

TRAVIS COUNTY EMERGENCY SERVICES DISTRICT No. 2
PFLUGERVILLE FIRE DEPARTMENT
203 E. PECAN STREET
PFLUGERVILLE, TEXAS 78660
(512) 251-2801

Request for Proposals

for

REPLACEMENT OF 2 (TWO) 2.5 TON HVAC UNITS

RFP # 201903

Dated: 3/18/2019

DUE DATE FOR RESPONSES: 4/5/19

4:00 PM Central Standard Time

Table of Contents

Section/Title	Page
1.0 Notice of RFP	3
1.1 RFP Contact Information	3
1.2 RFP Schedule of Events	4
2.0 Background	5
3.0 Purpose and objectives	7
4.0 Scope of Work	6
4.1 Anticipated Approach	7
4.2 District Responsibilities	8
4.3 Combination of Vendors/Products	9
4.4 Contractor Requirements	10
5.0 Proposal Requirements	11
5.1 Proposal Submission Format	12
5.2 Proposal Requirements	13
5.3 Proposal Time Stamp	14
5.4 Proposer Representations and Responsibilities	15
5.5 Late Proposals	17
5.6 Proposer Questions	18
6.0 Proposal Evaluation Criteria	20
7.0 Terms and Conditions	21

2.0 Background

Travis County Emergency Services District No. 2 (the District) was created in accordance with Chapter 775 of the Texas Health and Safety Code. The District, also referred to as the Pflugerville Fire Department, has a great responsibility in providing fire suppression, fire prevention, and first response emergency medical care covering approximately 77 square miles with staff and equipment working out of four fire stations 24-hours a day to a population of more than 133,000 in northeast Travis County.

The District service area is roughly bounded by Farm-to-Market Road 1325 in the West, the Travis-Williamson County line on the North, Manda Carlson Road and Cameron Road on the East, and Yager Lane, Dessau Road and Howard Lane on the South. The City of Pflugerville lies within the boundaries of the District, as well as two large municipal utility districts, Wells Branch and Northtown.

Maintaining facilities and living quarters are paramount to support ongoing operations for the District. As part of the asset life cycle program, we have determined that two of the HVAC units at Central Station are end of life and are in need of replacement.

Additional information regarding the District can be found at the District's website <https://www.pflugervillefire.org/>.

3.0 Project Purpose and Objectives

The District desires to contract with a qualified firm to replace two (2) HVAC units at our Central Fire Station located at 203 E Pecan Street in Pflugerville, Texas.

Contract Objectives:

- To identify and contract with an experienced HVAC contractor to replace two HVAC units.

4.0 Scope of Work

This scope of work (SOW) specifies the products and services that The District expects to acquire from the successful Proposer as a result of this RFP. This SOW outlines minimum requirements for the removal of the existing units and installation of new air handlers, condensers, and associated accessories.

4.1 Anticipated Approach

The District expects that the winning proposer will:

- Provide a comprehensive list of parts to be replaced including manufacturer.
- Provide and adhere to a timeline for the project.
- Assign a single point of contact to interface with the District during the project.
- Complete all work using generally accepted industry practices and follow all applicable safety regulations.
- Complete the work without delay.

4.2 District Responsibilities

The District will provide:

- Access to the building and areas surrounding the condensers.
- Contact information for key District staff to ensure effective communication and timely response.

4.3 Combination of Vendors/Products

The District will consider combinations of vendors/products to achieve the entire list of requirements stated in this RFP. As a result, it is possible for a Proposer to propose portions of the solution and specify compatible products/partners for the remaining parts of the solution. If this approach is taken, The District will evaluate the number, strength and relationship of the vendors/products proposed to determine if that approach provides the best value and easiest ongoing operation for The District.

5.0 Proposal Requirements

The District is soliciting competitive sealed proposals from Proposers having suitable qualifications and experience in providing services in accordance with all terms, conditions, specifications and requirements of this RFP. This RFP is intended to describe the requirements and response format in sufficient detail to secure comparable proposals.

The District adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information.

The District, in its sole discretion, expressly reserves the right to request and/or require any additional information from Proposer(s) deemed relevant with respect to this RFP.

Award of the contract, if any, shall be made to the responsible Proposer whose proposal is determined to be the best evaluated offer from negotiation, taking into consideration the relative importance of price and other evaluation factors set forth in this RFP. All proposals must be valid for a minimum of 120 days from the date of submission.

The District expressly reserves the right to:

- Waive any defect, irregularity or informality in any proposal;
- Reject or cancel any or all proposals, or part(s) of any proposal;
- Accept proposals from one or more Proposers;
- Procure services by other means;
- Select the acceptable Proposer(s) who will offer contractual terms and conditions most favorable to The District; and/or
- Modify the specifications of the RFP contract for segments of this RFP, and/or negotiate the price and any other terms with Proposers, as needed.

Any contract awarded based on this RFP shall be governed by and construed in accordance with the laws of the State of Texas, is fully performable in Pflugerville, Texas, and venue for any action related to this contract will be Pflugerville, Texas.

The implied warranties of merchantability and fitness for a particular purpose shall not be waived under this RFP or any contract awarded from this RFP except as expressly authorized in writing by The District granting the waiver.

The Proposal and, as necessary, all associated documents must be signed by an individual authorized to contractually commit Proposer.

By submission of a response to this RFP, Proposer acknowledges and/or certifies the following:

1. Requirements stated in the RFP shall become part of any award to successful Proposer(s), and any deviations from these requirements must be specifically defined in proposal, request for clarification and/or counter proposal which, if accepted, shall also become part of any contract resulting from this RFP. The contents of the proposal and any clarification or counter proposal thereto submitted by the successful Proposer shall become part of the contractual obligation and incorporated by reference into the ensuing contract.
2. Products and services not specifically mentioned in this RFP, but which are necessary to provide the functional capabilities described by the Proposer shall be included in the proposal.
3. Proposals submitted in accordance with the requirements of this RFP shall be considered offers to contract on the terms contained in the proposals and in this RFP and at the price offered by the successful Proposer. If the District awards a contract to the successful Proposer, such award will constitute an acceptance of that offer and a contract between The District and the successful Proposer embodying the terms of this RFP and the proposal will become effective on the date of such award.
4. Any award under this RFP, or any part of the work to be provided under this RFP, shall not be assignable by Proposer without the express written permission of The District.
5. Review and acceptance of Standard Terms and Conditions (section 7.0)

5.1 Proposal Submission Format

The District will not accept oral proposals, or proposals received by telephone, FAX machine, telegraph, or email. Proposals must be prepared simply and economically, providing a straightforward, concise description of Proposer's ability to meet all components of this RFP. Emphasis should be focused on completeness, clarity of content and responsiveness to all requirements and specifications of this RFP. Proposer may also provide supplemental marketing or technical materials, to be packaged separately from the proposal. No materials provided by the Proposer will be returned.

Proposer shall submit one original hard copy. All proposals become the property of The District and will not be returned to the Proposer.

5.2 Proposal Requirements

- 5.2.1 Cover Letter signed by officer authorized to contractually commit Proposer

- 5.2.2 Proposer shall furnish a complete name, mailing address and telephone number.
 - 5.2.3 Proposal must designate individual(s), along with respective telephone numbers, responsible for answering technical and contractual questions with respect to proposal.
 - 5.2.4 Promotional or display materials shall be separated from RFP response and labeled.
 - 5.2.5 **Detailed statement of qualifications**, addressing at a minimum:
 - 5.2.5.1 Detailed description of Proposer’s experience in providing HVAC installation services;
 - 5.2.5.2 Hours of operation and contact information for staff to assist with problem resolution;
 - 5.2.6 **A minimum of three references** for clients similar in size and complexity to the District – references must include name and address of client, point of contact, contact information (phone, fax and email);
 - 5.2.7 **Cost and Revenue Proposal**
 - 5.2.7.1 Cost/fee for providing services outlined in this RFP. Please provide clear and concise pricing model.
 - 5.2.8 **Exceptions.** The District expects the successful Proposer to agree to the standard terms and conditions that would be extended by The District for the purchase of comparable products and services. The District’s standard terms and conditions can be found in RFP Section 7.0. These terms and conditions or, in the sole discretion of the District, terms and conditions substantially similar, will constitute and govern any agreement resulting from this RFP. If Proposer takes exception to any terms or conditions, Proposer will submit a list of the exceptions as part of its proposal. Proposer’s exceptions will be reviewed by District and may result in disqualification of Proposer’s proposal as non-responsive to this RFP. If Proposer’s exceptions do not result in disqualification of Proposer’s proposal, then District may consider Proposer’s exceptions when District evaluates the Proposer’s proposal. Proposals including conditional clauses, modifications or alterations to the RFP and/or irregularities of any kind are subject to disqualification by the District at the District’s sole discretion.
- 5.3 **Proposal Time Stamp**
The time proposals are received shall be determined by the receipt date and time recorded by District Administration personnel, who will promptly record submissions as they are received. Proposers are responsible for insuring and verifying that proposals are received and recorded by District Administration personnel by the due date indicated in RFP Section 1.0.
- 5.4 **Proposer Representations and Responsibilities**

By submitting a proposal in response to this RFP, Proposer represents that it has carefully read and understands all elements of this RFP; has familiarized itself with all federal, state, and local laws, ordinances, and rules and regulations that in any manner may affect the cost, progress, or performance of the contract work; and has full knowledge of the scope, nature, quality and quantity of services to be performed.

By submitting a proposal in response to this RFP, the Proposer represents it has not relied exclusively upon any technical details in place or under consideration for implementation by the District but has supplemented this information through due diligence research and that Proposer sufficiently understands all issues relative to the indicated requirements.

The failure or omission of Proposer to receive or examine any form, instrument, addendum, or other documents or to acquaint itself with any other conditions or other details shall in no way relieve Proposer from any obligations with respect to its proposal or to any resulting contract.

5.5 Late Proposals

All proposals received by the District on time shall be accepted. All late proposals received by the District shall be rejected and will be made available for pickup by the Proposer upon request. Late proposals will remain unopened.

5.6 Proposer Questions

Proposers may only contact the individual listed in Section 1.1 with any questions regarding this RFP. Proposers shall not attempt to contact District Board members, District staff or management directly during the pre-award period. The District intends to respond to all appropriate questions and concerns; however, the District reserves the right to decline to respond to any question or concern.

All material questions/responses, clarifications, modifications and/or interpretations will be incorporated into an addendum which will be sent via email to original contact that the RFP was sent to. All addenda issued prior to the due date/time for responses are incorporated into this RFP and must be acknowledged in proposal. Only information provided in written addenda shall be binding – oral or other interpretations shall not be binding and are held without legal effect.

6.0 Proposal Evaluation

The District has attempted to provide Proposers with a comprehensive statement of requirements through this RFP for the services requested. Proposers must provide written proposals presenting Proposer's qualifications and understanding of the work to be performed. Proposers must address each evaluation criteria and be specific in presenting qualifications. Proposals must be as thorough and detailed as possible so that The District may properly evaluate qualifications, capabilities and all details of proposal.

Selection may be made of one or more Proposers deemed to be fully qualified and best suited among those submitting proposals. Onsite (or at the District's discretion, teleconference or videoconference) demonstrations or presentations, as well as client site visits, may be conducted for the Proposers so selected.

The District reserves the right to award based on the responses received or to negotiate with any or all the Proposers so selected. Price shall be considered but shall not be the sole determining factor for selection. The District may also award to other than the highest ranked proposer in the event the best and final price submitted by Proposer is more than the budget available for the project. The District shall select the Proposer which, in the District's opinion, has made the proposal most beneficial to the District for award. Should the District determine in writing and in its sole discretion that only one Proposer is fully qualified or that one Proposer is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Proposer. The District reserves the right to revoke the original recommendation for award and associated contract in the event the recommended Proposer fails to execute a contract within thirty days of notification of selection for award. The award document will be a contract incorporated by reference all the requirements, terms and conditions of the RFP and the Proposer's proposal as negotiated.

For purposes of evaluation, The District may establish, after an initial review of proposals, a competitive range of acceptable or potentially acceptable proposals composed of the highest rated proposals, and defer action on proposals outside of the competitive range pending selection of a successful Proposer; however, the District reserves the right to include additional proposals in the competitive range if deemed to be in the District's best interest.

The District may permit revision of proposal(s) prior to final selection of a successful Proposer; such revisions, including pricing, shall become binding. Proposers within the competitive range may be provided an opportunity for discussion and revision of its proposal. The District is not obligated to select the

Proposer offering the most attractive economic terms if such Proposer is not the most advantageous to the District overall, as solely determined by the District.

By submission of a proposal, Proposer acknowledges acceptance of the evaluation process, the evaluation criteria, all specification, terms and conditions and all other requirements and specifications set forth in this RFP, and recognition that some subjective judgments must be made by the District during the process. The District makes no guarantees or representations that any award will be made and reserves the right to cancel this solicitation for any reason. Proposer shall be solely responsible and accept all risk for any costs associated with preparation of a response to this RFP, or subsequent evaluation related activities such as onsite interviews, demonstrations or presentations.

6.1 Proposal Evaluation Criteria

The District has established criteria for scoring. This section presents the evaluation criteria, description, and the total points available to each. Total points available are 100.

Detailed Statement of Qualifications (Section 5.2.5) – up to 5 points

Highest points awarded to Proposers who have extensive experience in mechanical and HVAC installations.

Reference Interviews (from references provided in section 5.2.6) – up to 5 points

Highest points awarded to Proposers whose references provide positive feedback on reference interview questions.

Ability to meet RFP requirements and Perform Required Services (section 5.2.7) – up to 5 points

Highest points awarded to Proposers that clearly address all RFP requirements including the Scope of Work Section 4.0.

Detailed proposal for services (Section 5.2.8) – up to 5 points

Highest scores awarded to Proposal with clear transition plan/timeline and overall summary of Proposer's solution that aligns with District goals.

Cost Proposal – up to 75 points

Highest points awarded for low Cost/fee proposal.

Exceptions – up to 5 points

Exceptions to RFP requirements and/or Terms and Conditions. Proposers with no exceptions will receive 5 points. Less points will be awarded to those with numerous and/or significant exceptions.

7.0 Terms and Conditions

By acceptance of a purchase order or agreement, or response to a solicitation, Proposer agrees the following terms and conditions, without modification, will govern:

7.1 Standard Terms and Conditions

7.1.1 Definitions

The following definitions shall be used to identify terms throughout procurement documents:

- 7.1.1.1 AGREEMENT/CONTRACT – A mutually binding legal document obligating the Vendor to furnish the goods, equipment or services specified within the solicitation and obligating the District to pay for the goods, equipment, or services specified.
- 7.1.1.2 BID/PROPOSAL/RESPONSE/OFFER/QUOTATION– A complete, properly signed response to a solicitation that, if accepted, would bind the Respondent to perform the resulting contract.
- 7.1.1.3 BIDDER/PROPOSER/RESPONDENT/OFFERER – The Respondent identified throughout the solicitation that they consider themselves qualified to provide the goods, equipment or services specified herein, and are interested in making an offer to provide the goods, equipment or services to The District.
- 7.1.1.4 District – Travis County Emergency Services District No. 2, Pflugerville Fire Department.
- 7.1.1.5 SERVICES – Work performed to meet the requirements and demand of a purchase order. The furnishing of labor, time, or effort by the Vendor and their ability to comply with promised delivery dates, specification and technical assistance specified.
- 7.1.1.6 SOLICITATION/INVITATION TO BID/REQUEST FOR PROPOSALS/REQUEST FOR QUOTES – The solicitation document issued by the District containing terms, conditions and specifications for the service or commodity to be procured.
- 7.1.1.7 VENDOR/CONTRACTOR – Person or business enterprise providing goods, equipment, labor and/or services to the District as fulfillment of obligations arising from an agreement or purchase order.

Solicitations

7.1.2 Conflict of Interest

Effective January 1, 2006, Chapter 176 of the Texas Local Government Code (HB 914) requires an entity contracting or seeking to contract for the sale or purchase of property, goods, or services with a local governmental entity to disclose any affiliation or business relationship which might create a conflict of interest with a local government entity. The Conflict of Interest Questionnaire is available from the Texas Ethics Commission at www.ethics.state.tx.us, and completed forms must be submitted to the appropriate records administrator of The District not later than the seventh business day after the date the entity begins contract discussions or negotiations with the local governmental entity, or submits to the local governmental entity an application, response to a Request for Proposals or Bids, correspondence, or another writing related to a potential Agreement with the local governmental entity. If responding to a Solicitation, the Conflict of Interest Form may be submitted with the Response. The completed forms may be mailed or hand delivered to The District. This legislation is subject to change and each entity should consult its own attorney regarding the current law. Any attempt to intentionally or unintentionally conceal a conflict of interest may result in disqualification of any response to a solicitation. The validity of the Contract is not affected solely because of failure to comply with the conflict of interest disclosure requirements.

7.1.3 Communications with the District

To insure the proper and fair evaluation of a Solicitation, The District prohibits ex parte communication (e.g., unsolicited) initiated by the Offeror to District Officials or Employees evaluating or considering the Responses prior to the time an award has been made. Communication between Offeror and the District will be initiated by the appropriate District Official or Employee in order to obtain information or clarification needed to develop a proper and accurate evaluation of the Solicitation. Ex parte communication may be grounds for disqualifying the offending Offeror from consideration or award of the Solicitation then in evaluation, or any future Solicitation.

Unless otherwise specified, all requests for clarification or questions regarding a Solicitation must be directed to Travis County ESD No. 2, Attn.: Purchasing Manager, 203 East Pecan Street, Pflugerville, TX 78660, 512-251-2801, FAX: 512-990-1125, purchasing@Pflugervillefire.org.

7.1.4 DISCLOSURE OF PENDING LITIGATION:

Each Respondent shall include in its proposal a complete disclosure of any material civil or criminal litigation or pending

investigation which involves the Respondent or in which the Respondent has been judged guilty.

7.1.5 CONFIDENTIALITY OF RESPONSES, PUBLIC INFORMATION ACT:

All Responses are subject to release as public information unless the Response or specific parts of the Response can be shown to be exempt from the Texas Public Information Act. Respondents are advised to consult with their legal counsel regarding disclosure issues and take the appropriate precautions to safeguard trade secrets or any other proprietary information. The District assumes no obligation or responsibility for asserting legal arguments on behalf of potential Respondents.

If a Respondent believes that a Response or parts of a Response are confidential, then the Respondent shall so specify. The Respondent shall stamp in bold red letters the term "CONFIDENTIAL" on that part of the Response, which the Respondent believes to be confidential. Vague and general claims as to confidentiality shall not be accepted. All Responses and parts of Responses that are not marked as confidential will be automatically considered public information. Notwithstanding, responses to Requests for Proposals shall be opened in a manner that avoids disclosure of the contents to competing offeror and keeps the proposals secret during negotiations.

7.1.6 CLARIFICATIONS, WAIVER OF MINOR TECHNICALITIES OR DISCREPANCIES:

The District reserves the right to request clarification or additional information specific to any response after all Responses have been received and the Solicitation due date has passed. Additionally, The District reserves the right to accept or reject all or part of any Response, waive any formalities or technical inconsistencies, delete any requirement or specification from the Solicitation, or terminate the Solicitation when deemed to be in District's best interest.

7.1.7 COST OF PREPARATION OF RESPONSE:

All costs directly or indirectly related to preparation of a Response to this Solicitation or any oral presentation required to supplement and/or clarify a Response which may be required by The District shall be the sole responsibility of the Respondent.

7.1.8 RESPONSES BECOME PROPERTY OF The District:

Proposals received in response to a Solicitation become the sole property of The District.

7.1.9 WITHDRAWAL OF A RESPONSE:

A Response may be withdrawn prior to the submission deadline by submitting a written request for its withdrawal to the Purchasing Manager. A new Response may be submitted and must be received prior to the submission deadline to be considered. Modifications offered in any manner will not be considered if submitted after the submission deadline.

7.1.10 DETERMINATION OF AWARD, RESULTING AGREEMENT:

In determining award, The District reserves the right to select the acceptable Respondent who will offer contractual terms and conditions most favorable to The District. All requirements stated in the Solicitation shall become a part of any Contract, Agreement or Purchase Order awarded as a result of the Solicitation, and any deviations from these requirements must be specifically stated and defined by the Respondent in their Response. Requests for clarification and the responses(s) shall also become a part of any Contract, Agreement or Purchase Order resulting from the Solicitation.

7.1.11 AFFIRMATIONS AND CERTIFICATIONS:

By signature on and submission of a Response, Respondent certifies they have not conspired with any other potential supplier in any manner to attempt to control competitive pricing. By signature on and submission of a Response, Respondent certifies they are duly qualified, capable and a bondable business entity not in receivership or contemplating same and has not filed for bankruptcy. By signature on and submission of a Response, Respondent affirms that they will not discriminate against any employee or applicant as prohibited by law.

7.1.12 REQUIREMENTS FOR SUBMISSION OF RESPONSE:

All Responses must be submitted in the form requested by the District and accompanied by all required attachments. Each Response shall be placed in a separate envelope and properly identified with Solicitation Number and Opening Date. Responses must be time-stamped by District Administration personnel at the Administration Building, 203 East Pecan Street, Pflugerville, TX 78660, on or before due date and time shown on the Solicitation form. Late Responses will not be considered.

If applicable, Respondent will show exact cost to deliver goods/services. Responses must specify unit price on the quantity specified, extend and show total. Unit prices shall govern, including in case of errors. Pricing will be considered firm for acceptance for a minimum of 60 days after the due date unless otherwise specified in the Solicitation. The validity period may be extended beyond that date on agreement of parties. Cash discounts will not be

considered in determining award; all cash discounts offered will be taken if earned. Respondent will list and deduct all discounts not based on early payment from prices quoted.

The District is exempt from all federal excise, state and local taxes unless otherwise stated. The District claims exemption from under Texas Tax Code §151.309, as amended. Texas Limited Sales Tax Exemption Certificates will be furnished upon request. Do not include taxes in Response to any Solicitation.

Unless stated otherwise, any catalog, brand name or manufacturer's reference used in the Solicitation is descriptive (not restrictive) and is used to indicate type and quality desired.

7.1.13 INSURANCE REQUIREMENTS:

Unless specific insurance requirements are noted, Vendor shall maintain standard insurance coverage. Upon request, Vendor shall provide a copy of its insurance policies to the District.

7.1.14 EXCEPTIONS TO SPECIFICATIONS:

Any deviation from the specifications must be clearly indicated in the Response to the Solicitation or promptly documented in writing at or before the time of the award. Any deviations or exceptions are subject to review by the District and may be grounds for rejection.

7.1.15 TRAVEL EXPENSES:

All travel, lodging and/or per diem expenses associated with providing the materials, equipment or services specified must be included in Proposal.

7.1.16 EMPLOYEES:

Vendor shall employ only orderly and competent workers, skilled in the performance of the Services which they will perform under the Agreement. Successful Proposer shall be responsible for conducting criminal background checks and verifying employment eligibility on all employees that will have access to District information.

Payment

7.1.17 TAX EXEMPT STATUS:

The District is exempt from all federal excise, state and local taxes unless otherwise stated in this document. The District claims exemption from all sales and/or use taxes under Texas Tax Code §151.309, as amended. Texas Limited Sales Tax Exemption Certificates are furnished upon request. Vendor will not charge for such taxes. If billed, The District will not remit payment until a corrected invoice is received.

7.1.18 INVOICING REQUIREMENTS:

Unless otherwise specified, all invoices shall be submitted to:
Travis County ESD No. 2, Attn: Accounts Payable, 203 East Pecan
Street, Pflugerville, TX 78660, or to
accountspayable@pflugervillefire.org

7.1.19 RIGHT TO AUDIT:

The Vendor agrees that the representatives of the District shall have access to, and the rights to audit, examine, or reproduce, any and all records of the Vendor related to the performance under this Agreement. The Vendor shall retain all such records for a period of four (4) years after final payment on this Agreement or until all audit and litigation matters that the District has brought to the attention of the Vendor are resolved, or retention required by law, whichever is longer. The Vendor agrees to refund to the District any overpayments disclosed by any such audit.

7.1.20 FIRM PRICING:

The price shall remain firm for the duration of the Contract and extension periods. Vendor further certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

7.1.21 PRICE WARRANTY:

The Vendor warrants the prices quoted are not materially higher than the Vendors current prices on orders by others for like deliverables under similar terms of purchase. In addition to any other remedy available, The District may deduct from any amounts owed to the Vendor, or otherwise recover, any amounts paid for items materially in excess of the Vendor's current prices on orders by others for like deliverables under similar terms of purchase.

Additional Requirements

7.1.22 VENDOR'S OBLIGATION:

Vendor shall fully and timely provide all deliverables described in Solicitation, Vendor's Offer in strict accordance with the terms, covenants and conditions of the Agreement and all applicable federal, state and local laws, rules and regulations.

7.1.23 DEFAULT:

Vendor shall be in default under the Agreement if the Vendor (a) fails to fully, timely and faithfully perform any of its material obligations under the Agreement, (b) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (c) makes a

material misrepresentation in Vendor's Offer, or in any report or deliverable required to be submitted by Vendor to The District.

TERMINATION/CANCELLATION:

7.1.24 TERMINATION FOR CAUSE:

In the event of default by the Vendor, the District shall have the right to terminate the Agreement for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Vendor, within such ten (10) day period cures such default, or provides evidence sufficient to prove to the District's satisfaction that such default does not, in fact, exist. In addition to any other remedies available under law or in equity, the District shall be entitled to recover all actual damages, costs, losses and expenses incurred by the District as a result of the Vendor's default, including without limitation, cost of cover, reasonable attorneys' fees, court costs and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of default by the Vendor, the District may remove the Vendor from the District's Vendor List and any Offer submitted by the Vendor may be disqualified for up to three (3) years. All rights and remedies under the Agreement are cumulative and not exclusive of any other right or remedy provided by law.

7.1.25 TERMINATION WITHOUT CAUSE:

The District shall have the right to terminate the Agreement, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Vendor shall promptly cease all further work pursuant to the Agreement, with such exceptions, if any, specified in the notice of termination. The District shall pay the Vendor, to the extent of funds appropriated or otherwise legally available for such purposes, for all goods delivered and services performed, and obligations incurred prior to the date of termination in accordance with the terms hereof.

7.1.26 NON-APPROPRIATION:

The resulting Agreement is a commitment of the District's current revenues only. It is understood and agreed that The District shall have the right to terminate the Agreement at the end of any District fiscal year (September 30th) if the governing body of The District does not appropriate funds sufficient to purchase the estimated yearly quantities, as determined by The District's budget for the fiscal year in question. The District may effect such termination by providing the Vendor a written notice of termination at the end of its then current fiscal year.

7.1.27 CANCELLATION:

The District reserves the right to cancel the Agreement for default all or any part of the delivered portion of the deliverables if the Vendor breaches any term hereof including warranties or becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any remedies which The District may have in law or in equity.

7.1.28 FRAUD:

Fraudulent statements by the Vendor on any Offer or in any report or deliverable required to be submitted by the Vendor to The District shall be grounds for termination of the Agreement for cause by The District and may result in legal action.

7.1.29 INDEMNITY:

VENDOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS The District, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LEGAL PROCEEDINGS, CAUSES OF ACTION, CLAIMS, DEMANDS, DAMAGES, JUDGMENTS, LOSSES, LIENS, COSTS, EXPENSES, ATTORNEYS' FEES AND ANY AND ALL OTHER COSTS, FEES AND/OR CLAIMS OF ANY KIND OR DESCRIPTION ARISING OUT OF, IN CONNECTION WITH OR RESULTING FROM THE AGREEMENT OR THE GOODS OR SERVICES PROVIDED UNDER THE AGREEMENT. IF THE VENDOR AND The District ARE CONCURRENTLY NEGLIGENT, EACH PARTY'S LIABILITY SHALL BE LIMITED TO THAT PORTION OF NEGLIGENCE ATTRIBUTABLE TO IT AS DETERMINED UNDER THE APPLICABLE PROPORTIONATE RESPONSIBILITY RULES OF THE STATE OF TEXAS.

7.1.30 LIABILITY:

Any person, firm or corporation performing services pursuant to this Agreement shall be liable for all damages incurred while in the performance of such services. Vendor assumes full responsibility for the work to be performed hereunder and hereby releases, relinquishes, and discharges the District, its officers, agents and employees from all claims, demands and causes of action of any nature including the cost of defense thereof, for any injury to, including death of, any person whether that person be a third party, supplier or an employee of either of the parties hereto, and any loss of or damage to property, whether the same be that of either of the parties, caused by or alleged to have been caused by, arising out of or in connection with the issuance of the Agreement or Purchase Order to the Vendor and the negligence of the Vendor, whether or not said claims, demands and causes of action in whole or in part

are covered by insurance. Certificates of insurance may be required for, but not limited to, Commercial General Liability, Business Auto Liability, Workers Compensation and Professional Liability Insurance.

7.1.31 INFRINGEMENT:

Vendor represents and warrants to the District that: (a) Vendor shall provide the District good and indefeasible title to the deliverables and (b) the deliverables supplied by the Vendor in accordance with the specifications of the Agreement shall not infringe, directly or contributory, any patent, trademark, copyright, trade secret or any other intellectual property right of any kind of any third party; that no claims have been made by an person or entity with respect to the ownership or operation of the deliverables and the Vendor does not know of any basis for any such claims. Vendor shall, at its sole expense, defend, indemnify and hold the District harmless from and against all liability, damages and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (a) any claim that the District exercises anywhere in the world of the rights associated with the District's ownership, and if applicable, license rights, and its use of the deliverable infringes the intellectual property rights of any third party; or (b) Vendor's breach of any of the Vendor's representations or warranties stated in this Agreement. In the event of any such claim, the District shall have the right to monitor such claim or, at its option, engage its own separate counsel to act as co-counsel on The District's behalf. Further, Vendor agrees that the District's specifications regarding the deliverables shall in no way diminish Vendor's warranties or obligations under the Section, and the District makes no warranty that the products, development or delivery of such deliverables will not impact such warranties of Vendor.

7.1.32 CONFIDENTIALITY:

In order to provide the deliverables to the District, Vendor may require access to the District's and/or its licensors' confidential information (including, but not limited to, inventions, employee information, trade secrets, confidential know-how, confidential business information and other information which The District or its licensors consider confidential) (collectively, "Confidential Information"). Vendor acknowledges and agrees that the Confidential Information is the valuable property of the District and/or its licensors, and any unauthorized use, disclosure, dissemination or other release of the Confidential Information will substantially injure the District and/or its licensors. The Vendor

(including its employees, subcontractors, agents or representatives) agrees that it will maintain the Confidential Information in strict confident and shall not disclose, disseminate, copy, divulge, recreate or otherwise use the Confidential Information without the prior written consent of the District, or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or as a result of an order of any court or other governmental authority with proper jurisdiction, provided the Vendor promptly notifies the District prior to disclosing such information so as to permit the District reasonable time to seek an appropriate protective order. The Vendor agrees to use protective measures no less stringent than the Vendor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

7.1.33 CODES, PERMITS, LICENSES:

Vendor shall comply with all federal, state and local standards, codes and ordinances and the terms and conditions of the services of the electric utility, as well as other authorities that have jurisdiction pertaining to equipment and materials used and their application. None of the terms or provisions of the specification shall be construed as waiving any rules, regulations or requirements of these authorities. Vendor shall be responsible for obtaining all necessary permits, certificates and/or licenses to fulfill contractual obligations to The District.

7.1.34 ADVERTISING and the District:

Vendor shall not advertise or otherwise publicize, without the District's prior written consent, the fact that the District has entered into the Agreement, except to the extent required by applicable law.

7.1.35 INDEPENDENT CONTRACTOR:

The Agreement shall not be construed as creating an employer/employee relationship, a partnership or joint venture. The Vendor's services shall be those of an independent contractor. The Vendor agrees and understands that the Agreement does not grant any rights or privileges established for employees of the District. Vendor shall not be within protection or coverage of the District's Worker Compensation insurance, Health Insurance, Liability Insurance or any other insurance that the District, from time to time, may have in force.

7.1.36 LIENS:

Vendor shall defend, indemnify and hold the District harmless from and against any and all liens and encumbrances for all labor, goods

and services provided under this Agreement. At the District's request, the Vendor or its subcontractors shall provide a proper release of all liens or satisfactory evidence of freedom from liens shall be delivered to the District.

7.1.37 ASSIGNMENT/DELEGATION:

The Agreement shall be binding upon and endure to the benefit of the District and the Vendor, and their respective successors and assignees, provided however, that no right or interest in the Agreement shall be assigned and no obligation shall be delegated by the Vendor without the prior written consent of the District. Any attempted assignment or delegation by the Vendor shall be void unless made in conformity with this Section. The Agreement is not intended to confer any rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third-party beneficiaries to the Agreement.

7.1.38 INTERPRETATION:

The Agreement is intended by both parties as the final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Agreement. Although the Agreement may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner fair to both parties, reading no provision more strictly against one party of the other. Whenever a term defined by the Uniform Commercial Code (the "UCC"), as enacted by the State of Texas, is used in the Agreement, the UCC definition shall control unless otherwise defined in the Agreement.

7.1.39 GOVERNING LAW AND VENUE:

This Agreement is made under and shall be governed by the laws of the State of Texas, including when applicable, the UCC as adopted in Texas, VTCA, Business & Commerce Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. This Agreement is fully performable in Pflugerville, TX, and the venue for any action related to this Agreement shall be Pflugerville, TX. All issues arising from this Agreement shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or the ability of The District to seek and secure injunctive relief from any competent authority as contemplated herein and does not waive The District's defense of sovereign immunity.

7.1.40 SURVIVABILITY OF OBLIGATIONS:

All provisions of the Agreement that impose continuing obligations on the parties, including but not limited to the warranty, indemnity and confidentiality obligations of the parties, shall survive the expiration or termination of the Agreement.

7.1.41 CLAIMS:

If a claim, demand, suit or other action is asserted against the Vendor which arises under or concerns the Agreement, or which could have a material adverse effect on the Vendor's ability to perform thereunder, the Vendor shall give written notice to the District within ten (10) calendar days after receipt of notice by the Vendor. Such notice to the District shall state the date of notification of any such claim, demand, suit or other action; the names and address of the claimant(s); the basis thereof; and the name of each person against whom such claim is asserted. Such notice shall be delivered to the District at 203 East Pecan Street, Pflugerville, TX 78660.

7.1.42 GRATUITIES:

The District may, by written notice to the Vendor, cancel the Agreement without liability if it is determined by the District that gratuities were offered or given by the Vendor or any agent or representative of the Vendor to any officer or employee of the District with the intent of securing the Agreement or securing favorable treatment with respect to awarding or amending or the making of any determinations with respect to performing of the Agreement. In the event the Agreement is cancelled by the District pursuant to this Section, the District shall be entitled, in addition to any other rights and remedies, to recover the benefits or payments to the Vendor, as a result of the gratuities.

7.1.43 PERSONAL INTEREST PROHIBITED:

No officer, employee, independent consultant or elected official of the District who is involved in the development, evaluation or decision-making process of the performance of the any Solicitation shall have a financial interest, direct or indirect, in the resulting Agreement.

7.1.44 WAIVER:

No claim or right arising out of a breach of the Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Vendor or the District of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations

under the Agreement, or an express or implied acceptance of any other existing or future default(s), whether of similar or different character.

7.1.45 DISPUTE RESOLUTION:

If either the Vendor or The District has a claim, dispute or other matter in question for breach of duty, obligations, services rendered or any warranty that arises under this Agreement, the parties shall first attempt to resolve the matter through this dispute resolution process. The disputing party shall notify the other party in writing as soon as practicable after discovering the claim, dispute or breach. The notice shall state the nature of the dispute and list the party's specific reasons for such dispute. Within ten (10) business days of receipt of the notice, both parties shall make a good faith effort, in person or through generally accepted means, to resolve any claim, dispute, breach or other matter in question that may arise out of, or in connection with, this Agreement. If the parties fail to resolve the dispute within sixty (60) days of the date of receipt of the notice of the dispute, then the parties may submit the matter to non-binding mediation upon written consent of authorized representatives of both parties in accordance with the Arbitration Rules of the American Arbitration Association or other applicable rules governing mediation then in effect. If the parties cannot resolve the dispute through mediation, then either party shall have the right to exercise any and all remedies available under law regarding the dispute.

7.1.46 INVALIDITY:

The invalidity, illegality or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace the stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent the entire Agreement from being void should a provision which is the essence of the Agreement be determined to be void.