

GENERAL TERMS AND CONDITIONS

The following Terms and Conditions shall apply to this Solicitation, any submission made under this Solicitation, and any contract entered into by and between the District and vendor as a result of an award made under this Solicitation.

1. **Submission.** Submissions must be made according to the instructions provided in the Solicitation.
 - a. *Format.* Submissions must be made on forms or in the format provided by the District. No alteration to the District's forms will be permitted, including substitutions, additions, deletions or interlineations, without written consent by the District. Reproduction of the District's documents is permitted, so long as reproduced copies are exactly the same in size, format, and content as forms prepared by the District. Any submission made in altered form shall result in rejection of such submission at the option of the District. All prices and quotations must be typed or written in ink. Submissions written in pencil will not be accepted. Mistakes may be crossed out and corrections may be inserted with the initials of the vendor's authorized representative.
 - b. *Electronic Submission.* If the Solicitation's instructions provide that submission must be made electronically, then submissions must be made online at <https://wisdebid.ionwave.net>.
 - c. *Hard Copy Submission.* If the Solicitation's instructions provide for non-electronic submissions, please return the original signed submission in a sealed envelope, clearly marked with the vendor's name, Solicitation number and opening date and time. Hard copies of submissions may be hand delivered to 501 Franklin Avenue, Suite 401, Waco, Texas 76701 or mailed to P.O. Box 27, Waco, Texas 76703.
 - d. It shall be the sole responsibility of the vendor to ensure that complete submissions are received through the appropriate medium on or before the deadline provided in the instructions. Submissions made by telegram, facsimile or e-mail will not be accepted unless specified in the Solicitation's instructions. Submissions received after the date and time specified in the instructions will not be accepted. Submissions received without proper signatures or without all required documents will not be considered.
2. **Cost.** The District will not be liable for any costs not listed in the vendor's submission.
3. **Unit Price.** Unit prices should be extended in submissions. The unit price will prevail in the event of resolution of mathematical errors in extension or totals.
4. **Discounts.** Vendors are encouraged to offer discounts for quantity buys, timeliness of buys, and/or prompt payment incentives as "value-adds." Discounts will be applied to submission prices(s) and will be considered in the evaluation criteria for recommendation of an award.
5. **All-or-None Combination Prices.** The District will not accept or consider "all-or-none" combination prices for any submission, which is explicitly not solicited by the District in this Solicitation. In the event the District determines in its sole discretion that select items in a submission may be combined for the purpose of making an award, the District will request a total price for said combined items.
6. **Freight Charges and Delivery.** Unless otherwise indicated, prices in vendor submissions must include delivery inside the Waco ISD warehouse or to the school/department placing the order. All freight shall be prepaid. Deliveries shall be made during the District's normal 8:00 A.M. to 5:00 P.M. working hours, unless prior approval has been granted by the ordering department or school.
7. **Invoices.** Invoices provided by vendor must include a list of the goods and/or services provided, dates on which the goods and/or services are provided, and location(s) where the goods and/or services were provided during the billing period.
8. **Payment Terms.** Payment terms will be net thirty (30) days after acceptance of delivery or receipt of correct invoice, whichever occurs later, unless a prompt payment discount is offered and agreed to by the District.
9. **Taxes.** Vendor must exclude Federal and State sales and ad valorem taxes in its submission. In the event that a vendor is or subsequently becomes delinquent in the payment of its school ad valorem taxes, such fact shall constitute grounds for rejection of the submission or for cancellation of the contract if vendor has been awarded a contract. However, the District reserves the right, in its sole discretion, to deduct any amounts owed for delinquent taxes from payments that the District may owe to the delinquent vendor as a result of such contract.
10. **Time.** Time is of the essence. Vendor agrees to perform all obligations, deliver goods, and/or render services set forth herein.
11. **Purchase Order.** A vendor awarded a contract by the District shall not begin providing services or delivering goods without an authorized purchase order. All purchase commitments shall be on a properly drawn and issued purchase order. Purchases without a properly drawn and issued purchase order will not be honored by the District. The purchase order will list authorized personnel. Purchases will be mailed, faxed or phoned in (purchase order number will be

provided). Unless otherwise specified, orders will be completed no later than 30 days after the receipt of the purchase order. Items not delivered within this period will be subject to cancellation by the District.

12. **Samples.** Upon request, a properly tagged sample shall be submitted by each vendor before the time of submission opening at the location provided. The sample shall be provided to the District at no cost. The tag on the sample shall indicate the item number, the name of the vendor submitting the sample, and the Request for Proposal or Bid number. Samples for evaluation purposes must be provided at no cost or obligation to the District. Samples, if not destroyed in examination, will be returned to the vendor upon request, at the vendor's expense. Do not enclose or attach vendor's submission to the sample.
13. **Production Specifications.** Vendor must specify the make and/or model of a product even if the vendor is submitting the brand specified in the Solicitation and even if submitting a product as "equal." The vendor shall not indicate solely "as specified" or "equal" to be in compliance with the requirements of these Terms and Conditions.
14. **Substitutions.** The use of brand names and catalog numbers does not prohibit the substitution of other brands of equal quality unless "NO SUBSTITUTE" or similar language is specified. The naming of a particular brand is not intended to limit competition. The brand named in the specifications is known to meet all requirements and expectations of Waco ISD for that particular item. However, the District reserves the right to approve an alternate brand that is submitted as an equivalent. On all such submissions, the vendor shall indicate clearly the product being submitted, and shall supply sufficient data on its own letterhead to enable an intelligent and equitable comparison to be made with the particular brand or manufacturer specified. It is the vendor's responsibility to provide specification sheets for items submitted as "or equal." If an item is submitted as an "approved equal," it shall be the sole discretion of Waco ISD to determine if an item is truly an equal to the named brand. Substitutes on discontinued equipment must be approved by the Director of Business Services prior to shipment. Substituted equipment must meet or exceed the specifications of the equipment originally offered.
15. **Deviation from Specifications.** All deviations from specifications must be noted in detail by the vendor, in writing, at the time of the vendor's submission. The absence of a written list of specification deviations at the time of vendor's submission will hold the vendor strictly accountable to the District to the specifications as written. Any deviations from the specifications as instructed that are not submitted as required may constitute grounds for rejection of the material or item at any time.
16. **Good Faith Compliance with Specifications.** The vendor shall abide by and comply with the true intent of the specifications in the Solicitation and not take advantage of any unintentional error(s) or omission(s).
17. **Special Conditions or Qualifications.** Any special conditions or qualifications concerning price, quantities, delivery, etc. of items submitted must be noted in the vendor's submission.
18. **Right of Inspection.** The District has the right to inspect goods at delivery before accepting them. If the District is not able to inspect the goods at the time of the delivery, the District has the right to inspect and approve the goods within a reasonable time period after delivery is made. If specifications are not met, goods may be returned at the vendor's expense and at the vendor's risk for all damages incidental to the rejection. Payment by the District shall not constitute an acceptance of goods nor impair the District's right to inspect the goods or enforce any other remedies available to the District at law or in equity.
19. **Vendor's Expertise.** By making a submission to the District under this Solicitation, the vendor represents that he/she/it is knowledgeable in the goods and/or services being offered, including historical, current and future market conditions and that the District can rely on this representation.
20. **Quantities.** The quantities requested in the specifications are estimated based on the District's projected use and need. It is specifically understood and agreed that these quantities are approximate figures only and shall in no way obligate the District to purchase those quantities. An increase or decrease in any quantities specified will be adjusted in the submission amount based upon the unit price quoted by the vendor for said item. It is further understood that the vendor shall not have any claim against Waco ISD for quantities less than the estimated amount.
21. **Deduction of Damages from Price.** If vendor fails to deliver the quality and/or quantity of items on which an award is made by the promised delivery date at the prices specified in their submission, the District reserves the right to purchase the specified items elsewhere and vendor agrees to allow the District to deduct the difference in price and cost of handling, if any, from vendor's pending invoices, as permitted under Article II of the Uniform Commercial Code.
22. **Submission Errors.** All submissions shall be deemed final, conclusive, and irrevocable, and no submission shall be subject to correction or amended for errors or miscalculations by the vendor after the submission opening date and time, unless agreed to in writing by the District.

23. **Ambiguity.** In case of ambiguity or lack of clarity, the District reserves the right to consider the most advantageous construction thereof, or to reject the submission.
24. **Withdrawal of Submission.** No submission may be withdrawn for a period of 90 days after the submission opening has taken place, except by the written, mutual consent of the District and vendor. However, submissions may be withdrawn upon providing written notice to the District before the due date established for receipt of submissions. It shall be the sole responsibility of the vendor to ensure said written notice is timely received by the District.
25. **District's Discretionary Authority.** The District reserves the right, in its sole discretion, to take any action deemed in the best interests of the District, including but not limited to, the following: to accept and/or reject any and all submissions, or any part thereof; to waive any informalities, technicalities and/or irregularities in submissions received; to increase or decrease any quantities specified in the Solicitation; to negotiate any and all terms and conditions with vendors; to accept and/or reject each item separately or as a whole; to negotiate separately with any source whatsoever, in any manner necessary; to purchase in total from one vendor or divide the purchase by selection of various items from multiple vendors; to alter the timeline upon providing notice of the alteration; and to reissue the Solicitation (i.e. RFP, IFB, RFO, RFQ, bid, etc.). The District may, in its discretion, award a contract to the most favorable and/or responsible vendor(s) submitted in accordance with the requirements of the Solicitation based on a determination by the District that it is in the best interest of the District and provides the best value to the District, although it may not necessarily represent the lowest prices submitted.
26. **Acceptance by District.** No award of a contract shall be valid, and no contract is created or binding, until approved by the District's appropriate approval authority.
27. **Mail.** Vendors who respond to this Solicitation with either a formal submission or a notice of no submission will remain on our mailing list. Vendors making no response at all may be removed from our mailing list. Vendors are responsible for notifying the District in writing of a change in their address or telephone number. The District is not responsible for failing to mail a vendor a solicitation or for undelivered or misdirected mail.
28. **No Contact.** The District has implemented a "no contact" procedure during the Solicitation process. Accordingly, from the date the Solicitation is issued until the date an award is made by the District's Board of Trustees, there shall be no contact by any vendor to any District employee (excluding the Director and staff of the Business Services Department) or board member in relation to this Solicitation, unless authorized by the District's Director of Business Services.
29. **Ethics.** Vendor shall not offer gifts or anything of value or enter into any business arrangement with any District trustee, officer, employee or agent.
30. **Equal Employment Opportunity.** Waco ISD does not discriminate on the basis of race, creed, color, sex, sexual orientation, gender identity, age, national origin, disability, political belief, or religion in providing education services, activities or programs. It is the intent and policy of this District to conduct its activities in compliance with all Federal and State laws prohibiting discrimination of any form, including but not limited to on the basis of race, sex, age, religion, color, national origin or disability. Thus, during the performance of any contract awarded, vendor agrees not to discriminate against any employee or applicant for employment because of race, creed, color, sex, sexual orientation, gender identity, age, national origin, disability, political belief, or religion, except where it is a bona fide occupational qualification reasonably necessary to the normal operations of the vendor. Vendor agrees to post notices setting forth the provisions of this non-discrimination clause in conspicuous places that are accessible and available to employees and applicants for employment. Vendor, in all solicitations or advertisements for employees placed by or on behalf of vendor, will state that vendor is an equal opportunity employer. Notices, advertisements and solicitations placed in accordance with Federal laws, rules or regulations shall be deemed sufficient for the purpose of meeting the requirements of this section. Vendor shall include the provisions of the foregoing in every subcontract or purchase order over \$10,000.00, making these provisions binding upon each subcontractor or third-party vendor.
31. **Sexual Harassment Prohibited.** Sexual harassment or sexual misconduct with District employees or students is strictly forbidden and is subject to disciplinary action.
32. **Safety.** All vendors and subcontractors performing services for the District are required to comply with all federal, state and local safety laws and regulations, including but not limited to the Occupational Safety and Health Administration (OSHA) State and County Safety and Occupational Health Standards. All vendors and subcontractors shall be held responsible for the safety of their employees and any unsafe acts or conditions that may cause injury or damage to any person or property within and around the work site area under the contract.
33. **Environment of the District.** The District is a tobacco-free, drug-free, weapon-free and alcohol-free environment. It is the responsibility of the vendor to ensure that employees, agents, subcontractors, etc. of the vendor refrain from being under the influence and/or in possession of firearms, illegal drugs, tobacco, and alcoholic beverages while performing duties in accordance with the contract.

34. **Warranties.** The products, goods, and/or services furnished under the contract shall be covered by the most favorable commercial warranties available to any customer for the same or similar products, goods and/or services. Vendor further warrants that the prompt payment discount terms, distribution allowance, quality and performance of products and/or services, prices, product/services warranty, and any other conditions and provisions offered in vendor's submission are the same or better than those offered to the vendor's most favored customer.
35. **Out of State Vendors.** The "Reciprocity Rule" applies. Vendors whose principal place of business is located in a state which gives preference to its residents are subject to the same restrictions when submitting an offer with the District.
36. **Advertising.** Vendor shall not advertise or publish, without the District's prior written consent, the fact that the District has entered into any contract as a result of an award made under this Solicitation, except to the extent necessary to comply with valid requests for information from an authorized representative of the federal, state, or local government.
37. **Right to Assurance.** Should the District have a good faith basis to question the vendor's intent to perform, the District may demand that the vendor give written assurance of their intent to perform. In the event that such a demand is made and no assurance is given within five (5) calendar days, the District may treat this failure as anticipatory repudiation of the contract.
38. **Audit.** The District reserves the right to audit the books of the awarded vendor in regards to a contract awarded under this Solicitation and all supporting documentation surrounding said contract.
39. **Criminal History Records.** In accordance with Section 22.083 of the Texas Education Code, the District may obtain from any law enforcement agency, criminal justice agency, the department or a private entity that is a consumer reporting agency governed by the Fair Credit Reporting Act all criminal history record information that relates to a person who is an employee of an entity that contracts with the District if that individual's duties are or will be performed on school property or at another location where students are regularly present.
40. **Records Retention.** In accordance with Chapter 552 of the Texas Government Code wherein lies the Texas Public Information Act, if an awarded contract is valued at one million dollars (\$1,000,000) or more in a fiscal year for the purchase of goods or services by the District and if the such expenditure will be funded by public funds, the vendor must preserve all contracting information related to a contract awarded by this Solicitation for the duration of the contract term pursuant to the District's records retention requirements, promptly provide contracting information upon request made by the District, and upon completion of the contract either provide the District all contracting information related to the contract at no cost to the District or continue to preserve all contracting information pursuant to the District's records retention requirements. The District's records retention policy will vary based on the type of goods and/or services contract entered into and can be determined by contacting the District's records management department. Upon written request by the District to the vendor to provide requested information, the vendor shall have five (5) business days to provide the District with the requested information. If the vendor fails to provide the requested information, the District shall notify the vendor in writing and allow ten (10) business days to cure the violation. The District may terminate a contract with the vendor if it determines that the vendor knowingly and intentionally failed to timely cure the violation and failed to take adequate steps to ensure future compliance, absent an exception.
41. **Non-Appropriation of Funds.** Should the District not have sufficient funds appropriated for the purchase of the goods and/or services mentioned in this submission and after timely notification is provided to the vendor, the District is fully and expressly released from all obligations under this contract and any incidental contracts hereto.
42. **Collaborative Contract Management.** Waco ISD is a member in good standing of the Central Texas Purchasing Alliance (CTPA/txctpa.org), an alliance of over forty school districts in Texas representing over a million students, sharing information, services and contractual opportunities. CTPA is an alliance created in accordance with Section 791.001 of the Texas Government Code through Interlocal agreements. In support of this collaborative effort, all awards made by Waco ISD may be adopted by other active CTPA member districts. By adopting a contract from another CTPA member district, the adopting district has met the competitive bidding requirements established by the Texas Education Code, Section 44.031(a)(4) and as required by the adopting district's policies. There is no obligation on either party to participate unless both parties agree to do so. The goods and services provided under the contract will be at the same or better contract pricing and purchasing terms established by the originating district. The adopting district shall be responsible for the management of the new contract and all payments to the contracted vendor. The originating district shall have no responsibilities under the new contract agreement.
43. **Software Remote Access.** Vendor shall not install a remote access or backdoor into vendor's systems during its analysis of the District's system or at any other time. Vendor will remove remote access or backdoor from third party software to be used by the vendor or District.
44. **Workers' Compensation.** The District will not provide workers' compensation coverage to the vendor. All of

vendor's employees, subcontractors, agents, representatives, etc. who will provide goods and/or services to the District must be covered by workers' compensation coverage for the duration of the Contract. The coverage must be based on proper reporting of classification codes and payroll amounts and all coverage agreements must be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance regulation. Providing false or misleading information may subject the vendor to administrative, criminal or civil penalties or other civil actions.

45. **Independent Contractor Relationship.** In any resulting contract, vendor is being engaged as an independent contractor and the District shall have no responsibility or obligation to provide transportation, insurance, workers' compensation, or employee benefits normally associated with employee status. Vendors covenants and agrees to conduct itself consistent with independent contractor status and it will neither hold itself out as nor claim to be an officer, partner, employee, or agent of the District. Vendor will disclose to the District any relationship that could be construed as a conflict of interest or potential conflict of interest or otherwise prejudice in any way the independent relationship of the District and the vendor.
46. **Effective Date.** The effective date of the contract, if any, is the date that the award is approved by Waco ISD's Board of Trustees or designated representative. In some cases, the effective date and the date for start of services may be separated by several weeks and/or months.
47. **Amendment.** No verbal agreement or conversation with any officer, representative, agent or employee of the District either before or after the execution of a contract resulting from vendor's submission in response to this Solicitation or follow-up negotiations shall affect, amend or modify any of these Terms and Conditions or any other terms and conditions contained in any written contract resulting from this Solicitation. No alterations, modifications or amendments to the terms and conditions of any contract entered into as a result of this submission shall be valid or binding unless made in writing and signed by the District's Director of Business Services or his/her authorized designee and an authorized vendor representative.
48. **Assignment.** No assignment or transfer of this submission, in whole or in part, to any other party shall be allowed unless the vendor to whom an award is made provides written request to and receives written approval from the District's Director of Business Services or his/her authorized designee. Written approval must be requested and received prior to any assignment or transfer. In the event the vendor fails to comply with this provision, the District may take any action(s) to require compliance or take any other measures deemed appropriate.
49. **Remedies for Non-Performance.** If at any time, the vendor fails to fulfill or abide by the terms, conditions, or specifications of the contract, (i.e., delays, defaults, non-performance, etc.), then the District reserves the right to employ any remedy allowed by the contract, in law, in equity, or by the Uniform Commercial Code (UCC) including, but not limited to, to purchase on the open market and charge the vendor the difference between the contract and actual purchase price and/or terminate the contract within ten (10) days written notification.
50. **Liquidated Damages.** If the vendor receiving an award under this Solicitation fails to deliver or defaults on the contract within the time specified in the contract, the vendor shall pay (or have withheld from payments due), at the option of the District as liquidated damages as follows: for goods the vendor shall pay \$300, or the amount identified elsewhere in the Solicitation and/or contract, per line item of the purchase order that is delinquent, whichever is greater, and for services the vendor shall pay \$15,000, or the amount identified elsewhere in the Solicitation and/or contract for the defaulted services, whichever is greater.
51. **Termination/Cancellation.** Any contract awarded as a result of this Solicitation may be terminated or cancelled under the following circumstances:
 - a. The District may cancel or terminate the contract for convenience upon providing a 30-day written notice to the vendor.
 - b. The District may terminate the contract during the term of the contract if, at the expiration of each District budget period, funds are not adequately appropriated for payment under the contract.
 - c. Good and/or services under the contract may be terminated in whole or in part by the District upon delivery to vendor of a notice of termination specifying the extent to which the delivery of goods and/or performance of services is terminated and the date upon which the termination becomes effective. This right of termination is in addition to and not in lieu of the District's right to cancel undelivered goods or services under the contract.
 - d. The District may cancel all or any part of the undelivered goods or services of the contract for cause if the vendor breaches any of the terms of the contract, including, but not limited to, non-performance by the vendor, warranties of the vendor, if the vendor becomes insolvent, or if the vendor begins bankruptcy or reorganization proceedings. The District's rights of termination or cancellation are in addition to other remedies the District may have in law or equity.
 - e. The District may cancel or terminate all or any part of the contract for cause if a vendor fails to meet applicable federal, state or local laws as required.

The Should the District terminate all or any part of the contract for cause, vendor shall be liable to the District for its damages, including but not limited to actual damages, exemplary damages, liquidated damages, specific performance, reasonable attorney's fees, court costs, and any other remedies available to the District at law or in equity.

52. **Title & Risk of Loss.** The title and risk of loss of goods shall not pass to the District until the District actually receives and takes possession of the goods at the point or points of delivery.
53. **Force Majeure.** The District shall not be liable for defaults or delays due to acts of God or the public enemy, acts or demands of any governmental agency, strikes, fires, floods, accidents, or other unforeseeable causes beyond its control and not due to its own fault or negligence.
54. **Liability & Waiver of Claims.** By making a submission under this Solicitation, the vendor agrees to waive any claim it has or may have against the District, its trustees, officers, employees, representatives, agents and attorneys arising out of or in connection with the administration, evaluation, or recommendation of any submission, waiver of any requirements under the submission documents, waiver of any requirements under the contract documents, acceptance or rejection of any submissions, and award of any contracts.
55. **Indemnification.** Vendor agrees to indemnify, defend, and hold the District harmless from any patent, copyright, trademark, or trade secret infringement claim or cause of action, or any similar intellectual or proprietary rights infringement claim or cause of action, suits, demands, proceedings costs, damages, and liabilities, arising out of, connected with, or resulting from any acts of omissions of the vendor, the vendor's contractors or any agents, employees, or suppliers of vendor's contractors in the execution of or performance of any contract that is based on or related to the goods and/or services sold or used by the vendor in connection with this award or any contract entered into as a result of this award. Vendor agrees to indemnify, defend, and hold harmless the District, its officers, directors, trustees, agents and employees from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and reasonable attorneys' fees, for damages arising out of or in connection with the vendor's negligence and/or intentional acts in providing the goods and/or services furnished in any contract based on a result of this award. Vendor shall defend any such claims or causes of action at its own expense, and the District shall have the right to have such litigation monitored by its own counsel at the District's expense.
56. **Waiver.** No claim or right arising out of a breach of the contract by the vendor shall be discharged in whole or in part by a waiver or enunciation of the claim or right unless the waiver or enunciation is supported by consideration and in writing signed by the District.
57. **Severability.** In case any one or more of the provisions contained in the contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and the remainder of the contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
58. **Applicable Law and Venue.** Any contract entered into as a result of an award made to a vendor under this Solicitation shall be governed by the laws of the State of Texas and Uniform Commercial Code as applicable and as adopted and amended from time to time by the Texas Legislature. Both parties agree that the venue for any litigation arising out of any contract entered into as a result of this award shall lie in Waco, McLennan County, Texas. The District does not agree to the use of arbitration in resolving any conflicts and such a term in any contract entered into as a result of an award made under this Solicitation will be deemed voidable and stricken by the making of this submission.
59. **Attorneys' Fees.** A resulting award from this submission constitutes a contract between the District and the awarded vendor. The prevailing party in an action, whether in state or federal court, to enforce or interpret the contract or any disputes related thereto is entitled to recover its reasonable attorneys' fees and court costs from the other party. Without waiving any other rights available to the District for recovery, if the District is the prevailing party, vendor hereby agrees and authorizes the District to deduct the reasonable attorneys' fees and court costs from amounts, if any, owed to vendor under the contract.
60. **Governance.** The contents of this Solicitation, the vendor's submission in response to this Solicitation, these General Terms and Conditions, and any applicable Special Terms and Conditions will become part of any contract awarded and govern the relationship between the District and vendor.