


TIPS Advisory Document for Member Use of the TIPS Request for Qualifications 170103 Energy Savings Performance Contracts (ESCO)

TIPS always recommends that the TIPS Member read the TIPS Vendor Contract and the “Bid Request” document that is part of the “Due Diligence” tab for each Vendor for every contract.

PART 1 is for Texas TIPS members and Part 2 is for TIPS members in other states.

PART 1 – TEXAS MEMBERS ONLY

The TIPS ESCO Request for Qualification (RFQ) 170103 was performed by TIPS according to the applicable controlling Texas statutes for Texas governmental entities. The ESCO RFQ 170103 differs from all other TIPS solicitations because the statutory requirements for the solicitation and procurement of an ESCO differ from other statutory solicitation and procurement requirements

The RFQ document titled “BID Request” is posted online at the contract site for the qualified vendor listed at <https://www.tips-usa.com/vlist.cfm>. Once you have arrived at <https://www.tips-usa.com/vlist.cfm>, click +  **Energy Savings Performance Contracts**. Then, select a listed Vendor qualified to provide an ESCO for TIPS Members. That Vendor Profile contains the RFQ requirements and how TIPS Members should use the contract. The RFQ and its addenda, if any, clearly describe the process for all types of Texas entities and the statutes that apply to each.

The controlling Texas statutes for various Texas governmental entities include:

1. A Texas PK-12 public schools and community colleges - Texas Education Code §44.901 found <https://statutes.capitol.texas.gov/Docs/ED/htm/ED.44.htm#44.901>
2. A Texas Public Higher Education institutions - Texas Education Code § 51.927 found <https://statutes.capitol.texas.gov/Docs/ED/htm/ED.51.htm#51.927>
3. A Texas Local government, defined as a county, municipality, or other political subdivision of this state – Texas Local Government Code §302 et seq. <https://statutes.capitol.texas.gov/Docs/LG/htm/LG.302.htm>
4. A Texas State Agency - TEXAS GOVERNMENT CODE Sec. 2166.406 found <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2166.htm#2166.406>

For your convenience, the instructive language included in the RFQ is, in part, included below.

TIPS PERFORMED THE REQUEST FOR QUALIFICATIONS ONLY.

THE OTHER STEPS OUTLINED IN THE APPLICABLE STATUTES ABOVE FOR THE VARIOUS TYPES OF ENTITIES MUST BE COMPLETED BY THE TIPS TEXAS MEMBER ENTITY.

The Texas statutes specify that Energy Savings Performance Contracts must be procured according to TEXAS GOVERNMENT CODE §2254.004 methods. TEXAS GOVERNMENT CODE §2254.004 title description is listed as “CONTRACT FOR PROFESSIONAL SERVICES OF ARCHITECT, ENGINEER, OR SURVEYOR”. This can be misleading because Texas entities cannot legally engage architect and engineer services through a cooperative contract such as this.

However, the controlling statutes below only specify that the procurement methodology provided in TEXAS GOVERNMENT CODE §2254.004 be used for the procurement of Energy Savings Performance Contracts. Thus, NO PRICING IS SOLICITED OR PERMITTED TO BE PROPOSED FOR THIS RFQ PURSUANT TO TEXAS GOVERNMENT CODE §2254.004 AND **TIPS PERFORMED THE REQUEST FOR QUALIFICATIONS ONLY**. IT IS THE MEMBERS' DUTY TO EVALUATE, NEGOTIATE, AND SELECT A QUALIFIED VENDOR ACCORDING TO TEXAS LAW.

NOTE: TIPS members are under no obligation to negotiate exclusively with TIPS awarded providers of Energy Savings Performance Contracts. TIPS is identifying qualified providers of Energy Savings Performance Contracts for TIPS members to consider, rank and negotiate with according to the rules below. In procuring an Energy Savings Performance Contract Provider the TIPS Member may consider any awarded TIPS provider under this RFQ. The TIPS Members will then determine from the list of TIPS awarded Energy Savings Performance Contract providers, or any other vendor otherwise determined qualified, which vendor is the most highly qualified for the Member's purposes as provided below in section. The TIPS Member will then attempt to negotiate with the most highly qualified provider, as determined by the TIPS Member, a contract at a fair and reasonable price as provided below in section. If the TIPS member cannot negotiate a satisfactory contract with the most highly rated provider, then the entity shall: (1) formally end negotiations with that provider; (2) select the next most highly qualified provider; and (3) attempt to negotiate a contract with that provider at a fair and reasonable price. The entity shall continue the process described to select and negotiate with providers until a contract is entered into or the TIPS Member determines it no longer desires to enter into an Energy Savings Performance Contract.

PART 2 – MEMBERS IN STATES OTHER THAN TEXAS.

Please read the Part 1 for insight into the process as it is authorized in Texas. Then, TIPS encourages you to consult your attorney as to how Energy Savings Performance Contracts may be procured in your jurisdiction and if the TIPS RFQ can be used as part of your procurement process.

Should you have any questions, please contact TIPS at 866-839-8477 or by email at Bids@Tips-USA.com.