



**RFP # 21-0002**

**Request for Proposals**

**Athletic Supplies, Awards and Equipment**

**Submittal Deadline and Proposal Opening Deadline:**

**Issued May 28, 2021 by:**

Chalita Cyprian, Purchasing Specialist

Stafford Municipal School District  
1633 Staffordshire Road  
Stafford, TX 77477  
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**Submittal Deadline and Proposal Opening:**

**Wednesday, June 23, 2021 at 2:00 PM, Central Time**

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## 1.0 NOTICE OF INTENT

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Contracts awarded pursuant to this RFP are intended to comply with the Education Department General Administrative Regulations (EDGAR), 2 C.F.R. §§ 200.318-326. It is the intent of Stafford Municipal School District (SMSD) to award one or more contract(s) as a result of this RFP. Product(s) and/or services considered for award shall equal or exceed a minimum quality level of industry standard(s) as defined within this RFP, including **Section 5.0 Scope of Proposal**, and shall comply with all applicable federal, state and local technical, environmental, and performance standards and specifications.

- 1.1 **The initial base term of the prospective contract is a period of one calendar year, and SMSD may elect to extend any contract awarded pursuant to this RFP for up to two (2) additional one-year renewal terms.**
- 1.2 In this RFP and in the Contract, the following terms shall mean as follows:
  - 1.2.1 **“SMSD”** and **“District”** mean the Stafford Municipal School District, a municipal school district established under the laws of the State of Texas, with central administrative offices located at 1633 Staffordshire Road, Stafford, Texas 77477.
  - 1.2.2 **“Vendor(s)”** means the proposer(s) responding to this RFP and vendor(s) to whom a contract has been awarded as a result of this RFP by SMSD. A responsible vendor is a vendor who has adequate financial resources (or the ability to obtain such resources), can comply with the delivery requirements, and is a qualified and established firm regularly engaged in the type of business that provides the product(s) /service(s) listed herein.
  - 1.2.3 **“Contract”** means the contract terms and conditions in **Section 4.0 Contract Terms and Conditions**, as further defined in the Entire Agreement provision of Section 4.43. A contract is exclusively between SMSD and Vendor.
  - 1.2.4 **“Best Value”** means the method by which a contract, if any, is awarded, in accordance with applicable laws, rules, and regulations. Best Value includes multiple parameters, including experience, references, quality of the Vendor’s product(s)/service(s), and price, as detailed in **Section 3.0 Evaluation and Award**.
  - 1.2.5 **“Purchase Order” or “PO”** means the agreed-upon purchase order between SMSD and the Vendor. Special terms and conditions agreed to by the Vendor and SMSD may be added as addendums to the PO, including such items as requirements concerning certificates of insurance, bonding, and small or disadvantaged business goals.

1.2.6 **“Premium Hours”** means those hours not included in Regular Hours or federal holidays. Premium Hours must be approved by SMSD for each Purchase Order.

1.2.7 **“Regular Hours”** means the hours between 8 a.m. and 4 p.m. Monday thru Friday, excluding the following holidays: Presidents’ Day, Easter, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and New Year’s Day.

### 1.3 Time Table

SMSD anticipates following the time table listed below for this job. The table below is only an estimate and may vary.

TIME TABLE		
Item	Activity	Date
1	RFP Released	May 28, 2021
1	RFP Advertised - 1 <sup>st</sup> run	June 2, 2021
2	RFP Advertised - 2 <sup>nd</sup> run	June 9, 2021
3	Questions Due	June 11, 2021
4	Proposals Due	June 23, 2021
5	Award Date/Board Meeting	August 14, 2021

## 2.0 INSTRUCTIONS TO VENDORS

### 2.1. Proposal Response Format

To qualify for evaluation, a proposal must have been submitted on time and must materially satisfy all mandatory requirements identified in this RFP. Vendors must follow the format instructions detailed below in preparing and submitting their proposals.

#### 2.1.1 Required Format

Vendors shall submit proposals in person or mailed to the address below. The Proposal must be **received** on or before the deadline for the Bid Opening Date.

Submit Proposals to:

Stafford MSD  
Business Office  
1633 Staffordshire  
Stafford, Texas 77477

The sealed envelope shall be labeled in the following manner:

Your company name Your return address info	STAFFORD MSD BUSINESS OFFICE 1633 STAFFORDSHIRE STAFFORD, TEXAS 77477
<u>RFP# 21-0002</u> Bid Opening Date/Time: <u>June 23, 2021 at 2:00pm CST</u>	

If the District opens an improperly labeled bid response prior to the date and time of sealed bid opening, the package will be returned as is, and rejected. The package must be labeled per the instructions in this section.

#### 2.1.2 The following items must be included in the **Proposal**. Failure to include these items may result in non-award.

- 1) Completed 8.0 Vendor Questionnaire
- 2) Completed 9.0 Attachment Packet
- 3) Pricing; Electronic Catalog/Price Lists
- 4) Insurance Coverage Certification
- 5) Address of Vendor's website
- 6) Any applicable certificates (i.e., HUB, SWBE, licenses, etc.)

### 2.1.3 **Proposal Response Location**

Proposals shall be received no later than the submittal day and time deadline.

## 2.2 **SMSD Reservations**

SMSD reserves the right to:

- a) Cancel this solicitation in whole or in part, at the sole discretion of SMSD.
- b) Accept, reject, or negotiate modifications in any terms of the Vendor's proposal or any parts thereof.
- c) Conduct oral interviews/discussions or presentations necessary to select the best value Vendor and/or to obtain competitive pricing.
- d) Reject and/or disqualify any or all proposals received, to award contracts for individual products or services as may appear advantageous, and to negotiate separately in any manner necessary to serve the best interest of SMSD
- e) Waive any formalities, technicalities, or other defects if deemed in the best interest of SMSD; Request clarification and/or correction of Vendor(s) for the purpose of eliminating minor errors, clerical errors, and/or non-substantive irregularities.
- f) Be the sole judge of quality and equality.
- g) Award one or more contracts, in part or in whole, to a single or to multiple Vendors, in SMSD sole discretion.
- h) Make all decisions regarding this RFP, including, without limitation, the right to decide whether a proposal substantially complies with the requirements of this RFP.
- i) Utilize State of Texas contracts, contracts awarded by other governmental agencies, or cooperative agreements in lieu of any offer received or award made as a result of this proposal, if it is in the best interest of SMSD, at SMSD's sole discretion, to do so.

## 2.3 **Financial Responsibility**

SMSD assumes no financial responsibility for any costs incurred by Vendors in developing and submitting a proposal or any amendments or addenda, participating in pre-proposal meetings, participating in any negotiation sessions or discussions, or any other costs incurred by Vendors pursuant to this RFP.

## 2.4 **Contracts Involving Federal Funds**

Because at the time of procurement, SMSD may be unable to determine the source of funds to be used for particular contracts, SMSD intends to competitively procure contracts as required by Section 44.031 of the Texas Education Code and intends to comply with EDGAR for every procurement action for which federal funds may be used. To comply with EDGAR, if it is anticipated that SMSD will use federal funds exceeding the simplified acquisition threshold, SMSD will perform an independent estimate of the value of goods or services in the current market before receiving bids or proposals and after SMSD received bids and proposals, but before awarding a contract,

SMDS will also conduct a price or cost analysis and document its findings.

## 2.5 **Compliance with Specifications and Contract**

Proposals shall be deemed responsive if they comply with all material and administrative aspects of this RFP. Vendors are required to respond to all requests identified in this RFP and indicate their acceptance or objection to the terms of the RFP and the Contract terms in **Section 4.0 Contract Terms and Conditions**. Any exceptions to the terms and conditions in the RFP or the Contract must be clearly indicated in the Vendor's submitted proposal. Deviations or exceptions stipulated in a Vendor's response may result in disqualification. Any language to the effect that the Vendor does not consider this RFP to be part of a contractual obligation may result in the Vendor's proposal being disqualified. Each Vendor, by making its proposal, represents that the Vendor has read and understands the RFP and the Contract.

## 2.6 **SMDS's Code of Silence – Policy CAA (Local)**

SMDS's Board of Trustees has implemented a Code of Silence for procurement of goods and services, as outlined in Board Policy CAA (Local), which provides as follows:

The District shall implement a Code of Silence regarding the procurement of goods and services through competitive methods to enforce its commitment to ethical contracting standards and to improve account-ability and public confidence.

**Purpose.** For purposes of this policy, “vendor’s representative” shall mean an employee, partner, director, Board member, or officer of a potential vendor or consultant, lobbyist, actual or potential subcontractor of a vendor, or any other individual or for-profit or nonprofit organization acting through or on behalf of any person seeking an award or on behalf of a group of interested individuals or members.

**Procurement Methods.** In accordance with law [see policies CH and CV], the District may purchase goods and services through one of the following procurement methods:

1. Competitive bidding for goods and services other than construction services;
2. Competitive sealed proposals for goods and services other than construction services;
3. A request for proposals (“RFP”) for goods and services other than construction services;
4. Any method provided by Chapter 2269 of the Texas Government Code for construction services;
5. A request for qualifications for professional services; and
6. Any other procurement method authorized by state law.

For purposes of this policy, “Competitive Solicitation” shall mean any RFP, bid or other competitive solicitation issued pursuant to one of the foregoing procurement methods.

**Applicability.** The Code of Silence period applies to the acquisition of goods or services using the procurement methods identified above, as well as renewal periods for contracts previously awarded by the Board of Trustees with renewal options.

“*Code of Silence*” shall mean a prohibition on any communication regarding any Competitive Solicitation between:

1. Any person who seeks an award from the District or its affiliated entities (including, but not limited to, the SMSD Education Foundation), including a potential vendor or vendor’s representative; and
2. A Board member, the Superintendent, the Deputy Superintendent, an Executive Team member, or other District representative who has influence on or is participating in the evaluation or selection process.

Furthermore, campaign contributions, gifts, donations, and any other items of value are prohibited between the parties defined above during the Code of Silence period. Also, candidates who have filed for election to the Board of Trustees are subject to these limitations after the date on which the candidate has filed for office. The District shall review historical campaign finance reports to identify campaign contributions for the applicable period and will hold newly elected Board members accountable as existing Board members during the Code of Silence period.

**Exceptions.** The Code of Silence shall not apply to communication with the District’s legal counsel, Chief Financial Officer, or Director of Operations, to the extent that they are not serving on the particular procurement committee, or with any individual specifically designated to be excepted from the Code of Silence in the Competitive Solicitation; provided that any such communications shall be limited to the purpose of obtaining clarification or information concerning the subject solicitation.

An exception shall also apply to specific members of the Board of Trustees and the office of finance for the selection of external auditors or the Board’s legal counsel, and to any other specific circumstances approved in writing by the Superintendent.

Nothing contained in this policy shall prohibit any potential vendor or vendor’s representative from:

1. Making public representations at scheduled pre-bid conferences or scheduled selection and negotiation committee meetings;
2. Engaging in contract negotiations during any scheduled meeting;
3. Making a public presentation to the Board during any duly noticed public meeting; or



4. Conducting business on contracts previously executed and currently in force.

The potential vendor or vendor's representative shall send all written communication related to the foregoing items 1-4 directly to the Chief Financial Officer.

Nothing in this policy shall prohibit the procurement committee's representative from initiating a contact with a potential vendor or vendor's representative and subsequent communication related thereto for the purpose of obtaining additional clarifying information regarding a response to a Competitive Solicitation. Such contact, and any response thereto, shall be in writing and shall be provided to the members of the applicable procurement committee.

**Time Period.** The Code of Silence time period shall begin upon the issuance of a Competitive Solicitation. Additionally, the Superintendent or designee may invoke the Code of Silence at any time for any existing or anticipated procurement of goods or services. The authority of the Superintendent or designee to invoke the Code of Silence extends to any procurement method and is not limited to those procurement methods identified in this policy. The Code of Silence time period shall officially end upon execution of the awarded contract by all required parties.

Regardless of the above time period, it is not acceptable for a potential vendor or vendor's representative to participate in determining the scope of work, strategic direction, technical specifications, or evaluation criteria of District projects subject to competitive procurement in a manner that limits fair and open competition or is otherwise prohibited by law.

**Notification of Solicitation.** The District shall provide public notice of all current procurements that are in the Code of Silence period on a public facing page on the District's website. A weekly e-mail notification containing notice of all procurements that have entered the Code of Silence period since the last e-mail shall also be sent by the Chief Financial Officer to the Board of Trustees, the Superintendent, the Deputy Superintendent, senior staff members, department heads, directors, managers, or other District representatives who have influence on or are participating in the evaluation or selection process for each Competitive Solicitation. The weekly e-mail notification is provided as a courtesy. Board members, candidates who have filed for election to the Board, and District employees are responsible for regularly reviewing the list of procurements subject to the Code of Silence maintained on the District's website before any interaction with a potential vendor.

**Violation.** Any suspected violation of this policy shall be investigated by the Chief Financial Officer or an outside law firm and may result in any of the following being deemed void or voidable:

1. Any recommendation for award;

2. Any Competitive Solicitation award;
3. Any bid award to the potential vendor or the vendor's representative; or
4. A vendor's contract.

The potential vendor or vendor's representative determined by the Board of Trustees to have violated this policy shall be subject to debarment from bidding and contracting activities of current and future projects for a period up to two calendar years. In addition to any other penalty provided by law, violation of this policy by a District employee may subject the employee to disciplinary action up to and including termination. Board members and candidates who have filed for election to the Board determined by the Board of Trustees to have violated the Code of Silence or received campaign contributions, gifts, donations, or any other items of value prohibited under this policy, shall abstain from voting on all matters relating to the particular vendor with whom the Board member engaged in a violation of the Code of Silence for a period up to two calendar years and may be subject to additional action as deemed appropriate by the Board of Trustees.

In the event that a Board member or candidate unknowingly accepts a campaign contribution, gift, donation, or any other item of value from a vendor representative during the Code of Silence, the Board member or candidate shall have the duty to return the contribution, gift, donation, or other item of value within ten calendar days after becoming aware of the conflict with this policy.

**Formal Complaints.** This policy is not intended to prohibit contractors or their representatives from issuing formal complaints or concerns about potential conflicts of interest during the Code of Silence. Any such complaints or concerns should be communicated in writing to the Chief Financial Officer.

## 3.0 EVALUATION AND AWARD

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### 3.1 Award of Contract

In accordance with applicable laws, rules, and regulations for public procurement, award(s) will be made to the responsible Vendor(s) whose proposal(s) is/are determined after evaluation by SMSD to be the best value to SMSD. To qualify for evaluation, a proposal must have been submitted on time and must materially satisfy all mandatory requirements identified in this document.

### 3.2 Market Basket Survey

SMSD reserves the right, in its sole discretion, to use a "Market Basket Analysis" method. If federal Child Nutrition funds are used, the market basket analysis sample will be established to represent 75% of the total estimated value of the contract to be awarded. The most recent velocity/sales report for our current supplier(s) will be used to project the balance of the year and adjusted for any estimated change in menu and participation for the following year. As a result, this list of goods to be purchased under this solicitation will include the goods purchased by dollar volume representing the 75% threshold. Prices for the remaining goods listed in the solicitation should also be included, though they will not be part of the market basket analysis. The market basket analysis shall not be used for service or equipment contracts, nor for Fee-For-Service Processing contracts.

### 3.3 Competitive Range

It may be necessary for SMSD to establish a competitive range of acceptable proposals as part of the evaluation process. Proposals not in the competitive range are unacceptable and will not receive further award consideration.

### 3.4 Conflict of Interest – EDGAR

In accordance with federal EDGAR requirements, 2 CFR § 318(c)(1), no employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

The officers, employees, and agents of SMSD may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.

Violations of this standard by an employee will be reported to the Superintendent's Office and addressed through SMSD's personnel policies. Violations of this standard by an officer or the Superintendent shall be addressed to the Board President and addressed through SMSD Board policies.

### 3.5 Deviations and Exceptions to Requirements

Deviations or exceptions stipulated in a Vendor's response may result in disqualification. Any language to the effect that the Vendor does not consider this RFP to be part of a contractual obligation may result in the Vendor's proposal being disqualified.

### 3.6 Clarification and/or Discussions

SMSD may request clarification from Vendor(s) for the purpose of eliminating minor errors, clerical errors, and/or non-substantive irregularities. Clarification does not give a Vendor the opportunity to revise, change, or modify its proposal in any way except to the extent of

correction of the error. Discussion between SMSD and Vendor can also take place after the initial receipt of proposals. SMSD reserves the right to conduct discussions with all, some, or none of the Vendor submitting proposals. SMSD will not assist the Vendor in the revision or modification of its proposal, nor will SMSD assist the Vendor in bringing its proposal to the same level of other proposals received by SMSD.

Questions related to the RFP can be directed to SMSD Business Office, Chalita Cyprian, Purchasing Specialist, at (281) 261-9252, no later than five (5) business days prior to the submittal deadline date. All questions and answers will be listed online.

**3.7 No Guarantee of Quantities**

SMSD makes no guarantee or commitment of any kind concerning quantities that will actually be purchased under this RFP and the resulting contract, if any. However, Vendors are expected to carry sufficient inventories to service the needs of SMSD and shall furnish all required goods and/or services to the District at the stated price, when and if required. The District makes every effort to be as accurate as possible when providing estimated quantities; however, quantities for purchases paid for with Child Nutrition funds are subject to change for various reasons, which include, but are not limited to the following: USDA commodity allocation(s), variations in student population, SMSD production item substitution(s), changes in consumer taste or expectations, pricing, and nutrition regulatory changes.

**3.8 SMSD's Supplier Diversity Program / Minority and Women's Business Enterprise (MWBE), Historically Under-utilized Business (HUB) and Small Business Enterprise (SBE) Participation**

SMSD's Supplier Diversity Program

SMSD's supplier diversity program ensures that the District shall use its best efforts to inform small, women-owned, and minority-owned businesses of current and future purchasing activities. Pursuant to SMSD Board Policy CH (Local), the District shall encourage the participation of these businesses in purchasing of all goods and services. All solicitations issued by the District shall include a supplier diversity program form that is to be completed and submitted with the bid response. The form is included in Section 9.0 Attachments.

SMSD's MWBE, HUB, and SBE Participation

In addition to SMSD's Supplier Diversity Program, SMSD encourages the use of HUB, MWBE, and SBE both as prime and subcontractors. However, these entities must meet the same minimum standards and requirements as the prime contractor. It will be the responsibility of the prime contractor to pre-qualify any subcontractors offered as HUB, MWBE and SBE participants. The Vendor shall also indicate on their submitted proposals whether or not they are a HUB, MWBE, or SBE vendor and with whom they are certified, e.g., State, City, Federal, and provide a copy of the certificate(s) in the proposal submission.

SMSD takes all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible, including, but not limited to, placing qualified small and minority businesses and women's business enterprises on solicitation lists; assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises; establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and requiring the prime contractor, if subcontractors are to be let, to take the same steps as listed in this paragraph.

3.9 **Formation of Contract (Execution of Offer)**

A response to this RFP is an offer to contract with SMSD based upon the terms, conditions, scope of work, and specifications contained in this RFP. An RFP does not become a contract unless and until it is accepted by SMSD after approval by the SMSD Board of Trustees. A contract is formed when SMSD's Superintendent signs the Signature Form. The Vendor must submit a signed Signature Form, thus eliminating the need for the formal signing of a separate contract.

3.10 **Multiple Awards**

SMSD reserves the right to award contracts to multiple vendors. The decision to award multiple contracts, award only one contract, or to make no awards rests solely with SMSD. SMSD may make multiple awards; this fact should be taken into consideration by each Vendor.

3.11 **Non-Exclusive Contract**

Any contract resulting from this RFP is non-exclusive and shall be awarded with the understanding and Contract that it is for the sole convenience of SMSD. SMSD is free to have multiple contracts for the awarded products and/or services and may initiate other procurement solicitations or procurement activity with other suppliers at any time, at SMSD's sole discretion.

3.12 **Disqualification**

A Vendor may be disqualified before or after the proposals are opened upon evidence of collusion with the intent to defraud or evidence of intent to perform other illegal activities for the purpose of obtaining an unfair competitive advantage. A Vendor may also be disqualified before or after the proposals are opened in the event Vendor is out of compliance with an existing contract with SMSD.

3.13 **Environmental Initiatives**

SMSD is committed to reducing waste and promoting energy conservation. Toward that end, Vendors responding to this solicitation are encouraged to provide their company's environmental policy and green initiative.

3.14 **Interpretation**

This solicitation represents the basis for any award and supersedes all prior offers, negotiations, exceptions and understandings (whether orally or in writing). Submitted proposals should be self-explanatory and should not require any clarification or additional information.

3.15 **Return of Proposals**

Vendors may request the return of a proposal within five (5) business days of the proposal deadline. After that time, SMSD will not return proposals to Vendor. Vendors should be aware that the District will retain a copy of all materials submitted, and the information will remain subject to the Texas Public Information Act.

3.16 **Non-Collusion Statement**

Vendors are required to certify a **Non-Collusion Statement**. (See **Section 9.0 Attachments**) Vendors are required to state the party submitting a proposal or bid, that such proposal or bid is genuine and not collusive or sham; that Vendor has not colluded, conspired, connived or agreed, directly or indirectly, with an entity or person, to put in a sham proposal or bid or to refrain from proposing, and has not in any manner, directly or indirectly, sought by Contract or collusion, or communication or conference, with any person, to fix the proposed price or of any other vendor, or to fix any overhead, profit or cost element of said proposed price, or of that of any other vendor, or to secure any advantage against SMSD or any person interested in the proposed contract, and that all statements in said proposal are true.

**3.17 Open Records Policy**

SMSD is a governmental body subject to the Texas Public Information Act. Proposals submitted to SMSD as a result of this RFP may be subject to release as public information after contracts are executed or the procurement is terminated. If a Vendor believes that its response, or parts of its response, may be exempted from disclosure under Texas law, the Vendor must specify page-by-page and line-by-line the parts of the response which it believes are exempt. In addition, the Vendor must specify which exception(s) to the Texas Public Information Act are applicable and provide detailed reasons to substantiate the exception(s). Vague or general claims to confidentiality will not be accepted. SMSD assumes no obligation or responsibility relating to the disclosure or nondisclosure of information submitted by Vendors.

**3.18 Preferences**

SMSD may apply applicable preferences for Texas resident Vendors in the event of a tie bid. Preferences must be explicitly claimed by Vendor and may not be applicable in procurements and/or contracts involving federal funds unless the procurement and/or contract involves unprocessed locally grown or locally raised agricultural products for use by SMSD in a Child Nutrition Program. See TEXAS GOV'T. CODE §2252.001-.004; 2 C.F.R. § 200.319.

**3.19 Responsible Vendor**

SMSD may only award contracts to Responsible Vendor(s) who possess the ability to perform successfully under the terms and conditions of a proposed procurement contract. A Responsible Vendor is a vendor who has adequate financial resources (or the ability to obtain such resources), can comply with the delivery requirements, and is a qualified and established firm regularly engaged in the type of business that provides the items listed herein. When determining if a vendor is responsible, SMSD will consider the proposer's integrity, compliance with public policy, record of past performance, and financial and technical resources.

**3.20 Responsive Proposal**

Proposals shall be deemed responsive if they comply with all material and administrative aspects of this RFP.

**3.21 Similar Products or Materials**

Whenever product(s) and/or material(s) are referred by SMSD in this solicitation by describing a proprietary product or by using the name of a manufacturer or brand name, the term "or equal" if not inserted shall be implied, as applicable. The specified product(s) and/or material(s) shall be understood as indicating type, function, minimum standard of design, efficiency and quality desired and shall not be construed as to exclude other manufactured products or comparable quality, design and efficiency, as applicable.

**3.22 Material Changes**

In the event federal child nutrition funds are used, if a material change (as that term is defined by TDA rules and regulations) to a contract entered into between SMSD and Vendor occurs, then the contract will not be renewed upon the conclusion of its term. Upon the expiration of the term, SMSD may issue a new procurement solicitation for the goods or services procured under the previously-existing contract. "Material change" for purposes of this Section 3.22 means a modification that substantially exceeds the terms of the original contract between AISD and Vendor.

**3.23 Product Recall**

If a product recall is instituted on an item that has been furnished and delivered to SMSD, Vendor must immediately notify the individual who signed the Purchase Order and SMSD's Chief Financial Officer at [dnorman@staffordmsd.org](mailto:dnorman@staffordmsd.org) with all pertinent information regarding the recall.

**3.24 Appeal/Protest Process**

Any Vendor who submitted a proposal may appeal SMSD's award, if the appeal is based on deviations from laws, rules, regulations, or SMSD Board policies. SMSD Board Policy GF (Local) applies to any Vendor wishing to appeal a proposal and/or award of a contract. In accordance with Policy GF (Local), a Vendor shall submit a complaint/appeal form by hand-delivery, fax, or U.S. mail, to SMSD's Chief Financial Officer. Complaints/appeals must be received by the close of business on or before the 15<sup>th</sup> SMSD business day after award of the contract. In the event Vendor is unsure about the award of the contract, it is the Vendor's responsibility to contact the SMSD Business Office on the next business day after the award is announced and verify details concerning the award.

### 3.25 Evaluation of Proposals

SMSD will base a recommendation for contract award on the following factors:

<b>Evaluation Factors</b>	<b>Weighted Value</b>
Price	40
<ul style="list-style-type: none"> <li>• Overall Cost of Program</li> <li>• Pricing as determined by the proposal submitted</li> <li>• Pricing may also be based upon usage and coverage</li> <li>• Warranty Terms and Conditions</li> </ul>	
Vendor's experience and reputation	10
<ul style="list-style-type: none"> <li>• References for local governmental entities</li> <li>• Local government agencies within the past 5 years</li> <li>• Other projects completed within the past 10 years</li> </ul>	
Vendor's compliance with RFP specifications	10
<ul style="list-style-type: none"> <li>• Delivery schedules, product or service specifications</li> </ul>	
Quality of Vendor's products/services and extent to which the products/services meet SMSD's needs:	20
<ul style="list-style-type: none"> <li>• Quality of Vendor's Products/Service, including product guarantees</li> <li>• Demonstrated Ability to Perform</li> <li>• Timeliness</li> </ul>	
Impact on the ability of SMSD to comply with laws and rules relating to HUB/MWBE/SBE	3
Whether Vendor's financial capability is appropriate to the size and scope of the project and the total long-term cost to SMSD to acquire the products/services	10
For goods and services, other than goods and services related to telecommunications and information services, building construction and maintenance, or instructional materials, whether the Vendor or the Vendor's ultimate parent company or majority owner:	2
<p>(A) Has its principal place of business in this state; or</p> <p>(B) Employs at least 500 persons in this state<sup>1</sup></p>	
Vendor's past relationship with SMSD	5
<b>TOTAL POSSIBLE POINTS:</b>	<b><u>100</u></b>

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<sup>1</sup> As a general rule, SMSD may not apply geographic preferences for procurements involving federal funds. *See* 2 C.F.R. § 200.319. However, SMSD may apply an optional geographic preference in the procurement of unprocessed locally grown or locally raised agricultural products for use in a Child Nutrition Program. *See* 2 C.F.R. §§ 210 (National School Lunch Program), 215 (Special Milk Program for Children), 220 (School Breakfast Program), 225 (Summer Food Service Program), 226 (Child and Adult Care Food Program).



## 4.0 CONTRACT TERMS AND CONDITIONS

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These Contract Terms and Conditions are part of the final contract in each product and/or service contract awarded as a result of this RFP and are part of the terms and conditions of each Purchase Order or proposal forms issued in connection with this RFP. Vendors are responsible for identifying any exceptions to these terms and conditions. **ANY EXCEPTIONS MUST BE NOTED DIRECTLY BELOW EACH OF THE RESPECTIVE TERMS AND CONDITIONS.** Proposals that are qualified with conditional clauses, items not called for, or other irregularities may be considered non-responsive by SMSD and eliminated from further consideration.

**CONTRACT BETWEEN  
STAFFORD MUNICIPAL SCHOOL DISTRICT AND  
("VENDOR")  
FOR  
Athletic Supplies, Awards and Equipment**

This Contract is entered into between SMSD and Vendor, having submitted a proposal in response to this RFP issued by SMSD and whose proposal has been accepted and awarded by SMSD. In consideration of the mutual covenants and conditions contained in this Contract and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, SMSD and Vendor, intending to be legally bound, and subject to the terms, conditions, and provisions of this Contract, agree as follows:

- 4.1 **Definitions**  
The terms used in this Contract shall have the meanings assigned to them in **Section 1.0 Notice of Intent** of the RFP.
- 4.2 **Contract Terms; Amendment**  
The terms and conditions of this Contract shall govern all procurements conducted hereunder. No pre-published terms on Vendor's Purchase Order, acknowledgments, invoices, or other forms shall have any force or effect unless expressly agreed to by SMSD and Vendor. No amendment of this Contract shall be permitted unless and until first approved in writing by SMSD, and no such amendment shall have any effect unless and until a written amendment to this Contract is executed by the SMSD Superintendent or his designee after any necessary approvals have been obtained from the SMSD Board of Trustees. In the event that a Vendor has an existing SMSD contract in the same contract title, upon award the new contract will immediately supersede the older contract.
- 4.3 **Term of Contract; Renewal of Contract**  
The initial term of this Contract is for a period of one (1) year, from **September 1, 2021 to August 31, 2022**, with SMSD having the option to renew the Contract for two (2) additional one-year terms, at SMSD's sole discretion, unless otherwise specified in **Section 5.0 Scope of Proposal**. Consequently, the total term of the Contract may be for a period of **three (3)** years. The phrase "Term" in this Contract shall mean the then-current Term of the Contract, whether an initial term or a renewal term.
- 4.4 **Termination of Contract; Survival**  
This Contract shall remain in effect until (1) the Contract expires by its terms or (2) the Contract is terminated by mutual consent of SMSD and Vendor.

In the event of a breach or default of the Contract and/or the RFP by Vendor, SMSD reserves the right to enforce the performance of the Contract in any manner prescribed by law or deemed to be in the best interest of SMSD. SMSD further reserves the right to terminate the Contract immediately in the event Vendor fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in the RFP, this Contract, and/or a Purchase Order; (2) make any payments owed; or (3) otherwise perform in accordance with this Contract and/or

the RFP. SMSD also reserves the right to terminate the Contract immediately, with written notice to Vendor, if SMSD believes, in its sole discretion that it is in the best interest of SMSD to do so.

In the event that a material change to the terms of the Contract occurs, then the Contract shall be allowed to expire and shall not be renewed upon the conclusion of the Contract's term. The phrase "material change" in this paragraph shall mean a modification that substantially exceeds the terms of the original contract between SMSD and Vendor. Upon the expiration of the Contract's term, SMSD may issue a new RFP for the goods or services procured under the previous contract.

Vendor agrees that SMSD shall not be liable for damages in the event that SMSD declares Vendor to be in default or breach of this Contract and/or the RFP. Vendor further agrees that upon termination of the Contract for any reason, Vendor shall, in good faith and with reasonable cooperation, aid in the transition to any new arrangement and/or Vendor.

#### 4.5 **Buy America Act; Prevailing Wage Rates**

##### **Buy America**

The Buy American Act, set forth in 7 C.F.R. Part 210.21(d), requires that participants in the National School Lunch Program and the School Breakfast Program use the federal nonprofit food service funds, to the maximum extent practical, to buy domestic commodities or products. 7 C.F.R. Part 210.21(d) defines a "domestic commodity or product" as one that is either produced in the U.S. or is processed in the U.S. substantially using agricultural commodities that are produced in the U.S. "Substantially" means that over 51 percent of the final processed product consists of agricultural commodities that were grown domestically.

If applicable, SMSD requires Vendor to certify whether its products are "domestic commodities or products", as defined by 7 C.F.R. Part 210.21(d). Accordingly, Vendor agrees to provide certification of the domestic content of the parts, components, and other elements contained in the product, including specific information about the percentage of U.S. content from the supplier (i.e., manufacturer or distributor).

Exceptions to the Buy American provision should be used as a last resort; however, an alternative or exception may be approved by SMSD, upon request. To be considered for an exception to the Buy American provision, Vendor must submit a good faith request for an exception, certifying that the Vendor reasonably believes that:

- a) the product is not produced or manufactured in the U.S. in sufficient and reasonable available quantities of a satisfactory quality; and/or
- b) the costs of a U.S. product are significantly higher than the non-domestic product.

In the event Vendor or Vendor's supplier(s) are unable or unwilling to certify compliance with the Buy American Provision, or the applicability of an exception to the Buy American provision, SMSD may decide not to purchase from Vendor.

Additionally, SMSD may require country of origin on all products and invoices submitted for payment by Vendor, and Vendor agrees to comply with any such requirements.

##### **Prevailing Wage Rates**

Vendor and all subcontractors of Vendor shall comply with all laws regarding prevailing wage rates, including, but not limited to, TEX. GOV'T. CODE Chapter 2258, applicable to the construction of a public work, and any related federal requirements, including the DAVIS-BACON ACT. In the event TEX. GOV'T. CODE Chapter 2258 applies to a product or service provided by Vendor to SMSD, Vendor and any subcontractor(s) shall comply with the prevailing wage rates set by SMSD.

#### 4.6 **Change Orders**

Pursuant to TEX. EDUC. CODE § 44.0411(a), if a change in plans or specifications is necessary after the performance of a Purchase Order has begun or if it is necessary to decrease or increase the quantity of work to be performed or of materials, equipment, or supplies to be furnished, SMSD may approve change orders making the changes. The total Purchase Order price may not be increased because of the changes unless additional money for increased costs is approved for that purpose from available money or is provided for by the authorization of the issuance of time warrants. A Purchase Order with an original contract price of \$1 million or more may not be increased under TEX. EDUC. CODE § 44.0411(a) by more than 25 percent. If a change order for a Purchase Order with an original contract price of less than \$1 million increases the contract amount to \$1 million or more, the total of the subsequent change orders may not increase the revised contract amount by more than 25 percent of the original contract price.

#### 4.7 **Compliance with Laws**

Vendor shall comply with all applicable federal, state, and local laws, statutes, ordinances, standards, orders, rules, and regulations, including, as applicable, workers' compensation laws; minimum and maximum salary and wage statutes and regulations; prompt payment and licensing laws and regulations; anti-discrimination statutes and regulations (Title VI of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title 7 C.F.R. Parts 15, 15a, and 15b; the Americans with Disabilities Act; and FNS Instruction 113-1, Civil Rights Compliance and Enforcement—Nutrition Programs and Activities); the Davis-Bacon Act (40 U.S.C. § 276a / 29 CFR Part 5); the Copeland "Anti-Kickback" Act (18 U.S.C. § 874 / 29 CFR Part 5); the Equal Opportunity Employment requirements (Executive Orders 11246 and 11375 / 41 CFR Chapter 60); the McNamara-O'Hara Service Contract Act (41 U.S.C. 351); Section 306 of the Clean Air Act (42 U.S.C. § 1857h); Section 508 of the Clean Water Act (33 U.S.C. § 1368); Executive Order 11738, Environmental Protection Agency regulations (40 CFR Part 15); the Contract Work Hours and Safety Act (40 U.S.C. § 3701-3708; 29 C.F.R. Part 5; the Solid Waste Disposal Act (Section 6002 as amended by the Resource Conservation and Recovery Act for procuring solid waste management services in a manner that maximizes energy and resource recovery when contract amount is in excess of \$10,000); the Education Department General Administrative Regulations ("EDGAR") (2 C.F.R. Part 200); mandatory standards and policies contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871); and all applicable requirements and regulations, including those related to reporting, patent rights, copyrights, data rights, and those mandated by federal agencies making awards of federal funds to SMSD. Vendor understands that Vendor is ineligible to receive a contract award with SMSD if Vendor or its principal(s) is listed on the government wide exclusions in the System for Award Management (Debarment and Suspension Orders Executive Orders 12549 and 12689) or is 30 days or more delinquent in paying child support (Tex. Fam. Code § 231.006). For the entire duration of this Contract, Vendor and all subcontractors shall maintain all required licenses, certifications, permits, and any other documentation necessary to perform this Contract. All permits will be acquired by Vendor and invoiced to SMSD at cost as part of the Purchase Order, unless the permits are provided by SMSD. For the entire duration of this Contract, Vendor and all subcontractors shall also comply with all requirements pertaining to local, state, or federal health and safety certifications, licensing, or regulations. Vendor must comply with all state and local building code requirements unless otherwise specifically provided in SMSD's Purchase Order, and Vendor must pay all fees and charges for connections to outside services and for use of property outside the project site. Vendor is responsible for being acquainted with and complying with Texas's requirements. When required or requested by SMSD, Vendor shall furnish SMSD with satisfactory proof of Vendor's compliance with this provision.

#### 4.8 **Confidentiality**

Vendor and SMSD agree to secure the confidentiality of all information and records in accordance with applicable federal and state laws, rules, and regulations. Vendor and SMSD understand that the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, governs the privacy and security of educational records and information and agree to abide by FERPA rules and regulations, as applicable. Vendor also acknowledges that SMSD is subject to the Texas Public Information Act, and Vendor waives any claim against and releases from liability SMSD, its respective officers, employees, agents, and attorneys with respect to disclosure of information provided under or in this Contract or otherwise created, assembled, maintained, or held by Vendor or SMSD and determined by SMSD, the Attorney General of Texas, or a court of law to be subject to disclosure under the Texas Public Information Act.

#### 4.9 **Performance and Payment Bonds**

Vendor agrees to provide performance bonds and/or payment bonds as required by law, based on the amount or estimated amount of any Purchase Order for a public work contract, which is defined as a contract for constructing, altering, or repairing a public building or carrying out or completing any public work. TEX. GOV'T. CODE § 2253.001(4). Pursuant to TEX. GOV'T. CODE § 2253.021, a performance bond is required if a Purchase Order is in excess of \$100,000 for governmental entities subject to Chapter 2253; a payment bond is required if a Purchase Order is in excess of \$25,000 governmental entities subject to Chapter 2253 and are not municipalities or a joint board created under Subchapter D, Chapter 22 of the Tex. Transp. Code, and a payment bond is required if a Purchase Order is in excess of \$50,000 for governmental entities subject to Chapter 2253 and are municipalities or a joint board created under Subchapter D, Chapter 22 of the TEX. TRANSP. CODE. Additionally, Vendor shall provide all bonds, including bid guarantee, performance bond, and payment bond, as applicable under U.S. Department of Agriculture and/or Texas Department of Agriculture rules.

#### 4.10 **Title and Risk of Loss**

Whenever SMSD is purchasing (and not leasing) a product under this Contract, title and risk of loss shall pass upon the later of SMSD's acceptance of the product or payment of the applicable invoice.

#### 4.11 **Warranty Conditions**

All product(s) and/or service(s) provided by the Vendor under this Contract must be warranted to be free from defects in material, workmanship, and free from such defects in design for a period of one (1) year upon the later of SMSD's acceptance of the product and/or service or payment of the applicable invoice. Vendor warrants that all products and/or services furnished under this Contract shall conform in all respects to the terms of this Contract, including any drawings, specifications, and/or standards incorporated herein, including, without limitation, those detailed in the RFP and Purchase Order. In addition, Vendor warrants that products and/or services are suitable for and will perform in accordance with the purposes for which they are intended. Vendor shall assume all liabilities incurred within the scope of consequential damages and incidental expenses, as set forth in the Vendor or manufacturer's warranty, which result from either delivery or use of product, which does not meet the specifications within this Contract, the RFP, or Purchase Order.

#### 4.12 **Criminal History Review**

**Section 9.0 Attachment Packet–SB 9 Contractor Certification: Contractor Employees (Required) and Attachment–SB 9 Contractor Certification: Subcontractor Form (If Applicable) must be submitted with packet, if applicable.**

Prior to commencing any work under the Contract, if Vendor contracts with SMSD to provide services, Vendor must certify, on the form provided herein, that for each covered employee of Vendor who will have direct contact with students, Vendor has obtained, as required by TEX.

EDUC. CODE Section 22.0834: (a) state criminal history record information from a law enforcement or criminal justice agency or a private entity that is a consumer reporting agency governed by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.) for each covered employee of Vendor employed before January 1, 2008; and (b) national criminal history record information for each employee of Vendor employed on or after January 1, 2008. Vendor must also obtain similar certifications of compliance with TEX. EDUC. CODE, Chapter 22 requirements from any subcontractors on the form provided herein. Covered employees with disqualifying criminal history are prohibited from serving at SMSD school district locations; Vendor and any subcontracting entity may not permit a covered employee to provide services at a school if the employee has been convicted of a felony or misdemeanor offense that would prevent a person from being employed under TEX. EDUC. CODE § 22.085(a) (i.e., Title 5 felony or an offense requiring registration as a sex offender and victim was under 18 years of age or was enrolled in a public school at the time the offense occurred). Covered employees do not include employees of a contracting or subcontracting entity that is providing engineering, architectural, or construction services on a project to design, construct, alter, or repair a public work if: (1) the public work does not involve the construction, alteration, or repair of an instructional facility as defined by Texas Education Code Section 46.001; (2) the employee's duties will be completed more than seven (7) days before a new instructional facility will be used for instruction; or (3) for an existing instructional facility, the work area contains sanitary facilities separated from all areas used by students by a fence at least six (6) feet high, and the Contractor adopts, informs employees of, and enforces a policy prohibiting employees and any subcontractor's employees from interacting with students or entering areas used by students. Tex. Educ. Code §§ 22.0834(a-1), .08341. The criminal history record information review obligation applies only if Vendor contracts with SMSD to provide services; it does not apply to a contract for the purchase of goods, products or real estate.

**4.13 Customer Support**

Vendor shall provide timely and accurate technical advice and sales support to SMSD staff. Vendor shall respond to requests for customer support within one (1) business day after receipt of the request. Vendor shall provide training to SMSD staff regarding products and/or services supplied by Vendor, at no additional charge, if requested by SMSD.

**4.14 SMSD Property**

In the event of loss, damage, or destruction of any property owned by or loaned by SMSD that is caused by Vendor or Vendor's representative, agent, employee, or contractor, Vendor shall indemnify SMSD and pay to SMSD the full value of or the full cost of repair or replacement of such property, whichever is greater, within thirty (30) days of Vendor's receipt of written notice of SMSD's determination of the amount due. If Vendor fails to make timely payment, SMSD may obtain such money from Vendor by any means permitted by law, including, without limitation, offset or counterclaim against any money otherwise due to Vendor by SMSD.

**4.15 Tax Exempt Status**

SMSD is a Texas governmental entity that is exempt from payment of Texas State Sales Taxes under TEXAS TAX CODE § 151.310 for the purchase of tangible personal property. Vendor represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, without limitation, any federal, state, or local income, sales or excise taxes of Vendor or its employees. SMSD shall not be liable for any taxes resulting from this Contract, except where otherwise required by law.

**4.16 State of Texas Franchise Tax**

By submitting a proposal in response to the RFP, Vendor certifies that Vendor is not currently delinquent in Vendor's payment of any franchise taxes or other taxes owed to the State of Texas.

**4.17 Tax Responsibilities of Vendor and Indemnification for Taxes**

Vendor is responsible for complying with the tax laws of states and the federal government. Vendor and all subcontractor(s) of Vendor shall pay all federal, state, and local taxes applicable to Vendor's operation, any persons employed by Vendor, and all subcontractors of Vendor. Vendor shall require all subcontractors to hold SMSD harmless from any responsibility for taxes, damages, and interest. If applicable, contributions required under federal, state, and/or local laws and regulations and any other costs, including, but not limited to, transaction privilege taxes, unemployment compensation insurance, Social Security, and Worker's Compensation, shall be the sole responsibility of Vendor.

**4.18 IRS W-9**

To receive payment under this Contract, Vendor shall have a current I.R.S. W-9 Form on file with SMSD.

**4.19 Assignment of Contract**

Vendor may not assign this Contract or any of its rights, duties or obligations hereunder without the prior written approval of SMSD. Any attempted assignment of this Contract by Vendor shall be null and void. Any Purchase Order made as a result of this Contract may not be transferred, assigned, subcontracted, mortgaged, pledged, or otherwise disposed of or encumbered in any way by Vendor without the prior written approval of SMSD.

**4.20 Notification of Material Change**

Vendor is required to notify SMSD 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.

**4.21 Performance**

Vendor agrees to use commercially reasonable best efforts to provide the product(s) and/or service(s) subject to this Contract. Vendor shall furnish all supervision, labor, tools, equipment, permits, licenses, transportation, insurance, material, and supplies necessary to complete any scope of work, Purchase Order under this Contract. Vendor shall use skilled, trained personnel, who shall be supervised by Vendor.

**4.22 Subcontractors**

If Vendor uses subcontractors in the performance of any part of this Contract, Vendor shall be fully responsible to SMSD for all acts and omissions of the subcontractors. Nothing in this Contract shall create for the benefit of any such subcontractor any contractual relationship between SMSD and any such subcontractor, nor shall it create any obligation on the part of SMSD to pay or to see to the payment of any monies due any such subcontractor except as may otherwise be required by law. Vendor represents and warrants that it is willing, able, and capable of obtaining, supervising, and being responsible for any subcontractors who perform and/or provide products and services related to this Contract.

**4.23 Non-Appropriation**

Renewal of this Contract, if any, will be in accordance with TEX. LOCAL GOV'T. CODE § 271.903 concerning non-appropriation of funds for multi-year contracts. Notwithstanding any other provision of this Contract or obligation imposed on SMSD by this Contract, SMSD shall have the right to terminate this Contract or Purchase Order without default or liability to Vendor resulting from such termination, effective as of the expiration of each budget period of SMSD if it is determined by SMSD, at its sole discretion, that there are insufficient funds to extend this Contract, or any Purchase Order. The parties agree that this Contract and/or any Purchase Order are commitments of the current revenue of SMSD only.

#### 4.24 **Ordering Procedures**

Purchase Orders are issued by SMSD to the Vendor according to this Contract. A purchase order will not be executed until the District wishes to purchase the specified product and/or services. The purchase order cannot be re-used. SMSD shall not be responsible or liable for any payment to the vendor for any goods and/or services unless a purchase order is issued and signed by an appropriate and authorized individual from SMSD and delivered to the vendor. Each SMSD purchase order shall indicate "formal bid."

#### 4.25 **Invoices; Payments**

- 4.25.1 Vendor shall submit invoices directly to SMSD at the address indicated below or via email to [ap@staffordmsd.org](mailto:ap@staffordmsd.org). Each invoice shall include SMSD's Purchase Order number. All invoices shall be itemized to include the type of product(s) and/or service(s) rendered. Vendor shall submit invoices within a timely manner during SMSD's fiscal year in which the product(s) and/or service(s) are purchased. The shipment tracking number or pertinent information for verification of SMSD's receipt shall be made available upon request by SMSD.

Each invoice shall be itemized and submitted to:

Stafford MSD

Attention: Accounts Payable

11633 Staffordshire Road

Stafford, Texas 77477 or via email to: [ap@staffordmsd.org](mailto:ap@staffordmsd.org)

SMSD will make payments directly to Vendor.

- 4.25.2 TEX. GOV'T. CODE § 2251.021 shall govern when payments are due to the Vendor. Payments are due to Vendor by SMSD, whose governing body meets only once a month or less frequently, **within forty-five (45) days** after the later of the following: (1) the date SMSD receives the products and services under the Contract; (2) the date the performance of the service under the Contract is completed; or (3) the date SMSD receives an invoice for the products or service. Vendor agrees to pay any subcontractors the appropriate share of the payment received from SMSD not later than the **tenth (10th) day** after the date the Vendor receives the payment from SMSD.

The exceptions to payments made by SMSD and/or Vendor listed in TEX. GOV'T. CODE § 2251.002 shall apply to this Contract.

#### 4.26 **Pricing Changes**

All prices and discount percentages in Vendor's proposal shall be firm for the Term of this Contract. Pricing may be negotiated during the Contract renewal period. Vendor agrees to promptly lower the proportionate price of any product purchased through this Contract following a reduction in the price the Vendor is paying suppliers. All price changes shall be presented to SMSD for acceptance or rejection by SMSD, in its sole discretion, using the same format as was accepted in Vendor's original proposal; all price changes for products and/or services provided under this Contract must be approved, in writing, by SMSD prior to taking effect.

The following documentation shall be provided to support a request for a price change:

- justification for change/increase
- terms and conditions
- market conditions
- manufacturers'/distributors' impact, if any

All price decreases shall be allowed for all products and/or services.

#### 4.27 **Records Retention**

Vendor shall maintain its records and accounts in a manner that shall assure a full accounting for all product(s) and/or service(s) provided by the Vendor to SMSD under this Contract. These records and accounts shall be retained by Vendor and made available for review and copying by SMSD for a period of **not less than three (3) years** from the date of completion of the service(s), receipt of product(s), the date of the receipt by SMSD of Vendor's final invoice or claim for payment in connection with this Contract, or the date SMSD makes final payments and closes pending matters in connection with a federal grant, whichever is later. If an audit or a compliance review has been announced, the Vendor shall retain its records and accounts until such audit or compliance review has been completed.

When federal funds are expended by SMSD pursuant to this Contract, Vendor certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.333. Vendor further certifies that Vendor will retain all records as required by 2 CFR § 200.333 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

#### 4.28 **Right to Review, Audit and Inspect**

SMSD, any federal agency that has awarded federal funds/grant(s) to SMSD, and the Comptroller General of the United States, and/or any of their authorized representatives, shall, upon written notice, have the right to audit and examine all of Vendor's records and accounts relating to this Contract and inspect any project performed by the Vendor relating to this Contract. Records subject to audit/review shall include, but are not limited to, all Purchase Orders resulting from this Contract and records which may have a bearing on matters in connection with the Vendor's work for SMSD, and shall be open to inspection and subject to audit/review and/or reproduction by SMSD, and/or their authorized representative(s) to the extent necessary to adequately permit evaluation and verification of:

- Vendor's compliance with this Contract and the requirements of the RFP.
- Compliance with procurement laws, policies, and procedures, including, without limitation, reviewing/comparing pricing on invoices for SMSD.
- Compliance with provisions for computing billings SMSD.
- Any other matter related to this Contract.

#### 4.29 **Indemnification**

VENDOR SHALL INDEMNIFY AND HOLD HARMLESS SMSD, INCLUDING SMSD'S TRUSTEES, OFFICERS, ADMINISTRATORS, EMPLOYEES, AND AGENTS, FROM ALL CLAIMS, LIABILITIES, COSTS, SUITS OF LAW OR IN EQUITY, EXPENSES, ATTORNEYS' FEES, FINES, PENALTIES OR DAMAGES ARISING FROM ACTS OR OMISSIONS OF VENDOR, VENDOR'S EMPLOYEES, AGENTS, OR SUBCONTRACTORS, IN CONNECTION WITH THIS CONTRACT, INCLUDING WITHOUT LIMITATION, THOSE ARISING FROM CLAIMED INFRINGEMENT OF ANY PATENTS, TRADEMARKS, COPYRIGHT OR OTHER CORRESPONDING RIGHT(S) WHICH IS RELATED TO ANY ITEM VENDOR IS REQUIRED TO DELIVER. VENDOR'S OBLIGATIONS UNDER THIS CLAUSE SHALL SURVIVE ACCEPTANCE AND PAYMENT BY SMSD.

#### 4.30 **Governing Law and Exclusive Venue**

The laws of the State of Texas, without regard to its provisions on conflicts of laws, govern this Contract. Any dispute under this Contract involving SMSD must be brought exclusively in the state and federal courts located in Houston, Harris County, Texas.

#### 4.31. **Multiple Contract Awards; Non-Exclusivity**

SMSD reserves the right to award multiple contracts under the RFP, including multiple contracts for each product/service category. Product/Service categories are established at the sole discretion of SMSD. Nothing in this Contract may be construed to imply that Vendor has the exclusive right to provide products and/or services to SMSD. During the Term of this



Contract, SMSD reserves the right to use all available resources to procure other products and/or services as needed and doing so will not violate any rights of Vendor. In the event that a Vendor has an existing SMSD contract in the same contract title, upon award the new contract will immediately supersede the older contract.

#### 4.32 **New Products**

During the term(s) of the Contract awarded under this solicitation, additional purchases not included in this solicitation list and resulting awarded contract may become necessary and benefit SMSD. New products that meet the specifications detailed in the RFP may be added to this Contract, with prior written approval from SMSD. Pricing of any new products shall be equivalent to the percentage discount or proposed prices for other similar products. Vendor may replace or add products to the contract if: the replacing products are equal to or superior to the original products offered or discounted in a similar degree or to a greater degree and the products meet the requirements of the RFP. No products may be added to avoid competitive procurement procedures. SMSD may reject any proposed additions, without cause, in its sole discretion.

In the event this Contract uses federal Child Nutrition Funds, Vendor and SMSD agree that the aggregate value of added new product purchases during each year of the contract, if renewable, shall not exceed 10% of the estimated total value of the contract. The total value of the contract must be agreed upon and the dollar value listed in every contract and contract renewal. Such additions may be included in the awarded contract list during the contract renewal through a contract amendment, and the total contract value adjusted accordingly. For each Contract renewal, the total actual value of the contract in the preceding year and the additions made during the Term, will be the basis for determining the maximum dollar amount (not to exceed 10%) of the additional goods that will be allowed during the next contract renewal year.

#### 4.33. **No Substitution**

Any Purchase Order issued pursuant to this Contract shall conform to the specifications and descriptions identified in this Contract and the RFP. Vendor shall not deliver substitutes without prior written authorization from SMSD.

#### 4.34 **Penalties**

If the Vendor is unable to provide the product(s) or services at the prices quoted in Vendor's proposal or if Vendor fails to fulfill or abide by the terms and conditions of the Contract or the RFP, SMSD may take the following action(s), in the sole discretion of SMSD, and Vendor agrees to comply with the chosen action(s):

- Insist that the Vendor honor the quoted price(s) specified in Vendor's proposal, as applicable;
- Have the Vendor pay the difference between the Vendor's price and the price of the next acceptable proposal, as determined by SMSD;
- Have the Vendor pay the difference between Vendor's price and the actual purchase price of the product or service on the open market; and/or
- Recommend to SMSD Board of Trustees that the Vendor no longer be given the opportunity to submit a proposal to SMSD and/or that this Contract be terminated.

#### 4.34 **Safety**

Vendor, its subcontractor(s), and their respective employees shall comply fully with all applicable federal, state, and local safety and health laws, ordinances, rules, and regulations in the performance of services under this Contract, including, without limitation, those promulgated by SMSD and by the Occupational Safety and Health Administration ("OSHA"). In case of conflict, the most stringent safety requirements shall govern. Vendor shall comply with SMSD harmless from and against all claims, demands, suits, actions, judgments, fines, penalties, and liability of every kind arising from the breach of Vendor's obligations under this provision.

#### 4.35 **Workforce**

Vendor shall employ only orderly and competent workers, skilled in the performance of the services, if any, which shall be performed under this Contract. Vendor, its employees, subcontractors, and subcontractor's employees may not use or possess any firearms, alcoholic or other intoxicating beverages, illegal drugs or controlled substances while on the job or on SMSD's property, nor may such workers be intoxicated or under the influence of alcohol or drugs on SMSD's property.

#### 4.36 **Insurance**

Vendor is required to provide SMSD with copies of certificates of insurance, naming SMSD as additional insured's for Texas Workers Compensation and General Liability Insurance, **within 14 business days of contract award and prior to the commencement of any work under this Contract.** Certificates of Insurance, name and address of Vendor, the limits of liability, the effective dates of each policy, and policy number shall be delivered to SMSD prior to commencement of any work under this Contract. The insurance company insuring Vendor shall be licensed in the State of Texas, and shall be acceptable to SMSD. Vendor shall give SMSD a **minimum of ten (10) days'** notice prior to any modifications or cancellation of said policies of insurance. Vendor shall require all subcontractors performing any work under or relating to this Contract to maintain coverage as specified below. Vendor shall, at all times during the Term of this Contract, maintain insurance coverage with not less than the type and requirements shown below. Such insurance is to be provided at the sole cost of the Vendor. These requirements do not establish limits of Vendor's liability.

All policies of insurance shall waive all rights of subrogation against SMSD, and SMSD's officers, employees and agents.

Upon request, certified copies of original insurance policies shall be furnished to SMSD.

SMSD, as requested, shall be named as an "additional insured" on insurance policies.

SMSD reserves the right to require additional insurance should SMSD deem additional insurance necessary, in its sole discretion.

- Workers Compensation (with waiver of subrogation to SMSD)      Employer's      Liability, including all states, U.S. Longshoremen, Harbor Workers and other endorsements.
- Statutory, and Bodily Injury by Accident: \$100,000 each employee. Bodily Injury by Disease: \$500,000, policy limit \$100,000 each employee.
- Commercial General Liability Occurrence Form including, but not limited to, Premises and Operations, Products Liability Broad Form Property Damage, Contractual Liability, Personal and Advertising Injury Liability and where the exposure exists, coverage for watercraft, blasting collapse, and explosions, blowout, cratering and underground damage. \$300,000 each occurrence Limit Bodily Injury and Property Damage combined. \$300,000 Products-Completed Operations Aggregate Limit \$500,000 per Job Aggregate. \$300,000 Personal and Advertising Injury Limit.
- Automobile Liability Coverage: \$300,000 Combined Liability Limits Bodily Injury and Property Damage Combined.

#### 4.37 **No Agency or Endorsements**

It is the intention of the parties to this Contract that Vendor is independent of SMSD, is an independent contractor, and is not an employee, agent, joint venturer, or partner of SMSD. Nothing in this Contract shall be interpreted or construed as creating or establishing the relationship of employer and employee, agent, joint venturer or partner, between SMSD and

Vendor, or SMSD and any of Vendor's agents. Vendor has no power or authority to assume or create any obligation or responsibility on behalf of SMSD, and SMSD has no power or authority to assume or create any obligation or responsibility on behalf of Vendor. This Contract shall not be construed to create or imply any partnership, agency, or joint venture, nor shall it be construed or deemed an endorsement of a specific company or product. Vendor agrees that SMSD has no responsibility for any conduct of any of Vendor's employees, agents, representatives, contractors, or subcontractors.

**4.38 Equal Opportunity**

It is the policy of SMSD not to discriminate on the basis of race, color, national origin, gender, limited English proficiency or handicapping conditions in its programs. Vendor agrees not to discriminate against any employee or applicant for employment to be employed in the performance of this Contract, with respect to hire, tenure, terms, conditions and privileges of employment, or a matter directly or indirectly related to employment, because of age (except where based on a bona fide occupational qualification), sex (except where based on a bona fide occupational qualification) or race, color, religion, national origin, or ancestry. Vendor further agrees that every subcontract entered into for the performance of this Contract shall contain a provision requiring non-discrimination in employment herein specified, binding upon each subcontractor. Breach of this covenant may be regarded as a material breach of the Contract.

**4.39 Force Majeure**

Neither SMSD nor Vendor shall be deemed to have breached any provision of this Contract as a result of any delay, failure in performance, or interruption of service resulting directly or indirectly from acts of God, network failures, acts of civil or military authorities, civil disturbances, wars, energy crises, fires, transportation contingencies, interruptions in third-party telecommunications or Internet equipment or service, other catastrophes, or any other occurrences which are reasonably beyond SMSD or Vendor's control.

SMSD and Vendor are required to use due caution and preventive measures to protect against the effects of force majeure, and the burden of proving that a force majeure event has occurred shall rest on the party seeking relief under this provision. The party seeking relief due to force majeure is required to promptly notify the other parties in writing, citing the details of the force majeure event and relief sought, and shall resume performance immediately after the obstacles to performance caused by a force majeure event have been removed, provided the Contract has not been terminated. Delay or failure of performance, by either party to this Contract, caused solely by a force majeure event, shall be excused for the period of delay caused solely by the force majeure event. SMSD and Vendor shall not have any claim for damages against any other party resulting from delays caused solely by force majeure. Notwithstanding any other provision of this Contract, in the event the Vendor's performance of its obligations under this Contract is delayed or stopped by a force majeure event, SMSD shall have the option to terminate this Contract. This section shall not be interpreted as to limit or otherwise modify any of SMSD's contractual, legal, or equitable rights.

**4.40 Severability**

In the event any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions, and the Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

**4.41 Waiver**

No failure on the part of either party at any time to require the performance by the other party of any term hereof shall be taken or held to be a waiver of such term or in any way affect such party's right to enforce such term, and no waiver on the part of either party of any term hereof shall be taken or held to be a waiver of any other term hereof or the breach thereof. No waiver,

alteration, or modification of any of the provisions of this Contract shall be binding unless in writing and signed by duly authorized representatives of the parties hereto.

**4.42 Entire Agreement**

The Contract, the RFP, Vendor's proposal submitted in response to the RFP, the attached and incorporated attachments, addendum, and/or exhibits, if any, contain the entire agreement of the parties relative to the purpose(s) of the Contract and supersede any other representations, agreements, arrangements, negotiations, or understandings, oral or written, between the parties to this Contract. In the event of a conflict between this Contract and the RFP or Vendor's proposal submitted in response to the RFP, this Contract shall control. In the event of a conflict between the RFP and Vendor's proposal submitted in response to the RFP, the RFP shall control. This Contract supersedes any conflicting terms and conditions on any Purchase Order, invoices, checks, order acknowledgements, forms, purchase orders, or similar commercial documents relating hereto and which may be issued by Vendor after the Effective Date of this Contract.

**4.43 Interpretation**

Vendor agrees that the normal rules of construction that requires that any ambiguities in this Contract are to be construed against the drafter shall not be employed in the interpretation of this Contract.

**4.44 Notice**

Any notice provided under the terms of this Contract by the parties to any other shall be in writing and shall be given by hand-delivery or by certified or registered mail, return receipt requested. Notice shall be sufficient if made or addressed to the party at the address listed in the signature line of this Contract. Notice shall be deemed effective upon receipt. Each party may change the address at which notice may be sent to that party by giving notice of such change to the other party by certified mail, return receipt requested.

**4.45 Captions**

The captions herein are for convenience and identification purposes only, are not an integral part hereof, and are not to be considered in the interpretation of any part hereof.

**4.46 Use by other governmental entities.**

Tex. Educ. Code Section 44.031(a)(4) and Tex. Gov't Code Ch. 791 allow for government entities, i.e. state agencies, local governments and school districts, to enter into cooperative agreements to allow the procurement process to be performed by a single entity on behalf of all those electing to participate. SMSD may allow other governmental entities to "piggyback" onto any existing contract between SMSD and Vendor entered into pursuant to this RFP, as contemplated in United States Department of Agriculture Memorandum SP35-2012, Procuring Services of Purchasing Cooperatives, Group Purchasing Organizations, Group Buying Organizations, etc., June 12, 2012 ("SP 35-2012"). Should the "piggybacking" result in a material change to the Contract, SMSD will proceed under Section 5.45 of this RFP. Accordingly, other governmental entities are authorized to enter into separate and independent contracts with Vendor that employ the same negotiated terms and conditions contained in an existing contract(s) between SMSD and Vendor. In the event SMSD allows another governmental entity to join, it is expressly understood that SMSD shall in no way be liable for the obligations of the joining governmental entity.

## 5.0 SCOPE OF PROPOSAL

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- 5.1 It is the intention of SMSD to establish one or more contracts to furnish and/or deliver **Athletic Supplies, Awards and Equipment**.
- 5.2 Vendors are encouraged to offer any applicable terms and conditions should be included for any additional product or service. SMSD reserves the right to accept or reject any items included by Vendor in this section.
- 5.2 Awards will be made to the successful Vendor(s) for the total line of products and services submitted. Proposals can be made for any or all services and products described herein. The terms and conditions listed below apply to all categories and lots within the **Athletic Supplies, Awards and Equipment**. Each category and lot contain additional terms, conditions, and specifications. If there is a conflict between category or lot terms and conditions and those listed below, the category or lot terms and conditions shall take precedence.
- 5.3 **Vendor is required to ensure that the Purchase Order includes the following, as applicable:**
- The contract number, lump sum price, start date, schedule, and notice to proceed. The schedule will include the mobilization, materials purchase, installation and delivery, design, weather, and site cleanup and inspection. No additional claims may be made for delays as a result of these items.
  - The date for commencing services and/or delivery of products ("work"). Upon commencing work, the Vendor will proceed diligently toward contract completion. Any delay in the work beyond the Vendor's control must be reported to the SMSD's authorized representative immediately.
  - Compensation for received products, terms of progress payments, and a schedule of payments. SMSD retains the right to extend the schedule of work/delivery time or to suspend the work and to direct the Vendor to resume work when appropriate. The Purchase Order must describe an equitable adjustment for added costs caused by any suspension. Any increases will be invoiced through SMSD as allowed in the Contract or RFP.
  - A schedule for performance of work that can be met without planned overtime, which shall be Vendor's responsibility.
  - Terms for acceptance by SMSD and title to work must be clearly agreed upon and described. If any part of the work requires SMSD to assume control prior to the completion, this must be defined. Vendor and SMSD must agree on the definition of what constitutes final acceptance before payment of any retained compensation.
- 5.4 **For each Purchase Order, the following shall apply:**
- After the Purchase Order is signed, a copy of the Purchase Order shall be sent to SMSD's Business Office.
  - Each individual Purchase Order may be limited to work at a single facility and will describe the Scope of Work to be performed. Descriptions may be written, by sketch, and/or by drawing and should include the location where work is to be performed, whether work may be performed during Regular Hours, the project completion time, and the price to be paid for the work.
  - The Vendor shall perform the scope of work within the project completion time and for the fixed price of the Purchase Order.
  - No work shall be performed until a written Purchase Order has been signed by the Vendor and SMSD. Any work performed under a Purchase Order before the Vendor's receipt of the written Purchase Order is at the Vendor's risk.
  - The Vendor is required to perform all work under a Purchase Order which has been issued and received before the expiration date of this Contract. If the Purchase Order is not

received by the Vendor before the expiration date of this Contract, the Purchase Order will be considered cancelled. Purchase Orders sent in the last 30 days of a Term should be sent "Return Receipt Requested". Any Purchase Order issued during the Term of the Contract and not completed before the expiration date of the Contract must be completed within the completion/delivery time stated in the Purchase Order, and the rights and obligations of the Vendor and SMSD with respect to the Purchase Order will be the same as if the Purchase Order were completed during the Term of the Contract.

- The Vendor may not refuse to perform any project requested by SMSD unless such project is unlawful.
- SMSD also reserves the right not to issue a Purchase Order if in its best interest. The Vendor shall not recover any costs arising out of or related to the development of the Purchase Order.

## 6.0 SPECIFICATIONS

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- 6.1 It is the intention of SMSD to establish one or more contract(s) with highly qualified Vendor(s) for **Athletic Supplies, Awards and Equipment**. Vendor(s) shall, at the request of SMSD, provide these products and/or covered services under the terms of this RFP and the Contract set forth in Section **4.0 Contract Terms and Conditions**. Vendor shall assist SMSD with making a determination of its individual needs, as stated below.

## 7.0 PRICING / DELIVERY INFORMATION

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### 7.1 Pricing

Vendors must provide pricing to SMSD in their proposals, including any additional pricing examples and pricing discount schedules that need to be submitted to provide SMSD with a comprehensive catalog. SMSD may request the Vendor to provide discounts or other adjustments, on a per-Purchase Order basis. If discounts or quantity prices are offered by the Vendor, the Vendor must also offer the same reductions in pricing for orders of similar size to SMSD. **Catalog/price lists must be included in the Vendor's proposal if applicable.**

### 7.2 Discounts provided on price lists and catalogs – Detail the average discount provided by the Vendor on stated prices.

7.2.1 Provide discount schedules for all products Vendor intends to offer, shown either by category or code. Use separate discount for any net items with description of these net items.

7.2.2 Provide labor notes for each category shown that Vendor is proposing. These notes must include Vendor's overhead, and profit. Provide Vendor's miscellaneous material markups. If Vendor does not provide this labor classification, mark "NA" (Not Available).

7.2.3 Provide a description on how Vendor intends to guarantee the performance of Vendor's labor, and what benchmark will be used to determine the labor hours for each project.

7.2.4 Indicate any list price adjustment Vendor intends on providing during the contract period and on what it is based. For example: CPI.

7.2.5 **All pricing shall be flat fee and if federal child nutrition funds are used, may not be cost plus percentage of cost as defined by the Texas Department of Agriculture.**

### 7.3 Freight, Delivery, Inspection & Acceptance

All deliveries shall be **Freight Prepaid, F.O.B. Destination, Full Freight Allowed, and Inside Delivery**. Deliveries shall be made during SMSD's Regular Hours.

The conforming product(s) shall be delivered within **ten (10) business days** of Vendor's receipt of a Purchase Order. If delivery is not or cannot be made within this time period, Vendor must receive authorization from SMSD for the delayed delivery.

If defective or incorrect products are delivered, SMSD may make the determination, at its sole discretion, to return the products to Vendor at no cost to SMSD. Vendor agrees to pay all shipping and handling costs for any such return shipment. Vendor also shall be responsible for arranging the return of the defective or incorrect products.

SMSD may request emergency delivery. Vendor must use its best efforts to comply with rush or emergency delivery. However, if Vendor is unable to fulfill the emergency delivery request, SMSD may procure its needs from alternative sources without penalty.



## 8.0 VENDOR QUESTIONNAIRE

8.1 Please complete the Vendor Questionnaire and return with the Vendor proposal.

LEGAL NAME OF VENDOR:

\_\_\_\_\_

DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER:

\_\_\_\_\_

TYPE OF BUSINESS/DESCRIPTION OF PRODUCTS AND/OR SERVICES PROVIDED:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

VENDOR MAILING ADDRESS:

\_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

VENDOR STREET ADDRESS:

\_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_ FAX: \_\_\_\_\_

CONTACT PERSON'S NAME:

\_\_\_\_\_

CONTACT PERSON'S TELEPHONE NUMBER: \_\_\_\_\_ FAX: \_\_\_\_\_

CONTACT PERSON'S E-MAIL ADDRESS:

\_\_\_\_\_

1. TYPE OF BUSINESS ENTITY: ☐ PUBLICLY TRADED CORPORATION ☐ PRIVATE CORPORATION ☐ LIMITED PARTNERSHIP  
☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ NOT FOR PROFIT ENTITY

2. NUMBER OF FULL TIME EMPLOYEES: \_\_\_\_\_ NUMBER OF PART TIME EMPLOYEES: \_\_\_\_\_

3. NUMBER OF YEARS VENDOR HAS BEEN IN CONTINUOUS OPERATION: \_\_\_\_\_

4. NUMBER OF YEARS VENDOR HAS BEEN IN BUSINESS UNDER ITS PRESENT BUSINESS NAME: \_\_\_\_\_

5. HAS VENDOR CONDUCTED BUSINESS WITH THE DISTRICT UNDER ANOTHER NAME? ☐ YES ☐ NO

*IF YES, PROVIDE OTHER*

NAME(S): \_\_\_\_\_

6. NUMBER OF YEARS DOING BUSINESS WITH SMSD: \_\_\_\_\_

7. DOES VENDOR HAVE A PARENT COMPANY OR SUBSIDIARY THAT CURRENTLY CONDUCTS OR THAT HAS PREVIOUSLY CONDUCTED BUSINESS WITH THE DISTRICT? ☐ YES ☐ NO

*IF YES, NAME OF PARENT COMPANY AND/OR SUBSIDIARY:*

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8. DO YOU HAVE EXPERIENCE WITH OTHER SCHOOL DISTRICTS? ☐ YES ☐ NO

*PLEASE LIST NAMES OF DISTRICTS*

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9. DOES VENDOR HAVE ANY OWNERS, PRINCIPAL SHAREHOLDERS OR STOCKHOLDERS, OFFICERS, AGENTS, SALESPEOPLE OR KEY EMPLOYEES WHO HAVE BEEN MEMBERS OF THE SMSD BOARD OF EDUCATION DURING THE LAST 5 YEARS? ☐ YES ☐ NO

*IF YES, NAME(S) AND TITLE(S):*

---

10. DOES ANY OFFICER, PARTNER, OWNER, SALES REPRESENTATIVE AND/OR SPOUSE WORK FOR SMSD?

☐ YES ☐ NO

11. DOES VENDOR HAVE ANY OWNERS, PRINCIPAL SHAREHOLDERS OR STOCKHOLDERS, OFFICERS, AGENTS, SALESPEOPLE OR KEY EMPLOYEES WHO ARE DISTRICT EMPLOYEES OR WHO ARE MEMBERS OF A DISTRICT EMPLOYEE'S IMMEDIATE FAMILY WHO EITHER WORK OR WHO MAY POTENTIALLY WORK ON THIS CONTRACT WITH THE DISTRICT? ☐ YES ☐ NO

*IF YES, NAME(S) AND TITLE(S):*

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12. NAMES OF AUTHORIZED AGENTS, INCLUDING ANY PERSON OR ENTITY AUTHORIZED TO 'ACT WITH' OR 'ACT ON YOUR BEHALF,' SUCH AS CONSULTANTS, SUB-CONTRACTORS, RE-SELLERS, LOBBYISTS, CONFIDANTS, ETC., WHETHER COMPENSATED OR NOT COMPENSATED:

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- 13. HAS VENDOR (INCLUDING ANY OWNER, PRINCIPAL SHAREHOLDER OR STOCKHOLDER, OFFICER, AGENT, SALESPERSON, OR EMPLOYEE) BEEN INVOLVED IN PAST, PENDING, OR PRESENT LITIGATION INVOLVING THE DISTRICT OR ANOTHER GOVERNMENTAL ENTITY?**

☐ YES ☐ NO

*IF YES, PLEASE PROVIDE THE STYLE AND STATUS OF THE CASE AS WELL AS THE TYPE OF LITIGATION:*

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- 14. NAME OF INSURANCE COMPANIES:**

INSURANCE COMPANIES	INSURANCE COMPANIES

- 15. CHECK ONE OF THE FOLLOWING:** ☐ VENDOR WILL PROVIDE GOODS AND SERVICES WITH OWN WORK FORCE

☐ VENDOR WILL PURCHASE GOODS DIRECTLY FROM THE MANUFACTURER OR OTHER SUPPLIER

- 16. CAN VENDOR PROVIDE SMSD WITH PERIODIC PREFORMATTED FLAT FILE UPDATES OF YOUR CATALOG?** ☐

YES ☐ NO

- 17. DOES VENDOR HAVE E-COMMERCE CAPABILITY?** ☐ YES ☐ NO

- 18. DOES VENDOR HAVE PUNCH-OUT CATALOGS IN PLACE TODAY?** ☐ YES ☐ NO

- 19. DOES VENDOR HAVE ANY INTERNAL ELECTRONIC CATALOGS WITH ANY CUSTOMERS?** ☐ YES ☐ NO

**I ATTEST THAT I HAVE ANSWERED THE ABOVE QUESTIONS TRUTHFULLY AND TO THE BEST OF MY KNOWLEDGE.**

\_\_\_\_\_  
OFFICER'S SIGNATURE

\_\_\_\_\_  
PRINTED NAME AND TITLE

## 9.0 ATTACHMENTS

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- 9.1 Please complete the Attachment Packet and return all completed, executed forms with the proposal.



**Stafford Municipal School District**  
*"The Best Little School District in Texas"*

SMSD 21-0002

Request for Proposals

Athletic Supplies, Awards and Equipment

**APPENDIX A - ATTACHMENTS**

Name of Company Submitting Proposal: \_\_\_\_\_

**TABLE OF CONTENTS**

Items below are components which comprise this bid/proposal package. Respondents are asked to review the proposal document and attachments package to be sure that all applicable parts are included. If any portion of the package is missing, please notify SMSD immediately.

This attachment package must be completed, executed, and dated by the authorized proposer and must be included with your proposal at the time of submission.

**Attachments:**

Execution of Offer

Conflict of Interest Questionnaire

Certificate of Interested Parties – Form 1295

IRS Form W-9

Proposer Certifications

Felony Conviction Notice Form

Antitrust Certification Statement

Add this item if it deals with student contact

1. SB9 Contractor Certification Form: Contractor Employees (Varies)
2. SB9 Contractor Certification Form: Subcontractor (Varies)

## EXECUTION OF OFFER

The undersigned Proposer has carefully examined all instructions, requirements, specifications, terms and conditions of this RFQ and the Agreement and certifies:

1. It is a reputable company regularly engaged in providing goods and/or services necessary to meet the requirements, specifications, terms and conditions of the RFP and the Agreement.
2. It has the necessary experience, knowledge, abilities, skills, and resources to satisfactorily perform the requirements, specifications, terms and conditions of the RFP and the Agreement. Further, if awarded, the Proposer agrees to perform the requirements, specifications, terms and conditions of the RFP and the Agreement.
3. All statements, information, and representations prepared and submitted in response to this RFP are current, complete, true, and accurate. Proposer acknowledges that SMSD will rely on such statements, information, and representations in selecting the successful Proposer(s).
4. It is not currently barred or suspended from doing business with the Federal government, any of the members represented, or any of their respective agencies.
5. It shall be bound by all statements, representations, warranties, and guarantees made in its proposal.
6. Submission of a proposal indicates the Proposer's acceptance of the evaluation technique and the Proposer's recognition that some subjective judgments may be made by SMSD and its membership as part of the evaluation.
7. That all of the requirements of this RFP and the Agreement have been read and understood. In addition, compliance with all requirements, terms and conditions will be assumed by SMSD if not otherwise noted in the proposal.
8. The individual signing below has authority to enter into this on behalf of Proposer.
9. Proposer acknowledges that the Agreement may be canceled if any conflict of interest or appearance of a conflict of interest is discovered by SMSD.
10. This Agreement is subject to purchase orders duly authorized and executed by SMSD.

<b>CORPORATE NAME:</b>	
<b>AUTHORIZED SIGNATURE:</b>	
<b>PRINT NAME:</b>	
<b>TITLE:</b>	
<b>DATE:</b>	
<b>ADDRESS:</b>	
<b>CITY, STATE, ZIP CODE:</b>	
<b>PHONE/FAX:</b>	
<b>EMAIL ADDRESS:</b>	
<b>WEBSITE URL:</b>	

### This Section to be Completed by SMSD

Contract Number: \_\_\_\_\_ Term of Contract \_\_\_\_\_ to \_\_\_\_\_

Approved by Stafford Municipal School District:

\_\_\_\_\_  
Authorized SMSD Representative

\_\_\_\_\_  
Board Approval Date

## **CONFLICT OF INTEREST DISCLOSURE STATEMENT**

Stafford Municipal School District (SMSD) is required to comply with Texas Local Government Code Chapter 176, Disclosure of Certain Relationships with Local Government Officers. House Bill 23 significantly changed Chapter 176 as well as the required disclosures and the corresponding forms. As of September 1, 2015, any vendor who does business with SMSD or who seeks to do business with SMSD must fill out the new Conflict of Interest Questionnaire (CIQ) whether or not a conflict of interest exists. A conflict of interest exists in the following situations:

- 1) If the vendor has an employment or other business relationship with a local government officer of SMSD or a family member of the officer, as described by section 176.003(a)(2)(A) of the Texas Local Government Code; or
- 2) If the vendor has given a local government officer of SMSD, or a family member of the officer, one or more gifts with the aggregate value of \$100, excluding any gift accepted by the officer or a family member of the officer if the gift is: (a) a political contribution as defined by Title 15 of the Election Code; or (b) a gift of food accepted as a guest; or
- 3) If the vendor has a family relationship with a local government officer of SMSD.

**“Vendor”** means a person who enters or seeks to enter into a contract with a local governmental entity. The term includes an agent of a vendor. The term includes an officer or employee of a state agency when that individual is acting in a private capacity to enter into a contract. The term does not include a state agency except for Texas Correctional Industries. *Texas Local Government Code 176.001(7).*

**“Business relationship”** means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on: (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity; (B) a transaction conducted at a price and subject to terms available to the public; or (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency. *Texas Local Government Code 176.001(3).*

**“Family relationship”** means a relationship between a person and another person within the third degree by consanguinity or the second degree by affinity, as those terms are defined by Subchapter B, Chapter 573, Government Code. *Texas Local Government Code 176.001(2-a).*

**“Local government officer”** means: (A) a member of the governing body of a local governmental entity; (B) a director, superintendent, administrator, president, or other person designated as the executive officer of a local governmental entity; or (C) an agent of a local governmental entity who exercises discretion in the planning, recommending, selecting, or contracting of a vendor. *Texas Local Government Code 176.001(4).*

- ***SMSD Board of Trustees and Superintendent include:***

Mr. Christopher Caldwell	Ms. Alicia Lacy-Castille
Ms. Dawn Reichling	Mr. Greg Holsapple
Mr. Ash Hamirani	Mr. Manuel Hinojosa
Ms. Jacqueline Jean-Baptiste	Dr. Robert Bostic, Superintendent

- ***Current local government officers include, but are not limited to:***

Marva Rasberry, Chief Innovations Officer  
Dr. Kadir Almus, Chief Academic Officer  
Dr. Dawn Dubose, Chief of Schools  
Dedrea Norman, Chief Financial Officer

**If no conflict of interest exists, you must fill out Box 1 and type N/A on Box 3 of the CIQ form, sign and date it.** In the event of changed circumstances, an updated CIQ must be filed within seven (7) business days after the vendor becomes aware that a conflict of interest exists.

**CONFLICT OF INTEREST QUESTIONNAIRE**  
For vendor doing business with local governmental entity

**FORM CIQ**

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

**OFFICE USE ONLY**

Date Received

**1 Name of vendor who has a business relationship with local governmental entity.**

**2** ☐ **Check this box if you are filing an update to a previously filed questionnaire.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

**3 Name of local government officer about whom the information is being disclosed.**

\_\_\_\_\_  
Name of Officer

**4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.**

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes

☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes

☐ No

**5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.**

**6** ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

**7**

\_\_\_\_\_  
Signature of vendor doing business with the governmental entity

\_\_\_\_\_  
Date



## **CONFLICT OF INTEREST QUESTIONNAIRE**

### **For vendor doing business with local governmental entity**

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

**Local Government Code § 176.001(1-a):** "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

**Local Government Code § 176.003(a)(2)(A) and (B):**

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

\*\*\*  
(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

- (i) a contract between the local governmental entity and vendor has been executed;
- or
- (ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

**Local Government Code § 176.006(a) and (a-1)**

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

- (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
- (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
- (3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

- (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
- (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

- (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
- (B) that the vendor has given one or more gifts described by Subsection (a); or
- (C) of a family relationship with a local government officer.

## **SMSD CERTIFICATE OF INTERESTED PARTIES – FORM 1295**

SMSD is required to comply with House Bill 1295, which amended the Texas Government Code by adding Section 2252.908, Disclosure of Interested Parties. Section 2252.908 prohibits SMSD from entering into a contract resulting from this RFP with a business entity unless the business entity submits a Disclosure of Interested Parties (Form 1295) to SMSD at the time business entity submits the signed contract. Effective January 1, 2018, the Form 1295 requirement does not apply to: (1) a contract with a publicly traded business entity or wholly owned subsidiary of the same; (2) an electric utility; or (3) a gas utility. The Texas Ethics Commission has adopted rules requiring the business entity to file Form 1295 electronically with the Texas Ethics Commission. The following **definitions** apply:

- (1) ***“Business Entity”*** means an entity recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation. TEX. GOV’T CODE § 2252.908(1).
- (2) ***“Interested Party”*** means a person:
  - a) who has a controlling interest in a business entity with whom SMSD contracts; or
  - b) who actively participates in facilitating the contract or negotiating the terms of the contract, including a broker, intermediary, adviser, or attorney for the business entity. TEX. GOV’T CODE § 2252.908(3).
- (3) ***“Controlling interest”*** means:
  - a) an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds 10 percent;
  - b) membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or
  - c) service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers. *Subsection (c) does not apply to an officer of a publicly held business entity or its wholly owned subsidiaries.* TEX. ETHICS COMM. RULE 46.3(c).
- (4) ***“Intermediary”*** means a person who actively participates in the facilitation of the contract or negotiating the contract, including a broker, adviser, attorney, or representative of or agent for the business entity who:
  - a) receives compensation from the business entity for the person’s participation;
  - b) communicates directly with the governmental entity or state agency on behalf of the business entity regarding the contract; and
  - c) is not an employee of the business entity. TEX. ETHICS COMM. RULE 46.3(e).

### **As a “business entity,” all vendors must:**

- (1) **complete Form 1295 electronically** with the Texas Ethics Commission using the online filing application, which can be found at [https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)
  - **All vendors must complete Form 1295, even if no interested parties exist**
  - In Section 2, insert “Stafford Municipal School District”
  - In Section 3, insert the SMSD SMSD/RFP # for this proposal
- (2) **print a copy of the completed form** (make sure that it has a computer-generated certification number in the “Office Use Only” box)
- (3) have an authorized agent of the business entity **sign the form**
- (4) **submit** the completed Form 1295 by **attaching the form to your statement of qualifications/proposal.**

SMSD must acknowledge the receipt of the filed Form 1295 by notifying the Texas Ethics Commission of the receipt of the filed Form 1295 no later than the 30<sup>th</sup> day after receipt by SMSD. After SMSD acknowledges the Form 1295, the Texas Ethics Commission will post the completed Form 1295 to its website with seven business days after receiving notice from SMSD.

# Request for Taxpayer Identification Number and Certification

► Go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9) for instructions and the latest information.

Give Form to the  
requester. Do not  
send to the IRS.

Print or type.  
See Specific Instructions on page 3.

<b>1</b> Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.	
<b>2</b> Business name/disregarded entity name, if different from above	
<b>3</b> Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only <b>one</b> of the following seven boxes.  <input type="checkbox"/> Individual/sole proprietor or single-member LLC  <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► _____ <b>Note:</b> Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is <b>not</b> disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.  <input type="checkbox"/> Other (see instructions) ► _____	<b>4</b> Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):  Exempt payee code (if any) _____  Exemption from FATCA reporting code (if any) _____  <small>(Applies to accounts maintained outside the U.S.)</small>
<b>5</b> Address (number, street, and apt. or suite no.) See instructions.	Requester's name and address (optional)
<b>6</b> City, state, and ZIP code	
<b>7</b> List account number(s) here (optional)	

## Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

**Note:** If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

<b>Social security number</b>										
				-				-		
<b>or</b>										
<b>Employer identification number</b>										
				-						

## Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign  
Here

Signature of  
U.S. person ►

Date ►

## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9).

## Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See *What is backup withholding, later*.

**STAFFORD MUNICIPAL SCHOOL DISTRICT  
PROPOSER/VENDOR CERTIFICATION FORMS**

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**CERTIFICATION OF RESIDENCY**

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The State of Texas has a law concerning non-resident vendors. This law can be found in Texas Education Code under Chapter 2252, Subchapter A. This law makes it necessary for SMSD to determine the residency of its Vendors. In part, this law reads as follows:

Section: 2252.001: "Non-resident bidder" refers to a person who is not a resident. "Resident bidder" refers to a person whose principal place of business is in this state, including a vendor whose ultimate parent company or majority owner has its principal place of business in this state.

Section: 2252.002: "A governmental entity may not award a governmental contract to a non-resident bidder unless the nonresident underbids the lowest bid submitted by a resident bidder by an amount that is not less than the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located."

Company submitting bid is a **resident bidder**:

☐ Yes

☐ No

City and state of vendor's principal place of business:

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**SMSD SUPPLIER DIVERSITY PROGRAM – REQUIRED FORM**

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SMSD's supplier diversity program ensures that the District shall use its best efforts to inform small, women-owned, and minority-owned businesses of current and future purchasing activities. Pursuant to SMSD Board Policy CH (Local), the District shall encourage the participation of these businesses in purchasing of all goods and services. All solicitations issued by the District shall include this supplier diversity program form that is to be completed and submitted with the bid response.

If possible, the District shall attain 25 percent of its professional goods and services from small, women-owned, and minority-owned businesses.

In addition, the District shall make every effort to purchase goods and services from Stafford-owned businesses.

The following definitions shall apply:

- A "small business" shall be defined as a business entity that is independently owned and operated and is not dominant in its field of operation. The business shall employ fewer than 50 employees and/or shall have less than \$3 million in annual business volume from this local operation.
- A "minority business" shall be a business entity that is at least 51 percent owned by one or more minority individuals or, in the case of any publicly owned business, at least 51 percent of the stock is owned by one or more minority individuals and whose management and daily business operations are controlled by one or more of the minority individuals who own the entity. Minority individuals shall mean residents of the United States who are members of the following groups: African Americans, Hispanics, American Indians, Asian Americans, Alaska natives, or Pacific Islanders.
- A "woman business enterprise" shall mean a business entity that follows the same guidelines as a minority business but that is at least 51 percent owned by one or more women, or in the case of a publicly owned business, at least 51 percent of the stock is owned by one or more women and whose management and daily business operations are controlled by one or more women who own the entity.

Vendor certifies that it has the following supplier diversity classification(s):

Vendor certifies that it is a small business as defined above:

☐ Yes ☐ No

Vendor certifies that it is a minority business as defined above:

☐ Yes ☐ No

Vendor certifies that it is a woman business enterprise as defined above:

☐ Yes ☐ No

If Vendor is MWBE and/or HUB certified, please include a copy of the certification letter and the percentage of your business with MWBE and/or HUB suppliers, if applicable, in your proposal response.

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**I, the authorized representative for the company named below, certify that the information concerning residency certification, and MWBE and HUB certifications have been reviewed by me and the information furnished is true to the best of my knowledge.**

Contractor's Name/Company Name: \_\_\_\_\_

Address, City, State, and Zip Code: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Printed Name and Title of Authorized Representative: \_\_\_\_\_

Email Address: \_\_\_\_\_

Signature of Authorized Representative: \_\_\_\_\_

Date: \_\_\_\_\_

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#### **CERTIFICATION REGARDING TERRORIST ORGANIZATIONS**

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Vendor hereby certifies that it is not a company identified on the Texas Comptroller's list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State.

\_\_\_\_\_ Initials of Authorized Representative of Vendor

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#### **CERTIFICATION REGARDING BOYCOTTING OF ISRAEL**

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**If (a) Vendor is not a sole proprietorship; (b) Vendor has ten (10) or more full-time employees; and (c) this Agreement has a value of \$100,000 or more, the following certification shall apply; otherwise, this certification is not required.** Pursuant to Chapter 2270 of the Texas Government Code, the Vendor hereby certifies and verifies that neither the Vendor, nor any affiliate, subsidiary, or parent company of the Vendor, if any (the "Vendor Companies"), boycotts Israel, and the Vendor agrees that the Vendor and Vendor Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term "boycott" shall mean and include refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

\_\_\_\_\_ Initials of Authorized Representative of Vendor, if applicable

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**REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS  
UNDER FEDERAL AWARDS – APPENDIX II TO 2 CFR PART 200**

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The following provisions are required and apply when federal funds are expended by SMSD for any contract resulting from this procurement process.

**(A) Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.**

Pursuant to Federal Rule (A) above, when federal funds are expended by SMSD, SMSD reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

Does vendor agree? YES \_\_\_\_\_ Initials of Authorized Representative of vendor

**(B) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)**

Pursuant to Federal Rule (B) above, when federal funds are expended by SMSD, SMSD reserves the right to immediately terminate any agreement in excess of \$10,000 resulting from this procurement process in the event of a breach or default of the agreement by Vendor, in the event vendor fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in the procurement solicitation, contract, and/or a purchase order; (2) make any payments owed; or (3) otherwise perform in accordance with the contract and/or the procurement solicitation. SMSD also reserve the right to terminate the contract immediately, with written notice to vendor, for convenience, if SMSD believes, in its sole discretion that it is in the best interest of SMSD to do so. The vendor will be compensated for work performed and accepted and goods accepted by SMSD as of the termination date if the contract is terminated for convenience of SMSD. Any award under this procurement process is not exclusive and SMSD reserves the right to purchase goods and services from other vendors when it is in the best interest of SMSD.

Does vendor agree? YES \_\_\_\_\_ Initials of Authorized Representative of vendor

**(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”**

Pursuant to Federal Rule (C) above, when federal funds are expended by SMSD on any federally assisted construction contract, the equal opportunity clause is incorporated by reference herein.

Does vendor agree to abide by the above?

YES \_\_\_\_\_ Initials of Authorized Representative of vendor

**(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all**



prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

Pursuant to Federal Rule (D) above, when federal funds are expended by SMSD, during the term of an award for all contracts and subgrants for construction or repair, the vendor will be in compliance with all applicable Davis-Bacon Act provisions.

Does vendor agree? YES \_\_\_\_\_ Initials of Authorized Representative of vendor

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Pursuant to Federal Rule (E) above, when federal funds are expended by SMSD, the vendor certifies that during the term of an award for all contracts by SMSD resulting from this procurement process, the vendor will be in compliance with all applicable provisions of the Contract Work Hours and Safety Standards Act.

Does vendor agree? YES \_\_\_\_\_ Initials of Authorized Representative of vendor

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

Pursuant to Federal Rule (F) above, when federal funds are expended by SMSD, the vendor certifies that during the term of an award for all contracts by SMSD resulting from this procurement process, the vendor agrees to comply with all applicable requirements as referenced in Federal Rule (F) above.

Does vendor agree? YES \_\_\_\_\_ Initials of Authorized Representative of vendor

**(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).**

Pursuant to Federal Rule (G) above, when federal funds are expended by SMSD, the vendor certifies that during the term of an award for all contracts by SMSD resulting from this procurement process, the vendor agrees to comply with all applicable requirements as referenced in Federal Rule (G) above.

Does vendor agree? YES \_\_\_\_\_ Initials of Authorized Representative of vendor

**(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.**

Pursuant to Federal Rule (H) above, when federal funds are expended by SMSD, the vendor certifies that during the term of an award for all contracts by SMSD resulting from this procurement process, the vendor certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency or by the State of Texas. Vendor shall immediately provide written notice to SMSD if at any time the vendor learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. SMSD may rely upon a certification of a vendor that the vendor is not debarred, suspended, ineligible, or voluntarily excluded from the covered contract, unless SMSD knows the certification is erroneous.

Does vendor agree? YES \_\_\_\_\_ Initials of Authorized Representative of vendor

**(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.**

Pursuant to Federal Rule (I) above, when federal funds are expended by SMSD, the vendor certifies that during the term and after the awarded term of an award for all contracts by SMSD resulting from this procurement process, the vendor certifies that it is in compliance with all applicable provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). The undersigned further certifies that:

- (1) No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an



officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certificate is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Does vendor agree? YES \_\_\_\_\_ Initials of Authorized Representative of vendor \_\_\_\_\_

- (J) Procurement of Recovered Materials – When federal funds are expended by SMSD, SMSD and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include: (1) procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; (2) procuring solid waste management services in a manner that maximizes energy and resource recovery; and (3) establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.**

Pursuant to Federal Rule (J) above, when federal funds are expended SMSD, as required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6962(c)(3)(A)(i)), the vendor certifies, by signing this document, that the percentage of recovered materials content for EPA-designated items to be delivered or used in the performance of the contract will be at least the amount required by the applicable contract specifications or other contractual requirements.

Does vendor agree? YES \_\_\_\_\_ Initials of Authorized Representative of vendor \_\_\_\_\_

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**REQUIRED AFFIRMATIVE STEPS FOR SMALL, MINORITY, AND WOMEN-OWNED FIRMS FOR  
CONTRACTS PAID FOR WITH FEDERAL FUNDS – 2 CFR § 200.321**

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When federal funds are expended by SMSD, Vendor is required to take all affirmative steps set forth in 2 CFR 200.321 to solicit and reach out to small, minority and women owned firms for any subcontracting opportunities on the project, including:

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

Does vendor agree? YES \_\_\_\_\_ Initials of Authorized Representative of vendor \_\_\_\_\_

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**RECORD RETENTION REQUIREMENTS FOR CONTRACTS PAID FOR WITH FEDERAL FUNDS –  
2 CFR § 200.333**

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When federal funds are expended by SMSD for any contract resulting from this procurement process, the vendor certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.333. The vendor further certifies that vendor will retain all records as required by 2 CFR § 200.333 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

Does vendor agree? YES \_\_\_\_\_ Initials of Authorized Representative of vendor \_\_\_\_\_

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**CERTIFICATION OF COMPLIANCE WITH EPA REGULATIONS  
APPLICABLE TO GRANTS, SUBGRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS  
IN EXCESS OF \$100,000 OF FEDERAL FUNDS**

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When federal funds are expended by SMSD for any contract resulting from this procurement process in excess of \$100,000, the vendor certifies that the vendor is in compliance with all applicable standards, orders, regulations, and/or requirements issued pursuant to the Clean Air Act of 1970, as amended (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act, as amended (33 U.S.C. 1368), Executive Order 117389 and Environmental Protection Agency Regulation, 40 CFR Part 15.

Does vendor agree? YES \_\_\_\_\_ Initials of Authorized Representative of vendor \_\_\_\_\_

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**CERTIFICATION OF COMPLIANCE WITH THE ENERGY POLICY AND CONSERVATION ACT**

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When federal funds are expended by SMSD for any contract resulting from this procurement process, the vendor certifies that the vendor will be in compliance with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

Does vendor agree? YES \_\_\_\_\_ Initials of Authorized Representative of vendor \_\_\_\_\_

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**CERTIFICATION OF COMPLIANCE WITH BUY AMERICA PROVISIONS**

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Vendor certifies that vendor is in compliance with all applicable provisions of the Buy America Act. Purchases made in accordance with the Buy America Act must still follow the applicable procurement rules calling for free and open competition.

Does vendor agree? YES \_\_\_\_\_ Initials of Authorized Representative of vendor \_\_\_\_\_

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**CERTIFICATION OF NON-COLLUSION STATEMENT**

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Vendor certifies under penalty of perjury that its response to this procurement solicitation is in all respects bona fide, fair, and made without collusion or fraud with any person, joint venture, partnership, corporation or other business or legal entity.

Does vendor agree? YES \_\_\_\_\_ Initials of Authorized Representative of vendor \_\_\_\_\_

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**Vendor agrees to comply with all federal, state, and local laws, rules, regulations and ordinances, as applicable. It is further acknowledged that vendor certifies compliance with all provisions, laws, acts, regulations, etc. as specifically noted above.**

Vendor's Name/Company Name: \_\_\_\_\_

Address, City, State, and Zip Code: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Printed Name and Title of Authorized Representative: \_\_\_\_\_

Email Address: \_\_\_\_\_

Signature of Authorized Representative: \_\_\_\_\_

Date: \_\_\_\_\_ Federal Tax ID # \_\_\_\_\_

**STAFFORD MUNICIPAL SCHOOL DISTRICT**  
**FELONY CONVICTION NOTICE FORM**

FELONY CONVICTION NOTIFICATION

State of Texas Legislative Senate Bill No. 1 Section 44.034, Notification of Criminal History, Subsection (a), states “a person or business entity that enters into an agreement with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony”.

Subsection (b) states “a school district may terminate the agreement with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a), or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract”.

Subsection (c) states “this section does not apply to a publicly held corporation”.

.....

I, the undersigned agent for the firm named below, certify that the information concerning notification of felony convictions has been reviewed by me and the information furnished is true to the best of my knowledge.

Contractor’s Name/Company Name: \_\_\_\_\_

Authorized Official’s Name (Printed or Typed): \_\_\_\_\_

**You must select one and sign below:**

- ☐ Firm is a publicly held corporation; therefore the above reporting requirement does not apply per Section 44.034, Texas Education Code, Subsection (c).
- ☐ Contractor/Firm **is not** owned nor operated by anyone who has been convicted of a felony.
- ☐ Contractor/Firm **is** operated or owned by the following individual(s) who has/have been convicted of a felony:

Name of Individual(s): \_\_\_\_\_ Detail  
of Conviction(s): \_\_\_\_\_

*(Attach additional pages if necessary.)*

Signature of Company Official: \_\_\_\_\_

Date: \_\_\_\_\_

**STAFFORD MUNICIPAL SCHOOL DISTRICT**

**ANTITRUST CERTIFICATION STATEMENT**

**(Tex. Government Code § 2155.005)**

I affirm under penalty of perjury of the laws of the State of Texas that:

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

Contractor's Name/Company Name: \_\_\_\_\_

Address, City, State, and Zip Code: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_ Date Signed: \_\_\_\_\_

**SB 9 Contractor Certification: Contractor Employees**  
(As applicable)

**Background:** Texas Education Code Chapter 22 requires entities that contract with school districts to obtain **criminal history records on covered employees**. Covered employees **with disqualifying criminal histories are prohibited from serving at a school district**. Contractors must certify to SMSD that they have complied and must obtain similar certifications from their subcontractors. See *SB 9 Contractor Certification: Subcontractor attachment*. The law requires each contractor to obtain the criminal histories of its covered employees. For more information or to set up an account, a contractor should contact the Texas Department of Public Safety's Crime Records Service at 512.424.2474.

**Definitions:**

**Covered employees:** Employees of a contractor who have or will have continuing duties related to the service to be performed at a school district and have or will have direct contact with students. SMSD will be the final arbiter of what constitutes *continuing duties* and *direct contact* with students.

**Public Works Exception to Covered Employees:** Covered employees do not include employees of a contracting or subcontracting entity that is providing engineering, architectural, or construction services on a project to design, construct, alter, or repair a public work if: (1) the public work does not involve the construction, alteration, or repair of an instructional facility as defined by Texas Education Code Section 46.001; (2) the employee's duties will be completed more than seven (7) days before a new instructional facility will be used for instruction; or (3) for an existing instructional facility, the work area contains sanitary facilities separated from all areas used by students by a fence at least six (6) feet high, and the Contractor adopts, informs employees of, and enforces a policy prohibiting employees and any subcontractor's employees from interacting with students or entering areas used by students.

**Disqualifying criminal history:** (1) a conviction or other criminal history information designated by SMSD; (2) a felony or misdemeanor offense that would prevent a person from being employed under Texas Education Code § 22.085(a), that is: if at the time of the offense, the victim was under 18 or was enrolled in a public school: (a) a felony offense under Title 5, Texas Penal Code; (b) an offense on conviction for which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) an offense under federal law or the laws of another state that is equivalent to (a) or (b).

**Types of Criminal History Record Information:**

- For employees hired by Contractor before January 1, 2008—Any law enforcement or criminal justice agency;
- For employees hired by Contractor on or after January 1, 2008—National criminal history information from the Texas Department of Public Safety criminal history clearinghouse.

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On behalf of \_\_\_\_\_ ("Contractor"), I, the undersigned authorized signatory for Contractor, certify to Stafford Municipal School District ("SMSD") that [check one]:

[ ] None of Contractor's employees are *covered employees*, as defined above. If this box is checked, I further certify that Contractor has taken precautions or imposed conditions to ensure that its employees will not become *covered employees*. Contractor will maintain these precautions or conditions throughout the time the contracted services are provided.

Or

[ ] Some or all of Contractor's employees are *covered employees*. If this box is checked, I further certify that:

- (1) Contractor has obtained all required criminal history record information regarding its covered employees. None of the covered employees has a disqualifying criminal history.
- (2) If Contractor receives information that a covered employee subsequently has a reported criminal history, Contractor will immediately remove the covered employee from contract duties and notify

SMSD in writing within 3 business days.

- (3) Upon request, Contractor will provide SMSD with the name and any other requested information of covered employees so that SMSD may obtain criminal history record information on the covered employees.

If SMSD objects to the assignment of a covered employee on the basis of the covered employee's criminal history record information, Contractor agrees to discontinue using that covered employee to provide services at SMSD locations.

I also certify to SMSD on behalf of Contractor that Contractor has obtained certifications from its subcontractors of compliance with Texas Education Code, Chapter 22. Noncompliance or misrepresentation regarding this certification may be grounds for contract termination.

Signature

Title

Date

**SB 9 Contractor Certification: Subcontractor**  
(As applicable)

**Background:** Texas Education Code Chapter 22 requires entities that contract with school district contractors to obtain criminal history records regarding covered employees. Covered employees with disqualifying criminal histories are prohibited from serving at a school district. Subcontractors must certify to SMSD and to the contractor that they have complied. The law requires each subcontractor to obtain the criminal histories of its covered employees. For more information or to set up an account, a contractor should contact the Texas Department of Public Safety's Crime Records Service at 512.424.2474.

**Definitions:**

Covered employees: Employees of a subcontractor who have or will have continuing duties related to the service to be performed at a school district and have or will have direct contact with students. SMSD will be the final arbiter of what constitutes *continuing duties* and *direct contact* with students.

Public Works Exception to Covered Employees: Covered employees do not include employees of a contracting or subcontracting entity that is providing engineering, architectural, or construction services on a project to design, construct, alter, or repair a public work if: (1) the public work does not involve the construction, alteration, or repair of an instructional facility as defined by Texas Education Code Section 46.001; (2) the employee's duties will be completed more than seven (7) days before a new instructional facility will be used for instruction; or (3) for an existing instructional facility, the work area contains sanitary facilities separated from all areas used by students by a fence at least six (6) feet high, and the Contractor adopts, informs employees of, and enforces a policy prohibiting employees and any subcontractor's employees from interacting with students or entering areas used by students.

Disqualifying criminal history: (1) a conviction or other criminal history information designated by SMSD; (2) a felony or misdemeanor offense that would prevent a person from being employed under Texas Education Code § 22.085(a), that is: if at the time of the offense, the victim was under 18 or was enrolled in a public school: (a) a felony offense under Title 5, Texas Penal Code; (b) an offense on conviction for which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) an offense under federal law or the laws of another state that is equivalent to (a) or (b).

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Subcontractor has entered into a contract with \_\_\_\_\_ ("Contractor"), to provide services in connection with the contract between Stafford Municipal School District ("SMSD") and Contractor. I, the authorized signatory for Subcontractor, certify to SMSD and Contractor that [check one]

☐ None of Subcontractor's employees are *covered employees*, as defined above. If this box is checked, I further certify that Subcontractor has taken precautions or imposed conditions to ensure that its employees will not become *covered employees*. Subcontractor will maintain these precautions or conditions throughout the time the contracted services are provided.

Or

- ☐ Some or all of Subcontractor's employees are *covered employees*. If this box is checked, I further certify that:
- (1) Subcontractor has obtained all required criminal history record information regarding its covered employees. None of the covered employees has a disqualifying criminal history.
  - (2) If Subcontractor receives information that a covered employee subsequently has a reported criminal history, Subcontractor will immediately remove the covered employee from contract duties and notify SMSD in writing within 3 business days.
  - (3) Upon request, Subcontractor will provide SMSD with the name and any other requested information of covered employees so that SMSD may obtain criminal history record information on the covered employees.

If SMSD objects to the assignment of a covered employee on the basis of the covered employee's criminal history record information, Subcontractor agrees to discontinue using that covered employee to provide services at SMSD locations.



I also certify to SMSD and Contractor on behalf of Subcontractor that Subcontractor has obtained certifications from its subcontractors of compliance with Texas Education Code, Chapter 22. Noncompliance or misrepresentation regarding this certification may be grounds for contract termination.

Signature	Title	Date