

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

GENERAL CONDITIONS OF CONTRACT – A/E

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 El Paso County Community College District (“District” or “the District”).

1. Purpose

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

2. Receipt of Offers

Offers will be received by the District as indicated in the invitation for offers. The District will not be responsible for tracking or confirming receipt of offers or proposal packets.

3. Official and Correct Time

In the case of Requests for Proposals, Requests for Competitive Sealed Proposals, or Requests for Qualifications in which offers are received through the Bonfire portal, the official and correct time is as indicated in the Bonfire portal. For all other offers, the official time is as indicated on the National Institute of Standards and Technology (NIST) time website, <https://www.time.gov/>.

In the case of Requests for Competitive Sealed Proposals for goods and/or 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 deadline for offers will not be considered. No exceptions.

Sufficient lead time should be allowed to ensure receipt by the Office of Purchasing & Contract Management on or before the deadline to receive offers.

5. Property of Offers

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

6. Offer Preparation

Offers will not be considered unless properly made out on the Proposal Form and signed by the Offeror. 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.

Changes, alterations, or interlineations in the original Proposal Form itself (excluding attachments) or the Offeror’s “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. In the case of Requests for Proposals and Requests for Competitive Sealed Proposals, either form may be downloaded multiple times from www.epcc.edu/administration/purchasing (Click on “Solicitations, Plan Holder Lists, Construction Tabs”). Alternatively, a blank version of either form may be copied multiple times by an Offeror prior to completion.

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

7. Offer Preparation (Other)

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

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.

8. Offer Submission

All offers 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*).

9. 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.

10. Award Provisions and Reservations

The District and the Board reserve the right to waive any formalities and 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 for which the District cannot accurately determine the true cost.

The Offeror acknowledges and agrees that any contract awarded for a term exceeding the District's 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."

11. 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 or offers 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.

12. 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.

13. Indemnification

Offeror, if awarded a contract by El Paso County Community College District ("District" or "the District"), shall FULLY INDEMNIFY, DEFEND AND HOLD HARMLESS, the District, its trustees, officers, officials, employees, directors, volunteers and representatives of the District, individually or collectively (a "District Party"), from and against any and all costs, claims, liens, damages, losses, expenses, fees, including reasonable costs of defense, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon District Party to the extent caused by the Offeror's performance of its services and/or activities under any agreement with the District, including any acts or omissions of the Offeror, any agent, officer, director, representative, employee, consultant or subcontractor of the Offeror, and their respective officers, agents, employees, directors, and representatives, and all Offeror's subcontractors,

vendors, suppliers or other entities who may perform services and/or activities while in the exercise of performance of the rights or duties under any agreement with the District.

Offeror shall promptly advise District in writing of any claim or demand against District and/or Offeror known to Offeror related to or arising out of Offeror's activities under any agreement with 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.

14. 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...*" or similar **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.

15. 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 deadline for submitting the offer.

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.

16. Appearances Before the Board

Except upon invitation by the Board, the President of the Board, or the President of the College 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.

17. 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.

18. Site Inspection

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

19. 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.

20. Remaining on Interested Vendor List

If the Offeror cannot or does not wish to submit an offer but desires to remain on the List, Offeror should forward a letter to this effect prior to the posted deadline for submitting the offer.

21. 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 greater of the following:

(1) 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; or

(2) 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 a majority of the manufacturing relating to the contract will be performed.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1404 (H.B. 3648), Sec. 2, eff. June 14, 2013.

Text of section as amended by Acts 2013, 83rd Leg., R.S., Ch. 1127 (H.B. 1050), Sec. 2

For text of section as amended by Acts 2013, 83rd Leg., R.S., Ch. 1404 (H.B. 3648), Sec. 2, see other Sec. 2252.002.

Sec. 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:

(1) the state in which the nonresident's principal place of business is located; or

(2) a state in which the nonresident is a resident manufacturer.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1127 (H.B. 1050), Sec. 2, eff. September 1, 2013.

22. 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, as amended.

23. 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 offeror to supply the services.

24. Objections

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

25. 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.

26. Signed Forms

Vendor must include in their offer 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.

27. Certificate of Interested Parties

An Offeror whose offer is deemed "best value" in the case of a Request for Proposals or Request for Competitive Sealed Proposals or "most highly qualified" in the case of a Request for Qualifications 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.

28. Contract Form

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

29. 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 for offers issued or to be issued by the District, including by way of example and not limitation, 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/offer. All RFP's, RFQ's and RFCSP's advertised or to be advertised can be found at www.epcc.edu/administration/purchasing (click on "Solicitations, Plan Holder Lists, Construction Tabs").

30. 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.

31. Confidentiality

When applicable, form 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.

32. Antitrust Affirmation

By making an offer to the District, Offeror represents and warrants that neither Offeror nor the firm, corporation, partnership, or institution represented by Offeror, or anyone acting for such a firm, corporation or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of its offer to any competitor or any other person engaged in the same line of business as Offeror.

33. Assignment

Offeror may not assign any contract issued it by the District or assign, transfer or delegate, in whole or in part, any of its interest in, or rights or obligations under, the contract without the prior written

consent of the District, and any attempted or purported assignment, transfer or delegation thereof without such consent shall be null and void.

34. Child Support Obligation

Under Section 231.006(d) of the Texas Family Code regarding child support, by making an offer to the District, Offeror certifies that it is not ineligible to receive the specified payment and acknowledges that the contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any Offeror subject to Section 231.006 of the Texas Family Code, must include in the form Family Code (PUR025) the names and social security numbers of each person with at least 25% ownership of the business entity submitting the offer.

35. Cloud Computing

This section is applicable only to Offerors of cloud computer services subjected to the state risk and authorization management program.

Pursuant to Section 2054.0593(d)-(f) of the Texas Government Code, relating to cloud computing state risk and authorization management program, by making an offer, Offeror represents and warrants that it complies with the requirements of the state risk and authorization management program and Offeror agrees that throughout the term of the contract it shall maintain its certifications and comply with the program requirements in the performance of the contract.

36. COVID-19 Vaccine Passport Prohibition

Under Section 161.0085 of the Texas Health and Safety Code, by making an offer, Offeror certifies that the individual or business entity named in its offer is not ineligible to receive the specified contract. Businesses with a “vaccine passport” requirement are not eligible to enter into a contract payable with state funds.

37. Critical Infrastructure Affirmation

This section applies only in cases where the products or services provided or to be provided by Offeror would require that the Offeror be granted direct or remote access to or control of critical infrastructure, as defined by Section 2274.0101 of the Texas Government Code.

Pursuant to Government Code Section 2274.0102, in making an offer, Offeror certifies that neither it nor its parent company, nor any affiliate of Offeror or its parent company, is: (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Government Code Section 2274.0103, or (2) headquartered in any of those countries.

38. Data Management and Security Controls

This section applies only when the District is entering into or renewing a contract with an Offeror authorized to access, transmit, use, or store data for the District. The District shall determine its security controls which shall be proportional to the District’s risk under contract based on the sensitivity of its data.

In accordance with Section 2054.138 of the Texas Government Code, in making an offer, Offeror certifies that it will comply with the security controls required under the contract and will maintain records and make them available to the District as evidence of Offeror's compliance with the required controls.

39. Energy Company Boycotts

EXCEPTIONS: This section only applies to contracts and offerors that meet the following criteria: (i) a "company" within the definitions of Section 2274.001(2) of the Tex. Gov't Code; (ii) with 10 or more full-time employees; and (iii) with a contract to be paid a value of \$100,000 or more wholly or partially from public funds of the governmental entity (the District).

By making an offer to the District, Offeror represents and warrants that: (1) it does not, and will not for the duration of the contract, boycott energy companies or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If circumstances relevant to this provision change during the course of any contract issued by the District to the Offeror, Offeror shall promptly notify the District.

40. Entities that Boycott Israel

EXCEPTION: This section only applies to certain solicitations (for offers) and contracts. Section 2271.002 of the Texas Government Code states the following:

(a) This section applies only to a contract that: (1) is between a governmental entity and a company with 10 or more full-time employees; and (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

(b) A governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. Section 2271.001(2) of the Government Code defines "company" to be the meaning assigned by Section 808.001 of the Texas Government Code, except that the term does not include a sole proprietorship. "Boycott Israel" has the meaning assigned by Section 808.001 of the Texas Government Code.

By making an offer to the District, Offeror represents and warrants that (1) it does not, and shall not for the duration of the contract, boycott Israel or (2) the verification required by Section 2271.002 of the Texas Government Code does not apply to any contract resulting from its offer. If circumstances relevant to this provision change during the course of any contract with the District, Offeror shall promptly notify the District.

41. Excluded Parties

EXCEPTION: Clause applies as long as Executive Order No. 13224 is in effect. Executive Order 13224 (Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), was issued by President George W. Bush on September 23, 2001, as a response to the attacks on September 11, 2001.

By making an offer to the District, Offeror certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, “Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism”, published by the United States Department of the Treasury, Office of Foreign Assets Control.

42. Divestment

A governmental entity, including the District, may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code, Sections 2270.0052, 2270.0102, or 2270.0152. By making an offer to the District, in accordance with Texas Government Code, Chapter 2252, Subchapter F, Offeror hereby represents and warrants that it is not a company identified on the lists prepared and maintained under Texas Government Code §§ 2270.0052 (companies with business operations in Sudan), 2270.0102 (companies with business operations in Iran), or 2270.0152 (companies known to have contracts with or provide supplies or services to a foreign terrorist organization). Notwithstanding the foregoing, a company that the United States government affirmatively declares to be excluded from its federal sanctions regime relating to Sudan, Iran, or to a foreign terrorist organization, is not subject to contract prohibition under this clause. A company claiming such exemption must submit the official copy of the declaration.

43. Firearm Entities and Trade Associations Discrimination

APPLICABILITY: This clause applies only to a contract that: (1) is between a governmental entity, including the District, and a company with at least 10 full-time employees; and (2) has a value of at least \$100,000 that is paid wholly or partly from public funds of the District. EXCEPTIONS: This clause is not applicable on (1) contracts with a sole-source provider; or when the District (2) does not receive any bids from a company that is able to provide the written verification required by Section 2274.002(b) of the Texas Government Code.

If Offeror is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, Offeror verifies that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. If Offeror does not make that verification, Offeror must so indicate in its offer and state why the verification is not required.

44. No Conflicts of Interest

By making an offer to the District, Offeror represents and warrants that the provision of goods and services or other performance under any contract with the District resulting from the offer will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.

45. Signature Authority

By submitting an offer, Offeror represents and warrants that the individual submitting the offer and the documents made part of the offer is authorized to make the offer and sign such documents on behalf of the Offeror and to bind the Offeror under any contract that may result from the submission of the offer.

46. 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.

END OF GENERAL CONDITIONS OF CONTRACT – A/E