

Request For Proposal (RFP) Beverage Sponsorship Program

Section 1 - Administrative Overview

1.1 INTRODUCTION:

DeSoto Independent School District ("School") is seeking proposals from experienced and qualified offerors ("Offerors") to provide exclusive beverage rights, which shall include sales of packaged beverages at School building locations, concessions and catering, and a campus vending machine program. The Child Nutrition/Food Service Program is exempted from this proposal and contract.

1.2 AUTHORITY:

This RFP is issued by the School under the provisions of Texas's Public Purchasing statute.

1.3 RFP ORGANIZATION:

This RFP is organized into the following sections:

Section 1. Administrative Overview

Section 2. Scope of Work

Section 3. Proposal Requirements

Section 4. Evaluation Criteria

1.4 PRE-BID MEETING AND OVERVIEW:

A pre-proposal conference will be held on Wednesday, September 26, 2022 at 3:00 PM via Zoom. The Zoom link will be sent via email by request. The purpose of this meeting is to fully acquaint potential Offerors with all conditions. At this time, any questions regarding this Request for Proposal will be addressed.

Attendance at this pre-proposal conference is a prerequisite and a requirement to be qualified to submit a proposal. Proposals will be accepted only from those companies who are represented at the preproposal conference, as evidenced by the representatives' signatures on the attendance roster. Failure to attend this meeting will preclude your firm from submitting a proposal.

Attendance at the meeting will be limited to two (2) employees per offeror. Any changes resulting from this meeting or subsequent written questions will be issued in a formal addendum.

1.5 SUBMISSION OF QUESTIONS AND ISSUANCE OF ADDENDA:

Offerors may submit questions or requests for clarification. The deadline for submission of questions is September 30, 2022. No phone or verbal questions will be considered. All questions and answers, clarifications, or corrections will be assembled by the School and distributed to interested parties not later than October 04, 2022 through addenda on the Purchasing webpage. Offeror must acknowledge receipt of all addenda in its submitted proposal. It shall be the responsibility of prospective Offerors and interested parties to become familiar with the webpage and visit it regularly during the RFP process for updated information or addenda related to this RFP.

Questions must be submitted in written form to:

David Scott, DeSoto Independent School District, 200 E Beltline Road, DeSoto, TX 75115
or david.scott@desotoid.org

1.6 SUBMISSION OF SEALED PROPOSALS:

Offerors shall submit a clearly marked original and two (2) copies along with a digital copy of the proposal. Sealed proposals must be received by David Scott no later than 3:00 PM on October 7, 2022. Note that unsealed or faxed proposals will not be accepted. Any proposal received after this date and time shall be rejected. No other public disclosure will be made until after the award of the contract. Proposals must be delivered to:

David Scott, DeSoto Independent School District Purchasing Department, 200 E Beltline Road, DeSoto, TX 75115

The outside cover of the sealed package containing the proposal shall be marked:
RFP Beverage Sponsorship Program, submitted by (Name of Offeror)

1.7 COSTS FOR PROPOSAL PREPARATION:

Any costs incurred by Offerors in preparing or submitting a proposal or presentation shall be the Offeror's sole responsibility.

1.8 DISQUALIFICATION OF PROPOSALS:

The School reserves the right to consider as acceptable only those proposals submitted in accordance with all requirements set forth in this RFP and applicable laws, and which demonstrate an understanding of the scope of the work. Any proposal offering any other set of terms and conditions contradictory to those included in this RFP or applicable laws may be disqualified without further notice.

An offeror shall be disqualified and the proposal automatically rejected for any one or more of the following reasons:

- The offeror has not submitted an offer that conforms in all material respects to the specifications.
- The offeror has not submitted an offer that complies specifically with the solicitation and the instructions to offerors.
- The offeror has not complied with all applicable statutes, ordinances, resolutions, or rules pertaining to the award of a public contract.

1.9 RIGHTS RESERVED:

School reserves the right to reject any and all proposals, in whole or in part and to waive technical defects, irregularities and omissions if, in its judgment, the best interest of School will be served. School's evaluation committee shall determine the Offeror that is more highly qualified than the others under consideration, at which point a contract may be offered, negotiated, and awarded to that Offeror. The awarded document will be a contract incorporating by reference all requirements, terms and conditions of the solicitation and the Offeror's proposal as negotiated.

1.10 FINAL CONTRACT:

School intends to use this RFP and the successful proposal as a basis for terms and conditions in the final contract.

1.11 INSPECTION OF PROPOSALS and CONFIDENTIAL INFORMATION:

Proposals may be available for public inspection upon notice of award and shall be available for public inspection after the contract is signed by all parties. Information marked as "confidential" in any proposal shall be honored as such, to the extent allowable under Texas Public Information Laws.

The School treats proposals as confidential until after the award is issued. At that time, they become subject to disclosure under the Texas Public Information Laws. If a respondent wishes to supply any information, which it believes is exempt from disclosure under the Public Information Laws that respondent should summarize such information in a separate envelope and each page submitted should clearly state "Confidential," but otherwise be presented in the same manner as the proposal. However, any such information is provided entirely at the respondent's own risk and the School assumes no liability for any loss or damage which may result from the School's disclosure at any time of any information provided by the respondent in connection with its proposal.

1.12 CONTRACT INVALIDATION:

If any provision of this RFP is found to be invalid, such invalidation will not be construed to invalidate the entire RFP.

1.13 TERM OF CONTRACT:

The initial term of the contract shall be for five (5) years, beginning January 1, 2023. In addition to other termination events, School may terminate any arrangement with thirty (30) days' notice if the purchase or sale of the products will cause School to be in violation of any laws, regulations, standards, or requirements applicable to School or risk loss of or threaten School's eligibility for any public funding, programs, grants, etc. When School makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of the arrangement, the arrangement may also be canceled.

1.14 TERMS AND CONDITIONS:

The terms and conditions as detailed in the appendix section should be reviewed carefully to ensure full responsiveness and compliance to the RFP. The anticipated Beverage Agreement will be, in form and substance, consistent with applicable School policies and applicable statutes and regulations regarding the creation and execution of such contract. The failure of any respondent to receive or examine any contract, document, form, addenda or to visit the sites and acquaint itself with existing conditions, will not relieve it of any obligation with respect to its proposal or any executed contract. The submission of a proposal shall be conclusive evidence and understanding of the School's intent to incorporate such terms and conditions into the beverage sponsorship contract.

1.15 RECYCLED MATERIALS:

The School has a commitment to encourage the purchase and use of recycled and recyclable materials whenever technically or economically feasible or required by law. Offerors are encouraged to use recycled or recyclable supplies.

Section 2 - Scope of Work

2.1 BACKGROUND:

DeSoto Independent School District is a political subdivision with numerous school buildings in DeSoto, TX ("Campus")

2.2 OBJECTIVES:

The School is seeking a qualified Offeror to provide exclusive beverage services to the School. The mutual goals of School and the service provider should be to create a beverage arrangement with a national brand product for the purpose of maximizing revenue, controlling costs, and providing exceptional service to the School community.

The School anticipates that opportunities presented by the resulting agreement will provide substantial benefits for the School and its beverage supplier. This RFP document provides important information for evaluation of this venture.

2.3 CURRENT SERVICES INFORMATION:

2.3.1 The School currently has an exclusive contract with a national beverage company, It is the School's intent through this RFP to continue with an exclusive beverage provider following the conclusion of this contract.

2.3.2 The School currently distributes and/or promotes beverages through the following operations:

- Concessions at the School's athletic stadiums in support of School athletic events held by outside organizations.
- Vending machine operation locations, as detailed in Appendix.
- Products purchased and used by organizations affiliated with, but independent from the School in support of dining, retail, catering, and concessions needs.

2.4 BEVERAGE AVAILABILITY RIGHTS:

Subject to the Permitted Exceptions set forth in Section 2.6 below, the School is willing to consider that all beverages distributed or sampled (i.e. distributed at no cost) at all locations at the School where refreshments are sold or distributed will be made available as-specified in the resulting agreement. The School is willing to consider that it will cause its concessionaires to purchase products for the School from the responsible Offeror whose proposal is determined in writing to be the most advantageous to the School either directly or as the company's agent, provided if the company is unable to supply any products that the School desires to purchase, and then the School may purchase such products from another company. Subject to the permitted exceptions set forth in Section 2.6 below, School is willing to consider a proposal where no competitive products are sold, dispensed, served, or promoted on the School campus or in connection with the School with the exception of the Child Nutrition/Food Service Program.

- 2.4.1 The School shall use reasonable efforts to permit promotions maximizing concession sales and sale of and distribution of products on the Campus. Such promotions must be at the expense of the Offeror and coordinated through the appropriate School office.
- 2.4.2 The School is willing to consider promoting the sale of products by allowing products to be sold in approved cups or plastic bottles at athletic events.
- 2.4.3 Subject to the permitted exceptions set forth in Section 2.6 below, all beverages sold, dispensed, served, advertised or promoted anywhere, anytime, on the Campus and in connection with the School and the events may be the Offeror's products.

2.5 MARKETING RIGHTS:

The School is willing to consider granting to the Offeror the following promotion rights to:

- 2.5.1 Market and promote the beverages in connection with the School, the campus, and events, including the right of recognition of its sponsorship at locations designated by the School and paid for by the winning Offeror.
- 2.5.2 Market and promote beverages in connection with School promotional activities. School will consider granting to the Offeror a license to use the School marks on a royalty-free basis for the purpose of promoting products as provided in the parties' agreement.
- 2.5.3 Refer to the Offeror in its marketing materials as a "sponsor" of the Campus, the School, and its athletic teams, and refer to any brand of products in any of the Offeror's marketing materials as the "official" or "exclusive" soft drink, sports drink, tea, juice, or juice drink of the Campus, the School, and its athletic teams.
- 2.5.4 Create and market for retail sale, either at Offeror retail stores or through its catalog, merchandise incorporating the School marks and trademarks of products. Offeror or its licensee shall pay a royalty on each item of merchandise consistent with industry standards for sales of such merchandise.

By terms of the agreement approved by its board, the School is willing to consider granting to the Offeror the following merchandising rights:

- 2.5.5 Materials promoting the products at the point-of-sale on the Campus shall be clearly visible to the public and shall be displayed in a manner and location acceptable to both School and sponsor.
- 2.5.6 Product trademarks shall be prominently displayed on menu boards and menus on the Campus whenever practical.
- 2.5.7 Only product trademarks shall be displayed on beverage vending machines on the Campus.
- 2.5.8 School may provide the Offeror with media and other marketing options, all of which shall be exclusive with respect to Beverages.
- 2.5.9 School shall have the right to pre-approve (i) the concept for any promotional activity and (ii) any artwork or other items created by the Offeror for use in promotional activities or otherwise in accordance with the terms of the agreement and that incorporate any of the School marks.

- 2.5.10 School may agree that beverages served, sold or dispensed on the Campus in disposable vessels (including beverages served, sold or made available in locker rooms and players' benches) shall be served in approved cups.
- 2.5.11 Subject to the Permitted Exceptions set forth in Section 2.6, School may agree it will not, directly or indirectly, maintain any agreement or relationship allowing the sale of competitive products.

2.6 PERMITTED EXCEPTIONS:

- 2.6.1 For as long as a similar product is unavailable, as identified by the School, the School shall have the right to make available for sale on the campus (i) freshly-brewed coffee and freshly brewed specialty coffee, (ii) freshly-brewed tea, (iii) hot chocolate, (iv) dairy and non-dairy milk, (v) premium sodas and drinks, and (vi) any beverage not meeting state or federal standards (e.g. Healthy Hunger-Free Kids Act of 2010) This shall not be deemed to allow advertising or promotional rights with respect to such competitive products except that trademarks for such competitive products may be displayed on menu boards and on dispensing equipment. School cannot be restricted from or limited in using other suppliers to purchase and offer beverages needed to receive public funding, programs, grants, etc. if those beverages are not available thru the successful offeror.
- 2.6.2 For certain student sponsored events, special events and receptions in buildings, School foundation events, and off-campus events, products of other manufacturers and premium sodas may be made available if donated by private, governmental, or charitable parties.
- 2.6.3 The School will ensure that no permanent or temporary advertising, signage, or trademark visibility for competitive products is displayed on Campus except for advertising in the student newspaper, ads on the student radio station, and other media when the School cannot control or restrict such activities.
- 2.6.4 For certain special private events held by educational organizations and for receptions in School's buildings, competitive products may be made available if donated or purchased by attendees of such events; provided, however: (i) such event is not open to the general public; and (ii) any such competitive products shall be made available solely for personal consumption by the attendees of the event and not for resale on the Campus.

2.7 ATHLETICS

The School has a robust athletics program. With this program, comes the anticipated increase in beverage sales and expanded opportunities for advertisement space and scoreboards. For example, the School may live stream many games that will provide opportunities for advertisement and sponsorships.

2.8 EQUIPMENT, UTILITIES, SUPPLIES AND SPACE USE:

- 2.8.1 The appendix section provides a summary and includes current locations of vending machines across the Campus. It is intended at regular intervals during the duration of the contract the number of equipment shall be examined by the School and Offeror with the objective of providing the best possible service to the students, staff, and public.

The Offeror may be required to conduct a survey of buildings and areas and suggest locations for additional vending machines. These suggestions will need to be approved by School. During the term of the contract, surveys shall be conducted annually with the purpose of identifying locations for additional machines.

- 2.8.2 The School requires the Offeror to provide both new and updated vending and related auxiliary equipment. New equipment shall be of the most recent model and not remanufactured. The use of remanufactured equipment requires the express prior written approval of the School and must be proven to be reliable and dependable.

For the purpose of the contract, the updated rebuilt and required reconditioned equipment must be in like new condition prior to final acceptance by the School for the location on Campus. It is important the Offeror understands the School's requirements for new and updated equipment are an essential condition of the contract.

New and updated equipment must be compatible in terms of decor when three or more machines are placed together at one location. The vending equipment shall be in the same height to give uniformity of appearance, except as otherwise mutually agreed by the School and the Offeror.

- 2.8.3 Where necessary and mutually agreed by the School, utility connections shall be made available for the equipment by the School. The Offeror shall be responsible for paying the costs of the connections from the equipment to the utility source, including all other costs of installation of the equipment.

- 2.8.4 All vending equipment owned by the Offeror shall remain as such. While the School makes no representations regarding security, the School agrees to take reasonable measures for the protection against afterhours loss by pilferage or destruction. Required equipment repair expense shall always remain the Offeror's responsibility.

- 2.8.5 The vending machines shall be operated during the entire year, but with reduced selections, arrived at by mutual agreement, for the summer session and School vacation breaks. Vending machine hours will be determined by the regulations of the Child Nutrition/Food Service Program.

- 2.8.6 In addition to the necessary operating instructions, the Offeror shall provide each vending location with information to the user where product quality comments, malfunction reports, and refund requests may be made. Product comments can be made directly to the Offeror. Malfunction reports shall be made to the Offeror and to the School's administrative offices. Refunds due to machine malfunctions shall be recorded and reimbursed by the Offeror as part of the monthly reconciliation.

All information including permits, licenses and price regulation required to be posted shall be displayed in an appropriate manner agreed by the School without defacing of the facilities of the School.

- 2.8.7 The Offeror shall be responsible for control of any keys obtained from the School and the security of those areas for which and when they are used by its representatives. The Offeror shall be responsible for immediately reporting all facts relating to losses incurred from equipment damage or break-ins. The School shall designate the department that shall receive these reports and be responsible for key issue and periodic review of key control. The Offeror is responsible for the purchase of internet, alarms, padlocks, and other security devices which may be required by the Offeror to further ensure revenue, product or property security.

- 2.8.8 The Offeror shall be responsible for replacement of lost keys and the cost of re-keying and replacement of locking cylinders required as a result of their negligence and/or loss of keys. The School shall only provide the Offeror with routine, standard campus protection currently

available on the Campus, such as night patrol, door checks, security consulting, call response, etc. The School and the Offeror shall mutually determine the additional security measures required to control unauthorized access to all vending service areas included in this contract.

- 2.8.9 Vending and auxiliary vending equipment not removed from the School locations upon cancellation or expiration of this contract and/or after ten (10) business days written notice to the Offeror may be removed and placed in storage by the School. All costs of removal, storage and product and revenue loss shall be the Offerors.
- 2.8.10 The School cannot guarantee an uninterrupted supply of water, electricity, internet connection, heat, or utilities except that it shall be diligent in restoring service following an interruption. The School shall not be liable for any loss which may result from the interruptions or failure of any such utility services.
- 2.8.11 The Offeror shall supply portable coolers, refrigerators, and recycling containers for outside events on the Campus.

2.9 EQUIPMENT AND FACILITIES MAINTENANCE, REPLACEMENT AND SANITATION:

- 2.9.1 The equipment and supplies provided by the Offeror in support of a beverage rights program at School shall be maintained throughout the life of the resulting contract in condition satisfactory to the School and in compliance with all School, state and local related health, food, retail, and sanitation codes. Thus, the Offeror shall adhere to the highest standards of cleanliness and sanitary practices. Structural, utility and non-vending equipment changes necessary in order to comply with such requirements shall be made by the School at its expense.

The customer contact surfaces of all vending machines and equipment including selector buttons, knobs, and handles and cup dispensing platforms shall be cleaned with germicidal solution. Visible product residue, as in cup platforms, shall be removed with warm water and detergent before application of the germicide.

The external cabinet of all vending machines, including cabinet tops, shall be kept free from dust and other contaminants. Screens, compressor zones and condensers shall be inspected regularly for dust, seepage and other residue and shall be kept clean.

Such maintenance and cleaning shall be conducted twice per semester and once during the summer at a mutually agreed upon schedule. Reports that maintenance and cleaning have been done shall be forwarded to the School's administrative offices.

- 2.9.2 Government inspectors and Campus personnel shall have complete cooperation and access to all vending service, production and storage areas. These inspections may be at the request of the School or agency's own discretion. A representative of the Offeror shall conduct equipment and facilities maintenance and sanitation inspections periodically. A copy of all inspection reports shall be furnished to the School by the Offeror within two (2) business days of receipt. The Offeror is responsible to implement corrective operating measures required as a result of these inspections and reports within five (5) business days' notification from the inspecting agency and by mutual agreement of the School.
- 2.9.3 A program of preventive maintenance and regular replacement of worn, damaged or malfunctioning equipment, including soft drink equipment, shall be instituted and carried out by the awarded Offeror. This program shall be described in detail with each Offeror specifying equipment and parts backlog to meet emergencies and routine maintenance and repair. The

School shall not perform maintenance or repair on any equipment owned by the Offeror or that is on loan to the School.

Routine, preventive maintenance program and regular replacement of worn, damaged or malfunctioning non-vending capital equipment and related facilities shall be instituted and paid by the School and executed with full cooperation of the Offeror.

- 2.9.4 The Offeror shall provide on call, as needed, vending and auxiliary equipment maintenance and repair service 24 hours a day and seven days a week, so as to minimize vending equipment down time should malfunctions be reported. The Offeror shall respond to equipment service and repair calls/reports within a minimum of one (1) business day between normal school hours 24-hour response time during weekends.

Equipment which cannot be returned to full service within two (2) business days notification of needed repair shall be replaced with comparable equipment of like quality until the original equipment is returned to service.

The Offeror shall supply beverage products to the equipment as required, Monday through Friday and during school hours. The Offeror shall be alert to specific equipment which requires product inventory stocking more frequently to maintain adequate product variety and inventory to provide satisfactory service during each school day.

Prior to the start of the contract, the School and Offeror shall mutually determine those locations requiring weekend service and service after lunch prior to the start of the evening events.

- 2.9.5 The Offeror shall maintain a continual program of equipment replacement in high volume locations where obsolescence becomes a factor resulting in potential service or sales reduction.

- 2.9.6 Industry improvements on vending equipment occurring during the life of this contract shall be incorporated by the Offeror on the originally installed equipment and subsequent installations where it is deemed feasible by the School and mutually agreed by the Offeror. Such improvements shall include, but not be limited to: odd-cent coin mechanism, "fail-safe" no touch burglar alarms, self-locking coin boxes and various electronic security and metering devices.

- 2.9.7 The Offeror shall keep the School informed on new industry security measures in use. The School may institute or execute such measure required to accomplish maximum property, product and revenue security when presented in writing by the Offeror and mutually agreed by the School.

- 2.9.8 The School shall provide routine floor maintenance in the vending areas and the Offeror shall cooperate in keeping this service to a minimum. Offeror personnel shall clean floor spillage which occurs in the process of filling or sanitizing equipment.

The School and Offeror shall mutually develop a semi-annual schedule for the Offeror to thoroughly clean and seal the floor under and in the adjacent area of vending equipment.

- 2.9.9 The School shall be responsible for the periodic routine maintenance of floors in the vending areas.

- 2.9.10 While the School may separate arrangements in place for the recycling of all beverage bottles and cans, Offeror shall place recycling containers at vending machine locations and provide them for outside events. The Offeror shall comply with the School and governmental policies

and procedures related to recycling of waste materials and participate in required waste separation programs.

Note that where available all products offered and sold through vending machines under this agreement shall be in plastic bottles. In instances that a particular product is available only in cans, cans may be offered and sold.

2.9.11 The Offeror shall remove all waste packaging, master carton, boxes, etc., from the vending service and storage areas to dumpsters provided and serviced by the School.

2.9.12 The Offeror shall maintain maximum insect and pest control for his products and equipment.

2.9.13 The Offeror shall comply with School policies and limit access to relevant areas of the Campus.

2.9.14 All materials, equipment and supplies provided by the Offeror must comply fully with all safety requirements as set forth by governmental entities and industry standards.

During the course of performing the service necessary to satisfy the requirements of this proposal, the Offeror is fully liable for risks while work is in process or at any site exposed as a potential hazard. The Offeror must provide warning devices and/or signs which shall be prominently installed and displayed and be fully in compliance with the applicable safety regulations.

2.9.15 The Offeror shall propose any such alterations or facility changes for prior approval. Any changes in the physical structure of the building require prior approval of the School and government officials.

All additions, alterations or improvements shall be at Offeror's expense and made in a professional and workmanlike manner, in accordance with School approved plans and specifications and in compliance with all applicable statutes, codes, ordinances, rules and regulations.

2.9.16 Existing facilities damaged during installation and/or service by the Offeror or Offeror's supplier's agents or employees shall be repaired and left in as good condition as found. All repairs shall be accomplished at no cost to the School.

2.10 INSURANCE:

2.10.1 The Offeror shall obtain and maintain appropriate insurance in accordance with applicable laws including general liability and worker's compensation.

2.11 CAMPUS DEBIT CARD SYSTEM:

2.11.1 The Offeror may offer to be responsible for the purchase and supply of the card readers and accompanying supplies necessary to facilitate sales through credit cards. The Offeror shall be responsible for the supply, repair, installation, and maintenance of such equipment along with the purchase of any required interface software necessary for connection to the credit card system.

2.12 PERSONNEL EMPLOYMENT PRACTICES AND STAFFING:

2.12.1 The Offeror shall furnish a supervisor or employee who will be available on call so that the School is assured of 24-hour service as required or needed.

- 2.12.2 The Offeror shall provide headquarters management staff, made known to the School, to act with full authority on the Offeror's behalf in any and all matters pertaining to the specifications of this contract.
- 2.12.3 Personnel relations of employees on the Offeror's payroll shall be the Offeror's responsibility. The Offeror shall comply with all applicable government regulations related to the employment, compensation, and payment of personnel. The Offeror shall also provide training and development programs for their employees at all levels of the organization.
- 2.12.4 The Offeror shall control the conduct, demeanor and appearance of its employees and agents.
- 2.12.5 Personnel of the Offeror shall observe all regulations of the School; failure to do so may be grounds for dismissal. The School reserves the right to approve any personnel assigned to the campus.
- 2.12.6 Employee uniforms shall be provided by the Offeror that are mutually agreed upon by the School and Offeror to be best suited for the job function intended, and easily and appropriately identify the Offeror and employee by name. All employees of the Offeror shall wear an approved uniform while on duty at the School.
- 2.12.7 All employees on the Offeror's payroll shall be the Offeror's responsibility. The Offeror shall comply with all applicable regulations related to non-discrimination, employment, compensation, and payment of personnel practices.

2.13 COMMISSIONS, ACCOUNTING AND PAYMENTS:

- 2.13.1 Commissions shall be expressed on the included proposal submittal forms by the Offeror on net sales (gross sales, less refunds and tests and State and Local Sales Tax).
- 2.13.2 The commissions expensed shall include the percentage of net sales on individual vending product categories or a minimum guarantee of total commission per year, whichever is greater.
- 2.13.3 The Offeror shall maintain complete and accurate records of transactions for each machine in accordance with accepted industry accounting practices, and shall keep in a safe place all such financial records and statements pertaining to the operations at School for a period of three (3) years from the close of each year's operation or until audited by the School, whichever comes first. The School's representative or selected auditors may annually or more often if demand is necessary examine all financial and operational phases of the Offeror's services. Periodic reviews, conducted jointly by representatives of School and the Offeror, shall be made at the School's discretion to ensure that commission and guarantee payments, pricing structure and other phases of the operation are conducted in the most efficient and financially sound basis.
- 2.13.4 A voucher refund system shall be required and shall involve dispersing of funds through the School. The voucher system shall include a form supplied by the Offeror and approved by the School to be filled out by the person making refund claims and shall include information regarding what machine, what happened, amount of loss, amount of refund, date, building, and who suffered loss. The Offeror shall expedite and be liable for the supply and maintenance of funds for such refunds to the satisfaction of the School.

All vending machine locations shall display instructions, provided at Offeror's cost where refunds may be obtained. The School shall be provided documents to verify reported refunds as part of each period statement.

- 2.13.5 Sales tax collected from customers shall be deducted from gross receipts, before computing the current sales tax, provided the customers are advised of the amount of sales tax they are paying by posted sign or printed notice. Commissions shall be computed on the resulting net receipts for all commission sales. The Offeror on request shall make available to School copies of all sales and other excise tax reports that the Offeror is required to furnish any government or governmental agency that identify the revenue and resulting taxes generated at the School.
- 2.13.6 School's commissions under this contract are determined in part with the Offeror's full consideration of applicable sales taxes on all products at the start of this contract. In event of an increase in these taxes or change in tax structure increasing Offeror's tax liability an affected product sale price is not adjusted, commissions shall be reduced the same amount in dollar terms to compensate the Offeror for tax increase. In the event of tax decrease, and decrease in gross sales price is affected, School shall receive the same amount in commission compensation for such decreased tax.
- 2.13.7 Refunds and tests shall be deducted from commission gross sales in item categories in which refund and tests occurred prior to computation of state and local sales tax and commissions due to School.
- 2.13.8 Commissions shall not be paid on the Offeror's revenue losses resulting from vandalism or theft of money or product from vending equipment at School.
- 2.13.9 A representative of School may accompany the Offerors' employees when meter counts and money counts and money collections are made at a time pre-determined and agreed to by the School. Cash receipts collected from the equipment shall be jointly counted by School and the route employee at a location and by means determined by School and mutually agreed upon by the Offeror. Revenue discrepancies from the composite of these collections and that reported on the period statement shall be explained by the Offeror in writing as part of such period statements.
- 2.13.10 School shall require the Offeror to provide the following information:
- A. A detailed statement showing the gross sales, net sales, and commission derived from each location for each vending machine under this contract (monthly). Sales shall be divided into cash sales and card sales on all reports. The Offeror shall be allowed sixty (60) days to reconcile sales and commission statement before the penalty of commission due to an un-reconciled statement is initiated. During the unreconciled term, the Offeror shall pay the School at the highest commission rate based upon the School's report on cash and Connect Cash sales. If reconciliation is not completed by the 61st day, the payments as stated above will stay in effect.
 - B. If the Offeror's' statement does not reconcile with the School's report on cash and Connect Cash sales and commissions, the School shall receive the highest commission payment for that period until reconciliation is finalized. The Offeror shall be allowed sixty (60) days to reconcile said sales and commission statement before the penalty of commission due to an un-reconciled statement is initiated.
 - C. Building location of machines and product to be sold at that location (upon award).
 - D. Machine number (upon award)
 - E. Selling prices of products offered (upon bid submittal).

- F. Week and year machine installed (upon award/installation).
 - G. Week and year machine removed from service (as warranted).
 - H. Refunds, discards and tests for each item by category (as warranted).
 - I. Proposed new locations for machines and product to be sold at those locations.
- 2.13.11 Payments: The Offeror shall pay School the commission percentage of each period net (gross sales less sales tax) vending sales on or before the 30th day of the period following the last day of the period in which commissions were earned, and shall accompany this payment with a detailed explanation of dollar sales by item category, by location by each offeror and an extension of commissions and composite statement of said sales and commissions. Causes of abnormal revenue deviations shall be noted by the Offeror as part of these statements.
- 2.13.12 All commission statements and payments shall be sent to the School's Chief Financial Officer. Vending commissions and guarantee payments not received by School on the 30th day following the last day of the period in which it was earned shall be paid by the Offeror plus interest penalty on the commissions due at the prevailing prime interest rate published by the Federal Reserve.
- 2.13.13 One year from the effective date of this contract, and each full year thereafter during the contract, the Offeror shall pay School that portion of commissions due, if any, to equal the guaranteed annual commission required in this contract. Payments shall be made by the 30th day of the following accounting period in which they were earned and recorded as commissions paid in the year the guarantee was due. Upon authorized and mutually agreed early termination of this contract, partial year guarantee commissions due, if any, shall be determined by dividing the prior year commissions earned through the date of termination by the prior contract year total commission or guarantee received, whichever is greater and multiply the resulting percentage prorated commission received the prior year by the annual guarantee required per proposal submitted. If the resulting prorated guarantee is greater than the commissions received to date of termination, any balance due shall be paid to School by the 30th day of the following accounting period.
- 2.13.14 On expiration or termination of this contract, commission due School shall be paid on sales until all equipment has been removed, and the removal date shall be indicated on the period statement when each piece of equipment was reviewed, including equipment reviewed at any time during the contract period prior to expiration.
- 2.13.15 On requests of the School, the Offeror shall meet with representatives of the School to review each statement, explain deviations, discuss problems, and mutually agree on courses of action to improve the results of the required services included in this contract. Any statement adjustments required as a result of review and/or audit shall be identified and reflected on the next statement.
- 2.13.16 All records pertaining to the operations of vending service shall be open for inspection and/or audit by government officials and/or School at any or all reasonable times.
- 2.13.17 School shall be advised by the Offeror of the audit of its records and operations.
- 2.13.18 No fees shall be assessed against School by the Offeror other than those specified in the resulting contract.

- 2.13.19 School reserves the right to review, on an annual basis, the products being offered through this contract and make suggestions for product changes based on usage. Similarly the Offeror shall be able to make suggestions for product changes. Any suggested changes will require mutual consent prior to actual change out.

Section 3 - Proposal Requirements

3.1 RESPONSE REQUIREMENTS

Each proposal must include a table of contents.

All proposals must include a written point-by-point response to this RFP. Each response must be cross referenced to the corresponding numbered item in this RFP and described in as much detail as possible. The Offeror's information should be prepared simply and economically, providing a straightforward, concise description of that which is required. Emphasis should be on completeness and clarity of content. No fewer than an original and two (2) copies along with a digital copy of the proposal shall be submitted.

Failure to respond to all points may be grounds for rejection. Likewise, failure to supply any information required to accompany the proposals may cause a rejection of the proposal as non-compliant. The School reserves the right to request additional information and/or presentations, if clarification is needed.

Proposals that do not substantially conform to the contents of the bid request, consequently altering the basis for proposal comparison, may be considered as unresponsive and disregarded.

3.2 OFFEROR QUALIFICATIONS AND INFORMATION

The specifications in this section must be responded to on a point-by-point basis so the School can evaluate how the Offeror plans to meet these requirements. Offerors must use the RFP numbering scheme in their response to allow for efficient evaluation.

The following specifications are to be addressed in the Offeror's response.

- A. Provide a detailed proposed Beverage Agreement plan. Identify specific sales and revenue objectives for each product. Describe programs and resources which support achieving the identified objectives.
- B. Identify all products that would be available under the agreement, including beverage category, package sizes, etc. Include syrups, pre-mix, and CO2.
- C. Provide pricing for all products that would be available under the agreement. Pricing commitments must be guaranteed for a minimum of one (1) year. After the initial one (1) year term, prices may be adjusted up or down in an amount consistent with market activity. School expects any increases to be consistent with those applied to other customers of similar size and nature. Indicate your acceptance of this requirement.
- D. Provide complete information on proposed "economic package", including signing bonus, product pricing, commissions, signage, proposal, complimentary product, and guaranteed revenue to the School. Please refer to the appendix section.
- E. Provide complete details on any additional financial support offered, such as marketing support, student, academic and athletic initiatives, volume incentives etc.

- F. Describe in detail the following aspects of your accounting and auditing:
- Vending personnel accounting controls.
 - Method of recording, checking and reporting sales, and the methodology for incorporating the School's cash and card sales.
 - Route and internal control of cash handling of vending machine counting facilities and refund system. Explain controls used to separate vending machine changer funds and revenues.
 - Internal audit system.
 - Regular accounting and cash collection control forms used with detailed explanation of each and their importance.
 - Route man inventory and cash control procedures with example control card and card entry procedures and audit.
 - Proposed accounting periods (minimum twelve (12) annually).
 - Copy of proposed period revenue and commission statements as specified.
 - Formula for how commissions are determined.
- G. Provide an organization chart and a plan for the administrative management, supervision and staffing required under the specifications of the resulting contract, including regional and headquarters support and description of the qualifications of the manager candidate to be assigned to the School.
- H. Name and address of operating company and the names of all the owners or principals of the company or corporation. Indicate ownership, i.e., corporation, partnership, etc., under its present business name.
- I. Provide a description in detail the program regarding preventative maintenance and regular replacement of worn and/or malfunctioning equipment.
- J. Provide plans for advertising, merchandising and promotion for the first year of the contract, including marketing programs and schedules for implementation. Proposals should focus on programs to maximize sales volume on campus.
- K. Describe in general terms your approach to meeting the service requirements of this contract including evenings and weekends.
- L. List your proposed revisions, which would enhance the minimum equipment requirements specified by location by machine. Include information on energy saving vending machines that would be used at School (including information regarding energy misers).
- M. The Offeror's response must clearly demonstrate the capacity to handle the requirements of this contract in addition to current workload. Does the offeror have sufficient staff of properly trained employees to take on and consistently maintain the resulting contract? Explain.
- N. Provide a list of a minimum of three (3) North Texas school operations of similar size and complexity where you are, or have within the last year, owned and operated the specified service. Provide the length of time at each account, and the name, address and phone number of contact person for each. Provide information on any bottle recovery and recycling initiatives that would be offered and incorporated into any subsequent contract.
- O. Supplementary information may be requested by the School to assure that the offeror's competence, business organization, and financial resources are adequate to successfully perform the specified service.

- P. Proposals are required to be complete and accurate. Omission, inaccuracy of misstatements may be sufficient cause for rejection of proposal.
- Q. The proposal must include a summary of the offeror's compliance with EEOC laws and how the offeror's arrangement and relationship with School will allow School to comply with and maximize reimbursement from governmental agencies including but not limited to USDA food programs.
- R. Provide your company's general qualifications and experience as they relate to the following:
- A demonstrated compliance with Texas contracting statutes and regulations. If an Offeror has no experience in Texas, it shall provide the same information from experience in other states.
 - History of contracts entered into with Texas schools over the two (2) year period immediately prior to the published date of the RFP, including contracts awarded, contracts terminated, and contracts determined to be null and void.
 - History of violations of Texas statutes and regulations during the five (5) year period immediately prior to the published date of the RFP.
- S. School has made a commitment to energy and natural resource conservation. The Offeror must provide vending machines that earn the ENERGY STAR and meet the ENERGY STAR specifications for energy efficiency for vending machines. The offeror is encouraged to visit energystar.gov for complete product specifications and an updated list of qualifying products. Include complete energy efficiency information on the equipment being proposed, including provisions for or inclusion of peripheral energy saving equipment such as the "Vending Miser". Explain your understanding of this requirement and your ability to comply, including ENERGY STAR specifications and ratings for the equipment.
- T. Provide other such information as the Offeror deems pertinent for consideration by the School (value added services).

Section 4 - Bid Evaluation Criteria

Evaluation – There will be an evaluation to determine the responsible offeror whose proposal is determined in writing to be the most advantageous to the School and will be based upon a comprehensive review and analysis of all proposals by the RFP committee, and negotiation of the proposal which best meets the needs of the School. Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the School, taking into consideration price and the other evaluation factors set forth in the request for proposals.

If an offeror fails to provide information required by the School concerning a determination of whether the offeror is responsible, that offeror may not be considered responsible. In determining whether an offeror is responsible, School may consider the following: (1) The ability and capacity of the offeror to provide the supplies or service. (2) The integrity, character, and reputation of the offeror. (3) The competency and experience of the offeror. An offeror must also provide evidence of financial responsibility in order to be considered responsible.

The School will include in its evaluation: proposals, presentations (if requested), references, and financial considerations (commissions). In addition, the award will be predicated upon the successful negotiation of the specific terms and conditions to be included in the resulting contract.

Proposals will be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. Discussions may be conducted with, and best and final offers obtained from, responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award.

Offerors will be accorded fair and equal treatment with respect to any opportunity for discussion and revisions of proposals. In conducting discussions with an Offeror, information derived from proposals submitted by competing Offerors may be used in discussion only if the identity of the Offeror providing the information is not disclosed to others. The School will provide equivalent information to all Offerors with which the School chooses to have discussions.

All proposals will be evaluated by a committee, which will use the specific evaluation criteria listed below. Proposals will be evaluated as to the Offeror's response to the following criteria:

Evaluation Criteria

Each proposal will be evaluated by a committee against the following criteria to determine which responsible offeror's proposal is determined in writing to be the most advantageous to the governmental body, taking into consideration price and the other evaluation factors set forth in the request for proposals.

- Demonstrated ability based on experience, qualifications and references, to provide the services, product and equipment requested.
- Experience in Texas public schools.
- Economic package, including signing bonus, product pricing, commissions, and guaranteed revenue to the School.
- Variety and scope of products.
- Quality of Beverage Agreement plan, including feasibility, innovation, communication, specific ideas and resources identified to support revenue and other objectives.
- Team experience and commitment, including evaluation of human resources identified and committed to the agreement.
- Sponsorship and marketing support of school programs, including student, academic and athletic initiatives.
- Demonstrated commitment to energy savings, sustainability and recycling.
- Experience with card systems.
- Demonstrated compliance with governmental contracting statutes and regulations, including history of contracts entered into and history of violations of statutes and regulations.
- Quality and clarity of the presentation to the screening committee concerning offeror's proposal (if requested).
- Accounting statements and practices, with emphasis on reconciliation processes.

The order in which the above selection criteria are listed is not indicative of their relative importance.

Supplemental Information: As part of the review, the School may request the Offeror to supply, in writing, clarifications, additional documentation or information needed to fairly evaluate each proposal.

Presentations: The School reserves the right, but is not obligated, to request a formal presentation of a Offeror's proposal at a date and time to be determined. If required by the School, it is anticipated that such presentation will not exceed one (1) hour. No Offeror will be entitled to be present during, or otherwise receive any information regarding, any other presentation of any other offeror.

Review of References: Each Offeror is required to provide a list of references. Include name, title, telephone number and e-mail address of a contact person at each school. The School reserves the right, but is not obligated to, contact and review the program of any other institution as a reference.

Supplier Representatives: Offeror must identify the people it anticipates representing the Offeror in developing and implementing the arrangement. The School may conduct interviews with identified supplier representatives as a part of its evaluation process.

The School will include in its evaluation: Proposals, presentations (if requested), references and interviews. In addition, the award will be predicated upon the successful negotiation of the specific terms and conditions to be included in the agreement. The School will be the sole judge of the suitability of the proposed agreement.

Requests for Clarification by the School: The School may request that any proponent clarify or supplement any information contained in any Proposal. Offerors are required to provide a written response within one (1) business day of receipt of any request for clarification by the School.

Section 5 - Instruction to Offerors

- A. Proposals must be addressed and delivered to the Chief Financial Officer on or before the time and date set for closing. Proposals should be emailed or in a sealed envelope marked:

Name of Offeror:
Title of Proposal: RFP Beverage Sponsorship Program
Proposal Due Date: October 7, 2022 at 3:00 PM CST

- No telephone, telegraphic or facsimile proposals will be considered. Proposals should include one (1) original (signed in ink) with two (2) copies along with a digital copy.
- B. Offerors may withdraw their proposals at any time prior to the time and date set for opening.
- C. No department, employee, or office at the School has the authority to solicit or receive official proposals other than the Director of Purchasing. All solicitation is performed under the direct supervision of the Chief Financial Officer and in complete accordance with School policies and procedures. Communication with anyone other than the Purchasing Director can result in disqualification of that offeror and/or its proposal.
- D. Discussions may be conducted with responsible offerors, who submit proposals determined to be reasonably susceptible of being selected for award. Once an award is made, the entire contents of the contract file may be inspected except for proprietary information included with an offer, such as trade secrets, manufacturing processes, and financial information that was not required to be made available for public inspection by the terms of the request for proposals and Texas Public Information laws.
- E. Submission of a proposal in response to this RFP is the offeror's acknowledgement that subjective criteria will be used in the evaluation of proposals. Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the School, taking into consideration price and the other evaluation factors set forth in the request for proposals.
- F. Proposals must be provided as outlined in this RFP. Proposals in any other form will be considered informal and will be rejected. Conditional proposals will not be considered. All proposals must be signed by an individual authorized to extend a formal proposal. Proposals not signed will be rejected.
- G. The School reserves the right to any or all proposals or any part thereof, or to accept any proposal, or any part thereof, or to withhold the award and to waive or decline to waive irregularities in any proposal when it determines that it is in its best interest to do so. The School also reserves the right to hold all proposals for a period of 60 days after the opening date, 30 days after the acceptance of an offer, and the right to accept a proposal not withdrawn before the scheduled opening date. When the School

determines it is in the best interests of the School: (1) a solicitation may be canceled; or (2) offers may be rejected; in whole or in part as specified in the solicitation.

- H. Notwithstanding any other law, offers may be opened after the time stated in the solicitation if both of the following apply: (1) the School makes a written determination that it is in the best interest of the School to delay the opening. (2) The day, time, and place of the rescheduled opening is announced at the day, time, and place of the originally scheduled opening.
- I. Any alleged oral agreement or arrangement made by an offeror with any agency or employee will be superseded by the written agreement.
- J. No additions or changes to the original proposal will be allowed after submittal. While changes are not permitted, clarification at the request of the agency may be required at the offeror's expense.

Appendix I References

Proposals should include institutions, of similar or the same size, where your organization provides services similar to the size and scope of the operation at School. Please include name, title, telephone number and e-mail address of a contact person at each institution. **References may be checked electronically; the requirement for e-mail addresses is a mandatory requirement.**

<u>References</u>	<u>Institution</u>	<u>Contact</u>	<u>Telephone No.</u>
Reference #1	_____	_____	_____
E-mail:	_____		
Reference #2	_____	_____	_____
E-mail:	_____		
Reference #3	_____	_____	_____
E-mail:	_____		

Appendix II Proposal Certification and Pricing Structure

I certify that:

- this proposal is a legal and binding offer and I have the authority to bind the Offeror indicated below to the specific terms, conditions and technical specifications required in this RFP and offered in the Offeror's proposal. I understand that by submitting this proposal, the Offeror indicated below agrees to provide the services described in the proposal.
- the contents of the proposal are true and accurate and that the Offeror has not made any knowingly false statements in the proposal.
- the proposal has been developed independently, without consultation or communication with any employee or consultant of School who has worked on the development of this RFP, or with any person serving as a member of the evaluation committee, or with any other Offeror or parties for the purpose of restricting competition.
- this proposal is genuine and is not made in the interest of or on behalf of any undisclosed person, firm or corporation; that the Offeror has not directly or indirectly induced or solicited any other Offeror to put in a false or sham proposal; that the Offeror has not solicited or induced any person, firm or corporation to refrain from responding; and that the Offeror has not sought by collusion to obtain any advantage over any other Offeror or over the School.
- we have read and understood the RFP and have submitted our proposal in accordance with the terms and conditions of the proposal specifications and agree to fulfill our legal obligations pursuant to the attached contractual provisions.

We, the undersigned, in compliance with the Request for Proposal for an Exclusive Beverage Agreement, hereby agree to pay the following commissions and guarantees to School.

- A) Itemized Commission Guarantee – Beverage Vending Machines _____%
(attach additional sheets as necessary to provide detail, breakdown, etc)
- B) Minimum Annual Guarantee (if any) \$ _____
- C) Sponsorship Fees (if any) \$ _____ (attach additional sheets as necessary to provide details)
- D) Signing Award (if any) \$ _____
- E) Complimentary product(s) (if any) \$ _____ (attach additional sheets as necessary to provide details)
- F) Other considerations (attach additional sheets as necessary to provide details)

Firm _____

Authorized
Signature _____

Title _____

Appendix III Beverage Vending Equipment Profile

School	Machine	Number of Machines
DESOTO HS	Vending	11
DESOTO AEP	Vending	8
ISC	Vending	3
COCKRELL HILL ES	Vending	1
MCCOWAN MS	Vending	2
DESOTO WEST MS	Vending	1
THE MEADOWS ES	Vending	1
FRANK D. MOATES ES	Vending	1
EAST MS	Vending	2
WOODRIDGE ES	Vending	1
RUBY YOUNG STEM ACADEMY	Vending	1
KATHERINE JOHNSON TECHNICAL SCHOOL	Vending	1
	Vending	1
BEN DIAL ATHLETIC COMPLEX	Cooler	5
	Cooler	16
	Cooler	3
	Cooler	23
	Cooler	1
	Cooler	1

Appendix IV

Per Year Sales Volume: Approximately 1,000 cases per year per previous vendor history.

Appendix V General Contract Provisions and Terms

TERMS AND CONDITIONS

In submitting an RFP, the Proposer understands and agrees to be bound by the following terms and conditions which shall be incorporated into any future contracts, agreements, or purchase orders relating to this RFP between the Proposer and the DeSoto Independent School District. By submitting an RFP, each Proposer agrees to waive any claim it has or may have against the DeSoto Independent School District arising out of or in connection with the administration, evaluation, or recommendation of any RFP; waiver of any requirements under the RFP Documents; acceptance or rejection of any RFPs; and award of Contracts, if any.

Regardless of the award of RFP hereunder, the District retains the right to issue subsequent proposals and approve additional firms for the same or similar items/services during the agreement period should it be determined that doing so would be in the District's best interest.

COMPLIANCE WITH LAWS

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

RECORD RETENTION

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

RIGHT TO AUDIT

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

ASSIGNMENT

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

TERMINATION

DeSoto ISD shall have the right to terminate for default all or part of a resulting contract if the Proposer breaches any of the terms hereof or if the Proposer becomes insolvent or files any petition in bankruptcy.

Such right of termination is in addition to and not in lieu of any other remedies which DeSoto ISD may have in law or equity, specifically including, but not limited to, the right to collect for damages or demand specific performance.

DeSoto ISD may terminate a resulting contract and debar the Proposer from future "bidding" for violations of federal requirements including, but not limited to, "Contract Work Hours and Safety Standards Act", "Equal Employment Opportunity Act", and "Energy Policy and Conservation Act". In the event of a material failure by the Proposer to provide services in accordance with the terms of this RFP ("default"), the District may terminate the award upon ten (10) calendar days' written notice of termination setting forth the nature of the material failure; provided, that, the material failure is through no fault of the District. The termination will not be effective if the material failure is fully cured prior to the end of the ten-day period.

Termination by the District will not relieve Proposer from liability for any default or breach under a resulting agreement or any other act or omission of Proposer. If Proposer fails to cure any default within ten (10) calendar days after receiving written notice of the default, the District will be entitled (but will not be obligated) to cure the default and will have the right to offset against all amounts due to Proposer, any and all reasonable expenses incurred in connection with the District's curative actions.

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

Should any termination of this RFP award be held to be unenforceable or otherwise improper by a court of competent jurisdiction, then such termination shall be considered a termination for convenience as provided herein.

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

DEFAULT AND REMEDIES

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

GRATUITIES

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

CONTROLLING DOCUMENTS AND INTEGRATION

The Contract resulting from this solicitation consists of the RFP, including all Addenda, the Proposal submitted by Proposer that is satisfactory to the District, and accepted and awarded by the District, and the District's Contract form(s) which may include, but are not limited to, a written contract, an agreement letter, or a purchase order. ***NOTWITHSTANDING ANYTHING TO THE CONTRARY IN ANY PROPOSER FORM, PROPOSAL OR DOCUMENTATION, THE TERMS AND CONDITIONS OF THE CONTRACT AS INTEGRATED ABOVE SHALL BE CONTROLLING IN ALL INSTANCES.***

To the extent that there is any conflict between or among the documents composing the Contract, the following hierarchy (from most to least authoritative) shall prevail: (i) the District's Contract forms (written contract, agreement letter or purchase order as applicable); (ii) RFP as provided by the District and all Addenda; and (iii) any Proposal provisions submitted by Proposer and agreed to by the District.

FORCE MAJEURE

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

be responsible for payment for any product or service delayed or foreclosed by any Force Majeure event unless and until such delayed or foreclosed product or service is provided. The provisions of this section shall not preclude the District from canceling or terminating any resulting award (or any order for any goods or services included herein), or from revising the Scope of the Work, as otherwise permitted under this RFP.

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

FIXED TERM OF ENGAGEMENT PRICING

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

SECTION HEADINGS

The headings of sections contained in any document related to this project are for convenience only, and they shall not, expressly or by implication, limit, define, extend, or construe the terms or provisions relating to the project.

THIRD PARTY BENEFICIARIES

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

NON-APPROPRIATION OF FUNDS

District will make reasonable efforts to obtain and appropriate funds each fiscal year for payment of its contractual obligations pursuant to this RFP. In the event that the District does not appropriate funding for the next fiscal year for the services specified, then the affected obligations shall terminate at the end of the last fiscal year for which funding is appropriated. The rates and charges, terms and conditions of this Contract are subject to review and/or approval by the regulatory authorities of the State of Texas.

INDEMNIFICATION AND HOLD HARMLESS

The DeSoto ISD is a Texas Political Subdivision and a local governmental entity; therefore, is prohibited from indemnifying it or any third parties for any damages arising pursuant to this RFP. Except as otherwise expressly provided, Proposer shall defend, indemnify, and hold DeSoto ISD harmless from and against all claims, liability, loss and expenses, including reasonable costs, collection expenses, and attorneys' fees incurred, which arise by reason of the acts or omissions of Proposer, its agents or employees in the performance of its obligations pursuant to this RFP. This clause shall survive termination of any resulting award.

The successful Proposer will be expected to indemnify and hold harmless the DeSoto ISD and its employees, officers, agents, representatives, contractors, assignees and designees from any and all third-party claims and judgments involving infringement of patent, copyright, trade secrets, trade or service marks, and any other intellectual or intangible property rights in connection with the Proposer's proposal or ultimate contracts awarded and approved.

The successful Proposer will be expected to indemnify and hold harmless DeSoto ISD, its officers, employees, agents, representatives, contractors, assignees and designees from and against any and all liability, actions, claims, demands or suits, and all related costs, attorney's fees and expenses arising out of, or resulting from any acts or omissions of the Proposer or its agents, employees, subcontractors, or suppliers in the execution or performance of any agreements ultimately made by DeSoto ISD and the Proposer.

PAYMENT TERMS

DeSoto ISD complies with the State of Texas Prompt Payment Act, Texas Government Code, Chapter 2251. (See statute for specifics). Payment will be made within 30 days after the later of, receipt of goods/services and a properly submitted invoice. The district considers an invoice properly submitted when the following conditions are met:

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

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

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

INVOICING AND PAYMENT

Billing invoices must contain the appropriate DeSoto ISD Purchase Order number on the face of the invoice for each matter. Invoices submitted without the correct Purchase Order number shown may be returned to the Proposer for correction. Corrected invoices will be subject to the same payment provision as original invoices.

Invoices should be provided to the District in a timely manner. Firms are requested to invoice the District within 30 days of providing goods and/or services to the District. Proposers who continuously invoice the District in a manner other than generally accepted business practices may affect their continuing relationship with the District.

In the event a Proposer presents the District with invoices, statements, reports, etc. that are incomplete, inaccurate or in need of substantial internal research, the District may be required to perform substantial research which could result in delay of payment. The District will not be responsible for any interest charges and/or late fees as a result of delayed payment due to time delays caused by inadequate or incomplete information provided in invoices by Proposer.

GOVERNING LAW, JURISDICTION AND SERVICE OF PROCESS

This agreement and any addenda or other additions and all contracts or awards resulting from this procurement process, however described, shall be governed by, construed and enforced in accordance with the laws of the State of Texas, regardless of any conflict of laws principles.

Any Proceeding arising out of or relating to this procurement process or any contract resulting from or any contemplated transaction shall be brought in a court of competent jurisdiction in Dallas County, Texas and each of the parties irrevocably submits to the exclusive jurisdiction of said court in any such proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the Proceeding shall be heard and determined only in any such court and agrees not to bring any proceeding arising out of or relating to this procurement process or any contract resulting from or any contemplated transaction in any other court. The parties agree that either or both of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and freely bargained for agreement between the

parties irrevocably to waive any objections to venue or to convenience of forum. Process in any Proceedings referred to in the first sentence of this Section may be served on any party anywhere in the world.

DeSoto Independent School District (“DeSoto ISD” or “the District”), is a school district based in DeSoto, Texas and has an enrollment of approximately 7,500 students. The District has 4 elementary schools, 2 middle schools and 1 high school. DeSoto ISD employs approximately 1,000 staff members, which includes teachers, administrators at all school campuses and central office staff.

Additional information about DeSoto ISD can be obtained from the District’s website at www.desotoisd.org.

TERM OF CONTRACT

All contracts will be for a FIVE (5) year terms subject to negotiation. Fee structure will be reviewed at the end of each one-year term and may be renegotiated for subsequent terms. The District reserves the right to terminate the contract with advance written notice to the other party at will.

CONFLICT OF INTEREST

No employee, officer or agent of the District may participate in the selection, award, or administration of a Contract if he or she has a real or apparent conflict of interest. DeSoto ISD officers, employees and agents may not solicit nor accept gratuities, favors, or anything of monetary value from Proposers or parties to subcontracts. DeSoto ISD maintains written standards covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts.

PROPOSER CONDUCT

During the RFP process, Proposers are not permitted to contact any DeSoto ISD employee unless at the request of DeSoto ISD’s Purchasing Director. Firms currently involved with the District may contact the District as necessary. Communications regarding this RFP will only be accepted in writing. No gratuities of any kind will be accepted including meals, gifts, or tips during the RFP process. Violation of these conditions will subject any Proposer to immediate disqualification.

REFERENCES

Please provide a list of references of client entities with contact person and contact information. The District reserves the right to contact references from the Proposer’s client list.