

**REQUEST FOR COMPETITIVE SEALED PROPOSALS  
POTH INDEPENDENT SCHOOL DISTRICT  
FUEL PROVIDER**

The Poth Independent School District (“District”) is soliciting proposals from qualified vendors for transportation fuel, including supplying two above-ground fuel storage tanks, pursuant to Texas Education Code Section 44.031. Persons or entities submitting proposals are referred to herein as “Offeror(s)” and responses to this RFP are referred to herein as “Proposals.”

**PROPOSALS MUST BE RECEIVED NO LATER THAN  
2:00 P.M., May 12, 2022.**

PROPOSALS MUST BE SUBMITTED ON THE PROPOSAL FORM ATTACHED AS EXHIBIT “A”. THIS RFP CONTAINS REQUIRED TERMS AND DESCRIPTIVE INFORMATION ABOUT THE SERVICES. RESPONSES NOT MADE AS SET FORTH IN THE RFP MAY BE DEEMED NON-RESPONSIVE AND MAY NOT BE CONSIDERED.

*For questions regarding this Request for CSP, please contact Braden Lyssy, Business Manager, 510 Titcomb, Poth, Texas 78147, [blyssy@PothISD.us](mailto:blyssy@PothISD.us)*

Questions must be received no later than 2:00 p.m. May 4, 2022. Questions will be responded to no later than 12:00 p.m. May 6, 2022.

Proposals must include the information requested in Section I of this RFP in the sequence and format prescribed. In addition to and separate from the requested information, Offerors submitting Proposals may provide supplementary materials further describing their capabilities and experience. Offerors shall submit one (1) original and three (3) copies of the Proposal. The District will not acknowledge or receive Proposals that are delivered by telephone, facsimile (fax), or electronic mail (email). Any Proposal received after such time will not be considered and will be returned unopened.

Proposals shall be addressed to and received by:

**Braden Lyssy  
Business Manager  
Poth Independent School District  
510 Titcomb  
Poth, Texas 78147**

Proposal envelopes must be plainly marked on the outside with the Offeror’s name and address and the following:

**SEALED PROPOSAL - DO NOT OPEN  
POTH ISD FUEL PROVIDER  
DUE AT 2:00 P.M., May 12, 2022.**

Following the deadline for receipt, the District’s staff will receive, publicly open, and read aloud the names of the Offerors and all fees and prices stated in the Proposals at the District’s Administration Office. Within forty-five (45) days following the date of the opening, District staff will evaluate and rank each Proposal submitted in relation to the selection criteria set forth herein.

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The District may also request additional information from Offerors at any time prior to final ranking of Offerors. The District may select all, some or none of the Offerors for interviews. Interviews with Offerors, if any, will not be scored separately from the Proposal, but may result in an adjustment in score. A recommendation will be made to the Board of Trustees as to the ranking of the Proposals.

Following the Board’s ranking of the Proposals based on the published selection criteria, the District will attempt to negotiate an agreement with the Offeror that offers the best value to the District. If the District is unable to negotiate an agreement with the selected Offeror, the District will, formally and in writing, end negotiations with that Offeror and begin the negotiation process with the next ranked Offeror in the order of selection ranking until a contract is reached or negotiations with all ranked Offerors end.

The District will rank the Proposals based on the following criteria and relative weights:

WEIGHT	CRITERIA
40%	Purchase Price -- based on total proposal
15%	Offeror’s experience and reputation
15%	Quality of the Offeror’s goods or services
10%	Extent to which Offeror’s goods or services meet the District’s needs
10%	Long term cost of the District to acquire the vendor’s goods or services
10%	Whether the Offeror’s financial capability is appropriate to the size and scope of the project

All responses in your Proposal may be used to rank Offerors based on the criteria. The District reserves the right to verify the accuracy and completeness of all responses by utilizing any information available to the District without regard to whether such information appears in your Proposal. Questions regarding this RFP may be submitted to the address indicated above.

**ACCEPTANCE OF EVALUATION METHODOLOGY:** By submitting its Proposal in response to this package, the Offeror accepts the evaluation process and acknowledges and accepts that determination of the “best value” will require subjective judgments by the District, based upon the information responsive to the Evaluation Criteria and Weight/Points Value as published with this package.

**I. INSTRUCTIONS TO OFFERORS**

- 1. PROPOSAL FORM:** The Proposal Form attached as Exhibit A must be filed out and signed by the Offeror.
- 2. CLARIFICATIONS AND INTERPRETATIONS:** Any clarifications or interpretations of this RFP that materially affects or changes its requirements will be issued by the District as an addendum. It is the responsibility of all Offerors to obtain this information in a timely manner. All

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such addenda issued by the District before the Proposals are due are part of the RFP, and Offerors shall acknowledge receipt of and incorporate each addendum in its Proposal. District will consider only those clarifications and interpretations that Offerors submit five (5) days prior to the submittal deadline. Interpretations or clarifications in any other form, including oral statements, will not be binding on the District and should not be relied on in preparing Proposals.

**3. TIME:** Offeror agrees to hold the Proposal open for acceptance for ninety (90) days from the Proposal date.

**4. WITHDRAWAL OF PROPOSALS:** Offerors may request permission to withdraw a Proposal prior to the actual time for Proposal opening. Such request must be made in person or in writing at the same location designated to receive the Proposal. The District will return the Proposal documents unopened at that time.

**5. WAIVER:** By submitting a Proposal, each Offeror agrees to waive any claim it has or may have against the District, its trustees, agents and employees, and any reference sources, arising out of or in connection with the administration, evaluation, or recommendation of any Proposal; waiver of any requirements under the Proposal documents; acceptance or rejection of any Proposal; and award of the Proposal. The District shall have no contractual obligation to any Offeror, nor will any Offeror have any property interest or other right in the Proposal or contract being proposed unless and until the contract is unconditionally executed and delivered by all parties, and all conditions to be fulfilled by the Offeror have been fulfilled by the Offeror.

**6. OTHER INFORMATION:** The District believes the information included in this RFP is materially accurate, however, the District does not warrant this information to be free from errors or omissions. Offerors are encouraged to inspect the premises prior to submitting a response.

**7. POINT-OF-CONTACT:** The District designates the following person, as its representative and Point-of-Contact for this RFP. Offerors shall restrict all contact with the District and direct all questions regarding this RFP, including questions regarding terms and conditions, to the Point-of-Contact person:

Braden Lyssy  
Business Manager  
Poth Independent School District  
510 Titcomb  
Poth, Texas 78147  
Phone: (830) 484-3330 ext. 2003  
Email: [blyssy@PothISD.us](mailto:blyssy@PothISD.us)

**9. NON-CONTACT:** The Offerors, or any agent or representative of Offerors, shall not undertake any contact, activities or actions to promote or advertise their qualifications or Proposal to any member of the District's Board of Trustees, the District's Administration or their respective staff persons, except as specifically requested in writing by the District, at any time between the date of submission of the RFP and the date of award of the Contract Documents by the District's

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Board of Trustees. This restriction extends to “thank you” letters, phone calls, emails and any contact that results in the direct or indirect discussion of the RFP and/or Proposal submitted by Offerors.

**10. PUBLIC INFORMATION:** The District fully complies with the Texas Public Information Act, Texas Government Code Chapter 552. During the course of the selection process, RFP responses are exempt from disclosure to the public under the Texas Public Information Act. The submitted Proposals will, upon the award of the contract, become a public record; and therefore, subject to disclosure to any person who makes a proper request for review of the documents. Some of the information you provide in your Proposal may contain commercial or financial information which you consider privileged or confidential, or may be of a nature which you believe may cause substantial competitive harm to your business if disclosed by the District to a third-party, even after the award. You may be entitled to protect this information at the time a request is made for disclosure; however, you will need to consult your legal counsel to assure that this type of information, if included in your Proposal, is properly marked as confidential prior to submission. Wholesale marking of your entire Proposal “Confidential” or “Proprietary” will not be effective. In the event information from your Proposal is requested, the District will use its best efforts to notify the Offeror of such request, but will have no duty to assert any claim to the Attorney General regarding that the Proposal or any parts of the Proposal are not subject to disclosure under the Act.

**11. CONFLICT OF INTEREST QUESTIONNAIRE.** Chapter 176 of the Texas Local Government Code requires that persons, or their agents, who seek to contract for the sale or purchase of property, goods, or services with the District shall file a completed Conflict of Interest Questionnaire (CIQ) with District. Complete, sign and submit the CIQ as part of your response to a Request for Proposals. Exhibit “B”

**12. FELONY CONVICTION NOTIFICATION.** Complete, sign and submit the Felony Conviction Notification Form attached hereto as Exhibit “C”.

**13. NON-COLLUSION AFFIDAVIT.** Complete, sign and submit the Non-Collusion Affidavit attached hereto as Exhibit “D”.

**14. THE OFFEROR MUST SUBMIT THE FOLLOWING ITEMS:**

- Proposal Form - Exhibit A
- Conflict of Interest Questionnaire Exhibit B
- Felony Conviction Notification - Exhibit C
- Non-Collusion Affidavit - Exhibit D
- Company Information. include in this section your company name, address, telephone number, fax number, company background, year current firm was established, name of parent company (if applicable), principal owners, and type of organization (individual, partnership, corporation, joint venture, etc.)
- Certificates of Insurance. Include your General Liability, Workers’ Compensation and Automobile Insurance Policies.

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**II. SPECIAL TERMS AND CONDITIONS**

**PRICING AND CONTRACT**

Prices must be firm unless otherwise specified in the solicitation.

PRICES SHALL BE FIXED AND FIRM FOR THE TERM OF THE CONTRACT. If the vendor is awarded a contract under this solicitation, the prices proposed by the vendor shall remain fixed and firm during the term of the contract, provided, however, that the vendor may offer incentive discounts from this fixed price to the District at any time during the contractual term.

**SPECIFICATIONS**

The successful vendor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of any contract or agreement.

<b>Item</b>	<b>Quantity</b>	<b>Articles and Descriptions</b>	<b>Price per Unit</b>	<b>Amount</b>
1.	70,000	gal. #2 diesel		
2.	7,000	gal. unleaded gasoline		

Quantities may vary.

The SUCCESSFUL VENDOR IS RESPONSIBLE for assuring that all of vendor's employees, agents, representatives, subcontractors, subcontractors' employees, agents, and representatives, and anyone else performing any aspect of the work are notified of these requirements.

Vendor shall supply two (2) above-ground fuel storage tanks ("Tanks") as follows:

Diesel: 1,000 gallons minimum

Gasoline: 2,000 gallons minimum

The Tanks shall include all pumps and equipment necessary for use of the Tanks for fueling District vehicles. Tanks shall remain the property of the Vendor. The Vendor, at Vendor's sole cost and expense, shall be responsible for compliance with all federal, state and local laws and regulations applicable to installation, maintenance and operation of the Tanks. All costs to supply, install, license and maintain the Tanks shall be included in and not in addition to the Bid Price. Upon termination of this Agreement, Vendor shall remove the tanks at no cost to the District.

Exact quantities of each type of fuel to be purchased under this contract are not known. The approximate quantities of fuel purchased during the 2021-2022 school year were 6,500 gallons of unleaded gasoline and 16,000 gallons of diesel.

Vendors are not authorized to make delivery until a contract, signed by the proper parties, is executed. The District accepts no liability of any kind for products or services furnished or delivered without proper authorization.

Deliveries must be made within twenty-four (24) [or forty-eight (48)] hours after an order is placed. If the Vendor is unable to deliver the requested items within the delivery time specified in this

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contract, the District reserves the right to purchase the amount of the order from another supplier, and at its option, recover from the Vendor (as liquidated damages to offset against the price due for fuel subsequently supplied by the Vendor) any amount by which the cost of such substituted fuel exceeds the contract price which would have been applicable, together with the cost of any incidental expenses reasonably incurred by the District in making such substituted purchase(s) and the amount of any consequential damages allowed by law.

Delivery trucks shall be properly equipped with accurate measuring devices as well as vapor recovery system all verifiable by District's personnel upon completion of delivery. Vendors must be able to furnish certifications issued by the State of Texas which will verify tank capacities on a given truck.

Extreme care must be taken by the Vendor to avoid fuel spills. The transport (or bobtail) must be attended at all times during fuel offloading. Any costs incurred as a result of fuel spills caused by the Vendor, its agents or employees, or due to equipment malfunction, will be borne by the Vendor and may be grounds for termination of the contract at the option of the District.

Quality Control: The District reserves the right to test fuels at any time for specifications compliance. Costs of tests shall be done by the contractor in the event product fails to comply. Such failure will result in Vendor's prompt removal of failed product, using Vendor's own equipment, at no cost to the District, within twenty-four (24) hours of notifications. Acceptable fuel shall immediately replace non-complying fuel based on the quantity of unsuitable fuel originally delivered to a given location at no charge for the entire shipment. Violations of specification requirements may give the District cause to cancel and rebid the entire contract and will be a consideration in future awards.

**WARRANTY AND GUARANTEE**

Neither the final payment nor any provisions of the contract documents shall relieve the vendor from any obligation assumed under any other provision of the contract. All work is to be guaranteed for a period of one (1) year. Materials/Equipment used for any job required under this contract shall be new and the latest model. Each item, at a minimum, shall carry the manufacturer's maximum standard warranty for a minimum of 12 months.

**SUPPLIER'S WARRANTY RESPONSIBILITY**

The successful vendor(s) is ultimately responsible for and must assure the District that any warranty service shall be performed to the satisfaction of the District, regardless of whether the successful vendor or his agent performs the warranty work. If there is a question of whether it is the responsibility of the successful vendor or the equipment manufacturer to repair a given defect, then it shall automatically become the successful vendor's responsibility to see that the repair(s) is made to the satisfaction of the District.

**PENALTIES**

Upon refusal of the successful vendor to make satisfactory and timely adjustment(s), the District reserves the right to claim and recover from said successful vendor by due process of law, such

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sums as may be sufficient to correct the error or make good the defect in material and/or workmanship.

**INSURANCE**

All insurance requirements, including public liability and workers' compensation as outlined in Texas State Statutes shall be met prior to any delivery and shall remain in effect during the life of the contract. Certification of such coverage must be provided to the District.

**PROJECT TIMELINE**

April 27, 2022: Advertisement & Specifications released

May 12, 2022: Proposals are due

May 18, 2022: Anticipated recommendation made to the Board of Trustees

**III. REPRESENTATIONS**

By execution and submission of the Proposal Form, attached as Exhibit A, the Offeror hereby agrees, represents and warrants to District as follows:

1. Offeror will hold the Proposal open for acceptance for ninety (90) days.
2. Offer accepts District's right to reject any or all Proposals, to waive formalities and to accept the Proposal which District considers most advantageous.
3. By signing the Proposal Form, the undersigned on behalf of the Offeror affirms that, to the best of his knowledge, the information concerning this Proposal has been arrived at independently and is being submitted without collusion with anyone to obtain information or gain any favoritism that would in any way limit competition or give an unfair advantage over other respondents in the award of this Proposal.
4. Offeror has read and understands the RFP and the Contract Documents, and this Proposal is made in accordance with the RFP, and any addenda to it, and the Contract Documents.
5. All information submitted by the Offeror to the District in response to this RFP is true and correct. The District, or any authorized representative of the District, is authorized by the undersigned to contact any firm, institution, or person to obtain information about our firm's services, financial condition, and any other information which the District might determine as being desirable.
6. To the fullest extent permitted by applicable law, the Offeror waives any claim it has or may have against the District, its trustees, officers, shareholders, directors, partners, agents, contractors, consultants and employees arising out of or in connection with the administration, evaluation or recommendation of any offers; waiver of any requirements under the RFP or the Contract Documents; acceptance or rejection of any Proposals; and the award of a Contract.

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7. Under Section 231.006, Texas Family Code, the Offeror certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

8. Under Section 2155.004, Texas Government Code, the Offeror certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

9. Under Section 2254.004, Texas Government Code, the Offeror certifies that each individual or business entity which is an engineer or architect proposed by Offeror as a member of its team was selected based on demonstrated competence and qualifications only.

10. A corporate Offeror certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171, Texas Tax Code, or that the corporate Offeror is exempt from the payment of such taxes, or that the corporate Offeror is an out-of-state corporation that is not subject to the Texas Franchise Tax, whichever is applicable.

11. Offeror certifies that neither the Offeror nor the firm, corporation, partnership or Owner represented by the Offeror, or anyone acting for such firm, corporation, or institution has violated the antitrust laws of this state, codified in Texas Business and Commerce Code Chapter 15, or the Federal antitrust laws, nor communicated directly or indirectly the information in the Proposal to any competitor or any other person engaged in such line of business.

12. Offeror acknowledges and accepts that any costs incurred from the Offeror's participation in this RFP process shall be at the sole risk and responsibility of the Offeror.

13. Pursuant to Texas Government Code Chapter 2271, as amended, if the resulting contract is valued at \$100,000 or more and if the Offeror has at least ten (10) full time employees, then the Offeror, by its execution of any resulting agreement with the District, represents and warrants to the District that the Offeror does not boycott Israel and will not boycott Israel during the term of any resulting agreement. This section does not apply to a sole proprietorship.

14. Pursuant to Texas Government Code Chapters 2274 and 809, if the contract is valued at \$100,000 or more and if Offeror has at least ten (10) full-time employees, then Offeror represents and warrants to the District that the Offeror does not boycott energy companies and will not boycott energy companies during the term of the contract. This provision does not apply to sole proprietorships.

15. Pursuant to Texas Government Code Chapter 2274, if the contract is valued at \$100,000 or more and if Offeror has at least ten (10) full-time employees, then Offeror represents and warrants to the District that the Offeror does not discriminate against firearm entities or firearm trade associations and will not discriminate against firearm entities or firearm trade associations during the term of the contract. This provision does not apply to sole proprietorships.

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16. In compliance with Chapter 2252 of the Texas Government Code, Offeror certifies that it does not engage in business with Iran, Sudan, or any foreign terrorist organization. Offeror also certifies that for the length of any resulting contract with the District, Offeror will not engage in any business with Iran, Sudan, or any foreign terrorist organization.

17. Offeror certifies that it understands that Texas Education Code Chapter 22 requires that criminal history records be obtained regarding covered employees of entities that contract with school districts (“Contractors”) and entities that contract with school district contractors (“Subcontractors”). Texas Education Code §22.08341 requires that the Contractor obtain criminal history record information (“CHRI”) on Covered Employees with Disqualifying Criminal Histories (each defined below). These persons are prohibited from serving at a school district. Because of restrictions on what entities may access such information, prior to commencement of work under this Agreement, using the process established by the Owner, Contractor will be required to arrange with the Owner to obtain the national criminal history record information (“CHRI”) on all of Contractor’s employees, independent contractors, agents, or Subcontractors, Contractor’s Subcontractors of every tier (“Subcontractors”), if any of these persons is a “Covered Employee” as defined by the Statute, i.e. the person has or will have continuing duties related to the contracted for services, and said person has or will have the opportunity for direct contact with students in connection with those continuing duties. Contractor will also be required to reimburse the Owner for the costs and expenses associated with obtaining the criminal history information by entering into the proposed Contract Documents will be required to agree to accept the Owner’s interpretation of the report as to whether any Covered Employee has been determined to have a Disqualifying Criminal History and will be required to be excluded from assignment to the Project. The selected Contractor will not assign or permit Covered Employees (of either Contractor or any of its subcontractors, independent contractors, or consultants) with a Disqualifying Criminal History to performing any work on the District’s Project or property.

**IV. STANDARD GENERAL CONDITIONS**

Poth ISD (“Buyer”) is requesting proposals and Vendor (or “Seller”) certifies that:

1. Seller of Package Goods: Seller will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently packed as follows: a) Seller’s name and address; b) Consignee’s name, address and purchase order or purchase release number and the supply agreement number if applicable; c) Container number and the total number of containers, e.g. box 1 of 4 boxes; and d) the number of the container bearing the packing slip. Seller shall bear the cost of packaging unless otherwise provided. Goods shall be suitably packed to secure the lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. Buyer’s count or weight shall be final and conclusive on shipments not accompanied by packing lists.

2. Shipment Under Reservation Prohibited: Seller is not authorized to ship the goods under reservation and no tender of a bill of lading will operate as a tender of goods.

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3. Title and Risk of Loss: The title and risk of loss of goods shall not pass to Buyer until Buyer actually receives and takes possession of the goods at the point or points of delivery.
4. Delivery Terms and Transportation Charges: F.O.B. Destination Freight Prepaid unless terms are specified otherwise in proposal: Buyer agrees to reimburse Seller for transportation costs in the amount specified in Seller's proposal, or actual cost, whichever is lower.
5. No Placement of Defective Tender: Every tender or delivery of goods must fully comply with all provisions of this contract as to time of delivery, quality and the like. If a tender is made which does not fully conform, this shall constitute a breach and the Seller shall not have the right to substitute a conforming tender, provided, where the time for performance has not yet expired, the Seller may reasonably notify Buyer of his intention to cure and may make a conforming tender within the contract time but not afterward.
6. Place of Delivery: The place of delivery shall be set forth on the purchase order. Any change thereto shall be effected by modification as provided for in Clause 20, "Modifications," hereof. The terms of this contract are "no arrival, no sale."
7. Invoices and Payments:
- a) Seller shall submit separate invoices, in duplicate, on each purchase order after each delivery. Invoices shall indicate the purchase order number, shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading, and the freight weight bill when applicable, should be attached to the invoice.
- b) Mail to: Poth ISD, Attn: Business Office, 510 Titcomb, Poth, Texas 78147. Payment shall not be due until the above instruments are submitted after delivery. Suppliers should keep the Accounts Payable Office advised of any changes in your remittance address.
- c) Do not include Federal Excise, State or City Sales Tax. Poth ISD shall furnish tax exemption certificate, if required.
8. Gratuities: The Buyer may, by written notice to the Seller, cancel this contract without liability to Seller if it is determined by Buyer that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Seller, or any agent, or representative of the Seller, to any officer or employee of Poth ISD with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or the making or any determinations with respect to the performing of such a contract. In the event this contract is canceled by Buyer pursuant to this provision, Buyer shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Seller in providing such gratuities.
9. Special Tools and Test Equipment: If the price stated on the face hereof includes the cost of any special tooling or special test equipment fabricated or required by Seller for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the Buyer and to the extent feasible shall be identified by the Seller as such.

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10. Warranty Price:

a) The price to be paid by the Buyer shall be that contained in Seller's bid which Seller warrants to be no higher than Seller's current prices on orders by others for products of the kind and specification covered by this agreement for similar quantities under similar or like conditions and methods of purchase. In the event Seller breaches this warranty, the prices of the items shall be reduced to the Seller's current prices on order by others, or in the alternative, Buyer may cancel this contract without liability to Seller for breach or Seller's actual expense.

b) The Seller warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Seller for the purpose of securing business.

For breach or violation of this warranty, the Buyer shall have the right in addition to any other right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

11. Warranty Products: Seller warrants that the goods furnished will conform to the specifications, drawings and descriptions listed in the bid invitation and to the sample(s) furnished by Seller, if any. In the event of a conflict between the specifications, drawings and descriptions, the specifications shall govern. Seller shall not limit or exclude any implied warranties and any attempt to do so shall render this contract voidable at the option of the Buyer. All workmanship and materials shall be warranted from the date of acceptance for the period identified in Bid Form. The Seller warrants to Poth ISD that all materials and equipment furnished under this solicitation will be new unless otherwise specified, and that all work will be of good quality, free from faults and defects and in conformance with all requirements. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by Poth ISD, the Seller shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Seller warrants the materials, workmanship and work to be in conformance with the contract documents included in this project, for one (1) full year from date of acceptance unless a longer warranty or special guarantee is specified. Seller shall assign to Poth ISD all warranties and guarantees from or rights against any manufacturer, supplier or distributor of equipment, fixtures and other material installed in or incorporated in the work at the time of acceptance. The Warranty binds the Seller to correct any work that does not conform with such contract documents or any defects in workmanship or materials furnished under this contract which may be discovered within the one year period. The Seller shall, at its own expense, correct such defect after receiving notice from Poth ISD by repairing same to the condition called for in the contract documents. This warranty shall cover parts, labor, travel and all other expenses.

12. Safety Warranty: Seller warrants that the product sold to Buyer shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act (OSHA) of 1970. In the event the product does not conform to OSHA standards, Buyer may return the product for correction or replacement at the Seller's expense. In the event Seller fails to make the appropriate correction within fourteen (14) days, correction made by Buyer will be at Seller's expense.

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13. No Warranty By Buyer Against Infringements: As part of this contract for sale, Seller agrees to ascertain whether goods manufactured in accordance with the specifications attached to this agreement will give rise to the rightful claim of any third person by way of infringement or the like. Buyer makes no warranty that the production of goods according to the specification will not give rise to such claim, and in no event shall Buyer be liable to Seller for indemnification in the event that Seller is sued on the grounds of infringement or the like. If Seller is of the opinion that an infringement or the like will result, the Seller will notify Buyer to this effect in writing within two (2) weeks after the signing of this contract. If Buyer does not receive notice and is subsequently held liable for the infringement or the like, Seller will hold Buyer harmless.

If Seller in good faith ascertains that production of the goods in accordance with the specifications will result in infringement or the like, this contract shall be null and void except that Buyer will pay Seller the reasonable cost of his search as to infringement.

14. Right of Inspection: Buyer shall have the right to inspect the goods at delivery before accepting them.

15. Cancellation: Buyer shall have the right to cancel for default all or any part of the undelivered portion of this order if Seller breaches any of the terms hereof including warranties of Seller or if the Seller becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any other remedies, which Buyer may have in law or equity.

16. Termination: The performance of work under this order may be terminated in whole or in part by the Buyer in accordance with this provision. Termination of work there under shall be effected by the delivery to the Seller of a "Notice of Termination" specifying the extent to which performance of work under the order is terminated and the date upon which such termination becomes effective. Further, Buyer shall have the right to terminate this agreement for any reason upon sixty (60) days written notice to the Seller. Notice shall be deemed delivered upon the date Buyer deposits the notice with the U.S. Postal System for delivery to Seller or with some other private courier service. Termination shall be effective on the date specified in the written notice (at least sixty (60) days from date of mailing of the notice) and any compensation due from Buyer to Seller shall be prorated up to the effective date of termination. Such rights of termination is in addition to and not in lieu of rights of Buyer set forth in Clauses 15 and 34, herein.

17. Force Majeure: If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after the occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

The term Force Majeure as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, orders of any kind of government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides,

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land sink age, lighting, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, or other causes not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty.

18. Assignment Delegation: No right or interest in this contract shall be assigned or delegation of any obligation made by Seller without the prior written permission of the Buyer. Any attempted assignment or delegation by Seller shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

19. Waiver: No claim or right arising out of a breach of this contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved.

20. Modifications: This contract can be modified or rescinded only by a written statement signed by both parties to the contract or their duly authorized agents.

21. Interpretation Parole Evidence: This writing is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this contract. Acceptance or acquiescence in a course of performance rendered under this contract shall not be relevant to determine the meaning of this performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code is used in this contract, the definition contained in the Code is to control.

22. Applicable Law: This agreement shall be governed by the Uniform Commercial Code and the laws of the State of Texas. Wherever the term "Uniform Commercial Code" is used, it shall be construed as meaning the Uniform Commercial Code as adopted in the State of Texas effective and in force on the date of this contract.

23. Advertising: Seller shall not advertise or publish, without Buyer's prior written consent, the fact that Buyer has entered into this contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.

24. Right to Assurance: Whenever one party to this contract in good faith has reason to question the other party's intent to perform he/she may demand that the other party give written assurance of his/her business intent to perform. In the event that a demand is made and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.

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25. Venue: Both parties agree that venue for any litigation arising from this contract shall lie in Wilson County, Texas.
26. Prohibition Against Personal Interest in Contracts: Any board member which has any substantial interest, either direct or indirect, in any business entity seeking to contract with the district, shall, before any vote or decision on any matter involving the business entity, file an affidavit stating the nature and extent of interest and shall abstain from any participation in the matter. This is not required if the vote or decision will not have any special effect on the entity other than its effect on the public. However, if a majority of the governing body are also required to file, and do file similar affidavits, then the member is not required to abstain from further participation. Vernon's Texas Codes Annotated, Local Government Code Chapter 171.
27. Penalties for Non-Performance: If, at any time, the Vendor fails to fulfill or abide by the terms, conditions, or specifications of the contract, the District reserves the right to:
- a. Purchase on the open market and charge the contractor the difference between contract and actual purchase price,
  - b. Deduct such charges from existing invoice totals due at the time, or
  - c. Cancel the contract within thirty (30) days written notification of intent.
28. Right to Investigate: The District reserves the right to investigate:
- a. Capacity.
  - b. Financial Information.
  - c. Business Records (Federally Funded Contracts).
29. Bidder Qualification: Bidders not on the District's bid list, may be required to prove their qualifications concerning the following criteria:
- a. Financial capabilities.
  - b. Bonding status.
  - c. Contractual history (references).
  - d. Ability to fulfill and abide by the terms and specifications.
  - e. Quality and stability of product and sources.
30. District Bid Forms: Bid proposals not submitted on the District's bid forms will be rejected.
31. Delinquent School Taxes: The District shall not do business with any individual or company that is delinquent in the payment of their school taxes.
32. "OR EQUAL" Products: Whenever an article or material is defined by describing a proprietary product or by using the name of a manufacturer, the term "or equal", if not inserted, shall be implied. The specified article or material shall be understood as indicating the type, function, minimum standard of design, efficiency, and quality desired and shall not be construed as to exclude other manufactured products of comparable quality, design and efficiency. The District reserves the right to waive any or all technicalities, and shall be the sole judge in determining equality, technicalities and formalities. Bidders offering substitute items must indicate manufacturer's name and model number.

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33. Deviation(s): Any deviation(s) to the specification(s) shall be listed on a separate sheet(s) of paper and attached to the bid response form identifying the section number, component(s) with deviation(s) and a clearly defined explanation for the deviation(s). It is the Bidder's responsibility to submit a bid that meets all mandatory specifications stated within. Because of the variations in manufacturer's construction, the Bidder must compare their product bid with the required listed minimum specifications and identify any deviations. Failure to properly identify deviations may render the Bidder's proposal non-responsive and not capable of consideration for award. Bidders should note that a descriptive brochure of the model bid may not be sufficient or acceptable as proper identification of deviations from the written specifications.
34. Right to award: The District reserves the right to award the bid in its entirety, partially, or reject it. The District reserves the right to buy any and/or all supplies from any Vendor.
35. Right to increase or decrease quantities: The District reserves the right to increase or decrease the number of articles called for in any item of the specifications or to eliminate items entirely. Bidder's proposal will be adjusted in accordance with the unit price quoted therein.
36. Renewal Option for Term Contracts: There will be a renewal option to extend this term contracts, if applicable, for four (4) additional one (1) year terms if all parties agree to the renewal in writing and all bid prices, discounts, terms and conditions remain the same. In no instance shall this extension be considered automatic.
37. Warranty & Guarantees: Except as otherwise specified, the Bidder warrants and guarantees all work against defects in materials, equipment or workmanship for one (1) year from the date of final acceptance. Upon receipt of written notice from the District of the discovery of any defects, the Bidder shall remedy the defects and replace any property damaged there from occurring within the warranty and guarantee period.
38. EVALUATION FACTORS: The bid award shall be based on the following evaluation factors:
- a. Purchase Price -- based on total proposal
  - b. Offeror's experience and reputation
  - c. Quality of the Offeror's goods or services
  - d. Extent to which Offeror's goods or services meet the District's needs
  - e. Long term cost of the District to acquire the vendor's goods or services
  - f. Whether the Offeror's financial capability is appropriate to the size and scope of the project
39. NON-COLLUSIVE BIDDING CERTIFICATION: By submission of this bid or proposal, the Bidder certifies that:
- a. This bid or proposal has been independently arrived at without collusion with any other bidder or with any competitor;

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- b. This bid or proposal has not been knowingly disclosed and will not be knowingly disclosed, prior to the opening of bids, or proposals for this project, to any other bidder, competitor or potential competitor;
  - c. No attempt has been or will be made to induce any other person, partnership or corporation to submit or not to submit a bid or proposal;
  - d. The person signing this bid or proposal certifies that he has fully informed himself regarding the accuracy of the statements contained in this certification, and under the penalties being applicable to the bidder as well as to the person signing in its behalf.
40. EEOC NON-DISCRIMINATION STATEMENT: It is the policy of the District not to discriminate on the basis of sex, age, handicap, religion, race, color, or national origin in its educational programs.
41. By submitting a Proposal, each Bidder agrees to waive any claim it has or may have against the District and its trustees, agents and employees, and any reference sources, arising out of or in connection with the administration, evaluation, or recommendation of any Proposal; waiver or any requirements under the Proposal Documents; acceptance or rejection of any Proposal; and award of the Contract.

The District shall have no contractual obligation to any Bidder, nor will any Bidder have any property interest or other rights in the contract or work being proposed unless and until the contract is unconditionally executed and delivered by all parties, and all conditions to be fulfilled by the Bidder have been so fulfilled by the Bidder.

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**EXHIBIT A  
IDENTIFICATION OF OFFEROR  
AND ACCEPTANCE OF TERMS**

**IMPORTANT: A Proposal, to be valid, must be manually signed in ink by an authorized person in the space provided. By such signature, Offeror agrees to strictly abide by the terms, conditions, representations and specifications set out in the RFP.**

Entity, Company or Firm Name: \_\_\_\_\_

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

Address: \_\_\_\_\_

Telephone #: \_\_\_\_\_

Fax: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

**1. PRICE** (Amount per gallon of fuel over OPIS Rack price for San Antonio, Texas):

Unleaded Gasoline:..... \$ \_\_\_\_\_

Diesel: ..... \$ \_\_\_\_\_

**2. ADDENDA**

Undersigned acknowledges receipt of Addenda Nos. (if any):

\_\_\_\_\_.

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**EXHIBIT B  
CONFLICT OF INTEREST QUESTIONNAIRE**

<b>CONFLICT OF INTEREST QUESTIONNAIRE</b> For vendor doing business with local governmental entity		<b>FORM CIQ</b>
<p><b>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.</b></p> <p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.</p> <p>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</p>	<b>OFFICE USE ONLY</b>  Date Received	
<p><b>1</b> Name of vendor who has a business relationship with local governmental entity.</p>		
<p><b>2</b> <input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)</p>		
<p><b>3</b> Name of local government officer about whom the information is being disclosed.</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">Name of Officer</p>		
<p><b>4</b> Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.</p> <p style="margin-left: 40px;">A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?</p> <p style="margin-left: 80px;"><input type="checkbox"/> Yes      <input type="checkbox"/> No</p> <p style="margin-left: 40px;">B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?</p> <p style="margin-left: 80px;"><input type="checkbox"/> Yes      <input type="checkbox"/> No</p>		
<p><b>5</b> Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.</p>		
<p><b>6</b> <input type="checkbox"/> Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).</p>		
<p><b>7</b></p> <p style="text-align: center;">_____ Signature of vendor doing business with the governmental entity</p> <p style="text-align: right; margin-right: 100px;">_____ Date</p>		

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**EXHIBIT C  
FELONY CONVICTION NOTIFICATION**

The Texas Education Code, 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.

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

Vendor’s Business Name \_\_\_\_\_

Authorized Company Official’s Name (Printed) \_\_\_\_\_

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

Signature of Company Official: \_\_\_\_\_

Date Signed: \_\_\_\_\_

B. My firm is not owned or operated by anyone who has been convicted of a felony.

Signature of Company Official: \_\_\_\_\_

Date Signed: \_\_\_\_\_

C. My firm is owned or operated by the following individual(s) who has/have been convicted of a felony (printed name and general description of type of felony or felonies):

1. \_\_\_\_\_  
\_\_\_\_\_
2. \_\_\_\_\_  
\_\_\_\_\_
3. \_\_\_\_\_  
\_\_\_\_\_

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4.

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Signature of Company Official: \_\_\_\_\_

Date Signed: \_\_\_\_\_

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**EXHIBIT D  
NON-COLLUSION STATEMENT**

\_\_\_\_\_, being first duly sworn, deposes and says this:

(1) He/She is \_\_\_\_\_ of \_\_\_\_\_,  
(a partner or officer) (the firm of, etc.)  
the Offeror who has submitted the attached Proposal.

(2) He/She is fully informed respecting the preparation and contents of the attached Proposal and of all pertinent circumstances respecting such Proposal.

(3) The Proposal is genuine and is not a collusive or sham response.

(4) Neither the said Offeror nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with another Offeror, firm or person, to submit a collusive or sham. Response in connection with the Contract Documents for which the attached Proposal has been submitted or to refrain from proposing in connection with such Contract Documents, or has in any manner, directly or indirectly, sought by agreement or collusion, or communication or conferences, with any other Offeror, firm or person to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the District or any person interested in the proposed Contract Documents; and,

(5) The price or prices which are offered in connection with this Proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Offeror or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

(Offeror's Business Name): \_\_\_\_\_

(Offeror's Representative Signature) \_\_\_\_\_

(Offeror's Representative Title) \_\_\_\_\_

Subscribed and sworn to before me on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS