

September 20, 2022

To Whom It May Concern:

Proposals for “Musical Instruments and Services for Hattiesburg Public Schools” as listed on the attached sheets will be received electronically through Central Bidding at [www.centralbidding.com](http://www.centralbidding.com) until **5:00 p.m. (CST), October 7, 2022.**

Sincerely,

Edith Stallings  
Accounting Supervisor

# **REQUEST FOR PROPOSALS**

**Bid # 23-003**

**Musical Instruments and Services for HPS 2022**

**Hattiesburg Public Schools**

**Attn: Edith Stallings, Accounting Supervisor**

**301 Mamie Street**

**Hattiesburg, MS 39401**

**Contact:**

**Kenya L. Horn, Federal Programs Director**

**Phone: 601-582-5078 Fax: 601-582-6666**

**Email: [kenya.horn@hattiesburgpsd.com](mailto:kenya.horn@hattiesburgpsd.com)**

**Reverse Auction Date: Wednesday, October 12, 2022  
10:00 a.m. -11:00 am**

**PRE- QUALIFICATION TRANSMITTAL FORM**

**Musical Instruments and Services for HPS Band programs**

Having examined the specifications outlined on the attached sheets, my company agrees to furnish and deliver items and provide equipment and services according to your specifications and instructions at the indicated prices. We/I, the undersigned understand and accept the instructions and conditions under which this bid is being submitted.

This bid consists of Vendor Proposal Form, Conditions/Specifications and Site Allocation Table. We/I understand that a company officer's signature is required on each form and unless this has been done, our bids may be considered incomplete and therefore rejected.

**Name of Vendor:** \_\_\_\_\_

**Contact Person:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Location of Vendor's Principal Place of Business:** \_\_\_\_\_

**Location of Place of Performance (if different from above):**

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

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

**Mailing Address:** \_\_\_\_\_

\_\_\_\_\_  
By my signature below, I hereby represent that I am authorized to and do bind the offering vendor to the provisions of the attached proposal for instrument and services. The undersigned offers and agrees to provide the specified instruments, packaging, and services in accordance with provisions set forth in the bid process held by reverse auction. Furthermore, the undersigned fully understands and assures compliance with the Conditions of Solicitation and Standard Terms and Conditions contained in the proposal. The undersigned is fully aware of the evaluation criteria to be utilized in awarding the contract.

\_\_\_\_\_  
**Authorized Signature**

\_\_\_\_\_  
**Date**

**BID SPECIFICATIONS AND CONDITIONS – HATTIESBURG PUBLIC SCHOOLS**

## **INTENT**

The Reverse Auction is being held to obtain pricing from a qualified and reasonable vendor who can provide musical instruments and services needed for the 2022-2023 school year. All musical equipment in this order must be received by December 15, 2022. . The Hattiesburg Public Schools is requesting qualified vendors in the area of band instruments and related services in response to Covid -19 to respond and prevent the spread of the virus from sharing instruments. Partial shipments will be accepted.

The district seeks bids from qualified vendors for the procurement of musical instruments in accordance with provided specifications and requirements. The auction will require the vendor to provide pricing for one year that includes all services outlined in the specifications. The vendor/vendors are expected to provide pricing that includes all services outlined in the specifications. All bid responses should provide an “all-in-one” price that includes costs for the instruments, a 3-year depot warranty, 3-year unlimited accidental device protection, white glove service, if applicable, and shipping.

No substitutions of materials, instruments, and/or equipment except for that of musical stands, student chair, chair movers/storage carts, AV equipment, and musical stand movers/storage carts. Bidders must obtain prior approval for any model that is not specified items, and bidders must make it evident and clear which model is being quoted if it differs from the specified request list of band instruments. All variances in construction, design, performance, and accessories from the item specified must be submitted in writing, including a detailed manufactures specification by the deadline specified in the bid documents. All bidders proposing an alternate device may be required to supply the district with a demonstration model that is the exact model being proposed; bids for instruments with the exact specifications submitted by the deadline specified in the model requested do not need to submit a demonstration instrument.

The co-curricular band programs for the school district currently include beginner and advanced band offerings for students in grades 6-12 across three school campuses: Hattiesburg STEAM Academy, N.R. Burger Middle School, and Hattiesburg High School. The district seeks bids from qualified vendors for the procurement of band instruments and related services in accordance with provided specifications and requirements.

## **Auction Details and Instructions**

The reverse auctions will be held on **October 12, 2022 at 10:00 am 11:00 am (Central)**. Questions about the auction can be directed to Central Bidding at (225)810-4814 or [support@centralbidding.com](mailto:support@centralbidding.com). Vendors must have the requested forms submitted to Central Bidding by **October 7, 2022 at 5:00 pm (Central)** to be able to participate. Vendors who fail to make contact prior to this deadline will not be included in the reverse auction.

Questions concerning items and services should be sent to: Kenya L. Horn, Federal Programs Director at [kenya.horn@hattiesburgpsd.com](mailto:kenya.horn@hattiesburgpsd.com) The deadline for submitting written questions by email is **October 5, 2022 at 8:00 a.m.** All responses to written questions and changes to specification requirements will be communicated via e-mail to the person submitting the questions. All questions, comments, and requests for clarification must be in writing. Only written response to written communication shall be considered official and binding upon HPS. HPS reserves the right, as its sole discretion, to determine appropriate and adequate responses to the written comments, questions, and requests for clarification.

## **SHIPPING**

Instruments being shipped via FedEx or UPS should be shipped to:

Hattiesburg Public Schools Band Programs  
 Director of Bands Frederick Hawkins  
 301 Hutchinson Ave., Hattiesburg, MS 39401

Instruments shipping via USPS or another delivery service should email the Director of Bands at [frederick.hawkins@hattiesburgpsd.com](mailto:frederick.hawkins@hattiesburgpsd.com) to receive an alternate address and directions.

## **SPECIFICATIONS**

Specific instruments and related services requested include, but are not limited to:

| <b>SECONDARY BAND INSTRUMENT LIST</b> |                 |                                 |
|---------------------------------------|-----------------|---------------------------------|
| <b>ITEM #</b>                         | <b>QUANTITY</b> | <b>DESCRIPTION</b>              |
| 2350W                                 | 6               | King Sousaphone Outfit          |
| 1121                                  | 16              | King Marching Mellophone Outfit |
| 1124                                  | 6               | King Marching Baritone Outfit   |
| 1130                                  | 6               | King Marching Euphonium Outfit  |
| SAS411                                | 2               | Selmer Step-Up ASX OFT-LACQ     |
| STS411                                | 2               | Selmer Step-Up TSX OFT-LACQ     |
| B16PROLOGUE                           | 6               | SP Prologue by Seles Bo Clar    |
| 18037                                 | 6               | Bach Trumpet Oft                |

|               |    |                                |
|---------------|----|--------------------------------|
| 42BO          | 4  | Bach Trombone OFT              |
| LUMS14PB      | 8  | 12x14 Ultimate Snare, Black    |
| LUCT15PB      | 4  | 12x15 Ultimate chest Tenor Blk |
| LUMT68023PBAC | 2  | 6-13" Quint, RMABSQ, Case      |
| LUMB20PB      | 1  | 14x20 Ultimate Bass, Black     |
| LUMB22PB      | 1  | 14x22 Ultimate Bass, Black     |
| LUMB24PB      | 1  | 14x24 Ultimate Bass, Black     |
| LUMB26PB      | 1  | 14x26 Ultimate Bass, Black     |
| LUMB28PB      | 1  | 14x28 Ultimate Bass, Black     |
| LF475         | 8  | Multi Angle Crry Bar           |
| LF479         | 8  | Rod Mt Lg Rest                 |
| LP66C         | 12 | LDWG Molded Case 14x16-16x16   |
| LP20C         | 1  | LDWG Molded Case 14x20-16x20   |
| LP22C         | 1  | LDWG Molded Case 14x22-16x22   |
| LP24C         | 1  | LDWG Molded Case 14x24-16x24   |
| LP26C         | 1  | LDWG Molded Case 14x24-16x26   |
| LP28C         | 1  | LDWG Molded Case 14x28-16x28   |
| 6D            | 4  | C.G. Conn Double Horn Outfit   |
| 8D            | 6  | C.G. Conn Double Horn Outfit   |
| 2280          | 4  | King Euphonium Outfit          |
| 1135W         | 4  | King Tuba Outfit               |
| 2341W         | 4  | King Tuba Outfit               |
| 623           | 5  | King Baritone Outfit           |
| 50B           | 1  | Bach Trombone Oft              |
| 120B          | 4  | Selmer Step-Up Oboe            |
| 1432B         | 4  | Student Bassoon                |

|            |   |   |
|------------|---|---|
| SBS411     | 1 | Selmer Step-Up BSX Oft Lacq                       |
| L7168      | 4 | Leblanc Bass Comp                                 |
| SFL511BO   | 5 | Selmer FL ALL, SS, Open, Offset, B                |
| LTP04PG    | 2 | Ludwig PRO Timp Set Pol Cpr 23-32" W/G            |
| LCS512TDOG | 1 | Ludwig Concert Snare Drum, Black Cortex           |
| LP923SSC   | 1 | Ludwig Concert Snare Stand                        |
| LE790      | 1 | Ludwig All-Terrain Tilted Bass Drum Stand 28"-40" |
| MUKM43     | 1 | Musser Marimba                                    |
| MUAV30     | 1 | Musser Vibraphone                                 |
| SPC 411    | 1 | Selmer Intermediate Piccolo                       |
| SPC 711    | 1 | Selmer Advanced Piccolo                           |
|            | 4 | 20" zildjian cymbals (A Custom)                   |

### **GENERAL REQUIREMENTS**

All products shall be new, not used, not refurbished, and the latest model available at the time of purchase. Should an instrument or model be discontinued and/or upgraded during the contract and warranty period, the awarded vendor and/or vendors shall offer the district a new alternate product meeting and/or exceeding the established specifications, under the same terms and conditions originally offered at the start of the **contract/warranty and purchase period with a unit price that cannot exceed the original accepted price.** The district shall be notified in writing at least two months prior to a change in model or specifications.

### **ASSEMBLY, INSTALLATION, AND PACKAGING**

All instruments must include the necessary tools to play that particular instrument (i.e., mouthpieces, ligatures, and maintenance pack). All instruments must include personal cases with identification badges.

## **ASSET TAGGING**

The vendor and/or vendors are required to deliver all instruments for asset tagging before installation and provide all device information including serial numbers to the District upon delivery.

## **SHIPPING AND HANDLING COSTS**

It is the district preference that all shipping and handling costs for the instruments and related products are the responsibility of the selected vendor and/or vendors and not at a cost to the district. However, if the selected vendor and/or vendors are not taking shipping and handling responsibility for the delivery of all of the instruments and related product packages in the RFP, the vendor and/or vendors' response proposals must provide an all-inclusive flat shipping and handling cost for all of the instruments and support packaging and equipment.

## **WARRANTY, REPAIR, AND REPLACEMENT**

All instruments must include at minimum three-year damage, repair, and/or replacement warranty offered through the vendor or the seller's company that also includes any associated shipping and handling costs for all instruments and related products connected to warranty, accidents, repairs, and/or replacement. Accidental damage protection (ADP) must include repair for accidental drops, bumps, and structural failures incurred under normal operating conditions or handling. Accidental damage protection must be unlimited for the warranty period (minimum of three years) and include all repairs regardless of the number of times the instrument has been previously repaired as well as include depot repair that includes free shipping and handling to and from the repair or replacement depot unlimited.

## **COSTS OF SERIES**

The costs of any services provided should be listed separately per specific service rendered and separate from equipment.

## **TYPE OF CONTRACT**

It is anticipated that this contract will be a fixed-price contract with payment made upon completion of tasks identified within the bid proposal and receipt of the equipment, related products, and associated services.

## **TIME FRAME**

The contract will become effective on the date it is signed by all parties for the products and related services. This contract is at the sole discretion of the Hattiesburg Public Schools. A contract will be awarded to the vendor/vendors whose proposal is determined to be the most advantageous to the district, taking into consideration the price and the evaluation factors set forth in the advertised bid.



## **CONTRACTOR REQUIREMENTS**

The contractor will be responsible for all products and services as required to complete the project as described in the Scope of Work.

### **FORMAT AND PROCEDURE FOR DELIVERY OF PROPOSAL**

The proposal will consist of seven parts: Part I – Proposal Transmittal Form; Part II – Vendor Profile; Part III – Proposed Plan; Part IV – Budget; Part V – Standard Terms and Conditions; Part VI – Prospective Contractor’s Representation Regarding Contingent Fees Form and Part VII – Proprietary Information Form.

- **Part I** is the Proposal Transmittal Form, which shall serve as the cover page of the offering vendor’s proposal. The offering vendor shall complete the form and attach to the proposal in response to the RFP.
- **Part II** is the Vendor Profile, which shall provide satisfactory evidence of the vendor’s capability to manage and coordinate the types of activities and to provide the services described in this RFP in a timely manner. Special attention should be given to the qualifications listed in the Qualifications section of this RFP. A discussion shall include a description of the vendor’s background and relevant experience as related to the described activities. A description and details of the relevant experience shall be included. A minimum of three (3) references and professional profiles of all vendor/vendors shall be provided by the bidder. References may be contacted and interviewed according to the services provided. Samples of previous work, projects, products, etc. may be included.
- **Part III** is the Proposed Plan Proposal that shall provide a detailed plan describing how the products and related services will be performed to meet the requirements of the RFP. The description shall encompass the requirements of Part I and Part II of this RFP. The proposal must include a detailed plan of how the request will be fulfilled timely and with quality products utilizing a high degree of customer service, including shipping, assembly, tagging, packaging, warranty, and repair with shipping included. The proposal shall include a detailed timeline of products and services that is prepared and organized in a clear and concise manner and is easily understandable. The proposal shall address the tasks to be accomplished, processes to be undertaken to accomplish those tasks, and a proposed timeline for completion. Vendor/vendors must provide examples of materials that demonstrate the quality of work completed by the entity on similar projects for school districts and band programs. Offering vendors must designate those portions of the proposals which contain trade secrets or other proprietary data which may remain confidential in accordance with Sections 25-61-9 and 79-23-1 of the Mississippi Code.
- **Part IV** is the Budget that shall include the cost proposal and must encompass all requirements of this RFP. In order to be considered, vendors must submit a proposal that includes the budget narrative/cost proposal that addresses all costs for products, expenses, services, and expenses specified in the RFP. The budget narrative is a maximum cost. The district will not pay any costs above this amount for the duration of the contract. A detailed budget narrative shall be included by the vendor/vendors. Indirect costs will not be allowed. The budget

narrative should include all costs associated with the products and their related services. A unit price for each equipment product and associated service and such unit price shall be the same throughout the proposal. The Budget Summary form shall be completed and shall accompany the proposal.

- **Part V** is the Standard Terms and Conditions section where the Vendor shall indicate agreement with the terms and conditions as set forth in the RFP. If the Vendor objects to any of the terms and conditions, the Vendor shall so state and indicate any revisions desired by the Vendor. Please note that any revisions may be considered adequate cause for rejection of the proposal.
- **Part VI** is the Prospective Contractor's Representation Regarding Contingent Fees Form which must be completed and attached to the proposal in response to the RFP.
- **Part VII** is the Proprietary Information Form which must be completed and attached to the proposal in response to the RFP.

### **ACCEPTANCE OF PROPOSALS**

The HPS reserves the right, in its sole discretion, to waive minor irregularities in proposals. A minor irregularity is a variation of the RFP, which does not affect the price of the proposal, or give one party an advantage or benefit not enjoyed by other parties, or adversely impacts the interest of HPS. Waivers, when granted, shall in no way modify the RFP requirements or excuse the party from full compliance with the RFP specifications and other contract requirements if the party is awarded the contract.

### **REJECTION OF PROPOSALS**

Any proposal shall be rejected in whole or in part when it is determined to be in the best interest of HPS. Reasons for rejecting a proposal include, but are not limited to:

1. The proposal contains unauthorized amendments to the requirements of the RFP.
2. The proposal is conditional.
3. The proposal is incomplete or contains irregularities, which make the proposal indefinite or ambiguous.
4. The proposal is not signed by an authorized representative of the party.
5. The proposal contains false or misleading statements or references.
6. The offering vendor is determined to be non-responsive.
7. The proposal price is clearly unreasonable.
8. The products or service item offered in the proposal is unacceptable by reason of its failure to meet the requirements of the specifications or permissible alternates or other acceptable criteria set forth in the RFP.
9. The required number of proposals was not submitted.

**EXCEPTIONS:**

HPS reserves the right to reject any and all proposals, to negotiate with the best-proposed offering vendor to address issues other than those described in the proposal, to award a contract to other than the low offering vendor, or not to make any award if it is determined to be in the best interest of the HPS.

**DISPOSITION OF PROPOSALS**

All submitted proposals become the property of HPS and will not be returned to the offering vendor.

**QUALIFICATIONS**

The offering vendor shall provide the following minimum information:

- The name of the offering vendor, the location of the offering vendor's principal place of business, and, if different, the place of performance of the proposed contract;
- The age of the offering vendor's business and an average number of employees over the past three years, as specified in the Request for Proposal;
- The abilities, qualifications, and experience of all persons who would be assigned to provide the required services;
- A listing of other contracts under which services similar in scope, size, or discipline to the required services were performed or undertaken within the past three years, as specified in the Request for Proposal; and,
- A plan giving as much detail as is practical explaining how the services will be provided.

**CONDITIONS OF SOLICITATION**

The release of the bid does not constitute an acceptance of any offer, nor does such release in any way obligate the HPS to execute a contract with any other party.

The offering vendor shall assure compliance with the following conditions of solicitation:

1. Any proposal submitted in response to the bid shall be in writing.
2. The HPSD will not be liable for any costs associated with the preparation of proposals or negotiations of contracts incurred by any party.
3. The award of a contract for any proposal is contingent upon the following:
  - Favorable evaluation of the proposal,
  - Approval of the proposal by the HPS
  - Successful negotiation of any changes to the proposal as required by HPS
  - HPS Board of Trustees approval
4. Likewise, HPS also reserves the right to accept any proposal as submitted for a contract award, without substantive negotiation of offered terms, services, or prices. Therefore, all parties are advised to propose their most favorable terms initially. Discussions may be conducted with offering vendors who submit proposals determined to be reasonably susceptible of being selected for the award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements, but proposals may be accepted without such discussions.

5. Any proposal received after the time and date set for receipt of proposals is late. Any withdrawal or modification of a proposal received after the time and date set for receipt of proposals at the place designated for receipt is late. No late proposal, late modification, or late withdrawal will be considered.
6. Bidders shall acknowledge receipt of any amendment to the solicitation by signing and returning the amendment with the bid, by identifying the amendment number and date in the space provided for this purpose on the bid form, or by letter. The acknowledgment must be received by the Hattiesburg Public Schools by the time and at the place specified for receipt of bids.
7. The bidder certifies that the prices submitted in response to the solicitation have been arrived at independently and without – for the purpose of restricting competition – any consultation, communication, or agreement with any other bidder or competitor relating to those prices, the intention to submit a bid, or the methods or factors used to calculate the bid prices.
8. HPS reserves the right to cancel the contract, at any time, within ten days prior to written notice. The contract awarded under this bid is contingent on the availability of funds to HPS for this project. In the event funds are not available, any contract resulting from this RFP and/or bid proposal will become void immediately.
9. Contract Agreement – The successful contractor(s) will be required to enter into an Agreement with HPS for the completion of this project. Where no formal contract is required, the specifications of this proposal and the purchase order issued to the contractor will serve as the contract, with all terms of this proposal presumed to be integrated into the purchase order. Any contract approved must include meeting all requirements submitted as part of the proposal.
10. The HPS will be responsible for:
  - a. Providing a contact person to work with the successful contractor(s) to ensure quality control,
  - b. Provide and approve time frames, and work plans supported by approved purchase orders, and
  - c. Provide available information to assist the contractor.

This bid document contains sufficient information and instructions to enable qualified bidders to prepare and submit pricing through the reverse auction process. This document contains all major terms and conditions that the successful vendor will be expected to accept.

The quoted price must include all of the required elements included in the specifications narrative including the instruments, accidental damage coverage, shipping, and white-glove deployment services, if applicable.

### **STANDARD TERMS AND CONDITIONS**

Certain terms and conditions are required for contracting. Therefore, the offering vendor shall assure agreement and compliance with the following standard terms and conditions.

## **ACCESS TO RECORDS**

The Contractor agrees that the HPS, Mississippi Department of Education, United States Department of Education, the Comptroller General of the United States, or any of its duly authorized representatives at any time during the term of this agreement, shall have access to, and the right to audit and examine any pertinent books, documents, papers, and records of Contractor related to this specific contract for the purpose of making audit, examination, excerpts, or transcriptions. Such records shall be kept by Contractor for a period of three (3) years after final payments and all other pending matters are closed under this agreement. Contractor agrees to refund to the HPS any overpayment disclosed by any such audit. However, if any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it.

## **APPLICABLE LAW**

The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of law provisions, and any litigation with respect thereto shall be brought in the courts of the State. The Contractor shall comply with applicable federal, state, and local laws and regulations. In compliance with State law, the Contractor, if employed by a public entity, must make arrangements with his/her employer to take the appropriate leave (professional, etc.) during the period of service covered by the Contractor.

## **ASSIGNMENT**

Contractor shall not assign or subcontract in whole or in part, its right or obligations under this agreement without prior written consent of the HPS. Any attempted assignment without said consent shall be void and of no effect.

## **AUTHORITY TO CONTRACT**

Contractor warrants (a) that it is a validly organized business with valid authority to enter into this agreement; (b) that it is qualified to do business and in good standing in the State of Mississippi; (c) that entry into and performance under this agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind; and (d) notwithstanding any other provision of this agreement to the contrary, that there are no existing legal proceedings or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this agreement.

## **COMPLIANCE WITH LAWS**

The Contractor understands that the HPS is an Equal Opportunity Employer and therefore maintains a policy that prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful and the Contractor agrees during the term of the agreement that the Contractor will strictly adhere to this policy in its employment practices and provision of services. The Contractor shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented by the Department of

Labor. All activities under this agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.

### **INDEPENDENT CONTRACTOR**

The Contractor shall perform all services as an independent contractor and shall at no time act as an agent for the HPS. No act performed or representation made, whether oral or written, by the contractor with respect to third parties shall be binding on the HPS.

### **COPYRIGHTS AND PATENTS**

Contractor (i) agrees that the HPS shall determine the disposition of the title to and the rights under any copyright or patent by Contractor or employees on copyrightable material first produced, composed, discovered or invented in the course of or under this agreement, and (ii) hereby grants to the HPS a royalty free, nonexclusive, irrevocable license to reproduce, translate, publish, use and dispose of, and to authorize others to do so, all copyrighted or (copyrightable) work not first produced or composed by Contractor in the performance of this agreement, but which is incorporated in the material furnished under the agreement, provided that such license shall be only to the extent Contractor now has, or prior to the completion of full final settlements of agreement may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

Contractor further agrees that all material produced and/or delivered under this contract will not, to the best of the Contractor's knowledge, infringe upon the copyright, patent, or any other proprietary rights of any third party. Should any aspect of the materials become, or in the Contractor's opinion be likely to become, the subject of any infringement claim or suit, the Contractor shall procure the rights to such material or replace or modify the material to make it non-infringing.

### **DISCLOSURE OF CONFIDENTIAL INFORMATION**

In the event that either party to this agreement receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of confidential or otherwise protected information that party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by law. This section shall survive the termination or completion of this agreement. The parties agree that this section is subject to and superseded by Mississippi Code Ann. Section 25-61-1, *et seq.*

### **EXCEPTIONS TO CONFIDENTIAL INFORMATION**

Contractor and the HPS shall not be obligated to treat as confidential and proprietary any information disclosed by the other party ("the Disclosing Party") which (a) is rightfully known to the recipient prior to negotiations leading to this agreement, other than information obtained in confidence under prior engagements; (b) is generally known or easily ascertainable by non-parties of ordinary skill in the business of the customer; (c) is released by the Disclosing Party to any other person, firm, or entity (including governmental agencies

or bureaus) without restriction; (d) is independently developed by the recipient without any reliance on confidential information; (e) is or later becomes part of the public domain or may be lawfully obtained by the HPS or the Contractor from any non-party; or (f) is disclosed with the Disclosing Party's prior written consent.

### **MODIFICATION OR RENEGOTIATION**

This agreement may be modified, altered or changed only by written agreement signed by the parties hereto. The parties agree to renegotiate the agreement if federal and/or State revisions of any applicable laws or regulations make changes in this agreement necessary.

### **REPRESENTATION REGARDING CONTINGENT FEES**

The Contractor represents that it has not retained a person to solicit or secure a State contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in the Contractor's bid or proposal.

### **REPRESENTATION REGARDING GRATUITIES**

The bidder, offering vendor, or Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 7-204 (Gratuities) of the Mississippi Personal Service Contract Procurement Regulations.

### **AVAILABILITY OF FUNDS**

It is expressly understood and agreed that the obligation of the HPS to proceed under this agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the HPS, the HPS shall have the right upon ten (10) working days written notice to the Contractor, to terminate this agreement without damage, penalty, cost or expenses to the district of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

### **STOP WORK ORDER**

(1) *Order to stop work.* The Purchasing Agent of HPSD may by written order to the Contractor at any time, and without notice to any surety, require the Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to the Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Business Office of HPSD shall either:

- (a) cancel the stop work order; or
  - (b) terminate the work covered by such order as provided in the Termination for Default Clause or the Termination for Convenience Clause of this contract.
- (2) *Cancellation or Expiration of the Order.* If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Contractor price, or both, and the contract shall be modified in writing accordingly, if:
- (a) the stop work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
  - (b) the Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Procurement Officer of HPSD decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.
- (3) *Termination of Stopped Work.* If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.
- (4) *Adjustment of Price.* Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract.

#### **TERMINATION FOR DEFAULT**

- (1) *Default.* If the Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract, or any extension thereof otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Purchasing Agent of HPSD may notify the Contractor in writing of the delay or nonperformance and if not cured in ten days or any longer time specified in writing by the Purchasing Agent of HPSD, such officer may terminate the Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Purchasing Agent of HPSD may procure similar supplies or services in a manner and upon terms deemed appropriate by the Purchasing Agent of HPSD. The Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- (2) *Contractor's Duties.* Notwithstanding termination of the contract and subject to any directions from the Purchasing Agent of HPSD, the Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the Contractor in which the HPSD has an interest.
- (3) *Compensation.* Payment for completed services delivered and accepted by the HPS shall be at the **one year or up to three years start of the contract established annual price** The HPS may withhold from amounts due the Contractor such



sums as the Purchasing Agent of HPSD deems to be necessary to protect the HPSD against loss because of outstanding liens or claims of former lien holders and to reimburse the HPSD for the excess costs incurred in procuring similar goods and services.

- (4) *Excuse for Nonperformance or Delayed Performance.* Except with respect to defaults of Subcontractors, the Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if the Contractor has notified the Purchasing Agent of HPSD within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a Subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the Contractor shall not be deemed to be in default, unless the services to be furnished by the Subcontractor were reasonably obtainable from other sources in sufficient time to permit the Contractor to meet the contract requirements.

Upon request of the Contractor, the Purchasing Agent of HPSD shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the HPSD under the clause entitled "Termination for Convenience." (As used in this Paragraph of this clause, the term "Subcontractor" means Subcontractor at any tier).

- (5) *Erroneous Termination for Default.* If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the HPSD, be the same as if the notice of termination had been issued pursuant to such clause.
- (6) *Additional Rights and Remedies.* The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

## **TERMINATION FOR CONVENIENCE**

- (1) *Termination.* The Purchasing Agent of HPS may, when the interests of the HPSD so require, terminate this contract in whole or in part, for the convenience of the HPSD. The Purchasing Agent of HPSD shall give written notice of the termination to the Contractor specifying the part of the contract terminated and when termination becomes effective.
- (2) *Contractor's Obligations.* The Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontractors and orders connected with the terminated work. The Purchasing Agent of HPSD may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the State. The Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

## **E-VERIFICATION**

The Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Mississippi Code Annotated §§ 71-11-1 and 71-11-3, and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. The Contractor agrees to maintain records of such compliance and, upon request of the State, to provide a copy of each such verification to the State. The Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws of these warranties, the breach of which may subject the Contractor to the following:

- a. termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public;
- b. the loss of any license, permit, certification or other document granted to the Contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year; or,
- c. both.

In the event of such termination/cancellation, the Contractor shall also be liable for any additional costs incurred by the HPS due to contract cancellation or loss of license or permit.

### **EQUAL OPPORTUNITY EMPLOYER**

The Contractor shall be an equal opportunity employer and shall perform to all affirmative action and other applicable requirements; accordingly, contractor shall neither discriminate nor permit discrimination in its operations or employment practices against any person or group of persons on the ground of race, color, religion, national origin, disability, or sex in any manner prohibited by law.

### **BOARD APPROVAL**

It is understood that this contract is void and no payment shall be made in the event that the Board of Trustees does not approve this contract.

### **PERSONNEL**

Contractor agrees that, at all times, the employees of the contractor furnishing or performing any of the services specified under this agreement shall do so in a proper, workmanlike, and dignified manner.

### **CONFIDENTIALITY**

The Contractor shall agree to assure the confidentiality of any records obtained from the HPSD as required by state and federal privacy laws. No information, documents or other material provided to or prepared by the contractor deemed confidential by HPSD pursuant to state and federal privacy laws, shall be made available to any person or organization without the prior approval of the HPSD. Any liability resulting from the wrongful disclosure of confidential information on the part of the Contractor shall rest with the Contractor. This includes all student-related data and the contractor is required to comply with all Family Educational Rights and Privacy Act (FERPA) provisions.

### **INDEMNIFICATION**

To the fullest extent allowed by law, the Contractor shall indemnify, defend, save and hold harmless, protect and exonerate the members of the Mississippi Board of Education, the HPSD, and its commission members, officers, employees, agents and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, and attorneys' fees, arising out of or caused by the Contractor and/or its partners, principals, agents, employees and/or Subcontractors in the performance of or failure to perform this agreement. In the State's sole discretion, the Contractor may be allowed to control the defense of any such claim, suit, etc. In the event the Contractor defends said claim, suit, etc., the Contractor shall use legal counsel acceptable to the State; the Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the State shall be entitled to participate in said defense. The Contractor shall not settle any claim, suit, etc. without the HPSD's concurrence, which the HPSD shall not unreasonably withhold.

## **DEBARMENT AND SUSPENSION**

The Contractor certifies that neither it nor its principals: (a) are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency; (b) have, within a three (3) year period preceding this agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (c) are presently indicted of or otherwise criminally or civilly charged by a governmental entity with the commission of fraud of a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property, and (d) have, within a three (3) year period preceding this agreement, had one or more public transaction (federal, state or local) terminated for cause or default. See Excluded Parties List System at [www.epls.gov](http://www.epls.gov).

## **ROYALTIES AND PATENTS**

The firm shall pay all royalties and license fees. The firm shall defend all suits or claims for infringement of any patent rights and shall hold the Hattiesburg Public Schools harmless from such loss on account thereof.

**Q. As a bidding vendor, we understand that all of these provisions must be strictly complied with in order to fulfill the contract.**

FIRM \_\_\_\_\_

BY \_\_\_\_\_

TITLE \_\_\_\_\_

## **PART VI**

### **PROSPECTIVE CONTRACTOR'S REPRESENTATION REGARDING CONTINGENT FEES**

The prospective contractor represents as a part of such contractor's bid or proposal that such contractor has ( ) or has not ( ) retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract.

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\_\_\_\_\_ Offering vendor Signature Date

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\_\_\_\_\_ Title of Request for Proposal

\*Please check appropriate response

## **PROPRIETARY INFORMATION**

The enclosed proposal does ( ) or does not ( ) contain trade secrets or other proprietary data which the offering vendor wishes to remain confidential in accordance with Section 25-61-9 and 79-23-1 of the Mississippi Code.

If the enclosed proposal does include pages that the offering vendor wishes to designate as proprietary, please list page numbers below.

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Offering Vendor Signature Date

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Title of Request for Proposal

\*Please check appropriate response

## **BID PROTEST PROCEDURE AND POLICY**

### **I. Purpose**

The procedures set forth herein and issued by the Hattiesburg Public School District, establish the guidelines relating to the filing, hearing, decision, and appeal of protests by any actual prospective bidder or contractor who is aggrieved in connection with the bidding or award of a contract.

### **II. Definitions**

When used in reference to this procedure:

- a. The term "Protestor" means any actual or prospective bidder or contractor who is aggrieved in connection with the bidding or award of a contract which meets School Board approval requirements and who files a protest.
- b. The term "Interested Party" means any party who has identified him/herself in writing as such to the Child Nutrition Director.
- c. The term "Board Attorney" means the individual assigned by the Superintendent of the Hattiesburg School District to provide legal assistance to the Foodservice Administrator.
- d. The term "Board" means the membership of the Hattiesburg School District Board of Education.

### **III. Right to Protest**

Any actual or prospective bidder, offerer, or contractor who is aggrieved in connection with the solicitation or award of a contract that meets Board approval requirements may file a protest.

### **IV. Subject of Protest**

Protestors may file a protest on any phase of solicitation or award including, but not limited to, specifications, bid solicitation, or award.

### **V. Authority to Resolve Protests**

The Superintendent or his/her designee shall have the authority to settle and resolve a protest of an aggrieved bidder, offerer, or contractor, actual or prospective, concerning the specifications, solicitation, or award of a contract.

#### **a. Protest of Specification/Product Code Number**

Within ten (10) calendar days of the date the Invitation to Bid is mailed, the protestor must submit in writing to the Superintendent the reason for the protest. The Superintendent shall review specifications and product code numbers and based on the facts:

1. issue an addendum
2. withdraw solicitation and rebid
3. reject protest

#### **b. Protest of Award**

Protest filed against bid award must proceed with steps VI-XX.

## **VI. Filing of Protest**

### **a. Time for Filing**

Protests shall be made in writing and submitted in an envelope labeled "Protest" to the Superintendent within seven (7) calendar days after the protestor knows or should have known of the facts giving rise thereto. A protest is deemed filed when received by the Superintendent.

### **b. Limitations on Time for Filing**

No protest will be entertained if filed more than seven (7) calendar days after the award of a contract.

## **VII. Content of Protest**

The written protest shall contain the following:

- a. the name, mailing address, telephone number, and fax number of the protestor;
- b. appropriate identification of the procurement or contract protested;c.
- c. a statement, in sufficient detail, of the facts upon which the protest is based, including the effective date of any alleged grievable action and why such action is believed to be in error;d.
- d. supporting exhibits, evidence, or documents to substantiate any claims  
unless not available within the filing time, in which case the expected date the information will be available shall be indicated; and,
- e. a statement of the relief requested.

## **VIII. Notification**

Upon receipt of a written protest, the Superintendent shall submit a copy of the protest to the Board Attorney and the Foodservice Administrator.

## **IX. Stay of Procurement**

In the event of a timely protest, the State shall not proceed further with the solicitation or award of the contract until the resolution of the protest, unless the Superintendent, after conferring with the Foodservice Administrator, makes a determination that in order to protect substantial interests of the school district, it is necessary to go forward with the solicitation or award of the contract.

## **X. Additional Information- Time for Filing**

Any additional information requested by any of the parties should be submitted within the reasonable time period established by the requesting source in order to expedite the consideration of the protest. Failure of any party to comply expeditiously with a request for information by the Superintendent may result in the protest being resolved without additional information being considered.



**XI. Protest Process Committee**

The Superintendent shall appoint a committee to review all protests. The Foodservice Administrator, shall present the protest materials to the Protest Process Committee who shall consist of:

1. Superintendent
2. Deputy Superintendent
3. Finance Director

**XII. Scheduling of Protest Conference**

When a protest is filed, the Superintendent shall determine if a protest conference is needed and appropriate. If so, a date, time, and place for the protest conference will be scheduled and a notice of the same will be sent via personal delivery or by certified United States Mail, postage prepaid, return receipt requested, to the protestor, the procuring school district or institution, and any interested party.

**XIII. Rescheduling of Protest Conference**

Continuances requested by any party to the protest shall be granted within the discretion of the Superintendent only for good cause shown.

**XIV. Failure to Appear at Protest Conference**

If a protestor, without good cause, fails to appear at the protest conference, such failure will be deemed a withdrawal of the protest and the Superintendent shall dismiss the protest and such dismissal shall be final and conclusive.

**XV. Conduct of Protest Conference**

So as to encourage the amicable resolution of a protest, the protest conference is informal and no witnesses are examined. However, if there is anyone that a party believes can provide pertinent input, the party may have that person present to be interviewed at the conclusion of the conference and before a decision is made.

The protestor has the burden of proving that the specifications, bidding, or award of the contract was in error and merits the relief requested.

The Superintendent shall have the authority to maintain the decorum of the conference and shall take reasonable steps to do so when necessary, including clearing the conference room of any person who is disruptive.

## **XVI. Decision Upon Completion of Protest Process**

The Superintendent shall, within a reasonable time after the conclusion of the protest process, prepare a written decision. A copy of such decision shall be sent by personal delivery or by certified United States Mail, postage prepaid, return receipt requested, to the protestor, any interested party, and the Foodservice Administrator. The decision of the Superintendent shall be final and conclusive unless fraudulent or unless a timely request for a review by the Board is filed.

## **XVII. Review by the Board**

### **a. Right to Review**

Any protestor or interested party who participated in the conference or the procuring agency aggrieved by the final decision of the Superintendent may file a written request for review by the Board.

### **b. Time for Filing**

Requests for review by the Board shall be filed with the Board with copies of same being sent to the Superintendent, the Foodservice Administrator, and any interested party who participated in the protest, by personal delivery or by certified United States Mail postage prepaid, return receipt requested, within three (3) calendar days after receipt of the decision of the Superintendent.

### **c. Content of Review Request**

The written request for review by the Board shall contain, at minimum, the following:

1. the name and mailing address of the person filing the request for review;
2. a copy of the written protest originally filed;
3. copies of all documents which have been produced thus far in the protest proceedings;
4. a copy of the decision of the Superintendent;
5. a statement, in sufficient detail, of the facts relied upon to substantiate a claim that the decision of the Superintendent is in error; and
6. a statement of the relief requested.

### **d. Decision on Review**

The Board shall issue a final written decision within a reasonable time after the final date for filing all documents to be considered on review. A copy of the such decision shall be sent by certified United States Mail, postage prepaid, return receipt requested, to the party filing the request for review, the Superintendent, the Foodservice Administrator, and any interested party who participated in the protest. A determination of an issue or fact by a quorum of the Board shall be final and conclusive unless arbitrary, capricious, fraudulent, or clearly erroneous.

#### **XVIII. Exhaustion of Remedies**

Except as may be authorized under federal law, no protestor may file a petition for judicial review with a court of competent jurisdiction (that court being in Forrest County, Mississippi) until a final written decision has been issued by the Board.

#### **XIX. Time Limits**

If a protest is not filed within the time limit set forth herein, it will be considered waived.

If a request for review by the Board is not filed within the specified time limit, it will be considered waived and the decision of the Superintendent shall be final and conclusive.

#### **XX. Amendment of Rules, Etc.**

The Board may, from time to time, amend these rules or promulgate new rules.

If any one or more of these rules is found to be invalid by a court of competent jurisdiction, such finding shall not affect the validity of any other of these rules.