

EDMONDS SCHOOL DISTRICT NO. 15

I. STANDARD DEFINITIONS

This section contains definitions of some of the terms commonly used in our competitive procurements.

1. **ALTERNATE:** Goods or services that deviate with respect to features, performance, or use from the goods or services specified in the procurement document.
2. **BID:** A written offer to perform a contract to provide goods or services to the District in response to an IFB, RFP or RFQ.
3. **BIDDER:** A supplier who submits a bid to the District.
4. **CONTRACT:** An agreement, or mutual assent, between two or more competent parties with the elements of the agreement being offer, acceptance, and consideration.
5. **CONTRACT ADMINISTRATOR:** An individual or individuals designated by the District to implement and administer the terms of the contract.
6. **CONTRACTOR:** An individual, company, corporation, firm or combination thereof with whom the District develops a contract for the procurement of goods or services.
7. **CONTRACTOR'S REPRESENTATIVE:** An individual designated by the Bidder or Contractor to act on its behalf and with the authority to legally bind the Bidder or Contractor concerning the terms and conditions set forth in bid and contract documents.
8. **DISTRICT:** Edmonds School District #15
9. **EQUAL:** Goods or services that meet or exceed the quality, performance, and use of the brand, model or specifications in the procurement document.
10. **FORCE MAJEURE:** The term "force majeure" means an occurrence that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure shall include acts of God, war, riots, strikes, fire, floods, epidemics, or other similar occurrences.
11. **FREE ON BOARD (F.O.B.) DESTINATION:** The District accepts legal title of goods at point of delivery. Contractor determines mode of freight and accepts responsibility for payment of freight charges. Contractor accepts responsibility for processing of freight claims.
12. **LEAD TIME:** The period of time between when the Contractor receives the order and the District receives the goods.
13. **PURCHASING AGENT:** An individual or individuals designated by the District to act on behalf of the District to develop and negotiate contracts within the limits established by law.
14. **SUPPLIER:** A business that provides or furnishes goods, materials, or services.
15. **SUBCONTRACTOR:** A person or business who is providing or performing an essential aspect of the contract under the direction of the Contractor.

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II. STANDARD TERMS AND CONDITIONS (T's & C's)

1. **ACCESS TO DATA:** The Contractor shall provide access to data generated under this contract to the District and the State Auditor at no additional cost.
2. **ADDITIONS OR DELETIONS:** The District reserves the right to add or delete items, or locations, as determined to be in the best interest of the District. Added items, or locations will be related to those on contract and additions or deletions will not represent a significant increase or decrease in size or scope of the contract. Such additions or deletions will be by mutual agreement, will be at prices consistent with the original bid price margins, and will be evidenced by issuance of a written contract change notice from the Purchasing Agent.
3. **AMENDMENTS TO AGREEMENT:** The District and the Contractor may make amendments or modifications to this contract by written amendment signed by both parties. No amendments shall be effective unless signed by both an authorized representative of the Contractor and an authorized representative of the District.
4. **ALTERNATIVE DISPUTE RESOLUTION FEES AND COSTS:** In the event that the parties engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution method, including cost of mediator or arbitrator. In addition, each party shall be responsible for its own attorneys' fees incurred as a result of the alternative dispute resolution method. Both parties agree to be bound by the determination of the alternative dispute resolution forum.
5. **ASSIGNMENT OF CONTRACT:** The Contractor shall not assign this contract, or any part thereof, or any moneys owing there under, without the prior written approval of the District. The Contractor shall have total responsibility for meeting the contract requirements.
6. **AUTHORITY:** Each party by signature has full power and authority to enter into and perform this contract, and the person signing this contract on behalf of each party has been properly authorized and empowered to enter into this contract. Each party further acknowledges that it has read this contract, understands it, and agrees to be bound by it.
7. **BREACH, DEFAULT, TERMINATION:**
 - A. **Breach:** A breach of a term or condition of the contract shall mean any one or more of the following events: (1) Contractor fails to perform the services by the date required or by a later date as may be agreed to in a written amendment to the contract signed by the District; (2) Contractor breaches any warranty or fails to perform or comply with any term or agreement in the contract; (3) Contractor makes any general assignment for the benefit of creditors; (4) in the District's sole opinion, Contractor becomes insolvent or in an unsound financial condition so as to endanger performance hereunder; (5) Contractor becomes the subject of any proceeding under any law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors; (6) any receiver, trustee, or similar official is appointed for Contractor or any of the Contractor's property; (7) Contractor is determined to be in violation of federal, state, or local laws or regulations and that such determination, in the District's sole opinion renders the Contractor unable to perform any aspect of the contract.
 - B. **Default:** A Contractor may be declared in default for failing to perform a contractual requirement or for a material breach of any term or condition.
 - C. **Termination for Convenience:** The District may terminate this contract, in whole or in part, at any time and for any reason by giving thirty (30) calendar days written termination notice to Contractor. Termination charges shall not apply unless they are subsequently agreed upon by both parties. Where termination charges are applicable, both parties agree to negotiate in good faith and to limit the extent of negotiations to valid documented expenses incurred by Contractor prior to date of termination. Should the parties not agree to a satisfactory settlement, the matter may be subjected to alternate dispute resolution.

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- D. **Termination for Breach and/or Default:** Except in the case of delay or failure resulting from circumstances beyond the control and without the fault or negligence of the Contractor or of the Contractor's suppliers or subcontractors, the District shall be entitled, by written or oral notice, to cancel and/or terminate this contract in its entirety or in part for breach and/or for default of any of the terms herein and to have all other rights against Contractor by reason of the Contractor's breach as provided by law.
 - E. **Termination by Mutual Agreement:** The District or the Contractor may terminate this contract in whole or in part, at any time, by mutual agreement with thirty (30) calendar days written notice from one party to the other.
 - F. **Sanctions:** Any violations of the mandatory provisions of this contract shall be a material breach of contract for which the contractor may be subject to a requirement of specific performance, or damages and sanctions provided by contract, or by other applicable laws.
8. **OPPORTUNITY TO CURE DEFAULT:**
- A. **Events:** In the event that Contractor fails to perform a contractual requirement or materially breaches any term or condition, the District may issue a written or oral notice of default and provide a period of time in which Contractor shall have the opportunity to cure. Time allowed for cure shall not diminish or eliminate Contractor's liability for liquidated or other damages. The District is not required to allow the Contractor to cure defects if the opportunity for cure is not feasible as determined solely by the District. The District may terminate the contract for nonperformance, breach or default without allowing the opportunity to cure by the Contractor.
 - B. **Remedies:** If the nonperformance, breach or default remains after Contractor has been provided the opportunity to cure, the District may do one or more of the following:
 - 1. Exercise any remedy provided by law.
 - 2. Terminate this contract and any related contracts or portions thereof.
9. **CHANGES:** No alteration in any of the terms, conditions, or contractual requirements herein shall be effective without the written consent of the Purchasing Agent as evidenced by issuance by the District of a contract change notice.
10. **CHARGES FOR HANDLING:** No charge will be allowed for handling that includes but is not limited to packing, wrapping, bags, containers, or reels, unless otherwise stated herein.
11. **COMPLIANCE WITH THE LAW:** The Contractor shall comply with all applicable federal, state and local laws and with applicable directions, rules and regulations of public officials in enforcement of District regulations and regulations from the State of Washington or from the United States of America with respect to any portion of this contract. Failure to comply with any part of this section shall be grounds for the District to immediately terminate the contract.
- A. **Drug-Free Workplace:** In accordance with the Drug-Free Workplace Act of 1988, as a recipient of federal grant moneys, the District requires the Contractor to prohibit the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance or of alcohol in the workplace.
 - B. **PROHIBITED EMPLOYEES:** RCW 28A.400.330 requires the Contractor to prohibit from working with children, any employee of the Contractor who has pled guilty to or been convicted of any felony crime specified under RCW 28A.400.322. Failure to comply with this section shall be grounds for the school district to immediately terminate the contract.
 - C. **TOBACCO FREE SITE:** In accordance with RCW 28A.210.310 and School Board policy 6805, the use of all tobacco products or nicotine delivery devices on public school property is strictly prohibited.
 - D. **WEAPON FREE ZONE:** In accordance with RCW 9.41.280, firearms and dangerous weapons are prohibited on District premises.
12. **CONFLICT AND SEVERABILITY:**
- A. **Conflict:** In the event of conflict between contract documents and applicable laws, codes, ordinances or regulations, the most stringent or legally binding requirement shall govern and be considered a part of this contract to afford the district maximum benefits.

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- B. Severability: If any part of this agreement is found void and unenforceable, it will not affect the validity of the balance of the agreement, which shall remain valid and enforceable according to its terms.
13. **CONTRACT SUSPENSION:** The District may at any time and without cause, suspend the contract or any portion thereof, for a period of not more than thirty (30) calendar days, by written notice to the Contractor. Contractor shall resume performance within fifteen (15) calendar days of written notice from the District.
14. **DELIVERY OF GOODS:**
- A. Time: Delivery must be made during normal work hours and within time frames proposed by Bidder herein and subsequently accepted by the District. Failure to comply may subject Contractor to non-delivery assessment charges as appropriate. The District reserves the right to refuse shipment when delivered after normal working hours. Contractor shall verify specific working hours of individual delivery sites and so instruct carrier(s) to deliver accordingly. The acceptance by the District of late performance with or without objection or reservation by the District shall not waive the right to claim damage for such breach, nor preclude the District from pursuing any other remedy provided herein, including termination, nor constitute a waiver of the requirements for the timely performance of any obligation remaining to be performed by Contractor.
- B. Terms: Unless otherwise specified, all goods are to be shipped F.O.B. Destination freight prepaid and included. Where specific authorization is granted to ship goods F.O.B. shipping point, Contractor agrees to prepay all shipping charges, route as instructed or if instructions are not provided, route by cheapest common carrier. Each invoice for shipping charges shall contain the original or a copy of the freight bill indicating that the payment for shipping has been made. The District reserves the right to refuse COD shipments.
- C. Location: All deliveries are to be made to the applicable delivery location in accordance with Interstate Commerce Commission rules or as indicated in purchase order. When applicable, Contractor shall take necessary actions to safeguard items.
- D. Authorization: In no case shall Contractor initiate delivery prior to receipt of written or verbal authorization from contract administrator. Expenses incurred otherwise shall be borne solely by the Contractor.
15. **DETERMINATION OF RESPONSIBILITY:** During the contract term, should the contractor be determined to be in violation of federal, state, or local laws or regulations, the District reserves the right to modify its initial determination of responsibility at the time of award and to take other action as determined appropriate, including but not limited to termination of the contract.
16. **FEDERAL DEBARMENT:** By acceptance of this purchase order, the Contractor certifies that neither the Contractor nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in transactions by any federal department or agency.
17. **FORCE MAJEURE:**
- A. Except for payment of sums due, neither party shall be liable to the other or deemed in default under this contract if and to the extent that such party's performance of this contract is prevented by reason of force majeure. Notification: If either party is delayed by force majeure, said party shall provide written notification as soon as reasonably possible. The notification shall provide evidence of the force majeure to the satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of same shall be provided. The time of completion shall be extended by contract modification for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this contract.
- B. Rights Reserved: The District reserves the right to cancel the contract and/or purchase materials, equipment or services from the best available source during the time of force majeure, and Contractor shall have no recourse against the District.

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- C. Force Majeure. Neither party will be liable for, or be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any cause or condition beyond that party's reasonable control; provided, however, that both parties will use all commercially reasonable efforts to (i) promptly advise the other party of any delay or failure to perform on account of such delay or failure and (ii) avoid or remove such causes of non-performance. The District will not be liable for, or be considered to be in breach of or default under this Agreement on account of, legislative action that significantly reduces district spending so long as the District provides documentation adequately showing such reduction.
18. **IMPLIED WARRANTIES PRESERVED:** The District will not accept any exclusion or modification of the implied warranties of merchantability or fitness for particular purpose by the contractor. All merchandise delivered is subject to inspection and acceptance or rejection to the satisfaction of the District. The Contractor shall also assume all responsibility in making any necessary adjustments with freight companies or replacing any materials damaged in transit, to the satisfaction of the District.
19. **IDENTIFICATION:** The applicable purchase order number shall be identified on all invoices, packing lists, packages, instruction manuals, correspondence, shipping notices, shipping containers, and other written documents affecting this contract. Packing lists shall be enclosed with each shipment, indicating the contents therein.
20. **INDEMNIFICATION:** The Contractor shall defend, indemnify and hold harmless the District, its board of directors, officers, employees, or agents from and against any and all claims, liabilities and expenses, including attorney's fees, arising out of or resulting from any injuries to persons (including death) or damage to property arising from acts or omissions of the Contractor, its employees, agents or subcontractors, however caused.
21. **INSURANCE:** The Contractor shall purchase and maintain at its own cost in a company or companies licensed and admitted to do business in the State of Washington such comprehensive general liability and other insurance, on an occurrence basis, and as will provide protection from claims set forth below which may arise out of or result from the Contractor's operations under the contract, whether to be performed or furnished by the Contractor, by any subcontractor, by anyone directly or indirectly employed by any of them to perform or furnish any of the products or services, or by anyone for whose acts any of them may be liable. Edmonds School District No. 15 shall be named as a primary, non-contributing additional insured on such policies other than state workers' compensation. The District's specification or approval of this insurance or of its amount shall not relieve or decrease the liability of the Contractor under this contract or otherwise. Policies shall contain a provision that the District shall be given 30 days written notice by certified mail before cancellation of any insurance or reduction of the amount thereof, or any alteration, modification or restriction thereto. Upon acceptance of contract and prior to any work being performed, a certificate of insurance with additional insured endorsement attached shall be mailed to:
- Edmonds School District No. 15**
Attn: Risk Management
20420 68th Ave W
Lynnwood, WA 98036-7400
- or sent by email to: RiskMgmt@edmonds.wednet.edu
22. **REQUIRED COVERAGE:**
- A. Claims under workers' or workman's compensation, disability benefits and other similar employee benefit acts, including Contingent Employers Liability (Stop Gap);
- B. Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- C. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;

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- D. Claims for damages insured by personal injury liability coverage which are sustained (a) by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or (b) by any other person for any other reason. Claims for damages, other than to the products or services themselves, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom;
- E. Claims arising out of operation of Laws or Regulations for damages because of bodily injury or death of any person or for damage to property;
- F. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle, including coverage for Owned Motor Vehicles, Non-Owned Motor Vehicles and Hired or Borrowed Motor Vehicles; and
- G. Comprehensive General Liability;
- H. Blanket Contractual Liability;
- I. Comprehensive Auto Liability; and;
- J. Claims for damages arising out of the contractor's errors and/or omissions while performing professional services. (When a contractor or consultant is providing expert services, a professional errors and omissions policy should be obtained. Examples include medical, dental, legal, architectural, certified public accountant, etc.; services performed by someone with special knowledge, skills, license, etc.)
- K. These required coverage shall be written for not less than the following (or greater if required by law):

Worker's Compensation:	State: Statutory Employer's Liability:	\$500,000	
Comprehensive General Liability (including Premises-Operations; Independent Contractor's Protective; Products and Completed Operations; Broad-Form Property Damage):	Bodily Injury; Property Damage; Combined Single Limit:	\$1,000,000 Each Occurrence	\$2,000,000 Aggregate
Blanket Contractual Liability:	Bodily Injury; Property Damage; Combined Single Limit:	\$1,000,000 Each Occurrence	\$2,000,000 Aggregate
	Personal Injury, with Employment Exclusion Deleted:	\$1,000,000 Each Occurrence	\$2,000,000 Aggregate
Comprehensive Automobile Liability:	Bodily Injury; Property Damage; Combined Single Limit:	\$1,000,000 Each Occurrence	\$2,000,000 Aggregate
Professional Errors and Omissions Liability Required when a contractor or consultant is providing expert services	Damages arising out of the contractor's errors and omissions while performing professional services	\$1,000,000 Each Occurrence	\$2,000,000 Aggregate

23. INSPECTION AND REJECTION:

- A. The District's inspection of all materials and equipment upon delivery is for the sole purpose of identification. Such inspection shall not be construed as final acceptance, or as acceptance of the materials or equipment, if materials or equipment does not conform to contractual requirements. If there are any apparent defects in the materials or equipment at the time of delivery, the District will promptly notify the Contractor thereof. Without limiting any other rights, the District at its option, may require the Contractor to:
 1. Repair or replace, at Contractor's expense, any or all of the damaged goods, or

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2. Refund the price of any or all of the damaged goods, or
 3. Accept the return of any or all of the damaged goods.
24. **JURISDICTION:** This contract shall be construed and interpreted in accordance with the laws of the State of Washington and the venue of any action brought hereunder shall be in the Superior Court for Snohomish County.
25. **LICENSES:** The Contractor, at no additional expense to the District, shall secure and maintain in full force and effect during the term of this contract, all required licenses, and similar legal authorization, and comply with all legal requirements.
26. **NON-DISCRIMINATION:** During the performance of this Contract, the Contractor shall comply with all applicable federal and state nondiscrimination laws, regulations and policies, including, but not limited to, Title VII of the Civil Rights Act, 42 U.S.C. section 12101 et. seq.; the Americans with Disabilities Act (ADA); and, [Chapter 49.60 RCW](#), Discrimination – Human Rights Commission.
27. **ORDER OF PRECEDENCE:** The items listed below are incorporated into and made a part of the contract between the District and the Contractor. In the event of an inconsistency in or between any documents comprising the contract, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:
- A. Applicable Federal and State Statutes and Regulations
 - B. Special Terms and Conditions
 - C. Standard Terms and Conditions
 - D. Contractor's Bid; and
 - E. Any other documents incorporated in this contract by mutual written agreement of the parties.
28. **PAYMENT:**
- A. Payment will be made by the District. Contractor shall provide two (2) copies of each invoice. Each invoice shall be submitted as required by the contract and shall reference the purchase order number. Invoices will not be processed for payment nor will the period of cash discount commence until receipt of a properly completed invoice and until all invoiced items are received and satisfactory performance of Contractor has been attained. If an adjustment in payment is necessary due to damage or dispute, the cash discount period shall commence on the date final approval for payment is authorized. Under Chapter 39.76 RCW, the District shall pay interest at a rate of one percent per month, but at least one dollar per month, on amounts due on written contracts for public works, personal services, goods and services, equipment, and travel, whenever the public body fails to make timely payment. Payment shall be timely if check or warrant is mailed or is available on the date specified for the amount specified in the applicable contract documents but not later than thirty days of receipt of a properly completed invoice or receipt of goods or services, whichever is later. If no terms are specified, net 30 days will automatically apply. Payment(s) made in accordance with contract terms shall fully compensate the Contractor for all risk, loss, damages or expense of nature and acceptance of payment shall constitute a waiver of all claims submitted by Contractor.
 - B. Payment for materials or equipment received or for services rendered shall be made by check, warrant, Procurement Card or electronic funds transfer issued from the District and redeemable in U.S. dollars. Unless otherwise indicated, the District's sole responsibility shall be to issue this payment. Any bank or transaction fees or similar costs associated with currency exchange procedures shall be fully assumed by the Contractor.
29. **PERFORMANCE:** Acceptance by the District of unsatisfactory performance with or without objection or reservation shall not waive the right to claim damage for breach, or terminate the contract, nor constitute a waiver of requirements for satisfactory performance of any obligation remaining to be performed by Contractor.
30. **QUALITY STANDARDS:** Product or service specifications herein are intended solely to clearly describe type and quality and not to be restrictive. Trade reference specifications describe the type of product thus far found to best meet District functional requirements and provide the most economical useful life under District use situations. So as not to misrepresent the requirements

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herein, brands other than those specified will therefore be considered on the basis of whether they are at least equal in quality/performance.

31. **SAFETY CONDITIONS:** The Contractor shall provide and/or install merchandise that meets or exceeds the "Washington Industrial Safety and Health Standard" and the "Washington State Board of Health Standard for Primary and Secondary Schools", and comply with applicable laws, orders, rules, regulations, and ordinances, including, but not limited to those relating to industrial insurance, medical aid, unemployment compensation, pension, social security, minimum wage, equal employment, safety standards and building codes (collectively, the "Acts").
32. **TITLE AND RISK OF LOSS:** Regardless of F.O.B. point, Contractor agrees to bear all risks of loss, injury, or destruction of goods and materials ordered herein which occur prior to delivery and acceptance. Such loss, injury or destruction shall not release Contractor from any obligation hereunder.
33. **TREATMENT OF ASSETS:** Except as otherwise provided for in the contract, the ownership and title to all real property and all personal property purchased by the Contractor in the course of performing this contract with moneys paid by the District shall vest in the District, except for supplies consumed in performing this contract. The Contractor shall (1) maintain a current inventory of all the real and personal property; (2) label all the property "Edmonds School District"; and, (3) surrender property and title to the District without charge prior to settlement upon completion, termination or cancellation of this agreement.

Any property of the District furnished to the Contractor shall, unless otherwise provided herein, or approved by the District, be used only for the performance of the contract and shall remain property of the District.

The Contractor shall be responsible for any loss or damage to property of the District which results from the negligence of the Contractor. If any property is lost, destroyed, or damaged, the Contractor shall notify the District and take all reasonable steps to protect the property from further damage.

All reference to the Contractor under this clause shall include Contractor's employees, agents and subcontractors.
34. **ENTIRE AGREEMENT:** This contract, including all addenda and subsequently issued change notices, comprises the entire agreement between the District and the Contractor and shall be governed by the laws of the State of Washington incorporated herein by reference.