



Procurement Office
14160 S. Black Bob Rd.
Olathe, KS 66062
913.780.8045

REQUEST FOR PROPOSALS

SECTION 1 - INSTRUCTIONS TO PROPOSERS

Olathe Public Schools USD #233 (the "District") offers the following instructions to proposers that shall apply to the solicitation.

1-1 SUBMISSION OF PROPOSALS

- a. Sealed electronic bids for this solicitation will be received until the time and date noted in the General Information section of the solicitation displayed on the District's online bid portal website [IonWave](#), at which time the responses will be publicly unsealed/opened. Submission of electronic responses after the specified Due Date/Time are not possible. Proposals of any other format received after the exact time specified for receipt will not be considered. *Olathe Public Schools ensures the identification, security, and confidentiality of electronically submitted bids and proposals.*
- b. Proposers or potential proposers accessing this document from somewhere other than the District's online bid portal website at [IonWave](#) are responsible for accessing and acknowledging any questions/answers or applicable addenda if issued. NOTE: While notifications of addenda are sent to registered/interested proposers, it is the proposer's sole responsibility to access this information. Proposals received by the District that do not include acknowledgement of such may be rejected.
- c. **Proposals should be submitted electronically via the District's online bid portal website at [IonWave](#). All proposals received in this manner are SEALED and are automatically time and date stamped. A facsimile or email response to this Request for Proposals does NOT meet the requirement of a sealed bid and will NOT be accepted.**
- d. Proposals must be submitted in accordance with the electronic formats provided in the District's online bid portal website and must be acknowledged and electronically submitted by a person authorized to commit Proposer to extend an offer. Any alterations or corrections by the Proposer must be completed prior to the Due Date/Time and require additional acknowledgement and submittal.
- e. Proposals may be withdrawn or modified at any time prior to the scheduled closing time for receipt of bids.
- f. All proposals shall be valid and constitute an irrevocable offer to contract on the terms and conditions contained in this Request for Proposals for one hundred twenty (120) days after opening, but the District reserves the right to accept or reject bids on each item or service separately or as a whole, to reject any or all proposals, to waive informalities or irregularities, and to contract in the best interest of the District.
- g. Unless otherwise specified, only one price brand and/or model may be proposed for each item or service in this Request for Proposals. Proposers must determine their single best offering based on the quality specified. **Proposals not conforming to this requirement may be rejected.**
- h. Any time District Offices are closed on days other than scheduled holidays, any opening, pre-proposal conference, or other meeting or event related to this Request for Proposals scheduled for that date/time will be held on the next normal working day at the scheduled time or as communicated by District Procurement staff. It shall be the Proposer's sole responsibility for making themselves aware of, and making attempts to remedy, any situation causing a potential delay in bid submission.

1-2 ALTERNATE BRANDS/SPECIFICATIONS

- a. Brand names and specifications referenced in this solicitation are meant to establish a minimum standard of quality, performance, or use desired. Unless otherwise noted, proposals on “equals” may be considered provided Proposer clearly identifies the alternate product or service to those specified in this bid, and furnishes descriptive literature and other proof required by the District to determine that the “equal” being proposed meets the minimum essential specifications.
- b. When brand names or specifications are not changed, it will be assumed that Proposers’s proposal is as specified and any award or agreement would be done so accordingly.
- c. Samples, when required by the District, must be furnished free of charge, including freight, to and from the District.
- d. In the event the District elects to contract for a brand purported to be an equal by the Proposer, the acceptance of the item will be conditioned on the District's inspection and testing after receipt. If, in the sole judgment of the District, the item is determined not to be equal, the material will be returned at Proposer’s expense and the Agreement terminated.

1-3 PRICING

- a. Except as otherwise provided, proposal prices must be firm and based on the units specified. The proposal price shall include everything necessary for the execution and completion of this Agreement including, but not limited to, furnishing all materials, equipment, management, superintendence, labor, and service, except as may be otherwise provided in this Agreement. Prices quoted on the Line Items section shall include all freight and/or delivery charges. In the event of a discrepancy between the unit price and the total price, the unit price will govern and the total price will be adjusted accordingly. Proposer’s agreement and submittal of information/pricing on the Request for Proposals Line Items section guarantees that prices have not been arrived at through collusion with other eligible Proposers and without effort to preclude the District from obtaining the lowest possible competitive prices. The proposal price shall not include any allowance for Kansas State sales or use tax.
- b. The District will evaluate the total price for the basic requirements with any option(s) exercised at the time of award. Evaluation of option(s) will not obligate the District to exercise the options(s).
- c. The District may reject an offer if it is materially unbalanced as to process for the basic requirements and the option quantities. An offer is materially unbalanced when based on prices significantly less than the cost for some work and prices significantly overstated for other work.

1-4 DELIVERY AND FREIGHT REQUIREMENTS

- a. Unless otherwise specified, proposal response must be on the basis of F.O.B. Destination, prepaid and allowed. Requests for additional compensation for freight or delivery charges will be rejected by the District unless specifically identified on the proposal form and agreed to by the District.
- b. Unless otherwise specified in the Request to Proposal, delivery at the earliest possible date is desired; therefore, weighted consideration may be given to the earliest date as stated by the Contractor in its proposal. Proposer will state, in calendar days, the time required to make delivery after receipt of an Agreement or purchase order. Failure to make delivery within the time specified may be cause for the District to cancel the Agreement or purchase order and to make the purchase on the open market with any cost in excess of the Agreement amount to be paid by the Proposer. Failure of the Proposer to meet contract delivery dates may also be cause for removal from the District’s bidder consideration list.

1-5 SUBCONTRACTORS

Names and addresses of all proposed subcontractors (if any) shall be submitted with the proposal response. Failure to provide this information may be grounds for rejection of the proposal. The District reserves the right to approve or reject the Proposal’s subcontractor(s).

1-6 INTERPRETATION, CORRECTIONS, OR CHANGES

Proposers requesting any interpretations or clarifications of this document or any part of the RFP shall direct those questions in writing via the Questions section within the RFP on the online bid portal website **by no later than the date and time established and noted within the solicitation.**

The District's Procurement Office is the first and only point of contact on all matters related to the procedures associated with this Request for Proposals. If additional information is needed from any source, the District's Procurement Office will work with the Proposer and with the various offices of the District to gather that information.

Any interpretation, correction, or change in the Request for Proposals will be made via formal addendum or answers to questions issued electronically on the online bid portal website by the District's Procurement Office and must be acknowledged by Proposer in the proposal response within the aforementioned website. Interpretations, corrections, or changes to the Request for Proposals allegedly made in any other manner will not be binding and no Proposer may rely upon any such interpretation, correction, or change.

Respondents should make NO CONTACT, either written or verbal, with USD 233 Board of Education members, the District's legal counsel, the District's Superintendent, District staff, or project consultants, beginning with the issuance of this document through approval of award. Any attempt by a Proposer to influence District personnel may be grounds to disqualify the Proposer from participation in the selection process of this Request for Proposals. The exception to this involves companies already providing services for the District, allowing for discussions necessary for completion of the existing contracts.

1-7 PROPOSER'S REPRESENTATION

By submission of a proposal, Proposer represents that they have examined the Agreement documents and made an examination of the physical site or otherwise satisfied him/herself completely as to the provisions of the Agreement documents and physical site conditions, areas, and quantities.

1-8 QUALIFICATION OF PROPOSER(S)

Upon request by the District, the apparent successful proposer(s) shall furnish documentation satisfactory to the District which confirms qualification requirements. Any conviction for a criminal or civil offense that indicates a lack of business integrity of business honesty which currently, seriously, and directly affects responsibility as a state contractor must be disclosed. This is to include (a) conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract; (b) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, or receiving stolen property; (c) conviction under state or federal antitrust statutes; and (d) any other offense to be serious and compelling as to affect responsibility as a state contractor (see K.S.A. 75-37,103); or (e) is federally debarred.

1-9 BASIS OF AWARD(S)

The District shall make the award(s) to the responsive and responsible Proposer(s) whose proposal(s) will be most advantageous to the District, in the District's sole discretion, with respect to price, conformance to the specifications, quality, and other factors as evaluated by the District. The District shall not in any event be required or constrained to award the Agreement(s) to the Proposer(s) proposing the lowest price(s). Nor shall the District be required to make any award whatsoever. The District may award Agreement(s) on the basis of initial proposals received, without discussion; therefore, each initial proposal should contain the Proposer's best terms from a cost and technical standpoint.

1-10 APPEAL OF AWARD

A Proposer aggrieved by the award of an Agreement may file an appeal in writing to the District's Procurement Office. The appeal must be received by the Procurement Office within five working days after the award is made, must describe the basis for the appeal, and must include all arguments and evidence the Proposer wishes the Procurement Office to consider. Keeping track of the date an award is made is the responsibility of the Proposer(s).

1-11 PROPOSAL CONFIDENTIALITY

Each Proposer agrees that the contents of each bid submitted in response to this Request for Proposals is confidential, proprietary, and constitutes trade secret information as to all technical and financial data, and waives any right of access to such proposals, except as provided for by law. Except as determined by the District's Procurement Office, in its sole discretion, no information will be given regarding any proposals or evaluation progress until after an award is made, except as provided for by law.

1-12 ORDER OF PRECEDENCE

To the extent that this proposal's terms, conditions, or provisions may be in conflict or be inconsistent, their order of authority shall be as follows: 1) Instructions to Proposers; 2) State of Kansas Department of Administration DA-146a (Rev. 07-19) Contractual Provisions Attachment; 3) District General Terms and Conditions; and 4) the Specifications.

1-13 DISCLOSURE OF POTENTIAL CONFLICT OF INTERESTS

It is the duty of the Contractor to disclose all circumstances that constitute an actual or potential conflict of interest as those terms are defined in the District's Conflict of Interest Policy DL (<http://www.boarddocs.com/ks/olathe/Board.nsf/Public#>). This duty is continuing throughout the procurement process, and such circumstances must be disclosed to the District immediately upon Contractor's knowledge. Failure to do so could jeopardize the procurement process and result in rejection of a Proposer's submission or rescission of a proposed award.

SECTION 2 - PROCUREMENT PROCESS

2-1 PROPOSER LIST AND QUALIFICATION EVALUATION

After the established date for receipt of proposals, a listing of Proposers submitting proposals will be prepared, and will be available for public inspection. Qualifications and proposals submitted by interested Proposers will be reviewed and evaluated based on the evaluation factors set forth in the RFP.

2-2 PROPOSAL CLASSIFICATION

For the purpose of conducting discussions with individual Proposers, if required, proposals will initially be classified as:

- A. Potentially Acceptable
- B. Unacceptable

Discussions may be conducted with any or all of the Proposers whose proposals are found potentially acceptable. The Procurement Department will establish procedures and schedules for conducting oral and/or written discussions.

Proposers are advised that the District may award an Agreement on the basis of initial offers received, without discussions; therefore, each initial offer should contain the proposer's best terms from a cost and technical standpoint.

2-3 PROPOSER INVESTIGATION

The District will make such investigations as it considers necessary to obtain full information on the Proposers selected for discussions, and each Proposer shall cooperate fully in such investigations.

2-4 FINAL OFFERS AND AWARD OF AGREEMENT

Following any discussions with Proposers regarding their technical proposals, alternative approaches, or optional features, a number of the firms may be requested to submit best and final offers. The committee will rank the final Proposers for the project, giving due consideration to the established evaluation criteria. The committee will propose award to the proposal which is found to be most advantageous to the District, based on the factors set forth in the Request for Proposals.

SECTION 3 - TERMS AND CONDITIONS

In addition to the Olathe Public Schools USD #233 (the "District") General Terms and Conditions, the following terms and conditions shall apply to the Agreement.

3-1 AGREEMENT TERMS AND CONDITIONS

The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in the Agreement and made a part thereof. The submission of a proposal herein constitutes the agreement of Contractor that any Agreement to be drawn as the result of an award herein shall be prepared by the District and shall include at a minimum, all terms and conditions set forth in this Request for Proposals. The submission of a bid/proposal shall further constitute the agreement of each Contractor that it will not insist on the use of standard contract agreements, documents, or forms, and that it waives any demand for the use of its standard agreements, and that it will not insist on or require any modifications to the Contractual Provisions Attachment (Form DA-146a, Rev. 06-12).

3-2 LAWS, REGULATIONS AND PERMITS

The Contractor shall give all notices required by law and comply with all applicable Federal, State, and local laws, ordinances, rules, and regulations relating to the conduct of the work and as required in the related industry, including without limitation, laws specific to public K-12 educational entities, such as (and again without limitation): Section 504 of the Rehabilitation Act of 1973, and the Family Educational Rights & Privacy Act. The Contractor shall be liable for all violations of the law in connection with work furnished by the Contractor, including the Contractor's subcontractors, if any. Failure of the District to insist on the strict performance of the terms, conditions, and agreements herein contained or any of these shall not constitute or be construed as a waiver of relinquishment of the District's right thereafter to enforce strict compliance with any such terms, agreement or condition, but the same shall continue in full force and effect.

3-3 PAYMENT AND ACCEPTANCE

Except as otherwise provided herein, undisputed payments shall be due and payable within 30-45 days after acceptance of such goods or services or after receipt of properly completed invoice, whichever is later. No advance payment shall be made for goods or services furnished pursuant to this Agreement. A properly completed invoice shall contain the following information: purchase order number and/or contract number, item number, description of supplies or services, sizes, unit of measure, quantity, unit price and extended totals. **The District may give preferable consideration to a Contractor who will accept an ePayables Credit Card payment as payment for invoices. Acceptance of this form of payment shall not require payment of additional charges or fees beyond those costs outlined for the goods and/or services in this Agreement.**

3-4 CONTRACTOR COMMITMENTS, WARRANTIES, AND REPRESENTATIONS

- a. Any commitment by the Contractor within the scope of this Agreement shall be binding upon the Contractor. Failure of the Contractor to fulfill such a commitment shall render the Contractor liable for actual damages incurred by the District by reason of such failure of the Contractor. The rights and remedies of the District provided in this clause shall not be exclusive and are in addition to other rights and remedies provided by law or under the terms of this Agreement. For purposes of this Agreement, a commitment by the Contractor includes: 1) prices and options committed to remain in force over a specified period of time; 2) any warranty or representation made by the Contractor in a proposal as to performance or any other physical, design, or functional characteristics; 3) any warranty or representation made by Contractor concerning the characteristics or items in (2) above, contained in any literature, descriptions, drawings or specifications accompanying or referred to in a proposal; 4) any modification of, affirmation, or representation as to the above that is made by Contractor in writing or during the course of negotiation, whether or not incorporated into a formal amendment to the proposal, supporting documents or negotiations subsequent thereto as to training to be provided, services to be performed, prices, and options committed to remain in force over a fixed period of time, or any other similar matter, regardless of the fact the duration of such commitment may exceed the duration of this Agreement.
- b. In addition to any other representations and warranties contained herein, Contractor represents and warrants the following: (1) that it is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to provide the equipment and goods, complete the services, and perform its obligations required hereunder; (2) that it is authorized to do business in Kansas, properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and the equipment, goods, and/or services required hereunder, and has or will obtain all licenses and permits required by law prior to the beginning date of the initial term of the Agreement, and is not federally debarred.

3-5 BOARD OF EDUCATION APPROVAL

The Agreement may be subject to approval by the District's Board of Education, and if such approval is required but not granted, the Agreement shall be void and neither party shall have any further obligations or liabilities hereunder.

3-6 KANSAS ACT AGAINST DISCRIMINATION

The following (Sec. 1-5 of K.S.A. 44-1030(a)) are conditions of the Agreement. Only contractors, vendors, or suppliers whose contracts with the District cumulatively total Five Thousand Dollars (\$5,000) or less during the fiscal year of the District or who have fewer than four (4) employees shall be exempt from these provisions.

- a. The Contractor shall observe the provisions of the Kansas act against discrimination, as amended, and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin or ancestry;
- b. In all solicitations or advertisements for employees, the Contractor shall include the phrase "equal opportunity employer," or a similar phrase to be approved by the Kansas human rights commission;
- c. If the Contractor fails to comply with the manner in which the Contractor reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Contractor shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the District;
- d. If the Contractor is found guilty of a violation of the Kansas act against discrimination under a decision or order of the commission which has become final, the Contractor shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the District; and
- e. The Contractor shall include the provisions of K.S.A. 44-1030(a)(1)-(5), as amended, in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

3-7 EXECUTIVE ORDER 11246

The Contractor shall, in the performance of the requirements of any contract, comply with the provisions stipulated in Executive Order 11246.

3-8 CONTINUATION DURING DISPUTES

The Contractor agrees, notwithstanding the existence of any dispute between the parties, insofar as possible under the terms of the Agreement to be entered into, each party will continue to perform the obligations required of it during the continuation of any such dispute, unless enjoined or prohibited by any court.

3-9 CONTRACTOR'S INSURANCE

Contractor will secure, purchase and maintain, at its own expense, the insurance policies, with the minimum insurance coverages noted, to remain in full force and effect during all periods of use or service covered by the Agreement:

- a. Statutory Workers' Compensation Insurance in accordance with the laws of the State of Kansas, including Employer's Liability Insurance in the amount of at least one million dollars (\$1,000,000) per accident or disease.
- b. Commercial General Liability Insurance (including broad form contractual liability) in the amount of at least one million dollars (\$1,000,000) each occurrence bodily injury and property damage combined, one million dollars (\$1,000,000) per occurrence personal and advertising liability, two million dollars (\$2,000,000) products/completed operations aggregate, and two million dollars (\$2,000,000) general aggregate.

The Commercial General Liability Insurance policy shall be written on an occurrence basis and shall be endorsed to include "Olathe Public Schools, its agents, its employees, and its assigns" as additional insureds. Further, coverage for these additional insureds shall apply on a primary and non-contributory basis irrespective of any other insurance, collectable or not.

- c. Comprehensive Automobile Liability Insurance, including owned, non-owned, and hired vehicles, in the amount of at least one million dollars (\$1,000,000) each occurrence bodily injury and property damage combined.
- d. Umbrella Liability Insurance with limits of liability of not less than three million dollars (\$3,000,000) per occurrence and three million dollars (\$3,000,000) annual aggregate.
- e. Property Insurance with limits adequate to replace any equipment located on the premises of the District and a waiver of subrogation shall be issued on the District's behalf.
- f. General Requirements: All insurance required hereunder shall be maintained in full force and effect in a company or companies reasonably satisfactory to the District and shall be maintained at Contractor's expense. All insurance required hereunder shall contain a clause requiring written notice to the District thirty (30) days in advance of the cancellation, non-renewal, or material modification of said insurance as evidenced by return receipt of United States certified mail. Certificates of insurance shall be supplied contemporaneously with the execution and delivery of a final contract. Said certificates shall evidence compliance with all provisions of this Section 2-10.

The Contractor will further require any subcontractors or others acting under its direction or control to maintain the same insurance coverage as set forth above and provide certificates of insurance evidencing the required coverage. "Olathe Public Schools, its agents, its employees, and its assigns" shall be named as additional insureds on any Commercial General Liability Insurance policy and be evidenced on such certificate.

3-10 INDEMNIFICATION

To the fullest extent permitted by law, the party who enters into this Agreement with the District, including its respective officers, directors, partners, employees, insurers, agents, subcontractors, invitees or others acting under its direction or control (collectively, "Party"), agrees to defend, indemnify and hold harmless District, District's officers, directors, partners, employees, agents and representatives from and against any and all actual or alleged claims, costs, losses, damages and costs of defense (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all courts or arbitration or other dispute resolution costs) of any nature whatsoever, resulting from, arising out of or in consequence of, any action or cause of action in connection with the execution, performance and furnishing of Party's commitments, obligations and services under this Agreement including, but not limited to: monies owed by Party to third parties (including without limitation subcontractors) and/or damage to property or any injuries or death sustained by any person or persons, including any third parties, employees, agents, invitees and the like, caused by the negligent acts or omissions or intentional acts of any Party. Party further waives any rights of subrogation against District, District's officers, directors, partners, employees, insurers, agents or representatives.

3-11 APPROPRIATIONS CLAUSE

The District's obligations and liabilities hereunder are subject to the appropriation of funds. If funds are not appropriated for the purpose of this Agreement, the Agreement shall terminate and neither party shall have any further obligations hereunder.

3-12 GENERAL QUALITY

All of the Contractor's work shall be performed with the highest degree of skill in accordance with applicable laws and generally accepted practices and standards of similar professionals in the industry, and completed in accordance with the Agreement Documents.

3-13 PROOF OF COMPLIANCE WITH AGREEMENT

In order that the District may determine whether the Contractor has complied with the requirements of the Agreement documents, the Contractor shall, at any time when requested by the District, submit to the District properly authenticated documents or other satisfactory proofs as to compliance with such requirements.

3-14 SEVERABILITY

If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application; to this end the terms and conditions of this Agreement are declared severable.

3-15 RISK OF LOSS

Until all improvements, equipment, or goods to be provided under this Agreement are installed on property owned or controlled by the District and working properly, or unless the District provides otherwise, the Contractor shall bear all risks of all loss or damage to the improvements, equipment, or goods, excluding loss or damage caused by acts, omissions, or negligence of the District. Once all improvements, equipment, or goods to be provided under this Agreement are installed on property owned or controlled by District and working properly, the risk of all loss or damage shall be borne by District, excluding loss or damage caused by acts, omissions, or negligence of the Contractor.

3-16 INTEGRATION

This Agreement constitutes the entire Agreement between the parties. No change thereto, including any price increase for the project, shall be valid or binding unless in writing communicated in the stipulated manner, and signed by the District and the Contractor.

3-17 SURVIVAL OF TERMS

The terms and provisions hereof, and all documents being executed hereunder, if any, including, without limitation, the representations and warranties, shall survive this Agreement and shall remain in full force and effect thereafter.

3-18 HEADINGS

The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation hereof.

3-19 KANSAS OPEN RECORDS ACT

Contractor recognizes that Olathe Public Schools USD #233 is a public governmental body subject to the provisions of the Kansas Open Records Act, K.S.A. 45-215 through 45-223. As such, the District is required to allow citizens to inspect and copy documents deemed to be "public records" under the law. Nothing herein shall prohibit the District from satisfying a request to inspect and copy documents.

3-20 ADDITIONAL ACTS (FURTHER ASSURANCES)

Except as otherwise provided herein, in addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by the parties, the parties hereby agree to perform, execute and/or deliver or cause to be performed, executed and/or delivered any and all such further acts, deeds and assurances as any party hereto may reasonably require to consummate the transaction contemplated hereunder.

3-21 TIME OF ESSENCE

All times provided for in this Agreement, or in any other document executed hereunder, for the performance of any act will be strictly construed, time being of the essence.

3-22 INFORMATION TRUE AND CORRECT

All documents, agreements and other information provided to the District by Contractor or which Contractor has caused to be provided to the District are true and correct in all respects and do not omit to state any material fact or condition required to be stated, necessary to make the statement or information not misleading, and there are no other agreements or conditions with respect thereto.

3-23 CONFIDENTIALITY

The parties hereto agree that the terms and conditions of this Agreement shall be held in confidence except as required by or for applicable disclosure laws, financing sources, enforcement of the Agreement, mergers and acquisitions, or as otherwise mutually agreed by the Parties, and such agreement shall not be withheld unreasonably.

3-24 TERMINATION FOR CONVENIENCE

The District may terminate this Agreement, in whole or in part, at any time, with or without cause, by written notice to the Contractor. The Contractor shall be paid all amounts due and owing for work performed as of the date of termination. The Contractor shall submit a final claim for payment for actual work performed within ten (10) business days of the date of termination. If the Contractor has any property in its possession belonging to the District, the Contractor will account for the same and dispose of it in the manner the District directs.

GENERAL TERMS AND CONDITIONS OLATHE PUBLIC SCHOOLS USD #233

1. THIS ORDER EXPRESSLY LIMITS ACCEPTANCE TO THE TERMS AND CONDITIONS STATED HEREIN. ALL ADDITIONAL OR DIFFERENT TERMS PROPOSED BY CONTRACTOR ARE OBJECTED TO AND ARE HEREBY REJECTED, UNLESS OTHERWISE PROVIDED FOR IN WRITING BY THE DIRECTOR OF BUSINESS SERVICES, OLATHE PUBLIC SCHOOLS (the "District").
2. CHANGES: No alteration in any of the terms, conditions, delivery, price, quality, quantity or specifications of this order will be effective without the written consent of the District's Procurement Office. All changes in scope to the agreement must be in writing and submitted on a District Procurement Office Change Order Form.
3. PACKING: No charges will be allowed for special handling, packing, wrapping, bags, containers, etc., unless otherwise specified.
4. DELIVERY: For any exceptions to the delivery date as specified on the order, Contractor shall give prior notification and obtain approval thereto from the District Procurement Office. With respect to delivery under this order, time is of the essence and order is subject to termination for failure to deliver within the timeframe specified in this order.
5. SHIPPING INSTRUCTIONS: Unless otherwise instructed, all goods are to be shipped prepaid and allowed, FOB Destination.
6. ORDER NUMBERS: Agreement order numbers or purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.
7. REJECTION: All goods, materials, or services purchased herein are subject to approval by the District. Any rejection of goods, materials, or services resulting from nonconformity to the terms, conditions or specifications of this order, whether the goods are held by the District or returned, will be at Contractor's risk and expense.
8. QUALITY STANDARDS: Brand names, models, and specifications referenced herein are meant to establish a minimum standard of quality, performance, or use required by the District. No substitutions will be permitted without written authorization of the District Procurement Office.
9. WARRANTIES: Contractor warrants that all products delivered under this order shall be new, unless otherwise specified, free from defects in material and workmanship, shall be fit for the intended purpose, and shall not infringe upon the rights of any third party. All products found defective shall be replaced by the Contractor upon notification by the District. All costs of replacement, including shipping charges, are to be borne by the Contractor. Contractor further warrants that all products and services shall be delivered and performed in a professional manner in accordance with applicable laws and generally accepted practices and standards of similar professionals in the industry.
10. PAYMENT, CASH DISCOUNT: Invoices will not be processed for payment nor will the period of computation for cash discount commence until receipt of a properly completed invoice or invoiced items are received and accepted, whichever is later. If an adjustment in payment is necessary due to damage or dispute, the cash discount period shall commence on the date final approval for payment is authorized. Payment shall not be considered late if a check or warrant is available or mailed within the time specified.
11. LIENS, CLAIMS AND ENCUMBRANCES: Contractor warrants and represents that all the goods and materials delivered herein are free and clear of all liens, claims or encumbrances of any kind.
12. TERMINATION: In the event of a breach by Contractor of any of the provisions of this Agreement, the District reserves the right to cancel and terminate this Agreement forthwith upon giving written notice to the Contractor. Contractor shall be liable for damages suffered by the District resulting from Contractor's breach of Agreement.
13. TRADEMARKS: Contractor shall not use the name, trade name, trademark, or any other designation of the District, or any contraction, abbreviation, adaptation, or simulation of any of the foregoing, in any advertisement or for any commercial or promotional purpose (other than in performing under this Agreement) without the District's prior written consent in each case.
14. SAVE HARMLESS: Contractor shall protect, indemnify, and save the District harmless from and against any damage, cost or liability, including reasonable attorney's fees, for any or all injuries to persons or property arising from acts or omissions of Contractor, its employees, or subcontractors, howsoever caused.

15. OSHA REGULATIONS: Contractor guarantees all items, or services, meet or exceed those requirements and guidelines established by the Occupational Safety and Health Act.

16. TAXES: The District is exempt from the tax levied by the Kansas Retailers' Sales Tax Act and the Compensating Tax Act for the reason that KSA 79-3606(c) provides that all sales of tangible personal property or services, including the renting and leasing of tangible personal property, purchased directly by a public or private elementary or secondary school or public or private nonprofit educational institution and used primarily by such school or institution for nonsectarian programs and activities provided or sponsored by such school or institution or in the erection, repair or enlargement of buildings to be used for such purposes.

17. BINDING EFFECT: This Agreement is for the benefit only of the parties hereto and shall inure to the benefit of and bind the parties and their respective heirs, legal representatives, successors and assigns.

18. ASSIGNMENTS: No Agreement, order, or any interest therein shall be transferred by Contractor to any other party without the approval in writing of the Director of Business Services, Olathe Public Schools. Transfer of an Agreement without approval may cause the rescission of the transferred Agreement at the option of the District. Notwithstanding any assignment, Contractor shall remain fully liable on this Agreement and shall not be released from performing any of the terms, covenants, and conditions of this Agreement.

19. WAIVER: No covenant, term or condition, or the breach thereof, shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and then only to the extent of such written consent. Acceptance by a party of any performance by another party after the time the same shall have become due shall not constitute a waiver by the first party of the breach or default unless otherwise expressly agreed to in writing.

20. FORCE MAJEURE: Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes thereof, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform (except for financial ability), shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage.

21. NO JOINT VENTURE: Nothing contained in this Agreement shall be construed as creating a joint venture, partnership, or employment or agency relationship between the parties.

22. PRICE WARRANTY FOR COMMERCIAL ITEMS: Contractor warrants that prices charged to the District are based on Contractor's current catalog or market prices of commercial items sold in substantial quantities to the general public and prices charged do not exceed those charged by Contractor to other customers purchasing the same item in like or comparable quantities.

23. NONDISCRIMINATION: Contractor represents and agrees that it will not discriminate in the performance of this Agreement or in any matter directly or indirectly related to this Agreement on the basis of race, sex, color, religion, national origin, disability, ancestry, or status as a veteran. This non-discrimination requirement includes, but is not limited to, any matter directly or indirectly related to employment. Breach of this covenant may be regarded as a material breach of Agreement.

24. DISTRICT POLICIES: Contractor shall follow and comply with all policies and procedures of the District and the reasonable instructions of District personnel.

25. GOVERNING LAW: This Agreement shall be construed in accordance with, and governed by the laws of the State of Kansas. Any legal proceeding related to this Agreement shall be instituted in the courts of the state of Kansas, and Contractor agrees to submit to the jurisdiction of such court.

26. PROTECTION OF DISTRICT PROPERTY: Contractors are responsible for protecting flooring, furniture and equipment in contracted work areas. Contractors are responsible for covering the District's property that may be affected by the contractors work. Expectations of the District are; contracted work areas are left in the same condition as when the work began.

27. ORDER OF PRECEDENCE: Notwithstanding any other provision in this Agreement, to the extent any terms contained in the various documents to this Agreement, the following shall be the order of controlling precedence: Form DA-146a, Olathe Public Schools General Terms and Conditions, Solicitation Documents, Contractor's response submission to solicitation, and then any supplemental documents.

28. W-9 REQUIREMENT: The Olathe Public Schools requires a Form W-9 (Request for Taxpayer Identification Number and Certification), updated annually, from all contractors that do business with the school district. The Form W-9 verifies the Tax Identification Number of the contractor so the district can correctly report to the IRS all funds paid to the contractor. A W-9 Form must be completed as a part of the vendor registration process on www.PublicPurchase.com. Form W-9 can also be found at <http://www.irs.gov/pub/irs-pdf/fw9.pdf>. No payment shall be made to contractor without a current W-9 form being filed with district.

NOTICE OF NON-DISCRIMINATION

The Olathe Public Schools prohibit discrimination on the basis of race, color, national origin, sex, age, religion or disability in its programs, activities or employment, and provides equal access to the Boy Scouts and other designated youth groups to its facilities as required by: Title IX of the Education Amendments of 1972, Title VI and Title VII of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act (ADA), the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973 and other relevant state and federal laws. Inquiries regarding compliance with applicable civil rights statutes related to ethnicity, gender, age discrimination or equal access may be directed to Staff Counsel, 14160 Black Bob Road, Olathe, KS 66063-2000, phone 913-780-7000. All inquiries regarding compliance with applicable statutes regarding Section 504 of the Rehabilitation Act and the Individuals with Disabilities Education Act and the Americans with Disabilities Act may be directed to the Assistant Superintendent General Administration, 14160 Black Bob Rd. Olathe, KS 66063-2000, phone (913) 780-7000. Interested persons including those with impaired vision or hearing, can also obtain information as to the existence and location of services, activities and facilities that are accessible to and usable by disabled persons by calling the Assistant Superintendent General Administration. (04/13)

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:
"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 07-19), which is attached hereto, are hereby incorporated in this contract and made a part thereof."
The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges-hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001, *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111, *et seq.*) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101, *et seq.*) (ADA), and Kansas Executive Order No. 19-02, and to not discriminate against any person because of race, color, gender, sexual orientation, gender identity or expression, religion, national origin, ancestry, age, military or veteran status, disability status, marital or family status, genetic information, or political affiliation that is unrelated to the person's ability to reasonably perform the duties of a particular job or position; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) Contractor agrees to comply with all applicable state and federal anti-discrimination laws and regulations; (g) Contractor agrees all hiring must be on the basis of individual merit and qualifications, and discrimination or harassment of persons for the reasons stated above is prohibited; and (h) if it is determined that the contractor has violated the provisions of any portion of this paragraph, such violation shall constitute a breach of contract and the contract may be canceled, terminated, or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.