

EDUCATION SERVICE CENTER REGION 12

GENERAL CONDITIONS

AND

SPECIFICATIONS

FOR

**REQUEST FOR QUALIFICATIONS HEALTH INSURANCE BENEFITS
CONSULTING**

RFQ # 2019-001

CLOSING DATE:

Wednesday

March 27, 2019

2:00 PM

PROPOSAL OF BIDDERS

The term “bid” and the term “proposal” in this document have the same meaning.

The following bid is made for furnishing the materials/services for the Education Service Center Region 12; hereafter may be referred to as “Service Center”.

The undersigned declares that the amount and nature of the services to be furnished is understood and that the nature of this bid is in strict accordance with the conditions set forth and is a part of this bid, and that there will at no time be a misunderstanding as to the intent of the specifications or conditions to be overcome or pleaded after the bids are opened.

The undersigned, in submitting this bid, represents that they are an equal opportunity employer, and will not discriminate with regard to race, religion, color, national origin, age or sex in the performance of this contract.

The undersigned affirms that they are duly authorized to execute this contract that this company, corporation, firm, partnership or individual and has not prepared this bid in collusion with any other bidder, and that the contents of this bid as to prices, terms or conditions of said bid have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of business prior to the official opening of this type of business prior to the official opening of this bid.

The undersigned agrees that they are an independent / unbiased consultant and not affiliated with any institution that may bid for this account.

EMPLOYEE HEALTH BENEFITS CONSULTING AND SETTING UP A HEALTH BENEFITS COOP

RFQ #2019-001

Respectfully Submitted,

Federal ID Number: _____

SIGNATURE

DATE

PRINTED NAME TITLE

COMPANY NAME CONTACT PERSON (Must have knowledge of Bid)

BILLING ADDRESS STREET SERVICE CENTER STATE ZIP

MAILING ADDRESS STREET SERVICE CENTER STATE ZIP

PHONE NUMBER (metro/toll free) FAX NUMBER E-MAIL ADDRESS

NOTICE TO BIDDERS

Sealed proposals will be received by the Education Service Center Region 12, at the office of Terry Marak, Chief Financial Officer, until the hour of 2:00 PM on the 27th day of March, 2019 at which time bids duly delivered and submitted will be considered for supplying the following:

REQUEST FOR QUALIFICATIONS FOR HEALTH BENEFITS CONSULTANT RFQ #2019-001

Any proposal received after stated closing time will be returned unopened. If bids are sent by mail to the Service Center, the bidder shall be responsible for actual delivery of the bid to the Chief Financial Officer before the advertised date and hour for opening of bids. If mail is delayed by the postal service, courier service, an ISP – internet service provider or in the internal mail system of the Education Service Center Region 12 beyond the date and hour set for the bid opening, bids thus delayed will not be considered and will be returned unopened.

Information concerning the bid specifications may be submitted in writing to Terry Marak tmarak@esc12.net by Wednesday, March 27th.

Information on the proposal process/procedures may be obtained from Terry Marak, Chief Financial Officer at (254)-297-1178 or tmarak@esc12.net and Aprille Kaska at (254)297-1245 or akaska@esc12.net

Until the final award by the Education Service Center Region 12, said Service Center reserves the right to reject any and/or all proposals, to waive technicalities, to re-advertise, to proceed otherwise when the best interests of said Service Center will be realized hereby. Bids will be submitted sealed and plainly marked with the date and time of opening.

Publication Dates: March 11, 2019

Closing Date: March 27, 2019 at 2:00 PM

GENERAL CONDITIONS

ADDENDA

It is the responsibility of the vendor to check for addenda. Addenda will be posted to the Education Service Center Region 12's website: www.esc12.net/page/about_Vendor.

ANNUAL CONTRACT FUNDING

The Service Center operates on a fiscal year that ends on August 31st. Because state law mandates that a Service Center may not commit funds beyond a fiscal year, this bid is subject to cancellation if funds for this commodity are not approved in the next fiscal year.

ASSIGNMENT OF PROPOSAL/CONTRACT

The successful bidder may not assign their rights and duties under and award without the written consent of the Service Center's Chief Financial Officer. Such consent shall not relieve the assignor of liability in event of default by their assignee.

PROPOSAL CONSIDERATION / TABULATION

Until final award of the Contract, the Service Center reserves the right to reject any or all bids, to waive technicalities, and to re-advertise for new bids, or proposed to do the work otherwise in the best interests of the Service Center.

NOTE: The selected vendor will be expected to agree to and sign off on the Service Center's Agreement for Professional Services (attached).

The following items will be considered when an award is based on best value:

- The cost or percentage commission to the Service Center;
- The reputation of the bidder and of the bidder's services;
- The quality of the bidders' services;
- The extent to which the services meet the Service Center's needs;
- The bidder's past relationship with the Service Center;
- The impact on the ability of the Service Center to comply with laws and rules relating to contracting with historically underutilized businesses and nonprofit organizations employing persons with disabilities;
- The total long-term profitability/cost to the Service Center to acquire the bidder's services; and
- Any relevant criteria specifically listed in the request for bids or proposals.

BID SUBMISSION

Bids may be submitted in person or by mail.

- Submit bids via mail to ESC Region 12, PO Box 23409, Waco, TX 76702
- To submit a bid via mail or in person, all documents must be returned, and an original signature provided.
- Bids will not be accepted in either format without a signature.
- The Service Center is not responsible for mail service.

CANCELLATION OF BIDS

Bids may be cancelled with 30 days written notice with good cause.

CHANGES OR ALTERATIONS

No part of this bid may be changed/alterd in any way. Vendors must submit written requests to change any specifications/conditions with their proposal. ***Changes made with out submission of a written request to this bid will result in disqualification.***

COMPLETING INFORMATION

Bidder must fill in all information asked for in the blanks provided under each item. Failure to comply may result in rejection of the Bid at the Service Center's option.

CONTRACT CLAUSE

All bidders understand and agree that the vendor's bid response will become a legally binding contract upon acceptance in writing by the Service Center. This contract may be superseded only if replaced with a more extensive contract that is agreed to by both parties.

DEFAULT

In case of default of the successful bidder, the Service Center may procure the articles from other sources and hold the bidder responsible for any excess cost occasioned thereby.

INDEMNIFICATION

In case any action in court is brought against the Owner, or any officer or agent of the Owner, for the failure, omission, or neglect of the vendor to perform any of the covenants, acts, matters, or things by this contract undertaken; or for injury or damage caused by the alleged negligence of the vendor or his subcontractors or his or their agents, or in connection with any claim based on lawful demands of subcontractors, workmen, materialmen, or suppliers the vendor shall indemnify and save harmless the Owner and his officers and agents, from all losses, damages, costs, expenses, judgments, or decrees arising out of such action.

INSURANCE

Deductibles, of any type, are the responsibility of the vendor/contractor.

MISCELLANEOUS

Successful bidder(s) agrees to extend prices to all entities that have entered into or will enter into joint purchasing inter-local cooperation agreements with the Service Center. As such, the Service Center has executed an inter-local agreement with certain other governmental entities authorizing participation in a cooperative purchasing program. The successful vendor may be asked to provide product/services, based upon the bid price, to any other participant in the forum.

The Service Center operates on a fiscal year that ends on August 31st. State law mandates that a Service Center may not commit funds beyond a fiscal year; this bid is subject to cancellation if funds for this commodity are not approved in the next fiscal year.

PAYMENT TERMS & CONDITIONS

All bids shall specify terms and conditions of payment, which will be considered as part of, but not control, the award of bid. The Service Center's review, inspection, and processing procedures ordinarily require thirty (30) days after receipt of payments (invoices), materials or service. Payments (invoices) to the Service Center will be made within 30 days of receipt of the business. The Service Center is open to any reasonable processing procedures that can be negotiated with the winning bidder.

PROVISIONAL CLAUSES

The Service Center will not enter into any contract where the cost is provisional upon such clauses as are known as "escalator" or "cost-plus" clauses.

REJECTION OF BIDS

The Service Center reserves the right to reject any or all bids or to waive technicalities at its option when in the best interests of said Service Center.

Bids will be considered irregular if they show any omissions, alteration of form, additions, or conditions not called for, unauthorized alternate bids or irregularities of any kind. However, the Service Center reserves the right to waive any irregularities and to make the award in the best interests of the Service Center.

The Service Center reserves the right to reject any or all bids, and all bids submitted are subject to this reservation. Bids may be rejected, among other reasons, for any of the following specific reasons:

- Bids received after the time limit for receiving bids as stated in the advertisement.
- Proposal containing any irregularities.
- Unbalanced value of any items.

Bidders may be disqualified, and their bids not considered, among other reasons, for any of the following specific reasons:

- Reason for believing collusion exists among the Bidders.

- Reasonable grounds for believing that any Bidder is interested in more than one Proposal for the work contemplated.
- The Bidder being interested in any litigation against the Service Center.
- The Bidder being in arrears on any existing contract or having defaulted on a previous contract.
- Lack of competency as revealed by a financial statement, experience and equipment, questionnaires, etc.
- Uncompleted work, which in the judgment of the Service Center will prevent or hinder the prompt completion of additional work if awarded.

REQUEST FOR NON-CONSIDERATION

Bids deposited with the Service Center cannot be withdrawn prior to the time set for opening bids. Request for non-consideration of bids must be made in writing to the Chief Financial Officer and received by the Service Center prior to the time set for opening bids. After other bids are opened and publicly read, the Proposal for which non-consideration is properly requested may be returned unopened. The Proposal may not be withdrawn after the bids have been opened, and the Bidder, in submitting the same, warrants and guarantees that this bid has been carefully reviewed and checked and that it is in all things true and accurate and free of mistakes and that such bid will not and cannot be withdrawn because of any mistake committed by the Bidder.

SALES TAX

The total for each bid submitted must include any applicable taxes. Although the Service Center is exempt from most State and Federal taxes, this is not true in all cases. It is suggested that taxes, if any, be separately identified, itemized, and stated on each bid. The Service Center cannot determine for the bidder whether or not the bid is taxable to the Service Center. The bidder through the bidder's attorney or tax consultant must make such determination. Bills submitted for taxes after the bids are awarded will not be honored.

SPECIFICATIONS

SCOPE OF SERVICES

Service 1

The Service Center is requesting qualifications for a health insurance benefits consultant. These services will include, but are not limited to:

1. Assisting the center with securing employee health insurance for member school districts (and potentially the Service Center itself).
2. Auditing resulting contracts for accuracy of coverage, terms, and conditions.
3. Assisting the Service Center in determining specifications for future insurance coverage.
4. Preparing, disseminating, and analyzing bid packages through identification of appropriate carriers, analysis of proposals, provisions of recommendations, and assistance in contract negotiation.
5. Marketing the selected health insurance benefits to school districts in the state of Texas.
6. Reviewing the employee health benefits package for quality of benefits provided, cost effectiveness, competitiveness and plan administration on an annual basis.
7. Perform a Health Benefits review of any plan member. Review to include any suggested changes and costs saving associated with any changes.
8. Monitor ongoing contracts, including any third party administrators, to insure contract compliance.
9. Analyzing claims history and insurance utilization on at least a quarterly basis (or more often if negotiated).
10. Assist with Wellness programs initiatives including communication efforts to educate employees on those initiatives and promote positive trends in employee health.
11. Providing information on employee health benefit issues, trends, and proposed new legislation.
12. Meeting with the Service Center's Administrative staff as needed.
13. Assisting in the design of school district employee benefits communications and participating in Benefit Fairs and the annual enrollment process.
14. Providing a key contact person to be available to answer questions and resolve issues that arise during the year regarding employee health benefits, contract administration, and service provisions.
15. Evaluating various insurance products submitted for consideration by insurance carriers.
16. Perform other benefits related consultant services as needed or requested.
17. Vendor Proposal Requirements:

The proposal must clearly demonstrate the required qualifications, expertise, competence, and capability of the vendors. Please provide a concise description of your firm's ability to provide the services required in the scope of this document. Costs incurred by firms responding to this RFQ are solely their responsibility. Additionally please provide answers to the following questions:

- a) Describe your organizational structure (e.g. partnership, sole proprietorship, etc.).
- b) Confirm you are a license broker in the state of Texas (if necessary).
- c) Briefly describe your company's management and philosophy.
- d) How many public sector clients does your firm currently provide these types of services to?
- e) Provide references of clients that have secured similar services.
- f) Describe how your organization assists clients in developing a strategic health benefit plan.
- g) Explain the process of developing plan specifications, selection of an insurance vendor, and your firm's experience in this process.
- h) Describe any automation processes or tools your firm employs in this process.

Service 2

The consultant/consulting who will assist the Service Center in the design, set up, procurement process, and management of a Regional/Statewide benefits Co-op. The Co-Op is to be initially offered to School Districts in Region 12 and eventually throughout the State via interlocal agreements. The purpose of the Co-Op is to offer the best vendors and products for the price for the following services:

1. Health Insurance Plans

2. Medical Claims Administration Services
3. Preferred Provider Networks
4. Prescription benefit Management Services
5. On Site/Near Site Clinic Management Services
6. Employee Assistance Programs
7. Section 125 Administration
8. On-Line Enrollment Services and Voluntary Plan Administration/Offerings
9. Tele-Medicine Providers
10. Stop-Loss Insurance
11. Any Other Products as needed

CONSULTANT FEE

The fee each Consultant proposes, as determined by the above requirements, must include the proposed commission and/or annual retainer as well as hourly rates (if applicable). The proposal should be net-of-commission and should detail what is covered by the retainer fee along with when hourly rates will occur or any other specific costs. The fee is to be broken out by each part.

REQUESTED PROPOSAL COPIES

Please provide 3 copies of the proposal.

PRE-BID CORRESPONDENCE

If you need any additional information, please submit all questions in writing to Terry Marak, CFO and copy Aprille Kaska. **All requests for additional information should be received no later than Wednesday, March 21, 2019.**

EVALUATION CRITERIA

All proposals received will be judged according to the following criteria and percentages:

Cost:	40%
Expertise in the Public Sector:	20%
References:	20%
Experience Base:	10%
Presentation and Communication:	10%

PROPOSAL DEADLINE

All sealed proposals must be submitted to Terry Marak, Chief Financial Officer on **Wednesday March 27, 2019 by 2:00PM**. No proposal will be accepted or considered after that time.

INSURANCE REQUIREMENTS

All proposals must include the specific information required in our attached Consulting Agreement (Professional Services Contract). Provide a pricing attachment if the Professional Services Contract is not flexible enough and note "See Attached pricing".

SPECIAL CONDITIONS/QUESTIONNAIRE

1. The winning vendor(s) will be expected to sign the “Professional Services Contract” document attached. The agreement will be customized to reflect this work, but the main terms of the agreement are not subject to change.
2. The RFP award(s) will be for one year and prices will be fixed during that period, and the Service Center would like to have an option to renew this agreement for two (2) additional - one (1) year periods based on mutual agreement by both parties. Prices must remain fixed for the initial period, but please note in your response how you will handle price increases for the renewal periods of years two and three.
3. This agreement is cancellable with 30 days’ notice and all vendor expenses will be reimbursed for the services provided up to that point.

THE STATE OF TEXAS §

Professional Services Contract

COUNTY OF MCLENNAN §

with _____

THIS CONTRACT is entered into on this _____ day of _____, 20__, by and between the **EDUCATION SERVICE CENTER REGION 12, TEXAS**, located in McLennan County, Texas, (hereinafter referred to as “Service Center”), acting by and through its Service Center Manager or his designee, and _____ (“hereinafter referred to as “Consultant”) whose address is _____.

W I T N E S S:

WHEREAS, the Service Center desires to obtain professional services from Consultant for _____; and

WHEREAS, Consultant health insurance benefits/brokerage firm qualified to provide such services and is willing to undertake the performance of such services for Service Center in exchange for fees hereinafter specified; NOW, THEREFORE,

THAT IN CONSIDERATION of the covenants and agreements hereinafter contained and subject to the terms and conditions hereinafter stated, the parties hereto do mutually agree as follows:

I. Employment of Consultant

Consultant will perform as an independent contractor all services under this Contract to the prevailing professional standards consistent with the level of care and skill ordinarily exercised by members of the architectural, engineering and planning professions, both public and private, currently practicing in the same locality under similar conditions including but not limited to the exercise of reasonable, informed judgments and prompt, timely action. If Consultant is representing that it has special expertise in one or more areas to be utilized in this Contract, then Consultant agrees to perform those special expertise services to the appropriate local, regional and national professional standards.

II. Scope of Services

Consultant shall perform such services as are necessary to _____ specifically including, but not necessarily limited to, the tasks enumerated more fully in the entitled “Scope of Services” previously listed (hereafter referred to as the “Project”). The above Scope of Services is hereby incorporated herein by reference and made a part hereof as if written word for word.

III. Payment for Services

Total payment for services described herein shall be a sum not to exceed _____ Thousand _____ and No/100 Dollars (\$_____). This total payment for services includes Consultant’s ordinary expenses. Additional expenses, which are extraordinary in nature, shall be approved in advance by the Service Center in writing signed by the parties. Such extraordinary expenses may be paid as incurred and billed to the Service Center pursuant to this Contract over and above the total payment amount identified in this provision. Any extraordinary expenses not approved in writing in advance by the Service Center shall remain the sole responsibility of the Consultant.

Consultant will bill the Service Center on a percent complete basis in accordance with Attachment “B”; provided however that this Contract shall control in the event of any conflict between the language in

Attachment "B" and the language in this Contract. If additional services, trips or expenses are requested, Consultant will not provide such additional services until authorized by the Service Center in writing to proceed. The Scope of Services shall be strictly limited. The Service Center shall not be required to pay any amount in excess of the amount identified in the preceding paragraph unless the Service Center shall have approved in writing in advance (prior to the performance of additional work) the payment of additional amounts.

Each month Consultant will submit to the Service Center an invoice supporting the percentage complete for which payment is sought. Each invoice shall also state the percentage of work completed on the Project through the end of the then submitted billing period, the total of the current invoice amount and a running total balance for the Project to date.

Within thirty (30) days of receipt of each such monthly invoice the Service Center shall make monthly payments in the amount shown by Consultant's approved monthly statements and other documentation submitted.

Nothing contained in this Contract shall require the Service Center to pay for any work that is unsatisfactory as determined by the Service Center or which is not submitted in compliance with the terms of this Contract, nor shall failure to withhold payment pursuant to the provisions of this section constitute a waiver of any right, at law or in equity, which the Service Center may have if Consultant is in default, including the right to bring legal action for damages or for specific performance of this Contract. Waiver of any default under this Contract shall not be deemed a waiver of any subsequent default.

IV. Revisions of the Scope of Services

The Service Center reserves the right to revise or expand the Scope of Services after due approval by the Service Center as the Service Center may deem necessary, but in such event the Service Center shall pay Consultant equitable compensation for such services. In any event, when Consultant is directed to revise or expand the Scope of Services under this Section of the Contract, Consultant shall provide the Service Center a written proposal for the entire costs involved in performing such additional services. Prior to Consultant undertaking any revised or expanded services as directed by the Service Center under this Contract, the Service Center must authorize in writing the nature and scope of the services and accept the method and amount of compensation and the time involved in all phases of the Project.

It is expressly understood and agreed by Consultant that any compensation not specified in Paragraph III herein above may require the Service Center Council approval and is subject to the current budget year limitations.

V. Term

This Contract shall begin on the date first written above and shall terminate when the Service Center has approved the Project as being final or otherwise terminates this Contract as provided herein.

VI. Contract Termination Provision

This Contract may be terminated at any time by the Service Center for any cause by providing Consultant thirty (30) days written notice of such termination. Upon receipt of such notice, Consultant shall immediately terminate working on, placing orders or entering into contracts for supplies, assistance, facilities or materials in connection with this Contract and shall proceed to promptly cancel all existing contracts insofar as they are related to this Contract.

VII. Ownership of Documents

All materials and documents prepared or assembled by Consultant under this Contract shall become the sole property of the Service Center and shall be delivered to the Service Center without restriction on future use. Consultant may retain in its files copies of all drawings, specifications and all other pertinent information for the work. Consultant shall have no liability for changes made to any materials or other documents by others subsequent to the completion of the Contract.

VIII. Insurance Requirements

A. Before commencing work, Consultant shall, at its own expense, procure, pay for and maintain during the term of this Contract the following insurance written by companies approved by the state of Texas and acceptable to the Service Center. Consultant shall furnish to the Service Center Chief Financial Officer certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. Certificates shall reference the project/contract number and be provided to the Service Center.

1. Commercial General Liability insurance, including, but not limited to Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability, with minimum combined single limits of \$1,000,000 per-occurrence, \$1,000,000 Products/Completed Operations Aggregate and \$1,000,000 general aggregate. Coverage must be written on an occurrence form. The General Aggregate shall apply on a per project basis.
2. Workers' Compensation insurance with statutory limits; and Employers' Liability coverage with minimum limits for bodily injury: a) by accident, \$100,000 each accident, b) by disease, \$100,000 per employee with a per policy aggregate of \$500,000.
3. Business Automobile Liability insurance covering owned, hired and non-owned vehicles, with a minimum combined bodily injury and property damage limit of \$1,000,000 per occurrence.
4. Professional Liability Insurance to provide coverage against any claim which the consultant and all consultants engaged or employed by the consultant become legally obligated to pay as damages arising out of the performance of professional services caused by error, omission or negligent act with minimum limits of \$2,000,000 per claim, \$2,000,000 annual aggregate.

NOTE: If the insurance is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than *thirty-six (36) months* following completion of the contract and acceptance by the Service Center of.

B. With reference to the foregoing required insurance, the consultant shall endorse applicable insurance policies as follows:

1. A waiver of subrogation in favor of the Service Center of, its officials, employees, and officers shall be contained in the Workers' Compensation insurance policy.

2. The Service Center, its officials, employees and officers shall be named as additional insureds on the Commercial General Liability policy, by using endorsement CG2026 or broader.
 - 3.. All Insurance Policies shall be endorsed to the effect that the Service Center will receive at least thirty (30) days' notice prior to cancellation, non-renewal, termination, or material change of the policies.
- C. All insurance shall be purchased from an insurance company that meets a financial rating of B+VI or better as assigned by A.M. Best Company or equivalent.

IX. Right to Inspect Records

Consultant agrees that the Service Center shall have access to and the right to examine any directly pertinent books, documents, papers and records of Consultant involving transactions relating to this Contract. Consultant agrees that the Service Center shall have access during normal working hours to all necessary Consultant facilities and shall be provided adequate and appropriate workspace in order to conduct audits in compliance with the provisions of this section. The Service Center shall give Consultant reasonable advance notice of intended audits.

Consultant further agrees to include in subcontract(s), if any, a provision that any subcontractor or engineer agrees that the Service Center shall have access to and the right to examine any directly pertinent books, documents, papers and records of such engineer or sub-contractor involving transactions to the subcontract, and further, that the Service Center shall have access during normal working hours to all such engineer or sub-contractor facilities and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of the paragraph. The Service Center shall give any such engineer or sub-contractor reasonable advance notice of intended audits.

X. Successors and Assigns

The Service Center and Consultant each bind themselves and their successors, executors, administrators and assigns to the other party to this contract and to the successors, executors, administrators and assigns of such other party in respect to all covenants of this Contract. Neither the Service Center nor Consultant shall assign or transfer its interest herein without the prior written consent of the other.

XI. Consultant's Liability

Acceptance of the final plans by the Service Center shall not constitute nor be deemed a release of the responsibility and liability of Consultant, its employees, associates, agents or consultants for the accuracy and competency of their designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility by the Service Center for any defect in the designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility by the Service Center for any defect in the designs, working drawings, specifications or other documents and work prepared by said Consultant, its employees, associates, agents or sub-consultants.

XII. Indemnification

CONSULTANT DOES HEREBY COVENANT AND CONTRACT TO WAIVE ANY AND ALL CLAIMS, RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE SERVICE CENTER, ITS SERVICE CENTER COUNCIL, OFFICERS, EMPLOYEES, AND AGENTS, IN

BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ALL LIABILITY, CAUSES OF ACTION, CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LOSSES, PENALTIES OR SUITS, WHICH IN ANY WAY ARISE OUT OF, RELATE TO, OR RESULT FROM CONSULTANT'S PERFORMANCE UNDER THIS CONTRACT OR WHICH ARE CAUSED BY THE INTENTIONAL WRONGFUL ACTS OR NEGLIGENT ACTS OR OMISSIONS OF CONSULTANT, ITS SUBCONTRACTORS, ANY OFFICERS, AGENTS OR EMPLOYEES OF EITHER CONSULTANT OR ITS SUBCONTRACTORS, AND ANY OTHER THIRD PARTIES FOR WHOM OR WHICH CONSULTANT IS LEGALLY RESPONSIBLE (THE "INDEMNIFIED ITEMS") SUBJECT TO THE LIMITATIONS IN TEXAS LOCAL GOVERNMENT CODE § 271.904 (A) AND TEXAS CIVIL PRACTICE AND REMEDIES CODE, § 130.002 (B).

BY WAY OF EXAMPLE, THE INDEMNIFIED ITEMS MAY INCLUDE PERSONAL INJURY AND DEATH CLAIMS AND PROPERTY DAMAGE CLAIMS, INCLUDING THOSE FOR LOSS OF USE OF PROPERTY.

INDEMNIFIED ITEMS SHALL INCLUDE ATTORNEYS' FEES AND COSTS, COURT COSTS, AND SETTLEMENT COSTS. INDEMNIFIED ITEMS SHALL ALSO INCLUDE ANY EXPENSES, INCLUDING ATTORNEYS' FEES AND EXPENSES, INCURRED BY AN INDEMNIFIED INDIVIDUAL OR ENTITY IN ATTEMPTING TO ENFORCE THIS INDEMNITY.

In its sole discretion, the Service Center shall have the right to approve counsel to be retained by Consultant in fulfilling its obligation to defend and indemnify the Service Center. Consultant shall retain approved counsel for the Service Center within seven (7) business days after receiving written notice from the Service Center that it is invoking its right to indemnification under this Contract. If Consultant does not retain counsel for the Service Center within the required time, then the Service Center shall have the right to retain counsel and the Consultant shall pay these attorneys' fees and expenses. The Service Center retains the right to provide and pay for any or all costs of defending indemnified items, but it shall not be required to do so.

XIII. Independent Contractor

Consultant's status shall be that of an Independent Contractor and not an agent, servant, employee or representative of the Service Center in the performance of this Contract. No term or provision of or act of Consultant or the Service Center under this Contract shall be construed as changing that status. Consultant will have exclusive control of and the exclusive right to control the details of the work performed hereunder, and shall be liable for the acts and omissions of its officers, agents, employees, contractors, subcontractors and engineers and the doctrine of respondent superior shall not apply as between the Service Center and Consultant, its officers, agents, employees, contractors, subcontractors and engineers, and nothing herein shall be construed as creating a partnership or joint enterprise between the Service Center and Consultant.

XIV. Default

If at any time during the term of this Contract, Consultant shall fail to commence the work in accordance with the provisions of this Contract or fail to diligently provide services in an efficient, timely and careful manner and in strict accordance with the provisions of this Contract or fail to use an adequate number or quality of personnel to complete the work or fail to perform any of its obligations under this Contract, then the Service Center shall have the right, if Consultant shall not cure any such default after thirty (30) days written notice thereof, to terminate this Contract. Any such act by the Service Center shall not be deemed a waiver of any other right or remedy of the Service Center. If

after exercising any such remedy due to Consultant's nonperformance under this Contract, the cost to the Service Center to complete the work to be performed under this Contract is in excess of that part of the Contract sum which has not theretofore been paid to Consultant hereunder, Consultant shall be liable for and shall reimburse the Service Center for such excess. Consultant's liability under this provision shall be limited to the total dollar amount of this Contract.

The Service Center's remedies for Consultant's default or breach under this Contract shall be limited to one or more of the following remedies which may be exercised separately or in combination at the Service Center's sole exclusive choice:

- (a) Specific performance of the Contract;
- (b) Re-performance of this Contract at no extra charge to the Service Center; or,
- (c) Monetary damages in an amount not to exceed the greater of:
 - (1) The amount of any applicable insurance coverage Consultant is required to purchase and maintain under this Contract plus any deductible amount to be paid by Consultant in conjunction with said coverage regardless of whether Consultant has actually purchased and maintained said coverage; or,
 - (2) The total dollar amount of this Contract.

The terms of Sections XII entitled Indemnification, and XVII entitled Confidential Information shall survive termination of this Contract.

XV. Changes

The Service Center may, from time to time, require changes in the Scope of Services to be performed under this Contract. Such changes as are mutually agreed upon by and between the Service Center and Consultant shall be incorporated by written modification to this Contract.

XVI. Conflict of Interest

Consultant covenants and agrees that Consultant and its associates and employees will have no interest, and will acquire no interest, either direct or indirect, which will conflict in any manner with the performance of the services called for under this Contract. All activities, investigations and other efforts made by Consultant pursuant to this Contract will be conducted by employees, associates or subcontractors of Consultant.

XVII. Confidential Information

Consultant hereby acknowledges and agrees that its representatives may have access to or otherwise receive information during the furtherance of its obligations in accordance with this Contract, which is of a confidential, non-public or proprietary nature. Consultant shall treat any such information received in full confidence and will not disclose or appropriate such Confidential Information for its own use or the use of any third party at any time during or subsequent to this Contract. As used herein, "Confidential Information" means all oral and written information concerning the Service Center, its affiliates and subsidiaries, and all oral and written information concerning the Service Center or its activities, that is of a non-public, proprietary or confidential nature including, without limitation, information pertaining to customer lists, services, methods, processes and operating procedures, together with all analyses, compilation, studies or other documents, whether prepared by Consultant or

others, which contain or otherwise reflect such information. The term “Confidential Information” shall not include such materials that are or become generally available to the public other than as a result of disclosure of Consultant or are required to be disclosed by a governmental authority.

XVIII. Mailing Address

All notices and communications under this Contract to be mailed to the Service Center shall be sent to the address of the Service Center’s agent as follows, unless and until Consultant is otherwise notified:

Education Service Center Region 12
Post Office Box 23409
Waco, Texas 76702

Notices and communications to be mailed or delivered to Consultant shall be sent to the address of Consultant as follows, unless and until the Service Center is otherwise notified:

Any notices and communications required to be given in writing by one party to the other shall be considered as having been given to the addressee on the date the notice or communication is posted, faxed or personally delivered by the sending party.

XIX. Applicable Law

The Contract is entered into subject to the Service Center Bylaws and ordinances of the Service Center, as same may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable State of Texas and federal laws. Consultant will make any and all reports required per federal, state or local law including, but not limited to, proper reporting to the Internal Revenue Service, as required in accordance with Consultant’s income. Situs of this Contract is agreed to be McLennan County, Texas, for all purposes, including performance and execution.

XX. Severability

If any of the terms, provisions, covenants, conditions or any other part of this Contract are for any reason held to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants, conditions or any other part of this Contract shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

XXI. Remedies

No right or remedy granted herein or reserved to the parties is exclusive of any other right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this Contract may be waived without written consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Contract.

XXII. Entire Agreement

This Contract embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporaneous agreements between the parties relating to matters herein, and except as otherwise provided herein cannot be modified without written agreement of the parties.

XXIII. Non-Waiver

It is further agreed that one (1) or more instances of forbearance by the Service Center in the exercise of its rights herein shall in no way constitute a waiver thereof.

XXIV. Headings

The headings of this Contract are for the convenience of reference only and shall not affect any of the terms and conditions hereof in any manner.

XXV. Venue

The parties to this Contract agree and covenant that this Contract will be enforceable in, Texas; and that if legal action is necessary to enforce this Contract, exclusive venue will lie in McLennan County, Texas.

XXVI. No Third-Party Beneficiary

For purposes of this Contract, including its intended operation and effect, the parties (Service Center and Consultant) specifically agree and contract that: (1) the Contract only affects matters/disputes between the parties to this Contract, and is in no way intended by the parties to benefit or otherwise affect any third person or entity notwithstanding the fact that such third person or entity may be in contractual relationship with the Service Center or Consultant or both; and (2) the terms of this Contract are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either the Service Center or Consultant.

IN WITNESS WHERE OF, the parties hereto have set their hands by their representatives duly authorized on the day and year first written above.

Education Service Center Region 12

By: _____
(Printed Name)

_____ (Printed Consultant's Name)

Signature

Signature

Title: _____

Title: _____

Date Signed: _____

Date Signed: _____

ATTEST:

THE STATE OF TEXAS §
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 20____, by _____ in his/her capacity as _____ of _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he/she executed the same on behalf of and as the act of _____.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE _____ DAY OF _____, 20_____.

Notary Public _____ County, Texas
My commission expires _____

CONFLICT OF INTEREST QUESTIONNAIRE

Effective January 1, 2006, Chapter 176 of the Texas Local Government Code went into effect which requires that any vendor or person considering doing business with a local government entity disclose in the Questionnaire Form CIQ, the vendor or person's affiliation or business relationship that might cause a conflict of interest with a local government entity. By law, this questionnaire must be filed with the Business Office of the Service Center not less than the 7th business day after the person becomes aware of facts that require the statement to be filed.

A recent amendment to this state law that went into effect on September 1, 2007 now allows for two changes to the original statute:

1. The Conflict of Interest Questionnaire only needs to be filled out and returned with your bid if you or your company are aware of a conflict, and,
2. If the amount of the conflict exceeds \$2,500

It is the responsibility of every vendor filling out and returning this bid to determine if there is a conflict meeting the parameters listed above. If so, **the Service Center requires that this Questionnaire be completed and turned in with your bid.** If there is no conflict, or if the amount of the conflict is less than \$2,500, then you are not required to submit the Questionnaire with your bid.

See Section 176.006, Local Government Code which reads, "A person commits an offense if the person violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor."

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

This questionnaire is being filed in accordance with chapter 176 of the Local Government Code by a person doing business with the governmental entity.

By law this questionnaire must be filed with the records administrator of the local government not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person violates Section 176.006, Local Government Code. An Offense under this section is a Class C misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of person doing business with local governmental entity.

2

Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than September 1 of the year for which an activity described in Section 176.006(a), Local Government Code, is pending and not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3 Name each employee or contractor of the local government entity who makes recommendations to a local government officer of the governmental entity with respect to expenditures of money AND describe the affiliation or business relationship.

4 Name each local government officer who appoints or employs local government officers of the governmental entity for which this questionnaire is filed AND describe the affiliation or business relationship.

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

Page 2

For vendor or other person doing business with local governmental entity

5 Name of local government officer with whom filer has affiliation or business relationship. (Complete this section only if the answer to A, B, or C is YES.

This section, item 5 including subparts A, B, C & D, must be completed for each officer with whom the filer has affiliation or other relationship. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income from the filer of the questionnaire?

Yes

No

B. Is the filer of the questionnaire receiving or likely to receive taxable income from or at the direction of the local government Officer named in this section AND the taxable income is not from the local governmental entity?

Yes

No

C. Is the filer of this questionnaire affiliated with a corporation or other business entity that the local government officer serves As an officer or director, or holds an ownership of 10 percent or more?

Yes

No

D. Describe each affiliation or business relationship.

6

Signature of person doing business with the governmental entity

Date