

September 1, 2016

To all Vendors:

You are invited to submit a Region 18 ESC Professional Consultant and Contract Services RFP (R18-PC-16-0001) to become an approved consultant vendor for Region 18 Education Service Center. This RFP is an “Open” submission RFP, in that there will not be a closing date.

**Bids will be accepted electronically through the Region 18 PC&CS RFP site (<http://psrfq.esc18.net>).**

**The bid submission also requires vendors to complete required signature documents online through Adobe Sign.** It is best to complete these forms before entering data on the PC&CS RFP site. Upon completing the electronic documents and clicking on the submit button you will receive the first of two emails. In the first email you confirm your email address. Then you will receive a second email. In that second email will be a pdf attachment of the completed and signed forms. On the last page of the attachment you will find the Transaction ID.

**You MUST return to the [Region 18 PC&CS site](#) enter the CAPTCHA characters, your name, email address and click “Continue to Form” to complete your submission.**

Consultant and contract vendors who are on the Region 18 mailing list will receive an email or letter with information about how to access the Region 18 Professional Consultant and Contract Vendor Proposal Site to submit entries electronically. Vendors who have not received their electronic information or new vendors interested in electronic submission may go to the site and begin the registration process.

The Region 18 Professional Consultant and Contract Services RFP will create a pool of consultants for the ESC to choose from when needing to contract with a professional consultant or contractor for services such as Educational Consulting, Keynote Speakers, Technology Consulting, Child Nutrition Consulting, etc. This RFP will provide ESC decision-making staff a resource where consultants can be chosen and contracted based on qualifications that best fit the need of each individual situation while also meeting competitive purchasing law requirements.

**A resume or biography must be included.** Failure to include a resume or biography with the completed RFP packet will result in your RFP being rejected (**no exceptions**). There are instructions on how to upload resume or biography at the electronic submission site. The information received in this RFP will be maintained for 3 years, a new RFP will only be needed to update pricing, contact and other information.

Vendors meeting all requirements will be notified of award and placement in the pool of approved consultants via email

**\*\*Please make sure you have read the bid packet completely before you submit a bid. \*\***

Sincerely,



John Burdsal

Purchasing Specialist



## VENDOR CONTRACT

Between \_\_\_\_\_ and

(Company Name)

### **Region 18 Education Service Center (ESC18) For Professional Consultant and Contract Services RFP (R18-PC-16-0001) General Information**

The vendor contract shall include the contract, the terms and conditions, special terms and conditions, any agreed upon amendments, as well as all of the sections of the solicitation and the awarded vendor's proposal. Once signed, if an awarded vendor's proposal varies or is unclear in any way from the ESC18 contract, ESC18, at its sole discretion, will decide which provision will prevail. Other documents to be included are the awarded vendor's proposals, task orders, purchase orders and any adjustments which have been issued.

The following pages will constitute the contract between the successful vendors(s) and ESC18. Bidders shall state, in a separate writing, and include with their proposal response, any required exceptions or deviations from these terms, conditions, and specifications. If agreed to by ESC18, they will be incorporated into the final contract.

The Vendor Contract ("Contract") made and entered into by and between Region 18 Education Service Center (hereinafter referred to as "ESC18" respectfully) a government educational institution in the State of Texas, having its principal place of business at 2811 Laforce Blvd, Midland, TX 79706. This contract consists of the provisions set forth below, including provisions of all Attachments referenced herein. In the event of a conflict between the provisions set forth below and those contained in any Attachment, the provisions set forth shall control.

#### **Definitions**

**PURCHASE ORDER** is the ESC18 member's approval providing the authority to proceed with the negotiated delivery order under the contract. Special terms and conditions as agreed to between the vendor and ESC18 will be added as addendums to the PO. Items such as certificate of insurance, bonding requirements, small or disadvantaged business goals are some of the addendums possible.

**PREMIUM HOURS** are defined as those hours not included in regular hours or recognized holidays. Premium hours are to be approved by the ESC18 for each delivery order and noted in the delivery order proposal as a line item during negotiations.

**REGULAR HOURS** are defined as those hours between the hours of 8:30 AM and 4:30 PM Monday thru Friday.

# Terms and Conditions

## Freight

All deliveries shall be freight prepaid, F.O.B. destination and shall be included in all pricing offered unless otherwise clearly stated in writing.

## Warranty Conditions

All supplies equipment and services shall include manufacturer's minimum standard warranty unless otherwise agreed to in writing. Vendor shall be an authorized dealer, distributor or manufacturer for all products. All equipment proposed shall be new unless clearly stated in writing.

## Customer Support

The Vendor shall provide timely and accurate customer support to ESC18. Vendors shall respond to such requests within one (1) working day after receipt of the request. Vendor shall provide training regarding products and services supplied by the Vendor unless otherwise clearly stated in writing at the time of purchase. (Unless training is a line item sold or packaged and must be purchased with product.)

## Contracts

**All contracts and agreements** between Vendors and ESC18 shall strictly adhere to the statutes that are set forth in the Uniform Commercial Code as most recently revised.

**Contracts for purchase** will normally be put into effect by means of a purchase order(s) executed by authorized agents of ESC18.

**Davis Bacon Act** requirements will be met when Federal Funds are used for construction and/or repair of buildings.

## Tax exempt status

A taxable item sold, leased, rented to, stored, used, or consumed by any of the following governmental entities is exempted from the taxes imposed by this chapter:(1) the United States; (2) an unincorporated instrumentality of the United States; (3) a corporation that is an agency or instrumentality of the United States and is wholly owned by the United States or by another corporation wholly owned by the United States;(4) the State of Texas; (5) a Texas county, city, special district, or other political subdivision; or (6) a state, or a governmental unit of a state that borders Texas, but only to the extent that the other state or governmental unit exempts or does not impose a tax on similar sales of items to this state or a political subdivision of this state. Texas Tax Code § 151.309.

## Assignments of contracts

No assignment of contract may be made without the prior written approval of ESC18. Payment can only be made to the awarded Vendor or vendor assigned dealer.

## Disclosures

1. Vendor affirms that he/she has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this contract.

2. Vendor shall attach, in writing, a complete description of any and all relationships that might be considered a conflict of interest in doing business with participants in the ESC18 program.
3. The vendor affirms that, to the best of his/her knowledge, the offer has been arrived at independently, and is submitted without collusion with anyone to obtain information or gain any favoritism that would in any way limit competition or give an unfair advantage over other vendors in the award of this contract.

### **Renewal of Contracts**

The contract is for one (1) year with an option for renewal for 2 consecutive years. Total term of contract can be up to 3 years if sales are reported through the contract and both parties agree. As this will be an open ended RFP, a new RFP will only be needed to update pricing, contact and other information.

### **Shipments**

The Vendor shall ship ordered products within five (5) working days after the receipt of the order. If a product cannot be shipped within that time, the Vendor shall notify ESC18 as to why the product has not shipped and shall provide an estimated shipping date, if applicable. ESC18 may cancel the order if estimated shipping time is not acceptable.

### **Invoices**

The Vendor or vendor assigned dealer shall submit invoices, to ESC18. Each invoice shall include the ESC18 purchase order number. The shipment tracking number or pertinent information for verification of ESC18 receipt shall be made available upon request. The Vendor or vendor assigned dealer shall not invoice for partial shipments unless agreed to in writing in advance by ESC18.

### **Payments**

ESC18 will make payments directly to the Vendor or vendor assigned dealer at net 45 days after receiving invoice.

### **Pricing**

The Vendor contracts to provide pricing to ESC18 that is the lowest pricing available to like customers as well purchasing cooperatives and the pricing shall remain so throughout the duration of the contract. The Vendor agrees to promptly lower the cost of any product purchased by ESC18 following a reduction in the manufacturer or publisher's direct cost to the Vendor. In the event that a price increase occurs, a new RFP will be needed to update pricing, contact and other information.

### **Indemnity**

1. **Indemnity for Personality Contracts.** Vendor agrees to indemnify and hold harmless and defend ESC18, officers and employees, from and against all claims and suits for damages, injuries to persons (including death), property damages, losses, and expenses including court costs and attorney's fees, arising out of, or resulting from, Vendor's performance of this contract, including all such causes of action based upon common, constitutional, or statutory law, or based in whole or in part, upon allegations of negligent or intentional acts on the part of the Vendor, its officers, employees, agents, subcontractors, licensees, invitees, whether or not such claims are based in whole or in part upon the negligent acts or omissions of the ESC18, officers, employees, or agents.

2. **Indemnity for Performance Contracts.** The Vendor agrees to indemnify and hold harmless and defend ESC18, officers and employees from and against all claims and suits for damages, injuries to persons (including death), property damages, losses, and expenses including court costs and attorney's fees, arising out of, or resulting from, Vendor's work under this contract, including all such causes of action based upon common, constitutional, or statutory law, or based in whole or in part, upon allegations of negligent or intentional acts on the part of the Vendor, its officers, employees, agents, subcontractors, licensees, or invitees. Vendor further agrees to indemnify and hold harmless and defend ESC18, officers and employees, from and against all claims and suits for injuries (including death) to an officer, employee, agent, subcontractor, supplier or equipment lessee of the Vendor, arising out of, or resulting from, Vendor's work under this contract whether or not such claims are based in whole or in part upon the negligent acts or omissions of the ESC18, officers, employees, or agents.

**Attorney's Fees--Texas Local Government Code § 271.159 is expressly referenced.**

Pursuant to §271.159, TEXAS LOC. GOV'T CODE, in the event that any one of the Parties is required to obtain the services of an attorney to enforce this Agreement, the prevailing party, in addition to other remedies available, shall be entitled to recover reasonable attorney's fees and costs of court.

### **Multiple Vendor Awards**

ESC18 reserves the right to award multiple vendor contracts for categories when deemed in the best interest of the ESC18. Categories are established at the discretion of ESC18.

### **State of Texas Franchise Tax**

By signature hereon, the bidder hereby certifies that he/she is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Tax Code.

### **Miscellaneous**

The Vendor acknowledges and agrees that continued participation as a vendor for ESC18 is subject to ESC18's sole discretion and that any Vendor may be removed from the participation at any time with or without cause. Nothing in the contract or in any other communication between ESC18 and the Vendor may be construed as a guarantee that ESC18 will submit any orders at any time. ESC18 reserves the right to request additional proposals for items already on contract at any time.

### **Purchase Order Pricing/Product Deviation**

If a deviation of pricing/product on a purchase order occurs, ESC18 is to be notified within 24 hours of receipt of order.

### **Cancellation for non-performance or contract deficiency**

ESC18 may terminate any contract if ESC18 has not used the contract, or if purchase volume is determined to be "low volume" in any 12-month period. ESC18 reserves the right to cancel the whole or any part of this contract due to failure by awarded vendor to carry out any obligation, term or condition of the contract. ESC18 may issue a written deficiency notice to awarded vendor for acting or failing to act in any of the following:

- Providing material that does not meet the specifications of the contract;
- Providing work and/or material that was not awarded under the contract;

- Failing to adequately perform the services set forth in the scope of work and specifications;
- Failing to complete required work or furnish required materials within a reasonable amount of time;
- Failing to make progress in performance of the contract and/or giving ESC18 reason to believe that awarded vendor will not or cannot perform the requirements of the contract; and/or
- Performing work or providing services under the contract prior to receiving a ESC18 reviewed purchase order for such work.

Upon receipt of the written deficiency, awarded vendor shall have ten (10) days to provide a satisfactory response to ESC18. Failure to adequately address all issues of concern may result in contract cancellation. Upon cancellation under this paragraph, all goods, materials, work, documents, data and reports prepared by awarded vendor under this contract shall become the property of ESC18 on demand.

### **Form of Contract**

The form of contract for this solicitation shall be the Request for Proposal, the awarded proposal(s) and best and final offer(s), and properly issued and reviewed purchase orders referencing the requirements of the Request for Proposal. If a vendor submitting an offer requires ESC18 to sign an additional agreement, a copy of the proposed agreement must be included with the proposal.

Vendor contract documents: ESC18 will review proposed vendor contract documents. Vendor's contract document shall not become part of ESC18's contract with vendor unless and until an authorized representative of ESC18 reviews and approves it.

### **Licenses**

Awarded vendor shall maintain in current status all federal, state and local licenses, bonds and permits required for the operation of the business conducted by awarded vendor. Awarded vendor shall remain fully informed of and in compliance with all ordinances and regulations pertaining to the lawful provision of services under the contract. ESC18 reserves the right to stop work and/or cancel contract of any awarded vendor whose license(s) expire, lapse, are suspended or terminated.

### **Novation**

If awarded vendor sells or transfers all assets or the entire portion of the assets used to perform this contract, a successor in interest must guarantee to perform all obligations under this contract. ESC18 reserves the right to accept or reject any new party. A simple change of name agreement will not change the contractual obligations of awarded vendor.

### **Site Requirements (when applicable to service or job)**

Cleanup: Awarded vendor shall clean up and remove all debris and rubbish resulting from their work as required or directed by ESC18 Member. Upon completion of work, the premises shall be left in good repair and an orderly, neat, clean and unobstructed condition.

Preparation: Awarded vendor shall not begin a project for which ESC18 Member has not prepared the site, unless awarded vendor does the preparation work at no cost, or until ESC18 Member includes the cost of site preparation in a purchase order.



Site preparation includes, but is not limited to: moving furniture, installing wiring for networks or power, and similar pre-installation requirements.

Registered sex offender restrictions: For work to be performed at schools, awarded vendor agrees that no employee of a sub-contractor who has been adjudicated to be a registered sex offender will perform work at any time when students are or reasonably expected to be present. Awarded vendor agrees that a violation of this condition shall be considered a material breach and may result in the cancellation of the purchase order at the ESC18 Member's discretion.

Awarded vendor must identify any additional costs associated with compliance of this term. If no costs are specified, compliance with this term will be provided at no additional charge.

Safety measures: Awarded vendor shall take all reasonable precautions for the safety of employees on the worksite, and shall erect and properly maintain all necessary safeguards for protection of workers and the public. Awarded vendor shall post warning signs against all hazards created by the operation and work in progress. Proper precautions shall be taken pursuant to state law and standard practices to protect workers, general public and existing structures from injury or damage.

### **Smoking**

Persons working under contract shall adhere to local smoking policies. Smoking will only be permitted in posted areas or off premises.

### **Invoices**

The awarded vendor shall submit invoices to the participating entity clearly stating "Per ESC18 Contract". The shipment tracking number or pertinent information for verification shall be made available upon request.

### **Marketing**

Awarded vendor agrees to allow ESC18 to use their name and logo within website, marketing materials and advertisement. Any use of ESC18 name and logo or any form of publicity, inclusive of press release, regarding this contract by awarded vendor must have prior approval from ESC18.

### **Supplemental agreements**

The entity participating in the ESC18 contract and awarded vendor may enter into a separate supplemental agreement to further define the level of service requirements over and above the minimum defined in this contract i.e. invoice requirements, ordering requirements, specialized delivery, etc. Any supplemental agreement developed as a result of this contract is exclusively between the participating entity and awarded vendor. ESC18, its agents, ESC18 and employees shall not be made party to any claim for breach of such agreement.

### **Legal obligations**

It is the responding vendor's responsibility to be aware of and comply with all local, state and federal laws governing the sale of products/services identified in this RFP and any awarded contract thereof. Applicable laws and regulations must be followed even if not specifically identified herein.

### **Audit rights**

Awarded Vendor shall, at their sole expense, maintain appropriate due diligence of all purchases made by ESC18. ESC18 reserves the right to audit the accounting for a period of three (3) years from the time such purchases are made. This audit right shall survive termination of this Agreement for a period of one (1) year from the effective date of termination. ESC18 shall have authority to conduct random audits of Awarded Vendor's pricing that is offered to ESC18. Notwithstanding the foregoing, in the event that ESC18 is made aware of any pricing being offered that is materially inconsistent with the pricing under this agreement, ESC18 shall have the ability to conduct the audit internally or may engage a third-party auditing firm. In the event of an audit, the requested materials shall be provided in the format and at the location designated by ESC18.

### **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 fully 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.

### **Services**

When applicable, performance bonds will be required on construction or labor required jobs over \$100,000 and payment bonds on jobs over \$25,000 or awarded vendor will meet the ESC18's local and state purchasing requirements. Awarded vendors may need to provide additional capacity as jobs increase. Bonds will not require that a fee be paid to ESC18. The actual cost of the bond will be added to the purchase order.

### **Scope of Services**

The specific scope of work for each job shall be determined in advance and in writing between ESC18 Member and Awarded vendor. It is okay if the ESC18 member provides a general scope, but the awarded vendor should provide a written scope of work to the ESC18 member as part of the proposal. Once the scope of the job is agreed to, the ESC18 member will issue a PO with the estimate referenced as an attachment along with bond and any other special provisions agreed to for the ESC18 member. If special terms and conditions other than those covered within this solicitation and awarded contracts are required, they will be attached to the PO and shall take precedence over those in the base contract.

### **Project Delivery Order Procedures**

The ESC18 may make a request of the awarded vendor under this contract when the ESC18 has services that need to be undertaken. Notification may occur via phone, the web, email, fax, or in person. Upon notification of a pending request, the awarded vendor shall make contact with the ESC18 as soon as possible, but must make contact with the ESC18 within two working days.

**Scheduling of Projects**

Scheduling of projects (if applicable) will be accomplished when the ESC18 issues a purchase order that will serve as “the notice to proceed”. The period for the delivery order will include the mobilization, materials purchase, installation and delivery, design, weather, and site cleanup and inspection. No additional claims may be made for delays as a result of these items. When the tasks have been completed the awarded vendor shall notify the client and have ESC18 inspect the work for acceptance under the scope and terms in the PO. ESC18 will issue in writing any corrective actions that are required. Upon completion of these items, ESC18 will issue a completion notice and final payment will be issued.

**Support Requirements**

If there is a dispute between the awarded vendor and ESC18, ESC18 or its representatives will assist in conflict resolution or third party (mandatory mediation), if requested by either party. ESC18, or its representatives, reserves the right to inspect any project and audit the awarded vendors ESC18 project files, documentation and correspondence.

**Check one of the following responses to the General Terms and Conditions:**

We take no exceptions/deviations to the **general** and/or **special terms and conditions**.

(Note: If none are listed below, it is understood that no exceptions/deviations are taken.)

We take the following exceptions/deviations to the **general** and/or **special terms and conditions**. All exceptions/deviations must be clearly explained. Reference the corresponding general or special terms and conditions that you are taking exceptions/deviations to. The proposer must clearly state if you are adding additional terms and conditions to the general or special terms and conditions. Provide details on your exceptions/deviations below:

Exceptions:

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Signature

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Date

State of Texas Legislative Bill No. 1, Section 44.034, Notification of Criminal History, Subsection (a), states that “a person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony.”

Subsection (b) states “a school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract.”

**THIS NOTICE IS NOT REQUIRED OF A PUBLICLY-HELD CORPORATION**

I, the undersigned agent for the firm named below, certify that the information concerning notification of felony convictions has been reviewed by me and the following information furnished is true to the best of my knowledge.

**VENDOR’S NAME** \_\_\_\_\_

**AUTHORIZED COMPANY OFFICIAL’S NAME (PRINTED)** \_\_\_\_\_

**Signature of Company Official** \_\_\_\_\_

**Place a check mark in the statement that best describes your firm:**

- A. My firm is a publicly held corporation; therefore, this reporting requirement is not applicable.
- B. My firm is not owned or operated by anyone who has been convicted of a felony.
- C. My firm is owned or operated by the following individual(s) who has / have been convicted of felony:

Name of Felon(s) \_\_\_\_\_

\_\_\_\_\_

Details of Conviction(s) \_\_\_\_\_

\_\_\_\_\_

## Proposal Scoring

### Scoring of Proposal: Criteria and Relative Weights

A Review Committee will evaluate and score all proposals. ESC18 will base a recommendation for contract award on several factors. The factors which will be considered are weighted points in each area as follows:

1. **Purchase price.** (Pricing factors as determined by ESC18 using a market basket study of randomly selected items.) (30%)
2. **Reputation** of the vendor and the vendor's goods or services. References may be contacted. (10%)
3. **Quality** of the vendor's goods or services. (10%)
4. Extent to which the goods or services **meet criteria** outlined in RFP category submitted. (14%)
5. Vendor's **past relationship** with ESC18. (15%)
6. The total **long-term cost** to ESC18 to acquire the vendor's goods or services. Length of price guaranty. (10%)
7. **Availability** to ESC18 at time needed. (10%)
8. **HUB** The impact on the ability of ESC18 to comply with laws and rules relating to historically underutilized businesses; Considered but because there are no set aside and a response will not impact our ability to comply with laws and rules relating to historically underutilized businesses, a weight of 0% is given to this criteria. (1%)

