



**BRENHAM INDEPENDENT SCHOOL DISTRICT
REQUEST FOR PROPOSALS
RFP # 2022-1002
FOR BOILER INSPECTION AND
BOILER MAINTENANCE AND REPAIR SERVICES**

The Brenham Independent School District (“BISD” and/or the “District”) is soliciting proposals for Boiler Inspection and Boiler Maintenance and Repair Services for BISD’s boilers as more fully set out in the Scope and Specifications sections of this Request for Proposals (“RFP”). An original and at least two (2) true copies of the proposal must be submitted, in a SEALED envelope, and one electronic copy of ALL documents must be submitted on an USB memory stick, in accordance with the instructions set out herein to:

Brenham Independent School District
c/o Paul Aschenbeck
P.O. Box 1147
Brenham, TX 77834-1147

If delivered by hand:

Brenham Independent School District; Maintenance Building
507 E. Sixth Street
Brenham, TX 77833

Submittal Deadline & Proposal Opening:

September 28, 2021 at 2 p.m. at

Brenham ISD Maintenance Building, 507 E. Sixth Street, Brenham, Texas 77833

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PART 1.0 – NOTICE OF INTENTION

Brenham Independent School District (“BISD” or the “District”) is conducting this procurement to establish a contract for Boiler Inspection and Boiler Maintenance and Repair Services for BISD’s boilers by vendors qualified to work on boiler systems. The Initial Term of the prospective contract is a period of one (1) year. **It is anticipated that the Contract term will begin November 1, 2021.**

The District may elect, with mutual agreement of the awarded vendor, to extend any contract awarded pursuant to this procurement solicitation for up to four (4) additional one-year terms (individually, a “Renewal Term”). The maximum duration of any contract resulting from this procurement is a total of five (5) years, running from the date of execution of the contract by the authorized representative of the District. No contract shall be executed until it has been reviewed and approved by the Board of Trustees of the District (“Board”) in a duly called and posted meeting of the Board. This contract can be accessed on an “as needed” basis from a list of contracts that have been competitively bid and awarded with qualified, high performance vendors based on the selection criteria set forth herein. Proposers are requested to submit a proposal offering their total line of available products and services that are commonly purchased by government entities, school districts and other public, not-for-profit agencies and organizations.

Product(s) considered for award shall equal or exceed the technical, environmental and performance standards and specifications as defined within this RFP and further described in Part 4.0 Scope and Specifications.

The good(s) or service(s) to be purchased under the awarded contract, if any, may be of indefinite delivery and indefinite quantity (IDIQ).

PART 2.0 – PROPOSAL REQUIREMENTS

Please read carefully this entire proposal document and specifications. Complete all forms and submit your bid with all appropriate attachments.

2.1 Request for Proposals (RFP) Documents

BISD procurement solicitation documents are made available to anyone who wishes to submit a proposal. However, it is the responsibility of the proposer submitting a proposal to make certain that the BISD has the appropriate company name, authorized representatives, and contact information on file for the purpose of receiving notices, changes, addenda or other critical information. BISD procurement solicitation documents are available at www.brenhamisd.net/page/business.Bids or at the BISD maintenance building located at 507 E. Sixth Street, Brenham, Texas 77833.

2.2 Tentative Timetable

BISD anticipates following the timetable listed below for this job:

Item	Activity	Date & Time
1	Job starts to advertise (1 st run)	September 9, 2021
2	Job advertised (2 nd run)	September 16, 2021
3	Pre-Proposal Meeting	September 21, 2021 at 2 p.m.
4	Addenda (if any)	September 23, 2021
5	Deadline for submission of proposals (<i>See Part 3.0 – Instruction to Proposers – for detailed submission requirements</i>)	September 28, 2021 at 2 p.m.
7	Anticipated Award Date	October 4, 2021

The table above is only an estimate and may vary.

2.3 Procurement Method

BISD is utilizing the Request for Proposals (RFP) method of procurement in accordance with Texas Education Code Section 44.031(3) Purchasing Contracts, Request for Proposals for services other than construction services.

For information regarding the proposal process, contact **Paul Aschenbeck**, BISD Director of Facilities 507 E. Sixth Street, Brenham, TX 77834, paschenbeck@brenhamk-12.net. **All communications pertaining to the RFP shall be addressed in writing, as outlined in the Questions and Clarification Section, below.**

2.4 Pre-Proposal Conference

A pre-proposal conference is scheduled for September 21, 2021 at 2 p.m. at the BISD Maintenance Building, located at 507 E. Sixth Street, Brenham, Texas 77833. **Attendance is not mandatory**, but all prospective vendors are highly encouraged to attend in order to have a better understanding of the requirements of this RFP. Persons with disabilities requiring special accommodations should contact **Paul Aschenbeck**, BISD Director of Facilities 507 E. Sixth Street, Brenham, TX 77833 paschenbeck@brenhamk-12.net, at least two (2) business days prior to the conference.

2.5 Rights Reserved by BISD and Restrictions on RFP Process

- a) BISD reserves the right to cancel this solicitation in whole or in part by issuance of a revised or amended Request for Proposals.
- b) BISD further reserves the right to award one or more contracts, in part or in whole, to a single or to multiple prospective vendors or proposers. The decision to award multiple contracts, award only one contract, or to make no awards rests solely with BISD. BISD may make multiple awards, and this fact should be taken into consideration by each proposer.
- c) BISD assumes no financial responsibility for any costs incurred by prospective vendors in developing and submitting a proposal or any amendments or addenda, participating in bid conferences, participating in any negotiation sessions or discussions, or any other costs incurred by proposers prior to award of a contract pursuant to this RFP.
- d) BISD reserves the right to reject any and/or all proposals, to award contracts for individual products or services as may appear advantageous, and to negotiate separately in any manner necessary to serve the best interests of the District. BISD further reserves the right to accept, reject, or negotiate modifications in any terms of a proposed vendor's proposal or any parts thereof. BISD further reserves the right to waive any formalities or technicalities if deemed in the best interest of the District. BISD also reserves the right as sole judge of quality and equality.

2.6 Questions and Clarification

- a) Questions regarding the requirements specified in this solicitation may be sent via email to Paul Aschenbeck at paschenbeck@brenhamk-12.net **no less than five (5) business days** before the proposals are due.
- b) BISD will not answer verbal questions; any responses to a prospective vendor's questions will be posted through an addendum to the RFP.

PART 3.0 – INSTRUCTIONS TO PROPOSERS

This portion of the RFP includes instructions on the format proposers must follow in preparing and submitting their proposals. It further identifies how questions can be raised and will be addressed.

3.1 Compliance with Specifications

Proposers are required to respond to all requests identified in this RFP and indicate their acceptance or objection to the terms of the RFP and the terms of the Agreement. Any exceptions to the terms and conditions in the RFP or the Agreement must be clearly indicated in the proposer's submitted proposal. Each proposer, by making its proposal, represents that the proposer has read and understands the RFP and the Agreement.

3.2 Required Proposal Format

Proposers should submit one (1) original and at least two (2) true copies of the proposal, in a SEALED envelope, and one electronic copy of ALL documents must be submitted on an USB memory stick that includes the following:

- BISD's Vendor Packet, including Pricing form, Execution of Offer form, references, and all included forms and certifications
- Proof of insurance as required herein, including liability insurance and workers' compensation coverage (See Section 6.13)
- A description of proposer's similar experience
- Evidence of the appropriate license(s), if any are required, to perform the scope of work of this RFP

3.3 **REQUIRED ORGANIZATION:** To achieve a uniform review process and obtain the maximum degree of comparability, a Proposal must be organized in the manner specified and shall be submitted in a binder with tabs as set forth below:

- TITLE PAGE:** Include RFP number and name, Vendor's name, address, telephone number, name of contact person, and date.
- TAB 1 – TABLE OF CONTENTS:** Clearly identify the materials by tabs and page numbers.
- TAB 2 – FORMS:** Complete and return Forms A–J and any Attachments set forth in BISD's vendor packet in the following order:

All Forms and Attachments are Mandatory:

- *FORM A: Execution of Offer*
- *FORM B: Vendor Questionnaire*
- *FORM C: General Certifications*
- *FORM D: EDGAR Certifications*
- *FORM E: Exceptions (see Section 3.1)*
- *FORM F: Conflict of Interest Instructions and Questionnaire (Form CIQ)*
- *FORM G: SB 9 Certification Forms*
- *FORM H: IRS Form W-9*
- *FORM I: 1295 Form*
- *FORM J: Certificate of Insurance (Acord Form) or a letter from Proposer's insurance provider stating that Proposer can provide the levels of insurance required in this RFP*
- *FORM K: Pricing Form*
- *FORM L: Confidentiality Declaration Form*

- TAB 3 – PROFILE OF PROPOSER:**

- Indicate the number of people in your organization and their level of experience and qualifications.
- List Proposer's top ten clients (current or former clients from the past two years) indicating the type of goods and/or services provided and/or performed for each client.

- TAB 4 – SCOPE SECTION:** Clearly describe the scope of the goods and/or services to be provided based upon the information stated in **Section 4.0, Scope and Specifications**. Respond to each item listed, as appropriate.
- TAB 5 – INVOICE PROCEDURES:** Describe Vendor’s invoicing and delivery procedures. Include:
 - Documentation identifying all of Proposer’s fees. (See Section 6.23 Prices & Pricing Form)
 - Payment Terms
- TAB 6 – PRICE:** In accordance with the pricing form included in Section 7.0, provide any and all pricing information including, but not limited to the following.
 - Time and materials pricing for Boiler Inspection and Boiler Maintenance and Repair Services
 - Hourly rate(s) for additional services requested by the District
- TAB 7 - ADDENDA:** Insert all addenda under this section.

3.4 FORMAT: The District requires typed responses. Proposals **must be printed on ONE side of the paper only**. Proposals must be submitted with each copy in its own binder. The original Proposal must be labeled “ORIGINAL,” and the two (2) true copies must be labeled “COPY.” **THE “ORIGINAL” MUST CONTAIN MANUAL SIGNATURES.** One electronic copy of the Proposal (including ALL documents and forms) must be submitted on an USB memory stick Label the outside of each binder and any container for the binders with Proposer’s name, address, RFP number, and RFP name.

3.5 Addendum

Any interpretations, corrections, additions, or changes to this RFP will be communicated to proposers by the issuance of an addendum. It is the responsibility of the proposer, prior to submitting the proposal, to determine whether an addendum was issued. All proposers shall comply with the requirements specified in any addendum issued by BISD.

3.6 Disqualification

A proposer may be disqualified before or after the proposals are opened, upon evidence of collusion with the intent to defraud, or evidence of intent to perform other illegal activities for the purpose of obtaining an unfair competitive advantage.

3.7 Interpretation

This solicitation represents the basis for any award and supersedes all prior offers, negotiations, exceptions and understandings (whether orally or in writing). Submitted proposals should be self-explanatory and should not require any clarification or additional information.

3.8 Withdrawal of Proposals

A proposal that has been submitted may be withdrawn prior to the deadline for submission of proposals.

3.9 Preferences

BISD may apply applicable preferences for Texas resident proposers in the event of a tie bid. Preferences must be explicitly claimed by proposer and may not be applicable in procurements and/or contracts involving federal funds unless the procurement and/or contract involves unprocessed locally grown or locally raised agricultural products for use by BISD in a Child Nutrition Program. *See Texas Government Code §§ 2252.001 - .004; 2 C.F.R. § 200.319.*

3.10 Responsible Vendor

A responsible vendor is a vendor who has adequate financial resources (or the ability to obtain such resources), can comply with the requirements set forth in this RFP, and is a qualified and established firm regularly engaged in the type of business that provides the items listed herein.

3.11 Responsive Proposal

Proposals shall be deemed responsive if they comply with all material and administrative aspects of this

solicitation.

3.12 Similar Products

Whenever an article or material is defined by BISD in this solicitation by describing a proprietary product or by using the name of a manufacturer or brand name, the term “or equal” if not inserted shall be implied (as applicable). The specified article or material shall be understood as indicating type, function, minimum standard of design, efficiency and quality desired and shall not be construed as to exclude other manufactured products or comparable quality, design and efficiency (as applicable).

3.13 BISD is tax-exempt

BISD is tax-exempt. Proposal prices should not include taxes.

PART 4.0 – SCOPE & SPECIFICATIONS

4.1 Scope of Services

BISD is looking to obtain proposals from vendors that can provide boiler inspection and boiler maintenance and repair of BISD's boilers, including the locations detailed below (which may be amended from time to time by BISD):

Building	Location of Boiler	Manufacture / Model #
AES	Mechanical Room by Kitchen	Laars PNCH2000NCL2CXN
AES	Mechanical Room by Kitchen	Laars MT2H2000NCK1CXN
BES	Mechanical Room by Kitchen	Rite 150-WG
BES	Mechanical Room by Kitchen	Rite 150-WG
KES	Mechanical Room by Kitchen	Teledyne Laars Magnatherm
BMS	Mech. Room by Band Hall	Laars Rheos
BMS	Mech. Room by Band Hall	Laars Rheos
BJH	Main Building by Kitchen	RBI 33HW0530NE2CSPX
BJH	Main Building by Kitchen	Rite 225WG
BJH	Behind Band Hall	Raypak C48T
BJH	Rubber Gym Heating	Laars NB199537
BJH	Rubber Gym Domestic	Laars MTZV0200NACK1PLN
BJH	Science Wing	Laars RHHH20000NAIF2EXN
BJH	Tax Office	Laars LCR-770
Stadium	Field House	Raypack H3
BHS	By Chiller Yard	Laars RHCH2000NACF2EAN
BHS	By Chiller Yard	Laars RHCH2000NACF2EAN
BHS	By Chiller Yard	Laars RHCH2000NACF2EAN
BHS	By Chiller Yard	Laars RHCH2000NACF2EAN
BHS	Athletic Hall	Laars 1000W-11
BHS	Girls Locker Room	RiverSide Hydron 1000W-11
BHS	Boys Locker Room	Laars 1000W-11
CEC	By the Chillers	Laars PW1825IN09K1ANXX
ECLC	Mech. Room by Kitchen	Ajax WG-600

Scope of Work:

- a. The work shall be scheduled so that all boiler equipment be operative at any time students and/or staff are on campus/BISD facility.
- b. All repairs, alterations and modifications to the boiler must be performed by a competent and qualified person familiar with/in performing boiler inspection, repair, alteration and modification work and all requirements outlined by the Texas Department of Licensing and Regulation (TDLR), <https://www.tdlr.texas.gov/boilers/blrrules.htm>, and by a vendor which has been furnished a manufacturer's "S" Stamp and certified by the American Society of Mechanical Engineers or an American Society of Boiler Pressure Vessel Inspectors and the Texas Department of Labor Standards as being certified to repair, Alter or modify A.S.M.E. Code Welded Boilers.
- c. Inspections, repairs, alterations, and modifications to all boilers and their appurtenances shall conform to the requirements of the National Board of Inspectors Code, Chapter Three (3), "Repairs and Alterations to Boilers and Pressure Vessels by Welding." In addition to the foregoing the repairs, alterations and modifications to all boilers shall be in strict accordance with the Texas Department of Labor Standards, Boiler Inspection Division, Part R ("R" - Stamp). Repairs and Alterations as described in their current Code Book of Boiler Rules and Regulations.
- d. Furnishing all labor, equipment, materials and management necessary for the efficient, professional, and effective delivery of commercial boiler inspection and boiler maintenance and repair.
- e. Vendor shall purchase and provide all manufacturers' replacement parts for each model of boiler. After-market parts shall not be used unless approved by BISD.
- f. Warranty on all equipment and systems provided must come with the maximum granted by the manufacturer. Vendor shall provide manufacturer's warranty documents with full disclosure of any and all warranty terms, conditions and tenures on each equipment and system provided under this RFP.
- g. The equipment and systems shall be warranted against defects in material and workmanship for a period of not less than twelve (12) months. If the manufacturer's standard warranty exceeds twelve (12) months, then the standard warranty period shall apply. Vendor shall furnish manufacturer's warranty to BISD at the time of delivery.
- h. Vendor is responsible for removal and proper disposal of all debris and trash from the premises when job is completed for the day.

Inspection:

- a. Responsible for the internal and external boiler inspection for approximately 24 of boilers at the location detailed in the chart above.
- b. Responsible for obtaining proper boiler inspection certificates as issued by the TDLR.

Maintenance and repair:

- a. Perform annual preventative maintenance.
- b. Provide labor and normal wear parts for the normal operation of the scheduled boilers.
- c. "Normal wear parts" include, but are not limited to: ignitors, flow switch, high pressure relief safety valve, flame sensor, air pressure switch and any and all gaskets needed to perform annual maintenance. Refer to each boiler's manufacturer's installation and operation manual for a complete list of annual replacement parts.
- d. Gas valves, burners, main controllers, low water cutoff switch, air filters, high pressure cutoff switch, blower assemblies, exhaust stacks, and other such boiler components are not considered annual replacement parts and replacing these components may be done only with the prior written consent of BISD.

- e. The Vendor is to secure and pay for all permits and all fees and file with the appropriate jurisdiction the necessary information required by ordinance, and complete the work in conjunction with the governing jurisdiction's regulation.

Reporting:

- a. A written report for each boiler will be submitted at the time of invoicing. The boiler report must contain the boiler's state ID number, all initial operational observation, all work performed, and all conditions of operations observed once the boiler is back in operation.
- b. Vendor's inspector will be responsible for approving/signing a R1-Release Form for each boiler upon which work is performed. In addition, if Change Order Work is required above and beyond original Bid Quotes the District's State Registered Boiler Insurance Inspector shall also inspect and sign the R1-Release Form. This R1-Release Form must be witnessed by an authorized representative of BISD to insure agreement with approval. Scheduling with an authorized witness of the Inspector's review status work can be accommodated with a minimum of four (4) hours advance notice through the Vendor Administrator.
- c. Vendor's inspector will also be responsible for witnessing all hydro tests work as completed.

Other requirements:

- a. Many of BISD buildings' hot water systems are supplied by single boilers which do not have backup or a redundant boiler; therefore, all boilers taken out of service for maintenance must be returned to service as soon as possible and prior to the technician leaving campus.
- b. In the event a boiler needs to be taken out of service for an extended period of time, this must be scheduled with advance notice. BISD may request this work be performed after normal business hours at a prior agreed upon date.

4.2 Specifications

It is the intention of BISD to establish one or more contract(s) with highly qualified Vendor(s) for boiler inspection and boiler maintenance and repair services. Vendor(s) shall provide these products and/or covered services under the terms of this RFP and the Contract set forth in **Section 6.0 Contract Terms and Conditions**.

Normal working hours: for the purposes of this RFP, normal working hours shall be defined as the hours of 7:00 a.m. to 4:00 p.m., Monday through Friday. Vendor may be required to respond on an emergency basis from 4:01 p.m. to 6:59 a.m. Monday through Friday and all-day Weekends and Holidays.

Proposers shall provide in their proposals the following:

- BISD's Vendor Packet, including Pricing form, Execution of Offer form, references, and all included forms and certifications
- Proof of insurance as required herein, including liability insurance and workers' compensation coverage (See Section 6.13)
- A description of proposer's similar experience
- Evidence of the appropriate license(s), if any are required, to perform the scope of work outlined herein.

PART 5.0 – EVALUATION AND AWARD OF PROPOSALS

In accordance with applicable laws, rules, and regulations for public purchasing, award(s) will be made to the responsible proposer(s) whose proposal(s) is/are determined, after evaluation, to be the best value to BISD. To qualify for evaluation, a proposal must have been submitted on time and must materially satisfy all mandatory requirements identified in this document. BISD, in its sole discretion, may deem a Proposal non-responsive if Proposer fails to comply with the instructions in this RFP or submits an incomplete Proposal. BISD may, in its sole discretion, eliminate non-responsive proposals from further evaluation.

5.1 Evaluation Criteria

BISD will review and evaluate proposals and make a recommendation to the BISD Board of Trustees. BISD will base a recommendation for contract award on the following factors, in accordance with Texas Education Code § 44.031:

Evaluation Factors	Weighted Value
1. Price	Points 60
2. Reputation of Vendor and of Vendor’s goods and/or services	Points 10
3. Quality of Vendor’s goods and/or services	Points 15
4. Extent to which the goods and/or services meet BISD’s needs	Points 10
5. Vendor’s past relationship with BISD	Points 5
6. Impact on the ability of BISD to comply with laws and rules relating to HUBs	Points 0
7. Total long-term cost to BISD to acquire Vendor’s goods and/or services	Points 0
8. For a contract for goods and services, other than goods and services related to telecommunications and information services, building construction and maintenance, or instructional materials, whether the Vendor or the Vendor’s ultimate parent company or majority owner: (A) has its principal place of business in this state; or (B) employs at least 500 persons in this state	Points 0
100 Points	

5.2 Estimated Quantities

BISD makes no guarantee or commitment of any kind concerning quantities that will actually be purchased. BISD makes no guarantee or commitment of any kind regarding usage of any contracts resulting from this solicitation.

5.3 Formation of Contract (Execution of Offer)

A response to this solicitation is an offer to contract with BISD based upon the terms, conditions, scope of work, and specifications contained in this procurement solicitation. A solicitation/proposal does not become a contract unless and until it is accepted by BISD after approval by the BISD Board of Trustees. The proposer must submit a signed Execution of Offer Form.

5.4 Non-Exclusive Contract

Any contract resulting from this solicitation is non-exclusive and shall be awarded with the understanding and agreement that it is for the sole convenience of BISD. BISD is free to have multiple contracts for the awarded goods and services and may initiate other procurement solicitations or purchasing activity with other vendors at any time, in BISD’s sole discretion.

5.5 Appeal/Protest Process

Any Vendor who submitted a proposal may appeal BISD’s award, if the appeal is based on deviations from

laws, rules, regulations, or BISD Board policies. BISD Board Policy GF (Local) applies to any Vendor wishing to appeal a proposal and/or award of a contract. In accordance with Policy GF (Local), a Vendor shall submit a complaint/appeal form by hand-delivery, fax, or U.S. mail, to BISD. Complaints/appeals must be received by the close of business on or before the 15th BISD business day after award of the contract. In the event Vendor is unsure about the award of the contract, it is the Vendor's responsibility to contact BISD on the next business day after the award is announced and verify details concerning the award

PART 6.0 – GENERAL TERMS AND CONDITIONS

The words “bids,” “requests for proposals,” “quotes,” “RFPs,” “solicitation,” “procurement,” and their derivatives may be used interchangeably in these terms and conditions. These terms and conditions apply to all bids, requests for proposals, quotes, competitive sealed proposals, and other procurement solicitations to which they are attached. The term “Vendor” means each awarded vendor chosen by BISD.

These General Terms and Conditions are part of the final contract in each commodity and/or service contract and are part of the terms and conditions of each purchase order or other bid/proposal forms issued in connection with this solicitation.

Proposers are responsible for identifying any exceptions to these terms and conditions. **ANY EXCEPTIONS MUST BE NOTED IN THE PROPOSAL.** Proposals that are qualified with conditional clauses, items not called for, or other irregularities may be considered non-responsive by BISD and eliminated from further consideration by BISD.

This Agreement is entered into between Brenham Independent School District (“BISD”) and Vendor, having submitted a proposal in response to a procurement solicitation issued by BISD and whose proposal has been accepted and awarded by BISD. In consideration of the mutual covenants and conditions contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, BISD and Vendor, intending to be legally bound, and subject to the terms, conditions, and provisions of this Agreement, agree as follows:

6.1 Agreement Terms; Amendment

The terms of this Agreement shall govern all procurements conducted hereunder. No pre-published terms on the Vendor’s order acknowledgments, invoices, or other forms shall have any force or effect. Further, no amendment of this Agreement shall be permitted unless first approved in writing by BISD, and no such amendments shall have any effect unless and until a written amendment to this Agreement is executed by BISD’s Superintendent or designee after any necessary approvals have been obtained from the BISD Board of Trustees.

6.2 Assignment of Agreement

Vendor may not assign this Agreement or any of its rights, duties, or obligations hereunder without the prior written approval of BISD. Any attempted assignment of this Agreement by Vendor shall be null and void. Any purchase or work order made as a result of this Agreement may not be transferred, assigned, subcontracted, mortgaged, pledged, or otherwise disposed of or encumbered in any way by Vendor without the prior written approval of BISD. Vendor is required to notify BISD when any material change in operations occurs, including but not limited to, changes in distribution rights for awarded products, bankruptcy, material changes in financial condition, change of ownership, and the like, within three (3) business days of such change.

6.3 Captions

The captions herein are for convenience and identification purposes only, are not an integral part hereof, and are not to be considered in the interpretation of any part hereof.

6.4 Certifications.

- a. Vendor hereby certifies that it is not a company identified on the Texas Comptroller’s list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State.
- b. If (a) Vendor is not a sole proprietorship; (b) Vendor has ten (10) or more full-time employees; and (c) this Agreement has a value of \$100,000 or more, the following certification shall apply; otherwise, this certification is not required. Pursuant to Chapter 2270 of the Texas Government Code, Vendor hereby certifies and verifies that neither the Vendor, nor any affiliate, subsidiary, or parent company of the Vendor, if any (the “Vendor Companies”), boycotts Israel, and the Contractor agrees that the Vendor and Vendor Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term “boycott” shall mean and include refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit

commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

6.5 Compliance with Laws

Vendor shall comply with all applicable federal, state, and local laws, statutes, ordinances, standards, orders, rules, and regulations, including, as applicable, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, prompt payment and licensing laws and regulations, the Uniform Guidance for Federal Awards (2 CFR Part 200), and all applicable requirements and regulations, including those related to reporting, patent rights, copyrights, data rights and those mandated by federal agencies making awards of federal funds to BISD. For the entire duration of this Agreement, Vendor and all subcontractors shall maintain all required licenses, certifications, permits, and any other documentation necessary to perform this Agreement. Vendor must comply with all state and local building code requirements unless otherwise specifically provided in the BISD's Purchase Order, and Vendor must pay all fees and charges for connections to outside services and for use of property outside the project site.

6.6 Confidentiality

Vendor acknowledges that BISD is subject to the Texas Public Information Act, and Vendor waives any claim against and releases from liability BISD, its officers, employees, agents, and attorneys with respect to disclosure of information provided under or in this Agreement or otherwise created, assembled, maintained, or held by Vendor and determined by BISD, the Attorney General of Texas, or a court of law to be subject to disclosure under the Texas Public Information Act.

6.7 Contract Term

The initial term of the Agreement is for a period of one (1) year, with BISD having the option to renew the Agreement for four (4) additional years in one (1) year increments. Consequently, the total term of the Agreement may be for a period of five (5) years. The phrase "Term" in this Agreement shall mean the then-current Term of the Agreement, whether the initial term or a renewal term.

6.8 Entire Agreement

This Agreement, the procurement solicitation issued by BISD, and Vendor's proposal submitted in response to BISD's procurement solicitation, and the attached and incorporated addendum or exhibits, if any, contain the entire agreement of the parties relative to the purpose(s) of the Agreement and supersede any other representations, agreements, arrangements, negotiations, or understanding, oral or written, between the parties to this Agreement. In the event of a conflict between this Agreement and the procurement solicitation issued by BISD or Vendor's proposal submitted in response to BISD's procurement solicitation, this Agreement shall control. In the event of a conflict between the procurement solicitation issued by BISD and Vendor's proposal submitted in response to BISD's procurement solicitation, BISD's procurement solicitation shall control. This Agreement supersedes any conflicting terms and conditions on any purchase or work orders, invoices, checks, order acknowledgements, forms, purchase orders, or similar commercial documents relating hereto and which may be issued by Vendor after the Effective Date of this Agreement.

6.9 Force Majeure

Neither BISD or Vendor shall be deemed to have breached any provision of this Agreement as a result of any delay, failure in performance, or interruption of service resulting directly or indirectly from acts of God, network failures, acts of civil or military authorities, civil disturbances, wars, energy crises, fires, transportation contingencies, interruptions in third-party telecommunications or Internet equipment or service, other catastrophes, or any other occurrences which are reasonably beyond such party's control.

The parties to this Agreement are required to use due caution and preventive measures to protect against the effects of force majeure, and the burden of proving that a force majeure event has occurred shall rest on the party seeking relief under this provision. The party seeking relief due to force majeure is required to promptly notify the other party in writing, citing the details of the force majeure event and relief sought, and shall resume performance immediately after the obstacles to performance caused by a force majeure event have been removed, provided the Agreement has not been terminated. Delay or failure of performance, by either party to this Agreement, caused solely by a force majeure event, shall be excused for the period of delay caused solely by the force majeure event. Neither party shall have any claim for damages against the other resulting

from delays caused solely by force majeure. Notwithstanding any other provision of this Agreement, in the event the Vendor's performance of its obligations under this Agreement is delayed or stopped by a force majeure event, BISD shall have the option to terminate this Agreement. This section shall not be interpreted as to limit or otherwise modify any of BISD's contractual, legal, or equitable rights.

6.10 Governing Law and Venue

The laws of the State of Texas, without regard to its provisions on conflicts of laws, govern this Agreement. The mandatory, exclusive jurisdiction for any dispute under this Agreement is in the state and federal courts in Washington County, Texas.

6.11 BISD Property

In the event of loss, damage, or destruction of any property owned by or loaned by BISD that is caused by Vendor or Vendor's representative, agent, employee, or contractor, Vendor shall indemnify BISD and pay to BISD the full value of or the full cost of repair or replacement of such property, whichever is greater, within thirty (30) days of Vendor's receipt of written notice of BISD's determination of the amount due. If Vendor fails to make timely payment, BISD may obtain such money from Vendor by any means permitted by law, including, without limitation, offset or counterclaim against any money otherwise due to Vendor by BISD.

6.12 Indemnification

VENDOR SHALL INDEMNIFY AND HOLD BISD HARMLESS FROM ALL CLAIMS, LIABILITIES, COSTS, SUITS OF LAW OR IN EQUITY, EXPENSES, ATTORNEYS' FEES, FINES, PENALTIES OR DAMAGES ARISING FROM THE ACTS OR OMISSIONS OF VENDOR, VENDOR'S EMPLOYEES, AGENTS, OR SUBCONTRACTORS, IN CONNECTION WITH THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE ARISING FROM CLAIMED INFRINGEMENT OF ANY PATENTS, TRADEMARKS, COPYRIGHT OR OTHER CORRESPONDING RIGHT(S) WHICH IS RELATED TO ANY ITEM VENDOR IS REQUIRED TO DELIVER. Vendor's obligations under this clause shall survive acceptance and payment by BISD.

6.13 Insurance

Vendor is required to provide BISD with copies of certificates of insurance for Texas Worker's Compensation and General Liability Insurance. Certificates of Insurance, name and address of Vendor, the limits of liability, the effective dates of each policy, and policy number shall be delivered to BISD prior to commencement of any work under this Agreement. The insurance company insuring Vendor shall be licensed in the State of Texas and shall be acceptable to BISD. Vendor shall give BISD a minimum of ten (10) days' notice prior to any modifications or cancellation of said policies of insurance. Vendor shall require all subcontractors performing any work under or relating to this Agreement to maintain coverage as specified below.

Minimum Insurance Requirements:

- Vendor shall, at all times during the Term of this Agreement, maintain insurance coverage with not less than the type and requirements shown below. Such insurance is to be provided at the sole cost of Vendor. These requirements do not establish limits of Vendor's liability.
- All policies of insurance shall waive all rights of subrogation against BISD, its officers, employees, and agents.
- BISD shall be named as an "additional insured" on insurance policies, except Worker's Compensation.
- Upon request, certified copies of original insurance policies shall be furnished to BISD.
- BISD reserves the right to require additional insurance should BISD deem additional insurance necessary, in BISD's sole discretion.
 - A. Workers' Compensation (with Waiver of subrogation to BISD) Employer's Liability, including all states, U.S. Longshoremen, Harbor Workers and other endorsements.
 - B. Statutory, and Bodily Injury by Accident: \$100,000 each employee. Bodily Injury by Disease: \$500,000, policy limit \$100,000 each employee. Commercial General Liability Occurrence Form including, but not limited to, Premises and Operations, Products Liability Broad Form Property Damage, Contractual Liability, Personal and Advertising Injury Liability and where the exposure exists, coverage for watercraft, blasting collapse, and explosions, blowout, catering and underground

damage.

- \$300,000 each occurrence Limit Bodily Injury and Property Damage combined
- \$300,000 Products-Completed Operations Aggregate Limit \$500,000 per Job Aggregate
- \$300,000 Personal and Advertising Injury Limit

C. Automobile Liability Coverage

- \$300,000 Combined Liability Limits Bodily Injury and Property Damage Combined

6.14 Interpretation

Vendor agrees that the normal rules of construction that require that any ambiguities in this Agreement are to be construed against the drafter shall not be employed in the interpretation of this Agreement.

6.15 Invoices; Payments

Invoices shall be directed to BISD's Business Office. All invoices shall be itemized to include the type of good(s) and/or service(s) rendered. Vendor shall submit invoices within a timely manner during BISD's fiscal year in which the good(s) and/or services are purchased. Vendor may offer the District a discount for payment of an invoice(s) with stated discount terms. Vendor's invoices should be sent to Brenham Independent School District, P.O. Box 1147, Brenham, TX 77834-1147. Alternative payment terms may be accepted, in BISD's sole discretion. In accordance with Texas Government Code § 2251.021, payments are due to Vendor within forty-five (45) days after the later of the following: (1) the date BISD receives the goods under the Agreement; (2) the date the performance of the service under the Agreement is completed; or (3) the date BISD receives an invoice for the goods or service. Vendor agrees to pay any subcontractors, if any, the appropriate share of the payment received from BISD not later than the tenth (10th) day after the date Vendor receives the payment from BISD. The exceptions to payments made by BISD and/or Vendor listed in Texas Government Code § 2251.002 shall apply to this Agreement.

6.16 New and/or Additional Products/Services

New or additional products/services that meet the specifications detailed in the solicitation may be added to this Agreement, with prior written approval from BISD. Pricing of any new products shall be equivalent to the percentage discount or proposed prices for other similar products. No products/services may be added to avoid competitive procurement procedures. BISD may reject any proposed additions, without cause, in its sole discretion.

6.17 No Substitution

Any order issued pursuant to this Agreement shall conform to the specifications and descriptions identified in this Agreement and in the solicitation. Unless otherwise agreed to in advance by BISD, Vendor will not deliver substitutes without prior authorization from BISD.

6.18 No Agency or Endorsements

BISD and Vendor are independent contractors and have no power or authority to assume or create any obligation or responsibility on behalf of the other party. This Agreement shall not be construed or deemed an endorsement of a specific company or product. It is the intention of the parties that Vendor is independent of BISD and is not an employee, agent, joint venturer, or partner of BISD, and nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee, agent, joint venturer or partner, between BISD and Vendor or BISD and any of Vendor's agents. Vendor agrees that BISD has no responsibility for any conduct of any of Vendor's employees, agents, representatives, contractors, or subcontractors.

6.19 Non-Appropriation Clause

Renewal of this Agreement, if any, will be in accordance with Texas Local Government Code § 271.903 concerning non-appropriation of funds for multi-year contracts. Notwithstanding any other provision of this Agreement or obligation imposed on BISD by this Agreement, BISD shall have the right to terminate this Agreement without default or liability to Vendor resulting from such termination, effective as of the expiration of each budget period of BISD if it is determined by BISD, in BISD's sole discretion, that there are insufficient funds to extend this Agreement. The parties agree that this Agreement is a commitment of BISD's current revenue only.

6.20 Notice

Any notice provided under the terms of this Agreement by either party to the other shall be in writing and shall be given by hand-delivery or by certified or registered mail, return receipt requested. Notice shall be sufficient if made or addressed to the address listed in the signature line of this Agreement. Notice shall be deemed effective upon receipt. Each party may change the address at which notice may be sent to that party by giving notice of such change to the other party by certified or registered mail, return receipt requested.

6.21 Penalties

If Vendor is unable to provide the goods or services at the prices quoted in Vendor's proposal or if Vendor fails to fulfill or abide by the terms and conditions of the Agreement, BISD may take the following action(s), in BISD's sole discretion, and Vendor agrees to comply with BISD's action(s):

- (a) insist that Vendor honor the quoted price(s) specified in Vendor's proposal;
- (b) have Vendor pay the difference between Vendor's price and the price of the next acceptable proposal (as determined by BISD);
- (c) have Vendor pay the difference between Vendor's price and the actual purchase price of the good or service on the open market; and/or
- (d) recommend to BISD's Board of Trustees that Vendor no longer be given the opportunity to submit a proposal to BISD and/or that this Agreement be terminated.

6.22 Performance

Vendor agrees to use best efforts to provide the good(s) and/or service(s) subject to this Agreement.

6.23 Prices

All prices in Vendor's proposal shall be firm for the Term of the Agreement. Vendor may request a price increase each renewal term (if any), in an amount that constitutes the lesser of 10% or the percentage increase in the Services category of the Consumer Price Index; if the CPI is zero or negative, the prices will remain unchanged for the renewal term. Any other price changes shall be presented to BISD for acceptance or rejection by BISD, in its sole discretion, using the same format as was accepted in Vendor's original proposal; all price changes for goods and/or services provided under this Agreement must be approved, in writing, by BISD prior to taking effect, and the following documentation shall be provided to support a request for a price change: justification for change/increase; terms and conditions; market conditions; manufacturers/distributors' impact (if any).

6.24 Quantities

Because all commodities will be provided on an "as needed" basis, BISD makes no representation either orally or in writing to the amount of commodities, services, or related items BISD will use during the Term of the Agreement.

6.25 Records Retention

Vendor shall maintain its records and accounts in a manner that shall assure a full accounting for all goods and/or services provided by Vendor to BISD under this Agreement. These records and accounts shall be retained by Vendor and made available for audit by BISD for a period of not less than three (3) years from the date of completion of the services, receipt of the goods, or the date of the receipt by BISD of Vendor's final invoice or claim for payment in connection with this Agreement, whichever is later. If an audit has been announced, Vendor shall retain its records and accounts until such audit has been completed.

6.26 Right to Audit

BISD, upon written notice, shall have the right to audit all of Vendor's records and accounts relating to this Agreement. Records subject to audit shall include, but are not limited to, records which may have a bearing on matters of interest to BISD in connection with Vendor's work for BISD and shall be open to inspection and subject to audit and/or reproduction by BISD or its authorized representative(s) to the extent necessary to adequately permit evaluation and verification of:

- (a) Vendor's compliance with this Agreement and the requirements of the solicitation,
- (b) compliance with BISD procurement policies and procedures,

- (c) compliance with provisions for computing billings to BISD, and/or
- (d) any other matters related to this Agreement.

6.27 Safety

Vendor, its subcontractors, and their respective employees shall comply fully with all applicable federal, state, and local safety and health laws, ordinances, rules, and regulations in the performance of services under this Agreement, including, without limitation, those promulgated by BISD and by the Occupational Safety and Health Administration (“OSHA”). In case of conflict, the most stringent safety requirements shall govern. Vendor shall comply with all other safety guidelines and standards as required by BISD. Vendor shall indemnify and hold BISD harmless from and against all claims, demands, suits, actions, judgments, fines, penalties, and liability of every kind arising from the breach of Vendor’s obligations under this provision.

6.28 Severability

In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

6.29 Subcontractors

If Vendor uses subcontractors in the performance of any part of this Agreement, Vendor shall be fully responsible to BISD for all acts and omissions of the subcontractors just as Vendor is responsible for Vendor’s own acts and omissions. Nothing in this Agreement shall create for the benefit of any such subcontractor any contractual relationship between BISD and any such subcontractor, nor shall it create any obligation on the part of BISD to pay or to see to the payment of any moneys due any such subcontractor except as may otherwise be required by law.

6.30 Taxes

BISD is tax-exempt, and BISD shall not pay taxes for goods and/or services provided under this Agreement. Vendor represents and warrants that it shall pay all taxes or similar amounts resulting from this Agreement, including, without limitation, any federal, state, or local income, sales or excise taxes of Vendor or its employees. BISD shall not be liable for any taxes resulting from this Agreement.

6.31 Tax Responsibilities of Vendor and Indemnification for Taxes

Vendor and all subcontractor(s) of Vendor shall pay all federal, state, and local taxes applicable to their operation and any persons employed by Vendor and all subcontractors of Vendor. Vendor shall require all subcontractors to hold BISD harmless from any responsibility for taxes, damages, and interest. If applicable, contributions required under federal, state, and/or local laws and regulations and any other costs including, but not limited to, transaction privilege taxes, unemployment compensation insurance, Social Security, and Worker’s Compensation, shall be the sole responsibility of Vendor.

6.32 Termination of Contract

This Agreement shall remain in effect until (1) the Agreement expires by its terms or (2) the Agreement is terminated by mutual agreement of BISD and Vendor. In the event of a breach or default of the Agreement and/or the procurement solicitation by Vendor, BISD reserves the right to enforce the performance of the Agreement and/or the procurement solicitation in any manner prescribed by law or deemed to be in the best interest of BISD. BISD further reserves the right to terminate the Agreement immediately in the event Vendor fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in this Agreement, the procurement solicitation, and/or a purchase or work order; (2) make any payments owed; or (3) otherwise perform in accordance with this Agreement and/or the procurement solicitation. BISD also reserves the right to terminate the Agreement immediately, with written notice to Vendor, if BISD believes, in its sole discretion, that it is in the best interest of BISD to do so. Vendor agrees that BISD shall not be liable for damages in the event that BISD declares Vendor to be in default or breach of this Agreement and/or the procurement solicitation. Vendor further agrees that upon termination of the Agreement for any reason, Vendor shall, in good faith and with reasonable cooperation, aid in the transition to any new arrangement and/or vendor.

6.33 Title and Risk of Loss

Whenever BISD is purchasing (and not leasing) an item under this Agreement, title and risk of loss shall pass

upon the later of BISD's acceptance of the item or payment of the applicable invoice.

All deliveries under this Agreement shall be delivered: **Freight Prepaid, F.O.B. Destination, Full Freight Allowed, Inside Delivery** and shall be included in all pricing in Vendor's proposal unless otherwise clearly stated in writing in Vendor's proposal.

6.34 Waiver

No failure on the part of either party at any time to require the performance by the other party of any term hereof shall be taken or held to be a waiver of such term or in any way affect such party's right to enforce such term, and no waiver on the part of either party of any term hereof shall be taken or held to be a waiver of any other term hereof or the breach thereof. No waiver, alteration, or modification of any of the provisions of this Contract shall be binding unless in writing and signed by duly authorized representatives of the parties hereto.

6.35 Warranty

All goods and/or services provided by Vendor under this Agreement must be warranted to be free from defects in material, workmanship, and free from such defects in design for a period of one (1) year upon the later of BISD's acceptance of the product and/or service or payment of the applicable invoice. Vendor warrants that all goods and/or services furnished under this Agreement shall conform in all respects to the terms of this Agreement, including any drawings, specifications, and/or standards incorporated herein, including, without limitation, those detailed in the procurement solicitation issued by BISD. In addition, Vendor warrants that goods and/or services are suitable for and will perform in accordance with the purposes for which they are intended. Vendor shall assume all liabilities incurred within the scope of consequential damages and incidental expenses, as set forth in the vendor or manufacturer's warranty, which result from either delivery or use of product, which does not meet the specifications within this Agreement or the solicitation procurement.

6.36 Workforce

Vendor shall employ only orderly and competent workers, skilled in the performance of the services, if any, which shall be performed under this Agreement. Vendor, its employees, subcontractors, and subcontractor's employees may not use or possess any firearms, alcoholic or other intoxicating beverages, illegal drugs or controlled substances while on the job or on BISD's property, nor may such workers be intoxicated or under the influence of alcohol or drugs on BISD's property.

6.37 Work Stoppage

If, following seven (7) calendar days of a written notice to a Vendor identifying defective or nonconforming work, the Vendor or its subcontractors fail to correct such defective or nonconforming work, BISD may order the Vendor to stop further work, or any portion thereof, until the defect or nonconformance has been properly corrected by the Vendor or its subcontractors. Should the Vendor not proceed with the correction of defective or non-conforming work within three (3) additional calendar days of BISD's order to stop further work, as set forth above, BISD may cause the removal, repair or correction of the defective or nonconforming work and may charge all associated costs of the same to the Vendor. In no event shall BISD be liable or responsible to Vendor or any other person for or on account of any stoppage or delay in work.

6.38 Safety Data Sheets (SDS)

In the performance of Vendor's services, Vendor shall not cause any release of Hazardous Substances, including asbestos, or contamination of the environment, including the soil, the atmosphere or any water course or ground water. Vendor shall be liable for any claims or damages resulting from such release of or exposures to any such substances as a result of Vendor's activities. The Federal Government requires that the District obtain current and accurate Safety Data Sheets for each product which may contain hazardous substances, create hazardous substances as a by-product, cause harmful physical effects, or otherwise be considered hazardous. The successful vendor must furnish these sheets on all items with the initial delivery of each item to the warehouse and/or campus location.