

New Caney Independent School District Bids/Proposals - General Terms and Conditions

1. **UNDUE INFLUENCE:** In order to ensure the integrity of the selection process, vendor's officers, employees, agents or other representatives shall not lobby or attempt to influence a vote or recommendation related to the vendor's response, directly or indirectly, through any contact with school board members or other district officials from the date this solicitation is released until the award of a contract by the Board of Trustees.
2. **BID/PROPOSAL SUBMISSION:** Bids/Proposals must be submitted utilizing the bid/proposal documents and must reach the New Caney Independent School District Purchasing Office on or before the date and time specified in the bid/proposal. Late submittals will be filed unopened. **Faxed or emailed proposals will not be accepted.**
3. **ADDENDA:** All addenda shall be posted on the District's Purchasing Department's website prior to or on the date listed in the bid/proposal. It is the responsibility of the proposer to check the website prior to submitting a response. Responses that do not include all addenda information may be deemed as incomplete and not considered by the district.
4. **SUPPLEMENTAL INFORMATION:** All supplemental information required by the proposal documents must be included with the response. Failure to provide complete and accurate information may disqualify vendor from consideration.
5. **SIGNATURES:** Response must be signed by an authorized individual to contractually bind their company or firm when submitting the response. Failure to sign the response will be considered as a mistake in documentation and the response will be rejected as nonresponsive.
6. **PROPOSAL ERRORS:** Proposals will represent a true and correct statement and shall contain no cause for claim of omission or error. Request for withdrawal of proposal must be made in writing stating the conditions for withdrawal.
7. **USE OF BRAND NAMES:** The use of brand and manufacturer's names is for the purpose of brevity in establishing type and quality of merchandise and is not restrictive. Manufacturer, trade and/or brand names must be indicated for each article and when omitted, district will consider bid to be as specified. Illustrations and complete description must be included with the bid if bidding other than specified.
8. **SPECIAL TOOLS & TEST EQUIPMENT:** If the price stated on the face hereof includes the cost of any special tooling or special test equipment fabricated or required by Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the District and to the extent feasible shall be identified by the Contractor as such.
9. **CONTRACTUAL RELATIONSHIP:** Nothing herein shall be construed as creating the relationship of employer or employee between the District and the Contractor or between the District and the Contractor's employees. The District shall not be subject to any obligations or liabilities of the Contractor or his employees, incurred in the performance of the contract unless otherwise herein authorized. Neither the Contractor nor his employees shall be entitled to any of the benefits established for District employees, nor be covered by the District's Workers' Compensation Program.
10. **TRS RETIREE/REHIRE:** Contractor shall inform District in the event that any employee of the Contractor is a TRS retiree.
11. **INDEMNIFICATION:** Contractor shall indemnify, defend and hold harmless the District, its officers, agents and employees, from and against any and all loss, cost, damage, expense and claims, including attorney's fees and liability of any kind for any acts or omission of Contractor, its officers, agents or employees, in performance of contract, so long as the sole negligence of the District is not the cause of the loss, claim, damage expense or cost.
12. **APPLICABLE LAW:** This contract shall be governed by the policies of the New Caney ISD Board of Trustees, laws of the State of Texas and the Uniform Commercial Code, as applicable. Wherever the term "Uniform Commercial Code" is used, it shall be construed as meaning the Uniform Commercial Code as adopted in the State of Texas as effective and in force on the date of this contract. New Caney ISD Board Policies can be accessed on the web at www.newcaneyisd.org
13. **GRATUITIES:** The District may, by written notice to the Contractor, cancel this contract without liability to the District if it is determined by the District that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the NCISD with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such a contract. In the event this contract is cancelled by the District pursuant to this provision, the District shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
14. **ASSIGNMENT-DELEGATION:** No right or interest in this contract shall be assigned or delegation of any obligation made by the Contractor without the written permission of the District. Any attempted assignment or delegation by the Contractor shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.
15. **MODIFICATIONS:** This contract may only be modified by a written agreement signed by both of the parties or their duly authorized agents.

16. INTERPRETATION OF EVIDENCE: This contract is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their contract. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this contract. Acceptance or acquiescence in a course of performance rendered under this contract shall not be relevant to determine the meaning of this contract even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code is used in this contract, the definition contained in the Code is to control.
17. DELIVERY TERMS AND TRANSPORTATION CHARGES: F.O.B. Destination, UNLOADED, unless delivery terms are specified otherwise in proposal. All deliveries, unless specified otherwise in the contract or order document, will be made to the campus or department specified, between the hours of 8:00 a.m. to 4:00 p.m., Monday through Friday, except on school holidays. The delivery shall be made and articles shall be placed inside the school building or district facility in the room or rooms designated, at no additional charge. The title and risk of loss of the goods shall not pass to the District until the District actually receives, accepts, and takes possession of the goods at the point or points of delivery. The place of delivery shall be that set forth in any subsequent duly authorized purchase orders.
18. FUND AVAILABILITY: Any purchase order resulting from this solicitation is contingent upon the continued availability of appropriations and is subject to cancellation, without penalty, either in whole or in part, if funds are not appropriated by the NCISD Board of Trustees or otherwise not made available to the District.
19. ADVERTISING: Contractor shall not advertise or publish, without the District's prior consent, the fact that the District has entered into this contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.
20. WAIVER: No claim or right arising out of a breach of this contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.
21. LEGAL VENUE: Both parties agree that venue for any litigation arising from this contract shall lie in Montgomery County in the State of Texas.
22. RIGHT OF INSPECTION: The District shall have the right to inspect the goods before accepting them.
23. PAYMENT TERMS: Payment terms shall be Net 30 days from date of acceptance or receipt of a properly prepared and submitted invoice, whichever is later.
24. RIGHT TO ADDITIONAL COMPETITION: New Caney ISD occasionally purchases very large quantities of specific items and expressly reserves the right to purchase these and other similar items via other competitive methods if deemed in the best interest of the District.
25. DURATION OF SUBMISSION: Offers must remain open for acceptance for a period of sixty (60) days subsequent to the opening of proposals. No bid may be withdrawn during the period of firm offering.
26. RECYCLED PRODUCTS: The District may give preference in purchasing products made of recycled materials if the products meet applicable specifications as to quantity and quality.
27. NOTICE OF INTENT TO SUE: Vendor understands and agrees that before any action or lawsuit may be filed against New Caney ISD that vendor must deliver written notice of its intent to file suit against New Caney ISD to the Superintendent of Schools at least 90 days in advance. As part of this written notice, the vendor will identify the nature of the proposed resolution in order to provide New Caney ISD an opportunity to resolve the dispute without the need for litigation. Vendor understands and agrees that nothing in these terms and conditions constitutes a waiver of any immunity that New Caney ISD maintains from suit or liability.
28. MEDIATION/ALTERNATIVE DISPUTE RESOLUTION: Unless waived in writing by an authorized representative of New Caney ISD, vendor understands and agrees to participate in mediation with New Caney ISD, upon the District's request, as a condition precedent to any action or lawsuit being initiated or maintained against New Caney ISD. Nothing herein shall be construed to require New Caney ISD to participate in mediation without the consent of New Caney ISD.
29. VENDOR GRIEVANCE PROCEDURE: Unless waived in writing by an authorized representative of New Caney ISD, vendor understands and agrees that it must first utilize the District's internal grievance procedures as set forth under New Caney ISD Board Policy as a condition precedent to any action or lawsuit being initiated or maintained against New Caney ISD.
30. WARRANTY-PRICE: The price to be paid by the District shall be that contained in the Contractor's bid which the Contractor warrants to be no higher than Contractor's current prices on orders by others for products of the kind and specification covered by this contract for similar quantities under similar or like conditions and methods of purchase. In the event Contractor breaches this warranty, the prices of the items shall be reduced to the Contractor's current prices on orders by others, or in the alternative, the District may cancel this contract without liability to District for breach at Contractor's actual expense. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the District shall have the right in addition to any other right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.
31. WARRANTY-PRODUCT: Contractor shall not limit or exclude any implied warranties and any attempt to do so shall render this contract voidable at the option of the District. Contractor warrants that the goods furnished will conform to the

specifications, drawings and descriptions listed in the bid invitation, and to the sample(s) furnished by Contractor, if any. In the event of a conflict between the specifications, drawings and descriptions, the drawings and descriptions shall govern.

32. **WARRANTY-SAFETY:** Contractor warrants that the product sold to the District shall conform to the standards 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, the District may return the product for correction or replacement at the Contractor's expense. In the event the Contractor fails to make the appropriate correction within reasonable time, correction made by the District will be at the Contractor's expense.
33. **WARRANTY-INFRINGEMENT:** As part of this contract for sale Contractor agrees to ascertain whether goods manufactured in accordance with the specifications attached to this contract will give rise to the rightful claim of any third person by way of infringement or the like. The District makes no warranty that the production of goods according to the specification will not give rise to such a claim and in no event shall the District be liable to the Contractor for indemnification in the event that Contractor is sued on the grounds of infringement or the like. If Contractor is of the opinion that an infringement or the like will result, he will notify the District to this effect in writing within two weeks after the signing of this contract. If the District does not receive notice and is subsequently held liable for the infringement or the like, the Contractor will hold the District harmless (if the Contractor in good faith ascertains that production of goods in accordance with the specifications will result in infringement or the like, this contract shall be null and void except that the District will pay the Contractor the reasonable cost of his search as to infringements).
34. **REJECTION/AWARD:** New Caney ISD reserves the right to reject any and/or all submittals, to award contracts for individual items as may appear advantageous and to waive all formalities in bidding. Written notice of award mailed or otherwise furnished to the successful bidder results in a binding contract without further action by either party.
35. **TERMINATION:** The District reserves the right to terminate all or any part of the undelivered portion of any order resulting from this bid/proposal solicitation upon thirty (30) days written notice; upon default by the vendor, for delay or nonperformance by the vendor or, if it is deemed in the best interest of the District, for convenience. Any notice delivered to either party shall be deemed to be delivered when mailed by registered or certified mail, return receipt requested, postage prepaid, and addressed to party's address appearing in the request or response documents (or as subsequently revised or changed). Any compensation due to Contractor will be limited to services performed and accepted by New Caney ISD up to the date of termination.
36. **PUBLIC ACCESS:** New Caney ISD is a public entity subject to the provisions of the provisions of the Texas Public Information Act (*Tex. Govt. Code* Ch. 552). Responses to this invitation may be subject to release as public information unless the response or specific parts of the response are accepted from public disclosure under such Act. The firm must stamp in bold red letters the term "CONFIDENTIAL" or "PROPRIETARY" on every page of any part of the response that the firm claims is confidential or proprietary. All responses and parts of the response that are not marked as confidential or proprietary will be considered public information after the contract is awarded. The District assumes no liability or responsibility for release of any information not properly marked. In the event that the District receives a request for disclosure of material marked "confidential" or "proprietary", the District may request an opinion from the Texas Attorney General concerning whether such material must be disclosed. Any complete response that is deemed Copyrighted is unacceptable and will be disqualified as non-responsive.
37. **COST OF PROPOSAL PREPERATION:** The company or firm shall be responsible for any cost incurred in the preparation of the response and participation in the evaluation process. There is no expressed or implied obligation by New Caney ISD to reimburse any individual or firm for any costs incurred in preparing or submitting responses, for providing additional information when requested by New Caney ISD, or for participating in any selection demonstration/interviews, including discovery (pre-contract negotiations) and contract negotiations.
38. **AWARD OF RESPONDENT(S):** The New Caney ISD Board of Trustees reserves the right to accept or reject all or any part of any response, waive minor formalities, and make the award to the company or firm that is deemed to be most advantageous to New Caney ISD. Furthermore, the Board of Trustees reserves the right to make an award to a single, multiple, or all respondents.
39. **AWARD CRITERIA:** All responses will be evaluated to determine the best value response. It is not the policy of New Caney ISD to award a contract solely on the basis of low price. Specific evaluation criteria are further detailed in the proposal document.
40. **CRIMINAL HISTORY REVIEW:** Prior to commencing any work on this Project, Respondent will certify, on the form provided herein entitled Certification of Criminal History Record Information Review by Service Company, that, for each employee of Respondent who (1) will have direct contact with students (substantial opportunity for verbal or physical interaction with students that is not supervised by a certified educator or other professional District employee), and (2) will have continuing duties related to the Project, Respondent has obtained, as required by Texas Education Code Section 22.0834 and Texas Administrative Code Sections 153.1101 and 153.1117: national criminal history record information from a law enforcement or criminal justice agency for each employee of Respondent hired before January 1, 2008; and national criminal history record information from the Texas Department of Public Safety for each employee of Respondent hired on or after January 1, 2008. Any employee or independent Company of a Company, who will have direct, unsupervised contact with students, must not have been convicted of an offense identified in Texas Education Code Section 22.085 (or any higher standard established by the District's Board of Trustees). Once a Contract is executed, the Company, Individual or Firm will be required to obtain from each and every sub Company or independent Company the form of certification attached hereto entitled Certification of Criminal History Record Information Review by Service Sub Company, relating to the employees of such Sub Companies.
41. **INSURANCE:** The Company, Individual or Firm shall secure non-declining, non-expense within limits commercial general liability insurance in a minimum amount of \$1,000,000.00 per occurrence, or higher as set forth in the proposal document, from an insurer lawfully authorized to do business in the jurisdiction in which the Project is located and which shall apply to claims made

with respect to this Project for negligent acts, errors or omissions of the Company, Individual or Firm, its consultants, and agents and employees of any of them, subject to the standard terms and conditions of such policies, as acceptable to and approved by the District's Project Representative. The Company, Individual or Firm shall furnish to the District's Project Representative copies of Certificates of such insurance. The costs and premiums for such insurance will be at the expense of the Company, Individual or Firm. The Company, Individual or Firm shall not commence work under the contract until satisfactory evidence of such insurance has been delivered to, and approved by the District.

42. **PAYMENT/PERFORMANCE BONDS:** Government Code 2253.021 requires a government entity to secure a Payment Bond if a contract for services constituting a public work is \$25,000 or above. And, a Performance Bond is required if the contract for services constituting a public work is over \$100,000. Cost of required bonding shall be submitted as a part of the original bid/proposal response.
43. **NEW CANEY ISD LOGO:** The use of New Caney ISD logo is regulated. For the purpose of responding to this request; Companies, Individuals, or Firms shall refrain from the use of the logo in any form on your proposal documents or any correspondence that may be connected with said request. Use of the New Caney ISD logo on any response documents will be deemed as failure to follow instructions as a part of this request and will be grounds for disqualification.
44. As used in this document, the terms "bid" and "proposal" are used interchangeably and the use of one term shall include application to the other.
45. **STUDENT CONFIDENTIALITY:** Supplier 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 Supplier shall be provided in compliance with the requirements and exceptions outlined in FERPA. Supplier must comply with said law and regulations and safeguard student information. Supplier may not disclose student information to a third party without prior written consent from the parent or eligible student. Supplier must destroy any student information received from the District when no longer needed for the purposes of the Agreement.