



EDUCATION SERVICE CENTER REGION 19

DEFINITIONS, TERMS & CONDITIONS

Definitions

In this SOLICITATION and in the Contract, the following terms shall mean as follows:

- **“ESC R19”** means the **Education Service Center - Region 19**, of the **Texas Education Agency (a state agency)** established under the laws of the State of Texas as per Texas Education Code Chapter 8; 6611 Boeing Drive, El Paso, Texas 79925-1010. ESC R19 is the sole administrator of all contracts and is administered by employees working for the State of Texas.
- **“Vendor(s)”** means the proposer responding to this SOLICITATION and vendor(s) to whom a contract has been awarded as a result of this SOLICITATION by ESC R19. A responsible vendor is a vendor who has adequate financial resources (or the ability to obtain such resources), can comply with the delivery requirements, and is a qualified and established firm regularly engaged in the type of business that provides the product(s) /service(s) listed herein.
- **“Contract”** means the contract terms and conditions in the **Contract Terms and Conditions** section, as further defined in the Entire Agreement provision.
- **“Supplemental Contract”** means a separate, supplemental contract entered into between an ESC R19 and Vendor to further define the level of service and/or product requirements over and above the minimum defined in the Contract and the SOLICITATION, including, without limitation, invoice requirements, ordering requirements, on-campus service, specialized delivery, discounted pricing, etc. An addendum to a Purchase Order and/or Job Order under the ESC R19 contract that may add additional scope and/or requirements agreed to by ESC R19 and the contractor may be a Supplemental Contract.
- **“Best Value”** means the method by which a contract, if any, is awarded, in accordance with applicable laws, rules, and regulations. Best Value includes multiple parameters, including experience, references, quality of the Vendor’s product(s)/service(s), and price, as detailed in the **Evaluation and Award** section.
- **“Scope of Work or SOW”** is the specific work that has been agreed to be undertaken and accomplished by Vendor for ESC R19 via the Delivery Order process.
- **“Purchase Order or PO”** means ESC R19’s written approval for the Vendor to proceed with the negotiated Delivery Order. Special terms and conditions agreed to by the Vendor and ESC R19 may be added as addendums to the PO, including such items as requirements concerning certificates of insurance, bonding, and small or disadvantaged business goals. An order for a job or project under a job order contract must be signed by ESC R19 and the Vendor. TEX. GOV’T. CODE § 2269.
- **“Vendor’s Project General Manager (PGM)”** is the senior member of the Vendor’s team and will be the ultimate interface between ESC R19 and Vendor.
- **“Regular Hours”** means the hours between 6:30 a.m. and 5:00 p.m. Monday thru Friday, excluding the following holidays: Presidents’ Day, Easter, Memorial Day, Independence Day, Labor Day, Thanksgiving Day,

Christmas Day, and New Year's Day. It is up to the contractor to recognize holidays in other States and jurisdiction.

- **“Procurement”** means buying, purchasing, renting, leasing, or otherwise acquiring any materials, services or construction. Procurement also includes all functions that pertain to the obtaining of any materials, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract and all phases of contract administration.
- **“Responsive Offeror”** means a person, company, firm, corporation, partnership, or other organization who submits a proposal which conforms in all material respects to the invitation for bids or request for proposals/qualifications.
- **“Days”** means calendar days.
- **“Specifications”** means any description of physical or functional characteristic, or of the nature of a material, service, or construction of item. Specifications may include a description or any requirement for inspecting, testing or preparing a material, service or construction item for delivery.
- **“Vendor”** means any provider or seller of goods and/or services that has a contractual relationship with ESC R19.
- **“SOLICITATION”** means a Request for Proposal/Qualifications.
- **Description of Product(s) and/or Service(s)** Describe product(s) and/or service(s) the Vendor is proposing to provide ESC R19. Provide a matrix that will allow ESC R19 to readily appraise the Vendor's products, pricing and/or services offering versus other Vendors, if available.
- **Description of Value-Added Product(s) and/or Service(s) Include** any additional information Vendor believes ESC R19 should have when making its decision concerning contract award(s), if any. Detail any value-added options offered by Vendor; if value-added options are best described in a line-item format, add value-added items to the designated area at the end of the line-item list.

Terms and Conditions

THESE TERMS AND CONDITIONS ARE INTENDED TO BE LEGALLY BOUND AS AGREED UPON BY ACCEPTANCE OF THE PURCHASE ORDER.

1. (EDGAR) Vendor shall comply with all applicable federal, state, and local laws, statutes, ordinances, standards, orders, rules, and regulations, to include but not limited to, as applicable, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, prompt payment and licensing laws and regulations, the DAVIS-BACON ACT (40 U.S.C. § 276a / 29 CFR Part 5), the Copeland "Anti-Kickback" Act (18 U.S.C. § 874 / 29 CFR Part 5), the Equal Opportunity Employment requirements (Executive Orders 11246 and 11375 / 41 CFR Chapter 60), Contract Work Hours and Safety Standards Act (40 U.S.C. § 327-330 / 29 CFR Part 5), the McNamara-O'Hara Service Contract Act (41 U.S.C. 351), Section 306 of the Clean Air Act (42 U.S.C. § 1857h, Section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, Environmental Protection Agency regulations (40 CFR Part 15), Administrative Requirements for Grants and Cooperative Contracts to state, local, and federally recognized Indian tribal governments (24 CFR Part 85), mandatory standards and policies contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871), Byrd Anti-Lobbying Act, DHS Seals/Logos/Flags, Compliance with Federal Law, Regulations and Executive Orders, Obligations by purchasing entities, Program Fraud/False Statements/Fraud and Related Acts, Purchase Orders under this contract, AZ34-607 as revised will apply, and all applicable requirements and regulations, including those related to reporting, patent rights, copyrights, data rights and those mandated by federal agencies making awards of federal funds to ESC R19. Federal Agencies may incorporate by references the Federal Acquisition Regulations (FAR) sections that are appropriate to their project requirements. 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. All permits will be

acquired by Vendor and invoiced to ESC R19 at cost as part of the Purchase Order unless the permits are provided by ESC R19. Vendor must comply with all state and local building code requirements unless otherwise specifically provided in the ESC R19 Purchase Order or Job Order, and Vendor must pay all fees and charges for connections to outside services and for use of property outside the project site. The states of individual ESC R19 may have regulations and laws that govern payment retention and progress payments for public projects. Vendor is responsible for being acquainted with and complying with each state's requirements. When required or requested by ESC R19, Vendor shall furnish ESC R19 with satisfactory proof of Vendor's compliance with this provision with a "certified payroll". It is ESC R19's obligation to inform the contractor of this requirement and note it in the purchase order. Additionally, all vendors will complete a Felony Conviction/ Debarment Notice/ Clean Air & Water Act Notice provided by ESC R19 at the time proposals are submitted for consideration of award. Certain specific terms are listed below. This is not meant to serve as an exclusive list.

2. Award Terms; Amendment

The terms and conditions of this solicitation shall govern all procurements conducted hereunder. No pre-published terms on Vendor's Purchase Order, acknowledgments, invoices, or other forms shall have any force or effect unless expressly agreed to by ESC R19 and Vendor. No amendment of these terms and conditions shall be permitted unless and until first approved in writing by ESC R19, and no such amendment shall have any effect unless and until a written amendment to these terms and conditions is executed by the ESC R19 Purchasing Director or designee. ESC R19 approval is not required on any additional supplemental contract that may be negotiated between ESC and the vendor.

3. Supplemental Contract

ESC R19 and Vendor may enter into a separate, Supplemental Contract. Any Supplemental Contract developed as a result of this Contract and/or the SOLICITATION is exclusively between ESC R19 and Vendor and shall have no effect or impact on ESC R19, or this Contract. Any Supplemental Contract between Vendor and ESC R19 is exclusive and will be subject to immediate cancellation by ESC R19 (without penalty to ESC R19) if, in the opinion of ESC R19, the quality, service, and specification requirements, and/or the terms and conditions are not maintained as stated in the Supplemental Contract.

4. Survival

All Supplemental Contracts, purchase orders, warranties, and/or orders for goods or services entered into between offeror and ESC Region 19, accepted by Vendor under the terms and conditions of the Contract, shall survive the expiration or termination of this Contract.

5. Warranty/Guarantee, Materials and Workmanship

All products purchased under this SOLICITATION shall be NEW and free from defects unless authorized rehabilitation of existing is authorized by ESC R19 and is considered part of the contractor's standard of care or the goods and/or services do not apply to the stated requirements. Vendor shall be responsible for all materials delivered and work performed until completion and acceptance of the entire work by ESC R19, except for any completed unit of work which may have been previously accepted by ESC R19. All work must be performed in a skillful and workmanlike manner. ESC R19 may, in writing, require the Vendor to remove from the worksite any employee ESC R19 deems incompetent, careless, or otherwise objectionable. If at any time during the term of this contract, ESC R19 determines the standards and quality of the goods and services have deteriorated, the vendor has 24 hours to respond and make whole the issue the vendor has been notified on regardless of whether it is in writing, by phone to the account manager, or other means of communication. All product(s) and/or service(s) provided by the Vendor under this Contract must be warranted to be free from defects in material, workmanship, and free from such defects in design for a period of one (1) year upon the later of ESC R19's acceptance of the product and/or service or payment of the applicable invoice. Vendor warrants that all products and/or services furnished under this Contract shall conform in all respects to the terms of this Contract, including any drawings, specifications, and/or standards incorporated herein, including, without limitation, those detailed in the SOLICITATION, Purchase Order, and Job Order. In addition, Vendor warrants that products and/or services are suitable for and will perform in accordance with the purposes for which they are intended. Vendor shall assume all liabilities incurred within the scope of consequential damages and

incidental expenses, as set forth in the Vendor or manufacturer's warranty, which result from either delivery or use of product, which does not meet the specifications within this Contract, the SOLICITATION, Purchase Order, or Job Order.

6. Safety Plan (IF APPLICABLE)

Vendor may be required to submit a safety plan. If requested by ESC R19, vendor shall submit an updated, detailed safety plan within 14 business days of award and prior to commencement of any work. The plan should specifically address how the Vendor will implement the plan with subcontractors, including OSHA compliance, environmental compliance, drug testing, trend analysis, and noncompliance corrective action; whether a safety officer will interact with the ESC R19's staff; and the management of safety and environmental issues while working in occupied areas. Vendor shall indemnify and hold ESC R19 harmless from and against all claims, demands, suites, actions, judgements, fines, penalties, and liability of every kind arising from the breach of Vendor's obligations under this provision.

Health and Safety Certifications, Licensing, or Regulations

All contractors must meet applicable local, state, and federal health and safety certifications, licensing, or regulations which include, but are not limited to, facility use, food establishment, and authorized providers.

7. Subcontracting Plan

Contracts do not allow for subcontracting of any onsite service for goods and/or services without prior approval. Leased employees will be considered as employees when work is performed, and all on-site workers must have gone through complete background checks including fingerprinting if required by the ESC R19. If Vendor uses subcontractors in the performance of any part of this Contract, Vendor shall be fully responsible to ESC R19 for all acts and omissions of the subcontractors. Nothing in this Contract shall create for the benefit of any such subcontractor any contractual relationship between ESC R19 and any such subcontractor, nor shall it create any obligation on the part of ESC R19 to pay or to see to the payment of any monies due any such subcontractor except as may otherwise be required by law. Vendor represents and warrants that it is willing, able, and capable of obtaining, supervising, and being responsible for any subcontractors who perform and/or provide products and services related to this Contract.

8. Safe and Secure Schools Plan

It is the policy of ESC R19 to promote safe and secure schools. All Vendors and subcontractors are responsible for ensuring employees on the job site are in compliance with the following:

- **No drugs, alcohol, or tobacco on ESC R19's property**
All ESC R19 property and facilities are drug-free zones. No one may use, consume, carry, transport, or exchange tobacco, cigarettes, alcohol, or illegal drugs while in or on ESC R19's property or building.
- No weapons on school grounds except for normal tools used in construction.
- Convicted child and sex offenders may not work on school grounds.

9. ESC R19 Reservations

ESC R19 reserves the right of the following:

- Cancel this solicitation in whole or in part, at the sole discretion of ESC R19.
- Accept, reject, or negotiate modifications in any terms of the Vendor's proposal or any parts thereof including the request of a best and final offer.
- Conduct oral interviews/discussions or presentations necessary to select the best value Vendor and/or to obtain competitive pricing.
- Reject and/or disqualify any or all proposals received, to award contracts for individual products or services as may appear advantageous, and to negotiate separately in any manner necessary to serve the best interest of ESC R19.
- Disqualify any vendor response that is delinquent on reporting or administrative fee payment.
- Waive any formalities, technicalities, or other defects if deemed in the best interest of ESC R19; Request clarification and/or correction of Vendor(s) for the purpose of eliminating minor errors, clerical errors, and/or non-substantive irregularities.
- Be the sole judge of quality and equality.

- Award one or more contracts, in part or in whole, to a single or to multiple Vendors, in ESC R19's sole discretion.
- In auditing projects completed by the vendor, ESC R19 reserves the right to make all decisions regarding this SOLICITATION, including, without limitation the right to decide whether a proposal substantially complies with the requirements of this SOLICITATION.
- Remove, for any reason, vendor personnel working under this contract.

10. **Financial Responsibility**

ESC R19 assumes no financial responsibility for any costs incurred by Vendors in developing and submitting a proposal or any amendments or addenda, participating in pre-proposal meetings, participating in any negotiation sessions or discussions, or any other costs incurred by Vendors pursuant to this SOLICITATION.

11. **Process**

As part of any proposal the successful vendor shall be responsible for obtaining all necessary permits, fees, and licenses as may be required by local authorities having jurisdiction. The vendor is responsible for verifying compliance with local authorities having jurisdiction prior to commencing work. All documents prepared, along with manufacturer's data sheets and spec sheets for equipment shall be submitted to client for preliminary review before commencing work or submitting documents for review and approval by authorities having jurisdiction.

12. **Purchase Order Process**

ESC R19 will utilize a purchase order for a specific period. As a service contract, the awarded vendor may be given a blanket purchase order for the estimated dollar amount to be utilized over a period pre-determined by ESC R19. Vendors will invoice as services have been provided and proper signatures acknowledging the serviced was performed are received back by the vendor. A single purchase order may be generated for each site to be serviced or one master blanket purchase order may be generated for large number of sites. The vendor agrees to accept all forms of a purchase order and invoices must clearly reference the purchase order number and date (s) of service.

The Vendor shall perform the Scope of Work within the project completion time and for the fixed price of the Purchase Order. Any change orders must be approved by ESC R19 and added as an addendum to the purchase order, or a new purchase order generated. No work shall be performed until a written Purchase Order has been received from ESC R19. Any work performed under a Purchase Order before the Vendor's receipt of the written Purchase Order is at the Vendor's risk.

13. **Purchase Order Limits**

The Vendor is required to perform all work under a Purchase Order which has been issued and received before the expiration date of this Contract. If the Purchase Order is not received by the Vendor before the expiration date of this Contract, the Purchase Order will be considered cancelled. Any Purchase Order issued during the Term of the Contract and not completed before the expiration date of the Contract must be completed within the project completion time stated in the Purchase Order, and the rights and obligations of the Vendor and ESC R19 with respect to the Purchase Order will be the same as if the Purchase Order were completed during the Term of the Contract.

When the Purchase Order has been completed, the Vendor shall notify ESC R19 and have ESC R19 inspect the work for acceptance under the scope and terms in the Purchase Order. ESC R19 will issue, in writing, any corrective actions that are required. Final payment of a Purchase Order for which progress payments have been made will not be made until the project is totally completed (including punch list items), and the final application for payment is approved and signed by ESC R19. The vendor should strive to have a zero-punch list policy. All bonds must be reconciled at the end of the project prior to the final invoicing to ESC R19 with no additional administrative costs when applicable.

The Vendor may not refuse to perform any project requested by ESC R19 unless such project is unlawful, or they are unqualified to perform the project as it relates to their award. In those cases, they should consult with ESC R19 about possible options.

ESC R19 reserves the right to reject a Proposal or cancel a project for any reason. ESC R19 also reserves the right not to issue a Purchase Order if in its best interest. The Vendor shall not recover any costs arising out of or related to the development of the Purchase Order, including but not limited to, the costs to review the Proposal Request or prepare a Proposal.

14. Award of Contract

In accordance with applicable laws, rules, and regulations (Texas Ed. Code 44.031, 2254, 2269) for public procurement, award(s) will be made to the responsible Vendor(s) whose proposal(s) is/are determined after evaluation by ESC R19 to be the best value to ESC R19. To qualify for evaluation, a proposal must have been submitted on time and must materially satisfy all mandatory requirements identified in this document.

15. Protest Procedures

If a vendor wants to contest a procurement award, the vendor must contact the Procurement Director within 7 business days of non-award notice to request a review. The Director will review the award and provide the vendor with the result. Vendor will be given the opportunity to meet with the Director to review the results. Should the vendor not find the result acceptable, a meeting with the Associate Executive Director will be scheduled. Meetings with the Executive Director and finally the Board of Directors (BOD) are the final 2 levels of protest. The BOD has the final decision regarding a protest.

16. Competitive Range

It may be necessary for ESC R19 to establish a competitive range of acceptable proposals as part of the evaluation process. Proposals not in the competitive range are unacceptable and will not receive further award consideration.

17. Clarification and/or Discussions

ESC R19 may request clarification from Vendor(s) for the purpose of eliminating minor errors, clerical errors, and/or non-substantive irregularities. Clarification does not give a Vendor the opportunity to revise, change, or modify its proposal in any way except to the extent of correction of the error. Discussion between ESC R19 and Vendor can also take place after the initial receipt of proposals. ESC R19 reserves the right to conduct discussions with all, some, or none of the Vendors submitting proposals. ESC R19 will not assist the Vendor in the revision or modification of its proposal, nor will ESC R19 assist the Vendor in bringing its proposal to the same level of other proposals received by ESC R19.

18. No Guarantee of Quantities

ESC R19 makes no guarantee or commitment of any kind concerning quantities that will be purchased under this SOLICITATION and the resulting contract, if any. ESC R19 makes no guarantee or commitment of any kind regarding usage of any contracts resulting from this SOLICITATION.

19. Minority and Women's Business Enterprise (MWBE), Historically Under-utilized Business (HUB) Small Business Enterprise (SBE), Veteran-Owned Business (VOB), and Labor Surplus Area (LSA) Participation

ESC R19 encourages the use of HUB, MWBE, SBE, VOB, and LSA both as prime and subcontractors. However, these entities must meet the same minimum standards and requirements as the prime contractor. It will be the responsibility of the prime contractor to pre-qualify any subcontractors offered as HUB, MWBE SBE, VOB, and LSA participants. ESC R19 may have specific goals for subcontracting requirements and will require that a plan be attached to meet their goals. The Vendor shall also indicate on their submitted proposals whether they are a HUB, MWBE, SBE, VOB, or LSA vendor and with whom they are certified, e.g., State, City, Federal.

20. Formation of Contract (Execution of Offer)

A response to this SOLICITATION is an offer to contract with ESC R19 based upon the terms, conditions, scope of work, and specifications contained in this SOLICITATION. A SOLICITATION does not become a contract unless and until it is awarded by the ESC R19 Board of Directors or signed by their designee (ESC R19's Director).

21. Non-Exclusive Contract

Any contract resulting from this SOLICITATION is non-exclusive and shall be awarded with the understanding and Contract that it is for the sole convenience of ESC R19. ESC R19 is free to have multiple contracts for the awarded products and/or services and may initiate other procurement solicitations or procurement activity with other suppliers at any time, at ESC R19's sole discretion.

22. Disqualification

A Vendor may be disqualified before or after the proposals are opened upon evidence of collusion with the intent to defraud or evidence of intent to perform other illegal activities for the purpose of obtaining an unfair competitive advantage.

23. Non-Return of Proposals

Once submitted, ESC R19 will not return proposals to Vendor.

24. Open Records/Records Retention Policy

ESC R19 is a governmental body subject to the Texas Public Information Act. Proposals submitted to ESC R19 as a result of this SOLICITATION may be subject to release as public information after contracts are executed or the procurement is terminated. If a Vendor believes that its response, or parts of its response, may be exempted from disclosure under Texas law, the Vendor must specify page-by-page and line-by-line the parts of the response which it believes are exempt. In addition, the Vendor must specify which exception(s) to the Texas Public Information Act are applicable and provide detailed reasons to substantiate the exception(s). Vague or general claims to confidentiality will not be accepted. ESC R19 assumes no obligation or responsibility relating to the disclosure or nondisclosure of information submitted by Vendors. Vendor shall maintain its records and accounts in a manner that shall assure a full accounting for all product(s) and/or service(s) provided by the Vendor to ESC R19 under this Contract. These records and accounts shall be retained by Vendor and made available for review by ESC R19 for a period of **not less than three (3) years** from the date of completion of the service(s), receipt of product(s), the date of the receipt by ESC R19 of Vendor's final invoice or claim for payment in connection with this Contract, or the date ESC R19 makes final payments and closes pending matters in connection with a federal grant, whichever is later. If an audit or a compliance review has been announced, the Vendor shall retain its records and accounts until such audit or compliance review has been completed. When School Nutrition Program (SNP) funds are expended by the ESC, Vendor certifies that it will comply with the record retention requirements per United States Department of Agriculture (USDA)/Texas Department of Agriculture (TDA). Vendor will retain all records as required by USDA/TDA for a period of five (5) years after the end of the fiscal year to which the documentation/records pertain. Vendor further certifies that these records must be accessible to the ESC and federal or state reviewers. (See TDA Administrator's Reference Manual Section 17).

25. Preferences

ESC R19 may apply applicable preferences for Texas resident Vendors in the event of a tie bid. Preferences must be explicitly claimed by Vendor and may not be applicable in procurements and/or contracts involving federal funds. See TEXAS GOV'T. CODE §2252.001-.004.

26. Similar Products

Whenever product(s) is(are) referred by ESC R19 in this solicitation by describing a proprietary product or by using the name of a manufacturer or brand name, the term "or equal" if not inserted shall be implied, as applicable. The specified product(s) shall be understood as indicating type, function, minimum standard of design, efficiency, and quality desired and shall not be construed as to exclude other manufactured products or comparable quality, design, and efficiency, as applicable.

27. Marketing

ESC R19 is not responsible for the marketing of awarded vendors. It is the responsibility of the awarded vendor to market the products and services awarded. If requested by ESC R19, potential vendor will provide a marketing plan for promoting the contract.

28. Contract Extension

ESC R19 reserves the right to extend current contracts up to 180 additional days past the awarded contract term if needed.

29. Federal, State and Local Compliance

Pursuant to certain state notice provisions, the following public agencies and political subdivisions of the referenced public agencies are eligible to register with ESC R19 and access the Contract award made pursuant to any solicitation. This notice is given of the forgoing request for proposals/qualifications for purposes of complying with the procedural

requirements of said statutes. Lists of political subdivisions and local governments may be found at www.usa.gov. Federal incentives may be sought, under this program, by qualifying parties under the law.

30. Confidentiality

Vendor and ESC R19 agree to secure the confidentiality of all information and records in accordance with applicable federal and state laws, rules, and regulations. Vendor and ESC R19 understand that the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, governs the privacy and security of educational records and information and agree to abide by FERPA rules and regulations, as applicable. Vendor also acknowledges that ESC R19 is subject to the Texas Public Information Act, and Vendor waives any claim against and releases from liability ESC R19, their respective officers, employees, agents, and attorneys with respect to disclosure of information provided under or in this Contract or otherwise created, assembled, maintained, or held by Vendor, ESC R19, and determined by ESC R19, the Attorney General of Texas, or a court of law to be subject to disclosure under the Texas Public Information Act.

31. Performance and Payment Bonds (IF APPLICABLE)

Vendor agrees to provide performance bonds and/or payment bonds as required by law, based on the amount or estimated amount of any Purchase Order or Job Order, as applicable. TEX. GOV'T. CODE § 2269.411. Pursuant to TEX. GOV'T. CODE § 2253.021, a performance bond is required if a Job Order is in excess of \$100,000 for ESCs that are governmental entities subject to Chapter 2253; a payment bond is required if a Job Order is in excess of \$25,000 for ESCs that are governmental entities subject to Chapter 2253 and are not municipalities or a joint board created under Subchapter D, Chapter 22 of the Tex. Transp. Code, and a payment bond is required if a Job Order is in excess of \$50,000 for ESCs that are governmental entities subject to Chapter 2253 and are municipalities or a joint board created under Subchapter D, Chapter 22 of the TEX. TRANSP. CODE.

32. ESC R19's Property

In the event of loss, damage, or destruction of any property owned by or loaned by ESC R19 that is caused by Vendor or Vendor's representative, agent, employee, or contractor, Vendor shall indemnify ESC R19 and pay to ESC R19 the full value of or the full cost of repair or replacement of such property, whichever is greater, within thirty (30) days of Vendor's receipt of written notice of ESC R19's determination of the amount due. If Vendor fails to make timely payment, ESC R19 may obtain such money from Vendor by any means permitted by law, including, without limitation, offset or counterclaim against any money otherwise due to Vendor by ESC R19.

33. Tax Exempt Status

ESC R19 is exempt from payment of Texas State Sales Taxes under TEXAS TAX CODE§ 151.310 for the purchase of tangible personal property. Laws of other states govern the tax status of ESC R19 in states other than Texas. Vendor represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, without limitation, any federal, state, or local income, sales or excise taxes of Vendor or its employees. ESC R19 shall not be liable for any taxes resulting from this Contract, except where otherwise required by law.

34. Other State Tax Requirements

- i. State and Local Transaction Privilege Taxes – ESC R19 is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sales of products and are the sole responsibility of Vendor, as the seller, to remit. Failure to remit taxes from ESC R19, as the buyer, does not relieve Vendor, as the seller, from its obligation to remit taxes.

35. State of Texas Franchise Tax

By submitting a proposal in response to the SOLICITATION, Vendor certifies that Vendor is not currently delinquent in Vendor's payment of any franchise taxes or other taxes owed to the State of Texas.

36. Tax Responsibilities of Vendor and Indemnification for Taxes

Vendor is responsible for complying with the tax laws of states and the federal government. Vendor and all subcontractor(s) of Vendor shall pay all federal, state, and local taxes applicable to Vendor's operation, any persons employed by Vendor, and all subcontractors of Vendor. Vendor shall require all subcontractors to hold ESC R19 harmless from any responsibility for taxes, damages, and interest. If applicable, contributions required under federal, state, and/or local laws and regulations and any other costs, including, but not limited to, transaction privilege taxes,

unemployment compensation insurance, Social Security, and Worker's Compensation, shall be the sole responsibility of Vendor.

37. Notification of Material Change

Vendor is required to notify ESC R19 when any material change in operations occurs, including changes in distribution rights for awarded products, bankruptcy, material changes in financial condition, change of ownership, and the like, within three (3) business days of such change.

38. Performance

Vendor agrees to use commercially reasonable best efforts to provide the product(s) and/or service(s) subject to this Contract. Vendor shall furnish all supervision, labor, tools, equipment, permits, licenses, transportation, insurance, material, and supplies necessary to complete any scope of work, Purchase Order, or Job Order under this Contract. Vendor shall use skilled, trained personnel, who shall be supervised by Vendor. Vendor shall provide timely and accurate technical advice to ESC R19 staff. Vendor shall provide reasonable training to ESC R19 staff regarding products and/or services supplied under this contract by the Vendor, at no additional charge, if requested by ESC R19.

39. Non-Appropriation

Renewal of this Contract, if any, will be in accordance with TEX. LOCAL GOV'T. CODE § 271.903 concerning non-appropriation of funds for multi-year contracts. Notwithstanding any other provision of this Contract or obligation imposed on ESC R19 by this Contract, ESC R19 shall have the right to terminate this Contract, any Supplemental Contract, Purchase Order, or Job Order without default or liability to Vendor resulting from such termination, effective as of the expiration of each budget period of ESC R19 if it is determined by ESC R19, at their sole discretion, that there are insufficient funds to extend this Contract, any Supplemental Contract, any Purchase Order, or Job Order. The parties agree that this Contract, any Supplemental Contract, any Purchase Order, and Job Order are commitments of the current revenue of ESC R19 only.

40. Right to Review, Audit and Inspect

ESC R19 and any federal agency that has awarded federal funds/grant(s) to ESC R19, and the Comptroller General of the United States, and/or any of their authorized representatives, shall, upon written notice, have the right to audit and examine all of Vendor's records and accounts relating to this Contract and inspect any project performed by the Vendor relating to this Contract. Records subject to audit/review shall include, but are not limited to, all Purchase Orders or Job Orders resulting from this Contract and records which may have a bearing on matters of interest to ESC R19 in connection with the Vendor's work for ESC R19, and shall be open to inspection and subject to audit/review and/or reproduction by ESC R19, and/or their authorized representative(s) to the extent necessary to adequately permit evaluation and verification of:

- i. Vendor's compliance with this Contract and the requirements of the SOLICITATION.
- ii. Compliance with procurement laws, policies, and procedures, including, without limitation, reviewing/comparing pricing on invoices for ESC R19.
- iii. Compliance with provisions for computing billings to ESC R19.
- iv. Any other matter related to this Contract.

41. Indemnification

VENDOR SHALL INDEMNIFY AND HOLD HARMLESS ESC R19, INCLUDING ESC R19'S TRUSTEES, OFFICERS, ADMINISTRATORS, EMPLOYEES, AND AGENTS, FROM ALL CLAIMS, LIABILITIES, COSTS, SUITS OF LAW OR IN EQUITY, EXPENSES, ATTORNEYS' FEES, FINES, PENALTIES OR DAMAGES ARISING FROM ACTS OR OMISSIONS OF VENDOR, VENDOR'S EMPLOYEES, AGENTS, OR SUBCONTRACTORS, IN CONNECTION WITH THIS CONTRACT, INCLUDING WITHOUT LIMITATION, THOSE ARISING FROM CLAIMED INFRINGEMENT OF ANY PATENTS, TRADEMARKS, COPYRIGHT OR OTHER CORRESPONDING RIGHT(S) WHICH IS RELATED TO ANY ITEM VENDOR IS REQUIRED TO DELIVER. VENDOR'S OBLIGATIONS UNDER THIS CLAUSE SHALL SURVIVE ACCEPTANCE AND PAYMENT BY ESC R19.

42. Governing Law and Exclusive Venue

The laws of the State of Texas, without regard to its provisions on conflicts of laws, govern this Contract. Any dispute under this Contract involving ESC R19 must be brought exclusively in the state and federal courts located in El Paso, El Paso County, Texas, and the parties hereby submit to the exclusive jurisdiction of said courts.

43. Multiple Contract Awards; Non-Exclusivity

In accordance with TEX. GOV'T. CODE § 2269.406, ESC R19 reserves the right to award multiple contracts under the SOLICITATION, including multiple contracts for each product/service category. Product/Service categories are established at the sole discretion of ESC R19. Nothing in this Contract may be construed to imply that Vendor has the exclusive right to provide products and/or services to ESC R19. During the Term of this Contract, ESC R19 reserves the right to use all available resources to procure other products and/or services as needed and doing so will not violate any rights of Vendor. Additionally, although multiple contracts may be awarded under the SOLICITATION, ESC R19 may not complete Delivery Orders between JOC Vendors or other JOC contractors for delivery orders in violation of State law.

44. New Products

During the term of this contract, certain products may be eliminated by the manufacturer and substitute products will be considered on an individual basis by ESC R19 prior to any sales resulting from this contract. Additionally, new products may come to market that fit within the scope and specifications of the SOLICITATION and those products will also be evaluated and considered on an individual basis.

45. Insurance

Vendor is required to provide ESC R19 with copies of certificates of insurance, naming ESC R19 as a certificate holder or additional insured depending on ESC R19's request for Texas Workers Compensation and General Liability Insurance, Certificates of Insurance, name and address of Vendor, the limits of liability, the effective dates of each policy, and policy number shall be delivered to ESC R19 within three (3) days of notice of award. The insurance company insuring Vendor shall be licensed in the State of Texas, and shall be acceptable to ESC R19. Vendor shall give ESC R19 a **minimum of ten (10) days'** notice prior to any modifications or cancellation of said policies of insurance. Vendor shall require all subcontractors performing any work under or relating to this Contract to maintain coverage as specified below. Vendor shall, at all times during the Term of this Contract, maintain insurance coverage with not less than the type and requirements shown below.

Specialty insurance, such as "marine insurance", if required for a purchase order, may be listed as a line item and passed through to ESC R19.

All policies of insurance shall waive all rights of subrogation against ESC R19, and ESC R19's officers, employees, and agents.

Upon request, certified copies of original insurance policies shall be furnished to ESC R19.

ESC R19 shall be named as an "additional insured" on insurance policies.

ESC R19 reserves the right to require additional insurance should ESC R19 deem additional insurance necessary, in their sole discretion.

- Workers Compensation (with waiver of subrogation to ESC R19), Employer's Liability, including all states, U.S. Longshoremen, Harbor Workers and other endorsements.
- Statutory, and Bodily Injury by Accident: \$1,000,000 each employee. Bodily Injury by Disease: \$1,000,000, policy limit \$1,000,000 each employee.
- Commercial General Liability Occurrence Form including, but not limited to, Premises and Operations, Products Liability Broad Form Property Damage, Contractual Liability, Personal and Advertising Injury Liability and where the exposure exists, coverage for watercraft, blasting collapse, and explosions, blowout, cratering and underground damage. \$1,000,000 each occurrence Limit Bodily Injury and Property Damage combined. \$1,000,000 Products-Completed Operations Aggregate Limit \$1,000,000 per Job Aggregate. \$1,000,000 Personal and Advertising Injury Limit.
- Automobile Liability Coverage: \$1,000,000 Combined Liability Limits Bodily Injury and Property Damage Combined.

46. No Agency or Endorsements

It is the intention of the parties to this Contract that Vendor is independent of ESC R19, is an independent contractor, and is not an employee, agent, joint venture, or partner of ESC R19. Nothing in this Contract shall be interpreted or construed as creating or establishing the relationship of employer and employee, agent, joint venture or partner, between ESC R19 and Vendor, and ESC R19 and any of Vendor's agents. Vendor has no power or authority to assume or create any obligation or responsibility on behalf of ESC R19, and ESC R19 has no power or authority to assume or create any obligation or responsibility on behalf of Vendor. This Contract shall not be construed to create or imply any partnership, agency, or joint venture, nor shall it be construed or deemed an endorsement of a specific company or product. Vendor agrees that ESC R19 have no responsibility for any conduct of any of Vendor's employees, agents, representatives, contractors, or subcontractors.

47. Equal Opportunity

It is the policy of ESC R19 not to discriminate on the basis of race, color, national origin, gender, limited English proficiency or handicapping conditions in its programs. Vendor agrees not to discriminate against any employee or applicant for employment to be employed in the performance of this Contract, with respect to hire, tenure, terms, conditions and privileges of employment, or a matter directly or indirectly related to employment, because of age (except where based on a bona fide occupational qualification), sex (except where based on a bona fide occupational qualification) or race, color, religion, national origin, or ancestry. Vendor further agrees that every subcontract entered into for the performance of this Contract shall contain a provision requiring non-discrimination in employment herein specified, binding upon each subcontractor. Breach of this covenant may be regarded as a material breach of the Contract. 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. § 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 Fed. Reg. 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). See 2 C.F.R. Part 200, Appendix II(C).

48. Force Majeure

If by reason of Force Majeure, either party hereto 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 a reasonable time 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, act 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; lightning; earthquake; fires; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accidents to machinery, 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.

49. Severability

In the event any one or more of the provisions contained in this 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 provisions, and the Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

50. 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. No waiver, alteration, or modification of any of the provisions of this Contract shall be binding unless in writing and signed by duly authorized representatives of the parties hereto.

51. Entire Agreement

The terms and conditions, the SOLICITATION, Vendor's proposal submitted in response to the SOLICITATION, the attached and incorporated attachments, addendum, and/or exhibits, if any, and the Supplemental Contract, if any, contain the entire agreement of the parties relative to the purpose(s) of the Contract and supersede any other representations, agreements, arrangements, negotiations, or understandings, oral or written, between the parties to this Contract. In the event of a conflict between this Contract and the SOLICITATION or Vendor's proposal submitted in response to the SOLICITATION, this Contract shall control. In the event of a conflict between the SOLICITATION and Vendor's proposal submitted in response to the SOLICITATION, the SOLICITATION shall control. This Contract supersedes any conflicting terms and conditions on any Purchase Order, invoices, checks, order acknowledgements, forms, purchase orders, or similar commercial documents relating hereto and which may be issued by Vendor after the Effective Date of this Contract. In addition to this Contract, a Supplemental Contract (agreement) between Vendor and ESC R19 may be established to further detail the terms and conditions of ESC R19's specific project. In the event of a conflict between this Contract and the Supplemental Contract, as to ESC R19, this Contract shall prevail.

52. Notice

Any notice provided under the terms of this Contract by the parties to any other shall be in writing and shall be given by hand-delivery or by certified or registered mail, return receipt requested. Notice shall be sufficient if made or addressed to the party at the address listed in the signature line of this Contract. Notice shall be deemed effective upon receipt. Each party may change the address at which notice may be sent to that party by giving notice of such change to the other party by certified mail, return receipt requested.

53. Title and Risk of Loss

Whenever ESC R19 is purchasing (and not leasing) a product under this Contract, title and risk of loss shall pass upon the later of ESC R19's acceptance of the product or payment of the applicable invoice.

54. Travel

Bid response pricing should be all inclusive of travel. Travel expenses (car, air, hotel, meals, etc.) should not be a separate cost. Should travel be separate, a deviation to this term must be noted on the deviation sheet. Acceptance is at the discretion ESC and subject to GSA requirements and exclusions.

55. Termination of Contract (EDGAR)

This Contract shall remain in effect until (1) the term expires or (2) the Contract is terminated by mutual consent of ESC R19 and Vendor. In the event of a breach or default of the Contract and/or the SOLICITATION by Vendor, ESC R19 reserves the right to enforce the performance of the Contract in any manner prescribed by law or deemed to be in the best interest of ESC R19. ESC R19 further reserves the right to terminate the Contract immediately in the event Vendor fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in the SOLICITATION, this Contract, and/or a Purchase Order or Job Order; (2) make any payments owed; or (3) otherwise perform in accordance with this Contract and/or the SOLICITATION. ESC R19 also reserves the right to terminate the Contract immediately, with written notice to Vendor, if ESC R19 believes, in its sole discretion that it is in the best interest of ESC R19 to do so.

Vendor agrees that ESC R19 shall not be liable for damages in the event that ESC R19 declares Vendor to be in default or breach of this Contract and/or the SOLICITATION. Vendor further agrees that upon termination of the Contract for any reason, Vendor shall, in good faith and with reasonable cooperation, aid in the transition to any new arrangement and/or Vendor.

56. FEMA EDGAR Requirements:

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to

ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all informal information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

Davis Bacon Act

All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable. Contractors are 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. Additionally, contractors are required to pay wages not less than once a week.

Copeland Anti-Kickback Act

a. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

b. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

c. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12."

Contract Work Hours and Safety Standards Act

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek

unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
3. *Withholding for unpaid wages and liquidated damages.* ESC R19 shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
4. *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph this section including a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

Clean Air Act

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The contractor agrees to report each violation to ESC R19 and understands and agrees that ESC R19 will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The contractor agrees to report each violation to ESC R19 and understands and agrees that ESC R19 will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Suspension and Debarment

1. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
2. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
3. This certification is a material representation of fact relied upon by ESC R19. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to ESC R19, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

4. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall 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 shall 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 recipient who in turn will forward the certification(s) to the awarding agency.

Procurement of Recovered Materials

1. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
 - a. Competitively within a timeframe providing for compliance with the contract performance schedule;
 - b. Meeting contract performance requirements; or
 - c. At a reasonable price.
2. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
3. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

Access to Records

1. The Contractor agrees to provide any government agency including ESC R19, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
2. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
3. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
4. In compliance with the Disaster Recovery Act of 2018, ESC R19, vendor and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

FEMA Funding

It is acknowledged that FEMA financial assistance may be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

Obligation

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

Program Fraud

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

Architects/Engineers/Surveyors/Contractors

Vendor agrees to comply with Texas Civil Practice and Remedies Code Chapter 130 and Texas Business & Commerce Code Chapter 59.

57. Domestic Preference

ESC Region 19 – prefers for all purchases, acquisitions, use of goods, products, or materials to be produced in the United States including but not limited to iron, aluminum, steel, cement, and other manufactured products.

58. Prohibition of Contact

Vendor is prohibited from approaching members of the Board, ESC employees, sub-contractors, agents, and representatives, or any officer of the ESC in an attempt to gain an advantage in the vendor selection process.

Antitrust Certification Statement

I affirm under penalty of perjury of the laws of the State of Texas that: I am duly authorized to execute this contract on my own behalf or on behalf of the company, corporation, firm, partnership or individual ("Company") listed below; In connection with this bid/proposal, neither I nor any representative of the Company has violated any provision of the Texas Free Enterprise and Antitrust Act, TEX. BUSINESS & COMMERCE CODE, Chapter 15; In connection with this bid/proposal, neither I nor any representative of the Company have violated any federal antitrust law; and Neither I nor any representative of the Company has directly or indirectly communicated any of the contents of this bid/proposal to a competitor of the Company or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Company. I further affirm under penalty of perjury of the laws of the State of Texas that: • The proposal submitted by the Company is genuine and is not collusive or sham; • The Company has not colluded, conspired, connived or agreed, directly or indirectly, with an entity or person, to put in a sham proposal or to refrain from bidding, and has not in any manner, directly or indirectly, sought by Contract or collusion, or communication or conference, with any person, to fix the bid price or of any other Vendor, or to fix any overhead, profit or cost element of said bid price, or of that of any other vendor, or to secure any advantage against ESC or any person interested in the proposed contract; and • All statements in Company's proposal are true.

59. Certification of Compliance Regarding Texas Family Code

As per Section 14.52 of the TEX. FAMILY CODE, added by S.B. 84, Acts, 73rd Legislature, R.S. (1993), all bidders must complete and submit with the bid the following affidavit: I, the undersigned vendor, do hereby acknowledge that NO sole proprietor, partner, majority shareholder of a corporation, or an owner of 10% or more of another business entity is 30 days or more delinquent in paying child support under a court order or a written repayment Contract. I understand that under this doe, a sole proprietorship, partnership, corporation or other entity in which a sole proprietor, partner, majority shareholder or a corporation, or an owner of 10% or more of another entity is 30 days or more delinquent in paying child support under a court order or a written repayment Contract is NOT eligible to bid or receive a state contract.

60. Certification of Compliance Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017, Section 3017.510, Participants' responsibilities. The regulations were published as Part IV of the January 30, 1989, Federal Register (pages 4722-4733). Copies of the regulations may be obtained by contacting the Department of Agriculture agency with which this transaction originated. • The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. • Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

61. Grants, Subgrants, Cooperative Contracts and Contracts Exceeding \$100,000 in Federal Funds

Submission of this certification is a prerequisite for making or entering into this transaction and is imposed by section 1352, Title 31, U.S. Code. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Any person who fails to file the required certification shall

be subject to civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. The undersigned certifies, to the best of his/her knowledge and belief, that: 1. No Federal appropriated funds have been paid or will be paid or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of congress, or an employee of a member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative Contract, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative Contract. 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of congress, or an employee of a member of Congress in connection with this Federal grant or cooperative Contract, the undersigned shall complete and submit Standard Form-LLL, "disclosure Form to Report Lobbying", in accordance with its instructions. 3. The undersigned shall require that the language of this certification be included in the award documents for all covered sub-awards exceeding \$100,000 in Federal funds at all appropriate tiers and that all sub-recipients shall certify and disclose accordingly. In addition I, the vendor, am in compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act of 1970, as amended (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act, as amended (33 U.S.C. 1368), Executive Order 117389 and Environmental Protection Agency Regulation, 40 CFR Part 15 as required under OMB Circular A-102, Attachment O, Paragraph 14(I) regarding reporting violations to the grantor agency and to the United States Environment Protection Agency Assistant Administrator for the Enforcement.

62. Compliance Certification with the Davis-Bacon Wage Determination Issued by the Department of Labor

The Davis-Bacon Wage Determinations are wage determinations issued by the U.S. Department of Labor under the Davis-Bacon and related acts. The Wage and Hour Division of the U.S. Department of Labor determines prevailing wage rates to be paid on federally funded or assisted construction projects. It is the responsibility of the federal agency that funds or financially assists Davis-Bacon covered construction projects to ensure that the proper Davis-Bacon wage determination(s) is/are applied to such construction contracts(s). See 29 CFR 1.5 and 1.6 (b). I, the vendor, am in compliance with all applicable standards, orders or regulations issued pursuant to the programs subject to the Davis Bacon Act (40 U.S.C. 276a et seq.) and the Regulations of the Department of Labor, 29 CFR part 5 and Texas Government Code section 2258.

63. Compliance Certification with Buy America & American Recovery & Reinvestment Provisions

I, the vendor, am in compliance with all applicable provisions of the Buy America Act and the American Recovery & Reinvestment Act. Purchases made in accordance with the Buy America Act must still follow the applicable procurement rules calling for free and open competition. Texas Department of Agriculture requirements: Vendor MUST provide documentation, including statements on contracts and invoices that all food products will meet the Buy American provisions. ESC participates in the National School Lunch Program and School Breakfast Program and is required to use the nonprofit food service funds, to the maximum extent practicable, to buy domestic commodities or products for Program meals. A domestic commodity or product is defined as one that is either produced in the U.S. or is processed in the U.S. substantially using agricultural commodities that are produced in the U.S. as provided in 7 CFR 210.21(d). Vendor MUST certify the food product was processed in the U.S. and certify the percentage of U.S. content, by weight or volume, in the food component of processed food products supplied to us. Vendor MUST provide documentation that demonstrates that food products meet the Buy American Provision. Situations that may warrant a waiver to permit non-domestic food purchases (used as a last resort):

- a. The product is not produced or manufactured in the US in sufficient and reasonable available quantities of satisfactory quality.
- b. Costs of a US product is significantly higher than the foreign product.

In this case, vendor MUST indicate in bid deviations any product submitted which is non-domestic and attach documentation as to the waiver. Also, vendor MUST notify CEs if a delivery contains non-domestic products, so the CE can approve delivery as an exception to the Buy American provision.

64. Domestic Preference

ESC Region 19 prefer for all purchases, acquisitions, use of goods, products or materials to be produced in the United States including but not limited to iron, aluminum, steel, cement, and other manufactured products.

65. Ban on Foreign Telecommunications

Federal grant funds may not be used to purchase equipment, services, or systems that use “covered telecommunications” equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. “Covered telecommunications” means purchases from Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities), and video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities). Vendor certifies that all products offered are not purchased, manufactured or otherwise affiliated in any way with the above named prohibited companies.

66. Certification of Non-Collusion

I, the vendor, certify under penalty of perjury that their response is in all respects bona fide, fair, and made without collusion or fraud with any person, joint venture, partnership, corporation or other business or legal entity. The vendor agrees to comply with all Federal, state, and local laws, rules, regulations and ordinances, as applicable. It is further acknowledged that vendor certifies compliance with all provisions, laws, acts, regulations, etc. as noted above, in the RFP, and in the Contract and has not in any manner, directly or indirectly, sought by Contract or collusion, or communication or conference, with any person, to fix the proposed price, overhead, profit or cost element of any other vendor, or to secure any advantage against ESC or any person interested in the proposed contract.

67. Contractor Employment Eligibility

By entering the contract, Contractor warrants compliance with the Federal immigration and Nationality Act (FINA), and all other federal and state immigration laws and regulations. The Contractor further warrants that it is in compliance proper with the various state statutes where this contract will operate. Participating government entities including school districts may request verification of compliance from any Contractor or subcontractor performing work under this contract. These entities reserve the right to confirm compliance in accordance with applicable laws. Should the participating entities suspect or find that the contractor or any of its subcontractors are not in compliance, they may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the contract for default, and suspension and/or debarment of the contractor. All costs necessary to verify compliance are the responsibility of the contractor. The offeror complies and maintains compliance with the appropriate statutes which requires compliance with federal immigration laws by State employers, State contractors and State subcontractors in accordance with the E-Verify Employee Eligibility Verification Program. Contractor shall comply with governing board policy of the participating entities in which work is being performed.

68. Compliance Certification with Fingerprinting and Background Checks

If required to provide services on school district property at least five (5) times during a month, contractor shall submit a full set of fingerprints to the school district if requested of each person or employee who may provide such service. Alternately, the school district may fingerprint those persons or employees. An exception to this requirement may be made as authorized in Governing Board policy. The district shall conduct a fingerprint check in accordance with the appropriate state and federal laws of all contractors, subcontractors or vendors and their employees for which fingerprints are submitted to the district. Contractor, subcontractors, vendors and their employees shall not provide services on school district properties until authorized by the District. The offeror shall comply with fingerprinting requirements in accordance with appropriate statutes in the state in which the work is being performed unless otherwise exempted.

69. Certification of Compliance with Texas House Bill 1295

House Bill 1295 was adopted by the Texas Legislature in 2015, adding section 2252.908 to Texas Government Code. The new law states a Texas governmental entity or Texas State Entity may not enter into certain contracts with a business entity unless the business submits a disclosure of interested parties to the Texas Governmental entity or Texas State Agency when the entity submits the signed contract to the governmental entity or state agency. The law applies only to contracts with Texas governments and entities that either (1) requires an action or vote by the governing body of the entity or agency before the contract may be signed or (2) has a value of at least \$1,000,000 on any contracts entered into after January 1, 2016. The new HB 1295 electronic form is provided for information only. Vendor may be required by each ESC Region 19 cooperative member to complete this form. Should this form be required for a Region 19 only contract, it will be requested before recommendation of award.

Vendor agrees to complete form 1295 if requested by ESC.

70. Rights to Inventions Made Under a Contract or Agreement (EDGAR)

If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient 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.

71. Procurement of Recovered Materials (EDGAR)

Vendor agrees to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act where applicable and provide such information and certifications as a vendor may require to confirm estimates and otherwise comply. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

72. Assignment of Contract

Vendor may not assign this Contract or any of its rights, duties or obligations hereunder without the prior written approval of ESC. Any attempted assignment of this Contract by Vendor shall be null and void. Any Purchase Order made as a result of this Contract may not be transferred, assigned, subcontracted, mortgaged, pledged, or otherwise disposed of or encumbered in any way by Vendor without the prior written approval of ESC. This contract cannot be assigned without prior written approval from ESC and approval of assignment documents.

73. Acceptance of Terms and Conditions

By accepting purchase order, vendor accepts all terms and conditions as posted.