

CLEBURNE INDEPENDENT SCHOOL DISTRICT
STANDARD TERMS AND CONDITIONS

The following terms and conditions are requirements that bind the Vendor that is awarded a bid, proposal, or contract. These terms and conditions communicate the District's expectations with regard to the Vendor's performance in connection with the District's purchase of goods and services. Cleburne Independent School District may also be referred to as "Cleburne ISD" "CISD" or "the District," throughout this and related documents. Vendor may also be referred to as "Contractor" throughout this and related documents. The words "bids, proposals, competitive sealed proposal, quotes" and their derivatives may be used interchangeably in these terms and conditions. These terms and conditions are applicable on all purchase orders, requests for proposals, quotes, competitive sealed proposals, etc. to which they are attached.

District and Vendor agree as follows:

1. Brands and Models: Brands and model numbers, where listed, are used for specification reference only, unless otherwise stated, and are not intended to limit the District's consideration of an approved equal. Descriptive information or samples may be requested for any item bid other than the referenced item.
2. All items bid must be new, unused, and in first-class condition unless otherwise requested by the District. Materials sold to or installed in any District facility are not to contain any asbestos material. Any Vendor who sells or installs asbestos containing material in any District facility shall be liable for and shall be required to bear the entire burden of any or all expenses associated with the removal and replacement of the material.
3. Equivalent Clause: If bidding on other than referenced specifications, Vendor's bid must show the specifications, manufacturer, brand, model, etc. of the product being offered. If other than brand(s) specified is offered, complete descriptive information of each product being offered must be included with Vendor's bid.

In every case, District, in its sole discretion, will determine if a product is an approved equal. If brands other than that specified are offered, complete descriptive information of said article must be included with the bid. If Vendor takes no exception to specifications or reference date, Vendor will be required to furnish brand names, models, etc. as specified.

- a. Samples, when requested in the bid specifications, must be furnished with the bid, or the bid will be disqualified. When samples are requested after the bid opening, they must be furnished within five (5) school business days of the request at no cost to the District, or the bid will be disqualified. If not destroyed in examination, they will be returned to Vendor on request.
- b. Once the contract is awarded, no substitutions of the products on the orders will be allowed without specific written consent from the Accounts Payable. An approval for substitution on one order does not equate to automatic approval for substitution on subsequent orders. Application of the product must be reviewed for each project, job, and use.

4. Products delivered that are determined by the District not to be of equal or comparable quality to the requested articles shall be promptly picked up by Vendor as requested and scheduled by the District, at no expense to the District, and replaced with the product specified at the same price as bid. Products or services bid and provided under any subsequent orders must conform to appropriate local, State and Federal ordinances, and statutes and regulations governing the manufacture, sale, safety and installation of the products or provision of services.
5. Material Safety Data Sheets (“MSDS”): The District requires product verification in the form of MSDS reports submitted at the time of the bid opening and on any product offered by a vendor if applicable.
6. Evaluation: (a) Evaluation Pursuant to Texas Education Code Section 44.031 for purchases made with non-federal funds: In evaluating qualified bids, the following considerations will be taken into account for award recommendations: (1) purchase price, (2) quality of Vendor’s goods or services, (3) reputation of Vendor and Vendor’s goods or services, (4) the extent to which the goods or services meet the District’s needs, (5) Vendor’s past relationship with the District, (6) total long-term cost to the District to acquire Vendor’s goods or services, (7) impact on the District’s ability to comply with laws and rules relating to historically underutilized businesses, (8) safety and suitability for the intended use, (9) Vendor’s delivery capabilities, warranty, and warranty service history, (10) non-responsive, incomplete, and incomprehensible bids, and (11) for a contract for goods and services, other than those goods and services related to telecommunications and information services, building construction and maintenance, or instructional materials, whether Vendor or Vendor’s ultimate parent company or majority owner: (A) has its principal place of business in this state; or (B) employs at least 500 persons in this state. The District reserves the right to conduct any tests, evaluations, or comparisons it deems necessary to complete the evaluation process and awards on the basis of best value to the District. The District may award a contract for any or all sections of this bid and/or by individual items or combination of items. The District does not purchase on the basis of low bid alone. The District follows the criteria set forth by statute.

(b) Evaluation for purchases made with federal funds: In addition to the criteria stated above in 9.(a), the following considerations will be taken into account for award recommendations: (a) the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals is prohibited, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference; (b) when contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract; (c) impact on the District’s ability to comply with laws and rules relating to historically underutilized businesses to provide for consideration to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible; (d) for each contract in which there is no price competition, and in all cases where cost analysis is performed, consideration of profit as a separate element of the price shall be made, and to establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

7. The District reserves the right to decrease by 100% and/or increase the quantity listed in the specifications at the same bid price at any time, beginning with the approval of the Board of Trustees of the Cleburne Independent School District.
8. The District reserves the right to (1) reject any, part of any, or all bids, (2) award the contract for any item as it may appear advantageous to the District, and/or (3) waive any informalities or irregularities in the bidding process. In case of tie bids, the District will award according to District policy CH (Legal).
9. District, may at its sole option, extend this bid for an additional sixty (60) days from the date of expiration, under the same pricing and terms and conditions, if it is determined by the District that additional time is required to avoid a contract lapse.
10. In absence of a mutually agreed contract document, it is understood and agreed that, once Vendor has taken action to fill a purchase order for any or all items, a contract shall thereby be created pursuant to and subject to these standard terms and conditions set forth herein. To the extent a vendor's terms or conditions differ, District's terms and conditions shall control.
11. Vendor of Package Goods: Vendor will package goods in accordance with best commercial practice. Each shipping container shall be clearly and permanently packed as follows: (a) Vendor's name and address; (b) Consignee's name, address and purchase order number; (c) Container number and total number of containers, e.g. "box 1 of 4 boxes"; and (d) the number of the container bearing the packing slip. Vendor shall bear cost of packaging unless otherwise provided and agreed to by the District. Goods shall be suitably packed to secure lowest transportation costs and to conform to requirements of common carriers and any applicable specifications. District's count or weight shall be final and conclusive on shipments not accompanied by packing lists.
12. Shipment Under Reservation Prohibited: Vendor is not authorized to ship goods under reservation and no tender of a bill of lading will operate as a tender of goods.
13. Title and Risk of Loss: The title and risk of loss of the goods shall not pass to District until District actually receives and takes possession of the goods at the point or points of delivery and has taken action to specifically signify that the District accepts the goods as conforming. Mere acceptance of delivery shall not be acceptance as conforming.
14. No Placement of Defective Tender: Every tender or delivery of goods must fully comply with all provisions of this contract as to time of delivery, quality and the like. If a tender is made which does not fully conform, this shall constitute a breach and Vendor shall not have the right to substitute a conforming tender provided. Where the time for performance has not yet expired, the Vendor may reasonably notify District of his intention to cure and may then make a conforming tender within the contract time but not afterward.
15. Delivery Terms and Transportation Charges: F.O.B. Destination. All freight/delivery charges are to be included in the line item bid prices. If the shipping and handling costs are not included in the bid price of each line item, the bid cannot be fairly compared and evaluated and it WILL NOT be considered due to being NOT AS SPECIFIED. No additional freight or delivery charge for line items will be paid on invoice unless agreed to by District. No tailgate or curbside deliveries will

be permitted; shipment must arrive at destination with proper equipment to make delivery inside District's building.

16. District is not liable for orders accepted without a purchase order.
17. Place and Time of Delivery: All materials and equipment shall be delivered to the address stated on the front of the Purchase Order unless otherwise authorized by the Director of Purchasing. Vendor shall complete delivery within forty-five (45) calendar days of issuance of the purchase order. If delays are foreseen, written notice shall be given to the District, which will take the extensions under advisement, and in such event the District, in its sole discretion, may cancel the purchase order without penalty. Vendors should keep the District advised of the status of orders, as failure to meet delivery dates may result in removal from the approved Vendors/vendors list, or may result in the District's non- acceptance or rejection of goods received pursuant to the purchase order at no liability to the District.
18. Inspection Requirements: Final inspection shall be made at the site after delivery. In case of rejection because of failure to meet contract requirements, or as otherwise provided herein, Vendor shall, without charge, promptly remove such rejected or damaged athletic equipment and replace it by delivering to the same inspection point athletic equipment which meets the contract requirements without any additional expense to the owner for freight or other charges.
19. Invoices and Payments:
 - a. Vendor shall submit separate invoices on each purchase order after each delivery. Invoices shall indicate the purchase order number and be itemized, and transportation charges, if any, shall be listed separately. The delivery by Vendor shall be accompanied by a set of commercial invoices (one original and one duplicate copy) on the Vendor's regular invoice form. Payment will not be made on partial shipments of purchase orders unless the invoice only indicates the items that were shipped. Payments will be made within thirty (30) days. Vendors should keep the District's Accounts Payable Department advised of any changes in remittance address by providing notice to the following address: Cleburne Independent School District, Attn: Accounts Payable.
 - b. As a tax exempt governmental entity, Vendor shall not include taxes in invoices.
20. Gratuities: Vendor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by Vendor for the purpose of securing business. For breach or violation of this warranty, District shall have the right, in addition to any other right or rights, to cancel this contract price, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee. If it is determined by District that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Vendor, or any agent or representative of the Vendor, to any officer or employee of the school district with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such a contract the District may terminate this Agreement. In the event this contract is canceled by District, pursuant to this provision, District shall be entitled, in addition to any other rights and

remedies, to recover or withhold the amount of the cost incurred by Vendor in providing such gratuities.

21. **Warranty Price:** The price to be paid by District shall be that contained in Vendor's offer which Vendor warrants to be no higher than Vendor's current prices on orders by others for products of the kind and specification covered by this agreement for similar quantities under similar or like conditions and methods of purchase. In the event Vendor breaches this warranty, the prices of the items shall be reduced to Vendor's current prices on orders by others, or in the alternative, District may cancel this contract without liability to Vendor whatsoever.
22. **Warranty Products:** Vendor shall not limit or exclude any implied warranties, and any attempt to do so shall render this contract voidable at the option of the District. Vendor warrants that the goods furnished will conform to the specifications, drawings and descriptions listed in the bid invitation and to the sample(s) furnished by Vendor, if any. In the event of a conflict between the specifications, drawings and descriptions, the specifications shall govern.
23. **Safety Warranty:** Vendor warrants that the product sold to District shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event the product does not conform to OSHA standards, District may return the product for correction or replacement at Vendor's expense. In the event Vendor fails to make the appropriate correction within a reasonable time, correction made by District will be at Vendor's expense.
24. **No Warranty by District Against Infringements:** As part of this contract for sale, Vendor agrees to ascertain whether goods manufactured in accordance with the specifications included in this agreement will give rise to the rightful claim of any third person by way of infringement or the like. District makes no warranty that the production of goods according to the specification(s) will not give rise to such a claim, and in no event shall District be liable to Vendor for indemnification in the event that Vendor is sued on the grounds of infringement or the like. If Vendor is of the opinion that an infringement or the like will result, he/she will notify District to this effect in writing within two (2) weeks after signing of this agreement. If District does not receive notice and is subsequently held liable for the infringement or the like, Vendor will indemnify and hold District harmless. If Vendor in good faith ascertains that production of the goods in accordance with the specifications will result in infringement or the like, this contract may be null and void, at District's sole option, at which time District may pay Vendor the reasonable cost of his/her search as to infringements.
25. **Liens:** All goods delivered or labor performed under this contract shall be free of all liens and upon request, a formal release of all liens will be delivered to the District. Liens: All goods delivered or labor performed under this contract shall be free of all liens and upon request, a formal release of all liens will be delivered to the District.
26. **Termination:** The performance of work under this contract may be terminated in whole or in part by the District in accordance with this provision. Termination of work hereunder shall be effected by the delivery to the Vendor of a "Notice of Termination" specifying the extent to which performance of work under the order is terminated and the date upon which such termination becomes effective. Such right of termination is in addition to and not in lieu of rights of District set forth herein.

The District shall have the right to terminate any Agreement or Contract with or without cause upon 10 calendar days' notice to Vendor.

Valid causes for termination of this contract by the District for cause include, but are not limited to:

- a. Lack of funds by the District. Lack of funds includes, but is not limited to, non-appropriation and/or non-availability of funds. For any proposed multi-year Agreement by and between the District and any Vendor, should the District's Board of Trustees not approve funds for such Agreement, the Agreement shall automatically terminate on the last day of the school fiscal year for which funds have been appropriated at no further cost or obligation of the District.
- b. Non-compliance with all federal regulations including, but not limited to the "Contract Work Hours and Safety Standards Act," "Equal Employment Opportunity Act," and the "Energy Policy and Conservation Act" by Vendor.
- c. Failure to meet bidding specifications as determined by District.
- d. Failure of the successful Vendor to deliver the item(s) within the specified time.
- e. Delivery of items on two (2) or more occasions that are rejected by the District.
- f. In the event that Vendor becomes insolvent or commits act of bankruptcy.
- g. Breach of warranties or service agreements.
- h. Breach by Vendor of any term or condition of the contract.
- i. Any attempt by the successful Vendor to misrepresent the product or service provided. (i.e., listing a product as the product ordered on the statement of charges and shipping a non-approved alternate).
- j. Any unethical business practice, or attempt to misrepresent or commit fraud against the District.
- k. Violation or breach of any federal or state law or regulation. If such violation occurs, Vendor may be barred from submitting future to District.

The basis for settlement prior to completion of the contract will, at District's discretion, be non-payment to the successful Vendor (Grantee), assessment of liquidated damages, and any other remedy at law or in equity available to District. Vendor agrees that this is a reasonable cost to compensate CISD for time and effort involved in procuring replacement products, goods, or services, which cost would be difficult, if not impossible, to compute with certainty, and does not constitute a penalty. Assessment of liquidated damages does not preclude District from seeking and obtaining other remedies as set forth in this solicitation or any other remedy at law or in equity available to District.

27. Penalties for Non-Performance: If, at any time, Vendor fails to fulfill or abide by the terms, conditions, or specifications of the contract, District reserves the right to:
- a. Purchase on the open market and charge Contractor the difference between contract and actual purchase price, or
 - b. Deduct such charges from existing invoice totals due at the time, or
 - c. Cancel the contract within ten (10) calendar days by written notification of intent.
28. Right to Assurance: In the event the District, in good faith, has reason to question the Vendor's intent to perform under the contract, the District may demand that the Vendor provide written assurance of its intent to perform. In the event that a demand is made and no assurance is provided within five (5) business days, the District may treat this failure as an anticipatory repudiation of the contract.
29. The successful Vendor must agree to provide to the school district, the Texas Education Agency, the Comptroller General of the United States, or any other duly authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions. The successful Vendor must also agree to maintain all required records for five (5) years after the school district makes final payment and all other pending matters are closed.
30. Pursuant to Texas Education Code § 44.034(a), contractors and sub-contractors 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. A school district may terminate a contract with a person or business entity if the school 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 the termination of the contract. TEX. EDUC. CODE § 44.034(b).

Additionally, pursuant to Texas Education Code § 22.0834 and Texas Government Code § 411.082, Vendor will before commencement of services and thereafter at least annually, obtain criminal history record information that relates to an employee, applicant, or agent of Vendor, if the person has or will have continuing duties related to the District, and the duties are or will be performed on the District's property or at another location where students are regularly present. Vendor shall assume all expenses associated with the background checks, and shall immediately remove any employee or agent who was convicted of a felony or a misdemeanor involving moral turpitude from the District's property or other location where students are regularly present. The District shall determine what constitutes "moral turpitude" or "a location where students are regularly present." Vendor understands that failure to comply with the requirements of this section may be grounds for termination of any Agreement.

31. For Vendor or other person doing business with local governmental entity: A Conflict of Interest Questionnaire must be filed in accordance with Chapter 176, Local Government Code by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local

governmental entity and the vendor meets requirements under Section 176.006(a). By law, this Questionnaire must be filed with the records administrator of the local governmental entity not later than the seventh (7th) business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code. A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

32. Possession of firearms, alcohol and/or drugs, even in vehicles, is strictly prohibited on school district property. The use of tobacco products is not allowed on school district property.
33. The Vendor must comply and agrees to abide by the District's Board Policies, rules, and regulations and all applicable federal and state laws and regulations to the extent applicable, including but not limited to the following:
 - a. Contract Work Hours and Safety Standards Act, 40 U.S.C. § 3701-3708.
 - b. Equal Employment Opportunity Act.
 - c. Energy Policy and Conservation Act (P.L. 94-163).
 - d. Equal Opportunity and Affirmative Action Employer.
 - e. "EDGAR" Requirements 2 CFR Part 200 Chapter 2-18 - 237.
 - f. The Copeland "Anti-Kick" Back Act.
 - g. Davis-Bacon Act
 - h. Byrd Anti-Lobbying Act
 - i. Family Education Rights and Privacy Act (FERPA)
 - j. Telephone Consumer Protection Act (TCPA)
 - k. Protection of Pupil Rights Amendment (PPRA)
 - l. Children's Online Privacy Protection Act (COPPA)

Neither party shall discriminate because of race, color, religion, sex, age, national origin, handicap, or status as a Veteran, as defined and prohibited by applicable government law, in the recruitment, selection, training, utilization, promotion, termination, or other employment related activities concerning personnel. In addition, Vendor affirms that it is an equal opportunity and affirmative action employer and shall comply with all applicable federal, state, and local laws and regulations including, but not limited to, Executive Order 11246 as amended by 11375 and 12086; 12138; 11625; 11750; 12073; the Rehabilitation Act of 1973, as amended; the Vietnam Era Veterans Readjustment Assistance Act of 1975; Civil Rights Act of 1964; Equal Pay Act of 1963; Age Discrimination in Employment Act of 1967; and Public Law 95-507.

34. Debarment and Suspension (Executive Orders 12549 and 12689): Vendor affirms that it is not listed on the government wide exclusions in the System for Award Management (SAM). 2 CFR § 180.220.
35. Privacy: Contractor shall only use data and information about District employees or District students for the purpose of fulfilling its duties under the Agreement, unless disclosure is permitted and written confirmation is obtained from the CISD Superintendent or designee.
36. Right of Access to Data: Contractor shall maintain and District shall have access at all times to all school related records retained by contractor for the length of the contract. Upon termination of the contract, contractor shall return all education records, as that term is defined in the Family Education Rights and Privacy Act, and then permanently destroy all such records. For all other records, Contractor shall maintain the records for a period of three (3) years from the termination of the agreement. Contractor shall notify CISD, and permit District to obtain copies of, any data prior to Contractor destroying or removing data from their database or records.
37. PCI and NACHA Compliance: To the extent applicable, Vendor is and shall at all times be compliant with PCI and NACHA requirements. Vendor will at its expense conduct at least annually an audit of its systems by a NACHA authorized auditor, as well as annual and quarterly audits and scans to retain its certification as a PCI Level One Compliant business. Vendor will provide the District the results of the above audits, scans and tests, and will promptly modify its security measures as needed based on those results in order to be compliant with PCI and NACHA requirements.
38. Safeguard Data: Vendor will store and process District data in accordance with commercial best practices, including appropriate administrative, physical, and technical safeguards, to secure such data from unauthorized access, disclosure, alteration, and use. Such measures will be no less protective than those used to secure Vendor's own data of a similar type, and in no event less than reasonable in view of the type and nature of the data involved.
39. Data Breach: Immediately upon becoming aware of a Security Breach, or of circumstances that has resulted in unauthorized access to or disclosure or use of District data, Vendor will notify the District, fully investigate the incident, and cooperate fully with the District's investigation of and response to the incident. Except as otherwise required by law, Vendor will not provide notice of the incident directly to individuals whose Personally Identifiable Information was involved, regulatory agencies, or other entities, without prior written permission from the District. Vendor shall be responsible for all costs associated with notifying individuals whose personal information has been breached, as required by Texas law.
40. Foreign Storage Prohibited: All data maintained by contractor shall be stored and maintained in within United States. Foreign (non US) storage of any data related to this agreement is prohibited. This includes backups of data.
41. Indemnification: The Vendor agrees it shall defend, indemnify, and hold harmless the District, its officers, and its employees against any and all liability, loss, costs, damages, and expenses, including attorney's fees that the District, its officers, or its employees may hereafter sustain, incur, or be required to pay arising out of the negligent or intentional acts or omissions of the Vendor's officers or employees.

42. Insurance: The Contractor agrees, in order to protect itself and the District under the indemnity provision set forth above, to at all times during the term of this contract have and keep in force insurance policies that meet or exceed the limits set forth by the District. Certificates of insurance showing the coverage set forth by the District shall be provided to the District prior to the effective date of this contract, and the District shall be named as an additional insured under the liability policy required above.
43. Force Majeure: If by reason of Force Majeure, either party shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and full particulars of Force Majeure in writing to the other party within fourteen (14) days after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

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

44. Assignment Delegation: No right or interest in this contract shall be assigned or delegation of any obligation made by Vendor without the written permission of the District. Any attempted assignment or delegation by Vendor shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.
45. Waiver: The waiver by either party of a breach of any provision of this Agreement will not be construed as a waiver of any subsequent breach. The invalidity, in whole or in part, of any provision of this Agreement will not affect the validity of the remaining provisions. Notwithstanding anything contained herein to the contrary, no provision herein may be construed as a waiver of the District's sovereign immunity.
46. Governing Law and Venue: This Agreement shall be construed and governed in accordance with the laws of the State of Texas without regard to its choice of law provisions. Both parties agree that venue for any litigation arising from this contract shall lie in Johnson County, Texas.
47. Pursuant to Texas Government Code Chapter 2270, Vendor represents and warrants to the District that the Vendor does not boycott Israel and will not boycott Israel during the term of this Agreement.