

**RFQ MUST BE RECEIVED AT THE DESIGNATED LOCATION SPECIFIED IN THIS SOLICITATION
ON OR BEFORE:**

Updated: 08/15/2019

October 3, 2019

at

10:00 AM CST

MAIL, COURIER or HAND DELIVER RESPONSE TO:

**Region 7 Education Service Center
ATTN: Martha Lakey
Purchasing Services
RFQ 07-10032019 Outdoor Early Learning Centers- Ecoland
1909 North Longview Street
Kilgore, Texas 75662**

Show RFQ Number, Opening Date and Time on Return Envelope

NOTES TO POTENTIAL RESPONDENTS:

Responses to this solicitation must be received at the location designated above and time stamped on or before the time and date specified in this solicitation in order to be considered.

It is the Respondent's sole responsibility for preparing, submitting and delivering a response with all required materials to the designated location on or before the published submittal deadline. Courier or delivery services may not deliver directly to the specified location. It is strongly recommended that the response be hand carried to insure receipt at the proper location:

- If mailing or sending by courier, the Respondent (Offeror) is cautioned to allow sufficient time for delivery prior to the published deadline to the location specified above.
- Failure to deliver, for whatever reason, may not be grounds for disputing the procurement solicitation process or any resulting contract award.

All questions relating to the RFQ shall be in writing via e-mail as provided below. All requests for information shall result in written responses attached as Addendum to the RFQ posting on the Region 7 Purchasing Services website.

REFER INQUIRIES IN WRITING TO:

**ATTN: Ronnie Hemann
Deputy Executive Director, Operations
Email: rhemann@esc7.net**

After receipt of qualifications, the names of Respondents will be made public after the contract award, if one is made. All qualifications submitted shall become the property of Region 7 Education Service Center upon receipt.

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SECTION 1: INTRODUCTION

1.1 STATEMENT OF WORK

Region 7 Education Service Center (ESC) is seeking responses to this solicitation from qualified individuals or firms (Respondents) to create, design and install an outdoor learning area located at Ecoland Early Learning Center in Kilgore, Texas.

Such a response shall be issued under a Request for Qualifications – Design Build Contract. Selected vendor will need to work with the selected contractor/architect throughout the design and installation process of exhibition components.

Qualifications to Include:

- Three similar, completed projects by Respondent.
- Size and experience of staff that will work on project.
- Ability to meet the deadline set by the ESC (TBD).
- In-house procedures for insuring quality and timely performance on projects.
- Familiarity with:
 - U.S. Department of Justice Civil Rights Division Disability Rights Section American Disabilities Act requirements.

Region 7 ESC shall not be liable to any Respondent, person or entity for any losses, expenses, costs, claims or damages of any kind:

- a) Arising out of, or by reason of, or attributable to, the Respondent responding to this RFQ.
- b) As a result of the use of any information, error or omission contained in this RFQ document or provided during the RFQ process.

The selected individual(s) or firm(s) as provider of the Work to the ESC shall:

- Be expected to maintain a high degree of confidentiality throughout the process;
- Be subject to the State's "open records" laws.

1.2 FORM OF RESPONSE

Responses shall contain the following information:

- A detail of the qualifications of the individual(s) or firm proposing to design, develop, and complete initial installation of exhibition components for the Ecoland Outdoor Learning Center.

1.3 RESPONSE EVALUATION

Responses shall be evaluated based on the weights assigned below to each evaluation criteria. If additional information or clarification is required, the RFQ evaluation team shall make written requests to the appropriate firm(s) and require all responses to be made in writing.

Company Information	20%
Experience and Qualifications	60%
References	20%
Total	100%

1.4 RFQ TIMELINE

Date Available	August 14, 2019
Response Deadline	October 03, 2019, 10:00 AM
Project Start	To be Determined

1.5 AWARD PROCESS

The ESC shall be the sole judge in making this determination and it shall be done if it is determined to be in the ESC's best interests.

1.5.1 Evaluation

1. Administrative Review

The ESC will review timely received responses to determine if mandatory requirements are met and to verify that the responses meet requirements. Compliant responses will be approved for subsequent evaluation steps.

2. Initial Ranking

A committee will review and rank compliant responses, without consideration of cost, from best to least qualified. The evaluation team will use detailed evaluation and weighting guidelines to carefully review and assign a score to each section of each response. Upon completion of the evaluation and scoring, the next step of this evaluation will be performed.

3. Cost Proposal Evaluation

Costs shall not be submitted.

4. Reference Checks, Clarification, and Product Demonstration/Presentation

Region 7 ESC will perform reference checks and seek further information as needed from all firms whose responses meet qualifications, based on the initial evaluation and scoring. Firms may be asked to discuss their responses or provide written clarification.

In the course of seeking additional information, the Region 7 ESC will:

- Control all discussions;
- Attempt to resolve any uncertainties concerning a firm's response;

- Attempt to resolve any suspected mistakes by calling them to a Respondent's attention as specifically as possible without disclosing information concerning other Respondent's responses or confidential aspects of the evaluation process;

1.6 TERM OF AGREEMENT

The term of any resulting agreements for the design and build of the Outdoor Early Learning Structures.

1.7 REGION 7 ESC BACKGROUND INFORMATION

Region 7 ESC is one of 20 regional education service centers statewide that participates in the planning, development, coordination, implementation and evaluation of innovative educational programs. Created in 1967, Education Service Centers (ESCs) do not have tax levying or bonding authority, and rely on grants and contracts for funding. Revenues are received from three primary sources: federal, state, and local funds. Region 7 currently serves 108 school districts and charters, the largest amount of school districts of any ESC.

1.8 COMPLIANCE WITH ESC POLICIES AND PROCEDURES

RESPONDENT IS NOTIFIED THAT IN THE EVENT OF AN AWARD THE FOLLOWING PROCEDURES, AT A MINIMUM, SHALL APPLY TO A CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS WHILE ON THE ESC PROPERTY:

- a. Visible name badge must be worn while on the property;
- b. Prohibition on smoking or tobacco use;
- c. Fire safety;
- d. Hazardous Materials;
- e. Drug-free workplace; and,
- f. Prohibition of sexual harassment, or harassment or discrimination based on race, color, national origin, age, sex, religion, disability or sexual orientation.

1.9 INSURANCE REQUIREMENTS

Respondent must provide valid proof of General Liability Insurance and Workers Compensation Insurance in addition to a Payment and Performance Bond if awarded this solicitation and applicable.

SECTION 2: GENERAL INFORMATION

2.1 Submittal Deadline and Location

- (a) All responses must be received by Region 7 Education Service Center at the designated location no later than the time and date specified.
- (b) It is the Respondent's sole responsibility for preparing, submitting and delivering a response with all required materials to the designated location on or before the published submittal deadline.

Late offers properly identified will be returned to Respondent unopened. Late offers will not be considered under any circumstances.

2.2 Submittal Instructions

- (a) Responses must be signed by Respondent's company official or representative authorized to commit such responses and bind the Respondent in the event of a contract award
- (b) An original and one (1) copy of your complete response submitted in response to this solicitation are required. Copy #1 must be exact copy of the original. An electronic version of the submission may be requested during evaluation.
- (c) Response package (envelope/box/carton) must indicate on the lower left-hand corner:
 - the Respondent's company name;
 - the response opening date; and,
 - RFQ number.
- (d) Telephone and/or facsimile (Fax) and/or e-mail responses to this RFQ are not acceptable.
- (e) All costs and expenses related to the preparation and submittal of a response to this solicitation shall be borne by the Respondent.
- (f) Upon receipt, all submittals shall become property of the ESC.

2.3 Inquiries and Interpretations

Any questions or inquiries regarding the specifications or any other aspect of this solicitation must be received by email to Ronnie Hemann, rhemann@esc7.net.

Responses to inquiries which directly affect an interpretation or change to this RFQ will be issued in writing by addendum (amendment) posted to the Region 7 Purchasing Cooperative website. All such addenda issued prior to the time that responses are received shall be considered part of the RFQ, and the Respondent shall consider and acknowledge specific receipt of each in his/her responses response.

Only those replies to inquiries, which are made by formal written addenda, shall be binding. Oral and other interpretations or clarification will be without legal effect.

SECTION 3: GENERAL TERMS AND CONDITIONS

Any Contract awarded as a result of this RFQ will contain the general terms and conditions listed below in this Section. Subcontractors are also obliged to comply with these provisions. Sample documents are provided for your reference.

Now Therefore, the ESC and Respondent hereby agree as follows:

1. **Authority**

This Contract is entered into pursuant to TEC 44.031 (3).

2. **Services, Standards of Performance and Contract Administration**

Contractor shall provide the services and the deliverables described herein in the manner required by all of the following documents:

1. Contract
2. Authorized Key Personnel List
3. The respondent's submitted RFQ

All of the above are attached to and incorporated as part of this Contract for all purposes.

Contractor shall provide all of the above services and all reasonably related services in accordance with applicable professional standards of a Contractor providing architectural services. Contractor represents and warrants that it has the requisite qualifications, experience, personnel and other resources to perform in the manner required by this Contract. *ESC* shall designate a Project Manager for this Contract. The Project Manager will serve as the point of contact between the *ESC* and Contractor. *Region 7 ESC* Project Manager shall supervise *Region 7 ESC's* review of Contractor's technical work, deliverables, draft reports, the final report, payment requests, schedules, financial budget administration and similar matters. The Project Manager does not have any express or implied authority to vary the terms of the Contract, amend the Contract in any way or waive strict performance of the terms or conditions of the Contract.

3. **Funding** All obligations of the *ESC* and Customers are subject to the availability of legislative appropriations and, for Customers expending federal funds, to the availability of the federal funds applicable to the Contract. The Respondent acknowledges that the ability of *ESC* and the Customers to make payments under the Contract is contingent upon the continued availability of funds. The Respondent further acknowledges that funds may not be specifically appropriated for the Contract and the *ESC* or Customers continual ability to make payments under the Contract is contingent upon the funding levels appropriated for each particular appropriation period. The *ESC* and the Customers will use all reasonable efforts to ensure that such funds are available. The Respondent agrees that if future levels of funding for *ESC* or a Customer are not sufficient to continue operations without any operational reductions, *ESC* or the Customer, in its discretion, may terminate the Contract or a pending order under the Contract, either in whole or in part. In the event of such termination, *ESC* or the Customer will not be considered to be in default or breach under the Contract, nor shall it be liable for any further payments ordinarily due under the Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination. *ESC* and the Customer shall make best efforts to provide reasonable

written advance notice to the Respondent of any such Contract or order termination. In the event of such a termination, the Respondent shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination, either on the particular order if an order is being terminated, or the Contract, if the Contract is being terminated. *ESC* or the Customer shall be liable for payments limited only to the portion of work the *ESC* or the Customer authorized in writing and which the Respondent has completed, delivered to the *ESC* or Customer, and which has been accepted by *ESC* or Customer. All such work shall have been completed, per the Contract requirements, prior to the effective date of termination.

4. **Personnel** Contractor shall assign only qualified personnel to this Contract. On the date of *ESC* execution of the Contract, *ESC* project manager shall authorize the key personnel listed in Exhibit D of this Contract to provide services under this Contract. Contractor, in its reasonable discretion, reserves the right to substitute appropriate key personnel to accomplish its duties so long as the substituted personnel are equally qualified and skilled in the tasks necessary to accomplish the tasks and services required. Contractor shall provide to *ESC* prior written notice and obtain written approval from *ESC* prior to any change in key personnel involved in providing services under this Contract.
5. **Subcontractors providing services under the Contract** Subcontractors providing services under the Contract shall meet the same requirements and level of experience as required of Contractor. No subcontract under the Contract shall relieve Contractor of responsibility for ensuring the requested services are provided. If Contractor uses a subcontractor for any or all of the work required, the following conditions shall apply: (a) Contractors planning to subcontract all or a portion of the work to be performed shall identify the proposed subcontractors. (b) Subcontracting shall be solely at Contractor's expense. (c) *ESC* retains the right to check subcontractor's background and approve or reject the use of submitted subcontractors. (d) Contractor shall be the sole contact for the *ESC*. Contractor shall list a designated point of contact for all *ESC* inquiries.
6. **Payments** Prior to authorizing payment to Contractor, *ESC* shall evaluate Contractor's performance. Contractor shall provide invoices to *ESC* for Commodities/Services provided/performed. Invoices must be submitted not later than the 15th day of the month after the Services are completed. No payment whatsoever shall be made under this contract without the prior submission of detailed, correct invoices. Subject to the foregoing, *ESC* must make all payments in accordance with the Texas Prompt Payment Act, *Government Code*, Chapter 2251. Payments under this Contract are subject to the availability of appropriated funds. Contractor acknowledges and agrees that payments for services provided under this Contract are contingent upon *ESC* receipt of funds appropriated by the Texas Legislature.
7. **Term and Termination** This Contract shall become effective on the date signed by the appropriate official of the *ESC*. Notwithstanding the termination or expiration of this Contract, the provisions of this Contract regarding confidentiality, indemnification, transition, records, right to audit and independent audit, property rights, dispute resolution, invoice and fees verification, and default shall survive the termination or expiration dates of this Contract. *ESC* may, in its sole discretion, terminate this Contract upon thirty (30) days' written notice to Contractor. Such notice may be provided by facsimile or certified mail

return receipt requested and is effective upon Contractor's receipt. In the event of such termination, the Respondent shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. Customers shall be liable only for payments for any goods or services ordered from the Respondent before the termination date.

8. **Cause/Default** If the Respondent fails to provide the goods or services contracted for according to the provisions of the Contract, or fails to comply with any terms or conditions of the Contract. *ESC* may, upon written notice of default to the Respondent, immediately terminate all or any part of the Contract. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies as provided in equity, by law or under the Contract. *ESC* may exercise any other right, remedy, or privilege which may be available to it under applicable law of the state and any other applicable law or may proceed by appropriate court action to enforce the provisions of the Contract. The exercise of any of the foregoing remedies will not constitute a termination of the Contract unless *ESC* notifies the Respondent in writing prior to the exercise of such remedy. The Respondent shall be liable for all costs and expenses, including court costs, incurred by *ESC* with respect to the enforcement of any of the remedies listed herein.
9. **Rights upon Termination or Expiration** In the event that the Contract is terminated for any reason, or upon its expiration, the *ESC* and Customers shall retain ownership of all associated work products and documentation obtained from the Respondent under the Contract.
10. **Survival of Terms** Termination of the Contract for any reason shall not release the Respondent from liability or obligation set forth in the Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, invoice and fees verification.
11. **Confidentiality and Public Information** Notwithstanding any provisions of this Contract to the contrary, Contractor understands that *ESC* will comply with the Texas Public Information Act, Government Code, Chapter 552 as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. *ESC* agrees to notify Contractor in writing within a reasonable time from receipt of a request for information related to Contractor's work under this contract. Contractor will cooperate with *ESC* in the production of documents responsive to the request. *ESC* will make a determination whether to submit a Public Information Act request to the Attorney General. Contractor will notify *ESC* General Counsel within twenty-four (24) hours of receipt of any third party requests for information that was provided by the State of Texas for use in performing the Contract. This Contract and all data and other information generated or otherwise obtained in its performance may be subject to the Texas Public Information Act. Contractor agrees to maintain the confidentiality of information received from the State of Texas during the performance of this Contract, including information which discloses confidential personal information particularly, but not limited to, social security numbers. The Comptroller of Public Accounts recommends that pursuant to SB 1368, state governmental entities include the following language in their contracts: **“Contractor is required to make any information created or exchanged with the state pursuant to this contract, and not**

otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state.” In addition to this recommended language, the Comptroller also advises that in order to ***comply with the new statutory requirements***, each state governmental entity should supplement this provision with the additional terms agreed upon by the parties regarding the specific format by which the Respondent is required to make the information accessible by the public.

12. **Insurance and Other Security** Contractor represents and warrants that it will, within five (5) business days of executing this agreement, provide *ESC* with current certificates of insurance and bonding information or other proof acceptable to *ESC* of the following insurance coverage: Standard Workers Compensation Insurance covering all personnel who will provide services under this Contract; Commercial General Liability Insurance, personal injury and advertising injury with, at a minimum, the following limits: \$500,000 minimum each occurrence; \$1,000,000 per general aggregate. Contractor represents and warrants that all of the above coverage is with companies licensed in the state of Texas, with “A” rating from Best, and authorized to provide the corresponding coverage. Contractor also represents and warrants that all policies contain endorsements prohibiting cancellation except upon at least thirty (30) days prior written notice to the *ESC*. Contractor represents and warrants that it shall maintain the above insurance coverage during the term of this Contract, and shall provide *ESC* with an executed copy of the policies immediately upon request.
13. **INDEMNIFICATION Acts or Omissions** Respondent shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Respondent or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY RESPONDENT WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND RESPONDENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. RESPONDENT AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.
14. **Infringements**
 - a. Respondent shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF RESPONDENT PURSUANT TO THIS CONTRACT. RESPONDENT AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. RESPONDENT SHALL BE LIABLE TO PAY ALL

COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY RESPONDENT WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND RESPONDENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

- b. Respondent shall have no liability under this section if the alleged infringement is caused in whole or in part by:
 - i. use of the product or service for a purpose or in a manner for which the product or service was not designed,
 - ii. any modification made to the product without Respondent's written approval,
 - iii. any modifications made to the product by the Respondent pursuant to Customer's specific instructions,
 - iv. any intellectual property right owned by or licensed to Customer, or
 - v. any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.
- c. If Respondent becomes aware of an actual or potential claim, or Customer provides Respondent with notice of an actual or potential claim, Respondent may (or in the case of an injunction against Customer, shall), at Respondent's sole option and expense;
 - i. procure for the Customer the right to continue to use the affected portion of the product or service, or
 - ii. modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

15. Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity

- a. RESPONDENT AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, RESPONDENT SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF RESPONDENT'S AND RESPONDENT'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. RESPONDENT AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE RESPONDENT, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.
- b. RESPONDENT AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. RESPONDENT SHALL BE LIABLE TO

PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY RESPONDENT WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND RESPONDENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. RESPONDENT AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

16. **Dispute Resolution** The dispute resolution process provided for in Texas *Government Code*, Chapter 2260 shall be used by ESC and Contractor to resolve any dispute arising under the Contract. The dispute resolution process provided for in Chapter 2260 shall be used, as further described herein, to attempt to resolve a claim for breach of contract asserted by the Respondent under the Contract. If the Respondent's claim for breach of Contract cannot be resolved by the Parties in the ordinary course of business, it shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, the Respondent shall submit written notice, as required by Chapter 2260, to the Deputy Comptroller or his or her designee. The notice shall also be given to the individual identified in the Contract for receipt of notices. Compliance by the Respondent with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260. The contested case process provided in Chapter 2260 is the Respondent's sole and exclusive process for seeking a remedy for an alleged breach of Contract by the ESC if the Parties are unable to resolve their disputes as described above. Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civil Practices and Remedies Code. Neither the execution of the Contract by the ESC nor any other conduct of any representative of the ESC relating to the Contract shall be considered a waiver of sovereign immunity to suit. For all other specific breach of contract claims or disputes under the Contract, the ESC and the Respondent shall first attempt to resolve them through direct discussions in a spirit of mutual cooperation. If the Parties' attempts to resolve their disagreements through negotiations fail, the dispute will be mediated by a mutually acceptable third party to be chosen by the ESC and the Respondent within fifteen (15) days after written notice by one them demanding mediation under this Section. The Respondent shall pay all costs of the medication unless the ESC in its sole good faith discretion, approves its payment of all or part of such costs. By mutual agreement, the ESC and the Respondent may use a non-binding form of dispute resolution other than mediation. The purpose of this Section is to reasonably ensure that the ESC and the Respondent shall, in good faith, utilize mediation or another non-binding dispute resolution process before pursuing litigation. The ESC participation in, or the results of, any mediation or other non-binding dispute resolution process under this Section or the provisions of this Section shall not be construed as a waiver by the ESC of (1) any rights, privileges, defenses, remedies or immunities available to the ESC; (2) the ESC termination rights; or (3) other termination provisions or expiration dates of the Contract. Notwithstanding any other provision of the Contract to the contrary, unless otherwise requested or approved in writing by the ESC the Respondent shall continue performance and shall not be excused from performance during

the period any breach of contract claim or dispute is pending under either of the above processes; however, the Respondent may suspend performance during the pendency of such claim or dispute if the Respondent has complied with all provisions of §2251.051, Gov't Code, and such suspension of performance is expressly applicable and authorized under that law.

17. **Representations, Warranties, and General Provisions 12.2. Eligibility** Under Government Code, Section 2155.004 (relating to certain taxes), Contractor represents and warrants that Contractor is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this representation and warranty is inaccurate. Contractor represents and warrants that it is not delinquent in the payment of any franchise taxes owed the State of Texas. Also, Government Code, Section 2155.004 prohibits a person or entity from receiving a state contract if that person or entity received compensation for participating in preparing the solicitation or specifications for the Contract.
18. **Liability for Taxes** Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of Contractor or its employees. ESC shall not be liable for any taxes resulting from this Contract.
19. **Amendments** Except as provided in this Contract, this Contract may be amended only upon written agreement between ESC and Contractor; however, any amendment of this Contract that conflicts with the laws of the State of Texas shall be void ab initio.
20. **Applicable Law; Venue** This Contract shall be governed by and construed in accordance with the laws of the State of Texas. The venue of any suit arising under this Contract is fixed in any court of competent jurisdiction of Gregg County, Texas.
21. **Strict Compliance** Time is of the essence in the performance of this Contract. Contractor shall strictly comply with all of the deadlines, requirements, and Standards of Performance for this Contract.
22. **Assignments** Without the prior written consent of ESC Contractor may not assign this Contract, in whole or in part, and may not assign any right or duty required under it.
23. **Partially Completed Work** No later than the first calendar day after the termination of this Contract, or at ESC request, Contractor shall deliver to ESC all completed, or partially completed, work and any and all documentation or other products and results of these services. Failure to timely deliver such work or any and all documentation or other products and results of the services shall be considered a material breach of this Contract. Contractor shall not make or retain any copies of the work or any and all documentation or other products and results of the services without the prior written consent of the ESC.
24. **Federal, State, and Local Requirements** Contractor shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common law employees. Contractor is responsible for both federal and State unemployment insurance coverage and standard Worker's Compensation Insurance coverage. Contractor shall comply with all federal and State tax laws and withholding requirements. The State of Texas shall not be liable to Contractor or its employees for any Unemployment or Workers' Compensation coverage, or federal or State withholding requirements. Contractor shall indemnify the State

of Texas and shall pay all costs, penalties, or losses resulting from Contractor's omission or breach of this Section.

25. **Severability Clause** In the event that any provision of this Contract is later determined to be invalid, void, or unenforceable, then the remaining terms, provisions, covenants, and conditions of this Contract shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.
26. **Applicable Law and Conforming Amendments** Contractor must comply with all laws, regulations, requirements and guidelines applicable to a Contractor providing services to the State of Texas as these laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Contract. *ESC* reserves the right, in its sole discretion, to unilaterally amend this Contract throughout its term to incorporate any modifications necessary for *ESC* or Contractor's compliance with all applicable State and federal laws, and regulations.
27. **No Waiver** Nothing in this Contract shall be construed as a waiver of the state's sovereign immunity. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under this Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. *ESC* does not waive any privileges, rights, defenses, or immunities available to *ESC* by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract.
28. **No Liability upon Termination** If this Contract is terminated for any reason, *ESC* and the State of Texas shall not be liable to Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination. However, Contractor may be entitled to the remedies provided in Government Code, Chapter 2260.
29. **Independent Contractor** Contractor or Contractor's employees, representatives, agents and any subcontractors shall serve as an independent contractor in providing the services under any PO resulting from this RFQ. Contractor or Contractor's employees, representatives, agents and any subcontractors shall not be employees of the *ESC*. Should Contractor subcontract any of the services required in this RFQ, Contractor expressly understands and acknowledges that in entering into such subcontract(s), *ESC* is in no manner liable to any subcontractor(s) of Contractor. In no event shall this provision relieve bidder of the responsibility for ensuring that the services rendered under all subcontracts are rendered in compliance with this RFQ.
30. **Limitation on Authority; No Other Obligations** Contractor shall have no authority to act for or on behalf of *ESC* or the State of Texas except as expressly provided for in this Contract; no other authority, power or use is granted or implied. Contractor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State of Texas or *ESC*.
31. **Patent, Trademark, Copyright and Other Infringement Claims** Contractor shall indemnify, save and hold harmless the State of Texas from and against claims of patent, trademark, copyright, trade secret or other proprietary rights, violations or infringements arising from the State's or Contractor's use of or acquisition of any services or other items

provided to the State of Texas by Contractor or otherwise to which the State of Texas has access as a result of Contractor's performance under this Contract, provided that the State shall notify Contractor of any such claim within a reasonable time of the State's receiving notice of any such claim. If Contractor is notified of any claim subject to this section, Contractor shall notify *ESC* of such claim within five (5) business days of such notice. No settlement of any such claim shall be made by Contractor without the *ESC*'s prior written approval. Contractor shall reimburse the State of Texas for any claims, damages, losses, costs, expenses, judgments or any other amounts, including, but not limited to, attorneys' fees and court costs, arising from any such claim. Contractor shall pay all reasonable costs of the State's counsel and shall also pay costs of multiple counsel, if required to avoid conflicts of interest. Contractor represents that it has determined what licenses, patents and permits are required under this Contract and has acquired all such licenses, patents and permits.

32. **Supporting Documents, Retention; Right to Audit; Independent Audits** Contractor shall maintain and retain supporting fiscal and any other documents relevant to showing that any payments under this Contract funds were expended in accordance with the laws and regulations of the State of Texas, including but not limited to, requirements of the Comptroller of the State of Texas and the State Auditor. Contractor shall maintain all such documents and other records relating to this Contract and the State's property for a period of four (4) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Contractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to the "Work" as defined in this Contract. Contractor and the subcontractors shall provide the State Auditor with any information that the State Auditor deems relevant to any investigation or audit. Contractor must retain all work and other supporting documents pertaining to this Contract, for purposes of inspecting, monitoring, auditing, or evaluating by *ESC* and any authorized agency of the State of Texas, including an investigation or audit by the State Auditor. Contractor shall cooperate with any authorized agents of the State of Texas and shall provide them with prompt access to all of such State's work as requested. Contractor's failure to comply with this Section shall constitute a material breach of this Contract and shall authorize the *ESC* and the State of Texas to immediately assess appropriate damages for such failure. Pursuant to Government Code, §2262.003 the acceptance of funds by Contractor or any other entity or person directly under this Contract, or indirectly through a subcontract under this Contract, shall constitute acceptance of the authority of the State Auditor to conduct an audit or investigation in connection with those funds. Contractor acknowledges and understands that the acceptance of funds under this Contract shall constitute consent to an audit by the State Auditor, Comptroller or other agency of the State of Texas. Contractor shall ensure that this paragraph concerning the State's authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards. Furthermore, under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the State Auditor must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit.

33. **Deceptive Trade Practices; Unfair Business Practices** Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Tex. Bus. & Com. Code, Chapter 17, or allegations of any unfair business practice in any administrative hearing or court suit and that Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings
34. **Equal Opportunity** Contractor represents and warrants that it shall not discriminate against any person on the basis of race, color, national origin, creed, religion, political belief, sex, sexual orientation, age, and disability in the performance of this Contract.
35. **Antitrust** Contractor represents and warrants that neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation or institution has (1) violated the antitrust laws of the State of Texas under Tex. Bus. & Com. Code, Chapter 15, or the federal antitrust laws; or (2) communicated directly or indirectly the response to any competitor or any other person engaged in such line of business during the procurement process for this Contract.
36. **No Conflicts** Contractor represents and warrants that Contractor has no actual or potential conflicts of interest in providing services to the State of Texas under this Contract and that Contractor's provision of services under this Contract would not reasonably create an appearance of impropriety.
37. **Financial Interests; Gifts** Contractor represents and warrants that neither Contractor nor any person or entity that will participate financially in this Contract has received compensation from ESC or any agency of the State of Texas for participation in preparation of specifications for this Contract. Contractor represents and warrants that it has not given, offered to give, and does not intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to any public servant or employee in connection with this Contract.
38. **Felony Criminal Convictions** Contractor represents and warrants that Contractor has not and Contractor's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Contractor has fully advised ESC as to the facts and circumstances surrounding the conviction.
39. **Notices** Any written notices required under this Contract will be by either hand delivery to Contractor's office address specified on Page 1 of this Contract or by U.S. Mail, certified, return receipt requested, to *Region 7 Education, 1909 North Longview Street, Kilgore Texas*. Notice will be effective on receipt by the affected party. Either party may change the designated notice address in this Section by written notification to the other party.
40. **False Statements; Breach of Representations** By signature to this Contract, Contractor makes all the representations, warranties, guarantees, certifications and affirmations included in this Contract. If Contractor signed its response with a false statement or signs this Contract with a false statement or it is subsequently determined that Contractor has violated any of the representations, warranties, guarantees, certifications or affirmations included in this Contract, Contractor shall be in default under this Contract and ESC may

terminate or void this Contract for cause and pursue other remedies available to *ESC* under this Contract and applicable law.

41. **Force Majeure** Neither Contractor nor *ESC* shall be liable to the other for any delay in, or failure of performance, of any requirement included in any PO resulting from this RFQ caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.
42. **Debts or Delinquencies to State** The Comptroller is prohibited from issuing any payment to a person or entity that has been reported as having an indebtedness or delinquency to the state. Contractor agrees that, to the extent Contractor owes any debt or delinquent taxes to the State of Texas, any payments or other amounts Contractor is otherwise owed under this Contract shall be applied toward the debt or delinquent taxes until the debt or delinquent taxes are paid in full. Contractor agrees to comply with all applicable laws regarding satisfaction of debts or delinquencies to the State of Texas.
43. **Buy Texas** In accordance with Government Code, Section 2155.4441, the State of Texas requires that during the performance of a contract for services, Contractor shall purchase products and materials produced in the State of Texas when available at a price and time comparable to products and materials produced outside the state.
44. **Work Made for Hire** For the purposes of this Contract, the term "Work" is defined as all reports, statistical analyses, work papers, work products, materials, approaches, designs, specifications, systems, documentation, methodologies, concepts, research, materials, intellectual property or other property developed, produced, or generated in connection with this Contract. All work performed pursuant to this Contract is made the exclusive property of the *ESC*. All right, title and interest in and to said property shall vest in *ESC* upon creation and shall be deemed to be a work for hire and made in the course of the services rendered pursuant to this Contract. To the extent that title to any such work may not, by operation of law, vest in the *ESC*, or such work may not be considered a work made for hire, all rights, title and interest therein are hereby irrevocably assigned to the *ESC*. *Region 7 Education Service Center* shall have the right to obtain and to hold in its name any and all patents, copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. Contractor must give the *ESC* and/or the State of Texas, as well as any person designated by *the ESC*, all assistance required to perfect the rights defined herein without any charge or expense beyond those amounts payable to Contractor for the services rendered under this Contract.
45. **Default** If Contractor is found to be in default under any provision of this Contract, *ESC* may cancel the Contract without notice and either re-solicit or award the contract to the next best responsive and responsible Respondent. In the event of abandonment or default, Contractor will be responsible for paying damages to *ESC* including but not limited to re-

procurement costs, and any consequential damages to the State of Texas or ESC resulting from Contractor's non-performance. The defaulting Contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work is significantly changed.

46. **Note to Respondent** Any terms and conditions attached to the response will not be considered unless specifically referred to on this Request for Qualifications and may result in disqualification of the response.
47. **Prohibited Use of Appropriated or other Funds; Lobbying** The Contractor represents and warrants that ordering entities' payments to the Contractor and Contractor's receipt of appropriated or other funds under any of this or any resulting agreement are not prohibited by Government Code §556.005 or §556.008.
48. **Certification Concerning Hurricane Relief** Sections §2155.006 and §2261.053, Government Code, prohibit state agencies from awarding a contract to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by §418.004 Gov't code, occurring after September 24, 2005. Under §2155.006, Gov't Code, the Respondent certifies that the individual or business entity named in its response is no ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld if this certifications inaccurate.
49. **Immigration** The Contractor represents and warrant that it shall comply with the requirements of the Immigration Reform and Control Act of 1986 and 1990 regarding employment verification and retention of verifications forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under the Contract and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) enacted on September 30, 1996.
50. **Boycott** Per Senate Bill 252 Sec. 2252, Contracts with companies engaged in business with prohibited foreign companies nulls the company's bid submission. See: <http://comptroller.texas.gov/procurement> for more information.
51. **Antiboycott** Per Senate Bill 252 Sec. 2252, Companies are prohibited from boycotting business with Israel companies. Noncompliance nulls the company's bid submission. See: <http://comptroller.texas.gov/procurement> for more information.
52. **Drug Free Work Place** The contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.) and maintain a drug-free work environment; and the final rule, government wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.
53. **Substitutions** Substitutions are not permitted without written approval of Region 7 Education Service Center.
54. **Public Disclosure** No public disclosures or news releases pertaining to this contract shall be made without prior written approval of the ESC.

55. **Historically Underutilized Business (HUB) Certification** Proposing companies that have been certified as Historically Underutilized Business (HUB) entities are encouraged to indicate their HUB status when responding to this RFQ. Please attach a copy of HUB certification.
56. **Testing and Inspection** ESC may test and inspect goods and services purchased under the Contract to ensure compliance with the specifications of this RFQ and the Contract. the ESC may also test and inspect goods and services before they are purchased under the Contract. Authorized ESC personnel shall have access to the Respondent's place of business for the purpose of inspecting the goods. To the extent practical, the ESC inspections will not disrupt the Respondent's daily operations. Tests shall be performed on samples submitted with the RFQ or on samples taken from regular shipments. All costs of testing and inspection shall be borne by the Respondent. In the event the goods tested fail to meet or exceed all conditions and requirements of the RFQ and Contract, the goods will be rejected in whole or in part, at the State's option, and returned to the Respondent or held for disposition at the Respondent's expense. Latent defects may result in cancellation of the Contract at no expense to the state. If material fails to meet specifications, the Respondent will be notified by fax/mail or e-mail. The Respondent will have ten (10) working days after receipt of the notification to remove the rejected material from state property. Material will be removed at the Respondent's expense. Material not removed in the allotted time period will be disposed by the Customer. The Respondent will be charged for all disposable expenses conducted by the Customers.
57. **Formation of a contract:** A response to this solicitation is an offer to Contract/Agreement with the ESC based upon the terms, conditions, scope of work, and specifications contained in this procurement solicitation. A solicitation/proposal does not become a Contract/Agreement unless and until it is accepted by the ESC after approval. Policy CH (Local) requires that all contracts or agreements shall be signed by the ESC *Executive Director* or their designee. No other personnel are authorized to execute or enter into contracts on behalf of the ESC.
58. **Order Precedence** In the event of conflicts or inconsistencies between this contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: Signed Contract (or Notice of Award), Attachments to the Contract (or Notice of Award), Request for Qualifications, and Respondent's Response to Request for Qualifications.
59. **Protest** The ESC procedure for protests can be obtained by contacting the Purchasing Cooperative The ESC must disclose information regarding the protest to TEA or other awarding agency. 2 CFR § 200.318(k). The protestor must comply with 19 TAC §30.2002. Procedures for Protests, Dispute Resolution, and Appeals Relating to Purchasing and Contract Issues as outlined.
60. **WITHDRAWAL OF RESPONSE:** Responses may be withdrawn prior to the specified deadline by providing written notification to Region 7 Purchasing Cooperative. All approvals shall be based upon an acceptable written reason for the action.
61. **Signatories** The undersigned signatories represent and warrant that they have full authority to enter into this Contract on behalf of the respective parties.