

TIPS SOLICITATION DOCUMENT



THE INTERLOCAL PURCHASING SYSTEM (“TIPS”)

A department of TIPS Lead Agency:



TEXAS REGION 8 EDUCATION SERVICE CENTER (“Region 8 ESC”)

TIPS RFQ 240704 ENERGY SAVINGS PERFORMANCE CONTRACTING (ESPC & EAAS)

I. NOTICE TO PROPOSERS.

Contact Information:

TIPS/Region 8 ESC
4845 US Hwy. 271 North
Pittsburg, Texas 75686
Toll Free: (866) 839-8477
Email: bids@tips-usa.com
Website: www.tips-usa.com

TIPS Solicitation:

TIPS RFQ 240704 ENERGY SAVINGS PERFORMANCE CONTRACTING (ESPC & EAAS)

This solicitation document is a Request for Qualifications as described in Texas Government Code Section 2254.004, as required by Texas Education Code Section 44.901. Regardless of potential informal or erroneous references to other solicitation terms such as: “solicitation”, “bid”, “request for competitive sealed proposal”, “RFP”, etc., this solicitation is the method of procurement identified at this location. This solicitation is for the qualifying of energy savings performance contracts (“ESPC”) as defined in Texas Local Government Code Section 302, including those ESPC subcategories which are sometimes referred to as Efficiency-as-a-Service (“EAAS”) contracts or Power Purchase Agreement (PPA) Contracts. **EAAS and PPA agreements which do not qualify as ESPCs as defined herein may not be proposed or offered under this solicitation. All references to ESPC or EAAS or PPA shall mean and refer to the primary definitions below and all other clarifying definitions provided in Texas Local Government Code Section 302.** If you intend to propose ESPCs as defined in another state or jurisdiction, you should ensure that the definition herein is encompassed by the definition utilized in that jurisdiction.

"Energy savings performance contract" [ESPC & EAAS & PPA for this solicitation] means a contract with a provider for energy or water conservation or usage measures in which the estimated energy savings, utility cost savings, increase in billable revenues, or increase in meter accuracy resulting from the measures is subject to guarantee to offset the cost of the energy or water conservation or usage measures over a specified period. The term does not include the design or new construction of a water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, or drainage project. The term includes a contract related to the pilot program described by Subdivision (9-a) and a contract for the installation or implementation of the following in new or existing facilities, including all causally connected work:

- (A) insulation of a building structure and systems within the building;
- (B) storm windows or doors, caulking or weather stripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed and coated window or door systems, or other window or door system modifications that reduce energy consumption;
- (C) automatic energy control systems, including computer software and technical data licenses;
- (D) heating, ventilating, or air-conditioning system modifications or replacements that reduce energy or water consumption;
- (E) lighting fixtures that increase energy efficiency;
- (F) energy recovery systems;
- (G) electric systems improvements;
- (H) water-conserving fixtures, appliances, and equipment or the substitution of non-water-using fixtures, appliances, and equipment;
- (I) water-conserving landscape irrigation equipment;
- (J) landscaping measures that reduce watering demands and capture and hold applied water and rainfall, including:
 - (i) landscape contouring, including the use of berms, swales, and terraces; and
 - (ii) the use of soil amendments that increase the water-holding capacity of the soil, including compost;
- (K) rainwater harvesting equipment and equipment to make use of water collected as part of a storm-water system installed for water quality control;
- (L) equipment for recycling or reuse of water originating on the premises or from other sources, including treated municipal effluent;
- (M) equipment needed to capture water from nonconventional, alternate sources, including air-conditioning condensate or graywater, for nonpotable uses;
- (N) metering or related equipment or systems that improve the accuracy of billable-revenue-generation systems;
- (O) alternative fuel programs resulting in energy cost savings and reduced emissions for local government vehicles, including fleet vehicles;
- (P) programs resulting in utility cost savings; or
- (Q) other energy or water conservation-related improvements or equipment, including improvements or equipment relating to renewable energy or nonconventional water sources or water reuse.¹

“Energy savings” means an estimated reduction in net fuel costs, energy costs, water costs, stormwater fees, or other utility costs, or related net operating costs, including costs for anticipated equipment replacement and repair, from or as compared to an established baseline of those costs. The term does not include an estimated reduction due to a decrease in energy rates that is not derived from increased conservation or reduced usage.²

“Guarantee” means a written guarantee of a provider that the energy savings, increase in billable revenues, or increase in meter accuracy from the energy or water conservation or usage measures will at least equal the cost of the energy or water conservation or usage measures, all causally connected work, and ancillary improvements provided for in an energy savings performance contract.³

Proposal Deadline:

All proposals shall be received electronically, or otherwise sealed, by: AUGUST 16, 2024, AT 3:00 A.M. LOCAL TIME

Access to Solicitation Documents:

Solicitation documents are located online at <http://tips.ionwave.net>. If you encounter a problem while accessing the solicitation, please contact TIPS at the contact information provided for assistance.

Piggybacking Notice:

This IDIQ Solicitation is intended for the use of public entities and qualifying non-profit entities who join TIPS, now and in the future, (“TIPS Members”) to piggyback upon and utilize as their own solicitation for legal procurement purposes. TIPS Contracts are

¹ Tex. Loc. Gov't Code Ann. § 302.001.

² Tex. Loc. Gov't Code Ann. § 302.001(3).

³ Tex. Loc. Gov't Code Ann. § 302.001(5).

established through free, full and open competition as described by the laws of TIPS jurisdiction and are available for piggy-back by other government entities anywhere in the United States, subject to each entities' jurisdictional law and regulation.

TIPS Administration Fee:

TIPS collection of fees is required pursuant to Texas Government Code Section 791.011 et. seq. The TIPS Administration Fee for this contract shall be 1% of the amount paid by the TIPS Member for each TIPS Sale, less shipping cost, bond cost, and taxes, if identifiable. Or, Vendor may propose an alternate fee structure in the Attribute entitled "Vendor Alternate TIPS Administration Fee Proposal." If an alternate fee is not proposed or is rejected by TIPS, the TIPS Administration Fee shall be 1% as described in this section.

Incorporation of Solicitation:

If Vendor proposes and is awarded, the specifications, terms, and conditions of this solicitation shall be incorporated by reference into the final, awarded TIPS Contract.

TIPS Contract Jurisdictional Limitations:

Depending on different entities' and jurisdictions' laws and regulations, TIPS Member Customers may be prohibited from utilizing TIPS as a procurement method for any specific procurement or procurement-type. TIPS makes no representations about when a TIPS procurement will be appropriate for any particular expenditure. It is always up to the TIPS Member customer to determine whether a TIPS procurement is appropriate under their applicable laws and policies.

Vendor Questions & Pre-Bid Meeting Requests:

Substantive questions will be received until August 2, 2024, at 12:00 p.m. local time. Questions about the specific solicitation shall be submitted to bids@tips-usa.com with the subject line "240704 ENERGY SAVINGS PERFORMANCE CONTRACTING (ESPC & EAAS) – Vendor Question". Vendor-specific questions about the process will often be answered directly. However, substantive questions that are not properly addressed in the solicitation information will be properly published to all vendors as an addendum or "Question & Answer" document.

Pre-Bid Meetings are not mandatory and, if requested, TIPS reserves the right to determine whether a Pre-Bid meeting shall be held. Pre-Bid Meetings may be requested by any proposer on or before July 17, 2024, by emailing bids@tips-usa.com with the subject line "240704 ENERGY SAVINGS PERFORMANCE CONTRACTING (ESPC & EAAS) – Pre-Bid Meeting Request."

Anticipated Schedule of Solicitation Events:

These anticipated dates are subject to change at TIPS' discretion. TIPS reserves the right to extend the proposal deadline for any reason.

| | | |
|------------------------|--------------------|-----------------------|
| Posting Date | JULY 3, 2024 | 8:00 A.M. Local Time |
| Proposal Deadline | AUGUST 16, 2024 | 3:00 P.M. Local Time |
| Proposal Opening | AUGUST 16, 2024 | 3:00 P.M. Local Time |
| Proposal Review Begins | AUGUST 16, 2024 | 3:01 P.M. Local Time |
| Proposals Award | SEPTEMBER 26, 2024 | 8:30 A.M. Local Time |
| Award Notifications | SEPTEMBER 26, 2024 | 12:00 P.M. Local Time |

Estimated Contract Value:

The estimated value for the life of the contract for all awarded vendors combined is \$322,299,648.00. This is an estimate and is not a guarantee of the minimum or maximum value of the contract because TIPS cannot speculate on TIPS Members' future needs or budget allocations as they relate to this solicitation.

II. TIPS Procurement of ESPC & EAAS

This solicitation is for the qualifying of energy savings performance contracts (“ESPC”) as defined in Texas Local Government Code Section 302, including those ESPC subcategories which are sometimes referred to as Efficiency-as-a-Service (“EAAS”) contracts or Power Purchase Agreement (PPA) Contracts. EAAS and PPA agreements which do not qualify as ESPCs as defined herein may not be proposed or offered under this solicitation. TIPS provides the qualification process and documentation only. TIPS does not provide final vendor award or selection. TIPS follows the laws of its jurisdiction when soliciting and evaluating this qualification documentation and information. When a TIPS Member is considering a TIPS ESPC procurement under this TIPS Contract, the TIPS Member should review TIPS’ qualification process and the resulting qualified vendor packages to confirm compliance with the laws and policies applicable to that specific TIPS Member. For example, if the laws and policies of another jurisdiction require that an ESPC shall be procured based on qualifications, advertised in publications, procured through a sealed process, and scored based on the published evaluation criteria, a public entity of another jurisdiction, although subject to a different specific statute, may find that TIPS processes meet or exceed their ESPC procurement requirements and may be utilized through interlocal cooperation with TIPS. TIPS encourages public entities using the TIPS qualification process to ensure that requirements specific to the project are otherwise met. Such entity-specific or project-specific requirements may include but are not limited to: board approval, bonding, financing limitations, approval by a state official or entity, or the contractor may be required to hold additional licenses, registrations, or approvals within the public entity’s specific state or locale.

More generally, the Interlocal Purchasing System (“TIPS”) is a department of Texas Region 8 Education Service Center, a government entity. TIPS, a governmental entity and a national purchasing cooperative operating under the Interlocal Cooperation Act⁴, seeks to provide a valuable and necessary solution to public entities and qualifying non-profits by performing the legal advertising and qualification process and providing a database of qualified vendors with supporting qualification documentation. When permitted by TIPS Members’ law and policy, instead of public entities and qualifying non-profits expending time, money, and resources on the extensive legal competitive procurement process, the use of TIPS, allows public entities to quickly select and purchase their preferred products or services from qualified, evaluated Vendors on an as-needed basis. TIPS evaluates and scores all responsive, properly submitted proposals. Recommendations for qualification will be made to the Region 8 Education Service Center Board of Directors. Qualifications are ratified or rejected at the monthly meeting of Region 8 ESC Board of Directors, or as delegated by the Board of Directors.

For TIPS specifically, Texas Education Code Sec. 44.901(h), applicable to TIPS and Texas public schools states, “an energy savings performance contract shall be let according to the procedures established for procuring certain professional services by **Section 2254.004, Texas Government Code**.⁵ Texas Local Government Code Chapter 302 (applicable to Texas Local Governments)⁶, Texas Government Code Section 2166 (applicable to Texas state and local entities)⁷, and/or Texas Education Code Section 51.927 (applicable to Texas Higher Education entities)⁸ also prescribe that the same Texas Government Code Section 2254.004 qualification process for the selection of energy savings performance contractors. For that reason, TIPS utilizes the qualification process described by Texas Government Code 2254.004⁹ to meet the procurement needs of various public entity types. Texas Government Code 2254.004 provides that a qualification process must be utilized to identify the most qualified before negotiating price.¹⁰ It is TIPS intent to advertise, solicit, record, evaluate, and organize necessary and relevant qualification documentation for TIPS Members. Then, when the TIPS Member determines it appropriate under their law and policy, the TIPS Member may review the advertised and solicited qualification packages to compare to other energy savings contractors, within or outside of TIPS, to identify the most qualified, negotiate a fair and reasonable price, and award their specific contract according to their applicable law and policy. During the qualification process, TIPS reserves the right to assign or deduct any number of points in any given category if warranted due to insufficient response or Vendor stipulated exceptions and limitations. If a TIPS Member’s jurisdiction has additional requirements such as approval of the ESPC by the comptroller, or that a qualified vendor be found on a pre-approved state website, TIPS encourages TIPS Members to ensure that other specific elements are met even when using TIPS qualifications process.

III. PROPOSAL GUIDANCE

1. TIPS strongly encourages all interested vendors to respond using the TIPS IonWave Electronic eBid System for proposal submission. The online submission has many safeguards built into the system that will notify proposers of mistakes or missing information. These safeguards will significantly minimize the potential for Vendor disqualification. If you encounter

⁴ See Texas Government Code, Chapter 791.

⁵ Tex. Edu. Code. Sec. 44.901(h).

⁶ Tex. Loc. Gov’t Code Ann. § 302.001.

⁷ Tex. Gov’t Code Ann. § 2166.406.

⁸ Tex. Educ. Code Ann. § 51.927.

⁹ Tex. Gov’t Code Ann. § 2254.004.

¹⁰ Tex. Gov. Code Sec. 2254.004.

- trouble with the TIPS IonWave eBid System, please contact TIPS.
2. If it is determined that Vendor cannot utilize the TIPS IonWave eBid System, Vendor must email bids@tips-usa.com seeking a manual submission packet which TIPS will send to you via US Mail or FedEx within two business days of receiving your request. All manual responses must be sealed in an envelope and must be physically received by TIPS at the TIPS Contact information provided herein and by the deadline provided herein.
 3. If you are viewing this document, you have likely already logged into the TIPS IonWave eBid System. If not, you need to register/login to the TIPS IonWave eBid System online at <https://tips.ionwave.net/> and follow these instructions.
 4. Once logged in, confirm that your Supplier Profile properly lists your accurate entity-name, EIN, d/b/a's, and contact information, matching your current W9. If it does not, either correct it, or disable the inaccurate profile and create a correct profile before proceeding.
 5. Next, confirm that all emails issued by the following domains can be received by your entity's email servers to ensure that you do not miss vital messages: "@tips-usa.com", @tipsconstruction.com", and "ionwave.net"
 6. Once that review/update is complete, Vendor shall carefully read through all bid Event Details, Bid Notes, Attachments, Addenda, Instructions, and Attribute Questions before submitting questions to TIPS.
 7. TIPS recommends starting Vendor's proposal response by answering the required "Attribute" questions within the IonWave eBid System. These responses are required and it is beneficial to start with the Attribute questions as some of the bid Attachments are only required depending on your responses to those questions.
 8. Once Vendor has completed the Attribute Questions, Vendor must download, properly complete, and upload into the correct "Response Attachments" location all required Attachments.
 9. Once Vendor has completed the Attribute Questions and uploaded all required Attachments, Vendor must submit the proposal before the legal Proposal Deadline. The system will notify you of errors and allow you to correct those errors where you would otherwise risk unintentional disqualification through paper submission.
 10. Proposals may be retracted, amended, and resubmitted by the proposer on the electronic eBid System at any time prior to the legal deadline.
 11. If an addendum is posted, you will receive an email notification and you are required to login to the IonWave eBid System to address the Addendum.
 12. TIPS reserves the right to reject any or all proposals, to accept any proposals, and to waive any informality in the proposal process provided waiver is equally applied to all proposers and another proposer is not prejudiced by the waiver.
 13. If Vendor has proposed deviations to TIPS' standard terms, there is an Attribute Question where Vendor can assert that it has proposed negotiations. If Vendor responds to that attribute question asserting deviations, after this solicitation legally closes and TIPS begins evaluating Vendor's file, TIPS will provide Vendor with a draft Word Document Vendor Agreement and instruct Vendor to include all requested negotiations as redline edits for TIPS consideration. This is the only proper way to submit proposed deviations for TIPS consideration. TIPS reserves the right to accept, decline, or modify Vendor's requested negotiated terms. For this reason, asserting deviations or negotiations may ultimately delay or prevent award.
 14. Withdrawal of proposals will not be allowed for a period of 90 days following the opening unless approved by TIPS in writing.
 15. If a Vendor desires to protest a process or decision by TIPS, the Vendor must follow the following process: http://www.tips-usa.com/assets/documents/docs/letters/Protest_Procedures_for_Vendor.pdf

Proposal Format

All responses should be direct, concise, complete, and unambiguous.

1. Attribute Questions.

Vendor must respond carefully and accurately to all "Attributes" within the IonWave eBid System.

2. Completion of Attachments & Required Uploads.

Vendor Agreement

The Vendor Agreement must be downloaded from the "Attachments" section of the IonWave eBid System, reviewed, properly completed, and uploaded to the "Response Attachments" section requesting the Vendor Agreement. If Vendor has proposed deviations to the Vendor Agreement, Vendor may assert so in the Attribute Questions and those shall be addressed during evaluation.

Vendor Agreement Signature Form

The Vendor Agreement Signature Form must be downloaded from the "Attachments" section of the IonWave eBid System, reviewed, properly completed, and uploaded to the "Response Attachments" section requesting the Vendor Agreement Signature Form. If Vendor has proposed deviations to the Vendor Agreement, Vendor may leave the signature line of this page blank and assert so in the Attribute Questions and those shall be addressed during evaluation.

Required Company Overview and Customer Care ESPC Qualification Package

The Required Company Overview and Customer Care ESPC Qualification Package must be downloaded from the “Attachments” section of the IonWave eBid System, reviewed, properly completed, and uploaded to the “Response Attachments” section requesting the Required Company Overview and Customer Care ESPC Qualification Package. You may place your responses on separate documents and attach them to the Package if the answers are numbered to match their corresponding question in the Package. You may also attach supplemental documents and information that support your responses.

Reference Letters

Vendor is required to upload three Reference Letters from three separate customers. Vendor will be scored on the aggregate Reference Letters received from customers as described in the solicitation. Vendor must provide three current letters (issued within the 12-months preceding the date on which the solicitation was posted) from its customers who have entered Energy Savings Performance Contracts with Vendor, verifying Vendor’s customer service and reputation as described herein. (Ex. if the solicitation/bid posted on February 4, 2024, the letters must be dated on or after February 1, 2023). The letters must be issued from customers who have entered Energy Savings Performance Contracts with the Vendor or its current corporate officials, on entity/company letterhead, must specify its customer experience with Vendor, and must be signed by an authorized representative of the customer. TIPS Reference Forms from past bids will no longer be accepted.

Required Bonding Capacity Letter

Vendor is required to upload a Bonding Capacity Letter from its surety as described herein. Please see the attachment entitled “Instructions and Sample – Required Bonding Capacity Letter” for complete instructions. Vendor will be scored on the aggregate bonding capacity displayed in the accepted letter. Vendor must provide a current letter (issued on or after the first day of the month preceding the date on which the solicitation was posted) from its surety verifying Vendor’s bonding capacity as described herein. (Ex. if the solicitation/bid posted on February 4, 2022, the letter must be dated on or after January 1 2022. The letter must be issued from Vendor’s Surety companies, on surety company letterhead, must specify the maximum bonding capacity of the Vendor, and must be signed by an authorized representative of the surety company. The issuing surety must be authorized to do business in the State of Texas and must be listed on the Department of the Treasury's Listing of Approved Sureties (Department Circular 570).

Required Confidentiality Claim Form

The Required Confidentiality Claim Form must be downloaded from the “Attachments” section of the IonWave eBid System, reviewed, properly completed, and uploaded to the “Response Attachments” section requesting the Required Confidentiality Claim Form. This is the only way for Vendor to assert confidentiality of any information submitted.

Conflict of Interest Questionnaire – Form CIQ

Do not upload this form unless you have a reportable conflict with TIPS. There is an Attribute entitled “Conflict of Interest Questionnaire Requirement” immediately followed by an Attribute entitled “Conflict of Interest Questionnaire Requirement – Form CIQ – Continued.” Properly respond to those Attributes and only upload this form if applicable/instructed. If upload is required based on your response to those Attributes, the Conflict of Interest Questionnaire – Form CIQ must be downloaded from the “Attachments” section of the IonWave eBid System, reviewed, properly completed, and uploaded to the “Response Attachments” section requesting the Conflict of Interest Questionnaire – Form CIQ.

Disclosure of Lobbying Activities – Standard Form - LLL

Do not upload this form unless Vendor has reportable lobbying activities. There are Attributes entitled, “2 CFR Part 200 or Federal Provision - Byrd Anti-Lobbying Amendment – Continued.” Properly respond to those Attributes and only upload this form if applicable/instructed. If upload is required based on your response to those Attributes, the Disclosure of Lobbying Activities – Standard Form - LLL must be downloaded from the “Attachments” section of the IonWave eBid System, reviewed, properly completed, and uploaded to the “Response Attachments” section requesting the Disclosure of Lobbying Activities – Standard Form – LLL.

Current Form W-9

Vendor must upload their current IRS Tax Form W-9. The legal name, EIN, and d/b/a's listed should match the information provided herein exactly. This form will be utilized by TIPS to properly identify your entity.

Certificates & Licenses (Supplemental Vendor Information Only)

Optional. If Vendor would like to display any applicable certificates or licenses (including HUB certificates) for TIPS and TIPS Member Customer consideration, Vendor may upload those at the “Response Attachments” section requesting

“Certificates & Licenses (Supplemental Vendor Information Only).” These supplemental documents shall not be considered part of the TIPS Contract. Rather, they are Vendor Supplemental Information for marketing and informational purposes only.

Vendor’s Warranties, Terms, and Conditions (Supplemental Vendor Information Only)

Optional. If Vendor would like to display any standard warranties, terms, or conditions which are often applicable to their offerings for TIPS and TIPS Member Customer consideration, Vendor may upload those at the “Response Attachments” section requesting “Vendor’s Warranties, Terms, and Conditions (Supplemental Vendor Information Only).” These supplemental documents shall not be considered part of the TIPS Contract. Rather, they are Vendor Supplemental Information for marketing and informational purposes only.

Supplemental Vendor Information (Supplemental Vendor Information Only)

Optional. If Vendor would like to display or include any brochures, promotional documents, marketing materials, or other Vendor Information for TIPS and TIPS Member Customer consideration, Vendor may upload those at the “Response Attachments” section requesting “Supplemental Vendor Information (Supplemental Vendor Information Only).” These supplemental documents shall not be considered part of the TIPS Contract. Rather, they are Vendor Supplemental Information for marketing and informational purposes only.

Vendor Logo (Supplemental Vendor Information Only)

Optional. If Vendor desires that their logo be displayed on their public TIPS profile for TIPS and TIPS Member viewing, Vendor may upload that logo at the “Response Attachments” section requesting “Vendor Logo (Supplemental Vendor Information Only).” These supplemental documents shall not be considered part of the TIPS Contract. Rather, they are Vendor Supplemental Information for marketing and informational purposes only.

IV. SPECIFICATIONS

Category: Energy Savings Performance Contracting (ESPC)

This solicitation is for the qualifying of energy savings performance contracts (“ESPC”) as defined in Texas Local Government Code Section 302, including those ESPC subcategories which are sometimes referred to as Efficiency-as-a-Service (“EAAS”) contracts or Power Purchase Agreement (PPA) Contracts. EAAS and PPA agreements which do not qualify as ESPCs as defined herein may not be proposed or offered under this solicitation. TIPS provides the qualification process and documentation only. TIPS does not provide final vendor award or selection. TIPS follows the laws of its jurisdiction when soliciting and evaluating this qualification documentation and information. When a vendor meets the minimum scoring criteria, they will be listed on TIPS website as qualified to receive a TIPS Contract. When a TIPS Member is considering a TIPS ESPC procurement under this TIPS Contract, the TIPS Member should review TIPS’ qualification process and the resulting qualified vendor packages to confirm compliance with the laws and policies applicable to that specific TIPS Member. For example, if the laws and policies of another jurisdiction require that an ESPC shall be procured based on qualifications, advertised in publications, procured through a sealed process, and scored based on the published evaluation criteria, a public entity of another jurisdiction, although subject to a different specific statute, may find that TIPS processes meet or exceed their ESPC procurement requirements and may be utilized through interlocal cooperation with TIPS. TIPS encourages public entities using the TIPS qualification process to ensure that requirements specific to the project are otherwise met. Such entity-specific or project-specific requirements may include but are not limited to: board approval, bonding, financing limitations, approval by a state official or entity, or the contractor may be required to hold additional licenses, registrations, or approvals within the public entity’s specific state or locale.

Nothing herein seeks to procure or legally approve specific financing options on behalf of any TIPS Member. If a TIPS Member determines that financing must be legally, separately procured, it must do so separately through a prescribed method. Also, the legality of financing methods varies by jurisdiction, project, and fund-type, and it is the responsibility of the TIPS Member Customer to determine the appropriate financing method for any specific project. Any financing offered must fall within the statutory definition of ESPCs as defined herein.

ENGINEERING AND ARCHITECTURAL SERVICES

It is impermissible in Texas and some other jurisdictions for engineering and architectural services (A&E) to be procured or provided through an interlocal cooperative contract such as this one. The TIPS Member Customer, if required by law, must engage independent A&E providers according to the laws of their jurisdiction before proceeding with a TIPS qualified vendor.

PROPOSAL SCORING AND EVALUATION

TIPS evaluates and scores all responsive, properly submitted proposals. Recommendations for qualification will be made to the Region 8 Education Service Center Board of Directors. Qualifications are ratified or rejected at the monthly meeting of Region 8 ESC Board of Directors, or as delegated by the Board of Directors. TIPS utilizes a value approach and bases its award recommendations on several factors mandated by the Texas Education Code section §44.031. The factors are allotted points as described herein. TIPS reserves the right to assign or deduct any number of points in any given category if warranted due to insufficient response or Vendor stipulated exceptions and limitations. TIPS reserves the right to reject any or all proposals or any part of any proposal. TIPS is the sole arbiter of scoring. TIPS reserves the right to award multiple vendors for each solicitation.

The following evaluation criteria are mandated for consideration by Texas Education Code § 44.031 (b).

1. Successful Experience in the Energy Savings Performance Contract Industry: (40) Points.

Points will be assigned based on Vendor's Required Company Overview and Customer Care ESPC Qualification Package to be submitted as instructed herein. Information and documentation supporting the following categories along with any other experience demonstrated, and any other information available to TIPS shall be considered. Proof of active, current qualification by the United States Department of Energy: <https://www.energy.gov/femp/articles/doe-qualified-list-energy-service-companies> shall receive an automatic 20 points in this category.

2. Experience: (20) Points.

Experience with Project Management: (10) Points.

Points will be assigned based on Vendor's Required Company Overview and Customer Care ESPC Qualification Package to be submitted as instructed herein, experience displayed in ESPC project management, along with any other experience demonstrated, and any other information available to TIPS shall be considered.

Years Experience: (10) Points.

Points will be assigned based on the number of years proposing Vendor has been operating the proposing business in this capacity as presented in response to the corresponding attribute question seeking the same. <5 years will receive 2-5 points depending on their bonding capacity proposed. If Vendor has <5 years' experience and bonding is less than \$1,000,000.00, Vendor will receive 2 points or less. If Vendor has <5 years' experience and bonding is more than \$1,000,000.00, Vendor will receive 3-5 points. 5-10 years will receive 6 points, 10-15 years will receive 8 points, and > 15 years will receive 10 points.

3. Reputation of Vendor and Vendor's Offerings: (20) Points.

Points will be assigned based on Vendor's references, to be submitted as instructed herein, reference inquiry response from provided references, and any past history with Vendor, and any other information available to TIPS regarding Vendor's reputation.

4. Vendor's Financial Capability: (18) Points.

Points will be assigned based on Vendor's bonding capacity letter, to be submitted as instructed herein. Aggregate bonding capacity greater than \$5,000,000 will receive maximum points. Bonding capacity less than \$1,000,000.00 will receive no points. All other amounts will be scaled accordingly: \$1,000,000 – 5 points; \$2,000,000 – 10 points; \$3,000,000 – 12 points; \$4,000,000 – 14 points; \$5,000,000 – 15 points; >\$5,000,000 – 18 Points.

5. Impact on the Ability of TIPS Members to Comply with Laws and Rules Relating to Historically Underutilized Businesses ("HUB's"): (2) Points.

Points are assigned if, where applicable herein, Vendor agrees that if they anticipate subcontracting under this award, they will abide by the required affirmative steps provided in 2 CFR 200. Please see the corresponding Attribute Questions regarding, "Subcontracting and Affirmative Steps for Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms." A response that Vendor does anticipate subcontracting but does not agree to the federal subcontracting practices will give Vendor 0 points for this category and deem Vendor unacceptable to receive federal funds under this contract, any other responses accurate responses will give Vendor 2 points for this category.

6. Residency: 0 Points.

For a contract for goods and services, other than goods and services related to telecommunications and information services, building construction and maintenance, or instructional materials, whether the vendor or the vendor's ultimate parent company or majority owner: A. has its principal place of business in this state; or B. employs at least 500 persons in this state. Vendor's response to the corresponding attribute question will be considered, as required by law, but no

points shall be assigned because federal funds may be utilized by TIPS Members, and residency is a prohibited criterion under federal regulation.

PROPOSERS FALLING BELOW AN 70-POINT THRESHOLD WILL NOT BE CONSIDERED FOR AN AWARD.

V. TERMS & CONDITIONS

1. **Incorporation of Solicitation.** As previously stated, if Vendor proposes and is awarded, the specifications, terms, and conditions of this solicitation shall be incorporated by reference into the final, awarded TIPS Contract. In the event of conflict between the terms herein and the final Vendor Agreement, the terms and conditions which are in the best interest of governmental/qualifying non-profit TIPS Members shall control at TIPS sole discretion.
2. **Deviations.** If Vendor has proposed deviations to TIPS' standard terms, there is an Attribute Question where Vendor can assert that it has proposed negotiations. If Vendor responds to that attribute question asserting deviations, after this solicitation legally closes and TIPS begins evaluating Vendor's file, TIPS will provide Vendor with a draft Word Document Vendor Agreement and instruct Vendor to include all requested negotiations as redline edits for TIPS consideration. This is the only proper way to submit proposed deviations for TIPS consideration. TIPS reserves the right to accept, decline, or modify Vendor's requested negotiated terms. For this reason, asserting deviations or negotiations may ultimately delay or prevent award.
3. **Term of the Agreement.** If qualified, the resulting Agreement with TIPS is effective until March 31, 2027.

Actual Effective Date: Agreement is effective upon signature by authorized representatives of both Parties.

Contract Expiration Date: To keep the contract term consistent for all vendors awarded under a single TIPS contract, the term expiration date shall be March 31, 2027.

TIPS may offer to extend Vendor Agreements to the fullest extent the TIPS Solicitation resulting in this Agreement permits.

4. **Termination.** If awarded, TIPS reserves the right to terminate the resulting agreement for cause or no cause for convenience with a thirty (30) days prior written notice. This Agreement may be terminated for cause by either party if the other party breaches the terms or materially defaults on the performance of any of its duties or obligations set forth herein, provided that such default is not cured within thirty (30) days, or as otherwise may be agreed to by both parties, after written notice is given to the defaulting party by the non-defaulting party which specifies the faulty performance and acceptable means of correction. In such event, termination of the Agreement shall be effective as of the date specified in such notice of such termination. Upon termination, all TIPS Sale orders previously accepted by Vendor shall be fulfilled and Vendor shall be paid for all TIPS Sales executed pursuant to the applicable terms. All TIPS Sale orders presented to Vendor but not fulfilled by Vendor, prior to the actual termination of this agreement shall be honored at the option of the TIPS Member. TIPS shall submit to Vendor an invoice for any outstanding TIPS Administration Fees and approved expenses and Vendor shall pay such fees and expenses within 30 calendar days of receipt of such valid TIPS invoice. Vendor acknowledges and agrees that continued participation in TIPS is subject to TIPS' sole discretion and that any Vendor may be removed from the TIPS program at any time with or without cause. This termination clause does not affect TIPS Sales Supplemental Agreements pursuant to this term regarding termination and the Survival Clause term.
5. **Pricing.** Vendor agrees and understands that pricing may not be considered as part of its proposal. If qualified by TIPS and selected by a Member Customer, pricing shall be negotiated with the customer directly at that time.
6. **Initiation of TIPS Sales.** If qualified, when a public entity initiates a purchase with Vendor under this resulting contract, if the Member inquires verbally or in writing whether Vendor holds a TIPS Contract, it is the duty of the Vendor to verify whether the Member is seeking a TIPS purchase. Once verified, Vendor must include the TIPS Contract Number on all purchase communications and sales documents exchanged with the TIPS Member.
7. **TIPS Sales and Supplemental Agreements.** If qualified, when making a sale under this awarded contract, the terms of the specific TIPS order, including but not limited to: shipping, freight, insurance, delivery, fees, bonding, cost, delivery expectations and location, returns, refunds, terms, conditions, cancellations, defects, order assistance, etc., shall be controlled by the purchase agreement (Purchase Order, Contract, AIA Contract, Invoice, etc.) ("Supplemental Agreement" as used herein) entered into between the TIPS Member Customer and Vendor only. TIPS is not a party to any Supplemental Agreement. All Supplemental Agreements shall include Vendor's Name, as known to TIPS, and TIPS Contract Name and Number. Vendor accepts and understands that TIPS is not a legal party to TIPS Sales and Vendor is solely responsible for identifying fraud,

mistakes, unacceptable terms, or misrepresentations for the specific order prior to accepting. Vendor agrees that any order issued from a customer to Vendor, even when processed through TIPS, constitutes a legal contract between the customer and Vendor only. When Vendor accepts or fulfills an order, even when processed through TIPS Vendor is representing that Vendor has carefully reviewed the order for legality, authenticity, and accuracy and TIPS shall not be liable or responsible for the same. In the event of a conflict between the terms of this TIPS Vendor Agreement document and those contained in any attachment, the provisions set forth herein shall control unless otherwise agreed to by the Parties in writing. The Supplemental Agreement shall dictate the scope of services, the project delivery expectations, the scheduling of projects and milestones, the support requirements, and all other terms applicable to the specific sale(s) between the Vendor and the TIPS Member.

8. **Payment for TIPS Sales.** TIPS Members may make payments for TIPS Sales directly to Vendor, or as otherwise agreed to in the applicable Supplemental Agreement after receipt of the invoice and in compliance with applicable payment statutes. Regardless of how payment is issued or received for a TIPS Sale. Vendor is responsible for all reporting and TIPS Administration Fee payment requirements as required by the TIPS Contract.
9. **Right of Refusal.** If qualified, Vendor has the right not to sell to a TIPS Member under the awarded agreement at Vendor's discretion unless otherwise required by law.
10. **Reporting TIPS Sales.** If qualified on this TIPS Contract, when a TIPS Member Customer seeks a quote or proposal for a TIPS sale, Vendor shall always include their TIPS Contract information on all quotes, estimates, proposals, and agreements. If selected by a TIPS Member through the TIPS qualification process, Vendor must report all TIPS Sales to TIPS. If a TIPS sale is initiated by Vendor receiving a TIPS Member's purchase order or contract from TIPS directly, Vendor may consider that specific TIPS Sale reported. Otherwise, with the exception of TIPS Automated Vendors, who have signed an exclusive agreement with TIPS regarding reporting, all TIPS Sales must be reported to TIPS by either: (1) Emailing the contract or similar purchase document (with Vendor's Name, as known to TIPS, and the TIPS Contract Name and Number included) to TIPS at tipspo@tips-usa.com with "Confirmation Only" in the subject line of the email within three business days of Vendor's acceptance of the order, or; (2) Within 3 business days of the order/contract being accepted by Vendor, Vendor must login to the TIPS Vendor Portal and successfully self-report all necessary sale information within the Vendor Portal and confirm that it shows up accurately on your current Vendor Portal statement. No other method of reporting is acceptable unless agreed to by the Parties in writing. Failure to report all sales pursuant to this provision may result in immediate cancellation of Vendor's TIPS Contract(s) for cause at TIPS' sole discretion. Please refer to the TIPS [Accounting FAQ's](#) for more information about reporting sales and if you have further questions, contact the Accounting Team at accounting@tips-usa.com.
11. **TIPS Administration Fees.** The collection of administrative fees by TIPS, a government entity, for performance of these procurement services is required pursuant to Texas Government Code Section 791.011 et. seq. The administration fee ("TIPS Administration Fee") is the amount legally owed by Vendor to TIPS for TIPS Sales made by Vendor. The TIPS Administration Fee amount is typically a set percentage of the amount paid by the TIPS Member for each TIPS Sale, less shipping cost, bond cost, and taxes if applicable and identifiable, which is legally due to TIPS, but the exact TIPS Administration Fee for this Contract is published herein. Unless otherwise accepted by TIPS through Vendor's response to the Attribute entitled "Vendor Alternate TIPS Administration Fee Proposal", the TIPS Administration Fees are due to TIPS immediately upon Vendor's receipt of payment, including partial payment, for a TIPS Sale. The TIPS Administration Fee is assessed on the amount paid by the TIPS Member, not on the Vendor's cost or on the amount for which the Vendor sold the item to a dealer or Authorized Reseller. Upon receipt of payment for a TIPS Sale, including partial payment (which renders TIPS Administration Fees immediately due), Vendor shall issue to TIPS the corresponding TIPS Administration Fee payment as soon as possible but not later than thirty-one calendar days following Vendor's receipt of payment. Vendor shall pay TIPS via check unless otherwise agreed to by the Parties in writing. Vendor shall include clear documentation with the issued payment dictating to which sale(s) the amount should be applied. Vendor may create a payment report within their TIPS Vendor Portal which is the preferred documentation dictating to which TIPS Sale(s) the amount should be applied. Failure to pay all TIPS Administration Fees pursuant to this provision may result in immediate cancellation of Vendor's TIPS Contract(s) for cause at TIPS' sole discretion as well as the initiation of collection and legal actions by TIPS against Vendor to the extent permitted by law. Any overpayment of participation fees to TIPS by Vendor will be refunded to the Vendor within ninety (90) days of receipt of notification if TIPS receives written notification of the overpayment not later than the expiration of six (6) months from the date of overpayment and TIPS determines that the amount was not legally due to TIPS pursuant to this agreement and applicable law. Any notification of overpayment received by TIPS after the expiration of six (6) months from the date that TIPS received the payment will render the overpayment non-refundable. Region 8 ESC and TIPS reserve the right to extend the six (6) month deadline if approved by the Region 8 ESC Board of Directors. TIPS reserves all rights under the law to collect TIPS Administration Fees due to TIPS pursuant to this Agreement.
12. **Confidentiality of Vendor Data.** Vendor understands and agrees that by signing this Agreement, all Vendor Data is hereby released to TIPS, TIPS Members, and TIPS third-party administrators to effectuate Vendor's TIPS Contract except as provided

for herein. The Parties agree that Vendor Data is accessible by all TIPS Members as if submitted directly to that TIPS Member Customer for purchase consideration. If Vendor otherwise considers any portion of Vendor's Data to be confidential and not subject to public disclosure pursuant to Chapter 552 Texas Gov't Code (the "Public Information Act") or other law(s) and orders, Vendor must have identified the claimed confidential materials through proper execution of the Confidentiality Claim Form which is required to be submitted as part of Vendor's proposal resulting in this Agreement and incorporated by reference. The Confidentiality Claim Form included in Vendor's proposal and incorporated herein by reference is the sole indicator of whether Vendor considers any Vendor Data confidential in the event TIPS receives a Public Information Request. If TIPS receives a request, any responsive documentation not deemed confidential by you in this manner will be automatically released. For Vendor Data deemed confidential by you in this manner, TIPS will follow procedures of controlling statute(s) regarding any claim of confidentiality and shall not be liable for any release of information required by law, including Attorney General determination and opinion. In the event that TIPS receives a written request for information pursuant to the Public Information Act that affects Vendor's interest in any information or data furnished to TIPS by Vendor, and TIPS requests an opinion from the Attorney General, Vendor may, at its own option and expense, prepare comments and submit information directly to the Attorney General stating why the requested information is exempt from disclosure pursuant to the requirements of the Public Information Act. Vendor is solely responsible for submitting the memorandum brief and information to the Attorney General within the time period prescribed by the Public Information Act. Notwithstanding any other information provided in this solicitation or Vendor designation of certain Vendor Data as confidential or proprietary, Vendor's acceptance of this TIPS Vendor Agreement constitutes Vendor's consent to the disclosure of Vendor's Data, including any information deemed confidential or proprietary, to TIPS Members or as ordered by a Court or government agency, including without limitation the Texas Attorney General. Vendor agrees that TIPS shall not be responsible or liable for any use or distribution of information or documentation by TIPS Members or as required by law.

13. **Conflicts of Interest.** Vendor confirms that they have not offered, given, or accepted, nor intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, service to the other in connection with this Agreement. Vendor affirms that, to the best of Vendor's knowledge, its proposal has been arrived at independently, and is awarded 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 vendors in the award of this Agreement. Vendor agrees that it will/has disclosed any necessary affiliations with Region 8 Education Service Center and the TIPS Department, if any, through the Conflict of Interest attachment provided in the solicitation.
14. **Volume of TIPS Sales.** Nothing in this Agreement or any TIPS communication may be construed as a guarantee that TIPS or TIPS Members will submit any TIPS orders to Vendor at any time.
15. **Exclusivity.** Any award under this solicitation is non-exclusive and TIPS reserves the right to award multiple vendors or not award any vendors. TIPS reserves the right to re-issue a solicitation or solicit the same or similar solicitation categories for additional similar awards at any time at TIPS sole discretion.
16. **Best and Final Offer.** Vendor's proposal shall be their best and final offer although deviations may be addressed.
17. **LIMITATION OF LIABILITY – Waiver.** BY SUBMITTING A PROPOSAL, OFFERER EXPRESSLY AGREES TO WAIVE ANY CLAIM IT HAS OR MAY HAVE AGAINST BOTH THE INTERLOCAL PURCHASING SYSTEM REGION 8 EDUCATION SERVICE CENTER, ITS DIRECTORS, OFFICERS, ITS TRUSTEES, OR AGENTS ARISING OUT OF OR IN CONNECTION WITH (1) THE ADMINISTRATION, EVALUATION, RECOMMENDATION OF ANY PROPOSAL; (2) ANY REQUIREMENTS UNDER THE SOLICITATION, PROPOSAL PACKAGE, OR RELATED DOCUMENTS; (3) THE REJECTION OF ANY PROPOSAL OR ANY PART OF ANY PROPOSAL; AND/OR (4) THE AWARD OF AN AGREEMENT, IF ANY. NEITHER REGION 8 ESC NOR TIPS SHALL BE RESPONSIBLE OR LIABLE FOR ANY COSTS INCURRED BY PROPOSERS OR THE SELECTED CONTRACTOR IN CONNECTION WITH RESPONDING TO THE SOLICITATION, PREPARING FOR ORAL PRESENTATIONS, PREPARING AND SUBMITTING A PROPOSAL, ENTERING OR NEGOTIATING THE TERMS OF AN AGREEMENT, OR ANY OTHER EXPENSES INCURRED BY A PROPOSER. THE PROPOSER OR SELECTED CONTRACTOR IS WHOLLY RESPONSIBLE FOR ANY SUCH COSTS AND EXPENSES AND SHALL NOT BE REIMBURSED IN ANY MANNER BY REGION 8 ESC OR TIPS.