

EL PASO COUNTY COMMUNITY COLLEGE DISTRICT
POST OFFICE BOX 20500
EL PASO, TEXAS 79998-0500

GENERAL CONDITIONS OF CONTRACT

All Offerors must agree to the conditions as stated without alterations. Proposed terms and/or conditions contrary to the following shall be considered void. An Offeror is defined as a person or company who makes an offer to provide goods and/or services to the District.

1. Purpose

The purpose of a competitive solicitation is to secure goods and/or services for El Paso County Community College District, hereinafter called the "District," on behalf of the Board of Trustees of the District, hereinafter called the "Board."

2. Receipt of Offers

Sealed offers will be received by the District as indicated in the Invitation. Responses to Request for Proposals (RFP), Request for Competitive Sealed Proposals (RFCSP), and Request for Qualifications (RFQ) shall not be accepted if in the form of an electronic transmittal of an offer, whether via facsimile transmission or email. The District will not be responsible for tracking or confirming receipt of offers or proposal packets.

3. Official and Correct Time

For competitive sealed proposals for services other than construction, the District shall receive, publicly open, and read aloud the names of the Offerors at the stated deadline for accepting proposals as indicated on the Invitation.

4. Late Offers

Offers, modifications or withdrawals thereof, received after the time set for the opening will not be considered. No exceptions.

Offers received after the date and time stated in the Invitation will be returned to the Offeror unopened. Sufficient lead time should be allowed on mailed offers to ensure receipt by the Office of Purchasing & Contract Management on or before the date and time of the opening.

5. Property of Offers

All offers become the property of the District and are not alterable or returnable.

6. Offer Preparation

Each offer must be submitted in a sealed envelope bearing on the outside the name of the Offeror, address, and the offer number. The envelope containing the offer must be sealed and addressed to:

El Paso Community College
Purchasing & Contract Management Department
Room A605
PO Box 20500
El Paso, Texas 79998-0500
Number and Name of Offer

If forwarded by mail, the sealed envelope containing said offer must be enclosed in another plain envelope addressed to the Purchasing & Contract Management Department as specified above.

Hand carried offers shall be addressed, sealed, and delivered to:

El Paso Community College
Administrative Service Center
Purchasing & Contract Management Department
9050 Viscount, Building A
Room A605
El Paso, Texas 79925
Number and Name of Offer

Offerors must exercise care when addressing labels, boxes, envelopes, packages, etc. to ensure that the Office of Purchasing & Contract Management is noted and **Room A605** is used to ensure timely and accurate delivery.

Offers will not be considered unless properly made out on the Proposal Form and signed by the Offeror. Two copies of the Proposal Form must be submitted of which **one (1) must be an original.** **District must be able to distinguish between the original and non-original.** The Texas Family Code, Conflict of Interest Questionnaire, and the Felony Conviction forms shall also be signed and included. The Requests for Qualifications **will not** contain a “Proposal Form.” Responses to Request for Qualifications must contain a signed “Letter of Transmittal,” otherwise known as “Statement of Qualifications,” in order to be considered. The “Letter of Transmittal” (“Statement of Qualifications”) shall be considered the offer in the case of a Request for Qualifications.

Offers may be either typewritten or written in ink. Offers submitted in pencil will be rejected.

Changes, alterations, or interlineations in the **original** Proposal Form itself (excluding attachments) or the “Letter of Transmittal” (“Statement of Qualifications”) in the case of a Request for Qualifications shall void the offer entirely. Offeror shall not use Liquid Paper™ or similar or typewriter correction tape, or make other corrections on either of the forms mentioned in this paragraph before submission. These forms must be free of corrections. Either form may be downloaded multiple times from www.epcc.edu/purchasing or obtained multiple times at the physical address of the Purchasing & Contract Management Department stated on the Invitation. Alternatively, a blank version of either form may be copied multiple times by an Offeror prior to completion.

Any explanation or statements which the Offeror wishes to make must be placed in the same envelope with the offer proper, but shall be written separately and independently from the offer proper and attached thereto.

Any and all modifications to this solicitation by the District shall be documented by written addendum only.

Conditional or qualified offers will not be accepted.

Offers will not be accepted: 1) that provide the law of a jurisdiction other than Texas shall be applicable, 2) or that provide the venue shall be elsewhere than El Paso County, Texas.

7. Offer Submission

All solicitations must be submitted according to instructions contained in this package. Offers will be accompanied by all forms and sureties required herein.

Bid Bond – Refer to the “Special Instructions” section (*present only when applicable*).

8. Opinion of Legal Counsel

Offers requiring the opinion of the District’s legal counsel as to the validity and enforceability of a contract resulting from an offer will not be accepted. Offerors shall obtain any required legal opinion at their own expense.

9. Award Provisions and Reservations

The District and the Board reserve the right to waive any formalities to reject any and all offers in whole or in part with or without cause. The intent is to accept the offer(s) that represent(s) best value or most/best qualified (in the case of RFQ) in the best interest of the District. The Board specifically reserves the right to reject any offer and may reject any offer that the District cannot accurately determine the true cost.

The Offeror acknowledges and agrees that any contract awarded for a term exceeding the present fiscal year shall, and does hereby, include the following language: “The award of this contract is dependent on the availability of funding. In the event funds do not become available, the contract may be terminated, or the scope amended. A 180-day written notice will be given to the vendor, and there shall be no penalty nor removal charges incurred by the District.”

10. Substitution

The use of the name of a manufacturer, brand, make or catalogue designation in specifying an item does not restrict Offeror to that manufacturer, brand, make, or catalogue designation identification. This is used simply to indicate the character, quality and/or performance equivalence of the item desired; but the item on which proposals are submitted must be of such character, quality, and/or performance equivalence that it will serve the purpose for which it is to be used equally as well as that specified. In substituting an offer on an item other than specified, Offeror shall furnish complete data and identification with respect to the equal or

alternate item(s) proposed. Consideration will be given to offers submitted on alternates to the extent that such action is deemed to best serve the interest of the District. If an Offeror does not indicate that the item proposed is other than specified, it will be considered to mean that the Offeror proposes to furnish the exact item as described.

11. Determination of Equals

Where any article or thing is specified by proprietary name, trade name, name of manufacturer, or catalogue number, with or without the addition of such expressions as “or equal” or “or approved equal,” it is to be understood that the article named or the equal thereof, is intended, subject to the determination of the District as to the equality thereof, and it is distinctly understood (1) that the District shall use its judgment in determining whether or not any article or thing proposed to be substituted is the equal of any article or thing specified; (2) that the decision of the District on all such questions of equality shall be final; and, (3) that in the event of any adverse decision by the District, no claims of any sort shall be made or allowed against the District.

12. Indemnification

All Offerors must agree, if awarded a contract, to indemnify and save harmless the District, the District’s Board of Trustees, and the District’s employees from all suits and actions of every nature and description brought against it or any of them growing out of any contract, written or verbal, entered into between the District and the successful Offeror, and further, that upon the awarding of the contract to the Offeror in accordance with these specifications, this agreement of indemnification shall automatically become effective.

The Offeror, if a party to a contract with the District, shall defend any and all suits brought against the District, its Board of Trustees, or the District’s employees by any employee or other person (whether employed by the Offeror or not) for damage to property and/or injury to persons (including death) alleged or claimed to have been caused by or through the performance by the Offeror of the work, and shall indemnify and hold harmless the District from and against any and all claims arising out of work performed by the Offeror, including, by way of example and not limitation, damage to the building and other property, driveways, streets, and alleys, and all cost and expenses of suits and reasonable attorney fees. In the event of any such injury (including death), loss, or damage (or claim or claims thereof), the Offeror shall give immediate notice thereof to the District.

No Contract shall be executed by the District where the Offeror requires the District to hold the Offeror harmless or seeks indemnity from the District.

13. Insurance Requirements

An Offeror awarded a contract by the District shall secure, pay for, and maintain until at least the contract terminates, such insurance as will protect it/him/her and the District from claims under Workers’ Compensation Act, Workers’ Occupational Diseases Act, and from any other claims for damage to property or for bodily injury (including death) which may arise from operations under this contract, whether such operations be by anyone directly or indirectly employed by the Offeror.

Such insurance shall cover all contractual obligations which the Offeror has assumed, including the “Indemnification.”

Before proceeding with any work, the Offeror shall furnish to the District certificates of insurance executed by insurance companies, approved by the District, naming the District as additional insured, to evidence coverage.

Such insurance shall be modifiable or cancelable only upon written notice from such insurance companies and the District must be notified by certified mail thirty (30) days in advance of modification or cancellation. Further, such insurance shall be kept in full force for the duration of the contract period. Furthermore, the cancellation notice must contain the unequivocal statement: “Should any of the described policies be cancelled or materially altered before the expiration date, the issuing company shall provide thirty (30) days written notice to the Owner, El Paso County Community College District, by certified mail.” The words “*endeavor to notify*” and “*failure to notify shall impose no obligation or liability upon the company...*” **will not be accepted.**

In the case of Requests for Proposals and/or Requests for Competitive Sealed Proposals, awarded Offerors shall provide insurance coverage as per the listed requirements below:

- General Liability - \$1,000,000 (one million dollars) per occurrence, \$2,000,000 (two million dollars) aggregate and \$2,000,000 (two million dollars) products and completed operations, per project aggregate. For construction contracts, Offeror shall NOT include Insurance Service Office (ISO) endorsement CG2294. Endorsement CG2294 eliminates coverage for general contractor for the work of subcontractors.
 - El Paso County Community College District must be named as an additional insured as their interest may appear. The project name, type, amount, class of operations covered, policy holder, policy number, effective dates and dates of expiration of policies shall be shown on insurance certificate.
- Automobile - \$1,000,000 (one million dollars) combined single limit.
 - El Paso County Community College District must be named as an additional insured. The project name, type, amount, class of operations covered, policy holder, policy number, effective dates and dates of expiration of policies shall be shown on insurance certificate.

In the case of Requests for Qualifications, in addition to the aforementioned insurance coverages, professional Errors and Omissions (E & O) coverage - \$1,000,000 (one million dollars).

The District requires a letter from the insurance company advising that no claims are outstanding and the full limit is available for the coverage listed above.

Employer’s Liability – (Workers’ Compensation) \$1,000,000 (one million dollars) each accident, disease/policy limit.

14. Discrepancies, Omissions, and Interpretations

Any discrepancy, omission, or doubt as to the meaning of the solicitation package shall be brought to the attention of the Director of Purchasing & Contract Management prior to the opening.

The special attention of the Offeror(s) is directed to the fact that no claims for relief because of error or omission in the solicitation will be considered, and Offeror(s) will be held strictly to the offer as submitted.

15. Appearances Before the Board

Except upon invitation by the Board, the President of the Board, or the President of the District, no person shall appear before the Board or any committee thereof until he or she files a written request with the Secretary of the Board. The request to appear before the Board shall be submitted to the Secretary two (2) work days before the date of the requested appearance. The request should include a statement as to the reason and substance of the appearance before the Board.

16. Tax Exempt

The District is a tax exempt institution, and as such is exempt from sales, use and other forms of taxes. Further, the District shall pay no taxes whether provided for in a rental, lease, or other usage contractual agreement even though title will not pass to the District. The Vendor shall pay all such taxes, and any form contract to the contrary shall be null and void.

17. Site Inspection

It shall be the responsibility of the Offeror to inspect the District location(s) or campus(es), and to satisfy themselves as to the conditions under which the work is to be performed. No separate or independent tours will be provided.

18. Required Permits, Licenses, and Certifications

Unless noted otherwise, respondents shall be responsible for obtaining and absorbing the costs for any and all required permits, licenses, certifications, and approvals necessary to complete work or services to be performed.

19. Remaining on Interested Vendor List

If the Offeror cannot or does not wish to submit an offer but desires to remain on the List, please forward a letter to this effect prior to the posted opening date.

20. Government Code 2252.002. Award of Contract to Nonresident Bidder

“A governmental entity may not award a governmental contract to a nonresident bidder unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which the nonresident’s principal place of business is located.”

21. Americans with Disabilities Act (ADA) and Equal Employment Opportunity Compliance (EEOC)

El Paso County Community College District does not discriminate on the basis of race, color, national origin, religion, gender, age, disability, veteran status, sexual orientation, gender identity, or in admission to access to, or operation of its programs, services, and activities pursuant to Title VI of the Civil Rights Act of 1964 (42 U.S.C. 200d) and the Americans with Disabilities Act of 1990, Pub. L 101-336.

22. Best Value or Best/Most Qualified

Award of contract shall be based on the offer that represents the best value in the best interest of the District per Texas Education Code Subchapter B, Section 44.031(b). In the case of a Request for Qualifications, award of contract shall be based on the Qualifications Statement that represents the best/most qualified firm to supply the services.

23. Objections

Objections to the award of a contract must be in writing and timely filed under District Purchasing Procedure.

24. Vendor Verification

The District may verify that all contract awarded vendors have good standing with the Texas State Comptroller's Franchise Tax office and the Better Business Bureau.

25. Signed Forms

Vendor must include in their proposal response the required forms bearing the signature of the representative with authority to contractually bind the company or firm: Proposal form or Letter of Transmittal, Family Code form, Felony Conviction form, and Conflict of Interest Questionnaire, as well as any other applicable documents, as required.

26. Certificate of Interested Parties

An Offeror whose offer is deemed "best value" in the case of an RFP or RFCSP or "most highly qualified" in the case of an RFQ and whose offer may result in a contract of \$50,000 or more will be required to comply with Texas Government Code 2252.908 as a condition of contract award.

27. Contract Form

Any contract resulting from an offer shall be in the form specified and approved by the District.

28. Lobbying

All oral and written inquiries or statements regarding a potential contract with the District must be directed through the El Paso County Community College District's Purchasing & Contract Management Department. Potential vendors to the District are hereby advised that lobbying any District staff, the District's President, or any member or members of its Board of Trustees is not permitted and will result in disqualification as outlined below.

Lobbying, in this section, is defined as any action taken by an individual, firm, associate, joint venture, partnership, syndicate, corporation, or any other individual or group of individuals who seek(s) to influence a governmental decision regarding the award of business in connection with a competitive solicitation.

Lobbying by any vendor or potential vendor to the District, or any individual or group as defined above acting on behalf of a vendor or potential vendor to the District, regarding a current or impending solicitation advertised or to be advertised by the District, including Requests for Proposals (RFP's), Requests for Qualifications (RFQ's) and Requests for Competitive Sealed Proposals (RFCSP's), will result in the rejection and disqualification of that vendor's proposal. All RFP's, RFQ's and RFCSP's advertised or to be advertised can be found at www.epcc.edu/purchasing (click on "Solicitations").

29. Texas Public Information Act

Offeror acknowledges that the District is subject to the provisions of Texas Government Code, Section 552, otherwise known as the Texas Public Information Act and that any "record" that is in the possession of the District, including by way of example and not limitation, any response to a Request for Proposals, Request for Competitive Sealed Proposals, Request for Qualifications or Request for Quotes, whether such response is in physical or electronic form, and whether marked "Confidential," "Proprietary," or otherwise, may be subject to disclosure by the District. Notwithstanding the foregoing, disclosure of information related to a solicitation in progress and not yet resulting in an executed contract may be made only after the contract is awarded.

30. Confidentiality

When applicable the annexed Confidentiality Agreement (PUR056) shall be a part of these General Conditions of Contract (General Conditions). The terms outlined in this Confidentiality Agreement shall become a part of ALL purchase orders issued by the District. Successful Offeror will be asked to sign this Confidentiality Agreement before a contract is awarded to Successful Offeror if, in the sole judgment of the District, as part of the contract, data may be conveyed to Successful Offeror which is or may be considered "Confidential" as defined in said Confidentiality Agreement.

31. General Conditions Prevail

Offeror acknowledges that Offeror has read these General Conditions and agrees that said General Conditions are hereby incorporated and a part of any Request for Proposals (RFP), Request for Competitive Sealed Proposals (RFCSP), Request for Qualifications (RFQ), or Request for Quotes that the District has issued. Offeror further acknowledges that it shall abide by said General Conditions at all times and that these General Conditions shall be incorporated into any and all contracts that result or may result between Offeror and District and further, that these General Conditions shall at all times prevail in any such contract.