

**Multnomah Education Service District  
Request for Proposals #109-19-727  
For  
Annual Financial Audit**

The Multnomah Education Service District (District) is seeking proposals to perform the annual audit of the financial records of the District for a term of three fiscal years commencing with the audit of the 2019-2020 fiscal year. The District seeks to allow for up to two renewal options of three years each, upon mutual agreement.

Sealed proposals will be accepted by the Purchasing Support Analyst at Multnomah Education Service District, Business Services, 11611 NE Ainsworth Circle, Portland, Oregon 97220-9017 until

**2:00 p.m., Pacific Standard Time on  
Wednesday, February 6, 2019**

All proposals (and the sealed envelopes containing them) shall be identified as “Annual Audit, RFP # 109-19-727”.

Any questions should be directed to Brian Altman, Purchasing Support Analyst, Multnomah Education Service District, at 11611 NE Ainsworth Circle, Portland, Oregon 97220-9017, phone (503) 257-1794; email: [baltman@mesd.k12.or.us](mailto:baltman@mesd.k12.or.us).

The district intends to produce a Comprehensive Annual Financial Report for 2019-2020 and subsequent fiscal years.

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**Nondiscrimination Notice**

MESD prohibits discrimination and harassment on any basis protected by law, including but not limited to race, color, religion, sex, national or ethnic origin, sexual orientation, mental or physical disability or perceived disability, pregnancy, familial status, economic status, veterans' status, parental or marital status or age. For more information and detail on MESD's non-discrimination policies, including procedures and contact information for reporting discrimination, please visit the MESD Home Page: <https://www.multnomahesd.org/>.

# Multnomah Education Service District

## *RFP 109-19-727 : Auditing Services*

### TABLE OF CONTENTS

SECTION 1	<u>Page</u>
Proposal Introduction	3
SECTION 2	
Scope of Work	4
SECTION 3	
District Background	6
SECTION 4	
Proposal Calendar	7
SECTION 5	
Request for Proposal Format and Evaluation Criteria	7
SECTION 6	
Administrative Information	11
SECTION 7	
General Terms and Conditions	14

# Multnomah Education Service District

## *RFP 109-19-727 : Auditing Services*

### SECTION 1: PROPOSAL INTRODUCTION

#### **Purpose & Intent**

Multnomah Education Service District (District) is evaluating its auditing needs regarding services and cost. The District invites interested auditing firms to respond to this request for proposals.

The Multnomah Education Service District Board of Directors (Board) reserves the right to accept any proposal that it deems most favorable to the interests of the District and the right to reject any and/or all proposals submitted or any portion thereof which in its opinion is not in the best interest of the District.

The District's Budget and financial statements may be viewed our website:

<https://www.multnomahesd.org/business-services.html>.

Please also see:

Exhibit 1: MESD Adopted Budget FY 2018-19

Exhibit 2: MESD Comprehensive Annual Financial Report FY 2017-18

#### **Proposal Request**

The District is requesting proposals from qualified firms of Certified Public Accountants to perform annual (and interim if needed) financial audits of the District's financial records and to review the District-prepared Comprehensive Annual Financial Report (CAFR). The CAFR includes the basic financial statements, required and other supplementary information and compliance reports. The financial and compliance audit will cover federal, state, and local funding sources in accordance with the following:

- Generally Accepted Auditing Standards (GAAS)
- Government Auditing Standards Board (GASB)
- Requirements of the Single Audit Act and Subpart F of Title 2 U.S. Code of Federal Regulations (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance)
- Minimum Standards for Audits of Oregon Municipal Corporations
- Applicable laws and regulations

# Multnomah Education Service District

## *RFP 109-19-727 : Auditing Services*

### **SECTION 2: SCOPE OF WORK**

#### Pre Audit Meeting

Auditors will provide an audit schedule, working paper standards and requirements, and deadlines to MESD Business Services staff at a pre-audit meeting or by email, prior to audit each year.

#### Report Requirements

The year-end audit reports will be presented by the auditor to the Board each year during their regularly scheduled monthly meeting in December, or prior, and will include:

- The District's Comprehensive Annual Financial Statement (CAFR);
- A report expressing the auditor's opinion on the District's financial statements;
- A report on the fairness of the presentation of the District's schedule of expenditures of federal awards (SEFA);
- Reports on internal controls related to the financial statements and major programs;
- Reports on compliance with laws, regulations, and the provisions of contracts or grant agreements. The report must disclose any noncompliance that could have a material effect on the financial statements and any noncompliance that could have a material effect as defined by Uniform Guidance on each major program;
- An accompanying schedule of findings and questioned costs; and,
- All reports required for the District by the *Minimum Standards for Audits of Oregon Municipal Corporations*.

A summary of findings may be required for presentation to the Board.

Findings of ineligible expenditures must be presented in enough detail for management to be able to understand and act upon the auditor's recommendations.

All findings of weaknesses in internal accounting controls will be discussed with the Director of Business Services. Significant findings will then be included in a Management Letter addressed to the Board. The auditor will submit a draft of the letter to the Director of Business Services at least fourteen (14) days prior to the date on which the audit is to be presented to the Board. The Director of Business Services will provide written responses to each finding and such responses will be included in the final Management Letter.

#### Report Timeline

The District's Accounting Staff will prepare an agreed-upon list of required schedules and will draft Comprehensive Annual Financial Report by an agreed-upon date for auditor's review. The audited CAFR, including the auditor's opinion letter and other findings, shall be submitted to the Director of Business Services at least fourteen (14) days prior to the date on which the audit is to be presented to the Board.

# **Multnomah Education Service District**

## ***RFP 109-19-727 : Auditing Services***

### **Client Assistance in Audit**

The Accounting Staff and other responsible personnel will be available during the audit to assist the firm by providing information, documentation, and explanations. The District will close and balance all accounts and submit appropriately detailed trial balances, supporting schedules, and supporting documentation to the auditor on a timely basis. Client prepared schedules and drafted Comprehensive Annual Financial Report may be submitted in hard copy and/or via electronic format.

The District's attorney(s) will issue an Attorney Representation Letter about the status of suits, threatened litigation, and/or other actual or contingent liabilities.

The District will provide the auditor with reasonable workspace, desks and/or tables, and chairs. The auditor will also be provided access to telephone lines, photocopying facilities, and fax machines and internet access. Such access may be on a limited availability basis, depending on the needs of the District.

### **Contacts**

The auditor should plan to meet with the District staff at least twice in relation to the engagement. The first meeting can be expected to be a time for pre-audit planning and discussion. The second meeting would be to discuss the audit findings and any recommended adjusting entries.

The auditor's principal contact with the District during the audit fieldwork will be the Director of Business Services. The Director will coordinate the assistance to be provided by the District to the auditor. The auditor must remember, however, that the auditor's responsibility is to the Board.

### **Audit Schedule**

The audit contract must be signed by all parties by March 5th, 2019. Audit fieldwork shall take place at times mutually agreed upon. The Comprehensive Annual Financial Report, Management Letter, and Oregon Audits Division Summary of Revenues and Expenditure must be reviewed and issued no later than November 15<sup>th</sup>. If November 15<sup>th</sup> falls on a non-business day, the following business day becomes the due date.

# Multnomah Education Service District

## *RFP 109-19-727 : Auditing Services*

### **SECTION 3: DISTRICT BACKGROUND**

The District's 2018-2019 adopted budget totals \$80,158,692 consisting of seven funds. Six of the funds are governmental type and one is an agency fund. The adopted budget amounts (excluding unappropriated amounts) are spread across the following funds:

● Resolution Services	\$44,269,900
● Contracted Services	\$25,409,588
● Debt Service Fund	\$ 3,068,266
● Facilities Acquisition & Improvement Fund	\$ 998,100
● Operating Fund	\$ 5,444,302
● Risk Management Reserve Fund	\$ 968,536
● Agency Pass-Through	\$ 0

#### **Accounting Policies**

The District operates in accordance with generally accepted accounting principles as required by Oregon Revised Statutes 294.305 – 294.520. The District prepares a budget for all funds subject to “Local Budget Law”. The budget for each fund is a plan for the financial operations to be conducted during the coming fiscal year and is adopted annually, prior to July 1 by the Board. After adoption, the Board may approve supplemental appropriations if an occurrence, condition, or need exists which has not been ascertained at the time the budget was adopted.

Supplemental budgets are adopted in accordance with statute and District policy.

All financial accounting records and functions are computerized. The District currently utilizes the Business Plus (formerly known as IFAS) system from PowerSchool (formerly SunGard Public Sector). Modules within the Business Plus software include Human Resources, Payroll, Purchasing and Accounting.

# Multnomah Education Service District

## RFP 109-19-727 : Auditing Services

### SECTION 4: PROPOSAL CALENDAR

#### Request for Proposal Calendar

The following is a list of key dates up to and including the date of contract finalization:

Request for Proposals Issued	January 9, 2019
Proposal Date Due	February 6, 2019
Review Process, including interviews	February 7 - February 14, 2019
Recommendation of Award, if any	February 15, 2019
Approval by Board of administrative recommendation	February 19, 2019
Contract Finalization	Two weeks after Notification of Award

This is the District's desired project schedule. The District reserves the right to modify the schedule.

### SECTION 5: REQUEST FOR PROPOSAL FORMAT AND EVALUATION CRITERIA

#### Evaluation Standards

Written proposals will be subjectively evaluated on the basis of the following criteria and points weighting:

<b>1. Experience with Municipal and Public Education Engagements</b>	<b>Points</b>
a. Firm's municipal and public education auditing experience and expertise	4
b. Local office's municipal and public education experience and expertise, particularly with like-sized school districts	9
c. Firm's assistance and experience/expertise in obtaining GFOA and ASBO program certificates	3

# Multnomah Education Service District

## *RFP 109-19-727 : Auditing Services*

<b>2. Staffing: Size, Training, and Experience</b>	
a. Municipal and public education auditing experience and expertise of audit team proposed for the District audit	17
b. Firm's and local office's ability to provide consulting services to the District	3
c. Firm's dedication to cooperation and compatibility with District's specific situation	7
<b>3. Proposer's Approach to the Examination</b>	
a. Description of audit approach, including the manner in which computer assisted auditing procedures will be utilized	14
b. Estimation of number of hours to be devoted to the engagement	13
c. Work plan schedule	5
d. Procedures followed in technical review of audit reports prior to issuance	6
<b>4. Audit Fee</b>	
a. Proposed fees	19
<b>Maximum Points Possible</b>	<b>100</b>

Upon review of the proposals, qualified audit firms may be interviewed at District's discretion. No additions, deletions or substitutions may be made to proposals during the interviews/presentations that cannot be viewed as clarification. An award of contract to the audit firm deemed most qualified will then be recommended to the Board by the Board Finance Committee. The Board will make the final decision.

# Multnomah Education Service District

## *RFP 109-19-727 : Auditing Services*

### **FORMAT**

#### **Technical Proposal**

One (1) original and four (4) copies of a Technical Proposal are required to be received no later than 2 pm PST on February 6, 2019, for a proposing firm to be considered. The proposal should include the following:

#### **Title Page**

The Request for Proposal (RFP) should show the subject; name of proposing firm; name, address, and telephone number of a local contact person; and the date of the proposal.

#### **Table of Contents**

The RFP must include a clear identification of the material by section and by page number.

#### **Transmittal Letter**

A signed letter of transmittal must include the following: a statement outlining the proposer's understanding of the work to be done and the commitment to perform the work within the time period; a statement outlining reasons why the firm believes itself to be qualified to perform the engagement; and a statement that the proposal is a firm and irrevocable offer for sixty (60) working days.

#### **Profile of the Proposer**

*(Please answer the following in order)*

- 1) Affirm that Proposer is a firm of certified public accountants (CPAs) properly licensed to practice in Oregon.
- 2) Affirm that Proposer meets standards of independence as defined by generally accepted auditing standards of the U.S. GAO.
- 3) Indicate the address of your home office.
- 4) Submit a copy of the report on the firm's most recent external quality control (peer) review, with a statement whether that quality control review included a review of specific government engagements.
- 5) State the number of partners, managers, supervisors, seniors, and other professional staff employed at the local office.
- 6) Describe the range of activities performed by the local office such as auditing, accounting, tax services, management services, and/or report preparation.
- 7) Describe your approach in assisting clients in maintaining reporting standards in compliance with applicable Generally Accepted Accounting Principles.

# Multnomah Education Service District

## *RFP 109-19-727 : Auditing Services*

### **Experience with Municipal Engagements**

*(Please answer the following in order)*

- 1) Provide the name, title, and State Board of Accountancy Municipal Audit Roster Number for the partner, manager, and in-charge accountant who would be assigned to this financial audit.
- 2) Identify governmental audit clients, both current and those performed during the preceding 5 year period, of your firm, particularly school districts and education service districts, regardless of the office handling the account that are comparable in size or larger than Multnomah Education Service District; in addition, identify those audit clients handled by your local office. Include the beginning year of audit and the entity's administrative contact person (name, title, and phone number).
- 3) Identify previous experience or knowledge in obtaining the Government Finance Officers Association (GFOA) Certificate of Achievement of Excellence in Financial Reporting and the Association of School Business Officials (ASBO) International Certificate of Excellence in Financial Reporting, both in your local and overall firm offices. Specifically identify the individuals who have served in the capacity of a panel review member for GFOA and/or ASBO and the number of years served in this capacity.
- 4) The firm shall list all district audits that have been discontinued or terminated within the preceding three (3) fiscal years and state the reason for the discontinuance or termination. If you are again serving them, please state the fiscal year that you started auditing them again.

### **Staffing: Size, Training, and Experience**

*(Please answer the following in order)*

- 1) Identify the partners, managers, seniors, specialists, and other key staff persons from (a) the local office and (b) from any other offices of your firm who would be assigned to the District engagement. Describe their roles and provide a brief description of their professional experience, including their experience in governmental auditing. Indicate the extent to which their governmental experience has been within the State of Oregon. Indicate their participation in professional development programs in the governmental accounting and auditing area. Indicate those who are CPAs and those who are members of the AICPA, OSCP, GFOA, and ASBO. If any partners or staff from other than the local office are to be assigned to the engagement, indicate the percentage of their time that will be devoted to the District engagement. If more convenient, resumes may be included in an appendix appropriately cross-referenced here. In addition, identify any independent contractors who may be assigned to this engagement and the basis for their selection.
- 2) Describe your firm's capability and experience in providing management consulting services to local governmental units. Describe recent engagements of that type handled by local office personnel, if any, and identify your local consultants who could provide such services. Identify what advice and consulting would be considered a part of this engagement.

# Multnomah Education Service District

## *RFP 109-19-727 : Auditing Services*

- 3) Estimate the aggregate number of hours of time that your firm's professional staff would devote to the District's audit engagement.
- 4) Describe your firm's professional development program and the specialized programs offered within the area of governmental accounting and auditing.

### **Proposer's Approach to the Examination**

Describe how your firm would approach the District engagement. Outline a work plan and related time schedule for each significant segment of the work. Include a "Table of Contents" outlining proposed schedules, worksheets, and reports. Indicate whether you intend to use any computer-assisted auditing procedures and whether you plan to use specialists, such as information technology specialists. Describe the procedures followed in the technical review of the audit reports prior to their issuance by qualified personnel other than the engagement partner. In addition, please provide any extra information about your firm's audit approach that you feel would be beneficial to the Committee.

### **Fee Proposal**

The Fee Proposal shall contain the following information:

- 1) The rate per hour for each of the staff classifications to be assigned to the District engagement.
- 2) An estimate of the number of hours that each of the staff in Item 1 will spend on the engagement.
- 3) The maximum fee/cost, including out-of-pocket expenses, that your firm will charge the District for the entire audit, including the management report.
- 4) The method to be used to determine the fee/cost in subsequent years of the engagement.

## **SECTION 6: ADMINISTRATIVE INFORMATION**

### **Proposals**

As part of your submitted proposal, you must provide original signatures on a facsimile or copy of the Signature Form, which can be found on the final page of this document.

Your proposal must include your original, signed proposal document, plus five (5) copies of the proposal.

Prior to delivery, your proposal must be sealed in an envelope, clearly identified as a proposal for Audit Services on the outside, and delivered to District at the address listed below, before the due date and time listed on page 1 of this document.

# Multnomah Education Service District

## *RFP 109-19-727 : Auditing Services*

Multnomah Education Service District  
Attn: Brian Altman, Purchasing Support Analyst  
11611 N.E. Ainsworth Circle  
Portland, OR 97220

Proposers should allow adequate delivery time to ensure timely receipt of their proposals by the Business Office. The proposer is responsible for assuring their proposal has been received by the Business Office (no faxes or electronic submissions will be accepted). **PROPOSALS RECEIVED AFTER THE DEADLINE CANNOT BE CONSIDERED.**

### **Incurred Costs**

The District will not be liable for any costs incurred by Proposers in the preparation and/or presentation of their proposals.

### **Trade Secrets**

Your proposal may be subject to Oregon Public Records law, the application of which shall determine if any confidential information you share is in fact exempt from disclosure as "Trade Secrets" (ORS 192.501 (2)). In order to facilitate possible public inspection of your Proposal, **material designated by you the Proposer as confidential in the Proposal shall be readily separable from the non-confidential portion of the Proposal.** Prices, makes, models or catalog numbers of proposed goods and services shall be publicly available regardless of any designation by you the Proposer to the contrary.

### **Working Papers**

All working papers and reports must be retained, at the auditor's expense, for a minimum of three (3) years, unless the firm is notified in writing by the District of the need to extend the retention period. Furthermore, the working papers must be available for examination by authorized representatives of the cognizant Federal audit agency and of the District. Working papers need to be accessible to the District's Business Office on demand. In addition, the firm shall respond to the reasonable inquiries of successor auditors and allow auditors to review working papers relating to matters of continuing accounting significance.

### **Term of Contract**

The selected auditing firm shall be designated as the District's auditor for a term of three fiscal years commencing with the audit of the 2019-2020 fiscal year.

### **Renewals**

The District seeks to allow for up to two renewal options of three years each, upon mutual agreement.

# **Multnomah Education Service District**

## ***RFP 109-19-727 : Auditing Services***

### **Equal Employment Compliance Requirement**

By submitting this bid, the bidder certifies conformance to the applicable Federal Acts, Executive Orders, and Oregon Statutes and Regulations concerning Affirmative Action toward Equal Employment Opportunities.

All information and reports required by the Federal or Oregon State Governments, having responsibility for the enforcement of such laws, shall be supplied to the District upon request for purposes of investigating to ascertain compliance with such acts, regulations, and orders.

### **Tax Identification Number**

Proposals must include the audit firm's federal and state taxpayer identification numbers.

# Multnomah Education Service District

## *RFP 109-19-727 : Auditing Services*

### **SECTION 7: GENERAL TERMS AND CONDITIONS**

#### **Bid/Proposal/Quote**

The terms "bid", "proposal" and "quote" will be used interchangeably in this document.

#### **Proposals**

Proposals shall be delivered to the Multnomah ESD, Business Services Department, 11611 NE Ainsworth Circle (PO Box 301039, 97230-9039), Portland, Oregon 97220-9017. All proposals shall be in the format designated by the District, or they may be rejected by the District. It shall be the proposer's responsibility to ensure that the proposal is delivered to the Business Services Department before the time and date set for proposal closing, and the District will not be responsible for proposals delivered to any location other than the Business Services Department.

#### **Compliance and Exceptions to Terms and Conditions**

Bidders are responsible for noting the terms and conditions included as applicable to each set of bid documents. By signing and returning the bid or proposal form, the bidder is acknowledging acceptance of the intent to abide by the terms and conditions. Bids or proposals which take exception to the specifications or contract terms, or which are made contingent upon the public agency's acceptance of different or additional specifications or terms, may be rejected because they are not responsive to the Invitation to Bid or the Request for Proposals. Any exceptions to the terms and conditions must be clearly stated in writing by the bidder in the signed returned bid or proposal. Exceptions to the terms and conditions become contractual obligations only upon written acceptance by the public agency.

#### **Notice Of Intent-To-Award**

Pursuant to ORS 279B.135, District will post its Notice of Intent to Award at its website at <https://www.multnomahesd.org/business-services.html> seven days before the award of a public contract pursuant to this RFP.

# Multnomah Education Service District

## *RFP 109-19-727 : Auditing Services*

### **Protest And Judicial Review**

The information in this section applies to each of the below potential causes of protest and judicial review. All administrative processes shall be exhausted prior to seeking judicial review. Any reference to “days” shall mean “calendar days” unless otherwise stated. “Delivered” shall mean that the protest shall be received by the District’s server for email or, for letter, shall be received in the office of the Bid Coordinator. Any protest that is Delivered within the required timeline shall be processed for a response. Any protest that is Delivered after the required timeline shall be deemed to be late and no further consideration of a protest will be allowed. Any Written protest shall be in the required format, contain the required information, and shall be presented either by email or in writing to one of the following addresses:

by email: [baltman@mesd.k12.or.us](mailto:baltman@mesd.k12.or.us), with a subject line reading "Protest", or

by mail: on the protestor's company letterhead, addressed to

Purchasing-Bid Coordinator  
Protest  
Multnomah Education Service District  
11611 NE Ainsworth Circle  
Portland, OR 97220

Any allowable suit or writ of review shall be properly filed in the Multnomah County (Oregon) Circuit Court.

### **Protest and Judicial Review of Solicitations**

The following procedures and requirements apply to any prospective Offeror's protest of the Procurement process or the Solicitation Document of this ITB in accordance with Oregon Revised Statutes Chapter 279B.405 and District’s Local Rules.

# Multnomah Education Service District

## *RFP 109-19-727 : Auditing Services*

### ADMINISTRATIVE REVIEW:

A. A Written Protest of the Solicitation shall be Delivered to the District not less than 10 days prior to the Closing date for the ITB, and shall contain the following information:

- 1) The name and contact information of the prospective Offeror who is protesting,
- 2) The Number and title of the ITB or Request for Proposals that is the subject of the protest,
- 3) The grounds that demonstrate how the procurement process is contrary to law or how the solicitation document is unnecessarily restrictive, is legally flawed or improperly specifies a brand name,
- 4) Evidence or supporting documentation that supports the grounds on which the protest is based,
- 5) The relief sought, and
- 6) A statement of the desired changes to the Procurement process or the Solicitation Document that the prospective Offeror believes will remedy the conditions upon which the prospective Offeror based its protest.

B. The District shall consider a Protest of the Solicitation if it is filed with the District in a timely manner and in the proper format. The District will issue a Written decision on such protest no less than three business days before bids, proposals or offers are due unless a written determination for a shorter timeline is made by the District or unless the District makes a determination to extend the Closing time to further consider the protest.

### JUDICIAL REVIEW:

A. A prospective Offeror may not challenge the contract on grounds under these statutes and rules in any further legal or administrative proceeding who fails to timely file a Protest of the Solicitation as outlined above.

B. A decision of the District on a Protest of the Solicitation is subject to judicial review only if the suit or writ of review is filed before the Closing of bids, proposals or offers.

### Protests and Judicial Review of Multi-Tiered and Multistep Solicitations

Purpose. An Affected Offeror may protest exclusion from the Competitive Range or from subsequent tiers or steps of a solicitation as described below and shall exhaust these administrative remedies before seeking judicial review.

### ADMINISTRATIVE REVIEW:

Basis for Protest. An Affected Offeror may protest its exclusion from a tier or step of competition only if the Offeror is Responsible and submitted a Responsive Offer and but for the District's mistake in evaluating the Offeror's or other Offerors' Offers, the protesting Offeror would have been eligible to participate in the next tier or step of competition. (For example, the protesting Offeror must claim it is eligible for inclusion in the Competitive Range if all ineligible higher-scoring Offerors are removed from consideration, and that those ineligible Offerors are

# Multnomah Education Service District

## *RFP 109-19-727 : Auditing Services*

ineligible for inclusion in the Competitive Range because: their Proposals were not Responsive, or the District committed a substantial violation of a provision in the Solicitation Document or of an applicable Procurement statute or administrative rule, and the protesting Offeror was unfairly evaluated and would have, but for such substantial violation, been included in the Competitive Range.)

Content of Protest. The Affected Offeror's protest shall be in Writing and must specify the grounds upon which the protest is based.

Delivery. An Affected Offeror shall deliver a Written protest to the District within seven (7) Days after issuance of the notice of the Competitive Range or notice of subsequent tiers or steps.

Contracting Agency Response. The District shall issue a Written disposition of the protest in a timely manner. If the Contracting Agency upholds the protest, in whole or in part, District may in its sole discretion either issue an Addendum under OAR 137-047-0430 reflecting its disposition or cancel the Procurement or solicitation under OAR 137-047-0660. The District shall not consider an Affected Offeror's multi-tiered or multistep solicitation protest submitted after the seven Day protest period has expired.

### JUDICIAL REVIEW:

Any allowable judicial review shall be in accordance with the below section entitled "Judicial Review of Other Violations"

### Protest and Judicial Review of Contract Award

The following procedures and requirements apply to any Offeror protest of the Award of a Contract, or the Intent to Award a Contract, whichever occurs first, in accordance with Oregon Revised Statutes Chapter 279B.410 and Chapter 279B.415 and District's Rules.

### ADMINISTRATIVE REVIEW:

A. An Offeror may protest the Contract Award if:

- 1) The Offeror is adversely affected because the Offeror would be eligible to be awarded the Contract in the event that the protest were successful, and
- 2) The reason for the protest is that:
  - a) All lower bids or higher ranked proposals are non-responsive,
  - b) The District has failed to conduct the evaluation of the proposals in accordance with the criteria or processes described in the Solicitation materials,
  - c) The District has abused its discretion in rejecting the protestor's bid or proposal as nonresponsive, or
  - d) The District's evaluation of bids or proposals or the subsequent determination of award is otherwise in violation Oregon Revised Statutes Chapters 279A or 279B.

# Multnomah Education Service District

## *RFP 109-19-727 : Auditing Services*

B. A Written protest of the Contract Award shall be Delivered to the Bid Coordinator within seven days after issuance of the Notice of Intent to Award the Contract, and shall contain the following information:

- 1) The name and contact information of the Offeror who is protesting,
- 2) The grounds of the protest in accordance with the above sub-section A.

C. The District shall consider a protest of the Contract Award if it is filed with the District in a timely manner and in the proper format. The District will issue a Written response on such protest no less than three business days prior to the Award of the Contract. After the District issues the Written response, the Offeror may seek judicial review in the manner provided below.

### JUDICIAL REVIEW:

A. An Offeror who has exhausted the Administrative Review process may seek judicial review of the Contract Award decision of the District.

B. Such complainant shall file a complaint with the court before the execution of the Contract that is the subject of the protest.

C. In the complaint, the complainant shall state the nature of the complainant's interest, the facts showing how the complainant is adversely affected or aggrieved by the District's decision, and the basis upon which the decision should be reversed or remanded. The complainant shall join as parties all Offerors that would be in line for an award of the contract ahead of the complainant. If injunctive relief is sought, the court may require the person seeking a stay to post a bond in an amount sufficient to protect the District and the public from costs associated with delay in execution of the contract.

### Judicial Review of Other Violations

(1) Any violation of ORS chapter 279A by the District for which no judicial remedy is otherwise provided by ORS chapter 279A, 279B or 279C is subject to judicial review only as provided in this section.

(2) Any violation of ORS chapter 279B, except ORS 279B.270, 279B.275, 279B.280 and 279B.400 to 279B.425, by the District for which no judicial remedy is otherwise provided by this chapter or ORS chapter 279A is subject to judicial review only as provided in this section.

(3) Judicial review is available under this section only if:

(a) A public contract is about to be awarded or has been awarded;

(b) An alleged violation of ORS chapter 279B or ORS chapter 279A, except ORS 279B.270, 279B.275, 279B.280 and 279B.400 to 279B.425, occurred in the procurement process for the public contract and that violation resulted in or will result in the unlawful award of a contract or the unlawful failure to award the contract;

# Multnomah Education Service District

## *RFP 109-19-727 : Auditing Services*

- (c) The alleged violation deprived the person seeking judicial review of the award of the contract or deprived the person of the opportunity to compete for the award of the contract;
  - (d) The person seeking judicial review would have been qualified to receive the award of the contract under ORS 279B.110;
  - (e) The person seeking judicial review gave written notice describing the alleged violation to the District no later than 10 days after the date on which the alleged violation occurred and in no event more than 10 days after the date of execution of the contract;
  - (f) The person seeking judicial review has exhausted all administrative remedies provided by the District; and
  - (g) (A) In the case of an alleged violation of ORS chapter 279A, the alleged violation is one for which no judicial review is provided by any other section of ORS chapter 279A, 279B or 279C; or  
(B) In the case of an alleged violation of ORS chapter 279B, except ORS 279B.270, 279B.275, 279B.280 and 279B.400 to 279B.425, the alleged violation is one for which no judicial review is provided by any other section of this chapter or ORS chapter 279A.
- (4) An alleged violation committed by the District is reviewable through a writ of review under ORS chapter 34 by the Multnomah County Circuit Court.

### Award

After expiration of the seven-day Intent-To-Award process period, and resolution of all protests, District will proceed with final award.

### **Addenda to Bid Documents**

Changes to bid documents by the District shall be accomplished by addenda. The bidder shall acknowledge receipt of all addenda issued, either with the bid, or separately, in writing, prior to the time and date set for bid closing. Addenda shall be sent within a reasonable time to allow prospective bidders to consider them in preparing their bids.

**ORAL INSTRUCTIONS OR INFORMATION CONCERNING THE INVITATION FOR BIDS OR THE PROJECT GIVEN OUT BY OFFICERS, EMPLOYEES OR AGENTS OF THE DISTRICT TO PROSPECTIVE BIDDERS SHALL NOT BIND THE DISTRICT AND SHALL NOT BE RELIED UPON.**

### **Cost of Bid Preparation**

The Invitation for Bids does not commit the District to pay any costs incurred by any bidder in the submission of a bid or in making necessary studies or designs for the preparation thereof, or for procuring or contracting for the item(s) to be furnished under the Invitation for Bids.

### **Right to Reject Bids**

The District may reject any bid not in compliance with all prescribed public bidding procedures and requirements, including its own rules, specifications and conditions, and may reject for good cause any or all bids upon a finding of the District it is in the public interest to do so.

# **Multnomah Education Service District**

## ***RFP 109-19-727 : Auditing Services***

### **Right to Waive Irregularities**

The District reserves the right to waive any irregularity not affecting substantial rights.

### **Immaterial Variances**

The District reserves the right to determine if any offered services complies substantially in quality and performance with the specifications, is acceptable to the District, and if any variance listed in the bid is material or immaterial.

### **Contract**

All specifications, terms and conditions contained in the Invitation for Bids shall be incorporated by reference and made a part of a contract awarded to the successful bidder.

### **Law of the State of Oregon**

Any contract between the District and a bidder shall be entered into within the State of Oregon, and the laws of said state, whether substantive or procedural, shall apply to the contract. In addition, the contract shall be subject to the policies and rules adopted by the Board of the District.

### **Failure to Execute Contract**

Failure on the part of the bidder to whom the contract is awarded to execute the contract and to deliver the contract and any required performance bond shall be just cause for cancellation of the award, withdrawal of the contract and forfeiture of any required bid surety. The forfeited bid surety shall become the property of the District, not as penalty, but in liquidation of damages sustained. Award may then be made to the next lowest responsive and responsible bidder, or otherwise, as the District in its discretion may decide.

### **Notice of Assignment**

There can be no assignment or transfer of any interest in any contract between the District and a bidder without the prior written approval of the District.

### **Subcontracting**

The successful bidder shall neither subcontract with others for any of the work required in the contract awarded, nor assign any of the bidder's rights acquired resulting from such contract without obtaining prior written consent of the District. The District by the award of a contract incurs no liability to third persons for payment of any compensation provided in the contract to the bidder. Any attempted assignment of the rights under the contract without the written consent of the District shall be void. Nothing contained herein shall be construed to entitle any other party to be a third party beneficiary of the contract.

# Multnomah Education Service District

## *RFP 109-19-727 : Auditing Services*

### **Payments by Successful Bidder**

The successful bidder shall:

1. Make payment promptly, as due, to all persons supplying to such bidder labor and material for the prosecution of the work provided for in the contract with the District.

If the bidder fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the bidder or a subcontractor by any person in connection with the contract as such claim becomes due, the District may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due, or to become due, the bidder by reason of such contract. The payment of a claim in the manner described shall not relieve the bidder or the bidder's surety from obligation with respect to any unpaid claims.

2. Pay all contributions or amounts due the Industrial Accident Fund from such bidder incurred in the performance of the contract.

3. Not permit any lien or claim to be filed or prosecution against the District on account of any labor or material furnished.

4. Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

5. Promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such bidder, of all sums which the bidder agrees to pay for such services and all monies and sums which the bidder collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

### **Invoices**

Invoices shall be submitted in duplicate (one copy to be marked "original") and shall contain the following information: Purchase order number (if any), item numbers, description of supplies or service by item, quantities, unit prices and extended totals. Invoices shall also state the unit or department to which the merchandise was shipped. Bill to: Multnomah Education Service District, 11611 NE Ainsworth Circle (PO Box 301039, 97230-9039), Portland, Oregon 97220-9017

### **Discrimination**

The bidder agrees not to discriminate against any client, employee or applicant for employment or for services because of race, religion, color, national origin, mental or physical disability, sex, age and marital status with regard to, but not limited to the following: Employment upgrading, demotion or transfer, recruitment or recruitment advertising, layoffs or termination, rates of pay or other forms of compensation, selection for training, and rendition of services.

# Multnomah Education Service District

## *RFP 109-19-727 : Auditing Services*

### **Hours of Labor**

No person shall be employed for more than eight hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases the laborer shall be paid at least time and a half pay for all overtime in excess of eight hours a day and for work performed on Saturday and on any legal holiday specified in ORS 279.334.

### **Hold Harmless**

The successful bidder shall indemnify, hold harmless, and defend the District from any and all liabilities, settlements, losses, penalties, costs, expenses, attorney fees (including attorney fees on appeal) in connection with any action, suit or claim based upon or allegedly based upon, resulting from or allegedly resulting from the successful bidder's negligence, omissions, activities or services provided pursuant to a contract awarded to such bidder.

### **Contract Cancellation**

The District may cancel the contract without cause upon 30 days written notice.

### **Failure to Perform**

In the event that the successful bidder fails to perform under a contract awarded, the successful bidder shall be liable for all costs and damages incurred by the District in procuring and obtaining any similar equipment, article, material or service from other providers, and the contract awarded to the successful bidder shall be in full force to the extent not terminated. The District reserves the right to terminate a contract awarded due to the successful bidder's failure to perform. Termination by the District shall not affect any right, obligation or liability of the successful bidder which accrued before such termination. In addition to the right to terminate due to the successful bidder's failure to perform, the District reserves all its rights and remedies at law and in equity available due to the failure to perform.

### **Severability**

The parties agree that if any term or provision of a resultant contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

### **Waiver**

The failure of the District to enforce any provision of a resultant contract shall not constitute a waiver by the District of that or any other provision.

### **Force Majeure**

The successful bidder shall not be held responsible for delay or default caused by fire, riot, acts of God and war which was beyond the successful bidder's reasonable control.

# Multnomah Education Service District

## *RFP 109-19-727 : Auditing Services*

### Breach of Contract

In the event that the successful bidder breaches a term or condition of a contract awarded, the District may terminate the contract. In addition to the right to terminate due to the successful bidder's breach, and all other rights and remedies contained in other provisions, the District reserves all its rights and remedies at law and in equity available due to the breach, including but not limited to the recovery from the successful bidder of any damages, costs, expenses and attorney fees (including attorney fees on appeal) arising out, or as a result, of the breach.

In the event that the District breaches a term or condition of a contract awarded, the successful bidder's remedy shall be limited to termination of the contract and receipt of payment by the District for any equipment, article, material or service provided by the successful bidder pursuant to the contract prior to the termination date.

### Insurance

At all times while providing services under this Agreement, Provider shall maintain in force at Provider's expense insurance coverage at least equal to the value of this Agreement and the following insurance coverage(s):

- a. **Workers' Compensation.** As required by ORS 656.017, subject employers shall provide Workers' Compensation coverage in accordance with ORS Chapter 656 for all subject workers (unless exempt under ORS 656.027 or 656.126). and shall submit a certificate of insurance to MESD showing proof of coverage. If Provider claims to be exempt, Provider shall complete and provide a Workers' Compensation Exemption Certificate on a form provided by MESD in lieu of providing the above certificate of insurance.
- b. **Professional Liability/Errors & Omission ("E&O").** If Provider is performing services that require a state license, then Provider shall maintain professional liability/E&O insurance coverage of at least \$2,000,000 for each claim, incident, or occurrence, and at least \$3,000,000 annual aggregate coverage. This policy shall provide extended reporting period coverage for claims made within two years after this Agreement is completed or otherwise terminated according to its terms. If Provider is performing services that do not require a state license, then Provider does not have to main professional liability/E&O insurance.
- c. **General Liability.** Provider shall maintain general liability insurance coverage on an occurrence basis with a combined single limit of not less than \$2,000,000 for bodily/personal injury and property damage, with an annual aggregate limit of \$3,000,000. This insurance must include contractual liability coverage.
- d. **Certificate of Insurance.** Upon MESD's request, Provider shall furnish to MESD a current certificate of insurance for each of the above coverages within 48 hours of such request. Agreement will not be binding and the Provider will not commence work until MESD receives certificate(s) of insurance (mailed from Provider's insurance carrier(s) directly to MESD) demonstrating that Provider meets all the insurance requirements of this

## **Multnomah Education Service District**

### ***RFP 109-19-727 : Auditing Services***

Agreement. Each certificate shall provide that there shall be no cancellation, termination, material change, or reduction of limits of the insurance coverage without 30 days deductible or retention level. For general liability coverage, the certificate shall also provide that MESD, its agents, officers, and employees are additional insureds with respect to Provider's services provided under this Agreement.

#### **Work Performed on MESD Property**

As required by schools and other MESD locations, each day Provider or Provider's employees, agents or officers are present on MESD property, Provider and Provider's employees, agents and officers must sign in at the location's main office to receive an in-school identification/visitor's badge. Provider and Provider's employees, agents and officers must display this badge on their person at all times while at any school or other MESD location(s).

**Multnomah Education Service District**

*RFP 109-19-727 : Auditing Services*

**Signature Form**

**Instructions: Include a signed copy or facsimile of this form with your sealed proposal.**

<b>Circle one:</b> Individual Company   Partnership   Corporation
<b><i>Name of Proposer's Company/Partnership/Corporation:</i></b>
<b><i>Proposer's Mailing Address:</i></b>
<b><i>Proposer's Telephone &amp; Website:</i></b>
<b><i>List Names of Principal Partners (if Partnership):</i></b>
<b><i>State of Incorporation (if Corporation):</i></b>
<b><i>Proposer's State &amp; Federal Tax ID Numbers (TIN):</i></b>
<b><i>Contact at Company regarding questions about this proposal (Name, Phone, &amp; Email):</i></b>
<b><i>Signature of Individual, authorized Partner or authorized Agent for this Proposal:</i></b>
<b><i>Date of Signature:</i></b>