

EPIC6 Purchasing Cooperative VENDOR AGREEMENT

RFP 14.22 (Books – Library, Text, Publications)

General Information

This Vendor Agreement is being entered into by vendor and between the Educational Purchasing Interlocal Cooperative at Region 6 (hereinafter referred to as “EPIC6” respectfully) a government cooperative purchasing program authorized by the Region 6 Education Service Center, having its principal place of business at 3332 Montgomery Road, Huntsville, TX 77340.

This Agreement consists of the provisions set forth below, including provisions of all Attachments referenced herein. In the event of a conflict between the provisions set forth below and those contained in any Attachment, the provisions set forth shall control.

The Vendor Agreement shall include and incorporate by reference this Agreement, the terms and conditions, special terms and conditions, any agreed upon amendments, as well as all of the sections of the solicitation as posted, including any addenda and the awarded vendor’s proposal. Once signed, if an awarded vendor’s proposal varies or is unclear in any way from this Agreement, EPIC6, at its sole discretion, will decide which provision will prevail unless otherwise specifically agreed in writing by the parties.

A Purchase Order, Agreement or Contract is the EPIC6 Member’s approval providing the authority to proceed with the negotiated delivery order under this Agreement. Special terms and conditions as agreed to between the vendor and EPIC6 Member should be added as addendums to the Purchase Order, Agreement or Contract. Items such as certificate of insurance, bonding requirements, small or disadvantaged business goals are some of the addendums possible.

Terms and Conditions

Freight

All quotes to Members shall provide a line item for cost for freight or shipping regardless if there is a charge or not. If no charge for freight or shipping, indicate by stating “No Charge”, “\$0”, “included in price” or other similar indication. Otherwise, all shipping, freight or delivery changes shall be passed through to the EPIC6 Member at cost with no markup and said charges shall be agreed by the EPIC6 Member unless alternative shipping terms are agreed by EPIC6 as a result of the proposal award.

Warranty Conditions

All supplies, equipment and services shall include manufacturer's minimum standard warranty unless otherwise agreed to in writing. Vendor shall be an authorized dealer, distributor or manufacturer for all products. All equipment proposed shall be new unless clearly stated in writing.

Customer Support

The Vendor shall provide timely and accurate customer support to EPIC6 members. Vendors shall respond to such requests within one (1) working day after receipt of the request. Vendor shall provide training regarding products and services supplied by the Vendor unless otherwise clearly stated in writing at the time of purchase. (Unless training is a line item sold or packaged and must be purchased with product.)

Conflict of Interest

No employee, officer, or agent of EPIC6 shall participate in the selection, award, or administration of a contract if a conflict of interest, real or apparent, exists. Vendor shall not engage in any activity that will restrict or eliminate competition. Violation of this provision may cause cancellation of this Agreement.

Tax exempt status

Most EPIC6 Members are tax exempt and the related laws and/or regulations of the controlling jurisdiction(s) of the EPIC6 Member shall apply.

Assignments of Agreements

No assignment of Agreement may be made without the prior notification of EPIC6. Written approval of EPIC6 shall not be unreasonably withheld. Payment for delivered goods and services can only be made to the awarded Vendor, Vendor designated reseller or vendor assigned company.

Disclosures

1. Vendor affirms that he/she has not given, offered to give, nor intends to give at any time here after any economic opportunity, future employment, gift, loan, gratuity, special discounts, trips, favor or service to a public servant in connection with this Agreement.
2. Vendor shall attach, in writing, a complete description of any and all relationships that might be considered a conflict of interest in doing business with members in the EPIC6 program.
3. The vendor affirms that, to the best of his/her knowledge, the offer has been arrived at independently, and is submitted without collusion with anyone to obtain information or gain any favoritism that would in any way limit competition or give an unfair advantage over other vendors in the award of this Agreement.

Renewal of Agreement

This Agreement is for one (1) year with an option for renewal for two (2) consecutive years. Total term of contract can be up to 3 years if both parties agree. A renewal letter will be sent prior to the renewal year giving the vendor the option to proceed with the current Agreement.

Shipments

The Vendor shall ship, deliver or provide ordered products or services within a commercially reasonable time after the receipt of the order from the EPIC6 Member. If a delay in said delivery is anticipated, the Vendor shall notify the EPIC6 Member as to why delivery is delayed and shall provide an estimated time for completion of the order. EPIC6 or the requesting entity may cancel the order if estimated delivery time is not acceptable or not as agreed by the parties.

Invoices

The Vendor or vendor assigned dealer shall submit invoices, to the EPIC6 member. Each invoice shall include the EPIC6 member's purchase order number. The shipment tracking number or pertinent information for verification of EPIC6 member receipt shall be made available upon request. The Vendor or vendor assigned dealer shall not invoice for partial shipments unless agreed to in writing in advance by EPIC6 and the EPIC6 member.

Payments

The EPIC6 member will make payments directly to the Vendor or vendor assigned dealer at net 30 days after receiving the invoice or as otherwise agreed by the EPIC6 member.

Pricing

Price increases will be honored provided they are permitted by and in accordance with the terms of the solicitation. However, the Vendor shall honor previous prices for thirty (30) days after written notification to EPIC6 of an increase.

Administration Fees

The Administration Fee of 1.5% that was published as part of the Solicitation is the legally effective fee stated in the RFP. Collection of this fee by EPIC6 is required under Texas Government Code §791.011 Et seq. Vendor or vendor assigned dealer agrees to pay the Administration fee for all Agreement sales to EPIC6 on a monthly scheduled report or as otherwise agreed by the parties. Failure to pay the Administration fee will result in termination of Agreement and possible legal action. Please contact EPIC6 at epic6@esc6.net or call (936) 435-8288 if you have questions about paying fee.

Vendor will not add this fee to any invoice presented to an EPIC6 member.

Monthly invoices will be prepared by EPIC6 and sent to vendor via email. The vendor or vendor assigned dealer is responsible for keeping a record of all sales that go through this Agreement. A check from vendor or vendor assigned dealer for fee is to be mailed to:

EPIC6
Attention: Matthew Reddoch
3332 Montgomery Road
Huntsville, Texas 77340

Failure to pay Administration fee will result in termination of this Agreement.

Indemnity

The Vendor agrees to indemnify and hold harmless and defend EPIC6, EPIC6 Member(s), officers and employees from and against all claims and suits by third parties for damages, injuries to persons (including death), property damages, losses, and expenses including court costs and reasonable attorney's fees, arising out of, or resulting from, Vendor's performance under this Agreement, including all such causes of action based upon common, constitutional, or statutory law, or based in whole or in part, upon allegations of negligent or intentional acts on the part of the Vendor, its officers, employees, agents, subcontractors, licensees, or invitees. Parties found liable shall pay their proportionate share of damages as agreed by the parties or as ordered by a court of competent jurisdiction over the case.

NO LIMITATION OF LIABILITY FOR DAMAGES FOR PERSONAL INJURY OR PROPERTY DAMAGE ARE PERMITTED OR AGREED BY EPIC6/ESC Region 6. Per Texas Education code §44.032(f).

Attorney's Fees--Texas Local Government Code § 271.159 is expressly referenced.

Pursuant to §271.159, TEXAS LOC. GOV'T CODE, in the event that any one of the Parties is required to obtain the services of an attorney to enforce this Agreement, the prevailing party, in addition to other remedies available, shall be entitled to recover reasonable attorney's fees and costs of court.

State of Texas Franchise Tax

By signature hereon, the proposer hereby certifies that he/she is not currently delinquent in The payment of any franchise taxes owed the State of Texas under Chapter 171, Tax Code and is in good standing with all applicable controlling federal, state and local agencies.

Miscellaneous

The Vendor acknowledges and agrees that continued participation in EPIC6 is subject to EPIC6 sole discretion and that any Vendor may be removed from participation in the program at any time with or without cause. Nothing in the Agreement or in any other communication between EPIC6 and the vendor may be construed as a guarantee that EPIC6 members will submit any orders at any time. EPIC6 reserves the right to request additional proposals for items or services already on Agreement at any time.

Purchase Order Pricing/Product Deviation

If a deviation of pricing/product on a purchase order occurs, EPIC6 or the member that issued the purchase order is to be notified within five (5) business days of receipt of order.

Termination for Convenience

EPIC6 reserves the right to terminate this agreement for cause or no cause for convenience with a thirty (30) days prior written notice. Termination for convenience is conditionally required under Federal Regulations 2 CFR part 200 if the customer is using federal funds for the procurement. All purchase orders presented to the Vendor, but not fulfilled by the Vendor, by an EPIC6 Member prior to the actual termination of this agreement shall be honored at the option of the EPIC6 Member. The awarded Vendor may terminate the agreement with ninety (90) days prior written notice to EPIC6. The vendor will be paid for goods and services delivered prior to the termination provided that the goods and services were delivered in accordance with the terms and conditions of the terminated agreement. This termination clause does not affect the sales agreements executed by the Vendor and the EPIC6 Member customer pursuant to this agreement. EPIC6 Members may negotiate a termination for convenience clause that meets the needs of the transaction based on applicable factors, such as funding sources or other needs.

Adding New Products or Services to the Award

Following the award, newly available or additional services or products of the same general category that could have been encompassed in the award of this contract, and that are not already on the contract, may be added if the award was a discount off catalog, shelf or web price. Also, if a line of awarded items have been replaced with a new version or model of the items, you must provide the description and pricing of the new items and show the discontinuation of the old items. Any deviation in the specifications or change in the products must be approved in advance by EPIC6. Notice of a change shall be submitted in writing to EPIC6, with the solicitation number in the subject line for review.

EPIC6 Member Purchasing Procedures

- Purchase orders are issued by participating EPIC6 member to the awarded vendor indicating on the PO "EPIC6", as well as any additional notation as required by awarded vendor.
- Awarded vendor delivers goods/services directly to the participating member.
- Awarded vendor invoices the participating EPIC6 member directly.
- Awarded vendor receives payment directly from the participating member.
- EPIC6 invoices Awarded vendor for the 1.5% Administration Fee.

Licenses

Awarded Vendor shall maintain, in current status, all federal, state and local licenses, bonds and permits required for the operation of the business conducted by awarded Vendor. Awarded Vendor shall remain reasonably fully informed of and in compliance with all ordinances and regulations pertaining to the lawful provision of goods or services under the Agreement. EPIC6 and EPIC6 Members reserves the right to stop work and/or cancel an order or terminate this or any other sales Agreement of any awarded Vendor whose license(s) required for performance under this Agreement have expired, lapsed, are suspended or terminated subject to a 30-day cure period unless prohibited by applicable statute or regulation.

Novation

If awarded vendor sells or transfers all assets or the entire portion of the assets used to perform this Agreement, a successor in interest must guarantee to perform all obligations under this Agreement. A simple change of name agreement will not change the Agreement obligations of awarded vendor. EPIC6 must be notified within five (5) business days of the transfer of assets or rights.

Site Requirements (when applicable to service or job)

Cleanup: Awarded vendor shall clean up and remove all debris and rubbish resulting from the work performed as required or directed by the EPIC6 Member. Upon completion of work, the premises shall be left in good repair and an orderly, neat, clean and unobstructed condition.

Preparation: Awarded vendor shall not begin a project for which the EPIC6 Member has not prepared the site, unless awarded vendor does the preparation work at no cost, or until the EPIC6 Member includes the cost of site preparation in a purchase order. Site preparation includes, but is not limited to: moving furniture, installing wiring for networks or power, and similar pre-installation requirements.

Registered sex offender restrictions and TEXAS EDUCATION CODE Chapter 22

For work to be performed at schools, awarded vendor agrees that no employee of a sub-contractor who has been adjudicated to be a registered sex offender will perform work at any time when students are or reasonably expected to be present. Awarded vendor agrees that a violation of this condition shall be considered a material breach and may result in the cancellation of the purchase order at the EPIC6 Member's discretion. Awarded vendor must identify any additional costs associated with compliance of this term. If no costs are specified, compliance with this term will be provided at no additional charge.

Safety measures

Awarded vendor shall take all reasonable precautions for the safety of employees on the worksite, and shall erect and properly maintain all necessary safeguards for protection of workers and the public. Awarded vendor shall post warning signs against all hazards created by the operation and work in progress. Proper precautions shall be taken pursuant to state law and standard practices to protect workers, the general public and existing structures from injury or damage.

Smoking

Persons working under contract shall adhere to local smoking policies. Smoking will only be permitted in posted areas or off premises and not on school grounds.

Marketing

Awarded vendor agrees to allow EPIC6 to use their name and logo within website, marketing materials and advertisements. Any use of EPIC6 name and logo or any form of publicity, inclusive of press release, regarding this Agreement by awarded vendor must have prior written approval from EPIC6.

Supplemental Agreements

The EPIC6 Member entity participating in the EPIC6 Agreement and awarded Vendor may enter into a separate Supplemental Agreement or contract to further define the level of service requirements over and above the minimum defined in this Agreement such as but not limited to, invoice requirements, ordering requirements, specialized delivery, etc. Any Supplemental Agreement or contract developed as a result of this Agreement is exclusively between the EPIC6 Member entity customer and the Vendor. EPIC6, its agents, EPIC6 Members and employees not a party to the Supplemental Agreement with the EPIC6 Member customer, shall not be made party to any claim for breach of such agreement unless named and agreed by the Party in question in writing in the agreement. If a Vendor submitting a Proposal requires EPIC6 and/or EPIC6 Member to sign an additional agreement, those agreements shall comply with the award made by EPIC6 to the Vendor. Supplemental Vendor's Agreement documents may not become part of EPIC6 Agreement with Vendor unless and until an authorized representative of EPIC6 reviews and approves it. EPIC6's review and approval may be at any time during the life of this Vendor Agreement. EPIC6 permits EPIC6 Members to negotiate additional terms and conditions with the Vendor for the provision of goods or services under the Vendor's EPIC6 Agreement so long as they do not materially conflict with this Agreement.

Survival Clause

All applicable software license agreements, warranties or service agreements that were entered into between Vendor and Customer under the terms and conditions of the Agreement shall survive the expiration or termination of the Agreement. All Orders, Purchase Orders issued or contracts executed by EPIC6 or a EPIC6 Member and accepted by the Vendor prior to the expiration or termination of this agreement, shall survive expiration or termination of the Agreement, subject to previously agreed terms and conditions agreed by the parties or as otherwise specified herein relating to termination of this agreement.

Legal Obligations

It is the responding vendor's responsibility to be aware of and comply with all local, state and federal laws governing the sale of products/services identified in the solicitation and any awarded contract thereof. Applicable laws and regulations must be followed even if not specifically identified herein.

Audit rights

Due to transparency statutes and public accountability requirements of EPIC6 and EPIC6 Members', the awarded Vendor shall, at their sole expense, maintain appropriate due diligence of all purchases made by a EPIC6 Member that utilizes this Agreement. EPIC6 and Region 6 ESC each reserve the right to audit the accounting of EPIC6 related purchases for a period of three (3) years from the time such purchases are made. This audit right shall survive termination of this Agreement for a period of one (1) year from the effective date of termination. In order to ensure and confirm compliance with this agreement, EPIC6 shall have authority to conduct random audits of Awarded Vendor's pricing that is offered to EPIC6 Members. Notwithstanding the foregoing, in the event that EPIC6 is made aware of any pricing being offered to eligible entities that is materially inconsistent with the pricing under this agreement, EPIC6 shall have the ability to conduct the audit internally or may engage a third-party auditing firm to investigate any possible non-complying conduct. In the event of an audit, the requested materials shall be reasonably provided in the format and at the location designated by Region 6 ESC or EPIC6. EPIC6 agrees not to perform a random audit the EPIC6 transaction documentation more than once per calendar year, but reserves the right to audit for just cause or as required by any governmental agency or court with regulatory authority over EPIC6 or the EPIC6 member.

Force Majeure

If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and fully particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer

period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

Services

When applicable, performance bonds and payment bonds may be required and the awarded vendor will meet the EPIC6 member's local and state bonding requirements. Prices of the bonding may be added to contract pricing as agreed by the parties. Bonds will not require that a fee be paid to EPIC6. The actual cost of the bond will be a pass through to the EPIC6 member and added to the purchase order as agreed.

Project Delivery Order Procedures

The EPIC6 member having approved and signed an interlocal agreement, or other EPIC6 membership document, may make a request of the awarded vendor under this Agreement when the EPIC6 member has services that need to be undertaken. Notification by member to awarded vendor may occur via phone, email, fax or in person. Upon notification of a pending request, the awarded vendor shall make contact with the EPIC6 member as soon as possible, but must make contact with the EPIC6 member within two working days.

DO NOT PROCEED WITH AN ORDER UNLESS YOU HAVE AN ORDER IN WRITING FROM THE EPIC6 MEMBER OR EPIC6.

Verbal orders are not acceptable and not enforceable. The vendor shall be compensated for work performed or delivered under a written order by the entity that placed the order unless the entity contests the claim of the awarded vendor, in which case the parties shall utilize the agreed conflict resolution methods.

Conflict Resolution with Member

Prior to filing of litigation, the parties may select non-binding mediation as a method of conflict resolution for issues arising out of or relating to this procurement process or any contract resulting from or any contemplated transaction. The parties agree that if non-binding mediation is chosen as a resolution process, the parties must agree to the chosen mediator(s) and that the mediation venue shall be at a location in county of the EPIC6 or its member at the discretion of the member. The parties agree to share equally the cost of the mediation process and venue cost.

Choice of Law

The Agreement between the Vendor and EPIC6/ESC Region 6 and any addenda or other additions resulting from this procurement process, however described, shall be governed by, construed and enforced in accordance with the laws of the State of Texas, regardless of any conflict of laws principles.

Support Requirements

If there is a dispute between the awarded Vendor and an EPIC6 Member, EPIC6 or its representatives may, at EPIC6's sole discretion, assist in conflict resolution if requested by either party. EPIC6, or its representatives, reserves the right to inspect any project and audit the awarded Vendor's EPIC6 project files, documentation and correspondence related to the requesting EPIC6 Member's order. If there are confidentiality requirements by either party, EPIC6 shall comply to the extent permitted by law.

Incorporation of Solicitation

The EPIC6 Solicitation, whether a Request for Proposals, the Request for Competitive Sealed Proposals or Request for Qualifications solicitation, the Vendor's response to same and all associated documents and forms made part of the solicitation process, including any addenda, that resulted in the execution of this agreement are hereby incorporated by reference into this agreement as if copied verbatim.

STATUTORY REQUIREMENTS

Texas governmental entities are prohibited from doing business with companies that fail to certify to this condition as required by Texas Government Code Sec. 2270. By executing this agreement, you certify that you are authorized to bind the undersigned Vendor and that your company (1) does not boycott Israel; and (2) will not boycott Israel during the term of the Agreement.

You certify that your company is not listed on and does not and will not do business with companies that are on the Texas Comptroller of Public Accounts list of Designated Foreign Terrorists Organizations per Texas Gov't Code 2270.0153.

You certify that if the certified statements above become untrue at any time during the life of this Agreement that the Vendor will notify EPIC6 within three (3) business day of the change.

Insurance Requirements

The undersigned Vendor agrees to maintain the below minimum insurance requirements for EPIC6 Contract Holders:

General Liability \$1,000,000 each Occurrence/ Aggregate

Automobile Liability \$300,000 Includes owned, hired & non-owned Workers' Compensation Statutory limits for the jurisdiction in which the Vendor performs under this Agreement.

Umbrella Liability \$1,000,000

When the Vendor or its subcontractors are liable for any damages or claims, the Vendor's policy, when the Vendor is responsible for the claim, must be primary over any other valid and collectible insurance carried by the Member. Any immunity available to EPIC6 or EPIC6 Members shall not be used as a defense by the contractor's insurance policy. The coverages and limits are to be considered minimum requirements and in no way limit the liability of the Vendor(s). Insurance shall be written by a carrier with an A-; VII or better rating in accordance with current A.M. Best Key Rating Guide. Only deductibles applicable to property damage are acceptable, unless proof of retention funds to cover said deductibles is provided. "Claims made" policies will not be accepted. Vendor's required minimum coverage shall not be suspended, voided, cancelled, non-renewed or reduced in coverage or in limits unless replaced by a policy that provides the minimum required coverage except after thirty (30) days prior written notice by certified mail, return receipt requested has been given to EPIC6 or the EPIC6 Member if a project or pending delivery of an order is ongoing. Upon request, certified copies of all insurance policies shall be furnished to EPIC6 or the EPIC6 Member.

Special Terms and Conditions

It is the intent of EPIC6 to award to reliable, high performance vendors to supply products and services to government and educational agencies. It is the experience of EPIC6 that the following procedures provide EPIC6, the Vendor, and the participating agency the necessary support to facilitate a mutually beneficial relationship. The specific procedures will be negotiated with the successful vendor.

- **Agreements:** Member district/entity will forward purchase order to awarded vendor. Member district/entity will email copy of purchase order to epic6orders@esc6.net.
- **Daily Order Confirmation:** The vendor must confirm receipt of orders to the EPIC6 member (customer) within 24 business hours.
- **Back Ordered Products:** If product is not expected to ship within 3 business days, the customer shall be notified within 24 hours and appropriate action taken based on the customer's request.

Vendor's Exceptions / Deviations (if any):

EPIC 6 Vendor Agreement Signature Form

RFP 14.22 (Books – Library, Text, Publications)

The undersigned Vendor hereby proposes and agrees to furnish products and/or services in strict compliance with the terms, specifications, and conditions of the RFP, this Agreement, and Vendor's proposal. The undersigned further certifies that he or she is an officer of the company and has authority to negotiate and contract for the company named below and meets/agrees with all of the terms and conditions of this Agreement and the RFP.

Company Name: Bellwether Media

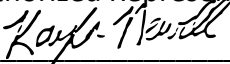
Address: 6012 Blue Circle Drive

City/State/Zip: Minnetonka, Minnesota, 55343

E-mail of Authorized Representative: orders@bellwethermedia.com

Printed Name of Authorized Representative: Kayla Newell

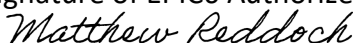
Title: Customer Service

Signature of Authorized Representative: 

Date: 6/17/2022

Printed Name of EPIC6 Authorized Representative: Matthew Reddock

Title: EPIC6 Manager

Signature of EPIC6 Authorized Representative: 

Date: 6/17/22

Approved by ESC Region 6 

Date: 6/17/2022

Term of Agreement: July 1, 2022 to June 30, 2023

Unless otherwise stated, this Agreement is for a period of one (1) year with an option to renew annually for an additional two (2) years, if agreed to by EPIC6 and Vendor.