# SOCORRO INDEPENDENT SCHOOL DISTRICT
# STANDARD TERMS AND CONDITIONS

**The following constitute the Standard Terms and Conditions of the Socorro ISD. Some of these Standard Terms and Conditions may not be applicable to a specific solicitation, proposal, RFQ, Qualification Quotes, or any other solicitations the district covers. To the extent each of the terms and conditions is applicable, these shall be deemed to be part of the solicitation documents. If there are specific terms and conditions contained in the solicitation documents which are inconsistent with the Standard Terms and Conditions, the specific terms and conditions in the solicitation documents shall control.**

1. **Solicitation Acceptance:** Contractor acknowledges and agrees that this solicitation is not a contract or an offer to contract. If awarded, this solicitation may result in a contract between the Socorro Independent School District ("SISD" or the "District") and Contractor to furnish the goods and/or services in accordance with the terms and conditions specified herein. Unless otherwise specified in the Special Terms and Conditions or specifications, Contractor shall not deliver substitutes or inferior materials without prior written authorization from SISD.

2. **District Reservations:** SISD makes no warranty or guarantee that an award will be made as a result of this solicitation. SISD reserves the right to (a) enter into an agreement for all or any portion of the requirements and specifications set forth in this solicitation with one or more Contractor(s); (b) reject any and/or all solicitations before or during the solicitation process; (c) reject or cancel an awarded solicitation or proposal, even after board approval, but prior to completion of a signed written contract, if deemed to be in the best interest of the District; (d) reissue any proposal and/or procure any item by other means; (e) waive any formalities and procedural requirements; (f) waive minor deviations from specifications; (g) add, delete or modify existing specifications, requirement and/or terms; (h) extend the opening date and time; (i) consider and accept alternate proposals; (j) reject any proposal because of unbalance unit prices; (k) specify approximate quantities. (l) Any proposal that fails to comply with the requirements contained in this solicitation may be rejected by the District, in SISD's sole discretion.

3. **Release of Award:** No contract shall be created, express or implied, until a final written contract is issued and signed by an individual authorized by Socorro ISD. During the contract process, SISD does not release the awarded vendor information until the contract is fully executed. This process is in place to make sure that all required documentation from the awarded vendor is received. Once a contract is fully executed, the information is made public or available through the open record process.

4. **Award**: It is the intent of the district to award all or none, but Socorro ISD reserves the right to award section by section or item by item, whichever is in the best interest of the district.

5. **Protest of Award:** A prospective bidder, vendor or proposer who is aggrieved in connection with a solicitation or award of a contract may file a formal protest with the Director of Purchasing. Such protests must be in writing and received in the Purchasing Department office within three (3) working days of the offer submission date, the time the procurement contract is executed or should have known of the occurrence of the act or omission being protested. In the case of a protest or dispute of an action taken by the Department of Purchasing any vendor may write a letter outlining any concerns which may exist to:

   Director of Purchasing
   12440 Rojas Drive
   El Paso, Texas 79928

6. **Termination and Transition:** If this Agreement terminates for any reason, at the District's option, Contractor will continue to perform its duties and obligations in accordance with the terms of this Agreement until District contracts with a new qualified and experienced vendor(s) to perform the duties and obligations or is able to perform the duties and obligations in-house; provided, that, Contractor will not be required to continue performing its duties and obligations under this Agreement immediately or no more than one hundred and twenty (120) days after termination of this Agreement. Contractor will cooperate with, and assist, District's efforts to transition the duties and obligations under this Agreement to another vendor(s) or to perform the duties and obligations in house.

7. **Confidentiality and Safeguarding of District Records:** If awarded a Contract/Agreement, Contractor must maintain confidentiality and security compliance requirements with respect to District Records subject to the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g ("FERPA"). Health Insurance Portability and Accountability Act ("HIPAA", Public Law No. 104-191) and the Gramm-Leach-Bliley Act ("GLB", Public Law No. 106-102), National Institute of Standards and Technology (NIST) and the Center for Internet Security (CIS) and on any records (1) created, (2) obtained, (3) stored, (4) used (5) received from or on behalf of District, or (6) have access to, records or record systems (collectively, "District Records"). Among other things, District Records may contain names, addresses, social security numbers, credit card numbers, or data protected or made confidential or sensitive by Applicable Federal or Texas Laws.

8. **Prohibition on Contracts with Companies Boycotting Israel:** Socorro ISD cannot enter into a contract with any individual and/or 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 an awarded contract under the terms of Section 2270 of the Texas Government Code. Should the individual and/or company during the term of the agreement boycott Israel, immediate notification is required to SISD Purchasing Department. I hereby certify that I and/or my company will adhere to Section 2270 of the Texas Government Code, PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL.

9. **Taxes:** SISD is tax-exempt and shall not pay or be liable for taxes for goods and/or services.

10. **Contractors of Package Goods:** Contractor will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently packed as follows: (a) Contractor's name and address; (b) Consignee's name, address, purchase order number and the supply agreement number if applicable; (c) Container number and total number of containers, e.g., box 1 of 4 boxes; and (d) the number of the container bearing the packing slip. Contractor shall bear cost of packaging unless otherwise provided. Goods shall be suitably packed to secure lowest transportation costs and to conform to requirements of common carriers and any applicable specifications. SISD's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

11. **Shipment Under Reservation Prohibited:** Contractor is not authorized to ship the goods under reservation and no tender of a bill of lading will operate as a tender of goods.

12. **Title and Risk of Loss:** The title and risk of loss of the goods shall not pass to the District until SISD actually receives and takes possession of the goods at the point or points of delivery. Contractor understands and agrees they will bear at its sole risk and responsibility, any cost due to any losses, damages, injuries, claims, fees, fines, penalties and expenses (Including legal fees) of every kind that relate to the use, operation, ownership, possession, or condition of your product/service.

13. **Delivery Terms and Transportation Charges:** All deliveries shall be freight prepaid FOB destination with solicitation prices reflecting freight and delivery charges to locations within the District, unless otherwise described in the Special Terms and Conditions or specifications of this solicitation. SISD agrees to reimburse Contractor for transportation costs in the amount specified in the solicitation, or actual costs, whichever is lower, if the quoted delivery terms do not include transportation costs, provided SISD shall have the right to designate what method of transportation shall be used to ship the goods.

14. **No Placement of Defective Tender:** Every tender or delivery of goods must fully comply with all provisions of this solicitation as to time of delivery, quality and the like. All delivered equipment, materials or merchandise must be new, unused, and in the manufacturer's original packing unless otherwise specified. If a tender is made which does not fully conform, this shall constitute a breach and Contractor shall not have the right to substitute a conforming tender provided, where the time for performance has not yet expired, the Contractor may reasonably notify Buyer of his intention to cure and may then make a conforming tender within the contract time but not afterward.

15. **Purchases Authorization:** The district will purchase goods by means of official district purchase order form which are to be authorized by signature from the Director of Purchasing or a Purchasing Agent. The District will not honor purchases without the proper authorization.

16. **Purchase Order:** The District may issue purchase orders as needed as a result of the solicitation. No deliveries will be accepted without a corresponding valid purchase order. Delivery must occur within sixty (60) days after receipt of order (ARO) unless otherwise specified on the District purchase order. Failure to deliver awarded merchandise within 60 days will cancel the order. The place of delivery shall be set forth on the purchase order.

17. **Purchase Order Modifications:** SISD reserves the right to make changes to issued Purchase Orders as need by the District.

18. **Invoices and Payments:**

    **a.** Itemized invoices shall be directed to SISD's Account Payable Department, P.O. Box 292800, El Paso, TX 79929-2800. Invoices shall indicate the Purchase Order or supply agreement number, if applicable. Invoices shall be itemized and transportation charges, if any, shall be listed separately.

    **b.** SISD's obligation is payable only and solely from funds available for the purpose of the purchase. Lack of funds shall render any contract or Purchase Order issued under this solicitation null and void to the extent funds are not available and any delivered but unpaid for goods will be returned to Contractor by Buyer.

    **c.** Do not include Federal Excise, State or City Sales Tax. The District will furnish tax exemption certificate(s), if required.

19. **Gratuities:** SISD may, by written notice to the Contractor, cancel any contract awarded under this solicitation without liability to contractor if it is determined by SISD that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Contractor, or any agent, or representative of the Contractor, to any officer or employee of the District with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or the making or any determinations with respect to the performing of such a contract. In the event this contract is canceled by SISD pursuant to this provision, SISD shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Contractor in providing such gratuities.

20. **Special Tools and Test Equipment:** If the price stated on the solicitation, includes the cost of any special tooling or special test equipment fabricated or required by Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of SISD and to the extent feasible shall be identified by the Contractor as such.

21. **Warranty Price:**

    **a.** The price to be paid by the District shall be that contained in Contractor's solicitation which Contractor warrants to be no higher than their current prices on orders by others for products of the kind and specification covered by this agreement for similar quantities under similar or like conditions and methods of purchase. In the event Contractor breaches this warranty, the prices of the items shall be reduced to the Contractor's current prices on orders by others, or in the alternative, SISD may cancel this contract without liability to Contractor for breach or Contractor's actual expense.

    **b.** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the District shall have the right in addition to any other right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

22. **Warranty Products:** Contractor shall not limit or exclude any implied warranties and any attempt to do so shall render any contract or Purchase Order issued by Socorro ISD voidable at the option of the District. Contractor warrants that the goods furnished will conform to the specifications, drawings and descriptions listed in the solicitation and to the sample(s) furnished by Contractor, if any. In the event of a conflict between the specifications, drawings and descriptions, the specifications shall govern. All equipment items awarded as a result of the solicitation will be covered by all parts and labor warranty, including any/all transportation charges, for a minimum period of one (1) year, or as specified in the Special Conditions section of this solicitation.

23. **Safety Warranty:** Contractor warrants that the product sold, shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event the product does not conform to OSHA standards, District may return the product for correction or replacement at the Contractor's expense. In the event Contractor fails to make the appropriate correction within a reasonable time requested by the District or 30 days whichever is shorter, correction may be made by the District at Contractor's expense.

24. **No Warranty By Buyer Against Infringements:** Contractor agrees to ascertain whether goods manufactured in accordance with the specifications attached to this solicitation will give rise to the rightful claim of any third person by way of infringement or the like. SISD makes no warranty that the production of goods according to the specification will not give rise to such a claim, and in no event shall SISD be liable to Contractor for indemnification in the event that Contractor is sued on the grounds of infringement or the like. If Contractor is of the opinion that an infringement or the like will result, he will

notify SISD to this effect in writing within two weeks after the signing of this agreement. If SISD does not receive notice and is subsequently held liable for the infringement or the like, Contractor will hold SISD harmless. If Contractor in good faith ascertains that production of the goods in accordance with the specifications will result in infringement or the like, this contract shall be null and void.

25. **Right of Inspection:** SISD shall have the right to inspect the goods at delivery before accepting them.

26. **Cancellation:** SISD shall have the right to cancel for default all or any part of the undelivered portion of any Purchase Order created by the solicitation if Contractor breaches any of the terms hereof including warranties of Contractor or if the Contractor becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any other remedies which the District may have in law or equity.

27. **Termination:** The performance of work under this solicitation may be terminated in whole or in part by the District in accordance with this provision. Termination of work hereunder shall be effected by the delivery to the Contractor of a "Notice of Termination" specifying the extent to which performance of work under the order is terminated and the date upon which such termination becomes effective. Such right of termination is in addition to and not in lieu of rights of the District.

28. **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 solicitation or the contract awarded as a result of this solicitation, then such party shall give notice and full 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 herein provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

    The term Force Majeure as employed herein, shall mean acts of God, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, acts of war, act of public enemy, orders of any kind of government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, arrests, restraint of government and people, civil disturbances, explosions, strikes, lockouts, or other industrial disturbances, breakage or accidents to machinery, pipelines or canal, or other causes not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party of parties when such settlement is unfavorable in the judgment of the party having the difficulty.

29. **Assignment Delegation:** No right or interest shall be assigned or delegation of any obligation made by Contractor without the written permission of the District. Any attempted assignment or delegation by Contractor shall be wholly void and totally ineffective for all purposes unless made in conformity with this solicitation.

30. **Waiver:** No claim or right arising out of a breach of any contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved.

31. **Interpretation Parole Evidence:** No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this solicitation or any contract issued as part of this solicitation. Acceptance or acquiescence in a course of performance rendered under this solicitation shall not be relevant to determine the meaning of any agreement between the parties even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code is used, the definition contained in the Code is to control.

32. **Applicable Law:** This solicitation shall be governed by the laws of the State of Texas and, where applicable, the Uniform Commercial Code. Wherever the term "Uniform Commercial Code" is used, it shall be construed as meaning the Uniform Commercial Code as adopted in the State of Texas as effective and in force on the date of this agreement.

33. **Advertising:** Contractor shall not advertise or publish, without SISD's prior consent, the fact that the District has entered into a contract with Contractor, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.

34. **Venue:** Both parties agree that venue for any litigation arising from this contract shall lie in El Paso County, Texas.

35. **Prohibition Against Personal Interest in Contracts:**

a. Any board member who has any substantial interest, either direct or indirect, in any business entity seeking to contract with the district, shall before any vote or decision on any matter involving the business entity, file an affidavit stating the nature and extent of interest and shall abstain from any participation in the matter. This is not required if the vote or decision will not have any special effect on the entity other than its effect on the public. However, if a majority of the governing body are also required to file, and do file similar affidavits, then the member is not required to abstain from further participation.
b. No employee of the District will have a direct financial interest in any contract with the District, nor will an employee have a direct financial interest in the sale to the District of any land, equipment, supplies and materials, or services. Any violation of this policy will render the contract involved void, unless such contract or sale is approved by the Board of Trustees after full disclosure.

36. **Contractor Responses**: Contractors are encouraged to submit a response on any or all items or services their firms can provide. The award will be made to the Contractor who submits a response, as per solicitation specifications, which is the most advantageous and best value to the District. All prices are to be your lowest and best net price, F.O.B. destination, on each item. The unit price for each item offered is to include all applicable discounts. In case of manual error, lower unit price will prevail.

37. **Electronic Submittal:** As permitted by law, Section 44.0313 of the Education Code SISD may conduct solicitation transactions by electronic (E-bid System) means. SISD will not accept facsimile or emails as an official form of submission. If your firm does not have the means to submit a response electronically the District may accept a hard copy response.

38. **Contract Provisions:** In all federally-funded contracts Department of Education (DOE) and United States Department of Agriculture (USDA), the District includes the applicable provisions described in Appendix II to 2 CFR Part 200 – Contract Provisions for Non-Federal Entity Contracts under Federal Awards. 2 CFR § 200.327. Provisions include the following, where applicable:

All contracts paid from state or federal grants administered by SISD pursuant to the provisions in 2 CFR § 200.315, title to intangible property vests in the District as long as such property is used for authorized purposes.

**a.** All contracts greater than $250,000 must address administrative, contractual, or legal remedies.
**b.** All contracts greater than $50,000 for United States Department of Agriculture (USDA) must address administrative, contractual, or legal remedies.
**c.** All contracts greater than $10,000 must address termination for cause and for convenience.
**d.** All construction contracts must include the Equal Employment Opportunity clause.
**e.** All prime construction contracts in excess of $2,000 must include a provision for compliance with the Davis-Bacon Act and its implementing regulations.
**f.** All contracts in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with the Contract Work Hours and Safety Standards Act and its implementing regulations.
**g.** All contracts that meet the definition of “funding agreement” and where the District wishes to enter into a contract with a small business firm or nonprofit organization must include a provision for compliance with the Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements.
**h.** All contracts and sub-grants greater than $150,000 must contain a provision for compliance with the Clean Air Act and the Federal Water Pollution Control Act and their implementing regulations.
**i.** A contract or subcontract must not be made to any party that is Debarred or Suspended from receiving federal funds.
**j.** Lobbying Certification and Disclosure of Lobbying (Byrd Anti-Lobbying Amendment) – All contractors that apply or bid for an award of $100,000 or more must file the required Lobbying Certification that it has not and will not use any federal funds to lobby. If non-federal funds are used to lobby, the contractor must complete the Disclosure of Lobbying and forward the disclosure to the next tier, who must forward it through each tier to the federal awarding agency.
**k.** All contracts greater than $10,000 must include compliance with section 6002 of the Solid Waste Disposal Act and its implementing regulations. 2 CFR § 200.323
**l.** For purchases using federal funds in excess of $250,000, Socorro ISD may be required to negotiate profit as a separate element of the price. See, 2 CFR 200.324(b).
**m.** When federal funds are expended by Socorro ISD for any contract resulting from this procurement process, Vendor certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.334. The Vendor further certifies that Vendor will retain all records as required by 2 CFR § 200.334 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

**n.** When School Nutrition Program (SNP) funds are expended by the District pursuant to this solicitation, Vendor certifies that it will comply with the record retention requirements per United States Department of Agriculture (USDA)/Texas Department of Agriculture (TDA). Vendor will retain all records as required by USDA/TDA for a period of five (5) years after the end of the fiscal year to which the documentation/records pertain. Vendor further certifies that these records must be accessible to the District and federal or state reviewers. (*See TDA Administrator's Reference Manual Section 17).*

**o.** When Socorro ISD expends federal funds for any contract resulting from this procurement process, Vendor certifies that it will comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.; 49 C.F.R. Part 18).

**p.** Vendor certifies that Vendor is in compliance with all applicable provisions of the Buy America Act. Purchases made in accordance with the Buy America Act must still follow the applicable procurement rules calling for free and open competition.

**q.** Buy American Certification. The District participates in the National School Lunch Program and School Breakfast Program and is required to use the nonprofit food service funds, to the maximum extent practicable, to buy domestic commodities or products for Program meals. A domestic commodity or product is defined as one that is either produced in the U.S. or is processed in the U.S. substantially using agricultural commodities that are produced in the U.S. as provided in 7 CFR 210.21(d). "Substantially" is defined as 51% or more of the final processed product consists of agricultural commodities grown domestically.

**r.** Vendor agrees that the Inspector General of the District or any of their duly authorized representatives shall have access to any books, documents, papers and records of Vendor that are directly pertinent to Vendor's discharge of its obligations under the Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to Vendor's personnel for the purpose of interview and discussion relating to such documents. 2 CFR. § 200.336

**s.** Vendor agrees that all contracts it awards pursuant to the Contract shall be bound by the foregoing terms and conditions.

**t.** Vendor agrees, in accepting an award from Socorro ISD, it shall make a good faith effort to work with Socorro ISD Inter-local contracts to provide such information and to satisfy such requirements as may apply to a particular purchase or purchases including, but not limited to, applicable recordkeeping and record retention requirements.

**u.** Civil Rights/Discrimination. Vendor certifies that Vendor is in compliance with Title VI of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title 7 CFR Parts 15, 15a, and 15b; the Americans with Disabilities Act; and FNS Instruction 113-1, Civil Rights Compliance and Enforcement – Nutrition Programs and Activities, which prohibit discrimination of all eligible program participants on the basis of age, color, disability, national origin, race, and gender.

**v.** Vendor certifies that Vendor meets all applicable local, state, and federal health and safety certifications, licensing, or regulations which include, but are not limited, to facility use, food establishment, and authorized providers.

**w.** Vendor certifies that should Vendor subcontract any work under this contract, vendor shall take the following steps: place qualified small and minority businesses and women's business enterprises on solicitation lists; assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; divide specifications and/or technical requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises; establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

**x.** Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms are especially invited to submit a response to the solicitation(s).

39. **Estimated Quantities:** It is specifically understood and agreed that the quantities shown on the solicitation are estimates, based on projected use, and are for consideration purposes only. The District has no commitment to the Contractor to purchase a specific quantity until a contract and/or Purchase Order is issued. Any increase in quantities will be paid for at the quoted price, unless required by law to re-bid. It is further understood that the Contractor will not have any claim against the District for the purchase of quantities less than the estimated amount.

40. **Product Standards:** When a brand name and identification numbers are shown on the solicitation, they indicate an acceptable standard, the features of which must be considered when submitting equals. This brand name is used only to establish a quality level, and basic features required. Submittals on equivalent or better items are encouraged, but must be accompanied with appropriate information for evaluation purposes. Failure to include such information will disqualify the response on that item. If submitting a response on other than reference specifications, identify manufacturer, brand, model, etc., of the item being offered. If other than brand(s) specified is offered, complete descriptive information in literature form of each item being offered must be included with your submittal. If Contractor takes no exception to specifications requested, Contractor will be required to furnish brand names, models, etc., as specified.

41. **Product Samples and Presentations:** Samples and/or Presentations for evaluation purposes must be provided, at no cost or obligation to the District, within five (5) days of request unless specified otherwise in the Line Item, Specifications, and/or Special Terms and Conditions. District has the right to use, test, and destroy any samples received unless, otherwise noted by the Contractor. Samples will be returned by request only at the Contractor's expense. Each sample submitted should be labeled with Contractor's name, solicitation name, solicitation number, and item number.

42. **Awarding Bids:** The District in accordance with Section 44.031(B) of the Public Education Code may consider the following or combination of the following in the awarding of bids and proposals

    **a.** the purchase price;
    **b.** the reputation of the vendor and of the vendor's goods or services;
    **c.** the quality of the vendor's goods or services;
    **d.** the extent to which the goods or services meet the district's needs;
    **e.** the vendor's past relationship with the district;
    **f.** the impact on the ability of the district to comply with laws and rules relating to historically underutilized businesses;
    **g.** the total long-term cost to the district to acquire the vendor's goods or services;
    **h.** for a contract for goods and services, other than goods and services related to telecommunications and information services, building construction and maintenance, or instructional materials, whether the vendor or the vendor's ultimate parent company or majority owner:(A) has its principal place of business in this state; or (B) employs at least 500 persons in this state; and
    **i.** any other relevant factor specifically listed in the request for bids or proposals.

43. **Price Per Unit:** Unit prices are to be based on the unit of measure requested on the solicitation. Failure to do so may disqualify the submittal. All charges, including delivery charges must be included in the bid price.

44. **Non-appropriations Clause:** This solicitation and any subsequent agreement is subject to the appropriation of funds by the District in its budget adopted for any fiscal year for the specific purpose of making payments pursuant to this solicitation . The obligation of the District pursuant to this solicitation in any fiscal year for which this solicitation is in effect shall constitute a current expense of the district for that fiscal year only, and shall not constitute an indebtedness of the District of any monies other than those lawfully appropriated in any fiscal year. In the event of non-appropriation of funds in any fiscal year to make payments pursuant to this solicitation, this solicitation and any subsequently issued Purchase Order or contract shall be terminated.

45. **Failure to Honor Bid Prices:** Any Contractor failing to honor services, pricing, or delivery of items may result in being removed from the bid list for a period of two (2) years. Items delivered not as specified on the award will be the responsibility of the Contractor to recover and credit to the District at no expense to the District.

46. **Solicitation Withdrawal:** Any request to withdraw a hard copy response prior to the scheduled time of opening must be submitted in writing to the Purchasing Department.

47. **Requests for Interpretation and Clarification:** If Contractor is in doubt as to the meaning of any part of the solicitation, a written request to the Purchasing Department of the interpretation in question will be required as stated in the solicitation attributes prior to the opening of solicitation. The person submitting the request will be responsible for its prompt delivery.

48. **Failure to Meet All Terms and Conditions:** Failure to meet all Terms and Conditions will constitute grounds for canceling the Contractors solicitation(s).

49. **Material Safety Data Sheets (MSDS):** The District requires product verification in the form of MSDS reports for all items for which the MSDS are available. MSDS shall be submitted at the time of the solicitation opening and with each delivery of those products. MSDS shall be submitted for any alternate products submitted.

50. **Deviations:** List any deviations from the specifications on the appropriate section of the solicitation.

51. **Contractor Responsibilities:** By submitting a proposal, Contractor certifies that it understands this Solicitation and has full knowledge of the scope, nature, quality, and quantity of the services to be performed, the detailed requirements of the services to be provided, and the conditions under which such services are to be performed. Contractor also certifies that it understands that all costs relating to preparing a response to this solicitation will be the sole responsibility of the Contractor.

52. **Texas Public Information Act:** Upon execution of a final agreement, SISD will consider all information, documentation, and other materials requested to be submitted in response to this solicitation, to be of a non-confidential and non-proprietary nature and, therefore, subject to public disclosure under the Texas Public Information Act (Government Code, Chapter 552.001, et seq.). Contractor will be advised of a request for public information that implicates their materials and will have the opportunity to raise any objections to disclosure to the Texas Attorney General. Certain information may be protected from release under Sections 552.101, 552.110, 552.113, and 552.131, Government Code.

53. **Delegations:** If selected by the District, Contractor will not delegate any of its duties or responsibilities under this solicitation or the Agreement to any sub-contractor, except as expressly provided in the Agreement.

54. **Authorization:** If selected by the District, Contractor certifies that the individual signing this document and the documents made a part of this solicitation, is authorized to sign such documents on behalf of the Contractor and to bind the Contractor under any agreements and other contractual arrangements that may result from the submission of its proposal.

55. **Legal Responsibilities:** Legal Responsibilities: Contractor will defend with counsel approved by the District, indemnify, and hold harmless the District, The Board of Trustees, Officers, Agents, and Employees, from and against all actions, suits, demands, costs, damages, liabilities and other claims of any nature, kind or description, including reasonable attorneys' fees incurred in investigating, defending or settling any of the omissions or willful misconduct of proposer or any Agent, Employee, Subcontractor, or Supplier of proposer in the execution or performance of any contract or agreement resulting from this solicitation.

56. **Penalties for Non-Performance:** If at any time, the Contractor fails to fulfill or abide by the terms, conditions, or specifications of the contract, the District reserves the right to:

    **a.** Purchase on the open market and charge the contractor the difference between contract and actual purchase price, or
    **b.** Reduce such charges from existing invoice totals due at the time, or
    **c.** Cancel the contract within thirty (30) days written notification of intent.

57. **Felony Conviction Notice:** Texas Education Code requires 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 or operator 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." Note: If this is a publicly-held company, you may select No, does not apply.

58. **Criminal Background Check:** Awarded contractor shall ensure to Socorro ISD that any agent/representative and/or employee(s) who will be performing services on campuses or will have direct contact with students shall be subject to a criminal history background check using the LEE FAST PASS process and shall not have a criminal history which is objectionable to the district. Awarded contractor shall submit appropriate information to SISD in compliance with Section 22.0834 and 22.08341 et.seq., Texas Education Code regarding criminal history records. The criminal background checks must be performed before any new employee or subcontractor is permitted to enter SISD property. SISD reserves the right to require additional background checks of identified personnel performing work on any projects or services where direct contact with staff and students may occur. The cost of required background checks and badges will be the responsibility of the successful contractor. Awarded vendor(s) shall also be required to provide identification badges for every employee(s) who will be performing services to the district at its expense. The badge will require the company's name, employee's name and a picture of the employee.

59. **Insurance Requirements:** The Contractor will carry and will request its subcontractors to carry the following insurance certification with companies authorized to do insurance business in the State of Texas in the amounts not less than the following minimum limits of coverages shown and under the conditions noted before any authorization will be given to commence, delivery or installed. Certificates of Insurance may be submitted to SISD by the successful Contractor after the award is made (If needed).

**General**

a. No work will be commenced until all requirements of this section have been approved by the District in writing. The District will be furnished a certificate of insurance on an approved certificate form (Accord form) or a Texas Department Insurance pre-approved form, prior to the commencement of any work.

b. All insurance policies will be endorsed to name SISD as an Additional Insured and provide a waiver of subrogation in favor of SISD. The remarks section should include job description and/or project name and/or bid number.

c. The insurance shall contain a provision that at least sixty (60) days prior written notice shall be given to the District in the event of cancellation, material change or non-renewal.

d. Insurance(s) shall be underwritten by a company rated not less than A+ in the Best's latest published guide.

e. There shall be a hold harmless agreement in which the contractor assumes liability on the contract and holds the District harmless.

f. If selected by the District, Contractor will maintain any insurance coverage as required by the Agreement during the term thereof.

**Casualty Insurance**

a. Commercial General Liability Insurance (Occurrence basis only):

$1.000,000 – Each Occurrence
$1,000,000 – General Aggregate
$1,000,000 – Personal & Advertising Injury
$1,000,000 – Products/Completed Operations – Aggregate
$ 5,000 – Premises Medical Expense
$ 500,000 – Damage to Rented Premises (each occurrence)

b. Commercial (Business) Automobile Liability Insurance coverage for all owned, non-owned and hired vehicles:

$1,000,000 (each occurrence) - for Bodily Injury/ and Property Damage

**c.** Workers Compensation:

$1,000,000 – Employers Liability – Each Accident
$1,000,000 – Employers Liability – Each Employee
$1,000,000 – Employers Liability – Disease – Policy Limit

Statutory Limits
Waiver of Subrogation

**d.** The contractor shall purchase and maintain in force the following kinds of insurance and bonds for operations under construction contracts/projects and as specified in each section: Additional Requirement(s):

1. Builders Risk Policy for total amount of completed project
2. Bid Bond (if required)
3. Payment and Performance Bond (if required)
4. Any project involving a higher hazard, an additional umbrella limit may be required
5. Endorsement CG 2294 is not acceptable, vendor must specifically and affirmatively state in their bid response that their insurance policy does not include Endorsement CG 2294 (elimination of coverage for General Contractors for the work of Sub Contractors)

No deletions/exclusions from standard coverage form allowed without written consent of the District.

**Umbrella Liability Insurance (Excess) - $3,000,000**

**a.** The owner shall be named as an additional insured on the contractor's policy as to the subject job.

**b.** This policy shall provide coverage over the Workers' Compensation, Commercial general Liability and Business Automobile Liability.

60. **Credits, Rebates, Discounts, and USDA food values**. Socorro ISD requires that all discounts, rebates, and credits accrue back to the school nutrition account. The vendor will be required to identify the amount of each discount, rebate, or other applicable credit on bills and invoices presented to SISD. All discounts, rebates, and credits will be tracked via monthly invoices or annual velocity reports. Vendors will be required to maintain documentation of costs, discounts, rebates, and credits and make those available to SISD upon request.

61. **CFR Section 200.216. Prohibition on certain telecommunications and video surveillance services or equipment.**

(a) District is prohibited from obligating or expending funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Vendor certifies vendor will not provide equipment/services as stated from the entities listed or any subsidiary or affiliate of such entities.

62. **Addition of Products.** During the Term of a Contract awarded under this solicitation, additional purchases not included in the original solicitation list and resulting awarded contract may become necessary and benefit Socorro ISD. Vendor and Socorro ISD agree that the aggregate value of added purchases during each year of the Contract (if renewed) shall not exceed 10% of the estimated total value of the Contract. The total value of the Contract must be agreed upon, and the dollar value listed in the Contract and each renewal term of the Contract (if any). For purposes of this section, the total value of the Contract includes all contracts awarded as a result of the procurement solicitation to all vendors. For the initial Term of a Contract awarded under this solicitation, Vendor and Socorro ISD agree that the total value of the Contract shall be as stated on the award. Additions of new products may be included in the awarded Contract list during the renewal of the Contract through an amendment to the Contract, and the total Contract value adjusted accordingly. For each renewal term of the Contract, the total actual value of the Contract in the preceding year and the additional new product(s) made during that Term will be the basis for determining the maximum dollar amount (not to exceed 10%) of the additional new product(s) that will be allowed during the next Contract renewal term.

63. **Senate Bill 19 Verification.** Effective September 1, 2021. Socorro ISD cannot enter into a contract with any company with at least ten (10) full time employees for goods or services with a value in excess of $100,000.00, unless the contract contains a written verification from the company 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 under the terms of Section 2274 of the Texas Government Code. Should the company during the term of the agreement adopt or enforce these items, immediate notification is required to SISD Purchasing Department.

**Pursuant to Section 2274.001, Texas Government Code:**

a. *"Discriminate against a firearm entity or firearm trade association" means, with respect to the entity or association, to: "refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association."*

b. *"Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or associations that exists to make a profit. The term does not include a sole proprietorship.*

Vendor Certifies that it will adhere to Section 2274 of the Texas Government Code.