



7145 West Tidwell Road ~ Houston, Texas 77092  
(713) 744-8108  
[www.esc4.net](http://www.esc4.net)

**Publication Date: February 23, 2017**

## **NOTICE TO RESPONDENT**

**SUBMITTAL DEADLINE: Thursday, March 16, 2017 @ 2:00 PM MST**

Questions regarding this solicitation must be submitted in writing to Robert Zingelmann at [questions@esc4.net](mailto:questions@esc4.net) or (713) 744-6835 no later than March 2, 2017. All questions and answers will be posted to both [www.esc4.net](http://www.esc4.net) and [www.tcpn.org](http://www.tcpn.org) under **Solicitations**. Offerors are responsible for viewing either website to review all questions and answers prior to submitting responses. Please note that oral communications concerning this RFQ shall not be binding and shall in no way excuse the responsive Offeror of the obligations set forth in this Request for Qualifications (RFQ).

**Request for Qualifications (RFQ)**  
by  
**Region 4 Education Service Center ("ESC")**  
for  
**Sports Surfaces, Installation, and Related  
Material(AZ)**

**On behalf of itself, other government agencies and non-profits, made  
available through The Cooperative Purchasing Network "TCPN."**

**Solicitation Number 17-09**

**Note: Envelopes must be sealed, prominently marked with the RFQ solicitation number, RFQ title, RFQ opening time/date and name of vendor. Facsimile or electronic submissions of the RFQ will not be accepted. Submissions must be received by the Region 4 ESC office at: 7145 West Tidwell Road, Houston, TX 77092 no later than 2:00 pm CDT, at which time and place they will be opened publicly and recorded.**

Any response received later than the specified deadline, whether delivered in person or mailed, will be disqualified.

**Please be advised that all information and documents submitted will be subject to the Public Information Act requirements governed by the State of Texas.**

Because contracts are awarded by a governmental entity, all responses submitted are subject to release as public information after contracts are executed. If an Offeror believes that its response, or parts of its response, may be exempted from disclosure, the Offeror must specify page-by-page and line-by-line the parts of the response, which it believes, are exempt. In addition, the Offeror must specify which exception(s) are applicable and provide detailed reasons to substantiate the exception(s). Offeror must provide this information on the "Acknowledgement and Acceptance to Region 4 ESC's Open Record Policy" form found on the next page of this solicitation. Any information that is unmarked will be considered public information and released, if requested under the Public Information Act.

The determination of whether information is confidential and not subject to disclosure is the duty of the Office of Attorney General (OAG). Region 4 Education Service Center ("ESC") must provide the OAG sufficient information to render an opinion and therefore, vague and general claims to confidentiality by the Offeror are not acceptable. Region 4 ESC must comply with the opinions of the OAG. Region 4 ESC assumes no responsibility for asserting legal arguments on behalf of any Offeror. Offerors are advised to consult with their legal counsel concerning disclosure issues resulting from this procurement process and to take precautions to safeguard trade secrets and other proprietary information.

After completion of award, these documents will be available for public inspection.

**ACKNOWLEDGMENT AND ACCEPTANCE**  
**OF REGION 4 ESC's OPEN RECORDS POLICY**

*Signature below certifies complete acceptance of Region 4 ESC's Open Records Policy, except as noted below (additional pages may be attached, if necessary).*

**Check one of the following responses to the Acknowledgment and Acceptance of Region 4 ESC's Open Records Policy below:**

- We acknowledge Region 4 ESC's Open Records Policy and declare that no information submitted with this proposal, or any part of our proposal, is exempt from disclosure under the Public Information Act.

*(Note: All information believed to be a trade secret or proprietary must be listed below. It is further understood that failure to identify such information, in strict accordance with the instructions below, will result in that information being considered public information and released, if requested under the Public Information Act.)*

- We declare the following information to be a trade secret or proprietary and exempt from disclosure under the Public Information Act.

*(Note: Offeror must specify page-by-page and line-by-line the parts of the response, which it believes, are exempt. In addition, Offeror must specify which exception(s) are applicable and provide detailed reasons to substantiate the exception(s).*

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## INTRODUCTION

### **Background on Region 4 Education Service Center**

Region 4 Education Service Center (“Region 4 ESC” herein “Lead Public Agency”) on behalf of itself and all state, local governments, school districts, and higher education institutions in the United States of America, and other government agencies and non-profit organizations (herein “Participating Agencies”) solicits responses from qualified Offerors to enter into a contract (“Contract”) for goods or services solicited. For purposes of this solicitation, this request for qualifications (RFQ) is one of two steps in competing for a competitively solicited Region 4 ESC contract.

Contracts are approved and awarded by a single governmental entity, Region 4 ESC, and are only available for use and benefit of all entities complying with state procurement laws and regulations (public and private schools, colleges and universities, cities, counties, non-profits, and all governmental entities).

Region 4 ESC’s purchasing cooperative was established in 1997 as a means to increase their economic and operational efficiency. The purchasing cooperative has since evolved into a national cooperative used to assist other government and public entities increase their economical and operational efficiency when procuring goods and services.

### **What is the role of The Cooperative Purchasing Network (“TCPN”)**

The Cooperative Purchasing Network (“TCPN”) assists Region 4 ESC in helping other public agencies and non-profits reap the benefits of national leveraged pricing, with no cost to the member. TCPN leverages one of the largest pools of purchasing potential.

### **Purpose of TCPN**

- Provide governmental and public entities opportunities for greater efficiency and economy in procuring goods and services.
- Take advantage of state-of-the-art purchasing procedures to ensure the most competitive contracts.
- Provide competitive price and bulk purchasing for multiple government or public entities that yields economic benefits unobtainable by the individual entity.
- Provide quick and efficient delivery of goods and services.
- Equalize purchasing power for smaller agencies that are unable to command the best contracts for themselves.
- Help in assisting with use of best business practices.

### **Customer Service**

- TCPN is dedicated to providing contracts successful for both our members and awarded suppliers.
- TCPN is committed to providing our members and awarded vendors with high quality service.
- TCPN has dedicated staff available to answer questions, offer guidance and help in any way possible.

## Key Definitions (R7-2-1001)

1. **Bidder Prequalification:** determining in accordance with this Article that a prospective bidder or offeror satisfies the criteria for being included on the bidders' list.
2. **Contract:** means all types of agreements, including purchase orders, regardless of what they may be called, for the procurement of materials, services or construction or the disposal of materials.
3. **Contract Modification:** means any written alteration in the terms and conditions of any contract accomplished by mutual action of the parties to the contract.
4. **Contractor:** means any company awarded a contract as a result of this procurement process.
5. **Cost:** means the aggregate cost of all materials and services, including labor performed by force account.
6. **Days:** means calendar days and shall be computed pursuant to A.R.S. 1-243.
7. **Detailed Record:** means minutes, which shall include the date, time, place, persons in attendance and a summary of what was said by whom and the decisions made. The minutes may be made either in writing or by a recording.
8. **Earth moving, material handling, road maintenance and construction equipment:** means a track type tractor, motor grader, excavator, landfill compactor, wheel tractor scraper, off-highway truck, wheel loader or track loader having a published manufacturer's minimum unit list price of \$50,000 or ore and a minimum expected life cycle of 3 years.
9. **Filed:** means delivery to the district representative, school district, or its hearing officer, whichever is applicable. A time/date stamp affixed to a document by the school district shall be determinative of the time or delivery for purposes of filing.
10. **Governing Board:** has the meaning defined in A.R.S. 15-101(7)
11. **Incremental award:** means an award or portions of a definite quantity requirement to more than one contractor. Each portion is for a definite quantity and the sum of the portions is the total definite quantity required.
12. **Interested Party:** means an actual or prospective bidder or offeror whose economic interest may be affected substantially and directly by the issuance of a solicitation, the award of a contract or by the failure to award a contract. Whether an actual or prospective bidder or offeror has an economic interest will depend upon the circumstances of each case.
13. **Materials:** means all property, including equipment, supplies, printing, insurance and leases of property, but does not include land, a permanent interest in land or real property or leasing space.
14. **Minor Informality:** means mistakes, excluding judgmental errors that have negligible effect on price, quantity, quality, delivery or other contractual terms and the waiver or correction of such mistake does not prejudice other bidders or Offerors.
15. **Multiple Awards:** means an award of an indefinite quantity contract for 1 or more similar materials or services to more than one bidder or offeror.
16. **Procurement:** means buying, purchasing, renting, leasing or otherwise acquiring any materials, services, or construction. Procurement also includes all functions that pertain to the obtaining of any material, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract and all phases of contract administration.

17. **Purchase Description:** means the words used in a solicitation to describe the materials, services or construction for purchase and include specifications attached to or made a part of the solicitation.
18. **Responsible Bidder or Offeror:** means a person who has the capability to perform the contract requirements and the integrity and reliability which will assure good faith performance.
19. **Responsive Bidder or Offeror:** means a person who submits a bid which conforms in all material respects to the invitation for bids or request for proposals.
20. **Solicitation:** means an invitation for bids, a request for technical offers, a request for proposals, a request for quotations or any other invitation or request by which the school district invites a person to participate in a procurement.
21. **Specifications:** means any description of physical or functional characteristics, or of the nature of a material, service, or construction of item. Specifications may include a description or any requirement for inspecting, testing, or preparing a material, service or construction item for delivery.
22. **Standard Commercial Material:** means material that in the normal course of business is customarily maintained in stock or readily available by a manufacturer, distributor or dealer for the marketing of such material.
23. **Total Cost:** means total cost as defined in A.R.S. 15-213(F)
24. **Total Life Cycle Cost:** means vendor costs, total school district costs and financing costs throughout the life cycle of the information systems or telecommunications systems being purchased or any other equipment purchased less residual value.
25. **Procurement Code:** is the Arizona State Procurement Code (Arizona Revised Statutes, Title 41, Chapter 23)
26. **Procurement Rules:** means the rules adopted by the Arizona State Board of Education (A.A.C. R7-2-1001, et. Seq.)
27. **USFR:** means the Uniform System of Financial Records

**PROJECT DESCRIPTION**  
**for**  
**Sports Surfaces, Installation,**  
**and Related Material**

Region 4 ESC is seeking qualified Sports Surfaces Contractors to provide products and services for TCPN members on an as needed basis in accordance with local, Arizona Revised Statutes and federal statutes that apply to sports surface products and services.

This RFQ is the first step of a two-step selection process. From the data submitted, firms that meet the minimum requirements and score in the acceptable range will make the “short list.” This list will be utilized to solicit pricing via an Invitation for Bid (IFB). Arizona contracts will be awarded from the short list developed by the evaluation team from responses to this document.

Region 4 ESC reserves the right to multi-award any resulting contract.

**Proposed Schedule for this RFQ for Sports Surfaces, Installation,**  
**and Related Materials**

Advertise RFQ	February 23, 2017
Pre-Submittal Conference	None
Responses are Due	March 16, 2017
Evaluations	March 2017
Invitation to Bid from qualified contractors	March/April 2017
Award recommendation	April 2017



## **PRODUCT / SERVICES SPECIFICATIONS**

It is the intention of Region 4 ESC to establish a contract with supplier(s) for Sport Surfaces, Installation, and Related Material(AZ). Awarded supplier(s) shall perform covered services under the terms of this agreement. Offerors shall provide pricing based on a discount from a manufacturer's price list or catalog, or fixed price, or a combination of both with indefinite quantities. Electronic Catalog and/or price lists must accompany the bid. Include an electronic copy of the catalog from which discount, or fixed price, is calculated. Multiple percentage discount structure is also acceptable. Please specify where different percentage discounts apply. Additional pricing and/or discounts may be included. If Offeror has existing cooperative contracts in place, Offeror is requested to submit pricing equal or better than those in place.

Each service proposed is to be priced separately with all ineligible items identified. Services may be awarded to multiple vendors. Offerors may elect to limit their response to a single service within any category, or multiple services within any or all categories.

Region 4 ESC is seeking a supplier with the depth, breadth and quality of resources necessary to complete all phases of this contract. In addition, Region 4 ESC also requests any value add commodity or service that could be provided under this contract.

While this solicitation specifically covers Sport Surfaces, Installation, and Related Material(AZ), offerors are encouraged to submit an offering on any and all products or services available that they currently perform in their normal course of business.

### **Minimum Requirements**

- Offeror shall have extensive knowledge and a minimum of 5 years' experience in the Sports Surfaces industry and can document and demonstrate experience with different types of applications.
- Offeror and/or employees shall be certified installers/applicators for products which contractor is proposing within this solicitation.
- Offeror shall have extensive knowledge and experience in doing business with schools and governmental entities as a sole provider without the use of a subcontractor. Please provide verification.
- Offeror's company shall have the ability to "self-perform" work for TCPN member projects. Explain your company's ability to "self-perform."
- Offeror shall have the ability to provide service to all or part of the state of Arizona. Explain which areas of Arizona your company can perform work for TCPN members.
- Offeror shall have aggregate bonding capabilities for multiple projects being performed simultaneously.

### **INFORMATION TO OFFERORS**

Region 4 ESC intends to enter into Contract(s) for Sports Surfaces, Installation and Related Materials. These contracts will be available for use by all public entities such as ESC's, ISD/USD's, universities, city and county governments, community colleges, state and federal agencies in the State of Arizona.

Offerors are encouraged to offer turn-key solutions to address the full range of Sports Surfaces requirements being sought in this solicitation, however offering a turn-key solution is **not** a requirement that must be met in order to be considered for award.

**OFFERORS ARE REMINDED THAT NO WORK IS OR HAS BEEN GUARANTEED UNDER THIS CONTRACT.**

It is the intention of Region 4 ESC to issue these contracts to give the members a choice of contractors providing best value.

The Offeror should describe in its business plan how it will include and work with local subcontractors and how it will work with local architects and engineers, especially those architectural and engineering firms already working with members.

Region 4 ESC will receive 3% of the total revenue from each purchase order or work order executed under this Contract. This fee will be **included** in the contractor's pricing in the second step with the IFB and will not be issued as a separate line item in any job proposals issued to members. This contract management fee will be required to be paid within thirty days of the completion of any purchase order or work order.

It will be the responsibility of the Contractor to pre-qualify their subcontractors. Some members will have a set goal for subcontracting requirements and will require that a plan be attached as an addendum to the purchase or work order outlining how the contractor will endeavor to meet their goal. Specific plans as part of the contractors' business plan to meet these goals will be part of the overall contractor's evaluation process as well as selection process for certain client members as a requirement for their delivery orders.

The Contractor at its expense and included as part of overhead will provide adequate insurance coverage meeting at a minimum the requirements of the State of Arizona. The Contractor will provide within 14 days but prior to the commencement of work, a certificate of insurance showing that Region 4 ESC, possibly the member, has been named as additional insured. If the member has higher insurance requirements, those requirements may be added as an addendum to the purchase or work order.

## INSTRUCTIONS TO RESPONDENTS

### Submission of Response

- Only sealed responses will be accepted. Faxed or electronically transmitted responses will not be accepted.
- Sealed responses may be submitted on any or all areas requested, unless stated otherwise. Region 4 ESC reserves the right to reject or accept any response.
- Deviations to any terms, conditions and/or specifications shall be conspicuously noted in writing by the Offeror and shall be included with the response.
- Withdrawal of response will not be allowed for a period of 120 days following the opening. Pricing (required for step 2) will remain firm for 120 days from submittal.
- One (1) bound and signed original and five electronic copies on CD, DVD, or flash drives (i.e. pin or jump drives) shall be provided.

### Response to RFQ Format

- Required: Responses shall be provided in a three-ring binder or report cover using 8.5 x 11 size paper clearly identified with the name of the respondent's company and solicitation responding to on the outside front cover and vertical spine. All forms are to be completed electronically. Tabs should be used to separate the response into sections, as identified below. Respondents failing to organize in the manner listed may be considered non-responsive and may not be evaluated.

### **Binder Tabs**

Tab 1 - Firm and Subcontractors Capabilities

Tab 2 - Staff Qualifications/Resumes (firm, consultants, and subcontractors)

Tab 3 - Experiences on Similar Projects

Tab 4 - Experience with Sports Surfaces

Tab 5 - Marketing Plan

Tab 6 - Value Add

Tab 7 - Contractor Requirements (Signed)

### **Shipping Label**

The package must be clearly identified as listed below with the solicitation number and name of the company responding. All packages must be sealed and delivered to the Region 4 ESC office address indicated on the cover page of this solicitation no later than the submittal deadline stated.

From: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Solicitation Name and Number: \_\_\_\_\_

Due Date and Time: \_\_\_\_\_

## **PROCESS**

In accordance with applicable laws, rules, and regulations for public purchasing, award(s) will be made to the Offeror(s) whose response is determined to be the most advantageous to Region 4 ESC and its members. Region 4 ESC reserves the right to use a "Market Basket Survey" method, based on randomly selected criteria to determine the most advantageous response.

### **Competitive Range**

It may be necessary to establish a competitive range. Factors from the predetermined criteria will be used to make this determination. Responses not in the competitive range are unacceptable and do not receive further award consideration. Required in Step Two of the process.

### **Estimated Quantities**

Region 4 ESC anticipates that a substantial number of participating members will enter into contracts resulting from this solicitation based on multiple surveys and usage of other contracts that may have included similar services, however, Region 4 ESC makes no guarantee or commitment of any kind concerning quantities or usage of contracts resulting from this solicitation. The volume for this contract is estimated to be from \$10 million annually. This information is provided solely as an aid to Offerors in preparing responses only. The successful Offeror(s) discount and pricing schedule (required in Step Two of the process) shall apply regardless of the volume of business under the Contract.

### **Evaluation**

A committee will review and evaluate all responses and make a recommendation for ITB's from the short list of vendor(s). The recommendation for contract awards will be based on the predetermined criteria factors outlined in this solicitation and the ITB, where each factor is assigned a point value based on its importance.

### **Formation of Contract**

A response to this solicitation is an offer to contract with Region 4 ESC based upon the terms, conditions, scope of work, qualifications and specifications contained in this request. A solicitation response does not become a contract until it is awarded by Region 4 ESC. A Contract is formed when Region 4 ESC's board signs the Vendor Contract Signature Form. The Offeror must submit a signed Vendor Signature Form with the response thus, eliminating the need for a formal signing process. Please be advised that this RFQ is the first step of a two-step process and that selected Offerors will move forward for consideration in the second step, the ITB competitive solicitation process.

### **Clarifications/Discussions**

Offeror may receive a written request to clarify, in writing, its response in order to determine whether a response should be further considered. The process of clarification is not an opportunity for an Offeror to revise or modify its response, and any response by an Offeror to a written request for clarification that attempts to revise or modify its response shall be given no effect. The purpose of the request for clarification will be solely made for the purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in the response, which may be corrected or waived in the leading agency's sole discretion.

**Multiple Awards**

Membership includes a large number of potential entities which may utilize this contract throughout Arizona. In order to assure that any Region 4 ESC fulfills current and future needs, Region 4 ESC reserves the right to award Contracts to multiple Offerors. The decision to award multiple Contracts, award only one Contract, or to make no awards rests solely with Region 4ESC.

**Non-Exclusive**

Any contract resulting from this solicitation shall be awarded with the understanding and agreement that it is for to sole convenience and benefit of participating members. Region 4 ESC and participating entities reserve the right to obtain like goods and services from other sources.

**Past Performance**

An Offeror's performance and actions under previously awarded contracts are relevant in determining whether or not the Offeror is likely to provide quality goods and services to TCPN members; including the administrative aspects of performance; the Offeror's history of reasonable and cooperative behavior and commitment to customer satisfaction; and generally, the Offeror's businesslike concern for the interests of the customer.

## EVALUATION CRITERIA

The Sports Surfaces Products and Services Offerors will be selected through a two-step qualification based selection process establishing a qualified bidders list. Offerors interested in providing Sports Surfaces products and services must submit a Statement of Qualifications (SOQ) that addresses the following evaluation criteria. Interviews may also be used to obtain qualification information.

### Offeror and Subcontractors Capabilities (20points)

- Provide a general description of the Offeror and/or team that is proposing to provide Sports Surface products and services. Explain the legal organization of the Offeror or team. Provide an organization chart showing the Offeror's key personnel down to the superintendent level. If specific subcontractors or architectural/engineering consultants will be utilized for all work of a specific type, include information on these team members.
- Identify the location of the Offerors principal office and any local offices in Arizona, if different.
- Identify any contract or subcontract held by the Offeror, which has been terminated within the last five years. Identify any claims arising from a contract that resulted in litigation or arbitration within the last five years. Briefly describe the circumstances and the outcome.
- Discuss the Offeror's knowledge of the current local market and of trade subcontractors and suppliers.
- Describe Offeror's philosophy and capabilities on self-performing any of the trade work.
- List the Arizona contractor's licenses and/or professional registrations held by the Offeror and/or team and the key personnel who will be assigned to job order projects. Provide the contractor license number and explain if held by an individual or the firm.
- Demonstrate that the Offeror holds the appropriate contractor's license
- Provide a statement of the Offeror's bonding capacity from a surety company or companies holding a Certificate of Authority to transact business in Arizona, issued by the Director of the State of Arizona Department of Insurance for Contract Performance and Payment bonds. These will be required for each purchase or work order issued throughout the Contract period.
- Provide a statement to the Offeror's insurability from a company or companies lawfully authorized to transact insurance business in the State of Arizona and rated at least B++6 in the company's current A.M. Best Company rating. Include a list of an unresolved bond claims and any open judgements or liens. The awarded Sports Surfaces Products and Services Contractor will be required to furnish a certificate(s) of insurance meeting minimum insurance requirements including:
  - Commercial General Liability \$1,000,000 each occurrence
  - \$2,000,000 Products/Completed Operations
  - \$2,000,000 General Aggregate
  - Automotive Liability \$1,000,000 each occurrence
  - Workers' Compensation \$1,000,000 each accident
  - \$1,000,000 disease for each employee
  - \$1,000,000 disease policy limit
  - Builders' Risk (Property) Required for all individual job orders over
  - \$100,000 – or the amount of the job order

- Provide a list of any deficiency orders issued against Offeror by the Arizona Registrar of Contractors within the last three years; and any filing under the United States Bankruptcy Code, assignments for the benefit of creditors, or other measures taken for the protection against creditors during the last three years.

**Staff Qualifications and Resumes (Offeror, consultants, and subcontractors - 20 points)**

- For each key person identified, list at least two comparable projects in which they have played a primary role. Include education, training/certifications, and tenure. If a project selected for a key person is the same as the one selected for the firm, provide just the project name and the role of the key person. For other projects provide:
  1. Description of project.
  2. Role of the person.
  3. Project's construction cost.
  4. Construction schedule.
  5. Project Owner reference information.
- Identify the home office location of key staff on this project and the percentage of their time expected to be devoted to this contract.
- List any proposed consultants and subcontractors, including key staff names and the experience and qualifications of these individuals. Explain how these key staff personnel for this proposed contract have sufficient experience.

**Experience on Similar Projects (20 points)**

- Identify at least five recent comparable projects in which the Offeror played a major role. The projects listed should show the breadth of the Offeror's contracting experience. Include entity name, city, state, contact person, title, e-mail address and phone number.
- For each comparable project identified above, provide:
  1. Description of project.
  2. Role of firm either as prime or subcontractor
  3. Project's construction cost.
  4. Construction dates (identify if this included phased construction).
  5. Project Owner reference information.
- Safety Program:
  1. Provide an overview of your firm's safety training program.
  2. Provide a letter from your firm's insurance company stating your firm's Worker's Compensation Experience Modification Rate (EMR) for the past five (5) years. The letter shall be on the insurance company's letterhead and shall be signed by an appropriate individual employed by the insurance company.

**Experience with Sports Surface Products and Services (20 points)**

1. Indicate knowledge, training, and/or experience specifically with Sports Surfaces Products and Services contracting with public/government entities or private firms:
2. List actual project experience with cost estimating.
3. List current workload and include a sample project schedule.
4. List average time to respond to Owner's request for task order pricing.

**Marketing Plan (10 points)**

The TCPN cooperative program has multiple members statewide and consists of various types of agencies including cities, counties, universities, community colleges, and school districts.

Provide a plan as to how you intend to market the Region 4 ESC Sports Surfaces contract to this varied clientele.

**Value Add Services (10 points)**

Detail additional services Offeror can provide. Qualifications should be submitted adequately supporting the value added services the Offeror can provide.



## GENERAL TERMS AND CONDITIONS

### 1. Customer Support

The Contractor shall provide timely and accurate technical advice and sales support to Region 4ESC staff, TCPN staff and participating agencies. The Contractor shall respond to such requests within one (1) working day after receipt of the request.

### 2. Assignment of Contract

No assignment of Contract may be made without the prior written approval of Region 4 ESC. Purchase orders and payment can only be made to Contractor unless otherwise approved by Region 4 ESC. Contractor is required to notify Region 4 ESC when any material change in operations is made that may adversely affect members (i.e. bankruptcy, change of ownership, merger, etc.).

### 3. Disclosures

Offeror affirms that he/she 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 this contract.

Include a complete description of any and all relationships that might be considered a conflict of interest in doing business with participants in TCPN.

The Offeror affirms that, to the best of its knowledge, the offer has been arrived at independently, and is submitted without collusion with anyone to obtain information or gain any favoritism that would in any way limit competition or give an unfair advantage over other vendors in the award of this contract.

### 4. Renewal of Contract

Unless otherwise stated, all Contracts are for a period of one (1) year with an option to renew annually for an additional four (4) years at Region 4 ESC's sole discretion. Region 4 ESC shall review the Contract prior to the renewal date and notify the Contractor each year of the contract renewal, in writing.

### 5. Funding Out Clause

A contract for the acquisition, including lease, of real or personal property is a commitment of the entity's current revenue only, provided the contract contains either or both of the following provisions:

"Retains to the entity the continuing right to terminate the contract at the expiration of each budget period during the term of the contract and is conditioned on a best effort attempt by the entity to obtain appropriate funds for payment of the contract."

### 6. Ordering Procedures

Purchase orders are issued by members to the Contractor stating "*Per TCPN Contract*".

### 7. Inspection & Acceptance

If defective or incorrect material is delivered, purchasing agency may make the determination to return the material to the Contractor at no cost to the member. The Contractor agrees to pay all shipping costs for the return shipment. Contractor shall be responsible for arranging the return of the defective or incorrect material.

## **8. Invoices**

The Contractor shall submit invoices to members clearly stating “*Per TCPN Contract*”. The shipment tracking number or pertinent information for verification shall be made available upon request.

## **9. Reporting**

The Contractor shall provide TCPN with an electronic accounting report, in a format prescribed by TCPN, on a monthly basis summarizing all Contract Sales for the applicable month. Reports of Contract Sales for Region 4 ESC and member agencies in each calendar month shall be provided by Contractor to TCPN by the 10<sup>th</sup> day of the following month. If there are no sales to report, Contractor is still required to communicate that information via email.

Failure to provide a monthly report of the administrative fees within the time and manner specified herein shall constitute a material breach of this Contract and if not cured within thirty (30) days of written notice to Contractor shall be deemed a cause for termination of the contract at Region 4 ESC’s sole discretion.

## **10. Payments**

The entity using the Contract will make payments directly to the Contractor.

## **11. Pricing**

A second part of this solicitation will be issued to each after determination of qualifications. This document will solicit pricing coefficients for final determination of awards.

## **12. Warranty conditions**

All supplies, equipment and services shall include manufacturer’s minimum standard warranty and one (1) year labor warranty unless otherwise agreed to in writing.

## **13. Indemnity**

The Contractor shall protect, indemnify, and hold harmless both Region 4 ESC and its participants, administrators, employees and agents against all claims, damages, losses and expenses arising out of or resulting from the actions of the vendor, vendor employees or vendor subcontractors in the preparation of the solicitation and the later execution of the contract, including any supplemental agreements with members. Any litigation involving either Region 4

ESC, its administrators and employees and agents will be in Harris County, Texas. Any litigation involving TCPN members shall be in the jurisdiction of the participating agency.

## **14. Franchise Tax**

The respondent hereby certifies that he/she is not currently delinquent in the payment of any franchise taxes.

## **15. Marketing**

Contractor agrees to allow Region 4 ESC to use their name and logo within website, marketing materials and advertisement. Any use of Region 4 ESC name and logo or any form of publicity, inclusive of press releases, regarding this contract by Contractor must have prior approval from Region 4 ESC.

## **16. Supplemental Agreements**

The entity participating in the Region 4 ESC contract and Contractor may enter into a separate supplemental agreement to further define the level of service requirements over and above the minimum defined in this contract i.e. invoice requirements, ordering requirements, specialized delivery, etc. Any supplemental agreement developed as a result of this contract is exclusively between the participating entity and Contractor. Neither Region 4 ESC, its agents, members and employees shall be made party to any claim for breach of such agreement.

## **17. Standard Cancellation**

Region 4 ESC may cancel this Contract in whole or in part by providing written notice. The cancellation will take effect 30 business days after the other party receives the notice of cancellation. After the 30th business day all work will cease following completion of final purchase order.

## **18. Contract Interpretation**

All state and local laws shall apply to this contract. It is the responsibility of the Contractor to follow state and local laws in the state/city in which business is conducted under this contract.

Implied Contract Terms: Each Provision of law and any terms required by law to be in this contract are a part of this contract as if fully stated in it.

## **19. Non-Collusion, Employment, and Services**

By submitting the RFQ the Offeror certifies that:

- a. It did not engage in collusion or other anti-competitive practices in connection with the preparation or submission of its offer; and
- b. It does not discriminate against any employee, applicant for employment, or person to whom it provides services because of race, color, religion, sex, national origin, or disability and that it complies with all applicable federal, state, and local laws and executive orders regarding employment.

## **20. Compliance with Federal and state requirements**

Contractor agrees when working on any federally assisted projects with more than \$2,000.00 in labor costs, to comply with all federal and state requirements, as well as Equal Opportunity Employment requirements and all other federal and state laws, statutes, etc. Contractor agrees to post wage rates at the work site and submit a copy of their payroll to the member for their files. Contractor must retain records for three years to allow the federal grantor agency access to these records, upon demand. Contractor also agrees to comply with the Arizona Executive Order 75-5, as amended by Executive Order 99-4.

When working on contracts funded with Federal Grant monies, contractor additionally agrees to comply with the administrative requirements for grants, and cooperative agreements to state, local and federally recognized Indian Tribal Governments.

## **21. Compliance with workforce requirements**

Pursuant to ARS 41-4401, Contractor and subcontractor(s) warrant their compliance with all federal and state immigration laws and regulations that relate to their employees, and compliance with ARS 23-214 subsection A, which states, "...every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program"

Region 4 ESC reserves the right to cancel or suspend the use of any contract for violations of immigration laws and regulations. Region 4 ESC and TCPN members reserve the right to inspect the papers of any Contractor or subcontract employee who works under this contract to ensure compliance with the warranty above.

## **22. Contractor Employee Work Eligibility**

By entering into this Contract, Contractor agrees and warrants compliance with A.R.S. 41-4401, A.R.S. 23-214, the Federal Immigration and Nationality Act (FINA), and all other Federal immigration laws and regulations. Region 4 ESC and/or TCPN members may request verification of compliance from any Contractor or sub-contractor performing work under this Contract. Region 4 ESC and TCPN members reserve the right to confirm compliance. If Region 4 ESC or TCPN members suspect or find that any Contractor or subcontractor is not in compliance, Region 4 ESC may pursue any and all remedies allowed by law, including but not limited to suspension of work, termination of contract, suspension and/or debarment of the contractor. All cost associated with any legal action will be the responsibility of the contractor.

### **23. Non-Compliance**

All federally assisted contracts to members that exceed \$10,000.00 may be terminated by the federal grantee for noncompliance by contractor. In projects that are not federally funded, Contractor must agree to meet any federal, state or local requirements as necessary. In addition, if compliance with the federal regulations increases the Contract costs beyond the agreed on costs in the Contract, the additional costs may only apply to the portion of the work paid by the federal grantee.

### **24. Offshore Performance of Work Prohibited**

Due to security and identity protection concerns, direct services under this Contract shall be performed within the borders of the United States.

### **25. Terrorism Country Divestments**

In accordance with A.R.S. 35-392, Region 4 ESC and TCPN members are prohibited from purchasing from a company that is in violation of the Export Administration Act. By entering into the contract, contractor warrants compliance with the Export Administration Act.

### **26. Force Majeure**

Except for payments of sums due, neither party shall be liable to the other, nor be deemed in default under this contract, if and to the extent that such party's performance of this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence, including, but not limited to the following: acts of God, acts of public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, fire, flood, snow, earthquake, tornados, violent wind, hail storms,

lockouts, injunctions-intervention-acts, or failures or refusals to act by government authority and other similar occurrences beyond the control of the party declaring force majeure, which such party is unable to prevent by exercising reasonable diligence. The force majeure shall be deemed to commence when the party declaring it notifies the other party of the existence of the force majeure and shall be deemed to continue as long as the results or effects of the force majeure prevent the party from resuming performance in accordance with the contract. Force majeure shall not include late deliveries of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies, or similar occurrences. If either party is delayed at any time by force majeure, the delayed party shall notify the other party in writing of such delay within forty-eight (48) hours.

### **27. Contract Type**

This contract shall be a line item/fixed price with indefinite quantities.

### **28. Form of Contract**

The form of contract for this solicitation shall be the Invitation for Bids. The awarded bid(s), and the TCPN member Purchase Order referencing the Contract number.

### **29. Vendor Contract Documents**

The Contract, as specified above, represents the final written expression of agreement between Region 4 ESC and the Contractor. All agreements are contained within this Contract document and no other agreement shall represent or override this Contract.

### **30. Indemnification**

To the extent permitted by law, Region 4 ESC and TCPN members shall be indemnified and held harmless by Contractor for liability as a result of entering into this Contract. Each party to the Contract is responsible for its own negligence.

### **31. Modification By Member**

The Contractor shall have no obligation with respect to any patent and copyright infringement claim based up member's modification of the product, equipment, etc. which is covered under this Contract.

### **32. Copyright and Patent Indemnification**

To the extent permitted by law, Contractor shall indemnify and hold harmless Region 4 ESC and TCPN members against any and all liability, including costs and expenses for infringement of any patent, trademark or copyright arising out of this Contract which is for the purpose of Region 4 ESC and TCPN member usage.

### **33. Installation**

Equipment and/or product installation shall be performed in a reasonable amount of time and be scheduled directly with the member. Installation shall be in accordance with the manufacturer's instructions and shall be accomplished by a skilled, certified, and properly licensed individual.

### **34. Licenses**

Contractor shall maintain the status of all federal, state and local licenses, bonds and permits required for the operation of the business conducted by contractor. Contractor shall remain fully informed of and in compliance with all ordinances and regulations pertaining to the lawful provision of services under the contract. Region 4 ESC and TCPN members reserves the right to stop and/or cancel work under this Contract if a Contractor's license has expired, lapses, terminated or suspended.

### **35. Maintenance Facilities and Support**

It is preferred that each Contractor have maintenance facilities and a support system available for servicing and repair of product and/or equipment. If a third party is to be used to provide maintenance and support to the TCPN member, Offeror must notify Region 4 ESC of that third party information. All technicians, applicators, installers shall be fully certified, trained and licensed to perform said duties.

### **36. Manufacturer's Representative**

Offerors submitting responses as a manufacturer's representative shall be able to supplement offer with a letter from the manufacturer certifying that bidder is an actual dealer for that manufacturer and that the Offeror is authorized to submit an offer for that product, and which guarantees that if the Offeror should fail to satisfactorily fulfill any obligations established as a result of the award of Contract, the manufacturer will either assume the Offeror's obligations or arrange for fulfillment thru another competent dealer to complete the balance of the project.

### **37. Ordering**

All quotations provided to TCPN members must be based on prices in the Contract. Contractor may only refuse a TCPN member order under this Contract if written documentation is provided describing the circumstances that warrant refusal. TCPN member Purchase Order,

reference contract number shall be sent directly to the Contractor.

### **38. Applicable Law**

This contract shall be governed by the laws of Arizona.

### **39. Arbitration**

After exhausting applicable administrative review, the parties to this contract may agree to resolve disputes arising out of or relating to this contract through arbitration, to the extent allowed by law.

### **40. Assignment**

Contractor shall assign no right or interest in this contract without prior written notice to and permission from Region 4 ESC.

### **41. Payments to Contractor**

TCPN member are allowed to make progress payments providing the TCPN member and the Contractor are in agreement as to the terms and dollar amounts of the payments. Quick pay discounts may be offered by the Contractor directly to TCPN members provided the product and/or services have been received prior to payment. Any and all discounts must be made available to all TCPN members.

### **42. Protest of an Award**

Any protest of an award or proposed award must be filed in writing within ten (10) days from the date of the official award notification and must be received by 5:00 pm CDT.

No protest shall lie for a claim that the selected Vendor is not a responsible Offeror. Protests shall be filed with Robert Zingelmann, CFO, Business/Operations Services and sent to the Region 4 ESC office at: 7145 West Tidwell Road, Houston, TX 77092. Protests shall include the following:

1. Name, address, and telephone number of protester
2. Original signature of protester or its representative
3. Identification of the solicitation by RFQ number
4. Detailed statement of legal and factual grounds including copies of relevant documents;  
and the form of relief  
requested.
5. Any protest review and action shall be considered final with no further formalities being considered.

### **43. Right to Assurance**

Whenever one party to the Contract has a good faith reason to question the other party's intent to perform, the party may request that the other party give written assurance of its intent to perform. If a request is made and no written assurance is given within ten (10) days, the requesting party may treat this failure as an anticipator repudiation of the Contract.

### **44. Safety Standards**

Items and materials supplied under this Contract shall comply with applicable Occupational Safety & Health Standards in Arizona.

### **45. Site Requirements**

Contractor shall clean up and remove all debris and rubbish resulting from its work as required or directed by TCPN member. Upon completion of the work, the premises shall be left in

good repair, orderly and free of trash and/or other debris.

#### **46. Contractor Employee Fingerprinting for Arizona**

If required to provide services on an Arizona school district property at least five (5) times in a one month period, Contractor shall submit a full set of fingerprints to the school district in accordance with A.R.S. 15-512 of each person or employee who may provide such service. Alternately, the school district may fingerprint those persons or employees. An exception to this requirement may be made as authorized by the TCPN member governing board policy. The school district shall conduct a fingerprint check in accordance with A.R.S. 41-1750 and Public Law 92-544 of all contractors, subcontractors or vendors and their employees for which fingerprint are submitted to the district. Contractor, Subcontractors or vendors and their employees shall not provide services on school district property until so authorized to do so by the school district. In addition, contractor shall comply with applicable governing board fingerprinting policies at the school district where services are to be provided.

#### **47. Registered Sex Offender Restrictions (Arizona)**

For work to be performed at an Arizona school, Contractor agrees that no employee or employee of a subcontractor who has been adjudicated to be a registered sex offender will perform work at any time when students are present, or reasonably expected to be present. Contractor agrees that a violation of this condition shall be considered a material breach and may result in the cancellation of the purchase order at the TCPN member's discretion. Contractor must identify any additional costs associated with compliance to this term. If no costs are specified, compliance with this term will be provided at no additional charge.

#### **48. Site Preparation**

Contractor shall not begin a project for which the TCPN member has not prepared the site, unless Contractor does the preparation work at no cost, or until the member includes the cost of site preparation in a purchase order to the Contractor. Site preparation includes, but is not limited to moving furniture, moving equipment or obstructions to the work area, installation of wiring or other necessary pre-installation needs.

#### **49. Safety Measures**

Contractor shall take all reasonable precautions for the safety of employees on the worksite, and shall erect and properly maintain all necessary safeguards for protection of workers and the public. Contractor shall post warning signs against all hazards created by its operation and work in progress. Proper precautions shall be taken pursuant to state law and standard practices to protect workers, the general public and existing structures from injury or damage. No smoking will be permitted in or around the work area. Contractor and employees shall adhere to all smoking policies and will only be permitted to smoke in designated areas or off of the premises.

#### **50. Specifications**

Brand names, trade names model numbers and catalog numbers are used to indicate the character, quality, and/or performance characteristics of the materials desired. Use of the name of a manufacturer, brand, make or catalog number does not restrict bidders from offering suitable, equal-to alternatives. However, Region 4 ESC reserves the right to decide whether the alternate products to the identified manufacturer and brand are equal to the materials, equipment described in the solicitation. Region 4 ESC will be the sole judge on the question of equality. The decision made by Region 4 ESC shall be final.

Offerors shall offer the equipment, supplies and/or services they believe come closest to meeting the specifications set forth in this document. If deviations exist for the items specified in this document, Offeror shall provide an explanation for the deviations. Failure to detail each deviation may result in rejection of bid.

Specifications are designed to enable the Offeror to satisfy a requirement for a product, material, service etc. A specification may be expressed as a standard, part of a standard, or independent

of a standard. No specification is intended to limit competition by eliminating items which are capable of satisfactorily meeting the requirements of this procurement.

#### **51. Subcontracts/Sub Contractors**

Contractor shall not enter into any subcontract subject to this solicitation without prior approval from Region 4 ESC. Any/all subcontracts shall abide by the terms and conditions of this solicitation and resulting Contract.

No subcontract relationships shall be entered into with an unlicensed party. Contractor must use subcontractors openly, include such arrangements in the response, and certify upon request that such use complies the rules associated with the procurement codes and statutes in the state of Arizona.

Contractor agrees to pay subcontractors in a timely manner. Failure to pay subcontractors for work faithfully performed and properly invoiced may result in suspension or termination of this Contract.

#### **52. Suspension or Debarment**

Offeror shall provide a letter in the response notifying Region 4 ESC of any debarment, suspension or other lawful action taken against them by any federal, state, or local government within the last five (5) years that precludes bidder or its employees from participating in any public procurement activity. The letter shall state the duration of the suspension or action taken, the relevant circumstances and the name of the agency imposing the suspension. Failure to supply or disclose this information may be grounds for cancellation of contract.

#### **53. Contract Term and Extensions**

TCPN intends to award a multi-term contract for the products and/or services set forth in this solicitation. The initial contract term will be for a period of one (1) calendar year from the date of contract award. By mutual written agreement between TCPN and the awarded contractor(s), the contract may be extended for up to four (4) consecutive 12 month periods. Contractor(s) shall be notified by TCPN in writing regarding the renewal and extension of said contract.

#### **54. Warranty/Guarantee**

Contractor warrants and agrees that any/all material, supplies, services offered to Region 4 ESC and its members shall fully conform to all requirements of the contract and all representations of contractor, and shall be fit for all purposes and uses required by Region 4 ESC.

Contractor warrants that all equipment, materials, services delivered or performed under this contract shall conform to the specifications. All material, supplies, equipment should carry a minimum 12-month manufacturer's warranty that includes replacement and/or repair, parts and labor. Contractor agrees to assist TCPN member a resolution should a dispute arise with the manufacturer regarding the quality and/or durability of any product supplied under this contract. Contractor shall at no time charge TCPN members for replacement parts or materials if these parts and/or materials were received at no cost to the contractor.



## **STANDARD TERMS AND CONDITIONS FOR CONSTRUCTION – ARIZONA**

### **1. Bid Security/Bonding**

Arizona school procurement rules R7-2-1111 (A) requires that all competitive sealed bidding for construction have bid security, if the amount of the construction contract will exceed the amount established by ARS 15-213(A). Bid security as a percentage of the bid amount is unacceptable, as this is a term contract with no specific bid amount. Bid security must be in the amount stated above (\$35,000.00).

Acceptable bid security will be a certified or cashier's check, or an annual or one-time bid bond underwritten by a surety company licensed to issue bid bonds in the state of Arizona R7-2-1111 (B,C). Bid Security may be provided by using the form supplied within this IFB (See form titled Bid Security).

Performance Bonds may be required by the TCPN member from the Contractor.

Upon execution of an agreement between TCPN member and Contractor, performance and payment bonds shall be provided to the member as required in R7-2-1112 (A, B,C,D). The Contractor agrees to notify the TCPN member in writing of this requirement before accepting any work orders. If the Contractor fails to deliver any required performance or payment bonds, the contract with Region 4 ESC may be terminated. The Contractor may be asked to supply copies of performance and payment bonds to Region 4 ESC for administrative purposes.

An irrevocable payment bond in an amount equal to 100% of the price specified in the agreement between the Contractor and the TCPN member shall be executed by a surety company authorized to do business in the state of Arizona. This bond will protect all persons supplying labor and material to the prime contractor for the performance of the work provided in the contract. Such bonds are taxable at the Contractor's tax rate.

An irrevocable performance bond in an amount equal to 100% of the price specified in the agreement between the member and the Contractor shall be executed by a surety company authorized to do business in the state of Arizona.

### **2. Change Orders**

The Contractor shall follow the requirements of all specifications and drawings as closely as construction will permit. Should existing conditions or limitations require a major change or rearrangement, the change shall be allowed only upon issuance of a written change order.

TCPN member and Contractor shall establish a procedure for identifying and approving changes to the work. Procedure shall include provisions for field change orders. Contractor agrees to follow all applicable rules and regulations for any change orders, including R7-2-1008.

Change orders shall be properly documented in writing. Minor changes mutually agreed between the member and the Contractor that do not involve compensation may be made without documentation.

### **3. Buyer Delays**

In accordance with ARS 15-213 (D), the Contractor will negotiate with the TCPN member for the recovery of damages related to expenses incurred by the Contractor for a delay for which the TCPN member is responsible, which is unreasonable, and which was not within the contemplation of the parties to the agreement between the two parties.

Compensation for received goods, terms of progress payments, and a schedule of payments should be described in the agreement. The agreement must state that Region 4 ESC will not be responsible for any late fees due to the Contractor by the TCPN member.

#### **4. Cancellation**

Region 4 ESC reserves the right to cancel the Contract if the original contract holder is sold and ownership is transferred to a new party. If Region 4 ESC cancels the contract, the cancellation clause will be exercised as required.

#### **5. Construction Agreement Requirement**

Any agreement between the Contractor and the TCPN member based on this Contract, the terms and conditions of this Contract will prevail. In any agreement between TCPN member and the Contractor, the scope of work will include all specifications, drawings, and other official documents. All applicable codes around which the Contract is made will be included as will any technical specifications and general conditions. The Contractor will acquire and pay for all permits and approvals from local, county and state offices needed to accomplish the work of this contract. The actual cost of permits, licenses and approvals may be invoiced to the buyer only if included in the original quotation and scope of work.

An agreement between the TCPN member and the Contractor for construction shall be an industry standard agreement.

Terms for acceptance by the TPCN member and title to work must be clearly agreed upon and described in the agreement. If any part of the construction requires the owner to assume control before the completion, this needs to be defined. Both parties must agree on the definition of what constitutes final acceptance before payment of any retained compensation. Upon completion of the project, the worksite shall be left in good condition and equal to the condition of the site prior to commencing the project.

A provision, covenant, clause or understanding in, collateral to or affecting a construction contract that makes the contract subject to the laws of another state or that requires any litigation, arbitration or other dispute resolution proceeding arising from the contract to be conducted in another state is against public policy of the State of Arizona and is void and unenforceable. ARS

15-213 & 34-227.

If any work is to be performed by the TCPN member, it must be clearly defined and agreed to by the TCPN member and Contractor prior to the start of the project.

#### **6. Construction Schedule**

The TCPN member retains the right to extend the schedule of work or to suspend the work and direct the Contractor to resume work when appropriate. The agreement must describe an equitable adjustment for added costs caused by any delay or suspension. Any increases will be invoiced as allowed in this agreement.

The schedule for performance of work that can be met without planned overtime is the responsibility of the Contractor.

The cost for each project shall include all costs of all necessary trained personnel to complete the project on or before the completion date set forth in the contract. The TCPN member shall not incur additional expense for upsized crews or overtime costs, which might be necessary for the contractor to complete the project on schedule.

#### **7. Coordination**

The Contractor and the TCPN member shall coordinate activities so as to avoid conflicts. The Contractor will make every effort not to interrupt scheduled activities with work under this agreement. The Contractor will notify the member of any construction work that may negatively impact scheduled member activities. The Contractor shall coordinate with other contractors and vendors so that work may be properly coordinated.

The Contractor shall employ such methods or means as will not cause any interruption of, or interference with work of any other contractor on the project site.

## **8. Condition and Delivery of Construction Material**

The Contractor will deliver materials to the worksite in new, dry, unopened, and well-marked containers showing product and Contractor's name clearly marked. Delivery of damaged or unlabeled materials will not be accepted.

The Contractor will deliver materials in sufficient quantity to allow for continuity of work. Delivery will be coordinated with the TCPN member's designated contact person.

The Contractor shall take all necessary precautions to protect materials from damage, theft and misuse. The TCPN member shall have no responsibility for such precautions or lack of protection.

Damaged or rejected materials shall be immediately removed from the project area.

## **9. Liquidated Damages**

Any agreements pertaining to Liquidated Damages and/or early completion incentives shall be made by and between the TCPN member and the Contractor.

## **10. Progress Payments**

R7-2-1115 allows for progress payments to the Contractor of construction if the Contractor agrees to adhere to ARS 41-2577 (B) (D) (F). All progress payments must be invoiced to the TCPN member. It is the responsibility of the TCPN member to review and approve any estimates of

work completed. If the TCPN member issues a written statement to the Contractor that the estimate of work is not approved and certified, the TCPN member may withhold an amount from the progress payment that the TCPN member reasonably expects to incur in correcting the deficiency set forth in the written finding, as permitted in R7-2-1115 (A). In such cases, the Contractor agrees to hold TCPN member harmless for any deficiency payment.

Progress payments may be made to the Contractor on the basis of a duly certified and approved estimate of work performed during the preceding month. The Contractor must agree to pay any subcontractors or material suppliers within seven (7) days of their receipt of the progress payment, unless otherwise agreed on in writing between the parties involved.

At which time all bonds are in place, the Contractor and the TCPN member will agree upon a schedule of payments based on identifiable milestones.

Acceptance of final payment is a waiver of all claims except unsettled claims previously made in writing.

## **11. Project Completion**

Upon completion of the work, the Contractor shall present the TCPN member with all documents necessary to close out the project. Maintenance manuals, drawings, warranties on installed equipment, etc. shall be given to the TCPN member.

Unfinished work, even if final payments are made, if the TCPN member discovers an unfinished job that should have been completed, the Contractor will complete the work in a timely fashion at no additional cost.

## **12. Public Works**

The Contractor shall be responsible for the preservation of all public and private property included on or adjacent to the worksite. The requirement shall apply to the surface and hidden features of the property.

Construction work on public buildings shall be in compliance with the state fire code unless a fire code has been adopted by the city, town, county or fire district in which the building is located. Public buildings shall be constructed in compliance with applicable building, plumbing, electrical, fire prevention and mechanical codes adopted by the city, town, county or fire district in which the building is located. If a public building is built in an area that has not adopted local codes, the building shall be designed or constructed according to the state fire code adopted by the state fire marshal and the building. Plumbing, electrical, fire prevention and mechanical codes that apply in the largest city in the county in which the building is located. Public buildings are subject to those codes that apply and are in effect when the building is designed or constructed and to the currently adopted codes when a building is found to be structurally unsafe, without adequate egress, or a fire hazard or are otherwise dangerous to human life. "Public Building" means a building or appurtenance to a building that is built in whole or in part with public monies (ARS 34-

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### **13. Receipt of Public Funds**

Contractors and subcontractors will meet the requirements of ARS 34, Article 3 for eligibility to receive public funds.

### **14. Residency Requirement**

ARS 34-302 states that only persons who have been for not less than one year, a bona fide resident of the state of Arizona shall be employed in the performance in any public work. A public works contract is defined in ARS 34-321 as "a contract to which the state or a political subdivision is a party involving the employment of laborers, workmen, or mechanics in the construction, alteration or repair of public buildings or improvements." It shall be the responsibility of the Contractor to comply with these laws when applicable.

### **15. Restoration**

The Contractor shall agree to repair, rebuild or otherwise restore any property on or adjacent to the worksite that was damaged during the course of work on the project. Such restoration shall be at the Contractor's expense and is not subject to reimbursement by the TPCN member.

### **16. Retention**

When fifty (50) percent of the work is completed, one-half of the amount retained shall be paid to the Contractor if the Contractor requests payment and if the TCPN member is satisfied with the progress of the work.

After the work is fifty (50) percent completed, no more than five (5) percent of the amount of any subsequent progress payments shall be retained, unless the governing board of the member determines satisfactory progress is not being made, at which point ten (10) percent retention shall be reinstated.

Ten (10) percent of all contract payments shall be retained by the TCPN member as insurance of proper performance of the prime contractor. Contractor agrees to identify the amount to be retained on invoices to TCPN member for each progress payment.

If the TCPN member and the Contractor agree to a substitute security, the agreement must be in full compliance with R7-2-1114 (B, C, D, E). If a substitute security is agreed to, the Contractor must provide TCPN member with a signed and acknowledged waiver of any right or power of the obligor to set off any claim against TCPN member.

### **17. Rules, Regulations & Codes**

All work will be accomplished in conformance to OSHA safety requirements, and any additional federal, state, or local fire or safety requirements. When specifications or scope of work will

result in a violation of a code or result in an unsafe condition, the Contractor must inform the TCPN member of the situation. The Contractor will not construct any device or produce any condition that intentionally violates a fire or safety code or standard.

Contractor must advise TCPN member whenever work is expected to be hazardous to school children, district employees and/or operators.

#### **18. Non-Payment/Non Performance**

All suits for nonpayment or nonperformance shall be filed in accordance with R7-2-1112 (D).

#### **19. Warranty/Maintenance Contracts**

The Contractor or manufacturer may offer extended warranties available to the TCPN member at an additional cost.

The Contractor will perform all warranty work and remain available to the member should continue service be required after warranty obligations are met.

#### **20. Worksite**

The TCPN member shall provide an all-weather road to the site and prepare the site with room for construction supplies and equipment.

The condition of the site before startup will be agreed upon between the TCPN member and the Contractor and will be written into the agreement.

Upon prior written agreement between the Contractor and the TCPN member, payment may be made for materials not incorporated in the work but delivered and suitably stored at the worksite or some other location, for installation at a later date. An inventory of the stored materials must be provided to the TCPN member prior to payment. Such materials must be stored and protected in a secure location, and be insured for their full value by the Contractor against loss and damage. Contractor agrees to provide proof of coverage and/or addition of member as an additional insured upon member's request. Additionally, if stored offsite, the materials must also be clearly identified as property of TCPN member and be separated from other materials. TCPN member must be allowed reasonable opportunity to inspect and take inventory of stored materials, on or offsite, as necessary.

Until final acceptance by the TCPN member, it shall be the Contractor's responsibility to protect all materials and equipment. The Contractor warrants and guarantees that title for all work, materials and equipment shall pass to the TCPN member upon final acceptance. Payment for stored materials shall not constitute final acceptance of such materials.

## **CONTRACTOR REQUIREMENTS**

### **Contractor Certification**

#### **CONTRACTOR'S EMPLOYMENT ELIGIBILITY**

By entering the Contract, Contractor warrants compliance with ARS subsection 41-4401, ARS subsection 23-214, the Federal Immigration and Nationality Act (FINA), and all other federal immigration laws and regulations.

The TCPN member may request verification of compliance from any Contractor or subcontractor performing work under this Contract. The TCPN Member reserves the right to confirm compliance in accordance with applicable laws.

Should the TCPN member suspect or find that the Contractor or any of its subcontractors are not in compliance, the TCPN member may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Contract for default, and suspension and/or debarment of the Contractor. All costs necessary to verify compliance are the responsibility of the Contractor.

The Offeror complies and maintains compliance with FINA, ARS 41-4401 and 23-214 which requires compliance with federal immigration laws by State employers, State contractors and State subcontractors in accordance with the E-Verify Employee Eligibility Verification Program.

Contractor shall comply with governing board policy in the school district in which work is being performed.

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#### **FINGERPRINT & BACKGROUND CHECKS**

If required to provide services on school district property at least five (5) times during a month, Contractor shall submit a full set of fingerprints to the school district in accordance with 15-512 of each person or employee who may provide such service. Alternately, the school district may fingerprint those persons or employees. An exception to this requirement may be made as authorized in Governing Board policy. The TCPN member shall conduct a fingerprint check in accordance with ARS 41-1750 and Public Law 92-544 of all contractors, subcontractors or vendors and their employees for which fingerprints are submitted to the district. Contractor, subcontractors, vendors and their employees shall not provide services on school district properties until authorized by the District.

The Offeror shall comply with fingerprinting requirements in accordance with ARS 15-512 unless otherwise exempted.

Contractor shall comply with governing board policy in the school district in which work is being performed.

**E-VERIFY REQUIREMENTS.**

To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Offeror and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). The Contractor's or subcontractor's breach of the above-mentioned warranty shall be deemed a material breach of the Contract and may result in the termination of the Contract by Region 4 ESC. The Offeror agrees to insert language similar to this paragraph in all contracts in which they engage with subcontractors on this project to ensure that those subcontractors are meeting the requirements of the abovementioned statutes. Region 4 ESC retains the legal right to randomly inspect the papers and records of the Contractor and its subcontractors who work on the Contract to ensure the Offeror and its subcontractors are complying with the above-mentioned warranty. The Offeror and its subcontractors warrant to keep the papers and records open for random inspection during normal business hours by Region 4 ESC. The Offeror and its subcontractors shall cooperate with Region 4 ESC's random inspections including granting Region 4 ESC entry rights onto its property to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

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**BUSINESS OPERATIONS IN SUDAN, IRAN**

In accordance with A.R.S. §35-391 and A.R.S. §35-393, the Contractor hereby certifies that the Contractor does not have scrutinized business operations in Sudan and/or Iran.

\_\_\_\_\_  
Signature of Offeror

\_\_\_\_\_  
Date

**VENDOR SIGNATURE FORM**

Company name \_\_\_\_\_

Address \_\_\_\_\_

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

Telephone No. \_\_\_\_\_

Fax No. \_\_\_\_\_

Email address \_\_\_\_\_

Printed name \_\_\_\_\_

Position with company \_\_\_\_\_

Authorized signature \_\_\_\_\_