



RFP 2.20

Swing Kingdom, LLC

Supplier Response

Event Information

Number: RFP 2.20
Title: PLAYGROUND - EQUIPMENT, INSTALLATION, SERVICE
Type: Request for Proposal
Issue Date: 9/18/2019
Deadline: 10/10/2019 12:05 PM (CT)
Notes: The Educational Purchasing Interlocal Cooperative at Region 6 (EPIC 6) seeks proposals for **PLAYGROUND - EQUIPMENT, INSTALLATION, SERVICE** on an "as needed" basis for the period of November 1, 2019 thru October 31, 2020 with an option to renew annually for an additional two (2) years if agreed upon by EPIC6 and the vendor. This Request for Proposal (RFP) is solicited on behalf of EPIC6 Purchasing Coop and its members. Awarded vendor(s) must agree to extend contract pricing and terms to all members, current and future, as agreed to by the Cooperative in this contract. Volumes and quantities that will be purchased are unknown. Cooperative members are not required to purchase from awarded vendors. In the event the vendor does not offer a discount or vendor's posted prices are discounted, notation of "0% discount" should be noted. Failure to enter a number for the discount shall be interpreted as a 0% discount. EPIC6 will be awarding this contract on a multi-vendor basis, so as to best serve the needs of its Cooperative members. EPIC6 seeks to award responsive, responsible proposals that score the minimum evaluation score of 80 points thus allowing the Cooperative members access to vendors that best meet their needs based on factors including, but not limited to, price, availability, and delivery. Awards resulting from this solicitation will designate the vendor(s) as an "approved vendor(s)" with the Cooperative and its members. Any reference within the following pages of this document to bid, Request for Proposal (RFP), Competitive Sealed Proposal (CSP) could be t

technically inaccurate but should still be construed to mean and are used interchangeably as the designated legal methods of procurement listed at TEC 44.031(a)(3). This is a Request for Proposals as defined in Texas Education Code Chapter 44.

Please note:

If vendor has been awarded on RFP 1.18 or RFP 1.19 and responded "I concur" on the EPIC6 Contract Renewal Letter, there is no need to submit a proposal unless there are changes.

Contact Information

Contact: Matthew Reddoch
Address: Purchasing
3332 Montgomery Road
Huntsville, TX 77340
Phone: (936) 4358288
Fax: (936) 4358263
Email: mreddoch@esc6.net

Swing Kingdom, LLC Information

Contact: Beve Robbins
Address: 36 Glenbrook Rd.
Leola, PA 17540
Phone: (717) 656-4449 x103
Fax: (717) 656-8464
Email: sales@swingkingdom.com

By submitting your response, you certify that you are authorized to represent and bind your company.

Mr. Phi V. Le

Signature

Submitted at 10/9/2019 11:06:50 AM

phi@swingkingdom.com

Email

Supplier Note

We offer a 10% discount on all equipment.

Response Attachments

2019 Commercial Buyer's Guide.pdf

2019 Commercial Buyer's Guide

SK Commercial Price List.pdf

We will provide a 10% discount on all equipment.

Bid Attributes

1 General Purchasing Requirements

GENERAL REQUIREMENTS APPLY TO ALL PURCHASES. HOWEVER, THESE MAY BE SUPERSEDED, IN WHOLE OR IN PART, BY THE SCOPE, SPECIAL REQUIREMENTS, SPECIFICATIONS, OR OTHER DATA CONTAINED HEREIN. Read this entire document carefully. Follow all instructions. Vendor is responsible for fulfilling all requirements and specifications.

1. SUPPLEMENTAL MATERIALS Seller is responsible for including all pertinent product data in the returned proposal/bid packet or an active link to access. Literature, brochures, data sheets, specification information, completed forms requested as part of the bid/proposal package and any other pertinent information that may affect the evaluation and award should be included. Materials such as legal documents and contractual agreements, which the Seller wishes to include as a condition of the bid/proposal, must also be included in the submitted packet. Failure to include all necessary and proper supplemental materials may be cause to reject the entire packet.

2. INSTALLATION When installation is specified in the packet, the Seller shall provide the following services and meet or exceed the requirements at no additional cost above the initial proposal/bid price on machinery or furniture: a. Provide transportation of the items to physical destination as noted in packet. b. Deliver items to proper location at physical destination. c. Complete assembly and adjustments by trained installation mechanic. d. Remove all packing/shipping materials. All materials, equipment, and labor necessary to fully assemble furniture or machinery must be provided by Seller. Machinery must be made ready for electrical and/or fluid service connection. Following proper connection, machine must be tested and deemed acceptable by both the Seller and the Buyer.

3. WARRANTY - PRODUCT Seller shall not limit or exclude any implied or express warranties. Any attempt to do so shall render this contract null and void at the option of the Buyer. Seller warrants that: a. The goods to be delivered hereunder shall be in full conformity to the specifications, drawings, and descriptions listed in the packet, and to the sample(s) furnished by Seller, if any. Further, it is agreed that this warranty shall survive acceptance of delivery and

payment for the goods and that the Seller agrees to bear the cost of inspecting and/or testing all goods rejected. b. That the goods to be delivered hereunder will not infringe on any valid patent, trademark, trade-name, or copyright, and that the Seller will, at no expense to the Buyer, defend any and all actions or suits charging such infringement against the Buyer, its agents and/or employees, in the event of any action or suit. c. That the goods to be delivered hereunder will be manufactured, sold, and/or installed in compliance with the provisions of all applicable Federal, State, and Local laws, ordinances, statutes, regulations, and/or policies. d. That nothing contained herein shall exclude or affect the operation of any implied warranties otherwise arising in favor of the Buyer. e. In event of conflict between specifications, drawings, and descriptions, the specifications shall govern.

4. **SAFETY – WARRANTY** Seller warrants that the product sold to Buyer shall conform to the standard promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event the product does not conform to OSHA standards, Buyer may return the product for correction or replacement at the Seller's expense. The "Hazardous Communications Act", commonly known as the "Texas Right to Know Act", states that a Seller must provide to the Buyer, with each delivery, material safety data sheets as is applicable to hazardous substances defined in the Act.

5. **RIGHT OF INSPECTION** Buyer shall have the right to inspect the goods at delivery point before accepting them. The Buyer reserves the right to: a. Inspect articles delivered and to return those which do not meet specifications or reasonable standards of quality. b. Reject articles shipped contrary to instructions or in containers which do not meet recognized standards. c. The Buyer may return rejected articles or excess merchandise (or may hold the articles subject to the Seller's order) and may, at Seller's risk and expense, in either event, charge Seller with the cost of shipping, unpacking, inspecting, re-packing, re-shipping, and other like expenses. The Buyer also reserves the right to requirements and needs of the Buyer.

6. **MODIFICATIONS** This contract can be modified or rescinded only by a written document signed by both parties or their duly-authorized agents.

7. **APPLICABLE LAW** This agreement shall be governed by the laws of the State of Texas without regard for any conflict of laws provisions and the Uniform Commercial Code.. Whenever the term "Uniform Commercial Code" is used it shall be construed as meaning the laws of the State of Texas without regard to any conflict of laws provisions and the Uniform Commercial Code as adopted in the State of Texas as effective and in force on the date of this agreement.

8. **CHOICE OF LAW / VENUE** Both parties agree that the venue for litigation arising from this contract between EPIC 6 and the proposer shall be in Huntsville, Walker County, Texas. Venue for litigation arising from this contract with an EPIC6 member shall lie in the county and state of the member.

9. **SEVERABILITY** If any section, subsection, paragraph, sentence, clause phrase, or word of these specifications shall be held invalid, such holding shall not affect the remaining portions of these specifications and it is hereby declared that such remaining portions would have been included in these specifications as though the invalid portion had been omitted.

10. **HOLD HARMLESS** Seller shall indemnify and hold Education Service Center, Region 6, EPIC6, and any EPIC6 member harmless for all claims of personal injury, death, and or property damage rising from any and all causes whatsoever, resulting directly or indirectly from Seller's performance. Seller shall procure and maintain, in respect to the subject matter of this bid, appropriate insurance coverage including, as a minimum, vehicle, public liability and property damage with adequate limits to cover Seller's liability as may arise directly or indirectly from work performed under terms of this solicitation. Where deemed appropriate by the Buyer, the limits of coverage will be included in the Special Instructions/Specifications. Certification of such coverage must be provided to the Buyer upon request. The Buyer and the awarded vendor may negotiate additional insurance requirements at their pleasure.

11. **WAIVER OF SUBROGATION** By virtue of submitting a proposal for this solicitation or acceptance of this contract, both Seller and insurance carrier waive any rights whatsoever with regard to subrogation against Education Service Center, Region 6 or its members as an indirect party to any suit arising out of personal or property damage resulting from Seller's performance under this contract.

12 **AWARD** Action on all proposals shall be taken within ninety (90) calendar days from the date and time of opening of proposals/bids or as otherwise provided by applicable law and the price must remain firm for this period of time. The Seller whose offer is accepted shall execute the contract, if one is required, and all related documents within ten (10) days after presentation of the contract for signature or as otherwise agreed by the parties. The contract shall be deemed to be executed by the Seller when one (1) copy of the contract and related documents signed by an aut

horized officer of the Seller are received by the EPIC6 Purchasing Cooperative or member Buyer. Failure to execute the contract and related documents within the time specified may constitute a breach of this Agreement affecting the acceptance of the offer. Buyer reserves the right to award this contract in accordance with the laws of the State of Texas, to reject any or all proposals/bids, to waive any proposal/bid irregularities, and to accept any proposal/bid deemed to be in the best interest of the Buyer.

13. NONAPPROPRIATION OF FUNDS This agreement is subject to the appropriation of funds by ESC, Region 6 or its Texas members in its budget adopted for any fiscal year for the specific purpose of making payments pursuant to this agreement for that fiscal year. The obligations for ESC, Region 6 or its Texas members pursuant to this agreement in effect shall constitute a current expense of ESC, Region 6 or its Texas members for that fiscal year only, and shall not constitute an indebtedness of ESC, Region 6 or its Texas members beyond that fiscal year. Nothing contained herein shall constitute a pledge by ESC, Region 6 or its Texas members of any taxes or monies other than monies lawfully appropriated in any fiscal year. In the event of non-appropriation of funds in any fiscal year to make payments pursuant to this Agreement, this Agreement may be terminated. The requirements in this section entitled "NONAPPROPRIATION OF FUNDS" is per Texas statute and not negotiable by either the ESC Region 6 or its Texas members.

2 Evaluation Criteria

Proposer scoring 80% or above will be considered for a contract award. The following is the evaluation criteria assigned to this RFP:

1. Purchase Price: (30) point weight per prices as determined by EPIC6 on a variety of randomly selected items.
2. The reputation of the vendor and of the vendor's goods or services; (1) point weight. Based on references or other information known to EPIC6
3. The quality of the vendor's goods or services; (28) point weight. This will also include vendor's electronic on-line catalog access and alternatives for those members with no electronic access.
4. The total long-term cost to the district to acquire the vendor's goods or services; (1) point weight (example: considers cost of training, changes, programming, and other soft costs)
5. Extent to which the Goods or Services meet the Needs: (29) point weight. The extent to which goods and services meet EPIC6/EPIC6 member needs.
6. Vendor's Past Relationship : (10) point weight – Vendor's past relationship with EPIC6/EPIC6 members. Only experience within the past 5 years will be evaluated unless otherwise specified. No past relationship is 5 points and a good relationship is 6 to 10 points and a poor relationship is 0 to 4 points
7. Impact on the Ability of the District to Comply with Laws and Rules Relating to Historically Underutilized Businesses: (0) point weight – There are no laws that apply to this procurement so it has been officially considered and no weight is assigned.
8. Residency: (1) point weight - 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;

3 EPIC6 Cooperative Member List

Awarded vendor(s) must agree to extend EPIC6 contract pricing and terms to all members and future members. Volumes and quantities that will be purchased are unknown. Cooperative members are not required to purchase from awarded vendors. EPIC6 will be awarding this contract on a multi-vendor basis, so as to best serve the needs of its Cooperative members. I certify that I accept the EPIC6 Cooperative member list (attachment) and agree to extend contract pricing to all members. (Yes / No)

Yes

4	Company and/or Product Description This information will appear on the EPIC6 website, if awarded an EPIC6 contract. (Limit 750 characters.) Swing Kingdom is a playground manufacturer and safety surface provider in Leola, Pennsylvania with a proven reputation for premium craftsmanship. Our commercial playgrounds are engineered from a safety first perspective. We offer pour in place (PIP), rubber mulch, and engineered wood fiber (EWF) surfacing materials.
5	Years Experience Company years experience in this category? 19
6	Primary Contact Name Mr. Phi V. Le
7	Primary Contact Title Chief Operating Officer
8	Primary Contact Email phi@swingkingdom.com
9	Primary Contact Phone Enter 10 digit phone number. (No dashes or extensions) Example: 9364358288 (717) 656-4449
10	Secondary Contact Name Beve Robbins
11	Secondary Contact Title Admin
12	Secondary Contact Email sales@swingkingdom.com
13	Secondary Contact Phone Enter 10 digit phone number. (No dashes or extensions) Example: 9364358288 (717) 656-4449
14	Admin Fee Contact Name Admin Fee Contact Name. This person is responsible for paying the admin fee to EPIC6. Mr. Phi V. Le
15	Admin Fee Contact Email phi@swingkingdom.com

1 6	Admin Fee Contact Phone Enter 10 digit phone number. (No dashes or extensions) Example: 9364358288 (717) 656-4449
1 7	Company Website This will appear on the EPIC6 website, if awarded an EPIC6 contract. www.SwingKingdom.com
1 8	Federal ID Number Federal ID Number also known as the Employer Identification Number. (Format - 12-3456789) 83-4583975
1 9	Primary Address, City, State, Zip 36 Glenbrook Road, Leola, PA 17540
2 0	Subsidiaries Please list all subsidiaries or other included companies of your company that will be included in this bid submission. If no subsidiaries, please respond "none". None
2 1	Discount Offered What is the MINIMUM percentage discount off of any item or service you offer to EPIC6 Members that is in your regular catalog, website, store or shelf pricing? This is a ceiling on your pricing and not a floor because, in order to be more competitive in the individual circumstance, you may offer a larger discount depending on the items or services purchased and the quantity at time of sale. Must answer with a number between 0% and 100%. 10%
2 2	Large Order Discount Do you offer additional discounts to EPIC6 members for large order quantities or large scope of work? (Yes/No) Yes
2 3	Contract Pricing Vendor agrees to honor the pricing discount off regular catalog, website, store or shelf pricing for the term of the award? (Yes / No) Yes
2 4	Minimum Order Restrictions Does your company require a minimum order? If so, please specify. If a minimum order is not required, please respond "no". In addition, please specify any additional charge for orders received for less than the minimum amount. No
2 5	Restocking Fee Does your company charge a restocking fee on returned items? If so, please specify. If not, please respond "no". 30%

26	Delivery	Delivery of items purchased is typically no more than _____ working days after receipt of an EPIC6 member's authorized order. (Number of days) 21
27	Contract Pricing Notation	If vendor requires a reference number or special notation on the purchase order to assure EPIC6 contract pricing, please list. If none is required, please respond with "n/a". N/A
28	EPIC6 Administration Fee	By submitting a proposal, I understand that if awarded an EPIC6 contract, a 1.5% administration fee will be charged for all goods and services provided under said contract. The fee shall be remitted to EPIC6. The fee shall not and will not be added by the vendor as a separate line item on an EPIC6 member invoice, quote, proposal or any other written communications with the EPIC6 member. EPIC6/ESC Region 6 is required by Texas Government Code § 791 to be compensated for its work and thus, failure to agree shall render your response void and it will not be considered. Vendor agrees to remit to EPIC6 the required administration fee? Please respond "Yes". Yes
29	Federal Funds	Most of our members receive Federal Government grants and they make up a significant portion of their budgets. The members need to know if your company is willing to sell to them when they spend federal budget funds on their purchase. There are attributes that follow that are provisions from the federal regulations in 2 CFR part 200. Your answers will determine if your award will be designated as Federal or Education Department General Administrative Regulations (EDGAR)compliant. Is it your intent to be able to sell to our members regardless of the fund source, whether it be local, state or federal? (Yes / No) Yes
30	Authorized Proposer	I certify that I am authorized to answer the questions in this section entitled, "Required Federal Contract Provisions of Federal Regulations for Contracts" for contracts with Educational Purchasing Interlocal Cooperative Region 6 (EPIC6) for the proposing company. (Yes / No) Yes
31	Certification of Residency	The vendor's ultimate parent company or majority owner: (A) has its principal place of business in Texas; OR (B) employs at least 500 persons in Texas? (Yes / No) No
32	City of Business	Vendor's principal place of business is in the city of? Leola

3
3**State of Business**

Vendor's principal place of business is in the state of?

PA

3
4**Felony Conviction Notice**

I certify that the information concerning notification of felony conviction has been reviewed by me and the information furnished is true to the best of my knowledge. State of Texas Legislative Senate Bill No.1, Section 44.034, Notification of Criminal History, Subsection (a), states "a person or business entity that enters into a contract with a school district or EPIC6 must give advance notice to the district or EPIC6 if the person, owner, or operator of the business entity has been convicted of a felony". The notice must include a general description of the conduct resulting in the conviction of a felony. Subsection (b) states, "a school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by subsection (a) or misrepresented the conduct resulting in the conviction". The district must compensate the person or business entity for services performed before the termination of the contract. This notice is not applicable of a publicly-held corporation. (Agree)

Agree

3
5**Publicly Held Corporation**

My firm is a publicly held corporation; therefore, this reporting requirement is not applicable? (Yes / No)

No

3
6**Owner(s)**

My firm is owned or operated by individual(s) who has/have been convicted of a felony? (Yes / No)

No

3
7**Details of Conviction**

If your firm is owned or operated by the following individual(s) who has/have been convicted of a felony: Please provide details of the conviction. This is not necessarily a disqualifying factor and the details of the conviction determines the eligibility. Providing false or misleading information about the conviction is illegal. Please respond "n/a" if not applicable.

N/A

3
8**Non-Collusive Bidding Certificate**

By submission of this bid or proposal, the Bidder certifies that:

- 1) This bid or proposal has been independently arrived at without collusion with any other Bidder or with any Competitor.
- 2) This bid or proposal has not been knowingly disclosed and will not be knowingly disclosed, prior to the opening of bids, or proposals for this project, to any other Bidder, Competitor or potential competitor.
- 3) No attempt has been or will be made to induce any other person, partnership or corporation to submit or not to submit a bid or proposal.
- 4) The person signing this bid or proposal certifies that he has fully informed himself regarding the accuracy of the statements contained in this certification, and under the penalties being applicable to the Bidder as well as to the person signing in its behalf. Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered.

(Agree)

Agree

3
9**Antitrust Certification Statements (Tex. Government Code § 2155.005)**

By submission of this bid or proposal, the Bidder certifies that: I affirm under penalty of perjury of the laws of the State of Texas that:

- 1) I am duly authorized to execute this contract on my own behalf or on behalf of the company, corporation, firm, or partnership.
 - 2) In connection with this bid, neither I nor any representative of the Company has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15.
 - 3) In connection with this bid, neither I nor any representative of the Company has violated any federal antitrust law.
 - 4) Neither I nor any representative of the Company has directly or indirectly communicated any of the contents of this bid to a competitor of the Company or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Company.
- (Agree)

4
0**Texas HB 89- Texas Government Code Sec. 2270.002**

A governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. I verify by my "YES" response to this attribute that, as a company submitting a proposal to this solicitation, that I am authorized to respond for the company and affirm that the company (1) does not boycott Israel; and (2) will not boycott Israel during the term of this contract, or any contract with EPIC6 in the future. I further affirm that if our company's position on this issue is reversed and this affirmation is no longer valid, that EPIC6 will be notified in writing within one (1) business day and we understand that our company's failure to affirm and comply with the requirements of Texas Government Code 2270 et seq. shall result in a "no award" determination by EPIC6 and if a contract exists with EPIC6, be grounds for immediate contract termination without penalty to EPIC6 and the Education Service Center Region 6. FAILURE TO RESPOND "YES" WILL RESULT IN NO CONSIDERATION OF YOUR PROPOSAL. I swear and affirm that the above is true and correct by a "YES" response.

4
1**Regulatory Standing**

I certify to EPIC6 for the proposal attached that my company is in good standing with all governmental agencies Federal or state that regulate any part of our business operations.

If not, please explain. (Yes / No)

4
2**Suspension or Debarment Certification Debarment and Suspension (Executive Orders 12549 and 12689)**

A contract award (2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. By submitting this offer and certifying this section, this bidder: Certifies that no suspension or debarment is in place, which would preclude receiving a federally funded contract as described above.

(Agree)

4
3**Non-Discrimination Statement and Certification**

In accordance with Federal civil rights law, all U.S. Yes Departments, including the U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident. Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotope, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English. To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at How to File a Program Discrimination Complaint and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov. (Title VI of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title 7 CFR Parts 15, 15a, and 15b; the Americans with Disabilities Act; and FNS Instruction 113-1, Civil Rights Compliance and Enforcement – Nutrition Programs and Activities) All U.S. Departments, including the USDA are equal opportunity provider, employer, and lender. Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered. I certify that in the performance of a contract with EPIC6 or its members, that our company will conform to the foregoing anti-discrimination statement and comply with the cited and all other applicable laws and regulations. (Agree)

4
4**2 CFR PART 200 Contract Provisions**

Required Federal contract provisions of Federal Acquisition Regulations for Contracts for contracts with ESC Region 6 and EPIC6 Members: The following provisions are required to be in place and agreed if the procurement is funded in any part with federal funds. The ESC Region 6 and EPIC6 Members are the subgrantee or Subrecipient by definition. Most of the provisions are located in 2 CFR PART 200 - Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards at 2 CFR PART 200. Others are included within 2 CFR part 200 et al. In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. Notice: Pursuant to the above, when federal funds are expended by ESC Region 6 and EPIC6 Members, ESC Region 6 and EPIC6 Members reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party. Does vendor agree? (Agree)

4 5 2 CFR PART 200 Termination

Termination for cause and for convenience by the grantee Yes or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000) Pursuant to the above, when federal funds are expended by ESC Region 6 and EPIC6 Members, ESC Region 6 and EPIC6 Members reserves the right to terminate any agreement in excess of \$10,000 resulting from this procurement process for cause after giving the vendor an appropriate opportunity and up to 30 days, to cure the causal breach of terms and conditions. ESC Region 6 and EPIC6 Members reserves the right to terminate any agreement in excess of \$10,000 resulting from this procurement process for convenience with 30 days notice in writing to the awarded vendor. The vendor would be compensated for work performed and goods procured as of the termination date if for convenience of the ESC Region 6 and EPIC6 Members. Any award under this procurement process is not exclusive and the ESC Region 6 and EPIC6 reserves the right to purchase goods and services from other vendors when it is in the best interest of the ESC Region 6 and EPIC6. Does vendor agree? (Yes / No)

Yes

4 6 2 CFR PART 200 Clean Air Act

Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). Pursuant to the Clean Air Act, et al above, when federal funds are expended by ESC Region 6 and EPIC6 Members, ESC Region 6 and EPIC6 Members requires that the proposer certify that during the term of an award by the ESC Region 6 and EPIC6 Members resulting from this procurement process the vendor agrees to comply with all of the above regulations, including all of the terms listed and referenced therein. Does vendor agree? (Agree)

Agree

4 7 2 CFR PART 200 Byrd Anti-Lobbying

Byrd Anti-Lobbying Amendment (31 U.S.C. Yes Amendment 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. Pursuant to the above, when federal funds are expended by ESC Region 6 and EPIC6 Members, ESC Region 6 and EPIC6 Members requires the proposer certify that during the term and during the life of any contract with ESC Region 6 and EPIC6 Members resulting from this procurement process the vendor certifies to the terms included or referenced herein. Does vendor agree? (Agree)

Agree

4 8 Federal Rule

Federal Rule (13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

Pursuant to Federal Rule (13) above, when federal funds are expended by EPIC6/EPIC6 member, EPIC6/EPIC6 member requires proposer certify that during the term of an award by EPIC6/EPIC6 member resulting for this procurement process the vendor will be in compliance with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

Failure to certify will render your proposal non-responsive and will not be considered for award.

Does vendor so certify? (Yes)

Yes

4 9 2 CFR PART 200 Procurement of Recovered Materials

A non-Federal entity that is a state agency or agency of a Materials political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. Does vendor certify that it is in compliance with the Solid Waste Disposal Act as described above? (Yes/No)

Yes

5 0 Indemnification

The ESC Region 6 and EPIC6 is a Texas Political Subdivision and a local governmental entity; therefore, it is prohibited from indemnifying third parties pursuant to the Texas Constitution (Article 3, Section 52) except as specifically provided by law or as ordered by a court of competent jurisdiction. A provision in a contract to indemnify or hold a party harmless is a promise to pay for any expenses the indemnified party incurs, if a specified event occurs, such as breaching the terms of the contract or negligently performing duties under the contract. Article III, Section 49 of the Texas Constitution states that "no debt shall be created by or on behalf of the State ... " The Attorney General has counseled that a contractually imposed obligation of indemnity creates a "debt" in the constitutional sense. Tex. Att'y Gen. Op. No. MW-475 (1982). Contract clauses which require the System or institutions to indemnify must be deleted or qualified with "to the extent permitted by the Constitution and Laws of the State of Texas." Liquidated damages, attorney's fees, waiver of vendor's liability, and waiver of statutes of limitations clauses should also be deleted or qualified with "to the extent permitted by the Constitution and laws of State of Texas." Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered. Do you agree to these terms? (Yes)

Yes

5 1 Subcontracting

2 CFR §200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce ; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

EPIC6/EPIC6 members anticipates the possibility of using federal funds for procurement under this potential award and is required to obtain the following compliance assurance.

Will you be subcontracting any of your work under this award if you are successful? (Yes / No)

No

5
2**Subcontracting Part 2**

If your response to the above attribute (#44) was yes, do you agree to comply with the following federal requirements?

If you answered yes, failure to answer yes here will render your proposal non-responsive and it will not be considered. Please respond "n/a" if not applicable.

5
3**Certification of Terms and Conditions**

I certify that I have read, understand and agree the EPIC6 Terms and Conditions. (attachment)
(Yes / No)

5
4**Solicitation Exceptions/Deviations**

If the bidder intends to deviate from the EPIC6 Terms and Conditions attached in this proposal invitation, all such deviations must be listed on this attribute, with complete and detailed conditions and information included or attached. EPIC6 will consider any deviations in its proposal award decisions, and EPIC6 reserves the right to accept or reject any bid based upon any deviations indicated below or in any attachments or inclusions. In the absence of any deviation entry on this attribute, the proposer assures EPIC6 of their full compliance with the Standard Terms and Conditions contained in this Solicitation.

5
5**1295 FORM REQUEST**

Copy and paste the following URL into a new tab of your web browser to navigate to the Texas Ethics Commission website. Follow the instructions provided to electronically file a 1295 form (Certificate of Interested Parties). Once completed, please then save PDF version of form, sign, and upload in "Response Attachments" of RFP.

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm