

ATTACHMENT 2 - GENERAL TERMS AND CONDITIONS

The following general terms and conditions are in addition to any instruction or condition stated elsewhere in this RFP and in the contract documents.

Definitions

Responsible means a proposing party possessing the skill, judgment, integrity, and financial ability necessary to timely perform and complete the contract proposed.

Responsive means a proposal that meets all of the specifications set forth in this request for proposals.

Name and Nature of Offeror's Legal Entity

The Offeror shall specify in its proposal the name and nature of its legal entity and any fictitious name under which it does business covered by this solicitation. The proposal shall be signed under the correct firm name by an authorized officer.

Withdrawal of Proposals

Proposals may be withdrawn by the Offeror prior to the proposal submission deadline, but may not be withdrawn for one hundred eighty (180) days after that deadline. During that period the Offeror shall guarantee the prices quoted in its proposal.

Bid Negotiations

A response to any specific item of this RFP using terms such as "negotiable," "will negotiate," or words of similar intent will be treated as a non-response to that item.

Prices

Prices shall be shown as instructed on Attachment 4 for each item. Taxes shall be separately identified and shall not be embedded in eligible line items. If during the contract period there is a decrease in the prices of the items quoted, a corresponding decrease shall be made to the Applicant for as long as the lower prices are in effect, and at no time shall the prices charged to the Applicant exceed the prices quoted. The Applicant shall be given the benefit of any lower price which, for comparable quality and delivery, is given by the contractor to any other school district or to any state, county, municipal, or local governmental agency similarly situated to the Applicant, consistent with the FCC's Lowest Corresponding Price rule.

Bid Exceptions

All exceptions taken in response to this RFP must be stated clearly and in writing as part of the proposal. Taking exceptions, or providing false, incomplete, or unresponsive statements, may result in disqualification. Allowance of exceptions will be determined by the Board of Education, whose decision shall be final. Any exception or additional condition requested after the proposal deadline that is not detailed within the proposal response may result in disqualification.

Acceptance or Rejection of Proposals

The Applicant may purchase an individual item or any combination of items, whichever is in the best interest of the Applicant, provided that an Offeror may specify that acceptance of one item is contingent upon acceptance of one or more additional items submitted in the same proposal. The Applicant reserves the right to accept or reject any or all proposals and to waive any informality or minor irregularity.

Execution of Contract

The Applicant's Request for Proposals and the Offeror's response will be incorporated into the resulting agreement as exhibits. An individual authorized to legally bind the Offeror must sign the response. Any Offeror selected will be required to negotiate a mutually agreeable contract, subject to approval by the Board of Education. Issuance of a purchase order or a fully executed written agreement shall evidence the contractual agreement between the Offeror and the Applicant. If an incumbent service provider is awarded the service, any original contract may be extended or amended, provided that any such extension or amendment is consistent with FCC competitive bidding rules and with the terms competitively bid under this RFP.

Public Records

Responses to this RFP will become the property of the Applicant and are subject to the Ohio Public Records Act, Ohio Revised Code § 149.43. The Applicant shall not be liable or responsible for the disclosure of any record, including a record marked confidential, where disclosure is required by law or by order of a court. An Offeror that indiscriminately identifies all or most of its response as exempt from disclosure without justification may be deemed non-responsive. In the event the Applicant is required to defend an action under the Public Records Act concerning any content of a response marked "Confidential," "Proprietary," or "Trade Secret," the Offeror agrees, by submitting its response, to defend and indemnify the Applicant from all costs and expenses, including attorneys' fees, arising under the Public Records Act. Pricing, service costs, and other cost-related information shall not be treated as proprietary or confidential.

Insurance

The successful Offeror shall maintain insurance adequate to protect it from claims under workers' compensation laws and from claims for damages for personal injury, including death, and damage to property, which may arise from its operations under the contract. The Offeror may be required to file proof of such insurance naming the South Euclid-Lyndhurst School District as an additional insured by separate endorsement. Bodily injury coverage shall be \$1,000,000 combined single limit, or \$1,000,000 per person and \$1,000,000 per accident. Property damage coverage shall be \$500,000 per loss. Failure to furnish such evidence of insurance, if required, may be considered a default by the Offeror.

Invoices and Payments

Unless otherwise specified, the successful Offeror shall render invoices for services performed under the contract to the South Euclid-Lyndhurst School District, Accounts

Payable, 5044 Mayfield Road, Lyndhurst, Ohio 44124. Invoices shall be submitted under the same firm name shown on the proposal. The Offeror shall list separately any taxes payable by the Applicant and shall certify on its invoices that federal excise tax is not included in the prices listed. The Applicant shall make payment within a reasonable and proper time after acceptance of the services and approval of the invoices by the authorized Applicant representative.

Default by Contractor

The Applicant shall hold the Offeror responsible for any damage sustained due to failure to comply with any term or condition listed herein. Time is of the essence in meeting the contract delivery requirements. If the successful Offeror fails or neglects to furnish or deliver any of the services listed herein at the prices named and at the time and place stated, or otherwise fails to comply with the terms of the proposal, the Applicant may, upon written notice, cancel the contract or purchase order in whole or in part and may purchase the services elsewhere without further notice. Any extra cost incurred by such default may be collected by the Applicant from the Offeror or deducted from any funds due to the Offeror.

Miscellaneous Provisions

- Assignment. The Service Provider shall not assign or transfer, by operation of law or otherwise, any or all of its rights, burdens, duties, or obligations without the prior written consent of the Applicant and of the surety on any performance bond.
- Binding Effect. This agreement shall inure to the benefit of and shall be binding upon the Service Provider and the Applicant and their respective successors and assigns.
- Severability. If any provision of the agreement is held invalid or unenforceable by a court of competent jurisdiction, that holding shall not invalidate or render unenforceable any other provision.
- Amendments. The terms of the agreement shall not be waived, altered, modified, supplemented, or amended in any manner except by written agreement signed by the parties.
- Entire Agreement. This RFP, all attachments, and the accepted proposal constitute the entire agreement between the parties. There are no understandings, agreements, representations, or warranties, express or implied, not specified in the agreement.
- Force Majeure. The parties shall be excused from performance during the time and to the extent that they are prevented from obtaining, delivering, or performing by act of God, fire, strike, loss or shortage of transportation facilities, lockout, or commandeering of materials, products, plants, or facilities by the government, when satisfactory evidence is presented to the other party and it is established that the non-performance is not due to the fault or neglect of the non-performing party.
- Hold Harmless. The successful Offeror agrees to indemnify, defend, and hold harmless the South Euclid-Lyndhurst School District, its Board of Education, officers, agents, and employees from and against any and all claims, demands,

losses, defense costs, or liability of any kind arising out of or connected with the Offeror's performance under the terms of the contract, excepting only liability arising out of the sole negligence of the Applicant.

- **Prevailing Law.** In the event of any conflict or ambiguity between these instructions and state or federal law or regulation, the latter shall prevail. All services performed under the contract shall conform to all applicable requirements of local, state, and federal law.
- **Governing Law and Venue.** In the event of litigation, the RFP documents, specifications, and related matters shall be governed by and construed in accordance with the laws of the State of Ohio. Venue shall lie only in the appropriate state or federal court located in Cuyahoga County, Ohio.
- **Permits and Licenses.** The successful Offeror and all of its employees and agents shall secure and maintain in force such licenses and permits as are required by law in connection with the furnishing of the services listed herein.
- **Independent Contractor.** While carrying out and complying with the terms and conditions of the contract, the Offeror agrees that it is an independent contractor and not an officer, employee, or agent of the Applicant.
- **Anti-Discrimination.** It is the policy of the South Euclid-Lyndhurst Board of Education that in connection with all work performed under purchasing contracts there shall be no discrimination against any prospective or active employee engaged in the work because of race, color, ancestry, national origin, sex, military status, disability, age, or religion. The Offeror agrees to comply with all applicable federal and Ohio laws, including Ohio Revised Code Chapter 4112, and to require like compliance by all subcontractors employed on the work.
- **Termination Without Cause.** The agreement may be terminated by the Applicant upon sixty (60) days advance written notice of an intention to terminate. Any termination of an E-Rate supported service will be reported to USAC as required by program rules.
- **Non-Appropriation.** The Applicant's obligations under any resulting agreement are subject to the annual appropriation of funds by the Board of Education. Non-appropriation shall not constitute a default and shall not give rise to early termination liability.