.
10. **GOVERNING LAW AND VENUE:** The laws of the State of Texas, without regard to conflicts of law, shall govern this Contract. Mandatory and exclusive venue for any dispute arising under this Contract shall be in the courts of Galveston County, Texas.
11. **COMPLIANCE WITH LAWS:** All items and services offered shall conform to all applicable local, county, state and federal laws, ordinances and regulations. For the entire duration of this Contract, Vendor and all subcontractors shall maintain all required licenses, certifications, permits, and any other documentation necessary to perform this Contract.
12. **CONFIDENTIALITY:** Vendor agrees to secure the confidentiality of all information and records provided by CCISD in accordance with applicable federal and state laws, rules, and regulations. Vendor acknowledges that the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g, governs the confidentiality of educational records and student personally identifiable information and agrees to abide by FERPA rules and regulations, as applicable, including but not limited to restrictions on disclosure of FERPA protected information to third parties. Vendor also acknowledges that CCISD is subject to the Texas Public Information Act, and Vendor waives any claim against CCISD and releases from liability CCISD, its officers, employees, agents, and attorneys with respect to disclosure of information determined by CCISD, the Attorney General of Texas, or a court of law to be subject to disclosure under the Texas Public Information Act. Per Government Code, Article 252.049, if any of the information is considered to be confidential or a trade secret belonging to the Vendor and, if released would give advantage to a competitor or Vendor, that information should be submitted with proposal marked "confidential – do not duplicate without permission." Any such designation shall be subject to CCISD's compliance with applicable law regarding disclosure.
13. **INDEMNIFICATION** –VENDOR SHALL INDEMNIFY AND HOLD CCISD HARMLESS FROM ALL CLAIMS, LIABILITIES, COSTS, SUITS OF LAW OR IN EQUITY, EXPENSES, ATTORNEYS' FEES, FINES, PENALTIES OR DAMAGES ARISING FROM THE ACTS OR OMISSIONS OF VENDOR, VENDOR'S EMPLOYEES, AGENTS, OR

SUBCONTRACTORS, IN CONNECTION WITH THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO CLAIMS INVOLVING PATENT RIGHT OR COPYRIGHT INFRINGEMENT. Vendor's obligations under this clause shall survive termination of this Agreement.

14. **ENERGY STAR COMPLIANCE:** Per the requirements of the District Energy Manager, all new equipment must be Energy Star compliant when available.
15. **APPROPRIATED FUNDS:** The parties agree that this Contract is a commitment of CCISD's current revenue only. Renewal of this Contract, if any, will be in accordance with Texas Local Government Code § 271.903 concerning non-appropriation of funds for multi-year contracts. Notwithstanding any other provision of this Contract, CCISD shall have the right to terminate this Contract without default or liability, effective as of the expiration of each budget period of CCISD if it is determined by CCISD, in CCISD's sole discretion, that there are insufficient funds to extend this Contract.
16. **PROPOSAL AWARD:** The District reserves the right to award contracts for any, all, or none of the parts and/or items of this proposal request. Contracts for purchase shall be put into effect by means of purchase order(s) executed by the District's Purchasing Director after this proposal has been awarded.
17. **NON-EXCLUSIVE AWARD:** Except as noted, proposal award resulting from this request is not an exclusive agreement to purchase. The District reserves the right and option, without penalty, to purchase like materials and services from other sources when and if such purchases, in the opinion of the District, are necessary and in the best interest of the District.
18. **VENDOR NON-PERFORMANCE.** If at any time, the Vendor fails to fulfill or abide by the terms and conditions or specifications of the Contract, the District reserves the right to cancel the Contract without written notification of intent.
19. **CANCELLATION:** The CCISD reserves the right to cancel any contract (or purchase order) resulting from this RFP at any time, for any reason (or for no reason) with a thirty (30) day written notice to the Vendor. Vendor may cancel the Contract, at any time for any reason, or for no reason with a sixty (60) day written notice. Any notice required or permitted to be delivered to the parties shall be deemed to be delivered when mailed by registered or certified mail, return receipt requested, postage prepaid, and addressed to the party's address appearing on the face of the RFP or Business Information Form (or as subsequently revised or changed in writing). Any compensation due Vendor will be limited to items received and accepted, or services performed and accepted, by the District prior to the notice of cancellation.
20. **INVOICES:** If applicable, original invoices shall be submitted to: Clear Creek Independent School District, PO BOX 799, League City, Texas 77574, Attention: Accounts Payable Department. Invoices must indicate the District purchase order number, invoice date, name of company, complete mailing address and telephone number, brief description of the item or service, quantity, unit price and extended price, any other substantiating documentation or information as required by the Contract. Invoices subject to cash discount will be calculated from the date final invoice is received by the District Accounts Payable Department.  
**NOTE: If E-rate applicable, invoices must identify E-rate and non-E-rate items.**
21. **PAYMENTS:** Subject to the pricing limitations established by this Contract, the payments due to Vendor are limited to the amount stated on the face of the purchase order. Any products provided, or services rendered in excess of this amount will be at Vendor's expense and not payable by the District. No alterations, substitutions or extra charges will be permitted without a written Change Order signed by an authorized representative of CCISD. Merchandise may not be billed at a price higher than the amount stated on the order. The District shall pay all undisputed invoices for accepted merchandise and/or services within 30 days of delivery or acceptance, whichever is later. Contracts requiring a monthly charge will be billed and paid on a monthly basis.
22. **TAXES:** CCISD is tax-exempt, and CCISD shall not pay taxes for goods and/or services provided under this Agreement. Vendor represents and warrants that it shall be solely responsible for paying all taxes or similar amounts resulting from this Agreement. Vendor and all subcontractors of Vendor shall hold CCISD harmless from any responsibility for taxes, and related damages and interest.
23. **INTER-LOCAL AGREEMENTS & OPEN MARKET PURCHASES:** In the best interest of the district, if the proposal goods and/or services are available at a lower price or better delivery time, it is to be understood that the District reserves the right to purchase these items through an inter-local agreement or on the open market.
24. **DELIVERY RESPONSIBILITY:** The District will not be responsible for any material being delivered or services performed without a purchase order, signed by an authorized representative of the District.
25. **SHIPPING REQUIREMENTS:** The Vendor shall take necessary actions to assure that orders are shipped promptly, to include partial shipments where appropriate. 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) CCISD'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 (must accompany all goods delivered). The packing slip (or shipping ticket) must state clearly purchase order number, packing slip number, number of items, stock number, destination of delivery and delivery date. Vendor shall bear cost of packaging unless otherwise provided.

26. **DELIVERY TERMS:** a) The title and risk of loss of the goods shall not pass to the District until CCISD receives and takes possession of the goods at the point or points of delivery; b) Delivery terms are F.O.B. inside delivery, unless delivery terms are specified otherwise in writing in CCISD's proposal; c) The place of delivery shall be that set forth on the purchase order; d) Vendor must provide goods or services within the term dates indicated on the purchase order. The terms of this agreement are "no arrival, no sale." E) Successful vendor(s) shall promptly notify the District Purchasing Office when any single line item cannot be delivered within the specified delivery time (according to the purchase order). If the successful vendor is unable to provide the requested item within a mutually acceptable time, the District reserves the option to purchase the outstanding item(s) from an alternate source according to the terms and conditions of this proposal invitation.
27. **WARRANTY:** Equipment/Products shall be new and the latest model. No remanufactured, demonstrator, used, or irregular product will be considered for purchase unless otherwise specified. The Vendor has the ultimate responsibility of insuring the delivery of complete, full functioning products that meet the District's specifications in all details and are free of defects in materials and workmanship. The manufacturer's standard warranty will apply unless otherwise specified. All products should be supplied complete, ready to be installed, including all cabling and connectors where applicable. Vendor shall not limit or exclude any implied warranties. Any attempt to do so shall render this Contract void at the option of the District. Vendor warrants that the goods furnished will conform to the specifications, drawings and descriptions listed in the solicitation 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.
28. **WARRANTY WORK AND DEFECTIVE WORKMANSHIP:** The Vendor is ultimately responsible for and must assure the District that any warranty service shall be performed to the satisfaction of the District, regardless of whether the Vendor or its agent performs the warranty work. If there is a question of whether it is the responsibility of the Vendor or the manufacturer to repair a given defect, then it shall automatically become the Vendor's responsibility to see that the repair(s) is made to the satisfaction of the District. If defective workmanship and/or materials is found after acceptance and payment has been made, the Vendor shall replace or repair the defective component(s), as required by the District, at Vendor's own cost, within a reasonable amount of time (normally 10 District business days), and at no extra cost to the District. Upon refusal of the Vendor to make satisfactory and timely adjustment(s), the District reserves the right to claim and recover from the Vendor, for costs incurred to correct the error or make good the defect in material or workmanship.
29. **INSURANCE REQUIREMENTS:** *(if applicable):*
- a. Certificates of Insurance. Certificates of insurance showing the solicitation number for each of the below listed policies, with insurance companies acceptable to the District, shall be delivered to the CISD with Vendor's solicitation response. Copies of required Waiver of Subrogation, Additional Insured and Cancellation endorsements must be attached to the Certificate of Insurance. If at any time during the Contract Terms the Certificate of Insurance lapses, the Contractor shall provide to the District an updated certificate.
  - b. Proof of Insurance. For the duration of this Contract, the Contractor shall provide proof and maintain the following insurance coverage applicable to liability which could be incurred in conjunction with the solicited project:
    - i. Workers' Compensation as required by the Texas Workers' Compensation Act, including Employers Liability insurance with limits of \$1,000,000.
    - ii. Comprehensive General Liability providing Products, Completed Operations, Independent Contractors and Contractual Liability coverage with Aggregate, Occurrence and Personal Injury Limits of \$1,000,000.
    - iii. Comprehensive Automobile Liability Insurance to cover all vehicles owned by, hired by, or used on behalf of the Contractor, with combined single limit of \$1,000,000 and a Medical Payment limit of \$5,000.
  - c. Waiver of Subrogation Endorsement. Waiver of Subrogation Endorsement in favor of the District shall be a part of each policy for coverage listed. The District will allow deductible policies. The Contractor shall pay the deductible amount. Such coverage shall remain in effect during the full term of service. Required insurance coverage is specified in the Solicitation.
  - d. Additional Insured Endorsement. Additional Insured Endorsements naming the District shall be a part of each policy for each coverage listed, except for Workers' Compensation.
  - e. Notice of Cancellation. If the Certificate of Insurance does not include such notice, a Cancellation, Non-Renewal or Material Change endorsement providing 60 days notice to the District must be provided.
30. **RECORDS RETENTION AND AUDIT:** Vendor shall maintain its records and accounts in a manner that shall assure a full accounting for all goods and/or services provided by Vendor to CCISD under this Contract, and agrees that such records shall be subject to audit by CCISD or an authorized investigating agency. These records and accounts shall be retained by Vendor and made available for audit by CCISD for a period of not less than three (3) years from the date of completion of the services, receipt of the goods, or the date of the receipt by CCISD of Vendor's final invoice or claim for payment in connection with this Agreement, whichever is later. If an audit has been announced, Vendor shall retain its

records and accounts until such audit has been completed. When federal funds are expended by CCISD pursuant to this Contract, Vendor certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.333. Vendor further certifies that Vendor will retain all records as required by 2 CFR § 200.333 for a period of three years (or otherwise specified for e-ratable products per USAC Guidelines, minimum of 10 years from last date of service) after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

31. **INDEPENDENT CONTRACTORS:** Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee, agent, joint venture or partner, between CCISD and Vendor or CCISD and any of Vendor's agents, employees, or subcontractors. Vendor agrees that CCISD has no responsibility for any conduct or payment of any of Vendor's employees, agents, representatives, contractors, or subcontractors.

32. **GOVERNMENTAL IMMUNITY:** Nothing herein shall be construed as to limit CCISD's governmental immunity as established by applicable law.

33. **GENERAL:**

- a. *Interpretation* - Vendor agrees that the normal rules of construction that require that any ambiguities in this Agreement are to be construed against the drafter shall not be employed in the interpretation of this Agreement.
- b. *Severability* - In the event that any one or more of the provisions contained in this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.
- c. *Force Majeure* – *The parties to this Contract may be excused from performance hereunder during the time and to the extent that they are prevented from performance due to acts of God, acts of the Government in its sovereign (and not contractual) capacity, fires, floods, epidemics, quarantine restrictions, public health emergencies, or unusually severe weather that forces road closures which make access to location and/or facility impossible. In all such events where performance is delayed or prevented, the affected party shall nonetheless exert reasonable efforts to remove said causes and resume performance hereunder. However, if CCISD has submitted payment under the terms of this Agreement prior to full performance of this contract, and an event or circumstances described in this paragraph delays or prevents performance of this Agreement, Contractor will refund all monies paid by CCISD if the parties cannot agree to resume performance of this Agreement at a mutually acceptable time and provided that such non-performance is not due to the fault of the non-performing party.*
- d. *Waiver* - No failure on the part of either party at any time to require the performance by the other party of any term hereof shall be taken or held to be a waiver of such term or in any way affect such party's right to enforce such term, and no waiver on the part of either party of any term hereof shall be taken or held to be a waiver of any other term hereof or the breach thereof.
- e. *Payment and Performance Bond* - In compliance with Article 5160, V.A.T.S. and Government Code 2253.021, all contracts in excess of \$25,000 for the construction, alteration or repair of public buildings shall require of the successful Vendor payment bonds in the full amount of the contract. Performance bonds shall be executed when such contracts exceed \$100,000. Such bonding shall be executed by a corporate surety duly authorized to do business in this state and be payable to the School District.

34. **FOREIGN ENTITY CERTIFICATIONS:** Vendor certifies it is not a company identified on the Texas Comptroller's list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a foreign terrorist organization by the U.S. Secretary of State under federal law. (Tex. Gov't Code §§2252.151-154). Vendor further certifies and verifies that neither Vendor, nor any affiliate, subsidiary, or parent company of vendor, if any (the "Companies"), boycotts Israel, and Vendor agrees that Vendor and Companies will not boycott Israel during the term of this agreement. (Tex. Gov't Code §§2270.001-.002, 808.001-.006, .051-.057, .101-.102).

35. **E-RATE Requirements:**

**FCC CERTIFICATION:** The vendor agrees that hardware supplied by the vendor meets all applicable FCC Certifications (Level A or B). Improper, falsely claimed or expired FCC certifications are grounds for termination.

- a. Bidder must agree to participate in USF Program (AKA "E-rate") for the corresponding funding year.
- b. Please include the correct Service Provider Identification Number (SPIN) on your bid.
- c. Bidders must have a current Service Provider Annual Certification (SPAC) on file with USAC.
- d. By submitting a bid, bidder certifies that the bidder does have a valid (non-red light status) SPIN for the E-rate program at the time of submission. Should the Applicant discover that the bidder is on a red light status, or if the FCC classifies the bidder as on red-light status before work is performed and invoices are paid, the contract will be null and void and the applicant will have no payment obligation to the bidder.

- e. Bidder is expected to provide the lowest corresponding price per E-rate rules. See <http://www.usac.org/sl/service-providers/step02/lowest-corresponding-price.aspx> for details.
- f. Contracts must not prohibit SPIN changes.
- g. Bidder must agree to provide the Applicant the choice of discount methods (SPI or BEAR).
- h. Bidder will be automatically disqualified if the District determines that the bidding company has offered any employee of the District any individual gift of more than \$20 or gifts totaling more than \$50 within a 12 month period.
- i. All contracts awarded will be contingent upon E-rate funding and final board approval. The applicant may choose to do all or part of the project upon funding notification.

All contracts awarded under this IFCB bidding process may be voluntarily renewed by the applicant, upon written notice to the provider, for five consecutive one year terms.