

General Terms and Conditions

1. Bid/Proposal Submission

Bid/Proposals must be submitted utilizing this document only and must reach the Burleson Independent School District Purchasing Office on or before the hour on the date specified. Late submittals will be returned unopened. Faxed or emailed proposals will not be accepted.

1.1. Sealed proposals.

Each proposal must be submitted in a SEALED envelope, package or container. The outside of the proposal package, must indicate the following information in clear and legible form:

- a) Full name and address of the proposing entity
- b) And the proposal name in the lower left-hand corner.**
- c) Submit one (1) original. No copies are required unless indicated otherwise.

1.2. Internet Downloads.

Vendors who have not obtained this solicitation document directly from BISD, or who may have downloaded the document from the BISD website, shall be responsible for immediately notifying BISD of their interest in order to receive all written addenda on a timely basis. Vendors who do not so notify BISD and submit proposals without receipt of all addenda issued may be deemed to have submitted proposals not responsive to this Request for Proposal solicitation.

1.3. Altering proposals.

Any change made to any written response on any of the proposal documents must be made in ink by marking through the original entry and clearly entering the new information alongside the change. Changes must not be made with correction fluid. All changes must be "initialed" by the person making the change. (The name of the person who initialed the change must be noted in a footnote on the same page containing the correction.) Proposals cannot be altered or amended after submission deadline.

1.4. Documentation.

All information requested must be provided by the Proposer for the Proposal to be responsive. Failure to provide this information may result in rejection of proposal.

1.5. Attendance.

Proposers are welcome to attend the proposal opening at the date and time indicated in the Notice of Invitation for Proposal, but proposer's presence is not required, and no weight or other consideration toward any award decision will be given to any proposer's attendance or absence at the proposal opening. Recap and tabulation of the proposals will be available after the Board of Trustees has made a determination to any interested party upon WRITTEN request. The form and content of the proposal recaps will be at the sole discretion of the administration of BISD. They may be in electronic form, if email address is on file.

2. Statement of Inclusion/Applicability.

These General Terms and Conditions are applicable to all Proposal Invitations issued by BISD, and by this inclusion, become an integral part of any contract which is awarded, or purchase order issued in association with the specifications with this Proposal Invitation.

2.1. Silence of Specifications.

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

2.2. Error in specifications.

If you discover or suspect an error in the item specifications in this Proposal Invitation, please note it as part of your proposal response.

3. General.

Throughout this document, the terms "Burleson Independent School District, or "BISD" are interchangeable to mean the related activities of the management and staff of the Burleson Independent School District and any one or all of its participating members and their management and staff. The section titles contained in this General Terms and Conditions document are for convenience and reference only, and in no way define, describe, extend, or limit the scope or intent of the provisions of any section of this document.

3.1. Individual item award.

Unless otherwise specified, you may submit a proposal on any or all items. Answer all questions related to each item on which you wish to propose. For items you do not wish to propose on, you may simply leave the questions for that item unanswered (blank). Items will be considered individually and awards will be made on each item independently, except for "related" items for which "compatibility" will be an element of consideration. In such cases, small groups of items will be considered as a unit.

3.2. Best Value.

BISD reserves the right to award by item/part/section or all/none as it deems to be the best value for the district.

3.3. "No Proposal".

Proposers who do not wish to respond to this Proposal Invitation, but who would like to remain on our bidders list for this commodity category should sign and return the "Notice of Invitation for Proposal" form with "No Proposal" indicated on the face of the form. Failure to adhere to this procedure will result in removal of the proposer's name from our bidders list.

3.4. Contract.

The term "contract", as used in this document, means the comprehensive collection of:

- 3.4.1. this General Terms and Conditions document, including any attachments and or amendments hereto,
- 3.4.2. the Item Specifications included in the Proposal Invitation and any subsequent addenda thereto,
- 3.4.3. The proposer's signed Notice of Invitation for Proposal sheet, which must be completed, signed by an authorized representative of the proposing entity, and returned with the proposer's response, along with this ENTIRE Terms and Conditions document and all other forms and information collection pages included with this Proposal Invitation.
- 3.4.4. the proposer's entire response to the Proposal Invitation,
- 3.4.5. the proposer's Notice of Award document,
- 3.4.6. And any additional terms, conditions, or instructions contained in each individual Purchase Order issued by BISD.

Collectively, these documents represent the entire agreement between the parties.

4. Contract

4.1. Contract time.

The time period for purchases covered by any contract resulting from any award under this proposal is stated in the Notice of Invitation for Proposal. Unless otherwise indicated in these General Terms and Conditions, all proposal pricing will be firm through the entire contract period. In the event this contract expires before another proposal is awarded, upon the mutual written agreement of the parties, this contract may be extended on a month to month basis beyond the expiration of the contract time period.

4.2. Assignment.

The successful proposer shall not sell, assign, transfer or convey this contract, in whole or in part, without the prior written consent of BISD.

4.3. Purchase Order.

Contracts will be put into effect by means of purchase order executed by the Business Office after awards have been made.

5. Addendum.

In the event that any changes to this Proposal Invitation occur subsequent to the mailing or other delivery of the original Proposal Invitation, the changes or corrections to this Proposal Invitation will be made by addendum, and any updated information contained in any addendum will prevail over the information contained in the original Proposal Invitation or any previous addendum. Each addendum will be mailed to all entities that are known to have received a copy of this Proposal Invitation. BISD is the sole authority for the issuance of any addendum related to this proposal. Any communications from any person or entity other than the Chief Financial Officer, or designee, regarding any matters related to this proposal are invalid and will have no influence on this Proposal Invitation.

Each addendum must be acknowledged in the manner indicated on the addendum. Any required acknowledgments must be submitted along with the submission of any proposal response.

6. Descriptive/not restrictive/ Substitutions.

Catalog numbers, brand names, or manufacturer's product or reference numbers used in the item specifications are intended to be descriptive, not restrictive. These references, as well as "approved brands" listed, are intended to identify and indicate the type of product being sought, and establish the level of quality desired. If any conflict exists in the item specifications between the product descriptions and any brand names or model or reference numbers used, the product descriptions will override the brand names or model number references.

In most cases, proposals on brands of equivalent nature and quality will be considered, provided they are regularly produced products from a reputable manufacturer. However, in some cases, BISD may find it advantageous to standardize equipment and/or supplies by manufacturer in order to achieve efficiencies in procurement, repair, and operation, to match existing stock, or to satisfy other requirements. In these cases, preference will be given to the specific products identified as "approved brands," especially if all other evaluation factors are deemed to be equal. For this reason, where specific brands or models are identified, it is preferable for the proposer to bid on the exact item specified, in addition to an alternate brand or model where desired.

All proposals must identify the manufacturer, brand, model, etc., of the article being offered. The proposer must supply a complete description and sufficient data for BISD to properly analyze the product being proposed, for proposals on “or equal/equivalent” items other than any “approved brand” specified

❖ **Substitutions.**

If the proposer fails to identify the manufacturer, brand, model, etc., for any item being proposed on, BISD will assume the proposer is proposing on the exact brand names, models, etc., as specified. Substitutions will not be allowed.

7. Proposal Evaluation and Award.

All proposals received in response to this Proposal Invitation which are submitted in accordance with the instructions and restrictions contained in section #1 of this General Terms and Conditions document entitled “Proposal Preparation and Submission Procedures” will initially be considered for award; however, initial consideration of any proposal will not constitute an assessment of its meeting the necessary qualifications, and any proposal may be disqualified at any time during the process of evaluating proposals for failure to meet any other terms or conditions contained anywhere else in the Proposal Invitation.

BISD reserves the right to waive any or all bidding irregularities, formalities, or other technicalities, to be the sole and independent judge of quality and suitability of any products offered, and may accept or reject any proposal in its entirety, or may reject any part of any proposal without affecting the remainder of that proposal, and may award the individual items on this proposal in any combination or in any way to best serve the interests of its members as it perceives those interests to be in its sole discretion.

7.1. Evaluation.

In evaluating the proposals received and determining to which proposer(s) (if any) to award a contract, the following considerations will be taken into account for award recommendations:

- the purchase price
- the reputation of the vendor and of the vendor’s goods and/or services
- the quality of the vendor’s goods and/or services
- the extent to which the goods and/or services meet the needs of BISD
- the vendor’s location and service and delivery capabilities
- the vendor’s past performance
- the warranties offered and the warranty service history
- the probability of continuous availability of the goods and/or services offered
- the total long-term cost to BISD to acquire the vendor’s goods and/or services
- any other relevant factor specifically listed in the request for bids or proposals

7.2. Best value.

It is understood that BISD, through its management, may use all means at their collective disposal to evaluate the proposals received on the above criteria, and the final decision as to the best overall offer, both as to price and to suitability of the products and/or services offered to fit the needs of BISD will rest solely with the Board of Trustees.

7.3. All or nothing.

Unless otherwise indicated in this proposal invitation, “all or nothing” proposals are not acceptable and will be rejected. The proposer must be willing to accept a partial award for any combination of the items and/or services proposed, and must be willing to share the business with any other successful proposers.

8. Quantities.

Quantities reflected in this Proposal Invitation are estimates based upon the combined projected needs for BISD. Quantities are the best estimate of anticipated needs available at the time of publication of this Proposal Invitation, but the accuracy of these estimated quantities may be affected by numerous factors including, but not limited to:

- Budgetary adjustments,
- Students participation
- Availability of government commodities or other subsidies, changing market forces, unintentional errors or omissions.

Actual needs may be greater or less than the estimated quantities provided.

Unless otherwise specified by the proposer, BISD will be allowed to purchase up to twenty-five (25%) more or up to twenty-five percent (25%) less than the estimated quantities for any item and still obtain the item at the proposal price.

Vendor at the close of the contract period agree not to hold BISD liable for any inaccuracies in estimated quantities or for any products on hand.

9. Packaging.

Unless otherwise provided for in this Proposal Invitation, all products supplied under any contract resulting from this Proposal Invitation must be packaged in containers that are new, appropriately designed for the products involved, and sturdy enough to protect the products involved in loading, transit, unloading and storage. Any products supplied under any contract resulting from this Proposal for Invitation for which palletizing is appropriate must be delivered on standard 48" 4-way pallets in good, serviceable condition.

10. Pricing.

All "Line Item" Proposals must be for a specific price for the unit of measure specified for that item. The proposer is responsible for clearly noting any differences in proposed packaging and/or units of measure in the proposal response, and the proposer shall understand that if the item in question is awarded to the proposer, the quantity specified for that item will be adjusted to achieve an approximately equivalent amount of the product.

"Discount from Catalog" Proposal Invitations require a single discount percentage to be applied to all items in the proposer's published catalog, which must be supplied with the proposal response.

"Cost Plus" proposals will not be accepted unless otherwise requested in this Proposal Invitation.

Proposal prices must be firm for acceptance for at least 90 days from proposal opening date, unless otherwise specified in this Proposal Invitation or in the proposer's response.

11. Sales Tax.

BISD is a public jurisdiction that is exempt from sales, excise, and use taxes. Tax Exemption Certificates will be provided by BISD upon individual requests from the vendor. Unless otherwise specified in this Proposal Invitation, sales tax will not be included in any proposal response or invoice submitted by any vendor unless the vendor has requested a Tax Exemption Certificate from the individual Cooperative member in writing and failed to receive the same within a reasonable period of time. The Limited Sales, Excise, and Use Tax Laws recognize the inclusion of tax exemption information as part of a purchase order document to be as binding as if it had been submitted separately, and by responding to this Proposal Invitation, the proposer agrees to accept tax exemption information in such form.

12. Delivery and Transportation.

Unless otherwise noted in these General Terms and Conditions or the Purchase Order, or unless prior approval has been obtained from BISD all deliveries shall be made between the hours of 8:00 A.M. through 12:00 P.M. and 1:00 P.M. through 4:30 P.M., Monday through Friday, with the exception of holidays.

- **F.O.B. destination.**

All freight, delivery, and handling charges are the responsibility of the proposer, and all proposal prices must be quoted freight prepaid, F.O.B. destination, and shall include all freight, delivery, and handling charges, including unloading and inside deliveries where required. Cartons must be marked as indicated on the Purchase Order.

- **Packing List.**

Each shipment must include a packing list and waybill or delivery ticket, and shall show (a) name and address of successful proposer, (b) name and address of receiving department and/or delivery location, (c) BISD Purchase Order number, and (d) descriptive information as to the merchandise delivered, including item number, quantity, number of container, etc.

Delivery under terms of the request for sealed proposals will be in accordance with the dates indicated therein except where no date is indicated; the vendor will enter the earliest date, which can be assured. Vendors should keep the district advised of the status of orders as failure to meet delivery dates may result in removal from the approved bidder list.

All goods are subject to inspection and return at the expense of the vendor if found to be inferior to those specified.

Except for those items that have hidden defects or that do not meet specifications, title to all products shall pass to BISD upon receipt and acceptance at the time of delivery.

13. Quality.

Unless otherwise indicated in the Proposal Invitation, all items must be new and in first class condition, and must conform to the highest standards of manufacturing practice, including containers suitable for shipment and storage. Unless otherwise requested, BISD will not accept "factory seconds" or otherwise inferior goods, and reserves the right to return any such item(s) within thirty (30) days of receipt at vendor's expense.

All electrical items must meet all applicable OSHA standards and regulations, and must bear the appropriate listing from US, FMRC, NEMA, or UL Laboratories.

Materials Safety Data Sheets (MSDS) on chemicals or any other products customarily requiring MSDS Sheets must be provided.

14. Product Inspection, Testing, and Defective Items.

All products supplied under this contract should arrive in the best possible condition and will be subject to inspection, testing, and approval by BISD.

Products damaged in shipment will be considered as defective products and will be picked up and replaced by the vendor within five (5) business days or on the next service date, whichever is sooner, without charge for the replacement(s) or delivery.

15. Warranties.

By submission of a proposal, the proposer warrants that the proposer is an authorized dealer, distributor, or manufacturer for the product(s) being offered, that all items being proposed conform to the specifications for which the items are being offered, and that all items supplied under any contract related to this proposal invitation will be free from all defects in material, workmanship, and title.

A minimum of ninety (90) days product guarantee or the manufacturer's standard commercial warranty, whichever is greater, shall apply to all products purchased under this Proposal Invitation. This warranty shall provide for replacement of defective merchandise, parts, and labor, and shall include pick-up of the defective merchandise BISD's location and delivery of the replacement(s) to the same location. The warranty shall be effective from the date of acceptance of the merchandise.

16. Withdrawal or Modification of Proposal.

A proposal may not be withdrawn or cancelled by the proposer for a period of ninety (90) days following the date designated for the receipt of proposals, and proposer so agrees upon submittal of their proposal.

17. Substitutions.

BISD will not accept any substitutes after item(s) have been awarded as specified, unless such substitutions are deemed to be in the best interest of BISD, and unless prior agreements have been reached and reduced to writing regarding such substitutions. Substituting without the prior approval of BISD will constitute a breach of contract by the vendor which may result in the initiation of actions which are covered in the Remedies section of this General Terms and Conditions document.

18. Deviations from Item Specification or General Terms and Conditions.

Any and all limitations, exceptions, qualifications, special conditions, or deviations from these General Terms and Conditions or any of the item specifications including the offering of any alternate to the "approved brand and/or model" (where identified) must be clearly noted in detail by the proposer at the time of submission of the proposal. The absence of such limitations, exceptions, qualifications, special conditions, or deviations being submitted in writing with the proposer's response will hold the proposer accountable to BISD to perform in strict accordance with all these General Terms and Conditions and all the item specifications as written, including any "approved brands and/or models" identified. The proposer should be aware that the submission of any such limitations exceptions, qualifications, special conditions, or deviations with the proposal response may place the proposer at a competitive disadvantage or otherwise prevent BISD from considering the proposal on the affected item(s).

Any deviation from any of the item specifications, including the delivery of any product other than the specific brand and model of the product awarded, will be grounds for rejection of the product(s) when delivered, and will expose the vendor to the remedies identified in the Remedies section of this General Terms and Conditions document, and may jeopardize future business from BISD.

19. Contracts and Purchase Orders.

A response to this Proposal Invitation is an offer to contract with BISD based upon the Item Specifications and the General Terms and Conditions contained in the Proposal Invitation.

- Proposals to Contracts.

Proposals become contracts when they are both accepted by BISD through an Award Notice to the Proposer, and put into effect by the issuance of a Purchase Order(s) by the Business Office after awards have been made and signed by an authorized representative of BISD. The contract shall be interpreted by and governed under the laws of the State of Texas.

- ❖ This contract shall collectively include:

- (a) The General Terms and Conditions and the Item Specifications included in the Proposal Invitation and any subsequent addenda thereto,
- (b) The proposer's signed Notice of Invitation for Proposal sheet and any other data collection sheets included with the Proposal Invitation,
- (c) The proposer's entire response to the Proposal Invitation,
- (d) The proposer's Notice of Award document,
- (e) Any additional terms, conditions, or instructions contained in each individual Purchase Order.

20. Invoices and Payment.

20.1. All Invoices must reflect

- (a) the name and address of the vendor,
- (b) the name and address location of the receiving entity,
- (c) the appropriate Purchase Order Number, and
- (d) Detailed descriptive information identifying the item(s) delivered, including quantity, item number, product code, item description, etc., and must include a properly signed copy of the delivery receipt.

20.2. Invoice Mailing Address

BISD Accounts Payable
1160 SW Wilshire Blvd.
Burlleson, TX 76028

20.3. Terms of Payment

BISD will pay all invoices for accepted merchandise or services not later than 30 days from date of acceptance or delivery as set forth in the specifications for this proposal. Invoices with incorrect prices or other errors or inconsistencies will not be paid until corrected, whether by credit memo(s) or issuance of a corrected invoice. At the option of BISD, invoices may be corrected upon receipt and payment may be made based upon their corrections.

21. Remedies for Non-Performance of Contract, and Termination of Contract.

The successful proposer and BISD agree that both parties have all rights, duties, and remedies available as stated in the Uniform Commercial Code. All services and supplies shall conform to proposed specifications and shall be free from all defects in material, workmanship and title.

If the vendor cannot comply with the terms and conditions in fulfilling its contract as anticipated, the vendor must supply the same products or services contracted from other sources at the contract price. The vendor's delay in the above will constitute the vendor's material breach of contract, whereupon BISD may terminate the vendor's contract for cause as provided by the remainder of this section.

21.1. Contract Termination.

Except as otherwise provided for within the General Terms and Conditions of this document, this contract may be terminated in whole or in part by either party in the event of substantial failure by the other party to fulfill its obligations under this contract through no fault of the terminating party; provided that no such termination may be implemented unless and until the other party is given (1) at least ten (10) days written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party, followed by a reasonable opportunity, of not more than ten (10) working days, to rectify the defects in products or performance, prior to termination.

21.2. Cancelled contract.

In the event BISD terminates this contract, in whole or in part, for any reason provided for within the contract, BISD reserves the right to award, to the extent otherwise allowed by law, the canceled contract, or any portion thereof, to the next lowest or best proposal as it deems such award to be in the best interest of BISD. Any contract termination resulting from any cause other than a Force Majeure event will be deemed valid reason for not considering any future proposals from the defaulting vendor.

21.3. Valid causes for termination.

- a) The vendor's failure to adhere to any of the provisions of the General Terms and Conditions of this Proposal Invitation
- b) The vendor's delivering any product(s) that fails to meet the Item Specifications included in this Proposal Invitation relating to the awarded product(s)
- c) The vendor delivering any substitution(s) of product(s) different than those originally proposal and awarded without the prior written approval of BISD,
- d) The vendor's failure to meet the required delivery schedules as identified in the contract documents, or
- e) The vendor's violation of any other provision contained within these General Terms and Conditions or any attachment thereto which provides for contract termination as a remedy.

Notwithstanding anything contained in this section, in the event of the vendor's breach of any provision in this contract, BISD reserves the right to enforce the performance of this contract in any manner prescribed by law or deemed to be in the best interest of BISD, including but not limited to, the purchase of other products of like type and quality from other sources in the open market.

22. Force Majeure.

The term Force Majeure shall include, but is not limited to, governmental restraints or decrees, provided they affect all companies in the vendor's industry equally and are not actions taken solely against the vendor; acts of God (except natural phenomena, such as rain, wind or flood, which are normally expected in the locale in which performance is to take place); work stoppages due to labor disputes or strikes; fires; explosions; epidemics; riots; war; rebellion; or sabotage.

The party seeking relief due to Force Majeure will be required to promptly notify the other party in writing, citing the details of the Force Majeure event, and will be required to use due diligence to overcome obstacles to performance created by the Force Majeure event, and shall resume performance immediately after the obstacles have been removed, provided the contract has not been terminated in the interim.

Delay or failure of performance, by either party to this contract, caused solely by a Force Majeure event shall be excused for the period of delay caused solely by the Force Majeure event, provided the affected party has promptly notified the other party in writing. Neither party shall have any claim for damages against the other resulting from delays caused solely by Force Majeure.

BISD will not be responsible for any costs incurred by the vendor because of the Force Majeure event.

Notwithstanding any other provision of this section, in the event the vendor's performance of its obligations under this contract is delayed or stopped by a Force Majeure event, BISD shall have the option to terminate this contract in accordance with the "Remedies" section of this General Terms and Conditions document. Furthermore, this section shall not be interpreted as to limit or otherwise modify any of BISD's rights as provided elsewhere in this contract.

23. Venue.

This agreement will be construed and governed according to the laws of the State of Texas. Both parties agree that venue for any litigation arising from this contract shall lie in state courts in Johnson County, Texas.

24. Waiver.

No claims or rights arising out of a breach of this contract can be discharged in whole or part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

25. Interpretation-Parol Evidence.

This writing is intended by the parties as a final expression of their agreement and a complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any terms used in this agreement. Acceptance or acquiescence in a course of performance rendered under this agreement shall not be relevant to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Texas Business & Commerce Code is used in this agreement, the definition contained in the Code shall be controlling.

26. Right to Assurance.

Whenever one party to this contract in good faith has reason to question the other party's intent to perform he may demand that the other party give written assurance of his intent to perform. In the event that a demand is made and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.

27. Assignment- Delegation.

No responsibility or obligation created by this contract shall be assigned or delegated by the vendor without written permission from BISD. Any attempted assignment or delegation by the vendor shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

28. Non-Collusion Certification.

By signing this proposal, the proposer certifies that, to the best of his/her knowledge;

- 1) Neither the proposer nor any business entity represented by the proposer has received compensation for participation in the preparation of the item specifications or the General Terms and Conditions related to this Proposal Invitation,
- 2) This proposal or proposal has been arrived at independently and is submitted without collusion with any other proposer, with any competitor or potential competitor, or with any other person or entity to obtain any information or gain any special treatment or favoritism that would in any way limit competition or give any vendor an unfair advantage over any other vendor with respect to this proposal,
- 3) The proposer has not accepted, offered, conferred, or agreed to confer, and will not in the future accept, offer, confer, or agree to confer, any benefit or anything of value to any person or entity related BISD in connection with any information or submission related to this proposal, any recommendation, decision, vote, or award related to this proposal, or the exercise of any influence or discretion concerning the sale, delivery, or performance of any product or service related to this proposal,
- 4) Neither the proposer, nor any business entity represented by the proposer, nor anyone acting for such business entity, has violated the Federal Antitrust Laws or the antitrust laws of this State with regard to this proposal, and this proposal or

proposal has not been knowingly disclosed, and will not be knowingly disclosed to any other proposer, competitor, or potential competitor prior to the opening of bids or proposals for this project,

- 5) No attempt has been or will be made to induce any other person or entity to submit or to not submit a bid or proposal.

The person signing this bid or proposal certifies that he/she has fully informed himself/herself regarding the accuracy of the statements contained in this certification.

29. Indemnification

To the fullest extent permitted by applicable law, the CONTRACTOR and its agents, partners, employees, and consultants (collectively "Indemnitors") shall and do agree to indemnify, protect, defend with counsel approved by the District, and hold harmless the District and its affiliated enterprises, representatives of the District, and their respective officers, directors, members of the board, partners, employees and agents collectively "Indemnitees") from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses, including attorney fees, of any nature, kind, or description (collectively "Liabilities") of any person or entity whomsoever arising out of, caused by, or resulting from the performance of services, or provision of goods, by contractor pursuant to this contract, or any part thereof, which are caused in whole or in part by any negligent act or omission of the CONTRACTOR or, anyone directly or indirectly employed by it or anyone for whose acts it may be liable even if it is caused in part by the negligence or omission of any Indemnitee, so long as it is not caused by the sole negligence or willful misconduct of any Indemnitee. In the event more than one of the Indemnitors are connected with an accident or occurrence covered by this indemnification, then each of such Indemnitors shall be jointly and severally responsible to the Indemnitees for indemnification and the ultimate responsibility among such Indemnitors for the loss and expense of any such indemnification shall be settled by separate proceedings and without jeopardy to any Indemnitee.

CONTRACTOR shall protect and indemnify the District from and against all claims, damages, judgments and loss arising from infringement or alleged infringement of any United States patent, or copyright, arising by or out of any of the services performed or goods provided hereunder or the use by CONTRACTOR or by the District at the direction of CONTRACTOR of any article or material, provided that upon becoming aware of a suit or threat of suit for patent or copyright infringement, the District shall promptly notify CONTRACTOR and CONTRACTOR shall be given full opportunity to negotiate a settlement. CONTRACTOR does not warrant against infringement by reason of the District's design of articles or the use thereof in combination with other materials or in the operation of any process. In the event of litigation, the District agrees to cooperate reasonably with CONTRACTOR and parties shall be entitled, in connection with any such litigation, to be represented by counsel at their own expense.

The indemnities contained herein shall survive the termination of any agreement or purchase order for any reason whatsoever.

District is prohibited from indemnifying third parties, including CONTRACTOR under Texas law. Any requirement or request for indemnity from the District by any CONTRACTOR or contract provision shall be void and of no effect between District and CONTRACTOR.

30. Non-Appropriation Clause

Renewal of contracts will be in accordance with Local Government Code 271.903 concerning non-appropriation of funds for multi-year contracts. The DISTRICT Board of Trustees reserves the right to rescind the contract at the end of each fiscal year if it is determined that there are insufficient funds to extend the contract. In the event that the necessary funding is not approved, then the affected multi-year contract becomes null and void, effective June 30th of the fiscal year for which such approval has been denied.

31. References

Please list three references, preferably school districts, or entities of similar size and scope, with which you have done business in the last three years. Include company name, address, phone number, contact person and email address.

32. Attorney Fees

The prevailing party in any dispute between District and CONTRACTOR arising under or in connection with the contract between District and CONTRACTOR shall be entitled to recover its reasonable and necessary attorney's fees, as allowed by Texas Local Government Code Section 271.159.