

## **GENERAL TERMS AND CONDITIONS**

### **1. TERMS AND CONDITIONS**

In submitting an RFP, Proposer understands and agrees to be bound by the following terms and conditions which shall be incorporated into any future contracts, agreements, or purchase orders relating to this RFP between the firm and the District. By submitting a RFP, each Proposer agrees to waive any claim it has or may have against the District arising out of or in connection with the administration, evaluation, or recommendation of any RFP; waiver of any requirements under the RFP Documents; acceptance or rejection of any RFPs; and award of Contracts, if any. The District may elect to issue subsequent proposals and approve additional firms for the same or similar items/services during the agreement period if it is determined to be in the best interest of the District.

### **2. COMPLIANCE WITH LAWS**

Proposer and WSISD shall comply with all applicable federal, state, and local laws, statutes, ordinances, standards, orders, rules, and regulations. All federal, state, and local laws, statutes, ordinances, standards, orders, rules, and regulation, including, EDGAR Certifications, are hereby integrated into this Contract.

#### **Student Confidentiality**

Contractor acknowledges that the District has a legal obligation to maintain the confidentiality and privacy of student records in accordance with applicable law and regulations, including, but not limited to the Family Educational Rights and Privacy Act ("FERPA"). Any student information provided to awarded Contractor shall be provided in compliance with the requirements and exceptions outlined in FERPA. Contractor must comply with said law and regulations and safeguard student information. Contractor may not disclose student information to a third party without prior written consent from the parent or eligible student. Contractor must destroy any student information received from the District when no longer needed for provision of services to District.

### **3. CONFLICT OF INTEREST**

No employee, officer, or agent may participate in the selection, award, or administration of a Contract if he or she has a real or apparent conflict of interest. *See* 2 C.F.R. § 200.318(c)(1). WSISD officers, employees, and agents may not solicit nor accept gratuities, favors, or anything of monetary value from Proposers or parties to subcontracts. WSISD maintains written standards covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts. For more information regarding conflicts of interest, visit the district Conflict of Interest policies located at: <http://pol.tasb.org/Policy/Search/367?filter=conflict%20of%20interest>.

### **4. TEXAS PUBLIC INFORMATION ACT (TPIA).**

PROPOSER acknowledges that the WSISD is subject to the Texas Public Information Act (TPIA). As such, upon receipt of a request under the TPIA, WSISD is required to comply with the requirements of the TPIA. For purposes of the TPIA, "public information" is defined as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- a. by WSISD; [or]
- b. for WSISD and WSISD
  - i. owns the information; or
  - ii. has a right of access to the information; or
  - iii. spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; [or]
- c. by an individual officer or employee of WSISD in the officer's or employee's official capacity and the information pertains to official business of the WSISD.

Proposer is expected to fully cooperate with the WSISD in responding to public information requests. This includes, but is not limited to, providing the WSISD with requested documentation. In the event that the request involves documentation that Proposer has clearly marked as confidential and/or proprietary, WSISD will provide Proposer with the required notices under the TPIA. Proposer acknowledges that it has the responsibility to brief the Attorney General's Office on why the documents identified as confidential and/or proprietary fall within an exception to public disclosure.

## **5. RECORD RETENTION**

Proposer shall preserve all records relating to this RFP and/or Contract for a period of seven (7) WSISD fiscal years or for such period as may be required by law, after final payment relating to this project.

## **6. RIGHT TO AUDIT**

Proposer shall maintain on a current basis complete books and records relating to this Agreement. Such records shall include, but not be limited to, documents supporting all bids, income, and expenditures. The books and records shall be original entry books with a general ledger itemizing all debits and credits for the work on this Agreement. In addition, Proposer shall maintain detailed payroll record including all subsistence, travel and field expenses, canceled checks and receipts and invoices for all items. These documents and records shall be retained for at least seven (7) fiscal years from the completion of this Agreement. Proposer will permit District to audit all books, accounts or records relating to this Agreement or all books, accounts or record of any business entities controlled by Proposer that participated in this Agreement in any way. Any audit may be conducted on Proposer's premises or, at District's option, another location. Proposer shall provide all books and records within fifteen (15) days upon receipt of written notice from District.

## **7. ASSIGNMENT**

The successful Proposer may not assign its rights and duties under an award without the written consent of the District. Such consent shall not relieve the assignor of liability in the event of default by its assignee.

## **8. TERMINATION**

WSISD shall have the right to terminate for default all or part of a resulting contract if the Contractor breaches any of the terms hereof or if the Contractor becomes insolvent or files any petition in bankruptcy. Such right of termination is in addition to and not in lieu of any other remedies which WSISD may have in law or equity, specifically including, but not limited to, the right to collect for damages or demand specific performance.

WSISD may terminate a resulting contract and debar the Contractor from future "bidding" for violations of the federal requirements including, but not limited to, "Contract Work Hours and Safety Standards Act," "Equal Employment Opportunity Act," and "Energy Policy and Conservation Act."

In the event of a material failure by the Contractor to provide services in accordance with the terms of this Request ("**default**"), the District may terminate the award upon ten (10) calendar days' written notice of termination setting forth the nature of the material failure; provided, that, the material failure is through no fault of the District. The termination will not be effective if the material failure is fully cured prior to the end of the ten-day period.

Termination by District will not relieve Contractor from liability for any default or breach under any resulting Agreement or any other act or omission of Contractor. If Contractor fails to cure any default within fifteen (15) calendar days after receiving written notice of the default, the District will be entitled (but will not be obligated) to cure the default and will have the right to offset against all amounts due to Contractor, any and all reasonable expenses incurred in connection with the District's

curative actions.

In the event the award is terminated, then within thirty (30) calendar days after termination, Contractor will reimburse the District for all fees paid by the District to Contractor that were (a) not earned by Contractor prior to termination, or (b) for goods or services that the District did not receive from Contractor prior to termination.

## **9. DEFAULT AND REMEDIES**

The Firm shall be considered in default of this RFP, and such default shall be grounds for the District to terminate any resulting award for this RFP and/or pursue any and all relief, at law or in equity, to which it may be entitled by reason of such default if Firm fails to perform any of its obligations under this RFP and fails to correct such non-performance within ten (10) calendar days of written notice from the District to do so. Should any termination of this RFP award be held to be unenforceable or otherwise improper by a court of competent jurisdiction, then such termination shall be considered a termination for convenience as provided herein.

The parties shall be entitled to exercise any right or remedy available to it either at law or in equity, subject to the choice of law, venue and service of process clauses limitations agreed herein. Nothing in this agreement shall commit the District to an arbitration resolution of any disagreement under any circumstances. Any Claim arising out of or related to the Contract, except for those specifically waived under the terms of the Contract, may, after denial of the Board of Trustees, be subject to mediation at the request of either party. Any issues not resolved hereunder must be referred to non-binding mediation to be conducted by a mutually agreed upon mediator as a prerequisite to the filing of any lawsuit over such issue(s). The parties shall share the mediator's fee and any associated filing fee equally. Mediation shall be held in Tarrant County, Texas. Agreements reached in mediation shall be reduced to writing and will be subject to the approval by the District's Board of Trustees, signed by the Parties if approved by the Board of Trustees, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Texas.

## **10. GRATUITIES**

The District may, by written notice to the Firm, cancel this RFP without liability to Firm if it is determined by the District that gratuities, in the form of entertainment, compensation, gifts, or otherwise, were offered or given by the Firm, or any agent or representative of the Firm, to any Board Member, officer, or employee of the District with a view toward securing a RFP or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such an agreement.

## **11. FORCE MAJEURE**

Neither Firm nor the District shall be responsible or deemed to be in default of its obligations to the other to the extent any failure to perform or delay in performing its obligations under this RFP is caused by events or conditions beyond the reasonable control of that party, and are not due to the negligence or willful misconduct of such party (hereinafter, "Force Majeure events"). For purposes of this RFP, Force Majeure events shall include, but not be limited to, acts of God or public enemy, war, riot or civil commotion, strikes, epidemic, fire, earthquake, tornado, hurricane, flood, explosion, or other catastrophes, or events or conditions due to governmental law, regulations, ordinances, order of a court of competent jurisdiction, executive decree or order. However, in the event of such delay(s) or nonperformance, the party so delayed shall furnish prompt written notice to the other party (including the date of inception of the Force Majeure event and the extent to which it will affect performance) and shall undertake all efforts reasonably possible to cure the delay or nonperformance and mitigate its effects or to otherwise perform. The District shall not be responsible for payment for any product or service delayed or foreclosed by any Force Majeure event unless and until such delayed or foreclosed product or service is provided. The provisions of this section shall not preclude the District from

canceled or terminating any resulting award (or any order for any goods or services included herein), or from revising the scope of the Work, as otherwise permitted under this RFP.

Failure of Firm to fully comply with the terms and provisions of this RFP shall constitute grounds for declaring the Firm in default.

## **12. CONTROLLING DOCUMENTS AND INTEGRATION**

The Contract resulting from this solicitation consists of the RFP, including all Addenda, the Proposal submitted by Proposer that is satisfactory to the District, and accepted and awarded by the district, and the District's Contract form(s) which may include, but are not limited to, a written contract, an agreement letter, or a purchase order.

**NOTWITHSTANDING ANYTHING TO THE CONTRARY IN ANY PROPOSER FORM, PROPOSAL, OR DOCUMENTATION, THE TERMS AND CONDITIONS OF THE CONTRACT AS INTEGRATED ABOVE SHALL BE CONTROLLING IN ALL INSTANCES.**

To the extent that there is any conflict between or among the documents composing the Contract, the following hierarchy (from most to least authoritative) shall prevail:

- a. the District's Contract forms (written contract, agreement letter, or purchase order as applicable);
- b. RFP as provided by the District and all Addenda; and
- c. any Proposal provisions submitted by Proposer and agreed to by the District.

## **13. FIXED TERM OF ENGAGEMENT PRICING**

All pricing proposed shall be maximums and be fixed as a maximum rate for the term of the engagement subject to the allowance by the District for the firm to decrease rates at any time.

## **14. THIRD PARTY BENEFICIARIES**

Nothing relating to this project shall be deemed or construed to create any third-party beneficiaries or otherwise give any third party any claim or right of action against any party to this request.

## **15. INDEMNIFICATION AND HOLD HARMLESS**

Proposer acknowledges and agrees that WSISD is a Texas Political Subdivision and a local government entity and therefore, is prohibited by the Texas Constitution from indemnifying it or any third parties for any damages arising under this Agreement.

Except as otherwise expressly provided, Proposer shall defend, indemnify, and hold WSISD harmless from and against all claims, liability, loss and expenses, including reasonable costs, collection expenses, and attorneys' fees incurred, which arise by reason of the acts or omissions of Proposer, its agents or employees in the performance of its obligations under a resulting contract. This clause shall survive termination of any resulting contract.

## **16. NON-APPROPRIATION OF FUNDS**

Agreement and all Addenda shall be subject to all applicable federal, state and local laws, ordinances, and regulations, and shall be construed in accordance with the laws of the state of Texas. Customer will make reasonable effort to obtain and appropriate funds each fiscal year for payment of its contractual obligations. In the event that Customer does not appropriate funding for the next fiscal year for the services specified in the Addendum, then the affected Addendum shall terminate at the end of the last fiscal year for which funding is appropriated. The rates and charges, terms and conditions of this Agreement are subject to the review and/or approval by the regulatory authorities of the state of Texas.

## 17. PAYMENT TERMS

WSISD pays net 30 or at point of sale and complies with the State of Texas payment law, Texas Government Code, Chapter 2251. See statute for specifics or consult your legal counsel. Payment will be made within 30 days after the later of the receipt of goods/services and/or a properly submitted invoice. The district considers an invoice properly submitted when the following conditions are met:

- a. Invoice is received at the address indicated on the purchase order.
- b. Pricing on the invoice matches the price on the purchase order.
- c. Include a description of the goods or services provided, the purchase order number, invoice number and any applicable cash discount.
- d. Quantities on the invoice do not exceed those specified on the Purchase Order
- e. Unique invoice number used for each billing.
- f. Merchandise has been shipped or service performed.
- g. Description of goods and services on the invoice shall match the description on the Purchase Order.

Cash/prompt payment discounts offered will not be considered in determining the award but will be taken if earned.

Purchase Orders will serve as the award instrument(s) against this Request for Proposal. Orders will be placed as items are approved for purchase and funds become available.

Proposer agrees to pay any sub-Proposers the appropriate share of the payment received from WSISD not later than the tenth (10th) day after the date Proposer receives the payment from WSISD. The exceptions to payments made by WSISD listed in Tex. Gov't Code Section 2251.002 shall apply to this Contract.

## 18. INVOICES

Proposer's invoices **must** contain the appropriate WSISD purchase order number on the face of the invoice. Each line item on the invoice should contain the corresponding line-item number shown on the purchase order. Invoices submitted without the correct purchase order number shown may be returned to the Proposer for correction. Corrected invoices will be subject to the same payment provisions as original invoices. A delay of payment may result if Proposer presents the District with invoices, statements, reports, etc. that are incomplete, inaccurate, or in need of substantial internal research. The District will not be responsible for any interest charges and/or late fees as a result of delayed payment due to time delays caused by inadequate or incomplete information provided in invoices by Proposer.

**Invoices are to be mailed for payment of delivery to:**

**WSISD/Accounts Payable  
8224 White Settlement Road  
White Settlement, TX 76108**

**or emailed to:**

**[wsisdinvoices@wsisd.net](mailto:wsisdinvoices@wsisd.net)**

## 19. CHANGE ORDERS/AMENDMENTS

WSISD reserves the right to make changes to a Purchase Order (e.g., increase/decrease quantities, change delivery date, delivery address). Once the performance of the Contract has begun, any change orders or requests will be made in accordance with Tex. Educ. Code Section 44.0411 and applicable WSISD procedures and policies. Any changes to a purchase order shall be communicated to Proposer by the issuance of a formal change purchase order. Only a WSISD procurement staff member may

make a change to the purchase order by issuing and sending a formal change purchase order to Proposer. If Proposer acts on the direction of a District employee who is not authorized to make changes, Proposer does so at his or her own risk or peril and risks termination of the Contract for cause. Also, if Proposer attempts, or receives, a modification/amendment from a District employee that is not authorized to make changes, Proposer does this at his or her own risk or peril and risks termination of the Contract for cause. No amendment of this Contract shall be permitted unless and until first approved in writing by WSISD, and no such amendment shall have any effect unless and until a written amendment to this Contract is executed by the Superintendent or designee after any necessary approvals have been obtained from the WSISD Board of Trustees.

## **20. GOVERNING LAW, JURISDICTION, AND SERVICE OF PROCESS**

This agreement and any addenda or other additions and all contracts or awards 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.

Any Proceeding arising out of or relating to this procurement process or any contract resulting from or any contemplated transaction shall be brought in a court of competent jurisdiction in Tarrant County, Texas and each of the parties irrevocably submits to the exclusive jurisdiction of said court in any such proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the Proceeding shall be heard and determined only in any such court, and agrees not to bring any proceeding arising out of or relating to this procurement process or any contract resulting from or any contemplated transaction in any other court.

## **21. ATTORNEY FEES**

In connection with WSISD's defense of any suit against it and/or WSISD's prosecution of any claim, counterclaim or action to enforce any of its rights and/or claims related to this RFP or any Contract, in which WSISD prevails as to all or any portion of its defense(s), claims, counterclaims or actions, WSISD shall be entitled to recover its actual attorney's fee and expenses incurred in defending such suit and/or in prosecuting such claim or action. Likewise, in connection with Proposer's defense of any suit against it and/or Proposer's prosecution of any claim, counterclaim or action to enforce any of its rights and/or claims related to this RFP or any Contract, in which Proposer prevails as to all or any portion of its defense(s), claims, counterclaims or actions, Proposer shall be entitled to recover its actual attorney's fee and expenses incurred in defending such suit and/or in prosecuting such claim or action.

## **22. NOTIFICATION OF MATERIAL CHANGE**

Proposer is required to notify WSISD when any material change in operations occurs, including changes in distribution rights for awarded products, bankruptcy, material changes in financial condition, change of ownership, and the like, within three (3) business days of such change.

## **23. WARRANTIES**

**PROPOSER EXPRESSLY WARRANTS THAT ALL THE GOODS AND SERVICES COVERED BY THE CONTRACT RESULTING FROM THIS RFP WILL BE IN EXACT ACCORDANCE WITH THE REQUIREMENTS OF THE AWARD OF THE RFP AND RESULTING CONTRACT AND FREE FROM DEFECTS IN MATERIALS AND/OR WORKMANSHIP. PROPOSER EXPRESSLY WARRANTS MERCHANTABILITY FOR ALL GOODS PROVIDED PURSUANT TO THE RESULTING CONTRACT. ALL WARRANTIES SHALL SURVIVE DELIVERY OF THE GOODS AND COMPLETION OF THE SERVICES AND SHALL NOT BE DEEMED WAIVED EITHER BY REASON OF THE DISTRICT'S ACCEPTANCE OF SAID GOODS AND SERVICES OR BY PAYMENT FOR THEM. ANY DEVIATIONS FROM THE CONTRACT, OR DESCRIPTIONS OR SPECIFICATIONS FURNISHED THEREUNDER, OR ANY OTHER EXCEPTIONS OR**

**ALTERATIONS MUST BE APPROVED IN WRITING BY THE DISTRICT'S  
PROCUREMENT COORDINATOR.**

**24. M/WBE PLAN**

Women and minority owned businesses, and historically underutilized businesses (HUB), shall have equal access as compared to other individuals/agencies, to competitive bidding, competitive sealed proposals, and requests for proposals as defined by the Texas Education Code 44.031.

The term women or minority owned business shall mean a business in which at least 51 percent of the ownership and management is by minority group members or women owned, or in the case of a publicly owned business, at least 51 percent of the stock is owned and managed by minority group members or women, or as otherwise defined by federal law. Minority groups shall include African Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and Asian-Indian Americans, or as otherwise defined by federal law. The District shall accept HUB certification from the comptroller of public accounts or D/M/WBE from any established certification organization or the District's women or minority owned business affidavit procedure.