

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

**October 31, 2024**

at

**10:00 AM CST**

**MAIL, COURIER, or HAND DELIVER PROPOSAL TO:**

**Region 7 Education Service Center**

**ATTN: Martha Lakey**

**Purchasing Specialist I, Purchasing Services**

**RFP 07-09262024 SUVs with Trade-Ins**

**1909 North Longview Street**

**Kilgore, Texas 75662**

***Show RFP Number, Opening Date and Time on Return Envelope***

**NOTES TO POTENTIAL RESPONDENTS:**

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

**REFER INQUIRIES IN WRITING TO SOLICITATION CONTACT:**

ATTN: Martha Lakey

Purchasing Specialist

Email: [purchasing@esc7.net](mailto:purchasing@esc7.net)

Sealed responses will be accepted until the date and time established for receipt. After receipt of responses, the names of Respondents will be made in accordance with the laws and regulations applicable to ESC. All responses submitted shall become the property of Region 7 Education Service Center upon receipt.

Failure to formalize the terms of the response by signing the RFP and completely submitting the required information may result in disqualification of the offer contained within the response. The Respondent must indicate exceptions to the contract terms and conditions in the body of their response and offer alternative language to any contract terms and conditions when they submit a response to this solicitation. If a response is signed and submitted without including specific exceptions to the General Contract Terms included in this solicitation, Region 7 will not negotiate and reserves the right to start negotiations with other respondents.

**Respondent must review this solicitation in its entirety. Failure to do so can result in missing required information and will result in rejecting a response for failure to follow instructions.**

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**SECTION 1: INTRODUCTION**

**1.1 STATEMENT OF WORK**

Region 7 ESC is seeking responses to this solicitation from qualified individuals or firms (Respondents) to perform the services described below (Work): To trade-in (5) 2018 GMC Terrains and three (3) 2020 GMC Terrains for six (6) new subcompact SUVs and two (2) compact SUVs located at 1909 North Longview Street, Kilgore, Texas, based on the available specifications provided by the HR/Operations Department of Region 7 ESC.

**1.1.1 BACKGROUND**

The purpose of this solicitation is to award a Respondent that can meet the requirements listed in this RFP. The Region 7 Education Service Center (ESC) HR/Operations Department reserves the right to award the Respondent in the best interest of the ESC.

**1.1.2 GENERAL REQUIREMENTS**

The below requirements are the minimum specifications to be offered by Respondent. Additional and optional services are amendable and acceptable by the ESC. For the purpose of this solicitation proprietary information is to be considered 'or equal'. Brand name and proprietary information will not affect award selection. The ESC shall determine an award based on the most responsible and responsive proposals which best meets the specifications and needs of the ESC for this purchase.

*To request a viewing of any vehicles, contact [purchasing@esc7.net](mailto:purchasing@esc7.net).*

• **TRADE-INS:**

Vehicle #	Color	Year & Model	Mileage as of 9/4/24
HS #1	White/Ebony	2018 GMC Terrain	70,502
HS #2	White/Ebony	2018 GMC Terrain	76,535
HS #3	White/Ebony	2018 GMC Terrain	76,653
HS #4	White/Ebony	2018 GMC Terrain	73,481
HS #5	White/Ebony	2018 GMC Terrain	72,951
HS #6	White/Ebony	2020 GMC Terrain	55,173
ESC #1	Quicksilver/Black	2020 GMC Terrain	66,513
ESC #3	Quicksilver/Black	2020 GMC Terrain	75,650

*\*NOTE: Vehicles will be in use until date of delivery; mileage will increase.*

Vehicles must meet the following specifications:

- SUV PURCHASE # 1: Purchase of six (6) new, no previous owner 2025 subcompact model.
  - Color: White Exterior; Ebony Interior
- SUV PURCHASE # 2: Purchase of two (2) new, no previous owner 2025 compact model.
  - Color: Quicksilver Exterior; Black Interior
- Convenience Capabilities (All 8 vehicles)
  - 4 Doors Plus Lift Gate or Rear Doors
  - Passenger Capacity: Driver Plus 3
  - Cloth Interior
  - Carpeted Flooring
  - Cruise Control
  - Tilt Wheel
  - Power Locks
  - Power Windows
  - Heat / Air Factory Installed
  - Power Mirrors: Drivers & Passenger
  - Lumbar Support
  - Radio – Manufacturer Standard
    - Bluetooth Capable

- Mechanical
  - Gas 4-Cylinder Engine
  - 6-Speed Automatic Transmission
  - Power Steering
  - AWD or FWD
  - Wheelbase 110" minimum
- Safety
  - Anti-Theft Alarm
  - Passenger Airbag Occupant Sensing Deactivation
  - Steering Wheel Mounted Controls
  - Rear center 3-point belt
  - Front seatbelt pretensioners
  - Stability control
  - Traction control
  - Electronic brakeforce distribution
  - Back-up Camera
  - Spare tire and accessories
- Additional Response Inclusions:
  - Respondent’s hours of normal business operation.

1.1.3 SCOPE OF BID

Bid Number:	07-09262024
Bid Title:	SUVs with Trade-Ins
Bid Type:	RFP: Request for Proposal
Estimated Value:	\$180,000.00
Project Start:	December 1, 2024
Optional Future Trade-Ins:	December 1, 2024 – July 31, 2025
Optional Maintenance Contract:	December 1, 2024 – August 31, 2027

1.2 FAIR AND OPEN COMPETITION

The Request for Proposal (RFP) meets the competitive proposal requirements as described in 2 CFR 200.320(b)(2) and creates full and open competition as the statement of work within the proposal is modifiable/amendable by Respondent. Items that are brand-labeled are to be considered 'or equal'. Brand name will not affect award selection.

1.3 PRICING OPTIONS

- Response to include pricing breakdown of:
  - Value per trade-in.
  - Cost Per:
    - SUV PURCHASE # 1
    - SUV PURCHASE # 2
  - Title & other fees, as applicable.
  - Cost offered per possible future trade-ins.

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

Arising out of, or by reason of, or attributable to, the Respondent responding to this RFP. As a result of the use of any information, error or omission contained in this RFP document or provided during the RFP process. The selected Respondent(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.

**1.4 COMMODITY CODES**

The corresponding NIGP commodity codes of this RFP includes but is not limited to the below, as found at: <https://mycpa.cpa.state.tx.us/commbook/>:

071-80

**1.5 PROPOSAL EVALUATION**

Proposals shall be evaluated based on the weights assigned below to each evaluation criteria. If additional information or proposal clarification is required, the RFP evaluation team shall make written requests to the appropriate Respondent(s) and require all responses to be made in writing. To request clarification of evaluation criteria, contact the Purchasing Services Department at [purchasing@esc7.net](mailto:purchasing@esc7.net).

Price	30%
Product Offerings	25%
Product Availability	25%
Compliance With Terms	10%
Payment Terms Provided	10%
<b>Total</b>	<b>100%</b>

The following factors may be considered in addition to the aforementioned PROPOSAL EVALUATION criteria: (a) Unit price, (b) total bid price, (c) delivery date, (d) results of testing samples, (e) quality of goods, (f) vendor’s past performance record, (g) technical assistance present and past, (h) vendor’s follow up of problems once notified.

Factors which may be considered by the Committee in making the award include: (a) The quality, availability, and adaptability of contractual services to the particular use required; (b) The number and scope of conditions, if any, attached to the bid response; (c) the ability, capacity, and skill of the Respondent to perform to the contract or provide the associated service required; (d) whether the Respondent can perform the contract or provide the service promptly, or within the time required, without delay or interference; (e) the character, responsibility, integrity, reputation, and experience of the Respondent; (f) The quality of performance of previous contracts (and associated services); (g) the previous and existing compliance by the Respondent with the State of Texas laws relating to the contract (or associated services); (h) the sufficiency of the financial resources and ability of the Respondent to perform the contract or provide the service; (i) the ability of the Respondent to provide future maintenance, repair parts, and associated service for the equipment provided by the contract; (j) the successful Respondent for technology related line-item bids must have a minimum of three (3) trained and certified computer technicians available for training and assistance to ESC employees, as applicable. Copies of additional, required certification shall be submitted to ESC upon award of bid.

**1.6 RFP TIMELINE**

<b>Event</b>	<b>Date</b>
Available:	09/26/2024
Walk-throughs Complete:	10/24/2024, 4:00 PM
Deadline for Questions:	10/28/2024 4:00 PM Central
Closes to Responses:	10/31/2024 10:00 AM Central
Opens for Review:	10/31/2024 10:00 AM Central
Review/Evaluations Complete:	11/07/2024
Delivery Deadline:	04/01/2025

## 1.7 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 interest. Contracts shall only be awarded to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement.

Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

During the review period, Respondents shall refrain from contacting any ESC employee, agent, representative, assignee, designee, or client of ESC regarding open solicitations, unless expressly requested by Purchasing Services or solicitation contact.

**Proposals and pricing shared in any form of communication, other than in the Respondent's submitted proposal, will void Respondent's submission, unless expressly requested by the Purchasing & Vendor Services Department or solicitation contact during the review period.**

### 1.7.1 Administrative Review

The Purchasing & Vendor Services Department will review timely received responses to determine if mandatory requirements are met and to verify that the proposals meet such requirements. Compliant responses will be approved for subsequent evaluation steps.

### 1.7.2 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.

### 1.7.3 Cost Proposal Evaluation

Cost proposals will be opened and reviewed by evaluation team members. Scores for cost will be based on pre-determined guidelines and weightings. These scores will be added to those assigned in the Initial Ranking process.

### 1.7.4 Reference Checks, Clarification, and Product Demonstration/Presentation

Region 7 ESC will perform reference checks and seek further information as needed from all Respondents whose responses meet qualifications, based on the initial evaluation and scoring. Respondents 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 Respondent'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.

### 1.7.5 Final Evaluation

The ESC intends to make the contract award to the Respondent whose response best meets the evaluation criteria and reflects the "best value" to the ESC. In determining "best value", the Evaluation Committee will be instructed to consider all information contained in the initial responses; the initial evaluation; Best And Final Offer responses (if necessary); and information obtained from references, site visits, Respondent presentations or demonstrations, and any other information obtained during this procurement solicitation process.

**1.8 TERM OF AGREEMENT**

The term of any resulting agreements will be to trade-in (5) 2018 GMC Terrains and three (3) 2020 GMC Terrains for six (6) new subcompact SUVs and two (2) compact SUVs located at 1909 North Longview Street, Kilgore, Texas, based on the available specifications provided by the Information Technology Department of Region 7 ESC, meeting the aforementioned requirements.

**1.9 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 101 school districts, the largest amount of school districts of any ESC.

**1.10 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 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.

**1.11 INSURANCE REQUIREMENTS**

Respondent must provide valid proof of General Liability Insurance and Workers Compensation.

**1.12 FINANCIAL OVERSIGHT**

The Region 7 ESC Head Start and HR/Operations Departments, with assistance of the Region 7 ESC Business Office, will oversee the financial obligations of any resulting awards or contracts. Contracts will be paid upon the terms set forth in mutual agreement with selected award Respondent.

## SECTION 2: RESPONSE SUBMITTAL AND INQUIRIES

### 2.1 SUBMITTAL DEADLINE AND LOCATION

- 2.1.1 All proposals must be received by Region 7 Education Service Center at the designated location indicated on the cover page of the solicitation no later than the time and date specified.
- 2.1.2 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

#### 2.2.1 SIGNATURE

Proposals must be signed by Respondent's company official or representative authorized to commit such proposals and bind the Respondent in the event of a contract award. Failure to sign the submitted proposal may be basis for disqualification.

#### 2.2.2 MULTIPLE RESPONSES

An original, three (3) copies excluding prices, and one (1) electronic copy (via USB) of your complete proposal submitted in response to this solicitation are required. Copies #1 -#3 must be an exact copy of the original excluding prices.

#### 2.2.3 PACKAGING

Proposal package (envelope/box/carton) must indicate on the lower left-hand corner: the Respondent's company name, the proposal opening date, RFP number and title

#### 2.2.4 RESPONSE CONTACT

Cover page of proposal must include:

- Company name
- Proposal contact
- Contact phone
- Contact e-mail.

#### 2.2.5 RESPONSE INCLUSION

Proposal must include:

- Tab A – RFP
  - Initialed RFP
  - Completed 2024 dated W-9 or equivalent
  - Completed Exhibit A: Authorized Key Personnel
  - OPTIONAL ONLY: Additional certifications/documentation (e.g., HUB, certifications).
- Tab B – Finance
  - Financial Capability Statement from Financial Institution
  - Respondent Insurance(s) As Applicable
    - Commercial General Liability
    - Workers' Compensation
- Tab C – Company Information
  - Executive summary of Respondent to include:
    - Qualifications:



- Education and certification (if applicable) of personnel involved in the scope of work if awarded.
  - Three references with contact information of similar standing as ESC.
- Tab D – Proposed Services
  - GENERAL REQUIREMENTS to include:
    - Manufacturer,
    - Model,
    - Available warranty, and
    - Timeline of build (if necessary).
- Tab E – Pricing
  - Response to include pricing breakdown of:
    - All associated costs as required for adherence to the GENERAL REQUIREMENTS.
  - Optional purchase of additional vehicles to include estimated trade-in values.
    - Repeated annual funding is contingent upon funds availability. See 3.2 Funding.
  - Payment terms.

*Telephone and/or facsimile (Fax) and/or e-mail responses to this RFP are not acceptable. All costs and expenses related to the preparation and submittal of a response to this solicitation shall be borne by the Respondent.*

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 solicitation contact: Martha Lakey purchasing@esc7.net.

Responses to inquiries which directly affect an interpretation or change to this RFP 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 proposals are received shall be considered part of the RFP, and the Respondent shall consider and acknowledge specific receipt of each in his/her proposal 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 RFP will contain the General Contract Terms listed below in Section 3.2. Subcontractors are obliged to comply with these provisions. A Sample contract to perform is provided in 3.1 for your reference.

3.1 SAMPLE: CONTRACT TO PERFORM

1. BETWEEN

*Region 7 Education Service Center AND \_\_\_\_\_*

**Contract No. 07-09262024**

This agreement (“Contract”) is entered into by the *Region 7 Education Service Center* (the “ESC” or “Region 7 ESC”), located at 1909 North Longview Street, Kilgore, Texas, and \_\_\_\_\_ (the “Contractor” or “Respondent”) located at \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.

**Recitals**

Whereas, on September 1, 2022 ESC issued a Request for Proposal from qualified, independent respondents to \_\_\_\_\_ and on \_\_\_\_\_, 20XX issued its official response to questions (collectively “RFP”); and Whereas, Contractor submitted a proposal (Proposal) dated \_\_\_\_\_, 20XX, in response to ESC RFP; and Whereas, Contractor was selected to \_\_\_\_\_ (online student software for *Region 7 ESC*). Now Therefore, the ESC and Contractor hereby agree as follows:

**Authority**

This Contract is entered into pursuant to TEC 44.031(3) and ESC Board policy CH(LOCAL).

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

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

- 1. This Contract
- 2. The Statement of Work
- 3. Exhibit A: Authorized Key Personnel List
- 4. Completed Proposal

All the above are attached to and incorporated as part of this Contract for all purposes. All these documents constitute the Standards of Performance for this Contract.

In the case of conflicts between this Contract and any of the above exhibits, the following shall control in this order of priority:

- 1. This Contract
- 2. The Statement of Work
- 3. Exhibit A: Authorized Key Personnel List
- 4. Completed Proposal

Contractor shall provide all of the above services and all reasonably related services in accordance with applicable professional standards of a Contractor providing similar services in the Region 7 ESC geographical area. 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.

### 3.2 General Contract Terms

1. **Funding** All obligations of the ESC and Customers are subject to the availability of legislative appropriations and, for the ESC and 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.
2. **NOGA** All contracts, agreements, and lease purchases that are to be paid with federal awards for each participating party shall strictly adhere to the regulations set forth in the Financial Accountability System Resource Guide (FASRG) of the Texas Education Agency (TEA), and the Education Department General Administrative Regulations (EDGAR) of the U.S. Department of Education. These requirements include but are not limited to (RE: Code of Federal Regulations [CFR Appendix II Part 200]):
  - Contract is effective upon receipt by the ESC or member of the Notice of Grant Award (NOGA)
  - Awardee must maintain an award status for the duration of the grant period of availability.
  - All services must be completed in the duration of the grant period of availability.
  - Services must be invoiced monthly after services are received
3. **NON-EXCLUSIVE CONTRACT** In an effort to promote fair and open competition, the ESC reserves the right to award multiple contracts.
4. **Personnel** Contractor shall assign only qualified personnel to this Contract. On the date of ESC execution of this Contract, ESC project manager shall authorize the key personnel listed in Exhibit A 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. **Invoices** Invoices shall be sent directly to Region 7 ESC. Payments are processed after business office has been notified that the items have been received in good condition and installation is complete. Invoices must detail the items delivered and must reference the purchase order number for speed in processing.
6. **Contract Monitoring** All pricing provided in the proposal should include a specific deliverable or a set of deliverables that demonstrate successful completion of activities. All activities must have documentation to support their completion. ESC reserves the right to reject goods or services which do not address the deliverables stated in the contract and do not meet ESC quality review. Monitoring may include, but is not limited, to reviewing invoices to ensure the receipt and acceptance of goods and services per contract requirements and monitoring contracts for certain administrative reporting activities stated in the contract terms and conditions or in any special provisions. These include contractor reporting of any litigation, lobbyist activities, changes in ownership or financial status, and key changes on personnel, and monitoring agency

compliance with statutes, rules, and regulations governing state agency contract and procurement activities. ESC expects the contractor to be responsive to requests for documentation for purposes of monitoring.

7. **Vendor Performance Deficiency** Non-performance of the award vendor in terms of specifications shall be a basis for the termination of award. Cancellation by the ESC may be made upon thirty (30) calendar days' written notice to the awarded vendor. The ESC shall not pay for work, equipment, or supplies which are unsatisfactory. Vendor shall be given a reasonable opportunity (30 calendar days) before termination, to correct the deficiencies. This, however, shall in no way be construed as negating the basis for termination for non-performance.
8. **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.
9. **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 15<sup>th</sup> 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.
10. **Guarantee** A minimum of ninety (90) days guarantee or standard commercial warranty, whichever is greater, shall be provided on all materials. In the event of failure, the vendor agrees to repair or replace such units at no cost to the ESC, within ten (10) working days.
11. **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. The ESC and/or other Customers shall be liable only for payments for any goods or services ordered from the Respondent before the termination date.
12. **Rights to Invention** If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
13. **Clean Air Act (42 U.S.C. 7401–7671q.)** and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended— Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
14. **Energy Policy and Conservation Act** Respondent certifies it is in compliance with 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 (Pub. L. 94-163, 89 Stat. 871).
15. **Byrd Anti-Lobbying Amendment** (31 U.S.C. 1352)—Contractors that apply or bid with CFR 202 for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in

connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. The Respondent 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.

16. **Recovered Materials** A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the guidelines. 2 CFR § 200.323; 40 CFR §247
17. **Prohibition of Certain Telecommunications and Video Surveillance Services and or Equipment** In accordance with Public Law 115-232, Section 889(f)(1) The ESC is prohibited from using federal funds to procure, obtain or enter contracts for certain telecommunication and video surveillance services or equipment. Vendor certifies that it does not use any covered telecommunication equipment or services per FAR 52.204-25. If it is discovered the Vendor does use prohibited telecommunications equipment, the Vendor must follow the reporting requirements. The ESC reserves the right to terminate any contract any contract in whole or, from time to time, in part if the ESC determines that a termination is in the ESC's best interest. 2 CFR § 200.216
18. **Termination for Convenience** Pursuant to 48 CFR 52.249.2 when federal funds are expended by ESC, ESC reserves the right to immediately terminate any Agreement in excess of \$10,000 in the event of a breach or default of the Agreement by Vendor, in the event vendor fails performance of work under any contract in whole or, from time to time, in part if the ESC determines that a termination is in the ESC's best interest. The ESC may terminate any resulting contract for convenience by providing (1) a statement that the contract is being terminated for the convenience of ESC, (2) the effective date of termination, (3) the extent of termination, (4) any special instructions, and (5) the steps the contractor is to take to minimize the impact on personnel. Upon any notification of termination for convenience, the contractor is to (1) stop work immediately on the terminated portion of the contract, (2) terminate all subcontracts related to the terminated portion of the prime contract, (3) advise the ESC of any special circumstances precluding stoppage of work, (4) perform the continued portion of the contract if the termination is partial, (5) take any action necessary to protect property in the contractor's possession in which the ESC has an interest, (6) notify the ESC of any legal proceedings growing out of any subcontract, (7) settle any subcontractor claims arising out of the termination, and (8) dispose of termination inventory as directed by ESC. FAR 52.249-5
19. **Termination for Cause/Default** If Contractor is found to be in default under any provision of this contract, the 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 Region 7 ESC including, but not limited to, re-procurement costs, and any consequential damages to the 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. The ESC expressly does not waive any rights, remedies, privileges, or immunities available to it as an agency of the State of Texas or otherwise available to it under the referenced contract and under applicable law among other things, the ESC reserves the right to refer this matter to the Office of the Attorney General of the State of Texas for handling.
20. **Termination for Non-Appropriations** The award contract is subject to the appropriation of funds each fiscal year by Region 7 ESC. The ESC cannot guarantee purchases obligated with federal awards. Pursuant to 2 CFR 200.339-346, the funding grant may be suspended or terminated. In the event of a termination, the Respondent will be paid for services rendered and the contract terminated effective upon notice of termination.
21. **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. The ESC and Customers shall retain ownership of all associated work products and documentation obtained from the Respondent under the Contract. However, Contractor may be entitled to the remedies provided in Government Code, Chapter 2260.

22. **Right to Audit** 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 ESC, 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 seven (7) 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 goods or services as defined in this Contract. Contractor and the subcontractors shall provide the ESC and/or State Auditor with any information that the ESC and/or 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 ESC and/or State of Texas and shall provide them with prompt access to all of such ESC's work-related information as requested. Contractor's failure to comply with this Section shall constitute a material breach of this Contract and shall authorize the ESC and/or 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 ESC and/or 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 ESC and/or the State Auditor, Comptroller, or other agency of the State of Texas. Contractor shall ensure that this paragraph concerning the ESC's and/or the State's authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate in any such audit is included in any subcontract it awards.
23. **No Conflicts of Interest** Contractor represents and warrants that the provision of goods and services or other performance will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety. Award contracts valued above \$1 million (\$1,000,000.00) or require ESC or cooperative member Board approval, as applicable, a Certificate of Interested Parties must be completed through the Texas Ethics Commission. The ESC will not be responsible for a cooperative members' obligation to comply with this standard. The ESC has no formal tracking options of contracts once award is released. TGC §§ 2252.908, 2254.032, 2261.252(b)
24. **Conflict of Interest** Dealings with Public Servants Affirmation: Respondent has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response. TGC §§ 572.051(a)(1), 2155.003; 34 TAC § 20.157; 31 U.S.C. 503; 2 CFR § 200.112; 2 CFR § 200.318(c)(1)
25. **E-Verify Program** Contractor certifies that for contracts for services, Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of the contract to determine the eligibility of: 1. all persons employed by Contractor to perform duties within Texas; and 2. all persons, including subcontractors, assigned by Contractor to perform work pursuant the contract within the United States of America. The Contractor shall provide, upon request of the ESC, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three most recent hires that match the criteria above, by the Contractor, and Contractor's subcontractors, as proof that this provision is being followed. If it is determined that Contractor has violated the certifications set forth in this Section, then (1) Contractor shall be in breach of contract, (2) ESC shall have the option to terminate the contract for cause without prior notice, and (3) in addition to any other rights or remedies available to ESC under the contract, Respondent shall be responsible for all costs incurred by ESC to obtain substitute services to replace the terminated contract. Executive Order RP-80: Federal E-Verify System
26. **Human Trafficking** Under Section 2155.0061 of the Texas Government Code, the Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate. TGC § 2155.0061
27. **Prior Employment** In accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, Respondent certifies that it does not employ an individual who has been employed by Region 7 or another agency at any time during the two years preceding the submission of the Response or, in the alternative, Respondent has disclosed in its Response the following: (i) the nature of the previous employment with Region 7 ESC or the other agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination. TGC §2254.033

28. **Small Business** Region 7 ESC requests that small and minority owned businesses, women’s business enterprises, and labor surplus area firms submit their documentation at time of response. This is basically accomplished using the Texas Certified Historically Underutilized Business (HUB) list. 2 CFR §200.321
29. **Buy American Act** The ESC may apply domestic preference on products produced and/or manufactured in the United States. In compliance with the “Buy American” provision, products substantially produced in the United States will be accepted. Substantially produced is defined as being greater than 51% of the final processed product consists of agricultural commodities that were grown domestically. As required by the Buy American provision, all agricultural and food products must be of domestic origin as required by 7 CFR Part 210.21(d). Exceptions to the Buy American provision should be used as a last resort; however, an alternative or exception may be approved upon request. To be considered for the alternative or exception, the request must be submitted in writing to a designated official, a minimum of 5 day(s) in advance of delivery.
30. **Buy America** Contractor must comply with 49 USC 5323(j)(1) Buy America, and the applicable regulations in 49 CFR part 661. Transit projects using products comprised of steel, iron, and manufactured goods must contain more than 70% United States manufactured components.
31. **Boycott** Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Gov’t Code.
32. **Prohibition** Pursuant to Section 2271.002 of the Texas Government Code, Contractor certifies that either (i) it meets an exemption criterion under Section 2271.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. Contractor shall state any facts that make it exempt from the boycott certification in its response.
33. **Felony Conviction** Texas Education Code Section 44.034, Notification of Criminal History, Subsection (a), states, “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”. Subsection (b) of Section 44.034 states, “A school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before termination of the contract. This notice is not required of a publicly-held corporation.
- My firm is a publicly-held corporation; therefore, this reporting requirement is not applicable.  
 My firm is not owned or operated by anyone who has been convicted of a felony.  
 My firm is owned or operated by the following individual(s) who has/have been convicted of a felony:  
 Details of Conviction(s)(attach additional information as needed):
- 
34. **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.
35. **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 within twenty-four (24) hours of receipt of any third party requests for information that was provided by the ESC 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 ESC during the performance of this Contract, including information which discloses confidential personal information particularly, but not limited to, social security numbers.
36. **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.

**37. Indemnification Acts or Omissions** Contractor shall indemnify and hold harmless the ESC, the State of Texas and any 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 Contractor 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 CONTRACTOR WITH THE LEGAL COUNSEL FOR REGION 7 ESC WHEN REGION 7 ESC IS NAMED DEFENDANT IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM REGION 7 ESC. CONTRACTOR AND THE ESC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

**38. Infringements**

- a. Contractor shall indemnify and hold harmless the ESC, the State of Texas and any 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 CONTRACTOR PURSUANT TO THIS CONTRACT. CONTRACTOR AND THE ESC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH LEGAL COUNSEL FOR REGION 7 ESC WHEN REGION 7 ESC IS NAMED DEFENDANT IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM REGION 7 ESC.
- b. Contractor 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 Contractor's written approval,
  - iii. any modifications made to the product by the Contractor pursuant to ESC' and/or any Customer's specific instructions,
  - iv. any intellectual property right owned by or licensed to ESC and/or any Customer, or
  - v. any use of the product or service by ESC and/or any Customer that is not in conformity with the terms of any applicable license agreement.
- c. If Contractor becomes aware of an actual or potential claim, or ESC and/or Customer provides Contractor with notice of an actual or potential claim, Contractor may (or in the case of an injunction against ESC and/or Customer, shall), at Contractor's sole option and expense;
  - i. procure for the ESC and/or any 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 the ESC's and/or any Customer's use is non-infringing.

**39. Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity**

- a. CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CONTRACTOR'S AND CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. CONTRACTOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE ESC, ANY CUSTOMER, AND/OR THE STATE SHALL NOT BE LIABLE TO THE CONTRACTOR, 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 AN ESC EMPLOYEE OR AN EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.
- b. CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS THE ESC, ANY 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. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE



SHALL BE COORDINATED BY CONTRACTOR WITH THE LEGAL COUNSEL FOR REGION 7 ESC AND/OR ANY CUSTOMER, AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM REGION 7 ESC. CONTRACTOR AND THE ESC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

40. **Changes In Law and Compliance with Laws** Any alterations, additions, or deletions to the terms of the contract that are required by changes in federal or state law or regulations are automatically incorporated
41. **Taxes** Purchases made by ESC are exempt from the State Sales Tax and Federal Excise Tax. ESC will furnish Tax Exemption Certificates to Contractor prior to purchase as requested by Contractor. Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from the 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 the contract.
42. **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 mediation 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.
43. **Representations, Warranties, and General Provisions** 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 contract if that person or entity received compensation for participating in preparing the solicitation or specifications for the Contract.
44. **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.
45. **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.

46. **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.
47. **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.
48. **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.
49. **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.
50. **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. Region 7 ESC 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 Region 7 ESC and shall pay all costs, penalties, or losses resulting from Contractor's omission or breach of this Section.
51. **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.
52. **Applicable Law and Conforming Amendments** Contractor must comply with all laws, regulations, requirements and guidelines applicable to a Contractor providing services to a governmental entity of 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.
53. **No Waiver** Nothing in this Contract shall be construed as a waiver of the ESC'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 ESC. 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.
54. **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 RFP or awarded contract. 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 RFP, 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 Contractor of the responsibility for ensuring that the services rendered under all subcontracts are rendered in compliance with this RFP.
55. **Secure Erasure of Hard Disk Capability** All equipment provided to ESC by Contractor that is equipped with hard disk drives (i.e., computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to securely erase data written to the hard drive prior to final disposition of such equipment, either at the end of the equipment's useful life or the end of the related services agreement for such equipment.
56. **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.
57. **Patent, Trademark, Copyright and Other Infringement Claims** Contractor shall indemnify, save and hold harmless ESC from and against claims of patent, trademark, copyright, trade secret or other proprietary rights, violations or infringements arising from the ESC's or Contractor's use of or acquisition of any services or other items provided to the ESC by Contractor

or otherwise to which ESC has access as a result of Contractor's performance under this Contract, provided that ESC shall notify Contractor of any such claim within a reasonable time of the ESC'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 ESC 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 ESC'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.

58. **Electrical Items** All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from Underwriters Laboratory (UL), Factory Mutual Resource Corporation (FMRC), or National Electrical Manufacturers Association (NEMA).
59. **Legal and Regulatory Actions** Respondent represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against Respondent or any of the individuals or entities included in the Response within the five (5) calendar years immediately preceding the submission of the Response that would or could impair Respondent's performance under the contract, relate to the solicited or similar goods or services, or otherwise be relevant to ESC's consideration of the Response. If Respondent is unable to make the preceding representation and warranty, then Respondent instead represents and warrants that it has included as a detailed attachment in its Response a complete disclosure of any such court or governmental agency actions, proceedings, or investigations, etc. that would or could impair Respondent's performance under the contract, relate to the solicited or similar goods or services, or otherwise be relevant to ESC's consideration of the Response. In addition, Respondent represents and warrants that it shall notify ESC in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update ESC shall constitute breach of contract and may result in immediate termination of the contract.
60. **License Grant** Respondent hereby grants to ESC a non-exclusive, perpetual, irrevocable, worldwide, transferable, fully paid, royalty-free, right and license: (a) to reproduce, modify, distribute, store, publicly perform, publicly display, create derivative works of, and otherwise exploit the deliverables, in each case without any restrictions and without accounting to Respondent; and (b) to sublicense any or all such rights to third parties.
61. **Change in Law and Compliance with Laws** Any alterations, additions, or deletions to the terms of the contract that are required by changes in federal or state law or regulations are automatically incorporated into the contract without written amendment hereto, and shall become effective on the date designated by such law or by regulation.
62. **Critical Infrastructure Subcontractors** For purposes of this Paragraph, the designated countries are China, Iran, North Korea, Russia, and any countries lawfully designated by the Governor as a threat to critical infrastructure. Pursuant to Section 117.002 of the Business and Commercial Code, Respondent shall not enter into a subcontract that will provide direct or remote access to or control of critical infrastructure, as defined by Section 117.001 of the Texas Business and Commerce Code, in this state, other than access specifically allowed for product warranty and support purposes to any subcontractor unless (i) neither the subcontractor nor its parent company, nor any affiliate of the subcontractor or its parent company, is majority owned or controlled by citizens or governmental entities of a designated country; and (ii) neither the subcontractor nor its parent company, nor any affiliate of the subcontractor or its parent company, is headquartered in a designated country. Respondent will notify the ESC before entering into any subcontract that will provide direct or remote access to or control of critical infrastructure, as defined by Section 117.001 of the Texas Business & Commerce Code, in this state.
63. **Damage to Government Property** Respondent shall be liable for all damage to government-owned, leased, or occupied property and equipment caused by the Respondent and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the contract. Respondent shall notify the ESC in writing of any such damage within one (1) calendar day. Respondent is responsible for the removal of all debris resulting from work performed under the contract.
64. **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

65. **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.
66. **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 Proposal to any competitor or any other person engaged in such line of business during the procurement process for this Contract.
67. **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.
68. **False Statements; Breach of Representations** By signing this Contract, Contractor makes all the representations, warranties, guarantees, certifications and affirmations included in this Contract. If Contractor signs Proposal or 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.
69. **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 this Contract or any PO resulting from this RFP 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, epidemics and pandemics resulting in an executive branch of state or federal government declaration of an emergency, 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.
70. **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.
71. **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.

72. **Note to Respondent** Any terms and conditions attached to the response will not be considered unless specifically referred to on this Request for Proposal and may result in disqualification of the response.
73. **Certification Concerning Hurricane Relief** Sections §2155.006 and §2261.053, Government Code, prohibit Texas 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 Proposal is not ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld if this certifications inaccurate.
74. **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.
75. **Davis-Bacon Act** as amended (40 U.S.C. 3141-3148). When required by Federal program law, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
76. **Debarment and Suspension** (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Access SAM at <https://www.sam.gov>.
77. **Drug Free Work Place** Respondent represents and warrants that it shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. § 701 et seq.) and maintain a drug-free work environment.
78. **Federal Occupational Safety and Health Law** Respondent represents and warrants that all articles and services shall meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Act of 1970, as amended (29 U.S.C. Chapter 15). Contractor warrants that the product sold to ESC shall conform to the standards promulgated by the U. S. Department of Labor under the Occupational Safety and Health Act. In the event the product does not conform to OSHA standards, ESC 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 (15 working days) correction made by the ESC will be at the Contractor's expense.
79. **Substitutions** Substitutions are not permitted without written approval of Region 7 ESC.
80. **Public Disclosure** No public disclosures or news releases pertaining to this contract shall be made without prior written approval of the ESC.
81. **COMPUTER EQUIPMENT RECYCLING PROGRAM** Contractor certifies its compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328. TX Health Safety CODE § 361.965(c) 1 TAC §217.10 30 TAC §§328.131-155
82. **CONTRACTING INFORMATION RESPONSIBILITIES** Respondent agrees to (1) preserve all contracting information related to this contract as provided by the records retention requirements applicable to ESC for the duration of the contract plus one (1) calendar year, (2) promptly provide to ESC any contracting information related to the contract that is in the custody or

possession of the Respondent at the request of ESC, and (3) on termination or expiration of the contract, either provide at no cost to ESC all contracting information related to the contract that is in the custody or possession of the Respondent or preserve the contracting information related to the contract as provided by the records retention requirements applicable to ESC. Except as provided by Section 552.374(c) of the Texas Gov't Code, the requirements of Subchapter J, Chapter 552, Texas Gov't Code, may apply to the contract and the Respondent agrees that the contract can be terminated if the Respondent knowingly or intentionally fails to comply with a requirement of that subchapter.

83. **COVID-19 Vaccine Passport Prohibition** Under Section 161.0085 of the Texas Health and Safety Code, Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract.
84. **Contract Work Hours and Safety Standards Act** (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
85. **VPTS Vendor Performance Tracking System** The VPTS provides the state procurement community with comprehensive online tool for evaluating Contractor performance to reduce risk in the contract award process. Region 7 may report contractor to the VPTS system. For information on Contractor performance reporting, please see the VPTS User Guide.
86. **Cyber Security Training** If Respondent has access to any ESC or state computer system or database, Respondent shall complete cybersecurity training and verify completion of the training program to the ESC pursuant to and in accordance with Section 2054.5192 of the Government Code.
87. **Dealing With Public Servants Affirmation** Respondent has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response. TGC §§ 572.051, 2155.003; 34 TAC § 20.157; 2 CFR § 200.318(c)(1)
88. **Disaster Recovery Plan** Upon request of ESC, Respondent shall provide the descriptions of its business continuity and disaster recovery plans. 13 TAC § 6.94(a)(9)
89. **Disclosure of Prior Employment** In accordance with Section 2254.033 of the TGC, relating to consulting services, Respondent certifies that it does not employ an individual who has been employed by Region 7 or another agency at any time during the two years preceding the submission of the Response or, in the alternative, Respondent has disclosed in its Response the following: (i) the nature of the previous employment with Region 7 or the other agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination. TGC §2254.033
90. **Energy Company Boycotts** Respondent represents and warrants that: (1) it does not, and will not for the duration of the contract, boycott energy companies or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If circumstances relevant to this provision change during the course of the contract, Respondent shall promptly notify ESC.
91. **Americans with Disabilities Act** Respondent represents and warrants its compliance with the requirements of the Americans With Disabilities Act (ADA) and its implementing regulations, as each may be amended.
92. **Assignments (For Goods)** Respondent shall not assign its rights under the contract or delegate the performance of its duties under the contract without prior written approval from the ESC. Any attempted assignment in violation of this Section is void and without effect.
93. **Abortion Provider and Affiliate Transactions Prohibited** Respondent represents and warrants that the contract is not a taxpayer resource transaction prohibited by Section 2273.003 of the Texas Government Code and that payments made by ESC or a cooperative member to Respondent and Respondent's receipt of appropriated funds under the contract are not prohibited by Article IX, Section 6.24 of the General Appropriations Act.
94. **Firearm Entities and Trade Association Discrimination** If Respondent is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, Respondent verifies that it (1) does not have a practice, policy, guidance, or

directive that discriminates against a firearm entity or firearm trade association and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. If Respondent does not make that verification, Respondent must so indicate in its Response and state why the verification is not required.

95. **Foreign Terrorist Organizations** Respondent represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
96. **Former Agency Employees** Respondent represents and warrants that none of its employees including, but not limited to, those authorized to provide services under the contract, were former employees of the ESC during the twelve (12) month period immediately prior to the date of execution of the contract.
97. **ESBD Electronic State Business Daily Search** Notices pertaining to this RFP shall be posted on the Texas Comptroller of Public Accounts ESBD.
98. **Testing and Inspection** ESC may test and inspect goods and services purchased under the Contract to ensure compliance with the specifications of this RFP 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 Proposal 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 RFP and Contract, the goods will be rejected in whole or in part, at the ESC'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 ESC. 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 ESC or any Customer property. Material will be removed at the Respondent's expense. Material not removed in the allotted time period will be disposed by the ESC. The Respondent will be charged for all disposable expenses conducted by the ESC or any Customer.
99. **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 designee. No other personnel are authorized to execute or enter into contracts on behalf of the ESC.
100. **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 Proposals, and Respondent's Response to Request for Proposals.
101. **Protest** The ESC procedure for protests can be obtained by contacting the Purchasing ESC The ESC may disclose information regarding the protest to TEA or other awarding agency. 2 CFR § 200.318(k). The protestor must comply with the procedures set forth in Region 7 ESC complaint policy EF(LOCAL).
102. **Withdrawal of Proposal** Proposals may be withdrawn prior to the specified deadline by providing written notification to ESC. All approvals shall be based upon an acceptable written reason for the action.
103. **Signatories** The undersigned signatories represent and warrant that they have full authority to enter into this Contract on behalf of the respective parties.
104. **Merger** This Contract contains the entire agreement between Contractor and *Region 7 ESC* and supersedes any prior understandings or oral or written agreements between ESC and Contractor on the matters contained herein. No modification, alteration, or waiver of any term, covenant, or condition of this Contract and any attachments shall be valid unless in writing and executed by ESC and Contractor.
105. **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. Notices to ESC shall be delivered to *Region 7 Education Service Center, 1909 North Longview Street, Kilgore, Texas, 75662*. 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.

COMPLIANCE

Contractor agrees to comply with all federal, state, and local laws, rules, regulations, and ordinances, as applicable. It is further acknowledged that Contractor certifies compliance with all provisions, laws, acts, regulations, etc. as specifically noted above.

_____ Contractor Company Name	_____ Unique Entity ID (SAM) #
_____ Authorized Person - Printed Name	_____ Authorized Person - Signature
_____ Authorized Person - Title	_____ Date
_____ Company Address: Street, City, State, Zip	
_____ Phone #	_____ Fax #

By: \_\_\_\_\_

Todd Schneider, Executive Director

*Region 7 Education Service Center*

Date: \_\_\_\_\_



**EXHIBIT A: AUTHORIZED KEY PERSONNEL 07-09262024**

**AUTHORIZED KEY PERSONNEL**

**Authorized Key Personnel:**

Name	Title

**Signatures:**

• \_\_\_\_\_ •  
• *Region 7 Education Service Center* •  
• •  
• **Date:** \_\_\_\_\_ •                      **Date:** \_\_\_\_\_

**OPTIONAL: NO BID FORM**

**RETURN ONLY IF YOU DO NOT TO SUBMIT A RESPONSE TO THIS SOLICITATION.**

You may email only this page to: [purchasing@esc7.net](mailto:purchasing@esc7.net)

RFP# 07-09262024

Whereas on the \_\_\_\_\_ day of \_\_\_\_\_, 2024, our company has reviewed Bid RFP 07-03132023 Network Infrastructure Equipment and Installation, offered by Region 7 ESC HR/Operations Department and our company elects not to submit a response based on the following determination.

\_\_\_\_\_ Company does not supply the requested commodity product/service.

\_\_\_\_\_ The statement of work is too small to be offered by my company.

\_\_\_\_\_ The statement of work is too large to be offered by my company.

\_\_\_\_\_ Other:

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\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Email Address

\_\_\_\_\_  
Authorized Person - Signature

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Contractor Company Name

\_\_\_\_\_  
Email Address