

VENDOR CONTRACT

Between

Educators Depot Inc.

and

(List Vendor or Company Name)

THE INTERLOCAL PURCHASING SYSTEM (TIPS/TAPS)

For

Playground Equipment, Athletic & PE Equipment, HD Gym, Weight Lifting & Exercise Equipment and All Related Supplies, Services and Installation

The following pages will constitute the contract between the successful vendors(s) and TIPS/TAPS. Bidders shall state, in a separate writing, and include with their proposal response, any required exceptions or deviations from these terms, conditions, and specifications. If agreed to by TIPS/TAPS, they will be incorporated into the final contract. NOTE: The award of this contract to vendor is made following all requirements to meet the Competitively Bid Procurement Laws.

The Vendor Contract ("Contract") made and entered into by and between The Interlocal Purchasing System (hereinafter referred to as "TIPS/TAPS" respectfully) a government cooperative purchasing program authorized by the Region VIII Education Service Center, having its principal place of residence at 4845 US Hwy 271 North, Pittsburg, Texas 75686. This contract 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.

1. General Terms and Conditions

1.1. Freight

All deliveries shall be freight prepaid, F.O.B. destination and shall be included in all pricing offered unless otherwise clearly stated in writing.

1.2. 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. (Or for commodity category appropriate for refurbished equipment, products may be "refurbished" but must be clearly represented as refurbished.)

1.3. Customer support

The Vendor shall provide timely and accurate technical advice and sales support to TIPS/TAPS staff and TIPS/TAPS participants. The Vendor shall respond to such requests within one (1) working day after receipt of the request. The Vendor shall provide free training to TIPS/TAPS staff regarding products and services supplied by the Vendor unless otherwise clearly stated in writing. (Unless training is a line item sold or packaged and must be purchased with product.)

1.4. Contracts

All contracts and agreements between Vendors and TIPS/TAPS Members shall strictly adhere to the statutes that are set forth in the Uniform Commercial Code as most recently revised.

Contracts for purchase will normally be put into effect by means of a purchase order(s) executed by authorized agents of the participating government entities.

Davis Bacon Act requirements will be met when Federal Funds are used for construction and/or repair of buildings.

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1.5. Tax exempt status

A taxable item sold, leased, or rented to, or stored, used, or consumed by, any of the following governmental entities is exempted from the taxes imposed by this chapter:(1) the United States; (2) an unincorporated instrumentality of the United States; (3) a corporation that is an agency or instrumentality of the United States and is wholly owned by the United States or by another corporation wholly owned by the United States;(4) the State of Texas; (5) a Texas county, city, special district, or other political subdivision; or (6) a state, or a governmental unit of a state that borders Texas, but only to the extent that the other state or governmental unit exempts or does not impose a tax on similar sales of items to this state or a political subdivision of this state. Texas Tax Code § 151.309.

1.6. Assignments of contracts

No assignment of contract may be made without the prior written approval of TIPS/TAPS. Payment can only be made to the awarded Vendor or vendor assigned dealer.

1.7. Disclosures

- 1.7.1. Vendor affirms that he/she has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this contract.
- 1.7.2. 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 participants in the TIPS/TAPS program.
- 1.7.3. 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 contract.

1.8. Renewal of Contracts

All contracts are for a period of one (1) year with an option for renewal for 2 consecutive years before this category is subject to public bid. (Except the Commodity Category of Trades, Temporary Labor and Materials will be a 12 month contract with No Option for Renewal. Trades, Temporary Labor and Materials will go to public bid every 12 months.)

1.9. Shipments

The Vendor shall ship ordered products within five (5) working days after the receipt of the order. If a product cannot be shipped within that time, the Vendor shall notify TIPS/TAPS and the requesting entity as to why the product has not shipped and shall provide an estimated shipping date, if applicable. TIPS/TAPS or the requesting entity may cancel the order if estimated shipping time is not acceptable.

1.10. Invoices

The Vendor or vendor assigned dealer shall submit invoices, to the TIPS/TAPS participant. Each invoice shall include the TIPS/TAPS participant's purchase order number. The shipment tracking number or pertinent information for verification of TIPS/TAPS participant 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 TIPS/TAPS and the TIPS/TAPS participant.

1.11. Payments

The TIPS/TAPS participant will make payments directly to the Vendor or vendor assigned dealer at net 30 days after receiving invoice.

1.12. Pricing

The Vendor contracts to provide pricing to TIPS/TAPS and its participating governmental entities that are the lowest pricing available to like cooperative purchasing customers and the pricing shall remain so throughout the duration of the

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contract. The Vendor agrees to not sell to TIPS/TAPS members at a price lower than can be obtained thru the TIPS/TAPS contract.

The Vendor agrees to promptly lower the cost of any product purchased through TIPS/TAPS following a reduction in the manufacturer or publisher's direct cost to the Vendor. Price increases will be honored. However, the Vendor shall honor previous prices for thirty (30) days after written notification to TIPS/TAPS of an increase.

All pricing submitted to TIPS/TAPS shall include the Two Percent (2%) participation fee to be remitted to TIPS/TAPS by the Vendor. Vendor will not show adding the 2% to the invoice presented to customer.

1.13. Participation Fees

Vendor or vendor assigned dealer contracts to pay 2% of all sales to TIPS/TAPS on a bi-monthly scheduled report. (Vendor may submit sales monthly on their own. TIPS/TAPS will email a Bi-Monthly Submission Report to each vendor on November, January, March, May, July and September. The Vendor or vendor assigned dealer is responsible for keeping record of all sales that go through the TIPS/TAPS contract. Report may be sent to TIPS/TAPS electronically while check for 2% is mailed. Failure to pay 2% participation fee will result in termination of contract.

1.14. Indemnity

Indemnity for Personality Contracts. Vendor agrees to indemnify and hold harmless and defend TIPS/TAPS, its member(s), officers and employees, from and against all claims and suits for damages, injuries to persons (including death), property damages, losses, and expenses including court costs and attorney's fees, arising out of, or resulting from, Vendor's performance of this contract, 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, invitees, whether or not such claims are based in whole or in part upon the negligent acts or omissions of the TIPS/TAPS, member(s), officers, employees, or agents.

Indemnity for Performance Contracts. The Vendor agrees to indemnify and hold harmless and defend TIPS/TAPS, its member(s), officers and employees from and against all claims and suits for damages, injuries to persons (including death), property damages, losses, and expenses including court costs and attorney's fees, arising out of, or resulting from, Vendor's work under this contract, 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. Vendor further agrees to indemnify and hold harmless and defend TIPS/TAPS, its member(s), officers and employees, from and against all claims and suits for injuries (including death) to an officer, employee, agent, subcontractor, supplier or equipment lessee of the Vendor, arising out of, or resulting from, Vendor's work under this contract whether or not such claims are based in whole or in part upon the negligent acts or omissions of the TIPS/TAPS, its member(s), officers, employees, or agents.

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.

1.15. Multiple Vendor Awards

TIPS/TAPS reserves the right to award multiple vendor contracts for commodity categories when deemed in the best interest of the membership. Bidders scoring 80 % or above will be considered for an award. Commodity categories are established at the discretion of TIPS/TAPS.

1.16. State of Texas Franchise Tax

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By signature hereon, the bidder 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.

1.17. Miscellaneous

The Vendor acknowledges and agrees that continued participation in TIPS/TAPS is subject to TIPS/TAPS sole discretion and that any Vendor may be removed from the participation in the Program at any time with or without cause. Nothing in the contract or in any other communication between TIPS/TAPS and the Vendor may be construed as a guarantee that TIPS/TAPS participants will submit any orders at any time. TIPS/TAPS reserves the right to request additional proposals for items already on contract at any time.

1.18. Purchase Order Pricing/Product Deviation

If a deviation of pricing/product on a purchase order occurs, TIPS/TAPS is to be notified within 24 hours of receipt of order.

Special Terms and Conditions

It is the intent of TIPS/TAPS to contract with a reliable, high performance vendor to supply commodities to government and educational agencies. It is the experience of TIPS/TAPS that the following procedures provide TIPS/TAPS, 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.

- **Contracts:** All vendor purchase orders must go to the TIPS/TAPS-Region VIII ESC office at 4845 US Hwy 271 North, Pittsburg, Texas 75686 or fax 866.839.8472. Should an agency send an order direct to vendor, it is the vendor's responsibility to forward the order to TIPS/TAPS at the address/fax above within 24 business hours and confirm its receipt with TIPS/TAPS.
- **Promotion of Contract:** It is agreed that Vendor will encourage all eligible entities to purchase from the TIPS/TAPS Program. Encouraging entities to purchase directly from the Vendor and not through TIPS/TAPS contract is not acceptable to the terms and conditions of this contract and will result in removal of Vendor from Program. Vendor is expected to use marketing funds for the marketing and promotion of this contract.
- **Daily Order Confirmation:** All contract purchase orders will be faxed twice daily from TIPS/TAPS to vendor. The vendor must confirm receipt of orders to the member (customer) within 24 business hours.
- **Vendor custom website for TIPS/TAPS:** If Vendor is hosting a custom TIPS/TAPS web site, then updated pricing must be posted by 1st of each month.
- **Back Ordered Products:** If product is not expected to ship within 3 business days, customer is to be notified within 24 hours and appropriate action taken based on customer request. See also Section 1.10.
- **Monthly Sales Report:** Vendor or vendor assigned dealer must submit a monthly or bimonthly sales report of all TIPS/TAPS participant purchases in the following format.

| | | |
|-------------------------|-----------|------------------------|
| ISD/Entity name | PO#, and | PO Total Sales Amount. |
| Example: XYZ ISD | PO#ABC123 | \$xxx.xx (order total) |

Any other Special Terms and Conditions that Bidder/Vendor requests should be listed in detail for consideration by TIPS/TAPS:

Vendor Profile

1.1. Minority/Women Business Enterprise (Required by some participating governmental entities)

Vendor certifies that his firm is a M/WBE Yes No

1.2. Certification of Residency (Required by the State of Texas)

Company submitting bid is a resident bidder. Yes No

Vendor's principal place of business is in the city of Beasley State of Texas

1.3. Felony Conviction Notice (Required by the State of Texas)

My firm is, as outlined in the Instructions to Bidders:

A publicly held corporation; therefore, this reporting requirement is not applicable.

Is not owned or operated by anyone who has been convicted of a felony.

Is owned or operated by the following individual(s) who has/have been convicted of a felony:

If the 3rd box is checked, a detailed explanation of the names and convictions must be attached.

1.4. Pricing Information

1.4.1. In addition to the typical unit pricing furnished herein, the Vendor agrees to furnish all current and future products at prices that are proportionate to Dealer Pricing. Yes No

If answer is no, attach a statement detailing how pricing for TIPS/TAPS participants would be calculated.

1.4.2. Pricing submitted includes the 2% TIPS/TAPS participation fee. Yes No

1.4.3. Vendor agrees to remit to TIPS/TAPS the required 2% participation fee. Yes No

1.4.4. Additional discounts to TIPS/TAPS members for bulk quantities? Yes No

1.5. Company billing address where the invoice for the 2% participation fee will be sent by TIPS/TAPS:

Contact person: Suzy Rodriguez
Company: Educator's Depot, Inc.
Address: 17424 W. Grand Pkwy. Ste. 206
City, State, Zip: Sugar Land, TX 77479
Phone: 979-387-3013
Fax: 866-736-2014
Email: srodriguez@eddepotinc.com

1.6. Vendor Service

1.6.1. Average shipping time after receipt of customer order is 7-14 working days.

1.6.2. Vendor currently has a government-to-business e-commerce site Yes No

1.6.3. Which description best describes your company's position in the distribution channel?

1.6.4.

Manufacturer direct

Certified education/government reseller

Authorized distributor

Manufacturer marketing thru reseller

Value-added reseller

Other _____

1.6.5. Company experience in this commodity/category. 8 Years

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1.6.6. The Vendor can supply all areas of the following states currently served TIPS/TAPS:

AL AK AR AZ DE CA CO DC FL GA HI ID IL IN IO KS KY LA MA MD ME MO MI MS MT NC ND NE
NJ NM NV OH OK OR PA RI SC SD TN TX UT VA VT WA WI WY

Yes No

If answer is no, please list which states can be served _____

2.6.6 The Vendor can supply all areas of the following states that may become serviced states of

TIPS/TAPS:

Yes No

CT MN NH NY WV

If answer is no, please list which states can be served _____

**** Prices are guaranteed for:** (Standard Time is "Term of Contract") Term selected will affect scoring.

_____ Month(s); or _____ Year(s); or _____ Term of Contract

Company and/or Product Description: (This information will appear on the TIPS/TAPS website for your company, if awarded a TIPS/TAPS contract.)

~~Classroom, Cafeteria, Office, Auditorium, Early Childhood, Outdoor, Science, Library, Reception, & Church Furniture, Playground Equipment, Installation Services, Markerboards, A/V Equipment.~~

Warehousing, Project Management, Turn Key Installation of large scale projects.

Each Awarded Vendor will have 2 contacts listed on the Vendor Profile page of the TIPS/TAPS website. These 2 contacts will answer all sales and general information calls from TIPS/TAPS members and direct them to the appropriate sales person. If vendor is awarded, these 2 contacts must be completely knowledgeable about the TIPS/TAPS contract. Online training by the TIPS/TAPS administration may be required of the 2 contacts listed below.

Main Contact:

Alternate Contact:

Name: Alan Clarke

Name: Jonathan Watterson

Title: CEO

Title: Director of Operations

Email: aclarke@eddepotinc.com

Email: jwatterson@eddepotinc.com

Phone: 979-387-3018

Phone: 979-387-3012

Fax: 866-736-2014

Fax: 866-736-2014

Mobile: 281-948-8648

Mobile: 281-451-2597

Mailing Address: 17424 W. Grand Pkwy. S. Ste. 206

Mailing Address: 17424 W. Grand Pkwy. S. Ste. 206

City: Sugar Land

City: Sugar Land

State/Zip: TX, 77479

State/Zip: TX, 77479

WORDS FOR "SEARCH ENGINE" - Please list words to be posted on your company's page on the TIPS website (if you receive an award from this proposal). Words may be product names, manufacturers, or other words that are associated with the commodity award that you are submitting a proposal for. Words to be included in the Search Engine for my Company are: Playground Equipment, Athletic Equipment, Shade Structures, Kidstuff Playsystems, Miracle Recreation, Martin Sports, Athletic Connection.

2% Contact for TIPS/TAPS Contract

Vendor must list the person who will be responsible for submitting the 2% payment and supportive documentation of sales to TIPS/TAPS on the bi-monthly reporting schedule.

Name: Suzy Rodriguez Position: Controller/ Accountant

Email srodriguez@eddepotinc.com Telephone: 979-387-3013

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CONTRACT Signature Form

The undersigned hereby proposes and agrees to furnish goods and/or services in strict compliance with the terms, specifications and conditions at the prices quoted unless noted in writing. The undersigned further certifies that he or she is an authorized agent of the company and has authority to negotiate and contract for the company named below.

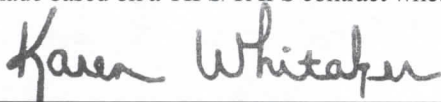
If addenda to this RFP are released, indicate the receipt of addenda by entering the number of addenda here: _____

| | |
|-----------------------|--|
| Company name | <u>Educator's Depot, Inc.</u> |
| Mailing Address | <u>17424 W. Grand Pkwy. S. Ste. 206</u> |
| City/State/Zip | <u>Sugar Land, TX 77479</u> |
| Telephone No. | <u>866-736-2012</u> |
| Fax No. | <u>866-736-2014</u> |
| E-mail address | <u>customerservice@eddepotinc.com</u> |
| Authorized signature | <u></u> |
| Printed name | <u>Alan Clarke</u> |
| Position with company | <u>CEO</u> |
| Web site URL | <u>www.eddepotinc.com</u> |

Accepted by The Interlocal Purchasing System:

Term of contract November 15, 2012 through November 14, 2013

Unless otherwise stated, all contracts are for a period of one year with an option to renew annually for an additional two years if agreed to by TIPS/TAPS and the awarded Vendor. Vendors shall honor the Two Percent (2%) participation fee for any sales made based on a TIPS/TAPS contract whether the Vendor is awarded a renewal or not.


TIPS/TAPS Authorized Signature

11/15/12
Date


Approved by Region VIII ESC

11/15/12
Date



edi contract
a division of Educators Depot Inc.

Educator's Depot, Inc.

Warranty

All standard manufacturer warranties will apply.