



MANSFIELD INDEPENDENT SCHOOL DISTRICT
PURCHASING DEPARTMENT
1920 N. Main Street
Mansfield, Texas 76063
(817) 473-5604

August 13, 2003

REQUEST FOR PROPOSAL

The Mansfield Independent School District is now accepting bid proposals for the following:

ELECTRIC SERVICE PROVIDER

BID #04-012

Sealed proposals will be received by the Mansfield Independent School District in the Office of the Purchasing Agent, MISD Operations Complex, 1920 N. Main St., Mansfield, Texas 76063, in accordance with the specifications available. **Proposals will be received until 2:00 p.m., September 9, 2003.**

Instructions to Proposers

Read Carefully

Instructions: These instructions apply to all proposals and become a part of the terms and conditions unless offeror takes exception in writing when submitting.

The School District or MISD shall mean Mansfield Independent School District.

Late Proposals: Proposals must be in the Purchasing Office prior to the closing date and time. NO LATE PROPOSALS WILL BE ACCEPTED for any reason. It is the sole responsibility of the bidder to ensure timely delivery of the bid. MISD will not be responsible for failure of service on the part of the U.S. Postal Office, courier companies, or any other form of delivery chosen by the bidder.

Facsimile: The School District WILL NOT accept fax proposals.

Acceptance: The right is reserved to accept or reject any or all of the proposals, waive minor technicalities, and to accept the offer most advantageous to the School District.

Authorized Signature: By signing and executing this contract, the offeror certifies and represents TO THE district the offeror has not offered, conferred or agreed to confer any pecuniary benefit or other thing of value for the receipt of special treatment, advantage, information, recipient's decision, opinion, recommendation, vote or any other exercise or discretion concerning this offer. Offers must show vendor name and address and be manually signed. Failure to do so will disqualify the offer. Person signing offer must show title or AUTHORITY TO BIND HIS FIRM IN A CONTRACT.

Cash Discounts: Normal payment terms are approximately 30 calendar days given that the goods and/or services received are in satisfactory condition. Any discounts available to the School District or early payment discounts should be noted.

Taxes: The Mansfield Independent School District is exempt from Federal Excise, State Sales and Transportation taxes. TAX MUST NOT BE INCLUDED IN BID. Tax exemption certificates will be executed by the Purchasing Director upon request.

Proprietary Information: All material submitted to the School District becomes public property and is subject to the Texas Open Records Act upon receipt. If an offeror does not desire proprietary information in the offer to be disclosed, each page must be identified and marked proprietary at time of submittal. The School District will, to the extent allowed by law, endeavor to protect such information from disclosure. The final decisions as to what information must be disclosed, however, lies with the Texas Attorney General. Failure to identify proprietary information will result in all unmarked sections being deemed non-proprietary and available upon public request.

Addendum: Receipt of an Addendum must be acknowledged by signing and returning the Addendum with the offer if requested or under separate cover prior to the due date. The Addendums containing pricing should be returned in a sealed envelope marked on the outside with the offeror's name, address, RFP number, and due date and time.

Evaluation: All offers are evaluated for compliance with specifications before the price is considered. Proposors may furnish pricing for all or any portion of the offer (unless otherwise specified). However, the School District may evaluate and award the contract for any item or group of items shown on the proposal, or any combination deemed most advantageous to the MISD. Offers that specify “all or none” award may be considered if a single award is advantageous.

Reservations: The School District expressly reserves the right to:

1. Specify approximate quantities;
2. Extend the opening date and time;
3. Consider and accept alternate proposals, if specified in the documents, when most advantageous to the School District;
4. Waive as an informality, minor deviations from specifications provided they do not affect competition or result in functionally unacceptable goods or services;
5. Waive any minor informality in any proposal or procedure (a minor informality that is one that does not affect the competitiveness);
6. Add additional terms or modify existing terms;
7. Reject or cancel any or all proposals;
8. Reissue a proposal; and/or
9. Procure by other means.

TABLE OF CONTENTS

1.0	Purpose and Background	Page 5
1.1	Purpose	
1.2	Background Information	
2.0	General Information	Page 6
2.1	Point of Contact	
2.2	Right to Amend or Withdraw	
2.3	Right to Reject Responses or Portions of Responses	
2.4	Ownership of Responses	
2.5	Pre-agreement Costs	
2.6	Submission Requirements	
2.7	Open Records	
3.0	Vendor Selection	Page 7
3.1	Evaluation of Responses and Negotiation	
3.2	Notice of Award	
4.0	Contract Term	Page 8
5.0	Invoicing	Page 9
5.1	Electronic Version of Previous Months Usages	
5.2	Report of Current Monthly Usage	
6.0	Information to be Provided by Mansfield ISD	Page 9
7.0	Information to be Provided by Retail Electric Provider	Page 10
8.0	Required Contract Terms	Page 11
9.0	Pricing	Page 12
10.0	Additions/Delections of Service Points	Page 13
FORMS		Page 14
Appendix A ESID Listing		Page 22
Appendix A1 New Service Addresses & Similar Monthly		Page 24

MANSFIELD INDEPENDENT SCHOOL DISTRICT ELECTRIC SERVICE PROVIDER

RFO# 04-012

1.0 Purpose and Background Information

1.1 Purpose

Mansfield ISD is seeking proposals for the supply of retail electric power from qualified Retail Electric Providers [REP's] for all accounts set forth in Appendix A and additional sites listed in Appendix A1. The sites listed in appendix A1 are currently under construction and are expected to be in service during the 04-05 school year. Elementary number 15 is expected in the 05-06 school year.

It is the goal of Mansfield ISD to achieve financial benefits by competitively purchasing power and creating economies of scale and more favorable kWh prices due to predictability of load patterns, energy conservation, demand reduction and the reduction of time required by Mansfield ISD to successfully procure power.

In conjunction with price reduction Mansfield ISD seeks to retain a high level of customer service and minimize the complexity of managing its electric service and distribution.

As a result of this RFP, Mansfield ISD expects to receive, evaluate responses, select a vendor, and enter into a contract with the successful vendor. Mansfield ISD makes no express or implied warranties whatsoever that any particular quantity or dollar amount of services will be procured through any contract resulting from this RFP.

1.2 Background Information

The Mansfield ISD is an educational institutaion that provides quality learning for kindergarten through 12th grade in Tarrant County. The Mansfield ISD includes 12 elementary schools grades Pre-K through 4th, 3 intermediate schools grades 5th and 6th, 3 middle schools grades 7th and 8th, 2 high schools grades 9th through 12th, and 1 alternative education complex for all grades. The District also has additional facilities, including administration, warehouse, purchasing, facilities/maintenance, child nutrition, police, special services, technology, transportation, and agricultural center.

The Mansfield ISD is a rapidly growing District. In 2003-2004 the District plans to open 2 new elementary school locations and in 2004-2205 plans to open 1 high school, 1 middle school, 1 intermediate school, 2 elementary schools, and 1 career tech center for high school students.

2.0 General Information

2.1 Point of Contact

The following individual shall provide clarification of the specifications for this RFP:

Shelley Freeman
Purchasing Agent
Purchasing Department
1920 N. Main Street
Mansfield, TX 76063
817-473-5367
freesh@mansfieldisd.org

All questions regarding this RFP shall be submitted via e-mail to Shelley Freeman at above address. The e-mail shall be clearly labeled with the appropriate title, "RFP #04-012. Questions must be received no later than September 3, 2003. All written inquiries will be answered at the sole discretion of Mansfield ISD. All questions should, to the degree possible, cite the specific RFP section and paragraph number(s) to which the question refers.

2.2 Right to Amend or Withdraw

Mansfield ISD reserves the right to alter, amend or modify any provision of this RFP, or to withdraw this RFP at any time prior to the award of a contract if to do so is in the best interest of the District.

2.3 Right to Reject Responses or Portions of Responses

Mansfield ISD has sole discretionary authority and reserves the right to reject any and all responses, or portions of responses, received as a result of this RFP.

2.4 Ownership of Responses

All responses become the property of Mansfield ISD. Responses may be reviewed by any person after selected vendor or vendors and Mansfield ISD have signed contracts. Mansfield ISD reserves the right to use any and all information and materials presented in reply to this RFP. Disqualification of a vendor does not eliminate this right.

2.5 Pre-agreement Costs

Mansfield ISD is not liable for any cost incurred by any responding vendor prior to signing an agreement.

2.6 Submission Requirements

To achieve a uniform review process and obtain the maximum degree of comparability, it is required that proposals be organized in the manner specified. Each proposal shall be submitted in a binder no later than 2:00 p.m. on September 9, 2003. Vendors shall submit three (3) copies of a complete response. One copy should be labeled "ORIGINAL" and contain original signatures. The RFP shall be submitted to Shelley Freeman at the address listed below. **Vendors shall also submit one copy of the complete response on CD-ROM in Excel and MS Word format.**

Purchasing Department
1920 N. Main Street
Mansfield, TX 76063

The external packaging of the response must reference ***closing date, company name and "RFP Enclosed #04-012"***.

2.7 Open Records

Bidders are notified that all proposals submitted to the Mansfield ISD will be considered public information subject to public review and inspection in accordance with the Texas Public Information Act, Texas Government Code Chapter 552, following the date of award of contract or rejection of all proposals. Any information considered proprietary, confidential or a trade secret by the proposer must be so designated at the time of submission to the Mansfield ISD, and the proposer will be required to assume responsibility for opposing disclosure of such materials as provided by section 552.305. Materials not so designaed by the proposer will not be considered proprietary, confidential or trade secret.

3.0 Vendor Selection

3.1 Evaluation of Response and Negotiations

- A. All responses submitted will be evaluated by an Evaluation Committee. A weighted scoring methodology will be established prior to the evaluation process. Scoring criteria may be based but not limited to the following:
 - 1. Responsiveness and completeness of the vendor's proposal, including whether the vendor has provided all information requested in the RFP and answered all questions in section 7.0.
 - 2. Vendor's understanding of and ability to address the RFP requirements.
 - 3. Experience

- a. Experience of the vendor in supporting organizations similar in size and requirements to Mansfield ISD.
4. Size, financial stability and resources of the vendor.
 - a. Pricing/Cost
 - b. Mansfield ISD will review all responses submitted and select one or more vendors for further negotiations based on "best value" in accordance with Section 2157.003, Texas Government Code. As part of the evaluation process, Mansfield ISD may invite one or more vendors to make an oral presentation to demonstrate how the software meets the requirements, or provide written clarification of their response.
 - c. Vendors are advised that, in the event of receipt of an adequate number of proposals, which in the opinion of Mansfield ISD require no clarification and/or supplementary information, such proposals may be evaluated without further discussion. Thus, the initial proposal from each vendor should represent the vendor's most complete and favorable terms from a technical standpoint. Should the proposals submitted require clarification and/or supplementary information, vendors should be prepared to submit such additional information in a timely manner, when requested to do so.
 - d. Negotiations shall be conducted with the selected vendor or vendors until such time as Mansfield ISD determines that the best value for the District has been obtained.
 - e. Mansfield ISD reserves the right to request the business entity's financial report for the most recently completed fiscal year.

3.2 Notice of Award

The award of this RFP shall be sent out upon execution of a contract with the vendor. All responses and working papers pursuant to this RFP are considered confidential information until all contracts have been executed.

4.0 Contract Term

The term of this agreement shall be for a one year starting on June 1st 2004 and ending on May 31st 2005. The Energy Service Company shall notify Mansfield ISD at least 90 days prior to end of term to discuss renewal. Mansfield ISD shall have the option of two one-year renewals. In the event that the contract term is not addressed by parties at the end of the renewal periods then the contract will continue on a month to month basis using the previous months TVA average index as reported by the power marketers association. However when a Texas average

index is developed that price will be used in lieu of the TVA average index price. Termination following the primary term or any renewal term shall require not less than 60 days notice. The Energy Service Company may submit an alternate term and pricing **in addition** to the one year base Term.

5.0 Invoicing

The Energy Service Provider shall submit one monthly summary invoice for all accounts serviced by the energy service provider. This will include Contract, Price to Beat or Standard List Offer accounts. A detailed, per account invoice, for supplies and services rendered the previous month will be included. The invoice shall be consistent with monthly Local Distribution Company's electric utility bills as to the amount of kWh and kW supplied to the facilities. The Energy Service Provider will include:

5.1 Electronic Version of Previous Months Usage

Electronic version of previous months usage and charges in a format that is compatible with and importable to the districts energy accounting software. Currently the district is utilizing Zpower energy accounting software. The Energy Service Provider may supply at no cost to Mansfield ISD an alternative energy accounting package if Mansfield ISD determines that it provides equal or better functionality and ease of use. **In no case will an invoice be deemed as delivered until the electronic data has been transmitted to the district.**

5.2 Report of Current Months Usage

A report that provides the current monthly peak, off-peak kWh, kw and load factor usage and total and average kwh costs of each of Mansfield ISD's facilities in comparison to the same period of the previous year.

6.0 Information to be Provided by Mansfield ISD

To facilitate the bidding process, Mansfield ISD will provide the following information:

6.1 Current contract ESID numbers. (Appendix A)

6.2 Addresses and comparable load ESID numbers. (Appendix A1)

6.3 Upon written request Mansfield ISD will execute a release for energy consumption records sufficient to permit bidders to retrieve additional energy consumption records from the school district's current electric utility provider.

6.4 In the event sufficient interest by bidders is expressed, Mansfield ISD will permit a joint inspection of school district facilities by bidders.

6.5 Mansfield ISD will consider requests for additional information to be provided in writing. In the event a response is made to such requests, the response will be made available to all proposers registered with the school district.

7.0 Information to be Provided by Retail Electric Provider (REP)

The REP will provide a copy of their most recent annual report with the proposal, and address each item listed below in its proposal:

- 7.1 Describe the generation resources available to your firm. Indicate the percentage of those resources that are under contract as of the date of the proposal.
- 7.2 How long has your firm been doing business under its current name? If your firm was established as a requirement of electric power deregulation statutes, how long has your predecessor firm(s) been doing business?
- 7.3 Provide the name and contact information for all school districts or other public entities that you currently serve.
- 7.4 Explain the system used to maintain up-to date tariff data and the frequency of reviewing procurement options for your current customers.
- 7.5 Describe how you will obtain TDSP and other regulated charges in order to submit complete billing in a timely manner.
- 7.6 List innovative ways your firm has/will assist clients with exceptional power purchasing opportunities.
- 7.7 Describe your firm's capability to monitor hourly, daily and/or weekly electric usage at client sites. Describe the meters and telemetry used and the cost to Mansfield ISD, if any.
- 7.8 Mansfield ISD may require the assistance of the selected Energy Service Company to negotiate rates, terms and conditions regarding the LDC various services. Please describe how your firm has partnered with a client to negotiate more favorable rates with their Local Distribution Company.
- 7.9 Describe how your firm would assist Mansfield ISD in Local Distribution Company negotiations if the Local Distribution Company were a client or affiliate of your firm, or has any degree of common ownership with your firm.
- 7.10 Describe how your company would assist Mansfield ISD to coordinate and expedite changes or additions in service such as would occur when moving or adding portable classrooms, security lighting, new construction, or other service changes or additions.
- 7.11 What are the requirements for advance notice in establishing or removing existing accounts and associated appurtenances.
- 7.12 Describe how your firm will assist Mansfield ISD with the identification of energy cost or usage reduction opportunities.

- 7.13 Describe your customer care program. Specifically address:
- a. 24-hour availability.
 - b. Access to technical support, especially power quality services.
 - c. Assigned account representative, their qualifications and credentials.
 - d. Availability of accurate historical energy data online.
 - e. Location of customer service offices.
- 7.14 Describe your company's quality control program and its impact on customers.
- 7.15 Describe how you will identify and correct service problems?
- 7.16 Describe how Mansfield ISD will be able to prompt improvements in services or offerings?
- 7.17 Describe the billing system that will be used to invoice Mansfield ISD and provide a sample copy of a bill for each system used in both a paper and electronic format.
- 7.18 Describe any other opportunities that you would provide Mansfield ISD.
- 7.19 Additional information not requested above but which the bidder believes may be of assistance to the Mansfield ISD in comparing proposals may be included as a separate appendix.

8.0 Required Contract Terms

The REP shall provide in its proposal a generic power-purchasing contract. The following language **will be included** in the final power purchasing agreement. **If exceptions are made, these exceptions must be included in your response.**

8.1 The Energy Service Provider shall insure electric power to the required delivery points of the Local Distribution Company. During the course of the agreement, school facilities may be modified, added or deleted by modification to the contract by Mansfield ISD at the agreed contract rate.

8.2 Nominations and Penalties:

The Energy Service Provider shall nominate on behalf of Mansfield ISD the required hourly, daily, weekly and/or monthly electrical energy requirements for 24 hour a day 7 days per week 365 days per year service, based on its best estimate of energy usage. The Energy Service Provider shall assist Mansfield ISD with any agreements with the Local Distribution Company.

8.3 Mansfield ISD will provide the Energy Service Provider with access to its meters on at least a weekly basis or through telemetry, so that the Energy Service Provider can nominate accurate amounts of electricity.

8.4 In the event that the Energy Service Provider nominates an excessive or deficient amount of kWh and the Local Distribution Company or Generator assesses Mansfield ISD with any fees, the Energy Service Provider is solely responsible for payment of those fees. Mansfield ISD is willing to consider cost effective alternative terms.

8.5 Force Majeure:

The Energy Service Company shall arrange for all transportation and delivery contracts with all transmission and independent system operator companies and deliver or cause to be delivered to the delivery points for use by Mansfield ISD.

8.6 The destination point is the delivery point of the electric Local Distribution Company involved. Title to all kWh's delivered under the agreement shall pass from the Energy Service Provider to Mansfield ISD at the local distribution companies delivery point. The Energy Service Provider warrants that it has permanent title to the electricity for the entire term of the Agreement hereunder and the right to sell the same. Title shall be free and clear of all liens, encumbrances and claims whatsoever for the term of the agreement.

8.7 Indemnification:

The Energy Service Company shall indemnify Mansfield ISD and hold harmless from all suits, actions, debts, accounts, damage, costs, losses and expenses arising from or out of adverse claims of any and all persons to said kWh or to royalties, taxes, license fees or charges thereon which are applicable prior to the delivery of such kWh to Mansfield ISD. Such obligation to indemnify shall apply without regard to the alleged negligence of the Mansfield ISD.

9.0 Pricing

9.1 Alternate Price:

The Energy Service Company may submit, **in addition** to the proposal price an alternate pricing structure based on any other pricing structure that benefits Mansfield ISD.

9.2 Proposal Price:

The proposal price shall be for 24 hour a day 7 days per week 365 days per year service and supply, and include any and all costs to the Energy Service Provider which include but are not limited to: Any and all costs associated with the delivery of power to the local distribution companies delivery point, including but not limited to all administrative costs, offeror's purchase price, transportation costs including losses, spinning reserve, operating reserve, energy imbalance services, scheduling, system control, dispatching services, regulation and frequency response service, reactive supply and voltage control from generation locations, fuel surcharges and all applicable royalties and taxes including taxes that may be imposed at the delivery point and all costs associated with the Energy Service Provider nominating the required quantities on behalf of Mansfield ISD.

Price must be submitted as follows:

Generating Cost	_____	per kWh
Transmission Cost	_____	per kWh
ESP Cost	_____	per kWh
Additional Services	_____	per kWh
Total Cost	_____	per kWh

10.0 Additions/Deletions of Service Points

Mansfield ISD adds and disposes of buildings and properties as necessary. The current electrical accounts as included in **Appendix A** and the scheduled new accounts as in **Appendix A1** are as accurate as possible, the Mansfield ISD reserves the right to add or delete points of service as necessary to or from this RFP at any point during the this contract.

FELONY CONVICTION NOTIFICATION

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

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

THIS NOTICE IS NOT REQUIRED OF A PUBLICLY HELD CORPORATION. PLEASE COMPLETE THE INFORMATION BELOW.

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

VENDOR'S NAME: _____

AUTHORIZED COMPANY OFFICIAL'S NAME (PRINTED):

A. My firm is a publicly-held corporation, therefore, this reporting requirement is not applicable.

Signature of Company Official: _____

B. My firm is not owned nor operated by anyone who has been convicted of a felony.

Signature of Company Official: _____

C. My firm is owned or operated by the following individual(s) who has/have been convicted of a felony:

Name of felon(s): _____

Details of Conviction(s): _____

—

Signature of Company Official: _____

Non-Resident Vendor Form
Mansfield Independent School District

Please answer the following questions and return with this bid:

Texas law prohibits cities and governmental units from awarding contracts to a non-resident unless the amount of such proposal is lower than the lowest proposal by a Texas resident by the amount the Texas resident would be required to underbid in the non-resident bidder's state.

For information regarding this series of questions, see Article 601g of the Texas Civil Statutes.

Is your principal place of business in Texas? Yes No (Circle One)

If no, in which state is your principal place of business? _____

If your principal place of business is not Texas, does your state favor resident bidders in your state by some dollar increment or percentage?

Yes No (Circle One)

If yes, what is that dollar increment or percentage? _____

AUTHORIZED SIGNATURE

NAME OF COMPANY

TELEPHONE NUMBER

ADDRESS

DATE

CITY STATE

**Mansfield Independent School District
Cover Sheet
RFP #04-012**

I {We} are bidding in accordance with the general conditions and established specifications.

COMPANY: _____

ADDRESS: _____

TELEPHONE: _____ FAX NUMBER: _____

NUMBER OF CALENDAR DAYS REQUIRED TO PLACE MATERIALS IN THE SCHOOL DISTRICT'S RECEIVING POINTS AFTER RECEIPT OF ORDER UNDER NORMAL CONDITIONS: _____

FEDERAL TAX ID # _____

E-MAIL ADDRESS _____

ADDITIONAL INFORMATION _____

AUTHORIZED SIGNATURE: _____
Typed

AUTHORIZED SIGNATURE: _____
Signed

DATE: _____

If unable to respond to this bid and you wish to continue to receive invitations to bid, please return this sheet to the following address:

Mansfield Independent School District
Purchasing Department
1920 N. Main Street
Mansfield, Texas 76063

**MANSFIELD INDEPENDENT SCHOOL DISTRICT
STANDARD TERMS AND CONDITIONS**

1. **INDEPENDENT CONTRACTOR** - Contractor shall operate hereunder as an independent contractor and not as an officer, agent, servant or employee of Mansfield ISD. Contractor shall have exclusive control of, and the exclusive right to control, the details of its operations hereunder, and all persons performing same, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants.
2. **ASSIGNMENT** - The Contractor shall not sell, assign, transfer or convey any interest in this contract in whole or in part without the prior written consent of the Mansfield ISD. No assignment, transfer or conveyance under this contract will be effective without the prior written consent of the school district.
3. **CONFLICT OF INTEREST** – The Contractor covenants and agrees that Contractor and its officers, employees, and agents will have no interest, including personal financial interest, and will acquire no interest, either directly or indirectly, which will conflict in any manner with the performance of the services called for under this Contract. No officer or employee of the school district shall have a financial interest, direct or indirect, in any contract with the MISD, or be financially interested, directly or indirectly, in the sale to the school district of any land, materials, supplies or services, except on behalf of the MISD or in compliance with the provisions of the Mansfield ISD Policies and Procedures Manual. Any violation of this provision shall render this contract voidable at the discretion of the school district.
4. **SERVERABILITY** - In case any one or more of the provisions contained in this contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this contract, and this contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
5. **MODIFICATIONS** - This contract can be modified only by written agreement of the parties.
6. **REMEDIES** - No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this contract may be waived without consent of the parties. Forbearance or indulgence by any party shall not constitute a waiver of any covenant or condition to be performed pursuant to this contract.
7. **FUNDING** – Contractor recognizes that the continuation of any contract after the close of any given fiscal year of the school district, which fiscal year ends on August 31 of each year, shall be subject to School Board budget approval. Should funding not be approved by the School Board for any given budget year during the contract term, the contract will terminate and become null and void.

8. **CONTRACTOR TO PACKAGE GOODS** - Contractor will package goods in accordance with good commercial practice. Each shipping container, shall be clearly and permanently marked as follows: (a) Contractor's name and address; (b) Consignee's name, address and purchase order or purchase change order number; (c) Container number and total number of container, e.g., box 1 of 4 boxes; and (d) Number of the container bearing the packing slip. Contractor shall bear cost of packaging unless otherwise provided. Goods shall be suitably packed to secure lowest transportation costs and to conform to requirements of common carriers and any applicable specifications. District's count or weight shall be final and conclusive on shipments not accompanied by packing list.
9. **PLACE OF DELIVERY** - The place of delivery shall be set forth in the block of the purchase order or purchase change order entitled "Ship to."
10. **TITLE AND RISK OF LOSS** - The title and risk of loss of goods shall not pass to the Mansfield ISD until the school district actually receives and takes possession of the goods at the point(s) of delivery, after inspection and acceptance of goods.
11. **FORCE MAJEURE** - Contractor shall not be liable for delay in delivery or performance when such delay is due to factors beyond its control, including but not limited to, explosions, governmental regulations, court orders or decrees, or acts of nature such as flood, wind, earthquake, tornado or hurricane. If the Contractor is unable to perform any of its obligations as a result of force majeure, Contractor shall immediately give written notice to the Purchasing Department of the date of inception of the force majeure condition and the extent to which it will affect performance.
12. **RIGHT OF INSPECTION** - MISD shall have the right to inspect the goods upon deliver before accepting them. Contractor shall be responsible for all charges for the return to Contractor of any goods rejected as being nonconforming under the specifications.
13. **RIGHT TO AUDIT** - Contractor agrees that the MISD shall, until the expiration of three (3) years after final payment under this Contract, have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor involving transactions relating to this Contract. Contractor agrees that the school district shall have access, during normal working hours, to all necessary Contractor facilities, and shall be provided adequate and appropriate workspace, in order to conduct audits in compliance with the provisions of this section. The MISD shall give Contractor reasonable advance notice of intended audits.
14. **PRODUCT GUARANTEE** - Bidder guarantees equipment or product offered will meet or exceed specifications identified in this bid invitation. The bidder shall, upon request, replace any equipment or product proved to be defective and make any and all adjustments necessary without any expense to the District. If at any time, the equipment or product cannot satisfactorily meet the requirements of the specifications, the bidder shall, upon written request from the District, promptly remove such equipment or product without any further expense to the District.
15. **PATENT RIGHTS:** The vendor agrees to protect the School District from any claim involving patent right infringement or copyrights on goods supplied.

16. **PRICE WARRANTY** - The price to be paid by the MISD shall be that contained in Contractor's bid, which Contractor warrants to be no higher than Contractor's current prices on orders by others for products of the kind and specification covered by this contract for similar quantities under like conditions and methods of purchase. In the event Contractor breaches this warranty, the prices of the items shall be reduced to Contractor's current prices on orders by others, or in the alternative upon school district's option, MISD shall have the right to cancel this contract without liability to Contractor for breach or for Contractor's actual expense.
17. **NEW MATERIALS** - Except as to any supplies or components which the specifications provide need not be new, all supplies and components to be provided under this contract shall be new (not used or reconditioned, and not of such age or so deteriorated as to impair their usefulness or safety), of current production, and of the most suitable grade for the purpose intended.
18. **SILENCE OF SPECIFICATION** - The apparent silence of these specifications as to any detail or to the apparent omission from it of a detailed description concerning any point shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of these specifications shall be made on the basis of this statement.
19. **INDEMNIFICATION** –Contractor does hereby agree to waive all claims, release, indemnify and both hold harmless the school district, its officials, agents and employees, in both their public and private capacities, from and against any and all liability, claims, losses, damages, suits, demands or causes of action, including all expenses of litigation and/or settlement, court costs and attorney fees, which may arise by reason of death or injury to persons or loss of, damage to, or loss of use of any property occasioned by any error, omission, or negligent act of the Contractor, its officers, agents, employees, subcontractors, invitees, or other persons for whom the Contractor is legally liable, arising out of or in connection with the performance of this contract, and Contractor will at its own cost and expense defend and protect the school district against any and all such claims and demands.
20. **NON-DISCRIMINATION** - Contractor shall not discriminate against any employee or applicant for employment of Contractor or of the school district because of race, age, color, religion, sex, national origin, ancestry, disability, or place of birth. Contractor shall take action to ensure that all persons are employed and/or treated without regard to their race, age, color, religion, sex, national origin, ancestry, disability, or place of birth. This action shall include, but not be limited to the following: employment, promotion, demotion, transfer, working conditions, recruitment, layoff, termination, rates of pay or other forms of compensation, and training opportunities.

21. **DISABILITY** - In accordance with the provisions of the Americans With Disabilities Act of 1990 (ADA), Contractor warrants that it and any and all of its subcontractors will not unlawfully discriminate on the basis of disability in the provision of services to general public, nor in the availability, terms and/or conditions of employment for applicants for employment with, or employees of Contractor or any of its subcontractors. **Contractor warrants it will fully comply with ADA's provisions and any other applicable federal, state and local laws concerning disability and will defend, indemnify and hold the school district harmless against any claims or allegations asserted by third parties or subcontractors against school district arising out of Contractor's and/or its subcontractor's alleged failure to comply with the above-referenced laws concerning disability discrimination in the performance of this contract.**
22. **DRUG POLICY** - All MISD property and facilities are a "drug free zone." No one may use, consume, carry, transport, or exchange tobacco, cigarettes, or illegal drugs while in a school district building or while on school district property. The responding company and its employees shall adhere to this policy.
23. **TERMINATION FOR DEFAULT** - MISD reserves the right to terminate the contract without prior notice in the event the Contractor defaults or breaches any of the terms and conditions of this contract, or otherwise fails to perform in accordance with the bid specifications. In the event of termination the school district reserves the right to complete the work or services in any manner it deems desirable, including engaging the services of other parties therefore and/or awarding the bid to the next lowest responsible bidder. Any such act by the school district shall not be deemed a waiver of any other right or remedy. If after exercising any such remedy, the cost to school district of the performance of the balance of the work or services is in excess of that part of the contract sum, which has not therefore been paid to the Contractor hereunder, Contractor shall be liable for and shall reimburse the school district for such excess. Bidders shall for this purpose, keep their bids open and prices fixed for a period of 90 days following the award of this bid.
24. **TERMINATION WITHOUT CAUSE** - MISD shall have the right to terminate the contract, in whole or in part, without cause any time upon thirty (30) days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease placing orders and all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. MISD shall pay the Contractor, to the extent funds are appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
25. **NO THIRD-PARTY BENEFICIARY** – For purposes of this contract, including its intended operation and effect, the parties to this contract specifically agree and contract that: (1) the agreement only affects matters/disputes between the parties to this contract, and is in no way intended by the parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entity may be in a contractual relationship with school district or Contractor or both; and (2) the terms of this contract are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either school district or Contractor.

26. **ENTIRE AGREEMENT** – This contract embodies the complete agreement of the parties hereto superseding all oral or written previous and contemporary agreements between the parties relating to matters herein and, except as otherwise provided herein, cannot be modified without written agreement of the parties.

APPENDIX A ESID LISTING

10443720001776690
10443720001776783
10443720001776721
10443720001776814
10443720001776845
10443720001776907
10443720001776969
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APPENDIX A ESID LISTING

10443720006567771
10443720006569228
10443720006581101
10443720006609741
10443720006769422
10443720006834026
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10443720007355791
10443720007355760
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10443720007891502
10443720007972288
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10443720008849991
10443720008850022
20020003611072001
10443720007296143
10443720007611289
10443720007628432
10443720007653263

**APPENDIX A1
NEW SERVICE ADDRESSES AND SIMILAR MONTHLY LOAD ESID NUMBERS**

School Name	Project	Address	Monthly Loads Similar to ESID #
Elizabeth Smith Elementary	Elementary #13	701 S. Holland Road, Mansfield, TX 76063	1044372000683 4026
Martha Reid Elementary	Elementary #14	500 Country Club Drive, Arlington, TX 76002	1044372000683 4026
Danny Jones Middle School	Middle School #4	4500 E. Broad Street, Mansfield, TX 76063	1044372000177 7868
			1044372000695 4089 combined with
Mansfield Timberview High School	High School #3	7700 S. Watson Road, Arlington, TX 76002	1044372000714 1577
Della Icenhower Intermediate School	Intermediate School #4	8100 Webb Ferrell Rd., Arlington, TX 76002	1044372000177 7868
Elementary School #15	Elementary #15	To be determined	1044372000683 4026
Ben Barber Career Tech Academy	Career Tech Academy	1120 W. Debbie Lane, Mansfield, TX 76063	1044372000177 7868

Bid Tabulation

	Utility Choice Electric	TXUES	Tri- Eagle	GLO
\$ per KWH	Not Provided	0.0783	0.0799	0.080035
gross receipts fee	Not Provided	0.0016	0.001622	0
PUC Assesment Fee	Not Provided	0	0	0
		0.0799	0.081522	0.080035

Shelly , besides pricing I looked at the compliance with the rfp, past history, available generation assets
Size of the company etc Do you need more?

; etc.