



**Multi Regional Purchasing Cooperative  
Request for Proposals #2017-02  
Instructional/General Catalog**

**Issued March 12, 2017 by:**  
**Region 9 Education Service Center, Fiscal Agent**  
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**Submittal Deadline:**  
**TUESDAY, APRIL 4, 2017 (CDT) – 2:00 PM**

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## Part 1.0 – Notice to Proposers

### 1.1 Submittal Deadline

Proposal submissions in response to this Request for Proposal (RFP) will be accepted by the Multi Regional Purchasing Cooperative (MRPC) until 2:00pm (CDT) on Tuesday, April 4, 2017. Proposals must be submitted through the Public Purchase online response system at [www.publicpurchase.com](http://www.publicpurchase.com).

### 1.2 Proposal Contact Person

Proposers will direct all questions regarding this RFP to the following contact:

Dana Parrish, Administrative Assistant  
Region 9 Education Service Center  
Email: [dana.parrish@esc9.net](mailto:dana.parrish@esc9.net)  
940-322-6928

### 1.3 Key Events Schedule

Event	Date	Time (if applicable) – CDT
RFP released	March 12, 2017	
Proposal submission deadline	April 4, 2017	2:00pm
Submission review	April 27, 2017 – June 13, 2017	
MRPC Evaluation Committee Meeting (via teleconference)	June 14, 2017 – June 21, 2017	TBD
Region 9 ESC Board of Directors meeting for award of RFP	June 28, 2017	12:30pm
Vendor notification of award, post-award paperwork	June 29 – July 27	
Effective period of award	August 1, 2017 – August 31, 2018	

### 1.4 Addenda to the RFP

MRPC/Region 9 reserves the right to revise and amend the specifications prior to the date set for the proposal opening. Revisions or amendments, if any, will be made by issuing addenda within the Public Purchase online response system.

### 1.5 Submission of Proposal

Proposers must submit a response through the Public Purchase online response system ([www.publicpurchase.com](http://www.publicpurchase.com)). The deadline for your response is **2:00 PM, April 4, 2017**. No proposal will be accepted after this deadline. Incomplete submissions will not be accepted or considered for award. All proposals submitted will remain sealed until the end of the proposal period on April 4, 2017 at 2:00 PM.

No vendors will be added to this cycle after the deadline for responses according to the action of the MRPC based on Attorney General Opinion No. JC-0037.

## 1.6 Proposal Validity Period

The proposed discount must remain valid for the period of August 1, 2017 – August 31, 2018.

## 1.7 RFP Award

Proposals will be selected for award based upon the quality of the response to the request for proposal. Awards will be made to the best 85% evaluated proposals in each category in accordance with the evaluation criteria outlined in Part 4.0 of this RFP. An exception to the 85% acceptance rate may be made in categories in which there is a low response rate or equally evaluated vendors causes a greater than 85% rate to be in the best interest of the cooperative. Multiple vendors may/will be awarded.

The Multi Regional Purchasing Coop (MRPC) reserves the right to accept or reject in part or in whole any responses submitted for the best interest of the member schools. The MRPC also reserves to the right to waive minor technicalities.

- a) The Coop may reject all responses whenever it is deemed in the best interest of the Coop to do so, and may reject any part of a response unless the response has been qualified as provided in item (b)(3) below. The Coop may also waive any minor informalities or irregularities in any response including failure to sign all responses and/or supporting forms, failure to submit literature or similar attachments, or failure to submit business affiliation information, if requested and approved by the MRPC evaluation committee.
- b) The Coop may reject a response if:
  - 1) The responder misstates or conceals any material fact in the response, or if
  - 2) The response does not strictly conform to law or the requirements of the RFP specifications, or if,
  - 3) The response is conditional except that the respondent may qualify the response for acceptance by the Coop on an "All or None" basis. However, an "All or None" response must include all items upon which responses are invited.

Respondents are advised that under the provisions of the RFP, the MRPC reserves the right to conduct negotiations over the proposals received or to award a contract without negotiations.

A Notice of Award will be emailed or otherwise furnished to the successful respondent(s). This Notice of Award will serve as the award of the RFP and will become a contract upon issuance of a purchase order(s) by member district(s).

In accordance with Section 2252.908 of the Texas Government Code, all awarded vendors will also be required to complete a Certificate of Interested Parties (Form 1295) to the Texas Ethics Commission (TEC) **after** receiving notice of award. Once the form has been submitted to the TEC and a response number issued, the form must be signed and notarized and the form mailed to Region 9 ESC. Further instructions will be provided to awarded vendors with acknowledgement of award.

Upon acceptance of the Notice of Award, the awarded respondent will be bound and obligated to carry out the terms of this RFP. This obligation will be enforced and the MRPC may impose a fee of \$500 for failure to deliver on products awarded, and may additionally seek further remedy through judicial action. The venue for such action will be in Wichita County, Texas.

## 1.8 Contract Period

The period of this contract will be from August 1, 2017 – August 31, 2018.

## 1.9 Preparation Costs

The MRPC/Region 9 will not be liable for any costs incurred in the preparation and submittal of proposals.

## 1.10 Disclosure of Proposal Content

After contract award, proposals are subject to release under the Texas Government Code, Chapter 552, Public Information Act. Proposers must indicate on their proposal cover if their submission contains proprietary information. It is required that a Proposer identify the specific portions of the proposal that it considers proprietary; however, entire sections cannot be specified as such.

If Proposers consider any portion of their proposal to be confidential and/or proprietary and considers that disclosure of its contents to competitors would cause the Proposer substantial competitive harm, the Proposer must clearly identify those portions of the proposal by designating **CONFIDENTIAL OR PROPRIETARY** in bold letters on the specific content within the applicable page(s) by clearly marking the text in red with the words “CONFIDENTIAL” or “PROPRIETARY”. The ESC will attempt to protect the identified portions from disclosure to the extent permitted under the law. You will be provided notice of any request for disclosure of the identified information and provided the opportunity to support your claim of confidentiality before the Texas Attorney General.

## 1.11 Submittal Checklist

All responses must be submitted into the Pubic Purchase online response system ([www.publicpurchase.com](http://www.publicpurchase.com)) by 2:00 PM (CDT) on Tuesday, April 4, 2017. Responses will not be allowed and no further responses accepted after this date and time. Supporting forms that are included in the online submittal are:

- Acceptance of Terms and Conditions
- Acknowledgement of Participating Schools
- Propose to Provide and Statement of Noncollusion
- Felony Conviction/Debarment Notice
- Certificate Sheet – Resident/Non-Resident Bidder
- Conflict of Interest Form (If Applicable)
- Clean Air/Water – Buy American Form (If Applicable)
- Lobbying Disclosure Form (If Applicable)
- HUB Questionnaire (If Applicable)

All awarded vendors will also be required to complete a Certificate of Interested Parties (Form 1295) to the Texas Ethics Commission (TEC) after being notified of award. Once the form has been submitted to the TEC and a response number issued, the form must be signed and notarized and the form mailed to Region 9 ESC. Further instructions will be provided to awarded vendors with acknowledgement of award.

If Proposers fail to return any of the listed items with the proposal, the submission may be rejected.

## Part 2.0 – Project Introduction and Purpose

### Purpose of the Request for Proposal

The Multi Regional Purchasing Cooperative has a membership of approximately 120 school districts and 4 Education Service Centers (ESC) primarily located in Regions 9 (ESC based in Wichita Falls), 11 (ESC based in Fort Worth), 14 (ESC based in Abilene), and 15 (ESC based in San Angelo).

The Instructional/ General Catalog RFP is to provide participating member schools and Education Service Centers (ESCs) with a list of vendors who have submitted required paperwork and been evaluated to form an approved vendors list from which they may purchase throughout the effective period as they have need. This is an “open catalog” RFP for purchases by schools as they follow their local purchasing policies and procedures. **No guaranteed annual volume is implied or expressed.** Pricing to schools shall be the vendor’s catalog price less the applicable discount allowed.

## Part 3.0 – Project Scope

### 3.1 Scope/Specifications

- Proposers will provide a **discount rate** that shall be applied to proposer’s catalog/website pricing for products within the following categories:

#### **Instructional Supplies / Teaching Aids**

- Art Supplies
- Math Manipulatives
- Science Equipment/Supplies
- Literacy
- Social Studies
- Curriculum Supplements/Testing Aids
- Physical Education Equipment/Supplies
- Classroom Furniture (Chairs, Desks, Chalkboards, Shelving)
- Special Education Supplies/Equipment
- Career/Technical/Vocational Supplies
- General Classroom Supplies

**Awards, Incentives, Promotional Items** (includes trophies, ribbons, custom print clothing or items)

#### **Library**

- Books
- Audio Books/CDs/DVDs
- Magazine/Newspaper
- Supplies (book repair, covers, etc.)

**Fine Arts**

Band & Orchestra Instruments/Supplies  
Band Uniforms/Choir Robes  
Music Class Supplies/Equipment  
Flag Corps Supplies/Uniforms  
Music Publications/Sheet Music  
Theater/Drama  
Equipment (Chairs, Risers, Stands, Etc.)

**Office**

Furniture (Desks, Chairs, Book Shelves, Filing Cabinets, etc.)  
Equipment - Purchase Only/No Rentals (Laminators, Copiers, Shredders, etc.)  
General Supplies (pens, paperclips, tape, staples, etc.)  
Paper  
Toner/Ink Cartridges  
Custom printed forms (i.e. letterhead, envelopes, business cards, etc.)

**Maintenance/Facilities**

Custodial Supplies  
Security Systems/Supplies  
Transportation Supplies  
Paper Supplies (Paper Towel, Toilet Paper, etc.)  
Signage  
Maintenance Supplies (Lighting, Hardware, etc.)  
Playground Equipment

**Athletics**

Equipment  
Uniforms  
Medical Supplies (athletic tape, cold packs, etc. - see also Nursing Supplies)

**Nursing Supplies**

- The catalog discount rate must be guaranteed for thirteen (13) months beginning August 1, 2017 to August 31, 2018.
- Vendors may respond to any categories of products.
- After receiving notification of acceptance of response, vendor must provide catalog and/or online catalog website address free of charge to ESCs and school districts.
- All delivery charges, freight, inside delivery, installation, etc., must be specified if not included in response prices. If not otherwise stated, delivery will be FOB destination. The title and risk of

loss of the goods shall not pass to Buyer until Buyer actually receives and takes possession of the goods at the point or points of delivery.

- If prices are determined by a confidential price list or by computer price printout, such list must be submitted with the response, less percentage discount clearly identified by date, product identification and cost.
- Merchandise shall be new merchandise, not used or shop worn merchandise. Products received in this condition will be returned freight collect at the vendor's expense. If this problem is not corrected within ten (10) working days of notification, the ESC(s) and each participating school district under the Uniform Commercial Code will have the right to exercise their right to remedy.
- All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC or NEMA. All markers and highlighters must comply with AP (ACMI) standards as required by the Department of State Health Services (DSHS) for use in schools and daycare facilities.
- Vendors must include Materials Safety Data Sheets (MSDS) with all hazardous materials listed at time of shipment.
- A packing list or other suitable shipping document shall accompany each shipment and show (a) name and address of vendor, (b) name and address of receiving teacher or department, (c) district purchase order number, and (d) description of material shipped including item numbers, quantity, number of containers, and package number.
- Invoices shall be sent directly to each entity. Payments are processed after each business office has been notified that the items have been received in good condition and shipments are complete. Invoices must detail the items delivered and must reference the entity's purchase order for speed in processing. Sums of money shall be indicated both by unit cost and total item cost. In case of discrepancy, the unit cost shall govern.
- All contracts, agreements, and lease purchases between merchants and each participating party shall strictly adhere to the statutes as set forth in the Texas School Law Bulletin, "Financial Accounting Reporting Manual" of the Texas Education Agency.
- Continuing non-performance of the responder in terms of specifications shall be a basis for removal from the listing. Cancellation by the ESC or any participating district may be made upon thirty (30) calendar days written notice to a successful responder. The ESC or a participating district shall not pay for works, equipment, or supplies that are unsatisfactory. Vendors shall be given a reasonable opportunity (30 days) before termination to correct the deficiencies. However, this shall in no way be construed as negating the basis for termination for non-performance.
- It is understood and agreed that each participating party in the Multi Regional Purchasing Cooperative reserves the right to increase or decrease quantities or modify conditions and specifications by mutual agreement with the selected supplier, both at the time of acceptance of this RFP offer as so modified, and subsequent thereto.



- Responders must comply with all rules, regulations and statutes relating to purchasing in the State of Texas in addition to the requirements of this form. Any response after being opened becomes subject to the Open Records Act, Article 6252-17a V.T.C.S.
- All contracts and agreements between vendor and the MRPC shall strictly adhere to the statutes as set forth in the Uniform Commercial Code as last amended in 1977 by the American Law Institute in the National Conference of Commissioners on Uniform State Laws. Reference: Uniform Commercial Code, effective July 2001 official text.
- Purchases made for State use are exempt from the State Sales tax and Federal Excise tax. **Do not include tax in the response.** Excise Tax Exemption Certificates are available upon request **from each school.**
- By submitting a response, responder certifies to the best of his/her knowledge that all information is true and correct.

### **3.2 Member School Participation**

Chapter 791 of the Texas Government Code authorizes local governments to contract with each other to provide governmental functions and services; and Texas Education Code § 8.002(a) directs regional education service centers to provide services to assist schools in improving student performance and increasing the efficiency and effectiveness of school operations; therefore, Regions 9, 11, 14 and 15 have established a cooperative purchasing program known as the Multi Regional Purchasing Coop (MRPC). Please see the included list of schools and Education Service Centers participating in the MRPC. By submitting a response, vendors are agreeing to serve all participating members within the counties covered by Regions 9, 11, 14 and 15.

### **3.3 Patented or Copyright Protected Items**

In the event any article to be sold or delivered hereunder is covered by any patent, copyright, trademark, or application thereof, the seller shall indemnify and hold harmless the MRPC from any and all loss, cost, expenses and legal fees on account of any claims, legal actions, or judgments on account of manufacture, sale, or use of such article in violation of, infringement or the like of rights under such patent, copyright, trademark or application.

### **3.4 Non-Appropriation of Funds**

Any purchase order resulting from this RFP is subject to cancellation, without penalty, either in whole or in part, if are not appropriated or reduced by the Federal or Texas Legislature to the member schools, or if grants, local property taxes or other funds are otherwise not made available or reduced for the ordering user.

It is understood and agreed that each participating party in the Multi Regional Purchasing Cooperative reserves the right to increase or decrease quantities or modify conditions and

specifications by mutual agreement with the selected supplier, both at the time of acceptance of this offer as so modified, and subsequent thereto.

### **3.5 Conflict of Interest**

Under Section 2155.003 of the Texas Government Code, a MRPC employee may not have an interest in, or in any manner be connected with a contract or bid for a purchase of goods or services by an agency of the state; or in any manner, including by rebate or gift, accept or receive from a person to whom a contract may be awarded, directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation. Any individual who interacts with public purchasers in any capacity is required to adhere to the guidelines established in Section 1.2 of the State of Texas Procurement Manual which outlines the ethical standards required of public purchasers, employees, and vendors who interact with public purchasers in the conduct of state business. Entities who are interested in seeking business opportunities with the MRPC must be mindful of these restrictions when interacting with public purchasers of MRPC or purchasers of state agencies.

### **3.6 Discriminatory Practices**

During the performance of this contract, the contractor agrees not to discriminate against any employee or applicant for employment because of race, color, national origin, age, religion, gender, marital or veteran status, or handicapping condition.

Participating members may require proof of compliance with state or federal laws if purchases are being made for construction projects using state or federal funding.

### **3.7 Guarantee**

A minimum of ninety (90) days' guarantee or standard commercial warranty, whichever is greater, shall be provided on all materials. In the event of failure, the vendor agrees to repair or replace such units at no cost to the ESC or to each participating party, within ten (10) working days.

### **3.8 Out of State Responders**

In accordance with Texas Civil Statutes, article 601g (b) (1), which requires the publication of a list of states which have laws or regulations regarding the award of contracts for general construction, improvements, services, or public works projects or purchases of supplies, materials, or equipment to nonresident bidders, together with a citation to and summary of the most recent law or regulation of each state relating to the evaluation of bids from and award of contracts to nonresident bidders.

## Part 4.0 – Evaluation Criteria

Review of responses will begin as soon as practical after the closing date. The evaluation committee will score all responses submitted based on the criteria listed below. After scoring, the 85% best evaluated respondents will be recommended for award. If any category has low response rate, or multiple vendors have the same scoring, the percentage of award may be changed in the best interest of the cooperative.

The following criteria will be considered in awarding each separate category:

Criteria	Possible Points
Purchase Price	0
Reputation of Vendor & Vendor's Goods or Services*	30
Quality of Vendor's Goods or Services*	35
Extent to which the Goods or Services Meet Needs	0
Vendor's Past Relationship with MRPC	0
Historically Underutilized Businesses	5
Total Long-Term Cost of MRPC/Region 9 to Acquire the Vendor's Goods or Services	0
Other Relevant Factors:	
Discount Rate Offered	20
Completeness of response, supporting forms, etc.	10
<b>Total Possible Points</b>	<b>100</b>

*\* Points may be awarded up to the maximum points for excellent service/quality of goods, and as low as 0 points for unsatisfactory service/quality of goods. The rating for previously awarded vendors is determined by survey of participating school district members and deviation reports submitted for last year's awarded vendors. Base award is one-half of allotted points to new respondents, or if no response is received through survey of participating school district members.*

The MRPC evaluation committee will meet via teleconference between June 14 – June 21, 2017 (exact date/time to be determined) to apply the evaluation criteria to all responses. The 85% best evaluated in each category will be recommended to the Region 9 ESC Board of Directors for award. If any category has low response rate, or multiple vendors have the same scoring, the percentage of award may be changed in the best interest of the cooperative. The award will be made by the Region ESC Board of Directors at their June meeting, currently scheduled for June 28, 2017 at 12:30 PM.

## **Part 5.0 – Standard Terms and Conditions**

This section contains standard terms and conditions of the contract between MRPC/Region 9 and the selected contractor. Any exceptions to this standard contract must be disclosed in the required forms of this RFP.

### **Abandonment or Default**

If the Contractor defaults on the contract, the Multi Regional Purchasing Cooperative and/or MRPC/Region 9 Education Service Center reserves the right to cancel the contract without notice and either re-solicit or re-award the contract to the next best responsive and responsible Responder. The defaulting Contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work significantly changed. The period of suspension will be determined by the agency based on the seriousness of the default.

### **Amendments**

This Contract may be amended only upon written agreement between MRPC/Region 9 Education Service Center and Contractor; however, any amendment of this Contract that conflicts with the laws of the State of Texas shall be void ab initio.

### **Antitrust**

Contractor represents and warrants that neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation or institution has (1) violated the antitrust laws of the State of Texas under Tex. Bus. & Com. Code, Chapter 15, or the federal antitrust laws; or (2) communicated directly or indirectly the Proposal to any competitor or any other person engaged in such line of business during the procurement process for this Contract.

### **Applicable Law; Venue**

This Contract shall be governed by and construed in accordance with the laws of the State of Texas. The venue of any suit arising under this Contract is fixed in any court of competent jurisdiction of Wichita County, Texas.

### **Applicable Law and Conforming Amendments**

Contractor must comply with all laws, regulations, requirements and guidelines applicable to a Contractor providing services to MRPC/Region 9 Education Service Center as these laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Contract. MRPC/Region 9 Education Service Center reserves the right, in its sole discretion, to unilaterally amend this Contract throughout its term to incorporate any modifications necessary for MRPC/Region 9 Education Service Center or Contractor's compliance with all applicable State and federal laws, and regulations.

### **Assignments**

Without the prior written consent of MRPC/Region 9 Education Service Center Contractor may not assign this Contract, in whole or in part, and may not assign any right or duty required under it.

### **Confidentiality and Public Information Act**

Notwithstanding any provisions of this Contract to the contrary, Contractor understands that MRPC/Region 9 Education Service Center will comply with the Texas Public Information Act, Texas Government Code, Chapter 552 as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. MRPC/Region 9 Education Service Center agrees to notify Contractor in writing within a reasonable time from receipt of a request for information related to Contractor's work under this contract. Contractor will cooperate with MRPC/Region 9 Education Service Center in the production of documents responsive to the request. MRPC/Region 9 Education Service Center will make a determination whether to submit a Public Information Act request to the Attorney General. Contractor will notify MRPC/Region 9 Education Service Center General Counsel within twenty-four (24) hours of receipt of any third party requests for information that was provided by MRPC/Region 9 Education Service Center to Contractor for use in performing the Contract. This Contract and all data and other information generated or otherwise obtained in its performance may be subject to the Texas Public Information Act. Contractor agrees to maintain the confidentiality of information received from MRPC/Region 9 Education Service Center to the extent permitted and/or required by law during the performance of this Contract, including information which discloses confidential personal information.

### **Deceptive Trade Practices; Unfair Business Practices**

Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Tex. Bus. & Com. Code, Chapter 17, or allegations of any unfair business practice in any administrative hearing or court suit and that Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

### **Dispute Resolution**

The dispute resolution process provided for in Texas Government Code, Chapter 2260 shall be used by MRPC/Region 9 Education Service Center and Contractor to resolve any dispute arising under the Contract.

The dispute resolution process provided for in Chapter 2260 shall be used, as further described herein, to attempt to resolve a claim for breach of contract asserted by the Contractor under the Contract. If the Contractor's claim for breach of Contract cannot be resolved by the Parties in the ordinary course of business, it shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, the Contractor shall submit written notice, as required by Chapter 2260, to the MRPC/Region 9 Education Service Center Executive Director or his or her designee. The notice shall also be given to the individual identified in the Contract for receipt of notices. Compliance by the Contractor with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260. The contested case process provided in Chapter 2260 is the Contractor's sole and exclusive process for seeking a remedy for an alleged breach of Contract by the MRPC/Region 9 Education Service Center if the Parties are unable to resolve their disputes as described above.

Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civil Practices and Remedies Code. Neither the execution of the Contract by the MRPC/Region 9 Education Service Center nor any other

conduct of any representative of the MRPC/Region 9 Education Service Center relating to the Contract shall be considered a waiver of sovereign immunity to suit.

For all other specific breach of contract claims or disputes under the Contract, the MRPC/Region 9 Education Service Center and the Contractor shall first attempt to resolve them through direct discussions in a spirit of mutual cooperation. If the Parties' attempts to resolve their disagreements through negotiations fail, the dispute will be mediated by a mutually acceptable third party to be chosen by the MRPC/Region 9 Education Service Center and the Contractor within fifteen (15) days after written notice by one them demanding mediation under this Part. The Contractor shall pay all costs of the mediation unless the MRPC/Region 9 Education Service Center in its sole good faith discretion, approves its payment of all or part of such costs. By mutual agreement, the MRPC/Region 9 Education Service Center and the Contractor may use a non-binding form of dispute resolution other than mediation. The purpose of this Part is to reasonably ensure that the MRPC/Region 9 Education Service Center and the Contractor shall, in good faith, utilize mediation or another non-binding dispute resolution process before pursuing litigation. The MRPC/Region 9 Education Service Center participation in, or the results of, any mediation or other non-binding dispute resolution process under this Part or the provisions of this Part shall not be construed as a waiver by the MRPC/Region 9 Education Service Center of (1) any rights, privileges, defenses, remedies or immunities available to the MRPC/Region 9 Education Service Center as an arm of the State of Texas or otherwise available to the MRPC/Region 9 Education Service Center ; (2) the MRPC/Region 9 Education Service Center termination rights; or (3) other termination provisions or expiration dates of the Contract.

Notwithstanding any other provision of the Contract to the contrary, unless otherwise requested or approved in writing by the MRPC/Region 9 Education Service Center the Contractor shall continue performance and shall not be excused from performance during the period any breach of contract claim or dispute is pending under either of the above processes; however, the Contractor may suspend performance during the pendency of such claim or dispute if the Contractor has complied with all provisions of Part 2251.051, Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.

#### **Drug Free Work Place**

The Contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug- Free Work Place Act of 1988 is incorporated by reference and the Contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

#### **Eligibility**

Under Texas Government Code, Part 2155.004 (relating to certain taxes), Contractor represents and warrants that Contractor is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this representation and warranty is inaccurate. Contractor represents and warrants that it is not delinquent in the payment of any franchise taxes owed the State of Texas. Also, Texas Government Code, Part 2155.004 prohibits a person or entity from receiving a state contract if that person or entity received compensation for participating in preparing the solicitation or specifications for the Contract.

**Equal Opportunity**

Contractor represents and warrants that it shall not discriminate against any person on the basis of race, color, national origin, creed, religion, political belief, sex, sexual orientation, age, and disability in the performance of this Contract.

**Family Code**

Under Texas Family Code, Title 5, Subtitle D, Part 231.006(d), regarding child support, the responder certifies that the individual or business entity named in this response is not ineligible to receive the specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any responder subject to Part 231.006 must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the response. This information must be provided prior to award.

**False Statements; Breach of Representations**

By signature to this Contract, Contractor makes all the representations, warranties, guarantees, certifications and affirmations included in this Contract. If Contractor signed its Proposal with a false statement or signs this Contract with a false statement or it is subsequently determined that Contractor has violated any of the representations, warranties, guarantees, certifications or affirmations included in this Contract, Contractor shall be in default under this Contract and MRPC/Region 9 Education Service Center may terminate or void this Contract for cause and pursue other remedies available to MRPC/Region 9 Education Service Center under this Contract and applicable law.

**Financial Interests; Gifts**

Contractor represents and warrants that neither Contractor nor any person or entity that will participate financially in this Contract has received compensation from MRPC/Region 9 Education Service Center or any agency of the State of Texas for participation in preparation of specifications for this Contract. Contractor represents and warrants that it has not given, offered to give, and does not intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to any public servant or employee in connection with this Contract.

**Force Majeure**

Neither Contractor nor MRPC/Region 9 Education Service Center shall be liable to the other for any delay in, or failure of performance, of any requirement included in any PO resulting from this RFP caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.

**Immigration**

The Contractor represents and warrant that it shall comply with the requirements of the Immigration Reform and Control Act of 1986 and 1990 regarding employment verification and retention of verifications forms for any individuals hired on or after November 6, 1986, who will perform any labor

or services under the Contract and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) enacted on September 30, 1996.

## **INDEMNIFICATION**

### **ACTS OR OMISSIONS**

Contractor shall indemnify and hold harmless the MRPC/Region 9 Education Service Center, and/or its officers, agents, employees, representatives, contractors, assignees, and/or designees from any and all liability, actions, claims, demands, or suits, and all related costs, attorney fees, and expenses arising out of, or resulting from any acts or omissions of the Contractor or its agents, employees, or subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract.

### **INFRINGEMENTS**

a) Contractor shall indemnify and hold harmless the MRPC/Region 9 Education Service Center, and/or its employees, agents, representatives, contractors, assignees, and/or designees from any and all third party claims involving infringement of united states patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the performances or actions of contractor pursuant to this contract. Vendor and the customer agree to furnish timely written notice to each other of any such claim. Contractor shall be liable to pay all costs of defense including attorneys' fees.

b) Contractor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Contractor's written approval, (iii) any modifications made to the product by the Contractor pursuant to the MRPC/Region 9 Education Service Center's specific instructions, (iv) any intellectual property right owned by or licensed to the MRPC/Region 9 Education Service Center, or (v) any use of the product or service by the MRPC/Region 9 Education Service Center that is not in conformity with the terms of any applicable license agreement.

c) If Contractor becomes aware of an actual or potential claim, or the MRPC/Region 9 Education Service Center provides Contractor with notice of an actual or potential claim, Contractor may (or in the case of an injunction against the MRPC/Region 9 Education Service Center, shall), at Contractor's sole option and expense; (i) procure for the MRPC/Region 9 Education Service Center the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that the MRPC/Region 9 Education Service Center's use is non-infringing.

### **TAXES/WORKERS' COMPENSATION/UNEMPLOYMENT INSURANCE - INCLUDING INDEMNITY**

1) Contractor agrees and acknowledges that during the existence of this contract, contractor shall be entirely responsible for the liability and payment of contractor's and contractor's employees' taxes of whatever kind, arising out of the performances in this contract. Contractor agrees to comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and workers' compensation. The MRPC/Region 9 Education Service Center shall not be liable to the contractor, its employees, agents, or others for the payment of taxes or the provision of unemployment insurance and/or workers' compensation or any benefit available to a MRPC/Region 9 Education Service Center employee or employee of another governmental entity customer.



2) Contractor agrees to indemnify and hold harmless the MRPC/Region 9 Education Service Center and/or its employees, agents, representatives, contractors, and/or assignees from any and all liability, actions, claims, demands, or suits, and all related costs, attorneys' fees, and expenses, relating to tax liability, unemployment insurance and/or workers' compensation in its performance under this contract. Contractor shall be liable to pay all costs of defense including attorneys' fees. The defense shall be coordinated by contractor with the MRPC/Region 9 Education Service Center attorney(s) when the MRPC/Region 9 Education Service Center is a named defendant in any lawsuit and contractor may not agree to any settlement without first obtaining the concurrence from the MRPC/Region 9 Education Service Center through its legal counsel. Contractor and the MRPC/Region 9 Education Service Center agree to furnish timely written notice to each other of any such claim.

### **Independent Contractor**

Contractor or Contractor's employees, representatives, agents and any subcontractors shall serve as an independent contractor in providing the services under any PO resulting from this RFP. Contractor or Contractor's employees, representatives, agents and any subcontractors shall not be employees of MRPC/Region 9 Education Service Center. Should Contractor subcontract any of the services required in this RFP, Contractor expressly understands and acknowledges that in entering into such subcontract(s), MRPC/Region 9 Education Service Center is in no manner liable to any subcontractor(s) of Contractor. In no event shall this provision relieve responder of the responsibility for ensuring that the services rendered under all subcontracts are rendered in compliance with this RFP.

### **Liability for Taxes**

Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of Contractor or its employees. MRPC/Region 9 Education Service Center shall not be liable for any taxes resulting from this Contract.

### **Limitation on Authority; No Other Obligations**

Contractor shall have no authority to act for or on behalf of MRPC/Region 9 Education Service Center except as expressly provided for in this Contract; no other authority, power or use is granted or implied. Contractor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the MRPC/Region 9 Education Service Center.

### **Merger**

This Contract contains the entire agreement between Contractor and MRPC/Region 9 Education Service Center and supersedes any prior understandings or oral or written agreements between MRPC/Region 9 Education Service Center and Contractor on the matters contained herein. No modification, alteration, or waiver of any term, covenant, or condition of this Contract and any attachments shall be valid unless in writing and executed by MRPC/Region 9 Education Service Center and Contractor.

### **No Conflicts**

Contractor represents and warrants that Contractor has no actual or potential conflicts of interest in providing services to the MRPC/Region 9 Education Service Center under this Contract and that Contractor's provision of services under this Contract would not reasonably create an appearance of impropriety.

**No Liability Upon Termination**

If this Contract is terminated for any reason, MRPC/Region 9 Education Service Center shall not be liable to Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination. However, Contractor may be entitled to the remedies provided in Texas Government Code, Chapter 2260.

**No Waiver**

Nothing in this Contract shall be construed as a waiver of the MRPC/Region 9 Education Service Center's sovereign immunity. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the MRPC/Region 9 Education Service Center. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the MRPC/Region 9 Education Service Center under this Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. MRPC/Region 9 Education Service Center does not waive any privileges, rights, defenses, or immunities available to MRPC/Region 9 Education Service Center by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract.

**Note to Responder/Contractor**

Any terms and conditions attached to the response will not be considered unless specifically referred to on this Request for Proposal and may result in disqualification of the response.

**Notices**

Any written notices required under this Contract will be by: (1) hand delivery to Contractor's office address specified on in this Contract; (2) by facsimile with confirmation sheet that it was successfully transmitted to the fax number specified in this Contract; or by U.S. Mail, certified, return receipt requested, to Contractor's office address specified on in this Contract, or to the MRPC/Region 9 Education Service Center address of 301 Loop 11 Wichita Falls, TX 76306. Notice will be effective on receipt by the affected party. Either party may change the designated notice address or fax number in this Part by written notification to the other party.

**Prohibited Use of Appropriated or other Funds Under Control of MRPC/Region 9 Education Service Center; Lobbying**

The Contractor represents and warrants that ordering entities' payments to the Contractor and Contractor's receipt of appropriated or other funds under any of this or any resulting agreement are not prohibited by Texas Government Code, Part 556.005 or Part 556.008.

**Severability Clause**

In the event that any provision of this Contract is later determined to be invalid, void, or unenforceable, then the remaining terms, provisions, covenants, and conditions of this Contract shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

**Signatories**

The signatories represent and warrant that they have full authority to enter into this Contract on behalf of the respective parties.

**Strict Compliance**

Time is of the essence in the performance of this Contract. Contractor shall strictly comply with all of the deadlines, requirements, and Standards of Performance for this Contract.

**Substitutions**

Substitutions are not permitted without written approval of MRPC/Region 9 Education Service Center.

**Survival of Terms**

Termination of the Contract for any reason shall not release the Contractor from liability or obligation set forth in the Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, invoice and fees verification.

**Term and Termination**

This Contract shall become effective on the date signed by the appropriate official of MRPC/Region 9 Education Service Center and shall expire on August 31, 2018 unless otherwise sooner terminated as provided in this Contract. Notwithstanding the termination or expiration of this Contract, the provisions of this Contract regarding confidentiality, indemnification, transition, records, right to audit and independent audit, property rights, dispute resolution, invoice and fees verification, and default shall survive the termination or expiration dates of this Contract. MRPC/Region 9 Education Service Center may, in its sole discretion, terminate this Contract upon thirty (30) days' written notice to Contractor. Such notice may be provided by facsimile or certified mail; return receipt requested and is effective upon Contractor's receipt.

**(a) Convenience**

MRPC/Region 9 Education Service Center may, in its sole discretion, terminate this Contract upon thirty (30) days' written notice to Contractor. Such notice may be provided by facsimile or certified mail return receipt requested and is effective upon Contractor's receipt. In the event of such termination, the Contractor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. The MRPC/Region 9 Education Service Center shall be liable only for payments for any goods or services ordered from the Contractor before the termination date.

**(b) Cause/Default**

If the Contractor fails to provide the goods or services contracted for according to the provisions of the Contract, or fails to comply with any terms or conditions of the Contract. MRPC/Region 9 Education Service Center may, upon written notice of default to the Contractor, immediately terminate all or any part of the Contract. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies as provided in equity, by law or under the Contract. MRPC/Region 9 Education Service Center may exercise any other right, remedy, or privilege which may be available to it under applicable law of the state and any other applicable law or may proceed by appropriate court action to enforce the provisions of the Contract. The exercise of any of the foregoing remedies will not constitute a termination of the Contract unless MRPC/Region 9 Education Service Center notifies the Contractor in writing prior to the exercise of such remedy. The Contractor shall be liable for all costs and expenses,

including court costs, incurred by MRPC/Region 9 Education Service Center with respect to the enforcement of any of the remedies listed herein.

**Rights upon Termination or Expiration**

In the event that the Contract is terminated for any reason, or upon its expiration, the MRPC/Region 9 Education Service Center shall retain ownership of all documentation obtained from the Contractor under the Contract.

**Testing and Inspection of Goods and Services**

MRPC/Region 9 Education Service Center may test and inspect goods and services purchased under the Contract to ensure compliance with the specifications of this RFP and the Contract. The MRPC/Region 9 Education Service Center may also test and inspect goods and services before they are purchased under the Contract.

Authorized MRPC/Region 9 Education Service Center personnel shall have access to samples of the Contractor's goods. Tests shall be performed on samples submitted with the proposal or on samples taken from regular shipments. All costs of testing and inspection shall be borne by the Contractor. In the event the goods tested fail to meet or exceed all conditions and requirements of the RFP and Contract, the goods will be rejected in whole or in part, at the MRPC/Region 9 Education Service Center's option, and returned to the Contractor upon request at the Contractor's expense. Latent defects may result in cancellation of the Contract at no expense to the MRPC/Region 9 Education Service Center.